

**ACTS**  
**OF THE**  
**LEGISLATURE**  
**OF**  
**WEST VIRGINIA**



**Regular Session, 1990**  
**First and Second Extraordinary Sessions, 1990**

**BJW Printers, Beckley, W. Va.**



## FOREWORD

This volume contains the Acts of the Second Regular and the First and Second Extraordinary Sessions of the 69th Legislature, 1990.

### Second Regular Session, 1990

The Second Regular Session of the 69th Legislature convened on January 10, 1990. The constitutional sixty-day limit on the duration of the session was midnight, March 10, 1990. However, the session was extended by Proclamation of the Governor for the sole consideration of the Budget Bill, and the Legislature adjourned its Regular Session *sine die* on March 14, 1990.

Bills totaling 1,717 were introduced in the two houses during this session (1,092 House and 625 Senate). The Legislature passed 200 bills, 120 House and 80 Senate. The Governor vetoed one House bill (H. B. 4692), two Senate bills (S. B. 78 and Com. Sub. for S. B. 311) and one bill (Com. Sub. for H. B. 4456) became law without the Governor's signature, leaving a net total of 197 bills which became law.

One hundred concurrent resolutions were introduced during the session, 54 House and 46 Senate, of which 17 House and 12 Senate were adopted. Thirty-two House Joint and 15 Senate Joint Resolutions were introduced proposing amendments to the State Constitution. Com. Sub. for H. J. R. 109, Local Government Fiscal Responsibility Amendment, was reported from committee but died on the House calendar. No Joint Resolutions were adopted. The House had 26 House Resolutions and the Senate had 36 Senate Resolutions, of which 13 House and 34 Senate were adopted.

The Senate failed to pass 86 House bills passed by the House and 64 Senate bills failed passage by the House. One House bill, Com. Sub. for H. B. 2278, permitting employees of school districts to be eligible for membership on county boards of education in certain instances, was rejected by the Senate. Five House and four Senate bills died in conference.

### First Extraordinary Session, 1990

The First Extraordinary Session convened at 9:45 p.m., on

March 14, 1990, and adjourned *sine die* at 8:53 p.m., on March 15, 1990.

The Proclamation convening the session contained two items for consideration during the session.

Two House bills and two Senate bills were introduced, of which two House bills passed and were approved by the Governor.

The Senate introduced and adopted eight Senate Resolutions. The House introduced and adopted one House Resolution, providing for payment of expenses of the session and one House Concurrent Resolution, directing the Joint Committee on Government and Finance to study the issues of personnel in the public education system.

### **Second Extraordinary Session, 1990**

The Legislature met in its Second Extraordinary Session at 5:00 p.m., on June 22, 1990, and adjourned *sine die* at 1:40 p.m. on June 27, 1990.

The Legislature was called together for the purpose of considering thirteen items: Workers' Compensation, Public Energy Authority, disclosure of certain tax information, establishment of a special advance payment account for the WIC Program, supplemental appropriation for WIC Program, child support statute revisions, Homestead Property Tax Exemption, Public Employees Retirement revision concerning nonremunerative governmental positions, solicitation of charitable funds, salary increase for public employees, funding of PEIA, salary increase for education employees and establishing a Disaster Recovery Council and Trust Fund.

The Legislature passed, and the Governor approved, twelve bills: Six House bills and six Senate bills.

Com. Sub. for H. B. 203, Disclosure of certain taxpayer information, passed the House, but the Senate rejected the Conference Report thereon. One House bill (H. B. 207, supplemental appropriation to PEIA, Acct. No. 6150) failed passage by the Senate.

The Senate introduced and adopted two Senate Concurrent

Resolutions and six Senate Resolutions. The House introduced and adopted two House Resolutions and three House Concurrent Resolutions.

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

These Acts may be purchased from the Division of Purchasing, Department of Administration, State Capitol, Charleston, West Virginia 25305.

DONALD L. KOPP,  
*Clerk of the House and  
Keeper of the Rolls.*



**TABLE OF CONTENTS**

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**ACTS AND RESOLUTIONS**

---

**Regular Session, 1990**  
**First & Second Extraordinary Sessions, 1990**

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**GENERAL LAWS**

Chapter		Page
	<b>ACTIONS AND SUITS</b>	
1.	When Loans or Lines of Credit Not Binding.....	1
	<b>ADMINISTRATION</b>	
2.	Reorganization of the Department of Administration.....	3
	<b>AGRICULTURE</b>	
3.	Requirements of Applicant for Public Market Permit .....	112
4.	Compensation of Cooperative Extension Service Employees.....	114
5.	Additional Definition of Dealer .....	116
6.	Agricultural Liming Materials Law .....	120
7.	Pesticide Control Act of 1990 .....	128
	<b>AIR POLLUTION CONTROL</b>	
8.	Use of Operating Fees and Penalties for Paying Commission Salaries and Expenses .....	161
	<b>ALCOHOLIC LIQUOR</b>	
9.	Authorizing the Private Sale of Alcoholic Liquor .....	167
	<b>APPROPRIATIONS</b>	
10.	Budget Bill, Making Appropriations for Fiscal Year Beginning July 1, 1990 .....	194
	<b>Supplemental</b>	
11.	Transfer of Funds, Acct. No. 1030, Joint Expenses, to Acct. No. 4050-21, Medical Services .....	275
12.	Expiring and Transferring Certain Unexpended Funds .....	276
13.	Tax Division, Acct. No. 1800 .....	278
14.	Commission on Aging, Acct. No. 4060 .....	279
15.	Nonintoxicating Beer Commissioner, Acct. No. 4900 .....	280
16.	Racing Commission, Acct. No. 4950 .....	281

Chapter		Page
	<b>APPROPRIATIONS—(Continued)</b>	
	<b>Supplemental—(Continued)</b>	
17.	Division of Personnel of the Civil Service System and the Civil Service Commission .....	282
18.	Division of Highways, Acct. No. 6700.....	283
19.	Division of Motor Vehicles, Acct. No. 6710. ....	285
20.	Expiring and Transferring Unexpended Amounts from Numerous State Agency Accounts to the Division of Human Services .....	287
21.	Information System Services Division, Acct. No. 8151 .....	293
22.	Division of Public Safety, Drunk Driving Prevention Fund .....	294
23.	Division of Health—Hospital Services Revenue Account .....	295
	<b>ARCHITECT-ENGINEER SERVICES</b>	
24.	Procurement of Architect-Engineer Services.....	297
	<b>ARCHIVES AND HISTORY</b>	
25.	Protection and Preservation of Historic Archaeological Sites and Burial Grounds.....	300
	<b>BANKS AND BANKING</b>	
26.	Reporting of State Assets Held to Secretary and State Treasurer	312
27.	Bank Assets Permitted to Qualify as a Member of the Board of Banking and Financial Institutions.....	313
28.	Capital Stock and Capital Surplus Requirement for a Banking Institution to Incorporate .....	316
29.	Prohibiting Furnishing Information By Financial Institutions to Other Financial Institutions Concerning Employee's Known Violation of Banking Laws .....	323
30.	Funds Transfer .....	324
	<b>BEER</b>	
31.	Manufacture, Sale, Distribution, Transportation, Storage and Consumption of Nonintoxicating Beer.....	361
	<b>BIDS</b>	
32.	Selection by County Boards of Education of Bidders from Whom School Buses are Purchased .....	369
	<b>BLENNERHASSETT PARK</b>	
33.	Regulatory Authority of Division of Commerce Over the Water Transport of Visitors to Blennerhassett Island .....	371
	<b>BOARD OF INVESTORS</b>	
34.	Prohibiting Attempts to Recover Overpayments Made from the Consolidated Fund to Local Governments .....	374
35.	Continuation of the West Virginia Board of Investments .....	376



TABLE OF CONTENTS

ix

Chapter	Page
<b>CABLE TELEVISION</b>	
36. Regulation of Cable Television.....	376
<b>CAPITAL COMPANY ACT</b>	
37. Definitions Under the Capital Company Act .....	405
<b>CAPITOL BUILDING COMMISSION</b>	
38. Continuing the Capitol Building Commission.....	406
<b>CHILD ADVOCATE</b>	
39. Continuing the Child Advocate Office .....	408
<b>CHILD SUPPORT</b>	
40. General Revision of Law Governing .....	409
<b>CHILD WELFARE</b>	
41. Purchase or Sale of Child Prohibited and Providing Penalties .....	476
42. Custody of Abused or Neglected Children During Emergency Situations .....	483
<b>CIVIL SERVICE</b>	
43. Offices and Positions Exempt from Coverage Under Classified Service .....	487
<b>CLAIMS</b>	
44. Claims Against the State .....	489
45. Claims for Compensation of Crime Victims .....	492
46. Claims Against Various State Agencies.....	493
<b>CONSUMER CREDIT AND PROTECTION</b>	
47. Recovery of Damages from and Prohibition of Unsolicited Commercial Telefacsimile Transmissions .....	507
48. Provisions Rendering Certain Assignees and Lenders Subject to Claims and Defenses.....	519
49. Increasing Recovery of Attorney's Fees and Collection Costs .....	525
50. Refund to Debtors of Unused Insurance Premiums Upon Payment in Full of Debt .....	527
51. Repeal of Section Creating Consumer Affairs Advisory Council ....	531
<b>CORRECTIONS</b>	
52. Providing Funds for Construction of Regional Jails and Correctional Facilities .....	532
53. Operation of Minimum or Medium Security Private Correctional Facilities Within the State .....	539
54. Continuing the Division of Corrections.....	564
55. Monitoring of Inmate Telephone Calls .....	565
56. Repeal of Sections Relating to Payment By Counties of Costs of Detention of Youths By Commissioner of Corrections .....	566
57. Appropriation for Buildings, Equipment, Etc., and Maximum Amount Allowed on Deposit in Prison Industries Account.....	567

Chapter	Page
<b>COURTS AND THEIR OFFICERS</b>	
58. Extending the January Term of Court in Ohio County .....	569
59. Changing Term of Court for the Sixteenth Judicial Circuit in Marion County .....	570
60. Preservation and Destruction of Papers Filed in Circuit Courts ...	570
61. Court Reporter Original Fees and Fees for Copies .....	572
62. Time Period for Petitioning for an Appeal to the Supreme Court	573
<b>CRIMES AND THEIR PUNISHMENT</b>	
63. Misdemeanor Offense of Impersonating a Law-Enforcement Officer .....	576
64. Records of Purchases of Scrap Metal By Junk Dealers, Salvage Yards or Recycling Facilities .....	577
65. Labeling of Video Movie Ratings .....	579
<b>CRIME VICTIMS</b>	
66. Transfer of Crime Victims Compensation Fund .....	581
67. Imposing Costs on Persons Convicted of DUI and Deposit of Such Costs Into the Crime Victims Compensation Fund.....	591
<b>DEPUTY SHERIFFS</b>	
68. Unlimited Unpaid Sick Leave for Deputy Sheriffs.....	595
<b>DOMESTIC RELATIONS</b>	
69. Repeal of Section Relating to Marriages Between Colored Persons	596
70. Relating to Prevention of Domestic Violence .....	597
<b>ECONOMIC DEVELOPMENT</b>	
71. Creating the Division of Tourism and Parks and West Virginia Guaranteed Work Force Program.....	606
72. Customized Job Training Program .....	637
<b>EDUCATION</b>	
73. Designating the Birthday of Martin Luther King as a Legal School Holiday .....	639
74. Public Participation in Promulgation of State Board of Education Rules .....	644
75. Commercial Driver's License for School Personnel.....	656
76. Revising Higher Education Degree Definition and Adding an In- Field Master's Degree.....	657
77. Competency Testing for School Service Personnel .....	662
78. Membership Terms of Faculty and Classified Employee Advisory Councils .....	665
<b>ELECTIONS</b>	
79. Numbered Divisions Within Multi-Judge Circuits for Election Purposes.....	669
80. Electronic Voting Systems .....	679

TABLE OF CONTENTS

xi

Chapter		Page
	<b>EMINENT DOMAIN</b>	
81.	Expanding Definition and Implementing Uniform Re-Assistance Act.....	701
	<b>ENERGY</b>	
82.	Use of Special Revenue Funds by the Commissioner of Energy ....	702
	<b>ETHICS</b>	
83.	Implementing Recommendations of the West Virginia Ethics Commission .....	707
	<b>EVIDENCE AND WITNESSES</b>	
84.	Prohibiting Compelled Testimony of Priests, Nuns, Ministers and Rabbis .....	736
85.	Certain Reproductions Deemed Duplicates .....	737
	<b>FARM MANAGEMENT COMMISSION</b>	
86.	Continuing the Farm Management Commission for Completion of Performance Audit.....	738
	<b>FIRE PREVENTION</b>	
87.	Removing Requirement That a Copy of the State Fire Code be Filed with Each County Clerk .....	745
88.	Authorizing the Use of Live Trees in Public Buildings.....	747
	<b>GASOLINE</b>	
89.	Posting the Alcoholic Content of Gasoline.....	747
	<b>GEOLOGICAL SURVEY</b>	
90.	Continuation of the Geological Survey Program .....	748
	<b>HEALTH</b>	
91.	Closure of Certain Hospitals and Facilities .....	749
92.	Fees for Services by the Division of Health .....	757
93.	Certificate of Need and Exemptions Therefrom .....	759
94.	Powers and Duties of the State Health Planning and Development Agency .....	776
95.	Copies of Health Care Records.....	780
96.	Termination Date of the Task Force on Uncompensated Health Care and Medicaid Expenditures .....	782
97.	Medical Power of Attorney Act .....	785
98.	Designee of Director of Health to be a Member of the Board of Medicine and to Act as Secretary .....	798
	<b>HORSE AND DOG RACING</b>	
99.	Powers and Authority of Racing Commission.....	800
100.	Televised Racing Days.....	803

Chapter		Page
<b>HUMAN SERVICES</b>		
101.	Reimbursement of Capital Costs for Certain Health Care Facilities .....	806
<b>HUNTING AND FISHING</b>		
102.	Transfer of Authority Prohibited for Plum Orchard Lake, Pleasants Creek, Big Ditch Lake and Teeter Creek .....	809
103.	Designating Moncove Lake Public Hunting and Fishing Area as a State Park .....	810
104.	Additional Compensation Paid to County Officials for Issuance of Hunting, Trapping and Fishing Licenses .....	812
105.	Small Arms Hunting License .....	814
106.	Eliminating the Antlered Deer Only Restriction .....	816
<b>INSURANCE</b>		
107.	Primary Malpractice Insurance for Treatment of Medicaid Obstetric Patients.....	817
108.	Capital and Surplus Requirements of Insurers and Minimum Amount of Tax Payable .....	820
109.	Continuing Education Program for Agents .....	821
110.	Required Reporting of an Impairment in the Financial Condition of an Insurance Company .....	825
111.	Agents, Brokers, Solicitors and Excess Line Agents.....	886
112.	Group Life Insurance Dependent Coverage .....	891
113.	Third Party Reimbursement for Rehabilitation Services .....	893
114.	Group Health Insurance Conversion .....	902
115.	Regulating the Declination and Termination of Property Insurance Policies.....	903
116.	Premium Reduction for Certain Drivers .....	910
117.	Requiring Hospital, Medical, Dental and Health Service Corporations Each to Provide Coverage for Mental Illness .....	912
<b>JUVENILE OFFENDERS</b>		
118.	Home Detention Act Established .....	914
<b>LAW-ENFORCEMENT OFFICERS</b>		
119.	Prohibiting Off-Duty Employment of Law-Enforcement Officers in Labor Disputes .....	919
<b>LEGISLATIVE RULES</b>		
120.	Legislative Rules for Various State Agencies .....	923
<b>LEGISLATURE</b>		
121.	Defining "Next Meeting of the Senate" .....	1036
122.	Charges for Use of Legislative Computer Subscriber System .....	1036

TABLE OF CONTENTS

xiii

<b>Chapter</b>		<b>Page</b>
	<b>LIENS</b>	
123.	Clarifying Obligatory and Nonobligatory Future Advances .....	1037
	<b>LOCAL POWERS ACT</b>	
124.	Establishing the Local Powers Act .....	1041
	<b>LOTTERY</b>	
125.	Setting Forth Revisions to the State Lottery Act .....	1053
	<b>MENTALLY ILL PERSONS</b>	
126.	Removing State Licensing Requirement of Physicians Treating Individuals Subject to Incompetency Hearings .....	1064
	<b>MOTOR VEHICLES</b>	
127.	Registration Fees for Certain Classes of Vehicles .....	1068
128.	Special License Plates for Survivors of the Attack on Pearl Harbor .....	1075
129.	Definition of Total Loss Vehicle and Licensing of Wreckers or Dismantler/Rebuilders .....	1081
130.	Making it Unlawful to be an Automobile Broker .....	1113
131.	Compensation to Dealers for Service Rendered on Warranty and Factory Recall Work.....	1114
132.	Felony Offense of Theft of a Rented or Leased Vehicle .....	1116
133.	Felony Offense of Theft of Motor Vehicle Offered for Sale Which has been Obtained for Temporary Use for Demonstration Purposes .....	1117
134.	Motorcycle Safety and Motorcycle Safety Program .....	1118
135.	Penalties for Overtaking and Passing School Buses .....	1132
136.	Altered Motor Vehicle Suspension Systems .....	1134
137.	Reducing Operator's License Suspension Period and Removing High Risk Insurance Requirement for Certain Drivers .....	1136
138.	Authorizing Service of Process on Defendant's Insurance Company When Attempts to Locate Defendant Fail .....	1139
	<b>MUNICIPALITIES</b>	
139.	Repeal of Article Relating to Notice of Suit Against Municipalities .....	1144
140.	Nonliability of Owner of Real Property for Delinquent Utility Rates or Charges .....	1145
141.	Acquisition or Construction of Electric Power and Waterworks Systems .....	1151
	<b>NATIONAL GUARD</b>	
142.	American Flag Burial for Deceased Members of the National Guard.....	1172

Chapter		Page
<b>NATURAL RESOURCES</b>		
143.	Sales of Public Land to Federal or State Entities for Less than Fair Market Value .....	1173
144.	Interstate Wildlife Violator Compact.....	1176
145.	Limitation on Liability of Horse Owners for Injury Resulting from Equestrian Activity .....	1186
146.	Definition of Term "Other Wastes" in the Water Pollution Control Act.....	1191
147.	Underground Storage Tank Management .....	1195
148.	Clarifying Unlawful Negligent Shooting, Wounding or Killing of Humans or Livestock While Hunting .....	1198
<b>PRISONERS</b>		
149.	Payment of Costs for Extradition of Criminals.....	1199
<b>PROFESSIONS AND OCCUPATIONS</b>		
150.	Permitting Graduates of Approved Vocational Programs to Take the Journeyman Electrician's Test and be Awarded a License .....	1200
151.	Voluntary Treatment of Physicians, Podiatrists and Physician Assistants for Alcohol or Chemical Dependency .....	1203
152.	General Revision of the Law Governing Architects.....	1206
153.	Permitting License Fees for Hearing-Aid Dealers and Fitters to be Established by Rule .....	1217
<b>PUBLIC DEFENDER</b>		
154.	Public Defender Services.....	1223
<b>PUBLIC LIBRARIES</b>		
155.	State Library Commission Authorized to Offer Certain Printed Matter for Sale.....	1244
156.	Confidentiality of Users of Library Materials.....	1246
<b>PUBLIC SAFETY</b>		
157.	Establishment of a Career Progression System Within the Department of Public Safety, Salary Increases, Classification and Promotion .....	1247
158.	Reimbursement by the Division of Motor Vehicles to the Division of Public Safety for Services Rendered .....	1252
159.	Retired Members of the Division of Public Safety Permitted to Carry a Handgun .....	1256
160.	Awarding Members of the Department of Public Safety Their Service Revolver Upon Retirement.....	1257
<b>PUBLIC SERVICE COMMISSION</b>		
161.	Cessation of Jurisdiction Over Rates for Certain Services of Telephone Utilities .....	1258
162.	Conferring Ratemaking Jurisdiction for Access Charges of Telephone Cooperatives .....	1261
163.	Emergency Telephone Systems .....	1265

TABLE OF CONTENTS

xv

Chapter		Page
	<b>RAFFLES</b>	
164.	Charitable Raffles .....	1268
	<b>REAL PROPERTY</b>	
165.	Real Estate Appraiser Licensing and Certification Act .....	1272
	<b>REGULATION OF TRADE</b>	
166.	Annual Registration Fees, Bedding and Upholstery Business.....	1304
	<b>RETIREMENT</b>	
167.	Supplemental Benefits Under the Policemen's and Firemen's Pension and Relief Funds .....	1305
	<b>SMALL BUSINESS ASSISTANCE</b>	
168.	Small Business Expansion Assistance Program .....	1307
	<b>SOLID WASTE</b>	
169.	Solid Waste and Disposal .....	1311
170.	County Recycling Program for Solid Waste .....	1352
	<b>SUNSET</b>	
171.	Termination of Governmental Entities or Programs .....	1355
	<b>TAXATION</b>	
172.	Taxation and Property Valuation .....	1358
173.	Tax Exemption for Property Used by Nonprofit Corporations Providing Natural Gas for Public Purposes.....	1387
174.	Timely Filing and Payment of Ad Valorem Real or Personal Property Taxes.....	1390
175.	Exemptions Under Consumers Sales Tax Law.....	1392
176.	Business Investment and Jobs Expansion Credit Restrictions and Limitations .....	1416
177.	Credit for Qualified Rehabilitated Buildings Investment .....	1428
178.	Personal Income Tax Terms .....	1434
179.	Business Franchise and Corporation Net Income Tax Terms .....	1438
	<b>TRAFFIC REGULATIONS</b>	
180.	Penalties for Violations of Handicapped Parking Privileges.....	1449
	<b>TREASURER</b>	
181.	Responsibilities of State Treasurer .....	1453
182.	Requiring Bank Reconciliations and the Balancing of State Accounts in a Timely Manner .....	1463
	<b>TURNPIKE</b>	
183.	Continued Toll Collection at the Intersection of U.S. Route 19 and the Turnpike .....	1465

Chapter	Page
<b>UNCLAIMED PROPERTY</b>	
184. Presumption of Abandonment of Property .....	1469
<b>UNEMPLOYMENT COMPENSATION</b>	
185. Unemployment Compensation Generally .....	1476
<b>UNIFORM STATE LAWS</b>	
186. Life Members of the Commission .....	1496
<b>VETERANS</b>	
187. Transfer of Administration of Division of Veterans' Affairs and Veterans' Council to the Department of Public Safety .....	1497
188. State Homes for Veterans .....	1506
<b>WAYPORT AUTHORITY</b>	
189. Creation of the West Virginia Wayport Authority .....	1508
<b>WOMEN'S COMMISSION</b>	
190. Continuing the Women's Commission and Correcting Designation of Ex Officio Members .....	1524
<b>WORKERS' COMPENSATION</b>	
191. Continuing the Office of Workers' Compensation Commissioner ....	1525
<b>LOCAL LAWS</b>	
<b>Fayette County</b>	
192. Establishing the Fayette County New River Gorge Bridge Day Commission .....	1528
<b>Hancock County</b>	
193. Repeal of Act Requiring the Providing of Funds for Certain Monuments, Marking of Certain Graves, Etc .....	1531
<b>Mercer County</b>	
194. Mercer County Tourist Train Authority .....	1532
<b>Morgan County</b>	
195. Board of Directors of Morgan County War Memorial Hospital .....	1534
<b>Putnam County</b>	
196. Extending Time for County Commission to Meet as Levying Body for Election to Continue Additional Levy for Parks, Recreation and Library Services .....	1536
<b>Spencer</b>	
197. Farm Management Commission and Division of Health Directed to Convey Spencer State Hospital Institutional Farm and Spencer State Hospital to the City of Spencer .....	1537



**RESOLUTIONS**

(Only resolutions of general interest are included herein)

Number	<b>Concurrent</b>	Page
HCR 1	Raising a Joint Assembly to Hear an Address by His Excellency, the Governor .....	1539
HCR 21	Relocation of FBI Identification Division in West Virginia .....	1539
HCR 40	Interim Review, Examination and Study of Solid and Toxic Waste Management .....	1540
SCR 19	Establishing the West Virginia Health Care Delivery and Accessibility Task Force .....	1541
SCR 30	Approving Purpose and Amount of Certain Projects of the West Virginia Regional Jail and Correctional Facilities Authority.....	1543
<b>House</b>		
HR 19	Amending the Rules of the House of Delegates Relating to Prohibiting Smoking and the use of all Other Tobacco Products in the Chamber, Galleries and Committee Rooms During Meetings .....	1547
<b>Senate</b>		
SR 3	Amending Senate Rule 27, Relating to Standing Committees of the Senate .....	1547
SR 13	Amending Rules of the Senate Relating to Defining the Phrase "Next Meeting of the Senate".....	1548

**First Extraordinary Session, 1990**

Chapter	<b>APPROPRIATIONS</b>	Page
1.	Supplementing, Amending, Reducing and Transferring Appropriations in Acct. No. 2950, State Department of Education—State Aid to Schools.....	1551
<b>EDUCATION</b>		
2.	General Revision of the Law Governing Public Education .....	1553

**Second Extraordinary Session, 1990**

Chapter	<b>APPROPRIATIONS</b>	Page
1.	Supplemental Appropriations to Various Accounts for Salary Increases .....	1589
2.	Supplemental Appropriation, Consolidated Medical Services Fund, Acct. No. 4190 .....	1593

Chapter		Page
	<b>APPROPRIATIONS—(Continued)</b>	
3.	Supplemental Appropriation, Division of Motor Vehicles, Acct. No. 6710 .....	1594
4.	Supplementing, Amending, Reducing and Transferring Appropriations in Various Accounts .....	1595
	<b>CHARITABLE FUNDS</b>	
5.	Solicitation of Charitable Funds Act .....	1600
	<b>CHILD SUPPORT</b>	
6.	Conforming State Law With Requirements of the Federal Family Support Act of 1989 .....	1610
	<b>EMERGENCY SERVICES</b>	
7.	West Virginia Disaster Recovery Act.....	1614
	<b>ENERGY</b>	
8.	Public Energy Authority .....	1626
	<b>HOMESTEAD PROPERTY TAX EXEMPTION</b>	
9.	Revision of the Law Concerning Exemption.....	1646
	<b>RETIREMENT</b>	
10.	Permitting Retired Public Employees to Serve on Certain Boards and Commissions .....	1650
	<b>WIC PROGRAM</b>	
11.	Establishment of Special Advance Payment Account.....	1658
	<b>WORKERS' COMPENSATION</b>	
12.	General Revision of Law .....	1660

# MEMBERS OF THE SENATE

REGULAR SESSION, 1990

## OFFICERS

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*President Pro Tem*—Homer Heck, Huntington  
*Clerk*—Darrell E. Holmes, Charleston  
*Sergeant at Arms*—Estil Bevins, Williamson  
*Doorkeeper*—Porter Cotton, Cabin Creek

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	John G. Chernenko (D).....	Wellsburg
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	Larry Wiedebusch (D).....	Glen Dale
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	Keith Burdette (D).....	Parkersburg
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	Robert L. Dittmar (D).....	Ravenswood
Fifth.....	Homer Heck (D).....	Huntington
	Ned Jones (D).....	Huntington
Sixth.....	H. Truman Chafin (D).....	Williamson
	A. Keith Wagner (D).....	Jaeger
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	Earl Ray Tomblin (D).....	Chapmanville
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	Robert K. Holliday (D).....	Fayetteville
Twelfth.....	<sup>3</sup> Walt Helmick (D).....	Marlinton
	Jae Spears (D).....	Elkins
Thirteenth.....	Bill Sharpe (D).....	Weston
	M. Jay Wolfe (R).....	Clarksburg
Fourteenth.....	Joe Manchin, III (D).....	Fairmont
	George Warner (R).....	Morgantown
Fifteenth.....	Charles B. Felton, Jr. (D).....	Rowlesburg
	C. N. Harman (R).....	Grafton
Sixteenth.....	Thomas J. Hawse, III (D).....	Moorefield
	Sondra Moore Lucht (D).....	Martinsburg
Seventeenth.....	Charlotte Jean Pritt (D).....	Charleston
	<sup>4</sup> Martha G. Wehrle (D).....	Charleston

<sup>1</sup> Appointed to fill the vacancy created by the resignation of Thomas E. Loehr.

<sup>2</sup> Appointed to fill the vacancy created by the resignation of John Boettner, Jr.

<sup>3</sup> Appointed to fill the vacancy created by the resignation of Larry A. Tucker.

<sup>4</sup> Appointed to fill the vacancy created by the resignation of Darrell E. Holmes.

(D) Democrats.....	30
(R) Republicans.....	4
Total.....	34

# MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1990

## OFFICERS

*Speaker*—Robert C. Chambers, Huntington

*Speaker Pro Tem*—Marjorie H. Burke, Sand Fork

*Clerk*—Donald L. Kopp, Clarksburg

*Sergeant at Arms*—Oce W. Smith, Jr., Fairmont

*Doorkeeper*—Dannie Wingo, Yukon

District	Name	Address
First.....	Sam Love (D).....	Weirton
	Tamara Pettit (D).....	New Cumberland
Second.....	Roy E. Givens (D).....	Wellsburg
	Bernard V. Kelly (D).....	Follansbee
Third.....	Andy Katz (D).....	Wheeling
	David B. McKinley (R).....	Wheeling
	Paul J. Otte (R).....	Wheeling
Fourth.....	Rodney T. Berry (D).....	Moundsville
	A. E. Tribett (D).....	McMechen
Fifth.....	Dave Pethtel (D).....	Hundred
Sixth.....	James E. Willison (R).....	Sistersville
Seventh.....	Otis A. Leggett (R).....	St. Marys
Eighth.....	Stephen C. Bird (D).....	Parkersburg
	Robert W. Burk, Jr. (R).....	Parkersburg
	A. V. Criss, III (R).....	Vienna
	J. Frank Deem (R).....	Vienna
	George E. Farley (D).....	Parkersburg
Ninth.....	Marjorie H. Burke (D).....	Sand Fork
	Randy Schoonover (D).....	Clay
Tenth.....	Bob Ashley (R).....	Spencer
Eleventh.....	Virginia Jolliffe Starcher (D).....	Ripley
Twelfth.....	Charley Damron (D).....	Leon
	Lydia D. Long (D).....	Pt. Pleasant
	Deborah F. Phillips (D).....	Scott Depot
	Patricia Holmes White (D).....	Poca
Thirteenth.....	Robert C. Chambers (D).....	Huntington
	Phyllis Given (D).....	Huntington
	Rick Houvouras (D).....	Huntington
	James Hanly Morgan (D).....	Huntington
	Evelyn E. Richards (R).....	Huntington
	Stephen T. Williams (D).....	Huntington
Fourteenth.....	Kenneth Adkins (D).....	Huntington
	Walter Rollins (D).....	Kenova
Fifteenth.....	Jim Reid (D).....	Williamson
	Mike Whitt (D).....	Meador
Sixteenth.....	W. E. Anderson (D).....	Logan
	Sammy D. Dalton (D).....	Harts
	Joe C. Ferrell (D).....	Logan
	David E. Whitman (D).....	Logan
Seventeenth.....	Delores W. Cook (D).....	Ridgeview
Eighteenth.....	Ernest C. Moore (D).....	Thorpe
	Rick Murensky (D).....	Welch
Nineteenth.....	Richard Browning (D).....	Oceana
	W. Richard Staton (D).....	Mullens

Twentieth.....	Terry W. Basham (D).....	Rock
	Tom Farmer (D).....	Princeton
	Richard D. Flanigan (D).....	Princeton
	Richard N. Kephart (D).....	Princeton
Twenty-first.....	Mary Pearl Compton (D).....	Union
Twenty-second.....	Robert S. Kiss (D).....	Prosperity
	Jack J. Roop (D).....	Beckley
	Arnold W. Ryan (D).....	Hinton
	Tom Susman (D).....	Beckley
	William R. Wooton (D).....	Beckley
Twenty-third.....	Ramona Gail Cerra (D).....	Charleston
	David Grubb (D).....	Charleston
	Barbara Burruss Hatfield (D).....	South Charleston
	Danny Jones (R).....	Charleston
	Robert J. Louderback (D).....	Charleston
	Margaret Miller (R).....	South Charleston
	Phyllis J. Rutledge (D).....	Charleston
	Lyle Sattes (D).....	Charleston
	Rudy Seacrist (D).....	Charleston
	<sup>2</sup> Walton S. Shepherd (D).....	Sissonville
	Henry Shores (R).....	Charleston
	Sharon Spencer (D).....	Charleston
Twenty-fourth.....	Paul M. Blake, Jr. (D).....	Fayetteville
	L. Dale Clonch (D).....	Fayetteville
	John W. Hatcher, Jr. (D).....	Fayetteville
Twenty-fifth.....	James J. Rowe (D).....	Lewisburg
	Bill Wallace (R).....	Clintonville
Twenty-sixth.....	C. Farrell Johnson (D).....	Summersville
	Eugene T. Wilson (D).....	Cowen
Twenty-seventh.....	Joe Martin (D).....	Elkins
	<sup>3</sup> Jane Price Sharp (D).....	Marlinton
Twenty-eighth.....	Dale Riggs (R).....	Buckhannon
	Donald L. Stemple (R).....	Philippi
Twenty-ninth.....	Robert J. Conley (R).....	Weston
Thirtieth.....	Percy C. Ashcraft, II (D).....	Clarksburg
	Joseph M. Minard (D).....	Clarksburg
	Michael L. Queen (D).....	Clarksburg
	Barbara A. Warner (D).....	Bridgeport
Thirty-first.....	Nick Fantasia (D).....	Kingmont
	James L. Pitrolo, Jr. (D).....	Fairmont
	Roman W. Prezioso, Jr. (D).....	Fairmont
	Cody A. Starcher (D).....	Fairmont
Thirty-second.....	Michael A. Buchanan (D).....	Morgantown
	Stephen L. Cook (D).....	Morgantown
	<sup>4</sup> Brian A. Gallagher (D).....	Morgantown
	Florence L. Merow (D).....	Morgantown
Thirty-third.....	David E. Miller (D).....	Kingwood
	Fred C. Peddicord (D).....	Kingwood
Thirty-fourth.....	<sup>5</sup> Phyllis M. Cole (R).....	Petersburg
	Robert A. Schadler (R).....	Keyser
Thirty-fifth.....	Harold K. Michael (D).....	Moorefield
Thirty-sixth.....	Jerry L. Mezzatesta (D).....	Romney
Thirty-seventh.....	Patrick H. Murphy (D).....	Martinsburg
Thirty-eighth.....	Larry V. Faircloth (R).....	Inwood
Thirty-ninth.....	John Overington (R).....	Martinsburg
Fortieth.....	Dale Manuel (D).....	Charles Town

<sup>1</sup> Appointed to fill the vacancy created by the resignation of Patricia Bradley.

<sup>2</sup> Appointed to fill the vacancy created by the resignation of James F. Humphreys.

<sup>3</sup> Appointed to fill the vacancy created by the resignation of Walt Helmick.

<sup>4</sup> Appointed to fill the vacancy created by the resignation of Twila S. Metheny.

<sup>5</sup> Appointed to fill the vacancy created by the resignation of Marc L. Harman.

(D) Democrats.....	80
(R) Republicans.....	20

Total..... 100

# COMMITTEES OF THE HOUSE OF DELEGATES

Regular Session, 1990

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## STANDING

### Agriculture and Natural Resources

Buchanan (*Chairman of Agriculture*), Peddicord (*Vice Chairman of Agriculture*), Love (*Chairman of Natural Resources*), Reid (*Vice Chairman of Natural Resources*), Ashcraft, Burke, Clonch, Compton, B. Hatfield, Martin, Michael, Murphy, Pethel, Pitrolo, Schoonover, Staton, Tribett, Warner, Whitman, Wilson, Leggett, Overington, Riggs, Stemple and Willison.

### Banking and Insurance

Phillips (*Chairman of Banking*), Minard (*Vice Chairman of Banking*), Susman (*Chairman of Insurance*), Adkins (*Vice Chairman of Insurance*), Berry, Cerra, Dalton, Damron, Fantasia, Flanigan, Gallagher, Grubb, Houvouras, Katz, Kephart, Michael, Queen, Rutledge, White, Wooton, Ashley, Criss, McKinley, Riggs and Shores.

### Constitutional Revision

Given (*Chairman*), Wooton (*Vice Chairman*), Basham, Blake, Browning, D. Cook, Grubb, Kelly, Kiss, Long, Louderback, Manuel, Martin, Murensky, Prezioso, Rowe, Sattes, Shepherd, V. Starcher, Staton, Faircloth, Overington, Richards, Stemple and Wallace.

### Education

Sattes (*Chairman*), Ashcraft (*Vice Chairman*), Bird, Blake, Compton, D. Cook, Dalton, Fantasia, Farmer, Gallagher, Long, Merow, Mezzatesta, D. Miller, Pettit, Queen, Sharp, Spencer, Susman, Williams, Leggett, Otte, Overington, Richards and Willison.

### Finance

Farley (*Chairman*), Murphy (*Vice Chairman*), Adkins, Anderson, Browning, Burke, S. Cook, B. Hatfield, Houvouras, Kiss, Martin, Minard, Peddicord, Phillips, Prezioso, Rutledge, Seacrist, V. Starcher, White, Wooton, Conley, Criss, Faircloth, McKinley and Stemple.

### Government Organization

Givens (*Chairman*), Flanigan (*Vice Chairman*), Cerra, Clonch, T. Hatfield, Johnson, Kelly, Kephart, Louderback, Love, Mezzatesta, Michael, Morgan, Rollins, Ryan, Schoonover, C. Starcher, Tribett, Whitman, Wooton, Cole, Riggs, Schadler, Shores and Wallace.

### Health and Human Resources

B. Hatfield (*Chairman*), White (*Vice Chairman*), Berry, S. Cook, Browning, Fantasia, Flanigan, Katz, Louderback, Merow, Mezzatesta, D. Miller, Moore, Pettit, Roop, Spencer, C. Starcher, Susman, Warner, Wilson, Ashley, Conley, Deem, Otte and Richards.

### Industry and Labor

Moore (*Chairman*), Spencer (*Vice Chairman*), Adkins, Anderson, Bird, Clonch, Compton, S. Cook, Farmer, Ferrell, Gallagher, Given, Long, D. Miller, Pethtel, Ryan, Schoonover, Whitman, Williams, Deem, McKinley, P. Miller, Overington and Schadler.

### Judiciary

Hatcher (*Chairman*), Berry (*Vice Chairman*), Basham, Buchanan, Damron, Ferrell, Given, Grubb, Katz, Manuel, Moore, Pethtel, Pitrolo, Reid, Roop, Rowe, Shepherd, Staton, Warner, Wilson, Ashley, Burk, Deem, Jones and P. Miller.

### Political Subdivisions

Roop (*Chairman*), Mezzatesta (*Vice Chairman*), Clonch, Damron, T. Hatfield, Houvouras, Johnson, Kelly, Kiss, Manuel, Merow, Morgan, Murphy, Rowe, Ryan, Seacrist, Sharp, V. Starcher, Staton, Tribett, Cole, Jones, P. Miller, Shores and Willison.

**Roads and Transportation**

Anderson (*Chairman*), Pitrolo (*Vice Chairman*), Ashcraft, Basham, Blake, Buchanan, Burke, Cerra, D. Cook, Dalton, Farmer, Ferrell, Johnson, Love, Morgan, Peddicord, Reid, Seacrist, C. Starcher, Williams, Conley, Criss, Leggett, Schadler and Wallace.

**Rules**

Chambers (*Chairman*), Ashcraft, Burke, Farley, Givens, Hatcher, Murensky, Sattes, Seacrist, Wooton, Burk and Otte.

**JOINT COMMITTEES****Enrolled Bills**

Kelly (*Chairman*), Ryan (*Vice Chairman*), Sattes, Ashley and Jones.

**Rules**

Chambers (*Co-Chairman*), Murensky and Burk.

**Government and Finance**

Chambers (*Co-Chairman*), Farley, Hatcher, Murensky, Sattes, Ashley and Burk.

**Legislative Rule-Making Review**

Murphy (*Acting Chairman*), Buchanan, Roop, V. Starcher, Burk and Faircloth.



## COMMITTEES OF THE SENATE

Regular Session, 1990

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### STANDING

#### Agriculture

Parker (*Chairman*), Dittmar (*Vice Chairman*), Hawse, Helmick, Lucht, Rundle, Spears, Whitlow, Wiedebusch and Wolfe.

#### Banking and Insurance

Thomas (*Chairman*), Heck (*Vice Chairman*), Craigo, Dittmar, Hawse, Jones, J. Manchin, Pritt, Rundle, Sharpe, Tomblin, Wagner and Wolfe.

#### Confirmations

Whitlow (*Chairman*), Blatnik (*Vice Chairman*), Chafin, Jackson, Lucht, Parker, Tomblin, Wehrle and Harman.

#### Education

Lucht (*Chairman*), M. Manchin (*Vice Chairman*), Blatnik, Brackenrich, Felton, Hawse, Holliday, Humphreys, Jones, Parker, Rundle, Wagner and Warner.

#### Energy, Industry and Mining

Sharpe (*Chairman*), Wehrle (*Vice Chairman*), Brackenrich, Chernenko, Felton, Helmick, Hylton, Jackson, J. Manchin, M. Manchin, Thomas, Wagner and Harman.

#### Finance

Tomblin (*Chairman*), Craigo (*Vice Chairman*), Blatnik, Brackenrich, Chernenko, Hawse, Jones, Lucht, J. Manchin, M. Manchin, Parker, Sharpe, Spears, Thomas, Wagner, Harman and Warner.

#### Government Organization

Spears (*Chairman*), Wiedebusch (*Vice Chairman*), Bracken-

rich, Chernenko, Craigo, Felton, Jackson, Jones, Lucht, J. Manchin, Parker, Tomblin, Wehrle and Boley.

### **Health and Human Resources**

Holliday (*Chairman*), Pritt (*Vice Chairman*), Blatnik, Chernenko, Craigo, J. Manchin, Sharpe, Spears, Thomas, Boley and Harman.

### **Interstate Cooperation**

Dittmar (*Chairman*), Hylton (*Vice Chairman*), Chafin, Heck, Holliday, M. Manchin, Pritt, Wehrle and Warner.

### **Judiciary**

Jackson (*Chairman*), Rundle (*Vice Chairman*), Chafin, Dittmar, Felton, Heck, Helmick, Holliday, Humphreys, Hylton, Pritt, Wehrle, Whitlow, Wiedebusch, Boley and Wolfe.

### **Labor**

Chernenko (*Chairman*), Humphreys (*Vice Chairman*), Blatnik, Chafin, Helmick, Holliday, Hylton, Wagner, Wiedebusch and Boley.

### **Military**

Felton (*Chairman*), Helmick (*Vice Chairman*), Blatnik, Chernenko, Heck, Rundle, Spears, Whitlow and Boley.

### **Natural Resources**

Brackenrich (*Chairman*), Hawse (*Vice Chairman*), Chafin, Craigo, Helmick, Humphreys, Hylton, Parker, Spears, Thomas, Whitlow, Wiedebusch, Harman and Warner.

### **Rules**

Burdette (*Chairman*), Blatnik, Brackenrich, Chafin, Craigo, Jackson, Lucht, Pritt, Tomblin and Harman.

### **Small Business**

Jones (*Chairman*), J. Manchin (*Vice Chairman*), Blatnik, Craigo, Hawse, Hylton, M. Manchin, Pritt, Rundle, Tomblin, Warner and Wolfe.

**Transportation**

Wagner (*Chairman*), Heck (*Vice Chairman*), Brackenrich, Craigo, Parker, Sharpe, Tomblin, Wiedebusch and Wolfe.

**SELECT COMMITTEE****Ethical Standards and Practices**

Wehrle (*Chairman*), Dittmar, Holliday, Lucht, Wagner, Whitlow and Harman.

**JOINT COMMITTEES****Enrolled Bills**

Parker (*Chairman*), Humphreys (*Vice Chairman*), Dittmar, Heck and Wolfe.

**Government and Finance**

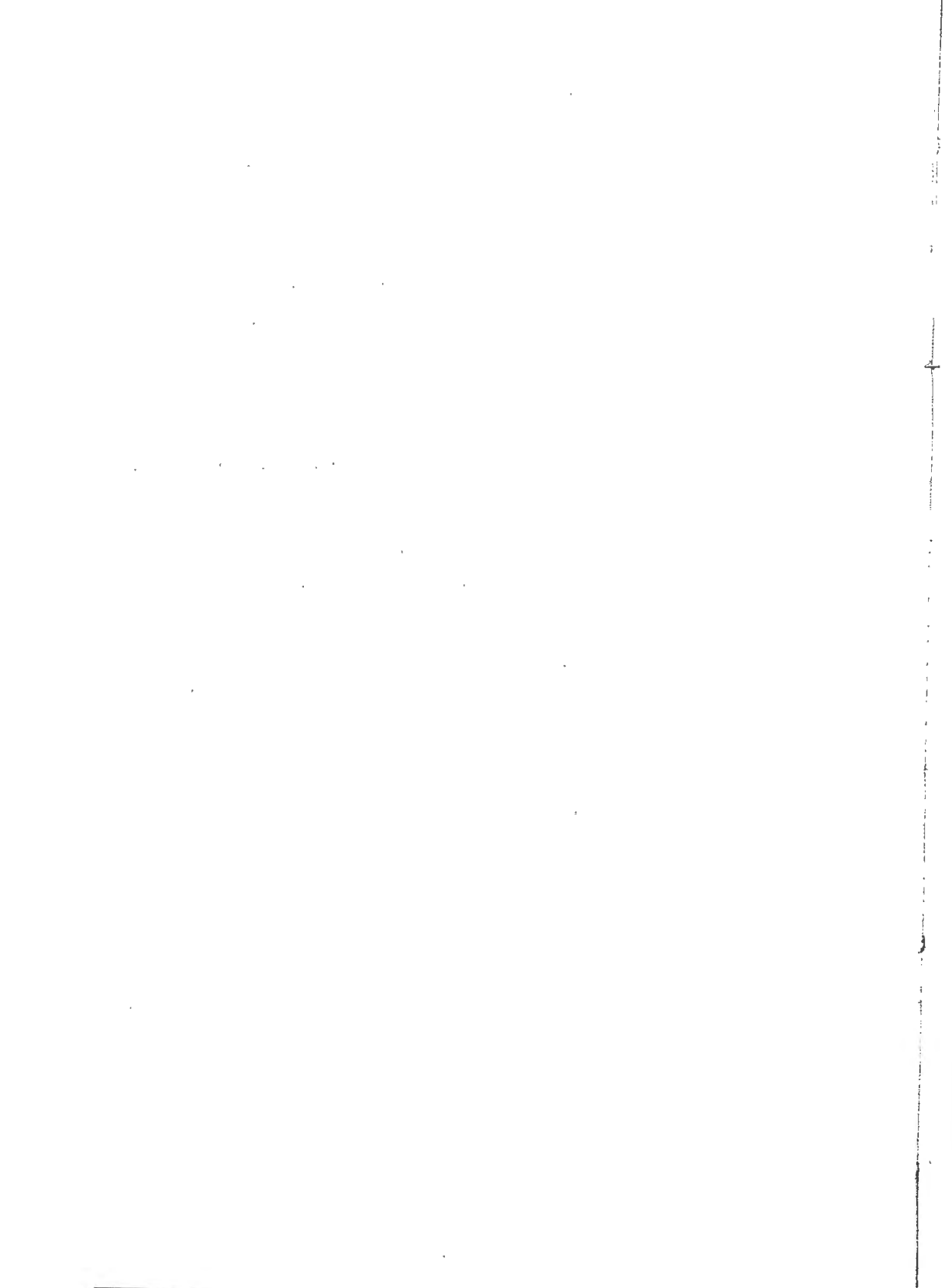
Burdette (*Co-Chairman*), Chafin, Craigo, Jackson, Sharpe, Tomblin and Harman.

**Legislative Rule-Making Review**

Jackson (*Chairman*), Chafin, J. Manchin, Tomblin, Wiedebusch and Warner.

**Rules**

Burdette (*Co-Chairman*), Chafin and Harman.



# LEGISLATURE OF WEST VIRGINIA

## ACTS

### SECOND REGULAR SESSION, 1990

#### CHAPTER 1

(Com. Sub. for H. B. 4045—By Delegates Phillips and Damron)

[Passed March 10, 1990; in effect July 1, 1990. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the statute of frauds; and providing that any offers, agreement, representation, assurance, understanding, commitment, or contract of a bank, savings and loan association or credit union, to extend credit or to make a loan of an amount in excess of fifty thousand dollars, primarily for nonagricultural business or commercial purposes, shall not be binding unless in writing and signed by the party to be charged.

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

That section one, article one, 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 1. STATUTE OF FRAUDS.

##### §55-1-1. When writing required.

- 1 No action shall be brought in any of the following
- 2 cases:
- 3 (a) To charge any person upon or by reason of a

4 representation or assurance concerning the character,  
5 conduct, credit, ability, trade, or dealings of another, to  
6 the intent or purpose that such other may obtain thereby  
7 credit, money, or goods; or

8 (b) To charge any person upon a promise made, after  
9 full age, to pay a debt contracted during infancy; or  
10 upon a ratification after full age, of a promise or simple  
11 contract made during infancy; or

12 (c) To charge a personal representative upon a  
13 promise to answer any debt or damages out of his own  
14 estate; or

15 (d) To charge any person upon a promise to answer  
16 for the debt, default, or misdoings of another; or

17 (e) Upon any agreement made upon consideration of  
18 marriage; or

19 (f) Upon any agreement that is not to be performed  
20 within a year; or

21 (g) Upon any offer, agreement, representation, assu-  
22 rance, understanding, commitment, or contract of a  
23 bank, savings and loan association, or credit union, to  
24 extend credit or to make a loan in excess of fifty  
25 thousand dollars, primarily for nonagricultural, busi-  
26 ness or commercial purposes, not including charge or  
27 credit card accounts, personal lines of credit, overdrafts,  
28 or any other consumer account: *Provided*, That this  
29 subsection shall not apply to any offer, agreement,  
30 representation, assurance, understanding, commitment  
31 or contract with a bank, savings and loan association or  
32 credit union in which a transaction has been completed  
33 as evidenced by a fund transfer;

34 Unless the offer, promise, contract, agreement,  
35 representation, assurance, or ratification, or some  
36 memorandum or note thereof, be in writing and signed  
37 by the party to be charged thereby or his agent. But the  
38 consideration need not be set forth or expressed in the  
39 writing; and it may be proved (where a consideration  
40 is necessary) by other evidence.

## CHAPTER 2

(Com. Sub. and S. B. 320—By Senators Burdette, Mr. President, and Harman,  
By Request of the Executive)

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[Passed March 10, 1990; in effect July 1, 1990. Approved by the Governor.]

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AN ACT to repeal article eight, chapter five; sections two-a, two-b and two-c, article one, sections nineteen-a, thirty-three, thirty-five and thirty-six, article two, section fourteen-a, article three, sections one-a, six and seven, article four, article four-a, sections four and five, article five, and section three-a, article eight, all of chapter five-a; to amend and reenact sections three, four and seven, article six, chapter five; to amend and reenact sections one, two, three, four, five and six, article one, chapter five-a; to further amend said article one by adding thereto two new sections, designated sections seven and eight; to amend and reenact article one-a, chapter five-a; to amend and reenact sections one, two, three, four, five, six, seven, eight, nine, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one and thirty-two, article two, chapter five-a; to further amend said article by adding thereto two new sections, designated sections ten and eleven; to amend and reenact sections one, two, three, four, five, six, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, forty-five, forty-six and forty-seven, article three, chapter five-a; to further amend said article by adding thereto eleven new sections, designated sections one-a, seven, twenty-three, thirty-seven-a, forty-eight, forty-nine, fifty, fifty-one, fifty-two, fifty-three and fifty-four; to amend and reenact article three-a, chapter five-a; to amend and reenact sections one, two, three, four

and five, article four, chapter five-a; to amend and reenact sections one, two and three, article five, chapter five-a; to amend and reenact sections one, two, three, four, five, six, seven and eight, article seven, chapter five-a; to further amend said article by adding thereto three new sections, designated sections nine, ten and eleven; to amend and reenact sections one, two, three, four, five, six and seven, article eight, chapter five-a; to further amend said article by adding thereto twelve new sections, designated sections eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen and nineteen; to amend and reenact section three, article nine, chapter five-a; to amend and reenact section seventeen, article three, chapter twelve; to amend and reenact section one, article three, chapter fourteen; and to amend and reenact sections seven and twenty-three, article six, chapter twenty-nine, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the reorganization of the department of administration; deleting prohibition against state building commission charging rent to general revenue agencies; powers of state building commission; contracts with state building commission over ten thousand dollars to be by competitive bids; definitions for chapter relating to department of administration; division of finance and administration abolished; transfer of duties and responsibilities to department of administration; divisions; division directors; powers and duties of secretary, division heads and employees; council of finance and administration; reports by secretary; bonds for director of purchasing, buyers and employees; cost of bonds; delegation of powers and duties by secretary; right of appeal from interference with functioning of agency to governor; employee suggestion award program; employee suggestion award board and term of members; duties of board and employees eligible for award; increasing maximum award; state ownership of suggestions; finance division created; director; budget and accounting sections created; powers and duties; general powers and duties of secretary of administration as director of budget; requests for appropriations; copies to legislative auditor



and sanctions; request provision for state superintendent of schools; contents of requests for appropriation; form of requests for appropriations; secretary to ascertain information concerning state finances; judiciary appropriations; secretary to examine requests for appropriation; appropriation requests by other than spending units to be no later than the first day of September each year; secretary to supervise and control expenditure of appropriations, except those made to the judicial and legislative branches; secretary to estimate revenues month by month; secretary to ascertain revenue collections in proportion to estimate; withholding department of administration funds if secretary fails to provide information; submission of expenditure schedules to secretary; contents of expenditure schedules; copies of expenditure schedule to legislative auditor and sanctions; secretary to examine and approve expenditure schedules and amendments; legislative auditor to receive copies of expenditure schedules and amendments; secretary may require a reserve for emergencies out of the total appropriation to spending unit; requests for quarterly allotments in accordance with approved expenditure schedules; governor to approve or reduce amount of allotments; limitation on expenditures during a quarter; effectuating transfers between line items; expenditure of excess collections; approval by governor and notices to auditor, treasurer and legislative auditor; spending units to report work and expenditures to secretary; secretary to send copies to legislative auditor; power of governor to reduce appropriations; governor to reduce pro rata appropriations from general revenue to prevent overdraft or deficit; governor to reduce pro rata appropriations from other funds; secretary to approve requests for changes, receipt and expenditure of federal funds; legislative auditor to receive copies; secretary to submit consolidated report to governor and legislative auditor of all federal funds; secretary to formulate management accounting system; system to include accounts kept by secretary, auditor and treasurer; governor to approve system; system to be certified to legislative auditor; expenditure of appropriations; expenditure of appropriations other than for purchases

of commodities or printing; expenditure of appropriations for purchases of commodities; expenditure of appropriations for personal services; expenditure of appropriations by legislative and judicial branches; appropriations expenditures by spending units without offices at capitol; sanctions for failure to submit required requests, amendments and reports to legislative auditor; purchasing division created; purpose; director and qualifications for director; applicability of purchasing requirements; director authorized to deal with manufacturers of prescription drugs; director to keep books and records and have available for public inspection; powers and duties of director of purchasing; purchasing rules and regulations to be issued by director; standard specifications for purchasing to be promulgated and adopted by director; spending units required to utilize standard specifications; assistance from other spending units in promulgating standard specifications; director of purchasing to advise with heads of state and other institutions producing commodities and printing; director of purchasing to resolve conflicts between state and other entities with preference; director to make facilities and services of purchasing available to local governmental bodies; expenses incurred by purchasing to be paid by local governmental body; director of purchasing to examine and test purchases for nonconformity with contractual requirements; report required; sealed bids in the amount specified by regulation; publication of advertisements; purchase of products of nonprofit workshops; purchasing employee to assist with nonprofit workshops; bids to be based on standard specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder, considering quality, conformity with specifications, suitability, availability and delivery; uniform bids; record of bids; public inspection of bids; vendor registration and payment of annual fee; contents of registration forms; false affidavits and penalties; director may waive vendor registration and fee for sole source and emergency purchases; contracts to be approved by attorney general as to form; filing with auditor; copies of purchase orders to be sent to finance

division for encumbrance; emergency purchases in open market; special fund created for purchases and maintenance of commodities in volume and printing; violation of purchasing laws and rules; personal liability; substituting commodity bearing particular trade name or brand for commodity meeting standard specifications at an equal or lower price; purchases from federal government, federal government contracts and higher education contracts; spending units to submit lists of expendable commodities; contracts for public printing and printing paper; printing plants at state and other institutions; legislative printing; printing of reports of supreme court of appeals; director of purchasing to print and bind reports to be transmitted to the governor; director to specify uniform standards for annual reports; limiting number of publications; purchasing division to perform printing and binding; exceptions; printing, binding and stationery to be paid from current expense and unclassified appropriations; director of purchasing to be custodian of reports and acts; sale of reports and acts by director; director of purchasing to establish central duplicating office; exemptions and contracts for duplicating; financial interest of secretary, director and employees of the purchasing division; receiving from interested party; penalties; applicability of bribery statute; penalty for violation of article; obtaining money and property by fraud or under false pretenses; penalties; corrupt combinations or conspiracies prohibited; penalties; director to suspend right to bid; notice of suspension; secretary to review suspension of right to bid; authority of director of purchasing over inventories and property; submission of annual inventories; inventory of personal property; maintenance and repair of office furniture, machinery and equipment; vendor preference; exceptions; leases for space; leasing of space by secretary; delegation of authority by regulation; selection of grounds, buildings, office space or other space; acquisition by contract for lease; long-term leases; permanent changes to be approved by secretary; leases and other instruments for space to be signed by secretary or director of purchasing; approval as to form; filing; leasing for space rules and regulations; state

agency for surplus property created; authority and duties of state agency for surplus property; disposition of surplus state property; semi-annual report of sales; application of sale proceeds; warehousing, transfer and other charges; department of agriculture and other agencies exempted from authority of state agency for surplus property; travel rules and regulations; exceptions; central motor pool for state-owned vehicles and aircraft; secretary to purchase and to dispose of vehicles and aircraft; maintenance and service to vehicles and aircraft; special fund for travel management created; expenditures; central nonprofit coordinating agency and committee for the purchase of commodities and services from the handicapped; purpose; central nonprofit agency duties and responsibilities; committee for purchase of commodities and services from the handicapped duties, responsibilities, compensation, and expenses; committee to adopt rules and regulations; exceptions from other code provisions; director of purchasing to determine comparable quality and price; general services division; director; general services division to have care, control and custody of capitol buildings and grounds; major renovations and repairs to be made at direction of secretary; security officers; appointment, oath and weapons; powers and duties of security officers; secretary to preserve law and order on capitol grounds; unlawful to kill or molest animals, birds or fowls upon capitol grounds; powers and duties of security officers; penalties; secretary to regulate parking on state-owned property; parking rules and regulations; legislative parking; penalties and enforcement; governor's mansion advisory committee created; appointment and terms of members; meetings and responsibilities of members; cooperation by spending units of state; annual report to be made to governor and Legislature; office of governor's mansion director created; duties and responsibilities of director; official use of state rooms in mansion; vacating private rooms of mansion by out-going governor; information services and communications division; definitions for division; information services and communications division created and purpose; use of facilities; rules and regula-

tions for division; director of division; appointment and qualifications of director; powers and duties of division; director to report on the economic justification, system design and suitability of equipment and systems used in state government; governor to review findings; authority of governor to order transfer of equipment and personnel; professional staff and reimbursement for education and training; approval of director required for procurements or changes in data-processing and/or telecommunications equipment or services; division to control central mailing office; central mailing office employees; central mailing office responsibilities; spending units to use central mailing office; preparation of mail for special rates; special fund created; payments into fund and charges for services; disbursements from fund; confidential records not to be delivered to division; public records management and preservation act; short title; declaration of policy for act; definitions used in act; categories of records to be preserved established; secretary of administration to be state records administrator; records management and preservation advisory committee; members, designated representatives, rules, meetings and compensation; duties of administrator; rules and regulations to be promulgated by administrator; duties of agency heads; preserving duplicates of essential state records; safekeeping of essential state records; maintenance, inspection and use of essential state records; confidential essential state records to be protected; administrator to review program at least annually; records management and preservation of local records; administrator to assist legislative and judicial branches; disposal of records; destruction of nonrecord materials; administrator to make annual written report to governor for transmission to Legislature; voluntary gilding the dome check-off program; contributions credited to special department of administration fund; public moneys and securities; appropriations, expenditures and deductions; liabilities incurred by state boards, commissions, officers or employee which cannot be paid out of current appropriations; claims due and against the state; interest on public contracts; payment of interest by the state on contracts when final payment

is delayed; miscellaneous boards and officers; civil service system; division of personnel; secretary of administration to appoint director of division of personnel; creating special revenue account for division of personnel and authorizing agencies to transmit funds for personnel services.

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

That article eight, chapter five; sections two-a, two-b and two-c, article one, sections nineteen-a, thirty-three, thirty-five and thirty-six, article two, section fourteen-a, article three, sections one-a, six and seven, article four, article four-a, sections four and five, article five, and section three-a, article eight, all of chapter five-a be repealed; that sections three, four and seven, article six, chapter five be amended and reenacted; that sections one, two, three, four, five and six, article one, chapter five-a be amended and reenacted; that said article one be further amended by adding thereto two new sections, designated sections seven and eight; that article one-a, chapter five-a be amended and reenacted; that sections one, two, three, four, five, six, seven, eight, nine, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one and thirty-two, article two, chapter five-a be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections ten and eleven; that sections one, two, three, four, five, six, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, forty-five, forty-six and forty-seven, article three, chapter five-a be amended and reenacted; that said article be further amended by adding thereto eleven new sections, designated sections one-a, seven, twenty-three, thirty-seven-a, forty-eight, forty-nine, fifty, fifty-one, fifty-two, fifty-three and fifty-four; that article three-a, chapter five-a be amended and reenacted; that sections one, two, three, four and five, article four, chapter five-a be amended and reenacted; that sections one, two and

three, article five, chapter five-a be amended and reenacted; that sections one, two, three, four, five, six, seven and eight, article seven, chapter five-a be amended and reenacted; that said article be further amended by adding thereto three new sections, designated sections nine, ten and eleven; that sections one, two, three, four, five, six and seven, article eight, chapter five-a be amended and reenacted; that said article be further amended by adding thereto twelve new sections, designated sections eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen and nineteen; that section three, article nine, chapter five-a be amended and reenacted; that section seventeen, article three, chapter twelve be amended and reenacted; that section one, article three, chapter fourteen be amended and reenacted; and that sections seven and twenty-three, article six, chapter twenty-nine be amended and reenacted, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, 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.**

12. **Public Moneys and Securities.**

14. **Claims Due and Against the State.**

29. **Miscellaneous Boards and Officers.**

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

#### **ARTICLE 6. STATE BUILDING COMMISSION.**

§5-6-3. Definitions.

§5-6-4. Powers of commission.

§5-6-7. Contracts with commission to be secured by bond; competitive bids required for certain contracts.

#### **§5-6-3. Definitions.**

- 1 The following terms, wherever used or referred to in
- 2 this article, shall have the following meanings, unless a
- 3 different meaning clearly appears from the context:

4 (1) "Commission" means the state building commis-  
5 sion of West Virginia or, if said commission shall be  
6 abolished, any board or officer succeeding to the  
7 principal functions thereof, or to whom the powers given  
8 to said commission shall be given by law;

9 (2) "Bonds" means bonds issued by the commission  
10 pursuant to this article;

11 (3) "Project" means collectively the acquisition of  
12 land, the construction, equipping, maintaining and  
13 furnishing of a building or buildings, together with  
14 incidental approaches, structures and facilities, herein  
15 authorized to be constructed;

16 (4) "Cost of project" includes the cost of construction,  
17 the cost of equipping and furnishing same, the cost of  
18 all land, property, material and labor which are deemed  
19 essential thereto, the cost of improvements, financing  
20 charges, interest during construction, and all other  
21 expenses, including legal fees, trustees', engineers' and  
22 architects' fees which are necessarily or properly  
23 incidental to the project;

24 (5) "General tax revenues of the state" means re-  
25 venues of the state derived from the exercise of the  
26 power of taxation and available for appropriation by the  
27 Legislature for general public purposes and shall not  
28 include revenues of the state, or of any officer, depart-  
29 ment or agency thereof, derived from taxes levied,  
30 collected and dedicated for a special purpose or purposes  
31 or derived from sources other than taxes such as profits,  
32 fees or charges; and

33 (6) "Rent" or "rental" includes all moneys received for  
34 the use of any part of a project either from the state of  
35 West Virginia or any officer, department or public  
36 corporation thereof, or from any instrumentality or  
37 political subdivision of the state, or directly or indi-  
38 rectly, from the United States of America or any officer,  
39 department, agency, instrumentality or public corpora-  
40 tion thereof: *Provided*, That nothing in this article shall  
41 be taken to authorize the payment by or on behalf of the  
42 state of any rent in excess of the fair rental value of  
43 property used by or for such state officer or department



44 or public corporation in the exercise of his or its  
45 statutory duties.

**§5-6-4. Powers of commission.**

- 1 The commission shall have power:
- 2 (1) To sue and be sued, plead and be impleaded;
- 3 (2) To have a seal and alter the same at pleasure;
- 4 (3) To contract to acquire and to acquire, in the name  
5 of the commission or of the state, by purchase, lease,  
6 lease-purchase, or otherwise, real property or rights or  
7 easements necessary or convenient for its corporate  
8 purposes and to exercise the power of eminent domain  
9 to accomplish such purposes;
- 10 (4) To acquire, hold and dispose of personal property  
11 for its corporate purposes;
- 12 (5) To make bylaws for the management and regula-  
13 tion of its affairs;
- 14 (6) With the consent of the attorney general of the  
15 state of West Virginia, to use the facilities of his office,  
16 assistants and employees in all legal matters relating to  
17 or pertaining to the commission;
- 18 (7) To appoint officers, agents and employees, and fix  
19 their compensation;
- 20 (8) To make contracts, and to execute all instruments  
21 necessary or convenient to effectuate the intent of, and  
22 to exercise the powers granted to it by, this article;
- 23 (9) To renegotiate all contracts entered into by it  
24 whenever, due to a change in situation, it appears to the  
25 commission that its interests will be best served;
- 26 (10) To construct a building or buildings on real  
27 property, which it may acquire, or which may be owned  
28 by the state of West Virginia, in the city of Charleston,  
29 as convenient as may be to the capitol building, together  
30 with incidental approaches, structures and facilities,  
31 subject to such consent and approval of the city of  
32 Charleston in any case as may be necessary; and, in  
33 addition, to acquire or construct a warehouse, including

34 office space therein, in Kanawha county for the West  
35 Virginia alcohol beverage control commissioner, and  
36 equip and furnish the same; and to acquire or construct,  
37 through lease, purchase, lease-purchase, or bond  
38 financing, hospitals or other facilities, buildings, or  
39 additions or renovations to buildings as may be neces-  
40 sary for the safety and care of patients, inmates and  
41 guests at facilities under the jurisdiction of and  
42 supervision of the division of health and at institutions  
43 under the jurisdiction of the division of corrections; and  
44 to formulate and program plans for the orderly and  
45 timely capital improvement of all of said hospitals and  
46 institutions and the state capitol buildings; and to  
47 construct a building or buildings in Kanawha county to  
48 be used as a general headquarters by the division of  
49 public safety to accommodate that division's executive  
50 staff, clerical offices, technical services, supply facilities  
51 and dormitory accommodations; and to develop, improve  
52 and expand state parks and recreational facilities to be  
53 operated by the division of commerce; and to establish  
54 one or more systems or complexes of buildings and  
55 projects under control of the commission; and, subject  
56 to prior agreements with holders of bonds previously  
57 issued, to change the same from time to time, in order  
58 to facilitate the issuance and sale of bonds of different  
59 series on a parity with each other or having such  
60 priorities between series as the commission may  
61 determine; and to acquire by purchase, eminent domain  
62 or otherwise all real property or interests therein  
63 necessary or convenient to accomplish the purposes of  
64 this subdivision;

65 (11) To maintain, construct and operate a project  
66 authorized hereunder;

67 (12) To charge rentals for the use of all or any part  
68 of a project or buildings at any time financed, con-  
69 structed, acquired or improved in whole or in part with  
70 the proceeds of sale of bonds issued pursuant to this  
71 article, subject to and in accordance with such agree-  
72 ments with bondholders as may be made as hereinafter  
73 provided: *Provided*, That on and after the effective date  
74 of the amendments to this section, to charge rentals for

75 the use of all or any part of a project or buildings at  
76 any time financed, constructed, acquired, maintained or  
77 improved in whole or in part with the proceeds of sale  
78 of bonds issued pursuant to this article, subject to and  
79 in accordance with such agreements with bondholders  
80 as may be made as hereinafter provided, or with any  
81 funds available to the state building commission,  
82 including, but not limited to, all buildings and property  
83 owned by the state of West Virginia or by the state  
84 building commission, but no such rentals shall be  
85 charged to the governor, attorney general, secretary of  
86 state, state auditor, state treasurer, the Legislature and  
87 the members thereof, the supreme court of appeals, nor  
88 for their offices, agencies, official functions and duties;

89 (13) To issue negotiable bonds and to provide for the  
90 rights of the holders thereof;

91 (14) To accept and expend any gift, grant or contri-  
92 bution of money to, or for the benefit of, the commission,  
93 from the state of West Virginia or any other source for  
94 any or all of the purposes specified in this article or for  
95 any one or more of such purposes as may be specified  
96 in connection with such gift, grant or contribution;

97 (15) To enter on any lands and premises for the  
98 purpose of making surveys, soundings and  
99 examinations;

100 (16) To invest in United States government obliga-  
101 tions, on a short-term basis, any surplus funds which the  
102 commission may have on hand pending the completion  
103 of any project or projects; and

104 (17) To do all things necessary or convenient to carry  
105 out the powers given in this article.

106 The rights and powers set forth in subdivision (10) of  
107 this section shall not be construed as in derogation of  
108 any rights and powers now vested in the West Virginia  
109 alcohol beverage control commissioner, the department  
110 of mental health, the commissioner of public institutions  
111 or the department of natural resources.

**§5-6-7. Contracts with commission to be secured by bond;  
competitive bids required for certain contracts.**

1 The commission shall construct a project pursuant to  
2 a contract or contracts. Every such contract shall be  
3 secured by a bond meeting the requirements of section  
4 thirty-nine, article two, chapter thirty-eight of this code.

5 No contract or contracts for the construction, remo-  
6 deling, renovation or repair of any building or buildings  
7 or any approaches, structures or facilities incidental  
8 thereto, or for the equipping and furnishing of any  
9 building or buildings, when the anticipated expenditure  
10 therefor will exceed the sum of five thousand dollars,  
11 shall be entered into except upon the basis of compet-  
12 itive sealed bids: *Provided*, That effective with the  
13 effective date of the amendments to this section, no  
14 contract or contracts for the construction, remodeling,  
15 renovation or repair of any building or buildings or any  
16 approaches, structures or facilities incidental thereto, or  
17 for the equipping and furnishing of any building or  
18 buildings, when the anticipated expenditure therefor  
19 will exceed the sum of ten thousand dollars, shall be  
20 entered into except upon the basis of such bids. Such  
21 bids shall be obtained by public notice soliciting such  
22 bids published as a Class II legal advertisement in  
23 compliance with the provisions of article three, chapter  
24 fifty-nine of this code, and the publication area for such  
25 publication shall be the county in which any such  
26 contract is to be performed. The publication shall be  
27 completed at least fourteen days prior to the final date  
28 for the submission of bids. The commission may in  
29 addition to such publication also solicit sealed bids by  
30 sending requests by mail to prospective bidders. The  
31 contract shall be awarded to the lowest responsible  
32 bidder, unless any and all bids are rejected, in which  
33 event new bids shall be sought by again publishing  
34 notice as aforesaid. Any bid, with the name of the  
35 bidder, shall be entered on a record and each record,  
36 with the successful bid indicated thereon, shall, after the  
37 award of any contract, be open to public inspection in  
38 the office of the secretary of the commission.

## CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

### Article

1. Department of Administration.
- 1A. Employee Suggestion Award Board.
2. Finance Division.
3. Purchasing Division.
- 3A. Central Nonprofit Coordinating Agency and Committee for the Purchase of Commodities and Services from the Handicapped.
4. General Services Division.
5. Governor's Mansion Advisory Committee.
7. Information Services and Communications Division.
8. Public Records Management and Preservation Act.
9. Voluntary Gilding the Dome Check-Off Program.

### ARTICLE 1. DEPARTMENT OF ADMINISTRATION.

§5A-1-1. Definitions.

§5A-1-2. Department of administration and office of secretary; secretary; division of finance and administration abolished; divisions; directors.

§5A-1-3. Powers and duties of secretary, division heads and employees.

§5A-1-4. Council of finance and administration.

§5A-1-5. Reports by secretary.

§5A-1-6. Oath and bond of secretary; bond required for director of the purchasing division; bonds for other directors and employees; cost of bonds.

§5A-1-7. Delegation of powers and duties by secretary.

§5A-1-8. Right of appeal from interference with functioning of agency.

#### §5A-1-1. Definitions.

- 1 For the purpose of this chapter:
- 2 "Commodities" means supplies, material, equipment,
- 3 contractual services, and any other articles or things
- 4 used by or furnished to a department, agency or
- 5 institution of state government.
- 6 "Contractual services" shall include telephone, tele-
- 7 graph, electric light and power, water and similar
- 8 services.
- 9 "Director" means the director of the division referred
- 10 to in the heading of the article in which the word
- 11 appears.
- 12 "Expendable commodities" means those commodities
- 13 which, when used in the ordinary course of business,
- 14 will become consumed or of no market value within the
- 15 period of one year or less.
- 16 "Nonprofit workshops" means an establishment

17 (a) where any manufacture or handiwork is carried on,  
18 (b) which is operated either by a public agency or by  
19 a cooperative or by a nonprofit private corporation or  
20 nonprofit association, in which no part of the net  
21 earnings thereof inures, or may lawfully inure, to the  
22 benefit of any private shareholder or individual,  
23 (c) which is operated for the primary purpose of  
24 providing remunerative employment to blind or severely  
25 disabled persons who cannot be absorbed into the  
26 competitive labor market, and (d) which shall be  
27 approved, as evidenced by a certificate of approval, by  
28 the state board of vocational education, division of  
29 vocational rehabilitation.

30 "Printing" means printing, binding, ruling, litho-  
31 graphing, engraving and other similar services.

32 "Removable property" means any personal property  
33 not permanently affixed to or forming a part of real  
34 estate.

35 "Secretary" means the secretary of administration  
36 and, as used in article two of this chapter, the director  
37 of the budget.

38 "Spending officer" means the executive head of a  
39 spending unit, or a person designated by him.

40 "Spending unit" means a department, agency or  
41 institution of the state government for which an  
42 appropriation is requested, or to which an appropriation  
43 is made by the Legislature.

**§5A-1-2. Department of administration and office of  
secretary; secretary; division of finance and  
administration abolished; divisions; directors.**

1 The department of administration and the office of  
2 secretary of administration are hereby continued in the  
3 executive branch of state government. The secretary  
4 shall be the chief executive officer of the department  
5 and director of the budget and shall be appointed by the  
6 governor, by and with the advice and consent of the  
7 senate, for a term not exceeding the term of the  
8 governor. The office of the commissioner of finance and  
9 administration and the division of finance and admin-  
10 istration are hereby abolished. All duties and responsi-  
11 bilities of the commissioner of finance and administra-

12 tion are hereby vested in the secretary of administra-  
13 tion. All records, responsibilities, obligations, assets and  
14 property, of whatever kind and character, of the division  
15 of finance and administration are hereby transferred to  
16 the department of administration. The balances of all  
17 funds of the division of finance and administration are  
18 hereby transferred to the department of administration.  
19 The department of administration is hereby authorized  
20 to receive federal funds.

21 The secretary shall serve at the will and pleasure of  
22 the governor. The annual compensation of the secretary  
23 shall be as specified in section three, article one, chapter  
24 five-f of this code.

25 There shall be in the department of administration a  
26 finance division, a general services division, an informa-  
27 tion services and communications division, an insurance  
28 and retirement division, a personnel division and a  
29 purchasing division. The insurance and retirement  
30 division shall be comprised of the public employees  
31 retirement system and board of trustees, the public  
32 employees insurance agency and public employees  
33 advisory board, the teachers retirement system and  
34 teachers' retirement board, and the board of risk and  
35 insurance management. Each division shall be headed  
36 by a director who may also head any and all sections  
37 within that division and who shall be appointed by the  
38 secretary. In addition to the divisions enumerated above,  
39 there shall also be in the department of administration  
40 those agencies, boards, commissions and councils  
41 specified in section one, article two, chapter five-f of this  
42 code.

**§5A-1-3. Powers and duties of secretary, division heads  
and employees.**

1 The secretary shall have control and supervision of the  
2 department of administration and shall be responsible  
3 for the work of each of its employees. The secretary shall  
4 have such power and authority as specified in section  
5 two, article two, chapter five-f of this code. The  
6 secretary shall also have the authority to employ such  
7 assistants and attorneys as may be necessary for the  
8 efficient operation of the department. The secretary, the  
9 division heads and the employees of the department

10 shall perform the duties herein specified and shall also  
11 perform such other duties as the governor may pres-  
12 cribe.

**§5A-1-4. Council of finance and administration.**

1 The council of finance and administration is hereby  
2 created and shall be composed of ten members, four of  
3 whom shall serve ex officio and six of whom shall be  
4 appointed as herein provided. The ex officio members  
5 shall be the secretary of the department of administra-  
6 tion, the attorney general or his designee, the state  
7 treasurer or his designee and the state auditor or his  
8 designee; such designees being authorized voting ones.  
9 From the membership of the Legislature, the president  
10 of the Senate shall appoint three senators as members  
11 of the council, not more than two of whom shall be  
12 members of the same political party, and the speaker  
13 of the House of Delegates shall appoint three delegates  
14 as members of the council, not more than two of whom  
15 shall be members of the same political party. Members  
16 of the council appointed by the president of the Senate  
17 and the speaker of the House of Delegates shall serve  
18 at the will and pleasure of the officer making their  
19 appointment. The secretary of administration shall  
20 serve as chairman of the council. Meetings of the council  
21 shall be upon call of the chairman or a majority of the  
22 members thereof. It shall be the duty of the chairman  
23 to call no less than four meetings in each fiscal year, one  
24 in each quarter, or more often as necessary, and all  
25 meetings shall be open to the public. All meetings of the  
26 council shall be held at the capitol building in a suitable  
27 committee room which shall be made available by the  
28 Legislature for such purpose: *Provided*, That the second  
29 quarterly meeting in each fiscal year shall be held in  
30 November and shall be a joint meeting with the joint  
31 committee on government and finance of the Legislature  
32 called jointly by the president of the Senate, speaker of  
33 the House of Delegates and secretary of administration.

34 The council shall serve the department of administra-  
35 tion in an advisory capacity for purposes of reviewing  
36 the performance of the administrative and fiscal  
37 procedures of the state, including the oversight of all  
38 federal funds, and shall have the following duties:



39 (1) To advise with the secretary in respect to matters  
40 of budgetary intent and efficiency, including budget bill  
41 and budget document detail and format;

42 (2) To advise with the secretary concerning such  
43 studies of government and administration concerning  
44 fiscal policy as it may consider appropriate;

45 (3) To advise with the secretary in the preparation of  
46 studies designed to provide long-term capital planning  
47 and finance for state institutions and agencies; and

48 (4) To advise with the secretary in respect to the  
49 application for, and receipt and expenditure of, antic-  
50 ipated or unanticipated federal funds.

51 The appointed, non-ex officio members of the council  
52 shall be entitled to receive such compensation and  
53 reimbursement for expenses in connection with perfor-  
54 mance of their duties, during interim periods, if not  
55 otherwise receiving the same for such identical periods,  
56 as is authorized by the applicable sections of article two-  
57 a, chapter four of the code in respect to performance of  
58 duties either within the state or, if deemed necessary,  
59 out of state. Such compensation and expenses shall be  
60 incurred and paid only after approval by the joint  
61 committee on government and finance.

**§5A-1-5. Reports by secretary.**

1 The secretary shall make an annual report to the  
2 governor concerning the conduct of the department and  
3 the administration of the state finances. He shall also  
4 make such other reports as the governor may require.

**§5A-1-6. Oath and bond of secretary; bond required for  
director of the purchasing division; bonds for  
other directors and employees; cost of bonds.**

1 The secretary, before entering upon the duties of his  
2 office, shall take and subscribe to the oath prescribed  
3 by Section 5, Article IV of the constitution of West  
4 Virginia. Notwithstanding any other provisions to the  
5 contrary, the secretary shall execute a bond in the  
6 penalty of one hundred thousand dollars, payable to the  
7 state of West Virginia, with a corporate bonding or  
8 surety company authorized to do business in this state  
9 as surety thereon, approved by the governor, in form  
10 prescribed by the attorney general and conditioned upon

11 the faithful performance of his duties and the account-  
12 ing for all money and property coming into his hands  
13 by virtue of his office. The oath and bond shall be filed  
14 with the secretary of state.

15 The director of the purchasing division shall execute  
16 a bond in the penalty of one hundred thousand dollars  
17 and any person employed as a state buyer in accordance  
18 with article three of this chapter shall execute a bond  
19 in the penalty of fifty thousand dollars, payable to the  
20 state of West Virginia, with a corporate bonding or  
21 surety company authorized to do business in this state  
22 as surety thereon, approved by the governor, in form  
23 prescribed by the attorney general and conditioned upon  
24 the faithful performance of his duties under the  
25 provisions of this chapter and all rules and regulations  
26 promulgated pursuant to such chapter and the account-  
27 ing for all money and property coming into his hands  
28 by virtue of his office or position. The bonds shall be  
29 filed with the secretary of state. In lieu of separate  
30 bonds for state buyers, a blanket surety bond may be  
31 obtained. The other division directors and all other  
32 employees of the department shall be covered by bonds  
33 in cases where the secretary thinks it necessary, which  
34 bonds shall be in the penalty prescribed by the secretary  
35 and shall be filed with the secretary of state.

36 The cost of all such surety bonds shall be paid from  
37 funds appropriated to the department of administration.

**§5A-1-7. Delegation of powers and duties by secretary.**

1 The powers and duties vested in the secretary may be  
2 delegated by him to his assistants and employees, but  
3 the secretary shall be responsible for all official acts of  
4 the department.

**§5A-1-8. Right of appeal from interference with functioning of agency.**

1 Upon occasion of a showing that the application of the  
2 authority vested under the provisions of this chapter  
3 may interfere with the successful functioning of any  
4 department, institution or agency of the government,  
5 such department, institution or agency may have the  
6 right of appeal to the governor for review of the case

7 and the decision or conclusion of the governor shall  
8 govern in such cases.

#### ARTICLE 1A. EMPLOYEE SUGGESTION AWARD BOARD.

§5A-1A-1. Employee suggestion award program continued.

§5A-1A-2. Board created; term of members.

§5A-1A-3. Duties of board; excluded employees.

§5A-1A-4. Awards.

§5A-1A-5. State ownership of suggestions.

##### §5A-1A-1. Employee suggestion award program continued.

1 There is hereby continued an employee suggestion  
2 award program within the department of administra-  
3 tion for employees of state government. Under this  
4 program cash or honorary awards may be made to state  
5 employees whose adopted suggestions will result in  
6 substantial savings or improvement in state operations.

##### §5A-1A-2. Board created; term of members.

1 There is hereby continued an employee suggestion  
2 award board which shall be composed of the secretary  
3 of administration or his designee, the secretary of the  
4 department of commerce, labor and environmental  
5 resources or his designee, the president of the Senate or  
6 his designee, the speaker of the House of Delegates or  
7 his designee, one member of the House of Delegates to  
8 be appointed by the speaker of the House of Delegates,  
9 one member of the Senate to be appointed by the  
10 president of the Senate, and the secretary of the  
11 department of health and human resources or his  
12 designee. The terms of the members of the board shall  
13 be consistent with the terms of the offices to which they  
14 have been elected or appointed.

##### §5A-1A-3. Duties of board; excluded employees.

1 It shall be the duty of the board to adopt rules  
2 governing its proceedings, to elect a chairman and  
3 secretary, to keep permanent and accurate records of its  
4 proceedings, to establish criteria for making awards, to  
5 adopt rules and regulations to carry out the provisions  
6 of this article, and to approve each award made.

7 In establishing criteria for making awards, the board  
8 may exclude certain levels of positions from participa-  
9 tion in the program, but in no event shall:

10 (1) The following levels of management, within the  
11 spending unit where the adopted suggestion will result  
12 in substantial savings, be eligible to receive cash awards  
13 under the program:

14 (a) Governor's staff, departmental secretaries and  
15 their equivalent;

16 (b) Assistant or deputy secretary, assistant to secre-  
17 tary, commissioner, assistant or deputy commissioner,  
18 major fiscal and administrative policy departmental  
19 staff or their equivalent;

20 (c) Director or division chief, including the division  
21 chief or director of a statewide program, and which  
22 includes a chief of a division supervising several service  
23 units or their equivalent;

24 (d) Assistant to director or division chief, section chief  
25 or head of major departmental function or their  
26 equivalent; and

27 (2) The following levels of management, not within  
28 the spending unit where the adopted suggestion will  
29 result in substantial savings, be eligible to receive cash  
30 awards under the program:

31 (a) Governor's staff, departmental secretaries and  
32 their equivalent;

33 (b) Assistant or deputy secretary, assistant to secre-  
34 tary, commissioner, assistant or deputy commissioner.

#### §5A-1A-4. Awards.

1 The maximum cash award approved shall be limited  
2 to twenty percent of the first year's estimated savings,  
3 as established by the head of the affected spending unit,  
4 or ten thousand dollars, whichever is less. Any cash  
5 awards approved by the board shall be charged by the  
6 head of the affected spending unit against the appropri-  
7 ation item or items to which such estimated savings  
8 apply.

**§5A-1A-5. State ownership of suggestions.**

- 1 The state shall become the sole owner of all sugges-
- 2 tions accepted by the employee suggestion award board.
- 3 The acceptance of a suggestion by the board shall
- 4 constitute an agreement by the employee and the state
- 5 that all claims pertaining to the suggestion, immediate
- 6 and future, on the state of West Virginia are waived.

**ARTICLE 2. FINANCE DIVISION.**

- §5A-2-1. Finance division created; director; sections; powers and duties.
- §5A-2-2. General powers and duties of secretary as director of budget.
- §5A-2-3. Requests for appropriations; copies to legislative auditor.
- §5A-2-4. Contents of requests.
- §5A-2-5. Form of requests.
- §5A-2-6. Information concerning state finances.
- §5A-2-7. Appropriations for judiciary.
- §5A-2-8. Examination of requests for appropriations.
- §5A-2-9. Appropriation requests by other than spending units.
- §5A-2-10. Powers of secretary in administration of expenditures.
- §5A-2-11. Estimates of revenue; reports on revenue collections; withholding department funds on noncompliance.
- §5A-2-12. Submission of expenditure schedules; contents; submission of information on unpaid obligations; copies to legislative auditor.
- §5A-2-13. Examination and approval of expenditure schedules; amendments; copies to legislative auditor.
- §5A-2-14. Reserves for emergencies.
- §5A-2-15. Requests for quarterly allotments; approval or reduction by governor.
- §5A-2-16. Limitation on expenditures.
- §5A-2-17. Transfers between items of appropriation of executive, legislative and judicial branches.
- §5A-2-18. Expenditure of excess in collections; notices to auditor and treasurer.
- §5A-2-19. Reports by spending units; copies to legislative auditor.
- §5A-2-20. Reduction of appropriations—Powers of governor.
- §5A-2-21. Reduction of appropriations—Pro rata reduction of appropriations from general revenue.
- §5A-2-22. Reduction of appropriations—Pro rata reduction of appropriations from other funds.
- §5A-2-23. Approval of secretary of requests for changes and receipt and expenditure of federal funds by state agencies; copies or sufficient summary information to be furnished to secretary and legislative auditor; and consolidated report of federal funds.
- §5A-2-24. Management accounting.
- §5A-2-25. System of accounting to be certified to legislative auditor.
- §5A-2-26. Expenditure of appropriations—Generally.

- §5A-2-27. Expenditure of appropriations—Other than for purchases of commodities.
- §5A-2-28. Expenditure of appropriations—Purchases of commodities.
- §5A-2-29. Expenditure of appropriations—Payment of personal services.
- §5A-2-30. Expenditure of appropriations—Legislative and judicial expenditures.
- §5A-2-31. Appropriations for officers, commissions, boards or institutions without office at capitol.
- §5A-2-32. Submission of requests, amendments, reports, etc., to legislative auditor; penalty for noncompliance.

**§5A-2-1. Finance division created; director; sections; powers and duties.**

1 The finance division of the department of administration is hereby created. The division shall be under the  
2 supervision and control of a director, who shall be  
3 appointed by the secretary. There shall be in the finance  
4 division, an accounting section and a budget section. The  
5 accounting section shall have the duties conferred upon  
6 it by this article and by the secretary, including, but not  
7 limited to, general financial accounting, payroll,  
8 accounts payable and accounts receivable for the  
9 department of administration.  
10

11 The budget section shall act as staff agency for the  
12 governor in the exercise of his powers and duties under  
13 Section 51, Article VI of the state constitution, and shall  
14 exercise and perform the other powers and duties  
15 conferred upon it by this article.

**§5A-2-2. General powers and duties of secretary as director of budget.**

1 The secretary, under the immediate supervision of the  
2 governor, shall have the power and duty to:

3 (1) Exercise general supervision of, and make rules  
4 and regulations for, the government of this division;

5 (2) Administer the budget in accordance with this  
6 article;

7 (3) Serve the governor in the consideration of requests  
8 for appropriations and the preparation of the budget  
9 document;

10 (4) Make such investigations and submit such reports  
11 as the governor may require;

12 (5) Make a continuous study of state expenditures and  
13 eligibility for federal matching dollars and make such  
14 recommendations to the governor for the more econom-  
15 ical use of state funds as he/she shall find practicable;

16 (6) Render assistance to spending officers with  
17 respect to the fiscal affairs of spending units; and

18 (7) Exercise such other powers as are vested in him  
19 by this article, or which may be appropriate to the  
20 discharge of his duties.

**§5A-2-3. Requests for appropriations; copies to legislative auditor.**

1 The spending officer of each spending unit, other than  
2 the legislative and the judicial branches of state  
3 government, shall, on or before the first day of Sep-  
4 tember of each year, submit to the secretary a request  
5 for appropriations for the fiscal year next ensuing. On  
6 or before the same date, the spending officer shall also  
7 transmit two copies of such request to the legislative  
8 auditor for the use of the finance committees of the  
9 Legislature.

10 If the spending officer of any spending unit fails to  
11 transmit to the legislative auditor two copies of the  
12 request for appropriations within the time specified in  
13 this section, the legislative auditor shall notify the  
14 secretary, auditor and treasurer of such failure, and  
15 thereafter no funds appropriated to such spending unit  
16 shall be encumbered or expended until the spending  
17 officer thereof has transmitted such copies to the  
18 legislative auditor.

19 If a spending officer submits to the secretary an  
20 amendment to the request for appropriations, two copies  
21 of such amendment shall forthwith be transmitted to the  
22 legislative auditor.

23 Notwithstanding any provision in this section to the  
24 contrary, the state superintendent of schools shall, on or  
25 before the fifteenth day of December of each year,  
26 submit to the secretary a request for appropriations for  
27 the fiscal year next ensuing for state aid to schools and  
28 two copies of such request to the legislative auditor for  
29 the use of the finance committees of the Legislature. The

30 request for appropriation shall be accompanied with  
31 copies of certified enrollment and employee lists from  
32 all county superintendents for the current school year.  
33 If certified enrollment and employee lists are not  
34 available to the state superintendent from any of the  
35 county school boards, the state superintendent shall  
36 notify those school boards and no funds shall be  
37 expended for salary or compensation to their county  
38 superintendent until the certified lists of enrollment and  
39 employees are submitted.

**§5A-2-4. Contents of requests.**

1 A request for an appropriation for a spending unit  
2 shall specify and itemize in written form:

3 (1) A statement showing the amount and kinds of  
4 revenue and receipts collected for use of the spending  
5 agency during the next preceding fiscal year and  
6 anticipated collections for the fiscal year next ensuing;

7 (2) A statement by purposes and objects of the amount  
8 of appropriations requested for the spending unit  
9 without deducting the amount of anticipated collections  
10 of special revenue, federal funds or other receipts;

11 (3) A statement showing the actual expenditures of  
12 the spending unit for the preceding year and estimated  
13 expenditures for the current fiscal year itemized by  
14 purposes and objects, including those from regular and  
15 supplementary appropriations, federal funds, private  
16 contributions, transfers, allotments from an emergency  
17 or contingent fund and any other expenditures made by  
18 or for the spending unit;

19 (4) A statement showing the number, classification  
20 and compensation of persons employed by the spending  
21 unit distinguishing between regular, special and casual  
22 employees during the preceding fiscal year and during  
23 the current fiscal year. The statement shall show the  
24 personnel requirements in similar form for the ensuing  
25 fiscal year for which appropriations are requested;

26 (5) A statement showing in detail the purposes for  
27 which increased amounts of appropriations, if any, are  
28 requested, and giving a justification statement for the



29 expenditure of the increased amount. A construction or  
30 other improvement request shall show in detail the kind  
31 and scope of construction or improvement requested;

32 (6) A statement of money claims against the state  
33 arising out of the activities of the spending unit; and

34 (7) Such other information as the secretary may  
35 request.

#### §5A-2-5. Form of requests.

1 The secretary shall specify the form and detail of  
2 itemization of requests for appropriations and state-  
3 ments to be submitted by a spending unit: *Provided*,  
4 That such request for appropriations must include at a  
5 minimum the information required by section four of  
6 this article. The secretary shall furnish blank forms for  
7 this purpose.

#### §5A-2-6. Information concerning state finances.

1 The secretary shall ascertain for the preceding year  
2 and as estimated for the current fiscal year:

3 (1) The condition of each of the funds of the state;

4 (2) A statement of all revenue collections both general  
5 and special; and

6 (3) Such other information relating to the finances of  
7 the state as the governor may request.

#### §5A-2-7. Appropriations for judiciary.

1 The governor shall transmit to the secretary the  
2 appropriations required by law for the judiciary for the  
3 fiscal year next ensuing and which have been certified  
4 to the governor by the auditor. The auditor shall certify  
5 such appropriations to the governor in accordance with  
6 Section 51, Article VI of the state constitution, on or  
7 before the first day of September of each year.

#### §5A-2-8. Examination of requests for appropriations.

1 The secretary shall examine the requests of a spend-  
2 ing unit with respect to requested appropriations,  
3 itemization, sufficiency of justification statements, and  
4 accuracy and completeness of all other information  
5 which the spending officer is required to submit.

6 If the secretary finds a request, report, or statement  
7 of a spending unit inaccurate, incomplete or inadequate,  
8 he shall consult with the spending officer of the unit and  
9 require the submission of the requests in proper form  
10 and content. The secretary shall assist spending officers  
11 in the preparation of their requests.

**§5A-2-9. Appropriation requests by other than spending units.**

1 A person or organization, other than a spending  
2 officer, who desires to request a general appropriation  
3 in the state budget, shall submit his request to the  
4 secretary on or before the first day of September of each  
5 year. The request shall be in the form prescribed by the  
6 secretary and shall be accompanied by a justification  
7 statement.

**§5A-2-10. Powers of secretary in administration of expenditures.**

1 The secretary shall supervise and control the expen-  
2 diture of appropriations made by the Legislature  
3 excluding those made to the Legislature and those made  
4 to the judicial branch of the state government. The  
5 expenditure of an appropriation made by the Legisla-  
6 ture except that made for the Legislature itself and the  
7 judicial branch of state government shall be conditioned  
8 upon compliance by the spending unit with the provi-  
9 sions of this article. An appropriation made by the  
10 Legislature except that made for the Legislature itself  
11 and the judicial branch of state government shall be  
12 expended only in accordance with this article.

**§5A-2-11. Estimates of revenue; reports on revenue collections; withholding department funds on noncompliance.**

1 Prior to the beginning of each fiscal year the secretary  
2 shall estimate the revenue to be collected month by  
3 month by each classification of tax for that fiscal year  
4 as it relates to the official estimate of revenue for each  
5 tax for that fiscal year and the secretary shall certify  
6 this estimate to the governor and the legislative auditor  
7 by the first day of July for that fiscal year.

8 The secretary shall ascertain the collection of the  
9 revenue of the state and shall determine for each month  
10 of the fiscal year the proportion which the amount  
11 actually collected during a month bears to the collection  
12 estimated by him for that month. The secretary shall  
13 certify to the governor and the legislative auditor, as  
14 soon as possible after the close of each month, and not  
15 later than the fifteenth day of each month, and at such  
16 other times as the governor or legislative auditor may  
17 request, the condition of the state revenues and of the  
18 several funds of the state and the proportion which the  
19 amount actually collected during the preceding month  
20 bears to the collection estimated by him for that month.  
21 The secretary shall include in this certification the same  
22 information previously certified for prior months in  
23 each fiscal year. For the purposes of this section, the  
24 secretary shall have the authority to require all  
25 necessary estimates and reports from any spending unit  
26 of the state government.

27 If the secretary fails to certify to the governor and the  
28 legislative auditor the information required by this  
29 section within the time specified herein, the legislative  
30 auditor shall notify the auditor and treasurer of such  
31 failure, and thereafter no funds appropriated to the  
32 department of administration shall be expended until  
33 the secretary has certified the information required by  
34 this section.

**§5A-2-12. Submission of expenditure schedules; contents;  
submission of information on unpaid obligations;  
copies to legislative auditor.**

1 Prior to the beginning of each fiscal year, the  
2 spending officer of a spending unit shall submit to the  
3 secretary a detailed expenditure schedule for the  
4 ensuing fiscal year. The schedule shall be submitted in  
5 such form and at such time as the secretary may  
6 require.

7 The schedule shall show:

8 (1) A proposed monthly rate of expenditure for  
9 amounts appropriated for personal services;

10 (2) Each and every position budgeted under personal  
11 services for the next ensuing fiscal year, with the  
12 monthly salary or compensation of each such position;

13 (3) A proposed quarterly rate of expenditure for  
14 amounts appropriated for employee benefits, current  
15 expenses, equipment and repairs and alterations  
16 classified by a uniform system of accounting as called  
17 for in section twenty-five of this article for each item of  
18 every appropriation;

19 (4) A proposed yearly plan of expenditure for amounts  
20 appropriated for buildings and lands; and

21 (5) A proposed quarterly plan of receipts itemized by  
22 type of revenue.

23 The secretary may accept a differently itemized  
24 expenditure schedule from a spending unit to which the  
25 above itemizations are not applicable.

26 The secretary shall consult with and assist spending  
27 officers in the preparation of expenditure schedules.

28 Within fifteen days after the end of each month of the  
29 fiscal year, the head of every spending unit shall certify  
30 to the legislative auditor the status of obligations and  
31 payments of the spending unit for amounts of employee  
32 benefits, including, but not limited to, obligations and  
33 payments for social security withholding and employer  
34 matching, public employees insurance premiums and  
35 public employees retirement and teachers retirement  
36 systems.

37 When a spending officer submits an expenditure  
38 schedule to the secretary as required by this section, the  
39 spending officer shall at the same time transmit a copy  
40 thereof to the legislative auditor and the joint committee  
41 on government and finance or its designee. If a spending  
42 officer of a spending unit fails to transmit such copy to  
43 the legislative auditor on or before the beginning of the  
44 fiscal year, the legislative auditor shall notify the  
45 secretary, auditor and treasurer of such failure, and  
46 thereafter no funds appropriated to such spending unit  
47 shall be encumbered or expended until the spending  
48 officer thereof has transmitted such copy to the legis-  
49 lative auditor.

50 In the event the legislative auditor determines from  
51 certified reports or from other sources that any spend-  
52 ing unit is not making all payments and transfers for  
53 employee benefits from funds appropriated for that  
54 purpose, the legislative auditor shall notify the secretary  
55 of administration, auditor and treasurer of such  
56 determination and thereafter no funds appropriated to  
57 such spending unit shall be encumbered or expended for  
58 the salary or compensation to the head of the spending  
59 unit until the legislative auditor shall determine that  
60 such payments or transfers are being made on a timely  
61 basis.

**§5A-2-13. Examination and approval of expenditure  
schedules; amendments; copies to legislative  
auditor.**

1 The secretary shall examine the expenditure schedule  
2 of each spending unit, and if he finds that it conforms  
3 to the appropriations made by the Legislature, the  
4 requirements of this article, and is in accordance with  
5 sound fiscal policy, he shall approve the schedule.

6 The expenditure of the appropriations made to a  
7 spending unit shall be only in accordance with the  
8 approved expenditure schedule unless the schedule is  
9 amended with the consent of the secretary, or unless  
10 appropriations are reduced in accordance with the  
11 provisions of sections twenty to twenty-three, inclusive,  
12 of this article. The spending officer of a spending unit  
13 shall transmit to the legislative auditor a copy of each  
14 and every requested amendment to such schedule at the  
15 same time that such requested amendment is submitted  
16 to the secretary. The secretary shall send to the  
17 legislative auditor copies of any schedule amended with  
18 the secretary's approval.

**§5A-2-14. Reserves for emergencies.**

1 The secretary, with the approval of the governor, may  
2 require that an expenditure schedule provide for a  
3 reserve for emergencies out of the total amount appro-  
4 priated to the spending unit. The amount of the reserve

5 shall be determined by the secretary in consultation  
6 with the spending officer.

**§5A-2-15. Requests for quarterly allotments; approval or reduction by governor.**

1 At least thirty days prior to the beginning of each  
2 quarter of the fiscal year, each spending officer shall  
3 submit to the secretary a request for an allotment of  
4 public funds sufficient to operate the unit during the  
5 ensuing quarter in accordance with the approved  
6 expenditure schedule.

7 The secretary shall examine the requests and, if he  
8 finds that the amounts requested are in accordance with  
9 the approved expenditure schedules and are in accor-  
10 dance with sound fiscal policy, he shall submit the  
11 requests to the governor. The secretary shall also submit  
12 a summary statement showing the amounts expended  
13 under the budget for each preceding quarter of the  
14 fiscal year and the total amount requested for allotment  
15 during the ensuing quarter.

16 The governor shall consider the amount of requests for  
17 allotment and the collection of revenues. If the governor  
18 finds that the collection of revenue warrants the  
19 expenditure of the amount requested in the allotment,  
20 he shall approve the allotment of funds for the ensuing  
21 quarter and send copies of the requests to the legislative  
22 auditor after approval. If the governor finds that the  
23 collection of revenue does not warrant the allotment of  
24 the requested amount, he may reduce the amount of  
25 allotments pending the collection of sufficient revenue.

**§5A-2-16. Limitation on expenditures.**

1 The expenditures of a spending unit during a quarter  
2 of the fiscal year shall not exceed the amount of the  
3 approved allotment, unless the governor approves the  
4 expenditure of a larger amount. Any amounts remain-  
5 ing unexpended at the close of the quarter shall be  
6 available for reallocation and expenditure during any  
7 succeeding quarter of the same fiscal year.

**§5A-2-17. Transfers between items of appropriation of executive, legislative and judicial branches.**

1 Notwithstanding any other provision of law to the

2 contrary, there shall be no transfer of amounts between  
3 items of appropriations nor shall moneys appropriated  
4 for any particular purpose be expended for any other  
5 purpose by any spending unit of the executive, legisla-  
6 tive or judicial branch except as hereinafter provided:

7 (1) Any transfer of amounts between items of appro-  
8 priations for the executive branch of state government  
9 shall be made only as specifically authorized by the  
10 Legislature.

11 (2) Any transfer of amounts between items of appro-  
12 priations for the legislative branch of state government  
13 shall be made only pursuant to the joint rules adopted  
14 by such body and any amendments thereto, as certified  
15 to the state auditor, the state treasurer and the  
16 legislative auditor.

17 (3) Any transfer of amounts between items of appro-  
18 priations for the judicial branch of state government  
19 shall be made only pursuant to rules adopted by the  
20 supreme court of appeals and any amendments thereto,  
21 as certified to the state auditor, the state treasurer and  
22 the legislative auditor.

**§5A-2-18. Expenditure of excess in collections; notices to  
auditor and treasurer.**

1 If the amount actually collected by a spending unit  
2 exceeds the amount which it is authorized to expend  
3 from collections, the excess in collections shall be set  
4 aside in a special surplus fund for the spending unit.  
5 Expenditures from this fund shall be made only in  
6 accordance with the following procedure:

7 The spending officer shall submit to the secretary:

8 (1) A plan of expenditure showing the purposes for  
9 which the surplus is to be expended; and

10 (2) A justification statement showing the reasons why  
11 the expenditure is necessary and desirable.

12 The secretary shall submit the request to the governor  
13 with his recommendation.

14 If the governor approves the plan of expenditure and

15 justification statement, and is satisfied that the expen-  
16 diture is required to defray the additional cost of the  
17 service or activity of the spending unit, and that the  
18 expenditure is in accordance with sound fiscal policy,  
19 he/she may authorize the use of the surplus during the  
20 current fiscal year. Notices of such authorization shall  
21 be sent to the state auditor, the state treasurer and the  
22 legislative auditor.

23 An expenditure from a special surplus fund without  
24 the authorization of the governor, or other than in  
25 accordance with this section, shall be an unlawful use  
26 of public funds.

**§5A-2-19. Reports by spending units; copies to legislative auditor.**

1 A spending unit shall submit to the secretary such  
2 reports with respect to the work and expenditures of the  
3 unit as the secretary may request for the purposes of  
4 this article. Upon receipt thereof, the secretary shall  
5 immediately send copies of all such reports to the  
6 legislative auditor.

**§5A-2-20. Reduction of appropriations—Powers of governor.**

1 The governor may reduce appropriations according to  
2 any of the methods set forth in sections twenty-one and  
3 twenty-two of this article.

**§5A-2-21. Reduction of appropriations—Pro rata reduction of appropriations from general revenue.**

1 If the governor determines that the amounts, or parts  
2 thereof, appropriated from the general revenue cannot  
3 be expended without creating an overdraft or deficit in  
4 the general fund, he may instruct the secretary to  
5 reduce equally and pro rata all appropriations out of  
6 general revenue in such a degree as may be necessary  
7 to prevent an overdraft or a deficit in the general fund.

**§5A-2-22. Reduction of appropriations—Pro rata reduction of appropriations from other funds.**

1 The governor in the manner set forth in section  
2 twenty-one may reduce appropriations from:



- 3       (1) Funds supported by designated taxes or fees; and
- 4       (2) Fees or other collections set aside for the support  
5 of designated activities or services.
- 6       Each fund and each fee or collection account shall be  
7 treated separately, but appropriations from the same  
8 fund or account shall be treated equally and reduced pro  
9 rata.

**§5A-2-23. Approval of secretary of requests for changes  
and receipt and expenditure of federal  
funds by state agencies; copies or sufficient  
summary information to be furnished to  
secretary and legislative auditor; and con-  
solidated report of federal funds.**

1       Every agency of the state government when making  
2 requests or preparing budgets to be submitted to the  
3 federal government for funds, equipment, material or  
4 services, the grant or allocation of which is conditioned  
5 upon the use of state matching funds, shall have such  
6 request or budget approved in writing by the secretary  
7 before submitting it to the proper federal authority. At  
8 the time such agency submits such a request or budget  
9 to the secretary for approval, it shall send a copy thereof  
10 to the legislative auditor. When such federal authority  
11 has approved the request or budget, the agency of the  
12 state government shall resubmit it to the secretary for  
13 recording before any allotment or encumbrance of the  
14 federal funds can be made and the secretary shall send  
15 a copy of the federally approved request or budget to  
16 the legislative auditor. Whenever any agency of the state  
17 government shall receive from any agency of the federal  
18 government a grant or allocation of funds which do not  
19 require state matching, the state agency shall report to  
20 the secretary and the legislative auditor for their  
21 information the amount of the federal funds so granted  
22 or allocated.

23       Unless contrary to federal law, any agency of state  
24 government, when making requests or preparing

25 budgets to be submitted to the federal government for  
26 funds for personal services, shall include in such request  
27 or budget the amount of funds necessary to pay for the  
28 costs of any fringe benefits related to such personal  
29 service. For the purposes of this section, "fringe  
30 benefits" means any employment benefit granted by the  
31 state which involves state funds, including, but not  
32 limited to, contributions to insurance, retirement and  
33 social security, and which does not affect the basic rate  
34 of pay of an employee.

35 In addition to the other requirements of this section,  
36 the secretary shall, as soon as possible after the end of  
37 each fiscal year but no later than the first day of October  
38 of each year, submit to the governor and the legislative  
39 auditor a consolidated report which shall contain a  
40 detailed itemization of all federal funds received by the  
41 state during the preceding and current fiscal years, as  
42 well as those scheduled or anticipated to be received  
43 during the next ensuing fiscal year. Such itemization  
44 shall show: (a) Each spending unit which has received  
45 or is scheduled or expected to receive federal funds in  
46 either of such fiscal years, (b) the amount of each  
47 separate grant or distribution received or to be received,  
48 and (c) a brief description of the purpose of every such  
49 grant or other distribution, with the name of the federal  
50 agency, bureau or department making such grant or  
51 distribution: *Provided*, That it shall not be necessary to  
52 include in such report an itemization of federal revenue  
53 sharing funds deposited in and appropriated from the  
54 revenue sharing trust fund, or federal funds received for  
55 the benefit of the division of highways of the department  
56 of transportation.

57 The secretary is authorized and empowered to obtain  
58 from the spending units any and all information  
59 necessary to prepare such report.

60 Notwithstanding the other provisions of this section  
61 and in supplementation thereof, the Legislature hereby  
62 determines that the department of administration and  
63 its secretary need to be the single and central agency  
64 for receipt of information and documents in respect of  
65 applications for, and changes, receipt and expenditure

66 of, federal funds by state agencies. Every agency of state  
67 government, when making application for federal funds  
68 in the nature of a grant, allocation or otherwise; when  
69 amending such applications or requests; when in receipt  
70 of such federal funds; or when undertaking any expen-  
71 diture of federal funds; in all such respective instances,  
72 shall provide to the secretary of administration docu-  
73 ment copies or sufficient summary information in  
74 respect thereof as to enable the secretary to provide  
75 approval in writing for such activity in respect to the  
76 federal funds, and such state agencies shall, at the same  
77 time, provide such a document copy or sufficient  
78 summary information report to the legislative auditor's  
79 office in order to permit continuing meaningful cooper-  
80 ative overview of federal funds and their use budgetar-  
81 ily and in establishing state fiscal policies.

#### §5A-2-24. Management accounting.

1 It is the intent of this section to establish a centralized  
2 accounting system for the offices of the auditor,  
3 treasurer, secretary of administration and each spend-  
4 ing unit of state government to provide more accurate  
5 and timely financial data and increase public  
6 accountability.

7 Notwithstanding any provision of this code to the  
8 contrary, the secretary shall develop and implement a  
9 new centralized accounting system for the planning,  
10 reporting and control of state expenditures in accor-  
11 dance with generally accepted accounting principles to  
12 be used by the auditor, treasurer, secretary and all  
13 spending units. The accounting system shall provide for  
14 adequate internal controls, accounting procedures,  
15 recording income collections, systems operation proce-  
16 dures and manuals, and periodic and annual general  
17 purpose financial statements, as well as provide for the  
18 daily exchange of needed information among users.

19 The financial statements shall be audited annually by  
20 outside independent certified public accountants, who  
21 shall also issue an annual report on federal funds in  
22 compliance with federal requirements.

23 The secretary shall implement the centralized ac-

24 counting system no later than the thirty-first day of  
25 December, one thousand nine hundred ninety-three,  
26 and, after approval of the system by the governor, shall  
27 require its use by all spending units. The auditor,  
28 treasurer, secretary and every spending unit shall  
29 maintain their computer systems and data files in a  
30 standard format in conformity with the requirements of  
31 the centralized accounting system. Any system changes  
32 must be approved in advance of such change by the  
33 secretary. The auditor, treasurer and secretary shall  
34 provide on-line interactive access to the daily records  
35 maintained by their offices.

**§5A-2-25. System of accounting to be certified to legislative auditor.**

1 The secretary shall certify the system of accounting  
2 and reporting installed pursuant to the provisions of this  
3 article, and any changes made therein, to the legislative  
4 auditor.

**§5A-2-26. Expenditure of appropriations—Generally.**

1 The expenditure of an appropriation made by the  
2 Legislature shall be conditioned upon compliance by the  
3 spending unit with the following provisions of this  
4 article.

**§5A-2-27. Expenditure of appropriations—Other than for purchases of commodities.**

1 A requisition for expenditure, other than an order for  
2 the purchase of commodities, shall be submitted as  
3 follows:

4 (1) The spending officer shall prepare and submit to  
5 the director a requisition showing the amount, purpose,  
6 and appropriation from which the expenditure is  
7 requested;

8 (2) The director shall examine the requisition and  
9 determine whether the amount is within the quarterly  
10 allotment, is in accordance with the approved expendi-  
11 ture schedule, and otherwise conforms to the provisions  
12 of this article;

13 (3) If the director approves the requisition, he/she

14 shall encumber the proper account in the amount of the  
15 requisition and shall transmit the requisition to the  
16 auditor for disbursement in accordance with law; and

17 (4) If the director disapproves the requisition, he/she  
18 shall return it to the spending unit with a statement of  
19 his reasons.

**§5A-2-28. Expenditure of appropriations—Purchases of commodities.**

1 If a requisition is a request for a purchase of  
2 commodities, the spending unit shall transmit the  
3 requisition to the budget section for the purpose of  
4 ascertaining whether it conforms to the expenditure  
5 schedule. If it does not so conform, the requisition shall  
6 be returned by the budget section to the spending unit.  
7 If it conforms, the budget section shall transmit the  
8 requisition to the purchasing division for purchase in  
9 accordance with article three of this chapter. When a  
10 copy of the purchase order issued pursuant thereto is  
11 received from the purchasing division by the director in  
12 accordance with the provisions of section fourteen,  
13 article three of this chapter, the director shall ascertain  
14 whether the unencumbered balance in the appropriation  
15 concerned, in excess of all unpaid obligations, is  
16 sufficient to defray the cost of such order, and, if so,  
17 shall encumber the proper account and so certify the  
18 fact to the purchasing division, and, if not, shall notify  
19 the purchasing division which, upon receipt of such  
20 notification, shall return the requisition to the spending  
21 unit.

**§5A-2-29. Expenditure of appropriations—Payment of personal services.**

1 A requisition for the payment of personal services  
2 shall upon receipt by the director be checked against the  
3 personnel schedule of the spending unit making the  
4 requisition. The director shall approve a requisition for  
5 personal services only if the amounts requested are in  
6 accordance with the personnel schedule of the spending  
7 unit.

**§5A-2-30. Expenditure of appropriations—Legislative and judicial expenditures.**

1 The provisions of sections twenty-nine and thirty of  
2 this article shall not apply to the expenditure of amounts  
3 appropriated for the use of the Legislature or for the  
4 judiciary. In the case of appropriations made for the  
5 Legislature, the clerk of the House of Delegates, or the  
6 clerk of the Senate, as the case may be, shall present  
7 his requisition directly to the auditor. In the case of  
8 appropriations made for the judiciary, the clerk of the  
9 court shall present his requisition or claim directly to  
10 the auditor. In the case of appropriations made for  
11 criminal charges, the clerk or the proper officer shall  
12 present his claim directly to the auditor.

**§5A-2-31. Appropriations for officers, commissions, boards or institutions without office at capitol.**

1 All appropriations now or hereafter made for officers,  
2 commissions, boards or institutions, public or private,  
3 other than state institutions of higher education, state  
4 charitable institutions, state hospitals and sanatariums  
5 and state penal and correctional institutions, not having  
6 an office at the state capitol, shall, unless otherwise  
7 provided by law, be expended on requisitions of such  
8 officer, commission, board or institution, after approval  
9 by the secretary of the department of administration.

**§5A-2-32. Submission of requests, amendments, reports, etc., to legislative auditor; penalty for noncompliance.**

1 The provisions of sections three, eleven, twelve,  
2 thirteen, nineteen, twenty-three and twenty-five of this  
3 article requiring the secretary or the spending officer  
4 of the spending units, as the case may be, to supply  
5 copies of the documents specified therein to the legisla-  
6 tive auditor, shall be strictly adhered to by all such  
7 persons. Any failure by any person to do so shall be a  
8 misdemeanor, and, upon conviction thereof, such person  
9 shall be fined the sum of one thousand dollars. Such  
10 penalty shall be in addition to other penalties provided  
11 elsewhere in this article and other remedies provided by  
12 law.

**ARTICLE 3. PURCHASING DIVISION.**

- §5A-3-1. Division created; purpose; director; applicability of article.
- §5A-3-1a. Prescription drug products.
- §5A-3-2. Books and records of director.
- §5A-3-3. Powers and duties of director of purchasing.
- §5A-3-4. Rules and regulations of director.
- §5A-3-5. Purchasing section standard specifications—Promulgation and adoption by director; applicable to all purchases.
- §5A-3-6. Purchasing section standard specifications—Advisers from spending units.
- §5A-3-7. Director to advise with heads of state and other institutions producing commodities, services and printing.
- §5A-3-8. Facilities of division available to local governmental bodies.
- §5A-3-9. Examination and testing of purchases; report required.
- §5A-3-10. Competitive bids; publication of solicitations for sealed bids; purchase of products of nonprofit workshops; employee to assist in dealings with nonprofit workshops.
- §5A-3-11. Purchasing in open market on competitive bids; bids to be based on standard specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder; uniform bids; record of bids, and exception.
- §5A-3-12. Prequalification disclosure and payment of annual fee by vendors required; form and contents; register of vendors; false affidavits, etc.; penalties.
- §5A-3-13. Contracts to be approved as to form; filing.
- §5A-3-14. Copies of purchase orders sent to finance division; certificates required before contracts awarded.
- §5A-3-15. Emergency purchases in open market.
- §5A-3-16. Special fund; purposes; how composed.
- §5A-3-17. Purchases or contracts violating article void; personal liability.
- §5A-3-18. Substituting for commodity bearing particular trade name or brand.
- §5A-3-19. Purchases from federal government and other sources.
- §5A-3-20. Spending units to submit lists of expendable commodities.
- §5A-3-21. Contracts for public printing and paper for spending units; printing plants at institutions.
- §5A-3-22. Legislative printing.
- §5A-3-23. Publication of reports of supreme court of appeals.
- §5A-3-24. Publication of departmental reports; uniform standards; limiting number of publications; requiring division to perform printing and binding.
- §5A-3-25. Printing, binding and stationery to be paid from current expense appropriations.
- §5A-3-26. Custodian of reports and acts; delivery to state law librarian for distribution; sale.
- §5A-3-27. Director to establish central duplicating office; exemption of particular spending units; contracts for duplicating.
- §5A-3-28. Financial interest of secretary, etc.; receiving reward from interested party; penalty; application of bribery statute.
- §5A-3-29. Penalty for violation of article.

- §5A-3-30. Obtaining money and property under false pretenses or by fraud from state; penalties.
- §5A-3-31. Corrupt combinations, collusions or conspiracies prohibited; penalties.
- §5A-3-32. Power of director to suspend right to bid; notice of suspension.
- §5A-3-33. Review of suspension by secretary.
- §5A-3-34. Authority over inventories and property.
- §5A-3-35. Submission of annual inventories.
- §5A-3-36. Inventory of removable property; maintenance and repair of office furniture, machinery and equipment.
- §5A-3-37. Preference for resident vendors; preference for vendors employing state residents; exceptions.
- §5A-3-37a. Preference for resident vendors; exceptions; reciprocal preference.
- §5A-3-38. Leases for space to be made in accordance with article; exception.
- §5A-3-39. Leasing of space by secretary; delegation of authority.
- §5A-3-40. Selection of grounds, etc.; acquisition by contract or lease; long-term leases; requiring approval of secretary for permanent changes.
- §5A-3-41. Leases and other instruments for space signed by secretary or director; approval as to form; filing.
- §5A-3-42. Leasing for space rules and regulations.
- §5A-3-43. State agency for surplus property created.
- §5A-3-44. Authority and duties of state agency for surplus property.
- §5A-3-45. Disposition of surplus state property; semiannual report; application of proceeds from sale.
- §5A-3-46. Warehousing, transfer, etc., charges.
- §5A-3-47. Department of agriculture and other agencies exempted.
- §5A-3-48. Travel rules and regulations; exceptions.
- §5A-3-49. Central motor pool for state-owned vehicles and aircraft.
- §5A-3-50. Acquiring and disposing of vehicles and aircraft.
- §5A-3-51. Maintenance and service to vehicles and aircraft.
- §5A-3-52. Special fund for travel management created.
- §5A-3-53. Enforcement of travel management regulations.
- §5A-3-54. Payment of legitimate uncontested invoices; interest on late payments.

**§5A-3-1. Division created; purpose; director; applicability of article.**

1       There is hereby created the purchasing division of the  
2 department of administration for the purpose of  
3 establishing centralized offices to provide purchasing,  
4 travel and leasing services to the various state agencies.

5       No person shall be appointed director of the purchas-  
6 ing division unless that person is, at the time of  
7 appointment, a graduate of an accredited college or  
8 university and shall have spent a minimum of ten of the  
9 fifteen years immediately preceding his appointment  
10 employed in an executive capacity in purchasing for any



11 unit of government or for any business, commercial or  
12 industrial enterprise.

13 The provisions of this article shall apply to all of the  
14 spending units of state government, except as is  
15 otherwise provided by this article or by law: *Provided*,  
16 That the provisions of this article shall not apply to the  
17 legislative branch unless otherwise provided or the  
18 Legislature or either house thereof requests the director  
19 to render specific services under the provisions of this  
20 chapter, nor to purchases of stock made by the alcohol  
21 beverage control commissioner, nor to purchases of text-  
22 books for the state board of education.

### §5A-3-1a. Prescription drug products.

1 In addition to other provisions of this article, the  
2 division is authorized, on behalf of the public employees  
3 insurance agency, the schools of medicine of the state  
4 colleges and universities, the department of vocational  
5 rehabilitation and the department of health and human  
6 resources, to negotiate and enter into agreements  
7 directly with manufacturers and distributors whose  
8 prescription drug products are sold in the state for sole-  
9 source and multiple-source drugs to be paid for under  
10 a state program for eligible recipients. Such agreements  
11 shall provide for a rebate of a negotiated percentage of  
12 the total product cost to be paid by the manufacturer  
13 or distributor of a specific product. Each agency is  
14 authorized to establish, either singularly or together  
15 with other agencies, a drug formulary.

16 Prescription drug products are included in the drug  
17 formulary only upon completion of the application to  
18 and approval of the division. Those products for which  
19 a rebate is successfully negotiated are automatically  
20 included in the drug formulary for a period of time  
21 coterminous with the negotiated rebate.

22 If there has been a failure to negotiate or renew a  
23 rebate agreement for a specific prescription drug  
24 product, the pharmaceutical manufacturer of that  
25 product shall disclose to the division its most favorable  
26 pricing arrangements available to state and nonstate  
27 government purchasers. If the division determines that

28 the product needs to be included in the drug formulary,  
29 with the approval of the agency the division shall  
30 establish the amount to be reimbursed for the product  
31 based upon the price information provided by the  
32 manufacturer. The determination as to whether a  
33 product should be included in the drug formulary is  
34 based on the product's efficiency, cost, medical necessity  
35 and safety. Any rebate returns, as a result of the  
36 provisions of this section regarding prescription drugs,  
37 shall be deposited in the general revenue fund.

38 It is expressly recognized that no other entity may  
39 interfere with the discretion and judgment given to the  
40 single state agency that administers the state's medicaid  
41 program. Therefore, the department of health and  
42 human resources is authorized to negotiate rebates as  
43 provided for in this section.

#### **§5A-3-2. Books and records of director.**

1 The director shall keep in his offices accurate books,  
2 accounts and records of all transactions of his division,  
3 and such books, accounts and records shall be public  
4 records, and shall at all proper times be available for  
5 inspection by any taxpayer of the state.

#### **§5A-3-3. Powers and duties of director of purchasing.**

1 The director, under the direction and supervision of  
2 the secretary, shall be the executive officer of the  
3 purchasing division and shall have the power and duty  
4 to:

5 (1) Direct the activities and employees of the purchas-  
6 ing division;

7 (2) Ensure that the purchase of or contract for  
8 commodities and printing shall be based, whenever  
9 possible, on competitive bid;

10 (3) Purchase or contract for, in the name of the state,  
11 the commodities and printing required by the spending  
12 units of the state government;

13 (4) Apply and enforce standard specifications estab-  
14 lished in accordance with section five of this article as  
15 hereinafter provided;

- 16 (5) Transfer to or between spending units or sell  
17 commodities that are surplus, obsolete or unused as  
18 hereinafter provided;
- 19 (6) Have charge of central storerooms for the supply  
20 of spending units;
- 21 (7) Establish and maintain a laboratory for the  
22 testing of commodities and make use of existing  
23 facilities in state institutions for that purpose as  
24 hereinafter provided;
- 25 (8) Suspend the right and privilege of a vendor to bid  
26 on state purchases when the director has evidence that  
27 such vendor has violated any of the provisions of the  
28 purchasing law or the rules and regulations of the  
29 director;
- 30 (9) Examine the provisions and terms of every  
31 contract entered into for and on behalf of the state of  
32 West Virginia that impose any obligation upon the state  
33 to pay any sums of money for commodities or services  
34 and approve each such contract as to such provisions  
35 and terms; and the duty of examination and approval  
36 herein set forth does not supersede the responsibility  
37 and duty of the attorney general to approve such  
38 contracts as to form: *Provided*, That the provisions of  
39 this subdivision do not apply in any respect whatever to  
40 construction or repair contracts entered into by the  
41 division of highways of the department of transporta-  
42 tion: *Provided, however*, That the provisions of this  
43 subdivision do not apply in any respect whatever to  
44 contracts entered into by the university of West Virginia  
45 board of trustees or by the board of directors of the state  
46 college system, except to the extent that such boards  
47 request the facilities and services of the director under  
48 the provisions of this subdivision; and
- 49 (10) Assure that the specifications and commodity  
50 descriptions in all "requests for quotations" are pre-  
51 pared so as to permit all potential suppliers-vendors who  
52 can meet the requirements of the state an opportunity  
53 to bid and to assure that the specifications and descrip-  
54 tions do not favor a particular brand or vendor. If the  
55 director determines that any such specifications or

56 descriptions as written favor a particular brand or  
57 vendor or if it is decided, either before or after the bids  
58 are opened, that a commodity having different specifi-  
59 cations or quality or in different quantity can be bought,  
60 the director may rewrite the "requests for quotations"  
61 and the matter shall be rebid.

**§5A-3-4. Rules and regulations of director.**

1 (a) The director shall adopt and amend rules and  
2 regulations to:

3 (1) Authorize a spending unit to purchase specified  
4 commodities directly and prescribe the manner in which  
5 such purchases shall be made;

6 (2) Authorize, in writing, a spending unit to purchase  
7 commodities in the open market for immediate delivery  
8 in emergencies, define such emergencies and prescribe  
9 the manner in which such purchases shall be made and  
10 reported to the director; and for the purposes mentioned  
11 in subdivision (1) and this subdivision (2), the head of  
12 any spending unit, or the financial governing board of  
13 any institution, may, with the approval of the director,  
14 make requisitions upon the auditor for a sum to be  
15 known as an advance allowance account, in no case to  
16 exceed five percent of the total of the appropriations for  
17 any such spending unit, and the auditor shall draw his  
18 warrant upon the treasurer for such accounts; and all  
19 such advance allowance accounts shall be accounted for  
20 by the head of the spending unit or institution once  
21 every thirty days or oftener if required by the state  
22 auditor or director;

23 (3) Prescribe the manner in which commodities shall  
24 be purchased, delivered, stored and distributed;

25 (4) Prescribe the time for making requisitions and  
26 estimates of commodities, the future period which they  
27 are to cover, the form in which they shall be submitted  
28 and the manner of their authentication;

29 (5) Prescribe the manner of inspecting all deliveries  
30 of commodities, and making chemical and physical tests  
31 of samples submitted with bids and samples of deliver-  
32 ies to determine compliance with specifications;

33 (6) Prescribe the amount of deposit or bond to be  
34 submitted with a bid or contract and the amount of  
35 deposit or bond to be given for the faithful performance  
36 of a contract;

37 (7) Prescribe a system whereby the director shall be  
38 required, upon the payment by a vendor of an annual  
39 fee established by the director, to give notice to such  
40 vendor of all bid solicitations for commodities of the type  
41 with respect to which such vendor specified notice was  
42 to be given, but no such fee shall exceed the cost of  
43 giving the notice to such vendor, nor shall such fee  
44 exceed the sum of forty-five dollars per fiscal year, nor  
45 shall such fee be charged to persons seeking only  
46 reimbursement from a spending unit;

47 (8) Prescribe that each state contract entered into by  
48 the purchasing division shall contain provisions for  
49 liquidated damages, remedies, and/or provisions for the  
50 determination of the amount or amounts which the  
51 vendor shall owe as damages, in the event of default  
52 under such contract by such vendor; and

53 (9) Provide for such other matters as may be neces-  
54 sary to give effect to the foregoing rules and regulations  
55 and the provisions of this article.

56 (b) The director shall also adopt and amend rules and  
57 regulations to prescribe qualifications to be met by any  
58 person who, on and after the effective date of this  
59 section, is to be employed in the purchasing division as  
60 a state buyer. Such rules and regulations shall provide  
61 that no person shall be so employed as a state buyer  
62 unless such person at the time of employment either is  
63 (1) a graduate of an accredited college or university or  
64 (2) has at least four years' experience in purchasing for  
65 any unit of government or for any business, commercial  
66 or industrial enterprise. Those persons now serving as  
67 state buyers shall remain subject to the provisions of  
68 article six, chapter twenty-nine of this code, and those  
69 persons employed as state buyers on and after the  
70 effective date of this section shall be subject to the  
71 provisions of said article six.

**§5A-3-5. Purchasing section standard specifications—  
Promulgation and adoption by director;  
applicable to all purchases.**

1 The director shall promulgate and adopt standard  
2 specifications based on scientific and technical data for  
3 appropriate commodities, which shall establish the  
4 quality to which such commodities to be purchased and  
5 services to be contracted for by the state must conform.  
6 Standard specifications shall apply to every future  
7 purchase of or contract for the commodities described  
8 in the specifications. The purchases of no spending unit  
9 may be exempt from compliance with the standard  
10 specifications so established, but the director, whenever  
11 he deems it necessary and advisable, may exempt  
12 therefrom the purchase of particular items. The director  
13 shall update the standard specifications, as necessary.

**§5A-3-6. Purchasing section standard specifications—  
Advisers from spending units.**

1 The secretary may from time to time request any  
2 official or employee of any spending unit to aid and  
3 advise the director in formulating, revising or amending  
4 the schedule of standard specifications provided for in  
5 section five of this article. Such official or employee  
6 shall act at the request of the secretary and shall be  
7 entitled to receive his necessary expenses incurred in  
8 compliance therewith, but shall receive no additional  
9 compensation therefor.

**§5A-3-7. Director to advise with heads of state and other  
institutions producing commodities, services  
and printing.**

1 The director shall advise with the heads of the various  
2 state and other institutions producing commodities,  
3 services and printing, with the view to making these  
4 articles suitable for the needs of state spending units.  
5 Notwithstanding any provision of this code to the  
6 contrary, in the event of conflict between state and other  
7 institutions producing commodities, services and print-  
8 ing with preference in accordance with the code, the  
9 director shall determine which institution shall provide  
10 a commodity, service or printing, basing such determi-

11 nation on quality, price and the efficient and economical  
12 operation of state government.

**§5A-3-8. Facilities of division available to local governmental bodies.**

1 The director shall make available the facilities and  
2 services of his division to counties, county schools,  
3 municipalities, urban mass transportation authorities,  
4 created pursuant to article twenty-seven, chapter eight  
5 of this code, mass transportation divisions of county and  
6 municipal governments, volunteer fire departments, and  
7 other local governmental bodies within this state. The  
8 actual expenses incurred thereby shall be paid by the  
9 local governmental body.

**§5A-3-9. Examination and testing of purchases; report required.**

1 Within the limit of funds available, the director, or  
2 some person appointed by the director, shall determine  
3 whether commodities delivered or services performed  
4 conform to contractual requirements. Nonconformity  
5 shall be reported to the director and chief officer of the  
6 spending unit purchasing such commodities or services  
7 for remedial action.

**§5A-3-10. Competitive bids; publication of solicitations for sealed bids; purchase of products of non-profit workshops; employee to assist in dealings with nonprofit workshops.**

1 A purchase of and contract for commodities, printing  
2 and services shall be based, whenever possible, on  
3 competitive bids.

4 The director shall solicit sealed bids for the purchase  
5 of commodities and printing which is estimated to  
6 exceed ten thousand dollars. No spending unit shall  
7 issue a series of requisitions which would circumvent  
8 this ten thousand dollar maximum. The director may  
9 permit bids by facsimile transmission machine to be  
10 accepted in lieu of sealed bids: *Provided*, That an  
11 original bid is received within two working days  
12 following the date specified for bid opening. Bids shall  
13 be obtained by public notice. The notice may be

14 published by any advertising medium the director  
15 deems advisable. The director may also solicit sealed  
16 bids by sending requests by mail to prospective supp-  
17 liers and by posting notice on a bulletin board in his  
18 office: *Provided, however,* That the director shall,  
19 without competitive bidding, purchase commodities and  
20 printing produced and offered for sale by nonprofit  
21 workshops, as defined in section one, article one of this  
22 chapter, which are located in this state: *Provided*  
23 *further,* That such commodities and printing shall be of  
24 a fair market price and of like quality comparable to  
25 other commodities and printing otherwise available as  
26 determined by the director with the advice of the  
27 committee on the purchase of commodities and services  
28 from the handicapped.

29 Toward the end of effecting the making of contracts  
30 for commodities and printing of nonprofit workshops,  
31 the director shall employ a person whose responsibilities  
32 in addition to other duties shall be to identify all  
33 commodities and printing available for purchase from  
34 such nonprofit workshops, to evaluate the need of the  
35 state for such commodities and printing to coordinate  
36 the various nonprofit workshops in their production  
37 efforts and to make available to such workshops  
38 information about available opportunities within state  
39 government for purchase of commodities or printing  
40 which might be produced and sold by such workshops.  
41 Funds to employ such a person shall be included  
42 annually in the budget.

**§5A-3-11. Purchasing in open market on competitive  
bids; bids to be based on standard specifica-  
tions; period for alteration or withdrawal of  
bids; awards to lowest responsible bidder;  
uniform bids; record of bids; and exception.**

1 The director may make a purchase of commodities,  
2 printing and services of ten thousand dollars or less in  
3 amount in the open market, but such purchase shall,  
4 wherever possible, be based on at least three competitive  
5 bids.

6 The director may authorize spending units to pur-



7 chase commodities, printing and services in the amount  
8 of one thousand dollars in the open market without  
9 competitive bids.

10 Bids shall be based on the standard specifications  
11 promulgated and adopted in accordance with the  
12 provisions of section five of this article, and shall not be  
13 altered or withdrawn after the appointed hour for the  
14 opening of such bids. All open market orders, purchases  
15 based on advertised bid requests or contracts made by  
16 the director or by a state department shall be awarded  
17 to the lowest responsible bidder, taking into considera-  
18 tion the qualities of the articles to be supplied, their  
19 conformity with specifications, their suitability to the  
20 requirements of the government and the delivery terms:  
21 *Provided*, That state bids on school buses shall be  
22 accepted from all bidders who shall then be awarded  
23 contracts if they meet the state board's "Minimum  
24 Standards for Design and Equipment of School Buses".  
25 County boards of education may select from those  
26 bidders who have been awarded contracts and shall pay  
27 the difference between the state aid formula amount and  
28 the actual cost of bus replacement. Any or all bids may  
29 be rejected. If all bids received on a pending contract  
30 are for the same unit price or total amount, the director  
31 shall have authority to reject all bids, and to purchase  
32 the required commodities, printing and services in the  
33 open market, if the price paid in the open market does  
34 not exceed the bid prices.

35 All bidders submitting bid proposals to the purchas-  
36 ing division are required to submit an extra or duplicate  
37 copy to the state auditor.

38 Both copies must be received at the respective offices  
39 prior to the specified date and time of the bid openings.  
40 The failure to deliver or the nonreceipt of these bid  
41 forms at either of these offices prior to the appointed  
42 date and hour are grounds for rejection of the bids. In  
43 the event of any deviation between the copies submitted  
44 to the purchasing division and the state auditor, such  
45 bids as to which there is such deviation shall be rejected,  
46 if the deviation relates to the quantity, quality or  
47 specifications of the commodities, printing or services to

48 be furnished or to the price therefor or to the date of  
49 delivery or performance. After the award of the order  
50 or contract, the director, or someone appointed by him  
51 for that purpose, shall indicate upon the successful bid  
52 and its copy in the office of the state auditor that it was  
53 the successful bid. Thereafter, the copy of each bid in  
54 the possession of the director and the state auditor shall  
55 be maintained as a public record by both of them, shall  
56 be open to public inspection in the offices of both the  
57 director and the state auditor and shall not be destroyed  
58 by either of them without the written consent of the  
59 legislative auditor: *Provided*, That the board of regents  
60 may certify in writing to the director the need for a  
61 specific item essential to a particular usage either for  
62 instructional or research purposes at an institution of  
63 higher education and the director upon review of such  
64 certification may provide for the purchase of said  
65 specific items in the open market without competitive  
66 bids. If the director permits bids by facsimile transmis-  
67 sion machine to be accepted in lieu of sealed bids  
68 pursuant to the provisions of section ten of this article,  
69 a duplicate facsimile transmission machine bid shall be  
70 transmitted to the state auditor pursuant to this section:  
71 *Provided, however*, That an original bid is received by  
72 the state auditor within two working days following the  
73 date specified for bid opening.

**§5A-3-12. Prequalification disclosure and payment of  
annual fee by vendors required; form and  
contents; register of vendors; false affidav-  
its, etc.; penalties.**

1 The director shall not accept any bid received from  
2 any vendor unless the vendor has paid the annual fee  
3 specified in section four of this article and has filed with  
4 the director an affidavit of the vendor or the affidavit  
5 of a member of the vendor's firm, or, if the vendor is  
6 a corporation, the affidavit of an officer, director or  
7 managing agent, of such corporation, disclosing the  
8 following information:

9 (1) If the vendor is an individual, his name and  
10 residence address, and, if he has associates or partners

11 sharing in his business, their names and residence  
12 addresses;

13 (2) If the vendor is a firm, the name and residence  
14 address of each member, partner or associate of the  
15 firm;

16 (3) If the vendor is a corporation created under the  
17 laws of this state or authorized to do business in this  
18 state, the name and business address of the corporation;  
19 the names and residence addresses of the president, vice  
20 president, secretary, treasurer and general manager, if  
21 any, of the corporation; and the names and residence  
22 addresses of each stockholder of the corporation owning  
23 or holding at least ten percent of the capital stock  
24 thereof;

25 (4) A statement of whether the vendor is acting as  
26 agent for some other individual, firm or corporation,  
27 and if so, a statement of the principal authorizing such  
28 representation shall be attached to the affidavit or  
29 whether the vendor is doing business as another entity;

30 (5) The vendor's latest Dun & Bradstreet rating, if  
31 there is any such rating as to such vendor; and

32 (6) A list of one or more banking institutions to serve  
33 as references for such vendor.

34 Whenever a change occurs in the information heret-  
35 ofore submitted as required, such change shall be  
36 reported immediately in the same manner as required  
37 in the original disclosure affidavit.

38 The affidavit and information so received by the  
39 director shall be kept in a register of vendors which  
40 shall be a public record and open to public inspection  
41 during regular business hours in the director's office  
42 and made readily available to the public at such time.

43 The director may waive the above requirements in the  
44 case of any corporation listed on any nationally recog-  
45 nized stock exchange and in the case of any vendor who  
46 or which is the sole source for the commodity in  
47 question.

48 Any person who makes such affidavit falsely or who  
49 shall knowingly file or cause to be filed with the

50 director, an affidavit containing a false statement of a  
51 material fact or omitting any material fact, shall be  
52 guilty of a misdemeanor, and, upon conviction thereof,  
53 shall be fined not more than one thousand dollars, and,  
54 in the discretion of the court, confined in jail not more  
55 than one year. In any such case, an individual so  
56 convicted shall be adjudged forever incapable of holding  
57 any office of honor, trust or profit in this state, or of  
58 serving as a juror.

**§5A-3-13. Contracts to be approved as to form; filing.**

1 Contracts shall be approved as to form by the attorney  
2 general. A contract that requires more than six months  
3 for its fulfillment shall be filed with the state auditor.

**\*§5A-3-14. Copies of purchase orders sent to finance  
division; certificates required before con-  
tracts awarded.**

1 A copy of all purchase orders shall be transmitted to  
2 the director of the finance division so that the proper  
3 account may be encumbered before they are sent to the  
4 vendors. Except in an emergency, an order or contract  
5 shall not be awarded until it has been certified to the  
6 director by the secretary as director of the budget that  
7 the unencumbered balance in the appropriation con-  
8 cerned, in excess of all unpaid obligations, is sufficient  
9 to defray the cost of such order or contract.

**§5A-3-15. Emergency purchases in open market.**

1 The director may authorize, in writing, a state  
2 spending unit to purchase in the open market, without  
3 filing requisition or estimate, specific commodities for  
4 immediate delivery to meet bona fide emergencies  
5 arising from unforeseen causes, including delays by  
6 contractors, delays in transportation and unanticipated  
7 volume of work. A report of any such purchase, together  
8 with a record of the competitive bids upon which it was  
9 based, shall be submitted at once to the director by the  
10 head of the state spending unit concerned, together with  
11 a full account of the circumstances of the emergency:  
12 *Provided*, That the director may waive the need for the  
13 record of competitive bids. Such report shall be entered  
14 on a record and shall be open to public inspection.

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\*Clerk's Note: This section was also amended by HB 4386 (Chapter 32),  
which passed prior to this act.

**§5A-3-16. Special fund; purposes; how composed.**

1 There is hereby created a special revenue fund to be  
2 administered by the director to facilitate the following  
3 functions of the director:

4 (1) Purchase commodities in volume and maintain  
5 stocks to supply the needs of state spending units; and

6 (2) Performance of mimeographing, photostating,  
7 microfilming, multilithing, multigraphing and other  
8 work needed by spending units as provided by section  
9 twenty-seven of this article.

10 The amount of the fund may be fixed and changed by  
11 the governor upon the recommendation of the secretary.  
12 If at the end of each fiscal year the cash balance plus  
13 value of commodity inventories on hand exceeds the  
14 amount so fixed, the excess in cash shall be transferred  
15 by the governor upon recommendation of the secretary  
16 to the general revenue fund and become a part of the  
17 general revenue of the state. The fund shall be composed  
18 of the following:

19 (1) The cash balance and inventories of the fund  
20 heretofore established by this section; and

21 (2) Charges made by the director for commodities sold  
22 and services rendered to the state spending units as  
23 herein described: *Provided*, That charges shall not  
24 exceed total cost to the fund, which total cost shall  
25 include storage, supplies, equipment and salaries and  
26 wages of employees necessary to supply commodities  
27 and services in addition to purchase price of commod-  
28 ities.

**§5A-3-17. Purchases or contracts violating article void;  
personal liability.**

1 If a spending unit purchases or contracts for commod-  
2 ities contrary to the provisions of this article or the rules  
3 and regulations made thereunder, such purchase or  
4 contract shall be void and of no effect. The head of such  
5 spending unit shall be personally liable for the costs of  
6 such purchase or contract, and, if already paid out of  
7 state funds, the amount thereof may be recovered in the

8 name of the state in an appropriate action instituted  
9 therefor.

**§5A-3-18. Substituting for commodity bearing particular trade name or brand.**

1 If a spending unit requests the purchase of a commod-  
2 ity bearing a particular trade name or brand, and if the  
3 commodity is covered by standard specifications  
4 adopted as provided by section five of this article, the  
5 director may substitute a commodity bearing a different  
6 trade name or brand, if the substituted commodity  
7 reasonably conforms to the adopted standard specifica-  
8 tions and can be obtained at an equal or lower price.

**§5A-3-19. Purchases from federal government and other sources.**

1 Notwithstanding any other provision of this article,  
2 the director may, upon the recommendation of a state  
3 spending unit, make purchases from the federal govern-  
4 ment, from federal government contracts or from the  
5 university of West Virginia board of trustees or board  
6 of directors of the state college system contracts, if  
7 available and financially advantageous.

**§5A-3-20. Spending units to submit lists of expendable commodities.**

1 The head of every spending unit shall submit a list  
2 of expendable commodities such spending unit has on  
3 hand whenever requested to do so by the director.

**§5A-3-21. Contracts for public printing and paper for spending units; printing plants at institutions.**

1 The director shall contract for public printing and for  
2 printing paper for the use of spending units in the  
3 manner provided for contracts under sections ten  
4 through nineteen of this article, and in accordance with  
5 the specifications adopted as provided by section five of  
6 this article: *Provided*, That the provisions of this article  
7 shall not be construed to prohibit the state from  
8 maintaining printing plants for the purpose of instruc-  
9 tion or for printing for a state spending unit at

10 educational, benevolent, penal or correctional institu-  
11 tions.

**§5A-3-22. Legislative printing.**

1 Notwithstanding any other provision of this article,  
2 the letting of all contracts for legislative printing shall  
3 be subject only to the provisions of this section.

4 Upon request of the Legislature, or either house  
5 thereof, all contracts for legislative printing shall be let  
6 on competitive bids by the director to the lowest  
7 responsible bidder. Each such contract shall be subject  
8 to the approval of the governor, and in case of his  
9 disapproval the contract shall be relet on competitive  
10 bids submitted in the same manner as the original bids  
11 on the contract that was disapproved. Each bid on every  
12 such contract shall be within the maximum limits that  
13 may be fixed from time to time by concurrent resolution  
14 of the Legislature. The clerk of the Senate and the clerk  
15 of the House of Delegates shall have exclusive control  
16 of all printing authorized by their respective legislative  
17 bodies, and shall approve the specifications included in  
18 any contract before an invitation for bids is released by  
19 the director of purchasing. Before presenting for  
20 payment any bill for such legislative printing, the  
21 printer shall have the same approved by the purchasing  
22 division as correct and according to contract specifica-  
23 tions. A copy of all bills for legislative printing shall be  
24 furnished the clerk of the house for which such printing  
25 was done. When properly approved bills are presented  
26 to the clerk of the Senate, or to the clerk of the House  
27 of Delegates, he shall draw his requisition upon the  
28 auditor in the amount of the bill, payable from the  
29 legislative printing fund, and the auditor shall honor the  
30 requisition and issue to the printer a state draft  
31 therefor.

**§5A-3-23. Publication of reports of supreme court of  
appeals.**

1 Notwithstanding any of the provisions of this article,  
2 the official reporter of the supreme court of appeals  
3 shall have charge and supervision of the printing and  
4 binding of the reports of the decisions of the supreme

5 court of appeals of the state, and shall contract for their  
6 publication in the same manner that the director of the  
7 purchasing division contracts under sections ten  
8 through nineteen of this article. Such contract shall  
9 provide for the publication of such number of copies as  
10 the reporter and the supreme court of appeals may  
11 jointly direct. If the reporter and the supreme court of  
12 appeals do not agree on the number of copies for which  
13 the publication contract shall provide, the contract shall  
14 provide for the publication of the greater number of  
15 copies directed by either the reporter or the supreme  
16 court of appeals. In no event shall the number of copies  
17 published exceed one thousand five hundred. Copies of  
18 the reports of the decisions of the supreme court of  
19 appeals shall be on such paper and be bound in  
20 accordance with directions and specifications specified  
21 by the reporter by and with the concurrence of the  
22 court. The size of type and page shall be prescribed by  
23 the reporter with the concurrence of the court. A volume  
24 shall be published according to the terms of the contract  
25 whenever ordered by the court. The reporter shall  
26 secure the copyright of each volume for the benefit of  
27 the state. The reports shall be styled "West Virginia  
28 Reports".

29 The printing and binding of the reports shall be done  
30 under the direction of and in the manner prescribed by  
31 the reporter, subject to the control of the court. The  
32 reporter shall prefix to the printed report of each case  
33 the dates when the same was submitted and decided.  
34 Each volume shall, if practicable, contain the reports of  
35 at least eighty cases decided by the court, and shall  
36 contain approximately one thousand pages unless  
37 otherwise ordered by the court, exclusive of the index  
38 and table of cases reported and cited. Galley sheets or  
39 proof sheets shall be furnished by the printer to the  
40 reporter in such number as may be required by the  
41 reporter for the purposes of this section. It shall be the  
42 duty of the reporter to proof such galley sheets or proof  
43 sheets against the various cases, including the court's  
44 syllabi, as such cases and the court's syllabi appear in  
45 the most recent bound volume of the appropriate  
46 regional reporter in which such cases are reported.



47 Neither galley sheets nor proof sheets need be submitted  
48 to the court or the clerk thereof for any purpose.  
49 Thereafter the reporter shall make such corrections and  
50 modifications as he shall deem appropriate and all such  
51 corrections and modifications shall be made by the  
52 printer as the reporter may direct. If the work is not  
53 done in the manner required by law, the reporter shall  
54 not approve the volume and shall not accept it.

55 The reports of the decisions of the supreme court of  
56 appeals may be published in pamphlet form in advance  
57 of the publication of the bound volumes of the "West  
58 Virginia Reports", periodically, or at such times as may  
59 be directed by the reporter and the supreme court of  
60 appeals. The reporter shall secure the copyright of each  
61 pamphlet of opinions so published in advance. Each  
62 pamphlet shall contain the report of such number of  
63 cases as the supreme court of appeals and the reporter  
64 shall deem advisable.

65 The contract for the publication of such advance  
66 sheets shall be made in the manner provided for the  
67 publication of bound volumes of the "West Virginia  
68 Reports".

69 A charge of not less than the actual cost of printing  
70 and distribution shall be made for such advance sheets.

**§5A-3-24. Publication of departmental reports; uniform  
standards; limiting number of publications;  
requiring division to perform printing and  
binding.**

1 The director shall have charge and supervision of the  
2 printing and binding of all reports transmitted to the  
3 governor as required by section twenty, article one,  
4 chapter five of this code. Said reports shall be printed  
5 annually as soon as possible after the close of the fiscal  
6 year.

7 The director shall specify the uniform maximum  
8 standards as to form and format to be used in the  
9 preparation and publication of annual reports by the  
10 various departments, agencies, boards, commissions and  
11 institutions.

12 The number of copies of such reports shall be limited  
13 to the minimum quantity necessary for office use of the  
14 reporting spending unit and for legally required  
15 distribution and exchange, the exact number of copies  
16 of such reports to be expressly subject to the approval  
17 of the governor.

18 The director shall furnish to each spending unit  
19 sufficient copies of its report to satisfy the above  
20 purposes within the limits set by the governor.

21 The printing and binding of all such reports shall be  
22 done by the department of administration in the  
23 printing shop maintained by the department.

24 Subject to the approval of the secretary of adminis-  
25 tration and the governor, the director shall have  
26 authority to limit the number of any other report,  
27 bulletin and other publication ordered to be printed by  
28 each spending unit.

29 Nothing herein shall be construed as preventing the  
30 director from utilizing less expensive methods of  
31 printing and binding than those prescribed above.

**§5A-3-25. Printing, binding and stationery to be paid  
from current expense appropriations.**

1 Printing, binding and stationery for all spending units  
2 shall be paid from the current expense or unclassified  
3 appropriations for such spending units.

**§5A-3-26. Custodian of reports and acts; delivery to state  
law librarian for distribution; sale.**

1 The director shall be custodian of the "West Virginia  
2 Reports" after they are printed and bound and approved  
3 by the reporter, and of the acts of the Legislature after  
4 they are printed and bound and approved by the clerk  
5 of the House of Delegates. As soon as practicable after  
6 any new volume of such reports or acts has been  
7 delivered to the director, not including reprints of  
8 former volumes, he shall deliver to the state law  
9 librarian sufficient copies to enable him to make  
10 distribution thereof in the manner prescribed by  
11 sections five and six, article eight, chapter fifty-one of  
12 this code.

13 The director shall sell such copies of the reports and  
14 acts as remain after the distribution provided by law  
15 has been made at a price to be fixed by him with the  
16 approval of the secretary, but in no case shall such price  
17 be less than the actual cost to the state of the publication  
18 thereof.

**§5A-3-27. Director to establish central duplicating office;  
exemption of particular spending units;  
contracts for duplicating.**

1 Mimeographing, photostating, microfilming, multili-  
2 thing, multigraphing, and other duplicating work  
3 required to be done by or for any spending unit shall  
4 be done by a central duplicating office, which office  
5 shall be established by and under the supervision of the  
6 director.

7 Mimeographing, photostating, microfilming, multili-  
8 thing, multigraphing, and other duplicating equipment,  
9 supplies, personnel and the funds appropriated therefor  
10 shall be transferred to the central duplicating office,  
11 upon determination by the director to consolidate.

12 If the director is of the opinion that any spending unit  
13 is capable of doing such duplicating work as may be  
14 required by such particular spending unit more effi-  
15 ciently and economically than can the central duplicat-  
16 ing office, he may, in his discretion, exempt such  
17 particular spending unit from the provisions of this  
18 section; or if the director believes economy or efficiency  
19 can be effected by letting such work or any part thereof  
20 to contract, then he may do so in the manner provided  
21 for contracts under sections ten through nineteen of this  
22 article.

**§5A-3-28. Financial interest of secretary, etc.; receiving  
reward from interested party; penalty; ap-  
plication of bribery statute.**

1 Neither the secretary, nor the director nor any  
2 employee of the division of purchasing, shall be finan-  
3 cially interested, or have any beneficial personal  
4 interest, directly or indirectly, in the purchase of any  
5 commodities or printing, nor in any firm, partnership,

6 corporation or association furnishing them. Neither the  
7 secretary, nor the director nor any employee of the  
8 division of purchasing shall accept or receive directly or  
9 indirectly from any person, firm or corporation, known  
10 by such secretary, director or employee to be interested  
11 in any bid, contract or purchase, by rebate, gift or  
12 otherwise, any money or other thing of value what-  
13 soever, or any promise, obligation or contract for future  
14 reward, or compensation.

15 A person who violates this section shall be guilty of  
16 a misdemeanor, and, upon conviction thereof, shall be  
17 confined in jail not less than three months nor more than  
18 one year, or fined not less than fifty nor more than one  
19 thousand dollars, or both, in the discretion of the court:  
20 *Provided*, That any person who violates any of the  
21 provisions of the last sentence of the first paragraph of  
22 this section under circumstances constituting the crime  
23 of bribery under the provisions of section three, article  
24 five-a, chapter sixty-one of this code, shall, upon  
25 conviction of bribery, be punished as provided in said  
26 article five-a.

**§5A-3-29. Penalty for violation of article.**

1 Any person who violates a provision of this article,  
2 except where another penalty is prescribed, shall be  
3 guilty of a misdemeanor, and, upon conviction thereof,  
4 shall be confined in jail not less than ten days nor more  
5 than one year, or fined not less than ten nor more than  
6 five hundred dollars, or both, in the discretion of the  
7 court.

**§5A-3-30. Obtaining money and property under false pretenses or by fraud from state; penalties.**

1 It shall be unlawful for any person to obtain from the  
2 state under any contract made under the provisions of  
3 this article, by false pretense, token or representation,  
4 or by delivery of inferior commodities, with intent to  
5 defraud, any money, goods or other property, and upon  
6 violation thereof, such person shall be guilty of a felony,  
7 and, upon conviction thereof, shall be confined in the  
8 penitentiary not less than one year nor more than five  
9 years, and be fined not exceeding one thousand dollars.

**§5A-3-31. Corrupt combinations, collusions or conspiracies prohibited; penalties.**

1 It shall be unlawful for any person to corruptly  
2 combine, collude or conspire with one or more other  
3 persons with respect to the purchasing or supplying of  
4 commodities or printing to the state under the provi-  
5 sions of this article if the purpose or effect of such  
6 combination, collusion or conspiracy is either to (1)  
7 lessen competition among prospective vendors, or (2)  
8 cause the state to pay a higher price for such commod-  
9 ities or printing than would be or would have been paid  
10 in the absence of such combination, collusion or  
11 conspiracy, or (3) cause one prospective vendor or  
12 vendors to be preferred over one or more other prospec-  
13 tive vendor or vendors. Any person who violates any  
14 provision of this section shall be guilty of a felony, and,  
15 upon conviction thereof, shall be confined in the  
16 penitentiary not less than one nor more than five years,  
17 and be fined not exceeding five thousand dollars.

**§5A-3-32. Power of director to suspend right to bid; notice of suspension.**

1 The director shall have the power and authority to  
2 suspend, for a period not to exceed one year, the right  
3 and privilege of a vendor to bid on state purchases when  
4 the director has reason to believe that such vendor has  
5 violated any of the provisions of the purchasing law or  
6 the rules and regulations of the director. Every vendor  
7 whose right to bid has been so suspended shall be  
8 notified thereof by a letter posted by certified mail  
9 containing the reason for such suspension.

**§5A-3-33. Review of suspension by secretary.**

1 Any vendor whose right to bid on state purchases has  
2 been suspended by the director under the authority of  
3 the preceding section shall have the right to have the  
4 director's action reviewed by the secretary, who shall  
5 have the power and authority to set aside such suspen-  
6 sion.

**§5A-3-34. Authority over inventories and property.**

1 The director shall, under the direction and supervision

2 of the secretary, have full authority over inventories and  
3 property.

**§5A-3-35. Submission of annual inventories.**

1 The head of every spending unit of state government  
2 shall, on or before the fifteenth day of July of each year,  
3 file with the director an inventory of all real and  
4 personal property, and of all equipment, supplies and  
5 commodities in its possession as of the close of the last  
6 fiscal year, as directed by the director.

**§5A-3-36. Inventory of removable property; maintenance  
and repair of office furniture, machinery  
and equipment.**

1 The director shall have the power and duty to:

2 (1) Make and keep current an inventory of all  
3 removable property belonging to the state. Such  
4 inventory shall be kept on file in the office of the  
5 director as a public record. The inventory shall disclose  
6 the name and address of the vendor, the date of the  
7 purchase, the price paid for the property therein  
8 described and the disposition thereof;

9 (2) Provide for the maintenance and repair of all  
10 office furniture, machinery and equipment belonging to  
11 the state, either by employing personnel and facilities  
12 under his direction or by contracting with state agencies  
13 or private parties.

**§5A-3-37. Preference for resident vendors; preference  
for vendors employing state residents;  
exceptions.**

1 (a) Other provisions of this article notwithstanding,  
2 effective the first day of July, one thousand nine  
3 hundred ninety, through the thirtieth day of June, one  
4 thousand nine hundred ninety-four, in any instance  
5 involving the purchase of construction services or for the  
6 construction, repair or improvement of any buildings or  
7 portions thereof, where the total aggregate cost thereof,  
8 whether one or a series of contracts are awarded in  
9 completing the project, is estimated by the director to

10 exceed the sum of fifty thousand dollars, and where the  
11 director or any state department is required under the  
12 provisions of this article to make such purchase,  
13 construction, repair or improvement upon competitive  
14 bids, the successful bid shall be determined as provided  
15 in this section. The secretary of the department of tax  
16 and revenue shall promulgate such rules and regula-  
17 tions necessary to (i) determine that vendors have met  
18 the residence requirements described in this section; (ii)  
19 establish the procedure for vendors to certify such  
20 residency requirements at the time of submitting their  
21 bids; (iii) establish a procedure to audit bids which make  
22 a claim for preference permitted by this section and to  
23 reject noncomplying bids; and (iv) otherwise accomplish  
24 the objectives of this section. In prescribing such rules  
25 and regulations, the secretary shall use a strict construc-  
26 tion of the residence requirements set forth in this  
27 section. For purposes of this section, a successful bid  
28 shall be determined and accepted as follows:

29 (1) From an individual resident vendor who has  
30 resided in West Virginia continuously for the four years  
31 immediately preceding the date on which the bid is  
32 submitted or from a partnership, association or corpo-  
33 ration resident vendor which has maintained its  
34 headquarters or principal place of business within West  
35 Virginia continuously for four years immediately  
36 preceding the date on which the bid is submitted, if such  
37 resident vendor's bid does not exceed the lowest  
38 qualified bid from a nonresident vendor by more than  
39 two and one-half percent of the latter bid, and if such  
40 resident vendor has made written claim for such  
41 preference at the time the bid was submitted: *Provided,*  
42 That for purposes of this subparagraph (1), any partner-  
43 ship, association or corporation resident vendor of this  
44 state, which does not meet the requirements of this  
45 subparagraph solely because of the continuous four-year  
46 residence requirement, shall be deemed to meet such  
47 requirement if at least eighty percent of the ownership  
48 interest of such resident vendor is held by another  
49 individual, partnership, association or corporation  
50 resident vendor who otherwise meets the requirements  
51 of this subparagraph, including the continuous four-year

52 residency requirement: *Provided, however,* That the  
53 secretary of the department of tax and revenue shall  
54 promulgate rules and regulations relating to attribution  
55 of ownership among several such resident vendors for  
56 purposes of determining the eighty percent ownership  
57 requirement; or

58 (2) From a resident or nonresident vendor, if, for  
59 purposes of producing or distributing the commodities  
60 or completing the project which is the subject of such  
61 vendor's bid and continuously over the entire term of  
62 such project, on average at least sixty percent of such  
63 vendor's employees are residents of West Virginia who  
64 have resided in the state continuously for the two  
65 immediately preceding years and such vendor's bid does  
66 not exceed the lowest qualified bid from a nonresident  
67 vendor by more than two and one-half percent of the  
68 latter bid, and if such vendor has certified the residency  
69 requirements above and made written claim for such  
70 preference, at the time the bid was submitted; or

71 (3) From a vendor who meets the requirements of  
72 both subparagraphs (1) and (2) set forth above, if such  
73 bid does not exceed the lowest qualified bid from a  
74 nonresident vendor by more than five percent of the  
75 latter bid, and if such resident vendor has certified the  
76 residency requirements above and made written claim  
77 for such preference at the time the bid was submitted.

78 (b) If the secretary of the department of tax and  
79 revenue determines under any audit procedure that a  
80 vendor who received a preference under this section  
81 fails to continue to meet the requirements for such  
82 preference at any time during the term of the project  
83 for which such preference was received the secretary  
84 may: (1) Reject such vendor's bid; or (2) assess a penalty  
85 against such vendor of not more than five percent of  
86 such vendor's bid on the project.

87 (c) Political subdivisions of the state including county  
88 boards of education may grant the same preferences to  
89 any vendor of this state who has made a written claim  
90 for such preference at the time a bid is submitted, but  
91 for the purposes of this subsection, in determining the



92 lowest bid, any political subdivision shall exclude from  
93 the bid the amount of business occupation taxes which  
94 must be paid by a resident vendor to any municipality  
95 within the county comprising or located within such  
96 subdivision as a result of being awarded the contract  
97 which is the object of the bid; in the case of a bid  
98 received by a municipality, the municipality shall  
99 exclude only such business and occupation taxes as will  
100 be paid to such municipality: *Provided*, That prior to  
101 soliciting any such competitive bids, any such political  
102 subdivision may, by majority vote of all its members in  
103 a public meeting where all such votes shall be recorded,  
104 elect not to exclude from the bid the amount of business  
105 and occupation taxes as provided herein.

106 (d) If any of the requirements or provisions set forth  
107 in this section jeopardize the receipt of federal funds,  
108 then such requirement or provisions shall be void and  
109 of no force and effect for that specific project.

110 (e) If any provision or clause of this section or  
111 application thereof to any person or circumstance is held  
112 invalid, such invalidity shall not affect other provisions  
113 or applications of this section which can be given effect  
114 without the invalid provision or application, and to this  
115 end the provisions of this section are declared to be  
116 severable.

117 (f) This section may be cited as the "Jobs for West  
118 Virginians Act of 1990".

**§5A-3-37a. Preference for resident vendors; exceptions;  
reciprocal preference.**

1 Except where the provisions of section thirty-seven of  
2 this article may apply, in any instance where a purchase  
3 of commodities or printing by the director or by a state  
4 spending unit is required under the provisions of this  
5 article to be made upon competitive bids, preference  
6 shall be given to vendors resident in West Virginia as  
7 against vendors resident in any state that gives or  
8 requires a preference for the purchase of commodities  
9 or printing produced, manufactured or performed in  
10 that state. The amount of the preference shall be equal  
11 to the amount of the preference applied by the other  
12 state.

13 A vendor shall be deemed to be a resident of this state  
14 if such vendor is an individual, partnership, association  
15 or corporation in good standing under the laws of the  
16 state of West Virginia who (1) is a resident of the state  
17 or a foreign corporation authorized to transact business  
18 in the state; (2) maintains an office in the state; (3) has  
19 paid personal property taxes pursuant to article five,  
20 chapter eleven of this code on equipment used in the  
21 regular course of supplying services of the general type  
22 offered; and (4) has paid business taxes pursuant to  
23 chapter eleven of this code. In addition, in the case of  
24 a vendor selling tangible personal property, a resident  
25 vendor is one who has a stock of materials held in West  
26 Virginia for sale in the ordinary course of business,  
27 which stock is of the general type offered, and which is  
28 reasonably sufficient in quantity to meet the ordinary  
29 requirements of customers.

30 If any of the requirements or provisions set forth in  
31 this section jeopardize the receipt of federal funds, then  
32 such requirements or provision shall be void and of no  
33 force and effect.

**§5A-3-38. Leases for space to be made in accordance with  
article; exception.**

1 Notwithstanding any other provision of this code, no  
2 department, agency or institution of state government  
3 shall lease, or offer to lease, as lessee, any grounds,  
4 buildings, office or other space except in accordance  
5 with this article: *Provided*, That the provisions of this  
6 article except as to office space shall not apply in any  
7 respect whatever to the division of highways of the  
8 department of transportation.

**§5A-3-39. Leasing of space by secretary; delegation of  
authority.**

1 The secretary is authorized to lease, in the name of  
2 the state, any grounds, buildings, office or other space  
3 required by any department, agency or institution of  
4 state government: *Provided*, That the secretary may  
5 expressly delegate, in writing, the authority granted to

6 him by this article to the appropriate department,  
7 agency or institution of state government when the  
8 rental and other costs to the state do not exceed the sum  
9 specified by regulation in any one fiscal year or when  
10 necessary to meet bona fide emergencies arising from  
11 unforeseen causes.

**§5A-3-40. Selection of grounds, etc.; acquisition by contract or lease; long-term leases; requiring approval of secretary for permanent changes.**

1 The secretary shall have sole authority to select and  
2 to acquire by contract or lease, in the name of the state,  
3 all grounds, buildings, office space or other space, the  
4 rental of which is necessarily required by any spending  
5 unit, upon a certificate from the chief executive officer  
6 or his designee of said spending unit that the grounds,  
7 buildings, office space or other space requested is  
8 necessarily required for the proper function of said  
9 spending unit, that the spending unit will be responsible  
10 for all rent and other necessary payments in connection  
11 with the contract or lease and that satisfactory grounds,  
12 buildings, office space or other space is not available on  
13 grounds and in buildings now owned or leased by the  
14 state. The secretary shall, before executing any rental  
15 contract or lease, determine the fair rental value for the  
16 rental of the requested grounds, buildings, office space  
17 or other space, in the condition in which they exist, and  
18 shall contract for or lease said premises at a price not  
19 to exceed the fair rental value thereof.

20 The secretary is hereby authorized to enter into long-  
21 term agreements for buildings, land and space for  
22 periods longer than one fiscal year: *Provided*, That such  
23 long-term lease agreements shall not be for periods in  
24 excess of forty years and shall contain, in substance, all  
25 the following provisions: (1) That the department of  
26 administration, as lessee, shall have the right to cancel  
27 the lease without further obligation on the part of the  
28 lessee upon giving thirty days' written notice to the  
29 lessor, such notice being given at least thirty days prior  
30 to the last day of the succeeding month; (2) that the lease  
31 shall be considered canceled without further obligation

32 on the part of the lessee if the state Legislature or the  
33 federal government should fail to appropriate sufficient  
34 funds therefor or should otherwise act to impair the  
35 lease or cause it to be canceled; and (3) that the lease  
36 shall be considered renewed for each ensuing fiscal year  
37 during the term of the lease unless it is canceled by the  
38 department of administration before the end of the then  
39 current fiscal year.

40 A spending unit which is granted any grounds,  
41 buildings, office space or other space leased in accor-  
42 dance with this section may not order or make perman-  
43 ent changes of any type thereto, unless the secretary has  
44 first determined that the change is necessary for the  
45 proper, efficient and economically sound operation of the  
46 spending unit. For purposes of this section, a "perman-  
47 ent change" means any addition, alteration, improve-  
48 ment, remodeling, repair or other change involving the  
49 expenditure of state funds for the installation of any  
50 tangible thing which cannot be economically removed  
51 from the grounds, buildings, office space or other space  
52 when vacated by the spending unit.

**§5A-3-41. Leases and other instruments for space signed  
by secretary or director; approval as to  
form; filing.**

1 Leases and other instruments for grounds, buildings,  
2 office or other space shall be signed by the secretary or  
3 director in the name of the state. They shall be approved  
4 as to form by the attorney general. A lease or other  
5 instrument for grounds, buildings, office or other space  
6 that contains a term, including any options, of more than  
7 six months for its fulfillment shall be filed with the state  
8 auditor.

**§5A-3-42. Leasing for space rules and regulations.**

1 The secretary shall have the power and authority to  
2 promulgate such rules and regulations as he may deem  
3 necessary to carry out the provisions of sections thirty-  
4 eight, thirty-nine, forty and forty-one of this article.

**§5A-3-43. State agency for surplus property created.**

1 There is hereby established within the purchasing

2 division and under the supervision of the director of the  
3 purchasing division the state agency for surplus  
4 property.

**§5A-3-44. Authority and duties of state agency for surplus property.**

1 (a) The state agency for surplus property is hereby  
2 authorized and empowered (1) to acquire from the  
3 United States of America such property, including  
4 equipment, materials, books or other supplies under the  
5 control of any department or agency of the United  
6 States of America as may be usable and necessary for  
7 educational, fire protection and prevention, rescue, or  
8 public health purposes, including research; (2) to  
9 warehouse property acquired; and (3) to distribute the  
10 property to tax-supported medical institutions, hospi-  
11 tals, clinics, fire departments, rescue squads, health  
12 centers, school systems, schools, colleges and universities  
13 within the state, and to other nonprofit medical  
14 institutions, hospitals, clinics, volunteer fire depart-  
15 ments, volunteer rescue squads, health centers, schools,  
16 colleges and universities within the state which have  
17 been held exempt from taxation under the Internal  
18 Revenue Code of 1986, as amended.

19 (b) For the purpose of executing its authority under  
20 this article, the state agency for surplus property is  
21 authorized and empowered to adopt, amend or rescind  
22 rules and regulations as may be deemed necessary, and  
23 take other action necessary and suitable in the admin-  
24 istration of this article, including the enactment and  
25 promulgation of rules and regulations necessary to  
26 bring this article and its administration into conformity  
27 with any federal statutes or rules and regulations  
28 promulgated under federal statutes for the acquisition  
29 and disposition of surplus property.

30 (c) The state agency for surplus property is autho-  
31 rized and empowered to appoint advisory boards or  
32 committees necessary to the end that this article and the  
33 rules and regulations promulgated hereunder conform  
34 with federal statutes and rules and regulations promul-  
35 gated under federal statutes for the acquisition and  
36 disposition of surplus property.

37 (d) The state agency for surplus property is autho-  
38 rized and empowered to take action, make expenditures  
39 and enter into contracts, agreements and undertakings  
40 for and in the name of the state, require reports, and  
41 make investigations as may be required by law or  
42 regulation of the United States of America in connection  
43 with the receipt, warehousing and distribution of  
44 property received by the state agency for surplus  
45 property from the United States of America.

46 (e) The state agency for surplus property is autho-  
47 rized and empowered to act as a clearinghouse of  
48 information for the public and private nonprofit  
49 institutions and agencies referred to in subsection (a) of  
50 this section, to locate property available for acquisition  
51 from the United States of America, to ascertain the  
52 terms and conditions under which the property may be  
53 obtained, to receive requests from the above-mentioned  
54 institutions and agencies and to transmit to them all  
55 available information in reference to the property, and  
56 to aid and assist the institutions and agencies in every  
57 way possible in the consummation or acquisition of  
58 transactions hereunder.

59 (f) The state agency for surplus property shall  
60 cooperate to the fullest extent consistent with the  
61 provisions of this article, with the departments or  
62 agencies of the United States of America and shall make  
63 reports in the form and containing the information the  
64 United States of America or any of its departments or  
65 agencies may from time to time require, and it shall  
66 comply with the laws of the United States of America  
67 and the rules and regulations of any of the departments  
68 or agencies of the United States of America governing  
69 the allocation, transfer, use or accounting for property  
70 donable or donated to the state.

**§5A-3-45. Disposition of surplus state property; semian-  
nual report; application of proceeds from  
sale.**

1 The agency shall have the exclusive power and  
2 authority to make disposition of commodities or expen-

3 dable commodities now owned or in the future acquired  
4 by the state when any such commodities are or become  
5 obsolete or unusable or are not being used or should be  
6 replaced.

7 The agency shall determine what commodities or  
8 expendable commodities should be disposed of and shall  
9 make such disposition in the manner which will be most  
10 advantageous to the state, either by transferring the  
11 particular commodities or expendable commodities  
12 between departments, by selling such commodities to  
13 county commissions, county boards of education, munic-  
14 ipalities, public service districts, county building  
15 commissions, airport authorities, parks and recreation  
16 commissions, nonprofit domestic corporations qualified  
17 as tax exempt under section 501(c)(3) of the Internal  
18 Revenue Code of 1986, as amended, and volunteer fire  
19 departments in this state, when such volunteer fire  
20 departments have been held exempt from taxation  
21 under section 501(c) of the United States Internal  
22 Revenue Code, by trading in such commodities as a part  
23 payment on the purchase of new commodities, or by sale  
24 thereof to the highest bidder by means of public auctions  
25 or sealed bids, after having first advertised the time,  
26 terms and place of such sale as a Class II legal  
27 advertisement in compliance with the provisions of  
28 article three, chapter fifty-nine of this code, and the  
29 publication area for such publication shall be the county  
30 wherein the sale is to be conducted. The sale may also  
31 be advertised in such other advertising media as the  
32 agency may deem advisable. The agency may sell to the  
33 highest bidder or to any one or more of the highest  
34 bidders, if there is more than one, or, if the best interest  
35 of the state will be served, reject all bids.

36 Upon the transfer of commodities or expendable  
37 commodities between departments, or upon the sale  
38 thereof to an eligible organization described above, the  
39 agency shall set the price to be paid by the receiving  
40 eligible organization, with due consideration given to  
41 current market prices.

42 The agency may sell expendable, obsolete or unused  
43 motor vehicles owned by the state to an eligible

44 organization, other than volunteer fire departments. In  
45 addition, the agency may sell expendable, obsolete or  
46 unused motor vehicles owned by the state with a gross  
47 weight in excess of four thousand pounds to an eligible  
48 volunteer fire department. The agency, with due  
49 consideration given to current market prices, shall set  
50 the price to be paid by the receiving eligible organiza-  
51 tion, for motor vehicles sold pursuant to this provision:  
52 *Provided*, That the sale price of any motor vehicle sold  
53 to an eligible organization shall not be less than the  
54 "average loan" value, as published in the most recent  
55 available eastern edition of the National Automobile  
56 Dealer's Association (N.A.D.A.) Official Used Car  
57 Guide, if such a value is available, unless the fair market  
58 value of the vehicle is less than the N.A.D.A. "average  
59 loan" value, in which case the vehicle may be sold for  
60 less than the "average loan" value. Such fair market  
61 value must be based on a thorough inspection of the  
62 vehicle by an employee of the agency who shall consider  
63 the mileage of the vehicle, and the condition of the body,  
64 engine and tires as indicators of its fair market value.  
65 If no such value is available, the agency shall set the  
66 price to be paid by the receiving eligible organization  
67 with due consideration given to current market prices.  
68 The duly authorized representative of such eligible  
69 organization, for whom such motor vehicle or other  
70 similar surplus equipment is purchased or otherwise  
71 obtained, shall cause ownership and proper title thereto  
72 to be vested only in the official name of the authorized  
73 governing body for whom the purchase or transfer was  
74 made. Such ownership or title, or both, shall remain in  
75 the possession of that governing body and be non-  
76 transferable for a period of not less than one year from  
77 the date of such purchase or transfer. Resale or transfer  
78 of ownership of such motor vehicle or equipment prior  
79 to an elapsed period of one year may be made only by  
80 reason of certified unserviceability.

81 The agency shall report to the legislative auditor,  
82 semiannually, all sales of commodities or expendable  
83 commodities made during the preceding six months to  
84 eligible organizations. The report shall include a  
85 description of the commodities sold, the price paid by



86 the eligible organization, which received the commod-  
87 ities; and the report shall show to whom each commodity  
88 was sold.

89 The proceeds of such sales or transfers shall be  
90 deposited in the state treasury to the credit on a pro rata  
91 basis of the fund or funds out of which the purchase of  
92 the particular commodities or expendable commodities  
93 was made: *Provided*, That the agency may charge and  
94 assess fees reasonably related to the costs of care and  
95 handling with respect to the transfer, warehousing, sale  
96 and distribution of state property disposed of or sold  
97 pursuant to the provisions of this section.

**§5A-3-46. Warehousing, transfer, etc., charges.**

1 Any charges made or fees assessed by the state agency  
2 for surplus property for the acquisition, warehousing,  
3 distribution or transfer of any property acquired by  
4 donation from the United States of America for  
5 educational purposes or public health purposes, includ-  
6 ing research, shall be limited to those reasonably related  
7 to the costs of care and handling in respect to its  
8 acquisition, receipts, warehousing, distribution or  
9 transfer by the state agency for surplus property. All  
10 charges designated herein shall be used by the state  
11 agency for surplus property to defray the general  
12 operating expenses of the state agency for surplus  
13 property.

**§5A-3-47. Department of agriculture and other agencies  
exempted.**

1 Notwithstanding any provisions or limitations of this  
2 article, the state department of agriculture and any  
3 other state departments or agencies hereafter so  
4 designated are authorized and empowered to distribute  
5 food, food stamps, surplus commodities and agricultural  
6 products under contracts and agreements with the  
7 federal government or any of its departments or  
8 agencies, and the state department of agriculture and  
9 any other state departments or agencies hereafter so  
10 designated are authorized and empowered to adopt rules  
11 and regulations in order to conform with federal  
12 requirements and standards for such distribution and

13 also for the proper distribution of such food, food  
14 stamps, commodities and agricultural products. To the  
15 extent set forth in this section, the provisions of this  
16 article shall not apply to the state department of  
17 agriculture and any other state departments or agencies  
18 hereafter so designated for the purposes set forth in this  
19 section.

**§5A-3-48. Travel rules and regulations; exceptions.**

1 The secretary of administration shall promulgate  
2 rules and regulations relating to the ownership, pur-  
3 chase, use, storage, maintenance, and repair of all motor  
4 vehicles and aircraft owned by the state of West  
5 Virginia and in the possession of any department,  
6 institution, or agency thereof: *Provided*, That the  
7 provisions of sections forty-eight through fifty-three of  
8 this article shall not apply to the division of highways  
9 of the department of transportation or to the division of  
10 public safety of the department of public safety. If, in  
11 the judgment of the secretary, economy or convenience  
12 indicate the expediency thereof, the secretary may  
13 require all vehicles and the aircraft subject to regulation  
14 by this article, or such of them as he may designate, to  
15 be kept in such garages, and other places of storage, and  
16 to be made available in such manner and under such  
17 terms for the official use of such departments, institu-  
18 tions, agencies, officers, agents and employees of the  
19 state as the secretary may designate by any such rule  
20 or regulation as he may from time to time promulgate.  
21 The secretary shall also have the authority to administer  
22 the travel regulations promulgated by the governor in  
23 accordance with section eleven, article three, chapter  
24 twelve of this code, unless otherwise determined by the  
25 governor.

**§5A-3-49. Central motor pool for state-owned vehicles  
and aircraft.**

1 The secretary may create a central motor pool, which  
2 pool shall be maintained by the purchasing division of  
3 the department of administration, subject to such rules  
4 and regulations as the secretary may from time to time  
5 promulgate. Said division shall be responsible for the

- 6 storage, maintenance, and repairs of all vehicles and  
7 aircraft assigned to it.

**§5A-3-50. Acquiring and disposing of vehicles and aircraft.**

- 1 The secretary shall be empowered to purchase new  
2 vehicles and aircraft and dispose of old vehicles and  
3 aircraft as is practical from time to time.

**§5A-3-51. Maintenance and service to vehicles and aircraft.**

- 1 The secretary may utilize any building or land owned  
2 by the state, any department, institution or agency  
3 thereof, for the storing, garaging, and repairing of such  
4 motor vehicles and aircraft. The secretary shall provide  
5 for the employment of personnel needed to manage said  
6 motor pool and to repair and service such vehicles and  
7 aircraft and for the purchase of gasoline, oil, and other  
8 supplies for use in connection therewith, and may utilize  
9 the facilities, services and employees of any department,  
10 institution or agency of the state to effectuate the  
11 purposes thereof.

**§5A-3-52. Special fund for travel management created.**

- 1 There is hereby created a special fund in the state  
2 treasury, out of which all costs and expenses incurred  
3 pursuant to this section shall be paid. All allocations of  
4 costs and charges for operating, repairing and servicing  
5 motor vehicles and aircraft made against any institu-  
6 tion, agency or department shall be paid into such  
7 special fund by said department or agency. All funds so  
8 paid or transferred into this special fund are hereby  
9 appropriated for the purposes of this section and shall  
10 be paid out as the secretary may designate; said funds  
11 to be transferred to include all appropriations for the  
12 acquisition, maintenance, repair and operation of motor  
13 vehicles and aircraft and for personnel.

**§5A-3-53. Enforcement of travel management regulations.**

- 1 If any state officer, agent or employee fails to comply  
2 with any rule or regulation of the secretary made

3 pursuant to section forty-eight of this article, the state  
4 auditor shall, upon order of the secretary, refuse to issue  
5 any warrant or warrants on account of expenses  
6 incurred, or to be incurred, in the purchase, operation,  
7 maintenance, or repairs of any motor vehicle or aircraft  
8 now or to be in the possession or under the control of  
9 such officer, agent or employee. The secretary may take  
10 possession of any state-owned vehicle or aircraft and  
11 transfer it to the central motor pool or to make such  
12 other disposition thereof as the secretary may direct.

**§5A-3-54. Payment of legitimate uncontested invoices;  
interest on late payments.**

1 (a) Any properly registered and qualified vendor who  
2 supplies services or commodities to any state agency  
3 shall be entitled to prompt payment upon presentation  
4 to that agency of a legitimate uncontested invoice.

5 (b) (1) Except as provided in subdivision (2) of this  
6 subsection, for purchases of services or commodities  
7 made on or after the first day of July, one thousand nine  
8 hundred ninety-one, a state check shall be issued in  
9 payment thereof within sixty days after a legitimate  
10 uncontested invoice is received by the state agency  
11 receiving the services or commodities. Any state check  
12 issued after such sixty days shall include interest at the  
13 current rate, as determined by the state tax commis-  
14 sioner under the provisions of section seventeen-a,  
15 article ten, chapter eleven of this code, which interest  
16 shall be calculated from the sixty-first day after such  
17 invoice was received by the state agency until the date  
18 on which the state check is mailed to the vendor.

19 (2) For purchases of services or commodities made on  
20 or after the first day of July, one thousand nine hundred  
21 ninety-two, by the division of highways, the public  
22 employees insurance agency, and by the department of  
23 health and human resources, a state check shall be  
24 issued in payment thereof within sixty days after a  
25 legitimate uncontested invoice is received by any of such  
26 agencies receiving the services or commodities. Any  
27 state check issued after sixty days shall include interest  
28 at the current rate, determined in the manner provided

29 in subdivision (1) of this subsection, which interest shall  
30 be calculated from the sixtieth day after such invoice  
31 was received by any of such agencies until the date on  
32 which the state check is mailed to the vendor.

33 (3) For purposes of this subsection, an invoice shall be  
34 deemed to be received by a state agency on the date on  
35 which the invoice is marked as received by the agency,  
36 or three days after the date of the postmark made by  
37 the United States postal service as evidenced on the  
38 envelope in which the invoice is mailed, whichever is  
39 earlier: *Provided*, That in the event an invoice is  
40 received by a state agency prior to the date on which  
41 the commodities or services covered by the invoice are  
42 delivered and accepted or fully performed and accepted,  
43 the invoice shall be deemed to be received on the date  
44 on which the commodities or services covered by the  
45 invoice were actually delivered and accepted or fully  
46 performed and accepted.

47 (c) The state auditor shall deduct the amount of any  
48 interest due for late payment of an invoice from any  
49 appropriate account of the state agency responsible for  
50 the late payment: *Provided*, That if two or more state  
51 agencies are responsible for the late payment, the state  
52 auditor shall deduct the amount of interest due on a pro  
53 rata basis.

54 (d) The state agency initially receiving a legitimate  
55 uncontested invoice shall process such invoice for  
56 payment within ten days from its receipt: *Provided*,  
57 That in the case of the department of health and human  
58 resources, the division of highways and the public  
59 employees insurance agency, such invoices shall be  
60 processed within fifteen days of their receipt. No state  
61 agency shall be liable for payment of interest owed by  
62 another state agency under this section.

63 (e) Any other state agency charged by law with  
64 processing a state agency's requisition for payment of a  
65 legitimate uncontested invoice shall either process the  
66 claim or reject it for good cause within ten days after  
67 such state agency receives it. Failure to comply with the  
68 requirements of this subsection shall render such state

69 agency liable for payment of the interest mandated by  
 70 this section when there is a failure to promptly pay a  
 71 legitimate uncontested invoice: *Provided*, That no such  
 72 state agency shall be liable for payment of interest owed  
 73 by another state agency under this section.

74 (f) For purposes of this section, the phrase "state  
 75 agency" means any agency, department, board, office,  
 76 bureau, commission, authority or any other entity of  
 77 state government.

78 (g) This section may be cited as the "Prompt Pay Act  
 79 of 1990".

**ARTICLE 3A. CENTRAL NONPROFIT COORDINATING AGENCY  
 AND COMMITTEE FOR THE PURCHASE OF  
 COMMODITIES AND SERVICES FROM THE  
 HANDICAPPED.**

§5A-3A-1. Purpose.

§5A-3A-2. Central nonprofit agency.

§5A-3A-3. Committee for the purchase of commodities and services from the  
 handicapped.

§5A-3A-4. Responsibilities of the committee for the purchase of commodities  
 and services from the handicapped.

§5A-3A-5. Rules.

§5A-3A-6. Exceptions.

**§5A-3A-1. Purpose.**

1 The purpose of this article is to further the state's  
 2 policy of encouraging disabled persons to achieve  
 3 maximum personal independence by engaging in  
 4 productive activities and in addition to provide state  
 5 agencies, institutions and political subdivisions with a  
 6 method for achieving conformity with purchasing  
 7 procedures and requirements of nondiscrimination,  
 8 affirmative action, in employment matters related to  
 9 disabled persons.

**§5A-3A-2. Central nonprofit agency.**

1 A central nonprofit agency approved by the director  
 2 of the division of rehabilitation services is established  
 3 for the purpose of coordinating purchases under the  
 4 provisions of section ten, article three of this chapter,  
 5 between various "spending units" of the state and  
 6 "nonprofit workshops". This agency shall have the  
 7 following responsibilities:

8 (a) Represent qualified nonprofit workshops in deal-  
9 ing with state purchasing agents and the other bodies  
10 charged with purchasing responsibilities;

11 (b) Evaluating the qualifications and capabilities of  
12 workshops and entering, as necessary, into contracts  
13 with government procuring entities for the furnishing  
14 of the commodities or services provided by the  
15 workshops;

16 (c) Overseeing workshops to ensure compliance with  
17 contract performance and quality standards; list the  
18 commodities and services of participating workshops,  
19 research and assist the workshops in developing new  
20 products and upgrading existing ones, and shall survey  
21 applicable private industry to provide input on fair  
22 market prices; and

23 (d) Present an annual report for each fiscal year  
24 concerning the operations of its nonprofit workshops to  
25 the director of the division of rehabilitation services.

**§5A-3A-3. Committee for the purchase of commodities  
and services from the handicapped.**

1 (a) The committee for the purchase of commodities  
2 and services from the handicapped is hereby created as  
3 a part of the department of administration and shall be  
4 composed of the following six members who are to be  
5 appointed by the governor with the advice and consent  
6 of the Senate: A private citizen who is conversant with  
7 the problems incidental to the employment of handi-  
8 capped persons; a representative of a producing non-  
9 profit workshop; a representative of the division of  
10 rehabilitation services; a representative of the depart-  
11 ment of administration who is knowledgeable in the  
12 purchasing requirements of the state; a representative  
13 of private business who is knowledgeable in the  
14 activities involved in the sale of commodities or services  
15 to governmental entities; and a representative of  
16 organized labor who is knowledgeable in matters  
17 relating to employment of the disabled. The governor  
18 shall appoint one member to serve as chairperson.

19 (b) Members of the committee are appointed to serve  
20 two-year terms expiring on the thirty-first day of  
21 January of odd-numbered years. Members who are not  
22 state employees shall receive compensation for their  
23 service of fifty dollars per day for each day actually  
24 engaged in the work of the committee and all members  
25 shall receive reimbursement by the state for expenses  
26 incurred in performing their duties as members.

27 (c) The committee shall have as an executive secre-  
28 tary the person charged with program management in  
29 section ten, article three of this chapter. The executive  
30 secretary shall be responsible for the day-to-day  
31 management of the committee and shall coordinate with  
32 the central nonprofit agency to perform the duties  
33 outlined in section ten, article three of this chapter.

**§5A-3A-4. Responsibilities of the committee for the  
purchase of commodities and services from  
the handicapped.**

1 The committee shall have the following duties and  
2 responsibilities:

3 (a) Determining the fair market price of all commod-  
4 ities, printing and services produced by nonprofit  
5 workshops and offered for sale by the central nonprofit  
6 agency to the various departments and political subdivi-  
7 sions of the state. Prices shall be revised periodically  
8 to reflect changing market conditions.

9 (b) Monitoring the activities of the central nonprofit  
10 agency to assure that the interests of the state's  
11 handicapped citizens are advanced by the agency. The  
12 committee shall make rules necessary to monitor the  
13 agency as well as matters related to the state's use of  
14 the products and services produced by the handicapped.  
15 Except as stated in section ten, article three of this  
16 chapter, rules shall reflect agreement with the policies  
17 and procedures established by the state's purchasing  
18 units.

19 (c) Monitoring the performance of the central non-  
20 profit agency to see that the commodities and services  
21 produced meet state specifications (or in the absence of



22 specifications meet standards in use by the federal  
23 government or industry) as to quality and delivery. The  
24 committee shall provide procedures for formal and  
25 informal resolution of provider and consumer grievan-  
26 ces or complaints.

27 (d) Maintaining records pertaining to its activities  
28 under the act including records of sales, formal  
29 grievances, number of handicapped workers employed,  
30 a summary of disabilities for workers providing  
31 services, a list of workshop products and services, and  
32 the geographic distribution of provider workshops. On  
33 or before the first day of January of each year the  
34 committee shall file with the governor and the presiding  
35 officer of each house of the Legislature a written report  
36 summarizing the above records and giving a detailed  
37 accounting for all funds received and disbursed by the  
38 committee during the preceding year.

#### §5A-3A-5. Rules.

1 The committee may adopt rules for the implementa-  
2 tion, extension, administration, or improvement of the  
3 program authorized by this article.

#### §5A-3A-6. Exceptions.

1 Exceptions from the operation of the mandatory  
2 provisions of section ten, article three of this chapter  
3 may be made in any case where the commodity or  
4 printing so produced or provided does not meet the  
5 reasonable requirements of the purchasing unit, cannot  
6 be reasonably provided by a nonprofit workshop in the  
7 opinion of the committee or the central nonprofit  
8 agency, or is not of a fair market price and of like  
9 quality to other commodities or printing otherwise  
10 available as determined by the director of purchasing  
11 with the advice of the committee for the purchase of  
12 commodities and services from the handicapped. No  
13 spending unit may evade the intent of this section when  
14 required goods or services are reasonably available from  
15 nonprofit workshops.

### ARTICLE 4. GENERAL SERVICES DIVISION.

§5A-4-1. General services division; director.

§5A-4-2. Care, control and custody of capitol buildings and grounds.

§5A-4-3. Security officers; appointment; oath; carrying weapons; powers and duties generally, etc.

§5A-4-4. Unlawful to kill or molest animals, birds or fowls upon grounds of capitol; powers and duties of security officers; penalties.

§5A-4-5. Regulation of parking on state-owned property in Charleston; penalties; jurisdiction.

**§5A-4-1. General services division; director.**

1       There is hereby created a new general services  
2       division of the department of administration for the  
3       purpose of having the care, custody and control of the  
4       capitol buildings. The division shall be under the  
5       supervision of a director.

**§5A-4-2. Care, control and custody of capitol buildings and grounds.**

1       The director shall be charged with the full responsi-  
2       bility for the care, control and custody of the capitol  
3       buildings and in this connection he shall:

4       (1) Furnish janitorial services, such services to be  
5       provided by employees of the department of administra-  
6       tion for the main capitol building, including east and  
7       west wings, together with all the departments therein,  
8       or connected therewith, regardless of the budget or  
9       budgets, departmental or otherwise, from which such  
10      janitorial services are paid, and shall furnish janitorial  
11      supplies, light, heat and ventilation for all the rooms and  
12      corridors of the buildings: *Provided*, That nothing  
13      herein shall be construed to prohibit contracts for  
14      janitorial services with sheltered workshops. The  
15      president of the Senate and speaker of the House of  
16      Delegates, or their respective designees, shall have  
17      charge of the halls and committee rooms of their  
18      respective houses and any other quarters at the state  
19      capitol provided for the use of the Legislature or its  
20      staff, and keep the same properly cleaned, warmed and  
21      in good order, and shall do and perform such other  
22      duties in relation thereto as either house may require;

23      (2) Landscape and take care of the lawns and gardens;

24      (3) Direct the making of all minor repairs to and  
25      alterations of the capitol buildings and governor's

26 mansion and the grounds of such buildings and mansion.  
27 Major repairs and alterations shall be made under the  
28 supervision of the director, subject to the direction of the  
29 secretary.

30 The offices of the assistants and employees appointed  
31 to perform these duties shall be located where desig-  
32 nated by the secretary, except that they shall not be  
33 located in any of the legislative chambers, offices, rooms  
34 or halls. Office hours shall be so arranged that emer-  
35 gency or telephone service shall be available at all times.  
36 The hours shall be so arranged that janitorial service  
37 shall not interfere with other employment during  
38 regular office hours.

**§5A-4-3. Security officers; appointment; oath; carrying  
weapons; powers and duties generally, etc.**

1 In addition to the other powers given and assigned to  
2 the secretary in this chapter, he is hereby authorized to  
3 appoint bona fide residents of this state to act as security  
4 officers upon any premises owned or leased by the state  
5 of West Virginia and under the jurisdiction of the  
6 secretary, subject to the conditions and restrictions  
7 hereinafter imposed. Before entering upon the perfor-  
8 mance of his duties as such security officer, each person  
9 so appointed shall qualify therefor in the same manner  
10 as is required of county officers by taking and filing an  
11 oath of office as required by article one, chapter six of  
12 this code. No such person shall have authority to carry  
13 a gun or any other dangerous weapon until he shall have  
14 obtained a license therefor in the manner prescribed by  
15 section two, article seven, chapter sixty-one of this code.

16 It shall be the duty of any person so appointed and  
17 qualified to preserve law and order on any premises  
18 under the jurisdiction of the secretary to which he may  
19 be assigned by the secretary. For this purpose he shall  
20 as to offenses committed on such premises have and may  
21 exercise all the powers and authority and shall be  
22 subject to all the responsibilities of a deputy sheriff of  
23 the county. The assignment of security officers to any  
24 premises under the jurisdiction of the secretary shall not  
25 be deemed to supersede in any way the authority or duty

26 of other peace officers to preserve law and order on such  
27 premises.

28 The secretary may at his pleasure revoke the author-  
29 ity of any such officer by filing a notice to that effect  
30 in the office of the clerk of each county in which his oath  
31 of office was filed, and in the case of officers licensed  
32 to carry a gun or other dangerous weapon, by notifying  
33 the clerk of the circuit court of the county in which the  
34 license therefor was granted.

**§5A-4-4. Unlawful to kill or molest animals, birds or  
fowls upon grounds of capitol; powers and  
duties of security officers; penalties.**

1 In addition to the duties of persons appointed and  
2 qualified as security officers pursuant to section three,  
3 article four, chapter five-a of this code, to preserve law  
4 and order on any premises under the jurisdiction of the  
5 secretary to which he may be assigned by the secretary,  
6 such security officers shall have authority and it shall  
7 be the duty of such security officers to enforce the  
8 provisions of this section. This authority and duty of  
9 security officers shall not be deemed to supersede in any  
10 way the authority or duty of other peace officers to  
11 enforce the provisions of this section.

12 It shall be unlawful at any time to kill or molest in  
13 any manner, any animals, birds or fowls on the grounds  
14 of the capitol buildings or governor's mansion, except as  
15 may be deemed necessary by the secretary for the  
16 control or extermination of animals, birds or fowls  
17 deemed by him to be pests or a danger to the health and  
18 safety. Any person who kills or molests in any manner,  
19 or knowingly allows a dog or other animal owned by him  
20 to kill or molest in any manner any animals, birds or  
21 fowls on the grounds of the capitol buildings or  
22 governor's mansion shall be guilty of a misdemeanor,  
23 and, upon conviction thereof, be fined not less than fifty  
24 dollars nor more than five hundred dollars or, in the  
25 discretion of the court, be imprisoned in the county jail  
26 for not more than six months, or both such fine and  
27 imprisonment.

28 It shall be unlawful for any person to knowingly allow

29 a dog owned by him to be upon the grounds of the  
30 capitol buildings or governor's mansion unless such dog  
31 is under control by leash. Any person who knowingly  
32 allows a dog owned by him to be upon the grounds of  
33 the capitol buildings or governor's mansion while not  
34 under control by leash shall be guilty of a misdemeanor,  
35 and, upon conviction thereof, be fined not less than  
36 twenty-five nor more than one hundred dollars.

37 It shall further be unlawful for any person to  
38 knowingly allow a dog or other animal owned by him  
39 or under his control to defecate upon the grounds of the  
40 capitol buildings or governor's mansion. In the event  
41 that a dog or other animal owned by or under the control  
42 of a person defecates upon the grounds of the capitol  
43 buildings or governor's mansion, the person shall  
44 remove such defecation. Any person who knowingly  
45 allows a dog or other animal owned by him or under  
46 his control to defecate upon the grounds of the capitol  
47 buildings or governor's mansion and who subsequently  
48 fails to remove said defecation, shall be guilty of a  
49 misdemeanor, and, upon conviction thereof, shall be  
50 fined not less than twenty-five nor more than one  
51 hundred dollars.

**§5A-4-5. Regulation of parking on state-owned property  
in Charleston; penalties; jurisdiction.**

1 The secretary is vested with authority to regulate  
2 parking of motor vehicles in accordance with the  
3 provisions of this section with regard to the following  
4 state-owned property in the city of Charleston, Kanawha  
5 county:

6 (a) The east side of Greenbrier Street between  
7 Kanawha Boulevard and Washington Street, East;

8 (b) The west side of California Avenue between  
9 Kanawha Boulevard and Washington Street, East;

10 (c) Upon the state-owned grounds upon which state  
11 Office Building No. 3 is located;

12 (d) Upon the state-owned grounds upon which state  
13 Office Building No. 4, 112 California Avenue, is located;

14 (e) In the state-owned parking garage at 212 Califor-  
15 nia Avenue and upon the state-owned grounds upon  
16 which such parking garage is located;

17 (f) Upon the state-owned property at Michigan  
18 Avenue and Virginia Terrace; and

19 (g) Upon any other property now or hereafter owned  
20 by the state and used for parking purposes in conjunc-  
21 tion with the state capitol or state office buildings  
22 numbers three and four, including the Laidley field  
23 complex.

24 The secretary is authorized to promulgate rules and  
25 regulations respecting parking and to allocate parking  
26 spaces to public officers and employees of the state upon  
27 all of the aforementioned property of the state: *Provided,*  
28 That during sessions of the Legislature, including  
29 regular, extended, extraordinary, and interim sessions,  
30 parking on the east side of Greenbrier Street between  
31 Kanawha Boulevard and Washington Street, East, in  
32 the science and culture center parking lot, on the north  
33 side of Kanawha Boulevard between Greenbrier Street  
34 and California Avenue, and on the west side of Califor-  
35 nia Avenue between Kanawha Boulevard and Washing-  
36 ton Street, East, shall be subject to rules and regulations  
37 promulgated jointly by the speaker of the House of  
38 Delegates and the president of the Senate. Any person  
39 parking any vehicle contrary to the rules and regula-  
40 tions promulgated under authority of this section shall  
41 be subject to a fine of not less than one dollar nor more  
42 than twenty-five dollars for each offense. In addition, the  
43 secretary or the Legislature, as the case may be, may  
44 cause the removal at owner expense of any vehicle that  
45 is parked in violation of such rules and regulations.  
46 Magistrates in Kanawha county shall have jurisdiction  
47 of all such offenses.

48 The secretary is authorized to employ such persons as  
49 may be necessary to enforce the parking rules and  
50 regulations promulgated under the provisions of this  
51 section.

52 On or before the first day of December, one thousand  
53 nine hundred ninety, the secretary shall perform a study

54 of the parking requirements at the capitol complex,  
55 which study shall include the need, estimated cost and  
56 availability of a suitable location, for a parking building  
57 at the capitol complex.

#### ARTICLE 5. GOVERNOR'S MANSION ADVISORY COMMITTEE.

§5A-5-1. Committee continued; appointment, terms, etc., of members; meetings and responsibilities; annual report.

§5A-5-2. Office of governor's mansion director created; duties and responsibilities.

§5A-5-3. Official use of state rooms in governor's mansion; vacating private rooms of mansion.

**§5A-5-1. Committee continued; appointment, terms, etc., of members; meetings and responsibilities; annual report.**

1 There is hereby continued the governor's mansion  
2 advisory committee within the department of adminis-  
3 tration. The secretary of administration or his desig-  
4 nated representative, the commissioner of culture and  
5 history or his designated representative, and the spouse  
6 of any governor during the term of office of that  
7 governor, or the designated representative of such  
8 governor, shall be ex officio members of the committee.  
9 In addition, the governor shall appoint three additional  
10 members of the committee, one to be a curator in the  
11 field of fine arts, one to be an interior decorator who is  
12 a member of the American institute of decorators, and  
13 one to be a building contractor. The appointive members  
14 of the committee shall serve for a term of four years.  
15 The members of the committee shall serve without  
16 compensation but shall be reimbursed for reasonable  
17 and necessary expenses actually incurred in the perfor-  
18 mance of their duties; except that in the event the  
19 expenses are paid, or are to be paid, by a third party,  
20 the member shall not be reimbursed by the state. The  
21 governor shall designate from the committee a chair-  
22 man to serve for a term of one year. The secretary of  
23 administration shall serve as secretary. The committee  
24 shall meet upon the call of the chairman annually and  
25 may meet at such other times as may be necessary for  
26 the performance of its functions.

27 The committee shall be charged with the following  
28 responsibilities:

29 (1) To make recommendations to the governor for the  
30 maintaining, preserving and replenishing of all articles  
31 of furniture, fixtures, decorative objects, linens, silver,  
32 china, crystal and objects of art used or displayed in the  
33 state rooms of the governor's mansion, which state  
34 rooms shall consist of the front hall, the reception room,  
35 the ballroom and its sitting room, the state dining room,  
36 the front upstairs hall and the music room;

37 (2) To make recommendations to the governor as to  
38 the decor and arrangements best suited to enhance the  
39 historic and artistic values of the mansion in keeping  
40 with the architecture thereof and of such articles of  
41 furniture, fixtures, decorative objects, linens, silver,  
42 china, crystal and objects of art, which recommenda-  
43 tions shall be considered by the governor in decorating  
44 said mansion; and

45 (3) To invite interested persons to attend its meetings  
46 or otherwise to assist in carrying out its functions.

47 All departments, boards, agencies, commissions,  
48 officials and employees of the state are hereby autho-  
49 rized to cooperate with and assist the committee in the  
50 performance of its functions and duties whenever  
51 possible. As soon after the close of each fiscal year as  
52 possible, the committee shall make an annual report to  
53 the governor and the Legislature with respect to its  
54 activities and responsibilities.

**§5A-5-2. Office of governor's mansion director created;  
duties and responsibilities.**

1 There is hereby created the office of governor's  
2 mansion director, who shall be qualified by background  
3 and experience for such a position and shall be ap-  
4 pointed by the governor to serve at the will and pleasure  
5 of the governor. The mansion director shall be charged  
6 with the following duties and responsibilities: To protect  
7 and preserve all articles of furniture, fixtures, table  
8 linens, silver, china, crystal and objects of art displayed  
9 in the state rooms in the mansion. The mansion director



10 shall assist the governor and/or the governor's spouse in  
11 the scheduling of state government functions and  
12 entertainment at the mansion.

**§5A-5-3. Official use of state rooms in governor's man-  
sion; vacating private rooms of mansion.**

1 (a) The state rooms of the mansion shall be used for  
2 official state government functions and entertainment:  
3 *Provided*, That tours of the state rooms of the mansion  
4 shall be permitted, and the mansion director shall assist  
5 in the scheduling of said tours and prescribe rules and  
6 regulations governing same.

7 (b) No personal furniture or furnishings of the first  
8 family may be placed in the state rooms of the mansion  
9 except for home entertainment equipment.

10 (c) No furniture or furnishings in the state rooms  
11 located on the first floor of the mansion may be replaced,  
12 removed or sold without prior approval of the governor's  
13 mansion advisory committee.

14 (d) No items in the state rooms purchased by the West  
15 Virginia mansion preservation foundation, inc., may be  
16 replaced, removed or sold without prior approval of such  
17 corporation.

18 (e) The outgoing governor and his family shall vacate  
19 the private rooms of the mansion at least seven days  
20 prior to the inauguration of a new governor so that the  
21 mansion may be made suitable for the change in  
22 occupancy.

**ARTICLE 7. INFORMATION SERVICES AND COMMUNICATIONS  
DIVISION.**

§5A-7-1. Definitions.

§5A-7-2. Division created; purpose; use of facilities, rules and regulations.

§5A-7-3. Director; appointment and qualifications.

§5A-7-4. Powers and duties of division generally; review of findings by  
governor; authority of governor to order transfer of equipment  
and personnel; professional staff.

§5A-7-5. Control over central mailing office.

§5A-7-6. Central mailing office employees.

§5A-7-7. Central mailing office responsibilities.

§5A-7-8. Use of the central mailing office.

§5A-7-9. Preparation of mail for special rates.

§5A-7-10. Special fund created; payments into fund; charges for services; disbursements from fund.

§5A-7-11. Confidential records.

**§5A-7-1. Definitions.**

1 Unless the context in which used clearly requires a  
2 different meaning, as used in this article:

3 (a) "Data-processing equipment" means: (1) Any  
4 equipment having stored program capabilities; (2) any  
5 equipment designed to handle electronic input-output  
6 devices; or (3) any other similar equipment specified by  
7 the director;

8 (b) "Director" means the director of the information  
9 services and communications division;

10 (c) "Division" means the information services and  
11 communications division established in section two  
12 hereof;

13 (d) "Secretary" means the secretary of the department  
14 of administration;

15 (e) "Telecommunications equipment" means: (1) Any  
16 equipment used in the transmission, emission or  
17 reception of signals, writings, images, sounds or other  
18 forms of communication by electromagnetic or visual  
19 means; or (2) any other similar equipment specified by  
20 the director.

**§5A-7-2. Division created; purpose; use of facilities; rules and regulations.**

1 There is hereby created the information services and  
2 communications division of the department of adminis-  
3 tration for the purpose of establishing, developing and  
4 improving data processing and telecommunication  
5 functions in the various state agencies, for promulgating  
6 standards in the utilization of data processing and  
7 telecommunication equipment and for promoting the  
8 more effective and efficient operation of all branches of  
9 state government. The facilities of the division shall be  
10 available, subject to rules and regulations established by  
11 the secretary, to the legislative, executive and judicial  
12 branches of state government. Such rules and regula-  
13 tions shall be promulgated in accordance with the

14 provisions of article three, chapter twenty-nine-a of this  
15 code.

**§5A-7-3. Director; appointment and qualifications.**

1 The division shall be under the supervision and  
2 control of a director. The secretary shall appoint a  
3 director of the division. The director must have exten-  
4 sive knowledge in the principles and practices of  
5 administration, five years' experience in data processing  
6 and telecommunications operations and extensive  
7 knowledge of the procedures and techniques used in  
8 conducting highly complex systems analyses.

**§5A-7-4. Powers and duties of division generally; review  
of findings by governor; authority of gover-  
nor to order transfer of equipment and  
personnel; professional staff.**

1 The division shall be responsible for the planning of  
2 an informational and analytical system for use by all  
3 branches of state government. The division shall also  
4 evaluate the economic justification, system design and  
5 suitability of equipment and systems used in state  
6 government. The director shall report to the secretary.

7 The governor shall review such findings and recom-  
8 mendations and is hereby authorized to order the  
9 transfer, in whole or in part, to the division from any  
10 other department or agency of state government, except  
11 the Legislature, the judiciary and the university of West  
12 Virginia board of trustees and board of directors for the  
13 state college system, of all data processing and telecom-  
14 munication activities, and the equipment, supplies,  
15 personnel and funds appropriated therefor utilized for  
16 data processing and telecommunication purposes:  
17 *Provided*, That any such transfer shall not be effective  
18 until ninety days following the entry of the transfer  
19 order by the governor.

20 The director shall be responsible for the development  
21 of personnel to carry out the technical work of the  
22 division and is hereby authorized to approve reimbur-  
23 sement of costs incurred by employees to obtain  
24 education and training.

25 Any procurements or changes in data processing  
26 and/or telecommunication equipment or services by any  
27 spending unit shall be referred to the director and  
28 payment for any such procurement or change will not  
29 be honored unless approved by the director.

30 An accounting system shall be implemented and  
31 maintained by the director for all telephone service to  
32 the state.

**§5A-7-5. Control over central mailing office.**

1 The central mailing office heretofore controlled by the  
2 director of the general services division shall hereinafter  
3 be under the control of the director of the information  
4 services and communications division.

**§5A-7-6. Central mailing office employees.**

1 The director shall employ such persons as shall be  
2 necessary to carry out the provisions of sections seven,  
3 eight, nine and ten of this article.

**§5A-7-7. Central mailing office responsibilities.**

1 The director shall have the general charge and  
2 supervision of the central mailing office, and shall be  
3 responsible for its efficient administration. The director  
4 shall be required to: (1) Charge each spending unit of  
5 state government served by the central mailing office  
6 for providing such services; (2) keep proper account of  
7 the receipts and disbursements of the central mailing  
8 office; (3) render to the secretary a report each month  
9 showing the receipts and expenses of the central mailing  
10 office for the preceding month, and shall render such  
11 other reports as the secretary may require; (4) keep the  
12 central mailing office open during regularly stated  
13 hours to serve state spending units; and (5) provide  
14 rules and regulations for the efficient and prompt  
15 dispatch of the mail.

**§5A-7-8. Use of the central mailing office.**

1 All state spending units having their offices in the  
2 capitol, except the legislative branch of government,  
3 shall dispatch all mail through the central mailing  
4 office: *Provided*, That mail prepared after gathering

5 time and mail for special handling may be posted  
6 without utilizing the central mailing office upon  
7 approval of the director.

**§5A-7-9. Preparation of mail for special rates.**

1 All mail received by the central mailing office shall  
2 be processed and presorted in order to receive the most  
3 favorable mailing rates, unless otherwise directed by the  
4 director. The director is authorized to make such  
5 expenditures as are necessary to process and presort all  
6 outgoing mail or to enter into contracts with any person,  
7 firm or corporation engaged in such business to supply  
8 the service.

**§5A-7-10. Special fund created; payments into fund;  
charges for services; disbursements from  
fund.**

1 For the operation of the division, there is hereby  
2 created in the state treasury a special revolving fund to  
3 be known and designated as the "information services  
4 and communications fund". This fund shall consist of  
5 appropriations made by the Legislature, funds trans-  
6 ferred in accordance with the provisions of section four  
7 of this article, funds received for data processing,  
8 telecommunication and central mailing office services  
9 rendered to other agencies, departments, units of state  
10 and local government and any other entity, and funds  
11 received from the federal government or any agency or  
12 department thereof, which federal funds the division is  
13 hereby authorized to receive. Each agency, department,  
14 unit of state or local government or any other entity  
15 served by the information services and communications  
16 division, is hereby authorized and directed to transmit  
17 to the division for deposit in said special fund the  
18 charges made by the agency for data processing,  
19 telecommunication and central mailing office services  
20 rendered, such charges to be those fixed in a schedule  
21 or schedules prepared by the director and approved by  
22 the governor. Disbursements from the fund shall be  
23 made in accordance with an approved expenditure  
24 schedule as provided by article two, chapter five-a of  
25 this code and shall be made under the direct supervision  
26 of the secretary.

**§5A-7-11. Confidential records.**

- 1 Under no circumstances whatever shall the head of
- 2 any state department or agency deliver to the division
- 3 any records required by law to be kept confidential, but
- 4 such head may extract information from such records
- 5 for data processing by such division, provided the
- 6 integrity of such confidential records is fully protected.

**ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT.**

- §5A-8-1. Short title.
- §5A-8-2. Declaration of policy.
- §5A-8-3. Definitions.
- §5A-8-4. Categories of records to be preserved.
- §5A-8-5. State records administrator.
- §5A-8-6. Records management and preservation advisory committee.
- §5A-8-7. Duties of administrator.
- §5A-8-8. Rules and regulations.
- §5A-8-9. Duties of agency heads.
- §5A-8-10. Essential state records—Preservation duplicates.
- §5A-8-11. Essential state records—Safekeeping.
- §5A-8-12. Essential state records—Maintenance, inspection and use.
- §5A-8-13. Essential state records—Confidential records.
- §5A-8-14. Essential state records—Review of program.
- §5A-8-15. Records management and preservation of local records.
- §5A-8-16. Assistance to legislative and judicial branches.
- §5A-8-17. Disposal of records.
- §5A-8-18. Destruction of nonrecord materials.
- §5A-8-19. Annual report.

**§5A-8-1. Short title.**

- 1 This article shall be known as the “Records Manage-
- 2 ment and Preservation of Essential Records Act”.

**§5A-8-2. Declaration of policy.**

- 1 The Legislature declares that programs for the
- 2 efficient and economical management of state and local
- 3 records will promote economy and efficiency in the day-
- 4 to-day record-keeping activities of state and local
- 5 government and will facilitate and expedite government
- 6 operations; that records containing information essential
- 7 to the operation of government and to the protection of
- 8 the rights and interests of persons must be protected
- 9 against the destructive effects of all forms of disaster
- 10 and must be available when needed. It is necessary,

11 therefore, to adopt special provisions for the selection  
12 and preservation of essential state and local records  
13 thereby providing for the protection and availability of  
14 such information.

### §5A-8-3. Definitions.

1 As used in this article:

2 (a) "Disaster" means any occurrence of fire, flood,  
3 storm, earthquake, explosion, epidemic, riot, sabotage or  
4 other condition of extreme peril resulting in substantial  
5 damage or injury to persons or property within this  
6 state, whether such occurrence is caused by an act of  
7 God, nature or man, including an enemy of the United  
8 States.

9 (b) "Record" means document, book, paper, photo-  
10 graph, sound recording or other material, regardless of  
11 physical form or characteristics, made or received  
12 pursuant to law or ordinance or in connection with the  
13 transaction of official business. Library and museum  
14 material made or acquired and preserved solely for  
15 reference or exhibition purposes, extra copies of  
16 documents preserved only for convenience of reference,  
17 and stocks of publications and of processed documents  
18 are not included within the definition of records as used  
19 in this article.

20 (c) "State record" means:

21 (1) A record of a department, office, commission,  
22 board or other agency, however designated, of the state  
23 government.

24 (2) A record of the state Legislature.

25 (3) A record of any court of record, whether of  
26 statewide or local jurisdiction.

27 (4) Any record designated or treated as a state record  
28 under state law.

29 (d) "Local record" means a record of a county, city,  
30 town, authority or any public corporation or political  
31 entity whether organized and existing under charter or  
32 under general law unless the record is designated or  
33 treated as a state record under state law.

34 (e) "Agency" means any department, office, commis-  
35 sion, board or other unit, however designated, of the  
36 executive branch of state government.

37 (f) "Preservation duplicate" means a copy of an  
38 essential state record which is used for the purpose of  
39 preserving such state record pursuant to this article.

**§5A-8-4. Categories of records to be preserved.**

1 State or local records which are within the following  
2 categories are essential records which shall be preserved  
3 pursuant to this article:

4 Category A. Records containing information necessary  
5 to the operation of government in the emergency created  
6 by a disaster.

7 Category B. Records not within category A but  
8 containing information necessary to protect the rights  
9 and interest of persons or to establish and affirm the  
10 powers and duties of governments in the resumption of  
11 operations after a disaster.

**§5A-8-5. State records administrator.**

1 The secretary of the department of administration is  
2 hereby designated the state records administrator,  
3 hereinafter called the administrator. The administrator  
4 shall establish and administer in the department of  
5 administration of the executive branch of state govern-  
6 ment a records management program, which will apply  
7 efficient and economical management methods to the  
8 creation, utilization, maintenance and retention, preser-  
9 vation and disposal of state records; and shall establish  
10 and maintain a program for the selection and preser-  
11 vation of essential state records and shall advise and  
12 assist in the establishment of programs for the selection  
13 and preservation of essential local records.

**§5A-8-6. Records management and preservation advisory  
committee.**

1 A records management and preservation advisory  
2 committee is continued within the department of



3 administration, to advise the administrator and to  
4 perform such other duties as this article requires. The  
5 records management and preservation advisory commit-  
6 tee shall be composed of the following members: The  
7 governor, auditor, attorney general, president of the  
8 Senate, speaker of the House of Delegates, the chief  
9 justice of the supreme court of appeals, a judge of a  
10 circuit court to be appointed by the governor, the  
11 director of the office of emergency services, and the  
12 director of the section of archives and history of the  
13 division of culture and history, or their respective  
14 designated representatives. The advisory committee  
15 shall designate one of its members to be chairman, and  
16 it shall adopt rules for the conduct of its business. The  
17 advisory committee shall meet whenever called by its  
18 chairman or the administrator. The members of the  
19 advisory committee shall serve without compensation  
20 but shall be reimbursed for all reasonable and necessary  
21 expenses actually incurred in the performance of their  
22 duties as members of the advisory committee; except  
23 that in the event the expenses are paid, or are to be paid,  
24 by a third party, the member shall not be reimbursed  
25 by the state.

#### §5A-8-7. Duties of administrator.

1 The administrator shall, with due regard for the  
2 functions of the agencies concerned:

3 (a) Establish standards, procedures, and techniques  
4 for effective management of records.

5 (b) Make continuing surveys of paperwork operations  
6 and recommend improvements in current records  
7 management practices including the use of space,  
8 equipment and supplies employed in creating, maintain-  
9 ing, storing and servicing records.

10 (c) Establish standards for the preparation of sche-  
11 dules providing for the retention of state records of  
12 continuing value and for the prompt and orderly  
13 disposal of state records no longer possessing sufficient  
14 administrative, legal, or fiscal value to warrant their  
15 further keeping.

16 (d) Select the state records which are essential and  
17 determine their category pursuant to this article. In  
18 accordance with the rules and regulations promulgated  
19 by the administrator, each person who has custody or  
20 control of state records shall (1) inventory the state  
21 records in his custody or control; (2) submit to the  
22 administrator a report thereon containing such informa-  
23 tion as the administrator directs and containing  
24 recommendations as to which state records are essential;  
25 and (3) periodically review his inventory and his report  
26 and, if necessary, revise the report so that it is current,  
27 accurate and complete.

28 (e) Obtain reports from agencies as are required for  
29 the administration of the program.

#### §5A-8-8. Rules and regulations.

1 The administrator shall promulgate such rules and  
2 regulations concerning the management and selection  
3 and preservation of essential state records as are  
4 necessary or proper to effectuate the purpose of this  
5 article.

#### §5A-8-9. Duties of agency heads.

1 The head of each agency shall:

2 (a) Establish and maintain an active, continuing  
3 program for the economical and efficient management  
4 of the records of the agency.

5 (b) Make and maintain records containing adequate  
6 and proper documentation of the organization, func-  
7 tions, policies, decisions, procedures and essential  
8 transactions of the agency designed to furnish informa-  
9 tion to protect the legal and financial rights of the state  
10 and of persons directly affected by the agency's  
11 activities.

12 (c) Submit to the administrator, in accordance with  
13 the standards established by him, schedules proposing  
14 the length of time each state record series warrants  
15 retention for administrative, legal or fiscal purposes  
16 after it has been received by the agency. The head of  
17 each agency also shall submit lists of state records in

18 custody that are not needed in the transaction of current  
19 business and that do not have sufficient administrative,  
20 legal or fiscal value to warrant their further keeping for  
21 disposal in conformity with the requirements of section  
22 ten of this article.

23 (d) Cooperate with the administrator in the conduct  
24 of surveys made pursuant to the provisions of this  
25 article.

26 (e) Comply with the rules, regulations, standards and  
27 procedures issued by the administrator.

28 (f) First obtain the administrator's written approval  
29 before purchasing or acquiring any equipment or  
30 supplies used or to be used to store or preserve records  
31 of the agency. If such approval is obtained the agency  
32 will submit a requisition to the finance division together  
33 with a copy of the administrator's said approval.

#### §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 preserva-  
3 tion duplicates existing copies of essential state records.  
4 A preservation duplicate shall be durable, accurate,  
5 complete and clear, and a preservation duplicate made  
6 by means of photography, microphotography, photocop-  
7 ying, film or microfilm shall be made in conformity with  
8 the standards prescribed therefor by the administrator.

9 (b) A preservation duplicate made by a photographic,  
10 photostatic, microfilm, microcard, miniature photogra-  
11 phic, or other process which accurately reproduces or  
12 forms a durable medium for so reproducing the original,  
13 shall have the same force and effect for all purposes as  
14 the original record whether the original record is in  
15 existence or not. A transcript, exemplification or  
16 certified copy of such preservation duplicate shall be  
17 deemed for all purposes to be a transcript, exemplifi-  
18 cation or certified copy of the original record.

#### §5A-8-11. Essential state records—Safekeeping.

1 (a) The administrator shall prescribe the place and

2 manner of safekeeping of essential state records and  
3 preservation duplicates and may establish, with the  
4 approval of the Legislature, storage facilities therefor.  
5 The administrator may provide for storage outside the  
6 state.

7 (b) When in the opinion of the administrator the  
8 legally designated or customary location of an essential  
9 state record is such that the essential state record may  
10 be destroyed or unavailable in the event of a disaster  
11 caused by an enemy of the United States:

12 (1) The administrator shall store a preservation  
13 duplicate at another location and permit such state  
14 record to remain at its legally designated or customary  
15 location; or

16 (2) The administrator shall store such state record at  
17 a location other than its legally designated or customary  
18 location and deposit at the legally designated or  
19 customary location a preservation duplicate for use in  
20 lieu of the state record; or

21 (3) The administrator may store such state record at  
22 a location other than its legally designated or customary  
23 location, without providing for a preservation duplicate,  
24 upon a determination that it is impracticable to provide  
25 for a preservation duplicate and that the state record is  
26 not frequently used. Such determination shall be made  
27 by the administrator and the regularly designated  
28 custodian of such state record, but if they disagree the  
29 determination shall be made by the administrator.

30 (c) The requirements of subsection (b) of this section  
31 shall not prohibit the administrator from removing an  
32 essential state record or preservation duplicate from the  
33 legally designated or customary location of the state  
34 record if a disaster caused by an enemy of the United  
35 States has occurred or is imminent.

**§5A-8-12. Essential state records—Maintenance, inspection and use.**

1 (a) The administrator shall properly maintain essen-  
2 tial state records and preservation duplicates stored by  
3 him.

4 (b) An essential state record or preservation duplicate  
5 stored by the administrator may be recalled by the  
6 regularly designated custodian of the state record for  
7 temporary use when necessary for the proper conduct  
8 of the office and shall be returned by such custodian to  
9 the administrator immediately after such use.

10 (c) When an essential state record is stored by the  
11 administrator, the administrator, upon request of the  
12 regularly designated custodian of the state record, shall  
13 provide for its inspection, or for the making or certifi-  
14 cation of copies thereof, and such copies when certified  
15 by the administrator shall have the same force and  
16 effect as if certified by the regularly designated  
17 custodian.

**§5A-8-13. Essential state records—Confidential records.**

1 When a state record is required by law to be treated  
2 in a confidential manner and is an essential state record,  
3 the administrator in effectuating the purpose of this  
4 article with respect to such state record, shall protect  
5 its confidential nature.

**§5A-8-14. Essential state records—Review of program.**

1 The administrator shall review periodically but at  
2 least once a year the program for the selection and  
3 preservation of essential state records, including the  
4 classification of records and the provisions for preser-  
5 vation duplicates, and for safekeeping of essential state  
6 records or preservation duplicates to ensure that the  
7 purposes of this article are accomplished.

**§5A-8-15. Records management and preservation of local records.**

1 The governing body of each county, city, town,  
2 authority or any public corporation or political entity,  
3 whether organized and existing under a charter or  
4 under general law, shall promote the principles of  
5 efficient records management and preservation of local  
6 records. Such governing body may, as far as practical,  
7 follow the program established for the management and  
8 preservation of state records. The administrator shall,  
9 upon the request of a local governing body, provide

10 advice and assistance in the establishment of a local  
11 records management and preservation program.

**§5A-8-16. Assistance to legislative and judicial branches.**

1 Upon request, the records administrator shall assist  
2 and advise in the establishment of records management  
3 programs in the legislative and judicial branches of  
4 state government and shall, as required by them,  
5 provide program services similar to those available to  
6 the executive branch of state government pursuant to  
7 the provisions of this article.

**§5A-8-17. Disposal of records.**

1 No record shall be destroyed or otherwise disposed of  
2 by any agency of the state, unless it is determined by  
3 the administrator and the director of the section of  
4 archives and history of the division of culture and  
5 history that the record has no further administrative,  
6 legal, fiscal, research or historical value.

**§5A-8-18. Destruction of nonrecord materials.**

1 Nonrecord materials or materials not included within  
2 the definition of records as contained in this article may,  
3 if not otherwise prohibited by law, be destroyed at any  
4 time by the agency in possession of such materials  
5 without the prior approval of the administrator. The  
6 administrator may formulate procedures and interpre-  
7 tations to guide in the disposal of nonrecord materials.

**§5A-8-19. Annual report.**

1 The administrator shall make an annual written  
2 report to the governor for transmission to the Legisla-  
3 ture. The report shall describe the status and progress  
4 of programs established pursuant to this article and  
5 shall include the recommendations of the administrator  
6 for improvements in the management and preservation  
7 of records in state government.

**ARTICLE 9. VOLUNTARY GILDING THE DOME CHECK-OFF PROGRAM.**

**§5A-9-3. Contributions credited to special fund.**

1 The tax division of the department of tax and revenue

2 shall determine by the first day of July of each year the  
3 total amount designated pursuant to this legislation and  
4 shall report such amount to the state treasurer who shall  
5 credit such amount to a special department of admin-  
6 istration fund.

## CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

### ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

#### §12-3-17. Liabilities incurred by state boards, commis- sions, officers or employees which cannot be paid out of current appropriations.

1 Except as provided in this section, it shall be unlawful  
2 for any state board, commission, officer or employee:  
3 (1) To incur any liability during any fiscal year which  
4 cannot be paid out of the then current appropriation for  
5 such year or out of funds received from an emergency  
6 appropriation; or (2) to authorize or to pay any account  
7 or bill incurred during any fiscal year out of the  
8 appropriation for the following year: *Provided*, That  
9 nothing contained herein shall prohibit entering into a  
10 contract or lease for buildings, land and space, the cost  
11 of which exceeds the current year's appropriation, even  
12 though the amount is not available during the then  
13 current year, if the aggregate cost does not exceed the  
14 amount then authorized by the Legislature. Nothing  
15 contained herein shall repeal the provisions of the  
16 general law relating to the expiration of appropriations  
17 for buildings and land.

18 Any member of a state board or commission or any  
19 officer or employee violating any provision of this  
20 section shall be personally liable for any debt unlawfully  
21 incurred or for any payment unlawfully made.

## CHAPTER 14. CLAIMS DUE AND AGAINST THE STATE.

### ARTICLE 3. INTEREST ON PUBLIC CONTRACTS.

#### §14-3-1. Payment of interest by the state on contracts when final payment is delayed.

1 All public contracts let in accordance with article

2 three, chapter five-a of the code or let by the state board  
3 of education, the university of West Virginia board of  
4 trustees, the board of directors of the state college  
5 system, state armory board or by any other board,  
6 agency or commission of the state, entered into on and  
7 after the first day of March, one thousand nine hundred  
8 sixty-nine, and prior to the first day of July, one  
9 thousand nine hundred ninety-one, except the state road  
10 commissioner, shall contain the following paragraph:

11 "Within ninety days after the completion of this  
12 contract is certified by the approving authority to be  
13 complete in accordance with terms of the plans or  
14 specifications, or both where appropriate, or is accepted  
15 by the authorized spending officer as complete, or is  
16 occupied by the owner, or is dedicated for public use by  
17 the owner, whichever occurs first, the balance due the  
18 contractor herein shall be paid in full. Should such  
19 payment be delayed for more than ninety days beyond  
20 the day the completion of this contract is certified by  
21 the authorized spending officer or is accepted by the  
22 owner as complete, or is occupied by the owner, or is  
23 dedicated for public use by the owner, said contractor  
24 shall be paid interest, beginning on the ninety-first day,  
25 at the current rate, as determined by the state tax  
26 commissioner under the provisions of section seventeen-  
27 a, article ten, chapter eleven of this code per annum on  
28 any unpaid balance: *Provided*, That whenever the  
29 approving authority reasonably determines that delay in  
30 completing the contract or in accepting payment for the  
31 contract is the fault of the contractor herein, the  
32 approving authority may accept and use the commod-  
33 ities or printing or the project may be occupied by the  
34 owner or dedicated for public use by the owner without  
35 payment of any interest on amounts withheld past the  
36 ninety-day limit."

37 All public construction contracts relating to roads or  
38 bridges let by the commissioner of the division of  
39 highways, entered into on and after the first day of  
40 March, one thousand nine hundred sixty-nine, and prior  
41 to the first day of July, one thousand nine hundred  
42 ninety-one, shall contain the following paragraph:



43       “Within one hundred fifty days after the approving  
44 authority notifies the contractor, in writing, of the final  
45 acceptance by such approving authority of the project  
46 for which this contract provides, the balance due the  
47 prime contractor shall be paid in full. Should such  
48 payment be delayed for more than one hundred fifty  
49 days beyond the date that the approving authority  
50 notifies the contractor of the final acceptance of the  
51 project in accordance with the terms of the contract and  
52 the plans and specifications thereof, said prime contrac-  
53 tor shall be paid interest, beginning on the one hundred  
54 fifty-first day, at the current rate, as determined by the  
55 state tax commissioner under the provisions of section  
56 seventeen-a, article ten, chapter eleven of this code per  
57 annum on such unpaid balance: *Provided*, That if the  
58 prime contractor does not agree to the amount of money  
59 determined by the approving authority to be due and  
60 owing to the prime contractor and set forth on the final  
61 estimate document, and the approving authority makes  
62 an offer to pay the amount of the final estimate to the  
63 said prime contractor, then the prime contractor shall  
64 not be entitled to receive any interest on the amount set  
65 forth in said final estimate, but shall only be entitled to  
66 the payment of interest at the current rate, as deter-  
67 mined by the state tax commissioner under the provi-  
68 sions of section seventeen-a, article ten, chapter eleven  
69 of this code per annum on the amount of money finally  
70 determined to be due and owing to the said prime  
71 contractor, less the amount of the final estimate that the  
72 approving authority had originally offered to pay to the  
73 said prime contractor.”

## CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

### ARTICLE 6. CIVIL SERVICE SYSTEM.

- §29-6-7. Director of personnel; appointment; qualifications; powers and duties.
- §29-6-23. Special fund; appropriations; cost of administering article; acceptance of grants or contribution; disbursements.

**§29-6-7. Director of personnel; appointment; qualifications; powers and duties.**

1 (a) The secretary of the department of administration  
2 shall appoint the director. The director shall be a person  
3 knowledgeable of the application of the merit principles  
4 in public employment as evidenced by the obtainment  
5 of a degree in business administration, personnel  
6 administration, public administration or the equivalent  
7 and at least five years of administrative experience in  
8 personnel administration.

9 (b) The director shall:

10 (1) Consistent with the provisions of this article  
11 administer the operations of the division, allocating the  
12 functions and activities of the division among sections  
13 as the director may establish;

14 (2) Maintain a personnel management information  
15 system necessary to carry out the provisions of this  
16 article;

17 (3) Supervise payrolls and audit payrolls, reports or  
18 transactions for conformity with the provisions of this  
19 article;

20 (4) Plan, evaluate, administer and implement person-  
21 nel programs and policies in state government and to  
22 political subdivisions after agreement by the parties;

23 (5) Supervise the employee selection process and  
24 employ performance evaluation procedures;

25 (6) Develop programs to improve efficiency and  
26 effectiveness of the public service, including, but not  
27 limited to, employee training, development, assistance  
28 and incentives;

29 (7) Establish pilot programs and other projects for a  
30 maximum of one year outside of the provisions of this  
31 article, subject to approval by the board, to be included  
32 in the annual report;

33 (8) Establish and provide for a public employee  
34 interchange program and may provide for a voluntary  
35 employee interchange program between public and  
36 private sector employees;

- 37 (9) Establish an internship program;
- 38 (10) Assist the governor and secretary of the depart-  
39 ment of administration in general work force planning  
40 and other personnel matters;
- 41 (11) Make an annual report to the governor and  
42 Legislature and all other special or periodic reports as  
43 may be required;
- 44 (12) Assess cost for special or other services;
- 45 (13) Recommend rules to the board for implementa-  
46 tion of this article; and
- 47 (14) Conduct schools, seminars or classes for supervi-  
48 sory employees of the state regarding handling of  
49 complaints and disciplinary matters and the operation  
50 of the state personnel system.

**§29-6-23. Special fund; appropriations; cost of adminis-  
tering article; acceptance of grants or contri-  
bution; disbursements.**

1 For the operation of the division, there is hereby  
2 created in the state treasury a special revolving fund to  
3 be known and designated as the "division of personnel  
4 fund". This fund shall consist of appropriations made by  
5 the Legislature, funds transferred in accordance with  
6 the provisions of section nine of this article, funds  
7 received for personnel services rendered to other  
8 agencies, departments, divisions and units of state and  
9 local government, and funds received by grant or  
10 contribution from the federal government or any other  
11 entity which funds the division is hereby authorized to  
12 receive: *Provided*, That for fiscal year one thousand nine  
13 hundred ninety all funds remaining in account numbers  
14 5840-00, 5840-35 and 5840-17 shall be transferred to the  
15 division of personnel fund on the effective date of this  
16 article. Each agency, department, division or unit of  
17 state or local government served by the division of  
18 personnel is hereby authorized and directed to transmit  
19 to the division for deposit in said special fund the  
20 charges made by the division of personnel for personnel  
21 services rendered, such charges to be those fixed in a  
22 schedule or schedules prepared by the director and

23 approved by the secretary of the department of admin-  
 24 istration. Disbursements from the fund shall be made  
 25 in accordance with an approved expenditure schedule as  
 26 provided by article two, chapter five-a of this code and  
 27 shall be made under the direct supervision of the  
 28 director.

29 The director shall maintain accurate records reflect-  
 30 ing the cost of administering the provisions of this  
 31 article.

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## CHAPTER 3

(H. B. 4352—By Delegates M. Burke and Riggs)

[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article two-a,  
 chapter nineteen of the code of West Virginia, one  
 thousand nine hundred thirty-one, as amended, relating  
 to applicant for permit to furnish surety bond for benefit  
 consignor.

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

That section eight, article two-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 2A. PUBLIC MARKETS.

#### §19-2A-8. Applicant for permit to furnish surety bond for benefit of consignors; form of surety bond.

1 Before the granting of any such permit, the applicant  
 2 shall execute and deliver to the commissioner a surety  
 3 bond conditioned as the commissioner may require and  
 4 acceptable to him, payable to the state of West Virginia,  
 5 for the benefit of the consignors at said market of  
 6 livestock, poultry, and other agricultural and horticult-  
 7 tural products, who have been wronged or damaged by  
 8 any fraud or fraudulent practices of the market and so  
 9 adjudged by a court of competent jurisdiction and who  
 10 shall have the right of action for damage for compen-  
 11 sation against such bond. A holder of a permit, who shall  
 12 have been in operation not less than twelve months, shall

13 maintain and deliver such bond to said commissioner as  
14 aforesaid in an amount not to exceed one hundred  
15 twenty percent of the average of its sales during the  
16 preceding calendar year. A holder of a permit, who shall  
17 have been in operation less than twelve months, shall  
18 maintain and deliver such bond to said commissioner as  
19 aforesaid in an amount established by the commissioner,  
20 but in no case shall the bond be less than the average  
21 bond maintained by all other public markets in the state  
22 that have been in operation more than twelve months.

23 The form of the bond shall be approved by the  
24 commissioner and may include, at the option of the  
25 applicant, surety bonding, collateral bonding (including  
26 costs and securities), establishment of an escrow account  
27 or a combination of these methods. If collateral bonding  
28 is used, the operator may elect to deposit cash or  
29 collateral securities or certificates as follows: Bonds of  
30 the United States or its possessions, of the federal land  
31 bank or of the homeowners' loan corporation; full faith  
32 and credit general obligation bonds of the state of West  
33 Virginia, or other states, and of any county, district or  
34 municipality of the state of West Virginia or other  
35 states; or certificates of deposit in a bank in this state,  
36 which certificates shall be in favor of the department.  
37 The cash deposit or market value of such securities or  
38 certificates shall be equal to or greater than the sum of  
39 the bond. It shall be the duty of the applicant to ensure  
40 the market value of such bonds are sufficient. The  
41 commissioner shall, upon receipt of any such deposit of  
42 cash, securities or certificates, promptly place the same  
43 with the treasurer of the state of West Virginia whose  
44 duty it shall be to receive and hold the same in the name  
45 of the state in trust for the purpose for which the deposit  
46 is made when the permit is issued. The applicant  
47 making the deposit shall be entitled from time to time  
48 to receive from the state treasurer, upon the written  
49 approval of the commissioner, the whole or any portion  
50 of any cash, securities or certificates so deposited, upon  
51 depositing with him in lieu thereof, cash or other  
52 securities or certificates of the classes herein specified  
53 having value equal to or greater than the sum of the  
54 bond.

## CHAPTER 4

(Com. Sub. for H. B. 4504—By Delegates Farley and Houvouras)

[Passed March 8, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eight, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state funded raise for cooperative extension service employees.

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

That section one, article eight, 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 8. COOPERATIVE EXTENSION WORKERS.**

**§19-8-1. County extension service committee; composition; organization; duties and responsibilities; employment and compensation of extension workers.**

1 The county extension service committee shall be  
2 composed of (a) the president of the county farm bureau,  
3 (b) the president of the county extension homemakers  
4 council, (c) the president of the county Four-H leaders'  
5 association, (d) a county commissioner designated by the  
6 president of the county commission, (e) a member of the  
7 county board of education designated by the president  
8 of the county board of education, (f) a county represen-  
9 tative of the grange, and (g) two members who are  
10 residents of the county to be appointed by the board of  
11 advisors of West Virginia University for staggered  
12 terms of three years each beginning on the first day of  
13 July, and in making these appointments the board of  
14 advisors shall appoint one member designated by any  
15 other active farm organization in the county not already  
16 represented by virtue of this section. If any of the above-  
17 named organizations do not exist in the county, the  
18 board of advisors of West Virginia University may  
19 appoint an additional member for each such vacancy.

20 The committee shall annually elect from its membership  
21 a chairperson and a secretary.

22 It shall each year be the duty and responsibility of the  
23 county extension service committee:

24 (1) To enter into a memorandum of agreement with  
25 the cooperative extension service of West Virginia  
26 University for the employment of county cooperative  
27 extension workers.

28 (2) To prepare a memorandum of agreement with the  
29 county commission and with the county board of  
30 education for their financial support of extension work.

31 (3) To give guidance and assistance in the develop-  
32 ment of the county cooperative extension service  
33 program and in the preparation of the annual plan of  
34 work for the county.

35 Such county cooperative extension service committee  
36 may on or before the first day of July of each year file  
37 with the county commission a written memorandum of  
38 agreement with the cooperative extension service of  
39 West Virginia University for the employment for the  
40 next fiscal year of county extension agents, extension  
41 homemaker agents, associate or assistant agents, and  
42 clerical workers.

43 The county cooperative extension service committee  
44 may also file on or before the first day of July of each  
45 year with the county board of education a written  
46 memorandum of agreement with the cooperative exten-  
47 sion service of West Virginia University for the  
48 employment for the next fiscal year of Four-H club or  
49 youth development agents, associate or assistant agents,  
50 and clerical workers.

51 If such agreement or agreements are so filed, the  
52 county commission and the county board of education of  
53 such county, or either of them, may annually enter into  
54 such agreement or agreements for the employment for  
55 the next fiscal year of such county extension agents,  
56 extension homemaker agents, Four-H club or youth  
57 development agents, associate or assistant agents, and  
58 clerical workers, or any of them, as may be nominated

59 by the cooperative extension service of West Virginia  
60 University, and approved in writing by at least five  
61 members of the county extension service committee.

62 Salaries and expenses of all such county extension  
63 workers shall be paid by the cooperative extension  
64 service, the county commission, and the board of  
65 education, or jointly out of such appropriations as are  
66 made by the Legislature, the county commission and the  
67 board of education, separately or in conjunction with  
68 such federal acts as do now, or may hereafter, provide  
69 funds for such purpose. That part of salaries, travel and  
70 general office expense to be provided by the county  
71 commission according to the approved memorandum  
72 shall be paid from general county funds.

73 Whenever the cooperative extension service is re-  
74 quired by law or legislative intent to grant a salary  
75 increase to its employees, the state budget shall include  
76 such additional funds as may be necessary to fully fund  
77 such salary increase. It is the intent of this section that  
78 the cooperative extension service shall not be dependent  
79 upon county or federal funds or upon the other funds  
80 of the institution or the governing board to meet the  
81 costs of such a salary increase required by law or  
82 legislative intent regardless of the source of the  
83 employee's base salary: *Provided*, That any decrease by  
84 the county of base salary levels of county extension  
85 employees, as exists on June thirtieth of the year  
86 preceding the year the salary increase is authorized,  
87 shall not be funded by the state.

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## CHAPTER 5

(H. B. 4349—By Delegates Stemple and Mezzatesta)

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[Passed February 15, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and sixteen, article twelve, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing an additional definition for the word "dealer", and increasing the penalty for violations of this article.



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

That sections two and sixteen, article twelve, 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 12. INSECT PESTS, PLANT DISEASES AND NOXIOUS WEEDS.**

§19-12-2. Definitions.

§19-12-16. Penalty for violation of article, rules and regulations; duties of prosecuting attorney.

**§19-12-2. Definitions.**

1 The following definitions shall apply in the interpre-  
2 tation and enforcement of this article. All words shall  
3 be construed to import either the plural or the singular,  
4 as the case demands:

5 (a) "Department" means the department of agricul-  
6 ture of the state of West Virginia.

7 (b) "Commissioner" means the commissioner of  
8 agriculture of the state of West Virginia and his duly  
9 authorized representatives.

10 (c) "Agent" means any person soliciting orders for  
11 nursery stock under the partial or full control of a  
12 nurseryman or dealer.

13 (d) "Dealer" means any person who buys, receives on  
14 consignment or otherwise acquires and has in his  
15 possession nursery stock which that person has not  
16 grown from propagative material such as tissue culture  
17 plants, cuttings, liners, seeds or transplanted nursery  
18 stock for the purpose of offering or exposing for sale,  
19 reselling, reshipping or distributing same. Each separ-  
20 ate location shall constitute a dealership.

21 (e) "Nursery" means any grounds or premises on or  
22 in which nursery stock is being propagated or grown for  
23 sale or distribution, including any grounds or premises  
24 on or in which nursery stock is being fumigated, treated,  
25 packed or stored or otherwise prepared or offered for  
26 sale or movement to other localities.

27 (f) "Nurseryman" means and includes any person who  
28 owns, leases, manages or is in charge of a nursery.

29 (g) "Nursery stock" means all trees, shrubs and woody  
30 vines, including ornamentals, bush fruits, grapevines,  
31 fruit trees and nut trees, whether cultivated, native or  
32 wild, and all buds, grafts, scions, fruit pits and cuttings  
33 from such plants. It also means sod, including sod plugs  
34 and sod-producing plants, and such herbaceous plants,  
35 including strawberry plants, narcissus plants and  
36 narcissus bulbs as the commissioner declares by  
37 regulation to be so included whenever he considers  
38 control of the movement of such plants and bulbs  
39 necessary for the control of any destructive plant pest.  
40 Florists' or greenhouse plants for inside culture or use,  
41 unless declared otherwise by the commissioner, as  
42 herein authorized, shall not be considered nursery stock,  
43 except that all woody plants, whether greenhouse or  
44 field grown, if for outside planting, are hereby defined  
45 as nursery stock.

46 (h) "Person" means any individual or combination of  
47 individuals, partnership, corporation, company, society,  
48 association, governmental organization, or other busi-  
49 ness entity and each officer, agent or employee thereof.

50 (i) "Plant and plant products" means trees, shrubs,  
51 vines; forage, fiber, cereal plants and all other plants;  
52 cuttings, grafts, scions, buds and lumber and all other  
53 parts of plants; and fruit, vegetables, roots, bulbs, seeds,  
54 wood, lumber and all other parts of plants and plant  
55 products.

56 (j) "Plant pest" means any living stage of: Any insects,  
57 mites, nematodes, slugs, snails, protozoa or other  
58 invertebrate animals, bacteria, fungi, other parasitic  
59 plants or reproductive parts thereof, viruses or any  
60 organisms similar to or allied with any of the foregoing,  
61 or any infectious substances, which can directly or  
62 indirectly injure or cause disease or damage in any  
63 plants or parts thereof, or any processed, manufactured  
64 or other products of plants.

65 (k) "Host" means any plant or plant product upon  
66 which a pest is dependent for completion of any portion  
67 of its life cycle.

68 (l) "Regulated article" means any article of any  
69 character, as described in the quarantine or other order  
70 of the commissioner carrying or capable of carrying a  
71 pest.

72 (m) "Certificate" means a document issued or autho-  
73 rized by the commissioner indicating that a regulated  
74 article is not contaminated with a pest.

75 (n) "Permit" means a document issued or authorized  
76 by the commissioner to provide for a movement of  
77 regulated articles to restricted destinations for limited  
78 handling, utilization or processing.

79 (o) "Noxious weed" means *rosa multiflora*, commonly  
80 known as *multiflora rose* or parts thereof; *cannabis*  
81 *sativa* L., commonly known as *marihuana* or any parts  
82 thereof and *opium poppy* or any parts thereof.

83 (p) "Infected area" means any area of uncontrolled  
84 growth of plant pests, other insects or noxious weeds,  
85 and any area of cultivated or controlled growth of  
86 *cannabis sativa* L., commonly known as *marihuana*, or  
87 of *opium poppy*.

88 (q) "Quarantine" means a legal declaration by the  
89 commissioner which specifies:

- 90 (1) The noxious weeds.
- 91 (2) The articles to be regulated.
- 92 (3) Conditions governing movement.
- 93 (4) The area or areas quarantined.
- 94 (5) Exemptions.

**§19-12-16. Penalty for violation of article, rules and regulations; duties of prosecuting attorney.**

1 Any person violating any of the provisions of this  
2 article, or the rules or regulations adopted thereunder,  
3 shall be deemed guilty of a misdemeanor and, upon  
4 conviction thereof, shall be fined not less than one  
5 hundred dollars nor more than five hundred dollars.

6 It shall be the duty of the prosecuting attorney of the  
7 county in which the violation occurred to represent the  
8 department of agriculture, to institute proceedings and  
9 to prosecute the person charged with such violation.

## CHAPTER 6

(Com. Sub. for H. B. 4590—By Delegates M. Burke and Stemple)

[Passed March 5, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, five, six, seven, eight, nine and ten, article fifteen-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to definitions of words and terms, registration of brands; registration fees; required labeling; toxic materials prohibited; inspection fee; report of tonnage; annual report; inspection; sampling; analysis; embargo; suspension or cancellation of registration; seizure of materials; violations; regulations; lime fund and penalties.

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

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

### ARTICLE 15A. WEST VIRGINIA AGRICULTURAL LIMING MATERIALS LAW.

- §19-15A-1. Definitions of words and terms.
- §19-15A-2. Registration of brands; registration fees.
- §19-15A-3. Required labeling; toxic materials prohibited.
- §19-15A-4. Inspection fee; report of tonnage; annual report.
- §19-15A-5. Inspection; sampling; analysis.
- §19-15A-6. Embargo; suspension or cancellation of registration; seizure of materials.
- §19-15A-7. Deficiency assessment, tolerances and payment.
- §19-15A-8. Regulations.
- §19-15A-9. Lime fund.
- §19-15A-10. Penalties.

#### §19-15A-1. Definitions of words and terms.

- 1 As used in this article:
- 2 (a) "Agricultural liming material" means a product
- 3 with calcium or calcium and magnesium compounds
- 4 which are capable of neutralizing soil acidity and which
- 5 are intended to be used to neutralize soil acidity.

6 (b) "Brand" means the term, designation, trademark,  
7 product name or other specific designation under which  
8 individual agricultural liming materials are offered for  
9 sale.

10 (c) "Bulk" means agricultural liming materials in  
11 nonpackaged form.

12 (d) "Burnt lime" means a material, made from  
13 limestone which consists essentially of calcium oxide or  
14 a combination of calcium oxide with magnesium oxide.

15 (e) "Calcium carbonate equivalent" means the acid  
16 neutralizing capacity of agricultural liming material  
17 expressed as the weight percentage of calcium  
18 carbonate.

19 (f) "Commissioner" means the commissioner of agri-  
20 culture of the state of West Virginia or his duly  
21 authorized agent.

22 (g) "Distributor" means any person who sells or offers  
23 for sale agricultural liming products that are registered  
24 pursuant to this article. Exempted from this definition  
25 are persons who retail registered products to the  
26 ultimate consumer.

27 (h) "Dolomite" means an agricultural liming material  
28 composed chiefly of carbonates of magnesium and  
29 calcium in substantially equimolar (1-1.19) proportions.

30 (i) "Embargo" means an order prohibiting the sale,  
31 processing, mixing, transporting and use of any product.

32 (j) "Fineness classification" means the designation  
33 given to the product by the percentage by weight of the  
34 material which will pass U.S. standard sieves of specific  
35 sizes.

36 (k) "Ground shells" means a material obtained by  
37 grinding the shells of mollusks.

38 (l) "High calcic liming material" means an agricultu-  
39 ral liming material containing at least twenty-five  
40 percent calcium and at least ninety-one percent of the  
41 total calcium and magnesium is calcium.

42 (m) "High magnesian liming material" means an

43 agricultural liming material containing at least six  
44 percent magnesium.

45 (n) "Hydrated lime" means a material, made from  
46 burnt lime, which consists essentially of calcium  
47 hydroxide or a combination of calcium hydroxide with  
48 magnesium oxide and magnesium hydroxide, or both  
49 magnesium oxide and magnesium hydroxide.

50 (o) "Label" means any written or printed matter on  
51 or attached to the package or on the delivery ticket  
52 which accompanies bulk shipments.

53 (p) "Limestone" means a material consisting essen-  
54 tially of calcium carbonate with magnesium carbonate  
55 capable of neutralizing soil acidity.

56 (q) "Marl" means a granular or loosely consolidated  
57 earthy material composed largely of shell fragments and  
58 calcium carbonate precipitated in ponds.

59 (r) "Percent or percentage" means percent or percen-  
60 tage by weight.

61 (s) "Person" means any individual, partnership,  
62 association, fiduciary, firm, corporation or any organ-  
63 ized group of persons whether incorporated or not.

64 (t) "Registrant" is a person who registers agricultural  
65 liming materials by product and is responsible for the  
66 guarantee of such product.

67 (u) "Slag" means any industrial waste or by-product  
68 containing calcium or calcium and magnesium in forms  
69 that will neutralize soil acidity.

70 (v) "Type" means the designation given to the product  
71 from its source material.

72 (w) "Ton" means a weight of two thousand pounds  
73 avoirdupois.

74 (x) "Weight" means the weight of undried liming  
75 material as offered for sale.

#### §19-15A-2. Registration of brands; registration fees.

1 (a) No agricultural liming material shall be used, sold  
2 or offered for sale in the state unless it has been  
3 registered with the commissioner.

4 (b) Application for registration shall be made to the  
5 commissioner on forms approved or supplied by the  
6 commissioner. Each separately identified agricultural  
7 liming material shall be registered before being  
8 distributed or used in the state.

9 (c) The commissioner shall collect a twenty-five dollar  
10 registration fee for each brand of the agricultural  
11 liming material registered; and, the commissioner shall  
12 collect a ten dollar registration fee from all distributors  
13 of agricultural liming materials.

14 (d) All registrations shall expire at the end of the  
15 calendar year of issue unless sooner revoked by the  
16 commissioner as provided in section six of this article.

**§19-15A-3. Required labeling; toxic materials prohibited.**

1 (a) No person shall sell, offer to sell, or expose for sale  
2 in the state any agricultural liming materials which do  
3 not have affixed to the outside of each package in a  
4 conspicuous manner a plainly printed, stamped or  
5 otherwise marked label, tag or statement, or in the case  
6 of bulk sales, a delivery invoice including at least the  
7 following:

8 (1) The name and principal business address of the  
9 manufacturer or distributor.

10 (2) The brand name of the agricultural liming  
11 material.

12 (3) The identification of the product as to the type of  
13 liming material.

14 (4) The net weight of the agricultural liming  
15 material.

16 (5) The minimum percentage of calcium oxide and  
17 magnesium oxide or calcium carbonate and magnesium  
18 carbonate or total elemental calcium and total elemental  
19 magnesium.

20 (6) The calcium carbonate equivalent as determined  
21 by methods prescribed by the association of official  
22 analytical chemists.

23 (7) The minimum percent by weight passing through  
24 United States standard sieves.

25 (8) The fineness classification of the material.

26 (b) A copy of the statement provided for in subsection  
27 (a) shall be posted for each brand sold in bulk at each  
28 site where purchase orders are accepted or from which  
29 deliveries for such liming materials are made.

30 (c) No information or statement shall appear on any  
31 package, label, delivery invoice or advertisement which  
32 gives a false or misleading impression to the purchaser  
33 as to the quality, analysis, type or composition of the  
34 liming material.

35 (d) When agricultural liming material has been  
36 adulterated subsequent to packaging, labeling or  
37 loading thereof and before delivery has been made to the  
38 consumer, conspicuous, plainly worded notice to that  
39 effect shall be affixed by the vendor to the package or  
40 delivery invoice to identify the kind and degree of  
41 adulteration therein: *Provided*, That no agricultural  
42 liming material shall be sold or offered for sale in the  
43 state which contains toxic materials in quantities  
44 injurious to plants or animals when applied according  
45 to directions.

**§19-15A-4. Inspection fee; report of tonnage; annual  
report.**

1 (a) The amount of the inspection fee shall be clearly  
2 stated on each sales invoice prepared in normal course  
3 of business by either a registrant or distributor  
4 reflecting the amount of said fee and the payor of the  
5 same.

6 (b) Within thirty days following the thirtieth day of  
7 June and the thirty-first day of December of each year,  
8 each registrant and distributor shall submit on a form  
9 furnished by the commissioner a summary of tons of  
10 each agricultural liming material sold or distributed by  
11 him in the state during the previous six months' period.  
12 Such report of tonnage shall be accompanied by  
13 payment of an inspection fee at the rate of five cents per  
14 ton. If such tonnage, or portion thereof, has been paid



15 by another person, documentation by invoice must  
16 accompany such report. The minimum semiannual  
17 payment shall be ten dollars. The minimum fee is  
18 waived if the total amount of the semi-annual inspection  
19 fee due is two dollars or less. A penalty of ten percent  
20 of the fees due or ten dollars whichever is greater shall  
21 be assessed a registrant or distributor whose report is  
22 not received by the fifteenth day of August and the  
23 fifteenth day of February each calendar year.

24 (c) The commissioner shall publish and distribute at  
25 least annually to each agricultural liming material  
26 registrant, distributor and other interested persons, a  
27 composite report showing the net tons of agricultural  
28 liming material sold in this state during the preceding  
29 period. This report shall in no way divulge information  
30 that can be related to the business of any individual  
31 registrant.

#### §19-15A-5. Inspection; sampling; analysis.

1 (a) It shall be the duty of the commissioner to audit,  
2 inspect, sample, analyze and test agricultural liming  
3 materials used, sold or offered for sale within the state  
4 as he may deem necessary to determine whether such  
5 agricultural liming materials are in compliance with  
6 the provisions of this article and for this purpose the  
7 commissioner is authorized to enter upon any public or  
8 private premises or carriers during reasonable times to  
9 inspect and sample liming materials, and to inspect  
10 records related to their distribution.

11 (b) The methods of analysis and sampling shall be  
12 those approved by the association of official analytical  
13 chemists or those approved by the commissioner.

14 (c) The results of official analyses of agricultural  
15 liming materials shall be distributed by the commis-  
16 sioner as he may deem necessary to carry out the  
17 enforcement of this article.

18 (d) The commissioner shall, on request, provide the  
19 registrant with a portion of the official sample:  
20 *Provided,* That the request be made within thirty days  
21 of the assessment of a violation.

22 (e) The commissioner in determining whether any  
23 agricultural liming material is deficient in guarantee  
24 shall be guided solely by the official sample.

**§19-15A-6. Embargo; suspension or cancellation of  
registration; seizure of materials.**

1 (a) The commissioner is authorized to suspend or  
2 cancel the registration of any brand of agricultural  
3 liming material and to refuse the application for  
4 registration of any brand of agricultural liming mate-  
5 rial upon being presented satisfactory evidence that the  
6 registrant has used false, fraudulent or deceptive  
7 practices in the evasion or attempted evasion of the  
8 provisions of this article or any regulation issued  
9 thereunder: *Provided*, That no registration shall be  
10 suspended, revoked or refused until the registrant has  
11 been given an opportunity to appear for a hearing before  
12 the commissioner.

13 (b) The commissioner may issue an embargo order to  
14 the owner or custodian of any lot of agricultural liming  
15 material when he finds said agricultural liming mate-  
16 rial is being offered or exposed for sale in violation of  
17 any of the provisions of this article or the regulations  
18 issued thereunder and such order shall remain in effect  
19 until it has been rescinded in writing by the commis-  
20 sioner: *Provided*, That the commissioner shall not  
21 rescind any embargo order until the requirements of  
22 this article have been complied with and all costs and  
23 expenses incurred in connection therewith have been  
24 paid.

25 (c) Any agricultural liming material found to be in  
26 violation of the provisions of this article shall be subject  
27 to seizure on complaint of the commissioner to a court  
28 of competent jurisdiction in the county in which such  
29 agricultural liming material is located. If the court  
30 orders the condemnation of such material it shall be  
31 disposed of in a manner consistent with the quality of  
32 the agricultural liming material and the laws of the  
33 state. In no instance shall the disposition of said  
34 agricultural liming material be ordered by the court  
35 without first giving the claimant an opportunity to

36 apply to the court for release of said agricultural liming  
37 material or for permission to process or relabel said  
38 agricultural liming material to bring it in compliance  
39 with this article.

**§19-15A-7. Deficiency assessment, tolerances and payment.**

1 (a) A registrant shall pay a deficiency assessment in  
2 accordance with the provisions of this section for each  
3 lot of agricultural liming material found to be deficient  
4 in its guaranteed analysis. Deficiencies existing in more  
5 than one component shall be considered additional  
6 violations.

7 (b) When the calcium carbonate equivalent is found  
8 to be over five percent deficient from the stated  
9 guarantee, the registrant shall pay a deficiency assess-  
10 ment equal to two times the actual cash value of the  
11 deficiency based on the retail price per ton at the  
12 distribution point where the official sample was  
13 collected. The cash value of the deficiency is calculated  
14 by multiplying the actual percent deficiency, less the  
15 five percent taken, times the retail price per ton, times  
16 the tons in the lot sampled. The minimum assessed  
17 penalty shall be fifty cents per ton in the lot sampled.

18 (c) When the product is found to be over five percent  
19 deficient in one or more of the guarantees for fineness  
20 classification, a penalty shall be assessed at one dollar  
21 per ton in the lot sampled.

22 (d) When the product is found to be over ten percent  
23 deficient for one or more of the following guarantees:  
24 Calcium oxide, magnesium oxide, calcium carbonate,  
25 magnesium carbonate, total elemental calcium or total  
26 elemental magnesium, a penalty shall be assessed at one  
27 dollar per ton in the lot sampled.

28 (e) Such deficiency assessment shall be paid to the  
29 ultimate consumer of the product, with receipts for the  
30 payment thereof being delivered to the commissioner as  
31 evidence of payment being made. If said ultimate  
32 consumer is not known, the penalty assessed shall be  
33 paid to the commissioner and deposited as set forth in  
34 section nine of this article.

35 (f) If any deficiency assessment has not been paid  
36 within sixty days of the notice of such assessment, then  
37 a late payment penalty of ten percent of the original  
38 penalty assessment will be added for each one hundred  
39 eighty days such assessment remains unpaid.

**§19-15A-8. Regulations.**

1 The commissioner is authorized to issue, after public  
2 hearing following due notice, and in accordance with the  
3 provisions of chapter twenty-nine-a of this code, such  
4 regulations in addition to any others mentioned else-  
5 where in the article, as he deems necessary to imple-  
6 ment the full intent and meaning of this article,  
7 including, but not limited to, minimum acceptable  
8 fineness classifications and minimum acceptable cal-  
9 cium carbonate equivalents for agricultural liming  
10 materials.

**§19-15A-9. Lime fund.**

1 All fees collected by the commissioner under the  
2 provisions of this article shall be placed in a special fund  
3 with the state treasurer to be known as the lime  
4 inspection fund and shall be expended on order of the  
5 commissioner for the administration of the program.

**§19-15A-10. Penalties.**

1 Any person violating any of the provisions of this  
2 article or the regulations issued thereunder shall be  
3 guilty of a misdemeanor, and, upon conviction thereof,  
4 shall be fined not less than two hundred nor more than  
5 three hundred dollars for the first offense and not less  
6 than three hundred nor more than one thousand dollars  
7 for each subsequent offense.

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## CHAPTER 7

(S. B. 419—By Senator Harman)

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[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to repeal article sixteen-b, chapter nineteen of the  
code of West Virginia, one thousand nine hundred

thirty-one, as amended; and to amend and reenact article sixteen-a of said chapter, relating to the "West Virginia Pesticide Control Act of 1990"; declaration of purpose; legislative finding; definitions; powers and duties of the commissioner of agriculture; registration of pesticides and fees; confidentiality of trade secrets; refusal or cancellation of registration; annual pesticide business license; financial security requirement; businesses required to keep records; restricted use pesticides; application of this article to government entities; liability; private and commercial applicator's license and certificate; registered technician certificate; renewals; exemptions; reexamination or special examinations; employee training program; reciprocal agreement; denial, suspension or revocation of license, permit or certification; civil penalty; pesticide accidents; incidents or loss; legal recourse of aggrieved persons; violations; criminal penalties; civil penalties; negotiated agreements; creation of pesticide control fund in state treasury; disposition of certain fees in the general revenue fund; issuance of subpoenas; right of commissioner to enter and inspect; enforcement of article; issuance of stop-sale, use or renewal orders; judicial review; and issuing warnings.

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

That article sixteen-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article sixteen-a, chapter nineteen of said code be amended and reenacted to read as follows:

**ARTICLE 16A. WEST VIRGINIA PESTICIDE CONTROL ACT.**

- §19-16A-1. Short title.
- §19-16A-2. Declaration of purpose; legislative finding.
- §19-16A-3. Definitions.
- §19-16A-4. Powers and duties of the commissioner.
- §19-16A-5. Registration of pesticides; fees; confidentiality of trade secrets.
- §19-16A-6. Refusal or cancellation of registration.
- §19-16A-7. Annual pesticide business license.
- §19-16A-8. Financial security requirement for licensed pesticide business.
- §19-16A-9. Records of pesticide businesses.
- §19-16A-10. Restricted use pesticides.
- §19-16A-11. Application of this article to government entities; liability.
- §19-16A-12. Private and commercial applicator's license and certificate; registered technician certificate.

- §19-16A-13. Renewals.
- §19-16A-14. Exemptions.
- §19-16A-15. Reexamination or special examinations.
- §19-16A-16. Employee training program.
- §19-16A-17. Reciprocal agreement.
- §19-16A-18. Denial, suspension or revocation of license, permit or certification; civil penalty.
- §19-16A-19. Pesticide accidents; incidents or loss.
- §19-16A-20. Legal recourse of aggrieved persons.
- §19-16A-21. Violations.
- §19-16A-22. Criminal penalties; civil penalties; negotiated agreement.
- §19-16A-23. Creation of pesticide control fund in state treasury; disposition of certain fees to general revenue fund.
- §19-16A-24. Issuance of subpoenas.
- §19-16A-25. Right of commissioner to enter and inspect; enforcement of article.
- §19-16A-26. Issuance of stop-sale; use or renewal orders; judicial review.
- §19-16A-27. Issuing warnings.

**§19-16A-1. Short title.**

- 1 This article shall be known as the "West Virginia
- 2 Pesticide Control Act of 1990".

**§19-16A-2. Declaration of purpose; legislative finding.**

- 1 The purpose of this article is to regulate and control
- 2 pesticides in the public interest, by their registration,
- 3 use and application. The Legislature finds that pesti-
- 4 cides perform a vital function in modern society because
- 5 they control insects, fungi, nematodes, rodents and other
- 6 pests which ravage and destroy our food and fiber,
- 7 which serve as vectors of disease, and which otherwise
- 8 constitute a nuisance in the environment or the home;
- 9 they control weeds which compete in the production of
- 10 foods and fiber, disrupt the supply of energy, render
- 11 highways unsafe and which otherwise are unwanted
- 12 elements in our environment; and they regulate plant
- 13 growth to enhance both the quality and quantity of our
- 14 food and fiber and to facilitate its harvest. Pesticides,
- 15 however, may be rendered ineffective, may cause injury
- 16 to man or may cause unreasonable, adverse effects on
- 17 the environment if not properly used. They may injure
- 18 man or animals either by direct poisoning or by the
- 19 gradual accumulation of pesticide residues in their
- 20 tissues. Crops or other plants may be affected by their

21 improper use. The misapplication, the drifting or  
22 washing of pesticides into streams or lakes may cause  
23 appreciable damage to aquatic life. A pesticide applied  
24 for the purpose of killing pests in a crop, which is not  
25 itself injured by the pesticide, may drift and injure other  
26 crops or nontarget organisms with which it comes in  
27 contact. Therefore, it is deemed necessary to provide for  
28 the control of pesticides.

29 Nothing in this article shall be construed as permit-  
30 ting municipalities or counties to enact laws or ordinan-  
31 ces regarding pesticide control.

### §19-16A-3. Definitions.

1 As used in this article:

2 (1) "Active ingredient" means:

3 (A) In the case of pesticides other than a plant  
4 regulator, defoliant or desiccant, an ingredient which  
5 will prevent, destroy, repel or mitigate insects, nema-  
6 todes, fungi, rodents, weeds or other pests;

7 (B) In the case of a plant regulator, an ingredient  
8 which, through physiological action, will accelerate or  
9 retard the rate of growth or rate of maturation or  
10 otherwise alter the behavior of ornamental or crop  
11 plants or the produce thereof;

12 (C) In the case of a defoliant, an ingredient which will  
13 cause the leaves or foliage to drop from a plant; and

14 (D) In the case of a desiccant, an ingredient which  
15 will artificially accelerate the drying of plant tissues.

16 (2) "Agriculture commodity" means any plant, or part  
17 thereof, or animal, or animal product, produced by a  
18 person (including farmers, ranchers, vineyardists, plant  
19 propagators, Christmas tree growers, aquaculturists,  
20 floriculturists, orchardists, foresters or other compara-  
21 ble persons) primarily for sale, consumption, propaga-  
22 tion or other use by man or animals.

23 (3) "Animal" means all vertebrate and invertebrate  
24 species, including, but not limited to, man and other  
25 mammals, birds, fish and shell fish.

26 (4) "Adulterated" means when the strength or purity  
27 of any pesticide falls below or is in excess of the  
28 professed standard or quality as expressed on labeling  
29 under which it is sold, or if any substance has been  
30 substituted wholly or in part for the article, or if any  
31 valuable constituent of the article has been wholly or in  
32 part abstracted.

33 (5) "Antidote" means the most practical immediate  
34 treatment in case of poisoning and includes first-aid  
35 treatment.

36 (6) "Certified applicator" means any person who is  
37 certified under this article to use or supervise the use  
38 of any restricted use pesticides or general use pesticides  
39 for hire.

40 (7) "Certified public applicator" means a licensed  
41 applicator who applies "restricted use pesticides or  
42 general use pesticides for hire" as an employee of a state  
43 agency, municipal corporation or other governmental  
44 agency. This term does not include employees who work  
45 only under the direct supervision of a certified public  
46 applicator.

47 (8) "Commercial applicator" means a certified appli-  
48 cator (whether or not he or she is a private applicator  
49 with respect to some uses) who uses or supervises the  
50 use of any pesticide which is classified for restricted use  
51 for any purpose or on any property other than as defined  
52 under the definition of "private applicator".

53 (9) "Commissioner" means the commissioner of agri-  
54 culture of the state of West Virginia and his or her duly  
55 authorized representatives.

56 (10) "Defoliant" means any substance or mixture of  
57 substances intended for causing the leaves of foliage to  
58 drop from a plant, with or without causing abscission.

59 (11) "Desiccant" means any substance or mixture of  
60 substances intended for artificially accelerating the  
61 drying of plant tissue.

62 (12) "Device" means any instrument or contrivance  
63 (other than a firearm) intended for trapping, destroy-



64 ing, repelling or mitigating insects or rodents or  
65 destroying, repelling or mitigating fungi, nematodes or  
66 such other pests as may be designated by the commis-  
67 sioner, but not including treated wood products or  
68 equipment used for the application of pesticides when  
69 sold separately therefrom.

70 (13) "Direct supervision" means that unless otherwise  
71 prescribed by its labeling, a pesticide shall be consi-  
72 dered to be applied under the direct supervision of a  
73 certified applicator if it is applied by a competent  
74 person acting under the verifiable instructions and  
75 control of a certified applicator who is available when  
76 needed, even though such certified applicator is not  
77 physically present at the time and place the pesticide is  
78 applied.

79 (14) "Environment" includes water, air, land and all  
80 plants and man and other animals living therein, and  
81 the interrelationships which exist among these.

82 (15) "Fumigant or fumigation" means any substance  
83 which, by itself or in combination with any other  
84 substance, emits or liberates a gas or gases, fumes or  
85 vapors, which gas or gases, fumes or vapors, when  
86 liberated and used, will destroy vermin, rodents, insects  
87 and other pests, and are usually lethal, poisonous,  
88 noxious or dangerous to human life.

89 (16) "Fungicide" means any substance or mixture of  
90 substances intended for preventing, destroying, repell-  
91 ing or mitigating any fungi or plant disease.

92 (17) "Fungus" means any nonchlorophyll-bearing  
93 thallophytes (that is, any nonchlorophyll-bearing plant  
94 of a lower order than mosses and liverworts), as, for  
95 example, rust, smut, mildew, mold, yeast, bacteria and  
96 virus, except those on or in living man or other animals  
97 and except those on or in processed food, beverages or  
98 pharmaceuticals.

99 (18) "General use pesticide" means any pesticide not  
100 designated as restricted use by the administrator,  
101 United States environmental protection agency or a  
102 state restricted use pesticide by the commissioner.

103 (19) "Herbicide" means any substance or mixture of  
104 substances intended for preventing, destroying, repell-  
105 ing or mitigating any weed.

106 (20) "Inert ingredient" means an ingredient which is  
107 not an active ingredient.

108 (21) "Ingredient statement" means a statement of the  
109 name of each active ingredient, together with the name  
110 of each and total percentage of the inert ingredients, if  
111 any, in the pesticide, and in case the pesticide contains  
112 arsenic in any form, a statement of the percentages of  
113 total and water soluble arsenic, each calculated as  
114 elemental arsenic.

115 (22) "Insect" means any of the numerous small  
116 invertebrate animals generally having the body more or  
117 less obviously segmented, for the most part belonging to  
118 the class insecta, comprising six-legged, either winged  
119 or wingless forms, as, for example, beetles, bugs, bees,  
120 flies, aphids and termites, and to other allied classes of  
121 arthropods whose members are wingless and usually  
122 have more than six legs, as, for example, spiders, mites,  
123 ticks, centipedes and wood lice.

124 (23) "Insecticide" means any substance or mixture of  
125 substances intended for preventing, destroying, repell-  
126 ing or mitigating any insects which may be present in  
127 any environment whatsoever.

128 (24) "Label" means the written, printed or graphic  
129 matter on, or attached to, the pesticide or device, or the  
130 immediate container thereof, and the outside container  
131 or wrapper of the retail package, if any there be, of the  
132 pesticide or device.

133 (25) "Labeling" means all labels and other written,  
134 printed, graphic matter or advertising:

135 (A) Upon the pesticide or device or any of its contain-  
136 ers or wrappers;

137 (B) Accompanying the pesticide or device at any time;

138 (C) To which reference is made on the label or in  
139 literature accompanying the pesticide or device, except  
140 when accurate, nonmisleading reference is made to

141 current official publications of the United States  
142 departments of agriculture or interior, the United  
143 States public health service, state experiment stations,  
144 state agricultural colleges or other similar federal  
145 institutions or official agencies of this state or other  
146 states authorized by law to conduct research in the field  
147 of pesticides; and

148 (D) Conveyed in any public media such as newspap-  
149 ers, periodicals, radio or television, relative to the  
150 offering for sale of any pesticide or device.

151 (26) "Land" means all land and water areas, including  
152 airspace and all plants, animals, structures, buildings,  
153 contrivances and machinery, appurtenant thereto or  
154 situated thereon, fixed or mobile, including any used for  
155 transportation.

156 (27) "Misbranded" means any pesticide or device if its  
157 labeling bears any statement, design or graphic repres-  
158 entation relative thereto or to its ingredients which is  
159 false or misleading in any particular; or

160 (A) If it is an imitation of or is offered for sale under  
161 the name of another pesticide;

162 (B) If its labeling bears any reference to registration  
163 under this article;

164 (C) If the labeling accompanying it does not contain  
165 directions for use which are necessary and, if complied  
166 with, adequate for the protection of the public;

167 (D) If the label does not contain a warning or caution  
168 statement which may be necessary and, if complied  
169 with, adequate to prevent injury to living man and other  
170 vertebrate animals, vegetation and useful invertebrate  
171 animals;

172 (E) If the label does not bear an ingredient statement  
173 on that part of the immediate container of the retail  
174 package which is presented or displayed under custom-  
175 ary conditions of purchase, and on the outside container  
176 or wrapper, if any, through which the ingredient  
177 statement on the immediate container cannot be clearly  
178 read;

179 (F) If any word, statement or other information  
180 required by or under authority of this article to appear  
181 on the label or labeling is not prominently placed  
182 thereon with such conspicuousness (as compared with  
183 other words, statement, designs or graphic matter in the  
184 labeling) and in such terms as to render it likely to be  
185 read and understood by the ordinary individual under  
186 customary conditions of purchase and use;

187 (G) If in the case of an insecticide, nematocide,  
188 fungicide or herbicide when used as directed or in  
189 accordance with commonly recognized practice it is  
190 injurious to living man or other vertebrate animals,  
191 except weeds to which it is applied, or to the person  
192 applying such pesticide; or

193 (H) If in the case of a plant regulator, defoliant or  
194 desiccant when used as directed it is injurious to living  
195 man or other vertebrate animals, or vegetation to which  
196 it is applied, or to the person applying such pesticide:  
197 *Provided*, That physical or physiological effects on  
198 plants or parts thereof are not deemed to be injury,  
199 when this is the purpose for which the plant regulator,  
200 defoliant or desiccant was applied, in accordance with  
201 the label claims and recommendations.

202 (28) "Name" as applied to the active ingredient shall  
203 be designated by an accepted chemical name and in  
204 addition the accepted common name, or by a common  
205 name promulgated by the commissioner. It is recom-  
206 mended that the commissioner adopt the nomenclature  
207 approved by the interdepartmental committee on pest  
208 control or the American standards committee or any  
209 national committee similarly functioning.

210 (29) "Nematode" means invertebrate animals of the  
211 phylum nemathelminthes and class nematoda, that is,  
212 unsegmented round worms with elongated, fusiform or  
213 sac like bodies covered with cuticle and inhabiting soil,  
214 water, plants or plant parts; may also be called nemas  
215 or eelworms.

216 (30) "Nematocide" means any substance or mixture of  
217 substances intended for preventing, destroying, repell-  
218 ing or mitigating nematodes.

219 (31) "Permit" means a written certificate, issued by  
220 the commissioner authorizing the use of certain res-  
221 tricted use pesticides or state restricted use pesticides.

222 (32) "Person" means any individual, partnership,  
223 association, fiduciary, corporation or any organized  
224 group of persons whether incorporated or not.

225 (33) "Pest" means any insect, rodent, nematode,  
226 fungus, weed or any other form of terrestrial or aquatic  
227 plant or animal life or virus, bacteria or other microor-  
228 ganism (except viruses, bacteria or other microorga-  
229 nisms on or in living man or other living animals) which  
230 is declared to be a pest by the commissioner.

231 (34) "Pesticide" means any substance or mixture of  
232 substances intended for preventing, destroying, repell-  
233 ing or mitigating any undesirable insects, rodents,  
234 nematodes, fungi, weeds and other forms of plant or  
235 animal life or viruses, except viruses on or in living man  
236 or other animals or which the commissioner may declare  
237 to be a pest and any substance or mixture of substances  
238 intended for use as a plant regulator, defoliant, desic-  
239 cant or herbicide.

240 (35) "Pesticide application business" means any  
241 person who owns or manages a pesticide application  
242 business which is engaged in the business of applying  
243 pesticides upon the lands of another (whether such  
244 person applies restricted use pesticides or other pesti-  
245 cides) and means each place for which the business of  
246 applying pesticides for hire is carried on, including a  
247 branch office, franchise location, suboffice or worker  
248 location of a larger business entity.

249 (36) "Pesticide business" means any person engaged  
250 in the business of distributing, applying or recommend-  
251 ing the use of a product, storing, selling or offering for  
252 sale pesticides for distribution to the user. The term does  
253 not include wood treaters not for hire or businesses  
254 exempted by rule adopted pursuant to this article.

255 (37) "Pesticide dealer" means any person who sells,  
256 wholesales, distributes, offers or exposes for sale,  
257 exchanges, barter or gives away within or into this  
258 state any restricted use pesticide.

259 (38) "Plant regulator" means any substance or mix-  
260 ture of substances, intended, through physiological  
261 action, for accelerating or retarding the rate of growth  
262 or rate of maturation or for otherwise altering the  
263 behavior of ornamental or crop plants or the produce  
264 thereof, but does not include substances to the extent  
265 that they are intended as plant nutrients, trace ele-  
266 ments, nutritional chemicals, plant inoculants or soil  
267 amendments.

268 (39) "Private applicator" means a certified applicator  
269 who uses or supervises the use of any pesticide which  
270 is classified for restricted use for purposes of producing  
271 any agricultural commodity on property owned or  
272 rented by him or her or his or her employer or if applied  
273 without compensation other than trading of personal  
274 services between producers of agricultural commodities  
275 on property of another person.

276 (40) "Registered technician" means an individual who  
277 renders services similar to those of a certified commer-  
278 cial applicator, but who has not completed all the  
279 training or time in service requirements to be eligible  
280 for examination as a commercial applicator and is  
281 limited to application of general use pesticides.  
282 However, if he or she applies restricted use pesticides,  
283 he or she may do so only under the direct supervision  
284 of a certified commercial applicator.

285 (41) "Registrant" means the person registering any  
286 pesticide pursuant to the provisions of this article.

287 (42) "Repellent" means a substance, not a fumigant,  
288 under whatever name known, which may be toxic to  
289 insects and related pests, but is generally employed  
290 because of its capacity for preventing the entrance or  
291 attack of pests.

292 (43) "Restricted use pesticide" means any pesticide  
293 classified for restricted use by the administrator, United  
294 States environmental protection agency or any pesticide  
295 declared to be state restricted by the commissioner.

296 (44) "Rodenticide" means any substance or mixture of

297 substances intended for preventing, destroying, repell-  
298 ing or mitigating any undesirable rodents or any other  
299 vertebrate animals or others which the commissioner  
300 may declare to be a pest.

301 (45) "Serious violation" means a violation of this  
302 article or rule promulgated by the commissioner where  
303 there is a substantial probability that death or serious  
304 physical harm to persons, serious harm to property or  
305 serious harm to the environment could have resulted  
306 from the violation unless the person or licensee did not  
307 or could not with the exercise of reasonable diligence  
308 know of the violation.

309 (46) "State restricted use pesticide" means any  
310 pesticide that the commissioner determines subsequent  
311 to a hearing, when used as directed or in accordance  
312 with a widespread and commonly recognized practice,  
313 requires additional restrictions for that use to prevent  
314 unreasonable adverse effects on the environment  
315 including man, land, beneficial insects, animals, crops  
316 and wildlife, other than pests.

317 (47) "Unreasonable adverse effects on the environ-  
318 ment" means any unreasonable risk to man or the  
319 environment, taking into account the economic, social  
320 and environmental costs and benefits of the use of any  
321 pesticide.

322 (48) "Weed" means any plant which grows where not  
323 wanted.

324 (49) "Wildlife" means all living things that are neither  
325 human, domesticated nor, as defined in this article,  
326 pests, including, but not limited to, mammals, birds and  
327 aquatic life.

#### **§19-16A-4. Powers and duties of the commissioner.**

1 The commissioner of agriculture has the power and  
2 duty to carry out the provisions of this article and is  
3 authorized to:

4 (1) Delegate to employees of the department of  
5 agriculture the authority vested in the commissioner by  
6 virtue of the provisions of this article.

7 (2) Cooperate, receive grants in aid and enter into  
8 agreements with any other agency of the state, the  
9 United States department of agriculture, United States  
10 environmental protection agency or any other federal  
11 agency or any other state or agency thereof for the  
12 purpose of carrying out the provisions of this article.

13 (3) Contract for research projects.

14 (4) Require that pesticides used in this state are  
15 adequately tested and are safe for use under local  
16 conditions.

17 (5) Require that individuals who sell, store, dispose or  
18 apply pesticides are adequately trained and observe  
19 appropriate safety practices.

20 (6) Promulgate rules pursuant to chapter twenty-  
21 nine-a of this code, including, but not limited to, the  
22 following:

23 (A) Licensing of businesses that sell, store, recom-  
24 mend for use, mix or apply pesticides;

25 (B) Registration of pesticides for manufacture, distri-  
26 bution, sale, storage or use in this state;

27 (C) Requiring reporting and recordkeeping related to  
28 licensing and registration;

29 (D) Establishing training, testing and standards for  
30 certification of commercial application, public applica-  
31 tion, registered technician and private applicator;

32 (E) Revoking, suspending or denying licenses, regis-  
33 tration and certification or certificate or permits;

34 (F) Creating advisory committees made up of both  
35 pesticide industry representatives and consumers as  
36 deemed necessary to implement this article;

37 (G) Establishing a fee structure for licenses, registra-  
38 tion and certificate to defray the costs of implementing  
39 this article;

40 (H) Classifying or subclassifying certificate or certif-  
41 icates to be issued under this article. Such classification  
42 may include, but not be limited to, agricultural, forest,



- 43 ornamental, aquatic, right-of-way, industrial, institu-  
44 tional, structural or health-related pest control;
- 45 (I) Restricting or prohibiting the sale or use and  
46 disposal of any pesticide, pesticide container or residue  
47 which is extremely hazardous;
- 48 (J) Coordinating and supporting pesticide monitoring  
49 programs;
- 50 (K) Developing a program for registration of persons  
51 with health sensitivity to pesticide drift;
- 52 (L) Establishing guidelines and requirements, as  
53 deemed necessary, for licensees, certificate holders and  
54 permittees for the identification of pests and their  
55 methods of inspection of property to determine the  
56 presence of pests;
- 57 (M) Establishing procedures for reporting spills,  
58 accidents or incidents; and
- 59 (N) Such other rules necessary or convenient to carry  
60 out the purpose of this article.
- 61 (7) Design and conduct an appropriate educational  
62 program on the use of pesticides and the necessity for  
63 care when applying the same.

**§19-16A-5. Registration of pesticides; fees; confidentiality  
of trade secrets.**

- 1 (a) Every pesticide which is manufactured, distrib-  
2 uted, sold or offered for sale, used or offered for use  
3 within this state, or delivered for transportation or  
4 transported in intrastate commerce or between points  
5 within this state through any point outside this state  
6 shall be registered in the office of the commissioner, and  
7 such registration shall be renewed annually. The  
8 commissioner may register and permit the sale and use  
9 of any pesticide which has been registered under the  
10 provisions of 7 U.S.C. § 136 *et seq.*, as the same is in  
11 effect on the effective date of this article: *Provided*, That  
12 such pesticides are subject to registration fees and all  
13 other provisions of this article.
- 14 (b) Products which have the same formula, and are

15 manufactured by the same person, the labeling of which  
16 contain the same claims and which have designation  
17 identifying the products as the same pesticide may be  
18 registered as a single pesticide without an additional  
19 fee.

20 (c) Within the discretion of the commissioner or his  
21 or her authorized representative, a change in labeling  
22 or formulas of a pesticide may be made within the  
23 current period of registration, without requiring a new  
24 registration of the product. The period of registration  
25 shall be for one year, commencing on the first day of  
26 January and ending on the thirty-first day of December  
27 of each year.

28 (d) The registrant shall file with the commissioner a  
29 statement including:

30 (1) The name and address of the registrant and the  
31 name and address of the person whose name will appear  
32 on the label, if other than the registrant;

33 (2) The name of the pesticide;

34 (3) A complete copy of the labeling accompanying the  
35 pesticide and a statement of all claims to be made for  
36 it including directions for use; and

37 (4) If requested by the commissioner, a full descrip-  
38 tion of the tests made and the results thereof upon which  
39 the claims are based and the analytical method or  
40 methods employed in determining the percentage of  
41 each active ingredient listed on the label to be regis-  
42 tered. In the case of renewal of registration, a statement  
43 is required only with respect to information which is  
44 different from that furnished when the pesticide was  
45 registered or last registered.

46 (e) The registrant shall pay an annual fee as pres-  
47 cribed by rules promulgated hereunder for each brand  
48 and grade of pesticide. The fees shall be deposited in the  
49 state treasury and to the credit of a special fund to be  
50 used only for carrying out the provisions of this article,  
51 and shall be expended upon order of the commissioner  
52 of agriculture, pursuant to section twenty-three of this  
53 article.

54 (f) The commissioner may require the submission of  
55 the complete formula of any pesticide. If it appears to  
56 the commissioner that the composition of the item is  
57 such as to warrant the proposed claims for it and if the  
58 item and its labeling and other material required to be  
59 submitted to comply with the requirements of this  
60 article, he or she shall register the item.

61 (g) If it does not appear to the commissioner that the  
62 item is such as to warrant the proposed claims for it or  
63 if the item and its labeling and other material required  
64 to be submitted do not comply with the provisions of this  
65 article, he or she shall notify the registrant of the  
66 manner in which the item, labeling or other material  
67 required to be submitted fails to comply with this article  
68 so as to afford the registrant an opportunity to make the  
69 necessary corrections.

70 (h) The commissioner may not make public, informa-  
71 tion which, in his or her judgment, contains or relates  
72 to trade secrets, commercial or financial information  
73 obtained from a person and privileged or confidential,  
74 except that, when necessary to carry out the provisions  
75 of this article, information relating to formulas of  
76 products acquired by authorization of this article may  
77 be revealed to any federal, state or local agency  
78 consultant and may be revealed at a public hearing or  
79 in findings of fact issued by the commissioner when it  
80 is in the public's best interest.

81 (i) The commissioner shall provide the necessary  
82 forms to register pesticides.

#### §19-16A-6. Refusal or cancellation of registration.

1 The commissioner may refuse or cancel the registra-  
2 tion of a pesticide if he or she finds, after a hearing, that  
3 use of the pesticide has demonstrated unreasonable  
4 adverse effects on the environment; or, a false or  
5 misleading statement about the pesticide has been made  
6 or implied by the registrant or the registrant's agent,  
7 in writing, verbally or through any form of advertising  
8 or literature or the registrant has not complied or the  
9 pesticide does not comply with the requirements of this  
10 article or any rule adopted pursuant to this article.

**§19-16A-7. Annual pesticide business license.**

1 (a) No person may engage in the application of  
2 pesticides for hire at any time without a pesticide  
3 application business license issued by the commissioner.  
4 The commissioner shall require an annual fee for each  
5 pesticide application business license issued as pres-  
6 cribed by rules promulgated hereunder.

7 (b) Application for a pesticide application business  
8 license shall be made in writing to the commissioner on  
9 forms approved or supplied by the commissioner. Each  
10 application for a license shall contain information  
11 regarding the applicant's qualifications and proposed  
12 operations, license classification or classifications the  
13 applicant is applying for and shall include the following:

14 (1) The full name of the person applying for the  
15 license;

16 (2) If different from subdivision (1) of this section, the  
17 full name of the individual qualifying under subsection  
18 (c) of this section;

19 (3) If the applicant is a person other than an individ-  
20 ual, the full name of each member of the firm or  
21 partnership, or the names of the officers of the associ-  
22 ation, corporation or group;

23 (4) The principal business address of the applicant in  
24 the state and elsewhere;

25 (5) The address of each branch office or suboffice  
26 from which the business of applying pesticides is carried  
27 on. Each suboffice shall be licensed;

28 (6) The name and address of each certified commer-  
29 cial applicator applying pesticides or supervising the  
30 application of pesticides for the pesticide application  
31 business;

32 (7) State tax number; and

33 (8) Any other necessary information prescribed by the  
34 commissioner.

35 (c) The commissioner may not issue a pesticide  
36 application business license until the owner, manager,

37 partner or corporate officer is qualified by passing an  
38 examination to demonstrate to the commissioner his or  
39 her knowledge of the state and federal pesticide laws,  
40 safe use and storage of pesticides. The pesticide  
41 application business shall be limited to the classification  
42 or classifications for which the business maintains  
43 certified commercial applicators in their employ.

44 (d) If the commissioner finds the applicant qualified  
45 to apply pesticides in the classifications the applicant  
46 has applied for, and if the applicant files the financial  
47 security required by this article, and if the applicant  
48 applying for a license to engage in aerial application of  
49 pesticides has met all the requirements of the federal  
50 aviation agency, the aeronautics commission of this  
51 state, and any other applicable federal or state laws or  
52 regulations to operate the equipment described in the  
53 application, the commissioner shall issue a pesticide  
54 application business license. The license so issued  
55 expires at the end of the calendar year of issue, unless  
56 it has been revoked or suspended prior thereto by the  
57 commissioner for cause. When the financial security  
58 required under this article is dated to expire at an  
59 earlier date, the license shall be dated to expire upon  
60 expiration date of said financial security. The commis-  
61 sioner may limit the license of the applicant to certain  
62 classifications of pest control work, or to certain areas  
63 or to certain types of equipment or to certain specific  
64 pesticides, if the applicant is only so qualified. If a  
65 license is not issued as applied for, the commissioner  
66 shall inform the applicant in writing of the reasons  
67 therefor.

68 (e) All persons applying pesticides as a pesticide  
69 business, whether or not they are applying restricted use  
70 pesticides, must be a certified applicator in the appropri-  
71 ate category or subcategory, or must be a registered  
72 technician under the direct supervision of a certified  
73 commercial applicator.

74 (f) All funds collected pursuant to this section shall be  
75 deposited in the general revenue fund of the state,  
76 pursuant to section twenty-three of this article.

**§19-16A-8. Financial security requirement for licensed pesticide business.**

1 (a) The commissioner may not issue a pesticide  
2 application business license until the business has  
3 furnished evidence of financial security with the  
4 commissioner consisting of either:

5 (1) A surety bond to the benefit of the state of West  
6 Virginia; or

7 (2) A liability insurance policy from a person autho-  
8 rized to do business within this state or a certificate  
9 thereof protecting persons who may suffer legal dam-  
10 ages as a result of the operation of licensee's business  
11 operation.

12 (b)(1) The commissioner, taking into consideration the  
13 different classifications or categories of pesticide  
14 application business licenses, shall establish the amount  
15 and kind of financial security for property damage and  
16 public liability and including loss or damage arising out  
17 of the actual use of any pesticide for each classification  
18 of license required. The financial security shall be  
19 maintained at not less than that sum at all times during  
20 the license period. The commissioner shall be notified  
21 forty-five days prior to any reduction at the request of  
22 the applicant or cancellation of such surety bond or  
23 liability insurance by the surety or insurer. The total  
24 and aggregate liability of the surety or insurer for all  
25 claims is limited to the face of the bond or liability  
26 insurance policy. The commissioner may accept a  
27 liability insurance policy or surety bond in the proper  
28 sum which has a deductible clause in the amount not  
29 exceeding that which the commissioner shall establish  
30 separately for aerial applicators and for other commer-  
31 cial applicators for the total amount of financial security  
32 required herein. If the applicant has not satisfied the  
33 requirement of the deductible amount in any prior legal  
34 claim, the deductible clause may not be accepted by the  
35 commissioner unless the applicant furnishes the com-  
36 missioner with a surety bond or liability insurance  
37 which satisfies the amount of the deductible as to all  
38 claims that may arise in his or her application of  
39 pesticides.

40 (2) If the surety furnished becomes unsatisfactory, the  
41 applicant shall, upon notice, immediately establish new  
42 evidence of financial security and if he or she fails to  
43 do so, it is unlawful thereafter for such person to engage  
44 in said business of applying pesticides until the financial  
45 security is brought into compliance with the require-  
46 ments as established by the commissioner and the  
47 person's license is reinstated.

48 (c) Nothing in this article may be construed to relieve  
49 any person from liability for any damage to the person  
50 or lands of another caused by the use of pesticides even  
51 though the use conforms to the rules of the commis-  
52 sioner.

#### **§19-16A-9. Records of pesticide businesses.**

1 As a condition of obtaining or renewing a license, each  
2 pesticide business shall maintain such records as  
3 required by the rules promulgated hereunder. The  
4 commissioner may require a licensed pesticide business  
5 to submit records to his or her office and failure to  
6 submit requested records is grounds for revocation of a  
7 license.

#### **§19-16A-10. Restricted use pesticides.**

1 No person may use any pesticide classified for  
2 restricted use unless that person has first complied with  
3 the certification requirements of the rules promulgated  
4 pursuant to this article, unless such person is acting  
5 under the direct supervision of a certified applicator.

#### **§19-16A-11. Application of this article to government entities; liability.**

1 All state agencies, municipal corporations or any  
2 other governmental agency are subject to the provisions  
3 of this article and rules adopted thereunder concerning  
4 the registration or application of pesticides.

5 These agencies are exempt from any fees prescribed  
6 by this article.

7 The governmental agencies and municipal corpora-

8 tions are subject to legal recourse by any person  
9 damaged by the application of any pesticide, and the  
10 action may be brought in the county where the damage  
11 or some part thereof occurred.

**§19-16A-12. Private and commercial applicator's license  
and certificate; registered technician  
certificate.**

1 (a) Application for a private or commercial applica-  
2 tor's license shall be made in writing to the commis-  
3 sioner on forms approved or supplied by the commis-  
4 sioner. Each application shall contain:

5 (1) The full name of the person applying for the  
6 license;

7 (2) The principal business address of the applicant;

8 (3) A listing of agricultural commodities produced or  
9 to be produced by the applicant applying for a private  
10 applicator's license;

11 (4) Any other necessary information prescribed by the  
12 commissioner; and

13 (5) Payment of required fees.

14 (b) The commissioner may renew any applicant's  
15 license under each classification for which such appli-  
16 cant is licensed. However, the applicant may, at no  
17 greater than three-year intervals, be required to present  
18 evidence or documentation indicating he or she has  
19 attended a workshop or training session approved by the  
20 commissioner.

21 (c) No private applicator may use any restricted use  
22 pesticide which is restricted to use by certified applica-  
23 tors without having first complied with the certification  
24 requirements determined by the commissioner as  
25 necessary to prevent unreasonable adverse effects on the  
26 environment, including injury to the applicator or other  
27 persons, for that specific pesticide use.

28 (d) As a minimum requirement for certification, a  
29 private or commercial applicator must show that he or  
30 she possesses a practical knowledge of the pest problems



31 and pest control practices associated with his or her  
32 agricultural operations, proper storage, use, handling  
33 and disposal of the pesticides and containers and his or  
34 her related legal responsibility. This practical knowl-  
35 edge includes ability to:

36 (1) Recognize common pests to be controlled and  
37 damage caused by them;

38 (2) Read and understand the label and labeling  
39 information including the common name of pesticides he  
40 or she uses; the crop, animal or site to which they will  
41 be applied; pests to be controlled; timing and methods  
42 of application; safety precautions; any preharvest or  
43 reentry restrictions; and any specified disposal  
44 procedures;

45 (3) Apply pesticides in accordance with label instruc-  
46 tions and warnings, including the ability to prepare the  
47 proper concentration of pesticide to be used under  
48 particular circumstances, taking into account such  
49 factors as area to be covered, speed at which application  
50 equipment will be driven, and the quantity dispersed in  
51 a given period of operation;

52 (4) Recognize local environmental situations that  
53 must be considered during application to avoid contam-  
54 ination; and

55 (5) Recognize poisoning symptoms and procedures to  
56 follow in case of a pesticide accident.

57 (e) If the commissioner does not certify the private or  
58 commercial application under this section, he or she  
59 shall inform the applicant in writing of the reasons  
60 therefor.

61 (f) Any written examinations required of private or  
62 commercial applicators may not be more stringent than  
63 the requirements for such examinations by the United  
64 States environmental protection agency.

### §19-16A-13. Renewals.

1 Any person holding a current valid license, permit or  
2 certification may renew such license, permit or certifi-  
3 cation for the next year without taking another exam-

4 ination, unless the license, permit or certification is not  
5 renewed by the first day of April of any year in which  
6 case such licensee, permittee or certificate holder shall  
7 be required to take another examination: *Provided*, That  
8 no person holding an expired license, permit or certi-  
9 fication may engage in any activity for which such  
10 license, permit or certification is required until such  
11 license, permit or certification has been renewed. Any  
12 person renewing after the fifteenth day of January of  
13 each year shall pay a penalty of twenty-five percent of  
14 the established license, permit or certificate fee. A  
15 penalty of fifty percent of the established fee shall be  
16 levied after the first day of February of each year.  
17 Persons delinquent after the first day of February shall  
18 be so notified.

#### §19-16A-14. Exemptions.

1 (a) *Veterinarian exemption.*—The provisions of  
2 section seven of this article relating to licenses and  
3 requirements for their issuance do not apply to a doctor  
4 of veterinary medicine applying pesticides to animals  
5 during the normal course of his or her veterinary  
6 practice: *Provided*, That he or she is not regularly  
7 engaged in the business of applying pesticides for hire  
8 amounting to a principal or regular occupation and does  
9 not publicly hold himself or herself out as a pesticide  
10 applicator.

11 (b) *Farmer exemption.*—The provisions of section  
12 seven of this article relating to licenses and require-  
13 ments for their issuance do not apply to any farmer  
14 applying pesticides for himself or herself or with ground  
15 equipment or manually for his or her farmer neighbors:  
16 *Provided*, That he or she:

17 (1) Operated farm property and operates and main-  
18 tains pesticide application equipment primarily for his  
19 or her own use;

20 (2) Is not regularly engaged in the business of  
21 applying pesticides for hire amounting to a principal or  
22 regular occupation and that he or she does not publicly  
23 hold himself or herself out as a pesticide applicator; and

24 (3) Operates his or her pesticide application equip-  
25 ment only in the vicinity of his or her own property and  
26 for the accommodation of his or her neighbors.

27 (c) *Experimental research exemption.*—The provisions  
28 of section seven of this article relating to licenses and  
29 requirements for their issuance do not apply to research  
30 personnel applying pesticides only to bona fide exper-  
31 imental plots.

**§19-16A-15. Reexamination or special examinations.**

1 Any applicator, whose certificate has been suspended,  
2 revoked or modified or if significant technological  
3 developments have occurred requiring additional  
4 knowledge related to the classification or subclassifica-  
5 tion for which the applicator has applied, or when  
6 required by additional standards established by the  
7 United States environmental protection agency, or when  
8 required by rules of the commissioner, is required to be  
9 reexamined or to take special examinations and furnish  
10 satisfactory evidence of completion of educational  
11 courses, programs or seminars approved by rules  
12 relating to applicator's certification.

**§19-16A-16. Employee training program.**

1 A licensee shall register with the commissioner any  
2 employee who performs pest control within thirty days  
3 after employment. The employee must have successfully  
4 completed training approved by the department. An  
5 employee who has not successfully completed training  
6 may only apply pesticides if a certified applicator is  
7 physically present at the time and place the pesticide is  
8 applied. The commissioner shall adopt rules that  
9 establish the criteria for approved training programs  
10 for such registered technicians.

**§19-16A-17. Reciprocal agreement.**

1 The commissioner may waive all or part of any license  
2 examination requirement provided for in this article on  
3 a reciprocal basis with any other state which has  
4 standards at least equal to those of West Virginia and  
5 with federal agencies whose employees are certified  
6 under a government agency plan approved by the

7 administrator of the federal environmental protection  
8 agency and may issue a license to the applicant:  
9 *Provided*, That all other requirements of this article are  
10 complied with by the applicant.

**§19-16A-18. Denial, suspension or revocation of license, permit or certification; civil penalty.**

1 The commissioner shall notify any licensee of viola-  
2 tions of this article by the licensee, and after inquiry,  
3 including opportunity for a hearing, may deny, suspend,  
4 revoke or modify any provision of any license, permit or  
5 certification issued under this article, or he or she may  
6 impose a civil penalty as provided hereafter by this  
7 article, if he or she finds that the applicant or the holder  
8 of a license, permit or certification has violated any  
9 provision of the act or any rule promulgated hereunder.

**§19-16A-19. Pesticide accidents; incidents or loss.**

1 (a) Any person claiming damages for a pesticide  
2 application shall file with the commissioner, on a form  
3 provided by the commissioner, a written statement  
4 claiming that he or she has been damaged. This report  
5 must be filed within sixty days after the date that  
6 damages occurred. If a growing crop is alleged to have  
7 been damaged, the report must be filed prior to the time  
8 that twenty-five percent of the crop has been harvested.  
9 The statement shall contain, but not be limited to, the  
10 name of the person allegedly responsible for the  
11 application of said pesticide, the name of the owner or  
12 lessee of the land on which the crop is grown and for  
13 which damage is alleged to have occurred and the date  
14 on which the alleged damage occurred. The commis-  
15 sioner shall, upon receipt of the statement, notify the  
16 licensee and the owner or lessee of the land or other  
17 person who may be charged with the responsibility of  
18 the damages claimed and furnish copies of statements  
19 as requested. The commissioner shall inspect damages  
20 whenever possible and when he or she determines that  
21 the complaint has sufficient merit he or she shall make  
22 the information available to the person claiming damage  
23 and to the person who is alleged to have caused the  
24 damage.

25 (b) The filing of the report or the failure to file a  
26 report need not be alleged in any complaint which is  
27 filed in a court of law, and the failure to file the report  
28 may not be considered a bar to the maintenance of any  
29 criminal or civil action.

30 (c) The failure to file a report is not a violation of the  
31 provisions of this article. However, if the person failing  
32 to file a report is the only one injured from such use or  
33 application of a pesticide by others, the commissioner  
34 may, when in the public interest, refuse to hold a  
35 hearing for the denial, suspension or revocation of a  
36 license or permit issued under this article until a report  
37 is filed.

38 (d) Where damage is alleged to have occurred, the  
39 claimant shall permit the commissioner, the licensee  
40 and his or her representative, such as bondsman or  
41 insurer, to observe within reasonable hours the lands or  
42 nontarget organism alleged to have been damaged in  
43 order that the damage may be examined. Failure of the  
44 claimant to permit the observation and examination of  
45 the damaged lands automatically bars the claim against  
46 the licensee.

#### **§19-16A-20. Legal recourse of aggrieved persons.**

1 Any person aggrieved by any action of the commis-  
2 sioner may obtain a review thereof by filing in a court  
3 of competent jurisdiction, within thirty days of notice of  
4 the action, a written petition praying that the action of  
5 the commissioner be set aside. A copy of such petition  
6 shall forthwith be delivered to the commissioner and  
7 within thirty days thereafter the commissioner shall  
8 certify and file in the court a transcript of any record  
9 pertaining thereto, including a transcript of evidence  
10 received, whereupon the court has jurisdiction to affirm,  
11 set aside or modify the action of the commissioner,  
12 except that the findings of the commissioner as to the  
13 facts, if supported by substantial evidence, are conclu-  
14 sive.

#### **§19-16A-21. Violations.**

1 It is unlawful for any person to manufacture, distrib-  
2 ute, sell or offer for sale, use or offer to use:

3 (1) *Product registration.*—(A) Any pesticide which is  
4 not registered pursuant to the provisions of this article,  
5 or any pesticide if any of the claims made for it or any  
6 of the directions for its use differ in substance from the  
7 representation made in connection with its registration,  
8 or if the composition of a pesticide differs from its  
9 composition as represented in connection with its  
10 registration, in the discretion of the commissioner, a  
11 change in the labeling or formula of a pesticide may be  
12 made, within a registration period, without requiring  
13 registration of the product, however, changes are not  
14 permissible if they lower the efficiency of the product.

15 (B) Any pesticide sold, offered for sale or offered for  
16 use which is not in the registrant's or the manufacturer's  
17 unbroken container and to which there is not affixed a  
18 label, visible to the public, bearing the following  
19 information:

20 (i) The name and address of the manufacturer,  
21 registrant or person for whom manufactured;

22 (ii) The name, brand or trademark under which the  
23 pesticide is sold; and

24 (iii) The net weight or measure of the content, subject  
25 to such reasonable variation as the commissioner may  
26 permit.

27 (C) Any pesticide which contains any substance or  
28 substances in quantities highly toxic to man, unless the  
29 label bears, in addition to any other matter required by  
30 this article:

31 (i) A skull and crossbones;

32 (ii) The word "poison" prominently in red, on a  
33 background of distinctly contrasting color; and

34 (iii) A statement of an antidote for the pesticide.

35 (D) The pesticides commonly known as lead arsenate,  
36 basic lead arsenate, calcium arsenate, magnesium  
37 arsenate, zinc arsenate, sodium fluoride, sodium fluosil-  
38 icate and barium fluosilicate unless they have been  
39 distinctly colored or discolored as provided by rules

40 issued in accordance with this article, or any other white  
41 powder pesticide which the commissioner, after inves-  
42 tigation of and after public hearing on the necessity for  
43 such action for the protection of the public health and  
44 the feasibility of coloration or discoloration, by rules,  
45 requires to be distinctly colored or discolored, unless it  
46 has been so colored or discolored. The commissioner may  
47 exempt any pesticide to the extent that it is intended for  
48 a particular use or uses from the coloring or discoloring  
49 required or authorized by this subsection if he or she  
50 determines that such coloring or discoloring for such use  
51 or uses is not necessary for the protection of the public  
52 health.

53 (E) Any pesticide which is adulterated or mis-  
54 branded, or any device which is misbranded.

55 (F) Any pesticide that is the subject of a stop-sale, use  
56 or removal order provided for hereinafter in this article  
57 until such time as the provisions of that section hereafter  
58 have been met.

59 (2) *Business/applicator violations.*—In addition to  
60 imposing civil penalties or referring certain violations  
61 for criminal prosecution the commissioner may, after  
62 providing an opportunity for a hearing, deny, suspend,  
63 modify or revoke a license issued under this article, if  
64 he or she finds that the applicant, or licensee or his or  
65 her employee has committed any of the following acts,  
66 each of which is declared to be a violation:

67 (A) Made false or fraudulent claims through any  
68 media, misrepresenting the effect of materials or  
69 methods to be utilized or sold;

70 (B) Used or caused to be used any pesticide in a  
71 manner inconsistent with its labeling or rules of the  
72 commissioner: *Provided*, That such deviation may  
73 include provisions set forth in section 2(ee) of the federal  
74 insecticide, fungicide and rodenticide act (7 U.S.C. § 136  
75 *et seq.*), as the same is in effect on the effective date of  
76 this article, disposed of containers or unused portions of  
77 pesticide inconsistent with label directions or the rules  
78 of the commissioner in the absence of label directions  
79 if those rules further restrict such disposal;

- 80 (C) Acted in a manner to exhibit negligence, incom-  
81 petence or misconduct in acting as a pesticide business;
- 82 (D) Made false or fraudulent records, invoices or  
83 reports;
- 84 (E) Failed or refused to submit records required by  
85 the commissioner;
- 86 (F) Used fraud or misrepresentation, or presented  
87 false information in making application for a license or  
88 renewal of a license, or in selling or offering to sell  
89 pesticides;
- 90 (G) Stored or disposed of containers or pesticides by  
91 means other than those prescribed on the label or  
92 adopted rules;
- 93 (H) Provided or made available any restricted use  
94 pesticide to any person not certified under the provisions  
95 of this article or rules issued hereunder;
- 96 (I) Made application of any pesticide in a negligent  
97 manner;
- 98 (J) Neglected or, after notice, refused to comply with  
99 the provisions of this article, the rules adopted he-  
100 reunder or of any lawful order of the commissioner;
- 101 (K) Refused or neglected to keep and maintain  
102 records or reports required under the provisions of this  
103 article or required pursuant to rules adopted under the  
104 provisions of this article or refused to furnish or permit  
105 access for copying by the commissioner any such records  
106 or reports;
- 107 (L) Used or caused to be used any pesticide classified  
108 for restricted use on any property unless by or under  
109 the direct supervision of a certified applicator;
- 110 (M) Made false or misleading statements during or  
111 after an inspection concerning any infestation of pests  
112 found on land;
- 113 (N) Refused or neglected to comply with any limita-  
114 tions or restrictions on or in a duly issued certification;



115 (O) Aided, abetted or conspired with any person to  
116 violate the provisions of this article, or permitted one's  
117 certification or registration to be used by another  
118 person;

119 (P) Impersonated any federal, state, county or city  
120 inspector or official;

121 (Q) Made any statement, declaration or representa-  
122 tion through any media implying that any person  
123 certified or registered under the provisions of this  
124 article is recommended or endorsed by any agency of  
125 this state;

126 (R) Disposed of containers or unused portions of  
127 pesticide inconsistent with label directions or the rules  
128 of the commissioner in the absence of label directions  
129 if those rules further restrict such disposal;

130 (S) Detach, alter, deface or destroy, in whole or in  
131 part, any label or labeling provided for in this article  
132 or the rules promulgated under the provisions of this  
133 article; or

134 (T) Refuse, upon a request in writing specifying the  
135 nature or kind of pesticide or device to which such  
136 request relates, to furnish to or permit any person  
137 designated by the commissioner to have access to and  
138 to copy such records of business transactions as may be  
139 essential in carrying out the purposes of this article.

**§19-16A-22. Criminal penalties; civil penalties; negotiated agreement.**

1 (a) *Criminal penalties.*—Any person violating any  
2 provision of this article or rule adopted hereunder is  
3 guilty of a misdemeanor, and, upon conviction thereof,  
4 shall be fined not less than one hundred dollars nor more  
5 than five hundred dollars for the first offense, and for  
6 the second offense, shall be fined not less than five  
7 hundred nor more than one thousand dollars, or  
8 imprisoned in the county jail not more than six months,  
9 or both fined and imprisoned. Magistrates have concur-  
10 rent jurisdiction with circuit courts to enforce the  
11 provisions of this article.

12 (b) *Civil penalties.*—(1) Any person violating a provi-  
13 sion of this article or rule adopted hereunder may be  
14 assessed a civil penalty by the commissioner. In  
15 determining the amount of any civil penalty, the  
16 commissioner shall give due consideration to the history  
17 of previous violations of any person, the seriousness of  
18 the violation, including any irreparable harm to the  
19 environment and any hazards to the health and safety  
20 of the public and the demonstrated good faith of any  
21 person charged in attempting to achieve compliance  
22 with this article after written notification of the  
23 violation.

24 (2) The commissioner may assess a penalty of not  
25 more than five hundred dollars for each first offense,  
26 nonserious violation, and not more than one thousand  
27 dollars for a serious violation, or for a repeat or  
28 intentional violation.

29 (3) The civil penalty is payable to the state of West  
30 Virginia and is collectible in any manner now or  
31 hereafter provided for collection of debt. If any person  
32 liable to pay the civil penalty neglects or refuses to pay  
33 the same, the amount of the civil penalty, together with  
34 interest at ten percent, is a lien in favor of the state of  
35 West Virginia upon the property, both real and per-  
36 sonal, of such a person after the same has been entered  
37 and docketed to record in the county where such  
38 property is situated. The clerk of the county, upon  
39 receipt of the certified copy of such, shall enter same to  
40 record without requiring the payment of costs as a  
41 condition precedent to recording.

42 (c) Notwithstanding any other provision of law to the  
43 contrary, the commissioner may promulgate and adopt  
44 rules which permit consent agreements or negotiated  
45 settlements for the civil penalties assessed as a result of  
46 violation of the provisions of this article.

47 (d) No state court may allow the recovery of damages  
48 for administrative action taken if the court finds that  
49 there was probable cause for such action.

**§19-16A-23. Creation of pesticide control fund in state  
treasury; disposition of certain fees to  
general revenue fund.**

1       There is hereby created a special fund in the state  
2 treasury to be known as "pesticide control fund" and  
3 may be expended on order of the commissioner. All  
4 product registration fees, nondedicated fees or civil  
5 penalties collected hereunder shall be placed in the  
6 pesticide control fund. The proceeds of the pesticide  
7 control fund may be used in carrying out the purpose  
8 of this article. Dealer, commercial and private applica-  
9 tor license fees and pesticide application business license  
10 fees shall be deposited in the general revenue fund of  
11 the state.

**§19-16A-24. Issuance of subpoenas.**

1       The commissioner may issue subpoenas to compel the  
2 attendance of the witnesses or production of books,  
3 documents and records anywhere in the state in any  
4 hearing affecting the authority or privilege granted by  
5 a license, certification or permit issued under the  
6 provisions of this article.

**§19-16A-25. Right of commissioner to enter and inspect;  
enforcement of article.**

1       (a) For the purpose of carrying out the provisions of  
2 this article, the commissioner may enter upon any  
3 public or private premises, other than a dwelling house  
4 and the curtilage thereof, at reasonable times, after  
5 reasonable notification to the owner, tenant or agent, in  
6 order to:

7       (1) Have access for the purpose of inspecting any  
8 equipment subject to this article and such premises on  
9 which such equipment is kept or stored;

10       (2) Inspect lands actually or reported to be exposed to  
11 pesticides;

12       (3) Inspect storage or disposal areas;

13       (4) Inspect or investigate complaints of injury to  
14 humans or land; or

15       (5) Sample pesticides being applied or to be applied.

16       (b) If the commissioner is denied access to any land

17 where such access was sought for the purpose set forth  
18 in this article, he or she may apply to any court of  
19 competent jurisdiction for a search warrant authorizing  
20 access to such land for said purposes. The court may,  
21 upon such application, issue the search warrant for the  
22 purposes requested.

23 (c) The commissioner, with or without the aid and  
24 advice of the county prosecuting attorney, is charged  
25 with the duty of enforcing the requirements of this  
26 article and any rules issued hereunder. In the event a  
27 county prosecuting attorney refuses to act on behalf of  
28 the commissioner, the attorney general shall so act.

29 (d) The commissioner may bring an action to enjoin  
30 the violation or threatened violation of any provisions of  
31 this article or any rule made pursuant to this article in  
32 a court of competent jurisdiction of the county in which  
33 such violation occurs or is about to occur.

**§19-16A-26. Issuance of stop-sale; use or renewal orders;  
judicial review.**

1 The commissioner shall issue and enforce a written or  
2 printed "stop-sale, use or renewal" order directed to the  
3 owner or custodian of any lot of pesticide, requiring him  
4 or her to hold the lot of pesticide at a designated place,  
5 when the commissioner finds the pesticide is being  
6 offered or exposed for sale or use or is being used in  
7 violation of any of the provisions of this article, until the  
8 law has been complied with and the pesticide is released  
9 in writing by the commissioner, or the violation has been  
10 otherwise legally disposed of by written authority. The  
11 owner or custodian of such pesticide has the right to  
12 judicial review of such order in accordance with the  
13 provisions of article five, chapter twenty-nine-a of this  
14 code. The provisions of this section may not be construed  
15 as limiting the right of the commissioner to proceed as  
16 authorized by other provisions of this chapter. The  
17 commissioner shall release the pesticide so withdrawn  
18 when the requirements of the provisions of this chapter  
19 have been complied with and upon payment of all costs  
20 and expenses incurred in connection with the withdra-  
21 wal.

**§19-16A-27. Issuing warnings.**

1 Nothing in this article requires the commissioner to  
2 report, for the institution of proceedings under this  
3 article, minor violations of this article whenever the  
4 commissioner believes that the public interest will be  
5 adequately served by a suitable written notice or  
6 warning to the person violating the provisions of this  
7 article.

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## CHAPTER 8

(Com. Sub. for H. B. 2813—By Mr. Speaker, Mr. Chambers)

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[Passed March 9, 1990: in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections five, eight and nine, article twenty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to air pollution control; eliminating the requirement that state controls be no more stringent than federal controls; allowing the air pollution control commission to establish permit and operating fees to be applied to paying salaries and expenses of the commission; increasing civil penalties and providing criminal penalties for violations of the article; requiring the attorney general to bring actions on behalf of the commission; and authorizing the director of the air pollution control commission to seek injunctive relief for violations.

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

That sections five, eight and nine, article twenty, 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 20. AIR POLLUTION CONTROL.**

§16-20-5. Air pollution control commission—Powers and duties; legal services; rules; public hearings.

§16-20-8. Penalties; recovery and disposition; duties of prosecuting attorneys.

§16-20-9. Applications for injunctive relief.

**§16-20-5. Air pollution control commission—Powers and duties; legal services; rules; public hearings.**

1 The commission is hereby authorized and empowered:

2 (1) To develop ways and means for the regulation and  
3 control of pollution of the air of the state;

4 (2) To advise, consult and cooperate with other  
5 agencies of the state, political subdivisions of the state,  
6 other states, agencies of the federal government,  
7 industries, and with affected groups in furtherance of  
8 the declared purposes of this article;

9 (3) To encourage and conduct such studies and  
10 research relating to air pollution and its control and  
11 abatement as the commission may deem advisable and  
12 necessary;

13 (4) To promulgate legislative rules in accordance with  
14 the provisions of chapter twenty-nine-a of this code not  
15 inconsistent with the provisions of this article, relating  
16 to the control of air pollution: *Provided*, That no rule of  
17 the commission shall specify a particular manufacturer  
18 of equipment nor a single specific type of construction  
19 nor a particular method of compliance except as  
20 specifically required by the "Federal Clean Air Act," as  
21 amended, nor shall any such rule apply to any aspect  
22 of an employer-employee relationship: *Provided, how-*  
23 *ever*, That no rule or program of the commission shall  
24 be any more stringent than any federal rule or program  
25 except to the limited extent that the commission first  
26 makes a specific written finding for any such departure  
27 that there exists scientifically supportable evidence for  
28 such rule or program reflecting factors unique to West  
29 Virginia or some area thereof;

30 (5) To enter orders requiring compliance with the  
31 provisions of this article and the rules lawfully promul-  
32 gated hereunder;

33 (6) To consider complaints, subpoena witnesses,  
34 administer oaths, make investigations and hold hearings  
35 relevant to the promulgation of rules and the entry of  
36 compliance orders hereunder;

37 (7) To encourage voluntary cooperation by municipal-

38 ities, counties, industries and others in preserving the  
39 purity of the air within the state;

40 (8) To employ personnel, including specialists and  
41 consultants, purchase materials and supplies, and enter  
42 into contracts necessary, incident or convenient to the  
43 accomplishment of the purpose of this article;

44 (9) To enter and inspect any property, premise or  
45 place on or at which a source of air pollutants is located  
46 or is being constructed, installed or established at any  
47 reasonable time for the purpose of ascertaining the state  
48 of compliance with this article and rules in force  
49 pursuant thereto. No person shall refuse entry or access  
50 to any authorized representative of the commission who  
51 requests entry for purposes of inspection, and who  
52 presents appropriate credentials; nor shall any person  
53 obstruct, hamper or interfere with any such inspection:  
54 *Provided*, That nothing contained in this article shall be  
55 construed to allow a search of a private dwelling,  
56 including the curtilage thereof, without a proper  
57 warrant;

58 (10) Upon reasonable evidence of a violation of this  
59 article, which presents an imminent and serious hazard  
60 to public health, to give notice to the public or to that  
61 portion of the public which is in danger by any and all  
62 appropriate means;

63 (11) To cooperate with, receive and expend money  
64 from the federal government and other sources;

65 (12) To represent the state in any and all matters  
66 pertaining to plans, procedures and negotiations for  
67 interstate compacts in relation to the control of air  
68 pollution;

69 (13) To appoint advisory councils from such areas of  
70 the state as it may determine. Each such council so  
71 appointed shall consist of not more than five members  
72 appointed from the general public, for each area so  
73 designated. Such members shall possess some knowl-  
74 edge and interest in matters pertaining to the regula-  
75 tion, control and abatement of air pollution. The council  
76 may advise and consult with the commission about all

77 matters pertaining to the regulation, control and  
78 abatement of air pollution within such area;

79 (14) To require any and all persons who are directly  
80 or indirectly discharging air pollutants into the air to  
81 file with the commission such information as the  
82 director may require in a form or manner prescribed  
83 by him for such purpose, including, but not limited to,  
84 location, size and height of discharge outlets, processes  
85 employed, fuels used and the nature and time periods  
86 of duration of discharges. Such information shall be  
87 filed with the director, when and in such reasonable  
88 time, and in such manner as the director may prescribe;

89 (15) To require the owner or operator of any station-  
90 ary source discharging air pollutants to install such  
91 monitoring equipment or devices as the director may  
92 prescribe and to submit periodic reports on the nature  
93 and amount of such discharges to the commission;

94 (16) To do all things necessary and convenient to  
95 prepare and submit a plan or plans for the implemen-  
96 tation, maintenance and enforcement of the "Federal  
97 Clean Air Act," as amended: *Provided*, That in prepar-  
98 ing and submitting each such plan the commission shall  
99 establish in such plan that such standard shall be first  
100 achieved, maintained and enforced by limiting and  
101 controlling emissions of pollutants from commercial and  
102 industrial sources and locations and shall only provide  
103 in such plans for limiting and controlling emissions of  
104 pollutants from private dwellings and the curtilage  
105 thereof as a last resort: *Provided, however*, That nothing  
106 herein contained shall be construed to affect plans for  
107 achievement, maintenance and enforcement of motor  
108 vehicle emission standards and of standards for fuels  
109 used in dwellings;

110 (17) Whenever the commission achieves informally,  
111 by letter, or otherwise, an agreement with any person  
112 that said person will cease and desist in any act  
113 resulting in the discharge of pollutants or do any act to  
114 reduce or eliminate such discharge, such agreement  
115 shall be embodied in a consent order and entered as, and  
116 shall have the same effect as, an order entered after a  
117 hearing as provided in section six of this article; and



118 (18) To establish by rule, permit and operating fees  
119 and penalties for nonpayment thereof. Such fees shall be  
120 deposited in a special fund in the state treasury  
121 designated "Air Pollution Control Commission Fund," to  
122 be appropriated as provided by law for the purpose of  
123 paying salaries and expenses of the commission. Any  
124 balance remaining in the fund at the end of any fiscal  
125 year shall not revert to the treasury but shall remain  
126 in the fund and may be appropriated and used as  
127 provided above in the ensuing fiscal years.

128 The attorney general and his assistants and the  
129 prosecuting attorneys of the several counties shall  
130 render to the commission without additional compensa-  
131 tion such legal services as the commission may require  
132 of them to enforce the provisions of this article.

133 No rule of the commission pertaining to the control,  
134 reduction or abatement of air pollution shall become  
135 effective until after at least one public hearing thereon  
136 shall have been held by the commission within the state.  
137 Notice to the public of the time and place of any such  
138 hearing shall be given by the commission at least thirty  
139 days prior to the scheduled date of such hearing by  
140 advertisement published as a Class II legal advertise-  
141 ment in compliance with the provisions of article three,  
142 chapter fifty-nine of this code, and the publication area  
143 for such publication shall be in at least one county in  
144 each affected air quality control region defined by the  
145 commission. A copy of any proposed rule of the commis-  
146 sion shall be filed in the office of the secretary of state  
147 at least sixty days prior to the scheduled date of any  
148 such hearing. Full opportunity to be heard shall be  
149 accorded to all persons in attendance and any person,  
150 whether or not in attendance at such hearing, may  
151 submit in writing his views with respect to any such  
152 rule to the commission within thirty days after such  
153 hearing. After such thirty-day period, no views or  
154 comments shall be received in writing or otherwise,  
155 unless formally solicited by the commission. The  
156 proceedings at the hearing before the commission shall  
157 be recorded by mechanical means or otherwise as may  
158 be prescribed by the commission. Such record of  
159 proceedings need not be transcribed unless requested by

160 an interested party in which event the prevailing rates  
161 for such transcripts will be required from such inter-  
162 ested party.

**§16-20-8. Penalties; recovery and disposition; duties of prosecuting attorneys.**

1 (a) Any person who violates any provision of this  
2 article, any permit or any rule or order issued pursuant  
3 to this article shall be subject to a civil penalty not to  
4 exceed ten thousand dollars for each day of such  
5 violation, which penalty shall be recovered in a civil  
6 action brought by the commission in the name of the  
7 state of West Virginia in the circuit court of any county  
8 wherein such person resides or is engaged in the activity  
9 complained of or in the circuit court of Kanawha  
10 County. The amount of the penalty shall be fixed by the  
11 court without a jury: *Provided*, That any such person  
12 shall not be subject to such civil penalties unless such  
13 person shall have first failed to correct such violation  
14 after being given written notice thereof by the director  
15 and within such time as is specified in the notice of  
16 violation issued by the director, such time period to  
17 begin upon receipt of said notice. The amount of any  
18 such penalty collected by the commission shall be  
19 deposited in the general revenue of the state treasury,  
20 according to law.

21 (b) (1) Any person who knowingly misrepresents any  
22 material fact in an application, record, report, plan or  
23 other document filed or required to be maintained under  
24 the provisions of this article or any rules promulgated  
25 by the commission thereunder is guilty of a misdemea-  
26 nor, and, upon conviction thereof, shall be fined not  
27 more than twenty-five thousand dollars or imprisoned in  
28 the county jail not more than six months or both fined  
29 and imprisoned.

30 (2) Any person who knowingly violates any provision  
31 of this article, any permit or any rule or order issued  
32 pursuant to this article is guilty of a misdemeanor, and,  
33 upon conviction thereof, shall be fined not more than  
34 twenty-five thousand dollars or imprisoned in the county  
35 jail not more than one year or both fined and impris-  
36 soned.

37 (c) Upon a request in writing from the commission,  
38 it shall be the duty of the attorney general and the  
39 prosecuting attorney of the county in which any such  
40 action for penalties accruing under this section or  
41 section nine of this article may be brought to institute  
42 and prosecute all such actions on behalf of the  
43 commission.

44 (d) For the purpose of this section, violations on  
45 separate days shall be considered separate offenses.

### §16-20-9. Applications for injunctive relief.

1 The director may seek an injunction against any  
2 person in violation of any provision of this article or any  
3 permit, rule or order issued pursuant to this article. In  
4 seeking an injunction, it is not necessary for the director  
5 to post bond nor to allege or prove at any stage of the  
6 proceeding that irreparable damage will occur if the  
7 injunction is not issued or that the remedy at law is  
8 inadequate. An application for injunctive relief brought  
9 under this section or for civil penalty brought under  
10 section eight of this article may be filed and relief  
11 granted notwithstanding the fact that all administrative  
12 remedies provided in this article have not been ex-  
13 hausted or invoked against the person or persons against  
14 whom such relief is sought.

15 In any action brought pursuant to the provisions of  
16 section eight or of this section, the state, or any agency  
17 of the state which prevails, may be awarded costs and  
18 reasonable attorney's fees.

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## CHAPTER 9

(Com. Sub. for S. B. 337—By Senators Burdette, Mr. President, and Harman,  
By Request of the Executive)

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[Passed February 27, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section nine-a, article fifteen,  
chapter eleven of the code of West Virginia, one

thousand nine hundred thirty-one, as amended; to amend chapter sixty of said code by adding thereto a new article, designated article three-a; and to amend and reenact section eleven, article seven of said chapter sixty, all relating to taxation and state control of alcoholic liquor; relating to exceptions to consumers sales tax exemptions for private clubs purchasing alcoholic liquor; declaring that the retail sale of liquor should be made through private retail licensees licensed by the state; providing a short title; providing legislative findings and declarations and a legislative purpose; specifying that the sale of liquor by retail licensees shall be lawful; relating to the discontinuing of retail liquor sales by the state; defining terms; creating the retail liquor licensing board; relating to members, qualifications, terms, meetings, officers, compensation, vacancies, quorum and costs of operation; enumerating powers and duties of board; relating to general powers and duties of board and alcohol beverage control commissioner; authorizing market zones and designated areas within such market zones and Class A and Class B retail licenses with respect thereto; relating to the number of Class A and Class B retail licenses and retail outlets in each market zone; establishing application requirements for retail licenses and identifying retail licensee qualifications and disqualifications; granting broad investigative powers; prohibiting judicial review of a decision denying an application after hearing; establishing notice and bidding procedures and bonding requirements; relating to payment of bid price; providing a preference for resident bidders; providing for annual retail license fees and annual renewal of retail licenses; providing that each retail license shall expire on the thirtieth day of June in the year two thousand, prior to which time new retail licenses shall be issued by following the bidding and other procedures specified; providing for annual reports to the joint committee on government and finance; requiring approval for the sale, assignment or transfer of retail licenses; relating to surrender of retail licenses; providing certain restrictions on the location of retail outlets and days and hours when liquor may be sold by retail licensees;

relating to wholesale prices of liquor; relating to maximum wholesale markup percentage for three years; requiring all liquor, other than wine and fortified wine, sold by retail licensees to be purchased from alcohol beverage control commissioner; requiring all liquor, other than wine and fortified wine, sold by private clubs to be purchased from retail licensees; relating to the transportation and storage of liquor; limiting amount of liquor which may be sold to any person at one time; relating to sales of nonintoxicating beer; imposing tax on sales of liquor by retail licensees; requiring posting of informational sign; relating to records and inspection thereof; prohibiting certain acts by persons other than retail licensees; prohibiting certain acts by persons and retail licensees; authorizing the imposition and collection of civil penalties; relating to the suspension or revocation of a retail license; relating to notice, hearing and appeal procedures; specifying that the state administrative procedures act shall be applicable; relating to the disposition of inventory in the event of the revocation or surrender of a retail license; providing that state agencies shall assist terminated employees; providing criminal offenses and penalties; providing rules of construction and a severability clause; relating to the sales tax on sales of liquor to retail licensees; and relating to the drunk driving prevention fund.

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

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

## **Chapter**

### **11. Taxation.**

### **60. State Control of Alcoholic Liquors.**

## **CHAPTER 11. TAXATION.**

### **ARTICLE 15. CONSUMERS SALES TAX.**

**§11-15-9a. Exemptions; exceptions for sales of liquors and wines to private clubs.**

1 The exemptions provided in this article for sales of  
 2 tangible personal property and services rendered for use  
 3 or consumption in connection with the conduct of the  
 4 business of selling tangible personal property to  
 5 consumers or dispensing a service subject to the tax  
 6 under this article and, for sales of tangible personal  
 7 property for the purpose of resale in the form of tangible  
 8 personal property, shall not apply to persons or organ-  
 9 izations licensed under authority of article seven,  
 10 chapter sixty of this code, for the purchase of liquor or  
 11 wines for resale either from the alcohol beverage control  
 12 commissioner or from retail liquor licensees licensed  
 13 under authority of article three-a, chapter sixty of this  
 14 code.

**CHAPTER 60. STATE CONTROL OF  
 ALCOHOLIC LIQUORS.**

**Article**

- 3A. Sales by Retail Liquor Licensees.**  
**7. Licenses to Private Clubs.**

**ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.**

- §60-3A-1. Short title.  
 §60-3A-2. Legislative findings and declarations; legislative purpose.  
 §60-3A-3. Sale of liquor by retail licensees permitted; cessation of retail sale of liquor by state.  
 §60-3A-4. Definitions.  
 §60-3A-5. Creation of retail liquor licensing board; members, terms, meetings and officers; general provisions.  
 §60-3A-6. General powers and duties of board and commissioner.  
 §60-3A-7. Market zones; Class A and Class B retail licenses.  
 §60-3A-8. Retail license application requirements; retail licensee qualifications.  
 §60-3A-9. Investigation of applicants for retail license; notification to applicants approving or denying application; general provisions relating to licensing.  
 §60-3A-10. Bidding procedure.  
 §60-3A-10a. Preference for resident bidders.  
 §60-3A-11. Bonding requirements.  
 §60-3A-12. Annual retail license fee; expiration and renewal of retail licenses.  
 §60-3A-13. Annual reports.  
 §60-3A-14. Sale, assignment or transfer of retail license.  
 §60-3A-15. Surrender of retail license.

- §60-3A-16. Restriction on location of retail outlets.
- §60-3A-17. Wholesale prices set by commissioner; continuation of price increases on liquor; retail licensees to purchase liquor from state; transportation and storage; method of payment.
- §60-3A-18. Days and hours retail licensees may sell liquor.
- §60-3A-19. Limitation on amount to be sold.
- §60-3A-20. Nonapplication of article to retail sales of nonintoxicating beer.
- §60-3A-21. Tax on purchases of liquor.
- §60-3A-22. Requirement for posting informational sign.
- §60-3A-23. Records required of retail licensees; inspection of records.
- §60-3A-24. Unlawful acts by persons.
- §60-3A-25. Certain acts of retail licensees prohibited; criminal penalties.
- §60-3A-26. Civil penalties.
- §60-3A-27. Suspension or revocation of retail license.
- §60-3A-28. Notice of and hearing on revocation.
- §60-3A-29. Disposition of inventory upon revocation or surrender of retail license.
- §60-3A-30. Employees.
- §60-3A-31. Rules of construction; severability.

**§60-3A-1. Short title.**

- 1 This article shall be known and may be cited as the  
2 "State Retail Liquor License Act".

**§60-3A-2. Legislative findings and declarations; legislative purpose.**

- 1 (a) The Legislature hereby finds and declares that the  
2 sale of liquor at retail should no longer be by the state,  
3 but rather by retail licensees; that there is a need for  
4 the state to control the wholesale sales of liquor; that the  
5 health and welfare of the citizens of this state will be  
6 adequately protected by the licensing and control of  
7 such retail licensees; that the sale of liquor through  
8 retail licensees will satisfy reasonable consumer con-  
9 cerns of availability and price; and that the operation  
10 and efficiency of state government will be improved by  
11 removing the state from the retail sale of liquor and  
12 permitting sales of liquor by retail licensees under  
13 licenses issued by the state together with strict enforce-  
14 ment of laws and rules relating to the sale of liquor.

- 15 (b) It is the purpose of the Legislature in providing  
16 for the retail sale of liquor to:

- 17 (1) Continue revenue to the state from the wholesale  
18 sale of liquor, by requiring all retail licensees to

19 purchase all liquor (other than wine) from the commis-  
20 sioner and by further requiring all private clubs  
21 licensed under the provisions of article seven of this  
22 chapter to purchase all liquor (other than wine) from  
23 retail licensees;

24 (2) Provide a system of controls, through limitations  
25 on the numbers of retail outlets and application of the  
26 police power of the state, to discourage the intemperate  
27 use of liquor;

28 (3) Preserve and continue the tax base of counties and  
29 municipalities derived from the retail sale of liquor; and

30 (4) Obtain for the state financial gain from the  
31 issuance of retail licenses.

**§60-3A-3. Sale of liquor by retail licensees permitted;  
cessation of retail sale of liquor by state.**

1 (a) Notwithstanding any provision of this code to the  
2 contrary, the sale of liquor by retail licensees in  
3 accordance with the provisions of this article shall be  
4 lawful.

5 (b) Upon the opening of a retail outlet in any market  
6 zone, the state shall, as soon as practicable, discontinue  
7 operating any and all state liquor stores and agency  
8 stores within such market zone so long as a retail outlet  
9 is in operation in such market zone.

**§60-3A-4. Definitions.**

1 For the purpose of this article:

2 "Applicant" means any person who bids for a retail  
3 license, or who seeks the commissioner's approval to  
4 purchase or otherwise acquire a retail license from a  
5 retail licensee, in accordance with the provisions of this  
6 article;

7 "Application" means the form prescribed by the  
8 commissioner which must be filed with the commis-  
9 sioner by any person bidding for a retail license;

10 "Board" means the retail liquor licensing board  
11 created by this article;



12 "Class A retail license" means a retail license  
13 permitting the retail sale of liquor at more than one  
14 retail outlet;

15 "Class B retail license" means a retail license permit-  
16 ting the sale of liquor at only one retail outlet;

17 "Code" means the code of West Virginia, one thousand  
18 nine hundred thirty-one, as amended;

19 "Designated areas" means one or more geographic  
20 areas within a market zone designated as such by the  
21 board;

22 "Executive officer" means the president of an appli-  
23 cant or retail licensee, any vice president of an applicant  
24 or retail licensee in charge of a principal business unit  
25 or division, or any other officer of an applicant or retail  
26 licensee who performs a policy-making function;

27 "Liquor" means alcoholic liquor as defined in section  
28 five, article one of this chapter, and shall also include  
29 both wine and fortified wines as those terms are defined  
30 in section two, article eight of this chapter;

31 "Market zone" means a geographic area designated as  
32 such by the board for the purpose of issuing retail  
33 licenses;

34 "Retail license" means a license issued under the  
35 provisions of this article permitting the sale of liquor at  
36 retail;

37 "Retail licensee" means the holder of a retail license;  
38 and

39 "Retail outlet" means a specific location where liquor  
40 may be lawfully sold by a retail licensee under the  
41 provisions of this article.

**§60-3A-5. Creation of retail liquor licensing board;  
members, terms, meetings and officers;  
general provisions.**

1 (a) There is hereby created the state retail liquor  
2 licensing board which shall be composed of five  
3 members, three of whom shall be appointed by the  
4 governor by and with the advice and consent of the

5 Senate, one of whom shall be the secretary of tax and  
6 revenue, and one of whom shall be the commissioner.  
7 The secretary of tax and revenue and the commissioner  
8 shall serve as the chairman and secretary, respectively,  
9 of the board. No more than two of the three members  
10 appointed by the governor shall be of the same political  
11 party. No member of the board may hold a retail license  
12 or have any financial interest, directly or indirectly, in  
13 any retail licensee.

14 (b) The provisions of this subsection apply to the three  
15 members appointed by the governor. They shall be  
16 appointed for overlapping terms of three years each and  
17 until their respective successors have been appointed  
18 and have qualified, except for the original appoint-  
19 ments. For the purpose of original appointments, one  
20 member shall be appointed for a term of three years and  
21 until his or her successor has been appointed and has  
22 qualified, one member shall be appointed for a term of  
23 two years and until his or her successor has been  
24 appointed and has qualified, and one member shall be  
25 appointed for a term of one year and until his or her  
26 successor has been appointed and has qualified.  
27 Members may be reappointed for any number of terms.  
28 Before entering upon the performance of his or her  
29 duties, each member shall take and subscribe to the oath  
30 required by Section 5, Article IV of the constitution of  
31 this state. Vacancies shall be filled by appointment by  
32 the governor for the unexpired term of the member  
33 whose office shall be vacant and such appointment shall  
34 be made within sixty days of the occurrence of such  
35 vacancy. Any member may be removed by the governor  
36 in case of incompetency, neglect of duty, gross immor-  
37 ality or malfeasance in office. Members shall receive  
38 compensation of one hundred dollars per day for each  
39 day actually engaged in the performance of their duties  
40 as board members, and in addition shall be reimbursed  
41 for all reasonable and necessary expenses actually  
42 incurred in the performance of their duties.

43 (c) A majority of the members of the board constitutes  
44 a quorum and meetings shall be held at the call of the  
45 chairman.

46 (d) Staff, office facilities and costs of operation of the  
47 board shall be provided by the commissioner.

**§60-3A-6. General powers and duties of board and commissioner.**

1 (a) The board shall create, based on economic and  
2 demographic factors, market zones within the state for  
3 the issuance of Class A and Class B retail licenses, and,  
4 if deemed necessary or desirable by the board, to create  
5 one or more designated areas within such market zones  
6 for the issuance of Class B retail licenses.

7 (b) The commissioner shall:

8 (1) Prescribe application forms for persons desiring to  
9 acquire retail licenses and adopt an orderly procedure  
10 and timetable for investigating, processing and approv-  
11 ing applications;

12 (2) Develop a form of retail license to be issued to each  
13 retail licensee under the provisions of this article;

14 (3) Disseminate to the public information relating to  
15 the issuance of retail licenses;

16 (4) Promulgate standards for advertising the sale,  
17 availability, price and selection of liquor;

18 (5) Enforce the provisions of this article;

19 (6) Impose civil penalties upon retail licensees;

20 (7) Enter the retail outlet of any retail licensee at  
21 reasonable times for the purpose of inspecting the same,  
22 and determining the compliance of such retail licensee  
23 with the provisions of this article and any rules  
24 promulgated by the board or the commissioner pursuant  
25 to the provisions of this article; and

26 (8) Issue subpoenas and subpoenas duces tecum for  
27 the purpose of conducting hearings under the provisions  
28 of section twenty-six or section twenty-eight of this  
29 article, which subpoenas and subpoenas duces tecum  
30 shall be issued in the time, for the fees, and shall be  
31 enforced in the manner specified in section one, article  
32 five, chapter twenty-nine-a of this code with like effect  
33 as if such section was set forth in extenso herein.

34 (c) The board and the commissioner shall each:

35 (1) Engage accounting, legal and other necessary  
36 professional consultants to assist them in carrying out  
37 their respective duties under this article; and

38 (2) Adopt, amend, or repeal such procedural, inter-  
39 pretive and legislative rules, consistent with the policy  
40 and objectives of this article, as they may deem  
41 necessary or desirable for the public interest in carrying  
42 out the provisions of this article. Such rules shall be  
43 adopted, amended and repealed in accordance with the  
44 provisions of chapter twenty-nine-a of this code.

**§60-3A-7. Market zones; Class A and Class B retail licenses.**

1 (a) The board shall determine the number of and  
2 establish market zones for the retail sale of liquor within  
3 this state. For each market zone so established, the  
4 commissioner shall be authorized to issue one Class A  
5 retail license and one or more Class B retail licenses.  
6 Each Class A retail license shall permit the holder  
7 thereof to operate such number of retail outlets as the  
8 board shall have authorized for that market zone. The  
9 number of Class B retail licenses to be issued by the  
10 commissioner within each market zone shall not exceed  
11 fifty percent of the number of retail outlets authorized  
12 for the Class A retail license for such market zone:  
13 *Provided*, That in a market zone where the number of  
14 retail outlets authorized under the Class A retail license  
15 is an odd number, the number of Class B retail licenses  
16 which may be issued in such market zone shall be  
17 rounded up to the next highest whole number following  
18 that number which is equal to fifty percent of the  
19 number of retail outlets authorized under such Class A  
20 retail license.

21 (b) If the board determines that a market zone is not  
22 suited for the issuance of a Class A retail license, then  
23 only Class B retail licenses may be authorized for such  
24 market zone and the board shall determine the maxi-  
25 mum number of Class B retail licenses which may be  
26 issued for such market zone.

27 (c) When authorizing Class B retail licenses for a  
28 market zone, the board may create one or more  
29 designated areas within such market zone and authorize  
30 one Class B retail license for each such designated area.  
31 For each such market zone, the commissioner may issue  
32 additional Class B retail licenses for retail outlets to be  
33 located outside any such designated area, but the  
34 number of such additional Class B retail licenses, when  
35 added to the total number of Class B retail licenses  
36 issued for all designated areas within the market zone,  
37 shall not exceed the maximum number of Class B retail  
38 licenses permitted under subsection (a) of this section  
39 for that market zone.

40 (d) A person may hold one or more Class A retail  
41 licenses and one or more Class B retail licenses, but for  
42 the same market zone no person shall hold a Class A  
43 retail license and a Class B retail license or more than  
44 one Class B retail license.

**§60-3A-8. Retail license application requirements; retail licensee qualifications.**

1 (a) Prior to or simultaneously with the submission of  
2 a bid for a retail license, each applicant shall file an  
3 application with the commissioner, stating under oath  
4 the following:

5 (1) If the applicant is an individual, his or her name  
6 and residence address;

7 (2) If the applicant is a corporation, limited partner-  
8 ship, partnership or association, the name and business  
9 address of such applicant; the state of its incorporation  
10 or organization; the names and residence addresses of  
11 each executive officer and director or general partner  
12 of such entity; and the names and residence addresses  
13 of any person owning, directly or indirectly, at least  
14 twenty percent of the outstanding stock of or partner-  
15 ship interests in such applicant; and

16 (3) That the applicant has never been convicted in this  
17 state of any felony or other crime involving moral  
18 turpitude or convicted of any felony in this or any other  
19 state court or any federal court for a violation of any

20 state or federal liquor law, and if the applicant is a  
21 corporation, limited partnership, partnership or associ-  
22 ation, that none of its executive officers, directors or  
23 general partners, or any person owning, directly or  
24 indirectly, at least twenty percent of the outstanding  
25 stock of or partnership interests in such applicant, has  
26 been so convicted.

27 (b) An applicant shall provide the commissioner any  
28 such additional information as the commissioner may  
29 request.

30 (c) Whenever a change occurs in any information  
31 provided to the commissioner, such change shall  
32 immediately be reported to the commissioner in the  
33 same manner as originally provided.

34 (d) The commissioner shall disqualify each bid  
35 submitted by an applicant under section ten of this  
36 article, and no applicant shall be issued or eligible to  
37 hold a retail license under this article, if:

38 (1) The applicant has been convicted in this state of  
39 any felony or other crime involving moral turpitude or  
40 convicted of any felony in this or any other state court  
41 or any federal court for a violation of any state or federal  
42 liquor law; or

43 (2) Any executive officer, director or general partner  
44 of the applicant, or any person owning, directly or  
45 indirectly, at least twenty percent of the outstanding  
46 stock of or partnership interests in the applicant, has  
47 been convicted in this state of any felony or other crime  
48 involving moral turpitude or convicted of any felony in  
49 this or any other state court or any federal court for a  
50 violation of any state or federal liquor law.

**§60-3A-9. Investigation of applicants for retail license;  
notification to applicants approving or den-  
ying application; general provisions relating  
to licensing.**

1 (a) Upon receipt of an application for a retail license  
2 and such supplemental information as the commissioner  
3 may require, the commissioner may conduct such  
4 investigation of an applicant as deemed necessary or  
5 desirable.

6 (b) Upon the completion of any investigation of an  
7 applicant, the commissioner shall inform such applicant  
8 in writing whether the application has been approved  
9 or denied, and shall post a copy of the decision in the  
10 commissioner's office.

11 (c) When an application is denied, the commissioner  
12 shall provide the applicant the reasons for the denial,  
13 including specific findings of fact, and the applicant  
14 shall be entitled to a hearing before the commissioner  
15 if a hearing is requested within five days of the decision.  
16 Any such hearing shall be held as specified in section  
17 twenty-eight of this article, but the decision after  
18 hearing shall, notwithstanding the provisions of section  
19 twenty-eight, be final and binding and not subject to  
20 judicial review.

21 (d) An applicant shall provide all information re-  
22 quired by this article and satisfy all requests for  
23 information pertaining to qualification and in the form  
24 specified by the commissioner. By filing an application,  
25 an applicant shall waive liability for any damages  
26 resulting from any disclosure or publication in any  
27 manner of any material or information acquired during  
28 inquiries, investigations or hearings.

#### **§60-3A-10. Bidding procedure.**

1 (a) The issuance of retail licenses shall be based on  
2 sealed competitive bids in accordance with the provi-  
3 sions of this section. Bids for the issuance of retail  
4 licenses shall be obtained by public notice published as  
5 a Class II-0 legal advertisement in compliance with the  
6 provisions of article three, chapter fifty-nine of this code,  
7 and the publication area for such publication shall be  
8 each market zone within which a retail outlet shall be  
9 located. The second publication of such notice must  
10 appear more than ninety days next preceding the final  
11 day for submitting bids.

12 (b) Each bid shall indicate the market zone for which  
13 the retail license is sought, whether the bid is for a Class  
14 A retail license or Class B retail license, and, if the  
15 board has created one or more designated areas for such  
16 market zone, whether the bid is for the Class B retail

17 license to be issued for any such designated area. No bid  
18 shall be altered or withdrawn after the appointed hour  
19 for the opening of the bids. Each retail license shall be  
20 awarded to the highest bidder. In market zones where  
21 two or more Class B retail licenses are authorized (other  
22 than for a designated area or areas), such licenses shall  
23 be awarded to those persons submitting the highest bids.  
24 No bid shall be considered unless the bond required  
25 under section eleven of this article is submitted to the  
26 commissioner. All bids for a retail license may be  
27 rejected by the board if the board determines that the  
28 highest bid is inadequate, in which event the commis-  
29 sioner shall begin anew the bidding process for that  
30 retail license.

31 (c) Each person desiring to submit a bid must file the  
32 same with the commissioner prior to the specified date  
33 and hour for the bid openings. The failure to deliver or  
34 the nonreceipt of a bid prior to the appointed date and  
35 hour shall constitute sufficient reason for the rejection  
36 of a bid. After the award of the retail license, the  
37 commissioner shall indicate upon the successful bid that  
38 it was the successful bid. Thereafter, a copy of the bid  
39 and the bidder's application shall be maintained as a  
40 public record, shall be open to public inspection in the  
41 commissioner's office and shall not be destroyed without  
42 the written consent of the legislative auditor.

43 (d) Prior to the advertisement for bids for a retail  
44 license, the commissioner shall determine whether the  
45 current lessor for any existing state liquor store or  
46 stores within the applicable market zone or designated  
47 area will agree to accept the eventual Class B retail  
48 licensee as lessee for the remaining term of the lease.  
49 Should such lessor agree to accept the eventual Class B  
50 retail licensee, such retail licensee shall have the option  
51 to assume such lease. In market zones where there are  
52 two or more Class B retail licensees, the retail licensee  
53 who or which submitted the highest bid shall have the  
54 option to assume such lease and, if such retail licensee  
55 does not assume such lease, then the retail licensee who  
56 or which submitted the next highest bid for a retail



57 license in such market zone shall have the option to  
58 assume such lease.

59 (e) Prior to the issuance of the retail license to the  
60 successful bidder, the bid price and the annual retail  
61 license fee, as specified in section twelve of this article,  
62 shall be paid to the commissioner by money order,  
63 certified check or cashier's check. All retail licenses  
64 shall be signed by the commissioner in the name of the  
65 state.

66 (f) If the successful bidder fails to pay to the commis-  
67 sioner the bid price and the annual retail license fee, at  
68 the time specified by the commissioner, the bond  
69 provided for in section eleven of this article shall be  
70 forfeited and such bidder shall not be issued the retail  
71 license. The commissioner shall then issue the retail  
72 license to the next highest bidder for such retail license  
73 or reject all bids and start anew the bidding procedure  
74 for such retail license.

#### **§60-3A-10a. Preference for resident bidders.**

1 In determining the highest bidder for purposes of  
2 section ten of this article, the board shall afford a five  
3 percent preference for West Virginia resident bidders,  
4 which preference shall be computed by adding five  
5 percent of the bid price to the bid price submitted by  
6 each resident bidder. For purposes of this section a  
7 bidder shall be deemed to be a West Virginia resident  
8 if the bidder (1) has resided in this state for at least four  
9 years immediately prior to the date on which the bid is  
10 opened; or, if the bidder is a corporation, has had its  
11 headquarters or principal place of business in this state  
12 for at least four years immediately prior to such date  
13 and (2) meets the requirements set forth in section  
14 forty-four, article three, chapter five-a of this code  
15 relating to a residency of vendors, except for the  
16 requirement of having paid business and occupation  
17 taxes.

#### **§60-3A-11. Bonding requirements.**

1 Each applicant submitting a bid under section ten of  
2 this article shall furnish to the commissioner a bond at

3 the time of bidding, which bond shall guarantee the  
4 payment of twenty-five percent of the price bid for the  
5 retail license. The bond required by this section shall be  
6 furnished in cash or negotiable securities or shall be a  
7 surety bond issued by a surety company authorized to  
8 do business with the state or an irrevocable letter of  
9 credit issued by a financial institution acceptable to the  
10 commissioner. If furnished in cash or negotiable  
11 securities, the principal shall be deposited without  
12 restriction in the state treasurer's office and credited to  
13 the commissioner, but any income shall inure to the  
14 benefit of the applicant. The bond shall be returned to  
15 an applicant following the bidding if such applicant is  
16 not the successful bidder for the retail license, and, if  
17 an applicant is the successful bidder, the bond shall be  
18 released after issuance of the retail license.

**§60-3A-12. Annual retail license fee; expiration and  
renewal of retail licenses.**

1 (a) The annual retail license period shall be from the  
2 first day of July to the thirtieth day of June of the  
3 following year. The annual retail license fee for a Class  
4 A retail license shall be the sum obtained by multiplying  
5 the number of retail outlets operated by the retail  
6 licensee in the market zone to which such Class A retail  
7 license applies by one thousand five hundred dollars.  
8 The annual retail license fee for a Class B retail license  
9 shall be five hundred dollars. The annual retail license  
10 fee for the initial year of issuance shall be prorated  
11 based on the number of days remaining between the  
12 date of issuance and the following thirtieth day of June.

13 (b) All retail licenses shall expire on the thirtieth day  
14 of June of each year and may be renewed only upon the  
15 submission to the commissioner of the same information  
16 required for the issuance of the license and such  
17 additional information as may be requested by the  
18 commissioner on such forms and by such date as may  
19 be prescribed by the commissioner, together with the  
20 payment to the commissioner of the applicable annual  
21 retail license fee required under this section.

22 (c) No person may sell liquor at any retail outlet if the

23 retail license applicable to such outlet has been sus-  
24 pended or revoked, or has expired.

25 (d) All retail licenses issued or renewed under the  
26 provisions of this article shall expire and be of no  
27 further force or effect as of the first day of July, in the  
28 year two thousand, prior to which time new retail  
29 licenses shall be issued by following the bidding and  
30 other procedures set forth herein for the initial issuance  
31 of retail licenses.

**§60-3A-13. Annual reports.**

1 On or before the thirty-first day of December, one  
2 thousand nine hundred ninety, and each successive year  
3 thereafter, the commissioner shall submit to the joint  
4 committee on government and finance an annual report  
5 focused upon subjects of interest concerning retail  
6 alcohol sales and of the implementation of this article  
7 including, but not limited to, the total revenue earned  
8 by the issuance of retail licenses, the location of each  
9 retail outlet and the names of all applicants for retail  
10 franchises.

**§60-3A-14. Sale, assignment or transfer of retail license.**

1 (a) No person may purchase or otherwise acquire a  
2 retail license unless the commissioner has first approved  
3 of such person's qualifications to hold a retail license,  
4 which qualifications shall be the same as those required  
5 under section eight of this article.

6 (b) No person may sell, assign or otherwise transfer  
7 a retail license without the prior written approval of the  
8 commissioner. For purposes of this section, the merger  
9 of a retail licensee or the sale of more than fifty percent  
10 of the outstanding stock of or partnership interests in  
11 the retail licensee shall be deemed to be a sale,  
12 assignment or transfer of a retail license under this  
13 section.

**§60-3A-15. Surrender of retail license.**

1 Any retail licensee may surrender a retail license to  
2 the commissioner at any time. The commissioner shall  
3 then proceed to reissue the retail license by following the

4 bidding and other procedures set forth herein for the  
5 initial issuance of a retail license.

**§60-3A-16. Restriction on location of retail outlets.**

1 No retail outlet may be located within the immediate  
2 vicinity of a school or church: *Provided*, That the  
3 provisions of this section shall not apply to the location  
4 of a retail licensee who, on the date of the passage of  
5 this act, holds a license for the retail sale of wine,  
6 fortified wine or nonintoxicating beer at such location.

**§60-3A-17. Wholesale prices set by commissioner; continuation of price increases on liquor; retail licensees to purchase liquor from state; transportation and storage; method of payment.**

1 (a) The commissioner shall fix wholesale prices for  
2 the sale of liquor (other than wine) to retail licensees.  
3 The commissioner shall sell liquor (other than wine) to  
4 retail licensees according to a uniform pricing schedule:  
5 *Provided*, That the commissioner may also establish  
6 discount prices for the sale to retail licensees of liquor  
7 in inventory at state liquor stores and agency stores, but  
8 such discount prices shall only be available to retail  
9 licensees who accept delivery of such liquor at such  
10 stores. The commissioner shall obtain if possible, upon  
11 request, any liquor requested by a retail licensee.

12 (b) In establishing wholesale prices, the commissioner  
13 shall include all price increases heretofore mandated  
14 under article three of this chapter.

15 (c) On or before the first day of July, one thousand  
16 nine hundred ninety, the commissioner shall specify the  
17 maximum wholesale markup percentage which may be  
18 applied to the prices paid by the commissioner for all  
19 liquor (other than wine) in order to determine the prices  
20 at which all liquor (other than wine) will be sold to  
21 retail licensees during the succeeding three years.

22 (d) A retail licensee shall purchase all liquor (other  
23 than wine) for resale in this state only from the  
24 commissioner, and the provisions of sections twelve and  
25 thirteen, article six of this chapter, shall not apply to  
26 the transportation of such liquor: *Provided*, That a retail

27 licensee shall purchase wine from a distributor thereof  
28 who is duly licensed under article eight of this chapter.  
29 All liquor (other than wine) purchased by retail  
30 licensees shall be stored in the state at the retail outlet  
31 or outlets operated by the retail licensee.

32 (e) The sale of liquor by the commissioner to retail  
33 licensees shall be by money order, certified check or  
34 cashier's check only: *Provided*, That if a retail licensee  
35 posts with the commissioner an irrevocable letter of  
36 credit from a financial institution acceptable to the  
37 commissioner guaranteeing payment of checks, then the  
38 commissioner may accept the retail licensee's checks in  
39 an amount up to the amount of the letter of credit.

**§60-3A-18. Days and hours retail licensees may sell liquor.**

1 Retail licensees may not sell liquor on Sundays,  
2 Christmas or election day, or between the hours of ten  
3 o'clock p.m. and eight o'clock a.m., except that wine and  
4 fortified wines may be sold on such days and at such  
5 times as authorized in section thirty-four, article eight  
6 of this chapter.

**§60-3A-19. Limitation on amount to be sold.**

1 Not more than ten gallons of liquor may be sold by  
2 a retail licensee to a person at one time without the  
3 approval of the commissioner or his or her representa-  
4 tive, but a sale in excess of ten gallons may be made  
5 to a religious organization purchasing wine for sacra-  
6 mental purposes: *Provided*, That this section does not  
7 apply to purchases by private clubs as defined in article  
8 seven of this chapter.

**§60-3A-20. Nonapplication of article to retail sales of nonintoxicating beer.**

1 This article does not apply to retail sales of nonintox-  
2 icating beer and a retail licensee may sell nonintoxicat-  
3 ing beer for consumption off the premises of any retail  
4 outlet operated by such retail licensee if such retail  
5 licensee has obtained the appropriate license to sell the  
6 same under article sixteen, chapter eleven of this code.

**§60-3A-21. Tax on purchases of liquor.**

1 (a) For the purpose of providing financial assistance  
2 to and for the use and benefit of the various counties and  
3 municipalities of this state, there is hereby levied tax  
4 upon all purchases of liquor from retail licensees. The  
5 tax shall be five percent of the purchase price and shall  
6 be added to and collected with the purchase price by the  
7 retail licensee.

8 (b) All such tax collected within the corporate limits  
9 of a municipality in this state shall be remitted to such  
10 municipality; all such tax collected outside of but within  
11 one mile of the corporate limits of any municipality shall  
12 be remitted to such municipality; and all other tax so  
13 collected shall be remitted to the county wherein  
14 collected: *Provided*, That where the corporate limits of  
15 more than one municipality be within one mile of the  
16 place of collection of such tax, all such tax collected shall  
17 be divided equally among each of such municipalities:  
18 *Provided, however*, That such mile is measured by the  
19 most direct hard surface road or access way usually and  
20 customarily used as ingress and egress to the place of  
21 tax collection.

22 (c) The tax commissioner, by appropriate rule pro-  
23 mulgated pursuant to chapter twenty-nine-a of this code,  
24 shall provide for the collection of such tax upon all  
25 purchases from retail licensees, separation or proration  
26 of the same and distribution thereof to the respective  
27 counties and municipalities for which the same shall be  
28 collected. Such rule shall provide that all such taxes  
29 shall be deposited with the state treasurer and distrib-  
30 uted quarterly by the state treasurer upon warrants of  
31 the auditor payable to the counties and municipalities.

**§60-3A-22. Requirement for posting informational sign.**

1 Each retail licensee shall post in an open and  
2 prominent place within each retail outlet operated by  
3 such person a blood-alcohol chart in the form prescribed  
4 by section twenty-four, article six of this chapter.

**§60-3A-23. Records required of retail licensees; inspection of records.**

1 The commissioner shall by rule prescribe the records  
2 to be kept by retail licensees relating to the purchase  
3 and sale of liquor. Such records shall be open at all  
4 reasonable times to inspection by the commissioner.

**§60-3A-24. Unlawful acts by persons.**

1 (a) Any person under the age of twenty-one years who,  
2 for the purpose of purchasing liquor from a retail  
3 licensee, misrepresents his or her age, or who for such  
4 purpose presents or offers any written evidence of age  
5 which is false, fraudulent or not actually his or her own,  
6 or who illegally attempts to purchase liquor from a  
7 retail licensee, is guilty of a misdemeanor, and, upon  
8 conviction thereof, shall be fined in an amount not to  
9 exceed fifty dollars or imprisoned in the county jail for  
10 a period not to exceed seventy-two hours, or both fined  
11 and imprisoned, or, in lieu of such fine and imprison-  
12 ment, may, for the first offense, be placed on probation  
13 for a period not exceeding one year.

14 (b) Any person who knowingly buys for, gives to or  
15 furnishes to anyone under the age of twenty-one to  
16 whom he or she is not related by blood or marriage any  
17 liquor from whatever source, is guilty of a misdemeanor  
18 and shall, upon conviction thereof, be fined in an amount  
19 not to exceed one hundred dollars or imprisoned in the  
20 county jail for a period not to exceed ten days, or both  
21 fined and imprisoned.

22 (c) No person while on the premises of a retail outlet  
23 may consume liquor or break the seal on any package  
24 or bottle of liquor. Any person who violates the  
25 provisions of this subsection (c) is guilty of a misdemea-  
26 nor and shall, upon conviction thereof, be fined in an  
27 amount not to exceed one hundred dollars or imprisoned  
28 in the county jail for a period not to exceed ten days,  
29 or both fined and imprisoned.

**§60-3A-25. Certain acts of retail licensees prohibited;  
criminal penalties.**

1 (a) It is unlawful for any retail licensee, or agent or  
2 employee thereof, on such retail licensee's premises to:

3 (1) Sell or offer for sale any liquor other than from  
4 the original package or container;

5 (2) Sell, give away, or permit the sale of, gift of, or  
6 the procurement of, any liquor, for or to any person  
7 under twenty-one years of age;

8 (3) Sell, give away, or permit the sale of, gift of, or  
9 the procurement of, any liquor, for or to any person  
10 visibly intoxicated;

11 (4) Sell or offer for sale any liquor on any Sunday or  
12 other than during the hours permitted for the sale of  
13 liquor by retail licensees as provided under this article;

14 (5) Permit the consumption by any person of any  
15 liquor;

16 (6) With the intent to defraud, alter, change or  
17 misrepresent the quality, quantity or brand name of any  
18 liquor;

19 (7) Permit any person under eighteen years of age to  
20 sell, furnish or give liquor to any other person;

21 (8) Purchase or otherwise obtain liquor in any manner  
22 or from any source other than that specifically autho-  
23 rized in this article; or

24 (9) Permit any person to break the seal on any  
25 package or bottle of liquor.

26 (b) Any person who violates any provision of this  
27 article, except section twenty-four of this article,  
28 including, but not limited to, any provision of this  
29 section, or any rule promulgated by the board or the  
30 commissioner, or who makes any false statement  
31 concerning any material fact, or who omits any material  
32 fact with intent to deceive, in submitting an application  
33 for a retail license or for a renewal of a retail license  
34 or in any hearing concerning the suspension or revoca-  
35 tion thereof, or who commits any of the acts declared  
36 in this article to be unlawful, is guilty of a misdemeanor,  
37 and shall, upon conviction thereof, for each offense be  
38 fined not less than one hundred or more than five  
39 thousand dollars, or imprisoned in the county jail for not  
40 less than thirty days nor more than one year, or both



41 fined and imprisoned. Magistrates have concurrent  
42 jurisdiction with the circuit courts for offenses under  
43 this article.

44 (c) Nothing in this article, or any rule of the board  
45 or commissioner, prevents or prohibits any retail  
46 licensee from employing any person who is at least  
47 eighteen years of age to serve in any retail licensee's  
48 lawful employment at any retail outlet operated by such  
49 retail licensee, or from having such person sell or deliver  
50 liquor under the provisions of this article. With the prior  
51 approval of the commissioner, a retail licensee may  
52 employ persons at any retail outlet operated by such  
53 retail licensee who are less than eighteen years of age  
54 but at least sixteen years of age, but such persons' duties  
55 shall not include the sale or delivery of liquor: *Provided,*  
56 That the authorization to employ such persons under the  
57 age of eighteen years shall be clearly indicated on the  
58 retail license issued to any such retail licensee.

#### §60-3A-26. Civil penalties.

1 (a) Any retail licensee who violates any provision of  
2 this article or any rule promulgated by the board or  
3 commissioner may be assessed a civil penalty by the  
4 commissioner, which penalty shall not be more than one  
5 thousand dollars for each such violation. Each violation  
6 shall constitute a separate offense. In determining the  
7 amount of the penalty, the commissioner shall consider  
8 the retail licensee's history of previous violations, the  
9 appropriateness of such penalty to the size of the  
10 business of the retail licensee charged, the gravity of the  
11 violation and the demonstrated good faith of the retail  
12 licensee charged in attempting to achieve rapid com-  
13 pliance after notification of a violation.

14 (b) A civil penalty shall be assessed by the commis-  
15 sioner only after the commissioner shall have given at  
16 least ten days' notice to the retail licensee. Notice shall  
17 be in writing, shall state the reason for the proposed  
18 civil penalty and the amount thereof, and shall designate  
19 a time and place for a hearing where the retail licensee  
20 may show cause why the civil penalty should not be  
21 imposed. Notice shall be sent by certified mail to the

22 address for which the retail license was issued. The  
23 retail licensee may, at the time designated for the  
24 hearing, produce evidence in his or her behalf and be  
25 represented by counsel.

26 (c) The provisions of subsections (b), (c), (d) and (e) of  
27 section twenty-eight of this article are applicable to any  
28 such hearing and with respect to judicial review  
29 thereafter.

#### **§60-3A-27. Suspension or revocation of retail license.**

1 (a) The commissioner may, upon his or her own  
2 motion, or upon the sworn complaint of any person,  
3 conduct an investigation to determine if any provision  
4 of this article or of any rule promulgated by the board  
5 or commissioner under authority of this article has been  
6 violated by any retail licensee. The commissioner may  
7 suspend or revoke a retail license if the retail licensee  
8 or any employee thereof acting in the scope of his or her  
9 employment has violated any such provision, and may  
10 suspend a retail license without hearing for a period not  
11 to exceed twenty days if he or she finds probable cause  
12 to believe that the retail licensee or any employee  
13 thereof acting in the scope of his or her employment has  
14 willfully violated any such provision.

15 (b) The commissioner may revoke a retail license for  
16 any reason which would constitute grounds for the  
17 denial of an application filed pursuant to section eight  
18 of this article.

#### **§60-3A-28. Notice of and hearing on revocation.**

1 (a) Before a retail license issued under the authority  
2 of this article may be suspended for a period of more  
3 than twenty days, or revoked, the commissioner shall  
4 give at least ten days' notice to the retail licensee. Notice  
5 shall be in writing, shall state the reason for suspension  
6 or revocation, and shall designate a time and place for  
7 a hearing where the retail licensee may show cause why  
8 the retail license should not be suspended or revoked.  
9 Notice shall be sent by certified mail to the address for  
10 which the retail license was issued. The retail licensee  
11 may, at the time designated for the hearing, produce

12 evidence in his or her behalf and be represented by  
13 counsel.

14 (b) Such hearing and the administrative procedures  
15 prior to, during and following the same shall be  
16 governed by and in accordance with the provisions of  
17 article five, chapter twenty-nine-a of this code in like  
18 manner as if the provisions of article five were fully set  
19 forth in this section.

20 (c) Any person adversely affected by an order entered  
21 following such hearing shall have the right of judicial  
22 review thereof in accordance with the provisions of  
23 section four, article five, chapter twenty-nine-a of this  
24 code with like effect as if the provisions of said section  
25 four were fully set forth in this section.

26 (d) The judgment of a circuit court reviewing such  
27 order of the commissioner shall be final unless reversed,  
28 vacated or modified on appeal to the supreme court of  
29 appeals in accordance with the provisions of section one,  
30 article six, chapter twenty-nine-a of this code.

31 (e) Legal counsel and services for the commissioner in  
32 all such proceedings in any circuit court and the  
33 supreme court of appeals shall be provided by the  
34 attorney general or his or her assistants and in any  
35 proceedings in any circuit court by the prosecuting  
36 attorney of that county as well, all without additional  
37 compensation.

38 (f) Upon final revocation, the commissioner shall  
39 proceed to reissue the retail license by following the  
40 procedures set forth herein for the initial issuance of a  
41 retail license.

**§60-3A-29. Disposition of inventory upon revocation or  
surrender of retail license.**

1 In the event of the revocation or surrender of any  
2 retail license in accordance with the provisions of this  
3 article, the commissioner shall purchase, and the retail  
4 licensee holding such retail license shall sell to the  
5 commissioner, all of the liquor inventory of such retail  
6 licensee based on the then current cost of such inventory  
7 less any expenses incurred by the commissioner in  
8 connection with the repossession thereof.

**§60-3A-30. Employees.**

1 The department of health and human resources, the  
2 division of employment security, the public employees  
3 retirement system, the public employees insurance  
4 agency, any state agency or local community action  
5 agency receiving job training partnership act funds, and  
6 any other agency of the state involved with benefits or  
7 services to the unemployed, shall work individually with  
8 all employees whose jobs have been terminated by this  
9 chapter in order to recommend benefits, services,  
10 training, interagency employment transfer, or other  
11 employment. The alcohol beverage control commission  
12 director and directors of all other state agencies shall  
13 use best efforts to employ qualified employees who were  
14 employed at the facility immediately prior to such sale  
15 or transfer: *Provided*, That notwithstanding any other  
16 provision of the code to the contrary, in filling vacancies  
17 at other facilities or other state agencies the director and  
18 the directors of other agencies shall, for a period of  
19 twenty-four months after such transfer or sale give  
20 preference over all but existing employees to qualified  
21 employees who were permanently employed at the  
22 facility immediately prior to such transfer or sale:  
23 *Provided, however*, That qualified persons who were  
24 permanently employed at an alcohol beverage control  
25 commission facility immediately prior to such transfer  
26 or sale shall not supersede those employees with recall  
27 rights in other state agencies.

**§60-3A-31. Rules of construction; severability.**

1 (a) Nothing contained in this article shall be  
2 construed to modify the provisions of article five of this  
3 chapter relating to local option elections, except that the  
4 references to sales of liquor by the commissioner shall  
5 be deemed to refer to sales of liquor by retail licensees.

6 (b) If any section, subsection, subdivision, provision,  
7 clause or phrase of this article or the application thereof  
8 to any person or circumstance is held unconstitutional  
9 or invalid, such unconstitutionality or invalidity shall  
10 not affect other sections, subsections, subdivisions,  
11 provisions, clauses or phrases or applications of the

12 article, and to this end each and every section, subsec-  
13 tion, subdivision, provision, clause and phrase of this  
14 article is declared to be severable. The Legislature  
15 hereby declares that it would have enacted the remain-  
16 ing sections, subsections, provisions, clauses and phrases  
17 of this article even if it had known that any sections,  
18 subsections, subdivisions, provisions, clauses and  
19 phrases thereof would be declared to be unconstitutional  
20 or invalid, and that it would have enacted this article  
21 even if it had known that the application thereof to any  
22 person or circumstance would be held to be unconstitu-  
23 tional or invalid.

24 (c) The provisions of subsection (b) of this section  
25 shall be fully applicable to all future amendments or  
26 additions to this article, with like effect as if the  
27 provisions of said subsection (b) were set forth in  
28 extenso in every such amendment or addition and were  
29 reenacted as a part thereof.

30 (d) In the event of any conflict between any provision  
31 of this article and any other provision of this code, any  
32 such other provision shall be construed and applied so  
33 as to enable the board and commissioner to implement  
34 and make effective the provisions of this article.

#### ARTICLE 7. LICENSES TO PRIVATE CLUBS.

##### **§60-7-11. Licensee must purchase alcoholic liquors from or through commissioner or retail licensee; exceptions.**

1 (a) All licensees shall purchase all alcoholic liquors  
2 sold by them from the West Virginia alcohol beverage  
3 control commissioner at prices established by such  
4 commissioner for sales of such alcoholic liquors to the  
5 public generally or from any retail licensee licensed  
6 under the provisions of article three-a of this chapter,  
7 except that such licensees may purchase those wines  
8 permitted to be sold at retail pursuant to article eight  
9 of this chapter from those distributors licensed pursuant  
10 to said article at the same prices such distributors sell  
11 such wines to retailers licensed pursuant to said article.

12 (b) In all reports filed under section sixteen, article

13 fifteen, chapter eleven of this code, retail licensees  
14 licensed under the provisions of article three-a of this  
15 chapter shall separately identify the amount of sales tax  
16 on sales of liquor to licensees in such manner as the tax  
17 commissioner shall require.

18 (c) Notwithstanding the provisions of section thirty,  
19 article fifteen, chapter eleven of this code to the  
20 contrary, the amount of such sales taxes collected by the  
21 tax commissioner shall be deposited in a revolving fund  
22 account in the state treasurer's office, designated the  
23 "drunk driving prevention fund", and administered by  
24 the commission on drunk driving prevention, subject to  
25 appropriations by the Legislature.

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## CHAPTER 10

(Com. Sub. for S. B. 35—By Senators Burdette, Mr. President, and Harman,  
By Request of the Executive)

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[Passed March 14, 1990; in effect from passage. Approved by the Governor.]

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AN ACT making appropriations of public money out of the  
treasury in accordance with section fifty-one, article six  
of the constitution.

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

**Title**

- I. General provisions.
- II. Appropriations.
- III. Administration.

**TITLE I—GENERAL PROVISIONS.**

- §1. General policy.
- §2. Definitions.
- §3. Classification of appropriations.
- §4. Method of expenditure.
- §5. Maximum expenditures.

## TITLE I—GENERAL PROVISIONS.

1       **Section 1. General Policy.**—The purpose of this bill  
2 is to appropriate money necessary for the economical  
3 and efficient discharge of the duties and responsibilities  
4 of the state and its agencies during the fiscal year one  
5 thousand nine hundred ninety-one.

1       **Sec. 2. Definitions.**—For the purpose of this bill:

2       “Governor” shall mean the governor of the state of  
3 West Virginia.

4       “Code” shall mean the code of West Virginia, one  
5 thousand nine hundred thirty-one, as amended.

6       “Spending unit” shall mean the department, division,  
7 office, board, commission, agency or institution to which  
8 an appropriation is made.

9       The “fiscal year one thousand nine hundred ninety-  
10 one” shall mean the period from July first, one thousand  
11 nine hundred ninety, through June thirtieth, one  
12 thousand nine hundred ninety-one.

13       “General Revenue Fund” shall mean the general  
14 operating fund of the State and includes all moneys  
15 received or collected by the State except as provided in  
16 section two, article two, chapter twelve of the code or  
17 as otherwise provided.

18       “Special Revenue Funds” shall mean specific revenue  
19 sources which by legislative enactments are not re-  
20 quired to be accounted for as general revenue, including  
21 federal funds.

22       “From collections” shall mean that part of the total  
23 appropriation which must be collected by the spending  
24 unit to be available for expenditure. If the authorized  
25 amount of collections is not collected, the total appropri-  
26 ation for the spending unit shall be reduced automat-  
27 ically by the amount of the deficiency in the collections.  
28 If the amount collected exceeds the amount designated  
29 “from collections,” the excess shall be set aside in a  
30 special surplus fund and may be expended for the

31 purpose of the spending unit as provided by article two,  
32 chapter five-a of the code.

1     **Sec. 3. Classification of appropriations.**—An ap-  
2 propriation for:

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

9     From appropriations made to the spending units of  
10 state government, upon approval of the governor, there  
11 may be transferred to a special account an amount  
12 sufficient to match federal funds under any federal act.

13     Unless otherwise specified, appropriations for per-  
14 sonal services shall include salaries of heads of spending  
15 units.

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

19     Funds appropriated for “annual increment” shall be  
20 transferred to “personal services” or other designated  
21 items only as required.

22     “Employee benefits” shall mean social security  
23 matching, workers’ compensation, unemployment com-  
24 pensation, pension and retirement contribution, public  
25 employees insurance matching, personnel fees or any  
26 other benefit normally paid by the employer as a direct  
27 cost of employment. Should the appropriation be  
28 insufficient to cover such costs, the remainder of such  
29 cost shall be paid by each spending unit from its  
30 “personal services” line item or its “unclassified” line  
31 item. Each spending unit is hereby authorized and  
32 required to make such payments.

33     “Current expenses” shall mean operating costs other  
34 than personal services and shall not include equipment,  
35 repairs and alterations, buildings or lands.

36     Each spending unit shall be responsible for all



37 contributions, payments or other costs related to  
38 coverage and claims of its employees for unemployment  
39 compensation. Such expenditures shall be considered a  
40 current expense.

41 Each spending unit shall be responsible for and  
42 charged monthly for all postage meter service and shall  
43 reimburse the appropriate revolving fund monthly for  
44 all such amounts. Such expenditures shall be considered  
45 a current expense.

46 "Equipment" shall mean equipment items which have  
47 an appreciable and calculable period of usefulness in  
48 excess of one year.

49 "Repairs and alterations" shall mean routine mainte-  
50 nance and repairs to structures and minor improve-  
51 ments to property which do not increase the capital  
52 assets.

53 "Buildings" shall include new construction and major  
54 alteration of existing structures and the improvement of  
55 lands and shall include shelter, support, storage,  
56 protection or the improvement of a natural condition.

57 "Lands" shall mean the purchase of real property or  
58 interest in real property.

59 "Capital outlay" shall mean and include buildings,  
60 lands or buildings and lands, with such category or item  
61 of appropriation to remain in effect as provided by  
62 section twelve, article three, chapter twelve of the code.

63 Appropriations classified in any of the above catego-  
64 ries shall be expended only for the purposes as defined  
65 above and only for the spending units herein designated:  
66 *Provided*, That the secretary of each department shall  
67 have the authority to transfer within the department  
68 those funds appropriated to the various agencies of the  
69 department: *Provided, however*, That no more than  
70 twenty-five percent of the funds appropriated to any one  
71 agency or board may be transferred to other agencies  
72 or boards within the department: *Provided further*, That  
73 no funds may be transferred from a special revenue

74 account, dedicated account, capital expenditure account  
 75 or any other account or funds specifically exempted by  
 76 the Legislature from transfer, except that the use of  
 77 appropriations from the state road fund transferred to  
 78 the office of the secretary of the department of trans-  
 79 portation is not a use other than the purpose for which  
 80 such funds were dedicated and is permitted: *And*  
 81 *provided further*, That if the Legislature by subsequent  
 82 enactment consolidates agencies, boards or functions,  
 83 the secretary may transfer the funds formerly approp-  
 84 riated to such agency, board or function in order to  
 85 implement such consideration.

86 Appropriations otherwise classified shall be expended  
 87 only where the distribution of expenditures for different  
 88 purposes cannot well be determined in advance or it is  
 89 necessary or desirable to permit the spending unit the  
 90 freedom to spend an appropriation for more than one of  
 91 the above classifications.

1 **Sec. 4. Method of expenditure.**—Money approp-  
 2 riated by this bill, unless otherwise specifically directed,  
 3 shall be appropriated and expended according to the  
 4 provisions of article three, chapter twelve of the code or  
 5 according to any law detailing a procedure specifically  
 6 limiting that article.

7 Funds of the state of West Virginia not heretofore  
 8 classified as to purpose and existing within the funds of  
 9 the treasury shall be determined by the Governor and  
 10 transferred to a special account for the purpose of  
 11 expenditure as part of the general fund of the state.

1 **Sec. 5. Maximum expenditures.**—No authority or  
 2 requirement of law shall be interpreted as requiring or  
 3 permitting an expenditure in excess of the appropria-  
 4 tions set out in this bill.

## TITLE II—APPROPRIATIONS.

§1. Appropriations from general revenue.

§2. Appropriations of federal funds.

### DEPARTMENT OF ADMINISTRATION

Board of Risk and Insurance Management—Acct. No. 2250 .....	16
Commission on Uniform State Laws—Acct. No. 2450 .....	17

Department of Administration—Office of the Secretary—	
Acct. No. 5310 .....	17
Division of Finance—Acct. No. 2110 .....	15
Division of Finance and Administration—Acct. No. 2100 .....	15
Division of General Services—Acct. No. 2130 .....	16
Division of Purchasing—Acct. No. 2120 .....	16
Education and State Employees Grievance Board—Acct. No. 6015 .....	18
Ethics Commission—Acct. No. 6180 .....	19
Public Employees Insurance Agency—Acct. No. 6150 .....	18
Public Employees Retirement System—Acct. No. 6140 .....	18
Public Legal Services Council—Acct. No. 5900 .....	17
<b>DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES</b>	
Air Pollution Control Commission—Acct. No. 4760 .....	22
Board of Coal Mine Health and Safety—Acct. No. 4720 .....	21
Coal Mine Safety and Technical Review Committee—Acct. No. 4750 .....	21
Department of Commerce, Labor and Environmental Resources—	
Office of the Secretary—Acct. No. 5321 .....	23
Division of Commerce—Acct. No. 4625 .....	20
Division of Energy—Acct. No. 4775 .....	22
Division of Forestry—Acct. No. 4650 .....	20
Division of Labor—Acct. No. 4500 .....	20
Division of Natural Resources—Acct. No. 5650 .....	23
Geological and Economic Survey—Acct. No. 5200 .....	22
Interstate Commission on Potomac River Basin—Acct. No. 4730 .....	21
Office of Community and Industrial Development—Acct. No. 1210 .....	19
Ohio River Valley Water Sanitation Commission—Acct. No. 4740 .....	21
Solid Waste Disposal Authority—Acct. No. 4020 .....	19
Water Development Authority—Acct. No. 5670 .....	23
Water Resources Board—Acct. No. 5640 .....	23
<b>DEPARTMENT OF EDUCATION</b>	
State Board of Education—Vocational Division—Acct. No. 2890 .....	24
State Board of Rehabilitation—	
Division of Rehabilitation Services—Acct. No. 4405 .....	26
State Department of Education—Acct. No. 2860 .....	23
State Department of Education—	
Aid for Exceptional Children—Acct. No. 2960 .....	25
State Department of Education—	
School Lunch Program—Acct. No. 2870 .....	24
State Department of Education—	
State Aid to Schools—Acct. No. 2950 .....	25
State FFA-FHA Camp and Conference Center—Acct. No. 3360 .....	25
West Virginia Schools for the Deaf and the Blind—	
Acct. No. 3330 .....	25
<b>DEPARTMENT OF EDUCATION AND THE ARTS</b>	
Board of Directors of State College System—Acct. No. 2785 .....	26
Board of Trustees of the University System of West Virginia—	
Acct. No. 2795 .....	26
Board of Trustees of the University System of West Virginia—	
Acct. No. 2855 .....	27
Board of Trustees of the University System of West Virginia and Board of	
Directors of the State College System—Acct. No. 2800 .....	26
Department of Education and the Arts—	
Office of the Secretary—Acct. No. 5332 .....	28
Division of Culture and History—Acct. No. 3510 .....	28
Educational Broadcasting Authority—Acct. No. 2910 .....	27
Library Commission—Acct. No. 3500 .....	28
<b>DEPARTMENT OF HEALTH AND HUMAN RESOURCES</b>	
Commission on Aging—Acct. No. 4060 .....	31

Consolidated Medical Service Fund—Acct. No. 4190	31
Department of Health and Human Resources—	
Office of the Secretary—Acct. No. 5343	32
Division of Health—Central Office—Acct. No. 4000	29
Division of Human Services—Acct. No. 4050	30
Division of Veterans' Affairs—Acct. No. 4040	29
Division of Veterans' Affairs—Veterans' Home—Acct. No. 4010	29
Human Rights Commission—Acct. No. 5980	32

## DEPARTMENT OF PUBLIC SAFETY

Adjutant General—State Militia—Acct. No. 5800	34
Board of Probation and Parole—Acct. No. 3650	33
Department of Public Safety—Office of the Secretary—Acct. No. 5354	34
Division of Corrections—Central Office—Acct. No. 3680	33
Division of Corrections—Correctional Units—Acct. No. 3770	33
Division of Public Safety—Acct. No. 5700	34
Fire Commission—Acct. No. 6170	35
Office of Emergency Services and Advisory Council—	
Division of Emergency Services—Acct. No. 1300	32

## DEPARTMENT OF TAX AND REVENUE

Department of Tax and Revenue—Office of the Secretary—Acct. No. 5365	36
Division of Professional and Occupational Licenses—	
State Athletic Commission—Acct. No. 4790	36
Municipal Bond Commission—Acct. No. 1700	35
Office of Nonintoxicating Beer Commissioner—Acct. No. 4900	36
Racing Commission—Acct. No. 4950	36
Tax Division—Acct. No. 1800	35

## DEPARTMENT OF TRANSPORTATION

Department of Transportation—Office of the Secretary—Acct. No. 5376	37
Railroad Maintenance Authority—Acct. No. 5690	37

## EXECUTIVE

Attorney General—Acct. No. 2400	13
Auditor's Office—General Administration—Acct. No. 1500	12
Department of Agriculture—Acct. No. 5100	13
Department of Agriculture—Agricultural Awards—Acct. No. 5150	15
Department of Agriculture—Division of Rural Resources—Acct. No. 5130	14
Department of Agriculture—Meat Inspection—Acct. No. 5140	14
Department of Agriculture—Soil Conservation Committee—Acct. No. 5120	14
Governor's Office—Acct. No. 1200	10
Governor's Office—Civil Contingent Fund—Acct. No. 1240	11
Governor's Office—Custodial Fund—Acct. No. 1230	11
Governor's Office—Debt Service—Acct. No. 1250	11
Secretary of State—Acct. No. 2500	13
State Elections Commission—Acct. No. 2600	13
Treasurer's Office—Acct. No. 1600	12
Treasurer's Office—School Building Sinking Fund—Acct. No. 1650	12

## JUDICIAL

Supreme Court—General Judicial—Acct. No. 1110	10
---	----

## LEGISLATIVE

House of Delegates—Acct. No. 1020	7
Joint Expenses—Acct. No. 1030	9
Senate—Acct. No. 1010	6

§3. Appropriations from other funds.

§4. Appropriations of federal funds.

## PAYABLE FROM MEDICAL SCHOOL FUND

## DEPARTMENT OF EDUCATION AND THE ARTS

West Virginia University—Schools of Health Sciences—Acct. No. 9280 ..... 44

## PAYABLE FROM SPECIAL REVENUE FUND

## DEPARTMENT OF ADMINISTRATION

Division of Finance and Administration—

Information System Services Division Fund—Acct. No. 8151..... 40

Division of Personnel—Acct. No. 8401 ..... 40

## DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES

Division of Natural Resources—Acct. No. 8300 ..... 41

## DEPARTMENT OF EDUCATION

State Board of Rehabilitation—Division of

Rehabilitation Services—West Virginia

Rehabilitation Center—Special Account—Acct. No. 8137 ..... 41

## DEPARTMENT OF EDUCATION AND THE ARTS

Higher Education Central Office—State System

Registration Fee—Revenue Bond Construction

Fund—Acct. No. 8845 ..... 42

Higher Education Central Office—State System

Registration Fee—Special Capital Improvement

Fund (Capital Improvement and Bond Retirement

Fund)—Acct. No. 8835 ..... 42

Higher Education Central Office—State System

Tuition Fee—Revenue Bond Construction Fund—

Acct. No. 8860 ..... 43

Higher Education Central Office—State System

Tuition Fee—Special Capital Improvement

Fund (Capital Improvement and Bond Retirement

Fund)—Acct. No. 8855 ..... 43

## DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Board of Barbers and Beauticians—Acct. No. 8220 ..... 44

Division of Health—Hospital Services Revenue Account (Special Fund)

(Capital Improvement Renovation and Operation)—Acct. No. 8500 ..... 45

Division of Health—Vital Statistics—Acct. No. 8216-15 ..... 44

Division of Veterans' Affairs—Veterans' Home—

Acct. No. 8260-13 ..... 45

## DEPARTMENT OF PUBLIC SAFETY

Division of Public Safety—Drunk Driving Prevention Fund—

Acct. No. 8355 ..... 47

Fire Commission—Fire Marshal Fees—Acct. No. 8017 ..... 46

## DEPARTMENT OF TAX AND REVENUE

Office of Alcohol Beverage Control Commissioner—Acct. No. 9270 ..... 48

Racing Commission—Acct. No. 8080 ..... 47

Racing Commission—Administration and

Promotion—Acct. No. 8081 ..... 47

## DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles—Driver

Rehabilitation—Acct. No. 8421-11 ..... 39

Division of Motor Vehicles—Driver's License

Reinstatement Fund—Acct. No. 8421-10 ..... 48

## EXECUTIVE

Department of Agriculture—Acct. No. 8180 ..... 39

General John McCausland Memorial Farm—Acct. No. 8194 .....	39
Treasurer's Office—Abandoned and Unclaimed Property— Acct. No. 8000 .....	38
Treasurer's Office—Board of Investments—Acct. No. 8004 .....	39

## LEGISLATIVE

Crime Victims Compensation Fund—Acct. No. 8412 .....	38
--	----

## PAYABLE FROM WORKERS' COMPENSATION FUND

## DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Workers' Compensation Fund—Acct. No. 9000 .....	46
---	----

## §5. Appropriations from other funds.

## PAYABLE FROM LOTTERY NET PROFITS

Board of Trustees of the University System of West Virginia and Board of Directors of the State College System—Acct. No. 8825 .....	50
Department of Health and Human Resources—Acct. No. 9132 .....	50
Division of Commerce—Acct. No. 8546 .....	50
Division of Health—Acct. No. 8525 .....	50
State Department of Education—Acct. No. 8243 .....	49
Teachers' Retirement Board—Acct. No. 9260 .....	51

## PAYABLE FROM SPECIAL REVENUE FUND

## DEPARTMENT OF ADMINISTRATION

Division of Finance and Administration—Revolving Fund—Acct. No. 8140 .....	52
---	----

## DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES

Division of Banking—Acct. No. 8392-06 .....	56
Division of Banking—Acct. No. 8395 .....	56
Division of Energy—Oil and Gas Operating Permits— Acct. No. 8536-25 .....	58
Division of Energy—Oil and Gas Reclamation Trust—Acct. No. 8536-14 .....	57
Division of Energy—Special Reclamation Fund— Acct. No. 8536-10 .....	57
Division of Forestry—Acct. No. 8477-24 .....	57
Division of Natural Resources—Game, Fish and Aquatic Life Fund—Acct. No. 8324-06 .....	55
Division of Natural Resources—Groundwater Planning—Acct. No. 8311-10 .....	53
Division of Natural Resources—Hazardous Waste Emergency and Response Fund—Acct. No. 8311-26 .....	53
Division of Natural Resources—Leaking Underground Storage Tanks—Acct. No. 8311-34 .....	54
Division of Natural Resources—Nongame Fund— Acct. No. 8324-26 .....	55
Division of Natural Resources—Planning and Development Division—Acct. No. 8329-07 .....	55
Division of Natural Resources—Solid Waste Enforcement Fund—Acct. No. 8311-32 .....	54
Division of Natural Resources—Solid Waste Reclamation and Environmental Response Fund—Acct. No. 8311-31 .....	54
Geological and Economic Survey—Acct. No. 8589 .....	58
Office of Community and Industrial Development— Acct. No. 8046-10 .....	52
Oil and Gas Conservation Commission— Acct. No. 8096-06 .....	53
Solid Waste Management Board—Acct. No. 8460-10 .....	56
Water Resources Board—Acct. No. 8540 .....	58

## DEPARTMENT OF EDUCATION

State Department of Education—Cedar Lakes Improvement—Acct. No. 8245-12.....	59
State Department of Education—FFA-FHA Conference Center—Acct. No. 8245-07.....	59

## DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Division of Health—Health Facility Licensing—Acct. No. 8216-19.....	60
Division of Health Laboratory Services—Acct. No. 8215-18.....	59
Health Care Cost Review Authority—Acct. No. 8564.....	61
Health Care Cost Review Authority—Planning—Acct. No. 8216-18.....	60
Hospital Finance Authority—Acct. No. 8330.....	60

## DEPARTMENT OF PUBLIC SAFETY

Division of Public Safety—Barracks Construction—Acct. No. 8352.....	62
Division of Public Safety—Inspection Fees—Acct. No. 8350.....	61
Regional Jail and Prison Authority—Acct. No. 8051.....	61
State Armory Board—General Armory Fund—Acct. No. 8445-07.....	62

## DEPARTMENT OF TAX AND REVENUE

Agency of Insurance Commissioner—Acct. No. 8016.....	63
Alcohol Beverage Control Commission—Wine License Special Fund—Acct. No. 8591-06.....	63
Office of Chief Inspector—Acct. No. 8090-06.....	62

## DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles—Insurance Certificate Fees—Acct. No. 8421-09.....	66
Division of Motor Vehicles—Motorboat Licenses—Acct. No. 8421-05.....	65
Division of Motor Vehicles—Returned Check Fees—Acct. No. 8421-08.....	65

## EXECUTIVE

Attorney General—Anti-Trust Enforcement—Acct. No. 8418-10.....	51
Auditor's Office—Land Department Operating Fund—Acct. No. 8120.....	51
Department of Agriculture—West Virginia Rural Rehabilitation Program—Acct. No. 8190-13.....	51

## MISCELLANEOUS BOARDS AND COMMISSIONS

Public Service Commission—Acct. No. 8280.....	66
Public Service Commission—Consumer Advocate—Acct. No. 8295.....	68
Public Service Commission—Gas Pipeline Division—Acct. No. 8285.....	67
Public Service Commission—Motor Carrier Division—Acct. No. 8290.....	67
Real Estate Commission—Acct. No. 8010.....	66

## PAYABLE FROM STATE ROAD FUND

## DEPARTMENT OF TRANSPORTATION

Division of Highways—Acct. No. 6700 .....	63
Division of Motor Vehicles—Acct. No. 6710 .....	65

## §6. Awards for claims against the state.

## §7. Supplemental and deficiency appropriations.

Division of Human Services—Acct. No. 4050 .....	69
Treasurer's Office—Acct. No. 1600 .....	69

## §8. Appropriations from surplus revenue.

Board of Risk and Insurance Management—Acct. No. 2250 .....	70
Department of Agriculture—Soil Conservation Committee— Acct. No. 5120 .....	70
Governor's Office—Debt Service—Acct. No. 1250 .....	70
Office of Community and Industrial Development— Acct. No. 1210 .....	70
State Board of Education—Vocational Division—Acct. No. 2890 .....	70

## §9. Appropriations and reappropriations—Revenue sharing trust fund.

## §10. Appropriations from federal block grants.

## PAYABLE FROM FEDERAL FUNDS

Division of Health—Alcohol and Drug Abuse Treatment and Rehabilitation—Acct. No. 8510 .....	73
Division of Health—Alcohol, Drug Abuse and Mental Health—Acct. No. 8503 .....	72
Division of Health—Community Youth Activity Program—Acct. No. 8504 .....	72
Division of Health—Maternal and Child Health—Acct. No. 8502 .....	72
Division of Health—Mental Health Services for the Homeless— Acct. No. 8508 .....	72
Division of Health—Preventive Health—Acct. No. 8506 .....	72
Division of Human Services—Energy Assistance—Acct. No. 9147 .....	73
Division of Human Services—Social Services—Acct. No. 9161 .....	73
Office of Community and Industrial Development— Community Development—Acct. No. 8029 .....	71
Office of Community and Industrial Development— Community Service—Acct. No. 8031 .....	71
Office of Community and Industrial Development— Job Partnership Training Act—Acct. No. 8030 .....	71
Office of Community and Industrial Development— Justice Assistance—Acct. No. 8032 .....	71
State Department of Education—Education Grant—Acct. No. 8242 .....	72

## §11. Special revenue appropriations.

## §12. State improvement fund appropriations.

## §13. Specific funds and collection accounts.

## §14. Appropriations for refunding erroneous payment.

## §15. Sinking fund deficiencies.

## §16. Appropriations to pay costs of publication of delinquent corporations.

## §17. Appropriations for local governments.

## §18. Total appropriations.

## §19. General school fund.



## TITLE II—APPROPRIATIONS.

1     **Section 1. Appropriations from general re-**  
 2 **venue.**—From the state fund, general revenue, there are  
 3 hereby appropriated conditionally upon the fulfillment  
 4 of the provisions set forth in article two, chapter five-  
 5 a of the code, the following amounts, as itemized, for  
 6 expenditure during the fiscal year one thousand nine  
 7 hundred ninety-one.

1     **Sec. 2. Appropriations of federal funds.**—In  
 2 accordance with article eleven, chapter four of the code,  
 3 from federal funds there are hereby appropriated  
 4 conditionally upon the fulfillment of the provisions set  
 5 forth in article two, chapter five-a of the code the  
 6 following amounts, as itemized, for expenditure during  
 7 the fiscal year one thousand nine hundred ninety-one.

## LEGISLATIVE

*1—Senate*

Acct. No. 1010

	Federal Funds Fiscal Year 1990-91	General Revenue Fund Fiscal Year 1990-91
1    Compensation of Members .. \$	—	\$ 277,000
2    Compensation and Per Diem		
3      of Officers and Employees	—	1,044,759
4    Expenses of Members .....	—	215,000
5    Repairs and Alterations ....	—	30,000
6    Current Expenses and		
7      Contingent Fund .....	—	510,000
8    Computer Supplies .....	—	15,000
9    Computer Systems .....	—	85,000
10   Printing Blue Book .....	—	—0—
11   Employee Benefits .....	—	193,000
12    Total .....	\$ —	\$ 2,369,759

13       The appropriations for the senate for the fiscal year  
14 1989-90 are to remain in full force and effect and are  
15 hereby reappropriated to June 30, 1991. Any balances  
16 so reappropriated may be transferred and credited to  
17 the 1990-91 accounts.

18       Upon the written request of the clerk of the senate,  
19 the auditor shall transfer amounts between items of the  
20 total appropriation in order to protect or increase the  
21 efficiency of the service.

22       The clerk of the senate, with the approval of the  
23 president, is authorized to draw his requisitions upon  
24 the auditor, payable out of the Current Expenses and  
25 Contingent Fund of the senate, for any bills for supplies  
26 and services that may have been incurred by the senate  
27 and not included in the appropriation bill, for supplies  
28 and services incurred in preparation for the opening, the  
29 conduct of the business and after adjournment of any  
30 regular or extraordinary session, and for the necessary  
31 operation of the senate offices, the requisitions for the  
32 same to be accompanied by bills to be filed with the  
33 auditor.

34       The clerk of the senate, with the written approval of  
35 the president, or the president of the senate shall have  
36 authority to employ such staff personnel during any  
37 session of the Legislature as shall be needed in addition  
38 to staff personnel authorized by the senate resolution  
39 adopted during any such session. The clerk of the senate,  
40 with the written approval of the president, or the  
41 president of the senate shall have authority to employ  
42 such staff personnel between sessions of the Legislature  
43 as shall be needed, the compensation of all staff  
44 personnel during and between sessions of the Legisla-  
45 ture, notwithstanding any such senate resolution, to be  
46 fixed by the president of the senate. The clerk is hereby  
47 authorized to draw his requisitions upon the auditor for  
48 the payment of all such staff personnel for such services,  
49 payable out of the appropriation for Compensation and  
50 Per Diem of Officers and Employees or Current  
51 Expenses and Contingent Fund of the senate.

52       For duties imposed by law and the senate, the clerk

53 of the senate shall be paid a monthly salary as provided  
 54 in senate resolution adopted January 1990 and payable  
 55 out of the amount appropriated for Compensation and  
 56 Per Diem of Officers and Employees.

*2—House of Delegates*

Acct. No. 1020

1	Compensation of Members .. \$	—	\$ 855,693
2	Compensation and Per Diem		
3	of Officers and Employees	—	583,531
4	Expenses of Members .....	—	633,825
5	Current Expenses and		
6	Contingent Fund .....	—	1,127,258
7	Total .....	\$ —	\$ 3,200,307

8 The appropriations for the house of delegates for the  
 9 fiscal year 1989-90 are to remain in full force and effect  
 10 and are hereby reappropriated to June 30, 1991. Any  
 11 balances so reappropriated may be transferred and  
 12 credited to the 1990-91 accounts.

13 Upon the written request of the clerk of the house of  
 14 delegates, the auditor shall transfer amounts between  
 15 items of the total appropriation in order to protect or  
 16 increase the efficiency of the service.

17 The clerk of the house of delegates, with the approval  
 18 of the speaker, is authorized to draw his requisitions  
 19 upon the auditor, payable out of the Current Expenses  
 20 and Contingent Fund of the house of delegates, for any  
 21 bills for supplies and services that may have been  
 22 incurred by the house of delegates and not included in  
 23 the appropriation bill, for bills for services and supplies  
 24 incurred in preparation for the opening of the session  
 25 and after adjournment, and for the necessary operation  
 26 of the house of delegates' offices, the requisitions for the  
 27 same to be accompanied by bills to be filed with the  
 28 auditor.

29 The speaker of the house of delegates, upon approval  
 30 of the house committee on rules, shall have authority to  
 31 employ such staff personnel during and between  
 32 sessions of the Legislature as shall be needed, in addition  
 33 to personnel designated in the house resolution, and the

34 compensation of all personnel shall be as fixed in such  
 35 house resolution for the session, or fixed by the speaker,  
 36 with the approval of the house committee on rules,  
 37 during and between sessions of the Legislature, notwith-  
 38 standing such house resolution. The clerk of the house  
 39 is hereby authorized to draw requisitions upon the  
 40 auditor for such services, payable out of the appropri-  
 41 ation for the Compensation and Per Diem of Officers  
 42 and Employees Fund or Current Expenses and Conting-  
 43 ent Fund of the house of delegates.

44 For duties imposed by law and by the house of  
 45 delegates, including salary allowed by law as keeper of  
 46 the rolls, the clerk of the house of delegates shall be paid  
 47 a monthly salary as provided in the house resolution,  
 48 unless increased between sessions under the authority of  
 49 the speaker, with the approval of the house committee  
 50 on rules, and payable out of the appropriation for  
 51 Compensation and Per Diem of Officers and Employees  
 52 or Current Expenses and Contingent Fund of the house  
 53 of delegates.

3—*Joint Expenses*

(WV Code Chapter 4)

Acct. No. 1030

1	Joint Committee on			
2	Government and Finance	\$	—	\$ 4,318,353
3	Legislative Printing . . . . .		—	793,200
4	Legislative Rule-Making			
5	Review Committee . . . . .		—	127,500
6	Total . . . . .	\$	—	\$ 5,239,053

7 The appropriation for Joint Expenses for the fiscal  
 8 year 1989-90 is to remain in full force and effect and  
 9 is hereby reappropriated to June 30, 1991. Any balances  
 10 so reappropriated may be transferred and credited to  
 11 the 1990-91 accounts.

12 Upon written request of the clerk of the senate, with  
 13 the approval of the president of the senate, and the clerk  
 14 of the house of delegates, with approval of the speaker  
 15 of the house of delegates, and a copy to the legislative  
 16 auditor, the auditor shall transfer amounts between

17 items of the total appropriation in order to protect or  
18 increase the efficiency of the service.

19 The clerk of either house, with the approval of the  
20 president and the speaker, is authorized to make a  
21 written request to the auditor for the transfer of  
22 amounts from items of the appropriation for Joint  
23 Expenses to an item or items of the appropriations for  
24 such house, in order to protect or increase the efficiency  
25 of the service. Upon receipt of such written request, the  
26 auditor shall transfer the amounts as requested.

### JUDICIAL

#### *4—Supreme Court—General Judicial*

Acct. No. 1110

1	Personal Services .....	\$	—	\$	20,100,498
2	Annual Increment .....		—		160,000
3	Other Expenses .....		—		2,650,000
4	Judges' Retirement System		—		1,400,000
5	Other Court Costs .....		—		1,800,000
6	Judicial Training Program		—		250,000
7	Mental Hygiene Fund .....		—		500,000
8	Social Security Matching ...		—		1,517,859
9	Public Employees				
10	Retirement Matching ....		—		1,715,272
11	Public Employees Health				
12	Insurance.....		—		1,675,000
13	Total .....	\$	—	\$	31,768,629

14 Any unexpended balances remaining in this appropri-  
15 ation at the close of the fiscal year 1989-90 are hereby  
16 reappropriated for expenditure during the fiscal year  
17 1990-91. Any balances so reappropriated may be  
18 transferred and credited to the 1990-91 accounts.

19 The appropriation shall be administered by the  
20 administrative director of the supreme court of appeals,  
21 who shall draw his requisitions for warrants in payment  
22 in the form of payrolls, making deductions therefrom as  
23 required by law for taxes and other items.

24 The appropriation for Judges' Retirement System is  
25 to be transferred to the judges' retirement fund, in

26 accordance with the law relating thereto, upon requisition of the administrative director of the supreme court  
27 of appeals.  
28

### EXECUTIVE

#### 5—Governor's Office

(WV Code Chapter 5)

Acct. No. 1200

1	Salary of Governor .....	\$	—	\$	72,000
2	Unclassified .....		—		1,242,275
3	Total .....	\$	—	\$	1,314,275

#### 6—Governor's Office—Custodial Fund

(WV Code Chapter 5)

Acct. No. 1230

1	Unclassified—Total .....	\$	—	\$	363,405
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2 To be used for current general expenses, including  
3 compensation of employees, household maintenance, cost  
4 of official functions and additional household expenses  
5 occasioned by such official functions.

#### 7—Governor's Office— Civil Contingent Fund

(WV Code Chapter 5)

Acct. No. 1240

1	Humanities Foundation				
2	Grants.....	\$	—	\$	—0—
3	Civil Contingent				
4	Fund .....		—		1,430,000
5	Total .....	\$	—	\$	1,430,000

6 Any unexpended balance remaining in the appropriation (account no. 1240-06) at the close of the fiscal year  
7 1989-90 is hereby reappropriated for expenditure  
8 during the fiscal year 1990-91.  
9

10 From this appropriation there may be expended, at  
11 the discretion of the governor, an amount not to exceed  
12 \$1,000 as West Virginia's contribution to the Interstate  
13 Oil Compact Commission.

*8—Governor's Office—  
Debt Service*

(WV Code Chapter 5)

Acct. No. 1250

1	Loan Payback to				
2	Consolidated Investment				
3	Fund—Total .....	\$	—	\$	—0—

*9—Auditor's Office—General Administration*

(WV Code Chapter 12)

Acct. No. 1500

1	Salary of Auditor .....	\$	—	\$	46,800
2	Other Personal Services ....		—		1,461,038
3	Annual Increment .....		—		27,216
4	Employee Benefits .....		—		396,142
5	Unclassified .....		—		583,885
6	Total .....	\$	—	\$	2,470,081

*10—Treasurer's Office*

(WV Code Chapter 12)

Acct. No. 1600

1	Salary of Treasurer .....	\$	—	\$	50,400
2	Other Personal Services ....		—		1,716,625
3	Annual Increment .....		—		17,796
4	Employee Benefits .....		—		489,734
5	Unclassified .....		—		2,732,599
6	Total .....	\$	—	\$	5,007,154

*11—Treasurer's Office—  
School Building Sinking Fund*

(WV Code Chapter 12)

Acct. No. 1650

1	Total .....	\$	—	\$	9,414,500
2	Any unexpended balance remaining in the appropriation for Treasurer's Office—School Building Sinking				
3	Fund (account no. 1650-06) at the close of the fiscal year				
4	1989-90 is hereby reappropriated for expenditure				
5	during the fiscal year 1990-91.				
6					
7	Funds transferred to the treasurer's office from the				

8 proceeds of the "Better School Building Amendment" as  
 9 well as investment earnings thereon are hereby appropri-  
 10 ated for use as debt service on bonds issued under  
 11 authorization of that amendment.

*12—Attorney General*

(WV Code Chapters 5, 14, 46 and 47)

Acct. No. 2400

1	Salary of Attorney			
	General.....	\$	—	\$ 50,400
2	Other Personal Services ....		—	1,646,640
3	Annual Increment .....		—	4,176
4	Employee Benefits .....		—	389,564
5	Unclassified .....		—	760,022
6	Total .....	\$	—	\$ 2,850,802

7 When legal counsel or secretarial help is appointed by  
 8 the attorney general for any state spending unit, this  
 9 account shall be reimbursed from such unit's appropri-  
 10 ated account.

*13—Secretary of State*

(WV Code Chapters 3, 5 and 59)

Acct. No. 2500

1	Salary of Secretary			
2	of State.....	\$	—	\$ 43,200
3	Other Personal Services ....		—	432,808
4	Annual Increment .....		—	4,050
5	Employee Benefits .....		—	133,662
6	Unclassified .....		—	156,916
7	Total .....	\$	—	\$ 770,636

*14—State Elections Commission*

(WV Code Chapter 3)

Acct. No. 2600

1	Unclassified—Total .....	\$	—	\$ 11,058
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*15—Department of Agriculture*

(WV Code Chapter 19)

Acct. No. 5100

1	Salary of Commissioner ....	\$	—	\$ 46,800
2	Other Personal Services ....		—	1,942,382



3	Annual Increment .....	—	38,916
4	Employee Benefits .....	—	576,737
5	Unclassified .....	1,742,930	668,270
6	Total .....	\$ 1,742,930	\$ 3,273,105

7 Out of the above general revenue funds a sum may  
8 be used to match federal funds for the eradication and  
9 control of pest and plant disease.

*16—Department of Agriculture—  
Soil Conservation Committee*

(WV Code Chapter 19)

Acct. No. 5120

1	Personal Services .....	\$ —	\$ 316,590
2	Annual Increment .....	—	4,140
3	Employee Benefits .....	—	77,198
4	Unclassified .....	—	91,825
5	Total .....	\$ —	\$ 489,753

*17—Department of Agriculture—  
Division of Rural Resources  
(Matching Fund)*

(WV Code Chapter 19)

Acct. No. 5130

1	Personal Services .....	\$ —	\$ 368,777
2	Annual Increment .....	—	5,652
3	Employee Benefits .....	—	128,559
4	Unclassified .....	—	228,345
5	Total .....	\$ —	\$ 731,333

6 Any part or all of this appropriation from the general  
7 revenue fund may be transferred to a special revenue  
8 fund for the purpose of matching federal funds for the  
9 above-named program.

*18—Department of Agriculture—  
Meat Inspection*

(WV Code Chapter 19)

Acct. No. 5140

1	Personal Services .....	\$ —	\$ 242,112
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2	Annual Increment .....	—	5,526
3	Employee Benefits .....	—	101,373
4	Unclassified .....	503,196	22,147
5	Total .....	\$ 503,196	\$ 371,158

6 Any part or all of this appropriation from general  
7 revenue may be transferred to a special revenue fund  
8 for the purpose of matching federal funds for the above-  
9 named program.

*19—Department of Agriculture—  
Agricultural Awards*

(WV Code Chapter 19)

Acct. No. 5150

1	Agricultural Awards .....	\$ —	\$ 64,505
2	Fairs and Festivals .....	—	181,028
3	Total .....	\$ —	\$ 245,533

**DEPARTMENT OF ADMINISTRATION**

*20—Division of Finance  
and Administration*

(WV Code Chapter 5A)

Acct. No. 2100

1 Any unexpended balance remaining in the appropri-  
2 ation for Urban Mass Transit Matching Funds (account  
3 no. 2100-41) at the close of the fiscal year 1989-90 is  
4 hereby reappropriated for expenditure during the fiscal  
5 year 1990-91.

*21—Division of Finance*

(WV Code Chapter 5A)

Acct. No. 2110

1	Personal Services .....	\$ —	\$ 450,226
2	Annual Increment .....	—	6,725
3	Employee Benefits .....	—	134,199
4	National Governors' 5 Association .....	—	57,400
6	Southern States 7 Energy Board .....	—	28,732

8	Public Transportation .....	—	300,000
9	Unclassified .....	7,339,098	440,196
10	Total .....	\$ 7,339,098	\$ 1,417,478

*22—Division of Purchasing*

(WV Code Chapter 5A)

Acct. No. 2120

1	Personal Services .....	\$ —	\$ 585,840
2	Annual Increment .....	—	6,684
3	Employee Benefits .....	—	166,581
4	Unclassified .....	—	96,210
5	Total .....	\$ —	\$ 855,315

6 The division of highways shall reimburse account no.  
 7 8148-42 for all actual expenses incurred pursuant to the  
 8 provisions of section thirteen, article two-a, chapter  
 9 seventeen of the code.

*23—Division of General Services*

(WV Code Chapter 5A)

Acct. No. 2130

1	Personal Services .....	\$ —	\$ 519,084
2	Annual Increment .....	—	13,032
3	Employee Benefits .....	—	183,317
4	Fire Service Fee .....	—	39,000
5	Unclassified .....	—	889,360
6	Total .....	\$ —	\$ 1,643,793

*24—Board of Risk and  
Insurance Management*

(WV Code Chapter 29)

Acct. No. 2250

1	Personal Services .....	\$ —	\$ —0—
2	Unclassified .....	—	4,043,852
3	FEMA Reimbursement .....	—	—0—
4	Total .....	\$ —	\$ 4,043,852

5 The Unclassified item of appropriation herein in-

6 cludes funding for the purpose of paying premiums, self-  
 7 insurance losses, loss adjustment expenses and loss  
 8 prevention engineering fees for property, casualty and  
 9 fidelity insurance for the various state agencies, except  
 10 those operating from special revenue funds, with such  
 11 special revenue fund agencies to be billed by the board  
 12 of risk and insurance management and with such costs  
 13 to be a proper charge against such spending units.

14 These funds may be transferred to a special account  
 15 for the payment of premiums, self-insurance losses, loss  
 16 adjustment expenses and loss prevention engineering  
 17 fees and may be transferred to a special account for  
 18 disbursement for payment of premiums and insurance  
 19 losses.

*25—Commission on Uniform State Laws*

(WV Code Chapter 29)

Acct. No. 2450

1	Unclassified—Total .....	\$	—	\$	14,550
2	To pay expenses of members of the commission on				
3	uniform state laws.				

*26—Department of Administration—  
Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 5310

1	Unclassified—Total .....	\$	—	\$	182,456
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*27—Public Defender Services*

(WV Code Chapter 29)

Acct. No. 5900

1	Personal Services .....	\$	—	\$	227,547
2	Annual Increment .....		—		2,232
3	Employee Benefits .....		—		56,871
4	Unclassified .....		—		8,177,635
5	Total .....	\$	—	\$	8,464,285

6 Any unexpended balance remaining in the appropri-  
 7 ation for Unclassified (account no. 5900-18) at the close

8 of the fiscal year 1989-90 is hereby reappropriated for  
9 expenditure during the fiscal year 1990-91.

*28—Education and State Employees Grievance Board*

(WV Code Chapter 18)

Acct. No. 6015

1	Personal Services .....	\$	—	\$	327,294
2	Annual Increment .....		—		3,348
3	Employee Benefits .....		—		76,648
4	Unclassified .....		—		121,420
5	Total .....	\$	—	\$	528,710

*29—Public Employees Retirement System*

(WV Code Chapter 5)

Acct. No. 6140

1	Supplemental Benefits for				
2	Annuitants—Total .....	\$	—	\$	1,928,500

3 The division of highways, division of motor vehicles,  
4 workers' compensation commissioner, public service  
5 commission and other departments or divisions operat-  
6 ing from special revenue funds and/or federal funds  
7 shall pay their proportionate share of the retirement  
8 costs for their respective divisions. When specific  
9 appropriations are not made, such payments may be  
10 made from the balances in the various special revenue  
11 funds in excess of specific appropriations.

*30—Public Employees Insurance Agency*

(WV Code Chapter 5)

Acct. No. 6150

1 The above appropriation and any special revenue  
2 received are intended to cover employers' contribution  
3 as defined in article sixteen, chapter five of the code.

4 The division of highways, division of motor vehicles,  
5 workers' compensation commissioner, public service  
6 commission and other departments or divisions operat-  
7 ing from special revenue funds and/or federal funds  
8 shall pay their proportionate share of the public  
9 employees health insurance cost for their respective

10 divisions. When specific appropriations are not made,  
 11 such payments may be made from the balances in the  
 12 various special revenue funds in excess of specific  
 13 appropriations.

*31—Ethics Commission*

(WV Code Chapter 6B)

Acct. No. 6180

1 Unclassified—Total ..... \$ — \$ 388,465

**DEPARTMENT OF COMMERCE, LABOR  
 AND ENVIRONMENTAL RESOURCES**

*32—Office of Community and  
 Industrial Development*

(WV Code Chapter 5B)

Acct. No. 1210

1	Personal Services .....	\$ .	—	\$	1,378,937
2	Annual Increment .....		—		20,404
3	Employee Benefits .....		—		334,751
4	Partnership Grants .....		—		1,000,000
5	Unclassified .....	14,629,478			2,020,929
6	Total .....	\$14,629,478		\$	4,755,021

7 Any unexpended balance remaining in the appropri-  
 8 ations for Partnership Grants (account no. 1210-15) at  
 9 the close of the fiscal year 1989-90 is hereby reapprop-  
 10 riated for expenditure during the fiscal year 1990-91.

*33—Solid Waste Management Board*

(WV Code Chapter 16)

Acct. No. 4020

1	Personal Services .....	\$	—	\$	—0—
2	Annual Increment .....		—		—0—
3	Employee Benefits .....		—		—0—
4	Unclassified .....		—		—0—
5	Total .....	\$	—	\$	—0—

*34—Division of Labor*

(WV Code Chapters 21 and 47)

Acct. No. 4500

1 Personal Services ..... \$ — \$ 819,677

2	Annual Increment .....	—	13,371
3	Employee Benefits .....	—	270,681
4	Unclassified .....	<u>298,836</u>	<u>274,655</u>
5	Total .....	\$ 298,836	\$ 1,378,384

*35—Division of Commerce*

(WV Code Chapter 5B)

Acct. No. 4625

1	Personal Services .....	\$ —	\$ —0—
2	Annual Increment .....	—	—0—
3	Employee Benefits .....	—	—0—
4	Unclassified .....	<u>1,300,000</u>	<u>6,103,831</u>
5	Total .....	\$ 1,300,000	\$ 6,103,831

6 Any revenue derived from mineral extraction at any  
 7 state park shall be deposited in a special revenue  
 8 account of the division of commerce, first for bond debt  
 9 payment purposes and with any remainder to be for  
 10 park operation and improvement purposes.

*36—Division of Forestry*

(WV Code Chapter 19)

Acct. No. 4650

1	Personal Services .....	\$ —	\$ 1,933,981
2	Annual Increment .....	—	38,412
3	Employee Benefits .....	—	601,031
4	Unclassified .....	<u>321,300</u>	<u>280,118</u>
5	Total .....	\$ 321,300	\$ 2,853,542

6 Out of the above general revenue funds, a sum may  
 7 be used to match federal funds for cooperative studies  
 8 or other funds for similar purposes.

*37—Board of Coal Mine  
Health and Safety*

(WV Code Chapter 22)

Acct. No. 4720

1	Personal Services .....	\$ —	\$ 41,362
2	Annual Increment .....	—	310

3	Employee Benefits .....	—		10,879
4	Unclassified .....	—		8,341
5	Total .....	\$	—	\$ 60,892

*38—Interstate Commission on  
Potomac River Basin*

(WV Code Chapter 29)

Acct. No. 4730

1	West Virginia's			
2	Contribution to			
3	the Interstate			
	Commission on			
	Potomac River Basin—			
4	Total .....	\$	—	\$ 26,905

*39—Ohio River Valley Water  
Sanitation Commission*

(WV Code Chapter 29)

Acct. No. 4740

1	West Virginia's			
2	Contribution to the			
3	Ohio River Valley			
4	Water Sanitation			
5	Commission—Total.....	\$	—	\$ 89,140

*40—Coal Mine Safety and  
Technical Review Committee*

(WV Code Chapter 22)

Acct. No. 4750

1	Personal Services .....	\$	—	\$ 5,528
2	Employee Benefits .....	—		1,439
3	Unclassified .....	—		61,384
4	Total .....	\$	—	\$ 68,351

*41—Air Pollution  
Control Commission*

(WV Code Chapter 16)

Acct. No. 4760

1	Personal Services .....	\$	—	\$ 460,209
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2	Annual Increment .....	—	5,620
3	Employee Benefits .....	—	135,066
4	Unclassified .....	<u>1,038,682</u>	<u>188,394</u>
5	Total .....	\$ 1,038,682	\$ 789,289

*42—Division of Energy*

(WV Code Chapter 22)

Acct. No. 4775

1	Personal Services .....	\$ —	\$ —0—
2	Annual Increment .....	—	—0—
3	Employee Benefits .....	—	—0—
4	Unclassified .....	<u>71,673,916</u>	<u>6,494,566</u>
5	Total .....	\$71,673,916	\$ 6,494,566

*43—Geological and Economic Survey*

(WV Code Chapter 29)

Acct. No. 5200

1	Personal Services .....	\$ —	\$ 1,141,313
2	Annual Increment .....	—	19,296
3	Employee Benefits .....	—	309,696
4	Unclassified .....	<u>433,034</u>	<u>160,692</u>
5	Total .....	\$ 433,034	\$ 1,630,997

6 Any unexpended balance remaining in the appropri-  
 7 ation To Secure Federal and Other Contracts (account  
 8 no. 5200-07) at the close of the fiscal year 1989-90 is  
 9 hereby appropriated for expenditure during the fiscal  
 10 year 1990-91.

11 The Unclassified appropriation includes funding to  
 12 secure federal and other contracts and may be trans-  
 13 ferred to a special revenue account for the purpose of  
 14 providing advance funding for such contracts.

*44—Department of Commerce,  
 Labor and Environmental Resources—  
 Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 5321

1	Unclassified—Total .....	\$ —	\$ 265,661
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*45—Water Resources Board*

(WV Code Chapter 20)

Acct. No. 5640

1	Personal Services .....	\$	—	\$	—0—
2	Annual Increment .....		—		—0—
3	Employee Benefits .....		—		—0—
4	Unclassified .....		—		—0—
5	Total .....	\$	—	\$	—0—

*46—Division of Natural Resources*

(WV Code Chapter 20)

Acct. No. 5650

1	Personal Services .....	\$	—	\$	2,359,322
2	Annual Increment .....		—		44,622
3	Employee Benefits .....		—		727,357
4	Black Fly Control				
5	Spraying Project .....		—		223,100
6	Unclassified .....		10,459,364		385,772
7	Total .....	\$	10,459,364	\$	3,740,173

*47—Water Development Authority*

(WV Code Chapter 20)

Acct. No. 5670

1	Unclassified—Total .....	\$14,703,579	\$	—0—
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**DEPARTMENT OF EDUCATION***48—State Department of Education*

(WV Code Chapters 18 and 18A)

Acct. No. 2860

1	Personal Services .....	\$	—	\$	2,565,697
2	Annual Increment .....		—		33,418
3	Employee Benefits .....		—		614,530
4	Unclassified .....		1,899,718		7,557,905

5	Education of		
6	Institutionalized		
	Juveniles .....	—	1,176,651
7	Total .....	\$ 1,899,718	\$ 11,948,201

8 The above appropriation includes the state board of  
9 education and their executive office.

10 The state board of education shall transfer the balance  
11 of funds and investment earnings thereon remaining  
12 from the "Better School Building Amendment" to the  
13 office of the treasurer to be applied to repayment of  
14 bonds issued for the purposes of that amendment.

49—*State Department of Education—  
School Lunch Program*

(WV Code Chapters 18 and 18A)

Acct. No. 2870

1	Personal Services .....	\$ —	\$ 135,298
2	Annual Increment .....	—	1,476
3	Employee Benefits .....	—	60,189
4	Unclassified .....	50,688,037	1,689,927
5	Total .....	\$50,688,037	\$ 1,886,890

50—*State Board of Education—  
Vocational Division*

(WV Code Chapters 18 and 18A)

Acct. No. 2890

1	Personal Services .....	\$ —	\$ 599,019
2	Annual Increment .....	—	8,209
3	Employee Benefits .....	—	154,896
4	Unclassified .....	11,062,512	11,629,956
5	Albert Yanni Vocational		
6	Program .....	—	160,000
7	Wood Products—Forestry		
8	Vocational Programs .....	—	—0—
9	Total .....	\$11,062,512	\$ 12,552,080

51—*State Department of Education—  
State Aid to Schools*

(WV Code Chapters 18 and 18A)

Acct. No. 2950

1	Unclassified .....	\$ 4,500,000	\$ 737,535,332
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2	Salary Equity.....	—	20,500,000
3	Public Employees		
4	Insurance Agency.....	—	78,449,000
5	Teachers' Retirement		
6	System.....	—	103,900,000
7	Total.....	\$ 4,500,000	\$ 940,384,332

*52—State Department of Education—  
Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Acct. No. 2960

1	Unclassified—Total.....	\$23,292,129	\$ —
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*53—West Virginia Schools for the  
Deaf and the Blind*

(WV Code Chapters 18 and 18A)

Acct. No. 3330

1	Personal Services.....	\$ —	\$ 3,884,486
2	Annual Increment.....	—	4,572
3	Employee Benefits.....	—	986,131
4	Unclassified.....	—	1,257,466
5	Total.....	\$ —	\$ 6,132,655

*54—State FFA-FHA Camp and Conference Center*

(WV Code Chapters 18 and 18A)

Acct. No. 3360

1	Personal Services.....	\$ —	\$ 127,331
2	Annual Increment.....	—	2,792
3	Employee Benefits.....	—	25,838
4	Unclassified.....	—	66,404
5	Total.....	\$ —	\$ 222,365

*55—State Board of Rehabilitation—  
Division of Rehabilitation Services*

(WV Code Chapter 18)

Acct. No. 4405

1	Personal Services.....	\$ —	\$ 3,902,403
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2	Annual Increment .....	—	89,342
3	Employee Benefits .....	—	1,057,246
4	Current Expenses .....	—	904,392
5	Repairs and Alterations ....	—	40,000
6	Workshop Development ....	—	1,633,000
7	Case Services .....	—	2,000,000
8	Unclassified .....	29,127,764	626,821
9	Total .....	\$29,127,764	\$ 10,253,204

**DEPARTMENT OF EDUCATION  
AND THE ARTS**

*56—Board of Directors of the  
State College System*

Control Account  
(WV Code Chapter 18B)

Acct. No. 2785

1	Unclassified—Total .....	\$ —	\$ 69,260,520
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*57—Board of Trustees of the  
University System of West Virginia*

Control Account  
(WV Code Chapter 18B)

Acct. No. 2795

1	Unclassified—Total .....	\$ —	\$128,235,865
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*58—Board of Trustees of the University System  
of West Virginia and Board of Directors of the  
State College System*

Consolidated Staff Account  
(WV Code Chapter 18B)

Account No. 2800

1	Higher Education		
2	Grant Program .....	\$ —	\$ 3,795,000
3	Contract Tuition Program ..	—	606,000
4	Eminent Scholars Program	—	—0—
5	Underwood-Smith		
6	Scholarship Program—		
	Student Awards .....	—	—0—
7	EPSCOR Program .....	—	—0—

8	Unclassified—Central Office	—	1,006,295
9	Total .....	\$ —	\$ 5,407,295

10 Any unexpended balance remaining in the appropri-  
 11 ation for Asbestos Litigation (account no. 2800-21) at the  
 12 close of the fiscal year 1989-90 is hereby reappropriated  
 13 for expenditure during the fiscal year 1990-91.

*59—Board of Trustees of the  
 University System of West Virginia*

University of West Virginia  
 Health Sciences Account

(WV Code Chapter 18B)

Acct. No. 2855

1	Unclassified—Total .....	\$ —	\$ 46,977,475
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2 From the above appropriation, \$130,000 shall be  
 3 expended towards establishing a doctor of pharmacy  
 4 program at the West Virginia university health science  
 5 center.

*60—Educational Broadcasting Authority*

(WV Code Chapter 10)

Acct. No. 2910

1	Personal Services .....	\$ —	\$ 2,999,090
2	Annual Increment .....	—	41,256
3	Employee Benefits .....	—	644,994
4	Unclassified .....	1,136,628	1,540,273
5	Total .....	\$ 1,136,628	\$ 5,225,613

6 These funds may be transferred to special revenue  
 7 accounts for matching college, university, city, county,  
 8 federal and/or other generated revenue.

*61—Library Commission*

(WV Code Chapter 10)

Acct. No. 3500

1	Personal Services .....	\$ —	\$ 916,602
2	Annual Increment .....	—	21,312
3	Employee Benefits .....	—	263,003
4	Unclassified .....	1,147,831	6,368,877
5	Total .....	\$ 1,147,831	\$ 7,569,794

62—*Division of Culture and History*

(WV Code Chapter 29)

Acct. No. 3510

1	Personal Services .....	\$	—	\$	—0—
2	Annual Increment .....		—		—0—
3	Employee Benefits .....		—		—0—
4	Project 2021 .....		—		—0—
5	Unclassified .....		1,525,000		4,308,472
			<u>1,525,000</u>		<u>4,308,472</u>
6	Total .....	\$	1,525,000	\$	4,308,472

7 The Unclassified appropriation includes funding for  
 8 the Arts Funds, Department Programming Funds,  
 9 Grants, Fairs and Festivals and Washington Carver  
 10 Camp and shall be expended only upon authorization of  
 11 the division of culture and history and in accordance  
 12 with the provisions of chapter five-a and article three,  
 13 chapter twelve of the code.

14 All federal moneys received as reimbursement to the  
 15 division of culture and history for moneys expended  
 16 from the general revenue fund for the Arts Fund and  
 17 Historical Preservation are hereby reappropriated for the  
 18 purposes as originally made, including personal servi-  
 19 ces, current expenses and equipment.

63—*Department of Education and the Arts—  
 Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 5332

1	Unclassified .....	\$	—	\$	182,340
2	Eminent Scholars Program		—		150,000
3	Underwood-Smith				
4	Scholarship				
	Program—Student				
	Awards.....		—		400,000
			<u>—</u>		<u>400,000</u>
5	Total .....	\$	—	\$	732,340

**DEPARTMENT OF HEALTH  
AND HUMAN RESOURCES**

*64—Division of Health—  
Central Office  
(WV Code Chapter 16)*

Acct. No. 4000

1	Personal Services .....	\$	—	\$ 5,131,820
2	Annual Increment .....		—	90,000
3	Corporate Nonprofit			
4	Community Health			
5	Centers—F.M.H.A.			
6	Mortgage Finance .....		—	105,913
7	Employee Benefits .....		—	1,600,000
8	Unclassified .....		—	4,244,079
9	Total .....	\$	—	\$ 11,171,812

*65—Division of Veterans' Affairs—  
Veterans' Home*

(WV Code Chapter 9A)

Acct. No. 4010

1	Unclassified—Total .....	\$	422,400	\$ —
2	Any unexpended balances remaining in the appropri-			
3	ations for Repairs and Alterations (account no. 4010-02)			
4	and Equipment (account no. 4010-03) at the close of the			
5	fiscal year 1989-90 are hereby reappropriated for			
6	expenditure during the fiscal year 1990-91.			

*66—Division of Veterans' Affairs*

(WV Code Chapter 9A)

Acct. No. 4040

1	Personal Services .....	\$	—	\$ 595,691
2	Annual Increment .....		—	11,736
3	Employee Benefits .....		—	215,064
4	Unclassified .....		—	92,643
5	Total .....	\$	—	\$ 915,134



*67—Division of Human Services*  
(WV Code Chapters 9, 48 and 49)

Acct. No. 4050

1	Personal Services .....	\$ —	\$ 12,393,130
2	Annual Increment .....	—	326,002
3	Employee Benefits .....	—	3,952,984
4	Current Expenses .....	—	—0—
5	Medical Services .....	—	103,733,532
6	Unclassified .....	578,463,736	73,023,214
7	Family Law Masters .....	225,000	789,165
8	Women's Commission .....	—	53,505
9	Commission on Hearing		
10	Impaired .....	—	43,000
11	Total .....	\$578,688,736	\$194,314,532

12 The Medical Services line item includes funding for  
13 Title XIX Waiver.

14 Funds appropriated through the Medical Services line  
15 item of account no. 4050 may not be expended to pay the  
16 cost of an abortion unless: (1) A duly licensed attending  
17 physician determines in his or her best clinical judgment  
18 that an abortion is medically necessary because (a) a  
19 continuation of the pregnancy would either endanger the  
20 life of the pregnant woman or could cause permanent,  
21 catastrophic, physical injuries to the woman; or (b)  
22 prenatal tests indicate that the child would probably be  
23 born with grave, permanent and irremediable mental  
24 and/or physical defects; or (2) the pregnancy resulted from  
25 sexual assault or incest and the sexual assault was  
26 reported to law-enforcement authorities or the incest was  
27 reported to the department of health and human resources  
28 prior to the performance of the abortion.

29 No funds from this account, or any other department  
30 of health and human resources account, shall be used to  
31 pay family law master salaries or expenses in excess of  
32 the Family Law Masters line item appropriation. It is  
33 anticipated that the family law master program will  
34 generate sufficient revenue from fees and federal child  
35 support funds to cover the remainder of its program  
36 costs.

## 68—Commission on Aging

(WV Code Chapter 29)

Acct. No. 4060

1	Personal Services .....	\$	—	\$	110,795
2	Annual Increment .....		—		2,416
3	Employee Benefits .....		—		33,839
4	Area Agencies on Aging				
5	Administration .....		—		—0—
6	Substate Ombudsman .....		—		—0—
7	Local Programs				
8	Service Delivery Costs ....		—		2,160,426
9	Attorney General .....		—		—0—
10	Silver Haired Legislature ..		—		—0—
11	Golden Mountaineer .....		—		—0—
12	Unclassified .....		10,151,000		1,001,488
13	Total .....	\$	10,151,000	\$	3,308,964

14 Any unexpended balance remaining in the appropri-  
 15 ation for Senior Citizen Centers—Land Acquisition,  
 16 Construction Repairs and Alterations (account no. 4060-  
 17 10) at the close of the fiscal year 1989-90 is hereby  
 18 reappropriated for expenditure during the fiscal year  
 19 1990-91.

## 69—Consolidated Medical Service Fund

Acct. No. 4190

1	Foster Grandparents				
2	Stipends/Travel .....	\$	—	\$	62,000
3	Institutional Facilities				
4	Operations .....		—		37,321,140
5	Employee Benefits .....		—		12,512,909
6	Poison Control				
	Hotline .....		—		250,000
7	ICF/MR Match .....		—		—0—
8	Special Olympics .....		—		28,000
9	State Aid to				
	Local Agencies .....		—		6,800,000
10	Maternal and Child				
11	Health Clinics,				
12	Clinicians and Medical				
13	Contracts and Fees .....		—		5,330,000

14	Continuum of Care .....	—	—0—
15	Primary Care Contracts		
16	to Community		
	Health Centers .....	—	2,800,000
17	Epidemiology Research ....	—	250,000
18	Grants to Counties and		
19	EMS Entities .....	—	1,725,000
20	Behavioral Health Program	—	36,300,930
21	Unclassified .....	<u>26,833,606</u>	<u>—0—</u>
22	Total .....	\$26,833,606	\$103,379,979

23 The director of health, prior to the beginning of the  
 24 fiscal year, shall file with the legislative auditor an  
 25 expenditure schedule for each formerly separate  
 26 spending unit which has been consolidated into the  
 27 above account and which receives a portion of the above  
 28 appropriation. He shall also, within fifteen days after  
 29 the close of the six-month period of said fiscal year, file  
 30 with the legislative auditor an itemized report of  
 31 expenditures made during the preceding six-month  
 32 period.

33 Additional funds have been appropriated in acct. no.  
 34 8500 for operation of the medical facilities.

*70—Department of Health and Human Resources—  
 Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 5343

1	Unclassified—Total .....	\$	—	\$	181,875
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*71—Human Rights Commission*

(WV Code Chapter 5)

Acct. No. 5980

1	Personal Services .....	\$	—	\$	367,025
2	Annual Increment .....		—		6,430
3	Employee Benefits .....		—		108,384
4	Unclassified .....		<u>102,190</u>		<u>177,589</u>
5	Total .....	\$	102,190	\$	659,428

### DEPARTMENT OF PUBLIC SAFETY

*72—Office of Emergency Services and Advisory Council—  
Division of Emergency Services*

(WV Code Chapter 15)

Acct. No. 1300

1	Personal Services .....	\$	—	\$	163,974
2	Annual Increment .....		—		3,096
3	Employee Benefits .....		—		48,805
4	Unclassified .....		2,744,980		36,957
5	Total .....	\$	2,744,980	\$	252,832

*73—Board of Probation and Parole*

(WV Code Chapter 62)

Acct. No. 3650

1	Salaries of Members				
2	of Board of Probation				
	and Parole .....	\$	—	\$	84,900
3	Other Personal Services ....		—		52,527
4	Annual Increment .....		—		1,080
5	Employee Benefits .....		—		31,500
6	Unclassified .....		—		11,104
7	Total .....	\$	—	\$	181,111

*74—Division of Corrections—  
Central Office*

(WV Code Chapters 25, 28, 29 and 62)

Acct. No. 3680

1	Personal Services .....	\$	—	\$	331,044
2	Annual Increment .....		—		5,184
3	Employee Benefits .....		—		89,994
4	Unclassified .....		—		160,506
5	Total .....	\$	—	\$	586,728

*75—Division of Corrections—  
Correctional Units*

(WV Code Chapters 25, 28, 29 and 62)

Acct. No. 3770

1	Personal Services .....	\$	—	\$	12,125,856
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2	Annual Increment .....	—	181,800
3	Employee Benefits .....	—	3,985,310
4	Payments to Counties		
5	and Regional Jails.....	—	—0—
6	Unclassified .....	—	8,749,410
7	Total .....	\$ —	\$ 25,042,376

8 Any unexpended balances remaining in the appropri-  
 9 ations for Capital Outlay (account no. 3770-04) at the  
 10 close of the fiscal year 1989-90 are hereby reapprop-  
 11 riated for expenditure during the fiscal year 1990-91.

12 The commissioner of corrections, prior to the begin-  
 13 ning of the fiscal year, shall file with the legislative  
 14 auditor an expenditure schedule for each formerly  
 15 separate spending unit which has been consolidated into  
 16 the above account and which receives a portion of the  
 17 above appropriation. He shall also, within fifteen days  
 18 after the close of each six-month period of said fiscal  
 19 year, file with the legislative auditor an itemized report  
 20 of expenditures made during the preceeding six-month  
 21 period. Such report shall include the total of expendi-  
 22 tures made for personal services, annual increment,  
 23 current expenses (inmate medical expenses and other),  
 24 repairs and alterations and equipment.

*76—Department of Public Safety—  
 Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 5354

1	Unclassified—Total .....	\$ —	\$ 136,240
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*77—Division of Public Safety*

(WV Code Chapter 15)

Acct. No. 5700

1	Personal Services .....	\$ —	\$ 15,412,471
2	Annual Increment .....	—	90,900
3	Employee Benefits .....	—	4,370,607
4	Unclassified .....	353,957	3,432,824
5	Total .....	\$ 353,957	\$ 23,306,802

*78—Adjutant General—State Militia*

(WV Code Chapter 15)

Acct. No. 5800

1	Personal Services .....	\$	—	\$	249,021
2	Annual Increment .....		—		5,580
3	Employee Benefits .....		—		85,543
4	Unclassified .....		4,629,272		3,645,176
5	Total .....	\$	4,629,272	\$	3,985,320

*79—Fire Commission*

(WV Code Chapter 29)

Acct. No. 6170

1	Personal Services .....	\$	—	\$	451,336
2	Annual Increment .....		—		7,452
3	Employee Benefits .....		—		144,254
4	Unclassified .....		—		153,624
5	Total .....	\$	—	\$	756,666

**DEPARTMENT OF TAX AND REVENUE***80—Municipal Bond Commission*

(WV Code Chapter 13)

Acct. No. 1700

1	Personal Services .....	\$	—	\$	72,333
2	Annual Increment .....		—		1,332
3	Employee Benefits .....		—		21,114
4	Unclassified .....		—		28,464
5	Total .....	\$	—	\$	123,243

*81—Tax Division*

(WV Code Chapter 11)

Acct. No. 1800

1	Personal Services .....	\$	—	\$	8,184,063
2	Annual Increment .....		—		148,126
3	Employee Benefits .....		—		2,368,841
4	Unclassified .....		—		4,801,187

5	Property Evaluation			
6	Training and			
7	Productivity			
	Commission.....	—		25,000
8	Total .....	\$	—	\$ 15,527,217

*82—Division of Professional and  
Occupational Licenses—  
State Athletic Commission*

(WV Code Chapter 29)

Acct. No. 4790

1	Unclassified—Total .....	\$	—	\$ 5,068
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*83—Office of Nonintoxicating  
Beer Commissioner*

(WV Code Chapter 11)

Acct. No. 4900

1	Personal Services .....	\$	—	\$ 304,174
2	Annual Increment .....		—	4,176
3	Employee Benefits .....		—	90,239
4	Unclassified .....		—	73,258
5	Total .....	\$	—	\$ 471,847

*84—Racing Commission*

(WV Code Chapter 19)

Acct. No. 4950

1	Personal Services .....	\$	—	\$ 996,474
2	Annual Increment .....		—	8,640
3	Employee Benefits .....		—	260,841
4	Unclassified .....		—	79,981
5	Total .....	\$	—	\$ 1,345,936

*85—Department of Tax and Revenue—  
Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 5365

1	Unclassified—Total .....	\$	—	\$ 182,495
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## DEPARTMENT OF TRANSPORTATION

86—*Department of Transportation—  
Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 5376

1	Civil Air Patrol .....	\$	—	\$	82,450
2	Unclassified .....		—	\$	182,340
3	Total .....	\$	—	\$	264,790

87—*Railroad Maintenance Authority*

(WV Code Chapter 29)

Acct. No. 5690

1	Personal Services .....	\$	—	\$	409,355
2	Annual Increment .....		—		5,724
3	Employee Benefits .....		—		215,867
4	Unclassified .....		348,000		180,900
5	Total .....	\$	348,000	\$	811,846

1 Total TITLE II, Section 1—

2 General Revenue .....\$ — \$ 1,757,054,039

1 **Sec. 3. Appropriations from other funds.**—From  
2 the funds designated there are hereby appropriated  
3 conditionally upon the fulfillment of the provisions set  
4 forth in article two, chapter five-a of the code the  
5 following amounts, as itemized, for expenditure during  
6 the fiscal year one thousand nine hundred ninety-one.

1 **Sec. 4. Appropriations of federal funds.**—In  
2 accordance with article eleven, chapter four of the code,  
3 from federal funds there are hereby appropriated  
4 conditionally upon the fulfillment of the provisions set  
5 forth in article two, chapter five-a of the code the  
6 following amounts, as itemized, for expenditure during  
7 the fiscal year one thousand nine hundred ninety-one.

## LEGISLATIVE

88—*Crime Victims Compensation Fund*

(WV Code Chapter 14)

Acct. No. 8412

TO BE PAID FROM SPECIAL REVENUE FUND



	Federal Funds Fiscal Year 1990-91	Other Funds Fiscal Year 1990-91
1 Personal Services .....	\$ —	\$ 105,503
2 Annual Increment .....	—	684
3 Employee Benefits .....	—	26,755
4 Unclassified .....	700,000	34,738
5 Total .....	\$ 700,000	\$ 167,680
6 These funds are intended to be expended for court		
7 costs and administrative costs and federal reimburse-		
8 ment for compensation paid to crime victims.		

**EXECUTIVE**

*89—Treasurer's Office—  
Abandoned and Unclaimed Property*

(WV Code Chapters 12 and 36)

Acct. No. 8000

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services .....	\$ —	\$ —0—
2 Annual Increment .....	—	—0—
3 Employee Benefits .....	—	—0—
4 Unclassified .....	—	—0—
5 Total .....	\$ —	\$ —0—

*90—Treasurer's Office—  
Board of Investments*

(WV Code Chapter 12)

Acct. No. 8004

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services .....	\$ —	\$ —0—
2 Annual Increment .....	—	—0—
3 Employee Benefits .....	—	\$ —0—
4 Unclassified .....	—	—0—
5 Total .....	\$ —	\$ —0—

91—*Department of Agriculture*

(WV Code Chapter 19)

Acct. No. 8180

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	202,925
2	Annual Increment .....		—		1,040
3	Employee Benefits .....		—		48,633
4	Unclassified .....		—		460,776
					460,776
5	Total .....	\$	—	\$	713,374

6 The total amount of this appropriation shall be paid  
 7 from a special revenue fund out of collections made by  
 8 the department of agriculture as provided by law.

92—*General John McCausland Memorial Farm*

(WV Code Chapter 19)

Acct. No. 8194

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified—Total .....	\$	—	\$	73,643
---	--------------------------	----	---	----	--------

2 Funds for the above appropriation shall be expended  
 3 in accordance with article twenty-six, chapter nineteen  
 4 of the code.

**DEPARTMENT OF ADMINISTRATION**

93—*Division of Finance and Administration—  
 Information System Services Division Fund*

(WV Code Chapter 5A)

Acct. No. 8151

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	2,880,263
2	Annual Increment .....		—		44,307
3	Employee Benefits .....		—		744,810
4	Unclassified .....		—		728,995
					728,995
5	Total .....	\$	—	\$	4,398,375

6 The total amount of this appropriation shall be paid  
 7 from a special revenue fund out of collections made by  
 8 the division of finance and administration as provided  
 9 by law.

10 There is hereby appropriated from this fund, in  
 11 addition to the above appropriation, the necessary  
 12 amount for the expenditure of funds other than personal  
 13 services or employee benefits to enable ISS to provide  
 14 information processing services to user agencies. These  
 15 services include, but are not limited to, data processing,  
 16 office automation and telecommunications.

17 There is hereby established a revolving fund for  
 18 postage meter service requirements for all spending  
 19 units operating from the general revenue fund, from  
 20 special revenue funds or receiving reimbursement for  
 21 postage from the federal government.

22 Each spending unit shall be charged monthly for all  
 23 postage meter service and shall reimburse the revolving  
 24 fund monthly for all such amounts.

*94—Division of Personnel—*

(WV Code Chapter 29)

Acct. No. 8401

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	1,988,570
2	Annual Increment .....		—		35,352
3	Employee Benefits .....		—		619,809
4	Unclassified .....		—		460,269
5	Total .....	\$	—	\$	3,104,000

6 The total amount of this appropriation shall be paid  
 7 from a special revenue fund out of fees collected by the  
 8 division of personnel.

**DEPARTMENT OF COMMERCE, LABOR  
 AND ENVIRONMENTAL RESOURCES**

*95—Division of Natural Resources*

(WV Code Chapter 20)

Acct. No. 8300

TO BE PAID FROM SPECIAL REVENUE FUND

## APPROPRIATIONS

[Ch. 10]

1	Personal Services .....	\$	—	\$	4,914,000
2	Annual Increment .....		—		84,000
3	Employee Benefits .....		—		1,500,000
4	Land Purchase and Buildings.....		—		452,000
5	Renovation of Dams .....		—		750,000
6	Unclassified .....		—		2,500,000
7	Total .....	\$	—	\$	10,200,000

8 The total amount of this appropriation shall be paid  
9 from a special revenue fund out of fees collected by the  
10 division of natural resources.

## DEPARTMENT OF EDUCATION

*96—State Board of Rehabilitation—  
Division of Rehabilitation Services—  
West Virginia Rehabilitation  
Center—Special Account*

(WV Code Chapter 18)

Acct. No. 8137

TO BE PAID FROM SPECIAL REVENUE FUND

1	Certification of the				
2	Rehabilitation				
3	Center—Total.....	\$	—	\$	200,000

## DEPARTMENT OF EDUCATION AND THE ARTS

*97—Higher Education Central Office—  
State System Registration Fee—  
Special Capital Improvement Fund  
(Capital Improvement and Bond Retirement Fund)*

(WV Code Chapter 18)

Acct. No. 8835

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service—Total.....	\$	—	\$	6,130,000
---	-------------------------	----	---	----	-----------

2 Any unexpended balances remaining in the prior  
 3 years' and 1989-90 appropriations are hereby reappropriated for expenditure during the fiscal year 1990-91  
 4 except for account no. 8835-66, fiscal year 1987-88 which  
 5 shall expire on June 30, 1990.  
 6

7 The total amount of this appropriation shall be paid  
 8 from the special capital improvement fund created by  
 9 section four, article twenty-four, chapter eighteen of the  
 10 code. Projects are to be paid on a cash basis and made  
 11 available from date of passage.

*98—Higher Education Central Office—  
 State System Registration Fee—  
 Revenue Bond Construction Fund*

(WV Code Chapter 18)

Acct. No. 8845

TO BE PAID FROM SPECIAL REVENUE FUND

1 The total amount of this appropriation shall be paid  
 2 from the proceeds of revenue bonds issued pursuant to  
 3 section four, article twenty-four, chapter eighteen of the  
 4 code. Projects are to be made available from the date  
 5 of passage.

6 Any unexpended balances remaining in prior years'  
 7 and the 1989-90 appropriations are hereby reappropriated and reauthorized for expenditure during the  
 8 fiscal year 1990-91.  
 9

*99—Higher Education Central Office—  
 State System Tuition Fee—  
 Special Capital Improvement Fund  
 (Capital Improvement and Bond Retirement Fund)*

(WV Code Chapter 18)

Acct. No. 8855

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service .....	\$	—	\$ 11,145,000
2	Building and			
3	Campus Renewal—			
4	State College System .....		—	2,605,000

5	Building and		
6	Campus Renewal—		
7	State University System . .	—	5,285,000
8	Facilities Planning		
9	and Administration . . . . .	—	300,000
10	Total . . . . .	\$ —	\$ 19,335,000

11 Any unexpended balances remaining in prior years'  
12 and 1989-90 appropriations are hereby reappropriated  
13 for expenditure during the fiscal year 1990-91.

14 The total amount of this appropriation shall be paid  
15 from the special capital improvement fund created by  
16 article twelve-b, chapter eighteen of the code. Projects  
17 are to be paid on a cash basis and made available from  
18 date of passage.

19 The above appropriation for Building and Campus  
20 Renewal—State University System is intended to  
21 include Jackson's Mill.

*100—Higher Education Central Office—  
State System Tuition Fee—  
Revenue Bond Construction Fund*

(WV Code Chapter 18)

Acct. No. 8860

TO BE PAID FROM SPECIAL REVENUE FUND

1 Any unexpended balances remaining in prior years'  
2 and 1989-90 appropriations are hereby reappropriated  
3 for expenditure during the fiscal year 1990-91.

*101—West Virginia University—  
Schools of Health Sciences*

(WV Code Chapter 18)

Acct. No. 9280

TO BE PAID FROM MEDICAL SCHOOL FUND

1 Unclassified—Total . . . . . \$ — \$ 14,664,430

2 Any unexpended balances remaining in the fiscal year  
3 1988-89 and fiscal year 1989-90 appropriations for the  
4 West Virginia University—Schools of Health Sciences at

5 the close of the fiscal year 1989-90 are hereby reappropriated for expenditure during the fiscal year 1990-91.

**DEPARTMENT OF HEALTH AND  
HUMAN RESOURCES**

*102-Division of Health  
Vital Statistics*

(WV Code Chapter 16)

Acct. No. 8216-15

TO BE PAID FROM SPECIAL REVENUE

1	Personal Services .....	\$	—	\$	155,226
2	Annual Increment .....		—		2,844
3	Employee Benefits .....		—		51,183
4	Current Expenses .....		—		48,570
5	Equipment .....		—		16,760
6	Total .....	\$	—	\$	274,583

*103—Board of Barbers and Beauticians*

(WV Code Chapters 16 and 30)

Acct. No. 8220

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	122,537
2	Annual Increment .....		—		2,412
3	Employee Benefits .....		—		35,064
4	Unclassified .....		—		76,360
5	Total .....	\$	—	\$	236,373

6 The total amount of this appropriation shall be paid  
7 from a special revenue fund out of collections made by  
8 the board of barbers and beauticians as provided by law.

*104—Division of Veterans' Affairs—  
Veterans' Home*

(WV Code Chapter 19A)

Acct. No. 8260-13

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	787,829
2	Annual Increment .....		—		15,660

3	Employee Benefits .....	—	262,941
4	Total .....	\$ —	\$ 1,066,430

*105—Division of Health—  
Hospital Services Revenue Account  
(Special Fund)  
(Capital Improvement, Renovation and Operation)  
(WV Code Chapter 16)  
Acct. No. 8500*

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service .....	\$ —	\$ 2,750,000
2	Institutional Facilities		
3	Operations .....	—	24,900,000
4	Total .....	\$ —	\$ 27,650,000

5 Any unexpended balance remaining in the appropri-  
6 ation for hospital services revenue account at the close  
7 of the fiscal year 1989-90 is hereby reappropriated for  
8 expenditure during the fiscal year 1990-91.

9 The total amount of this appropriation shall be paid  
10 from the hospital services revenue account special fund  
11 created by section fifteen-a, article one, chapter sixteen  
12 of the code, and shall be used only for operating  
13 expenses and for improvements in connection with  
14 existing facilities, medley, and bond payments.

15 Projects are to be paid on a cash basis and made  
16 available from the date of passage. Items and projects  
17 of this appropriation are to begin as funds become  
18 available in the special fund or from bond proceeds.

19 Necessary funds from the above appropriation may be  
20 used for medical facilities operations, either in connec-  
21 tion with this account or in connection with the item  
22 designated Institutional Facilities Operations in the  
23 Consolidated Medical Services Fund (account no. 4190).

*106—Workers' Compensation Fund*

(WV Code Chapter 23)

Acct. No. 9000

TO BE PAID FROM WORKERS' COMPENSATION FUND

1	Personal Services .....	\$ —	\$ 7,915,521
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2	Annual Increment .....	—	126,630
3	Employee Benefits .....	—	2,241,299
4	Unclassified .....	—	5,795,955
5	Employers' Excess		
6	Liability Fund .....	—	122,937
7	Total .....	\$ —	\$ 16,202,342

8 There is hereby authorized to be paid out of the above  
 9 appropriation, the amount necessary for the premiums  
 10 on bonds given by the treasurer as bond custodian for  
 11 the protection of the workers' compensation fund. This  
 12 sum shall be transferred to the state board of insurance.

### DEPARTMENT OF PUBLIC SAFETY

*107—Fire Commission  
 Fire Marshal Fees*

(WV Code Chapter 29)

Acct. No. 8017

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ —	\$ 190,000
2	Annual Increment .....	—	—0—
3	Employee Benefits .....	—	68,148
4	Unclassified .....	—	180,500
5	Total .....	\$ —	\$ 438,648

*108—Division of Public Safety—  
 Drunk Driving Prevention Fund*

(WV Code Chapter 15)

Acct. No. 8355

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified—Total .....	\$ —	\$ 622,740
---	--------------------------	------	------------

2 The total amount of this appropriation shall be paid  
 3 from the special revenue fund out of receipts collected  
 4 pursuant to sections nine-a and sixteen, article fifteen,  
 5 chapter eleven of the code and paid into a revolving fund  
 6 account in the state treasury.

## DEPARTMENT OF TAX AND REVENUE

*109—Racing Commission*

(WV Code Chapter 19)

Acct. No. 8080

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Medical Expenses—Total . . .	\$	—	\$	57,000
---	------------------------------	----	---	----	--------

2 The total amount of this appropriation shall be paid  
3 from the special revenue fund out of collections of  
4 license fees and fines as provided by law.

5 No expenditures shall be made from this account  
6 except for hospitalization, medical care and/or funeral  
7 expenses for persons contributing to this fund.

*110—Racing Commission  
Administration and Promotion*

(WV Code Chapter 19)

Acct. No. 8081

1	Administration and				
2	Promotion—Total . . . . .	\$	—	\$	105,000

*111—Office of Alcohol  
Beverage Control Commissioner*

(WV Code Chapter 60)

Acct. No. 9270

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services . . . . .	\$	—	\$	5,016,539
2	Annual Increment . . . . .		—		109,204
3	Employee Benefits . . . . .		—		1,772,009
4	Unclassified . . . . .		—		3,746,572
5	Total . . . . .	\$	—	\$	10,644,324

6 The total amount of this appropriation shall be paid  
7 from a special revenue fund out of liquor revenues.

8 The above appropriation includes the salary of the  
 9 commissioner, salaries of store personnel and store  
 10 inspectors, store operating expenses and equipment, and  
 11 salaries, expenses and equipment of administration  
 12 offices.

13 There is hereby appropriated from liquor revenues, in  
 14 addition to the appropriation, the necessary amount for  
 15 the purchase of liquor as provided by law.

## DEPARTMENT OF TRANSPORTATION

### *112—Division of Motor Vehicles— Driver's License Reinstatement Fund*

(WV Code Chapter 17B)

Acct. No. 8421-10

#### TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	146,422
2	Annual Increment .....		—		1,440
3	Employee Benefits .....		—		38,548
4	Current Expenses .....		—		80,500
5	Repairs and Alterations ....		—		4,000
6	Equipment .....		—		20,000
7	Unclassified .....		—		—0—
8	Total .....	\$	—	\$	290,910

### *113—Division of Motor Vehicles— Driver Rehabilitation*

(WV Code Chapter 17C)

Acct. No. 8421-11

#### TO BE PAID FROM SPECIAL REVENUE

1	Personal Services .....	\$	—	\$	116,384
2	Annual Increment .....		—		1,512
3	Employee Benefits .....		—		30,948
4	Current Expenses .....		—		379,000
5	Equipment .....		—		17,000
6	Total .....	\$	—	\$	544,844

7 **Sec. 5. Appropriations from other funds.— \* \* \***

8

9 \* \* \*, from the funds designated  
 10 there are hereby appropriated conditionally upon the  
 11 fulfillment of the provisions set forth in article two,  
 12 chapter five-a of the code, the following amounts as  
 13 itemized for expenditure during fiscal year one thou-  
 14 sand nine hundred ninety-one.

15 \* \* \*  
 16  
 17

\* \* \*

*114—State Department of Education*  
 (WV Code Chapters 18 and 18A)  
 Acct. No. 8243

## TO BE PAID FROM LOTTERY NET PROFITS

1	Salary Equity.....	\$	—	\$	3,520,000
2	Elementary Computer				
3	Education .....		—		3,520,000
4	Total .....	\$	—	\$	7,040,000

5 Any unexpended balances remaining in the appropri-  
 6 ation Elementary Computer Education (account no.  
 7 8243-06) at the close of the fiscal year 1989-90 is hereby  
 8 reappropriated for expenditure during the fiscal year  
 9 1990-91.

*115—Division of Health*  
 (WV Code Chapter 29)  
 Acct. No. 8525

## TO BE PAID FROM LOTTERY NET PROFITS

1	Commission on Aging .....	\$	—	\$	600,000
2	Continuum of Care .....		—		1,000,000
3	Total .....	\$	—	\$	1,600,000

*116—Division of Commerce*  
 (WV Code Chapter 5B)  
 Acct. No. 8546

## TO BE PAID FROM LOTTERY NET PROFITS

1	Unclassified—Total .....	\$	—	\$	11,020,000
---	--------------------------	----	---	----	------------

Clerk's Note: Language on lines 7, 8 and 9 and all of lines 15 through 17 were stricken by the Governor. Therefore, blank spaces have been published.

- 2 Any unexpended balance remaining in the appropri-  
 3 ation (account no. 8546-06) at the close of the fiscal year  
 4 1989-90 is hereby reappropriated for expenditure  
 5 during the fiscal year 1990-91.

*117—Board of Trustees of the  
 University System of West Virginia  
 and Board of Directors of the  
 State College System*

(WV Code Chapter 18B)

Acct. No. 8825

TO BE PAID FROM LOTTERY NET PROFITS

- |   |                              |      |              |
|---|------------------------------|------|--------------|
| 1 | Unclassified—Total . . . . . | \$ — | \$ 3,140,000 |
|---|------------------------------|------|--------------|

*118—Department of Health and Human Resources*

(WV Code Chapters 9, 48 and 49)

Acct. No. 9132

TO BE PAID FROM LOTTERY NET PROFITS

- |   |                               |      |              |
|---|-------------------------------|------|--------------|
| 1 | Castastrophic Health Care     |      |              |
| 2 | for Senior Citizens . . . . . | \$ — | \$ 4,950,000 |
| 3 | Title XIX Waiver for          |      |              |
| 4 | Senior Citizens . . . . .     | —    | \$ 250,000   |
| 5 | Total . . . . .               | \$ — | \$ 5,200,000 |

*119—Teachers Retirement Board*

(WV Code Chapter 18)

Acct. No. 9260

TO BE PAID FROM LOTTERY NET PROFITS

- |   |                              |      |        |
|---|------------------------------|------|--------|
| 1 | Unclassified—Total . . . . . | \$ — | \$ —0— |
|---|------------------------------|------|--------|

- 2 The auditor shall prorate each deposit of net profits  
 3 by the lottery director among account nos. 8825, 8243,  
 4 8525, 8546, 9132 and 9260 in the proportion the  
 5 appropriations for each account bear to the total of the  
 6 appropriations for the four accounts.

**EXECUTIVE***120—Auditor's Office—  
Land Department Operating Fund*

(WV Code Chapters 11A, 12 and 36)

Acct. No. 8120

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified—Total .....	\$	—	\$	11,058
---	--------------------------	----	---	----	--------

2	The total amount of this appropriation shall be paid				
3	from the special revenue fund out of fees and collections				
4	as provided by law.				

*121—Department of Agriculture—  
West Virginia Rural Rehabilitation Program*

(WV Code Chapter 19)

Acct. No. 8190-13

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Student and Farm Loans—				
2	Total .....	\$	—	\$	375,000

*122—Attorney General—  
Anti-Trust Enforcement*

(WV Code Chapter 47)

Acct. No. 8418-10

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	124,866
2	Annual Increment .....		—		—0—
3	Employee Benefits .....		—		29,764
4	Current Expenses .....		—		178,000
5	Repairs and Alterations ....		—		2,000
6	Equipment .....		—		110,000
7	Total .....	\$	—	\$	444,630

**DEPARTMENT OF ADMINISTRATION**

*123—Division of Finance and Administration—  
Revolving Fund*

(WV Code Chapter 5A)

Acct. No. 8140 .

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	667,215
2	Annual Increment .....		—		15,840
3	Employee Benefits .....		—		246,014
4	Unclassified .....		—		521,364
5	Total .....	\$	—	\$	1,450,433

6 The total amount of this appropriation shall be paid  
7 from a special revenue fund as provided by article two,  
8 chapter five-a of the code.

9 The above appropriation includes salaries and operat-  
10 ing expenses.

11 There is hereby appropriated from this fund, in  
12 addition to the above appropriation, the necessary  
13 amount for the purchase of supplies for resale.

**DEPARTMENT OF COMMERCE, LABOR  
AND ENVIRONMENTAL RESOURCES**

*124—Office of Community and Industrial Development*

(WV Code Chapter 5B)

Acct. No. 8046-10

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Emergency Assistance—				
	Total .....	\$	—	\$	993,000

2 These funds shall be transferred to the division of  
3 human services for enhancement of the federal emer-  
4 gency assistance program.

*125—Oil and Gas Conservation Commission*

(WV Code Chapter 22)

Acct. No. 8096-06

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	166,435
2	Annual Increment .....		—		360

3	Employee Benefits .....	—	34,425
4	Current Expenses .....	—	41,354
5	Repairs and Alterations ....	—	2,000
6	Equipment .....	—	8,600
7	Total .....	\$ —	\$ 253,174

*126—Division of Natural Resources—  
Groundwater Planning*

(WV Code Chapter 20)

Acct. No. 8311-10

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ —	\$ 53,854
2	Annual Increment .....	—	252
3	Employee Benefits .....	—	17,604
4	Current Expenses .....	—	67,450
5	Repairs and Alterations ....	—	21,500
6	Equipment .....	—	142,000
7	Total .....	\$ —	\$ 302,660

*127—Division of Natural Resources—  
Hazardous Waste Emergency and Response Fund*

(WV Code Chapter 20)

Acct. No. 8311-26

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ —	\$ 340,000
2	Annual Increment .....	—	540
3	Employee Benefits .....	—	98,000
4	Current Expenses .....	—	1,603,000
5	Repairs and Alterations ....	—	19,500
6	Equipment .....	—	43,000
7	Total .....	\$ —	\$ 2,104,040

*128—Division of Natural Resources—  
Solid Waste Reclamation and Environmental  
Response Fund*

(WV Code Chapter 20)

Acct. No. 8311-31

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ —	\$ 70,000
---	-------------------------	------	-----------



2	Employee Benefits .....	—	20,196
3	Current Expenses .....	—	513,000
4	Repairs and Alterations ....	—	7,000
5	Equipment .....	—	130,000
6	Total .....	\$ —	\$ 740,196

*129—Division of Natural Resources—  
Solid Waste Enforcement Fund*

(WV Code Chapter 20)

Acct. No. 8311-32

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ —	\$ 1,408,796
2	Annual Increment .....	—	8,316
3	Employee Benefits .....	—	418,988
4	Current Expenses .....	—	218,250
5	Repairs and Alterations ....	—	5,500
6	Equipment .....	—	139,000
7	Total .....	\$ —	\$ 2,198,850

*130—Division of Natural Resources—  
Leaking Underground Storage Tanks*

(WV Code Chapter 20)

Acct. No. 8311-34

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ —	\$ 300,000
2	Annual Increment .....	—	468
3	Employee Benefits .....	—	85,868
4	Current Expenses .....	—	39,900
5	Repairs and Alterations ....	—	4,500
6	Equipment .....	—	20,200
7	Total .....	\$ —	\$ 450,936

*131—Division of Natural Resources—  
Game, Fish and Aquatic Life Fund*

(WV Code Chapter 20)

Acct. No. 8324-06

TO BE PAID FROM SPECIAL REVENUE FUND

1	Current Expenses—Total ...	\$ —	\$ 35,000
---	----------------------------	------	-----------

*132—Division of Natural Resources—  
Nongame Fund*

(WV Code Chapter 20)

Acct. No. 8324-26

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—		\$	79,300
2	Annual Increment .....		—			180
3	Employee Benefits .....		—			19,998
4	Current Expenses .....		—			137,553
5	Repairs and Alterations ....		—			7,922
6	Equipment .....		—			5,000
7	Total .....	\$	—		\$	249,953

*133—Division of Natural Resources—  
Planning and Development Division*

(WV Code Chapter 20)

Acct. No. 8329-07

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—		\$	116,000
2	Annual Increment .....		—			1,800
3	Employee Benefits .....		—			39,424
4	Current Expenses .....		—			22,200
5	Repairs and Alterations ....		—			1,100
6	Equipment .....		—			11,000
7	Total .....	\$	—		\$	191,524

*134—Division of Banking*

(WV Code Chapter 47A)

Acct. No. 8392-06

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—		\$	64,454
2	Employee Benefits .....		—			17,741
3	Current Expenses .....		—			12,293
4	Repairs and Alterations ....		—			2,000
5	Total .....	\$	—		\$	96,488

*135—Division of Banking*

(WV Code Chapter 31A)

Acct. No. 8395

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	701,055
2	Annual Increment .....		—		4,032
3	Employee Benefits .....		—		173,617
4	Unclassified .....		—		397,508
5	Total .....	\$	—	\$	1,276,212

*136—Solid Waste Management Board*

(WV Code Chapter 20)

Acct. No. 8460-10

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	94,500
2	Employee Benefits .....		—		27,714
3	Current Expenses .....		—		42,700
4	Equipment .....		—		27,000
5	Payments to County				
6	Disposal Authority .....		—		883,378
7	Total .....	\$	—	\$	1,075,292

*137—Division of Forestry*

(WV Code Chapter 19)

Acct. No. 8477-24

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	146,000
2	Annual Increment .....		—		17,400
3	Employee Benefits .....		—		129,700
4	Current Expenses .....		—		167,794
5	Repairs and Alterations ....		—		302,706
6	Equipment .....		—		48,000
7	Total .....	\$	—	\$	811,600

*138—Division of Energy—  
Special Reclamation Fund*

(WV Code Chapter 22A)

Acct. No. 8536-10

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	332,700
2	Annual Increment .....		—		3,700
3	Employee Benefits .....		—		98,297
4	Current Expenses .....		—		759,422
5	Repairs and Alterations ....		—		3,045,000
6	Equipment .....		—		4,000
7	Total .....	\$	—	\$	4,243,119

*139—Division of Energy—  
Oil and Gas Reclamation Trust*

(WV Code Chapter 22B)

Acct. No. 8536-14

TO BE PAID FROM SPECIAL REVENUE FUND

1	Repairs and Alterations—				
2	Total .....	\$	—	\$	125,000

*140—Division of Energy—  
Oil and Gas Operating Permits*

(WV Code Chapter 22B)

Acct. No. 8536-25

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	107,726
2	Annual Increment .....		—		792
3	Employee Benefits .....		—		31,925
4	Current Expenses .....		—		283,946
5	Repairs and Alterations ....		—		16,000
6	Equipment .....		—		10,000
7	Total .....	\$	—	\$	450,389

*141—Water Resources Board*

(WV Code Chapter 20)

Acct. No. 8540

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	60,152
2	Annual Increment .....		—		864
3	Employee Benefits .....		—		18,690
4	Equipment .....		—		41,752
5	Total .....	\$	—	\$	121,458

*142—Geological and Economic Survey*

(WV Code Chapter 29)

Acct. No. 8589

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified—Total .....	\$	—	\$	138,350
2	The above appropriation shall be used in accordance				
3	with section four, article two, chapter twenty-nine of the				
4	code.				

## DEPARTMENT OF EDUCATION

*143—State Department of Education—  
FFA-FHA Conference Center*

(WV Code Chapter 18)

Acct. No. 8245-07

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	477,369
2	Annual Increment .....		—		9,531
3	Employee Benefits .....		—		165,564
4	Current Expenses .....		—		256,709
5	Repairs and Alterations ....		—		37,850
6	Equipment .....		—		21,000
7	Total .....	\$	—	\$	968,023

*144—State Department of Education—  
Cedar Lakes Improvement*

(WV Code Chapter 18)

Acct. No. 8245-12

TO BE PAID FROM SPECIAL REVENUE FUND

1	Current Expenses .....	\$	—	\$	118,291
2	Repairs and Alterations ....		—		30,000
3	Equipment .....		—		24,240
4	Total .....	\$	—	\$	172,531

**DEPARTMENT OF HEALTH AND  
HUMAN RESOURCES**

*145—Division of Health Laboratory Services*

(WV Code Chapter 16)

Acct. No. 8215-18

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	295,397
2	Annual Increment .....		—		4,248
3	Employee Benefits .....		—		81,480
4	Current Expenses .....		—		907,480
5	Total .....	\$	—	\$	1,288,605

*146—Health Care Cost Review Authority—  
Planning*

(WV Code Chapter 16)

Acct. No. 8216-18

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	118,531
2	Annual Increment .....		—		396
3	Employee Benefits .....		—		32,755
4	Current Expenses .....		—		298,935
5	Total .....	\$	—	\$	450,617

*147—Division of Health—  
Health Facility Licensing*

(WV Code Chapter 16)

Acct. No. 8216-19

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	118,888
2	Employee Benefits .....		—		30,992
3	Current Expenses .....		—		11,589
4	Repairs and Alterations ....		—		2,000
5	Equipment .....		—		1,938
6	Total .....	\$	—	\$	165,407

*148—Hospital Finance Authority*

(WV Code Chapter 16)

Acct. No. 8330

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	47,619
2	Annual Increment .....		—		—0—
3	Employee Benefits .....		—		10,387
4	Unclassified .....		—		66,858
5	Total .....	\$	—	\$	124,864

6 The total amount of this appropriation shall be paid  
7 from the special revenue fund out of fees and collections  
8 as provided by article twenty-nine-a, chapter sixteen of  
9 the code.

*149—Health Care Cost Review Authority*

(WV Code Chapter 16)

Acct. No. 8564

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	548,081
2	Annual Increment .....		—		5,544
3	Employee Benefits .....		—		96,607
4	Unclassified .....		—		365,817
5	Total .....	\$	—	\$	1,016,049

6 The above appropriation is to be expended in accor-  
 7 dance with and pursuant to the provisions of article  
 8 twenty-nine-b, chapter sixteen of the code, and from the  
 9 special revolving fund designated health care cost  
 10 review fund.

## DEPARTMENT OF PUBLIC SAFETY

### *150—Regional Jail and Prison Authority*

(WV Code Chapter 31)

Acct. No. 8051

#### TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—		\$ 343,589
2	Annual Increment .....		—		2,952
3	Employee Benefits .....		—		100,338
4	Unclassified .....		—		131,663
5	Debt Service .....		—		6,000,000
6	Total .....	\$	—	\$	6,578,542

### *151—Division of Public Safety— Inspection Fees*

(WV Code Chapter 15)

Acct. No. 8350

#### TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—		\$ 454,179
2	Annual Increment .....		—		2,160
3	Employee Benefits .....		—		137,956
4	Unclassified .....		—		123,070
5	Total .....	\$	—	\$	717,365

6 The total amount of this appropriation shall be paid  
 7 from the special revenue fund out of fees collected for  
 8 inspection stickers as provided by law.

### *152—Division of Public Safety— Barracks Construction*

(WV Code Chapter 17C)

Acct. No. 8352

#### TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—		\$ 60,000
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2	Employee Benefits .....	—	21,133
3	Current Expenses .....	—	223,999
4	Equipment .....	—	236,389
5	Total .....	\$ —	\$ 541,521

*153—State Armory Board—  
General Armory Fund*

(WV Code Chapter 15)

Acct. No. 8445-07

TO BE PAID FROM SPECIAL REVENUE FUND

1	Current Expenses .....	\$ —	\$ 52,000
2	Repairs and Alterations ....	—	153,000
3	Equipment .....	—	35,000
4	Total .....	\$ —	\$ 240,000

DEPARTMENT OF TAX AND REVENUE

*154—Office of Chief Inspector*

(WV Code Chapter 6)

Acct. No. 8090-06

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ —	\$ 1,228,310
2	Annual Increment .....	—	13,992
3	Employee Benefits .....	—	295,215
4	Current Expenses .....	—	327,400
5	Repairs and Alterations ....	—	2,400
6	Equipment .....	—	3,200
7	Total .....	\$ —	\$ 1,870,517

*155—Agency of Insurance Commissioner*

(WV Code Chapter 33)

Acct. No. 8016

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ —	\$ 925,412
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2	Annual Increment .....	—	10,654
3	Employee Benefits .....	—	235,550
4	Unclassified .....	—	525,924
5	Total .....	\$ —	\$ 1,697,540

6 The total amount of this appropriation shall be paid  
 7 from a special revenue fund out of collections of fees and  
 8 charges as provided by law.

*156—Alcohol Beverage Control Commission—  
 Wine License Special Fund*

(WV Code Chapter 60)

Acct. No. 8591-06

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ —	\$ 52,500
2	Annual Increment .....	—	504
3	Employee Benefits .....	—	55,295
4	Current Expenses .....	—	1,000
5	Repairs and Alterations ....	—	289,688
6	Total .....	\$ —	\$ 398,987

**DEPARTMENT OF TRANSPORTATION**

*157—Division of Highways*

(WV Code Chapters 17 and 17C)

Acct. No. 6700

TO BE PAID FROM STATE ROAD FUND

1	Maintenance, Expressway, 2 Trunkline and Feeder ....	\$ —	\$ 63,000,000
3	Maintenance, State		
4	Local Services .....	—	89,500,000
5	Maintenance, Contract		
6	Paving and Secondary		
7	Road Maintenance :.....	—	52,000,000
8	Bridge Repair		
9	and Replacement.....	—	30,000,000
10	Industrial Access Roads ....	—	2,000,000
11	Inventory Revolving .....	—	1,250,000
12	Equipment Revolving .....	—	15,590,000
13	General Operations.....	—	28,830,000

14	Annual Increment .....	—	203,000
15	Debt Service .....	—	113,300,000
16	Interstate Construction .....	—	47,000,000
17	Other Federal Aid Programs .....	—	128,500,000
18	Appalachian Program .....	—	67,000,000
19	Nonfederal Aid Construction .....	—	16,201,000
20	Highway Litter Control .....	—	2,000,000
21	Railroad Highway Grade Crossing Improvements ..	—	100,000
22			
23	Total .....	\$ —	\$656,474,000

24 The above appropriations are to be expended in  
25 accordance with the provisions of chapters seventeen  
26 and seventeen-c of the code.

27 The commissioner of highways shall have the author-  
28 ity to operate revolving funds within the state road fund  
29 for the operation and purchase of various types of  
30 equipment used directly and indirectly in the construc-  
31 tion and maintenance of roads and for the purchase of  
32 inventories and materials and supplies.

33 There is hereby appropriated within the above items  
34 sufficient money for the payment of claims, accrued or  
35 arising during this budgetary period, to be paid in  
36 accordance with sections seventeen and eighteen, article  
37 two, chapter fourteen of the code.

38 It is the intent of the Legislature to capture and match  
39 all federal funds available for expenditure on the  
40 Appalachian Highway system at the earliest possible  
41 time. Therefore, should amounts in excess of those  
42 appropriated by required for the purposes of Appalach-  
43 ian programs, funds in excess of the amount approp-  
44 riated may be made available upon recommendation of  
45 the commissioner and approval of the governor.  
46 Further, for the purpose of Appalachian programs,  
47 funds appropriated to line items may be transferred to  
48 other line items upon recommendation of the commis-  
49 sioner and approval of the governor.

*158—Division of Motor Vehicles*

(WV Code Chapters 17, 17A, 17B, 17C, 20 and 24)

Acct. No. 6710

## TO BE PAID FROM STATE ROAD FUND

1	Personal Services .....	\$	—	\$	2,279,446
2	Annual Increment .....		—		37,278
3	Employee Benefits .....		—		661,133
4	Commercial Driver's				
5	License Program .....		—		2,989,288
6	Unclassified .....		413,931		3,542,033
7	Reimbursement to Division				
8	of Public Safety .....		—		6,000,000
9	Total .....	\$	413,931	\$	15,509,178

*159—Division of Motor Vehicles—  
Motorboat Licenses*

(WV Code Chapter 20)

Acct. No. 8421-05

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	113,473
2	Annual Increment .....		—		1,296
3	Employee Benefits .....		—		37,408
4	Current Expenses .....		—		80,000
5	Repairs and Alterations ....		—		5,000
6	Equipment .....		—		2,000
7	Total .....	\$	—	\$	239,177

*160—Division of Motor Vehicles—  
Returned Check Fees*

(WV Code Chapter 17)

Acct. No. 8421-08

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	58,967
2	Annual Increment .....		—		504
3	Employee Benefits .....		—		18,627
4	Current Expenses .....		—		25,500
5	Equipment .....		—		6,500
6	Total .....	\$	—	\$	110,098

*161—Division of Motor Vehicles—  
Insurance Certificate Fees*

(WV Code Chapter 17A)

Acct. No. 8421-09

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—		\$	462,272
2	Employee Benefits .....		—			137,367
3	Current Expenses .....		—			59,536
4	Equipment .....		—			1,475
5	Total .....	\$	—		\$	660,650

**MISCELLANEOUS BOARDS AND COMMISSIONS**

*162—Real Estate Commission*

(WV Code Chapter 47)

Acct. No. 8010

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—		\$	169,332
2	Annual Increment .....		—			1,656
3	Employee Benefits .....		—			47,898
4	Unclassified .....		—			90,057
5	Total .....	\$	—		\$	308,943

6     The total amount of this appropriation shall be paid  
7     out of collections of license fees as provided by law.

*163—Public Service Commission*

(WV Code Chapter 24)

Acct. No. 8280

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—		\$	4,432,023
2	Annual Increment .....		—			42,000
3	Employee Benefits .....		—			1,229,634
4	Unclassified .....		118,332			1,438,719
5	Total .....	\$	118,332		\$	7,142,376

6     The total amount of this appropriation shall be paid

7 from a special revenue fund out of collections for special  
8 license fees from public service corporations as provided  
9 by law.

*164—Public Service Commission—  
Gas Pipeline Division*

(WV Code Chapter 24B)

Acct. No. 8285

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	123,363
2	Annual Increment .....		—		1,296
3	Employee Benefits .....		—		28,849
4	Unclassified .....		168,854		70,961
5	Total .....	\$	168,854	\$	224,469

6 The total amount of this appropriation shall be paid  
7 from a special revenue fund out of receipts collected for  
8 or by the public service commission pursuant to and in  
9 the exercise of regulatory authority over pipeline  
10 companies as provided by law.

*165—Public Service Commission—  
Motor Carrier Division*

(WV Code Chapter 24A)

Acct. No. 8290

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	1,116,885
2	Annual Increment .....		—		17,507
3	Employee Benefits .....		—		316,275
4	Unclassified .....		611,183		326,061
5	Total .....	\$	611,183	\$	1,776,728

6 The total amount of this appropriation shall be paid  
7 from a special revenue fund out of receipts collected for  
8 or by the public service commission pursuant to and in  
9 the exercise of regulatory authority over motor carriers  
10 as provided by law.

*166—Public Service Commission—  
Consumer Advocate*

(WV Code Chapter 24)

Acct. No. 8295

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$ 308,195
2	Annual Increment .....		—	1,620
3	Employee Benefits .....		—	70,270
4	Unclassified .....		—	268,878
5	Total .....	\$	—	\$ 648,963

6 The total amount of this appropriation shall be paid  
7 from a special revenue fund out of collections made by  
8 the public service commission.

1 **Sec. 6. Awards for claims against the state.—**

2 There are hereby appropriated, for the remainder of the  
3 fiscal year 1989-90 and to remain in effect until June  
4 30, 1991, from the fund as designated in the amounts  
5 as specified and for the claimants as named in enrolled  
6 house bill no. 4360, acts, Legislature, regular session,  
7 1990—crime victims compensation funds of \$143,500.00  
8 for payment of claims against the state.

9 There are hereby appropriated for the fiscal year  
10 1990-91 from the funds as designated in the amounts as  
11 specified and for the claimants as named in enrolled  
12 house bill no. 4459, acts, Legislature, regular session,  
13 1990—state road funds of \$3,607,381.72 and special  
14 revenue funds of \$163,410.72.

15 There is hereby appropriated for the fiscal year 1990-  
16 91 from the fund as designated in the amounts as  
17 specified and for the claimants as named in enrolled  
18 house bill no. 4359 and enrolled house bill no. 4459—  
19 workers' compensation funds of \$23,183.99.

20 There is hereby appropriated for the fiscal year 1990-  
21 91 from the fund as designated in the amounts as  
22 specified and for the claimants as named in enrolled  
23 house bill no. 4359 and enrolled house bill no. 4459—  
24 general revenue funds of \$1,454,319.54.

25 The total amount of general revenue funds above does  
 26 not include payment from the Supreme Court—General  
 27 Judicial, account No. 1110, or payment from the  
 28 Department of Education, account no. 2860, in the  
 29 amount of \$8,372.00, specifically made payable from the  
 30 appropriations for the current fiscal year 1989-90.

1 **Sec. 7. Supplemental and deficiency appropria-**  
 2 **tions.**—From the state fund, general revenue, except as  
 3 otherwise provided, there are hereby appropriated the  
 4 following amounts, as itemized, for expenditure during  
 5 the fiscal year one thousand nine hundred ninety to  
 6 supplement the 1989-90 appropriations and to be  
 7 available for expenditure upon date of passage.

*167—Treasurer's Office*

Acct. No. 1600

1	Unclassified—Total .....	\$	—	\$	1,000,000
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*168—Division of Human Services*

Acct. No. 4050

1	Employee Benefits .....	\$	—	\$	—0—
2	Medical Services .....		—		—0—
3	Unclassified .....		—		—0—
4	Total .....	\$	—	\$	—0—

5 **Sec. 8. Appropriations from surplus revenue.**—  
 6 The following items are hereby appropriated from the  
 7 state fund, general revenue, and are to be available for  
 8 expenditure during the fiscal year 1990-91 out of  
 9 surplus funds only, subject to the terms and conditions  
 10 set forth in this section.

11 It is the intent and mandate of this Legislature that  
 12 the following appropriations made by this section shall  
 13 be payable only from the surplus accrued as of July 31,  
 14 1990.

15 In the event that surplus revenues as to July 31, 1990,  
 16 are not sufficient to meet all of the appropriations made  
 17 by this section, then the surplus shall be allocated first  
 18 to provide the funds necessary for the first appropria-



19 tion of this section; next, to provide the funds necessary  
 20 for the second appropriation of this section; and  
 21 subsequently to provide the funds necessary for each  
 22 appropriation in succession before any funds are  
 23 provided for the next subsequent appropriation.

*169—Department of Agriculture—  
 Soil Conservation Committee*

(WV Code Chapter 19)

Acct. No. 5120

1 Unclassified—Total ..... \$ 2,500,000

*170—Governor’s Office—  
 Debt Service*

(WV Code Chapter 5)

Acct. No. 1250

1 Loan Payback to Consolidated  
 2 Investment Fund—Total ..... \$ 1,235,539

*171—Board of Risk and  
 Insurance Management*

(WV Code Chapter 29)

Acct. No. 2250

1 FEMA Reimbursement—Total..... \$ 2,000,000

*172—State Board of Education—  
 Vocational Division*

(WV Code Chapters 18 and 18A)

Acct. No. 2890

1 Wood Products-Forestry  
 2 Vocational Programs—Total ..... \$ 700,000

*173—Office of Community and  
 Industrial Development*

(WV Code Chapter 5)

Acct. No. 1210

1 Software Valley Programs—Total ..... \$ 100,000

1     **Sec. 9. Appropriations and reappropriations—**  
 2     **revenue sharing trust fund.**—Any unexpended balan-  
 3     ces to appropriations made by the 1979, 1980, 1981,  
 4     1982, 1984, 1985, 1986, 1987, 1988, and 1989 budget acts  
 5     and any supplementary transfers or redesignations  
 6     made by the above-listed budget acts from the revenue  
 7     sharing trust fund at the close of the fiscal year 1989-  
 8     90 are hereby reappropriated for expenditure during  
 9     the fiscal year 1990-91.

1     **Sec. 10. Appropriations from federal block**  
 2     **grants.**—The following items are hereby appropriated  
 3     from federal block grants to be available for expendi-  
 4     ture during the fiscal year 1990-91.

*174—Office of Community and Industrial Development—  
 Community Development*

Acct. No. 8029

TO BE PAID FROM FEDERAL FUNDS

1     Unclassified—Total ..... \$ 15,200,000

*175—Office of Community and Industrial Development—  
 Job Training Partnership Act*

Acct. No. 8030

TO BE PAID FROM FEDERAL FUNDS

1     Unclassified—Total ..... \$ 44,448,332

*176—Office of Community and Industrial Development—  
 Community Service*

Acct. No. 8031

TO BE PAID FROM FEDERAL FUNDS

1     Unclassified—Total ..... \$ 6,701,566

*177—Office of Community and Industrial Development—  
 Justice Assistance*

Acct. No. 8032

TO BE PAID FROM FEDERAL FUNDS

1     To Local Entities—Total ..... \$ 320,000

*178—State Department of Education—  
Education Grant*

Acct. No. 8242

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total ..... \$ 58,586,463

*179—Division of Health—  
Maternal and Child Health*

Acct. No. 8502

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total ..... \$ 7,350,340

*180—Division of Health—  
Alcohol, Drug Abuse and Mental Health*

Acct. No. 8503

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total ..... \$ 7,500,000

*181—Division of Health—  
Community Youth Activity Program*

Acct. No. 8504

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total ..... \$ 68,509

*182—Division of Health—Preventive Health*

Acct. No. 8506

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total ..... \$ 1,499,600

*183—Division of Health—  
Mental Health Services for the Homeless*

Acct. No. 8508

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total ..... \$ 400,000

*184—Division of Health—  
Alcohol and Drug Abuse Treatment and Rehabilitation*

Acct. No. 8510

TO BE PAID FROM FEDERAL FUNDS

1   Unclassified—Total ..... \$   250,000

*185—Division of Human Services—  
Energy Assistance*

Acct. No. 9147

TO BE PAID FROM FEDERAL FUNDS

1   Unclassified—Total ..... \$ 10,500,000

*186—Division of Human Services—  
Social Services*

Acct. No. 9161

TO BE PAID FROM FEDERAL FUNDS

1   Unclassified—Total ..... \$ 21,000,000

1   **Sec. 11. Special revenue appropriations.**—There  
2 are hereby appropriated for expenditure during the  
3 fiscal year one thousand nine hundred ninety-one  
4 appropriations made by general law from special  
5 revenue which are not paid into the state fund as  
6 general revenue under the provisions of section two,  
7 article two, chapter twelve of the code: *Provided*, That  
8 none of the money so appropriated by this section shall  
9 be available for expenditure except in compliance with  
10 and in conformity to the provisions of articles two and  
11 three, chapter twelve, and article two, chapter five-a of  
12 the code, unless the spending unit has filed with the  
13 director of the budget, the auditor and the legislative  
14 auditor prior to the beginning of each fiscal year:

15   (a) An estimate of the amount and sources of all  
16 revenues accruing to such fund;

17   (b) A detailed expenditure schedule showing for what  
18 purposes the fund is to be expended.

1     **Sec. 12. State improvement fund appropria-**  
2     **tions.**—Bequests or donations of nonpublic funds,  
3     received by the governor on behalf of the state during  
4     the fiscal year one thousand nine hundred ninety-one,  
5     for the purpose of making studies and recommendations  
6     relative to improvements of the administration and  
7     management of spending units in the executive branch  
8     of state government, shall be deposited in the state  
9     treasury in a separate account therein designated state  
10    improvement fund.

11    There are hereby appropriated all moneys so depos-  
12    ited during the fiscal year one thousand nine hundred  
13    ninety-one to be expended as authorized by the gover-  
14    nor, for such studies and recommendations which may  
15    encompass any problems of organization, procedures,  
16    systems, functions, powers or duties of a state spending  
17    unit in the executive branch, or the betterment of the  
18    economic, social, educational, health and general  
19    welfare of the state or its citizens.

1     **Sec. 13. Specific funds and collection accounts.**—  
2     A fund or collection account which by law is dedicated  
3     to a specific use is hereby appropriated in sufficient  
4     amount to meet all lawful demands upon the fund or  
5     collection account and shall be expended according to  
6     the provisions of article three, chapter twelve of the  
7     code.

1     **Sec. 14. Appropriations for refunding erroneous**  
2     **payment.**— Money that has been erroneously paid into  
3     the state treasury is hereby appropriated out of the fund  
4     into which it was paid, for refund to the proper person.

5     When the officer authorized by law to collect money  
6     for the state finds that a sum has been erroneously paid,  
7     he shall issue his requisition upon the auditor for the  
8     refunding of the proper amount. The auditor shall issue  
9     his warrant to the treasurer and the treasurer shall pay  
10    the warrant out of the fund into which the amount was  
11    originally paid.

1     **Sec. 15. Sinking fund deficiencies.**—There is  
2     hereby appropriated to the governor a sufficient amount  
3     to meet any deficiencies that may arise in the mortgage

4 finance bond insurance fund of the West Virginia  
5 housing development fund which is under the supervi-  
6 sion and control of the municipal bond commission as  
7 provided by section twenty-b, article eighteen, chapter  
8 thirty-one of the code, or in the funds of the municipal  
9 bond commission because of the failure of any state  
10 agency for either general obligations or revenue bonds  
11 or any local taxing district for general obligation bonds  
12 to remit funds necessary for the payment of interest and  
13 sinking fund requirements. The governor is authorized  
14 to transfer from time to time such amounts to the  
15 municipal bond commission as may be necessary for  
16 these purposes.

17 The municipal bond commission shall reimburse the  
18 state of West Virginia through the governor from the  
19 first remittance collected from the West Virginia  
20 housing development fund or from any state agency or  
21 local taxing district for which the governor advanced  
22 funds, with interest at the rate carried by the bonds for  
23 security or payment of which the advance was made.

1 **Sec. 16. Appropriations to pay costs of publica-**  
2 **tion of delinquent corporations.**—There is hereby  
3 appropriated out of the state fund, general revenue, out  
4 of funds not otherwise appropriated, to be paid upon  
5 requisition of the auditor and/or the governor, as the  
6 case may be, a sum sufficient to pay the cost of  
7 publication of delinquent corporations as provided by  
8 sections eighty-four and eighty-six, article twelve,  
9 chapter eleven of the code.

1 **Sec. 17. Appropriations for local governments.**—  
2 There are hereby appropriated for payment to counties,  
3 districts and municipal corporations such amounts as  
4 will be necessary to pay taxes due counties, districts and  
5 municipal corporations and which have been paid into  
6 the treasury:

- 7 (a) For redemption of lands;  
8 (b) By public service corporations;  
9 (c) For tax forfeitures.

1 **Sec. 18. Total appropriations.**—Where only a total  
2 sum is appropriated to a spending unit, the total sum

3 shall include personal services, annual increment,  
 4 employee benefits, current expenses, repairs and  
 5 alterations, equipment and capital outlay, where not  
 6 otherwise specifically provided and except as otherwise  
 7 provided in TITLE I—GENERAL PROVISIONS, Sec. 3.

1 **Sec. 19. General school fund.**—The balance of the  
 2 proceeds of the general school fund remaining after the  
 3 payment of the appropriations made by this act is  
 4 appropriated for expenditure in accordance with section  
 5 sixteen, article nine-a, chapter eighteen of the code.

### TITLE III. ADMINISTRATION.

§1. Appropriations conditional.

§2. Constitutionality.

### TITLE III—ADMINISTRATION.

1 **Section 1. Appropriations conditional.**—The ex-  
 2 penditure of the appropriations made by this act, except  
 3 those appropriations made to the legislative and judicial  
 4 branches of the state government, are conditioned upon  
 5 the compliance by the spending unit with the require-  
 6 ments of article two, chapter five-a of the code.

7 Where spending units or parts of spending units have  
 8 been absorbed by or combined with other spending  
 9 units, it is the intent of this act that reappropriations  
 10 shall be to the succeeding or later spending unit created  
 11 unless otherwise indicated.

1 **Sec. 2. Constitutionality.**—If any part of this act is  
 2 declared unconstitutional by a court of competent  
 3 jurisdiction, its decision shall not affect any portion of  
 4 this act which remains, but the remaining portion shall  
 5 be in full force and effect as if the portion declared  
 6 unconstitutional had never been a part of the act.

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## CHAPTER 11

(H. B. 4226—By Delegates B. Hatfield and White)

[Passed February 28, 1990: in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to  
 expire a certain unexpended amount of reappropriated  
 funds of Account No. 1030, Joint Expenses, as approp-

riated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill, and transferring such amount to Account No. 4050-21, Medical Services.

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

1 That the sum of five hundred thousand dollars of the  
2 reappropriated balance in Account No. 1030-05, Joint  
3 Expenses, line item on Joint Committee on Government  
4 and Finance, from fiscal year 1985-86, including  
5 balances carried forward on the first day of July, one  
6 thousand nine hundred eighty-nine, available for  
7 expenditure in the current fiscal year 1989-90, as  
8 appropriated by chapter ten, acts of the Legislature,  
9 regular session, one thousand nine hundred eighty-nine,  
10 known as the budget bill, be supplemented, amended,  
11 reduced and caused to expire, and that said sum be  
12 transferred to Account No. 4050-21, Medical Services.  
13 Said sum is hereby appropriated and available for  
14 expenditure upon the effective date of this bill.

15 The purpose of this supplementary appropriation bill  
16 is to supplement, amend, reduce and cause to expire out  
17 of appropriations for Joint Expenses the sum of five  
18 hundred thousand dollars, to transfer this sum into the  
19 Medical Services Fund, such moneys being formerly  
20 appropriated by the language of "Sec. 1. Appropriations  
21 from general revenue." This bill shall be effective upon  
22 the date of passage.

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## CHAPTER 12

(S. B. 624—Originating in the Committee on Finance)

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[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

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AN ACT supplementing, amending, reducing and causing to expire certain unexpended amounts of reappropriated general revenue funds in Account No. 1110, Supreme Court—General Judicial, as appropriated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the



budget bill; and certain unexpended amounts in Account No. 7320-10, Municipal Bond Commission—State Sinking Fund—Operating Account; and transferring specified amounts to Account No. 4050-21, Medical Services, Account No. 8380-24, Board of Social Workers and Account No. 8215-25, Medical Licensing Board.

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

That the following sums from the reappropriated balance from fiscal year 1985-1986, including balances carried forward on the first day of July, one thousand nine hundred eighty-nine, in the designated line items of Account No. 1110, Supreme Court-General Judicial, as appropriated from general revenue by chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill, be supplemented, amended, reduced and caused to expire:

1	1	Personal Services .....	\$	—	\$	148,575
2	2	Annual Increment .....		—		761
3	3	Other Expenses.....		—		80,000
4	4	Other Court Costs.....		—		132,121
5	7	Judicial Training				
6	8	Program .....		—		132,614
7	9	Mental Hygiene Fund.....		—		16,615
8		Total .....	\$	—	\$	510,686

9 That the sum of nine hundred thousand dollars from  
 10 Account No. 7320-10, Municipal Bond Commission—  
 11 State Sinking Fund—Operating Account be supple-  
 12 mented, amended, reduced and caused to expire and  
 13 that the sum of one million two hundred ninety thousand  
 14 six hundred eighty-six dollars be transferred to Account  
 15 No. 4050-21, Medical Services; and that the sum of one  
 16 hundred thousand dollars be transferred to Account No.  
 17 8215-25, Medical Licensing Board, and that the sum of  
 18 twenty thousand dollars be transferred to Account No.  
 19 8380-24, Board of Social Workers.

20 That the aforesaid transferred funds be available for  
 21 expenditure from the respective accounts upon the  
 22 effective date of this bill.

The purpose of this bill is to supplement, reduce and cause to expire certain unexpended amounts of reappropriated funds out of Account No. 1110, Supreme Court-General Judicial and Account No. 7320-10, Municipal Bond Commission-State Sinking Fund-Operating Account the total sum of one million four hundred ten thousand six hundred eighty-six dollars and to transfer the sum of one million two hundred ninety thousand six hundred eighty-six dollars to Account No. 4050-21, Medical Services, the sum of one hundred thousand dollars to Account No. 8215-25, Medical Licensing Board, and the sum of twenty thousand dollars to Account No. 8380-24, Board of Social Workers, and that the aforesaid transferred sums be available for expenditure in the respective accounts immediately upon the effective date of this bill.

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## CHAPTER 13

(S. B. 450—Originating in the Committee on Finance)

[Passed February 22, 1990: in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriations of the tax division, as appropriated by chapter ten, Acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill.

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

That the items of the total appropriation of Account No. 1800, chapter ten, Acts of the Legislature, regular session, one thousand nine hundred eighty-nine, be supplemented, amended and transferred to read as follows:

1	TITLE II—APPROPRIATIONS.	
2	Section 1. Appropriations From General Revenue.	
3	DEPARTMENT OF TAX AND REVENUE.	
4	90—Tax Division	
5	(WV Code Chapter 11)	
6	Account No. 1800	
7	1 Personal Services . . . . .	\$ — \$ 8,478,652

8	3	Employee Benefits .....	—	2,331,932
9	4	Unclassified .....	—	4,712,756
10	5	Total .....	\$ —	\$15,668,340

11 The purpose of this supplementary appropriation bill  
 12 is to supplement, amend and transfer certain moneys  
 13 between items of the existing appropriation for the  
 14 designated spending unit. The amounts as itemized for  
 15 expenditure during the fiscal year one thousand nine  
 16 hundred ninety shall be made available for expenditure  
 17 upon the effective date of this bill.



## CHAPTER 14

(H. B. 4592—By Delegate Farley, By Request)

[Passed March 8, 1990; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring between items of the existing appropriations of the Commission on Aging, as appropriated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill.

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

That the items of the total appropriation of Account No. 4060, chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, be supplemented, amended and transferred to read as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 Section 1. Appropriations from general revenue.
- 3 DEPARTMENT OF HEALTH
- 4 AND HUMAN RESOURCES
- 5 75—Commission on Aging
- 6 (WV Code Chapter 29)
- 7 Acct. No. 4060
- 8 6 Area Agencies on Aging
- 9 7 Administration..... \$ 201,483

10	9	Local Programs	
11	10	Service Delivery Costs .....	<u>2,731,792</u>
12	14	Total .....	\$3,410,644

13 The purpose of this supplementary appropriation bill  
 14 is to supplement, amend and transfer certain moneys  
 15 between items of the existing appropriation for the  
 16 designated spending unit. The amounts as itemized for  
 17 expenditure during the fiscal year one thousand nine  
 18 hundred ninety shall be made available for expenditure  
 19 upon the effective date of this bill.

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## CHAPTER 15

(H. B. 4589—By Delegate Farley, By Request)

[Passed March 9, 1990; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring between items of the existing appropriations of the Office of Nonintoxicating Beer Commissioner, as appropriated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill.

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

That the items of the total appropriation of Account No. 4900, chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, be supplemented, amended and transferred to read as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 Section 1. Appropriations from general revenue.
- 3 DEPARTMENT OF TAX AND REVENUE
- 4 92—Office of Nonintoxicating
- 5 Beer Commissioner
- 6 (WV Code Chapter 11)
- 7 Acct. No. 4900
- 8 1 Personal Services ..... \$297,407

9	3	Employee Benefits .....	75,613
10	4	Unclassified .....	<u>106,773</u>
11	5	Total .....	\$484,043

12 The purpose of this supplementary appropriation bill  
 13 is to supplement, amend and transfer certain moneys  
 14 between items of the existing appropriation for the  
 15 designated spending unit. The amounts as itemized for  
 16 expenditure during the fiscal year one thousand nine  
 17 hundred ninety shall be made available for expenditure  
 18 upon the effective date of this bill.

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## CHAPTER 16

(H. B. 4588—By Delegate Farley, By Request)

[Passed March 8, 1990; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring between items of the existing appropriations of the Racing Commission, as appropriated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill.

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

That the items of the total appropriation of Account No. 4950, chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, be supplemented, amended and transferred to read as follows:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	DEPARTMENT OF TAX AND REVENUE		
4	93—Racing Commission		
5	(WV Code Chapter 19)		
6	Acct. No. 4950		
7	1	Personal Services .....	\$1,015,293
8	2	Annual Increment .....	7,488

9	4	Unclassified .....	102,512
10	5	Total .....	\$1,381,810

11 The purpose of this supplementary appropriation bill  
 12 is to supplement, amend and transfer certain moneys  
 13 between items of the existing appropriation for the  
 14 designated spending unit. The amounts as itemized for  
 15 expenditure during the fiscal year one thousand nine  
 16 hundred ninety shall be made available for expenditure  
 17 upon the effective date of this bill.

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## CHAPTER 17

(H. B. 4678—By Delegate Farley)

[Passed March 8, 1990; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring between items of the existing appropriations of the Division of Personnel of the Civil Service System and the Civil Service Commission, as appropriated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill.

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

That the items of the total appropriation of Account No. 5840, chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, be supplemented, amended and transferred to read as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 DEPARTMENT OF ADMINISTRATION

4 26—*Division of Personnel of the*  
 5 *Civil Service System and the*  
 6 *Civil Service Commission*

7 Acct. No. 5840

8	1	Personal Services .....	\$ 570,718
9	3	Employee Benefits .....	184,895

10	4	Unclassified.....	416,676
11	5	Total .....	\$1,187,301

12 The purpose of this supplementary appropriation bill  
 13 is to supplement, amend and transfer certain moneys  
 14 between items of the existing appropriation for the  
 15 designated spending unit. The amounts, as itemized for  
 16 expenditure during the fiscal year one thousand nine  
 17 hundred ninety, shall be made available for expenditure  
 18 upon the effective date of this bill.

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## CHAPTER 18

(H. B. 4387—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
 By Request of the Executive)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all state road funds remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety, to the West Virginia Department of Transportation, Division of Highways, Account No. 6700, supplementing chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document dated January 10, 1990, wherein on page XI thereof are set forth the revenues and expenditures of the State Road Fund, including fiscal year 1989-1990; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the state road fund available for further appropriation during the fiscal year 1989-1990, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore,

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

That the total appropriations from the state road fund to the West Virginia Department of Transportation, Division of Highways, Account No. 6700, for the fiscal year ending the

thirtieth day of June, one thousand nine hundred ninety, as appropriated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill, be supplemented, amended and thereafter read as follows:

1	TITLE II. APPROPRIATIONS		
2	Section 3. Appropriations from Other Funds.		
3	Section 4. Appropriations of Federal Funds.		
4	DEPARTMENT OF TRANSPORTATION		
5	<i>125—Division of Highways</i>		
6	(WV Code Chapters 17 and 17C)		
7	Acct. No. 6700		
8	TO BE PAID FROM STATE ROAD FUND		
9		Federal	Other
10		Funds	Funds
11		Fiscal Year	Fiscal Year
12		1989-1990	1989-1990
13	1	Maintenance, Expressway	
14	2	Trunkline and Feeder ..	\$ —0— \$ 63,500,000
15	3	Maintenance, State	
16	4	Local Services.....	—0— 89,318,000
17	5	Maintenance, Contract	
18	6	Paving and Secondary	
19	7	Road Maintenance.....	—0— 65,750,000
20	8	Bridge Repair and	
21	9	Replacement.....	—0— 27,000,000
22	10	Industrial Access Road ...	—0— 1,899,000
23	11	Inventory Revolving.....	—0— 1,500,000
24	12	Equipment Revolving ....	—0— 15,514,000
25	13	General Operations.....	—0— 30,104,000
26	14	Annual Increment.....	—0— 206,000
27	15	Debt Service.....	—0— 89,300,000
28	16	Interstate Construction ...	—0— 47,500,000
29	17	Other Federal Aid	
30		Programs.....	—0— 136,500,000
31	18	Appalachian Program ....	—0— 30,000,000
32	19	Nonfederal Aid	
33		Construction.....	—0— 13,721,000



34	20	Highway Litter		
35	21	Control .....	—0—	<u>1,930,000</u>
36		Total .....		\$613,742,000

\* Includes salary of commissioner at \$60,000 per annum.

37 The purpose of this supplementary appropriation bill  
 38 is to supplement and amend the existing items in the  
 39 aforesaid account for expenditure in the fiscal year of  
 40 1989-1990, and to reflect the new total spending  
 41 authority of the spending unit for such fiscal year. Such  
 42 increased amounts shall be available for expenditure  
 43 upon the effective date of this bill.

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## CHAPTER 19

(Com. Sub. for H. B. 4400—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
 By Request of the Executive)

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[Passed February 27, 1990; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all state road funds remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety, to the West Virginia Department of Transportation, Division of Motor Vehicles, Account No. 6710, supplementing chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document dated January 10, 1990, wherein on Page XI thereof are set forth the revenues and expenditures of the State Road Fund, including fiscal year 1989-1990; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the state road fund available for further appropriation during the fiscal year 1989-1990, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

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

That the total appropriations from the State Road Fund to the West Virginia Department of Transportation, Division of Motor Vehicles, Account No. 6710, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety, as appropriated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill, be supplemented, amended and thereafter read as follows:

1	<b>TITLE 2. APPROPRIATIONS.</b>		
2	<b>Section 3. Appropriations from Other Funds.</b>		
3	<b>Section 4. Appropriations of Federal Funds.</b>		
4	<i>126—Division of Motor Vehicles</i>		
5	(WV Code Chapters 17, 17A, 17B, 17C, 20 and 24)		
6	Acct. No. 6710		
7	TO BE PAID FROM STATE ROAD FUND		
8		<b>Federal</b>	<b>Other</b>
9		<b>Funds</b>	<b>Funds</b>
10		<b>Fiscal Year</b>	<b>Fiscal Year</b>
11		<b>1989-1990</b>	<b>1989-1990</b>
12	1	Personal Services . . . . . \$	— \$ 2,371,460
13	2	Annual Increment . . . . .	— 46,312
14	3	Employee Benefits . . . . .	— 651,208
15	4	Unclassified . . . . .	100,000 3,762,613
16		Total . . . . .	\$ 100,000 \$ 6,831,593

17 The purpose of this supplementary appropriation bill  
 18 is to supplement and amend the unclassified item in the  
 19 aforesaid account for expenditure in the fiscal year of  
 20 1989-1990 to be used for the development of a classified  
 21 drivers license computer system, and to reflect the new  
 22 total spending authority of the spending unit for such  
 23 fiscal year. Such increased amount shall be available for  
 24 expenditure upon the effective date of this bill.

## CHAPTER 20

(Com. Sub. for H. B. 4456—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)

[Passed March 10, 1990; in effect from passage. Became law without signature of the Governor.]

AN ACT supplementing, amending, reducing and causing to expire certain unexpended amounts of Account Number 6710-88, Department of Motor Vehicles—Highway Litter Control Fund; Account Number 6735-80, Division of Highways—Salvage Yard Fees; Account Number 6740-80, Division of Highways—Outdoor Advertising Control—Fees; Account Number 8000-99, Abandoned and Unclaimed Property—Trust and Expense Fund—Cash Control; Account Number 8001-10, Rewrite—Old—Lost Checks; Account Number 8010-99, Real Estate Commission—License Fees—Cash Control; Account Number 8016-99, Insurance Commission—Unclassified—Cash Control; Account Number 8017-20, Fire Commission—Fire Marshal Fees; Account Number 8080-99, Racing Commission—Medical Expenses and Transfers—Cash Control; Account Number 8101-10, Board of Architects; Account Number 8102-15, Board of Dental Examiners; Account Number 8105-30, Board of Pharmacy; Account Number 8106-35, Board of Practical Nurses; Account Number 8107-40, Board of Professional Engineers; Account Number 8109-50, Board of Osteopathy; Account Number 8110-55, Board of Registered Nurses; Account Number 8111-60, Board of Veterinarians; Account Number 8121-06, Social Security Contributions; Account Number 8140-99, Finance and Administration—Revolving Fund—Purchasing Division—Cash Control; Account Number 8148-26, C & P Refunds; Account Number 8151-99, Finance and Administration—Revolving Fund—Information System Services Division—Cash Control; Account Number 8180-99, Department of Agriculture—Operating Account—Cash Control; Account Number 8190-13, West Virginia Rural Rehabilitation Program; Account Number 8212-10, Criminal Law Research Center; Account Number 8215-18, Laboratory Services; Account Number 8215-19, Hepatitis B Vaccine; Account Number

8215-25, Medical Licensing Board; Account Number 8216-15, Vital Statistics Account; Account Number 8216-18, Planning—Health Care Cost Review Authority; Account Number 8216-19, Health Facility Licensing; Account Number 8220-99, Barbers and Beauticians—Cash Control; Account Number 8245-07, Department of Education—FFA—FHA—Conference Center, Board and Room; Account Number 8250-08, Interest on Employers Delinquent Contributions; Account Number 8260-11, Veterans Fund; Account Number 8260-13, Resident Maintenance Collections; Account Number 8280-99, Public Service Commission—Special License Fees—Cash Control; Account Number 8285-99, Gas Pipeline Safety Fund—Cash Control; Account Number 8290-99, Public Service Commission—Motor Carrier Division—Cash Control; Account Number 8311-31, Solid Waste Reclamation and Environmental Response Fund; Account Number 8311-32, Solid Waste Enforcement Fund; Account Number 8325-62, Highway Litter Control Fund; Account Number 8330-99, West Virginia Hospital Finance Authority—Cash Control; Account Number 8350-99, Motor Vehicle Inspection Fund—Cash Control; Account Number 8352-12, Division of Public Safety—Barracks Construction—Purchase of Investment; Account Number 8352-99, Construction and Repairs to State Police Buildings and Barracks—Cash Control; Account Number 8380-24, Board of Social Work Examiners—Operating Account; Account Number 8392-06, West Virginia Lending and Credit Rate Board Revolving Fund; Account Number 8395-99, Division of Banking—Assessment and Examination Fund—Cash Control; Account Number 8421-05, Division of Motor Vehicles—Motorboat Registration Fees; Account Number 8421-07, Division of Motor Vehicles—Hearing Fees; Account Number 8421-08, Division of Motor Vehicles—Returned Check Fees; Account Number 8421-09, Division of Motor Vehicles—Insurance Certificate Fees; Account Number 8421-10, Division of Motor Vehicles—Driver License Suspend/Revoke Fees; Account Number 8421-11, Division of Motor Vehicles—Driver Rehabilitation; Account Number 8460-10, Solid Waste Planning Fund; Account Number 8477-24,

Forestry Fund; Account Number 8536-14, Energy—Oil and Gas Reclamation Trust; Account Number 8536-25, Energy—Oil and Gas Operator Permits; Account Number 8536-26, Energy—Test Fees; Account Number 8564-99, Health Care Cost Review Authority—Cash Control; Account Number 8591-06, Wine License Special Fund; Account Number 9270-99, Alcohol Beverage Control Commission—General Administration—Cash Control; and transferring specified amounts to the general revenue unappropriated surplus and appropriating specified amounts to Account Numbers 9150-35, Employee Benefits; Account Number 9155-04, Public Assistance; Account Number 9155-10, Social Services; Account Number 9155-67, Medical Services; Account Number 9155-59, Work and Training Program; Account Number 9150-00, Personal Services; Account Number 9150-06, Emergency Assistance; and Account Number 9150-01, Current Expense, all supplementing chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill.

WHEREAS, Due to the increased costs of providing services by the Division of Human Services of the Department of Health and Human Resources, the current appropriation has proven insufficient; and

WHEREAS, The Legislature has determined that this situation must be immediately addressed and responded to by means of prompt enactment of this supplementary appropriation bill, the single work object and purpose of which, pursuant to the provisions of Article VI, Section 51, C (7) (a) of the State Constitution, is to provide an appropriation of public moneys to such agency by budgetary action which expires certain nonoperational moneys now contained in special revenue funds or accounts of the state and to appropriate and transfer the total of such expired moneys to general revenue unappropriated surplus from which appropriations are to be made as specified herein; therefore

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

That the amounts hereinafter specified, in the special revenue funds and accounts, designated herein and appropriated by chapter ten, acts of the Legislature, regular session,

one thousand nine hundred eighty-nine, known as the budget bill, be supplemented, amended, reduced and caused to expire on or before the thirtieth day of June, one thousand nine hundred ninety, and that the total amount of expirations hereinafter specified be transferred to the general revenue unappropriated surplus: The sum of six hundred thousand dollars from Account Number 6710-88, Department of Motor Vehicles—Highway Litter Control Fund; the sum of eighty thousand dollars from Account Number 6735-80, Division of Highways—Salvage Yard Fees; the sum of forty thousand dollars from Account Number 6740-80, Division of Highways—Outdoor Advertising Control—Fees; the sum of four hundred thousand dollars from Account Number 8000-99, Abandoned and Unclaimed Property—Trust and Expense Fund—Cash Control; the sum of six hundred thousand dollars from Account Number 8001-10, Rewrite—Old—Lost Checks; the sum of four hundred thousand dollars from Account Number 8010-99, Real Estate Commission—License Fees—Cash Control; the sum of one million six hundred thousand dollars from Account Number 8016-99, Insurance Commission—Unclassified—Cash Control; the sum of one hundred twenty-one thousand dollars from Account Number 8017-20, Fire Commission—Fire Marshal Fees; the sum of seventy-five thousand dollars from Account Number 8080-99—Racing Commission—Medical Expenses and Transfers—Cash Control; the sum of fifteen thousand dollars from Account Number 8101-10, Board of Architects; the sum of thirty thousand dollars from Account Number 8102-15, Board of Dental Examiners; the sum of four hundred thousand dollars from Account Number 8105-30, Board of Pharmacy; the sum of seventy-five thousand dollars from Account Number 8106-35, Board of Practical Nurses; the sum of fifty thousand dollars from Account Number 8107-40, Board of Professional Engineers; the sum of twenty-five thousand dollars from Account Number 8109-50, Board of Osteopathy; the sum of two hundred fifty thousand dollars from Account Number 8110-55, Board of Registered Nurses; the sum of ten thousand dollars from Account Number 8111-60, Board of Veterinarians; the sum of two million five hundred seventy thousand dollars from Account Number 8121-06, Social Security Contributions; the sum of seventy-five thousand dollars from Account Number 8140-99, Finance and Administration—

Revolving Fund—Purchasing Division—Cash Control; the sum of one hundred forty-four thousand dollars from Account Number 8148-26, C & P Refunds; the sum of two hundred fifty thousand dollars from Account Number 8151-99, Finance and Administration—Revolving Fund—Information System Services Division—Cash Control; the sum of two hundred fifty thousand dollars from Account Number 8180-99, Department of Agriculture—Operating Account—Cash Control; the sum of two hundred thousand dollars from Account Number 8190-13, West Virginia Rural Rehabilitation Program; the sum of forty thousand dollars from Account Number 8212-10, Criminal Law Research Center; the sum of one hundred fifty thousand dollars from Account Number 8215-18, Laboratory Services; the sum of ten thousand dollars from Account Number 8215-19, Hepatitis B Vaccine; the sum of six hundred thousand dollars from Account Number 8215-25, Medical Licensing Board; the sum of one hundred thousand dollars from Account Number 8216-15, Vital Statistics Account; the sum of one hundred fifty thousand dollars from Account Number 8216-18, Planning—Health Care Cost Review Authority; the sum of one hundred thousand dollars from Account Number 8216-19, Health Facilities Licensing; the sum of one hundred thousand dollars from Account Number 8220-99, Barbers and Beauticians—Cash Control; the sum of seventy thousand dollars from Account Number 8245-07, Department of Education—FFA—FHA—Conference Center—Board and Room; the sum of seven hundred seventy-four thousand dollars from Account Number 8250-08, Interest on Employers Delinquent Contributions; the sum of two hundred fifty thousand dollars from Account Number 8260-11, Veterans Fund; the sum of two hundred fifty thousand dollars from Account Number 8260-13, Resident Maintenance Collections; the sum of two million five hundred thousand dollars from Account Number 8280-99, Public Service Commission—Special License Fees—Cash Control; the sum of fifty thousand dollars from Account Number 8285-99, Gas Pipeline Safety Fund—Cash Control; the sum of five hundred thousand dollars from Account Number 8290-99, Public Service Commission—Motor Carrier Division—Cash Control; the sum of seven hundred seventy-five thousand dollars from Account Number 8311-31, Solid Waste Reclamation and Environmental Response Fund; the sum of two hundred thousand dollars from Account Number 8311-32,

Solid Waste Enforcement Fund; the sum of fifty thousand dollars from Account Number 8330-99, West Virginia Hospital Finance Authority—Cash Control; the sum of fifty thousand dollars from Account Number 8350-99, Motor Vehicle Inspection Fund—Cash Control; the sum of two hundred thousand dollars from Account Number 8352-12, Division of Public Safety—Barracks Construction—Purchase of Investment; the sum of one hundred thousand dollars from Account Number 8325-62, Highway Litter Control Fund; the sum of five hundred thousand dollars from Account Number 8352-99, Construction and Repairs to State Police Buildings and Barracks—Cash Control; the sum of fifty thousand dollars from Account Number 8380-24, Board of Social Work Examiners—Operating Account; the sum of seventy-five thousand dollars from Account Number 8392-06, West Virginia Lending and Credit Rate Board Revolving Fund; the sum of three hundred thousand dollars from Account Number 8395-99, Division of Banking—Assessment and Examination Fund—Cash Control; the sum of one hundred seventy-five thousand dollars from Account Number 8421-05, Division of Motor Vehicles—Motorboat Registration Fees; the sum of one hundred thousand dollars from Account Number 8421-07, Division of Motor Vehicles—Hearing Fees; the sum of fifty thousand dollars from Account Number 8421-08, Division of Motor Vehicles—Returned Check Fees; the sum of two hundred thousand dollars from Account Number 8421-09, Division of Motor Vehicles—Insurance Certificate Fees; the sum of one hundred thousand dollars from Account Number 8421-10, Division of Motor Vehicles—Driver License Suspend/Revoke Fees; the sum of two hundred thousand dollars from Account Number 8421-11, Division of Motor Vehicles—Driver Rehabilitation; the sum of four hundred fifty thousand dollars from Account Number 8460-10, Solid Waste Planning Fund; the sum of twenty-five thousand dollars from Account Number 8477-24, Forestry Fund; the sum of one hundred fifty thousand dollars from Account Number 8536-14, Energy—Oil and Gas Reclamation Trust; the sum of fifty-one thousand dollars from Account Number 8536-26, Energy—Test Fees; the sum of five hundred thousand dollars from Account Number 8564-99, Health Care Cost Review Authority—Cash Control; the sum of six hundred fifty thousand dollars from Account Number 8591-06, Wine License Special Fund; and the



of five hundred thousand dollars from Account Number 9270-99, Alcohol Beverage Control Commission—General Administration—Cash Control. Further, that the twenty million six hundred fifty thousand dollars expired from the above stated special revenue accounts and funds shall be appropriated to the accounts indicated below in the following amounts: The sum of two hundred forty-five thousand one hundred seventeen dollars to Account Number 9150-00, Personal Services; the sum of two million fifty-three thousand twenty-nine dollars to Account Number 9150-35, Employee Benefits; the sum of three million five hundred nine thousand dollars to Account Number 9155-04, Public Assistance; the sum of seven million three hundred thousand dollars to Account Number 9155-10, Social Services; the sum of one hundred one thousand dollars to Account Number 9150-06, Emergency Assistance; the sum of three hundred thousand dollars to Account Number 9155-59, Work and Training Payments; the sum of three million one hundred eighty thousand dollars to Account Number 9155-67, Medical Services; and the sum of two million seven hundred seventy-one thousand eight hundred fifty-four dollars to Account Number 9150-01, Current Expenses.

The purpose of this supplementary appropriation bill is to supplement, reduce and cause to expire nineteen million four hundred sixty thousand dollars from various special revenue funds and accounts, and to transfer such funds into specified accounts in the Division of Human Services, of the Department of Health and Human Resources, with such funds being available for expenditure on or before the thirtieth day of June, one thousand nine hundred ninety.

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## CHAPTER 21

(H. B. 4670—By Delegate Farley)

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[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of special revenue funds out of the treasury from the balance of all special revenue funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred ninety, to the Division of Finance and Administration-Information System Services Division Fund,

Account No. 8151, as appropriated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill.

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

That Account No. 8151, chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill, be supplemented by adding the following sum to the designated line item:

- 1 TITLE II—APPROPRIATIONS.
- 2 Section 3. Appropriations from other funds.
- 3 DEPARTMENT OF ADMINISTRATION
- 4 101—*Division of Finance and Administration—*
- 5 *Information System Services Division Fund*
- 6 (WV Code Chapter 5A)
- 7 Account No. 8151
- 8 4 Unclassified ..... \$840,295

9 The purpose of this supplementary appropriation bill  
10 is to supplement this account in the budget bill for fiscal  
11 year 1989-90 by adding to this existing line item an  
12 amount to be used to fund procurement of goods and  
13 services previously paid for through merchandise for  
14 resale. The amount, as itemized for expenditure during  
15 the fiscal year one thousand nine hundred ninety, shall  
16 be made available for expenditure upon the effective  
17 date of this bill.

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## CHAPTER 22

(H. B. 4227—By Delegates M. Burke and Minard)

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[Passed March 1, 1990; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation of special revenue funds supplementing chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill.

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

That account No. 8355-99, chapter ten, acts of the Legislature, regular session, known as the budget bill, be supplemented by adding the following sum to the designated line item:

1	TITLE II—APPROPRIATIONS.		
2	<b>Sec. 3. Appropriations from other funds.</b>		
3	DEPARTMENT OF PUBLIC SAFETY		
4	<i>Division of Public Safety—</i>		
5	<i>Drunk Driving Prevention Fund</i>		
6	(WV Code Chapter 15)		
7	Acct. No. 8355		
8	TO BE PAID FROM SPECIAL REVENUE FUND		
9	Unclassified—Total.....	\$ —	\$ 1,392,000

10 The purpose of this supplementary appropriation bill  
 11 is to supplement this account in the budget bill for fiscal  
 12 year 1989-1990, by adding to this line item an additional  
 13 appropriation of seven hundred fifty thousand dollars  
 14 which may be used by the department of public safety  
 15 for personal services, employee benefits and unclassified  
 16 expenditures as provided in section sixteen, article  
 17 fifteen, chapter eleven of the code of West Virginia, one  
 18 thousand nine hundred thirty-one, as amended.

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## CHAPTER 23

(H. B. 4595—By Delegate Farley, By Request)

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[Passed March 1, 1990; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all special revenue funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred ninety, to the Division of Health-Hospital Services Revenue Account, Account No. 8500, supplementing

chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill.

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

That the total appropriation from the special revenue fund to the Division of Health-Hospital Services Revenue Account, Account No. 8500, for the fiscal year ending June thirtieth, one thousand nine hundred ninety, as appropriated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill, be supplemented, amended and thereafter read as follows:

1	TITLE II—APPROPRIATIONS.	
2	Section 3. Appropriations from other funds.	
3	DEPARTMENT OF HEALTH AND	
4	HUMAN RESOURCES	
5	<i>115—Division of Health</i>	
6	<i>Hospital Services Revenue Account</i>	
7	<i>(Special Fund)</i>	
8	<i>(Capital Improvement, Renovation and Operation)</i>	
9	(WV Code Chapter 16)	
10	Acct. No. 8500	
11	TO BE PAID FROM SPECIAL REVENUE FUND	
12	1	Unclassified ..... \$ —0—
13	2	Debt Service ..... 2,200,000
14	3	Institutional Facilities
15	4	Operations ..... 19,700,000
16	5	Medley Placement ..... <u>4,600,000</u>
17	6	Total ..... \$26,500,000
18	The purpose of this supplementary appropriation bill	
19	is to supplement and amend the existing items in the	
20	aforesaid account for expenditure in fiscal year 1989-90	
21	and to reflect the new total spending authority of the	
22	spending unit for such fiscal year. Such increased	
23	amounts shall be available for expenditure upon the	
24	effective date of this bill.	

## CHAPTER 24

(Com. Sub. for S. B. 146—By Senator J. Manchin)

[Passed March 9, 1990; to take effect July 1, 1990. Approved by the Governor.]

AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter five-g, relating to the procurement of architect-engineer services by agencies of the state and its political subdivisions; providing declaration of policy and definitions; providing procedure for selection and procurement of architectural and engineering services.

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

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

### CHAPTER 5G. PROCUREMENT OF ARCHITECT-ENGINEER SERVICES BY STATE AND ITS SUBDIVISIONS.

#### ARTICLE 1. PROCUREMENT OF ARCHITECT-ENGINEER SERVICES.

§5G-1-1. Declaration of legislative policy.

§5G-1-2. Definitions.

§5G-1-3. Contracts for architectural and engineering services; selection process where total project costs are estimated to cost two hundred fifty thousand dollars or more.

§5G-1-4. Contracts for architectural and engineering services; selection process where total project costs are estimated to cost less than two hundred fifty thousand dollars.

#### §5G-1-1. Declaration of legislative policy.

1 The Legislature hereby declares it to be the policy of  
2 the state, and its political subdivisions, to procure  
3 architectural or engineering services or both on the  
4 basis of demonstrated competence and qualification for  
5 the type of professional services required.

#### §5G-1-2. Definitions.

1 As used in this section:

2 (a) The term “agency” means all state departments,  
3 agencies, authorities, quasi-public corporations and all  
4 political subdivisions, including cities, counties, boards  
5 of education and public service districts.

6 (b) The term “architectural and engineering services”  
7 includes those professional services of an architectural  
8 or engineering nature as well as incidental services that  
9 members of those professions and those in their employ  
10 may logically or justifiably perform.

11 (c) The term “director of purchasing” means any  
12 individual assigned by any agency to procure the  
13 services of architects and engineers.

14 (d) The term “firm” or “professional firm” means any  
15 individual, firm, partnership, corporation, association or  
16 other legal entity permitted by law to practice the  
17 professions of architecture and engineering.

**§5G-1-3. Contracts for architectural and engineering  
services; selection process where total project  
costs are estimated to cost two hundred fifty  
thousand dollars or more.**

1 In the procurement of architectural and engineering  
2 services for projects estimated to cost two hundred fifty  
3 thousand dollars or more, the director of purchasing  
4 shall encourage such firms engaged in the lawful  
5 practice of the profession to submit an expression of  
6 interest, which shall include a statement of qualifica-  
7 tions and performance data, and may include antici-  
8 pated concepts and proposed methods of approach to the  
9 project. All such jobs shall be announced by public  
10 notice published as a Class II legal advertisement in  
11 compliance with the provisions of article three, chapter  
12 fifty-nine of this code. A committee of three to five  
13 representatives of the agency initiating the request shall  
14 evaluate the statements of qualifications and perfor-  
15 mance data and other material submitted by interested  
16 firms and select a minimum of three firms which, in  
17 their opinion, are best qualified to perform the desired  
18 service. Interviews with each firm selected shall be  
19 conducted and the committee shall conduct discussions

20 regarding anticipated concepts and proposed methods of  
21 approach to the assignment. The committee shall then  
22 rank, in order of preference, no less than three profes-  
23 sional firms deemed to be the most highly qualified to  
24 provide the services required, and shall commence scope  
25 of service and price negotiations with the highest  
26 qualified professional firm for architectural or engineer-  
27 ing services or both. Should the agency be unable to  
28 negotiate a satisfactory contract with the professional  
29 firm considered to be the most qualified, at a fee  
30 determined to be fair and reasonable, price negotiations  
31 with the firm of second choice shall commence. Failing  
32 accord with the second most qualified professional firm,  
33 the committee shall undertake price negotiations with  
34 the third most qualified professional firm. Should the  
35 agency be unable to negotiate a satisfactory contract  
36 with any of the selected professional firms, it shall select  
37 additional professional firms in order of their compe-  
38 tence and qualifications and it shall continue negotia-  
39 tions in accordance with this section until an agreement  
40 is reached.

**§5G-1-4. Contracts for architectural and engineering services; selection process where total project costs are estimated to cost less than two hundred fifty thousand dollars.**

1 In the procurement of architectural and engineering  
2 services for projects estimated to cost less than two  
3 hundred fifty thousand dollars, competition shall be  
4 sought by the agency. The agency shall conduct discus-  
5 sions with three or more professional firms solicited on  
6 the basis of known or submitted qualifications for the  
7 assignment prior to the awarding of any contract:  
8 *Provided*, That if a judgment is made that special  
9 circumstances exist and that seeking competition is not  
10 practical, the agency may, with the prior approval of the  
11 director of purchasing, select a firm on the basis of  
12 previous satisfactory performance and knowledge of the  
13 agency's facilities and needs. After selection, the agency  
14 and firm shall develop the scope of services required and  
15 negotiate a contract.

## CHAPTER 25

(Com. Sub. for H. B. 4752—By Delegates Martin and Murphy)

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[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections five and seven, article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article one by adding thereto a new section, designated section six-b, all relating to requiring and providing for the issuance of permits by the director of the archives and history section of the division of culture and history for the excavation, removal, destruction, or other disturbance of historic or prehistoric ruins, burial grounds, archaeological or site, or human skeletal remains, unmarked grave, grave artifact or grave marker of archaeological significance; requiring such permits for the sale or exchange of such items; providing penalties for undertaking such activities without first obtaining such permits, for violating the terms and conditions of such permits and for withholding information regarding such prohibited activities; providing legislative findings on the need for such permits; providing process for notification of discovery of human skeletal remains in unmarked locations and subsequent disposition; providing concurrent civil penalties for persons convicted of prohibited acts involving the excavation, removal, destruction, disturbance and offering for sale or exchange of historic or prehistoric ruins, burial grounds, archaeological site, or human skeletal remains, unmarked grave, grave artifact or grave marker of archaeological significance and providing for disposition of proceeds when civil damages are recovered; providing for property tax exemption for property containing unmarked grave site; providing for disposition of certain human skeletal remains and grave artifacts not subject to reburial; providing general penalties for violation of section; changing the requirement that the historical magazine of the archives and history section be published quarterly; and changing certain references to conform



to Acts reorganizing the executive branch of state government.

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

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

## CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

### ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-5. Archives and history section; director.

§29-1-6b. Protection of human skeletal remains; grave artifacts and grave markers; permits for excavation and removal; penalties.

§29-1-7. Protection of historic and prehistoric sites; penalties.

#### §29-1-5. Archives and history section; director.

1 (a) The purposes and duties of the archives and  
2 history division are to locate, survey, investigate,  
3 register, identify, excavate, preserve, protect, restore  
4 and recommend to the commissioner for acquisition  
5 historic, architectural, archaeological and cultural sites,  
6 structures, documents and objects worthy of preserva-  
7 tion, including human skeletal remains, graves, grave  
8 artifacts and grave markers, relating to the state of  
9 West Virginia and the territory included therein from  
10 the earliest times to the present, upon its own initiative  
11 or in cooperation with any private or public society,  
12 organization or agency; to conduct a continuing survey  
13 and study throughout the state to develop a state plan  
14 to determine the needs and priorities for the preserva-  
15 tion, restoration or development of such sites, structures,  
16 documents and objects; to direct, protect, excavate,  
17 preserve, study or develop such sites, structures and  
18 documents; to review all undertakings permitted,  
19 funded, licensed or otherwise assisted, in whole or in  
20 part, by the state for the purposes of furthering the  
21 duties of the division; to carry out the duties and  
22 responsibilities enumerated in the National Historic

23 Preservation Act of 1966, as amended, as they pertain  
24 to the duties of the division; to develop and maintain a  
25 West Virginia state register of historic places for use as  
26 a planning tool for state and local government; to  
27 operate and maintain a state library for the preservation  
28 of all public records, state papers, documents and  
29 reports of all three branches of state government  
30 including all boards, commissions, departments and  
31 agencies as well as any other private or public papers,  
32 books or documents of peculiar or historic interest or  
33 significance; to preserve and protect all battle or  
34 regimental flags borne by West Virginians and other  
35 memorabilia of historic interest; to designate appropri-  
36 ate monuments, tablets or markers for historic,  
37 architectural and scenic sites within the state and to  
38 arrange for the purchase, replacement, care of and  
39 maintenance of such monuments, tablets and markers  
40 and to formulate and prepare suitable copy for them; to  
41 operate and maintain a state museum, and to coordinate  
42 activities with other museums in the state; to cooperate  
43 with state and federal agencies in archaeological work;  
44 to issue permits for the excavation or removal of human  
45 skeletal remains, grave artifacts and grave markers,  
46 archaeological, and prehistoric and historic features  
47 under the provisions of section six-b of this article; to  
48 edit and publish a quarterly an historical magazine  
49 devoted to the history, biography, bibliography and  
50 genealogy of West Virginia; and to perform such other  
51 duties as may be assigned to the section by the  
52 commissioner.

53 (b) With the advice and consent of the commission, in  
54 addition to the duties above set forth, the section shall  
55 determine the whereabouts of and require the return of  
56 furnishings, objects and documents missing from the  
57 capitol building and other state-owned or controlled  
58 buildings, including, but not limited to, furnishings  
59 chosen or purchased for the capitol by its architect, Cass  
60 Gilbert. No furnishings from the capitol may be sold or  
61 disposed of except under the direction of the director of  
62 surplus state property pursuant to section three-a,  
63 article eight, chapter five-a of this code. If furnishings  
64 originally designated as capitol building furnishings

65 have been sold or otherwise disposed of without the  
66 requisite sale procedures, such furnishings shall be  
67 returned to the capitol and, upon presentation of proof  
68 of the amount paid, the current owner shall be reim-  
69 bursed for the cost of the furnishing less any approp-  
70 riate depreciation or wear and tear.

71 (c) With the advice and consent of the archives and  
72 history commission, the commissioner shall appoint a  
73 director of the archives and history section, who shall  
74 have: (1) A graduate degree in one of the social sciences,  
75 or equivalent training and experience in the fields of  
76 West Virginia history, history, historic preservation,  
77 archaeology, or in records, library or archives manage-  
78 ment; and (2) three years' experience in administration  
79 in the fields of West Virginia history, history, historic  
80 preservation, archaeology, or in records, library or  
81 archives management. Notwithstanding these qualifica-  
82 tions, the person serving as the state historian and  
83 archivist on the date of enactment of this article shall  
84 be eligible for appointment as the director of the  
85 archives and history section. The director of the archives  
86 and history section shall serve as the state historian and  
87 archivist, and shall be the state historic preservation  
88 officer or a deputy state historic preservation officer.

89 (d) With the approval of the commissioner, the  
90 director shall establish professional positions within the  
91 section and develop appropriate organizational struc-  
92 tures to carry out the duties of the section. The director  
93 shall employ the personnel with applicable professional  
94 qualifications to fill positions within the organizational  
95 structure with the minimum professional qualifications  
96 necessary to carry out the provisions of the National  
97 Historic Preservation Act of 1966, as amended. At the  
98 minimum, the following professions shall be represented  
99 within the section staff: Historian, architectural histo-  
100 rian, a licensed architect who specializes in historical  
101 preservation, archaeologist specializing in historic and  
102 prehistoric archaeology, archivist, librarian and techni-  
103 cal and clerical positions as are required.

104 (e) The director shall promulgate rules and regula-  
105 tions with the approval of the archives and history

106 commission and in accordance with the state adminis-  
107 trative procedures act concerning: (1) The professional  
108 policies and functions of the archives and history section;  
109 (2) the review of, and, when required, issuance of  
110 permits for, all undertakings permitted, funded,  
111 licensed or otherwise assisted, in whole or in part, by  
112 the state as indicated in subsection (a) of this section,  
113 in order to carry out the duties and responsibilities of  
114 the section; (3) the establishment and maintenance of a  
115 West Virginia state register of historic places, including  
116 the criteria for eligibility of buildings, structures, sites,  
117 districts and objects for the state register and proce-  
118 dures for nominations to the state register and protec-  
119 tion of nominated and listed properties; (4) the review  
120 of historic structures in accordance with compliance  
121 alternatives and other provisions in any state fire  
122 regulation and shall coordinate standards with the  
123 appropriate regulatory officials regarding their applica-  
124 tion; (5) review of historic structures in conjunction with  
125 existing state or local building codes, and shall coordi-  
126 nate standards with the appropriate regulatory officials  
127 for their application; and (6) the expenditure of funds  
128 provided for threatened and endangered historic  
129 properties by the voluntary check-off program estab-  
130 lished under section fourteen, article one of this chapter  
131 and such other rules and regulations as may be deemed  
132 necessary to effectuate the purposes of this article.

**§29-1-6b. Protection of human skeletal remains, grave  
artifacts and grave markers; permits for  
excavation and removal; penalties.**

1 (a) *Legislative findings and purpose.*

2 The Legislature finds that there is a real and growing  
3 threat to the safety and sanctity of unmarked human  
4 graves in West Virginia and the existing laws of the  
5 state do not provide equal or adequate protection for all  
6 such graves. As evident by the numerous incidents in  
7 West Virginia which have resulted in the desecration of  
8 human remains and vandalism to grave markers, there  
9 is an immediate need to protect the graves of earlier  
10 West Virginians from such desecration. Therefore, the  
11 purpose of this article is to assure that all human burials

12 be accorded equal treatment and respect for human  
13 dignity without reference to ethnic origins, cultural  
14 backgrounds, or religious affiliations.

15 The Legislature also finds that those persons engaged  
16 in the scientific study or recovery of artifacts which  
17 have been acquired in accordance with the law are  
18 engaged in legitimate and worthy scientific and educa-  
19 tional activities. Therefore, this legislation is intended to  
20 permit the appropriate pursuit of those lawful activities.

21 Finally, this legislation is not intended to interfere  
22 with the normal activities of private property owners,  
23 farmers, or those engaged in the development, mining  
24 or improvement of real property.

25 (b) *Definitions.*

26 For the purposes of this section:

27 (1) "Human skeletal remains" means the bones, teeth,  
28 hair or tissue of a deceased human body;

29 (2) "Unmarked grave" means any grave or location  
30 where a human body or bodies have been buried or  
31 deposited for at least fifty years and the grave or  
32 location is not in a publicly or privately maintained  
33 cemetery or in the care of a cemetery association, or is  
34 located within such cemetery or in such care and is not  
35 commonly marked;

36 (3) "Grave artifact" means any items of human  
37 manufacture or use that are associated with the human  
38 skeletal remains in a grave;

39 (4) "Grave marker" means any tomb, monument,  
40 stone, ornament, mound, or other item of human  
41 manufacture that is associated with a grave;

42 (5) "Person" includes the federal and state govern-  
43 ments and any political subdivision of this state; and

44 (6) "Disturb" means the excavating, removing, expos-  
45 ing, defacing, mutilating, destroying, molesting, or  
46 desecrating in any way of human skeletal remains,  
47 unmarked graves, grave artifacts or grave markers.

48 (c) *Acts prohibited; penalties.*

49 (1) No person may excavate, remove, destroy, or  
50 otherwise disturb any historic or prehistoric ruins,  
51 burial grounds, archaeological site, or human skeletal  
52 remains, unmarked grave, grave artifact or grave  
53 marker of historical significance unless such person has  
54 a valid permit issued to him or her by the director of  
55 archives and history: *Provided*, That the supervising  
56 archaeologist of an archaeological investigation being  
57 undertaken in compliance with the federal Archaeolog-  
58 ical Resources Protection Act (Public Law 96-95 at 16  
59 USC 470(aa)) and regulations promulgated thereunder  
60 shall not be required to obtain such permit, but shall  
61 notify the director of archives and history that such  
62 investigation is being undertaken and file reports as are  
63 required of persons issued a permit under this section:  
64 *Provided, however*, That projects being undertaken in  
65 compliance with section 106 of the National Historic  
66 Preservation Act of 1966, as amended, or subsection (a),  
67 section five of this article shall not be required to obtain  
68 such permit for excavation, removal, destruction or  
69 disturbance of historic or prehistoric ruins or archeolog-  
70 ical sites.

71 A person who, either by himself or through an agent,  
72 intentionally excavates, removes, destroys or otherwise  
73 disturbs any historic or prehistoric ruins, burial  
74 grounds or archaeological site, or unmarked grave,  
75 grave artifact or grave marker of historical significance  
76 without first having been issued a valid permit by the  
77 director of archives and history, or who fails to comply  
78 with the terms and conditions of such permit, is guilty  
79 of a misdemeanor, and, upon conviction, shall be fined  
80 not less than one hundred dollars nor more than five  
81 hundred dollars, and may be imprisoned in the county  
82 jail for not less than ten days nor more than six months  
83 or both fined and imprisoned.

84 A person who, either by himself or through an agent,  
85 intentionally excavates, removes, destroys or otherwise  
86 disturbs human skeletal remains of historical signifi-  
87 cance without first having been issued a valid permit  
88 by the director of archives and history, or who fails to  
89 comply with the terms and conditions relating to

90 disinterment or displacement of human skeletal remains  
91 of such permit, is guilty of the felony of disinterment  
92 or displacement of a dead human body or parts thereof  
93 under section fourteen, article eight, chapter sixty-one  
94 of this code and, upon conviction, shall be confined in  
95 the state penitentiary not less than two nor more than  
96 five years.

97 A person who intentionally withholds information  
98 about the excavation, removal, destruction, or other  
99 disturbance of any historic or prehistoric ruins, burial  
100 grounds, archaeological site, or human skeletal remains,  
101 unmarked grave, grave artifact or grave marker of  
102 historical significance is guilty of a misdemeanor and,  
103 upon conviction, shall be fined not more than one  
104 hundred dollars, and may be imprisoned in the county  
105 jail not more than ten days.

106 (2) No person may offer for sale or exchange any  
107 human skeletal remains, grave artifact or grave marker  
108 obtained in violation of this section.

109 A person who, either by himself or through an agent,  
110 offers for sale or exchange any human skeletal remains,  
111 grave artifact or grave marker obtained in violation of  
112 this section is guilty of a misdemeanor and, upon  
113 conviction, shall be fined not less than one thousand  
114 dollars nor more than five thousand dollars, and may be  
115 imprisoned in the county jail not less than six months  
116 nor more than one year.

117 (3) Each instance of excavation, removal, destruction,  
118 disturbance or offering for sale or exchange under (1)  
119 and (2) of this subsection shall constitute a separate  
120 offense.

121 (d) *Notification of discovery of human skeletal remains*  
122 *in unmarked locations.*

123 Within forty-eight hours of the discovery of human  
124 skeletal remains, grave artifact or grave marker in an  
125 unmarked grave on any publicly or privately owned  
126 property the person making such discovery shall notify  
127 the county sheriff of the discovery and its location. If the  
128 human remains, grave artifact or grave marker appear

129 to be from an unmarked grave, the sheriff shall  
130 promptly, and prior to any further disturbance or  
131 removal of the remains, notify the director of archives  
132 and history. The director shall cause an on-site inspec-  
133 tion of the disturbance to be made to determine the  
134 potential for archaeological significance of the site:  
135 *Provided*, That when the discovery is made by an  
136 archaeological investigation permitted under state or  
137 federal law, the supervising archaeologist shall notify  
138 the director of archives and history directly.

139 If the director of archives and history determines that  
140 the site has no archaeological significance, the removal,  
141 transfer and disposition of the remains shall be subject  
142 to the provisions of article thirteen, chapter thirty-seven  
143 of this code, and the director shall notify the circuit  
144 court of the county wherein the site is located.

145 If the director of archives and history determines that  
146 the site has a potential for archaeological significance,  
147 the director shall take such action as is reasonable,  
148 necessary and prudent, including consultation with  
149 appropriate private or public organizations, to preserve  
150 and advance the culture of the state in accordance with  
151 the powers and duties granted to the director, including  
152 the issuance of a permit for the archaeological excava-  
153 tion or removal of the remains. If the director deter-  
154 mines that the issuance of a permit for the archaeolog-  
155 ical excavation or removal of the remains is not  
156 reasonable, necessary or prudent, the director shall  
157 provide written reasons to the applicant for not issuing  
158 the permit.

159 (e) *Issuance of permits.*

160 All permits issued by the director of archives and  
161 history for the disturbance of human skeletal remains,  
162 grave artifacts, or grave markers shall at a minimum  
163 address the following conditions: (1) The methods by  
164 which descendents of proven kinship to the deceased are  
165 notified prior to the disturbance; (2) the respectful  
166 manner in which the remains, artifacts or markers are  
167 to be removed and handled; (3) the need for any  
168 scientific analysis of the remains, artifacts or markers



169 and the duration of those studies; (4) the way in which  
170 the remains may be reburied in consultation with any  
171 descendents of proven kinship, when available; and (5)  
172 such other conditions as the director may deem neces-  
173 sary. Expenses accrued in meeting the permit condi-  
174 tions shall be borne by the permit applicant, except in  
175 cases where the deceasedes' descendents or sponsors are  
176 willing to share or assume the costs. A permit to disturb  
177 human skeletal remains, grave artifacts or grave  
178 markers will be issued only after alternatives to  
179 disturbance and other mitigative measures have been  
180 considered.

181 In addition, a person applying for a permit to excavate  
182 or remove human skeletal remains, grave artifacts,  
183 grave markers, or any historic or prehistoric features of  
184 archaeological significance must:

185 (1) Provide a detailed statement to the director of  
186 archives and history giving the reasons and objectives  
187 for excavation or removal and the benefits expected to  
188 be obtained from the contemplated work;

189 (2) Provide data and results of any excavation, study  
190 or collection in annual reports to the director of archives  
191 and history and submit a final report to the director  
192 upon completion of the excavation; and

193 (3) Obtain the prior written permission of the owner  
194 if the site of such proposed excavation is on privately  
195 owned land.

196 Such permits shall be issued for a period of two years  
197 and may be renewed at expiration. The permits are not  
198 transferable but other persons who have not been issued  
199 a permit may work under the direct supervision of the  
200 person holding the permit. The person or persons to  
201 whom a permit was issued must carry the permit while  
202 exercising the privileges granted and must be present  
203 at the site whenever work is being done.

204 Notwithstanding any other penalties to which a  
205 person may be subject under this section for failing to  
206 comply with the terms and conditions of a permit, the  
207 permit of a person who violates any of the provisions of  
208 this subsection shall be revoked.

209 As permits are issued, the director of archives and  
210 history shall maintain a catalogue of unmarked grave  
211 locations throughout the state.

212 (f) *Property tax exemption for unmarked grave sites.*

213 To serve as an incentive for the protection of un-  
214 marked graves, the owner, having evidence of the  
215 presence of unmarked graves on his or her property,  
216 may apply to the director of archives and history for a  
217 determination as to whether such is the case. Upon  
218 making such a determination in the affirmative, the  
219 director of archives and history shall provide written  
220 certification to the land owner that the site containing  
221 the graves is a cemetery and as such is exempt from  
222 property taxation upon presentation of the certification  
223 to the county assessor. The area of the site to receive  
224 property tax exempt status shall be determined by the  
225 director of archives and history. Additionally, a prop-  
226 erty owner may establish protective easements for the  
227 location of unmarked graves.

228 (g) *Additional provisions for enforcement; civil penal-*  
229 *ties; rewards for information.*

230 (1) The prosecuting attorney of the county in which  
231 a violation of any provision of this section is alleged to  
232 have occurred may be requested by the director of  
233 archives and history to initiate criminal prosecutions or  
234 to seek civil damages, injunctive relief and any other  
235 appropriate relief. The director of archives and history  
236 shall cooperate with the prosecuting attorney in resolv-  
237 ing such allegations.

238 (2) Persons convicted of any prohibited act involving  
239 the excavation, removal, destruction, disturbance or  
240 offering for sale or exchange of historic or prehistoric  
241 ruins, burial grounds, archaeological site, human  
242 skeletal remains, unmarked grave, grave artifact or  
243 grave marker under the provisions of subdivisions (1)  
244 and (2), subsection (c) of this section shall also be liable  
245 for civil damages to be assessed by the prosecuting  
246 attorney in consultation with the director of archives  
247 and history.

248 Civil damages may include:

249 (i) Forfeiture of any and all equipment used in  
250 disturbing the protected unmarked graves or grave  
251 markers;

252 (ii) any and all costs incurred in cleaning, restoring,  
253 analyzing, accessioning and curating the recovered  
254 material;

255 (iii) any and all costs associated with recovery of data,  
256 and analyzing, publishing, accessioning and curating  
257 materials when the prohibited activity is so extensive as  
258 to preclude the restoration of the unmarked burials or  
259 grave markers;

260 (iv) any and all costs associated with restoring the  
261 land to its original contour or the grave marker to its  
262 original condition;

263 (v) any and all costs associated with reinterment of  
264 the human skeletal remains; and

265 (vi) any and all costs associated with the determina-  
266 tion and collection of the civil damages.

267 When civil damages are recovered, the proceeds, less  
268 the costs of the prosecuting attorney associated with the  
269 determination and collection of such damages, shall be  
270 deposited into the endangered historic properties fund  
271 created in section fourteen of this article and may be  
272 expended by the director of archives and history for  
273 archaeological programs at the state level, including the  
274 payment of rewards for information leading to the  
275 arrest and conviction of persons violating the provisions  
276 of subdivisions (1) and (2), subsection (c) of this section.

277 (3) The director of archives and history is authorized  
278 to offer and pay rewards of up to one thousand dollars  
279 from funds on deposit in the endangered historic  
280 properties fund for information leading to the arrest and  
281 conviction of persons who violate the provisions of  
282 subdivisions (1) and (2), subsection (c) of this section.

283 (h) *Disposition of remains and artifacts not subject to*  
284 *reburial.*

285 All human skeletal remains and grave artifacts found  
286 in unmarked graves on public or private land, and not  
287 subject to reburial, under the provisions of subsection (e)  
288 of this section, are held in trust for the people of West  
289 Virginia by the state and are under the jurisdiction of  
290 the director of archives and history. All materials  
291 collected and not reburied through this section shall be  
292 maintained with dignity and respect for the people of  
293 the state under the care of the West Virginia state  
294 museum.

**§29-1-7. Protection of historic and prehistoric sites;  
penalties.**

1 Historic and prehistoric landmarks, sites and dis-  
2 tricts, identified by the archives and history section, on  
3 lands owned or leased by the state, or on private lands  
4 where investigation and development rights have been  
5 acquired by the state by lease or contract, shall not be  
6 disturbed, or destroyed except as permitted under  
7 sections five and six-b of this article.

8 Any person violating the provisions of this section  
9 shall be guilty of a misdemeanor, and, upon conviction  
10 thereof, shall be fined not more than five hundred  
11 dollars, or imprisoned in the county jail not more than  
12 six months, or both fined and imprisoned.

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## CHAPTER 26

(S. B. 280—By Senators Humphreys, Whitlow, Felton, Wehrle,  
Helmick, Wolfe, Pritt and Dittmar)

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[Passed March 9, 1990: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine, relating to financial institutions; reporting of state assets held to secretary of administration and treasurer.

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

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

**ARTICLE 1. DEPARTMENT OF FINANCE AND ADMINISTRATION.**

**§5A-1-9. Reporting of state assets held to secretary and state treasurer.**

1 On or before the first day of July, one thousand nine  
2 hundred ninety, the secretary of administration shall,  
3 pursuant to chapter twenty-nine-a of this code, promul-  
4 gate rules requiring any and all banks, savings and  
5 loans or other financial institutions in possession of  
6 property or other assets belonging to the state of West  
7 Virginia to report on at least an annual basis, to the  
8 secretary and state treasurer, the nature and value of  
9 said property.

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## CHAPTER 27

(S. B. 148—By Senator Thomas)

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[Passed March 6, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the amount of bank assets permitted by code to qualify as a member of the board of banking and financial institutions.

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

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

**ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.**

**§31A-3-1. Board created; appointment, qualifications, terms, oath, etc., of members; quorum;**

**meetings; when members disqualified from participation; compensation; records; office space; personnel.**

1 (a) There is hereby created the West Virginia board  
2 of banking and financial institutions which shall consist  
3 of six members and the commissioner, who shall be  
4 chairman. The six members shall be appointed by the  
5 governor by and with the advice and consent of the  
6 senate. Three of the members shall be executive officers  
7 of state banking institutions, of whom one shall be truly  
8 representative of such state banking institutions having  
9 assets not greater than seventy-five million dollars, one  
10 shall be truly representative of such state banking  
11 institutions having total assets greater than seventy-five  
12 million dollars but not greater than two hundred million  
13 dollars, and one shall be truly representative of such  
14 banking institutions having total assets greater than two  
15 hundred million dollars. One member shall be an  
16 executive officer of a financial institution other than a  
17 banking institution. Two members shall represent the  
18 public, neither of whom shall be an employee, officer,  
19 trustee, director or stockholder of any financial institu-  
20 tion. No member shall hold any other office, employ-  
21 ment or position with the United States, any state,  
22 county, municipality or other governmental entity, any  
23 instrumentality or agency of any of the foregoing or  
24 with any political party.

25 (b) The members of the board shall be appointed for  
26 overlapping terms of six years, except that of the  
27 original appointments, two members shall be appointed  
28 for a term of two years, two members shall be appointed  
29 for a term of four years and two members shall be  
30 appointed for a term of six years, and in every instance  
31 until their respective successors have been appointed  
32 and qualified. Any member appointed for a full six-year  
33 term may not be reappointed until two years after the  
34 expiration of such term. Any member appointed for less  
35 than a full six-year term shall be eligible for reappoint-  
36 ment for a full term. Before entering upon the perfor-  
37 mance of his duties, each member shall take and  
38 subscribe to the oath required by Section 5, Article IV

39 of the constitution of the state of West Virginia. The  
40 governor shall, within sixty days following the occur-  
41 rence of a vacancy on the board, fill the same by  
42 appointing a person for the unexpired term of, and  
43 meeting the same requirements for membership as, the  
44 person vacating said office. Any member may be  
45 removed by the governor in case of incompetency,  
46 neglect of duty, gross immorality or malfeasance in  
47 office.

48 (c) A majority of the members of the board shall  
49 constitute a quorum. The board shall meet at least once  
50 in each calendar quarter on a date fixed by the board.  
51 The commissioner may, upon his own motion, or shall  
52 upon the written request of three members of the board,  
53 call additional meetings of the board upon at least  
54 twenty-four hours' notice. No member shall participate  
55 in a proceeding before the board to which a corporation,  
56 partnership or unincorporated association is a party,  
57 and of which he is, or was at any time in the preceding  
58 twelve months, a director, officer, owner, partner,  
59 employee, member or stockholder. A member may  
60 disqualify himself from participation in a proceeding for  
61 any other cause deemed by him to be sufficient. Each  
62 member shall receive fifty dollars for each day or  
63 portion thereof spent in attending meetings of the board  
64 and shall be reimbursed for all reasonable and neces-  
65 sary expenses incurred incident to his duties as a  
66 member of the board.

67 (d) The board shall keep an accurate record of all its  
68 proceedings and make certificates thereupon as may be  
69 required by law. The commissioner shall make available  
70 necessary office space and secretarial and other assist-  
71 ance as the board may reasonably require.

72 After having conducted a performance audit through  
73 its joint committee on government operations, pursuant  
74 to section nine, article ten, chapter four of this code, the  
75 Legislature hereby finds and declares that the West  
76 Virginia board of banking and financial institutions  
77 should be continued and reestablished. Accordingly,  
78 notwithstanding the provisions of section four, article  
79 ten, chapter four of this code, the West Virginia board

80 of banking and financial institutions shall continue to  
 81 exist until the first day of July, one thousand nine  
 82 hundred ninety-two.

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## CHAPTER 28

(Com. Sub. for H. B. 4803—By Delegate Phillips)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one and seven, article eight-a of said chapter; and to amend and reenact section two, article one, chapter forty-seven-a of said code, all relating to banking institutions and services generally; acquisition of bank shares, state banks or holding companies by foreign banks; lending and credit rate board yearly fee; and incorporation of newly organized banks; and capitalization requirements of newly organized banks.

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

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

### Chapter

**31A. Banks and Banking.**

**47A. West Virginia Lending and Credit Rate Board.**

### CHAPTER 31A. BANKS AND BANKING.

#### Article

**4. Banking Institutions and Services Generally.**

**8A. Acquisition of Bank Shares.**

**ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.**



**§31A-4-3. Minimum capital stock; one class of stock; par value; capitalization of surplus.**

1 (a) No banking institution may hereafter be incorpo-  
2 rated unless it shall have bona fide subscribed capital  
3 stock and capital surplus equal to at least one million  
4 dollars. The West Virginia board of banking and  
5 financial institutions shall require capital in excess of  
6 one million dollars if, in its judgment, economic  
7 conditions or the operating environment of the proposed  
8 banking institution, make such a requirement  
9 necessary.

10 (b) Notwithstanding any provision of (a) above, the  
11 commissioner or the West Virginia board of banking  
12 and financial institutions may approve the incorporation  
13 of a bank newly organized solely for the purpose of  
14 facilitating the acquisition of another bank if the  
15 proposed newly organized bank has a bona fide sub-  
16 scribed capital stock and capital surplus of at least sixty  
17 thousand dollars.

18 (c) Banking institutions shall issue but one class of  
19 stock and the shares shall have a nominal or par value  
20 of not less than one dollar nor more than one hundred  
21 dollars each, and as to each banking institution each  
22 share shall be equal in all respects with any other share.

23 (d) Any banking institution may change the par value  
24 of its shares, when and to the extent that any such action  
25 may be authorized in writing by the commissioner.

**ARTICLE 8A. ACQUISITION OF BANK SHARES.**

§31A-8A-1. Legislative findings and purpose.

§31A-8A-7. Acquisition of state bank or holding company by foreign bank;  
reciprocity; authority of the commissioner and of the board.

**§31A-8A-1. Legislative findings and purpose.**

1 After a review of the structure of banking organiza-  
2 tions in the state of West Virginia and after full  
3 consideration of the complex issues involved, the  
4 Legislature hereby finds and determines that:

5 (a) Well managed and financially sound banking  
6 institutions are essential to the financial well-being of

7 the citizens, and the promotion of the future economic  
8 and industrial growth and development of this state;

9 (b) The formation of bank holding companies will  
10 strengthen and supplement traditional banking services  
11 and facilitate the development of the type of banking  
12 institutions that are necessary for the economic and  
13 industrial growth and development of this state;

14 (c) It is in the best interests of this state and its  
15 citizens for the board to have the power and authority  
16 to disapprove the acquisition of a bank by a bank  
17 holding company when the board determines that such  
18 acquisition would result in a monopoly, substantially  
19 lessen competition, or be contrary to the best interests  
20 of the shareholders or customers of the bank involved;  
21 and

22 (d) The deposits of the citizens of this state are a  
23 substantial and valuable resource which should serve  
24 the economic and industrial growth and development  
25 needs, and the consumer needs of the citizens of this  
26 state; and since the board could not effectively make a  
27 determination that the control of deposits of the citizens  
28 of this state by bank holding companies, the principal  
29 places of business of which are located outside this state,  
30 would be used for the above enumerated local needs of  
31 this state's citizenry, a bank holding company with its  
32 principal place of business located outside this state  
33 shall be prohibited from acquiring, directly or indi-  
34 rectly, five percent or more of the interest in, or assets  
35 of, any bank or bank holding company located in this  
36 state, unless acquired pursuant to section seven of this  
37 article.

**§31A-8A-7. Acquisition of state bank or holding company  
by foreign bank; reciprocity; authority of  
the commissioner and of the board.**

1 (a) Except as authorized in this section, no banking  
2 institution incorporated under the laws of any other  
3 state or having its principal place of business in any  
4 other state may receive deposits or transact any banking  
5 business of any kind in this state other than the lending  
6 of money.

7 (b) Upon enactment, a bank holding company with its  
8 principal place of business in another state may  
9 establish electronic data processing facilities and credit  
10 card processing facilities in West Virginia.

11 (c) After the thirty-first day of December, one  
12 thousand nine hundred eighty-seven, a bank holding  
13 company with its principal place of business in another  
14 state may acquire a West Virginia bank or West  
15 Virginia bank holding company if the board determines  
16 in its discretion that the laws of such other state, as in  
17 effect at the time the application referred to in  
18 subsection (d) of this section, permits a West Virginia  
19 bank holding company to acquire a bank or bank  
20 holding company having its principal place of business  
21 in such other state on terms that are, on the whole,  
22 substantially no more restrictive than those established  
23 under this section and if the West Virginia bank has,  
24 or all West Virginia subsidiaries of the West Virginia  
25 bank holding company to be acquired have, been in  
26 operation for two years or more. The board may approve  
27 the acquisition of all or substantially all of the shares  
28 of a bank newly organized solely for the purpose of  
29 facilitating the acquisition of a bank that has been in  
30 existence and continuously operating for at least two  
31 years. If the law of such other state restricts entry by  
32 West Virginia bank holding companies to that state,  
33 then the board may similarly limit the authority  
34 granted by this section for bank holding companies with  
35 their principal places of business located in that state.

36 In no case may this section be construed to permit the  
37 merger, combination or consolidation of a West Virginia  
38 bank with or into a bank the principal place of business  
39 of which is not in this state.

40 (d) Any bank holding company proposing to acquire  
41 a West Virginia bank or West Virginia bank holding  
42 company pursuant to this section shall comply with, and  
43 be governed by, the procedures and requirements  
44 contained in section four of this article.

45 (e) No application for approval of an acquisition  
46 pursuant to the authority granted by this section may

47 be approved by the board if the board determines that  
48 such approval would cause the applicant bank holding  
49 company to control aggregate total deposits in this state  
50 exceeding twenty percent of the total deposits held by  
51 all financial institutions located in this state as reported  
52 in the most recently available reports of condition or  
53 similar reports filed with state or federal authorities.

54 (f) Unless the shareholders of the West Virginia bank  
55 or West Virginia bank holding company to be acquired  
56 have approved an amendment to its articles of incorpo-  
57 ration or code of regulations or comparable document  
58 that provides that this subsection shall not apply to such  
59 West Virginia bank or West Virginia bank holding  
60 company, any acquisition to be made pursuant to the  
61 authority granted by this section which will result in the  
62 acquiring nonresident bank holding company directly or  
63 indirectly owning or controlling the West Virginia bank  
64 or West Virginia bank holding company must be  
65 authorized by the affirmative vote of the holders of not  
66 less than two thirds of the voting power of the West  
67 Virginia bank or West Virginia bank holding company  
68 to be acquired.

69 (g) Any bank holding company acquiring a bank or  
70 bank holding company pursuant to the authority  
71 granted by this section shall file with the commissioner  
72 copies of the public portions of all regular and periodic  
73 reports such bank holding company is required to file  
74 with federal regulators and under section 13 or 15(d) of  
75 the "Securities Exchange Act of 1934," 48 STAT. 894,  
76 15 U.S.C. 78m or 78o(d), as amended. These reports  
77 shall be filed with the commissioner within fifteen days  
78 following the date they are filed in final form with the  
79 applicable regulator.

80 (h) As used in this section:

81 (1) "Acquire" or "acquisition" means any of the  
82 following transactions or actions:

83 (A) A merger, consolidation or combination of, or  
84 with, a West Virginia bank holding company;

85 (B) The acquisition of the direct or indirect ownership

86 or control of voting shares of a West Virginia bank  
87 holding company or a West Virginia bank if, after such  
88 acquisition, the acquiring bank holding company will  
89 directly or indirectly own or control more than five  
90 percent of any class of voting shares of the West  
91 Virginia bank or West Virginia bank holding company  
92 unless the board determines, in its discretion, that the  
93 nature of the acquisition is such that it should not be  
94 subject to the limitations of this section;

95 (C) The direct or indirect acquisition of all or  
96 substantially all of the assets of a West Virginia bank  
97 or West Virginia bank holding company by a bank  
98 holding company; or

99 (D) The taking of any other action by a bank holding  
100 company that results in the direct or indirect control of  
101 a West Virginia bank or West Virginia bank holding  
102 company.

103 (2) "Bank holding company" means any company  
104 which is a bank holding company as defined in this  
105 article, or which will become such an approved bank  
106 holding company prior to or upon completion of the  
107 acquisition to be made pursuant to the authority granted  
108 by this section.

109 (3) "Electronic data processing facilities and credit  
110 card processing facilities" means facilities established  
111 only for the purpose of processing accounts and or  
112 processing transactions relating to the issuance of credit  
113 cards.

114 (4) "Principal place of business" means, as to a bank  
115 holding company, the state or jurisdiction in which the  
116 total deposits of all direct and indirect banking subsi-  
117 diaries of the bank holding company and any other  
118 company that has control of the bank holding company  
119 are the largest, as shown in the most recent report of  
120 condition or similar report filed by such banking  
121 subsidiaries with state or federal authorities; and, as to  
122 a bank, the state or jurisdiction in which its total  
123 deposits and those of all its banking subsidiaries, if any,  
124 are the largest, as shown in the most recent report of  
125 condition or similar report filed by the bank and its  
126 banking subsidiaries with state or federal authorities.

127 (5) "West Virginia bank" means a bank incorporated  
128 under the laws of this state or a national banking  
129 association the principal place of business of which is in  
130 this state.

131 (6) "West Virginia bank holding company" means a  
132 bank holding company which owns or controls one or  
133 more West Virginia banks and has its principal place  
134 of business in this state.

135 (i) (1) When the commissioner of banking considers it  
136 necessary or appropriate, he may examine any bank  
137 holding company that has acquired or has an application  
138 pending to acquire a West Virginia bank or West  
139 Virginia bank holding company pursuant to the author-  
140 ity granted by subsection (c) of this section. The cost of  
141 an examination if in excess of the initial fee, shall be  
142 assessed against and paid by the bank holding company  
143 examined. The commissioner may request the bank  
144 holding company to be examined pursuant to this  
145 subsection to advance the estimated cost of such  
146 examination.

147 (2) The commissioner may enter into cooperative  
148 agreements with other state and federal bank regula-  
149 tory authorities to facilitate the examination of any bank  
150 holding company that has acquired or has an application  
151 pending to acquire a West Virginia bank or West  
152 Virginia bank holding company pursuant to the author-  
153 ity granted by subsection (c) of this section. The  
154 commissioner may accept reports of examinations and  
155 other records from such other authorities in lieu of  
156 conducting his own examination of such bank holding  
157 companies. The commissioner may take any action  
158 jointly with other regulatory agencies having concurrent  
159 jurisdiction over such bank holding companies or may  
160 take action independently in order to carry out his  
161 responsibilities under subsection (c) of this section.

162 (3) When the commissioner considers it necessary, he  
163 may require any bank holding company that has  
164 acquired a West Virginia bank or West Virginia bank  
165 holding company pursuant to the authority granted by  
166 subsection (c) of this section to submit such reports to

167 the commissioner as he determines to be necessary or  
168 appropriate for the purpose of carrying out his respon-  
169 sibilities.

## CHAPTER 47A. WEST VIRGINIA LENDING AND CREDIT RATE BOARD.

### ARTICLE 1. LENDING AND CREDIT RATE BOARD.

#### §47A-1-2. Board staff, offices, funding.

1 Under the direction of the chairperson of the board,  
2 the board shall be entitled to utilize the staff of the West  
3 Virginia banking department and the offices of the  
4 board shall be those of the West Virginia banking  
5 department. In order to defray the cost of the board's  
6 operations including the cost of its utilization of the staff  
7 of the West Virginia banking department, the board  
8 shall establish the West Virginia lending and credit rate  
9 board revolving fund.

10 On or before the first day of July of each year, the  
11 commissioner of banking may charge and collect from  
12 each supervised financial organization and supervised  
13 lender a yearly fee of fifty dollars and pay it into the  
14 revolving fund established by the board. The fees paid  
15 into this revolving fund shall be utilized to pay the costs  
16 and expenses of the board and all incidental costs and  
17 expenses necessary for its operations.

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## CHAPTER 29

(Com. Sub. for S. B. 355—By Senator Thomas)

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[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section forty-four, relating to financial institutions revealing to other financial institutions information concerning employee's or former employee's participation in violation of banking laws.

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

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

**ARTICLE 4. BANKING INSTITUTIONS AND SERVICES  
GENERALLY.**

**§31A-4-44. Employment information.**

1 It is not unlawful for any officer of a financial  
2 institution, as that term is defined in section two, article  
3 one, chapter thirty-one-a of this code, to provide  
4 employment information about an employee or former  
5 employee to another financial institution when that  
6 information is limited to the employee's, or former  
7 employee's, active participation in a violation of any  
8 state or federal statute, rule or regulation related to  
9 financial institutions and which has been duly reported  
10 to the proper state or federal prosecutorial authorities.

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## CHAPTER 30

(S. B. 138—By Senators Dittmar and Heck)

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[Passed March 7, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-six 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 payment order; funds transfer; other definitions; time payment order received; federal reserve regulations and operating circulars; exclusion of consumer transactions; security procedures; authorized and verified payment orders; unenforceability of certain verified payment orders; refund of payment; erroneous payment orders; transmission of payment; misdescription of beneficiary; misdescription of intermediary bank or beneficiary's bank; acceptance of payment order; rejection of payment order; cancellation and amendment of payment order; liability and duty of receiving bank;



execution; obligations of receiving bank; erroneous execution; duty of sender; liability for late or improper execution; payment date; obligation of sender; payment by sender; obligation of beneficiary's bank; payment of beneficiary's bank; payment by originator; discharge of underlying obligation; variation by agreement; creditor process; setoff by beneficiary's bank; injunction or restraining order; order items may be charged; preclusion of objection to debt; rate of interest; and choice of law.

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

That chapter forty-six 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. FUNDS TRANSFERS.

##### PART I. SUBJECT MATTER AND DEFINITIONS.

- §46-4A-101. Short Title.
- §46-4A-102. Subject matter.
- §46-4A-103. Payment order—Definitions.
- §46-4A-104. Funds transfer—Definitions.
- §46-4A-105. Other definitions.
- §46-4A-106. Time payment order is received.
- §46-4A-107. Federal reserve regulations and operating circulars.
- §46-4A-108. Exclusion of consumer transactions governed by federal law.

##### PART II. ISSUE AND ACCEPTANCE OF PAYMENT ORDER.

- §46-4A-201. Security procedure.
- §46-4A-202. Authorized and verified payment orders.
- §46-4A-203. Unenforceability of certain verified payment orders.
- §46-4A-204. Refund of payment and duty of customer to report with respect to unauthorized payment order.
- §46-4A-205. Erroneous payment orders.
- §46-4A-206. Transmission of payment order through funds-transfer or other communication system.
- §46-4A-207. Misdescription of beneficiary.
- §46-4A-208. Misdescription of intermediary bank or beneficiary's bank.
- §46-4A-209. Acceptance of payment order.
- §46-4A-210. Rejection of payment order.
- §46-4A-211. Cancellation and amendment of payment order.
- §46-4A-212. Liability and duty of receiving bank regarding unaccepted payment order.

**PART III. EXECUTION OF SENDER'S PAYMENT  
ORDER BY RECEIVING BANK.**

- §46-4A-301. Execution and execution date.
- §46-4A-302. Obligations of receiving bank in execution of payment order.
- §46-4A-303. Erroneous execution of payment order.
- §46-4A-304. Duty of sender to report erroneously executed payment order.
- §46-4A-305. Liability for late or improper execution of failure to execute payment order.

**PART IV. PAYMENT.**

- §46-4A-401. Payment date.
- §46-4A-402. Obligation of sender to pay receiving bank.
- §46-4A-403. Payment by sender to receiving bank.
- §46-4A-404. Obligation of beneficiary's bank to pay and give notice to beneficiary.
- §46-4A-405. Payment by beneficiary's bank to beneficiary.
- §46-4A-406. Payment by originator to beneficiary; discharge of underlying obligation.

**PART V. MISCELLANEOUS PROVISIONS.**

- §46-4A-501. Variation by agreement and effect of funds-transfer system rule.
- §46-4A-502. Creditor process served on receiving bank; setoff by beneficiary's bank.
- §46-4A-503. Injunction or restraining order with respect to funds transfer.
- §46-4A-504. Order in which items and payment orders may be charged to account; order of withdrawals from accounts.
- §46-4A-505. Preclusion of objection to debit of customer's account.
- §46-4A-506. Rate of interest.
- §46-4A-507. Choice of law.

**PART I. SUBJECT MATTER AND DEFINITIONS.**

**§46-4A-101. Short title.**

- 1 This article may be cited as Uniform Commercial
- 2 Code-Funds Transfer.

**§46-4A-102. Subject matter.**

- 1 Except as otherwise provided in section one hundred
- 2 eight of this article, this article applies to funds
- 3 transfers defined in section one hundred four of this
- 4 article.

**§46-4A-103. Payment order—Definitions.**

- 1 (a) In this article:
- 2 (1) "Payment order" means an instruction of a sender
- 3 to a receiving bank, transmitted orally, electronically or
- 4 in writing, to pay, or to cause another bank to pay, a

5 fixed or determinable amount of money to a beneficiary  
6 if:

7 (A) The instruction does not state a condition to  
8 payment to the beneficiary other than time of payment;

9 (B) The receiving bank is to be reimbursed by  
10 debiting an account of, or otherwise receiving payment  
11 from, the sender; and

12 (C) The instruction is transmitted by the sender  
13 directly to the receiving bank or to an agent, funds-  
14 transfer system or communication system for transmit-  
15 tal to the receiving bank.

16 (2) "Beneficiary" means the person to be paid by the  
17 beneficiary's bank.

18 (3) "Beneficiary's bank" means the bank identified in  
19 a payment order in which an account of the beneficiary  
20 is to be credited pursuant to the order or which  
21 otherwise is to make payment to the beneficiary if the  
22 order does not provide for payment to an account.

23 (4) "Receiving bank" means the bank to which the  
24 sender's instruction is addressed.

25 (5) "Sender" means the person giving the instruction  
26 to the receiving bank.

27 (b) If an instruction complying with subdivision (1),  
28 subsection (a) of this section is to make more than one  
29 payment to a beneficiary, the instruction is a separate  
30 payment order with respect to each payment.

31 (c) A payment order is issued when it is sent to the  
32 receiving bank.

#### §46-4A-104. Funds transfer—Definitions.

1 In this article:

2 (1) "Funds transfer" means the series of transactions,  
3 beginning with the originator's payment order, made for  
4 the purpose of making payment to the beneficiary of the  
5 order. The term includes any payment order issued by  
6 the originator's bank or an intermediary bank intended  
7 to carry out the originator's payment order. A funds  
8 transfer is completed by acceptance by the beneficiary's

9 bank of a payment order for the benefit of the benefi-  
10 ciary of the originator's payment order.

11 (2) "Intermediary bank" means a receiving bank  
12 other than the originator's bank or the beneficiary's  
13 bank.

14 (3) "Originator" means the sender of the first payment  
15 order in a funds transfer.

16 (4) "Originator's bank" means (A) the receiving bank  
17 to which the payment order of the originator is issued  
18 if the originator is not a bank or (B) the originator if  
19 the originator is a bank.

#### §46-4A-105. Other definitions.

1 (a) In this article:

2 (1) "Authorized account" means a deposit account of  
3 a customer in a bank designated by the customer as a  
4 source of payment of payment orders issued by the  
5 customer to the bank. If a customer does not so  
6 designate an account, any account of the customer is an  
7 authorized account if payment of a payment order from  
8 that account is not inconsistent with a restriction on the  
9 use of that account.

10 (2) "Banker" means a person engaged in the business  
11 of banking and includes a savings bank, savings and  
12 loan association, credit union, and trust company. A  
13 branch or separate office of a bank is a separate bank  
14 for purposes of this article.

15 (3) "Customer" means a person, including a bank,  
16 having an account with a bank or from whom a bank  
17 has agreed to receive payment orders.

18 (4) "Funds-transfer business day" of a receiving bank  
19 means the part of a day during which the receiving  
20 bank is open for the receipt, processing and transmittal  
21 of payment orders and cancellations and amendments of  
22 payment orders.

23 (5) "Funds-transfer system" means a wire transfer  
24 network, automated clearing house or other communi-  
25 cation system of a clearing house or other association of

26 banks through which a payment order by a bank may  
27 be transmitted to the bank to which the order is  
28 addressed.

29 (6) "Good faith" means honesty in fact and the  
30 observance of reasonable commercial standards of fair  
31 dealing.

32 (7) "Prove" with respect to a fact means to meet the  
33 burden of establishing the fact as defined in subdivision  
34 (8), section two hundred one, article one of this chapter.

35 (b) Other definitions applying to this article and the  
36 sections in which they appear are:

37 (1) "Acceptance", section two hundred nine of this  
38 article.

39 (2) "Beneficiary", section one hundred three of this  
40 article.

41 (3) "Beneficiary's bank", section one hundred three of  
42 this article.

43 (4) "Executed", section three hundred one of this  
44 article.

45 (5) "Execution date", section three hundred one of this  
46 article.

47 (6) "Funds transfer", section one hundred four of this  
48 article.

49 (7) "Funds-transfer system rule", section five hundred  
50 one of this article.

51 (8) "Intermediary bank", section one hundred four of  
52 this article.

53 (9) "Originator", section one hundred four of this  
54 article.

55 (10) "Originator's bank", section one hundred four of  
56 this article.

57 (11) "Payment by beneficiary's bank to beneficiary",  
58 section four hundred five of this article.

59 (12) "Payment by originator to beneficiary", section  
60 four hundred six of this article.

61 (13) "Payment by sender to receiving bank", section  
62 four hundred three of this article.

63 (14) "Payment date", section four hundred one of this  
64 article.

65 (15) "Payment order", section one hundred three of  
66 this article.

67 (16) "Receiving bank", section one hundred three of  
68 this article.

69 (17) "Security procedure", section two hundred one of  
70 this article.

71 (18) "Sender", section one hundred three of this  
72 article.

73 (c) The following definitions in article four of this  
74 chapter apply to this article:

75 (1) "Clearing house", section one hundred four, article  
76 four of this chapter.

77 (2) "Item", section one hundred four, article four of  
78 this chapter.

79 (3) "Suspends payments", section one hundred four,  
80 article four of this chapter.

81 (d) In addition, article one of this chapter contains  
82 general definitions and principles of construction and  
83 interpretation applicable throughout this article.

**§46-4A-106. Time payment order is received.**

1 (a) The time of receipt of a payment order or com-  
2 munication canceling or amending a payment order is  
3 determined by the rules applicable to receipt of a notice  
4 stated in subdivision (27), section two hundred one,  
5 article one of this chapter. A receiving bank may fix a  
6 cut-off time or times on a funds-transfer business day  
7 for the receipt and processing of payment orders and  
8 communications canceling or amending payment orders.  
9 Different cut-off times may apply to payment orders,  
10 cancellations or amendments, or to different categories  
11 of payment orders, cancellations or amendments. A cut-  
12 off time may apply to senders generally or different cut-

13 off times may apply to different senders or categories  
14 of payment orders. If a payment order or communica-  
15 tion canceling or amending a payment order is received  
16 after the close of a funds-transfer business day or after  
17 the appropriate cut-off time on a funds-transfer business  
18 day, the receiving bank may treat the payment order or  
19 communication as received at the opening of the next  
20 funds-transfer business day.

21 (b) If this article refers to an execution date or  
22 payment date or states a day on which a receiving bank  
23 is required to take action, and the date or day does not  
24 fall on a funds-transfer business day, the next day that  
25 is a funds-transfer business day is treated as the date  
26 or day stated, unless the contrary is stated in this article.

**§46-4A-107. Federal reserve regulations and operating circulars.**

1 Regulations of the board of governors of the federal  
2 reserve system and operating circulars of the federal  
3 reserve banks supersede any inconsistent provision of  
4 this article to the extent of the inconsistency.

**§46-4A-108. Exclusion of consumer transactions governed by federal law.**

1 This article does not apply to a funds transfer any part  
2 of which is governed by the Electronic Fund Transfer  
3 Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728,  
4 15 U.S.C. §1693 et seq.) as amended from time to time.

**PART II. ISSUE AND ACCEPTANCE  
OF PAYMENT ORDER.**

**§46-4A-201. Security procedure.**

1 "Security procedure" means a procedure established  
2 by agreement of a customer and a receiving bank for  
3 the purpose of (1) verifying that a payment order or  
4 communication amending or canceling a payment order  
5 is that of the customer, or (2) detecting error in the  
6 transmission or the content of the payment order or  
7 communication. A security procedure may require the  
8 use of algorithms or other codes, identifying words or  
9 numbers, encryption, callback procedures or similar

10 security devices. Comparison of a signature on a  
11 payment order or communication with an authorized  
12 specimen signature of the customer is not by itself a  
13 security procedure.

**§46-4A-202. Authorized and verified payment orders.**

1 (a) A payment order received by the receiving bank  
2 is the authorized order of the person identified as sender  
3 if that person authorized the order or is otherwise bound  
4 by it under the law of agency.

5 (b) If a bank and its customer have agreed that the  
6 authenticity of payment orders issued to the bank in the  
7 name of the customer as sender will be verified  
8 pursuant to a security procedure, a payment order  
9 received by the receiving bank is effective as the order  
10 of the customer, whether or not authorized, if (1) the  
11 security procedure is a commercially reasonable method  
12 of providing security against unauthorized payment  
13 orders, and (2) the bank proves that it accepted the  
14 payment order in good faith and in compliance with the  
15 security procedure and any written agreement or  
16 instruction of the customer restricting acceptance of  
17 payment orders issued in the name of the customer. The  
18 bank is not required to follow an instruction that  
19 violates a written agreement with the customer or notice  
20 of which is not received at a time and in a manner  
21 affording the bank a reasonable opportunity to act on  
22 it before the payment order is accepted.

23 (c) Commercial reasonableness of a security proce-  
24 dure is a question of law to be determined by consid-  
25 ering the wishes of the customer expressed to the bank,  
26 the circumstances of the customer known to the bank,  
27 including the size, type and frequency of payment  
28 orders normally issued by the customer to the bank,  
29 alternative security procedures offered to the customer  
30 and security procedures in general use by customers and  
31 receiving banks similarly situated. A security procedure  
32 is deemed to be commercially reasonable if (1) the  
33 security procedure was chosen by the customer after the  
34 bank offered, and the customer refused, a security  
35 procedure that was commercially reasonable for that



36 customer, and (2) the customer expressly agreed in  
37 writing to be bound by any payment order, whether or  
38 not authorized, issued in its name, and accepted by the  
39 bank in compliance with the security procedure chosen  
40 by the customer.

41 (d) The term "sender" in this article includes the  
42 customer in whose name a payment order is issued if  
43 the order is the authorized order of the customer under  
44 subsection (a) of this section, or it is effective as the  
45 order of the customer under subsection (b) of this  
46 section.

47 (e) This section applies to amendments and cancella-  
48 tions of payment orders to the same extent it applies to  
49 payment orders.

50 (f) Except as provided in this section and in subdivi-  
51 sion (1), subsection (a), section two hundred three of this  
52 article, rights and obligations arising under this section  
53 or section two hundred three of this article may not be  
54 varied by agreement.

**§46-4A-203. Unenforceability of certain verified pay-  
ment orders.**

1 (a) If an accepted payment order is not, under  
2 subsection (a), section two hundred two of this article,  
3 an authorized order of a customer identified as sender,  
4 but is effective as an order of the customer pursuant to  
5 subsection (b), section two hundred two of this article,  
6 the following rules apply:

7 (1) By express written agreement, the receiving bank  
8 may limit the extent to which it is entitled to enforce  
9 or retain payment of the payment order; or

10 (2) The receiving bank is not entitled to enforce or  
11 retain payment of the payment order if the customer  
12 proves that the order was not caused, directly or  
13 indirectly, by a person (A) entrusted at any time with  
14 duties to act for the customer with respect to payment  
15 orders or the security procedure, or (B) who obtained  
16 access to transmitting facilities of the customer or who  
17 obtained, from a source controlled by the customer and  
18 without authority of the receiving bank, information

19 facilitating breach of the security procedure, regardless  
20 of how the information was obtained or whether the  
21 customer was at fault. Information includes any access  
22 device, computer software or the like.

23 (b) This section applies to amendments of payment  
24 orders to the same extent it applies to payment orders.

**§46-4A-204. Refund of payment and duty of customer to report with respect to unauthorized payment order.**

1 (a) If a receiving bank accepts a payment order issued  
2 in the name of its customer as sender which is (1) not  
3 authorized and not effective as the order of the customer  
4 under section two hundred two of this article or (2) not  
5 enforceable, in whole or in part, against the customer  
6 under section two hundred three of this article, the bank  
7 shall refund any payment of the payment order received  
8 from the customer to the extent the bank is not entitled  
9 to enforce payment, and shall pay interest on the  
10 refundable amount calculated from the date the bank  
11 received payment to the date of the refund. However,  
12 the customer is not entitled to interest from the bank  
13 on the amount to be refunded if the customer fails to  
14 exercise ordinary care to determine that the order was  
15 not authorized by the customer and to notify the bank  
16 of the relevant facts within a reasonable time not  
17 exceeding ninety days after the date the customer  
18 received notification from the bank that the order was  
19 accepted or that the customer's account was debited  
20 with respect to the order. The bank is not entitled to any  
21 recovery from the customer on account of a failure by  
22 the customer to give notification as stated in this section.

23 (b) Reasonable time under subsection (a) of this  
24 section may be fixed by agreement as stated in subsec-  
25 tion (1), section two hundred four, article one of this  
26 chapter, but the obligation of a receiving bank to refund  
27 payment as stated in subsection (a) of this section may  
28 not otherwise be varied by agreement.

**§46-4A-205. Erroneous payment orders.**

1 (a) (1) If an accepted payment order was transmitted

2 pursuant to a security procedure for the detection of  
3 error and the payment order (A) erroneously instructed  
4 payment to a beneficiary not intended by the sender, (B)  
5 erroneously instructed payment in an amount greater  
6 than the amount intended by the sender, or (C) was an  
7 erroneously transmitted duplicate of a payment order  
8 previously sent by the sender, the following rules apply:

9 (2) If the sender proves that the sender or a person  
10 acting on behalf of the sender pursuant to section two  
11 hundred six of this article complied with the security  
12 procedure and that the error would have been detected  
13 if the receiving bank had also complied, the sender is  
14 not obliged to pay the order to the extent stated in  
15 subdivisions (3) and (4) of this subsection;

16 (3) If the funds transfer is completed on the basis of  
17 an erroneous payment order described in paragraph (A)  
18 or (C) of subdivision (1), the sender is not obliged to pay  
19 the order and the receiving bank is entitled to recover  
20 from the beneficiary any amount paid to the beneficiary  
21 to the extent allowed by the law governing mistake and  
22 restitution; or

23 (4) If the funds transfer is completed on the basis of  
24 a payment order described in paragraph (B) of subdi-  
25 vision (1), the sender is not obliged to pay the order to  
26 the extent the amount received by the beneficiary is  
27 greater than the amount intended by the sender. In that  
28 case, the receiving bank is entitled to recover from the  
29 beneficiary the excess amount received to the extent  
30 allowed by the law governing mistake and restitution.

31 (b) If (1) the sender of an erroneous payment order  
32 described in subdivision (1) of subsection (a) is not  
33 obliged to pay all or part of the order, and (2) the sender  
34 receives notification from the receiving bank that the  
35 order was accepted by the bank or that the sender's  
36 account was debited with respect to the order, the  
37 sender has a duty to exercise ordinary care, on the basis  
38 of information available to the sender, to discover the  
39 error with respect to the order and to advise the bank  
40 of the relevant facts within a reasonable time not  
41 exceeding ninety days after the bank's notification was

42 received by the sender. If the bank proves that the  
43 sender failed to perform that duty, the sender is liable  
44 to the bank for the loss the bank proves it incurred as  
45 a result of the failure, but the liability of the sender may  
46 not exceed the amount of the sender's order.

47 (c) This section applies to amendments to payment  
48 orders to the same extent it applies to payment orders.

**§46-4A-206. Transmission of payment order through  
funds-transfer or other communication  
system.**

1 (a) If a payment order addressed to a receiving bank  
2 is transmitted to a funds-transfer system or other third-  
3 party communication system for transmittal to the  
4 bank, the system is deemed to be an agent of the sender  
5 for the purpose of transmitting the payment order to the  
6 bank. If there is a discrepancy between the terms of the  
7 payment order transmitted to the system and the terms  
8 of the payment order transmitted by the system to the  
9 bank, the terms of the payment order of the sender are  
10 those transmitted by the system. This section does not  
11 apply to a funds-transfer system of the federal reserve  
12 banks.

13 (b) This section applies to cancellations and amend-  
14 ments of payment orders to the same extent it applies  
15 to payment orders.

**§46-4A-207. Misdescription of beneficiary.**

1 (a) Subject to subsection (b) of this section, if, in a  
2 payment order received by the beneficiary's bank, the  
3 name, bank account number or other identification of  
4 the beneficiary refers to a nonexistent or unidentifiable  
5 person or account, no person has rights as a beneficiary  
6 of the order and acceptance of the order cannot occur.

7 (b) If a payment order received by the beneficiary's  
8 bank identifies the beneficiary both by name and by an  
9 identifying or bank account number and the name and  
10 number identify different persons, the following rules  
11 apply:

12 (1) Except as otherwise provided in subsection (c) of

13 this section, if the beneficiary's bank does not know that  
14 the name and number refer to different persons, it may  
15 rely on the number as the proper identification of the  
16 beneficiary of the order. The beneficiary's bank need not  
17 determine whether the name and number refer to the  
18 same person; or

19 (2) If the beneficiary's bank pays the person identified  
20 by name or knows that the name and number identify  
21 different persons, no person has rights as beneficiary  
22 except the person paid by the beneficiary's bank if that  
23 person was entitled to receive payment from the  
24 originator of the funds transfer. If no person has rights  
25 as beneficiary, acceptance of the order cannot occur.

26 (c) If a payment order described in subsection (b) of  
27 this section is accepted, the originator's payment order  
28 described the beneficiary inconsistently by name and  
29 number, and the beneficiary's bank pays the person  
30 identified by number as permitted by subdivision (1),  
31 subsection (b) of this section, the following rules apply:

32 (1) If the originator is a bank, the originator is obliged  
33 to pay its order; or

34 (2) If the originator is not a bank and proves that the  
35 person identified by number was not entitled to receive  
36 payment from the originator, the originator is not  
37 obliged to pay its order unless the originator's bank  
38 proves that the originator, before acceptance of the  
39 originator's order, had notice that payment of a payment  
40 order issued by the originator might be made by the  
41 beneficiary's bank on the basis of an identifying or bank  
42 account number even if it identifies a person different  
43 from the named beneficiary. Proof of notice may be  
44 made by any admissible evidence. The originator's bank  
45 satisfies the burden of proof if it proves that the  
46 originator, before the payment order was accepted,  
47 signed a writing stating the information to which the  
48 notice relates.

49 (d) In a case governed by subdivision (1), subsection  
50 (b) of this section, if the beneficiary's bank rightfully  
51 pays the person identified by number and that person  
52 was not entitled to receive payment from the originator,

53 the amount paid may be recovered from that person to  
54 the extent allowed by the law governing mistake and  
55 restitution as follows:

56 (1) If the originator is obliged to pay its payment  
57 order as stated in subsection (c) of this section, the  
58 originator has the right to recover; or

59 (2) If the originator is not a bank and is not obliged  
60 to pay its payment order, the originator's bank has the  
61 right to recover.

**§46-4A-208. Misdescription of intermediary bank or  
beneficiary's bank.**

1 (a) This subsection applies to a payment order  
2 identifying an intermediary bank or beneficiary's bank  
3 only by an identifying number.

4 (1) The receiving bank may rely on the number as the  
5 proper identification of the intermediary or benefi-  
6 ciary's bank and need not determine whether the  
7 number identifies the bank.

8 (2) The sender is obliged to compensate the receiving  
9 bank for any loss and expenses incurred by the receiving  
10 bank as a result of its reliance on the number in  
11 executing or attempting to execute the order.

12 (b) This subsection applies to a payment order  
13 identifying an intermediary bank or the beneficiary's  
14 bank both by name and an identifying number if the  
15 name and number identify different persons.

16 (1) If the sender is a bank, the receiving bank may  
17 rely on the number as the proper identification of the  
18 intermediary or beneficiary's bank if the receiving  
19 bank, when it executes the sender's order, does not know  
20 that the name and number identify different persons.  
21 The receiving bank need not determine whether the  
22 name and number refer to the same person or whether  
23 the number refers to a bank. The sender is obliged to  
24 compensate the receiving bank for any loss and expenses  
25 incurred by the receiving bank as a result of its reliance  
26 on the number in executing or attempting to execute the  
27 order.

28 (2) If the sender is not a bank and the receiving bank  
29 proves that the sender, before the payment order was  
30 accepted, had notice that the receiving bank might rely  
31 on the number as the proper identification of the  
32 intermediary or beneficiary's bank even if it identifies  
33 a person different from the bank identified by name, the  
34 rights and obligations of the sender and the receiving  
35 bank are governed by subdivision (1) of this subsection,  
36 as though the sender were a bank. Proof of notice may  
37 be made by any admissible evidence. The receiving bank  
38 satisfies the burden of proof if it proves that the sender,  
39 before the payment order was accepted, signed a  
40 writing stating the information to which the notice  
41 relates.

42 (3) Regardless of whether the sender is a bank, the  
43 receiving bank may rely on the name as the proper  
44 identification of the intermediary or beneficiary's bank  
45 if the receiving bank, at the time it executes the sender's  
46 order, does not know that the name and number identify  
47 different persons. The receiving bank need not deter-  
48 mine whether the name and number refer to the same  
49 person.

50 (4) If the receiving bank knows that the name and  
51 number identify different persons, reliance on either the  
52 name or the number in executing the sender's payment  
53 order is a breach of the obligation stated in subdivision  
54 (1), subsection (a), section three hundred two of this  
55 article.

#### §46-4A-209. Acceptance of payment order.

1 (a) Subject to subsection (d) of this section, a receiving  
2 bank other than the beneficiary's bank accepts a  
3 payment order when it executes the order.

4 (b) Subject to subsections (c) and (d) of this section,  
5 a beneficiary's bank accepts a payment order at the  
6 earliest of the following times:

7 (1) When the bank (A) pays the beneficiary as stated  
8 in subsection (a), section four hundred five of this article  
9 or subsection (b), section four hundred five of this  
10 article, or (B) notifies the beneficiary of receipt of the

11 order or that the account of the beneficiary has been  
12 credited with respect to the order unless the notice  
13 indicates that the bank is rejecting the order or that  
14 funds with respect to the order may not be withdrawn  
15 or used until receipt of payment from the sender of the  
16 order;

17 (2) When the bank receives payment of the entire  
18 amount of the sender's order pursuant to subdivision (1),  
19 subsection (a), section four hundred three of this article  
20 or subdivision (2), subsection (a), section four hundred  
21 three of this article; or

22 (3) The opening of the next funds-transfer business  
23 day of the bank following the payment date of the order  
24 if, at that time, the amount of the sender's order is fully  
25 covered by a withdrawable credit balance in an  
26 authorized account of the sender or the bank has  
27 otherwise received full payment from the sender, unless  
28 the order was rejected before that time or is rejected  
29 within (A) one hour after that time, or (B) one hour after  
30 the opening of the next business day of the sender  
31 following the payment date if that time is later. If notice  
32 of rejection is received by the sender after the payment  
33 date and the authorized account of the sender does not  
34 bear interest, the bank is obliged to pay interest to the  
35 sender on the amount of the order for the number of  
36 days elapsing after the payment date to the day the  
37 sender receives notice or learns that the order was not  
38 accepted, counting that day as an elapsed day. If the  
39 withdrawable credit balance during that period falls  
40 below the amount of the order, the amount of interest  
41 payable is reduced accordingly.

42 (c) Acceptance of a payment order cannot occur  
43 before the order is received by the receiving bank.  
44 Acceptance does not occur under subdivision (2),  
45 subsection (b) of this section or subdivision (3), subsec-  
46 tion (b) of this section if the beneficiary of the payment  
47 order does not have an account with the receiving bank,  
48 the account has been closed or the receiving bank is not  
49 permitted by law to receive credits for the beneficiary's  
50 account.



51 (d) A payment order issued to the originator's bank  
52 cannot be accepted until (1) the payment date if the  
53 bank is the beneficiary's bank, or (2) the execution date  
54 if the bank is not the beneficiary's bank. If the  
55 originator's bank executes the originator's payment  
56 order before the execution date or pays the beneficiary  
57 of the originator's payment order before the payment  
58 date and the payment order is subsequently cancelled  
59 pursuant to subsection (b), section two hundred eleven  
60 of this article, the bank may recover from the benefi-  
61 ciary any payment received to the extent allowed by the  
62 law governing mistake and restitution.

**§46-4A-210. Rejection of payment order.**

1 (a) A payment order is rejected by the receiving bank  
2 by a notice of rejection transmitted to the sender orally,  
3 electronically or in writing. A notice of rejection need  
4 not use any particular words and is sufficient if it  
5 indicates that the receiving bank is rejecting the order  
6 or will not execute or pay the order. Rejection is  
7 effective when the notice is given if transmission is by  
8 a means that is reasonable in the circumstances. If  
9 notice of rejection is given by a means that is not  
10 reasonable, rejection is effective when the notice is  
11 received. If an agreement of the sender and receiving  
12 bank establishes the means to be used to reject a  
13 payment order, (1) any means complying with the  
14 agreement is reasonable, and (2) any means not comp-  
15 lying is not reasonable unless no significant delay in  
16 receipt of the notice resulted from the use of the  
17 noncomplying means.

18 (b) This subsection applies if a receiving bank other  
19 than the beneficiary's bank fails to execute a payment  
20 order despite existence on the execution date of a  
21 withdrawable credit balance in an authorized account  
22 of the sender sufficient to cover the order. If the sender  
23 does not receive notice of rejection of the order on the  
24 execution date and the authorized account of the sender  
25 does not bear interest, the bank is obliged to pay interest  
26 to the sender on the amount of the order for the number  
27 of days elapsing after the execution date to the earlier  
28 of the day the order is canceled pursuant to subsection

29 (d), section two hundred eleven of this article or the day  
30 the sender receives notice or learns that the order was  
31 not executed, counting the final day of the period as an  
32 elapsed day. If the withdrawable credit balance during  
33 that period falls below the amount of the order, the  
34 amount of interest is reduced accordingly.

35 (c) If a receiving bank suspends payments, all unac-  
36 cepted payment orders issued to it are deemed rejected  
37 at the time the bank suspends payments.

38 (d) Acceptance of a payment order precludes a later  
39 rejection of the order. Rejection of a payment order  
40 precludes a later acceptance of the order.

**§46-4A-211. Cancellation and amendment of payment order.**

1 (a) A communication of the sender of a payment order  
2 cancelling or amending the order may be transmitted  
3 to the receiving bank orally, electronically or in writing.  
4 If a security procedure is in effect between the sender  
5 and the receiving bank, the communication is not  
6 effective to cancel or amend the order unless the  
7 communication is verified pursuant to the security  
8 procedure or the bank agrees to the cancellation or  
9 amendment.

10 (b) Subject to subsection (a) of this section, a commun-  
11 ication by the sender cancelling or amending a payment  
12 order is effective to cancel or amend the order if notice  
13 of the communication is received at a time and in a  
14 manner affording the receiving bank a reasonable  
15 opportunity to act on the communication before the bank  
16 accepts the payment order.

17 (c) After a payment order has been accepted, cancel-  
18 lation or amendment of the order is not effective unless  
19 the receiving bank agrees or a funds-transfer system  
20 rule allows cancellation or amendment without agree-  
21 ment of the bank.

22 (1) With respect to a payment order accepted by a  
23 receiving bank other than the beneficiary's bank,  
24 cancellation or amendment is not effective unless a  
25 conforming cancellation or amendment of the payment  
26 order issued by the receiving bank is also made.

27       (2) With respect to a payment order accepted by the  
28 beneficiary's bank, cancellation or amendment is not  
29 effective unless the order was issued in execution of an  
30 unauthorized payment order, or because of a mistake by  
31 a sender in the funds transfer which resulted in the  
32 issuance of a payment order (A) that is a duplicate of  
33 a payment order previously issued by the sender, (B)  
34 that orders payment to a beneficiary not entitled to  
35 receive payment from the originator, or (C) that orders  
36 payment in an amount greater than the amount the  
37 beneficiary was entitled to receive from the originator.  
38 If the payment order is canceled or amended, the  
39 beneficiary's bank is entitled to recover from the  
40 beneficiary any amount paid to the beneficiary to the  
41 extent allowed by the law governing mistake and  
42 restitution.

43       (d) An unaccepted payment order is canceled by  
44 operation of law at the close of the fifth funds-transfer  
45 business day of the receiving bank after the execution  
46 date or payment date of the order.

47       (e) A canceled payment order cannot be accepted. If  
48 an accepted payment order is canceled, the acceptance  
49 is nullified and no person has any right or obligation  
50 based on the acceptance. Amendment of a payment  
51 order is deemed to be cancellation of the original order  
52 at the time of amendment and issue of a new payment  
53 order in the amended form at the same time.

54       (f) Unless otherwise provided in an agreement of the  
55 parties or in a funds-transfer system rule, if the  
56 receiving bank, after accepting a payment order, agrees  
57 to cancellation or amendment of the order by the sender  
58 or is bound by a funds-transfer system rule allowing  
59 cancellation or amendment without the bank's agree-  
60 ment, the sender, whether or not cancellation or  
61 amendment is effective, is liable to the bank for any loss  
62 and expenses, including reasonable attorney's fees,  
63 incurred by the bank as a result of the cancellation or  
64 amendment or attempted cancellation or amendment.

65       (g) A payment order is not revoked by death or legal

66 incapacity of the sender unless the receiving bank knows  
67 of the death or of an adjudication of incapacity by a  
68 court of competent jurisdiction and has reasonable  
69 opportunity to act before acceptance of the order.

70 (h) A funds-transfer system rule is not effective to the  
71 extent it conflicts with subdivision (2), subsection (c) of  
72 this section.

**§46-4A-212. Liability and duty of receiving bank regarding unaccepted payment order.**

1 If a receiving bank fails to accept a payment order  
2 that it is obliged by express agreement to accept, the  
3 bank is liable for breach of the agreement to the extent  
4 provided in the agreement or in this article, but does  
5 not otherwise have any duty to accept a payment order  
6 or, before acceptance, to take any action, or refrain from  
7 taking action, with respect to the order except as  
8 provided in this article or by express agreement.  
9 Liability based on acceptance arises only when accep-  
10 tance occurs as stated in section two hundred nine of this  
11 article, and liability is limited to that provided in this  
12 article. A receiving bank is not the agent of the sender  
13 or beneficiary of the payment order it accepts, or of any  
14 other party to the funds transfer, and the bank owes no  
15 duty to any party to the funds transfer except as  
16 provided in this article or by express agreement.

**PART III. EXECUTION OF SENDER'S PAYMENT  
ORDER BY RECEIVING BANK.**

**§46-4A-301. Execution and execution date.**

1 (a) A payment order is "executed" by the receiving  
2 bank when it issues a payment order intended to carry  
3 out the payment order received by the bank. A payment  
4 order received by the beneficiary's bank can be accepted  
5 but cannot be executed.

6 (b) "Execution date" of a payment order means the  
7 day on which the receiving bank may properly issue a  
8 payment order in execution of the sender's order. The  
9 execution date may be determined by instruction of the  
10 sender but cannot be earlier than the day the order is

11 received and, unless otherwise determined, is the day  
12 the order is received. If the sender's instruction states  
13 a payment date, the execution date is the payment date  
14 or an earlier date on which execution is reasonably  
15 necessary to allow payment to the beneficiary on the  
16 payment date.

**§46-4A-302. Obligations of receiving bank in execution of payment order.**

1 (a) Except as provided in subsections (b) through (d)  
2 of this section, if the receiving bank accepts a payment  
3 order pursuant to subsection (a), section two hundred  
4 nine of this article, the bank has the following obliga-  
5 tions in executing the order:

6 (1) The receiving bank is obliged to issue, on the  
7 execution date, a payment order complying with the  
8 sender's order and to follow the sender's instructions  
9 concerning (A) any intermediary bank or funds-transfer  
10 system to be used in carrying out the funds transfer, or  
11 (B) the means by which payment orders are to be  
12 transmitted in the funds transfer. If the originator's  
13 bank issues a payment order to an intermediary bank,  
14 the originator's bank is obliged to instruct the interme-  
15 diary bank according to the instruction of the originator.  
16 An intermediary bank in the funds transfer is similarly  
17 bound by an instruction given to it by the sender of the  
18 payment order it accepts; and

19 (2) If the sender's instruction states that the funds  
20 transfer is to be carried out telephonically or by wire  
21 transfer or otherwise indicates that the funds transfer  
22 is to be carried out by the most expeditious means, the  
23 receiving bank is obliged to transmit its payment order  
24 by the most expeditious available means, and to instruct  
25 any intermediary bank accordingly. If a sender's  
26 instruction states a payment date, the receiving bank is  
27 obliged to transmit its payment order at a time and by  
28 means reasonably necessary to allow payment to the  
29 beneficiary on the payment date or as soon thereafter  
30 as is feasible.

31 (b) Unless otherwise instructed, a receiving bank  
32 executing a payment order may (1) use any funds-

33 transfer system if use of that system is reasonable in the  
34 circumstances, and (2) issue a payment order to the  
35 beneficiary's bank or to an intermediary bank through  
36 which a payment order conforming to the sender's order  
37 can expeditiously be issued to the beneficiary's bank if  
38 the receiving bank exercises ordinary care in the  
39 selection of the intermediary bank. A receiving bank is  
40 not required to follow an instruction of the sender  
41 designating a funds-transfer system to be used in  
42 carrying out the funds transfer if the receiving bank,  
43 in good faith, determines that it is not feasible to follow  
44 the instruction or that following the instruction would  
45 unduly delay completion of the funds transfer.

46 (c) Unless subdivision (2), subsection (a) of this section  
47 applies or the receiving bank is otherwise instructed, the  
48 bank may execute a payment order by transmitting its  
49 payment order by first class mail or by any means  
50 reasonable in the circumstances. If the receiving bank  
51 is instructed to execute the sender's order by transmit-  
52 ting its payment order by a particular means, the  
53 receiving bank may issue its payment order by the  
54 means stated or by any means as expeditious as the  
55 means stated.

56 (d) Unless instructed by the sender, (1) the receiving  
57 bank may not obtain payment of its charges for services  
58 and expenses in connection with the execution of the  
59 sender's order by issuing a payment order in an amount  
60 equal to the amount of the sender's order less the  
61 amount of the charges, and (2) may not instruct a  
62 subsequent receiving bank to obtain payment of its  
63 charges in the same manner.

#### §46-4A-303. Erroneous execution of payment order.

1 (a) A receiving bank that (1) executes the payment  
2 order of the sender by issuing a payment order in an  
3 amount greater than the amount of the sender's order,  
4 or (2) issues a payment order in execution of the sender's  
5 order and then issues a duplicate order, is entitled to  
6 payment of the amount of the sender's order under  
7 subsection (c), section four hundred two of this article  
8 if that subsection is otherwise satisfied. The bank is

9 entitled to recover from the beneficiary of the erroneous  
10 order the excess payment received to the extent allowed  
11 by the law governing mistake and restitution.

12 (b) A receiving bank that executes the payment order  
13 of the sender by issuing a payment order in an amount  
14 less than the amount of the sender's order is entitled to  
15 payment of the amount of the sender's order under  
16 subsection (c), section four hundred two of this article  
17 if (1) that subsection is otherwise satisfied, and (2) the  
18 bank corrects its mistake by issuing an additional  
19 payment order for the benefit of the beneficiary of the  
20 sender's order. If the error is not corrected, the issuer  
21 of the erroneous order is entitled to receive or retain  
22 payment from the sender of the order it accepted only  
23 to the extent of the amount of the erroneous order. This  
24 subsection does not apply if the receiving bank executes  
25 the sender's payment order by issuing a payment order  
26 in an amount less than the amount of the sender's order  
27 for the purpose of obtaining payment of its charges for  
28 services and expenses pursuant to instruction of the  
29 sender.

30 (c) If a receiving bank executes the payment order of  
31 the sender by issuing a payment order to a beneficiary  
32 different from the beneficiary of the sender's order and  
33 the funds transfer is completed on the basis of that  
34 error, the sender of the payment order that was  
35 erroneously executed and all previous senders in the  
36 funds transfer are not obliged to pay the payment orders  
37 they issued. The issuer of the erroneous order is entitled  
38 to recover from the beneficiary of the order the payment  
39 received to the extent allowed by the law governing  
40 mistake and restitution.

**§46-4A-304. Duty of sender to report erroneously executed payment order.**

1 If the sender of a payment order that is erroneously  
2 executed as stated in section three hundred three of this  
3 article receives notification from the receiving bank that  
4 the order was executed or that the sender's account was  
5 debited with respect to the order, the sender has a duty  
6 to exercise ordinary care to determine, on the basis of

7 information available to the sender, that the order was  
8 erroneously executed and to notify the bank of the  
9 relevant facts within a reasonable time not exceeding  
10 ninety days after the notification from the bank was  
11 received by the sender. If the sender fails to perform  
12 that duty, the bank is not obliged to pay interest on any  
13 amount refundable to the sender under subsection (d),  
14 section four hundred two of this article for the period  
15 before the bank learns of the execution error. The bank  
16 is not entitled to any recovery from the sender on  
17 account of a failure by the sender to perform the duty  
18 stated in this section.

**§46-4A-305. Liability for late or improper execution or failure to execute payment order.**

1 (a) If a funds transfer is completed but execution of  
2 a payment order by the receiving bank in breach of  
3 section three hundred two of this article results in delay  
4 in payment to the beneficiary, the bank is obliged to pay  
5 interest to either the originator or the beneficiary of the  
6 funds transfer for the period of delay caused by the  
7 improper execution. Except as provided in subsection (c)  
8 of this section, additional damages are not recoverable.

9 (b) If execution of a payment order by a receiving  
10 bank in breach of section three hundred two of this  
11 article results in (1) noncompletion of the funds transfer,  
12 (2) failure to use an intermediary bank designated by  
13 the originator, or (3) issuance of a payment order that  
14 does not comply with the terms of the payment order  
15 of the originator, the bank is liable to the originator for  
16 its expenses in the funds transfer and for incidental  
17 expenses and interest losses, to the extent not covered  
18 by subsection (a) of this section resulting from the  
19 improper execution. Except as provided in subsection (c)  
20 of this section, additional damages are not recoverable.

21 (c) In addition to the amounts payable under subsec-  
22 tions (a) and (b) of this section, damages, including  
23 consequential damages, are recoverable to the extent  
24 provided in an express written agreement of the  
25 receiving bank.

26 (d) If a receiving bank fails to execute a payment



27 order it was obliged by express agreement to execute,  
28 the receiving bank is liable to the sender for its expenses  
29 in the transaction and for incidental expenses and  
30 interest losses resulting from the failure to execute.  
31 Additional damages, including consequential damages,  
32 are recoverable to the extent provided in an express  
33 written agreement of the receiving bank, but are not  
34 otherwise recoverable.

35 (e) Reasonable attorney's fees are recoverable if  
36 demand for compensation under subsection (a) or (b) of  
37 this section is made and refused before an action is  
38 brought on the claim. If a claim is made for breach of  
39 an agreement under subsection (d) of this section and  
40 the agreement does not provide for damages, reasonable  
41 attorney's fees are recoverable if demand for compen-  
42 sation under subsection (d) of this section is made and  
43 refused before an action is brought on the claim.

44 (f) Except as stated in this section, the liability of a  
45 receiving bank under subsections (a) and (b) of this  
46 section may not be varied by agreement.

#### PART IV. PAYMENT.

##### §46-4A-401. Payment date.

1 "Payment date" of a payment order means the day on  
2 which the amount of the order is payable to the  
3 beneficiary by the beneficiary's bank. The payment date  
4 may be determined by instruction of the sender but  
5 cannot be earlier than the day the order is received by  
6 the beneficiary's bank and, unless otherwise determined,  
7 is the day the order is received by the beneficiary's  
bank.

##### §46-4A-402. Obligation of sender to pay receiving bank.

1 (a) This section is subject to sections two hundred five  
2 and two hundred seven of this article.

3 (b) With respect to a payment order issued to the  
4 beneficiary's bank, acceptance of the order by the bank  
5 obliges the sender to pay the bank the amount of the  
6 order, but payment is not due until the payment date  
7 of the order.

8 (c) This subsection is subject to subsection (e) of this  
9 section and to section three hundred three of this article.  
10 With respect to a payment order issued to a receiving  
11 bank other than the beneficiary's bank, acceptance of  
12 the order by the receiving bank obliges the sender to pay  
13 the bank the amount of the sender's order. Payment by  
14 the sender is not due until the execution date of the  
15 sender's order. The obligation of that sender to pay its  
16 payment order is excused if the funds transfer is not  
17 completed by acceptance by the beneficiary's bank of a  
18 payment order instructing payment to the beneficiary  
19 of that sender's payment order.

20 (d) If the sender of a payment order pays the order  
21 and was not obliged to pay all or part of the amount  
22 paid, the bank receiving payment is obliged to refund  
23 payment to the extent the sender was not obliged to pay.  
24 Except as provided in section two hundred four and  
25 section three hundred four of this article, interest is  
26 payable on the refundable amount from the date of  
27 payment.

28 (e) If a funds transfer is not completed as stated in  
29 subsection (c) of this section and an intermediary bank  
30 is obliged to refund payment as stated in subsection (d)  
31 of this section but is unable to do so because not  
32 permitted by applicable law or because the bank  
33 suspends payments, a sender in the funds transfer that  
34 executed a payment order in compliance with an  
35 instruction, as stated in subdivision (1), subsection (a),  
36 section three hundred two of this article, to route the  
37 funds transfer through that intermediary bank is  
38 entitled to receive or retain payment from the sender of  
39 the payment order that it accepted. The first sender in  
40 the funds transfer that issued an instruction requiring  
41 routing through that intermediary bank is subrogated  
42 to the right of the bank that paid the intermediary bank  
43 to refund as stated in subsection (d) of this section.

44 (f) The right of the sender of a payment order to be  
45 excused from the obligation to pay the order as stated  
46 in subsection (c) of this section or to receive refund  
47 under subsection (d) of this section may not be varied  
48 by agreement.

**§46-4A-403. Payment by sender to receiving bank.**

1 (a) Payment of the sender's obligation under section  
2 four hundred two of this article to pay the receiving  
3 bank occurs as follows:

4 (1) If the sender is a bank, payment occurs when the  
5 receiving bank receives final settlement of the obligation  
6 through a federal reserve bank or through a funds-  
7 transfer system;

8 (2) If the sender is a bank and the sender (A) credited  
9 an account of the receiving bank with the sender, or (B)  
10 caused an account of the receiving bank in another bank  
11 to be credited, payment occurs when the credit is  
12 withdrawn or, if not withdrawn, at midnight of the day  
13 on which the credit is withdrawable and the receiving  
14 bank learns of that fact; or

15 (3) If the receiving bank debits an account of the  
16 sender with the receiving bank, payment occurs when  
17 the debit is made to the extent the debit is covered by  
18 a withdrawable credit balance in the account.

19 (b) If the sender and receiving bank are members of  
20 a funds-transfer system that nets obligations multilat-  
21 erally among participants, the receiving bank receives  
22 final settlement when settlement is complete in accord-  
23 dance with the rules of the system. The obligation of the  
24 sender to pay the amount of a payment order transmit-  
25 ted through the funds-transfer system may be satisfied,  
26 to the extent permitted by the rules of the system, by  
27 setting off and applying against the sender's obligation  
28 the right of the sender to receive payment from the  
29 receiving bank of the amount of any other payment  
30 order transmitted to the sender by the receiving bank  
31 through the funds-transfer system. The aggregate  
32 balance of obligations owed by each sender to each  
33 receiving bank in the funds-transfer system may be  
34 satisfied, to the extent permitted by the rules of the  
35 system, by setting off and applying against that balance  
36 the aggregate balance of obligations owed to the sender  
37 by other members of the system. The aggregate balance  
38 is determined after the right of setoff stated in the  
39 second sentence of this subsection has been exercised.

40 (c) If two banks transmit payment orders to each  
41 other under an agreement that settlement of the  
42 obligations of each bank to the other under section four  
43 hundred two of this article will be made at the end of  
44 the day or other period, the total amount owed with  
45 respect to all orders transmitted by one bank shall be  
46 set off against the total amount owed with respect to all  
47 orders transmitted by the other bank. To the extent of  
48 the setoff, each bank has made payment to the other.

49 (d) In a case not covered by subsection (a) of this  
50 section, the time when payment of the sender's obliga-  
51 tion under subsection (b), section four hundred two or  
52 subsection (c), section four hundred two of this article  
53 occurs is governed by applicable principles of law that  
54 determine when an obligation is satisfied.

**§46-4A-404. Obligation of beneficiary's bank to pay and  
give notice to beneficiary.**

1 (a) Subject to subsection (e), section two hundred  
2 eleven, subsection (d), section four hundred five, and  
3 subsection (e), section four hundred five of this article,  
4 if a beneficiary's bank accepts a payment order, the  
5 bank is obliged to pay the amount of the order to the  
6 beneficiary of the order. Payment is due on the payment  
7 date of the order, but if acceptance occurs on the  
8 payment date after the close of the funds-transfer  
9 business day of the bank, payment is due on the next  
10 funds-transfer business day. If the bank refuses to pay  
11 after demand by the beneficiary and receipt of notice  
12 of particular circumstances that will give rise to  
13 consequential damages as a result of nonpayment, the  
14 beneficiary may recover damages resulting from the  
15 refusal to pay to the extent the bank had notice of the  
16 damages, unless the bank proves that it did not pay  
17 because of a reasonable doubt concerning the right of  
18 the beneficiary to payment.

19 (b) If a payment order accepted by the beneficiary's  
20 bank instructs payment to an account of the beneficiary,  
21 the bank is obliged to notify the beneficiary of receipt  
22 of the order before midnight of the next funds-transfer  
23 business day following the payment date. If the payment

24 order does not instruct payment to an account of the  
25 beneficiary, the bank is required to notify the benefi-  
26 ciary only if notice is required by the order. Notice may  
27 be given by first class mail or any other means  
28 reasonable in the circumstances. If the bank fails to give  
29 the required notice, the bank is obliged to pay interest  
30 to the beneficiary on the amount of the payment order  
31 from the day notice should have been given until the day  
32 the beneficiary learned of receipt of the payment order  
33 by the bank. No other damages are recoverable.  
34 Reasonable attorney's fees are also recoverable if  
35 demand for interest is made and refused before an  
36 action is brought on the claim.

37 (c) The right of a beneficiary to receive payment and  
38 damages as stated in subsection (a) of this section may  
39 not be varied by agreement or a funds-transfer system  
40 rule. The right of a beneficiary to be notified as stated  
41 in subsection (b) of this section may be varied by  
42 agreement of the beneficiary or by a funds-transfer  
43 system rule if the beneficiary is notified of the rule  
44 before initiation of the funds transfer.

**§46-4A-405. Payment by beneficiary's bank to  
beneficiary.**

1 (a) If the beneficiary's bank credits an account of the  
2 beneficiary of a payment order, payment of the bank's  
3 obligation under subsection (a), section four hundred  
4 four of this article occurs when and to the extent (1) the  
5 beneficiary is notified of the right to withdraw the  
6 credit, (2) the bank lawfully applies the credit to a debt  
7 of the beneficiary, or (3) funds with respect to the order  
8 are otherwise made available to the beneficiary by the  
9 bank.

10 (b) If the beneficiary's bank does not credit an account  
11 of the beneficiary of a payment order, the time when  
12 payment of the bank's obligation under subsection (a),  
13 section four hundred four of this article occurs is  
14 governed by principles of law that determine when an  
15 obligation is satisfied.

16 (c) Except as stated in subsections (d) and (e) of this  
17 section, if the beneficiary's bank pays the beneficiary of

18 a payment order under a condition to payment or  
19 agreement of the beneficiary giving the bank the right  
20 to recover payment from the beneficiary if the bank does  
21 not receive payment of the order, the condition to  
22 payment or agreement is not enforceable.

23 (d) A funds-transfer system rule may provide that  
24 payments made to beneficiaries of funds transfers made  
25 through the system are provisional until receipt of  
26 payment by the beneficiary's bank of the payment order  
27 it accepted. A beneficiary's bank that makes a payment  
28 that is provisional under the rule is entitled to refund  
29 from the beneficiary if (1) the rule requires that both  
30 the beneficiary and the originator be given notice of the  
31 provisional nature of the payment before the funds  
32 transfer is initiated, (2) the beneficiary, the beneficiary's  
33 bank and the originator's bank agreed to be bound by  
34 the rule, and (3) the beneficiary's bank did not receive  
35 payment of the payment order that it accepted. If the  
36 beneficiary is obliged to refund payment to the benefi-  
37 ciary's bank, acceptance of the payment order by the  
38 beneficiary's bank is nullified and no payment by the  
39 originator of the funds transfer to the beneficiary occurs  
40 under section four hundred six of this article.

41 (e) (1) This subsection applies to a funds transfer that  
42 includes a payment order transmitted over a funds-  
43 transfer system that (A) nets obligations multilaterally  
44 among participants, and (B) has in effect a loss-sharing  
45 agreement among participants for the purpose of  
46 providing funds necessary to complete settlement of the  
47 obligations of one or more participants that do not meet  
48 their settlement obligations.

49 (2) If the beneficiary's bank in the funds transfer  
50 accepts a payment order and the system fails to  
51 complete settlement pursuant to its rules with respect  
52 to any payment order in the funds transfer, (A) the  
53 acceptance by the beneficiary's bank is nullified and no  
54 person has any right or obligation based on the  
55 acceptance, (B) the beneficiary's bank is entitled to  
56 recover payment from the beneficiary, (C) no payment  
57 by the originator to the beneficiary occurs under section  
58 four hundred six of this article, and (D) subject to

59 subsection (e), section four hundred two of this article,  
60 each sender in the funds transfer is excused from its  
61 obligation to pay its payment order under subsection (c),  
62 section four hundred two of this article because the  
63 funds transfer has not been completed.

**§46-4A-406. Payment by originator to beneficiary; discharge of underlying obligation.**

1 (a) Subject to subsection (e), section two hundred  
2 eleven, subsection (d), section four hundred five, and  
3 subsection (e), section four hundred five of this article,  
4 the originator of a funds transfer pays the beneficiary  
5 of the originator's payment order (1) at the time a  
6 payment order for the benefit of the beneficiary is  
7 accepted by the beneficiary's bank in the funds transfer  
8 and (2) in an amount equal to the amount of the order  
9 accepted by the beneficiary's bank, but not more than  
10 the amount of the originator's order.

11 (b) If payment under subsection (a) of this section is  
12 made to satisfy an obligation, the obligation is dis-  
13 charged to the same extent discharge would result from  
14 payment to the beneficiary of the same amount in  
15 money, unless (1) the payment under subsection (a) of  
16 this section was made by a means prohibited by the  
17 contract of the beneficiary with respect to the obligation,  
18 (2) the beneficiary, within a reasonable time after  
19 receiving notice of receipt of the order by the benefi-  
20 ciary's bank, notified the originator of the beneficiary's  
21 refusal of the payment, (3) funds with respect to the  
22 order were not withdrawn by the beneficiary or applied  
23 to a debt of the beneficiary, and (4) the beneficiary  
24 would suffer a loss that could reasonably have been  
25 avoided if payment had been made by a means com-  
26 plying with the contract. If payment by the originator  
27 does not result in discharge under this section, the  
28 originator is subrogated to the rights of the beneficiary  
29 to receive payment from the beneficiary's bank under  
30 subsection (a), section four hundred four of this article.

31 (c) For the purpose of determining whether discharge  
32 of an obligation occurs under subsection (b) of this  
33 section, if the beneficiary's bank accepts a payment

34 order in an amount equal to the amount of the origina-  
35 tor's payment order less charges of one or more  
36 receiving banks in the funds transfer, payment to the  
37 beneficiary is deemed to be in the amount of the  
38 originator's order unless upon demand by the benefi-  
39 ciary the originator does not pay the beneficiary the  
40 amount of the deducted charges.

41 (d) Rights of the originator or of the beneficiary of a  
42 funds transfer under this section may be varied only by  
43 agreement of the originator and the beneficiary.

#### PART V. MISCELLANEOUS PROVISIONS.

#### **§46-4A-501. Variation by agreement and effect of funds-transfer system rule.**

1 (a) Except as otherwise provided in this article, the  
2 rights and obligations of a party to a funds transfer may  
3 be varied by agreement of the affected party.

4 (b) "Funds-transfer system rule" means a rule of an  
5 association of banks, (1) governing transmission of  
6 payment orders by means of a funds-transfer system of  
7 the association or rights and obligations with respect to  
8 those orders, or (2) to the extent the rule governs rights  
9 and obligations between banks that are parties to a  
10 funds transfer in which a federal reserve bank, acting  
11 as an intermediary bank, sends a payment order to the  
12 beneficiary's bank. Except as otherwise provided in this  
13 article, a funds-transfer system rule governing rights  
14 and obligations between participating banks using the  
15 system may be effective even if the rule conflicts with  
16 this article and indirectly affects another party to the  
17 funds transfer who does not consent to the rule. A funds-  
18 transfer system rule may also govern rights and  
19 obligations of parties other than participating banks  
20 using the system to the extent stated in subsection (c),  
21 section four hundred four, subsection (d), section four  
22 hundred five, and subsection (c), section five hundred  
23 seven of this article.

#### **§46-4A-502. Creditor process served on receiving bank; setoff by beneficiary's bank.**

1 (a) As used in this section, "creditor process" means



2 levy, attachment, garnishment, notice of lien, sequestra-  
3 tion or similar process issued by or on behalf of a  
4 creditor or other claimant with respect to an account.

5 (b) This subsection applies to creditor process with  
6 respect to an authorized account of the sender of a  
7 payment order if the creditor process is served on the  
8 receiving bank. For the purpose of determining rights  
9 with respect to the creditor process, if the receiving  
10 bank accepts the payment order the balance in the  
11 authorized account is deemed to be reduced by the  
12 amount of the payment order to the extent the bank did  
13 not otherwise receive payment of the order, unless the  
14 creditor process is served at a time and in a manner  
15 affording the bank a reasonable opportunity to act on  
16 it before the bank accepts the payment order.

17 (c) If a beneficiary's bank has received a payment  
18 order for payment to the beneficiary's account in the  
19 bank, the following rules apply:

20 (1) The bank may credit the beneficiary's account.  
21 The amount credited may be set off against an obliga-  
22 tion owed by the beneficiary to the bank or may be  
23 applied to satisfy creditor process served on the bank  
24 with respect to the account;

25 (2) The bank may credit the beneficiary's account and  
26 allow withdrawal of the amount credited unless creditor  
27 process with respect to the account is served at a time  
28 and in a manner affording the bank a reasonable  
29 opportunity to act to prevent withdrawal; or

30 (3) If creditor process with respect to the beneficiary's  
31 account has been served and the bank has had a  
32 reasonable opportunity to act on it, the bank may not  
33 reject the payment order except for a reason unrelated  
34 to the service of process.

35 (d) Creditor process with respect to a payment by the  
36 originator to the beneficiary pursuant to a funds  
37 transfer may be served only on the beneficiary's bank  
38 with respect to the debt owed by that bank to the  
39 beneficiary. Any other bank served with the creditor  
40 process is not obliged to act with respect to the process.

**§46-4A-503. Injunction or restraining order with respect to funds transfer.**

1 For proper cause and in compliance with applicable  
2 law, a court may restrain (1) a person from issuing a  
3 payment order to initiate a funds transfer, (2) an  
4 originator's bank from executing the payment order of  
5 the originator, or (3) the beneficiary's bank from  
6 releasing funds to the beneficiary or the beneficiary  
7 from withdrawing the funds. A court may not otherwise  
8 restrain a person from issuing a payment order, paying  
9 or receiving payment of a payment order or otherwise  
10 acting with respect to a funds transfer.

**§46-4A-504. Order in which items and payment orders may be charged to account; order of withdrawals from account.**

1 (a) If a receiving bank has received more than one  
2 payment order of the sender or one or more payment  
3 orders and other items that are payable from the  
4 sender's account, the bank may charge the sender's  
5 account with respect to the various orders and items in  
6 any sequence.

7 (b) In determining whether a credit to an account has  
8 been withdrawn by the holder of the account or applied  
9 to a debt of the holder of the account, credits first made  
10 to the account are first withdrawn or applied.

**§46-4A-505. Preclusion of objection to debit of customer's account.**

1 If a receiving bank has received payment from its  
2 customer with respect to a payment order issued in the  
3 name of the customer as sender and accepted by the  
4 bank, and the customer received notification reasonably  
5 identifying the order, the customer is precluded from  
6 asserting that the bank is not entitled to retain the  
7 payment unless the customer notifies the bank of the  
8 customer's objection to the payment within one year  
9 after the notification was received by the customer.

**§46-4A-506. Rate of interest.**

1 (a) If, under this article, a receiving bank is obliged

2 to pay interest with respect to a payment order issued  
3 to the bank, the amount payable may be determined (1)  
4 by agreement of the sender and receiving bank, or (2)  
5 by a funds-transfer system rule if the payment order is  
6 transmitted through a funds-transfer system.

7 (b) If the amount of interest is not determined by an  
8 agreement or rule as stated in subsection (a) of this  
9 section, the amount is calculated by multiplying the  
10 applicable federal funds rate by the amount on which  
11 interest is payable, and then multiplying the product by  
12 the number of days for which interest is payable. The  
13 applicable federal funds rate is the average of the  
14 federal funds rates published by the Federal Reserve  
15 Bank of New York for each of the days for which  
16 interest is payable divided by three hundred sixty. The  
17 federal funds rate for any day on which a published rate  
18 is not available is the same as the published rate for the  
19 next preceding day for which there is a published rate.  
20 If a receiving bank that accepted a payment order is  
21 required to refund payment to the sender of the order  
22 because the funds transfer was not completed, but the  
23 failure to complete was not due to any fault by the bank,  
24 the interest payable is reduced by a percentage equal  
25 to the reserve requirement on deposits of the receiving  
26 bank.

#### §46-4A-507. Choice of law.

1 (a) The following rules apply unless the affected  
2 parties otherwise agree or subsection (c) of this section  
3 applies:

4 (1) The rights and obligations between the sender of  
5 a payment order and the receiving bank are governed  
6 by the law of the jurisdiction in which the receiving  
7 bank is located;

8 (2) The rights and obligations between the benefi-  
9 ciary's bank and the beneficiary are governed by the law  
10 of the jurisdiction in which the beneficiary's bank is  
11 located; and

12 (3) The issue of when payment is made pursuant to  
13 a funds transfer by the originator to the beneficiary is

14 governed by the law of the jurisdiction in which the  
15 beneficiary's bank is located.

16 (b) If the parties described in each paragraph of  
17 subsection (a) of this section have made an agreement  
18 selecting the law of a particular jurisdiction to govern  
19 rights and obligations between each other, the law of  
20 that jurisdiction governs those rights and obligations,  
21 whether or not the payment order or the funds transfer  
22 bears a reasonable relation to that jurisdiction.

23 (c) (1) A funds-transfer system rule may select the  
24 law of a particular jurisdiction to govern (A) rights and  
25 obligations between participating banks with respect to  
26 payment orders transmitted or processed through the  
27 system, or (B) the rights and obligations of some or all  
28 parties to a funds transfer any part of which is carried  
29 out by means of the system.

30 (2) A choice of law made pursuant to paragraph (A)  
31 of subdivision (1) is binding on participating banks.

32 (3) A choice of law made pursuant to paragraph (B)  
33 of subdivision (1) is binding on the originator, other  
34 sender, or a receiving bank having notice that the funds-  
35 transfer system might be used in the funds transfer and  
36 of the choice of law by the system when the originator,  
37 other sender, or receiving bank issued or accepted a  
38 payment order.

39 (4) The beneficiary of a funds transfer is bound by the  
40 choice of law if, when the funds transfer is initiated, the  
41 beneficiary has notice that the funds-transfer system  
42 might be used in the funds transfer and of the choice  
43 of law by the system. The law of a jurisdiction selected  
44 pursuant to this subsection may govern, whether or not  
45 that law bears a reasonable relation to the matter in  
46 issue.

47 (d) In the event of inconsistency between an agree-  
48 ment under subsection (b) of this section and a choice-  
49 of-law rule under subsection (c) of this section, the  
50 agreement under subsection (b) of this section prevails.

51 (e) If a funds transfer is made by use of more than  
52 one funds-transfer system and there is inconsistency

53 between choice-of-law rules of the systems, the matter  
54 in issue is governed by the law of the selected jurisdic-  
55 tion that has the most significant relationship to the  
56 matter in issue.

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## CHAPTER 31

(Com. Sub. for S. B. 437—By Senators Chafin and Wagner)

[Passed March 8, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eight, twenty-two, twenty-three and twenty-four, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to regulating and controlling the manufacture, sale, distribution, transportation, storage and consumption of nonintoxicating beer generally; establishing the qualifications of an applicant for a retailer's license to sell nonintoxicating beer; describing the powers of the nonintoxicating beer commissioner; eliminating the requirement that the collection of taxes be by the use of tax paid crowns, lids and/or stamps; providing for the suspension or revocation of a license or other sanctions against a licensee upon certain violations; providing for notice and hearing on the imposition of sanctions; authorizing the assessment of costs; and providing for the imposition of sanctions against a Class B licensee.

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

That sections eight, twenty-two, twenty-three and twenty-four, article sixteen, 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 16. NONINTOXICATING BEER.

- §11-16-8. Form of application for license; fee and bond; refusal of license.  
§11-16-22. Powers of the commissioner; rules, or orders.  
§11-16-23. Revocation or suspension of license; monetary penalty; hearing assessment of costs; establishment of enforcement fund.  
§11-16-24. Hearing on sanctioning of license; notice; review of action of commissioner; clerk of court to furnish commissioner copy of order or judgment of conviction of licensee assessment of costs.

**§11-16-8. Form of application for license; fee and bond; refusal of license.**

1 (a) A license may be issued by the commissioner to  
2 any person who submits an application therefor,  
3 accompanied by a license fee, and, where required, a  
4 bond, stating under oath:

5 (1) The name and residence of the applicant, the  
6 duration of such residency, that the applicant has been  
7 a resident of the state for a period of two years next  
8 preceding the date of the application and that the  
9 applicant is twenty-one years of age. If the applicant is  
10 a firm, association, partnership, limited partnership or  
11 corporation, the application shall include the residence  
12 of the members or officers for a period of two years next  
13 preceding the date of such application: *Provided*, That  
14 if any person, firm, partnership, limited partnership,  
15 association or corporation applies for a license as a  
16 distributor, such person, or in the case of a firm,  
17 partnership, limited partnership or association, the  
18 members or officers thereof shall state under oath that  
19 each has been a bona fide resident of the state for four  
20 years preceding the date of such application;

21 (2) The place of birth of applicant, that he or she is  
22 a citizen of the United States and of good moral  
23 character and, if a naturalized citizen, when and where  
24 naturalized; and, if a corporation organized or autho-  
25 rized to do business under the laws of the state, when  
26 and where incorporated, with the name and address of  
27 each officer; that each officer is a citizen of the United  
28 States and a person of good moral character; and if a  
29 firm, association, partnership or limited partnership,  
30 the place of birth of each member of the firm, associ-  
31 ation, partnership or limited partnership, and that each  
32 member is a citizen of the United States and if a  
33 naturalized citizen, when and where naturalized, each  
34 of whom must qualify and sign the application: *Pro-*  
35 *vided*, That the requirements as to residence shall not  
36 apply to the officers of a corporation which shall apply  
37 for a retailer's license, but the officers, agent, or  
38 employee who shall manage and be in charge of the

39 licensed premises shall possess all of the qualifications  
40 required of an individual applicant for a retailer's  
41 license, including the requirement as to residence;

42 (3) The particular place for which the license is  
43 desired and a detailed description thereof;

44 (4) The name of the owner of the building and, if the  
45 owner is not the applicant, that such applicant is the  
46 actual and bona fide lessee of the premises;

47 (5) That the place or building in which is proposed to  
48 do business conforms to all laws of health, fire and  
49 zoning regulations applicable thereto, and is a safe and  
50 proper place or building, and is not within three  
51 hundred feet of any school or church, measured from  
52 front door to front door, along the street or streets:  
53 *Provided*, That this requirement shall not apply to a  
54 Class B license, or to any place now occupied by a beer  
55 licensee, so long as it is continuously so occupied:  
56 *Provided*, however, That the prohibition against locating  
57 any such proposed business in a place or building within  
58 three hundred feet of any school shall not apply to any  
59 college or university that has notified the commissioner,  
60 in writing, that it has no objection to the location of any  
61 such proposed business in a place or building within  
62 three hundred feet of such college or university;

63 (6) That the applicant is not incarcerated and has not  
64 during the five years immediately preceding the date of  
65 said application been convicted of a felony;

66 (7) That the applicant is the only person in any  
67 manner pecuniarily interested in the business so asked  
68 to be licensed, and that no other person shall be in any  
69 manner pecuniarily interested therein during the  
70 continuance of the license; and

71 (8) That the applicant has not during five years next  
72 immediately preceding the date of said application had  
73 a nonintoxicating beer license revoked.

74 (b) The provisions and requirements of subsection (a)  
75 of this section are mandatory prerequisites for the  
76 issuance, and in the event any applicant fails to qualify  
77 under the same, license shall be refused. In addition to

78 the information furnished in any application, the  
79 commissioner may make such additional and independ-  
80 ent investigation of each applicant, and of the place to  
81 be occupied, as deemed necessary or advisable; and for  
82 this reason each and all applications, with license fee  
83 and bond, must be filed thirty days prior to the  
84 beginning of any fiscal year, and if application is for an  
85 unexpired portion of any fiscal year, issuance of license  
86 may be withheld for such reasonable time as necessary  
87 for investigation.

88 (c) The commissioner may refuse a license to any  
89 applicant under the provisions of this article if the  
90 commissioner shall be of the opinion:

91 (1) That the applicant is not a suitable person to be  
92 licensed;

93 (2) That the place to be occupied by the applicant is  
94 not a suitable place; or is within three hundred feet of  
95 any school or church, measured from front door to front  
96 door along the street or streets: *Provided*, That this  
97 requirement shall not apply to a Class B licensee, or to  
98 any place now occupied by a beer licensee, so long as  
99 it is continuously so occupied: *Provided, however*, That  
100 the prohibition against locating any such place to be  
101 occupied by an applicant within three hundred feet of  
102 any school shall not apply to any college or university  
103 that has notified the commissioner, in writing, that it  
104 has no objection to the location of any such place within  
105 three hundred feet of such college or university; or

106 (3) That the license should not be issued for reason of  
107 conduct declared to be unlawful by this article.

**§11-16-22. Powers of the commissioner; rules, or orders.**

1 (a) In addition to all other powers conferred upon the  
2 commissioner and in order to effectively carry out the  
3 provisions, intent and purposes of this article, the  
4 commissioner shall have the power and authority to  
5 adopt, promulgate, repeal, rescind and amend, in  
6 accordance with the provisions of chapter twenty-nine-  
7 a of this code, rules, standards, requirements and  
8 orders, including, but not limited to, the following:

9 (1) Prescribing records and accounts, pertaining to



10 the manufacture, distribution and sales of nonintoxicating  
11 beer, to be kept by the licensee and the form thereof;

12 (2) Requiring the reporting of such information by  
13 licensees as may be necessary for the effective admin-  
14 istration of this article;

15 (3) Regulating the branding and labeling of packages,  
16 bottles or other containers in which nonintoxicating beer  
17 may be sold; and, in his discretion, requiring the  
18 collection of all taxes provided for under section thirteen  
19 of this article;

20 (4) Prohibiting shipment into the state and sale within  
21 the state of low grade or under-standard nonintoxicating  
22 beer;

23 (5) Referring to licenses and the issuance and revoca-  
24 tion of the same;

25 (6) Establishing the suitability of businesses and  
26 locations for licensure, and requiring licensees to keep  
27 their places of business where nonintoxicating beer is  
28 sold at retail, and the equipment used in connection  
29 therewith, clean and in a sanitary condition;

30 (7) The establishment of advertising guidelines,  
31 prohibitions and prior permissions generally, including,  
32 but not limited to, (i) the use of posters, placards,  
33 mirrors, windows, doors or indoor and outdoor signs  
34 generally, and print and electronic advertising of retail  
35 licensees specifically, (ii) the sponsoring of athletic  
36 events or contests by licensees and restrictions relating  
37 thereto, (iii) the use of equipment, fixtures or supplies  
38 in advertising, (iv) false advertising with respect to any  
39 product of or sold by any licensee, including, but not  
40 limited to, draft beer and coolers and (v) the extent, if  
41 any, to which free goods and other inducements may be  
42 utilized by any licensee;

43 (8) Wholesale prices or price changes, including, but  
44 not limited to, the regulation and extent, if any, of any  
45 temporary price markoff or markdown, temporary  
46 wholesale price change downward or price discount,  
47 sometimes referred to as "post downs" or as "posting  
48 down" or any other price change, the express purpose  
49 of which is to put into effect a temporary price

50 reduction, as well as the duration of time during which  
51 such temporary price reduction is to remain in effect;

52 (9) Restrictions upon West Virginia distributors or  
53 other licensees with respect to the purchase of any  
54 nonintoxicating beer or malt coolers from manufactur-  
55 ers or brewers whether within or without the state who  
56 have failed to qualify for manufacture or shipment of  
57 any such product in the state; and

58 (10) Regulating, restricting or prohibiting a distrib-  
59 utor from selling, offering for sale, distributing or  
60 delivering nonintoxicating beer to any retailer whose  
61 principal place of business, residence or licensed  
62 premises is located without or beyond the assigned  
63 territory of such distributor of such nonintoxicating  
64 beer.

65 (b) Any rule or order heretofore adopted by the  
66 commissioner and currently in effect upon the conven-  
67 ing of the regular session of the Legislature held in the  
68 year one thousand nine hundred eighty-six shall remain  
69 in effect until changed by the commissioner in the  
70 manner prescribed by article three, chapter twenty-  
71 nine-a of this code, irrespective of whether specific  
72 authority for such currently effective rule existed prior  
73 to such date.

**§11-16-23. Revocation or suspension of license; monetary  
penalty; hearing assessment of costs; estab-  
lishment of enforcement fund.**

1 (a) Upon a determination by the commissioner that a  
2 licensee has (i) violated the provisions of section eighteen  
3 of this article, (ii) acted in such a way as would have  
4 precluded initial or renewal licensure or (iii) violated  
5 any rule or order promulgated by the commissioner, the  
6 commissioner may:

7 (1) Revoke the licensee's license;

8 (2) Suspend the licensee's license;

9 (3) Place the licensee on probationary status for a  
10 period not to exceed twelve months; and

11 (4) Impose a monetary penalty not to exceed one  
12 thousand dollars for each violation where revocation is  
13 not imposed.

14 (b) Any monetary penalty assessed and collected by  
15 the commissioner shall be transmitted to the state  
16 treasurer for deposit into the state treasury to the credit  
17 of a special revenue fund designated the "Nonintoxicating  
18 Beer Enforcement Fund", which is hereby created.  
19 All moneys collected, received and deposited in the  
20 "Nonintoxicating Beer Enforcement Fund" shall be kept  
21 and maintained for expenditures by the commissioner  
22 for the purpose of enforcement of the statutes and rules  
23 pertaining to nonintoxicating beer, and shall not be  
24 treated by the state treasurer or state auditor as any  
25 part of the general revenue of the state. At the end of  
26 each fiscal year all funds in the nonintoxicating beer  
27 enforcement fund in excess of two thousand dollars shall  
28 be transferred to the general revenue fund.

29 (c) In addition to the grounds for revocation, suspen-  
30 sion or other sanction of a license set forth in subsection  
31 (a) of this section, conviction of the licensee of any  
32 offense constituting a violation of the laws of this state  
33 or of the United States relating to nonintoxicating beer  
34 or alcoholic liquor shall be mandatory grounds for such  
35 sanctioning of a license.

**§11-16-24. Hearing on sanctioning of license; notice;  
review of action of commissioner; clerk of  
court to furnish commissioner copy of  
order or judgment of conviction of licen-  
see; assessment of costs.**

1 The commissioner shall not revoke nor suspend any  
2 license issued pursuant to this article or impose any civil  
3 penalties authorized thereby unless and until a hearing  
4 shall be held after at least ten days' notice to the licensee  
5 of the time and place of such hearing, which notice shall  
6 contain a statement or specification of the charges,  
7 grounds or reasons for such proposed contemplated  
8 action, and which shall be served upon the licensee as  
9 notices under the West Virginia rules of civil procedure  
10 or by certified mail, return receipt requested, to the  
11 address for which license was issued; at which time and  
12 place, so designated in the notice, the licensee shall have  
13 the right to appear and produce evidence in his behalf,  
14 and to be represented by counsel.

15 The commissioner shall have authority to summon  
16 witnesses in the hearings before him, and fees of  
17 witnesses summoned on behalf of the state in proceed-  
18 ings to sanction licenses shall be treated as a part of the  
19 expenses of administration and enforcement. Such fees  
20 shall be the same as those in similar hearings in the  
21 circuit courts of this state. The commissioner may, upon  
22 a finding of violation, assess a licensee a sum, not to  
23 exceed one hundred fifty dollars per violation to  
24 reimburse the commissioner for expenditures for  
25 witness fees, court reporter fees and travel costs  
26 incurred in holding the hearing. Any moneys so assessed  
27 shall be transferred to the nonintoxicating beer fund  
28 created by section twenty-three of this article.

29 If, at the request of the licensee or on his motion, the  
30 hearing shall be continued and shall not take place on  
31 the day fixed by the commissioner in the notice above  
32 provided for, then such licensee's license shall be  
33 suspended until the hearing and decision of the commis-  
34 sioner, and in the event of revocation or suspension of  
35 such license, upon hearing before the commissioner, the  
36 licensee shall not be permitted to sell beer pending an  
37 appeal as provided by this article. Any person contin-  
38 uing to sell beer after his license has been suspended or  
39 revoked, as hereinbefore provided, is guilty of a  
40 misdemeanor and shall be punished as provided in  
41 section nineteen of this article.

42 The action of the commissioner in revoking or  
43 suspending a license shall be subject to review by the  
44 circuit court of Kanawha County, West Virginia, in the  
45 manner provided in chapter twenty-nine-a of this code,  
46 when such licensee may be aggrieved by such revocation  
47 or suspension. Petition for such review must be filed  
48 with said circuit court within a period of thirty days  
49 from and after the date of revocation or suspension by  
50 the commissioner; and any licensee obtaining an order  
51 for such review shall be required to pay the costs and  
52 fees incident to transcribing, certifying and transmit-  
53 ting the records pertaining to such matter to the circuit  
54 court. An application to the supreme court of appeals  
55 of West Virginia for a writ of error from any final order  
56 of the circuit court in any such matter shall be made

57 within thirty days from and after the entry of such final  
58 order.

59 All such hearings, upon notice to show cause why  
60 license should be revoked or suspended, before the  
61 commissioner, shall be held in the offices of the  
62 commissioner in Charleston, Kanawha County, West  
63 Virginia, unless otherwise provided in such notice, or  
64 agreed upon between the licensee and the commissioner;  
65 and when such hearing is held elsewhere than in the  
66 commissioner's office, the licensee may be required to  
67 make deposits of the estimated costs of such hearing.

68 Whenever any licensee has been convicted of any  
69 offense constituting a violation of the laws of this state  
70 or of the United States relating to nonintoxicating beer,  
71 or alcoholic liquor, and such conviction has become final,  
72 the clerk of the court in which such licensee has been  
73 convicted shall forward to the commissioner a certified  
74 copy of the order or judgment of conviction if such clerk  
75 has knowledge that the person so convicted is a licensee,  
76 together with the certification of such clerk that the  
77 conviction is final.

78 In the case of a Class B licensee with multiple licensed  
79 locations, the commissioner may, in his or her discretion,  
80 revoke, suspend or otherwise sanction, per the provisions  
81 of section twenty-three of this article, only the license  
82 for the location or locations involved in the unlawful  
83 conduct for which licensure is sanctioned as opposed to  
84 all separately licensed locations of such licensee.

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## CHAPTER 32

(H. B. 4386—By Delegate Ashcraft)

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[Passed March 8, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section fourteen, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing county boards of education to select the bidders from whom school buses are purchased.

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

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

**ARTICLE 3. PURCHASING DIVISION.**

**\*§5A-3-14. Bids to be based on standard specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder; uniform bids; record of bids; and exception.**

1 Bids shall be based on the standard specifications  
 2 promulgated and adopted in accordance with the  
 3 provisions of section five of this article, and shall not be  
 4 altered or withdrawn after the appointed hour for the  
 5 opening of such bids. All open market orders, purchases  
 6 based on advertised bid requests or contracts made by  
 7 the director or by a state department shall be awarded  
 8 to the lowest responsible bidder, taking into considera-  
 9 tion the qualities of the articles to be supplied, their  
 10 conformity with specifications, their suitability to the  
 11 requirements of the government and the delivery terms:  
 12 *Provided*, That state bids on school buses shall be  
 13 accepted from all bidders who shall then be awarded  
 14 contracts if they meet the state board's "Minimum  
 15 Standards for Design and Equipment of School Buses".  
 16 County boards of education may select from those  
 17 bidders who have been awarded contracts and shall pay  
 18 the difference between the state aid formula amount and  
 19 the actual cost of bus replacement. Any or all bids may  
 20 be rejected. If all bids received on a pending contract  
 21 are for the same unit price or total amount, the director  
 22 shall have authority to reject all bids, and to purchase  
 23 the required commodities and printing in the open  
 24 market, if the price paid in the open market does not  
 25 exceed the bid prices.

26 All bidders submitting bid proposals to the purchas-  
 27 ing division are required to submit an extra or duplicate  
 28 copy to the state auditor. Both copies must be received  
 29 at the respective offices prior to the specified date and  
 30 time of the bid openings. The failure to deliver or the  
 31 nonreceipt of these bid forms at either of these offices

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\* Clerk's Note: This section was also amended by SB 320 (Chapter 2), which passed subsequent to this act.

32 prior to the appointed date and hour are grounds for  
33 rejection of the bids. In the event of any deviation  
34 between the copies submitted to the purchasing division  
35 and the state auditor, such bids as to which there is such  
36 deviation shall be rejected, if the deviation relates to the  
37 quantity, quality or specifications of the commodities or  
38 printing to be furnished or to the price therefor or to  
39 the date of delivery or performance. After the award of  
40 the order or contract, the director, or someone appointed  
41 by him for that purpose, shall indicate upon the  
42 successful bid and its copy in the office of the state  
43 auditor that it was the successful bid. Thereafter, the  
44 copy of each bid in the possession of the director and  
45 the state auditor shall be maintained as a public record  
46 by both of them, shall be open to public inspection in  
47 the offices of both the director and the state auditor and  
48 shall not be destroyed by either of them without the  
49 written consent of the legislative auditor: *Provided*, That  
50 the governing boards may certify in writing to the  
51 director the need for a specific item essential to a  
52 particular usage either for instructional or research  
53 purposes at an institution of higher education and the  
54 director upon review of such certification may provide  
55 for the purchase of said specific items in the open  
56 market without competitive bids.

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## CHAPTER 33

(Com. Sub. for H. B. 4479—By Delegate M. Burke)

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[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section two, article eight, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the Blennerhassett historical state park generally; requiring the Blennerhassett historical park commission to conduct meetings in accordance with the open governmental meetings law; and granting exclusive regulatory authority over the water transport of visitors to Blennerhassett Island to the division of commerce.

71 shall not be required to take and pass qualifying or  
72 competitive examinations upon or as a condition to being  
73 added to the classified service: *Provided*, That no person  
74 included in the classified service by the provisions of this  
75 section who is employed in any of such positions as of  
76 the effective date of this section, shall be thereafter  
77 severed, removed or terminated from such employment  
78 prior to his entry into the classified service except for  
79 cause as if such person had been in the classified service  
80 when severed, removed or terminated.

81 Notwithstanding any provision of this code to the  
82 contrary, the division of commerce shall have exclusive  
83 regulatory authority over watercraft transport of  
84 visitors to the Blennerhassett Island portion of the  
85 Blennerhassett historical state park and such watercraft  
86 transport shall not be subject to the provisions of article  
87 eighteen, chapter seventeen of this code.

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## CHAPTER 34

(S. B. 279—Originating in the Committee on Finance)

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[Passed February 14, 1990; in effect 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 five-a, relating to the West Virginia state board of investments; providing legislative findings; and prohibiting attempts to recover overpayments made from consolidated fund to local governments.

*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 five-a, to read as follows:

**ARTICLE 6. WEST VIRGINIA BOARD OF INVESTMENTS.**

**§12-6-5a. Legislative findings and limitation on certain board actions.**



1 (a) The Legislature hereby finds and declares that,  
2 during the period beginning the first day of August, one  
3 thousand nine hundred eighty-four, and ending on the  
4 thirty-first day of January, one thousand nine hundred  
5 eighty-nine, certain overapportionments or overpay-  
6 ments of interest earnings were made by the board of  
7 investments to local government participants in the  
8 consolidated investment fund local government account.

9 The Legislature also finds and declares that said  
10 participants were not at fault for any losses incurred by  
11 the consolidated fund during the aforesaid period, and  
12 that the participants were justified in accepting and  
13 using the overapportionments or overpayments of  
14 interest earnings credited to their accounts.

15 The Legislature further finds and declares that  
16 attempts by the board of investments, the state or any  
17 other state officer or agency to recover the overappor-  
18 tionments or overpayments would harm the public good  
19 and create economic hardship for local governments,  
20 and, therefore, said overapportionments or overpay-  
21 ments ought not to be subject to recovery by the board  
22 or any other state officer or agency.

23 (b) Neither the state, the board of investments nor any  
24 other state officer or agency may expend any funds or  
25 permit any personnel to seek, or attempt to recover,  
26 from participants in the consolidated fund local govern-  
27 ment account any moneys received by such participants  
28 solely as a result of erroneous allocation of interest  
29 earnings to the participants' account during the period  
30 of time beginning the first day of August, one thousand  
31 nine hundred eighty-four, and ending on the thirty-first  
32 day of January, one thousand nine hundred eighty-nine,  
33 unless authorized to do so by enactment of a separate  
34 and specific statute.

35 (c) This section shall not apply to any attempt by the  
36 board, the state or any other state officer or agency to  
37 recover moneys due for any other reason.

## CHAPTER 35

(S. B. 37—By Senator Spears)

[Passed March 8, 1990; in effect 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 eighteen, relating to continuation of the West Virginia board of investments.

*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 eighteen, to read as follows:

### ARTICLE 6. WEST VIRGINIA BOARD OF INVESTMENTS.

#### §12-6-18. West Virginia board of investments continued.

1 After having conducted a performance and fiscal  
2 audit through its joint committee on government  
3 operations, pursuant to section nine, article ten, chapter  
4 four of this code, the Legislature hereby finds and  
5 declares that the West Virginia board of investments  
6 should be continued and reestablished. Accordingly,  
7 notwithstanding the provisions of section four, article  
8 ten, chapter four of this code, the West Virginia board  
9 of investments shall continue to exist until the first day  
10 of July, one thousand nine hundred ninety-six.

## CHAPTER 36

(Com. Sub. for S. B. 67—By Senators Chafin, Blatnik, Wagner, J. Manchin and Warner)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eight-

een, relating to the regulation of cable television systems; providing for a short title; establishing legislative findings; defining certain terms; requiring all cable operators to obtain franchises for cable systems; designating franchising authorities; existing franchises to remain in effect; creating the West Virginia cable television advisory board; establishing the composition of, terms of office and certain duties and authority of the board; compensation for board members; setting forth specific duties of the board; establishing the application or proposal process for cable franchises and establishing fees and requirements therefor; requiring the holding of a public hearing for the issuance of a franchise with notice thereof to be given appropriate governing bodies and the general public; when cable franchise to be issued; establishing criteria to be considered by franchising authorities; providing for the terms and conditions of cable system installation, construction, operation and removal; when cable franchise may be revoked, altered or suspended; when civil fine may be imposed; establishing procedure for renewal of a cable franchise; prohibiting the transfer of any cable system or cable franchise without approval of appropriate franchising authorities; cable operators to file schedule of rates with board; authorizing board to regulate rates and other charges to the extent permitted by federal law; mandating cable operators to provide safe, adequate and reliable service; establishing procedures for the restoring of interrupted service and substandard service; when subscriber to receive credit or refund for interrupted service; setting forth office operating requirements for cable operators; requiring cable operators to mail notice to subscribers and prescribing contents thereof; requiring cable operators to maintain a record of all complaints regarding quality of service, rates, programming, equipment malfunctions, billing procedures, employee relations with customers and similar matters; mandating the filing of all franchise and related documents with the board; clarifying that application fees are franchise fees within the intent and meaning of federal law; prohibiting cable operators from discriminating against subscribers or

channel users; establishing procedure for the consideration of consumer complaints by the board; when cable operator may be fined; prescribing further duties of the board; authorizing board to bring legal action for enforcement purposes; reports to be filed by cable operators; assessing annual fee against cable operators; clarifying effect of annual fee on other franchise fees; prohibiting the regulation of the cable television industry as a utility; and providing for the severability of the provisions of this article.

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

That chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article eighteen, 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, OFFI-  
CES, PROGRAMS, ETC.**

**ARTICLE 18. WEST VIRGINIA CABLE TELEVISION SYSTEMS  
ACT.**

- §5-18-1. Short title.
- §5-18-2. Legislative findings.
- §5-18-3. Definitions.
- §5-18-4. Cable franchise required; franchising authority.
- §5-18-5. Existing cable franchises.
- §5-18-6. West Virginia cable television advisory board created; appointments and terms of members; meetings; vacancies; quorum.
- §5-18-7. Compensation and expenses of board members.
- §5-18-8. Duties of West Virginia cable television advisory board.
- §5-18-9. Application or proposal for cable franchise; fee; certain requirements.
- §5-18-10. Cable franchise application or proposal procedure; public hearing; notice.
- §5-18-11. Issuance of cable franchise authority; criteria; content.
- §5-18-12. Cable system installation, construction, operation, removal; general provisions.
- §5-18-13. Revocation, alteration, or suspension of cable franchise; penalties.
- §5-18-14. Renewal of cable franchise.
- §5-18-15. Transfer of cable franchise.
- §5-18-16. Rates; filing with board; approval.
- §5-18-17. Requirement for adequate service; terms and conditions of service.

- §5-18-18. Procedure for restoring interrupted service and improving sub-standard service.
- §5-18-19. Credit or refund for interrupted service.
- §5-18-20. Office operating requirements; office hours.
- §5-18-21. Notice to subscribers regarding quality of service.
- §5-18-22. Recording of subscriber complaints.
- §5-18-23. Franchise document clearinghouse.
- §5-18-24. Rights of individuals.
- §5-18-25. Complaints; violations; penalties.
- §5-18-26. Other duties of board; suit to enforce article.
- §5-18-27. Reports.
- §5-18-28. Annual fees; effect of application and filing fees on franchise fees.
- §5-18-29. Cable television industry not regulated as a utility.
- §5-18-30. Severability.

#### §5-18-1. Short title.

- 1 This article may be cited as the "West Virginia Cable
- 2 Television Systems Act".

#### §5-18-2. Legislative findings.

- 1 The Legislature finds that television is an important
- 2 source of information and entertainment affecting the
- 3 welfare and economy of the state, and that cable
- 4 television services have become widespread, often
- 5 providing the only access to quality television signals in
- 6 many areas of the state. The Legislature finds that it
- 7 is in the public interest to establish uniform standards
- 8 within the state of West Virginia for the issuance,
- 9 renewal and transfer of cable television franchises; to
- 10 establish uniform standards for the provision of cable
- 11 service; to establish uniform procedures for the inves-
- 12 tigation and resolution of complaints concerning cable
- 13 service; and to establish just, reasonable and nondis-
- 14 criminatory rates and charges for the provision of cable
- 15 service to the extent that the service is not subject to
- 16 effective competition. The purpose of this article is to
- 17 promote such goals by all available means not in conflict
- 18 with federal law, rules or regulations.

#### §5-18-3. Definitions.

- 1 As used in this article:
- 2 (1) "Applicant" means a person who initiates an
- 3 application or proposal.

4 (2) "Application" means an unsolicited filing for a  
5 cable franchise.

6 (3) "Basic cable service" means any service tier which  
7 includes the retransmission of local television broadcast  
8 signals.

9 (4) "Board" means the West Virginia cable television  
10 advisory board created under the provisions of this  
11 article.

12 (5) "Cable franchise" means a nonexclusive initial  
13 authorization or renewal thereof issued pursuant to this  
14 article, whether the authorization is designated as a  
15 franchise, permit, order, contract, agreement or other-  
16 wise, which authorizes the construction or operation of  
17 a cable system.

18 (6) "Cable operator" means any person or group of  
19 persons (A) who provides cable service over a cable  
20 system and directly or through one or more affiliates  
21 owns a significant interest in the cable system or (B)  
22 who otherwise controls or is responsible for, through any  
23 arrangement, the management and operation of a cable  
24 system.

25 (7) "Cable service" means (A) the one-way transmis-  
26 sion to subscribers of video programming or other  
27 programming service and (B) subscriber interaction, if  
28 any, which is required for the selection of video  
29 programming or other programming service.

30 (8) "Cable system" means any facility within this state  
31 consisting of a set of closed transmission paths and  
32 associated signal generation, reception and control  
33 equipment that is designed to provide cable service  
34 which includes video programming and which is  
35 provided to multiple subscribers within a community,  
36 but does not include (A) a facility that serves only to  
37 retransmit the television signals of one or more televi-  
38 sion broadcast stations; (B) a facility that serves only  
39 subscribers in one or more multiple unit dwellings  
40 under common ownership, control or management,  
41 unless that facility or facilities uses any public right-of-  
42 way; or (C) a facility of a public utility subject, in whole  
43 or in part, to the provisions of chapter twenty-four of

44 this code, except to the extent that those facilities  
45 provide video programming directly to subscribers.

46 (9) "County commission" means the commissioners  
47 composing the county commission in pursuance of  
48 section nine, article IX of the constitution of this state  
49 within whose jurisdiction there exists a cable system or  
50 where such cable system is hereafter constructed,  
51 operated, acquired or extended.

52 (10) "Facility" includes all real property, antennas,  
53 poles, supporting structures, wires, cables, conduits,  
54 amplifiers, instruments, appliances, fixtures and other  
55 personal property used by a cable operator in providing  
56 service to its subscribers.

57 (11) "Franchising authority" means a municipality, a  
58 county commission or the West Virginia cable television  
59 advisory board.

60 (12) "Institution of higher education" means an  
61 academic college or university accredited by the North  
62 Central Association of Colleges and Schools.

63 (13) "Municipality" means any municipal corporation  
64 duly chartered in the state of West Virginia within  
65 whose jurisdiction there exists a cable system or where  
66 such cable system is hereafter constructed, operated,  
67 acquired or extended.

68 (14) "Other programming service" means information  
69 that a cable operator makes available to all subscribers  
70 generally.

71 (15) "Person" means an individual, partnership,  
72 association, joint stock company, trust, corporation or  
73 governmental agency.

74 (16) "Proposal" means a filing solicited by the  
75 franchising authority for a cable franchise.

76 (17) "Public, educational or governmental access  
77 facilities" means (A) channel capacity designated for  
78 public, educational or governmental uses and (B)  
79 facilities and equipment for the use of that channel  
80 capacity.

81 (18) "Public place" includes any property, building,  
82 structure or water to which the public has a right of  
83 access and use.

84 (19) "School" means an academic and noncollege type  
85 regular or special education institution of learning  
86 established and maintained by the department of  
87 education and the arts or licensed and supervised by  
88 that department.

89 (20) "Service area" means the geographic area for  
90 which a cable operator has been issued a cable  
91 franchise.

92 (21) "Video programming" means programming  
93 provided by, or generally considered comparable to  
94 programming provided by, a television broadcast  
95 station.

**§5-18-4. Cable franchise required; franchising authority.**

1 (a) No person may construct, operate or acquire a  
2 cable system, or extend an existing cable system outside  
3 its designated service area, without first obtaining a  
4 cable franchise from a franchising authority as provided  
5 in this article.

6 (b) Any person operating a cable system on the  
7 effective date of this article without a franchise shall,  
8 within sixty days of the effective date of this article,  
9 notify the board in writing setting forth: (1) The name,  
10 business address and telephone number of the cable  
11 operator; (2) the principals and ultimate beneficial  
12 owners of the cable system or systems; (3) the geogra-  
13 phic location and service area of any cable system  
14 operated by such person; and (4) the number of  
15 subscribers within the cable system or systems. If the  
16 board shall not have been appointed and organized  
17 within sixty days of the effective date of this article,  
18 then such filing shall be made with the public service  
19 commission where such documents shall be retained for  
20 delivery to the board following the appointment and  
21 organization of its members.

22 (c) The board shall, upon receipt of such information,  
23 determine the appropriate franchising authority or



24 authorities for the purposes of the consideration of the  
25 issuance of a franchise to such cable operator or  
26 operators and shall notify the appropriate franchising  
27 authority or authorities and any such cable system  
28 operator of the franchise application procedures to be  
29 followed by the respective parties. Any such cable  
30 operator shall, within sixty days of receipt of such notice  
31 from the board, make formal application to the approp-  
32 priate franchise authority or authorities for a franchise  
33 in accordance with the provisions of this article.

34 (d) The franchising authority shall be the municipal-  
35 ity in which a cable system is to be constructed,  
36 operated, acquired or extended, or if there be no such  
37 municipality, then the franchising authority shall be the  
38 county commission of the county in which such cable  
39 system is to be constructed, operated, acquired or  
40 extended: *Provided*, That nothing herein shall prohibit  
41 any county commission of a county in which a munic-  
42 ipality acting as a franchising authority is located from  
43 also acting as a franchising authority for any cable  
44 system to be constructed, operated, acquired or ex-  
45 tended within the jurisdiction of such county  
46 commission.

47 (e) Any municipality or county commission may elect  
48 not to act as a franchising authority, in which event the  
49 franchising authority for any cable system to be  
50 constructed, operated, acquired or extended within the  
51 jurisdiction of such municipality or within the jurisdic-  
52 tion of such county commission shall be the board. If any  
53 municipality or county commission so elects, the mayor  
54 or president of the county commission shall certify such  
55 delegation in writing to the presiding officer of the  
56 board.

#### §5-18-5. Existing cable franchises.

1 (a) The provisions of any cable franchise in effect on  
2 the effective date of this article shall remain in effect,  
3 subject to the express provisions of this article, and for  
4 no longer than the then current remaining term of the  
5 franchise as such franchise existed on the effective date.

6 (b) For purposes of subsection (a) of this section and

7 other provisions of this article, a cable franchise shall  
8 be considered in effect on the effective date of this  
9 article if such franchise was granted on or before such  
10 effective date.

**§5-18-6. West Virginia cable television advisory board  
created; appointments and terms of members;  
meetings; vacancies; quorum.**

1 (a) There is hereby created a cable review board to  
2 be known as the "West Virginia Cable Television  
3 Advisory Board" which board shall, in consultation with  
4 the attorney general's office, implement the provisions  
5 of this article and consider subscriber complaints in  
6 accordance with the provisions of section twenty-five of  
7 this article.

8 (b) The board shall consist of seven members, who  
9 shall be residents of this state, and who shall be  
10 appointed as follows:

11 (1) The governor shall appoint one member to repres-  
12 ent the viewpoint of the public service commission.  
13 When the member is to be appointed, the governor shall  
14 request from the public service commission a list of  
15 three nominees for such position. A summary of the  
16 qualifications of each nominee shall be submitted with  
17 each list. When the completed list of nominees is  
18 submitted in accordance with the provisions hereof, the  
19 governor shall make his or her appointment from the  
20 persons so nominated.

21 (2) The governor shall appoint one member to repres-  
22 ent the viewpoint of those cable operators whose cable  
23 system or systems in the aggregate have five thousand  
24 subscribers or more, and one member to represent the  
25 viewpoint of cable operators whose cable system or  
26 systems in the aggregate have less than five thousand  
27 subscribers. The governor shall request from the trade  
28 association representing cable operators in this state a  
29 list of three nominees for each such position of the board.  
30 All nominees shall be persons with special experience  
31 and competence in cable television operations. A  
32 summary of the qualifications of each nominee shall be  
33 submitted with each list. When the completed list of

34 nominees for each position is submitted in accordance  
35 with the provisions hereof, the governor shall make his  
36 or her appointments from the persons so nominated.

37 (3) The governor shall appoint one member to repres-  
38 ent the viewpoint of municipalities within the state and  
39 one member to represent the counties within the state.  
40 The governor shall request from the associations  
41 representing the municipalities and counties, respec-  
42 tively, a list of three nominees for such position. A  
43 summary of the qualifications of each nominee shall be  
44 submitted with each list. When the completed list of  
45 nominees is submitted in accordance with the provisions  
46 hereof, the governor shall make his or her appointments  
47 from the persons so nominated.

48 (4) The governor shall appoint two members from the  
49 general public who shall be from different political  
50 parties and who shall not represent the viewpoint of the  
51 members appointed in accordance with the provisions of  
52 subdivision (2) or (3) of this subsection.

53 (5) All appointments made by the governor under the  
54 provisions of this section shall be with the advice and  
55 consent of the Senate.

56 (c) Upon the initial appointment of members, the  
57 governor shall specify the length of the beginning term  
58 which each member shall serve, pursuant to the  
59 following formula:

60 (1) With regard to the two members appointed in  
61 accordance with the provisions of subdivisions (2) and  
62 (3), subsection (b) of this section, one member shall serve  
63 a beginning term of two years, and one member shall  
64 serve a beginning term of three years;

65 (2) The two members appointed in accordance with  
66 the provisions of subdivision (3), subsection (b) of this  
67 section shall serve a term of two years;

68 (3) The member appointed in accordance with the  
69 provisions of subdivision (1), subsection (b) of this section  
70 shall be appointed to serve a beginning term of one year;  
71 and

72 (4) Following the beginning terms provided for in this  
73 subsection, members shall be nominated and appointed  
74 in the manner provided for in this section and shall  
75 serve for a term of three years. Members are eligible  
76 for reappointment.

77 (d) The board shall meet at least once during each  
78 calendar quarter, or more often as may be necessary,  
79 and at other times upon the call of the chairman or upon  
80 the request of any three members of the board. The  
81 chairman shall set the agenda for all meetings. No  
82 meeting of the board may be conducted unless said  
83 notice and agenda are given to the board members at  
84 least five days in advance, as provided herein, except in  
85 cases of emergency, as declared by the chairman, in  
86 which event members shall be notified of the board  
87 meeting and the agenda in a manner to be determined  
88 by the chairman. Four members of the board shall  
89 constitute a quorum and no action may be taken by the  
90 board unless agreed to by a majority of the members  
91 present.

92 (e) Each member of the board shall take and sub-  
93 scribe to the oath or affirmation required pursuant to  
94 section 5, article IV of the constitution of West Virginia.  
95 A member may be removed by the governor for  
96 substantial neglect of duty or gross misconduct in office,  
97 after written notice and an opportunity to reply.

98 (f) The board shall meet within thirty days of the  
99 initial appointments to the board, at a time and place  
100 to be determined by the governor, who shall designate  
101 a member to preside at that meeting until a chairman  
102 is elected. At its first meeting, the board shall elect a  
103 chairman and such other officers as are necessary.

104 (g) The board shall, within six months after the  
105 appointment of the initial board, promulgate rules for  
106 its procedure and to otherwise carry out its duties under  
107 the provisions of this article. Such rules shall be  
108 promulgated as legislative rules subject to legislative  
109 rule-making review and subject to the administrative  
110 procedures act.

111 (h) The board may subpoena witnesses, compel their

112 attendance and testimony, administer oaths and affir-  
113 mations, take evidence and require by subpoena the  
114 production of books, logs, papers, records or other  
115 evidence needed for the performance of the board's  
116 duties or exercises of its power under the provisions of  
117 section twenty-five of this article.

118 (i) The board may request the attorney general to  
119 provide legal advice to the board and the attorney  
120 general shall comply with the request. The board shall  
121 employ an executive secretary to be compensated from  
122 the cable advisory board fund created under the  
123 provisions of this article in an amount to be fixed by the  
124 board. Such executive secretary shall be in charge of its  
125 offices which shall be within the public service commis-  
126 sion, shall be responsible to the board for the mainte-  
127 nance of such offices and shall be the custodian of all  
128 documents filed by cable operators and of any com-  
129 plaints or other documents which may be filed with the  
130 board in accordance with the provisions of this article.  
131 The board is also authorized to employ and assign the  
132 necessary professional and clerical staff and such  
133 hearing examiners as may be necessary to conduct  
134 hearings in such various locations in the state, under the  
135 provisions of section twenty-five of this article, in order  
136 to provide a convenient forum for persons making  
137 subscriber complaints to be heard. The salaries and  
138 expenses of any such staff and hearing examiners shall  
139 be paid from the fees assessed and collected under  
140 provisions of this article.

#### §5-18-7. Compensation and expenses of board members.

1 Each member of the board not otherwise employed by  
2 the state shall receive a per diem in the amount of fifty  
3 dollars while actually engaged in the performance of the  
4 duties of the board, which shall be paid out of the cable  
5 advisory board fund created under the provisions of this  
6 article. Each member shall be reimbursed for all  
7 reasonable and necessary expenses actually incurred  
8 during the performance of his or her duties. Each  
9 member shall receive meals, lodging and mileage  
10 expense reimbursements at the rates established by rule  
11 of the secretary of the department of administration for

12 in-state travel of public employees. The reimbursement  
13 shall be paid out of the state treasury upon a requisition  
14 upon the state auditor, properly certified by the  
15 chairman of the board.

**§5-18-8. Duties of West Virginia cable television advisory board.**

1 The West Virginia cable television advisory board  
2 shall:

3 (1) Develop and maintain a statewide plan for the  
4 provision of cable services, setting forth the objectives  
5 which the board deems to be in the best interest of the  
6 citizens of this state;

7 (2) To the extent permitted by, and not contrary to  
8 applicable federal law, rules and regulations:

9 (A) Prescribe standards for procedures and practices  
10 which franchising authorities shall follow in considering  
11 the issuance of cable franchises, which standards shall  
12 provide for the forms of applications and proposals, the  
13 filing of all franchise applications, proposals and related  
14 documents as public records, with reasonable notice to  
15 the public that such records are open to inspection and  
16 examination during reasonable business hours; the  
17 holding of a public hearing, upon reasonable notice to  
18 the public, at which the applications or proposals shall  
19 be examined and members of the public and interested  
20 parties are afforded a reasonable opportunity to express  
21 their views thereon; the rendition of a written report by  
22 the franchising authority made to the public, setting  
23 forth the reasons for its decision in awarding or not  
24 awarding the franchise; and such other procedural  
25 standards governing the issuance of cable franchises  
26 mandated by the provisions of this article or as the  
27 board may otherwise deem necessary or appropriate to  
28 assure maximum public participation and competition  
29 and to protect the public interest;

30 (B) Prescribe minimum standards for inclusion in  
31 franchises, including maximum initial and renewal  
32 terms; minimum channel capacity; provisions regarding  
33 public, educational or governmental access facilities; a

34 requirement that no such franchise may be exclusive;  
35 standards necessary or appropriate to protect the  
36 interests of viewers of free broadcast television and the  
37 public generally, which prohibit or limit cable operators  
38 from prohibiting or entering into agreements prohibit-  
39 ing the sale or other transfer of rights for the simultane-  
40 ous or subsequent transmission over free broadcast  
41 television; and such other standards for inclusion in  
42 franchises as the board shall deem necessary or  
43 appropriate to protect the public interest, including any  
44 provision regulating the rates for cable services to the  
45 extent that the same is not in conflict with federal law,  
46 rules or regulations;

47 (C) Prescribe standards by which a franchising  
48 authority shall determine whether an applicant pos-  
49 sesses (i) the technical ability, (ii) the financial ability,  
50 (iii) the good character and (iv) other qualifications  
51 necessary to operate a cable system in the public  
52 interest;

53 (D) Prescribe standards for the construction and  
54 operation of cable systems, which standards shall be  
55 designed to promote (i) safe, adequate and reliable  
56 service to subscribers, (ii) the construction and operation  
57 of systems consistent with the most advanced state of the  
58 art, (iii) a construction schedule providing for maximum  
59 penetration as rapidly as possible within the limitations  
60 of economic feasibility, (iv) the construction of systems  
61 with the maximum practicable channel capacity,  
62 facilities for local program origination, facilities to  
63 provide service in areas conforming to various commu-  
64 nity interests, facilities with the technical capacity for  
65 interconnection with other systems within regions as  
66 established in the board's statewide plan and facilities  
67 capable of transmitting signals from subscribers to the  
68 cable system or to other points, and (v) the prompt  
69 handling of inquiries, complaints and requests for  
70 repairs;

71 (E) Prescribe such standards for the prohibition or  
72 limitation of concentration of control over mass media  
73 and communication companies and facilities and  
74 methods of enforcing such standards, as the board may

75 determine to be necessary or appropriate to protect the  
76 public interest: *Provided*, That nothing contained herein  
77 shall be construed to authorize the impairment of any  
78 existing rights of any mass media and communication  
79 company or any subsidiary thereof;

80 (3) Provide advice and technical assistance to other  
81 franchising authorities and community organizations in  
82 matters relating to cable franchises and services;

83 (4) Establish minimum specifications for equipment,  
84 service and safety of cable;

85 (5) Represent the interests of citizens of this state  
86 before the federal communication commission and make  
87 available information to the public on communications  
88 developments at the federal level;

89 (6) Stimulate and encourage cooperative arrange-  
90 ments among organizations, institutions, counties and  
91 municipalities in the development of public, educational  
92 or governmental access facilities;

93 (7) Maintain liaison with the communications indus-  
94 try and other parties, both public and private, having  
95 an interest therein, other states and political subdivi-  
96 sions of this state to promote the rapid and harmonious  
97 development of cable services as set forth in the  
98 legislative findings and intent of this article;

99 (8) Undertake such studies as may be necessary to  
100 meet the responsibilities and objectives of this article;  
101 and

102 (9) Implement the provisions of this article in a  
103 manner which is cognizant of the differing financial and  
104 administrative capabilities of cable systems of different  
105 sizes.

**§5-18-9. Application or proposal for cable franchise; fee;  
certain requirements.**

1 (a) No cable franchise shall be issued except upon  
2 written application or proposal therefor to the franchis-  
3 ing authority, accompanied by a fee of two hundred fifty  
4 dollars.



5 (b) An application for issuance of a cable franchise  
6 shall be made on a form prescribed by the board. The  
7 application shall set forth the facts as required by the  
8 board to determine whether a cable franchise should be  
9 issued, including facts as to:

10 (1) The citizenship and character of the applicant;

11 (2) The financial, technical and other qualifications of  
12 the applicant;

13 (3) The principals and ultimate beneficial owners of  
14 the applicant;

15 (4) The public interest to be served by the requested  
16 issuance of a cable franchise; and

17 (5) Any other matters deemed appropriate and  
18 necessary by the board including the proposed plans and  
19 schedule of expenditures for or in support of the use of  
20 public, educational and governmental access facilities.

21 (c) A proposal for issuance of a cable franchise shall  
22 be accepted for filing only when made in response to the  
23 written request of the franchising authority for the  
24 submission of proposals.

**§5-18-10. Cable franchise application or proposal procedure; public hearing; notice.**

1 An application or proposal for a cable franchise shall  
2 be processed as follows:

3 (1) After the application or proposal and required fee  
4 are received by the franchising authority within a time  
5 frame established by rule promulgated by the board, the  
6 franchising authority shall notify an applicant in  
7 writing of the acceptance or nonacceptance for filing of  
8 an application or proposal for issuance of a cable  
9 franchise required by this article.

10 (2) After the issuance of a notice of acceptance for  
11 filing and within a time frame established by rule  
12 promulgated by the board, the franchising authority  
13 shall hold a public hearing on the application or  
14 proposal to afford interested persons the opportunity to  
15 submit data, views or arguments, orally or in writing.

16 If the franchising authority is the board, notice thereof  
17 shall be given to the city council and mayor of any  
18 municipalities affected, the county commission of any  
19 counties affected and to any telephone or other utility  
20 and cable company in the county or counties in which  
21 the proposed service area is located, and a representa-  
22 tive of the governing body of a municipality or county  
23 commission may appear at the public hearing to  
24 represent the interests of the public which will be served  
25 by the issuance of a cable franchise. The franchising  
26 authority shall also cause notice of the application and  
27 hearing to be published at least once in each of two  
28 successive weeks in a newspaper of general circulation  
29 in the county or counties in which the proposed service  
30 area is located. The last published notice shall appear  
31 at least fifteen days prior to the date of the hearing.

32 (3) After holding a public hearing, the franchising  
33 authority shall approve the application or proposal, in  
34 whole or in part, with or without conditions or modifi-  
35 cations, or shall deny the application or proposal, with  
36 reasons for denial sent in writing to the applicant. Upon  
37 denial of the application or proposal, the applicant may  
38 appeal such denial to the circuit court of the county in  
39 which the franchise is to be located, which appeal shall  
40 be filed and considered in accordance with the provi-  
41 sions of section four, article five, chapter twenty-nine-  
42 a of this code.

**§5-18-11. Issuance of cable franchise authority; criteria;  
content.**

1 (a) A franchising authority is empowered to issue a  
2 cable franchise to construct or operate facilities for a  
3 cable system upon the terms and conditions provided in  
4 this article.

5 (b) The franchising authority, after a public hearing  
6 as provided in this article, shall issue a cable franchise  
7 to the applicant when the franchising authority is  
8 convinced that it is in the public interest to do so. In  
9 determining whether a cable franchise shall be issued,  
10 the franchising authority shall take into consideration,  
11 among other things, any objections arising from the

12 public hearing, the content of the application or  
13 proposal, the public need for the proposed service, the  
14 ability of the applicant to offer safe, adequate and  
15 reliable service at a reasonable cost to the subscribers,  
16 the suitability of the applicant, the financial responsi-  
17 bility of the applicant, the technical and operational  
18 ability of the applicant to perform efficiently the service  
19 for which authority is requested, and any other matters  
20 as the franchising authority considers appropriate in the  
21 circumstances.

22 (c) In determining the area which is to be serviced by  
23 the applicant, the franchising authority shall take into  
24 account the geography and topography of the proposed  
25 service area, and the present, planned and potential  
26 expansion in facilities or cable services of the applicant's  
27 proposed cable system and any of the applicant's  
28 existing cable systems.

29 (d) In issuing a cable franchise under this article, the  
30 franchising authority is not restricted to approving or  
31 disapproving the application or proposal, but may issue  
32 it for only partial exercise of the privilege sought or may  
33 attach to the exercise of the right granted by the cable  
34 franchise terms, limitations which the franchising  
35 authority considers the public interest may require. The  
36 cable franchise shall be nonexclusive, shall include a  
37 description of the service area in which the cable system  
38 is to be constructed, extended or operated and the  
39 approximate date on which the service is to commence  
40 and shall authorize the cable operator to provide service  
41 for a term of fifteen years.

**§5-18-12. Cable system installation, construction, operation, removal; general provisions.**

1 (a) A cable franchise shall be construed to authorize  
2 the construction or operation of a cable system within  
3 the service area above, below, on, in or along any  
4 highway or other public place and through easements  
5 which have been dedicated for compatible purposes.

6 (b) The technical specifications, general routes of the  
7 distribution system and the schedule for construction of  
8 the cable system are subject to the approval of the  
9 franchising authority.

10 (c) In installing, operating and maintaining facilities,  
11 the cable operator shall avoid all unnecessary damage  
12 and injury to any trees, structures and improvements in  
13 and along the routes authorized by the franchising  
14 authority.

15 (d) The cable operator shall indemnify and hold the  
16 state, county and municipality harmless at all times  
17 from any and all claims for injury and damage to  
18 persons or property, both real and personal, caused by  
19 the installation, operation or maintenance of its cable  
20 system, notwithstanding any negligence on the part of  
21 the state, county and/or municipality, their employees or  
22 agents. Upon receipt of notice in writing from the state,  
23 county and/or municipality, the cable operator shall, at  
24 its own expense, defend any action or proceeding against  
25 the state, county and/or municipality in which it is  
26 claimed that personal injury or property damage was  
27 caused by activities of the cable operator in the  
28 installation, operation or maintenance of its cable  
29 system.

30 (e) The cable operator shall provide a cable drop and  
31 basic cable service at no cost to any school or institution  
32 of higher education within its service area if service is  
33 actually being delivered within a reasonable distance  
34 from the school or institution of higher education which  
35 may request service.

36 (f) The cable operator shall be required to designate  
37 at least ten percent but not more than three of all of its  
38 channels for public, educational or governmental use.

39 (g) Upon termination of the period of the cable permit  
40 or of any renewal thereof, by passage of time or  
41 otherwise, the cable operator shall remove its facilities  
42 from the highways and other public places in, on, over,  
43 under or along which they are installed if so ordered by  
44 the franchising authority and shall restore the areas to  
45 their original or other acceptable condition or otherwise  
46 dispose of its facilities. If removal is not completed  
47 within six months of the termination, any property not  
48 removed shall be deemed to have been abandoned and

49 the cable operator shall be liable for the cost of its  
50 removal.

51 (h) The use of public highways and other public  
52 places shall be subject to:

53 (1) All applicable state statutes, municipal ordinances  
54 and all applicable rules and orders of the public service  
55 commission governing the construction, maintenance  
56 and removal of overhead and underground facilities of  
57 public utilities;

58 (2) For county highways, all applicable rules adopted  
59 by the governing body of the county in which the county  
60 highways are situated; and

61 (3) For state or federal-aid highways, all public  
62 welfare rules adopted by the secretary of the depart-  
63 ment of transportation.

64 (i) In the use of easements dedicated to compatible  
65 purposes, the cable operator shall ensure:

66 (1) That the safety, functioning and appearance of the  
67 property and the convenience and safety of other persons  
68 is not adversely affected by the installation or construc-  
69 tion of facilities necessary for a cable system;

70 (2) That the cost of the installation, construction,  
71 operation or removal of facilities is borne by the cable  
72 operator or subscribers, or a combination of both; and

73 (3) That the owner of the property is justly compen-  
74 sated by the cable operator for any damages caused by  
75 the installation, construction, operation or removal of  
76 facilities by the cable operator.

**§5-18-13. Revocation, alteration, or suspension of cable  
franchise; penalties.**

1 (a) Any cable franchise issued in accordance with the  
2 provisions of this article may be revoked, altered or  
3 suspended by the franchising authority upon the  
4 recommendation of the cable advisory board to a  
5 municipality or county acting as a franchising authority  
6 or after a hearing before the franchising authority, for  
7 the following reasons:

8 (1) For making material false or misleading state-  
9 ments in, or for material omissions from, any applica-  
10 tion or proposal or other filing made with the franchis-  
11 ing authority;

12 (2) For failure to maintain signal quality under the  
13 standards prescribed by the board;

14 (3) For any sale, lease, assignment or other transfer  
15 of its cable franchise without consent of the franchising  
16 authority;

17 (4) Except when commercially impracticable, for  
18 unreasonable delay in construction or operation or for  
19 unreasonable withholding of the extension of cable  
20 service to any person in a service area;

21 (5) For violation of the terms of its cable franchise;

22 (6) For failure to comply with this article or any rules,  
23 regulations or orders prescribed by the board;

24 (7) For violation of its filed schedule of terms and  
25 conditions of service; and

26 (8) For engaging in any unfair or deceptive act or  
27 practice.

28 (b) In lieu of, or in addition to, the relief provided by  
29 subsection (a) hereof, the franchising authority may fine  
30 a cable operator, for each violation under the provisions  
31 of this section, in an amount not less than fifty dollars  
32 nor more than five thousand dollars for each violation.  
33 Each day's continuance of a violation may be treated as  
34 a separate violation pursuant to rules and regulations  
35 adopted by the board. Any penalty assessed under this  
36 section shall be in addition to any other costs, expenses  
37 or payments for which the cable operator is responsible  
38 under other provisions of this article.

#### **§5-18-14. Renewal of cable franchise.**

1 Any cable franchise issued pursuant to this article  
2 may be renewed by the franchising authority upon  
3 approval of a cable operator's application or proposal  
4 therefor and in accordance with the provisions of 47  
5 U.S.C. §546 as the same is in effect on the effective date

6 of this article. The form of the application or proposal  
7 shall be prescribed by the board. The application or  
8 proposal fee shall be the same fee prescribed for  
9 franchise applications. The periods of renewal shall be  
10 not less than five nor more than twenty years each. The  
11 board shall require of the applicant full disclosure,  
12 including the proposed plans and schedule of expendi-  
13 tures for or in support of the use of public, educational  
14 or governmental access facilities.

**§5-18-15. Transfer of cable franchise.**

1 (a) No cable system and no cable franchise, including  
2 any system without a franchise and any franchise in  
3 existence on the effective date of this article, and  
4 including the rights, privileges and obligations thereof,  
5 may be assigned, sold, leased, encumbered or otherwise  
6 transferred, voluntarily or involuntarily, directly or  
7 indirectly, including a transfer of control of any cable  
8 system, whether by change in ownership or otherwise,  
9 except upon written application to and approval of the  
10 appropriate franchising authority or authorities. The  
11 form of the application for transfer shall be prescribed  
12 by the board.

13 (b) The procedure for consideration of any transfer  
14 under the provisions of this section shall conform, as  
15 nearly as possible, to the procedures prescribed in  
16 sections nine and ten of this article for the consideration  
17 of issuing cable franchises, including the application fee  
18 therefor.

**§5-18-16. Rates; filing with board; approval.**

1 (a) The board shall require each cable operator to file  
2 a schedule of its rates of service on a form and with the  
3 notice that the board may prescribe.

4 (b) To the extent permitted by federal law, the board  
5 shall regulate rates to ensure that they are just and  
6 reasonable both to the public and to the cable operator  
7 and are not unduly discriminatory.

8 (c) To the extent permitted by federal law, the board  
9 shall regulate charges other than those related to rates  
10 for the provision of basic cable service to ensure that

11 they are just and reasonable and not unduly discrimi-  
12 natory.

**§5-18-17. Requirement for adequate service; terms and conditions of service.**

1 (a) Every cable operator shall provide safe, adequate  
2 and reliable service in accordance with applicable laws,  
3 rules, franchise requirements and its filed schedule of  
4 terms and conditions of service.

5 (b) The board shall require each cable operator to  
6 submit a schedule of all terms and conditions of service  
7 in the form and with the notice that the board may  
8 prescribe.

9 (c) The board shall ensure that the terms and condi-  
10 tions upon which cable service is provided are fair both  
11 to the public and to the cable operator, taking into  
12 account the geographic, topographic and economic  
13 characteristics of the service area and the economics of  
14 providing cable service to subscribers in the service  
15 area.

**§5-18-18. Procedures for restoring interrupted service and improving substandard service.**

1 (a) Each cable operator, for the purpose of restoring  
2 interrupted service and improving substandard service,  
3 shall be able to receive calls twenty-four hours a day,  
4 seven days a week, and shall have one or more qualified  
5 persons as may be necessary to repair the cable system,  
6 facilities and equipment owned by the cable operator  
7 and located on a subscriber's premises, including, but  
8 not limited to, cable receiving equipment and directly  
9 associated equipment.

10 (b) Each cable operator shall restore interrupted  
11 service not later than twenty-four hours after being  
12 notified by a subscriber that service has been inter-  
13 rupted, unless (1) service cannot be restored until  
14 another company repairs facilities owned by such  
15 company and leased to, or required for the operation of,  
16 the cable service, (2) the interruption was caused by an  
17 act of nature or (3) the cable operator is unable to  
18 restore service within twenty-four hours due to exte-



19 nuating circumstances. In the event of such extenuating  
20 circumstances, the company shall restore service as soon  
21 as feasible and then submit a written notice to the board  
22 indicating that service has been restored and explaining  
23 the nature of the extenuating circumstances.

**§5-18-19. Credit or refund for interrupted service.**

1 (a) If cable service to a subscriber is interrupted for  
2 more than twenty-four continuous hours, such sub-  
3 scriber shall, upon request, receive a credit or refund  
4 from the cable operator in an amount that represents  
5 the proportionate share of such service not received in  
6 a billing period, provided such interruption is not  
7 caused by the subscriber.

8 (b) The board shall promulgate rules establishing a  
9 viewing time reliability standard for cable operators  
10 and requiring such companies to file with the board  
11 information on service interruptions not caused by  
12 subscribers.

**§5-18-20. Office operating requirements; office hours.**

1 Each cable operator shall operate a business office in  
2 the service area or in an immediately adjacent franchise  
3 area as may be approved by the board that shall be open  
4 during normal business hours, and each cable operator  
5 shall operate sufficient telephone lines, including a toll-  
6 free number or any other free calling option, as  
7 approved by the board, staffed by a company customer  
8 service representative during normal business hours.

**§5-18-21. Notice to subscribers regarding quality of service.**

1 (a) Annually, every cable operator shall mail to each  
2 of its subscribers a notice which:

3 (1) Informs subscribers how to communicate their  
4 views and complaints to the cable operator and to the  
5 board;

6 (2) States the responsibility of the board to receive  
7 and act on consumer complaints concerning matters  
8 other than channel selection, programming and rates;  
9 and

10 (3) States the policy regarding the method by which  
11 subscribers may request rebates or pro rata credit as  
12 described in section nineteen of this article.

13 (b) The notice shall be in nontechnical language,  
14 understandable by the general public, and in a conve-  
15 nient format. On or before the thirtieth day of January  
16 of each year, the operator shall certify to the franchising  
17 authority and the board that it has distributed the notice  
18 as provided in this section during the previous calendar  
19 year as required by this section.

**§5-18-22. Recording of subscriber complaints.**

1 (a) Every cable operator shall keep a record or log of  
2 all complaints received regarding quality of service,  
3 rates, programming, equipment malfunctions, billing  
4 procedure, employee relations with customers and  
5 similar matters as may be prescribed by the board. The  
6 records shall be maintained for a period of two years.

7 (b) The record or log shall contain the following  
8 information for each complaint received:

- 9 (1) Date, time, nature of complaint;
- 10 (2) Name, address, telephone number of complainant;
- 11 (3) Investigation of complaint; and
- 12 (4) Manner and time of resolution of complaint.

13 (c) Consistent with the subscriber privacy provisions  
14 contained in 47 U.S.C. §551 as the same is in effect on  
15 the effective date of this article, every cable operator  
16 shall make the logs or records, or both, of such  
17 complaints available to any authorized agent of the  
18 board and the franchising authority, upon request  
19 during normal business hours for on-site review.

**§5-18-23. Franchise document clearinghouse.**

1 (a) Within sixty days of the effective date of this  
2 article, all cable operators holding an existing franchise  
3 shall file a copy of the franchise and any federal  
4 communications commission rulings or other rulings  
5 affecting such franchises with the board. If the board  
6 shall not have been appointed and organized within

7 sixty days of the effective date of this article, then such  
8 filing shall be made with the public service commission  
9 where such documents shall be retained for delivery to  
10 the board following the appointment and organization  
11 of its members.

12 (b) Within sixty days of the granting of an initial  
13 franchise, a renewal franchise or a transferred fran-  
14 chise, the franchisee shall file a copy of the franchise  
15 and any federal communications commission rulings or  
16 other rulings affecting such franchise with the board  
17 and the franchising authority. The board and franchis-  
18 ing authority shall maintain a file of all franchise  
19 documents so recorded and make copies available upon  
20 request for the cost of reproduction and mailing, plus  
21 a reasonable administrative fee. The filing fee for initial,  
22 renewal or transfer franchise documents is fifty dollars  
23 per franchise, renewal or transfer of such franchise. In  
24 years in which the filing of initial, renewal or transfer  
25 franchise documents is not required, the franchisee shall  
26 pay a fee of twenty-five dollars for each franchise it  
27 holds.

28 (c) All such fees paid by any cable operator are  
29 franchise fees with the intent and meaning of 47 U.S.C.  
30 §542 as the same is in effect on the effective date of this  
31 article.

#### §5-18-24. Rights of individuals.

1 A cable television system operator may not deny  
2 service, deny access, or otherwise discriminate against  
3 subscribers, channel users, or any other citizens on the  
4 basis of age, race, religion, sex, physical handicap or  
5 country of natural origin.

#### §5-18-25. Complaints; violations; penalties.

1 (a) Subscriber complaints regarding the operation of  
2 a cable system must be made in writing and filed with  
3 the board. The board shall take up such complaints with  
4 the cable operator complained against in an endeavor to  
5 bring about satisfaction of the complaint without formal  
6 hearing.

7 (b) The board shall resolve all complaints, if possible,

8 informally. No form of informal complaint is prescribed,  
9 but the writing must contain the essential elements of  
10 a complaint, including the name and address of the  
11 complainant, the correct name of the cable operator  
12 against which the complaint is made, a clear and concise  
13 statement of the facts involved, and a request for  
14 affirmative relief.

15 (c) In the event that the board cannot resolve the  
16 complaint to the satisfaction of all parties, the complain-  
17 ant may file a formal request to the board and he or  
18 she is entitled to a hearing before the board, which  
19 hearing shall be conducted in accordance with chapter  
20 twenty-nine-a of the code, and the complainant and  
21 cable operator shall be afforded all rights including the  
22 right of appeal as set forth in said chapter twenty-nine-  
23 a.

24 (d) A cable operator may be subject to a fine in  
25 accordance with subsection (e) hereof, upon a determi-  
26 nation by the board that the cable operator has violated  
27 any of the following:

28 (1) The material terms of its cable franchise; or

29 (2) Substantial compliance with rules or orders  
30 prescribed by the board.

31 (e) The board may fine a cable operator for each  
32 violation of subsection (d) of this section in an amount  
33 not less than fifty dollars nor more than five hundred  
34 dollars for each violation. Any penalty assessed under  
35 this section is in addition to any other costs, expenses,  
36 or payments for which the cable operator is responsible  
37 under other provisions of this section.

38 (f) The board may permit, in lieu of a full hearing  
39 before the board, one of its hearing examiners to  
40 conduct hearings and report its findings to the board.

41 (g) No cable operator shall charge for more than one  
42 outlet per household.

43 (h) No cable operator shall add new channels and  
44 charge subscribers without the consent of the sub-  
45 scriber.

**§5-18-26. Other duties of board; suit to enforce article.**

1 (a) The board has the power and jurisdiction to  
2 supervise every cable operator within this state so far  
3 as may be necessary to carry out the purposes of this  
4 article and to do all things which are necessary or  
5 convenient in the exercise of this power and jurisdiction.

6 (b) The board may adopt rules and regulations as are  
7 necessary to implement the provisions of this article.

8 (c) The board or the board's designated representa-  
9 tives may, from time to time, visit the places of business  
10 and other premises and examine the records and  
11 facilities of all cable operators to ascertain if all laws,  
12 rules, regulations and cable franchise provisions have  
13 been complied with, and may examine all officers,  
14 agents and employees of cable operators and all other  
15 persons, under oath, and compel the production of  
16 papers and the attendance of witnesses to obtain the  
17 information necessary for administering this article.

18 (d) The board may appoint or contract for assistants  
19 and clerical, stenographic and other staff as may be  
20 necessary for the proper administration and enforce-  
21 ment of this article.

22 (e) The board or other aggrieved party may institute,  
23 or intervene as a party in, any action in any court of  
24 law seeking a mandamus, or injunctive or other relief  
25 to compel compliance with this article, or any rule,  
26 regulation, or order adopted hereunder, or to restrain  
27 or otherwise prevent or prohibit any illegal or unauth-  
28 orized conduct in connection with this article.

**§5-18-27. Reports.**

1 Each cable operator shall file with the board reports  
2 of its financial, technical and operational condition and  
3 its ownership. The reports shall be made in a form and  
4 on the time schedule prescribed by the board and shall  
5 be kept on file open to the public.

**§5-18-28. Annual fees; effect of application and filing fees on franchise fees.**

1 (a) Each cable operator shall pay to the board an

2 annual fee in an amount not less than twenty cents per  
3 subscriber or such greater annual fee as may be  
4 determined by the board. Such funds and all other funds  
5 to be paid to the board under the provisions of this  
6 article shall be deposited into a special fund designated  
7 the "cable advisory board fund". Such fund shall be used  
8 for purposes of administering the provisions of this  
9 article. To the extent permitted by federal law, the  
10 board may prohibit cable operators from assessing  
11 subscribers for any contribution toward the annual fee  
12 to be paid hereunder.

13 (b) Any filing fee required under the provisions of this  
14 article and the annual fee to be paid to the board under  
15 the provisions of this section, together with any fran-  
16 chise fee paid to any franchising authority, may not  
17 exceed the maximum amount for any franchise fee as  
18 set forth in 47 U.S.C. §542 as the same is in effect on  
19 the effective date of this article.

**§5-18-29. Cable television industry not regulated as a utility.**

1 No provision of this article may be construed to grant  
2 the board the power to regulate the cable television  
3 industry as a utility.

**§5-18-30. Severability.**

1 If any provision of any subparagraph, subsection or  
2 section of this article is held to be unconstitutional or  
3 void, the remaining provisions of such subparagraph,  
4 subdivision, subsection or section shall remain valid,  
5 unless the court finds the valid provisions are so  
6 essentially and inseparably connected with, and so  
7 dependent upon the unconstitutional or void provision  
8 that the court cannot presume the Legislature would  
9 have enacted the remaining valid provisions without the  
10 unconstitutional or void one, or unless the court finds  
11 that the remaining valid provisions, standing alone, are  
12 incomplete and are incapable of being executed in  
13 accordance with the legislative intent.

## CHAPTER 37

(Com. Sub. for S. B. 459—By Senators Warner, Chafin and J. Manchin)

[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to venture capital authority; the West Virginia capital company act; changing the designation “board” or “board of directors of the West Virginia industrial and trade jobs development corporation”, wherever found to the designation “authority” or “West Virginia economic development authority”; definitions; and including computer companies engaged in the creation of computer software as a qualified activity for which venture or risk capital may be made available for investments.

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

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

### ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

#### §5E-1-4. Definitions.

1 As used in this article, the following terms shall have  
2 the meanings ascribed to them in this section, unless the  
3 context in which the term is used clearly requires  
4 another meaning or a specific different definition is  
5 provided.

6 (a) “Authority” means the West Virginia economic  
7 development authority, provided for in article fifteen,  
8 chapter thirty-one of this code.

9 (b) “Capital base” means equity capital or net worth.

10 (c) “Certified West Virginia capital company” means:

11 (1) A West Virginia business development corporation  
12 created pursuant to article fourteen, chapter thirty-one  
13 of this code; or

14 (2) A profit or nonprofit entity organized and existing  
15 under the laws of this state, created for the purpose of  
16 making venture or risk capital available to qualified  
17 investments, that has been certified by the authority.

18 (d) "Qualified investment" means a debt or equity  
19 financing of a West Virginia business, but only if the  
20 business is engaged in one or more of the following  
21 activities: Manufacturing; agricultural production or  
22 processing; forestry production or processing; mineral  
23 production or processing, except for conventional oil and  
24 gas exploration; service industry; transportation;  
25 research and development of products or processes  
26 associated with any of the activities previously enumer-  
27 ated above; tourism; computer software development  
28 companies engaged in the creation of computer soft-  
29 ware; and wholesale or retail distribution activities  
30 within the state.

31 (e) "Qualified West Virginia capital company" means  
32 a West Virginia capital company that has been desig-  
33 nated by the authority as a qualified capital company  
34 under the provisions of section six of this article.

35 (f) "State" means the state of West Virginia.

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## CHAPTER 38

(Com. Sub. for S. B. 77—By Senator Rundle)

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[Passed March 8, 1990; in effect July 1, 1990. Approved by the Governor.]

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AN ACT to amend and reenact sections one and four, article eight, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to continuing the capitol building commission; members of the commission; and powers and duties generally.

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

That sections one and four, article eight, 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 8. CAPITOL BUILDING COMMISSION.**

§4-8-1. Creation; composition; qualifications.

§4-8-4. Powers and duties generally.

**§4-8-1. Creation; composition; qualifications.**

1       There is continued a capitol building commission,  
2 hereinafter referred to as the commission, which shall  
3 be composed of five members, who shall be appointed  
4 by the governor with the advice and consent of the  
5 Senate, plus the secretary of the department of admin-  
6 istration who shall be a nonvoting member. No more  
7 than three members shall be of the same political party.  
8 One member shall be an architect selected from three  
9 persons recommended by the board of architects, one  
10 member shall be a registered professional engineer  
11 selected from three persons recommended by the board  
12 of engineers, one member shall be the commissioner of  
13 the division of culture and history, who is chairman of  
14 the commission, and two members shall be selected from  
15 the public at large.

16       To allow for the completion of a performance audit  
17 through its joint committee on government operations,  
18 pursuant to section nine, article ten, chapter four of this  
19 code, the Legislature hereby finds and declares that the  
20 capitol building commission should be continued and  
21 reestablished. Accordingly, notwithstanding the provi-  
22 sions of section four, article ten, chapter four of this  
23 code, the capitol building commission shall continue to  
24 exist until the first day of July, one thousand nine  
25 hundred ninety-two.

**§4-8-4. Powers and duties generally.**

1       The capitol building commission shall review and  
2 approve or reject all plans recommending substantial  
3 physical changes inside or outside the state capitol  
4 building or surrounding complex, including the public  
5 meeting rooms, hallways and grounds, which affect the  
6 appearance thereof. The approval of the commission is  
7 mandatory before a contract may be let for work which  
8 constitutes a substantial physical change, or before  
9 changes are started if the work is not done under a  
10 contract. As used in this article, the surrounding

11 complex shall include the governor's mansion and other  
12 buildings used by the governor as part of his residence,  
13 the state science and cultural center, all state office  
14 buildings located in the immediate vicinity of the state  
15 capitol, and the roadways, structures and facilities  
16 which are incidental to such buildings. As used in this  
17 article, substantial physical change shall include, but  
18 not be limited to, permanent physical changes that alter  
19 the appearance of the public areas of the capitol  
20 building and surrounding complex. The secretary of the  
21 department of administration shall promulgate rules  
22 and regulations, pursuant to the provisions of chapter  
23 twenty-nine-a of this code, which rules and regulations  
24 shall be subject to the approval of the capitol building  
25 commission, to implement the provisions of this article.

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## CHAPTER 39

(S. B. 1—By Senators Brackenrich and J. Manchin)

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[Passed January 25, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section one, article two, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the child advocate office.

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

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

**ARTICLE 2. WEST VIRGINIA CHILD ADVOCATE OFFICE.**

**§48A-2-1. Reestablishment of the West Virginia child advocate office.**

1 (a) There is hereby established within the division of  
2 human services the child advocate office.

3 (b) Pursuant to the provisions of section four, article  
4 ten, chapter four of this code, the child advocate office  
5 shall continue to exist until the first day of July, one

6 thousand nine hundred ninety-one, to allow for the  
7 completion of an audit by the joint committee on  
8 government operations.

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## CHAPTER 40

(Com. Sub. for H. B. 4398—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)

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[Passed March 10, 1990; in effect July 1, 1990. Approved by the Governor.]

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AN ACT to repeal section five, article three, and section seven, article five, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections twelve, fourteen, fifteen, sixteen, seventeen, and twenty-four, article five, chapter sixteen of said code; to further amend said article five by adding thereto a new section, designated section eighteen-b; to amend and reenact sections one, fifteen, fifteen-a, twenty-seven and thirty-three, article two, chapter forty-eight; to further amend said article two by adding thereto a new section, designated section fifteen-b; to amend and reenact sections two and seven, article two; sections one, two, three, six and eight, article three; sections one, two, three, four, five, six, seven, eight, nine, and ten, article four, all of chapter forty-eight-a of said code; to further amend said article four by adding thereto two new sections, designated sections two-a and four-a; to amend and reenact sections one and three, article five; sections five and six, article six; and section fourteen, article seven, all of said chapter forty-eight-a; and to amend and reenact section four, article five, chapter fifty-seven of said code, all relating to the enforcement of support obligations generally; requiring parents to furnish social security account numbers in the administration of laws involving the issuance of birth certificates; limiting the use of social security numbers made available by the state registrar of vital statistics; defining certain terms relating to domestic relations; prescribing when prenuptial agreements are void; describing the relief which may be granted upon

ordering a divorce or annulment or granting a decree of separate maintenance; providing an additional basis for revising or altering a child support order; providing for withholding from income of amounts due as support; authorizing the family law master to open and inspect sealed court files; providing that the giving of incorrect information is false swearing; describing legislative intent; describing the responsibilities of the child advocate office; removing mediation and counseling and the enforcement of custody and visitation as responsibilities of the child advocate office; within existing appropriations, director to install computers in the office of each children's advocate; establishing the position of general counsel for the child advocate office; clarifying the duties of the children's advocate as regards the supervision of employees and the exercise of professional judgment; providing for the temporary reassignment of children's advocates; eliminating the requirement that the children's advocate investigate domestic relations cases; providing for periodic review of support orders; establishing a minimum salary for the position of children's advocate; exempting certain family law masters from appointments in indigent cases; redistributing the family law masters geographically; providing for referral of matters to a family law master; describing the matters to be heard by a family law master and fixing the fees for hearings; describing the powers of a master presiding at a hearing; providing for duplicate copies of electronic recordings of hearings and the preparation of transcripts; establishing procedures to be used in case of contemptuous acts or failures to act before a master; providing for recommended orders and findings of fact and conclusions of law by a master; setting forth a form of notice of recommended order; describing orders to be entered exclusively by the circuit court; establishing procedures for review by the circuit court of a master's recommended order; providing for the filing of an answer in opposition to a petition for review; providing for withholding from income of amounts payable as support; requiring a parent to furnish a social security account number in connection with a voluntary acknowledgment of paternity; and

empowering a family law master to order the issuance of a subpoena duces tecum.

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

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

## Chapter

16. Public Health.

48. Domestic Relations.

48A. Enforcement of Family Obligations.

57. Evidence and Witnesses.

## CHAPTER 16. PUBLIC HEALTH.

### ARTICLE 5. VITAL STATISTICS.

§16-5-12. Birth registration generally.

§16-5-14. Delayed registration of births.

§16-5-15. Judicial procedure to establish facts of birth.

§16-5-16. Court reports of adoption.

§16-5-17. Court reports of determination of paternity.

§16-5-18b. Limitation on use of social security numbers.

§16-5-24. Correction and amendment of vital records.

#### §16-5-12. Birth registration generally.

1 (a) A certificate of birth for each live birth which

2 occurs in this state shall be filed with the local registrar  
3 of the district in which the birth occurs within seven  
4 days after such birth and shall be registered by such  
5 registrar if it has been completed and filed in accor-  
6 dance with this section. When a birth occurs in a moving  
7 conveyance, a birth certificate shall be filed in the  
8 district in which the child is first removed from the  
9 conveyance. When a birth occurs in a district other than  
10 where the mother resides, a birth certificate shall be  
11 filed in the district in which the child is born and in  
12 the district in which the mother resides.

13 (b) When a birth occurs in an institution, the person  
14 in charge of the institution or his designated represen-  
15 tative shall obtain the personal data, prepare the  
16 certificate, secure the signatures required for the  
17 certificate and file it with the local registrar. The  
18 physician in attendance shall certify to the facts of birth  
19 and provide the medical information required for the  
20 certificate within five days after the birth.

21 (c) When a birth occurs outside an institution, the  
22 certificate shall be prepared and filed by one of the  
23 following in the indicated order of priority:

24 (1) The physician in attendance at or immediately  
25 after the birth, or in the absence of such a person,

26 (2) Any other person in attendance at or immediately  
27 after the birth, or in the absence of such a person,

28 (3) The father, the mother, or, in the absence of the  
29 father and the inability of the mother, the person in  
30 charge of the premises where the birth occurred.

31 (d) If the mother was married either at the time of  
32 conception or birth, the name of the husband shall be  
33 entered on the certificate as the father of the child  
34 unless paternity has been determined otherwise by a  
35 court of competent jurisdiction, in which case the name  
36 of the father as determined by the court shall be  
37 entered.

38 (e) If the mother was not married either at the time  
39 of conception or birth, the name of the father shall not  
40 be entered on the certificate of birth without the written

41 consent of the mother and of the person to be named as  
42 the father unless a determination of paternity has been  
43 made by a court of competent jurisdiction, in which case  
44 the name of the father as determined by the court shall  
45 be entered.

46 (f) Either of the parents of the child shall sign the  
47 certificate of live birth to attest to the accuracy of the  
48 personal data entered thereon, in time to permit its  
49 filing within the seven days prescribed above.

50 (g) In order that each county may have a complete  
51 record of the births occurring in said county, the local  
52 registrar shall transmit each month to the county clerk  
53 of his county the copies of the certificates of all births  
54 occurring in said county, from which copies the clerk  
55 shall compile a record of such births and shall enter the  
56 same in a systematic and orderly way in a well-bound  
57 register of births, which said register shall be a public  
58 record: *Provided*, That such copies and register shall not  
59 state that any child was either legitimate or illegitimate.  
60 The form of said register of births shall be prescribed  
61 by the state registrar of vital statistics.

62 (h) On and after the first day of November, one  
63 thousand nine hundred ninety, in addition to the  
64 personal data furnished for the certificate of birth  
65 issued for a live birth in accordance with the provisions  
66 of this section, a person whose name is to appear on such  
67 certificate of birth as a parent shall contemporaneously  
68 furnish to the person preparing and filing the certificate  
69 of birth the social security account number (or numbers,  
70 if the parent has more than one such number) issued to  
71 the parent. A record of the social security number or  
72 numbers shall be filed with the local registrar of the  
73 district in which the birth occurs within seven days  
74 after such birth, and the local registrar shall transmit  
75 such number or numbers to the state registrar of vital  
76 statistics in the same manner as other personal data is  
77 transmitted to the state registrar.

#### §16-5-14. Delayed registration of births.

1 (a) When the birth of a person born in this state has  
2 not been registered within the time period provided in

3 section twelve of this article, a certificate may be filed  
4 in accordance with a legislative rule promulgated by the  
5 state board of health in accordance with the provisions  
6 of chapter twenty-nine-a of this code. Such certificate  
7 shall be registered subject to such evidentiary require-  
8 ments as the state board of health shall by rule prescribe  
9 to substantiate the alleged facts of birth.

10 (b) Certificates of birth registered one year or more  
11 after the date of occurrence shall be marked "Delayed"  
12 and shall show on their face the date of the delayed  
13 registration.

14 (c) A summary statement of the evidence submitted  
15 in support of the delayed registration shall be endorsed  
16 on the certificate.

17 (d) (1) When an applicant does not submit the  
18 minimum documentation required in the rules for  
19 delayed registration or when the state registrar of vital  
20 statistics finds reason to question the validity or  
21 adequacy of the certificate or the documentary evidence,  
22 the state registrar of vital statistics shall not register the  
23 delayed certificate and shall advise the applicant in  
24 writing of the reasons for this action.

25 (2) The state board of health may by legislative rule  
26 promulgated in accordance with the provisions of  
27 chapter twenty-nine-a of this code provide for the  
28 dismissal of an application which is not actively  
29 prosecuted.

30 (e) On and after the first day of November, one  
31 thousand nine hundred ninety, in addition to the  
32 required documentation and other data furnished in an  
33 application for a delayed registration of birth in  
34 accordance with the provisions of this section, a person  
35 whose name is to appear on the certificate of birth as  
36 a parent shall contemporaneously furnish with the  
37 application the social security account number (or  
38 numbers, if the parent has more than one such number)  
39 issued to the parent.

**§16-5-15. Judicial procedure to establish facts of birth.**

1 (a) If a delayed certificate of birth is refused under



2 the provisions of section fourteen of this article, a  
3 petition may be filed in the circuit court of the county  
4 in which the petitioner resides or in the circuit court of  
5 Kanawha County for an order establishing a record of  
6 the date and place of the birth and the parentage of the  
7 person whose birth is to be registered.

8 (b) Such petition shall allege:

9 (1) That the person for whom a delayed registration  
10 of birth is sought was born in this state;

11 (2) That no record of birth of such person can be  
12 found in the office of the state or the local custodian of  
13 birth records;

14 (3) That diligent efforts by the petitioner have failed  
15 to obtain the evidence required in accordance with  
16 section fourteen of this article and of any rules and  
17 regulations adopted and promulgated thereunder;

18 (4) That the state registrar of vital statistics has  
19 refused to register a delayed certificate of birth; and

20 (5) Such other allegations as may be required by the  
21 court.

22 (c) The petition shall be accompanied by a copy of the  
23 statement of reasons of the registration official made in  
24 accordance with subsection (d)(1), section fourteen of  
25 this article and by all documentary evidence which was  
26 submitted to the registration official in support of such  
27 registration.

28 (d) The court shall fix a time and place for hearing  
29 the petition and shall require that the petitioner give the  
30 registration official who refused to register the petition-  
31 er's delayed certificate of birth not less than twenty  
32 days' notice of said hearing. Such official, or his  
33 authorized representative, may appear and testify in the  
34 proceeding.

35 (e) If the court finds from the evidence presented that  
36 the person for whom a delayed certificate of birth is  
37 sought was born in this state, it shall make findings as  
38 to the place and date of birth, parentage, and such other

39 findings as the case may require and shall issue an order  
40 setting forth the information required under the  
41 provisions of this article to establish a record of birth.  
42 This order shall include the birth date to be registered,  
43 a summary statement of the evidence presented, and the  
44 date of the court's action.

45 (f) The clerk of the court shall forward each such  
46 order to the state registrar of vital statistics not later  
47 than the tenth day of the calendar month following the  
48 month in which it was entered. Such order shall be  
49 registered by the state registrar of vital statistics and  
50 shall constitute the record of birth, from which copies  
51 may be issued in accordance with the provisions of this  
52 article.

53 (g) Any judgment shall be final unless reversed,  
54 vacated or modified on appeal, and any appeal shall be  
55 sought in the manner and within the time provided by  
56 law for appeals in other civil cases.

57 (h) On and after the first day of November, one  
58 thousand nine hundred ninety, in addition to the  
59 evidence presented to establish a record of birth in  
60 accordance with the provisions of this section, a person  
61 whose name is to appear on the delayed certificate of  
62 birth as a parent shall furnish to the clerk of the circuit  
63 court the social security account number (or numbers,  
64 if the parent has more than one such number) issued to  
65 the parent. A record of the social security number or  
66 numbers shall be forwarded to the state registrar of  
67 vital statistics along with the order establishing a record  
68 of birth, as provided for in subsection (f) of this section.

#### §16-5-16. Court reports of adoption.

1 (a) In conformance with the provisions of section ten,  
2 article four, chapter forty-eight of this code, any court  
3 in this state entering an order of adoption shall require  
4 the preparation by the clerk of the court of a certificate  
5 of adoption on a form prescribed and furnished by the  
6 state registrar of vital statistics. Such certificate shall  
7 include the factual information described in section ten,  
8 article four, chapter forty-eight of this code; shall  
9 provide such additional information as may be required

10 under legislative rules duly adopted pursuant to this  
11 article to establish a new certificate of birth of the  
12 person adopted; shall identify the order of adoption; and  
13 shall be certified by the clerk of court.

14 (b) Information in the possession of the petitioner  
15 necessary to prepare the certificate of adoption shall be  
16 pleaded in the petition for adoption or shall be furnished  
17 to the clerk of the court by the petitioner for adoption  
18 at the time the petition is filed. Any social or welfare  
19 agency or other person concerned with the adoption  
20 shall supply the petitioner with such information in the  
21 possession of such agency or person as may be necessary  
22 to complete the certificate.

23 (c) Whenever an adoption order or decree is amended  
24 or vacated, the clerk of the court shall prepare a  
25 certificate thereof, which shall include such facts as are  
26 necessary to identify the original adoption certificate  
27 and the facts amended in the adoption order or decree  
28 which are required to properly amend the birth record.

29 (d) Not later than the tenth day of each calendar  
30 month, the clerk of the court shall forward to the state  
31 registrar of vital statistics a report of all orders or  
32 decrees of adoption and of annulments or amendments  
33 thereof, entered in the preceding month, together with  
34 such related certificates and reports as may be required  
35 under the provisions of this article.

36 (e) When the state registrar of vital statistics shall  
37 receive a record of adoption or of an annulment or an  
38 amendment of an order or decree of adoption from a  
39 court for a person born outside of this state, such record  
40 shall be forwarded to the appropriate registration  
41 authority in the state of birth.

42 (f) On and after the first day of November, one  
43 thousand nine hundred ninety, in addition to the  
44 information pleaded or furnished in accordance with the  
45 provisions of subsection (b) of this section, each person  
46 whose name is to appear on the certificate of adoption  
47 as a parent, whether as an adoptive parent or as a  
48 natural parent who joins in the adoption without  
49 relinquishing parental rights, shall furnish to the clerk

50 of the circuit court the social security account number  
51 (or numbers, if the parent has more than one such  
52 number) issued to the parent. A record of the social  
53 security number or numbers shall be forwarded to the  
54 state registrar of vital statistics along with the certifi-  
55 cate of adoption, as provided for in subsection (d) of this  
56 section.

**§16-5-17. Court reports of determination of paternity.**

1 (a) Whenever a judgment has been entered determin-  
2 ing the paternity of a child, the clerk of the court shall  
3 prepare a certificate on a form prescribed and furnished  
4 by the state registrar of vital statistics. The certificate  
5 shall include such facts as are necessary to locate and  
6 identify the certificate of birth of the person whose  
7 paternity is determined; shall provide information  
8 necessary to establish a new certificate of birth of the  
9 person whose paternity is determined; and shall identify  
10 the action and be certified by the clerk of court.

11 (b) Not later than the tenth day of each calendar  
12 month, the clerk of the court shall forward to the state  
13 registrar of vital statistics certificates of paternity  
14 entered in the preceding month, together with such  
15 related reports as the state registrar of vital statistics  
16 shall require.

17 (c) On and after the first day of November, one  
18 thousand nine hundred ninety, in addition to providing  
19 the information necessary to establish a new certificate  
20 of birth of the person whose paternity has been  
21 determined, in accordance with the provisions of  
22 subsection (a) of this section, a person whose name is to  
23 appear on the certificate of paternity as a parent shall  
24 furnish to the clerk of the circuit court the social  
25 security account number (or numbers, if the parent has  
26 more than one such number) issued to the parent. A  
27 record of the social security number or numbers shall  
28 be forwarded to the state registrar of vital statistics  
29 along with the certificate of paternity, as provided for  
30 in subsection (b) of this section.

**§16-5-18b. Limitation on use of social security numbers.**

1 (a) A social security account number obtained in

2 accordance with the provisions of this article with  
3 respect to the filing of (1) a certificate of birth, (2) an  
4 application for a delayed registration of birth, (3) a  
5 judicial order establishing a record of birth, (4) an  
6 adoption order or decree, or (5) a certificate of paternity  
7 shall not be transmitted to a clerk of the county  
8 commission. Such social security account number shall  
9 not appear upon the public record of the register of  
10 births or upon any certificate of birth registration issued  
11 by the state registrar, local registrar, county clerk or  
12 other issuing authority, if any. Such social security  
13 account numbers shall be made available by the state  
14 registrar to the child advocate office upon its request,  
15 to be used solely in connection with the enforcement of  
16 child support orders.

17 (b) A parent who desires not to furnish a social  
18 security account number as required by the provisions  
19 of this article or section six, article six, chapter forty-  
20 eight-a of this code shall file with the person responsible  
21 for obtaining personal data from the parent, a request  
22 that he or she not be required to furnish such number.  
23 The request shall be made on a form prescribed by the  
24 state registrar of vital statistics or in a substantially  
25 similar instrument, and shall set forth the reasons that  
26 the parent declines or is unable to furnish such number.  
27 Supplies of a form for the request shall be made  
28 available to hospitals, circuit clerks, and other persons  
29 responsible for obtaining personal data from parents,  
30 and shall be provided to any parent who states that he  
31 or she desires not to be required to furnish such number.  
32 A request, when received, shall be transmitted in the  
33 same manner as a record of a social security account  
34 number. The board of health shall promulgate legisla-  
35 tive rules in accordance with the provisions of chapter  
36 twenty-nine-a of this code which shall establish the  
37 procedural means and substantive criteria by which the  
38 state registrar may determine whether there exists good  
39 cause for not requiring the furnishing of such number.  
40 In proposing the promulgation of such rules, the board  
41 of health shall give due consideration to related  
42 regulations prescribed by the secretary of health and  
43 human services of the United States.

**§16-5-24. Correction and amendment of vital records.**

1 (a) A certificate or record registered pursuant to this  
2 article may be amended only in accordance with the  
3 provisions of this article and rules and regulations duly  
4 adopted thereunder.

5 (b) A certificate that is amended under this section  
6 shall be marked "amended," except as hereinafter  
7 provided in this subsection and in subsection (d) of this  
8 section. The date of amendment and a summary  
9 description of the evidence submitted in support of the  
10 amendment shall be endorsed on or made a part of the  
11 record. The state board of health shall prescribe by rule  
12 and regulation the conditions under which additions or  
13 minor corrections shall be made to birth certificates  
14 within one year after the date of birth without the  
15 certificate being considered or marked as amended. The  
16 state board of health shall also prescribe by legislative  
17 rule promulgated in accordance with the provisions of  
18 chapter twenty-nine-a of this code a simplified proce-  
19 dure for the correction of any certificate or record  
20 registered pursuant to this article which is deficient in  
21 any particular, including, but not limited to, the  
22 omission or misspelling of a first name, and such rule  
23 and regulation shall specify when and under what  
24 circumstances a certificate or record so corrected shall  
25 be considered or marked as amended.

26 (c) Upon receipt of a certified copy of a court order  
27 of a court of competent jurisdiction changing the name  
28 of a person born in this state, which order was made  
29 and entered in a proceeding brought for that purpose,  
30 and upon request of such person or his parent, guardian,  
31 or legal representative, the state registrar of vital  
32 statistics shall amend the certificate of birth to reflect  
33 the new name.

34 (d) Upon request, and upon receipt of a sworn  
35 acknowledgment of paternity of a child born out of  
36 wedlock signed by both parents, the state registrar of  
37 vital statistics shall amend the certificate of birth to  
38 show such paternity if paternity is not shown on the

39 birth certificate. Upon request of both of the parents,  
40 the surname of the child shall be changed on the  
41 certificate to that of the father. Such certificate shall not  
42 be marked "amended."

43 (e) When a certificate is amended under this section,  
44 the state registrar of vital statistics shall report the  
45 amendment to the custodian of any permanent local  
46 records and such record shall be amended accordingly.

47 (f) On and after the first day of November, one  
48 thousand nine hundred ninety, in addition to providing  
49 the information necessary to amend a certificate or  
50 record in accordance with the provisions of this section,  
51 a person whose name is to appear on the amended  
52 certificate as a parent shall furnish to the person  
53 receiving the information the social security account  
54 number (or numbers, if the parent has more than one  
55 such number) issued to the parent. A record of the social  
56 security number or numbers shall be forwarded to the  
57 state registrar of vital statistics along with the informa-  
58 tion required for the amended certificate.

## CHAPTER 48. DOMESTIC RELATIONS.

### ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-1. Definitions.

§48-2-15. Relief upon ordering divorce or annulment or granting decree of separate maintenance.

§48-2-15a. Withholding from income prior to November 1, 1990.

§48-2-15b. Withholding from income on and after November 1, 1990.

§48-2-27. Sealing by clerk of evidence and pleadings.

§48-2-33. Disclosure of assets required.

#### §48-2-1. Definitions.

1 (a) "Alimony" means the allowance which a person  
2 pays to or in behalf of the support of his or her spouse  
3 or divorced spouse while they are separated or after they  
4 are divorced. The payment of alimony may be required  
5 by court order or by the terms of a separation agree-  
6 ment. Alimony may be paid in a lump sum or paid in  
7 installments as periodic alimony. Alimony includes  
8 temporary alimony as that term is used in section  
9 thirteen of this article, as well as alimony as that term

10 is used in section fifteen of this article and elsewhere  
11 throughout this article.

12 (b) "Antenuptial agreement" or "prenuptial agree-  
13 ment" means an agreement between a man and woman  
14 before marriage, but in contemplation and generally in  
15 consideration of marriage, whereby the property rights  
16 and interests of the prospective husband and wife, or  
17 both of them, are determined, or where property is  
18 secured to either or both of them, to their separate  
19 estate, or to their children or other persons. An  
20 antenuptial agreement may include provisions which  
21 define the respective property rights of the parties  
22 during the marriage, or in the event of the death of  
23 either or both of the parties, and may provide for the  
24 disposition of marital property upon an annulment of  
25 the marriage or a divorce or separation of the parties.  
26 A prenuptial agreement is void if at the time it is made  
27 either of the parties is a minor.

28 (c) "Earnings" means compensation paid or payable  
29 for personal services, whether denominated as wages,  
30 salary, commission, bonus, or otherwise, and includes  
31 periodic payments pursuant to a pension or retirement  
32 program. "Disposable earnings" means that part of the  
33 earnings of any individual remaining after the deduc-  
34 tion from those earnings of any amounts required by law  
35 to be withheld.

36 (d) "Income" means any of the following:

37 (1) Commissions, earnings, salaries, wages, and other  
38 income due or to be due in the future to an individual  
39 from his employer and successor employers;

40 (2) Any payment due or to be due in the future to an  
41 individual from a profit-sharing plan, a pension plan, an  
42 insurance contract, an annuity, social security, unem-  
43 ployment compensation, supplemental employment  
44 benefits, and workers' compensation;

45 (3) Any amount of money which is owing to an  
46 individual as a debt from an individual, partnership,  
47 association, public or private corporation, the United  
48 States or any federal agency, this state or any political



49 subdivision of this state, any other state or a political  
50 subdivision of another state, or any other legal entity  
51 which is indebted to the obligor.

52 (e) "Marital property" means:

53 (1) All property and earnings acquired by either  
54 spouse during a marriage, including every valuable  
55 right and interest, corporeal or incorporeal, tangible or  
56 intangible, real or personal, regardless of the form of  
57 ownership, whether legal or beneficial, whether individ-  
58 ually held, held in trust by a third party, or whether  
59 held by the parties to the marriage in some form of co-  
60 ownership such as joint tenancy or tenancy in common,  
61 joint tenancy with the right of survivorship, or any other  
62 form of shared ownership recognized in other jurisdic-  
63 tions without this state, except that marital property  
64 shall not include separate property as defined in  
65 subsection (f) of this section; and

66 (2) The amount of any increase in value in the  
67 separate property of either of the parties to a marriage,  
68 which increase results from (A) an expenditure of funds  
69 which are marital property, including an expenditure of  
70 such funds which reduces indebtedness against separate  
71 property, extinguishes liens, or otherwise increases the  
72 net value of separate property, or (B) work performed  
73 by either or both of the parties during the marriage.

74 The definitions of "marital property" contained in this  
75 subsection and "separate property" contained in subsec-  
76 tion (f) of this section shall have no application outside  
77 of the provisions of this article, and the common law as  
78 to the ownership of the respective property and earnings  
79 of a husband and wife, as altered by the provisions of  
80 article three of this chapter and other provisions of this  
81 code, are not abrogated by implication or otherwise,  
82 except as expressly provided for by the provisions of this  
83 article as such provisions are applied in actions brought  
84 under this article or for the enforcement of rights under  
85 this article.

86 (f) "Separate property" means:

87 (1) Property acquired by a person before marriage; or

88       (2) Property acquired by a person during marriage in  
89 exchange for separate property which was acquired  
90 before the marriage; or

91       (3) Property acquired by a person during marriage,  
92 but excluded from treatment as marital property by a  
93 valid agreement of the parties entered into before or  
94 during the marriage; or

95       (4) Property acquired by a party during marriage by  
96 gift, bequest, devise, descent or distribution; or

97       (5) Property acquired by a party during a marriage  
98 but after the separation of the parties and before the  
99 granting of a divorce, annulment or decree of separate  
100 maintenance; and

101       (6) Any increase in the value of separate property as  
102 defined in subdivision (1), (2), (3), (4) or (5) of this  
103 subsection which is due to inflation or to a change in  
104 market value resulting from conditions outside the  
105 control of the parties.

106       (g) "Separation" or "separation of the parties" means  
107 the separation of the parties next preceding the filing  
108 of an action under the provisions of this article, which  
109 separation continues, without the parties cohabiting or  
110 otherwise living together as husband and wife, and  
111 without interruption.

112       (h) "Separation agreement" means a written agree-  
113 ment entered into by a husband and wife whereby they  
114 agree to live separate and apart from each other and,  
115 in connection therewith, agree to settle their property  
116 rights; or to provide for the custody and support of their  
117 minor child or children, if any; or to provide for the  
118 payment or waiver of alimony by either party to the  
119 other; or to otherwise settle and compromise issues  
120 arising out of their marital rights and obligations.  
121 Insofar as an antenuptial agreement as defined in  
122 subsection (b) of this section affects the property rights  
123 of the parties or the disposition of property upon an  
124 annulment of the marriage, or a divorce or separation  
125 of the parties, such antenuptial agreement shall be  
126 regarded as a separation agreement under the provi-  
127 sions of this article.

**§48-2-15. Relief upon ordering divorce or annulment or granting decree of separate maintenance.**

1 (a) Upon ordering a divorce or granting a decree of  
2 separate maintenance, the court may require either  
3 party to pay alimony in the form of periodic install-  
4 ments, or a lump sum, or both, for the maintenance of  
5 the other party. Payments of alimony and child support  
6 are to be ordinarily made from a party's employment  
7 income and other recurring earnings, but in cases where  
8 the employment income and other recurring earnings  
9 are not sufficient to adequately provide for payments of  
10 alimony and child support, the court may, upon specific  
11 findings set forth in the order, order the party required  
12 to make such payments to make the same from the  
13 corpus of his or her separate estate. An award of such  
14 relief shall not be disproportionate to a party's ability  
15 to pay as disclosed by the evidence before the court.

16 (b) Upon ordering the annulment of a marriage or a  
17 divorce or granting of decree of separate maintenance,  
18 the court may further order all or any part of the  
19 following relief:

20 (1) The court may provide for the custody of minor  
21 children of the parties, subject to such rights of  
22 visitation, both in and out of the residence of the  
23 custodial parent or other person or persons having  
24 custody, as may be appropriate under the circumstan-  
25 ces. In addition, the court may, in its discretion, make  
26 such further order as it shall deem expedient, concern-  
27 ing the grant of reasonable visitation rights to any  
28 grandparent or grandparents of the minor children  
29 upon application, if the grandparent or grandparents  
30 are related to such minor child through a party:

31 (A) Whose whereabouts are unknown, or

32 (B) Who did not answer or otherwise appear and  
33 defend the cause of action.

34 (2) The court may require either party to pay child  
35 support in the form of periodic installments for the  
36 maintenance of the minor children of the parties.

37 (3) As an incident to requiring the payment of  
38 alimony or child support, the court may order either  
39 party to continue in effect existing policies of insurance  
40 covering the costs of health care and hospitalization of  
41 the other party and the minor children of the parties:  
42 *Provided*, That if the other party is no longer eligible  
43 to be covered by such insurance because of the granting  
44 of an annulment or divorce, the court may require a  
45 party to substitute such insurance with a new policy to  
46 cover the other party, or may consider the prospective  
47 cost of such insurance in awarding alimony to be paid  
48 in periodic installments. If there is no such existing  
49 policy or policies, the court shall order such health care  
50 insurance coverage to be paid for by the noncustodial  
51 parent, if the court determines that such health care  
52 insurance coverage is available to the noncustodial  
53 parent at a reasonable cost. Payments made to an  
54 insurer pursuant to this subdivision, either directly or  
55 by a deduction from wages, shall be deemed to be  
56 alimony, child support or installment payments for the  
57 distribution of marital property, in such proportion as  
58 the court shall direct: *Provided, however*, That if the  
59 court does not set forth in the order that a portion of  
60 such payments is to be deemed child support or  
61 installment payments for the distribution of marital  
62 property, then all such payments made pursuant to this  
63 subdivision shall be deemed to be alimony: *Provided*  
64 *further*, That the designation of insurance coverage as  
65 alimony under the provisions of this subdivision shall  
66 not, in and of itself, give rise to a subsequent modifi-  
67 cation of the order to provide for alimony other than  
68 insurance for covering the costs of health care and  
69 hospitalization.

70 (4) As an incident to requiring the payment of  
71 alimony or child support, the court may grant the  
72 exclusive use and occupancy of the marital home to one  
73 of the parties, together with all or a portion of the  
74 household goods, furniture and furnishings reasonably  
75 necessary for such use and occupancy. Such use and  
76 occupancy shall be for a definite period, ending at a  
77 specific time set forth in the order, subject to modifi-  
78 cation upon the petition of either party. Except in

79 extraordinary cases supported by specific findings set  
80 forth in the order granting relief, a grant of the  
81 exclusive use and occupancy of the marital home shall  
82 be limited to those situations where such use and  
83 occupancy is reasonably necessary to accommodate the  
84 rearing of minor children of the parties. The court may  
85 require payments to third parties in the form of home  
86 loan installments, land contract payments, rent, pay-  
87 ments for utility services, property taxes, insurance  
88 coverage, or other expenses or charges reasonably  
89 necessary for the use and occupancy of the marital  
90 domicile. Payments made to a third party pursuant to  
91 this subdivision for the benefit of the other party shall  
92 be deemed to be alimony, child support or installment  
93 payments for the distribution of marital property, in  
94 such proportion as the court shall direct: *Provided*, That  
95 if the court does not set forth in the order that a portion  
96 of such payments is to be deemed child support or  
97 installment payments for the distribution of marital  
98 property, then all such payments made pursuant to this  
99 subdivision shall be deemed to be alimony. Nothing  
100 contained in this subdivision shall abrogate an existing  
101 contract between either of the parties and a third party,  
102 or affect the rights and liabilities of either party or a  
103 third party under the terms of such contract.

104 (5) As an incident to requiring the payment of  
105 alimony, the court may grant the exclusive use and  
106 possession of one or more motor vehicles to either of the  
107 parties. The court may require payments to third  
108 parties in the form of automobile loan installments or  
109 insurance coverage if available at reasonable rates, and  
110 any such payments made pursuant to this subdivision  
111 for the benefit of the other party shall be deemed to be  
112 alimony or installment payments for the distribution of  
113 marital property, as the court may direct. Nothing  
114 contained in this subsection shall abrogate an existing  
115 contract between either of the parties and a third party,  
116 or affect the rights and liabilities of either party or a  
117 third party under the terms of such contract.

118 (6) Where the pleadings include a specific request for  
119 specific property or raise issues concerning the equita-

120 ble division of marital property as defined in section one  
121 of this article, the court shall order such relief as may  
122 be required to effect a just and equitable distribution  
123 of the property and to protect the equitable interests of  
124 the parties therein.

125 (7) Unless a contrary disposition be found appropriate  
126 and ordered pursuant to other provisions of this section,  
127 then upon the motion of either party, the court may  
128 compel the other party to deliver to the movant party  
129 any of his or her separate estate which may be in the  
130 possession or control of the respondent party, and may  
131 make such further order as is necessary to prevent  
132 either party from interfering with the separate estate  
133 of the other.

134 (8) The court may enjoin either party from the  
135 molesting or interfering with the other, or otherwise  
136 imposing any restraint on the personal liberty of the  
137 other, or interfering with the custodial or visitation  
138 rights of the other.

139 (9) The court may order either party to take necessary  
140 steps to transfer utility accounts and other accounts for  
141 recurring expenses from the name of one party into the  
142 name of the other party or from the joint names of the  
143 parties into the name of one party. Nothing contained  
144 in this subdivision shall affect the liability of the parties  
145 for indebtedness on any such account incurred before  
146 the transfer of such account.

147 (c) In any case where an annulment or divorce is  
148 denied, the court shall retain jurisdiction of the case and  
149 may order all or any portion of the relief provided for  
150 in subsections (a) and (b) of this section which has been  
151 demanded or prayed for in the pleadings.

152 (d) In any case where a divorce or annulment is  
153 granted in this state upon constructive service of  
154 process, and personal jurisdiction is thereafter obtained  
155 of the defendant in such case, the court may order all  
156 or any portion of the relief provided for in subsections  
157 (a) and (b) of this section which has been demanded or  
158 prayed for in the pleadings.

159 (e) At any time after the entry of an order pursuant  
160 to the provisions of this section, the court may, upon the  
161 verified petition of either of the parties, revise or alter  
162 such order concerning the maintenance of the parties,  
163 or either of them, and make a new order concerning the  
164 same, as the altered circumstances or needs of the  
165 parties may render necessary to meet the ends of justice.  
166 The court may also from time to time afterward, on the  
167 verified petition of either of the parties or other proper  
168 person having actual or legal custody of the minor child  
169 or children of the parties, revise or alter such order  
170 concerning the custody and support of the children, and  
171 make a new order concerning the same, as the circum-  
172 stances of the parents or other proper person or persons  
173 and the benefit of the children may require: *Provided,*  
174 That an order providing for child support payments  
175 may be revised or altered for the reason, inter alia, that  
176 the existing order provides for child support payments  
177 in an amount that is less than eighty-five percent or  
178 more than one hundred fifteen percent of the amount  
179 that would be required to be paid under the child  
180 support guidelines promulgated pursuant to the provi-  
181 sions of section eight, article two, chapter forty-eight-a  
182 of this code: In granting relief under this subsection, the  
183 court may, where other means are not conveniently  
184 available, alter any prior order of the court with respect  
185 to the distribution of marital property, if such property  
186 is still held by the parties, and if necessary to give effect  
187 to a modification of alimony, child support or child  
188 custody or necessary to avoid an inequitable or unjust  
189 result which would be caused by the manner in which  
190 the modification will affect the prior distribution of  
191 marital property.

192 (f) In every case where a separation agreement is the  
193 basis for an award of alimony, the court, in approving  
194 the agreement, shall examine the agreement to ascer-  
195 tain whether it clearly provides for alimony to continue  
196 beyond the death of the payor party or to cease in such  
197 event. Where alimony is to be paid pursuant to the terms  
198 of a separation agreement which does not state whether  
199 the payment of alimony is to continue beyond the death  
200 of the payor party or is to cease, or where the parties

201 have not entered into a separation agreement and  
202 alimony is to be awarded, the court shall specifically  
203 state as a part of its order whether such payments of  
204 alimony are to be continued beyond the death of the  
205 payor party or cease.

206 (g) In every case where a separation agreement is the  
207 basis for an award of alimony, the court, in approving  
208 the agreement, shall examine the agreement to ascer-  
209 tain whether it clearly provides for alimony to continue  
210 beyond the remarriage of the payee party or to cease in  
211 such event. Where alimony is to be paid pursuant to the  
212 terms of a separation agreement which does not state  
213 whether the payment of alimony is to continue beyond  
214 the remarriage of the payee party or is to cease, or  
215 where the parties have not entered into a separation  
216 agreement and alimony is to be awarded, the court shall  
217 specifically state as a part of its order whether such  
218 payments of alimony are to be continued beyond the  
219 remarriage of the payee party or cease.

220 (h) In addition to the statement provided for in  
221 subsection (d), section thirteen of this article and in  
222 addition or in lieu of the disclosure requirements set  
223 forth in section thirty-three of this article, the court may  
224 order accounts to be taken as to all or any part of  
225 marital property or the separate estates of the parties,  
226 and may direct that the accounts be taken as of the date  
227 of the marriage, the date upon which the parties  
228 separated, or any other time deemed to be appropriate  
229 in assisting the court in the determination and equitable  
230 division of property.

231 (i) In determining whether alimony is to be awarded,  
232 or in determining the amount of alimony, if any, to be  
233 awarded under the provisions of this section, the court  
234 shall consider and compare the fault or misconduct of  
235 either or both of the parties and the effect of such fault  
236 or misconduct as a contributing factor to the deteriora-  
237 tion of the marital relationship. However, alimony shall  
238 not be awarded in any case where both parties prove  
239 grounds for divorce and are denied a divorce, nor shall  
240 an award of alimony under the provisions of this section  
241 be ordered which directs the payment of alimony to a



242 party determined to be at fault, when, as a grounds  
243 granting the divorce, such party is determined by the  
244 court:

245 (1) To have committed adultery; or

246 (2) To have been convicted for the commission of a  
247 crime which is a felony, subsequent to the marriage if  
248 such conviction has become final; or

249 (3) To have actually abandoned or deserted his or her  
250 spouse for six months.

251 (j) Whenever under the terms of this section or section  
252 thirteen of this article a court enters an order requiring  
253 the payment of alimony or child support, if the court  
254 anticipates the payment of such alimony or child  
255 support or any portion thereof to be paid out of  
256 "disposable retired or retainer pay" as that term is  
257 defined in 10 U.S.C. §1408, relating to members or  
258 former members of the uniformed services of the United  
259 States, the court shall specifically provide for the  
260 payment of an amount, expressed in dollars or as a  
261 percentage of disposable retired or retainer pay, from  
262 the disposable retired or retainer pay of the payor party  
263 to the payee party.

**§48-2-15a. Withholding from income prior to November  
1, 1990.**

1 (a) From the first day of July, one thousand nine  
2 hundred eighty-six, until the thirty-first day of October,  
3 one thousand nine hundred ninety, both inclusive, every  
4 order entered or modified under the provisions of this  
5 article which requires the payment of child support or  
6 spousal support shall include a provision for automatic  
7 withholding from income of the obligor if arrearages in  
8 such support occur, in order to facilitate income  
9 withholding as a means of collecting support when such  
10 arrearages occur.

11 (b) Every such order as described in subsection (a)  
12 above shall contain or be considered to contain language  
13 authorizing income withholding to commence without  
14 further court action:

15 (1) When the support payments required by such  
16 order are thirty days or more in arrears if the order  
17 requires payments to be made in monthly installments;

18 (2) When the support payments required by such  
19 order are twenty-eight days or more in arrears if the  
20 order requires payments to be paid in weekly or bi-  
21 weekly installments; or

22 (3) When the obligor requests the child advocate office  
23 to commence income withholding.

24 (c) For the purposes of this section, the number of  
25 days support payments are in arrears shall be consi-  
26 dered to be the total cumulative number of days during  
27 which payments required by a court order have been  
28 delinquent, whether or not such days are consecutive.

29 (d) The supreme court of appeals shall make available  
30 to the circuit courts standard language to be included  
31 in all such orders, so as to conform such orders to the  
32 applicable requirements of state and federal law  
33 regarding the withholding from income of amounts  
34 payable as support.

35 (e) Every support order entered by a circuit court of  
36 this state prior to the first day of July, one thousand nine  
37 hundred eighty-six, shall be considered to provide for an  
38 order of income withholding by operation of law,  
39 notwithstanding the fact that such support order does  
40 not in fact provide for an order of withholding.

**§48-2-15b. Withholding from income on and after No-  
vember 1, 1990.**

1 (a) On and after the first day of November, one  
2 thousand nine hundred ninety, every order entered or  
3 modified under the provisions of this article which  
4 requires the payment of child support or spousal support  
5 shall include a provision for automatic withholding from  
6 income of the obligor, in order to facilitate income  
7 withholding as a means of collecting support.

8 (b) Every such order as described in subsection (a) of  
9 this section shall contain language authorizing income  
10 withholding to commence without further court action,  
11 as follows:

12 (1) The order shall provide that income withholding  
13 will begin immediately, without regard to whether there  
14 is an arrearage, (A) when a child for whom support is  
15 ordered is included or becomes included in a grant of  
16 assistance from the division of human services or a  
17 similar agency of a sister state for aid to families with  
18 dependent children benefits, medical assistance only  
19 benefits, or foster care benefits; or (B) when the support  
20 obligee has applied for services from the child advocate  
21 office or the support enforcement agency of another  
22 state or is otherwise receiving services from the child  
23 advocate office as provided for in chapter forty-eight-a  
24 of this code. Such order may provide that income  
25 withholding shall not begin immediately in any case  
26 where one of the parties demonstrates, and the court  
27 finds, that there is good cause not to require immediate  
28 income withholding, or in any case where there is filed  
29 with the court a written agreement between the parties  
30 which provides for an alternative arrangement and the  
31 agreement has been filed with the court.

32 (2) The order shall also provide that income withhold-  
33 ing will begin immediately upon the occurrence of any  
34 of the following:

35 (A) When the support payments required by such  
36 order are thirty days or more in arrears if the order  
37 requires payments to be made in monthly installments;

38 (B) When the support payments required by such  
39 order are twenty-eight days or more in arrears if the  
40 order requires payments to be paid in weekly or bi-  
41 weekly installments;

42 (C) When the obligor requests the child advocate  
43 office to commence income withholding; or

44 (D) When the obligee requests that such withholding  
45 begin, if the request is approved by the court in  
46 accordance with procedures and standards established  
47 by rules and regulations promulgated by the director of  
48 the child advocate office.

49 (e) For the purposes of this section, the number of

50 days support payments are in arrears shall be consi-  
51 dered to be the total cumulative number of days during  
52 which payments required by a court order have been  
53 delinquent, whether or not such days are consecutive.

54 (d) The supreme court of appeals shall make available  
55 to the circuit courts standard language to be included  
56 in all such orders, so as to conform such orders to the  
57 applicable requirements of state and federal law  
58 regarding the withholding from income of amounts  
59 payable as support.

60 (e) Every support order entered by a circuit court of  
61 this state prior to the first day of November, one  
62 thousand nine hundred ninety, shall be considered to  
63 provide for an order of income withholding, by operation  
64 of law, which complies with the provisions of this  
65 section, notwithstanding the fact that such support  
66 order does not in fact provide for such order of  
67 withholding.

**§48-2-27. Sealing by clerk of evidence and pleadings.**

1 When a judgment order is entered in any action for  
2 annulment of marriage or for divorce, the clerk shall  
3 immediately seal in a package all pleadings, except the  
4 orders of the court, all the written testimony, exhibits  
5 to the testimony, the stenographic notes or other  
6 recordings of the testimony, if any were taken, the  
7 commissioner's report, and all other evidence, and the  
8 same shall not be again opened except upon written  
9 permission of the court: *Provided*, That a family law  
10 master before whom a subsequent matter in the same  
11 action is pending may open and inspect the pleadings,  
12 testimony, exhibits, notes and recordings, reports,  
13 evidence and all other contents of the sealed court file  
14 without the written permission of the court.

**§48-2-33. Disclosure of assets required.**

1 (a) In addition to any discovery ordered by the court  
2 pursuant to rule eighty-one of the rules of civil proce-  
3 dure, the court may, or upon pleadings or motion of  
4 either party, the court shall, require each party to  
5 furnish, on such standard forms as the court may

6 require, full disclosure of all assets owned in full or in  
7 part by either party separately or by the parties jointly.  
8 Such disclosure may be made by each party individually  
9 or by the parties jointly. Assets required to be disclosed  
10 shall include, but shall not be limited to, real property,  
11 savings accounts, stocks and bonds, mortgages and  
12 notes, life insurance, interest in a partnership or  
13 corporation, tangible personal property, income from  
14 employment, future interests whether vested or non-  
15 vested, and any other financial interest or source. The  
16 court may also require each party to furnish, on the  
17 same standard form, information pertaining to all debts  
18 and liabilities of the parties. The form used shall contain  
19 a statement in conspicuous print that complete disclo-  
20 sure of assets and debts is required by law and  
21 deliberate failure to provide complete disclosure as  
22 ordered by the court constitutes false swearing. The  
23 court may on its own initiative and shall at the request  
24 of either party require the parties to furnish copies of  
25 all state and federal income tax returns filed by them  
26 for the past two years, and may require copies of such  
27 returns for prior years.

28 (b) Disclosure forms required under this section shall  
29 be filed within sixty days after the service of summons  
30 or at such other time as ordered by the court.  
31 Information contained on such forms shall be updated  
32 on the record to the date of hearing.

33 (c) Information disclosed under this section shall be  
34 confidential and may not be made available to any  
35 person for any purpose other than the adjudication,  
36 appeal, modification or enforcement of judgment of an  
37 action affecting the family of the disclosing parties. The  
38 court shall include in any order compelling disclosure  
39 of assets such provisions as the court considers necessary  
40 to preserve the confidentiality of the information  
41 ordered disclosed.

42 (d) Upon the failure by either party timely to file a  
43 complete disclosure statement as may be required by  
44 this section, the court may accept the statement of the  
45 other party as accurate.

46 (e) If any party deliberately or negligently fails to  
47 disclose information which may be required by this  
48 section and in consequence thereof any asset or assets  
49 with a fair market value of five hundred dollars or more  
50 is omitted from the final distribution of property, the  
51 party aggrieved by such nondisclosure may at any time  
52 petition a court of competent jurisdiction to declare the  
53 creation of a constructive trust as to all undisclosed  
54 assets, for the benefit of the parties and their minor or  
55 dependent children, if any, with the party in whose  
56 name the assets are held declared the constructive  
57 trustee, such trust to include such terms and conditions  
58 as the court may determine. The court shall impose the  
59 trust upon a finding of a failure to disclose such assets  
60 as required under this section.

61 (f) Any assets with a fair market value of five  
62 hundred dollars or more which would be considered  
63 part of the estate of either or both of the parties if owned  
64 by either or both of them at the time of the action, but  
65 which was transferred for inadequate consideration,  
66 wasted, given away or otherwise unaccounted for by one  
67 of the parties, within five years prior to the filing of the  
68 petition or length of the marriage, whichever is shorter,  
69 shall be presumed to be part of the estate and shall be  
70 subject to the disclosure requirement contained in this  
71 section. With respect to such transfers the spouse shall  
72 have the same right and remedies as a creditor whose  
73 debt was contracted at the time the transfer was made  
74 under section three, article one, chapter forty of this  
75 code. Transfers which resulted in an exchange of assets  
76 of substantially equivalent value need not be specifically  
77 disclosed where such assets are otherwise identified in  
78 the statement of net worth.

79 (g) A person who knowingly provides incorrect  
80 information pursuant to the provisions of this section is  
81 guilty of false swearing.

#### CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

##### Article

2. West Virginia Child Advocate Office.
3. Children's Advocate.

4. Proceedings Before a Master.
5. Remedies for the Enforcement of Support Obligations and Visitation.
6. Establishment of Paternity.
7. Revised Uniform Reciprocal Enforcement of Support Act.

## ARTICLE 2. WEST VIRGINIA CHILD ADVOCATE OFFICE.

§48A-2-2. Legislative purpose and intent; responsibility of the child advocate office.

§48A-2-7. Powers and duties of the director; advisory council.

### §48A-2-2. Legislative purpose and intent; responsibility of the child advocate office.

1 (a) This article is enacted for the purpose of creating  
2 a child advocate office which will focus on the vital  
3 issues of child support, spousal support, and the  
4 establishment of paternity, inasmuch as such issues are  
5 properly within the jurisdiction of the state of West  
6 Virginia. The Legislature of the state of West Virginia,  
7 in creating the child advocate office, recognizes the  
8 seriousness of family law issues as they affect the health  
9 and welfare of the children of this state. The Legislature  
10 intends, by the enactment of this article and through the  
11 creation of this office, to specifically assign the highest  
12 priority to these issues. It is the sense of the Legislature  
13 that there must be a state office which, as its primary  
14 function, protects and promotes the best interests of  
15 children; which recognizes the rights and obligations of  
16 all persons involved in family law issues; and which has  
17 the authority and the means to resolve family law issues  
18 fairly and efficiently. Through the establishment of the  
19 child advocate office the Legislature intends to create an  
20 impetus and a mechanism for dealing with the varied  
21 problems associated with support enforcement, thereby  
22 enhancing the health and welfare of our state's children  
23 and their families.

24 (b) In order to carry out the purposes and intent of  
25 the Legislature, the child advocate office shall have, as  
26 its primary responsibilities, the following:

27 (1) The enforcement of support obligations owed by a  
28 parent to his or her child or children;

29 (2) The enforcement of support obligations owed by an  
30 individual to his or her spouse or former spouse;

- 31 (3) Locating parents or spouses who owe a duty to pay  
32 support;
- 33 (4) Establishing paternity on behalf of minors whose  
34 paternal parentage has not been acknowledged by the  
35 father or otherwise established by law;
- 36 (5) Obtaining court orders for child and spousal  
37 support; and
- 38 (6) Assuring that the assistance and services of the  
39 office required to be provided under the provisions of  
40 this chapter will be available to all individuals for whom  
41 such assistance is required or requested.

**§48A-2-7. Powers and duties of the director; advisory council.**

- 1 (a) The director may promulgate legislative rules in  
2 accordance with the provisions of article three, chapter  
3 twenty-nine-a of this code where such rules are required  
4 to implement the provisions of this chapter.
- 5 (b) The director shall annually prepare a proposed  
6 budget for the next fiscal year, and submit such budget  
7 to the commissioner. Such budget shall include all sums  
8 necessary to support the activities of the child advocate  
9 office.
- 10 (c) In addition to any other duties required by this  
11 chapter, the director shall:
- 12 (1) Develop and recommend guidelines for the con-  
13 duct, operations and procedures of the office and his or  
14 her employees, including, but not limited to, the  
15 following:
- 16 (A) Caseload and staffing standards for employees  
17 who perform investigation and recommendation func-  
18 tions, enforcement functions and clerical functions.
- 19 (B) Orientation programs for clients of the office.
- 20 (C) Public educational programs regarding domestic  
21 relations law and community resources, including  
22 financial and other counseling, and employment oppor-  
23 tunities.



24 (D) Model pamphlets and procedural forms, which  
25 shall be distributed to each local office serving clients.

26 (2) Provide training programs for the children's  
27 advocates and other employees of the office, to better  
28 enable them to carry out the duties described in this  
29 chapter.

30 (3) Gather and monitor relevant statistics.

31 (4) Develop standards and procedures for the transfer  
32 of part or all of the responsibilities for a case from one  
33 office to another in situations considered appropriate.

34 (5) Subject to appropriation of funds by the Legisla-  
35 ture, install in the office of each children's advocate,  
36 adequate computer hardware and software to enable the  
37 advocate to utilize word processing and other data  
38 processing functions in the preparation of pleadings and  
39 other documents required for the proper discharge of  
40 the duties of the office.

41 (d) The commissioner of the division of human  
42 services shall appoint a nine-person advisory committee,  
43 serving without compensation except as provided in  
44 subsection (e) of this section, composed of the following:

45 (1) Three public members who are eligible for  
46 services with an office of the children's advocate;

47 (2) Three attorneys who are members of the West  
48 Virginia state bar with experience in domestic relations  
49 law, not more than two of whom may be employees of  
50 the department of health and human resources: *Pro-*  
51 *vided*, That one of the attorneys appointed shall be a  
52 children's advocate selected by the children's advocates  
53 throughout the state; and

54 (3) Three human service professionals who provide  
55 family counseling, not more than two of whom may be  
56 employees of the department of health and human  
57 resources.

58 Of the nine members initially appointed, one public  
59 member, one attorney and one professional shall be

60 appointed for a term of one year; one public member,  
 61 one attorney and one professional shall be appointed for  
 62 a term of two years; and one public member, one  
 63 attorney and one professional shall be appointed for a  
 64 term of three years. After the expiration of the initial  
 65 terms, appointments thereafter shall be made for terms  
 66 of three years. The commissioner shall fill any vacancies  
 67 resulting from death or resignation by appointment for  
 68 the unexpired term. Members of the advisory council  
 69 may be reappointed.

70 (e) The advisory committee established under subsec-  
 71 tion (d) of this section shall advise the director in the  
 72 performance of his or her duties under this section.  
 73 Advisory committee members shall be reimbursed for  
 74 their actual expenses for mileage, meals, and, if  
 75 necessary, lodging.

76 (f) The director shall appoint general counsel for the  
 77 child advocate office to supervise and assist the child-  
 78 ren's advocates in the performance of their professional,  
 79 nonadministrative duties and to promote uniformity in,  
 80 and increase the quality of, legal services provided by  
 81 children's advocates throughout the state. Such general  
 82 counsel shall also serve as counsel to the director. A  
 83 person appointed as general counsel shall be a member  
 84 in good standing of the West Virginia state bar.  
 85 Compensation and expenses of the general counsel shall  
 86 be fixed by the director and paid by the child advocate  
 87 office. The position of general counsel shall be a position  
 88 in the classified service.

### ARTICLE 3. CHILDREN'S ADVOCATE.

§48A-3-1. Purposes; how article to be construed.

§48A-3-2. Placement of children's advocates throughout the state; supervi-  
 sion; office procedures.

§48A-3-3. Duties of the children's advocate.

§48A-3-6. Investigations of support orders; notice and hearing upon modifi-  
 cation; petition for change.

§48A-3-8. Compensation; expenses.

#### §48A-3-1. Purposes; how article to be construed.

1 (a) The purposes of this article are:

2 (1) To enumerate and describe the functions and

3 duties of the children's advocate as an employee of the  
4 child advocate office;

5 (2) To ensure that procedures followed by the child-  
6 ren's advocate will protect the best interests of children  
7 in domestic relations matters; and

8 (3) To compel the enforcement of support orders,  
9 thereby ensuring that persons legally responsible for the  
10 care and support of children assume their legal obliga-  
11 tions and reduce the financial cost to this state of  
12 providing public assistance funds for the care of  
13 children.

14 (b) This article shall be construed to facilitate the  
15 resolution of domestic relations matters.

**§48A-3-2. Placement of children's advocates throughout  
the state; supervision; office procedures.**

1 (a) The child advocate office shall employ twenty-one  
2 employees in the position of children's advocate, and the  
3 offices of the children's advocates shall be distributed  
4 geographically so as to provide an office for each of the  
5 following areas of the state:

- 6 (1) The counties of Brooke, Hancock and Ohio;
- 7 (2) The counties of Marshall, Tyler and Wetzel;
- 8 (3) The counties of Pleasants, Ritchie, Wirt and Wood;
- 9 (4) The counties of Calhoun, Jackson and Roane;
- 10 (5) The counties of Mason and Putnam;
- 11 (6) The county of Cabell;
- 12 (7) The counties of McDowell and Wyoming;
- 13 (8) The counties of Logan and Mingo;
- 14 (9) The county of Kanawha;
- 15 (10) The county of Raleigh;
- 16 (11) The counties of Mercer, Monroe and Summers;
- 17 (12) The counties of Fayette and Nicholas;
- 18 (13) The counties of Greenbrier and Pocahontas;

19 (14) The counties of Braxton, Clay, Gilmer and  
20 Webster;

21 (15) The counties of Doddridge, Harrison, Lewis and  
22 Upshur;

23 (16) The counties of Marion and Taylor;

24 (17) The counties of Monongalia and Preston;

25 (18) The counties of Barbour, Randolph and Tucker;

26 (19) The counties of Grant, Hampshire, Hardy,  
27 Mineral and Pendleton;

28 (20) The counties of Berkeley, Jefferson and Morgan;  
29 and

30 (21) The counties of Boone, Lincoln and Wayne.

31 (b) Each children's advocate shall be appointed by the  
32 director of the child advocate office. The children's  
33 advocates shall be duly qualified attorneys licensed to  
34 practice in the courts of this state. Children's advocates  
35 shall be exempted from the appointments in the  
36 indigent cases which would otherwise be required  
37 pursuant to article twenty-one, chapter twenty-nine of  
38 this code.

39 (c) Nothing contained herein shall prohibit the  
40 director from temporarily assigning, from time to time  
41 as caseload may dictate, a children's advocate from one  
42 geographical area to another geographical area.

43 (d) The children's advocate is an employee of the child  
44 advocate office.

#### §48A-3-3. Duties of the children's advocate.

1 (a) The children's advocate shall supervise and direct  
2 the secretarial, clerical and other employees in his or  
3 her office in the performance of their duties as such  
4 performance affects the delivery of legal services. The  
5 children's advocate will provide appropriate instruction  
6 and supervision to employees of his or her office who are  
7 nonlawyers, concerning matters of legal ethics and  
8 matters of law, in accordance with applicable state and  
9 federal statutes, rules, and regulations.

10 (b) In accordance with the requirements of rule 5.4(c)  
11 of the rules of professional conduct as promulgated and  
12 adopted by the supreme court of appeals, the children's  
13 advocate shall not permit a nonlawyer who is employed  
14 by the department of health and human resources in a  
15 supervisory position over the children's advocate to  
16 direct or regulate the advocate's professional judgment  
17 in rendering legal services to clients in accordance with  
18 the provisions of this chapter; nor shall any nonlawyer  
19 employee of the department attempt to direct or  
20 regulate the advocate's professional judgment.

21 (c) The children's advocate shall make available to the  
22 public an informational pamphlet, designed in consul-  
23 tation with the director. The informational pamphlet  
24 shall explain the procedures of the court and the  
25 children's advocate; the duties of the children's advocate;  
26 the rights and responsibilities of the parties; and the  
27 availability of human services in the community. The  
28 informational pamphlet shall be provided as soon as  
29 possible after the filing of a complaint or other initiating  
30 pleading. Upon request, a party to a domestic relations  
31 proceeding shall receive an oral explanation of the  
32 informational pamphlet from the office of the children's  
33 advocate.

34 (d) The children's advocate shall act to establish the  
35 paternity of every child born out of wedlock for whom  
36 paternity has not been established, when such child's  
37 primary caretaker is an applicant for or recipient of aid  
38 to families with dependent children, and when such  
39 primary caretaker has assigned to the division of human  
40 services any rights to support for the child which might  
41 be forthcoming from the putative father: *Provided*, That  
42 if the children's advocate is informed by the secretary  
43 of the department of health and human resources or his  
44 or her authorized employee that it has been determined  
45 that it is against the best interest of the child to establish  
46 paternity, the children's advocate shall decline to so act.  
47 The children's advocate, upon the request of any  
48 primary caretaker of a child born out of wedlock,  
49 regardless of whether such primary caretaker is an  
50 applicant or recipient of aid to families with dependent

51 children, shall undertake to establish the paternity of  
52 such child.

53 (e) The children's advocate shall undertake to secure  
54 support for any individual who is receiving aid to  
55 families with dependent children when such individual  
56 has assigned to the division of human services any rights  
57 to support from any other person such individual may  
58 have: *Provided*, That if the children's advocate is  
59 informed by the secretary of the department of health  
60 and human resources or his or her authorized employee  
61 that it has been determined that it is against the best  
62 interests of a child to secure support on the child's  
63 behalf, the children's advocate shall decline to so act.  
64 The children's advocate, upon the request of any  
65 individual, regardless of whether such individual is an  
66 applicant or recipient of aid to families with dependent  
67 children, shall undertake to secure support for the  
68 individual. If circumstances require, the children's  
69 advocate shall utilize the provisions of article seven of  
70 this chapter and any other reciprocal arrangements  
71 which may be adopted with other states for the  
72 establishment and enforcement of support obligations,  
73 and if such arrangements and other means have proven  
74 ineffective, the children's advocate may utilize the  
75 federal courts to obtain and enforce court orders for  
76 support.

77 (f) The children's advocate shall pursue the enforce-  
78 ment of support orders through the withholding from  
79 income of amounts payable as support:

80 (1) Without the necessity of an application from the  
81 obligee in the case of a support obligation owed to an  
82 obligee to whom services are already being provided  
83 under the provisions of this chapter; and

84 (2) On the basis of an application for services in the  
85 case of any other support obligation arising from a  
86 support order entered by a court of competent  
87 jurisdiction.

88 (g) The children's advocate may decline to commence  
89 an action to obtain an order of support under the  
90 provisions of section one, article five of this chapter if

91 an action for divorce, annulment, or separate mainte-  
92 nance is pending, or the filing of such action is  
93 imminent, and such action will determine the issue of  
94 support for the child: *Provided*, That such action shall  
95 be deemed to be imminent if it is proposed by the  
96 obligee to be commenced within the twenty-eight days  
97 next following a decision by the children's advocate that  
98 an action should properly be brought to obtain an order  
99 for support.

100 (h) If the child advocate office, through the children's  
101 advocate, shall undertake paternity determination  
102 services, child support collection, or support collection  
103 services for a spouse or former spouse upon the written  
104 request of an individual who is not an applicant or  
105 recipient of assistance from the division of human  
106 services, the office may impose an application fee for  
107 furnishing such services. Such application fee shall be  
108 in a reasonable amount, not to exceed twenty-five  
109 dollars, as determined by the director: *Provided*, That  
110 the director may fix such amount at a higher or lower  
111 rate which is uniform for this state and all other states  
112 if the secretary of the federal department of health and  
113 human services determines that a uniform rate is  
114 appropriate for any fiscal year to reflect increases or  
115 decreases in administrative costs. Any cost in excess of  
116 the application fee so imposed may be collected from the  
117 obligor who owes the child or spousal support obligation  
118 involved.

**§48A-3-6. Investigations of support orders; notice and  
hearing upon modifications; petition for  
change.**

1 (a) In every case in which a final judgment containing  
2 a child support order has been entered in a domestic  
3 relations matter, the children's advocate shall once every  
4 three years or upon receipt of a written request from  
5 an obligee or an obligor made not more than once by  
6 a party each two years, examine the records and conduct  
7 any investigation considered necessary to determine  
8 whether the child support amount should be increased  
9 or decreased in view of a temporary or permanent  
10 change in physical custody of the child which the court

11 has not ordered, increased need of the child or changed  
12 financial conditions, unless:

13 (1) If a child is being supported, in whole or in part,  
14 by assistance payments from the division of human  
15 services, the children's advocate has determined that  
16 such a review would not be in the best interests of the  
17 child and neither parent has requested a review;

18 (2) In the case of any other order, neither parent has  
19 requested a review.

20 (b) Within sixty days after receipt of a request under  
21 subsection (a), the office of the children's advocate shall  
22 complete its investigation and make any resulting  
23 recommendations and supporting documents available  
24 as required in section three of this article.

25 (c) Before a hearing on a proposed modification, the  
26 office shall notify both parties of the proposed modifi-  
27 cation and afford the parties an opportunity for review  
28 and comment.

29 (d) The office shall petition the court for modification  
30 of the amount of a child support order if modification  
31 is determined to be necessary under subsection (a). A  
32 written report and recommendation shall accompany  
33 the petition.

34 (e) As used in this section, "changed financial condi-  
35 tions" means increases or decreases in the resources  
36 available to either party from any source. Changed  
37 financial conditions includes, but is not limited to, the  
38 application for or receipt of any form of public assist-  
39 ance payments, unemployment compensation and  
40 workers' compensation.

#### §48A-3-8. Compensation; expenses.

1 The salary of a children's advocate shall be not less  
2 than thirty-five thousand dollars per year, and shall be  
3 fixed by the director, who shall take into consideration  
4 ability, performance of duty and experience. The  
5 compensation and expenses of the employees of the office  
6 and all operating expenses incurred by the office shall  
7 be fixed by the director and paid by the child advocate  
8 office.



**ARTICLE 4. PROCEEDINGS BEFORE A MASTER.**

- §48A-4-1. Appointment of family law masters; term of office; vacancy; qualifications; removal; compensation and expenses; budget; location of offices; matters to be heard by master; fees for hearings; notice of master's hearing; content of notice; determination of issues by consent; hearing.
- §48A-4-2. Hearing procedures.
- §48A-4-2a. Acts or failures to act in the physical presence of family law masters.
- §48A-4-3. Default orders; temporary orders.
- §48A-4-4. Recommended orders.
- §48A-4-4a. Form of notice of recommended order.
- §48A-4-5. Orders to be entered by circuit court exclusively.
- §48A-4-6. Circuit court review of master's action or recommended order.
- §48A-4-7. Procedure for review by circuit court.
- §48A-4-8. Form of petition for review.
- §48A-4-9. Answer in opposition to a petition for review.
- §48A-4-10. Circuit court review of master's recommended order.

**§48A-4-1. Appointment of family law masters; term of office; vacancy; qualifications; removal; compensation and expenses; budget; location of offices; matters to be heard by master; fees for hearings; notice of master's hearing; content of notice; determination of issues by consent; hearing.**

- 1 (a) On or before the fifteenth day of September, one  
2 thousand nine hundred eighty-six, the governor shall  
3 appoint family law masters in such numbers and to  
4 serve such areas of the state as provided for under the  
5 provisions of this article, and such initial appointments  
6 of individuals as family law masters shall be for a term  
7 ending on the thirtieth day of June, one thousand nine  
8 hundred ninety. Thereafter, the length of the term of the  
9 office of family law master shall be four years, with  
10 terms commencing on the first day of July, one thousand  
11 nine hundred ninety, and on a like date in every fourth  
12 year thereafter, and ending on the thirtieth day of June,  
13 one thousand nine hundred ninety-four, and on a like  
14 date in every fourth year thereafter. Upon the expira-  
15 tion of his or her term, a family law master may  
16 continue to perform the duties of the office until his or  
17 her successor is appointed, or for sixty days after the  
18 date of the expiration of the master's term, whichever  
19 is earlier. If from any cause a vacancy shall occur in the

20 office of family law master, the governor shall, within  
21 thirty days after such vacancy occurs, fill such vacancy  
22 by appointment for the unexpired term: *Provided*, That  
23 if the remaining portion of the unexpired term to be  
24 filled is less than one year, the governor may, in his  
25 discretion, simultaneously appoint an individual to the  
26 unexpired term and to the next succeeding full four-  
27 year term. An individual may be reappointed to  
28 succeeding terms as a family law master to serve in the  
29 same or a different region of the state.

30 (b) No individual may be appointed to serve as a  
31 family law master unless he or she is a member in good  
32 standing of the West Virginia state bar.

33 (c) Removal of a master during the term for which he  
34 or she is appointed shall be only for incompetency,  
35 misconduct, neglect of duty, or physical or mental  
36 disability.

37 (d) A family law master may not engage in any other  
38 business, occupation, or employment inconsistent with  
39 the expeditious, proper, and impartial performance of  
40 his or her duties as a judicial officer. Family law  
41 masters who do not engage in the practice of criminal  
42 law shall be exempted from the appointments in  
43 indigent cases which would otherwise be required  
44 pursuant to article twenty-one, chapter twenty-nine of  
45 this code.

46 (e) All family law masters, and all necessary clerical  
47 and secretarial assistants employed in the offices of  
48 family law masters shall be deemed to be officers and  
49 employees in the judicial branch of state government.  
50 The director of the child advocate office and the  
51 commissioner of the division of human services shall  
52 enter into an agreement with the administrative office  
53 of the supreme court of appeals whereby the office and  
54 the division shall contract to pay the administrative  
55 office of the supreme court of appeals for the services  
56 of the family law masters required to be furnished  
57 under the provisions of this chapter which are not  
58 otherwise payable from the family law masters fund

59 created under the provisions of section twenty-two,  
60 article two of this chapter.

61 Each county commission of this state shall enter into  
62 an agreement with the administrative office of the  
63 supreme court of appeals whereby the administrative  
64 office of the supreme court of appeals shall contract to  
65 pay to the county commission a reasonable amount as  
66 rent for premises furnished by the county commission  
67 to the family law master and its staff, which premises  
68 shall be adequate for the conduct of the duties required  
69 of such master under the provisions of this chapter.

70 (f) A family law master appointed under the provi-  
71 sions of this article shall receive as full compensation for  
72 his or her services an annual salary of thirty-five  
73 thousand dollars. The secretary-clerk of the family law  
74 master shall receive an annual salary of fifteen thousand  
75 dollars and shall be appointed by the family law master  
76 and serve at his or her will and pleasure. Disbursement  
77 of salaries shall be made by or pursuant to the order  
78 of the director of the administrative office of the  
79 supreme court of appeals.

80 (g) Family law masters serving under the provisions  
81 of this article shall be allowed their actual and necessary  
82 expenses incurred in the performance of their duties.  
83 Such expenses and compensation shall be determined  
84 and paid by the director of the administrative office of  
85 the supreme court of appeals under such regulations as  
86 he or she may prescribe with the approval of the  
87 supreme court of appeals.

88 (h) The offices of the family law masters shall be  
89 distributed geographically so as to provide an office of  
90 the family law master for each of the following regions:

- 91 (1) The counties of Brooke, Hancock and Ohio;
- 92 (2) The counties of Marshall, Tyler and Wetzel;
- 93 (3) The counties of Pleasants, Ritchie, Wirt and Wood;
- 94 (4) The counties of Calhoun, Jackson and Roane;
- 95 (5) The counties of Mason and Putnam;
- 96 (6) The county of Cabell;

- 97 (7) The counties of McDowell and Wyoming;
- 98 (8) The counties of Logan and Mingo;
- 99 (9) The county of Kanawha;
- 100 (10) The county of Raleigh;
- 101 (11) The counties of Mercer and Summers;
- 102 (12) The counties of Fayette and Nicholas;
- 103 (13) The counties of Greenbrier, Pocahontas and  
104 Monroe;
- 105 (14) The counties of Braxton, Clay, Gilmer and  
106 Webster;
- 107 (15) The counties of Doddridge, Harrison, Lewis and  
108 Upshur;
- 109 (16) The counties of Marion and Taylor;
- 110 (17) The counties of Monongalia and Preston;
- 111 (18) The counties of Barbour, Randolph and Tucker;
- 112 (19) The counties of Grant, Hampshire, Hardy,  
113 Mineral and Pendleton;
- 114 (20) The counties of Berkeley, Jefferson and Morgan;  
115 and
- 116 (21) The counties of Boone, Lincoln and Wayne.
- 117 The governor shall appoint two masters to the office  
118 of the family law master for the region of Kanawha  
119 County. In each of the other regions defined by this  
120 subsection, the governor shall appoint one person as  
121 family law master from such region. Nothing contained  
122 herein shall prohibit the chief justice of the supreme  
123 court of appeals from temporarily assigning, from time  
124 to time as caseload may dictate, a family law master  
125 from one geographical region to another geographical  
126 region.
- 127 (i) A circuit court or the chief judge thereof shall  
128 refer to the master the following matters for hearing to  
129 be conducted pursuant to section two of this article:  
130 *Provided*, That on its own motion or upon motion of a

131 party, the circuit judge may revoke the referral of a  
132 particular matter to a master if the master is recused,  
133 if the matter is uncontested, or for other good cause, or  
134 if the matter will be more expeditiously and inexpen-  
135 sively heard by the circuit judge without substantially  
136 affecting the rights of parties in actions which must be  
137 heard by the circuit court:

138 (1) Actions to obtain orders of support brought under  
139 the provisions of section one, article five of this chapter;

140 (2) All actions to establish paternity under the  
141 provisions of article six of this chapter: *Provided*, That  
142 all actions wherein either or both of the parties have  
143 demanded a trial by jury of the law and the facts shall  
144 be heard by the circuit court;

145 (3) All motions for pendente lite relief affecting child  
146 custody, visitation, child support or spousal support,  
147 wherein either party has requested such referral or the  
148 court on its own motion in individual cases or by general  
149 order has referred such motions to the master: *Provided*,  
150 That if the circuit court determines, in its discretion,  
151 that the pleadings raise substantial issues concerning  
152 the identification of separate property or the division of  
153 marital property which may have a bearing on an  
154 award of support, the court may decline to refer a  
155 motion for support pendente lite to the family law  
156 master;

157 (4) All petitions for modification of an order involving  
158 child custody, child visitation, child support or spousal  
159 support;

160 (5) All actions for divorce, annulment or separate  
161 maintenance brought pursuant to article two, chapter  
162 forty-eight of this code: *Provided*, That an action for  
163 divorce, annulment or separate maintenance which does  
164 not involve child custody or child support shall be heard  
165 by the circuit judge if, at the time of the filing of the  
166 action, the parties file a written property settlement  
167 agreement which has been signed by both parties;

168 (6) All actions wherein an obligor is contesting the  
169 enforcement of an order to support through the with-

170 holding from income of amounts payable as support or  
171 is contesting an affidavit of accrued support, filed with  
172 a circuit clerk, which seeks to collect arrearages;

173 (7) All actions commenced under the provisions of  
174 article seven of this chapter or under the provisions of  
175 the revised uniform reciprocal enforcement of support  
176 act of any other state;

177 (8) Proceedings for the enforcement of support,  
178 custody, or visitation orders: *Provided*, That contempt  
179 actions shall be heard by a circuit judge.

180 (j) The initial fees for hearings before a master shall  
181 be paid before the commencement of the hearing, and  
182 additional hourly fees shall be paid at the conclusion of  
183 the hearing, unless a party is excused from payment  
184 thereof under the provisions of section one, article two,  
185 chapter fifty-nine of this code. Such initial fees may be  
186 paid at any time prior to such hearing, but shall not be  
187 required at the time the action is filed.

188 (k) Fees for hearings before a master shall be taxed  
189 as court costs, which costs may be assessed against  
190 either party or apportioned between the parties, in the  
191 discretion of the master. The assessment of court costs  
192 shall be made at the conclusion of the hearing and  
193 included as findings in each case of a master's recom-  
194 mended order. The fees for hearings before a master  
195 shall be as follows:

196 (1) For an action to establish an order of support, fifty  
197 dollars;

198 (2) For an action to establish paternity, one hundred  
199 dollars;

200 (3) For a motion for pendente lite relief affecting  
201 custody, visitation, child support or spousal support,  
202 fifty dollars;

203 (4) For a petition for modification of an order  
204 involving child custody, child visitation, child support or  
205 spousal support, fifty dollars: *Provided*, That if the  
206 matter is contested, the fee shall be fifty dollars for the  
207 first hour or any portion thereof, and thirty dollars per  
208 hour for each subsequent hour or any portion thereof;

- 209 (5) For an uncontested divorce action, fifty dollars;
- 210 (6) For a proceeding for the enforcement of an order,  
211 fifty dollars: *Provided*, That if the matter is contested,  
212 the fee shall be fifty dollars for the first hour or any  
213 portion thereof, and thirty dollars per hour for each  
214 subsequent hour or any portion thereof;
- 215 (7) For a contested divorce action matured for final  
216 hearing, fifty dollars for the first hour or any portion  
217 thereof, and thirty dollars per hour for each subsequent  
218 hour or any portion thereof.
- 219 (1) Persons entitled to notice of a master's hearing  
220 shall be timely informed of:
- 221 (1) The time, place and nature of the hearing;
- 222 (2) The legal authority and jurisdiction under which  
223 the hearing is to be held; and
- 224 (3) The matters of fact and law asserted.
- 225 (m) The master shall give all interested parties  
226 opportunity for the submission and consideration of  
227 facts, arguments, offers of settlement or proposals of  
228 adjustment when time, the nature of the proceedings  
229 and the public interest permit. To the extent that the  
230 parties are unable to settle or compromise a controversy  
231 by consent, the master shall provide the parties a  
232 hearing and make a recommended order in accordance  
233 with the provisions of sections two and four of this  
234 article.
- 235 (n) The master who presides at the reception of  
236 evidence pursuant to section two of this article shall  
237 prepare the default order or make and enter the  
238 pendente lite order provided for in section three of this  
239 article, or make the recommended order required by  
240 section four of this article, as the case may be. Except  
241 to the extent required for disposition of ex parte matters  
242 as authorized by this chapter, a master may not consult  
243 a person or party on a fact in issue, unless on notice and  
244 opportunity for all parties to participate; nor shall the  
245 master attempt to supervise or direct an employee or

246 agent engaged in the performance of investigative or  
247 prosecuting functions for a prosecuting attorney, the  
248 division of human services or any other agency or  
249 political subdivision of this state.

**§48A-4-2. Hearing procedures.**

1 (a) This section applies, according to the provisions  
2 thereof, to hearings required by section one of this  
3 article to be conducted in accordance with this section.

4 (b) A master appointed under the provisions of section  
5 one of this article shall preside at the taking of evidence.  
6 The functions of the master shall be conducted in an  
7 impartial manner. A master may at any time disqualify  
8 himself or herself. Upon such disqualification, or upon  
9 the filing in good faith of a timely and sufficient  
10 affidavit of personal bias or other disqualification of a  
11 master, the circuit court or the chief judge thereof may  
12 appoint a temporary master or the circuit court may  
13 receive the evidence and determine the matter.

14 (c) A master presiding at a hearing under the  
15 provisions of this chapter may:

16 (1) Administer oaths and affirmations, compel the  
17 attendance of witnesses and the production of docu-  
18 ments, examine witnesses and parties, and otherwise  
19 take testimony, receive relevant evidence and establish  
20 a record;

21 (2) Rule on motions for discovery and offers of proof;

22 (3) Take depositions or have depositions taken when  
23 the ends of justice may be served;

24 (4) Regulate the course of the hearing;

25 (5) Hold pre-trial conferences for the settlement or  
26 simplification of issues and enter time frame orders  
27 which shall include, but not be limited to, discovery cut-  
28 offs, exchange of witness lists, and agreements on  
29 stipulations, contested issues, and hearing schedules;

30 (6) Make and enter temporary orders on procedural  
31 matters, including, but not limited to, substitution of  
32 counsel, amendment of pleadings, requests for hearings  
33 and other similar matters;



34 (7) Accept voluntary acknowledgements of support  
35 liability or paternity;

36 (8) Accept stipulated agreements;

37 (9) Prepare default orders for entry if the person  
38 against whom an action is brought does not respond to  
39 notice or process within the time required;

40 (10) Recommend orders in accordance with the  
41 provisions of section four of this article;

42 (11) Require the issuance of subpoenas and subpoenas  
43 duces tecum, issue writs of attachment, hold hearings  
44 in aid of execution and propound interrogatories in aid  
45 of execution, and fix bond or other security in connection  
46 with an action for enforcement in a child or spousal  
47 support matter; and

48 (12) Take other action authorized by general order of  
49 the circuit court or the chief judge thereof consistent  
50 with the provisions of this chapter.

51 (d) Except as otherwise provided by law, a moving  
52 party has the burden of proof on a particular question  
53 presented. Any oral or documentary evidence may be  
54 received, but the master shall exclude irrelevant,  
55 immaterial, or unduly repetitious evidence. A party is  
56 entitled to present his or her case or defense by oral or  
57 documentary evidence, to submit rebuttal evidence, and  
58 to conduct such cross-examination as may be required  
59 for a full and true disclosure of the facts. In determining  
60 claims for money due or the amount of payments to be  
61 made, when a party will not be prejudiced thereby, the  
62 master may adopt procedures for the submission of all  
63 or part of the evidence in written form.

64 (e) Hearings before a master shall be recorded  
65 electronically. When requested by either of the parties,  
66 a master shall provide a duplicate copy of the tape or  
67 other electronic recording medium of each hearing held.  
68 The party requesting the copy shall pay to the master  
69 an amount equal to the actual cost of the tape or other  
70 medium or the sum of five dollars, whichever is greater.

71 Unless otherwise ordered by the court, the preparation  
72 of a transcript and the payment of the cost thereof shall  
73 be the responsibility of the party requesting the  
74 transcript.

75 (f) The recording of the hearing or the transcript of  
76 testimony, as the case may be, and the exhibits, together  
77 with all papers and requests filed in the proceeding,  
78 constitute the exclusive record for recommending an  
79 order in accordance with section four of this article, and  
80 on payment of lawfully prescribed costs, shall be made  
81 available to the parties. When a master's final recom-  
82 mended order rests on official notice of a material fact  
83 not appearing in the evidence in the record, a party is  
84 entitled, on timely request, to an opportunity to show the  
85 contrary.

**§48A-4-2a. Acts or failures to act in the physical presence  
of family law masters.**

1 (a) If in the master's presence a party, witness or  
2 other person conducts himself in a manner which would  
3 constitute direct contempt if committed in the presence  
4 of a circuit judge, the master shall halt any proceeding  
5 which may be in progress and inform the person that  
6 their conduct constitutes direct contempt and give notice  
7 of the procedures and possible dispositions which may  
8 result.

9 (b) (1) If a circuit judge is sitting in the same county  
10 in which the conduct occurred, or is otherwise available,  
11 the alleged contemnor shall be immediately taken before  
12 the circuit judge. Disposition of these matters shall be  
13 given priority over any other matters, with the excep-  
14 tion of a criminal trial in progress.

15 (2) If a circuit judge is unavailable then the master  
16 shall schedule a hearing before the circuit court and the  
17 alleged contemnor shall be advised, on the record, of the  
18 time and place of the hearing. The master may elect,  
19 in his or her discretion, to obtain a warrant for the  
20 arrest of the alleged contemnor from the magistrate  
21 court on the charge of contempt with the matter to be  
22 heard by the circuit court.

23 (c) At the hearing, the circuit court shall be advised  
24 of the charges, receive the evidence and rule in the same  
25 manner as would be appropriate if the conduct com-  
26 plained of occurred in the physical presence of a circuit  
27 judge. In addition to other sanctions the court may  
28 award attorney's fees and costs.

29 (d) Prior to or during any hearing before a master,  
30 if the master determines that a situation exists which  
31 warrants the presence of security during such hearing,  
32 the master shall inform the sheriff of the need for such  
33 security and the time and place of the hearing, and the  
34 sheriff shall assign a deputy to act as bailiff during such  
35 hearing.

**§48A-4-3. Default orders; temporary orders.**

1 (a) In any proceeding in which the amount of support  
2 is to be established, if the obligor has been served with  
3 notice of a hearing before a master and does not enter  
4 an appearance, the family law master shall prepare a  
5 default order for entry by the circuit judge, which order  
6 shall fix support in an amount at least equal to the  
7 amount paid as public assistance under section four,  
8 article three, chapter nine of this code, if the obligee or  
9 custodian receives public assistance, or in an amount at  
10 least equal to the amount that would be paid as public  
11 assistance if the obligee or custodian were eligible to  
12 receive public assistance, unless the family law master  
13 has sufficient information in the record so as to  
14 determine the amount to be fixed in accordance with the  
15 child support guidelines.

16 (b) A master who presides at a hearing under the  
17 provisions of section two of this article is authorized to  
18 make and enter pendente lite support and custody  
19 orders which, when entered, shall be enforceable and  
20 have the same force and effect under law as pendente  
21 lite support orders made and entered by a judge of the  
22 circuit court, unless and until such support orders are  
23 modified, vacated, or superseded by an order of the  
24 circuit court.

25 (c) All orders prepared by a master shall provide for  
26 automatic withholding from income of the obligor if

27 arrearages in support occur, if no such provision already  
28 exists in prior orders or if the existing order as it relates  
29 to withholding is not in compliance with applicable law.

**§48A-4-4. Recommended orders.**

1 (a) This section applies, according to the provisions  
2 thereof, when a hearing has been conducted in accor-  
3 dance with section two of this article.

4 (b) A master who has presided at the hearing pursu-  
5 ant to section two of this article shall recommend an  
6 order and findings of fact and conclusions of law to the  
7 circuit court within ten days following the close of the  
8 evidence. Before the recommended order is made, the  
9 master may, in his discretion, require the parties to  
10 submit proposed findings and conclusions and the  
11 supporting reasons therefor.

12 (c) The master shall sign and send the recommended  
13 order, any separate document containing the findings of  
14 fact and conclusions of law and the notice of recom-  
15 mended order as set forth in section four-a of this article  
16 to the attorney for each party, or if a party is unrepres-  
17 ented, directly to the party, in the same manner as  
18 pleadings subsequent to an original complaint are  
19 served in accordance with rule five of the rules of civil  
20 procedure for trial courts of record. The master shall  
21 file the recommended order and the record in the office  
22 of the circuit clerk prior to the expiration of the ten-day  
23 period during which exceptions can be filed.

24 (d) A copy of any supporting documents or a sum-  
25 mary of supporting documents, prepared or used by the  
26 children's advocate or an employee of the child advocate  
27 office, and all documents introduced into evidence  
28 before the master, shall be made available to the  
29 attorney for each party and to each of the parties before  
30 the circuit court takes any action on the recom-  
31 mendation.

32 (e) All recommended orders of the master shall  
33 include the statement of findings of fact and conclusions  
34 of law, and the reasons or basis therefor, on all the  
35 material issues of fact, law, or discretion presented on

36 the record; and the appropriate sanction, relief, or  
37 denial thereof.

**§48A-4-4a. Form of notice of recommended order.**

1 IN THE CIRCUIT COURT OF \_\_\_\_\_ COUNTY,  
2 WEST VIRGINIA,

3 \_\_\_\_\_  
4 Plaintiff,

5 vs. CIVIL ACTION NO. \_\_\_\_\_

6 \_\_\_\_\_  
7 Defendant.

8 NOTICE OF RECOMMENDED ORDER

9 The undersigned family law master hereby recom-  
10 mends the enclosed order to the circuit court of  
11 \_\_\_\_\_ county. If you wish to file objections  
12 to this decision, you must file a written petition in  
13 accordance with the provisions of chapter 48A-4-8 of the  
14 West Virginia Code within a period of ten days ending  
15 on \_\_\_\_\_, 1990, with the circuit clerk of  
16 \_\_\_\_\_ county and send a copy to counsel for  
17 the opposing party or if the party is unrepresented to  
18 the party, and to the office of the family law master  
19 located at \_\_\_\_\_.

20 If no written petition for review is filed by  
21 \_\_\_\_\_, 1990, then the recommended order will  
22 be sent to the circuit judge assigned to this case. A  
23 recommended order which is not signed by a party, or  
24 counsel for a party who is represented, by the end of the  
25 ten-day period will still be sent to the circuit judge for  
26 entry.

27 YOUR FAILURE TO SIGN THE ORDER AS HAV-  
28 ING BEEN INSPECTED OR APPROVED WILL NOT  
29 DELAY THE ENTRY THEREOF.

30 \_\_\_\_\_  
31 Family Law Master

**§48A-4-5. Orders to be entered by circuit court exclusively.**

1 With the exception of pendente lite support and

2 custody orders entered by a master in accordance with  
3 the provisions of section three of this article, and  
4 procedural orders entered pursuant to the provisions of  
5 section two of this article, an order imposing sanctions  
6 or granting or denying relief may not be made and  
7 entered except by a circuit court within the jurisdiction  
8 of said court and as authorized by law.

**§48A-4-6. Circuit court review of master's action or recommended order.**

1 A person who alleges that he or she will be adversely  
2 affected or aggrieved by a recommended order of a  
3 master is entitled to review of the proceedings. The  
4 recommended order of the master is the subject of  
5 review by the circuit court, and a procedural action or  
6 ruling not otherwise directly reviewable is subject to  
7 review only upon the review of the recommended order  
8 by the circuit court.

**§48A-4-7. Procedure for review by circuit court.**

1 (a) Within ten days after the master's recommended  
2 order, any separate document with findings of fact and  
3 conclusions of law and the notice of recommended order  
4 is served on the parties as set forth in section four of  
5 this article, any party may file exceptions thereto in a  
6 petition requesting that the action by the master be  
7 reviewed by the circuit court. Failure to timely file the  
8 petition shall constitute a waiver of exceptions, unless  
9 the petitioner, prior to the expiration of the ten-day  
10 period, moves for and is granted an extension of time  
11 from the circuit court. At the time of filing the petition,  
12 a copy of the petition for review shall be served on all  
13 parties to the proceeding, in the same manner as  
14 pleadings subsequent to an original complaint are  
15 served under rule five of the rules of civil procedure for  
16 trial courts of record.

17 (b) Not more than ten days after the filing of the  
18 petition for review, a responding party wishing to file  
19 a cross-petition that would otherwise be untimely may  
20 file, with proof of service on all parties, a cross-petition  
21 for review.

**§48A-4-8. Form of petition for review.**

1 (a) The petition for review shall contain a list of  
2 exceptions in the form of questions presented for review,  
3 expressed in the terms and circumstances of the case,  
4 designating and pointing out the errors complained of  
5 with reasonable certainty, so as to direct the attention  
6 of the circuit court specifically to them, but without  
7 unnecessary detail. The statement of questions should be  
8 short and concise and should not be argumentative or  
9 repetitious. The statement of a question presented will  
10 be deemed to comprise every subsidiary question fairly  
11 included therein. Only the questions set forth in the  
12 petition or fairly included therein will be considered by  
13 the court. Parts of the master's report not excepted to  
14 are admitted to be correct, not only as regards the  
15 principles, but as to the evidence, upon which they are  
16 founded.

17 (b) The circuit court may require, or a party may  
18 choose to submit with the petition for review a brief in  
19 support thereof, which should include a direct and  
20 concise argument amplifying the reasons relied upon for  
21 modification of the master's recommended order and  
22 citing the constitutional provisions, statutes and regula-  
23 tions which are applicable.

**§48A-4-9. Answer in opposition to a petition for review.**

1 (a) A respondent shall have ten days after the filing  
2 of a petition within which to file an answer disclosing  
3 any matter or ground why the recommended order of  
4 the master should not be modified by the court in the  
5 manner sought by the petition. The judge may require,  
6 or a party may choose to submit with the answer, a brief  
7 in opposition to the petition, which should include a  
8 direct and concise argument in support of the master's  
9 recommended order and citing the constitutional  
10 provisions, statutes and regulations which are  
11 applicable.

12 (b) No motion by a respondent to dismiss a petition  
13 for review will be received.

14 (c) Any party may file a supplemental brief at any

15 time while a petition for review is pending, calling  
16 attention to new cases or legislation or other intervening  
17 matter not available at the time of the party's last filing.

**§48A-4-10. Circuit court review of master's recommended order.**

1 (a) The circuit court shall proceed to a review of the  
2 recommended order of the master when:

3 (1) No petition has been filed within the time allowed,  
4 or the parties have expressly waived the right to file a  
5 petition;

6 (2) A petition and an answer in opposition have been  
7 filed, or the time for filing an answer in opposition has  
8 expired, or the parties have expressly waived the right  
9 to file an answer in opposition, as the case may be.

10 (b) To the extent necessary for decision and when  
11 presented, the circuit court shall decide all relevant  
12 questions of law, interpret constitutional and statutory  
13 provisions, and determine the appropriateness of the  
14 terms of the recommended order of the master.

15 (c) The circuit court shall examine the recommended  
16 order of the master, along with the findings and  
17 conclusions of the master, and may enter the recom-  
18 mended order, may recommit the case, with instruc-  
19 tions, for further hearing before the master or may, in  
20 its discretion, enter an order upon different terms, as  
21 the ends of justice may require. The circuit court shall  
22 not follow the recommendation, findings, and conclu-  
23 sions of a master found to be:

24 (1) Arbitrary, capricious, an abuse of discretion, or  
25 otherwise not in conformance with the law;

26 (2) Contrary to constitutional right, power, privilege,  
27 or immunity;

28 (3) In excess of statutory jurisdiction, authority, or  
29 limitations, or short of statutory right;

30 (4) Without observance of procedure required by law;

31 (5) Unsupported by substantial evidence; or



32 (6) Unwarranted by the facts.

33 (d) In making its determinations under this section,  
34 the circuit court shall review the whole record or those  
35 parts of it cited by a party. If the circuit court finds that  
36 a master's recommended order is deficient as to matters  
37 which might be affected by evidence not considered or  
38 inadequately developed in the master's recommended  
39 order, the court may recommit the recommended order  
40 to the master, with instructions indicating the court's  
41 opinion, or the circuit court may proceed to take such  
42 evidence without recommitting the matter.

43 (e) The order of the circuit court entered pursuant to  
44 the provisions of subsection (d) of this section shall be  
45 entered not later than ten days after the time for filing  
46 pleadings or briefs has expired or after the filing of a  
47 notice or notices waiving the right to file such pleading  
48 or brief.

49 (f) If a case is recommitted by the circuit court, the  
50 master shall retry the matter within twenty days.

51 (g) At the time a case is recommitted, the circuit  
52 court shall enter appropriate pendente lite orders  
53 awarding custody, visitation, child support, spousal  
54 support or such other temporary relief as the circum-  
55 stances of the parties may require.

#### ARTICLE 5. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS AND VISITATION.

§48A-5-1. Action to obtain an order for support of minor child.

§48A-5-3. Withholding from income of amounts payable as support.

#### §48A-5-1. Action to obtain an order for support of minor child.

1 (a) An action may be brought in circuit court to  
2 obtain an order for the support of a minor child when:

3 (1) Such child has a parent and child relationship  
4 with an obligor;

5 (2) Such obligor is not the primary caretaker or  
6 guardian of the child;

7 (3) The obligor is not meeting an obligation to support  
8 the child;

9 (4) An enforceable order for the support of the child  
10 by the obligor has not been entered by a court of  
11 competent jurisdiction; and

12 (5) There is no pending action for divorce, separate  
13 maintenance, or annulment in which the obligation of  
14 support owing from the obligor to the child is at issue.

15 (b) An action may be brought under the provisions of  
16 subsection (a) of this section by:

17 (1) A custodial parent of a child, when the divorce  
18 order or other order which granted custody did not  
19 make provision for the support of the child by the  
20 obligor;

21 (2) A primary caretaker of a child;

22 (3) A guardian of the property of a child or the  
23 committee for a child; or

24 (4) The department of health and human resources,  
25 when the department is providing assistance on behalf  
26 of the child in the form of aid to families with dependent  
27 children, and an assignment of any right to support has  
28 been assigned to the department.

29 (c) An action under the provisions of this section may  
30 be brought in the county where the obligee, the obligor  
31 or the child resides.

32 (d) If an action for child support is brought under the  
33 provisions of this section by an obligee against his or her  
34 spouse, such obligee may also seek spousal support from  
35 the obligor, unless such support has been previously  
36 waived by agreement or otherwise.

37 (e) Every order of support heretofore or hereafter  
38 entered or modified under the provisions of this section  
39 shall include a provision for the income withholding in  
40 accordance with the provisions of section fifteen-a or  
41 fifteen-b, article two, chapter forty-eight of this code.

42 (f) At any time after the entry of an order for support,  
43 the court may, upon the verified petition of an obligee

44 or the obligor, revise or alter such order, and make a  
45 new order, as the altered circumstances or needs of a  
46 child, an obligee, or the obligor may render necessary  
47 to meet the ends of justice.

**§48A-5-3. Withholding from income of amounts payable  
as support.**

1 (a) The withholding from an obligor's income of  
2 amounts payable as spousal or child support shall be  
3 enforced by the children's advocate in accordance with  
4 the provisions of this section. Every support order  
5 heretofore or hereafter entered by a circuit court or a  
6 magistrate of this state and every support order entered  
7 by a court of competent jurisdiction of another state  
8 shall be considered to provide for an order of income  
9 withholding in accordance with the provisions of section  
10 fifteen-a or fifteen-b, article two, chapter forty-eight of  
11 this code, notwithstanding the fact that such support  
12 order does not in fact provide for such an order of  
13 withholding.

14 (b) (1) In any case in which immediate income  
15 withholding is not required, the children's advocate  
16 shall cause the mailing of a notice to the obligor  
17 pursuant to this section when the support payments  
18 required by the order are in arrears a specific number  
19 of days, as follows:

20 (A) If the order requires support to be paid in  
21 monthly installments, the notice shall be sent on the day  
22 when the support payments are thirty days in arrears;  
23 or

24 (B) If the order requires support to be paid in weekly  
25 or bi-weekly installments, the notice shall be sent on the  
26 day when the support payments are twenty-eight days  
27 in arrears.

28 (2) The number of days support payments are in  
29 arrears shall be considered to be the total cumulative  
30 number of days during which payments required by a  
31 court order have been delinquent, whether or not such  
32 days are consecutive.

33 (c) If notice required by subsection (b) of this section

34 is appropriate, the children's advocate shall determine  
35 the time for a meeting between the obligor and the  
36 children's advocate and the time for a hearing before the  
37 family law master, and shall then set forth in such  
38 notice the times and places at which the meeting and  
39 hearing will be held if withholding is contested. The  
40 meeting and hearing may be scheduled on the same  
41 date, but in no case shall the meeting with the advocate  
42 be scheduled less than fifteen days after the date the  
43 notice is mailed nor shall the hearing before the master  
44 be scheduled more than twenty-one days after the date  
45 the notice is mailed. The children's advocate shall send  
46 such notice by first class mail to the delinquent obligor.  
47 The notice shall inform the delinquent obligor of the  
48 following:

49 (1) The amount owed;

50 (2) That it is proposed that there be withholding from  
51 the obligor's income of amounts payable as support, and  
52 that if withholding is uncontested, or is contested but  
53 determined appropriate, the amount withheld will be  
54 equal to the amount required under the terms of the  
55 current support order, plus amounts for any outstanding  
56 arrearages;

57 (3) An identification of the type or types of income  
58 from which amounts payable as support will be with-  
59 held, and a statement of the amounts proposed to be  
60 withheld, expressed in meaningful terminology such as  
61 dollar amounts or a percentage of disposable earnings,  
62 as may be appropriate for the type of income involved;

63 (4) That the withholding will apply to the obligor's  
64 present source of income and to any future source of  
65 income;

66 (5) That any action by the obligor to purposefully  
67 minimize his or her income will result in the enforce-  
68 ment of support being based upon potential and not just  
69 actual earnings;

70 (6) That payment of the arrearage after the date of  
71 the notice is not a bar to such withholding;

72 (7) That if the obligor wishes to agree to withholding

73 that he or she should notify the children's advocate, in  
74 writing, within fourteen days from the date of the notice  
75 in order to cancel a scheduled meeting with the office  
76 of the children's advocate and a hearing with the family  
77 law master;

78 (8) That if the obligor fails to respond to the notice  
79 or fails to appear at the meeting or hearing after  
80 responding to the notice, withholding will automatically  
81 occur as described in the notice;

82 (9) That if the obligor desires to contest the withhold-  
83 ing on the grounds that the amount to be withheld is  
84 incorrect or that withholding is not proper because of  
85 mistakes of fact, he or she must, within fourteen days  
86 of the date of the notice, inform the children's advocate  
87 in writing of the reasons why the proposed withholding  
88 is contested;

89 (10) That a mistake of fact exists only when there is  
90 an error in the amount of current or overdue support  
91 claimed in the notice, there is a mistake as to the  
92 identity of the obligor, or the amount of the proposed  
93 withholding exceeds the amount permitted to be  
94 withheld under applicable federal or state law;

95 (11) That matters such as lack of visitation, inappro-  
96 priateness of the support award, or changed financial  
97 circumstances of the obligee or the obligor will not be  
98 considered at any hearing held pursuant to the notice,  
99 but may be raised by the filing of a separate petition;

100 (12) That if the obligor contests the withholding, in  
101 writing, a meeting with the children's advocate will be  
102 held at a time and place set forth in the notice, for the  
103 purpose of attempting to settle any issues which are  
104 contested;

105 (13) That if the meeting with the children's advocate  
106 fails to resolve the issues being contested, a hearing  
107 before the family law master will be held at a time and  
108 place set forth in the notice, and that following such  
109 hearing, the master will make a recommended order to  
110 the circuit court;

111 (14) That a master's recommended order as to with-

112 holding will become effective when it is confirmed and  
113 entered by the circuit court, and that if the obligor  
114 disagrees with the master's recommended order, he or  
115 she will be given the opportunity to make objections  
116 known to the circuit court; and

117 (15) That if, while the withholding is being contested,  
118 it is determined that the obligor is in arrears in an  
119 amount equal to or greater than one month's support  
120 obligation, but the amount of the arrearage is disputed,  
121 then income withholding for the current payment of  
122 support will be instituted, and may not be stayed  
123 pending a final determination as to the amount of  
124 arrearages due.

125 (d) Withholding should occur when the support order  
126 provides for immediate income withholding, or if  
127 immediate income withholding is not so provided, then  
128 after entry of the master's recommended order by the  
129 circuit court. In any case where withholding should  
130 occur, the source of income shall proceed to withhold so  
131 much of the obligor's income as is necessary to comply  
132 with the order authorizing such withholding, up to the  
133 maximum amount permitted under applicable law.  
134 Such withholding, unless otherwise terminated under  
135 the provisions of this section, shall apply to any  
136 subsequent source of income or any subsequent period  
137 of time during which income is received by the obligor.

138 (e) Notwithstanding any other provision of this code  
139 to the contrary which provides for a limitation upon the  
140 amount which may be withheld from earnings through  
141 legal process, the amount of an obligor's aggregate  
142 disposable earnings for any given workweek which can  
143 be withheld as support payments is to be determined in  
144 accordance with the provisions of this subsection, as  
145 follows:

146 (1) After ascertaining the status of the payment  
147 record of the obligor under the terms of the support  
148 order, the payment record shall be examined to deter-  
149 mine whether any arrearages are due for amounts  
150 which should have been paid prior to a twelve-week

151 period which ends with the workweek for which  
152 withholding is sought to be enforced.

153 (2) If none of the withholding is for amounts which  
154 came due prior to such twelve-week period, then:

155 (A) When the obligor is supporting another spouse or  
156 dependent child other than the spouse or child for whom  
157 the proposed withholding is being sought, the amount  
158 withheld may not exceed fifty percent of the obligor's  
159 disposable earnings for that week; and

160 (B) When the obligor is not supporting another spouse  
161 or dependent child as described in paragraph (A) of this  
162 subdivision, the amount withheld may not exceed sixty  
163 percent of the obligor's disposable earnings for that  
164 week.

165 (3) If a part of the withholding is for amounts which  
166 came due prior to such twelve-week period, then:

167 (A) Where the obligor is supporting another spouse or  
168 dependent child other than the spouse or child for whom  
169 the proposed withholding is being sought, the amount  
170 withheld may not exceed fifty-five percent of the  
171 obligor's disposable earnings for that week; and

172 (B) Where the obligor is not supporting another  
173 spouse or dependent child as described in paragraph (A)  
174 of this subdivision, the amount withheld may not exceed  
175 sixty-five percent of the obligor's disposable earnings for  
176 that week.

177 (4) In addition to the percentage limitations set forth  
178 in subdivisions (2) and (3) of this subsection, it shall be  
179 a further limitation that in no case shall the total  
180 amounts withheld for current payments plus arrearages  
181 exceed the amounts withheld for current payments by  
182 an amount greater than ten percent of the obligor's  
183 disposable income.

184 (5) The provisions of this subsection shall apply  
185 directly to the withholding of disposable earnings of an  
186 obligor regardless of whether the obligor is paid on a  
187 weekly, bi-weekly, monthly or other basis.

188 (6) If an obligor acts so as to purposefully minimize  
189 his or her income and to thereby circumvent the

190 provisions of this section which provide for withholding  
191 from income of amounts payable as support, the amount  
192 to be withheld as support payments may be based upon  
193 the obligor's potential earnings rather than his or her  
194 actual earnings, and such obligor may not rely upon the  
195 percentage limitations set forth in this subsection which  
196 limit the amount to be withheld from disposable  
197 earnings.

198 (f) The source of income of any obligor who is subject  
199 to withholding, upon being given notice of withholding,  
200 shall withhold from such obligor's income the amount  
201 specified by the notice and pay such amount to the child  
202 advocate office for distribution in accordance with the  
203 provisions of section four, article three of this chapter.  
204 The notice given to the source of income shall contain  
205 only such information as may be necessary for the  
206 source of income to comply with the withholding order.  
207 Such notice to the source of income shall include, at a  
208 minimum, the following:

209 (1) The amount to be withheld from the obligor's  
210 income, and a statement that the amount to be withheld  
211 for support and other purposes, including the fee  
212 specified under subdivision (3) of this subsection, may  
213 not be in excess of the maximum amounts permitted  
214 under section 303(b) of the Federal Consumer Credit  
215 Protection Act or limitations imposed under the provi-  
216 sions of this code;

217 (2) That the source of income must send the amount  
218 to be withheld from the obligor's income to the child  
219 advocate office within ten days of the date the obligor  
220 is paid;

221 (3) That, in addition to the amount withheld under the  
222 provisions of subdivision (1) of this subsection, the source  
223 of income may deduct a fee, not to exceed fifty cents,  
224 for administrative costs incurred by the source of  
225 income, for each withholding;

226 (4) That withholding is binding on the source of  
227 income until further notice by the child advocate office;

228 (5) That the source of income is subject to a fine for



229 discharging an obligor from employment, refusing to  
230 employ, or taking disciplinary action against any obligor  
231 because of the withholding;

232 (6) That if the source of income fails to withhold  
233 income in accordance with the provisions of the notice,  
234 the source of income is liable for the accumulated  
235 amount the source of income should have withheld from  
236 the obligor's income;

237 (7) That the withholding under the provisions of this  
238 section shall have priority over any other legal process  
239 under the laws of this state against the same income,  
240 and shall be effective despite any exemption that might  
241 otherwise be applicable to the same income;

242 (8) That the source of income may combine withheld  
243 amounts from obligors' income in a single payment to  
244 the child advocate office and separately identify the  
245 portion of the single payment which is attributable to  
246 each obligor;

247 (9) That the source of income must implement with-  
248 holding no later than the first pay period or first date  
249 for payment of income that occurs after fourteen days  
250 following the date the notice to the source of income was  
251 mailed; and

252 (10) That the source of income must notify the child  
253 advocate office promptly when the obligor terminates  
254 his or her employment or otherwise ceases receiving  
255 income from the source of income, and must provide the  
256 obligor's last known address and the name and address  
257 of the obligor's new source of income, if known.

258 (g) The director shall, by administrative rule, estab-  
259 lish procedures for promptly refunding to obligors  
260 amounts which have been improperly withheld under  
261 the provisions of this section.

262 (h) A source of income must send the amount to be  
263 withheld from the obligor's income to the child advocate  
264 office and must notify the child advocate office of the  
265 date of withholding, within ten days of the date the  
266 obligor is paid.

267 (i) In addition to any amounts payable as support  
268 withheld from the obligor's income, the source of income  
269 may deduct a fee, not to exceed fifty cents, for admi-  
270 nistrative costs incurred by the source of income, for  
271 each withholding.

272 (j) Withholding of amounts payable as support under  
273 the provisions of this section is binding on the source of  
274 income until further notice by the child advocate office.

275 (k) Every source of income who receives a notice of  
276 withholding under the provisions of this section shall  
277 implement withholding no later than the first pay  
278 period or first date for the payment of income which  
279 occurs after fourteen days following the date the notice  
280 to the source of income was mailed.

281 (l) A source of income who employs or otherwise pays  
282 income to an obligor who is subject to withholding under  
283 the provisions of this section must notify the child  
284 advocate office promptly when the obligor terminates  
285 employment or otherwise ceases receiving income from  
286 the source of income, and must provide the office with  
287 the obligor's last known address and the name and  
288 address of the obligor's new source of income, if known.

289 (m) A source of income who has more than a single  
290 obligor who is subject to withholding from income under  
291 the provisions of this article may combine all withheld  
292 amounts into a single payment to the child advocate  
293 office, with the portion thereof which is attributable to  
294 each obligor being separately designated.

295 (n) A source of income is liable to an obligee, includ-  
296 ing the state of West Virginia or the department of  
297 health and human resources where appropriate, for any  
298 amount which the source of income fails to withhold  
299 from income due an obligor following receipt by such  
300 source of income of proper notice under subsection (f)  
301 of this section: *Provided*, That a source of income shall  
302 not be required to vary the normal pay and disburse-  
303 ment cycles in order to comply with the provisions of  
304 this section.

305 (o) That support collection under the provisions of this

306 section shall have priority over any other legal process  
307 under the laws of this state against the same income,  
308 and shall be effective despite any exemption that might  
309 otherwise be applicable to the same income.

310 (p) Any source of income who discharges from  
311 employment, refuses to employ, or takes disciplinary  
312 action against any obligor subject to income withholding  
313 required by this section because of the existence of such  
314 withholding and the obligations or additional obligations  
315 which it imposes on the source of income, shall be guilty  
316 of a misdemeanor, and, upon conviction thereof, shall be  
317 fined not less than five hundred dollars nor more than  
318 one thousand dollars.

319 (q) In any case where immediate income withholding  
320 is not required then, at any time following a period of  
321 eighteen months during which the obligor has owed no  
322 arrearages to the obligee or to the state of West Virginia  
323 or any other state, if the obligee and obligor agree to  
324 the termination of withholding and demonstrate to the  
325 children's advocate that there is a reliable alternative  
326 method by which to make the support payments, they  
327 may request the children's advocate to terminate  
328 withholding and such withholding from income may  
329 cease until such time as further withholding is required  
330 by law. The director of the child advocate office shall,  
331 by legislative rule, establish state termination standards  
332 which will ensure, at a minimum, that withholding will  
333 not be terminated where there are indications that it is  
334 unlikely that support will continue without such  
335 withholding. The mere fact that all arrearages have  
336 been paid shall not be a sufficient ground for the  
337 termination of withholding.

#### ARTICLE 6. ESTABLISHMENT OF PATERNITY.

§48A-6-5. Representation of parties.

§48A-6-6. Establishing paternity by acknowledgment of natural father.

#### §48A-6-5. Representation of parties.

1 (a) The children's advocate of the county where the  
2 action under this section is brought shall litigate the  
3 action in the best interests of the child although the  
4 action is commenced in the name of a plaintiff listed in  
5 section one of this article.

6 (b) The defendant shall be advised of his right to  
7 counsel. In the event he files an affidavit that he is a  
8 poor person within the meaning of section one, article  
9 two, chapter fifty-nine of this code, counsel shall be  
10 appointed to represent him. The service and expenses of  
11 counsel shall be paid in accordance with the provisions  
12 of article twenty-one, chapter twenty-nine of this code:  
13 *Provided*, That the court shall make a finding of  
14 eligibility for appointed counsel in accordance with the  
15 requirements of said article and, if the person qualifies,  
16 any blood or tissue tests ordered to be taken shall be  
17 paid as part of the costs of the proceeding.

18 (c) The children's advocate shall litigate the action  
19 only to the extent of establishing paternity and estab-  
20 lishing and enforcing a child support order.

**§48A-6-6. Establishing paternity by acknowledgment of natural father.**

1 (a) The natural father of a child may file an applica-  
2 tion to establish paternity in circuit court when he  
3 acknowledges that the child is his or when he has  
4 married the mother of the child after the child's birth  
5 and upon consent of the mother, or if she is deceased  
6 or incompetent, or has surrendered custody, upon the  
7 consent of the person or agency having custody of the  
8 child or of a court having jurisdiction over the child's  
9 custody. The application may be filed in the county  
10 where the natural father resides, the child resides, or  
11 the child was born. The circuit court, if satisfied that  
12 the applicant is the natural father and that establish-  
13 ment of the relationship is for the best interest of the  
14 child, shall enter the finding of fact and an order upon  
15 its docket, and thereafter the child is the child of the  
16 applicant, as though born to him in lawful wedlock.

17 (b) A written acknowledgment by both the man and  
18 woman that the man is the father of the named child  
19 legally establishes the man as the father of the child for  
20 all purposes and child support can be established under  
21 the provisions of this chapter.

22 (c) On and after the first day of November, one  
23 thousand nine hundred ninety, in addition to providing

24 the information necessary to establish paternity in  
25 accordance with the provisions of this section, a person  
26 whose name is to appear in the order establishing  
27 paternity as a parent shall furnish to the clerk of the  
28 circuit court the social security account number (or  
29 numbers, if the parent has more than one such number)  
30 issued to the parent. A record of the social security  
31 number or numbers shall be forwarded to the state  
32 registrar of vital statistics along with the order  
33 establishing paternity.

**ARTICLE 7. REVISED UNIFORM RECIPROCAL ENFORCEMENT  
OF SUPPORT ACT.**

**§48A-7-14. Duty of initiating court.**

1 If the initiating court finds that the petition or  
2 complaint sets forth facts from which it may be  
3 determined that the obligor owes a duty of support and  
4 that a court of the responding state may obtain  
5 jurisdiction of the obligor or his property, it shall so  
6 certify and cause three copies of the petition or  
7 complaint, one of which copies shall be certified, and one  
8 copy of this article to be sent to the responding court.  
9 Certification shall be in accordance with the require-  
10 ments of the initiating state. If the name and address  
11 of the responding court is unknown and the responding  
12 state has an information agency comparable to that  
13 established in the initiating state, it shall cause the  
14 copies to be sent to the state information agency or other  
15 proper official of the responding state, with a request  
16 that the agency or official forward them to the proper  
17 court and that the court of the responding state  
18 acknowledge their receipt to the initiating court.

**CHAPTER 57. EVIDENCE AND WITNESSES.**

**ARTICLE 5. MISCELLANEOUS PROVISIONS.**

**§57-5-4. Production of writings—By person other than  
party.**

1 When it appears by affidavit or otherwise that a  
2 writing or document in the possession of any person not  
3 a party to the matter in controversy is material and  
4 proper to be produced before the court, or any person

5 appointed by it or acting under its process or authority,  
 6 or any such person as is named in section one of this  
 7 article, such court, family law master, judge or presi-  
 8 dent thereof may order the clerk of the said court to  
 9 issue a subpoena duces tecum to compel such production  
 10 at a time and place to be specified in the order.

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## CHAPTER 41

(Com. Sub. for H. B. 4044—By Delegate M. Burke)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen; to amend and reenact section three, article one, chapter forty-nine of said code; and to amend and reenact section seven, article seven of said chapter, all relating to the prohibition of the sale or purchase of a child; creating penalties and exceptions; expanding the definition of "abused child"; and contributing to delinquency or neglect of child.

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

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

### Chapter

48. Domestic Relations.

49. Child Welfare.

### CHAPTER 48. DOMESTIC RELATIONS.

#### ARTICLE 4. ADOPTION.

§48-4-16. Prohibition of purchase or sale of child; penalty; definitions; exceptions.

1 (a) Any person or agency who knowingly offers, gives,

2 or agrees to give to another person money, property,  
3 service, or other thing of value in consideration for the  
4 recipient's locating, providing, or procuring a minor  
5 child for any purpose which entails a transfer of the  
6 legal or physical custody of said child, including, but not  
7 limited to, adoption or placement, shall be guilty of a  
8 misdemeanor and subject to fine and imprisonment as  
9 provided herein.

10 (b) Any person who knowingly receives, accepts, or  
11 offers to accept money, property, service, or other thing  
12 of value to locate, provide, or procure a minor child for  
13 any purpose which entails a transfer of the legal or  
14 physical custody of said child, including, but not limited  
15 to, adoption or placement, shall be guilty of a misdemea-  
16 nor and subject to fine and imprisonment as provided  
17 herein.

18 (c) Any person who violates the provisions of this  
19 section shall be guilty of a misdemeanor, and, upon  
20 conviction thereof, shall be fined not less than one  
21 hundred dollars nor more than two thousand dollars, or  
22 may be imprisoned in the county jail for not more than  
23 twelve months, or both fined and imprisoned.

24 (d) A child whose parent, guardian, or custodian has  
25 sold or attempted to sell said child in violation of the  
26 provisions of this article may be deemed an abused child  
27 as defined by section three, article one, chapter forty-  
28 nine of this code. The court may place such a child in  
29 the custody of the department of human services or with  
30 such other responsible person as the best interests of the  
31 child dictate.

32 (e) This section does not prohibit the payment or  
33 receipt of the following:

34 (1) Fees paid for reasonable and customary services  
35 provided by the department of human services or any  
36 licensed or duly authorized adoption or child-placing  
37 agency.

38 (2) Reasonable and customary legal, medical, hospital,  
39 or other expenses incurred in connection with legal  
40 adoption proceedings.

41 (3) Fees and expenses included in any agreement in  
42 which a woman agrees to become a surrogate mother.

43 (4) Any fees or charges authorized by law or approved  
44 by a court in a proceeding relating to the placement of  
45 a minor child for adoption.

## CHAPTER 49. CHILD WELFARE.

### ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-3. Definitions relating to abuse and neglect.

§49-7-7. Contributing to delinquency or neglect of a child.

#### §49-1-3. Definitions relating to abuse and neglect.

1 (a) "Abused child" means a child whose health or  
2 welfare is harmed or threatened by:

3 (1) A parent, guardian or custodian who knowingly or  
4 intentionally inflicts, attempts to inflict, or knowingly  
5 allows another person to inflict, physical injury, or  
6 substantial mental or emotional injury, upon the child  
7 or another child in the home; or

8 (2) Sexual abuse or sexual exploitation; or

9 (3) The sale or attempted sale of a child by a parent,  
10 guardian, or custodian in violation of section sixteen,  
11 article four, chapter forty-eight of this code.

12 In addition to its broader meaning, physical injury  
13 may include an injury to the child as a result of  
14 excessive corporal punishment.

15 (b) "Abusing parent" means a parent, guardian, or  
16 other custodian, regardless of his or her age, whose  
17 conduct, as alleged in the petition charging child abuse  
18 or neglect, has been adjudged by the court to constitute  
19 child abuse or neglect.

20 (c) "Child abuse and neglect" or "child abuse or  
21 neglect" means physical injury, substantial mental or  
22 emotional injury, sexual abuse, sexual exploitation, sale  
23 or attempted sale, or negligent treatment or maltreat-  
24 ment of a child by a parent, guardian, or custodian who



25 is responsible for the child's welfare, under circumstan-  
26 ces which harm or threaten the health and welfare of  
27 the child.

28 (d) "Child abuse and neglect services" means social  
29 services which are directed toward:

30 (1) Protecting and promoting the welfare of children  
31 who are abused or neglected;

32 (2) Identifying, preventing and remedying conditions  
33 which cause child abuse and neglect;

34 (3) Preventing the unnecessary removal of children  
35 from their families by identifying family problems and  
36 assisting families in resolving problems which could  
37 lead to a removal of children and a breakup of the  
38 family;

39 (4) In cases where children have been removed from  
40 their families, providing services to the children and the  
41 families so as to restore such children to their families;

42 (5) Placing children in suitable adoptive homes when  
43 restoring the children to their families is not possible or  
44 appropriate; and

45 (6) Assuring the adequate care of children away from  
46 their families when the children have been placed in the  
47 custody of the department or third parties.

48 (e) "Imminent danger to the physical well-being of the  
49 child" means an emergency situation in which the  
50 welfare or the life of the child is threatened. Such  
51 emergency situation exists when there is reasonable  
52 cause to believe that any child in the home is or has been  
53 sexually abused or sexually exploited, or reasonable  
54 cause to believe that the following conditions threaten  
55 the health or life of any child in the home:

56 (1) Nonaccidental trauma inflicted by a parent,  
57 guardian, custodian, sibling or a babysitter or other  
58 caretaker; or

59 (2) A combination of physical and other signs indicat-

60 ing a pattern of abuse which may be medically diag-  
61 nosed as battered child syndrome; or

62 (3) Nutritional deprivation; or

63 (4) Abandonment by the parent, guardian or custo-  
64 dian; or

65 (5) Inadequate treatment of serious illness or disease;  
66 or

67 (6) Substantial emotional injury inflicted by a parent,  
68 guardian or custodian; or

69 (7) Sale or attempted sale of the child by the parent,  
70 guardian, or custodian.

71 (f) "Multidisciplinary team" means a group of profes-  
72 sionals and paraprofessionals representing a variety of  
73 disciplines who interact and coordinate their efforts to  
74 identify, diagnose and treat specific cases of child abuse  
75 and neglect. Multidisciplinary teams may include, but  
76 are not limited to, medical, child care, and law-  
77 enforcement personnel, social workers, psychologists,  
78 and psychiatrists. Their goal is to pool their respective  
79 skills in order to formulate accurate diagnoses and to  
80 provide comprehensive coordinated treatment with  
81 continuity and follow-up for both parents and children.  
82 "Community team" means a multidisciplinary group  
83 which addresses the general problem of child abuse and  
84 neglect in a given community, and may consist of  
85 several multidisciplinary teams with different functions.

86 (g) (1) "Neglected child" means a child:

87 (A) Whose physical or mental health is harmed or  
88 threatened by a present refusal, failure or inability of  
89 the child's parent, guardian or custodian to supply the  
90 child with necessary food, clothing, shelter, supervision,  
91 medical care or education, when such refusal, failure or  
92 inability is not due primarily to a lack of financial  
93 means on the part of the parent, guardian or custodian;  
94 or

95 (B) Who is presently without necessary food, clothing,  
96 shelter, medical care, education or supervision because

97 of the disappearance or absence of the child's parent or  
98 custodian.

99 (2) "Neglected child" does not mean a child whose  
100 education is conducted within the provisions of section  
101 one, article eight, chapter eighteen of this code.

102 (h) "Parenting skills" means a parent's competencies  
103 in providing physical care, protection, supervision and  
104 psychological support appropriate to a child's age and  
105 state of development.

106 (i) "Sexual abuse" means:

107 (A) As to a child who is less than sixteen years of age,  
108 any of the following acts which a parent, guardian or  
109 custodian shall engage in, attempt to engage in, or  
110 knowingly procure another person to engage in, with  
111 such child, notwithstanding the fact that the child may  
112 have willingly participated in such conduct or the fact  
113 that the child may have suffered no apparent physical  
114 injury or mental or emotional injury as a result of such  
115 conduct:

116 (i) Sexual intercourse; or

117 (ii) Sexual intrusion; or

118 (iii) Sexual contact; or

119 (B) As to a child who is sixteen years of age or older,  
120 any of the following acts which a parent, guardian, or  
121 custodian shall engage in, attempt to engage in, or  
122 knowingly procure another person to engage in, with  
123 such child, notwithstanding the fact that the child may  
124 have consented to such conduct or the fact that the child  
125 may have suffered no apparent physical injury or  
126 mental or emotional injury as a result of such conduct:

127 (i) Sexual intercourse; or

128 (ii) Sexual intrusion; or

129 (iii) Sexual contact; or

130 (C) Any conduct whereby a parent, guardian or

131 custodian displays his or her sex organs to a child, or  
132 procures another person to display his or her sex organs  
133 to a child, for the purpose of gratifying the sexual desire  
134 of the parent, guardian or custodian, of the person  
135 making such display, or of the child, or for the purpose  
136 of affronting or alarming the child.

137 (j) "Sexual contact" means sexual contact as that term  
138 is defined in section one, article eight-b, chapter sixty-  
139 one of this code.

140 (k) "Sexual exploitation" means an act whereby:

141 (1) A parent, custodian, or guardian, whether for  
142 financial gain or not, persuades, induces, entices or  
143 coerces a child to engage in sexually explicit conduct as  
144 that term is defined in section one, article eight-c,  
145 chapter sixty-one of this code;

146 (2) A parent, guardian, or custodian persuades,  
147 induces, entices or coerces a child to display his or her  
148 sex organs for the sexual gratification of the parent,  
149 guardian, custodian, or a third person, or to display his  
150 or her sex organs under circumstances in which the  
151 parent, guardian, or custodian knows such display is  
152 likely to be observed by others who would be affronted  
153 or alarmed.

154 (l) "Sexual intercourse" means sexual intercourse as  
155 that term is defined in section one, article eight-b,  
156 chapter sixty-one of this code.

157 (m) "Sexual intrusion" means sexual intrusion as that  
158 term is defined in section one, article eight-b, chapter  
159 sixty-one of this code.

**§49-7-7. Contributing to delinquency or neglect of a child.**

1 (a) A person who by any act or omission contributes  
2 to, encourages or tends to cause the delinquency or  
3 neglect of any child, including, but not limited to, aiding  
4 or encourageing any such child to habitually or contin-  
5 ually refuse to respond, without just cause, to the lawful  
6 supervision of such child's parents, guardian or custo-  
7 dian or to be habitually absent from school without just

8 cause, shall be guilty of a misdemeanor, and, upon  
9 conviction thereof, shall be fined not less than fifty nor  
10 more than five hundred dollars, or imprisoned in the  
11 county jail for a period not exceeding one year, or both  
12 fined and imprisoned.

13 (b) In addition to any penalty provided under this  
14 section and any restitution which may be ordered by the  
15 court under article eleven-a of chapter sixty-one, the  
16 court may order any person convicted under the  
17 provisions of this section to pay all or any portion of the  
18 cost of medical, psychological or psychiatric treatment  
19 of the child resulting from the act or acts for which the  
20 person is convicted, whether or not the child is consi-  
21 dered to have sustained bodily injury.

22 (c) The provisions of this section shall not apply to any  
23 parent, guardian or custodian who fails or refuses, or  
24 allows another person to fail or refuse, to supply a child  
25 under the care, custody or control of such parent,  
26 guardian or custodian with necessary medical care,  
27 when such medical care conflicts with the tenets and  
28 practices of a recognized religious denomination or  
29 order of which such parent, guardian or custodian is an  
30 adherent or member.

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## CHAPTER 42

(S. B. 401—By Senators Wolfe and Pritt)

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[Passed March 8, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article six, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the length of time the division of human services may keep an abused or neglected child in its custody during emergency situations.

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

That section three, article six, chapter forty-nine of the code

of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.**

**§49-6-3. Petition to court when child believed neglected or abused — Temporary custody.**

1 (a) Upon the filing of a petition, the court may order  
2 that the child alleged to be an abused or neglected child  
3 be delivered for not more than ten days into the custody  
4 of the state department or a responsible relative,  
5 pending a preliminary hearing, if it finds that: (1) There  
6 exists imminent danger to the physical well-being of the  
7 child, and (2) there are no reasonably available alterna-  
8 tives to removal of the child, including, but not limited  
9 to, the provision of medical, psychiatric, psychological or  
10 homemaking services in the child's present custody. In  
11 a case where there is more than one child in the home,  
12 the petition shall so state, and notwithstanding the fact  
13 that the allegations of abuse or neglect may pertain to  
14 less than all of such children, each child in the home for  
15 whom relief is sought shall be made a party to the  
16 proceeding. Even though the acts of abuse or neglect  
17 alleged in the petition were not directed against a  
18 specific child who is named in the petition, the court  
19 shall order the removal of such child, pending final  
20 disposition, if it finds that there exists imminent danger  
21 to the physical well-being of the child and a lack of  
22 reasonable available alternatives to removal. The initial  
23 order directing such custody shall contain an order  
24 appointing counsel and scheduling the preliminary  
25 hearing, and upon its service shall require the imme-  
26 diate transfer of custody of such child or children to the  
27 state department or a responsible relative. The court  
28 order shall state: (1) That continuation in the home is  
29 contrary to the best interests of the child and why; and  
30 (2) whether or not the state department made a  
31 reasonable effort to prevent the placement or that the  
32 emergency situation made such efforts unreasonable or  
33 impossible. The order may also direct any party or the  
34 department to initiate or become involved in services to  
35 facilitate reunification of the family.

36 (b) Whether or not the court orders immediate  
37 transfer of custody as provided in subsection (a) of this  
38 section, if the facts alleged in the petition demonstrate  
39 to the court that there exists imminent danger to the  
40 child, the court may schedule a preliminary hearing  
41 giving the respondents at least five days' actual notice.  
42 If the court finds at the preliminary hearing that there  
43 are no alternatives less drastic than removal of the child  
44 and that a hearing on the petition cannot be scheduled  
45 in the interim period, the court may order that the child  
46 be delivered into the temporary custody of the state  
47 department or an appropriate person or agency for a  
48 period not exceeding sixty days: *Provided*, That the  
49 court order shall state (1) that continuation in the home  
50 is contrary to the best interests of the child and state  
51 the reasons therefor; (2) whether or not the department  
52 made reasonable efforts to prevent the child's removal  
53 from his or her home; (3) whether or not the state  
54 department made a reasonable effort to prevent the  
55 placement or that the emergency situation made such  
56 efforts unreasonable or impossible; and (4) what efforts  
57 should be made by the department to facilitate the  
58 child's return home: *Provided, however*, That if the court  
59 grants an improvement period as provided in subsection  
60 (b), section two of this article, the sixty-day limit upon  
61 temporary custody may be waived.

62 (c) If a child or children shall, in the presence of a  
63 child protective service worker of the division of hu-  
64 man services, be in an emergency situation which con-  
65 stitutes an imminent danger to the physical well-  
66 being of the child or children, as that phrase is defined  
67 in section three, article one of this chapter, and if such  
68 worker has probable cause to believe that the child or  
69 children will suffer additional child abuse or neglect or  
70 will be removed from the county before a petition can  
71 be filed and temporary custody can be ordered, the  
72 worker may, prior to the filing of a petition, take the  
73 child or children into his or her custody without a court  
74 order: *Provided*, That after taking custody of such child  
75 or children prior to the filing of a petition, the worker  
76 shall forthwith appear before a circuit judge or a

77 juvenile referee of the county wherein custody was  
78 taken, or if no such judge or referee be available, before  
79 a circuit judge or a juvenile referee of an adjoining  
80 county, and shall immediately apply for an order  
81 ratifying the emergency custody of the child pending the  
82 filing of a petition. The circuit court of every county in  
83 the state shall appoint at least one of the magistrates of  
84 the county to act as a juvenile referee, who shall serve  
85 at the will and pleasure of the appointing court, and who  
86 shall perform the functions prescribed for such position  
87 by the provisions of this subsection. The parents,  
88 guardians or custodians of the child or children may be  
89 present at the time and place of application for an order  
90 ratifying custody, and if at the time the child or children  
91 are taken into custody by the worker, the worker knows  
92 which judge or referee is to receive the application, the  
93 worker shall so inform the parents, guardians or  
94 custodians. The application for emergency custody may  
95 be on forms prescribed by the supreme court of appeals  
96 or prepared by the prosecuting attorney or the appli-  
97 cant, and shall set forth facts from which it may be  
98 determined that the probable cause described above in  
99 this subsection exists. Upon such sworn testimony or  
100 other evidence as the judge or referee deems sufficient,  
101 the judge or referee may order the emergency taking  
102 by the worker to be ratified. If appropriate under the  
103 circumstances, the order may include authorization for  
104 an examination as provided for in subsection (b), section  
105 four of this article. If a referee issues such an order, the  
106 referee shall by telephonic communication have such  
107 order orally confirmed by a circuit judge of the circuit  
108 or an adjoining circuit who shall on the next judicial day  
109 enter an order of confirmation. If the emergency taking  
110 is ratified by the judge or referee, emergency custody  
111 of the child or children shall be vested in the state  
112 department until the expiration of the next two judicial  
113 days, at which time any such child taken into emergency  
114 custody shall be returned to the custody of his or her  
115 parent, guardian or custodian unless a petition has been  
116 filed and custody of the child has been transferred under  
117 the provisions of section three of this article.



## CHAPTER 43

(S. B. 532—By Senator Brackenrich)

[Passed March 5, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to civil service system; exemptions to coverage under classified service; changing definition of seasonal employee; exempting nine-month employees of state forests, parks and recreational areas from civil service coverage and benefits accorded full-time employees.

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

That section four, 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 SYSTEM.

#### §29-6-4. Classified-exempt service; additions to classified service; exemptions.

1 (a) The classified-exempt service includes all positions  
2 included in the classified-exempt service on the effective  
3 date of this article.

4 (b) Except for the period commencing on the first day  
5 of July, one thousand nine hundred ninety-two, and  
6 ending on the first Monday after the second Wednesday  
7 of the following January and except for the same periods  
8 commencing in the year one thousand nine hundred  
9 ninety-six, and in each fourth year thereafter, the  
10 governor may, by executive order, with the written  
11 consent of the state personnel board and the appointing  
12 authority concerned, add to the list of positions in the  
13 classified service, but such additions shall not include  
14 any positions specifically exempted from coverage as  
15 provided in this section.

16 (c) The following offices and positions are exempt  
17 from coverage under the classified service:

- 18 (1) All judges, officers and employees of the judiciary;
- 19 (2) All members, officers and employees of the  
20 Legislature;
- 21 (3) All officers elected by popular vote and employees  
22 of the officer;
- 23 (4) All secretaries of departments and employees  
24 within the office of a secretary;
- 25 (5) Members of boards and commissions and heads of  
26 departments appointed by the governor or such heads  
27 of departments selected by commissions or boards when  
28 expressly exempt by law or board order;
- 29 (6) Excluding the policymaking positions in an  
30 agency, one principal assistant or deputy and one  
31 private secretary for each board or commission or head  
32 of a department elected or appointed by the governor  
33 or Legislature;
- 34 (7) All policymaking positions;
- 35 (8) Patients or inmates employed in state institutions;
- 36 (9) Persons employed in a professional or scientific  
37 capacity to make or conduct a temporary and special  
38 inquiry, investigation or examination on behalf of the  
39 Legislature or a committee thereof, an executive  
40 department or by authority of the governor;
- 41 (10) All employees of the office of the governor,  
42 including all employees assigned to the executive  
43 mansion;
- 44 (11) County road supervisors employed by the division  
45 of highways or their successors;
- 46 (12) Part-time professional personnel engaged in  
47 professional services without administrative duties and  
48 personnel employed for ninety days or less during a  
49 working year;
- 50 (13) Members and employees of the board of regents  
51 or its successor agencies;
- 52 (14) Uniformed personnel of the division of public  
53 safety; and

54 (15) Seasonal employees in the state forests, parks,  
55 and recreational areas working less than 1,560 hours per  
56 calendar year: *Provided*, That notwithstanding any  
57 provision of law to the contrary, seasonal employees  
58 shall not be considered full-time employees.

59 (d) The Legislature finds that the holding of political  
60 beliefs and party commitments consistent or compatible  
61 with those of the governor contributes in an essential  
62 way to the effective performance of and is an approp-  
63 priate requirement for occupying certain offices or  
64 positions in state government, such as the secretaries of  
65 departments and the employees within their offices, the  
66 heads of agencies appointed by the governor and, for  
67 each such head of agency, a private secretary and one  
68 principal assistant or deputy, all employees of the office  
69 of the governor including all employees assigned to the  
70 executive mansion, as well as any persons appointed by  
71 the governor to fill policymaking positions and county  
72 road supervisors or their successors, in that such offices  
73 or positions are confidential in character and/or require  
74 their holders to act as advisors to the governor or his  
75 appointees, to formulate and implement the policies and  
76 goals of the governor or his appointees, or to help the  
77 governor or his appointees communicate with and  
78 explain their policies and views to the public, the  
79 Legislature and the press.

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## CHAPTER 44

(Com. Sub. for H. B. 4359—By Delegates Seacrist and Minard)

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[Passed March 6, 1990; in effect July 1, 1990. Approved by the Governor.]

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AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

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

CLAIMS AGAINST THE STATE.

**§1. Finding and declaring certain claims against the department of education; department of finance and administration; governor's office; and railroad maintenance authority; and Workers' Compensation Fund, to be moral obligations of the state and directing payments thereof.**

1 The Legislature has heretofore made findings of fact  
 2 that the state has received the benefit of the commod-  
 3 ities received and/or services rendered by certain  
 4 claimants herein and has considered these claims  
 5 against the state and agencies thereof, which have  
 6 arisen due to over-expenditures of the departmental  
 7 appropriations by officers of such state spending units,  
 8 such claims having been previously considered by the  
 9 court of claims which also found that the state has  
 10 received the benefit of the commodities received and/or  
 11 services rendered by the claimants, but were denied by  
 12 the court of claims on the purely statutory grounds that  
 13 to allow such claims would be condoning illegal acts  
 14 contrary to the laws of the state. The Legislature,  
 15 pursuant to its findings of fact and also by the adoption  
 16 of the findings of fact by the court of claims as its own,  
 17 and, while not condoning such illegal acts, hereby  
 18 declares it to be the moral obligation of the state to pay  
 19 these claims in the amounts specified below, and directs  
 20 the auditor to issue warrants upon receipt of properly  
 21 executed requisitions supported by itemized invoices,  
 22 statements or other satisfactory documents as required  
 23 by section ten, article three, chapter twelve of the code  
 24 of West Virginia, one thousand nine hundred thirty-one,  
 25 as amended, for the payments thereof out of any fund  
 26 appropriated and available for the purpose.

27 (a) *Claims against the Department of Education:*

28 (TO BE PAID FROM GENERAL REVENUE FUND)

29	(1) Carole L. Ball . . . . .	\$	199.00
30	(2) Rhandy L. Barnett . . . . .	\$	235.00
31	(3) Daniel C. Barnette . . . . .	\$	199.00
32	(4) Gregory D. Bonnell . . . . .	\$	199.00
33	(5) Cheri L. Brown . . . . .	\$	235.00
34	(6) Juanita Browning . . . . .	\$	120.00

35	(7)	Judith C. Collins .....	\$	161.75
36	(8)	Mary K. Coontz .....	\$	199.00
37	(9)	Patricia L. Cowan .....	\$	199.00
38	(10)	James R. Gallaher .....	\$	470.00
39	(11)	Mary M. Gerba .....	\$	223.00
40	(12)	Lucy L. Wise-Gladwell .....	\$	97.00
41	(13)	Miller L. Hall .....	\$	314.00
42	(14)	Linda D. Harris .....	\$	199.00
43	(15)	Victoria A. Honaker .....	\$	230.00
44	(16)	Patsy A. Kerns .....	\$	398.00
45	(17)	Elizabeth Ann Kirby .....	\$	199.00
46	(18)	William N. Kraft .....	\$	282.00
47	(19)	Elizabeth M. Lathey .....	\$	398.00
48	(20)	Phyllis Ann Manley .....	\$	40.00
49	(21)	Pamela Lea McCourt .....	\$	199.00
50	(22)	Marquita Ann McIntyre .....	\$	199.00
51	(23)	Deborah A. Myers .....	\$	199.00
52	(24)	John Alan Quesenberry .....	\$	199.00
53	(25)	Kathleen L. Quesenberry .....	\$	199.00
54	(26)	Robert R. Reel .....	\$	384.00
55	(27)	Stanley Robinson .....	\$	384.00
56	(28)	Zelma Stewart .....	\$	235.00
57	(29)	Rose Mary Wentz .....	\$	199.00
58	(30)	Jeffrey Zigray .....	\$	192.00
59	(b) <i>Claims against the Department of</i>			
60	<i>Finance and Administration:</i>			
61	(TO BE PAID FROM GENERAL REVENUE FUND)			
62	(1)	Coal Valley News .....	\$	23.94
63	(2)	WV Newspaper Publishing		
64		Co., Inc. ....	\$	33.11
65	(c) <i>Claim against the Governor's Office:</i>			
66	(TO BE PAID FROM GENERAL REVENUE FUND)			
67	(1)	City of Elkins .....	\$	31,440.89
68	(d) <i>Claim against the Railroad Maintenance</i>			
69	<i>Authority:</i>			
70	(TO BE PAID FROM GENERAL REVENUE FUND)			
71	(1)	CSX Transportation, Inc .....	\$	100,000.00

72 (e) *Claim against the Workers'*  
73 *Compensation Fund:*

74 (TO BE PAID FROM SPECIAL REVENUE FUND)

75 (1) Mail-Well Envelope Company . . . \$ 15,572.95

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## CHAPTER 45

(H. B. 4360—By Delegates Seacrist and Minard)

[Passed March 5, 1990; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims for compensation of innocent victims of crimes occurring in West Virginia to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

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

### COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§1. Finding and declaring certain crime victims claims for compensation to be moral obligations of the state and directing payment thereof.

1 The Legislature has duly considered the findings of  
2 fact and recommendations for awards reported to it by  
3 the court of claims in respect to the following named  
4 claimants who were innocent victims of crime within  
5 this state and entitled to compensation; and in respect  
6 to each of such named claimants the Legislature adopts  
7 those findings of fact as its own, hereby declares it to  
8 be the moral obligation of the state to pay each such  
9 claimant in the amount specified below, and directs the  
10 auditor to issue warrants for the payment thereof out  
11 of any fund appropriated and available for the purpose.

#### 12 Claims for crime victims compensation awards:

13 (TO BE PAID FROM CRIME VICTIMS COMPENSATION FUND)

14 (1) Angalich, Nancy A. . . . . \$ 5,000.00  
15 (2) Angalich, Nancy A., as guardian of  
16 David Angalich . . . . . \$ 5,000.00

17	(3) Argabright, Charles C.....	\$ 15,000.00
18	(4) Butler, John, as guardian of	
19	Robert Chester Tice .....	\$ 5,000.00
20	(5) Cazad, Charles R.....	\$ 5,000.00
21	(6) Ellis, Lenora H., as guardian of	
22	Amanda Walls .....	\$ 5,000.00
23	(7) Ellis, Lenora H., as guardian of	
24	Cassandra Walls .....	\$ 5,000.00
25	(8) Escue, Wilson L.....	\$ 15,000.00
26	(9) Freeland, Joann C.....	\$ 15,000.00
27	(10) Fulmer, Rebecca A.....	\$ 3,500.00
28	(11) Galati, Wilma .....	\$ 5,000.00
29	(12) McCauley, Oma L.....	\$ 5,000.00
30	(13) Oldham, Frances M., as guardian of	
31	Jeremy S. Parsons .....	\$ 5,000.00
32	(14) Price, Gary E., and Janet D., guardians	
33	of James and Jeremiah Marshall .....	\$ 20,000.00
34	(15) Rakes, Judy M., guardian of	
35	Tammy Jean Browning .....	\$ 5,000.00
36	(16) Riggall, Elizabeth M.....	\$ 5,000.00
37	(17) Shawver, William G.....	\$ 15,000.00
38	(18) Williams, Edward P.....	\$ 2,500.00
39	(19) Riffle, Barbara L.....	\$ 2,500.00
40	TOTAL .....	\$143,500.00

41     The Legislature finds that the above moral obligations  
 42     and the appropriations made in satisfaction thereof shall  
 43     be the full compensation for all claimants herein.

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## CHAPTER 46

(Com. Sub. for H. B. 4459—By Delegates Seacrist and Minard)

[Passed March 10, 1990; in effect July 1, 1990. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

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

## CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the adjutant general; alcohol beverage control commissioner; board of education; attorney general; board of directors of the state college system; board of trustees of the University of West Virginia; department of agriculture; department of corrections; department of education; department of energy; department of finance and administration; department of health; department of health—office of the chief medical examiner; department of highways; department of human services; department of labor; department of motor vehicles; department of natural resources; department of public safety; division of forestry; education and state employees grievance board; human rights commission; nonintoxicating beer commission; public employees insurance agency; public service commission; secretary of state; state athletic commission; state fire marshal; state tax department; state treasurer; supreme court of appeals; and workers' compensation fund, to be moral obligations of the state and directing payment thereof; and finding and declaring a claim against the state for unjust arrest and imprisonment to be a moral obligation of the state and directing payment thereof.

1 The Legislature has considered the findings of fact  
2 and recommendations reported to it by the court of  
3 claims concerning various claims against the state and  
4 agencies thereof, and in respect to each of the following  
5 claims the Legislature adopts those findings of fact as  
6 its own, and in respect of certain claims herein, the  
7 Legislature has independently made findings of fact and  
8 determinations of award and hereby declares it to be the  
9 moral obligation of the state to pay each such claim in  
10 the amount specified below, and directs the auditor to  
11 issue warrants for the payment thereof out of any fund  
12 appropriated and available for the purpose.



13 (a) *Claim against the*  
14 *Adjutant General:*

15 (TO BE PAID FROM GENERAL REVENUE FUND)

16 (1) AT&T Communications, Inc. . . \$ 52.45

17 (b) *Claims against the Alcohol*  
18 *Beverage Control Commissioner:*

19 (TO BE PAID FROM SPECIAL REVENUE FUND)

20 (1) AT&T Communications, Inc. . . . \$ 223.56

21 (2) J. David Cecil . . . . . \$ 773.25

22 (3) John D. Jones and  
23 Carroll G. Jones,  
24 d/b/a Farmington Garbage  
25 Disposal Co. . . . . \$ 50.00

26 (c) *Claims against the*  
27 *Board of Education:*

28 (TO BE PAID FROM GENERAL REVENUE FUND)

29 (1) The Board of Education  
30 of the County of  
31 McDowell et al. . . . . \$ 2,305,816.60

32 *Provided, That \$461,163.32 shall be paid during the*  
33 *time period beginning the first day of July, one thousand*  
34 *nine hundred ninety, and ending the last day of June,*  
35 *one thousand nine hundred ninety-one; that \$461,163.32*  
36 *shall be paid during the time period beginning the first*  
37 *day of July, one thousand nine hundred ninety-one, and*  
38 *ending the last day of June, one thousand nine hundred*  
39 *ninety-two; that \$461,163.32 shall be paid during the*  
40 *time period beginning the first day of July, one thousand*  
41 *nine hundred ninety-two, and ending the last day of*  
42 *June, one thousand nine hundred ninety-three; that*  
43 *\$461,163.32 shall be paid during the time period*  
44 *beginning the first day of July, one thousand nine*  
45 *hundred ninety-three, and ending the last day of June,*  
46 *one thousand nine hundred ninety-four; that \$461,163.32*  
47 *shall be paid during the time period beginning the first*  
48 *day of July, one thousand nine hundred ninety-four, and*  
49 *ending the last day of June, one thousand nine hundred*  
50 *ninety-five: Provided, however, That the Board of*

51 Education of the County of McDowell shall be paid the  
52 full amount provided for in this act no later than the  
53 last day of June, one thousand nine hundred ninety-five.

54 (2) Board of Education of the  
55 County of Grant..... \$ 672,098.10

56 *Provided*, That \$336,049.05 shall be paid during the  
57 time period beginning the first day of July, one thousand  
58 nine hundred ninety, and ending the last day of June,  
59 one thousand nine hundred ninety one and that  
60 \$336,049.05 shall be paid during the time period  
61 beginning the first day of July one thousand nine  
62 hundred ninety-one, and ending the last day of June one  
63 thousand nine hundred ninety-two: *Provided, however*,  
64 That the Board of Education of the County of Grant  
65 shall be paid the full amount provided for in this act  
66 no later than the last day of June one thousand nine  
67 hundred ninety-two.

68 (3) Board of Education of the  
69 County of Ritchie..... \$ 396,636.00

70 *Provided*, That \$198,318.00 shall be paid during the  
71 time period beginning the first day of July one thousand  
72 nine hundred ninety, and ending the last day of June  
73 one thousand nine hundred ninety-one and that  
74 \$198,318.00 shall be paid during the time period  
75 beginning the first day of July one thousand nine  
76 hundred ninety-one, and ending the last day of June one  
77 thousand nine hundred ninety-two: *Provided, however*,  
78 That the Board of Education of the County of Ritchie  
79 shall be paid the full amount provided for in this act  
80 no later than the last day of June one thousand nine  
81 hundred ninety-two.

82 (d) *Claims against the*  
83 *Attorney General:*

84 (TO BE PAID FROM GENERAL REVENUE FUND)

85 (1) AT&T Companies ..... \$ 928.76  
86 (2) AT&T Communications, Inc. ... \$ 1,374.81  
87 (3) The Chesapeake and  
88 Potomac Telephone  
89 Company of West Virginia.. \$ 2,486.03

90	(4) Dowdy Brothers, d/b/a		
91	Travel Host Inn .....	\$	30.46
92	(5) West Publishing Company .....	\$	4,322.09
93	(e) <i>Claims against the Board of</i>		
94	<i>Directors of the</i>		
95	<i>State College System:</i>		
96	(TO BE PAID FROM SPECIAL REVENUE FUND)		
97	from Acct. No. 8623-11		
98	(1) James Whitlash .....	\$	27.56
99	from Acct. No. 8855		
100	(2) Wiseman Construction		
101	Co., Inc. ....	\$	74,452.20
102	(f) <i>Claim against the</i>		
103	<i>Board of Trustees of the</i>		
104	<i>University of West Virginia:</i>		
105	(TO BE PAID FROM SPECIAL REVENUE FUND)		
106	from Acct. No. 8610-31		
107	(1) Kenneth Paul Pennington .....	\$	540.85
108	(g) <i>Claim against the</i>		
109	<i>Department of Agriculture:</i>		
110	(TO BE PAID FROM GENERAL REVENUE FUND)		
111	(1) Jean F. Smith .....	\$	936.00
112	(h) <i>Claims against the</i>		
113	<i>Department of Corrections:</i>		
114	(TO BE PAID FROM GENERAL REVENUE FUND)		
115	(1) American White Goods/Mid		
116	American Bank & Trust ...	\$	514.85
117	(2) Braxton County Memorial		
118	Hospital .....	\$	524.75
119	(3) The Chesapeake and Potomac		
120	Telephone Company of		
121	West Virginia.....	\$	1,563.15
122	(4) Hervis Leasing .....	\$	1,505.06
123	(5) John Marshall Independent		
124	Laboratory .....	\$	35.00

125	(6)	Kanawha County Commission ..	\$	48,870.89
126	(7)	Lewisburg Cash Register, Inc. . .	\$	296.58
127	(8)	Potomac Valley Hospital . . . . .	\$	1,589.18
128	(9)	Regional Jail and Correctional		
129		Facility Authority . . . . .	\$	42,189.96
130	(10)	Reynolds Memorial Hospital . . .	\$	3,391.75
131	(11)	United Air Lines, Inc. . . . .	\$	104.00
132	(12)	Wheeling Hospital, Inc. . . . .	\$	86.00
133	(13)	Youth Services System . . . . .	\$	53.50

134 (i) *Claims against the*135 *Department of Education:*

136 (TO BE PAID FROM GENERAL REVENUE FUND)

137	(1)	Richard G. Diefenbaugh . . . . .	\$	271.60
138	(2)	National Association of		
139		State Boards of Education . .	\$	7,000.00
140	(3)	Jacqueline M. Senseney . . . . .	\$	235.00
141	(4)	Lynda Springston . . . . .	\$	666.87
142	(5)	Deborah D. Thomas . . . . .	\$	235.00
143	(6)	Henry A. Thomas . . . . .	\$	235.00
144	(7)	Tichenor Reporting Service . . . .	\$	391.00
145	(8)	Susan C. Veltri . . . . .	\$	235.00
146	(9)	West Virginia Press		
147		Services, Inc. . . . .	\$	1,372.00

148 (j) *Claim against the*149 *Department of Energy:*

150 (TO BE PAID FROM SPECIAL REVENUE FUND)

151	(1)	Cole Business Furniture,		
152		a Division of Joyce		
153		International, Inc. . . . .	\$	465.00

154 (k) *Claims against the Department*155 *of Finance and Administration:*

156 (TO BE PAID FROM GENERAL REVENUE FUND)

157	(1)	Phyllis Jeanne Eastwood . . . . .	\$	100.00
158	(2)	The Evening/Weekend		
159		Journal . . . . .	\$	16.61
160	(3)	The Fayette Tribune . . . . .	\$	41.35
161	(4)	Multigraphics, a Division		
162		of A.M. International, Inc. . .	\$	2,845.00

163	(5)	West Virginia Newspaper		
164		Publishing Co., Inc. ....	\$	57.94
165	(l)	<i>Claims against the</i>		
166		<i>Department of Health:</i>		
167		(TO BE PAID FROM GENERAL REVENUE FUND)		
168	(1)	American Mobilphone, Inc.....	\$	80.00
169	(2)	Cabell Huntington Hospital ....	\$	423.60
170	(3)	The Chesapeake and		
171		Potomac Telephone		
172		Company of		
173		West Virginia.....	\$	801.29
174	(4)	Hamilton Business		
175		Systems, Inc. ....	\$	88.27
176	(5)	Prestera Center for Mental		
177		Health Services, Inc. ....	\$	8,657.00
178	(6)	Radiology, Inc. ....	\$	31.20
179	(7)	Summit Center for Human		
180		Development, Inc.....	\$	32,855.00
181	(8)	Carter Thompson .....	\$	20.00
182	(9)	W. J. Clark Septic		
183		Tank Service, Inc.....	\$	910.00
184	(10)	Xerox Corporation.....	\$	2,113.67
185	(m)	<i>Claims against the Department</i>		
186		<i>of Health—Office of the</i>		
187		<i>Chief Medical Examiner:</i>		
188		(TO BE PAID FROM GENERAL REVENUE FUND)		
189	(1)	John J. Keefe, M.D. ....	\$	50.00
190	(2)	Joseph E. Schreiber, D.O. ....	\$	250.00
191	(3)	Reynaldo B. Vista, M.D.....	\$	100.00
192	(n)	<i>Claims against the</i>		
193		<i>Department of Highways:</i>		
194		(TO BE PAID FROM STATE ROAD FUND)		
195	(1)	Frances Barker .....	\$	65.63
196	(2)	Thomas R. Burgess .....	\$	545.71
197	(3)	Thomas R. Burgess, II .....	\$	750.00
198	(4)	Bethel Childers .....	\$	150,000.00
199	(5)	Thomas Childers .....	\$	15,000.00

200	(6)	Benjamin F. Clansy and		
201		Bula D. Clansy .....	\$	1,256.10
202	(7)	Sherlock Dean and		
203		Evelyn Dean .....	\$	5,364.00
204	(8)	Patricia L. Efaw .....	\$	80.83
205	(9)	Virginia Ellison Foss .....	\$	10,542.60
206	(10)	James M. Hunt and		
207		Gale S. Hunt .....	\$	53.00
208	(11)	Joni Carol Koenig .....	\$	7,000.00
209	(12)	Karl E. Koenig .....	\$	3,000.00
210	(13)	David L. Mallory .....	\$	646.81
211	(14)	Virginia L. Margolis .....	\$	3,500.00
212	(15)	Nationwide Mutual		
213		Insurance Company .....	\$	215.00
214	(16)	Margaret L. Prager .....	\$	88.73
215	(17)	Marvin L. Rush and Katherine		
216		Josephine Rush .....	\$	1,500.00
217	(18)	Tri-State Asphalt		
218		Corporation .....	\$	117,395.22
219	(19)	Vecellio & Grogan, Inc. ....	\$	3,214,006.75
220	(20)	Sarah J. Winchester .....	\$	650.00

221 (o) *Claims against the Department*  
 222 *of Human Services:*

223 (TO BE PAID FROM GENERAL REVENUE FUND)

224	(1)	Altmeyer Funeral		
225		Homes, Inc. ....	\$	2,000.00
226	(2)	Armstrong Funeral		
227		Home, Inc. ....	\$	400.00
228	(3)	Bartlett Funeral Home .....	\$	400.00
229	(4)	Beard Mortuary .....	\$	400.00
230	(5)	Bennett Widener		
231		Funeral Home .....	\$	400.00
232	(6)	Blue Ridge Funeral Home .....	\$	650.00
233	(7)	Brown Funeral Home .....	\$	325.00
234	(8)	Broyles-McGuire		
235		Funeral Home .....	\$	400.00
236	(9)	Carl Wilson Funeral Home .....	\$	1,450.00
237	(10)	Carpenter & Ford, Inc. ....	\$	400.00
238	(11)	Casto Funeral Home .....	\$	400.00
239	(12)	Chafin Funeral Home .....	\$	1,200.00
240	(13)	Chapman Funeral Home, Inc. ..	\$	400.00

241	(14)	Chapman's Mortuary, Inc. .... \$	1,450.00
242	(15)	Cravens-Shires Funeral	
243		Homes, Inc. .... \$	325.00
244	(16)	Crow-Hussell Funeral	
245		Home, Inc. .... \$	325.00
246	(17)	Cunningham-Parker-Johnson	
247		Funeral Home .... \$	1,525.00
248	(18)	Davis Funeral Home, Inc. .... \$	800.00
249	(19)	Davis-Weaver Funeral	
250		Home, Inc. .... \$	255.00
251	(20)	Dent Funeral Home, Inc. .... \$	400.00
252	(21)	Dodd & Reed Funeral	
253		Home, Inc. .... \$	800.00
254	(22)	Dodd-Payne-Hess	
255		Funeral Home .... \$	400.00
256	(23)	Dorsey Funeral Home, Inc. .... \$	1,050.00
257	(24)	The Douglas Mortuary .... \$	725.00
258	(25)	Eckels Funeral Home. .... \$	1,200.00
259	(26)	Elk Funeral Home .... \$	800.00
260	(27)	Evans Funeral Home	
261		(Oceana, WV) .... \$	400.00
262	(28)	Evans Funeral Home	
263		(Chapmanville, WV) .... \$	800.00
264	(29)	F. E. Runner Funeral Home ... \$	1,850.00
265	(30)	Fanning Funeral Home, Inc. ... \$	400.00
266	(31)	Franklin Funeral Chapel .... \$	400.00
267	(32)	Fred L. Jenkins	
268		Funeral Home .... \$	325.00
269	(33)	Frey Home for Funerals .... \$	325.00
270	(34)	Furbee Funeral Home .... \$	400.00
271	(35)	Greathouse Funeral Home .... \$	400.00
272	(36)	Greco-Bartolo Funeral Home ... \$	400.00
273	(37)	Greco-Hertnick Funeral Home \$	400.00
274	(38)	Greenlief-Combs	
275		Funeral Home .... \$	650.00
276	(39)	Grisell Funeral Home. .... \$	400.00
277	(40)	Hafer Funeral Home .... \$	400.00
278	(41)	Henson Mortuary .... \$	400.00
279	(42)	Honaker Funeral Home. .... \$	400.00
280	(43)	Hundley Funeral Home, Inc. ... \$	181.00
281	(44)	J. E. Johnson Funeral	
282		Home, Inc. .... \$	400.00

283	(45)	James Funeral Home		
284		(Logan, WV) . . . . .	\$	400.00
285	(46)	James Funeral Home		
286		(Follansbee, WV) . . . . .	\$	400.00
287	(47)	Jefferson Chapel		
288		Funeral Home . . . . .	\$	800.00
289	(48)	Kepner Funeral Home . . . . .	\$	400.00
290	(49)	Kiger-Williams Funeral		
291		Home, Inc. . . . .	\$	400.00
292	(50)	Kincaid-Mann Mortuary . . . . .	\$	400.00
293	(51)	Kogelschatz Funeral Home . . . . .	\$	400.00
294	(52)	Koontz Funeral Home . . . . .	\$	400.00
295	(53)	Leavitt Funeral Home . . . . .	\$	1,555.00
296	(54)	Leonard Johnson Funeral		
297		Home, Inc. . . . .	\$	800.00
298	(55)	Long & Fisher Funeral		
299		Homes, Inc. . . . .	\$	400.00
300	(56)	Masters Funeral Home . . . . .	\$	1,200.00
301	(57)	McGlumphy Mortuary, Inc. . . . .	\$	400.00
302	(58)	Melton Mortuary, Inc. . . . .	\$	325.00
303	(59)	Melvin T. Strider Co., Inc. . . . .	\$	1,020.00
304	(60)	Memorial Funeral		
305		Directory, Inc. . . . .	\$	400.00
306	(61)	Morris Funeral Home, Inc. . . . .	\$	400.00
307	(62)	Mounts Funeral Home, Inc. . . . .	\$	400.00
308	(63)	O'Dell Funeral Home . . . . .	\$	400.00
309	(64)	Parsons Funeral Home . . . . .	\$	400.00
310	(65)	Pryor Funeral Home . . . . .	\$	400.00
311	(66)	Raiguel Funeral Home . . . . .	\$	400.00
312	(67)	Reger Funeral Home, Inc. . . . .	\$	310.00
313	(68)	Ronald Meadows		
314		Funeral Parlors . . . . .	\$	400.00
315	(69)	Rose & Quesenberry		
316		Funeral Home . . . . .	\$	650.00
317	(70)	Ruttencutter Funeral		
318		Home, Inc. . . . .	\$	400.00
319	(71)	Schaeffer Funeral Home . . . . .	\$	400.00
320	(72)	Shaffer Funeral Home, Inc. . . . .	\$	400.00
321	(73)	Shanklin Funeral Home, Inc. . . . .	\$	400.00
322	(74)	Simons-Coleman		
323		Funeral Home . . . . .	\$	400.00
324	(75)	Sinnett Funeral Home . . . . .	\$	400.00



325	(76)	Stevens & Grass		
326		Funeral Home .....	\$	400.00
327	(77)	Stockert-Gibson		
328		Funeral Home .....	\$	400.00
329	(78)	Tankersley Funeral		
330		Home, Inc. ....	\$	400.00
331	(79)	Taylor Funeral Home .....	\$	800.00
332	(80)	Tyree Funeral Home, Inc. ....	\$	400.00
333	(81)	VanReenen Funeral Home .....	\$	650.00
334	(82)	Waters Funeral Chapel .....	\$	800.00
335	(83)	Wilcoxon Funeral Home .....	\$	400.00
336	(84)	William McCulla		
337		Funeral Home .....	\$	725.00
338	(p)	<i>Claim against the</i>		
339		<i>Department of Labor:</i>		
340		(TO BE PAID FROM GENERAL REVENUE FUND)		
341	(1)	Chapman Printing Company .....	\$	469.80
342	(q)	<i>Claims against the Department</i>		
343		<i>of Motor Vehicles:</i>		
344		(TO BE PAID FROM STATE ROAD FUND)		
345	(1)	American Association		
346		of Motor Vehicle		
347		Administrators .....	\$	63,270.64
348	(2)	Rita Brock .....	\$	28.46
349	(3)	James Stephen Dent .....	\$	45.00
350	(4)	T. H. Compton, Inc. ....	\$	12,377.24
351	(r)	<i>Claims against the Department</i>		
352		<i>of Natural Resources:</i>		
353		(TO BE PAID FROM SPECIAL REVENUE FUND)		
354		from Acct. No. 8300-23		
355	(1)	B. W. Painter, Inc., d/b/a		
356		Kentucky Fried Chicken .....	\$	7,590.00
357	(2)	Moore Business Forms &		
358		Systems Division .....	\$	4,212.92
359	(s)	<i>Claims against the</i>		
360		<i>Department of Public Safety:</i>		

361	(TO BE PAID FROM GENERAL REVENUE FUND)	
362	(1) Associated Physical	
363	Therapists, Inc. ....	\$ 381.00
364	(2) Associated Radiologists, Inc. ...	\$ 46.50
365	(3) Harold L. Casto, D.C. ....	\$ 320.00
366	(4) Davis Memorial Hospital.....	\$ 72.00
367	(5) Richard G. Gay .....	\$ 1,000.00
368	(6) Stephen Charles King .....	\$ 28.90
369	(7) Joseph F. Kyer .....	\$ 120.00
370	(8) Fred L. Morgan .....	\$ 180.27
371	(9) Orthopaedic Associates, Inc.....	\$ 852.00
372	(10) Philip G. Pollice, M.D. ....	\$ 760.00
373	(11) Radiology, Inc. ....	\$ 7.56
374	(12) Roentgen Diagnostics, Inc. ....	\$ 27.00
375	(13) Martha Wolfe .....	\$ 395.00
376	(t) <i>Claim against the</i>	
377	<i>Division of Forestry:</i>	
378	(TO BE PAID FROM GENERAL REVENUE FUND)	
379	(1) Xerox Corporation .....	\$ 239.11
380	(u) <i>Claim against the</i>	
381	<i>Education and State</i>	
382	<i>Employees Grievance Board:</i>	
383	(TO BE PAID FROM GENERAL REVENUE FUND)	
384	(1) AT&T Communications, Inc. ...	\$ 24.06
385	(v) <i>Claims against the Human</i>	
386	<i>Rights Commission:</i>	
387	(TO BE PAID FROM GENERAL REVENUE FUND)	
388	(1) Theodore R. Dues .....	\$ 46,600.00
389	(2) Martha A. Hannah .....	\$ 190.00
390	(3) Tony Majestro, M.D. ....	\$ 200.00
391	(4) Jack Manning,	
392	Sheriff/Treasurer	
393	of Fayette County.....	\$ 5.00
394	(5) Phyllis Haynes Edens	
395	CCR, Inc. ....	\$ 178.50
396	(w) <i>Claims against the Nonintoxicating</i>	
397	<i>Beer Commission:</i>	

398	(TO BE PAID FROM GENERAL REVENUE FUND)		
399	(1) Harry G. Camper, Jr. ....	\$	639.00
400	(2) Billy Williams .....	\$	70.54
401	(x) <i>Claims against the Public</i>		
402	<i>Employees Insurance Agency:</i>		
403	(TO BE PAID FROM GENERAL REVENUE FUND)		
404	(1) Eastern Panhandle		
405	Transit Authority .....	\$	1,344.00
406	(y) <i>Claims against the Public</i>		
407	<i>Service Commission:</i>		
408	(TO BE PAID FROM SPECIAL REVENUE FUND)		
409	(1) AT&T Communications, Inc. ...	\$	152.30
410	(2) Cole Office Environments .....	\$	813.00
411	(3) Hamilton Business		
412	Systems, Inc. ....	\$	334.56
413	(4) Jenner & Block, an Illinois		
414	Partnership Including		
415	Professional Corporations ...	\$	73,775.52
416	(z) <i>Claim against the</i>		
417	<i>Secretary of State:</i>		
418	(TO BE PAID FROM GENERAL REVENUE FUND)		
419	(1) The Monroe Watchman, Inc. ...	\$	90.00
420	(aa) <i>Claims against the State</i>		
421	<i>Athletic Commission:</i>		
422	(TO BE PAID FROM GENERAL REVENUE FUND)		
423	(1) Robert V. Lowery .....	\$	141.42
424	(bb) <i>Claim against the</i>		
425	<i>State Fire Marshal:</i>		
426	(TO BE PAID FROM GENERAL REVENUE FUND)		
427	(1) Arnold Corporation .....	\$	92.18
428	(cc) <i>Claims against the</i>		
429	<i>State Tax Department:</i>		
430	(TO BE PAID FROM GENERAL REVENUE FUND)		

431	(1)	Bell Atlanticom Systems, Inc. . . . \$	6,240.00
432	(2)	Capitol Business Interiors . . . . . \$	842.86
433	(3)	Gallatin National Bank . . . . . \$	27.50
434	(4)	Betty G. Linger, R. Thomas	
435		and R. B. Tracey, as	
436		Tenants in Common, d/b/a	
437		Morrison Building . . . . . \$	11,287.83
438	(5)	Standard Register Company . . . \$	465.00

439 (dd) *Claims against the*  
440 *State Treasurer:*

441 (TO BE PAID FROM GENERAL REVENUE FUND)

442	(1)	The Michie Company . . . . . \$	355.99
443	(2)	The Monroe Watchman . . . . . \$	17.50
444	(3)	Multigraphics, a Division of	
445		A. M. International, Inc. . . . . \$	255.06

446 (ee) *Claims against the*  
447 *Supreme Court of Appeals:*

448 (TO BE PAID FROM GENERAL REVENUE FUND)

449	(1)	Hamilton Business Systems . . . . \$	539.27
450	(2)	C. Reeves Taylor . . . . . \$	3,189.75

451 (ff) *Claim against the Workers'*  
452 *Compensation Fund:*

453 (TO BE PAID FROM WORKERS' COMPENSATION FUND)

454	(1)	G. Nicholas Casey . . . . . \$	7,611.04
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455 (gg) *Claim against the State of West Virginia:*

456 (TO BE PAID FROM GENERAL REVENUE FUND)

457	(1)	Harry Lee Clayton . . . . . \$	35,000.00
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458 The Legislature finds that the above moral obligations  
459 and the appropriations made in satisfaction thereof shall  
460 be the full compensation for all claimants, and that prior  
461 to the payments to any claimant provided for in this bill,  
462 the court of claims shall receive a release from said  
463 claimant releasing any and all claims for moral  
464 obligations arising from the matters considered by the  
465 Legislature in the finding of the moral obligations and

466 the making of the appropriations for said claimant. The  
467 court of claims shall deliver all releases obtained from  
468 claimants to the department against which the claim  
469 was allowed.

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## CHAPTER 47

(Com. Sub. for H. B. 4066—By Delegates Phillips and Rutledge)

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[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section one hundred two, article one, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article two of said chapter by adding thereto a new section, designated section one hundred thirty-nine, all relating to providing a mechanism by which persons may recover damages from and prohibit unsolicited commercial telefacsimile transmissions; notice to initiator of transmission; and defining “facsimile device” and “commercial facsimile transmission.”

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

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

### Article

1. Short Title, Definitions and General Provisions.
2. Consumer Credit Protection.

### ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS.

#### §46A-1-102. General definitions.

- 1 In addition to definitions appearing in subsequent
- 2 articles, in this chapter: (1) “Actuarial method” means
- 3 the method, defined by rules adopted by the commis-
- 4 sioner, of allocating payments made on a debt between

5 principal or amount financed and loan finance charge  
6 or sales finance charge pursuant to which a payment is  
7 applied first to the accumulated loan finance charge or  
8 sales finance charge and the balance is applied to the  
9 unpaid principal or unpaid amount financed.

10 (2) "Agreement" means the bargain of the parties in  
11 fact as found in their language or by implication from  
12 other circumstances including course of dealing or  
13 usage of trade or course of performance. A "consumer  
14 credit agreement" is an agreement where credit is  
15 granted.

16 (3) "Agricultural purpose" means a purpose related to  
17 the production, harvest, exhibition, marketing, trans-  
18 portation, processing or manufacture of agricultural  
19 products by a natural person who cultivates, plants,  
20 propagates or nurtures the agricultural products.  
21 "Agricultural products" includes agricultural, horticul-  
22 tural, viticultural and dairy products, livestock, wildlife,  
23 poultry, bees, forest products, fish and shellfish, and any  
24 products thereof, including processed and manufactured  
25 products, and any and all products raised or produced  
26 on farms and any processed or manufactured products  
27 thereof.

28 (4) "Amount financed" means the total of the follow-  
29 ing items to the extent that payment is deferred:

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

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

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

38 (i) Any applicable sales, use, privilege, excise or  
39 documentary stamp taxes;

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

42 (iii) Additional charges permitted by this chapter.

43 (5) "Average daily balance" in a billing cycle for  
44 which a sales finance charge or loan finance charge is  
45 made is the sum of the amount unpaid each day during  
46 that cycle divided by the number of days in that cycle.  
47 The amount unpaid on a day is determined by adding  
48 to the balance, if any, unpaid as of the beginning of that  
49 day all purchases and other debits and deducting all  
50 payments and other credits made or received as of that  
51 day.

52 (6) The "cash price" of goods, services or an interest  
53 in land means the price at which the goods, services or  
54 interest in land are offered for sale by the seller to cash  
55 buyers in the ordinary course of business, and may  
56 include (a) applicable sales, use, privilege, and excise  
57 and documentary stamp taxes, (b) the cash price of  
58 accessories or related services such as delivery, instal-  
59 lation, servicing, repairs, alterations and improvements,  
60 and (c) amounts actually paid or to be paid by the seller  
61 for registration, certificate of title, or license fees.

62 (7) "Closing costs" with respect to a debt secured by  
63 an interest in land include:

64 (a) Fees or premiums for title examination, title  
65 insurance or similar purposes including surveys;

66 (b) Fees for preparation of a deed, deed of trust,  
67 mortgage, settlement statement or other documents;

68 (c) Escrows for future payments of taxes and  
69 insurance;

70 (d) Official fees and fees for notarizing deeds and  
71 other documents;

72 (e) Appraisal fees; and

73 (f) Credit reports.

74 (8) "Code" means the official code of West Virginia,  
75 one thousand nine hundred thirty-one, as amended.

76 (9) "Commercial facsimile transmission" means the  
77 electronic or telephonic transmission in the state to a  
78 facsimile device to encourage a person to purchase  
79 goods, realty or services.

80 (10) "Commissioner" means the commissioner of  
81 banking of West Virginia.

82 (11) "Conspicuous": A term or clause is conspicuous  
83 when it is so written that a reasonable person against  
84 whom it is to operate ought to have noticed it. Whether  
85 a term or clause is conspicuous or not is for decision by  
86 the court.

87 (12) "Consumer" means a natural person who incurs  
88 debt pursuant to a consumer credit sale or a consumer  
89 loan.

90 (13) (a) Except as provided in paragraph (b), "con-  
91 sumer credit sale" is a sale of goods, services or an interest  
92 in land in which:

93 (i) Credit is granted either by a seller who regularly  
94 engages as a seller in credit transactions of the same  
95 kind or pursuant to a seller credit card;

96 (ii) The buyer is a person other than an organization;

97 (iii) The goods, services or interest in land are  
98 purchased primarily for a personal, family, household or  
99 agricultural purpose;

100 (iv) Either the debt is payable in installments or a  
101 sales finance charge is made; and

102 (v) With respect to a sale of goods or services, the  
103 amount financed does not exceed twenty-five thousand  
104 dollars.

105 (b) "Consumer credit sale" does not include a sale in  
106 which the seller allows the buyer to purchase goods or  
107 services pursuant to a lender credit card or similar  
108 arrangement.

109 (14) (a) "Consumer lease" means a lease of goods:

110 (i) Which a lessor regularly engaged in the business  
111 of leasing makes to a person, other than an organization,  
112 who takes under the lease primarily for a personal,  
113 family, household or agricultural purpose;

114 (ii) In which the amount payable under the lease does  
115 not exceed twenty-five thousand dollars; and



- 116 (iii) Which is for a term exceeding four months.
- 117 (b) "Consumer lease" does not include a lease made  
118 pursuant to a lender credit card or similar  
119 arrangement.
- 120 (15) "Consumer loan" is a loan made by a person  
121 regularly engaged in the business of making loans in  
122 which:
- 123 (a) The debtor is a person other than an organization;
- 124 (b) The debt is incurred primarily for a personal,  
125 family, household or agricultural purpose;
- 126 (c) Either the debt is payable in installments or a loan  
127 finance charge is made; and
- 128 (d) Either the principal does not exceed twenty-five  
129 thousand dollars or the debt is secured by an interest  
130 in land.
- 131 (16) "Cosigner" means a natural person who assumes  
132 liability for the obligation on a consumer credit sale or  
133 consumer loan without receiving goods, services or  
134 money in return for the obligation or, in the case of a  
135 revolving charge account or revolving loan account of a  
136 consumer, without receiving the contractual right to  
137 obtain extensions of credit under the account. The term  
138 cosigner includes any person whose signature is re-  
139 quested as a condition to granting credit to a consumer  
140 or as a condition for forbearance on collection of a  
141 consumer's obligation that is in default. The term  
142 cosigner does not include a spouse whose signature is  
143 required to perfect a security interest. A person who  
144 meets the definition in this paragraph is a "cosigner"  
145 whether or not the person is designated as such on the  
146 credit obligation.
- 147 (17) "Credit" means the privilege granted by a  
148 creditor to a debtor to defer payment of debt or to incur  
149 debt and defer its payment.
- 150 (18) "Earnings" means compensation paid or payable  
151 to an individual or for his account for personal services  
152 rendered or to be rendered by him, whether denomi-  
153 nated as wages, salary, commission, bonus or otherwise,

154 and includes periodic payments pursuant to a pension,  
155 retirement or disability program.

156 (19) "Facsimile device" means a machine that receives  
157 and copies reproductions or facsimiles of documents or  
158 photographs that have been transmitted electronically  
159 or telephonically over telecommunications lines.

160 (20) "Federal Consumer Credit Protection Act" means  
161 the "Consumer Credit Protection Act" (Public Law 90-  
162 321; 82 Stat. 146), as amended, and includes regulations  
163 issued pursuant to that act.

164 (21) "Goods" includes goods not in existence at the  
165 time the transaction is entered into and gift and  
166 merchandise certificates, but excludes money, chattel  
167 paper, documents of title and instruments.

168 (22) "Home solicitation sale" means a consumer credit  
169 sale in excess of twenty-five dollars in which the buyer  
170 receives a solicitation of the sale at a place other than  
171 the seller's business establishment at a fixed location  
172 and the buyer's agreement or offer to purchase is there  
173 given to the seller or a person acting for the seller. The  
174 term does not include a sale made pursuant to a  
175 preexisting open-end credit account with the seller in  
176 existence for at least three months prior to the transac-  
177 tion, a sale made pursuant to prior negotiations between  
178 the parties at the seller's business establishment at a  
179 fixed location, a sale of motor vehicles, mobile homes or  
180 farm equipment or a sale which may be rescinded under  
181 the Federal Truth in Lending Act (being Title I of the  
182 Federal Consumer Credit Protection Act). A sale which  
183 would be a home solicitation sale if credit were extended  
184 by the seller is a home solicitation sale although the  
185 goods or services are paid for in whole or in part by a  
186 consumer loan in which the creditor is subject to claims  
187 and defenses arising from the sale.

188 (23) Except as otherwise provided, "lender" includes  
189 an assignee of the lender's right to payment but use of  
190 the term does not in itself impose on an assignee any  
191 obligation of the lender.

192 (24) "Lender credit card or similar arrangement"

193 means an arrangement or loan agreement, other than  
194 a seller credit card, pursuant to which a lender gives  
195 a debtor the privilege of using a credit card, letter of  
196 credit, or other credit confirmation or identification in  
197 transactions out of which debt arises:

198 (a) By the lender's honoring a draft or similar order  
199 for the payment of money drawn or accepted by the  
200 consumer;

201 (b) By the lender's payment or agreement to pay the  
202 consumer's obligations; or

203 (c) By the lender's purchase from the obligee of the  
204 consumer's obligations.

205 (25) "Loan" includes:

206 (a) The creation of debt by the lender's payment of or  
207 agreement to pay money to the consumer or to a third  
208 party for the account of the consumer other than debts  
209 created pursuant to a seller credit card;

210 (b) The creation of debt by a credit to an account with  
211 the lender upon which the consumer is entitled to draw  
212 immediately;

213 (c) The creation of debt pursuant to a lender credit  
214 card or similar arrangement; and

215 (d) The forbearance of debt arising from a loan.

216 (26) (a) "Loan finance charge" means the sum of (i) all  
217 charges payable directly or indirectly by the debtor and  
218 imposed directly or indirectly by the lender as an  
219 incident to the extension of credit, including any of the  
220 following types of charges which are applicable: Interest  
221 or any amount payable under a point, discount, or other  
222 system of charges, however denominated, premium or  
223 other charge for any guarantee or insurance protecting  
224 the lender against the consumer's default or other credit  
225 loss; and (ii) charges incurred for investigating the  
226 collateral or credit worthiness of the consumer or for  
227 commissions or brokerage for obtaining the credit,  
228 irrespective of the person to whom the charges are paid  
229 or payable, unless the lender had no notice of the  
230 charges when the loan was made. The term does not

231 include charges as a result of default, additional  
232 charges, delinquency charges or deferral charges.

233 (b) If a lender makes a loan to a consumer by  
234 purchasing or satisfying obligations of the consumer  
235 pursuant to a lender credit card or similar arrange-  
236 ment, and the purchase or satisfaction is made at less  
237 than the face amount of the obligation, the discount is  
238 not part of the loan finance charge.

239 (27) "Merchandise certificate" or "gift certificate"  
240 means a writing issued by a seller or issuer of a seller  
241 credit card, not redeemable in cash and usable in its  
242 face amount in lieu of cash in exchange for goods or  
243 services.

244 (28) "Official fees" means:

245 (a) Fees and charges prescribed by law which actu-  
246 ally are or will be paid to public officials for determin-  
247 ing the existence of or for perfecting, releasing,  
248 terminating or satisfying a security interest related to  
249 a consumer credit sale or consumer loan; or

250 (b) Premiums payable for insurance or fees escrowed  
251 in a special account for the purpose of funding self-  
252 insurance or its equivalent in lieu of perfecting a  
253 security interest otherwise required by the creditor in  
254 connection with the sale, lease or loan, if such premium  
255 or fee does not exceed the fees and charges described  
256 in paragraph (a) which would otherwise be payable.

257 (29) "Organization" means a corporation, government  
258 or governmental subdivision or agency, trust, estate,  
259 partnership, cooperative or association.

260 (30) "Payable in installments" means that payment is  
261 required or permitted by agreement to be made in (a)  
262 two or more periodic payments, excluding a down  
263 payment, with respect to a debt arising from a consumer  
264 credit sale pursuant to which a sales finance charge is  
265 made, (b) four or more periodic payments, excluding a  
266 down payment, with respect to a debt arising from a  
267 consumer credit sale pursuant to which no sales finance  
268 charge is made, or (c) two or more periodic payments  
269 with respect to a debt arising from a consumer loan. If

270 any periodic payment other than the down payment  
271 under an agreement requiring or permitting two or  
272 more periodic payments is more than twice the amount  
273 of any other periodic payment, excluding the down  
274 payment, the consumer credit sale or consumer loan is  
275 "payable in installments."

276 (31) "Person" or "party" includes a natural person or  
277 an individual, and an organization.

278 (32) "Person related to" with respect to an individual  
279 means (a) the spouse of the individual, (b) a brother,  
280 brother-in-law, sister or sister-in-law of the individual,  
281 (c) an ancestor or lineal descendant of the individual or  
282 his spouse, and (d) any other relative, by blood or  
283 marriage, of the individual or his spouse who shares the  
284 same home with the individual. "Person related to" with  
285 respect to an organization means (a) a person directly  
286 or indirectly controlling, controlled by or under common  
287 control with the organization, (b) an officer or director  
288 of the organization or a person performing similar  
289 functions with respect to the organization or to a person  
290 related to the organization, (c) the spouse of a person  
291 related to the organization, and (d) a relative by blood  
292 or marriage of a person related to the organization who  
293 shares the same home with him.

294 (33) "Precomputed loan." A loan, refinancing or  
295 consolidation is "precomputed" if the debt is expressed  
296 as a sum comprising the principal and the amount of  
297 the loan finance charge computed in advance.

298 (34) "Precomputed sale." A sale, refinancing or  
299 consolidation is "precomputed" if the debt is expressed  
300 as a sum comprising the amount financed and the  
301 amount of the sales finance charge computed in  
302 advance.

303 (35) "Presumed" or "presumption" means that the  
304 trier of fact must find the existence of the fact presumed  
305 unless and until evidence is introduced which would  
306 support a finding of its nonexistence.

307 (36) "Principal" of a loan means the total of:

308 (a) The net amount paid to, receivable by or paid or  
309 payable for the account of the debtor;

310 (b) The amount of any discount excluded from the  
311 loan finance charge; and

312 (c) To the extent that payment is deferred:

313 (i) Amounts actually paid or to be paid by the lender  
314 for registration, certificate of title, or license fees if not  
315 included in (a); and

316 (ii) Additional charges permitted by this chapter.

317 (37) "Revolving charge account" means an agreement  
318 between a seller and a buyer by which (a) the buyer may  
319 purchase goods or services on credit or a seller credit  
320 card, (b) the balances of amounts financed and the sales  
321 finance and other appropriate charges are debited to an  
322 account, (c) a sales finance charge if made is not  
323 precomputed but is computed periodically on the  
324 balances of the account from time to time, and (d) there  
325 is the privilege of paying the balances in installments.

326 (38) "Revolving loan account" means an arrangement  
327 between a lender and a consumer including, but not  
328 limited to, a lender credit card or similar arrangement,  
329 pursuant to which (a) the lender may permit the  
330 consumer to obtain loans from time to time, (b) the  
331 unpaid balances of principal and the loan finance and  
332 other appropriate charges are debited to an account, (c)  
333 a loan finance charge if made is not precomputed but  
334 is computed periodically on the outstanding unpaid  
335 balances of the principal of the consumer's account from  
336 time to time, and (d) there is the privilege of paying the  
337 balances in installments.

338 (39) "Sale of goods" includes any agreement in the  
339 form of a bailment or lease of goods if the bailee or  
340 lessee agrees to pay as compensation for use a sum  
341 substantially equivalent to or in excess of the aggregate  
342 value of the goods involved and it is agreed that the  
343 bailee or lessee will become, or for no other or a nominal  
344 consideration has the option to become, the owner of the  
345 goods upon full compliance with his obligations under  
346 the agreement.

347 (40) "Sale of an interest in land" includes a lease in  
348 which the lessee has an option to purchase the interest  
349 and all or a substantial part of the rental or other

350 payments previously made by him are applied to the  
351 purchase price.

352 (41) "Sale of services" means furnishing or agreeing  
353 to furnish services and includes making arrangements  
354 to have services furnished by another.

355 (42) "Sales finance charge" means the sum of (a) all  
356 charges payable directly or indirectly by the buyer and  
357 imposed directly or indirectly by the seller or issuer of  
358 a seller credit card as an incident to the extension of  
359 credit, including any of the following types of charges  
360 which are applicable: Time-price differential, however  
361 denominated, including service, carrying or other  
362 charge, premium or other charge for any guarantee or  
363 insurance protecting the seller against the buyer's  
364 default or other credit loss, and (b) charges incurred for  
365 investigating the collateral or credit worthiness of the  
366 buyer or for commissions or brokerage for obtaining the  
367 credit, irrespective of the person to whom the charges  
368 are paid or payable; unless the seller had no notice of  
369 the charges when the credit was granted. The term does  
370 not include charges as a result of default, additional  
371 charges, delinquency charges or deferral charges. If the  
372 seller or issuer of a seller credit card purchases or  
373 satisfies obligations of the consumer and the purchase  
374 or satisfaction is made at less than the face amount of  
375 the obligation, the discount is not part of the sales  
376 finance charge.

377 (43) Except as otherwise provided, "seller" includes  
378 an assignee of the seller's right to payment but use of  
379 the term does not in itself impose on an assignee any  
380 obligation of the seller.

381 (44) "Seller credit card" means an arrangement  
382 pursuant to which a person gives to a buyer or lessee  
383 the privilege of using a credit card, letter of credit, or  
384 other credit confirmation or identification primarily for  
385 the purpose of purchasing or leasing goods or services  
386 from that person, that person and any other person or  
387 persons, a person related to that person, or others  
388 licensed or franchised or permitted to do business under  
389 his business name or trade name or designation or on  
390 his behalf.

391 (45) "Services" includes (a) work, labor and other  
392 personal services, (b) privileges with respect to transpor-  
393 tation, use of vehicles, hotel and restaurant accommoda-  
394 tions, education, entertainment, recreation, physical  
395 culture, hospital accommodations, funerals, cemetery  
396 accommodations, and the like, and (c) insurance.

397 (46) "Supervised financial organization" means a  
398 person, other than a supervised lender or an insurance  
399 company or other organization primarily engaged in an  
400 insurance business:

401 (a) Organized, chartered or holding an authorization  
402 certificate under the laws of this state or of the United  
403 States which authorizes the person to make consumer  
404 loans; and

405 (b) Subject to supervision and examination with  
406 respect to such loans by an official or agency of this state  
407 or of the United States.

408 (47) "Supervised lender" means a person authorized to  
409 make or take assignments of supervised loans.

410 (48) "Supervised loan" means a consumer loan made  
411 by other than a supervised financial organization,  
412 including a loan made pursuant to a revolving loan  
413 account, where the principal does not exceed two  
414 thousand dollars, and in which the rate of the loan  
415 finance charge exceeds eight percent per year as  
416 determined according to the actuarial method.

## ARTICLE 2. CONSUMER CREDIT PROTECTION.

### **§46A-2-139. Unlawful commercial facsimile transmis- sion; right of action for injunction, damages.**

1 (a) No person or organization may initiate an unsol-  
2 icited commercial facsimile transmission from within  
3 this state to another person or organization within this  
4 state after the initiator has been given notice that the  
5 recipient does not wish to receive such unsolicited  
6 commercial facsimile transmissions.

7 (b) A recipient of an unsolicited commercial facsimile  
8 transmission initiated in violation of subsection (a) of  
9 this section may bring an action to recover actual



10 damages for any injury sustained by the receipt of  
11 unsolicited commercial facsimile transmissions. In lieu  
12 of actual damages, a minimum damage assessment of  
13 three hundred dollars may be recovered for violations  
14 of this section. Punitive damages may be awarded for  
15 the willful failure to cease initiating unsolicited  
16 commercial facsimile transmissions. Court costs and  
17 reasonable attorney fees may be awarded for violations  
18 of this section.

19 (c) A recipient of an unsolicited commercial facsimile  
20 transmission initiated in violation of subsection (a) of  
21 this section may bring an action to enjoin the initiator  
22 from sending any further unsolicited commercial  
23 facsimile transmissions to the recipient. Any court costs  
24 or other costs incident to such action including reasona-  
25 ble attorney fees may be awarded.

26 (d) In any proceeding under this section, an unsoli-  
27 cited commercial facsimile transmission may be deemed  
28 to have been committed either at the place of initiation  
29 or at the place of receipt of such transmission.

30 (e) For purposes of this section, notice shall be  
31 sufficient which conveys to the initiator of the unsoli-  
32 cited commercial transmission a desire on the part of  
33 the recipient to receive no further unsolicited commer-  
34 cial facsimile transmissions and shall be served by  
35 certified mail, return receipt requested, or by facsimile  
36 transmission.

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## CHAPTER 48

(H. B. 4577—By Delegates Rowe and Shepherd)

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[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections one hundred two and one hundred three, article two, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia Consumer Credit and Protection Act provisions rendering certain assignees and lenders subject to claims and

defenses; defining the extent of liability of such assignees and lenders; providing that certain limitations on such liability shall apply to claims or defenses founded in fraud arising on or after the first day of July, one thousand nine hundred ninety; and eliminating expired statutory language.

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

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

## ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-102. Assignee subject to claims and defenses.

§46A-2-103. Lender subject to claims and defenses arising from sales.

### §46A-2-102. Assignee subject to claims and defenses.

1 The following provisions shall be applicable to  
2 instruments, contracts or other writings, other than  
3 negotiable instruments, evidencing an obligation arising  
4 from a consumer credit sale or consumer lease, other  
5 than a sale or lease primarily for an agricultural  
6 purpose: (1) Notwithstanding any term or agreement to  
7 the contrary or the provisions of article two, chapter  
8 forty-six of this code or section two hundred six, article  
9 nine of said chapter forty-six, an assignee of any such  
10 instrument, contract or other writing shall take and  
11 hold such instrument, contract or other writing subject  
12 to all claims and defenses of the buyer or lessee against  
13 the seller or lessor arising from that specific consumer  
14 credit sale or consumer lease of goods or services but  
15 the total of all claims and defenses which may be  
16 asserted against the assignee under this subsection or  
17 subsection (3) or subsection (4) of this section shall not  
18 exceed the amount owing to the assignee at the time of  
19 such assignment except (i) as to any claim or defense  
20 founded in fraud: *Provided*, That as to any claim or  
21 defense founded in fraud arising on or after the first day  
22 of July, one thousand nine hundred ninety, the total  
23 sought shall not exceed the amount of the original  
24 obligation under the instrument, contract or other

25 writing and (ii) for any excess charges and penalties  
26 recoverable under section one hundred one, article five  
27 of this chapter.

28 (2) For the purpose of determining the amount owing  
29 to an assignee of any such instrument, contract or other  
30 writing evidencing an obligation of a buyer or lessee  
31 arising from a consumer credit sale or consumer lease:

32 (a) Payments received after the consolidation of two  
33 or more consumer credit sales, other than pursuant to  
34 a revolving charge account, are deemed to have been  
35 first applied to the payment of the sales first made; if  
36 the sales consolidated arose from sales made on the same  
37 day, payments are deemed to have been first applied to  
38 the smaller or smallest sale or sales;

39 (b) Payments received upon a revolving charge  
40 account are deemed to have been first applied to the  
41 payment of sales finance charges in the order of their  
42 entry to the account and then to the payment of debts  
43 in the order in which the entries of the debts are made  
44 to the account.

45 (3) A claim or defense which a buyer or lessee may  
46 assert against an assignee of such instrument, contract  
47 or other writing under the provisions of this section may  
48 be asserted only as a matter of defense to or setoff  
49 against a claim by the assignee: *Provided*, That if a  
50 buyer or lessee shall have a claim or defense which could  
51 be asserted under the provisions of this section as a  
52 matter of defense to or setoff against a claim by the  
53 assignee were such assignee to assert such claim against  
54 the buyer or lessee, then such buyer or lessee shall have  
55 the right to institute and maintain an action or  
56 proceeding seeking to obtain the cancellation, in whole  
57 or in part, of the indebtedness evidenced by such  
58 instrument, contract or other writing or the release, in  
59 whole or in part, of any lien upon real or personal  
60 property securing the payment thereof: *Provided*,  
61 *however*, That any claim or defense founded in fraud,  
62 lack or failure of consideration or a violation of the  
63 provisions of this chapter as specified in section one  
64 hundred one, article five of this chapter, may be

65 asserted by a buyer or lessee at any time, subject to the  
66 provisions of this code relating to limitation of actions.

67 (4) Notwithstanding any provisions of this section, an  
68 assignee shall be subject to any claim or defense based  
69 upon lack or failure of consideration.

70 (5) Nothing contained in this section shall be  
71 construed as affecting any buyer's or lessee's right of  
72 action, claim or defense which is otherwise provided for  
73 in this code or at common law.

74 (6) Nothing contained in this section shall be  
75 construed in any manner as affecting any assignment of  
76 any such instrument, contract or other writing, made  
77 prior to the operative date of this chapter.

78 (7) Notwithstanding any provisions of this section, an  
79 assignee shall not be subject to any claim or defense  
80 arising from or growing out of personal injury or death  
81 resulting therefrom or damage to property.

**§46A-2-103. Lender subject to claims and defenses  
arising from sales.**

1 (a) The following provisions shall be applicable to  
2 claims and defenses of borrowers, arising from consu-  
3 mer sales, with respect to consumer loans:

4 A lender, other than the issuer of a lender credit card,  
5 who, with respect to a particular transaction, makes a  
6 consumer loan for the purpose of enabling a borrower  
7 to buy goods or services, other than primarily for an  
8 agricultural purpose, is subject to all claims and  
9 defenses of the borrower against the seller arising from  
10 that specific sale of goods or services if the lender  
11 participates in or is connected with the sales transaction.  
12 A lender is considered to be connected with such sales  
13 transaction if:

14 (i) The lender and the seller have arranged for a  
15 commission or brokerage or referral fee for the exten-  
16 sion of credit by the lender;

17 (ii) The lender is a person related to the seller unless  
18 the relationship is remote or is not a factor in the  
19 transaction;

20 (iii) The seller guarantees the loan or otherwise  
21 assumes the risk of loss by the lender upon the loan  
22 other than a risk of loss arising solely from the seller's  
23 failure to perfect a lien securing the loan;

24 (iv) The lender directly supplies the seller with  
25 documents used by the borrower to evidence the  
26 transaction or the seller directly supplies the lender  
27 with documents used by the borrower to evidence the  
28 transaction;

29 (v) The loan is conditioned upon the borrower's  
30 purchase of the goods or services from the particular  
31 seller, but the lender's payment of proceeds of the loan  
32 to the seller does not in itself establish that the loan was  
33 so conditioned;

34 (vi) The seller in such sale has specifically recom-  
35 mended such lender by name to the borrower and the  
36 lender has made ten or more loans to borrowers within  
37 a period of twelve months within which period the loan  
38 in question was made, the proceeds of which other ten  
39 or more loans were used in consumer credit sales with  
40 the seller or a person related to the seller, if in  
41 connection with such other ten or more loans, the seller  
42 also specifically recommended such lender by name to  
43 the borrowers involved; or

44 (vii) The lender was the issuer of a credit card other  
45 than a lender credit card which may be used by the  
46 borrower in the sale transaction as a result of a prior  
47 agreement between the issuer and the seller.

48 (b) The total of all claims and defenses which a  
49 borrower is permitted to assert against a lender under  
50 the provisions of this section shall not exceed that  
51 portion of the loan used for that sale, except (1) as to  
52 any claim or defense founded in fraud: *Provided*, That  
53 as to any claim or defense founded in fraud arising on  
54 or after the first day of July, one thousand nine hundred  
55 ninety, the total sought shall not exceed the original  
56 amount of the sale and (2) for any excess charges and  
57 penalties recoverable under section one hundred one,  
58 article five of this chapter.

59 (c) An agreement may not limit or waive the claims  
60 and defenses of a borrower under this section.

61 (d) "Lender credit card" as used in this section means  
62 an arrangement or loan agreement, other than a seller  
63 credit card, pursuant to which a lender gives a debtor  
64 the privilege of using the credit card in transactions  
65 which entitles the user thereof to purchase goods or  
66 services from at least one hundred persons not related  
67 to the issuer of the lender credit card, out of which debt  
68 arises:

69 (1) By the lender's honoring a draft or similar order  
70 for the payment of money drawn or accepted by the  
71 consumer;

72 (2) By the lender's payment or agreement to pay the  
73 consumer's obligation; or

74 (3) By the lender's purchase from the obligee of the  
75 consumer's obligations.

76 (e) A claim or defense which a borrower may assert  
77 against a lender under the provisions of this section may  
78 be asserted only as a defense to or setoff against a claim  
79 by the lender: *Provided*, That if a borrower shall have  
80 a claim or defense which could be asserted under the  
81 provisions of this section as a matter of defense to or  
82 setoff against a claim by the lender were such lender  
83 to assert such claim against the borrower, then the  
84 borrower shall have the right to institute and maintain  
85 an action or proceeding seeking to obtain the cancella-  
86 tion, in whole or in part, of the indebtedness evidenced  
87 by a negotiable instrument or other instrument or the  
88 release, in whole or in part, of any lien upon real or  
89 personal property securing the payment thereof: *Pro-*  
90 *vided, however*, That any claim or defense founded in  
91 fraud, lack or failure of consideration or a violation of  
92 the provisions of this chapter as specified in section one  
93 hundred one, article five of this chapter, may be  
94 asserted by a borrower at any time, subject to the  
95 provisions of this code relating to limitation of actions.

96 (f) Nothing contained in this section shall be  
97 construed in any manner as affecting any loan made  
98 prior to the operative date of this chapter.

99 (g) Notwithstanding any provisions of this section, a  
100 lender shall not be subject to any claim or defense  
101 arising from or growing out of personal injury or death  
102 resulting therefrom or damage to property.

103 (h) Nothing contained in this section shall be  
104 construed as affecting any buyer's or lessee's right of  
105 action, claim or defense which is otherwise provided for  
106 in this code or at common law.

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## CHAPTER 49

(H. B. 2537—By Mr. Speaker, Mr. Chambers, and Delegate Sattes)

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[Passed March 7, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section one hundred twenty-eight, article two, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to consumer credit protection; and increasing the recovery of attorney's fees and collection costs.

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

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

### ARTICLE 2. CONSUMER CREDIT PROTECTION.

#### §46A-2-128. Unfair or unconscionable means.

1 No debt collector shall use unfair or unconscionable  
2 means to collect or attempt to collect any claim. Without  
3 limiting the general application of the foregoing, the  
4 following conduct is deemed to violate this section:

5 (a) The seeking or obtaining of any written statement  
6 or acknowledgment in any form that specifies that a  
7 consumer's obligation is one incurred for necessities of  
8 life where the original obligation was not in fact  
9 incurred for such necessities;

10 (b) The seeking or obtaining of any written statement  
11 or acknowledgment in any form containing an affirma-  
12 tion of any obligation by a consumer who has been  
13 declared bankrupt, without clearly disclosing the nature  
14 and consequences of such affirmation and the fact that  
15 the consumer is not legally obligated to make such  
16 affirmation;

17 (c) The collection or the attempt to collect from the  
18 consumer all or any part of the debt collector's fee or  
19 charge for services rendered: *Provided*, That attorney's  
20 fees, court costs and other reasonable collection costs  
21 and charges necessary for the collection of any amount  
22 due upon delinquent educational loans made by any  
23 institution of higher education within this state may be  
24 recovered when the terms of the obligation so provide.  
25 Recovery of attorney's fees and collection costs may not  
26 exceed thirty-three and one-third percent of the amount  
27 due and owing to any such institution: *Provided*,  
28 *however*, That nothing contained in this subsection shall  
29 be construed to limit or prohibit any institution of  
30 higher education from paying additional attorney fees  
31 and collection costs as long as such additional attorney  
32 fees and collection costs do not exceed an amount equal  
33 to five percent of the amount of the debt actually  
34 recovered and such additional attorney fees and collec-  
35 tion costs are deducted or paid from the amount of the  
36 debt recovered for the institution or paid from other  
37 funds available to the institution;

38 (d) The collection of or the attempt to collect any  
39 interest or other charge, fee or expense incidental to the  
40 principal obligation unless such interest or incidental  
41 fee, charge or expense is expressly authorized by the  
42 agreement creating the obligation and by statute; and

43 (e) Any communication with a consumer whenever it  
44 appears that the consumer is represented by an attorney  
45 and the attorney's name and address are known, or  
46 could be easily ascertained, unless the attorney fails to  
47 answer correspondence, return phone calls or discuss  
48 the obligation in question or unless the attorney consents  
49 to direct communication.



## CHAPTER 50

(Com. Sub. for H. B. 4037—By Delegate Susman)

[Passed March 7, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred nine, article three, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to finance charges and related provisions—additional charges; insurance; requiring the refund to debtors of unused insurance premiums upon payment in full of debt; and providing civil penalty.

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

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

### ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

#### §46A-3-109. Additional charges; insurance; when refund required; civil penalty.

1 (1) In addition to the sales finance charge or loan  
2 finance charge permitted by this chapter, a creditor  
3 may contract for and receive the following additional  
4 charges in connection with a consumer credit sale or a  
5 consumer loan:

6 (a) Official fees and taxes;

7 (b) Charges for insurance as described in subsection  
8 (2): *Provided*, That nothing contained in this section with  
9 respect to insurance shall be construed as in any way  
10 limiting the power and jurisdiction of the insurance  
11 commissioner of this state in the premises;

12 (c) Annual charges, payable in advance, for the  
13 privilege of using a lender credit card or similar  
14 arrangement which entitles the user to purchase goods  
15 or services from at least one hundred persons not related  
16 to the issuer of the lender credit card or similar  
17 arrangement, under an arrangement pursuant to which

18 the debts resulting from the purchases are payable to  
19 the issuer;

20 (d) Charges for other benefits, including insurance,  
21 conferred on the consumer, if the benefits are of value  
22 to him/her and if the charges are reasonable in relation  
23 to the benefits, are of a type which is not for credit, and  
24 are excluded as permissible additional charges from the  
25 sales finance charge or loan finance charge by rule  
26 adopted by the commissioner: *Provided*, That as to  
27 insurance, the policy as distinguished from a certificate  
28 of coverage thereunder must be issued by an individual  
29 licensed under the laws of this state to sell such  
30 insurance and the determination of whether the charges  
31 therefor are reasonable in relation to the benefits shall  
32 be determined by the insurance commissioner of this  
33 state; and

34 (e) Reasonable closing costs with respect to a debt  
35 secured by an interest in land.

36 (2) A creditor may take, obtain or provide reasonable  
37 insurance on the life and earning capacity of any  
38 consumer obligated on the consumer credit sale or  
39 consumer loan, reasonable insurance on any real or  
40 personal property offered as security subject to the  
41 provisions of this subsection, and vendor's or creditor's  
42 single interest insurance with respect to which the  
43 insurer has no right of subrogation. Only one policy of  
44 life insurance and/or one policy of health and accident  
45 insurance and/or one policy of accident insurance and/or  
46 one policy of loss of income insurance on any one  
47 consumer may be in force with respect to any one  
48 contract or agreement at any one time, but one policy  
49 may cover both a consumer and his/her spouse:

50 (a) The amount, terms and conditions of property  
51 insurance shall have a reasonable relation to the existing  
52 hazards or risk of loss, damage or destruction and be  
53 reasonable in relation to the character and value of the  
54 property insured or to be insured; and the term of such  
55 insurance shall be reasonable in relation to the terms of  
56 credit: *Provided*, That nothing shall be deemed to  
57 prohibit the consumer from obtaining, at his/her option,

58 greater coverages for longer periods of time if he/she so  
59 desires;

60 (b) Life insurance shall be in an initial amount not to  
61 exceed the total amount repayable under the consumer  
62 credit agreement, and where a consumer credit sale or  
63 consumer loan is repayable in installments, such  
64 insurance shall at no time exceed the scheduled or  
65 actual amount of unpaid indebtedness, whichever is  
66 greater. Life insurance authorized by this subdivision  
67 shall provide that the benefits shall be paid to the  
68 creditor to reduce or extinguish the unpaid indebted-  
69 ness: *Provided*, That if a separate charge is made for  
70 such insurance and the amount of insurance exceeds the  
71 unpaid indebtedness, where not prohibited, then such  
72 excess shall be payable to the estate of the consumer.  
73 The initial term of such life insurance in connection with  
74 a consumer credit sale, other than a sale pursuant to a  
75 revolving charge account, or in connection with a  
76 consumer loan, other than a loan pursuant to a revolving  
77 loan account, shall not exceed the scheduled term of the  
78 consumer credit agreement by more than fifteen days.  
79 The aggregate amount of periodic benefits payable by  
80 credit accident and health insurance in the event of  
81 disability, as defined in the policy, and loss of income  
82 insurance in the event of involuntary loss of employ-  
83 ment, as defined in the policy, shall not exceed the  
84 unpaid amount of such indebtedness; periodic benefits  
85 payable in connection with a consumer credit sale  
86 pursuant to a revolving charge account or of a consumer  
87 loan pursuant to a revolving loan account may be based  
88 upon the authorized credit limit;

89 (c) When the insurance is obtained or provided by or  
90 through a creditor, the creditor may collect from the  
91 consumer or include as part of the cash price of a  
92 consumer credit sale or as part of the principal of a  
93 consumer loan, or deduct from the proceeds of any  
94 consumer loan the premium, or in the case of group  
95 insurance, the identifiable charge. The premium or  
96 identifiable charge for such insurance required or  
97 obtained by a creditor may equal, but shall not exceed,  
98 the premium rate filed by the insurer with the insu-

99 rance commissioner. In any case, when the creditor  
100 collects the entire premium for such insurance in  
101 advance, such premium shall be remitted by such  
102 creditor to the insurer or the insurance agent, as  
103 specified by the insurer, within ten days from or after  
104 the end of the month in which such collection was made;

105 (d) With respect to insurance against loss of or  
106 damage to property, or against liability, the creditor  
107 shall furnish a clear and specific statement in writing  
108 to the debtor, setting forth the cost of the insurance if  
109 obtained from or through the creditor, and stating that  
110 the debtor may choose the person through whom the  
111 insurance is to be obtained;

112 (e) With respect to consumer credit insurance provid-  
113 ing life, accident, health or loss of income coverage, no  
114 creditor shall require a consumer to purchase such  
115 insurance or to purchase such insurance from such  
116 creditor or any particular agent, broker or insurance  
117 company as a condition precedent to extending credit to  
118 or on behalf of such consumer; and

119 (f) With respect to consumer credit insurance provid-  
120 ing life, accident, health or loss of income coverage, and  
121 when a consumer credit sale or consumer loan, refinanc-  
122 ing or consolidation is paid in full, the creditor receiving  
123 such payment shall inform the debtor of his/her right  
124 to cancel any such insurance and to receive a refund of  
125 unearned premiums: *Provided*, That notice shall be sent  
126 in a form as prescribed by the commissioner as provided  
127 in chapter twenty-nine-a of this code. Such notice shall  
128 contain the name and address of the seller and the  
129 insurer. On the request of the debtor-insured of the  
130 seller of such insurance, the seller shall notify or shall  
131 cause the insurer to be notified of the debtor-insured's  
132 request for cancellation of such insurance. On receipt by  
133 the insurer of notification of the debtor-insured's  
134 requested cancellation of such insurance, the insurer  
135 shall cancel such insurance effective no later than thirty  
136 days from the date of payment in full of such consumer  
137 credit sale, consumer loan, refinancing or consolidation.  
138 Within forty-five days following the date of notification  
139 of cancellation of such insurance and if the debtor-

140 insured has not received repayment of or a credit for  
141 the amount of any unearned premiums by the seller of  
142 such insurance, the insurer shall pay any refund of  
143 unearned premiums to the debtor-insurer or such other  
144 person as directed by the debtor-insurer. An insurer,  
145 seller or creditor who fails to refund any unused  
146 insurance premium or provide the proper notification of  
147 payoff shall be liable for civil damages up to three times  
148 the amount of the unused premium as well as other  
149 remedies as provided for by section one hundred nine,  
150 article seven of this chapter.

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## CHAPTER 51

(Com. Sub. for S. B. 5—By Senators Spears, J. Manchin, Brackenrich and Boley)

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[Passed March 8, 1990; in effect July 1, 1990. Approved by the Governor.]

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AN ACT to repeal section one hundred sixteen, article seven, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to repealing the section creating the consumer affairs advisory council of the consumer protection division of the office of the attorney general.

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

### ARTICLE 7. ADMINISTRATION.

#### §1. Repeal of section relating to consumer affairs advisory council.

1 Section one hundred sixteen, article seven, chapter  
2 forty-six-a of the code of West Virginia, one thousand  
3 nine hundred thirty-one, as amended, is hereby re-  
4 pealed.

## CHAPTER 52

(S. B. 609—Originating in the Committee on Finance)

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[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

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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; to amend and reenact section twenty, article twenty, chapter thirty-one; to amend and reenact sections one, two and four-a, article three, chapter fifty; and to amend and reenact sections eleven and twenty-eight-a, article one, chapter fifty-nine of said code, all relating to the regional jail and prison development fund administered by the regional jail and correctional facilities authority; increasing maximum aggregate amount of indebtedness said authority may issue; increasing fees for filing civil actions in circuit and magistrate courts; creating filing fee schedule for civil actions in magistrate courts; increasing costs charged in criminal proceedings in circuit, magistrate and municipal courts, and requiring payment of increased amounts of such fees and costs into regional jail and prison development fund.

*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; that section twenty, article twenty, chapter thirty-one of said code be amended and reenacted; that sections one, two and four-a, article three, chapter fifty of said code be amended and reenacted; and that sections eleven and twenty-eight-a, article one, chapter fifty-nine of said code be amended and reenacted, all to read as follows:

### Chapter

- 8. Municipal Corporations.
- 31. Corporations.
- 50. Magistrate Courts.
- 59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

**CHAPTER 8. MUNICIPAL CORPORATIONS.****ARTICLE 11. POWERS AND DUTIES WITH RESPECT TO ORDINANCES AND ORDINANCE PROCEDURES.**

§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 against nonresidents.

§8-11-1a. Disposition of criminal costs into state treasury account for regional jail and prison 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 against nonresidents.**

1 To carry into effect the powers and authority con-  
2 ferred upon any municipality or its governing body by  
3 the provisions of this chapter, or any past or future act  
4 of the Legislature of this state, the governing body shall  
5 have plenary power and authority to make and pass all  
6 needful ordinances, orders, bylaws, acts, resolutions,  
7 rules and regulations not contrary to the constitution  
8 and laws of this state; and, for a violation thereof, to  
9 prescribe reasonable penalties in the form of fines,  
10 forfeitures and imprisonment in the county jail or the  
11 place of imprisonment in such municipality, if there be  
12 one, for a term not exceeding thirty days. Such fines,  
13 forfeitures and imprisonment shall be recovered,  
14 imposed or enforced under the judgment of the mayor  
15 of such municipality or the individual lawfully exercis-  
16 ing his functions, or the police court judge or municipal  
17 court judge of a city, if there be one, and may be  
18 suspended upon such reasonable conditions as may be  
19 imposed by such mayor, other authorized individual or  
20 judge. Any municipality may also maintain a civil action  
21 in the name of the municipality in the circuit court of  
22 the county in which the municipality or the major  
23 portion of the territory thereof is located to obtain an  
24 injunction to compel compliance with, or to enjoin a  
25 violation or threatened violation of, any ordinance of  
26 such municipality, and such circuit court shall have  
27 jurisdiction to grant the relief sought. A certified

28 transcript of a judgment for a fine rendered by a  
29 municipal court may be filed in the office of the clerk  
30 of a circuit court and docketed in the judgment lien book  
31 kept in the office of the clerk of the county commission  
32 in the same manner and with the same effect as the  
33 filing and docketing of a certified transcript of judg-  
34 ment rendered by a magistrate court as provided for in  
35 section two, article six, chapter fifty of this code. The  
36 judgment shall include costs assessed against the  
37 defendant. In addition to any other costs which may be  
38 lawfully imposed, an additional cost shall be imposed in  
39 an amount of not less than forty-two dollars in each  
40 proceeding, except that such additional cost shall not be  
41 assessed for a traffic offense that is not a moving  
42 violation, or an offense for which the ordinance does not  
43 provide for a period of incarceration. Of the forty-two  
44 dollars imposed as an additional cost, two dollars shall  
45 be an administrative cost to be retained by the  
46 municipality.

47 Execution shall be by fieri facias issued by the clerk  
48 of the circuit court in the same manner as such writs  
49 are issued on judgments for a fine rendered by circuit  
50 courts or other courts of record under the provisions of  
51 section eleven, article four, chapter sixty-two of this  
52 code.

**§8-11-1a. Disposition of criminal costs into state treasury  
account for regional jail and prison develop-  
ment fund.**

1 The clerk of each municipal court, or such person  
2 designated to receive fines and costs, shall at the end of  
3 each month pay into the regional jail and prison  
4 development fund in the state treasury an amount equal  
5 to forty dollars of the costs collected in each proceeding,  
6 except for traffic offenses that are not moving violations:  
7 *Provided*, That in a case where a defendant has failed  
8 to pay all costs assessed against him, no payment shall  
9 be made to the regional jail and prison development  
10 fund unless and until the defendant has paid all costs  
11 which, when paid, are available for the use and benefit  
12 of the municipality.



**CHAPTER 31. CORPORATIONS.**

**ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.**

**§31-20-20. Authorized limit on borrowing.**

1 The aggregate principal amount of notes, security  
 2 interests and bonds issued by the authority may not  
 3 exceed two hundred million dollars outstanding at any  
 4 one time. In computing the total amount of notes,  
 5 security interests and bonds which may be outstanding  
 6 at any one time, the principal amount of any outstanding  
 7 notes, security interests and bonds refunded or to be  
 8 refunded either by application of the proceeds of the sale  
 9 of any refunding notes, security interests or refunding  
 10 bonds of the authority or by exchange for any such  
 11 notes, security interests or refunding bonds shall be  
 12 excluded. The state board of investments may have  
 13 invested no more than a total aggregate principal  
 14 amount of fifteen million dollars at any one time in such  
 15 notes, security interests or bonds.

**CHAPTER 50. MAGISTRATE COURTS.**

**ARTICLE 3. COSTS, FINES AND RECORDS.**

§50-3-1. Costs in civil actions.

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

§50-3-4a. Disposition of criminal costs and civil filing fees into state treasury account for regional jail and prison development fund.

**§50-3-1. Costs in civil actions.**

1 The following costs shall be charged in magistrate  
 2 courts in civil actions and shall be collected in advance:

3 (a) For filing and trying any civil action and for all  
 4 services connected therewith, but excluding services  
 5 regarding enforcement of judgment, the following  
 6 amounts dependent upon the amount of damages sought  
 7 in the complaint:

8 Where the action is for five hundred  
 9 dollars or less ..... \$20.00

10 Where the action is for more than five  
 11 hundred dollars but not more than  
 12 one thousand dollars ..... \$25.00

13	Where the action is for more than	
14	one thousand dollars but not more	
15	than two thousand dollars .....	\$30.00
16	Where the action is for more than	
17	two thousand dollars .....	\$40.00
18	Where the action seeks relief other	
19	than money damages .....	\$20.00
20	(b) For each service regarding enforcement of a	
21	judgment including execution, suggestion, garnishment	
22	and suggestee execution .....	\$ 5.00
23	(c) For each bond filed in a case .....	\$ 1.00
24	(d) For taking deposition of witness for each hour or	
25	portion thereof .....	\$ 1.00
26	(e) For taking and certifying acknowledgment of a	
27	deed or other writing or taking oath upon an	
28	affidavit .....	\$ .50
29	(f) For mailing any matter required or provided by	
30	law to be mailed by certified or registered mail with	
31	return receipt .....	\$ 1.00
32	Costs incurred in a civil action shall be reflected in	
33	any judgment rendered thereon. The provisions of	
34	section one, article two, chapter fifty-nine of this code,	
35	relating to the payment of costs by poor persons, shall	
36	be applicable to all costs in civil actions.	

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

1 In each criminal case tried in a magistrate court in  
2 which the defendant is convicted, there shall be  
3 imposed, in addition to such other costs, fines, forfei-  
4 tures or penalties as may be allowed by law, costs in the  
5 amount of fifty dollars. No such costs shall be collected  
6 in advance.

7 A magistrate shall assess costs in the amount of two  
8 dollars and fifty cents for issuing a sheep warrant,  
9 appointment and swearing appraisers and docketing the  
10 same.

11 In each criminal case which must be tried by the

12 circuit court but in which a magistrate renders some  
13 service, costs in the amount of ten dollars shall be  
14 imposed by the magistrate court and shall be certified  
15 to the clerk of the circuit court in accordance with the  
16 provisions of section six, article five, chapter sixty-two  
17 of this code.

**§50-3-4a. Disposition of criminal costs and civil filing fees  
into state treasury account for regional jail  
and prison development fund.**

1 The clerk of each magistrate court shall, at the end  
2 of each month, pay into the regional jail and prison  
3 development fund in the state treasury an amount equal  
4 to forty dollars of the costs collected in each criminal  
5 proceeding and all but ten dollars of the costs collected  
6 for the filing of each civil action.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;  
NEWSPAPERS; LEGAL ADVERTISEMENTS.**

**ARTICLE 1. FEES AND ALLOWANCES.**

§59-1-11. Fees to be charged by clerk of circuit court.

§59-1-28a. Disposition of filing fees in civil actions and fees for services in  
criminal cases.

**§59-1-11. Fees to be charged by clerk of circuit court.**

1 The clerk of a circuit court shall charge and collect  
2 for services rendered as such clerk the following fees,  
3 and such fees shall be paid in advance by the parties  
4 for whom such services are to be rendered:

5 For instituting any civil action under the rules of civil  
6 procedure, any statutory summary proceeding, any  
7 extraordinary remedy, the docketing of civil appeals, or  
8 any other action, cause, suit or proceeding, seventy  
9 dollars: *Provided*, That the fee for instituting an action  
10 for divorce shall be twenty dollars plus the fee required  
11 by section six, article two-c, chapter forty-eight of this  
12 code.

13 In addition to the foregoing fees, the following fees  
14 shall likewise be charged and collected:

15 For any transcript, copy or paper made by the clerk

- 16 for use in any other court or otherwise to go out of the  
17 office, for each page, twenty-five cents;
- 18 For action on suggestion, five dollars;
- 19 For issuing an execution, two dollars;
- 20 For issuing or renewing a suggestee execution,  
21 including copies, postage, registered or certified mail  
22 fees and the fee provided by section four, article five-  
23 a, chapter thirty-eight of this code, three dollars;
- 24 For vacation or modification of a suggestee execution,  
25 one dollar;
- 26 For docketing and issuing an execution on a trans-  
27 cript of judgment from magistrate's court, three dollars;
- 28 For arranging the papers in a certified question, writ  
29 of error, appeal or removal to any other court, five  
30 dollars;
- 31 For postage and express and for sending or receiving  
32 decrees, orders or records, by mail or express, three  
33 times the amount of the postage or express charges;
- 34 For each witness summons over and above five, on the  
35 part of either plaintiff or defendant, to be paid by the  
36 party requesting the same, twenty-five cents;
- 37 For additional services (plaintiff or appellant) where  
38 any case remains on the docket longer than three years,  
39 for each additional year or part year, five dollars.
- 40 The clerk shall tax the following fees for services in  
41 any criminal case against any defendant convicted in  
42 such court:
- 43 In the case of any misdemeanor, fifty dollars;
- 44 In the case of any felony, sixty dollars;
- 45 No such clerk shall be required to handle or accept  
46 for disbursement any fees, costs or accounts, of any other  
47 officer or party not payable into the county treasury,  
48 except it be on order of the court or in compliance with  
49 the provisions of law governing such fees, costs or  
50 accounts.

**§59-1-28a. Disposition of filing fees in civil actions and fees for services in criminal cases.**

1 (a) The clerk of each circuit court shall, at the end of  
2 each month, pay into the regional jail and prison  
3 development fund in the state treasury an amount equal  
4 to sixty dollars of every filing fee received for instituting  
5 any civil action under the rules of civil procedure, any  
6 statutory summary proceeding, any extraordinary  
7 remedy, the docketing of civil appeals, or any other  
8 action, cause, suit or proceeding in the circuit court:  
9 *Provided*, That in actions for divorce, the clerk shall pay  
10 into such fund an amount equal to ten dollars of the  
11 filing fee for instituting such actions.

12 (b) The clerk of each circuit court shall, at the end of  
13 each month, pay into the regional jail and prison  
14 development fund in the state treasury an amount equal  
15 to forty dollars of every fee for service received in any  
16 criminal case against any defendant convicted in such  
17 court.

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## CHAPTER 53

(H. B. 4559—By Delegates Ashley and Rowe)

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[Passed March 7, 1990: in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section fourteen, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend chapter twenty-five of said code by adding thereto a new article, designated article five; and to amend and reenact sections eight, nine, ten and twelve, article five, chapter sixty-one of said code, all relating to disallowing an award from the crime victims compensation fund for any victim if the injury occurred while the victim was confined in any state, county or city jail, prison, private prison or correctional facility; relating to the private prison enabling and contracting act; granting authority to the commissioner of the division of corrections; granting authority to the

secretary of the department of public safety; prohibiting the operation of a private prison without the approval of the secretary; prohibiting the construction, modification, lease or alteration of a private prison without the approval of the regional jail authority; granting authority for the state or its political subdivisions to contract with private prisons for correctional services; granting the private prison contractor the ability to contract with foreign authorities for correctional services; allowing private prison contractors to house certain foreign inmates within West Virginia; limitations; requiring the contractor to report to the commissioner of the division of corrections and to appropriate foreign authorities regarding public information, inspections, crimes, extraordinary or unusual occurrences; mandating that certain records of the private prison be deemed public records; requiring the terms of the contract include provisions for security, discipline, adherence to rules of the commissioner, proper provisions for inmates, requiring the contractor and the contracting agency hold the state and its political subdivisions harmless, requiring the contractor to indemnify the state, requiring the contractor to transport an inmate back to the sending state for parole, furlough or release; allowing the regional jail authority to approve the site of a proposed facility; allowing for an exemption from regional jail authority approval for the Spencer state hospital location; providing for the standards of operation of the facility; requiring that services and programs meet the standards of the jail and correctional facility standards commission; requiring that the prison operations comply with all federal, state and local laws, rules, regulations, or ordinances, building, safety and health codes; providing a mechanism for notices of violations, assessing penalties, providing for a maximum dollar limit for violations and penalties, criteria for determining dollar amount; relating to hearing requirements and informal hearings; providing for a hearing board; providing for access by the contracting agency or the commissioner to the prison facility; creating a special fund; providing for reimbursement of expenses of inspections by the commissioner;

requiring annual report; providing for restrictions on the use of the defense of sovereign immunity; providing that certain powers and duties are not delegable to the contractor; providing for community service by inmates; requiring bonding; requiring insurance and the criteria therefor; prohibiting self-insurance; requiring indemnification to the state from the contractor; providing for approval of firearms training program; relating to the capture of escapees; providing that nonresident private correctional officers be deemed residents in certain circumstances; relating to employee training requirements and preference; requiring reimbursement to the state and its political subdivisions for expenses incurred in the recapture of escapees and the detention thereof; defining the offense of aiding escape from a jail, prison, private prison, juvenile facility or juvenile detention center and providing criminal penalties therefor; defining the offense of delivering anything to a person in the custody of a jail, prison, private prison, juvenile facility or juvenile detention center with the intent to aid or facilitate or attempt escape therefrom or for forcibly rescuing or attempting to rescue therefrom and providing criminal penalties therefor; defining the offense of delivering money or other thing of value, any written or printed matter, any article of merchandise, food or clothing, any medicine, utensil or instrument of any kind to an adult or inmate confined in a jail, prison, private prison, juvenile facility or juvenile detention center and providing criminal penalties therefor, exceptions; defining the offense of the transportation of alcoholic liquor, nonintoxicating beer, poison, explosive, firearm or other dangerous or deadly weapon or any controlled substance onto the grounds of jail, prison, private prison, juvenile facility or juvenile detention center and providing criminal penalties therefor; defining the offense of delivery of alcoholic liquor, nonintoxicating beer, poison, explosive, firearms or other dangerous or deadly weapon or any controlled substance to a person in the custody of a jail, prison, private prison, juvenile facility or juvenile detention center and providing criminal penalties therefor; defining the offense for the purchase, acceptance as a

gift, securing by barter, trade or in any other manner, any article or articles manufactured at or belonging to any jail, prison, private prison, juvenile facility or juvenile detention center and providing criminal penalties therefor, exceptions; defining the offense of persuading, inducing or enticing or attempting to persuade, induce or entice any person confined in a jail, prison, private prison, juvenile facility or juvenile detention center to escape therefrom or to engage or aid in any insubordination to the authority of any jail, prison, private prison, juvenile facility or juvenile detention center and providing criminal penalties therefor; defining the offense for a jailer or other officer or private correctional officer for permitting escape or refusing to receive custody and providing criminal penalties therefor; defining the offense of breaking or escaping by force, violence, or by any subterfuge, device or deception from a jail or private prison by a convicted or unconvicted prisoner and providing criminal penalties therefor; defining the offense of the abduction or persuading, inducing or enticing escape from a state benevolent or correctional institution, private prison or mental health facility and providing criminal penalties therefor; defining the offense of concealment or harboring of an inmate or patient from a state benevolent or correctional institution, private prison or mental health facility and providing criminal penalties therefor; providing for the return of fugitives; defining the offense of trespassing, idling, lounging or loitering on the grounds of state benevolent or correctional institution, private prison or mental health facility and providing criminal penalties therefor; defining the offense of communicating or attempting to communicate, by signals, signs, writings or otherwise with an inmate or patient, or conveying or assisting in any way establishing communication with an inmate or patient of a state benevolent or correctional institution, private prison or mental health facility and providing criminal penalties therefor, exceptions; defining the offense of intent to defraud, purchase, accept gifts, secure by barter or trade, or in any other manner, any article of clothing from an inmate or patient of a state benevolent



or correctional institution, private prison or mental health facility and providing criminal penalties therefor, exceptions.

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

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

#### Chapter

- 14. Claims Due and Against the State.
- 25. Division of Corrections.
- 61. Crimes and Their Punishment.

#### CHAPTER 14. CLAIMS DUE AND AGAINST THE STATE.

#### ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

#### §\*14-2A-14. Grounds for denial of claim or reduction of award; maximum awards; awards for emotional distress; mental anguish, etc.

1 (a) Except as provided in subsection (b), section ten  
2 of this article, the judge or commissioner shall not  
3 approve an award of compensation to a claimant who  
4 did not file his application for an award of compensation  
5 within two years after the date of the occurrence of the  
6 criminally injurious conduct that caused the injury or  
7 death for which he is seeking an award of compensation.

8 (b) An award of compensation shall not be approved  
9 if the criminally injurious conduct upon which the claim  
10 is based was not reported to a law-enforcement officer  
11 or agency within seventy-two hours after the occurrence  
12 of the conduct, unless it is determined that good cause  
13 existed for the failure to report the conduct within the  
14 seventy-two hour period.

15 (c) The judge or commissioner shall not approve an  
16 award of compensation to a claimant who is the offender

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\*Clerk's Note: §14-2A-14 was also amended by H. B. 4256 (Chapter 67), which passed subsequent to this act.

17 or an accomplice of the offender who committed the  
18 criminally injurious conduct, nor to any claimant if the  
19 award would unjustly benefit the offender or his  
20 accomplice. Unless a determination is made that the  
21 interests of justice require that an award be approved  
22 in a particular case, an award of compensation shall not  
23 be made to the spouse of, or to a person living in the  
24 same household with, the offender or accomplice of the  
25 offender, or to the parent, child, brother or sister of the  
26 offender or his accomplice.

27 (d) A judge or commissioner, upon a finding that the  
28 claimant or victim has not fully cooperated with  
29 appropriate law-enforcement agencies, or the claim  
30 investigator, may deny a claim, reduce an award of  
31 compensation, and may reconsider a claim already  
32 approved.

33 (e) An award of compensation shall not be approved  
34 if the injury occurred while the victim was confined in  
35 any state, county or city jail, prison, private prison or  
36 correctional facility.

37 (f) After reaching a decision to approve an award of  
38 compensation, but prior to announcing such approval,  
39 the judge or commissioner shall require the claimant to  
40 submit current information as to collateral sources on  
41 forms prescribed by the clerk of the court of claims. The  
42 judge or commissioner shall reduce an award of  
43 compensation or deny a claim for an award of compen-  
44 sation that is otherwise payable to a claimant to the  
45 extent that the economic loss upon which the claim is  
46 based is or will be recouped from other persons,  
47 including collateral sources, or if such reduction or  
48 denial is determined to be reasonable because of the  
49 contributory misconduct of the claimant or of a victim  
50 through whom he claims. If an award is reduced or a  
51 claim is denied because of the expected recoupment of  
52 all or part of the economic loss of the claimant from a  
53 collateral source, the amount of the award or the denial  
54 of the claim shall be conditioned upon the claimant's  
55 economic loss being recouped by the collateral source:  
56 *Provided*, That if it is thereafter determined that the  
57 claimant will not receive all or part of the expected

58 recoupment, the claim shall be reopened and an award  
59 shall be approved in an amount equal to the amount of  
60 expected recoupment that it is determined the claimant  
61 will not receive from the collateral source, subject to the  
62 limitation set forth in subsection (g) of this section.

63 (g) Except in the case of death, compensation payable  
64 to a victim and to all other claimants sustaining  
65 economic loss because of injury to that victim shall not  
66 exceed thirty-five thousand dollars in the aggregate.  
67 Compensation payable to a victim of criminally injur-  
68 ious conduct which causes permanent injury may  
69 include, in addition to economic loss, an amount up to  
70 fifteen thousand dollars for emotional distress and pain  
71 and suffering which are proximately caused by such  
72 conduct. Compensation payable to all claimants because  
73 of the death of the victim shall not exceed fifty thousand  
74 dollars in the aggregate, but may include, in addition  
75 to economic loss, compensation to the claimants specified  
76 in paragraph (2), subdivision (a), section three of this  
77 article, for sorrow, mental anguish and solace.

## CHAPTER 25. DIVISION OF CORRECTIONS.

### ARTICLE 5. PRIVATE PRISONS.

- §25-5-1. Short title.
- §25-5-2. Legislative findings and purpose.
- §25-5-3. Definitions.
- §25-5-4. Authority of the commissioner of the division of corrections;  
authority of secretary of department of public safety.
- §25-5-5. Prohibition of constructing or operating a correctional facility;  
exceptions.
- §25-5-6. Authority of the state and its political subdivisions to contract for  
correctional services.
- §25-5-7. Granting private contractor ability to contract with foreign  
contracting agencies.
- §25-5-8. Reporting requirements.
- §25-5-9. Terms of contract.
- §25-5-10. Site selection.
- §25-5-11. Standards of operation; violations.
- §25-5-12. Access by contracting agency, commissioner; reimbursement of  
expenses; report by commissioner.
- §25-5-13. Sovereign immunity.
- §25-5-14. Powers and duties not delegable to contractor.
- §25-5-15. Bonding requirements.
- §25-5-16. Insurance.
- §25-5-17. Liability; indemnification.

§25-5-18. Firearms; capture of escapees; nonresident private correctional officers.

§25-5-19. Employee training requirements; preference.

§25-5-20. Reimbursement to state and its subdivisions.

### §25-5-1. Short title.

1 This article shall be known as "The Private Prison  
2 Enabling and Contracting Act."

### §25-5-2. Legislative findings and purpose.

1 The Legislature hereby finds that adequate and  
2 modern prison facilities are essential to the safety and  
3 welfare of the people of this state and other states, and  
4 that contracting for portions of governmental services is  
5 a viable alternative for this state and its political  
6 subdivisions.

7 Further, the Legislature finds that allowing for the  
8 establishment of private prison facilities is an economic  
9 development opportunity for local communities and will  
10 augment the general revenue fund.

### §25-5-3. Definitions.

1 As used in this article, unless the context clearly  
2 requires a different meaning, the term:

3 (a) "Commissioner" means the commissioner of the  
4 division of corrections.

5 (b) "Contracting agency" means the appropriate  
6 governmental agency with the authority to enter into a  
7 contract with a prison vendor for correctional services.  
8 A contracting agency shall include, but not be limited  
9 to, the state of West Virginia and its political subdivi-  
10 sions, the federal government, any federal agency, one  
11 or more of the remaining United States, or a political  
12 subdivision of one or more of the remaining United  
13 States.

14 (c) "Correctional services" means the following  
15 functions, services and activities, when provided within  
16 a prison or otherwise:

17 (1) Design and modification or construction of prison  
18 facilities;

- 19       (2) Education, training and jobs programs;
- 20       (3) Development and implementation of systems for  
21 the classification of inmates and management informa-  
22 tion systems or other information systems or services;
- 23       (4) Food services, commissary, medical services,  
24 transportation, sanitation or other ancillary services;
- 25       (5) Counseling, special treatment programs or other  
26 programs for special needs;
- 27       (6) Recreational, religious or other activities; and
- 28       (7) Operation of correctional facilities, including  
29 management, custody of inmates, and providing  
30 security.
- 31       (d) "Division" means the division of corrections of the  
32 department of public safety of West Virginia.
- 33       (e) "Foreign" in the context of a foreign state or other  
34 unit of government means any state or political subdi-  
35 vision or the District of Columbia or the federal  
36 government or a federal agency other than the state of  
37 West Virginia and its political subdivisions.
- 38       (f) "Inmate" means an individual sentenced to incar-  
39 ceration by a court or contracting agency.
- 40       (g) "Prison contractor" or "contractor" or "prison  
41 vendor" means any individual, partnership, corporation,  
42 unincorporated association or any other nongovernmen-  
43 tal entity which is licensed to do business in the state  
44 of West Virginia and which has or will enter into a  
45 contractual agreement with a contracting agency to  
46 provide correctional services.
- 47       (h) "Prison" or "prison facility" or "facility" means  
48 any minimum or medium or maximum adult correc-  
49 tional institution operated under the authority of the  
50 division or of a political subdivision of this state,  
51 whether obtained by purchase, lease, construction,  
52 reconstruction, restoration, improvement, alteration,  
53 repair, or other means.
- 54       (i) "Private correctional officer" means any full-time  
55 or part-time employee of a prison vendor whose primary

56 responsibility is the supervision, protection, care and  
57 control of inmates within a private correctional facility.

58 (j) "Regional jail authority" means the West Virginia  
59 regional jail and correctional facility authority created  
60 by article twenty, chapter thirty-one of this code.

61 (k) "Secretary" means the secretary of the department  
62 of public safety.

63 (l) "State" means the state of West Virginia.

**§25-5-4. Authority of the commissioner of the division of  
corrections; authority of secretary of depart-  
ment of public safety.**

1 (a) The commissioner of the division of corrections  
2 shall promulgate rules, in accordance with chapter  
3 twenty-nine-a of this code, to implement the provisions  
4 of this article.

5 (b) The commissioner shall have the authority to  
6 recommend or to not recommend to the secretary that  
7 a prison vendor be granted the privilege of operating a  
8 prison facility in this state.

9 (c) The commissioner shall have the authority to issue  
10 notices of violations, assess penalties and proceed in the  
11 collection of money due the state by private contractors.

12 (d) The secretary of the department of public safety  
13 may, upon the recommendation of the commissioner,  
14 grant approval for a prison vendor to operate a private  
15 prison in this state.

16 (e) The commissioner shall have the authority to  
17 accept the custody of and to confine inmates from  
18 sentencing authorities located outside the state of West  
19 Virginia.

20 (f) The commissioner shall have the authority to  
21 expend funds contained in the private prison fund,  
22 established pursuant to subdivision (2), subsection (g),  
23 section eleven of this article, to cover any and all  
24 expenses incurred because of private prison operations  
25 within the state.

**§25-5-5. Prohibition of constructing or operating a correctional facility; exceptions.**

1 (a) No person may operate a private prison facility or  
2 provide correctional services in this state without first  
3 obtaining the written approval of the secretary.

4 (b) No person may construct, modify, lease, or  
5 otherwise alter a private prison facility without first  
6 obtaining the written approval of the regional jail  
7 authority.

8 (c) Nothing in this section shall impair the right of the  
9 state or its political subdivisions to operate a prison  
10 facility or provide correctional services.

11 (d) No private contractor may operate a correctional  
12 facility in this state for the confinement of maximum  
13 security inmates sentenced to a term of incarceration by  
14 a foreign court.

**§25-5-6. Authority of the state and its political subdivisions to contract for correctional services.**

1 A contracting agency of this state, its political  
2 subdivisions or their designee may contract with a  
3 prison contractor for the construction, lease, acquisition,  
4 improvement, operation, and management of correc-  
5 tional facilities and services.

**§25-5-7. Granting private contractor ability to contract with foreign contracting agencies.**

1 A private contractor upon the approval of the secre-  
2 tary and the regional jail authority may contract for  
3 correctional services with foreign contracting agencies  
4 provided such contract meets the minimal requirements  
5 contained in section nine of this article. Upon approval  
6 the facility may receive inmates sentenced to confine-  
7 ment by a foreign authority.

**§25-5-8. Reporting requirements.**

1 The contractor shall prepare the following informa-  
2 tion and submit it to the commissioner, as applicable:

3 (1) The prison vendor shall develop and implement a  
4 plan for the dissemination of information about the  
5 facility to the public, government agencies and the

6 media. This information shall be made available to all  
7 persons. All documents and records, except financial  
8 records, inmate records and personnel records, main-  
9 tained by the prison vendor, shall be deemed public  
10 records.

11 (2) The facility shall comply with all applicable laws  
12 and regulations of the local and state government  
13 regarding sanitation, food service, safety and health.  
14 Copies of inspections completed by the appropriate  
15 authorities shall be sent by the contractor to the division.

16 (3) The facility shall report for investigation all  
17 crimes in connection with the facility to the division of  
18 public safety and all other political subdivisions' law-  
19 enforcement agencies having jurisdiction where the  
20 prison is located. A written report shall be made of all  
21 extraordinary or unusual occurrences and forwarded to  
22 the commissioner. Extraordinary or unusual occurren-  
23 ces shall include, but not be limited to:

- 24 (A) Death of an inmate or staff member;
- 25 (B) Attempted suicide or suicide;
- 26 (C) Serious injury, whether accidental or self-  
27 inflicted;
- 28 (D) Attempted escape or escape from confinement;
- 29 (E) Fire;
- 30 (F) Riot;
- 31 (G) Battery, whether by a staff member or inmate;
- 32 (H) Sexual assaults; and
- 33 (I) Occurrence of contagious diseases.

**§25-5-9. Terms of contract.**

1 Contracts awarded under the provisions of this article  
2 shall:

3 (1) Provide for internal and perimeter security to  
4 protect the public, staff members and inmates.

5 (2) Impose discipline on inmates only in accordance  
6 with the rules promulgated by the commissioner.



7 (3) Provide for proper food, clothing, housing, and  
8 medical care for inmates.

9 (4) Require that a contractor shall adhere to the rules  
10 promulgated by the commissioner.

11 (5) Require that the contractor and the contracting  
12 agency shall indemnify, defend and hold harmless the  
13 state, its agencies, political subdivisions, and the  
14 employees and other contractors of the state, its agencies  
15 and political subdivisions from any claim or cause of  
16 action which arises from any act or omission by the  
17 contractor or any of the contractor's employees or  
18 subcontractors.

19 (6) Require the contractor to indemnify the state or  
20 its political subdivisions for any moneys the state or its  
21 political subdivisions may expend for claims against the  
22 state or its political subdivisions pursuant to section  
23 seventeen of this article.

24 (7) Require a foreign contracting agency to transport  
25 an inmate back to the contracting agency's state for  
26 parole, furlough or release.

#### §25-5-10. Site selection.

1 (a) The regional jail authority shall approve the site  
2 for the proposed facility. Approval shall be in accor-  
3 dance with legislative rules promulgated in accordance  
4 with chapter twenty-nine-a of this code. One such  
5 legislative rule shall establish criteria for identifying  
6 and evaluating potential sites for private prisons and  
7 shall provide for a public hearing or hearings to allow  
8 reasonable participation in the selection process by the  
9 citizens of the area to be affected by the construction  
10 and operation of a private prison.

11 (b) Notwithstanding the provisions of subsection  
12 (a) of this section, the Legislature hereby approves the  
13 site at the former Spencer state hospital for a private  
14 prison facility: *Provided*, That the contractor shall  
15 comply with the remaining provisions of this article:  
16 *Provided, however*, That the contractor shall not be  
17 required to comply with subsection (b) of section five of  
18 this article: *Provided further*, That the contractor shall

19 not be required to obtain the approval of the regional  
20 jail authority as required by section seven of this article.

**§25-5-11. Standards of operation; violations.**

1 (a) The facility shall be staffed at all times. The  
2 staffing pattern shall be adequate to ensure intense  
3 supervision of inmates and maintenance of security  
4 within the facility. The staffing pattern shall address  
5 the facility's operations and programs, transportation  
6 and security needs. In determining security need,  
7 considerations shall include, but not be limited to, the  
8 proximity of the facility to neighborhoods and schools.

9 (b) The facility shall provide the following services  
10 and programs which shall be consistent with the  
11 standards of the jail and correctional facilities standards  
12 commission:

- 13 (1) Health and medical services;
- 14 (2) Food services;
- 15 (3) Mail, telephone use, and visitation;
- 16 (4) Access to legal services and legal materials;
- 17 (5) Vocational training;
- 18 (6) Educational programs;
- 19 (7) Counseling services including personal counseling;
- 20 (8) Drug and alcohol counseling; and
- 21 (9) Sanitation services.

22 (c) In addition to the requirements of subsections  
23 (a) and (b) of this section, all facilities governed by this  
24 article shall be designed, constructed and at all times  
25 maintained and operated in accordance with standards  
26 and rules of the jail and correctional facility standards  
27 commission pursuant to section nine, article twenty,  
28 chapter thirty-one of the code of West Virginia, as  
29 amended: *Provided*, That any more stringent require-  
30 ments mandated by the commissioner shall be complied  
31 with.

32 (d) All facilities governed by this article shall at all

33 times comply with all applicable federal and state  
34 constitutional standards, all applicable federal laws and  
35 rules and regulations, state laws and rules and local  
36 ordinances, building, safety and health codes.

37 (e) If any of the requirements of subsection (d) of this  
38 section have not been complied with, the commissioner  
39 may cause a notice of violation to be served upon the  
40 contractor or his duly authorized agent. A copy of the  
41 notice shall be handed to the contractor or his duly  
42 authorized agent in person or served by United States  
43 certified mail, return receipt requested, addressed to the  
44 contractor at the permanent address shown on the  
45 application for approval to operate a prison facility. The  
46 notice shall specify in what respects the contractor has  
47 failed to comply with subsection (d) and shall specify a  
48 reasonable time for abatement of the violation not to  
49 exceed fifteen days. If the contractor has not abated the  
50 violation within the time specified in the notice, or any  
51 reasonable extension thereof, which extension is not to  
52 exceed seventy-five days, the commissioner shall assess  
53 a penalty as hereinafter provided. If a violation is not  
54 abated within the time specified or any extension  
55 thereof, a mandatory civil penalty of not less than five  
56 hundred dollars per day per violation shall be assessed  
57 until the violation is abated.

58 (f) Any contractor who violates any part of subsection  
59 (d) may also be assessed an additional civil penalty in  
60 the discretion of the commissioner. The penalty shall not  
61 exceed five hundred dollars per day. Each day of  
62 continuing violation may be deemed a separate violation  
63 for purposes of penalty assessments. In determining the  
64 amount of the penalty, the commissioner shall consider  
65 the contractor's history of previous violations at the  
66 particular facility, the seriousness of the violation,  
67 including any hazard to the health or safety of the  
68 public, whether the contractor was negligent, and the  
69 demonstrated good faith of the contractor in attempting  
70 to achieve timely compliance after notification of the  
71 violation.

72 (g) (1) Upon the issuance of a notice or order pursuant  
73 to this section, the commissioner shall, within thirty

74 days, set a proposed penalty assessment and notify the  
75 contractor in writing of such proposed penalty assess-  
76 ment. The proposed penalty assessment must be paid in  
77 full within thirty days of receipt thereof or, if the  
78 contractor desires to contest the violation, an informal  
79 conference with the commissioner may be requested  
80 within fifteen days or a formal hearing before three  
81 members of the regional jail authority, who are ap-  
82 pointed by the secretary to hear cases pursuant to this  
83 article, may be requested within thirty days. The notice  
84 of proposed penalty assessment shall advise the contrac-  
85 tor of the right to an informal conference or a formal  
86 hearing pursuant to this section. When an informal  
87 conference is requested, the contractor shall have fifteen  
88 days from receipt of the commissioner's decision  
89 resulting therefrom to request a formal hearing before  
90 three members of the regional jail authority.

91 (A) When an informal conference is held, the commis-  
92 sioner shall have authority to affirm, modify or vacate  
93 the notice, order or proposed penalty assessment.

94 (B) Formal hearings shall be subject to the provisions  
95 of article five, chapter twenty-nine-a of this code.  
96 Following the hearing, the three regional jail authority  
97 members may affirm, modify or vacate the notice, order  
98 or proposed penalty assessment and, when appropriate,  
99 incorporate an assessment order requiring that the  
100 assessment and costs of the proceedings be paid.

101 (2) Civil penalties under this section may be recovered  
102 by the commissioner in the circuit court in the county  
103 where the facility is located or in the circuit court of  
104 Kanawha County. Civil penalties collected under this  
105 article shall be deposited with the state treasurer to the  
106 credit of the division of corrections in a special revenue  
107 fund to be known as the "Private Prison Fund," which  
108 is hereby created.

**§25-5-12. Access by contracting agency, commissioner;  
reimbursement of expenses; report by  
commissioner.**

1 (a) The commissioner shall cause to be made such  
2 inspections of prison facilities as are necessary to  
3 effectively enforce the requirements of this article. The

4 commissioner or his authorized representative or a  
5 contracting agency shall have access to all areas of the  
6 facility and to inmates and staff at all times. The  
7 contractor shall provide to the commissioner any and all  
8 data, reports, and other materials that the commissioner  
9 determines are necessary to carry out inspections  
10 pursuant to this article.

11 (b) The contractor shall reimburse the division of  
12 corrections for expenses incurred for inspections. Such  
13 reimbursement shall be payable to the division of  
14 corrections.

15 (c) The commissioner shall report on the performance  
16 of contractors operating within this state, no less  
17 frequently than annually, until the year one thousand  
18 nine hundred ninety-three and thereafter as requested  
19 by either the speaker of the House of Delegates, the  
20 president of the Senate, the regional jail authority or the  
21 governor. Upon such request, the report shall be  
22 submitted to the speaker of the House of Delegates, to  
23 the president of the Senate, to the regional jail authority  
24 and to the governor.

#### §25-5-13. Sovereign immunity.

1 The sovereign immunity of the state shall not extend  
2 to the contractor or its insurer.

#### §25-5-14. Powers and duties not delegable to contractor.

1 (a) No contract for correctional services may autho-  
2 rize, allow or imply a delegation of the authority or  
3 responsibility of the contracting agency to a prison  
4 contractor for any of the following:

5 (1) Developing or implementing procedures for  
6 calculating inmate release and parole eligibility dates;

7 (2) Developing or implementing procedures for  
8 calculating and awarding good time;

9 (3) Approving inmates for work release;

10 (4) Approving the type of work inmates may perform  
11 and the wages or good time, if any, which may be given  
12 to inmates engaging in such work;

- 13 (5) Granting, denying or revoking good time; and  
14 (6) Recommending that the contracting state's parole  
15 authority either deny or grant parole, although the  
16 contractor may submit written reports that have been  
17 prepared in the ordinary course of business.
- 18 (b) Notwithstanding the provisions of subsection  
19 (a) of this section, the contractor may use inmates for  
20 community service upon the request and approval of the  
21 political subdivision where the prison is located.

**§25-5-15. Bonding requirements.**

1 A contractor shall give a performance bond payable  
2 to the state of West Virginia, in a form satisfactory to  
3 the commissioner, executed by a surety company  
4 qualified to do business in this state and in the penal  
5 sum, as determined by the commissioner, in an amount  
6 not less than one hundred thousand dollars. The bond  
7 shall be conditioned on the contractor performing all the  
8 requirements of this article and the rules promulgated  
9 hereunder.

**§25-5-16. Insurance.**

1 (a) The contractor shall provide an adequate policy of  
2 insurance specifically including insurance for civil  
3 rights claims as determined by a risk management or  
4 actuarial firm with demonstrated experience in public  
5 liability for state governments. In determining the  
6 adequacy of the policy, such risk management or  
7 actuarial firm shall determine whether:

8 (1) The insurance is adequate to protect the state, its  
9 political subdivisions or other contracting agencies from  
10 actions by a third party against the contractor;

11 (2) The insurance is adequate to protect the state, its  
12 political subdivisions or contracting agencies against  
13 claims arising as a result of any occurrence; and

14 (3) The insurance is adequate to satisfy other require-  
15 ments specified by the risk management or actuarial  
16 firm.

17 (b) The insurance contract shall contain a provision

18 that the state, its political subdivisions and contracting  
19 agencies are named insureds, and that the state, its  
20 political subdivisions and contracting agencies shall be  
21 sent any notice of cancellation.

22 (c) The contractor shall not self-insure.

**§25-5-17. Liability; indemnification.**

1 A contractor which has been approved to operate a  
2 facility pursuant to this article shall indemnify, defend  
3 and hold harmless the state, its officers, agents, and  
4 employees, and any local government entity in the state  
5 having jurisdiction over the facility or ownership of the  
6 facility from:

7 (1) Any claims or losses for services rendered by the  
8 contractor or person performing or supplying services  
9 in connection with the performance of the contract;

10 (2) Any claims or losses to any person injured or  
11 damaged by the willful or negligent acts of the contrac-  
12 tor, its officers or employees in the operation of a private  
13 prison or in the performance of the contract;

14 (3) Any claims or losses resulting to any person  
15 injured or damaged by the private contractor, its  
16 officers or employees by the publication, translation,  
17 reproduction, delivery, performance, use or disposition  
18 of any data processed under the contract in a manner  
19 not authorized by the contract, or by federal or state  
20 regulations or statutes;

21 (4) Any failure of the contractor, its officers or  
22 employees to adhere to West Virginia laws, including,  
23 but not limited to, labor laws and minimum wage laws;

24 (5) Any constitutional, federal, state or civil rights  
25 claim brought against the state related to the prison  
26 facility;

27 (6) Any claims, losses, demands or causes of action  
28 arising out of the contractor's activities in this state; and

29 (7) Any attorney's fees or court costs arising from any  
30 habeas corpus actions or other inmate suits which may  
31 arise, including, but not limited to, attorney's fees for

32 the state's representation as well as for any court  
33 appointed representation of any inmate as well as the  
34 costs of any special judge who may be appointed to hear  
35 such actions.

**§25-5-18. Firearms; capture of escapees; nonresident private correctional officers.**

1 (a) Private correctional officers of a private contrac-  
2 tor shall be authorized to carry and use firearms in the  
3 course of their employment only after completing a  
4 training course, approved by the commissioner, in the  
5 use of firearms in accordance with rules promulgated  
6 by the division.

7 (b) Upon notification by the contractor of an escape  
8 from the facility or a disturbance at the facility, the  
9 state shall use all reasonable means to recapture  
10 escapees or quell any disturbance.

11 (c) When acting within the scope of their normal  
12 employment at the private prison facility, nonresident  
13 private correctional officers shall be deemed residents  
14 for purposes of section eleven, article six, chapter sixty-  
15 one of this code.

**§25-5-19. Employee training requirements; preference.**

1 (a) All employees of a facility operated pursuant to  
2 this article shall receive training in a program approved  
3 by the commissioner. All training expenses shall be the  
4 responsibility of the contractor.

5 (b) West Virginia residents shall be given a hiring  
6 preference for positions at the facilities permitted to  
7 operate in accordance with this article.

**§25-5-20. Reimbursement to state and its subdivisions.**

1 Any cost incurred by the state or its political subdi-  
2 visions relating to the apprehension of an escapee or the  
3 quelling of a disturbance at the facility shall be  
4 chargeable to and borne by the contractor. The contrac-  
5 tor shall also reimburse the state or its political  
6 subdivisions for all reasonable costs incurred relating to  
7 the temporary detention of the escapee following  
8 recapture.



## CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

### ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-8. Aiding escape and other offenses relating to adults and juveniles in custody, imprisoned or in detention; penalties.

§61-5-9. Permitting escape; refusal of custody of prisoner; penalties.

§61-5-12. Escapes from, and other offenses relating to, state benevolent and correctional institution, or private prison or mental health facilities; penalties.

#### §61-5-8. Aiding escape and other offenses relating to adults and juveniles in custody, imprisoned or in detention; penalties.

1 (a) Where any adult or juvenile is lawfully detained  
2 in custody or as an inmate or prisoner in any jail, prison  
3 or private prison or as a resident of any juvenile facility  
4 or juvenile detention center, if any other person shall  
5 deliver anything into the jail, prison, private prison,  
6 facility or juvenile detention center or other place of  
7 custody of such adult or juvenile with the intent to aid  
8 or facilitate such adult's or juvenile's escape or attempt-  
9 ed escape therefrom, or if such other person shall  
10 forcibly rescue or attempt to rescue such adult or  
11 juvenile therefrom, such other person is guilty of a  
12 felony, and, upon conviction thereof, shall be confined in  
13 the penitentiary not less than one nor more than five  
14 years.

15 (b) Where any adult or juvenile is lawfully detained  
16 in custody or as an inmate or prisoner in any jail, prison  
17 or private prison or as a resident of any juvenile facility  
18 or juvenile detention center, if any other person shall  
19 deliver any money or other thing of value, any written  
20 or printed matter, any article of merchandise, food or  
21 clothing, any medicine, utensil or instrument of any  
22 kind to such adult or juvenile without the express  
23 authority and permission of the jailer, warden, private  
24 correctional officer or other supervising officer and with  
25 knowledge that such adult or juvenile is so lawfully  
26 detained, such other person is guilty of a misdemeanor,  
27 and, upon conviction thereof, shall be fined not less than  
28 fifty dollars nor more than five hundred dollars and  
29 imprisoned in the county jail not less than three nor

30 more than twelve months: *Provided*, That nothing herein  
31 shall preclude an attorney or any of his or her employees  
32 from supplying to such detainee any written or printed  
33 material which pertains to that attorney's representa-  
34 tion of said detainee.

35 (c) If any person transports any alcoholic liquor,  
36 nonintoxicating beer, poison, explosive, firearm or other  
37 dangerous or deadly weapon or any controlled substance  
38 as defined by chapter sixty-a of this code onto the  
39 grounds of any jail or prison, or private prison or  
40 juvenile facility or detention center within this state and  
41 is unauthorized by law to do so, or is unauthorized by  
42 the administration of said jail or prison, or private  
43 prison or juvenile facility or detention center, such  
44 person is guilty of a felony, and, upon conviction thereof,  
45 shall be fined not less than one thousand nor more than  
46 five thousand dollars or imprisoned in the penitentiary  
47 not less than one year nor more than five years, or, in  
48 the discretion of the court, be confined in the county jail  
49 not more than one year and shall be fined not more than  
50 five hundred dollars.

51 (d) If any person delivers any alcoholic liquor,  
52 nonintoxicating beer, poison, explosive, firearm or other  
53 dangerous or deadly weapon, or any controlled sub-  
54 stance as defined by chapter sixty-a of this code to an  
55 inmate or prisoner in any jail, prison or private prison  
56 or to any resident of any juvenile facility or juvenile  
57 detention center within this state and is unauthorized by  
58 law to do so, or is unauthorized by the administration  
59 of said jail or prison, or private prison or juvenile  
60 facility or detention center, such person is guilty of a  
61 felony, and, upon conviction thereof, shall be fined not  
62 less than one thousand nor more than five thousand  
63 dollars or imprisoned in the penitentiary not less than  
64 one year nor more than five years.

65 (e) Whoever purchases, accepts as a gift, or secures by  
66 barter, trade or in any other manner, any article or  
67 articles manufactured at or belonging to any jail, prison,  
68 or private prison, juvenile facility or juvenile detention  
69 center from any inmate, prisoner or resident detained  
70 therein is guilty of a misdemeanor, and, upon conviction

71 thereof, shall be fined not less than fifty dollars nor  
72 more than five hundred dollars and imprisoned in the  
73 county jail not less than three nor more than twelve  
74 months: *Provided*, That this subsection (e) shall not  
75 apply to articles specially manufactured in such jail,  
76 prison, or private prison, juvenile facility or juvenile  
77 detention center under the authorization of the admin-  
78 istration of such jail, prison, private prison, juvenile  
79 facility or juvenile detention center for sale inside or  
80 outside of such jail, prison, private prison, juvenile  
81 facility or juvenile detention center.

82 (f) Whoever persuades, induces or entices or attempts  
83 to persuade, induce or entice, any person who is an  
84 inmate or prisoner in any jail, prison, private prison or  
85 resident of any juvenile facility or juvenile detention  
86 center to escape therefrom or to engage or aid in any  
87 insubordination to the authority of such jail, prison,  
88 private prison, juvenile facility or juvenile detention  
89 center is guilty of a misdemeanor, and, upon conviction  
90 thereof, shall be fined not less than fifty dollars nor  
91 more than five hundred dollars and imprisoned in the  
92 county jail not less than three nor more than twelve  
93 months.

**§61-5-9. Permitting escape; refusal of custody of prisoner;  
penalties.**

1 If a jailer or other officer, or private correctional  
2 officer aid or voluntarily suffer a prisoner convicted or  
3 charged with felony to escape from his custody, he shall  
4 be deemed guilty of a felony, and, upon conviction, shall  
5 be confined in the penitentiary not less than one nor  
6 more than five years. If any such jailer or other officer,  
7 or private correctional officer negligently, but not  
8 voluntarily, suffer a person convicted of or charged with  
9 felony, or voluntarily or negligently suffer a person  
10 convicted of or charged with an offense not a felony, to  
11 escape from his custody, or willfully refuse to receive  
12 into his custody any person lawfully committed thereto,  
13 he shall be guilty of a misdemeanor, and, upon convic-  
14 tion, shall be confined in jail not less than six months,  
15 or be fined not exceeding one thousand dollars, or both  
16 such fine and confinement.

**§61-5-10. Jail or private prison breaking by convicted or unconvicted prisoner; penalties.**

1 (a) Any person confined in jail on conviction of a  
2 criminal offense, who escapes therefrom by force,  
3 violence, or by any subterfuge, device or deception,  
4 shall, if previously sentenced to confinement in the  
5 penitentiary, be guilty of a felony, and, upon conviction,  
6 shall be confined in the penitentiary for not less than  
7 one nor more than five years; and if he be previously  
8 sentenced to confinement in jail, he shall be guilty of a  
9 misdemeanor, and, upon conviction, shall be confined in  
10 jail one year.

11 (b) If any person be lawfully confined in jail or  
12 private prison and not sentenced on conviction of a  
13 criminal offense, shall escape therefrom by any means,  
14 such person shall, (i) if he be confined upon a charge  
15 of a felony, be guilty of an additional felony, and, upon  
16 conviction thereof, shall be confined in the penitentiary  
17 not less than one nor more than five years, or (ii) if he  
18 be confined upon a charge of a misdemeanor, be guilty  
19 of an additional misdemeanor, and, upon conviction  
20 thereof, shall be confined in jail one year.

21 (c) If any person is lawfully confined in a private  
22 prison and escapes therefrom by force, violence, or by  
23 any subterfuge, device or deception, he or she shall be  
24 guilty of a felony, and, upon conviction, shall be  
25 imprisoned for not less than one nor more than five  
26 years.

**§61-5-12. Escapes from, and other offenses relating to, state benevolent and correctional institution, or private prison or mental health facilities; penalties.**

1 Except where otherwise provided, whoever abducts  
2 any person who is an inmate or patient of any state  
3 benevolent or correctional institution, private prison or  
4 mental health facility shall be guilty of a felony, and,  
5 upon conviction thereof, shall be imprisoned in the  
6 penitentiary for not less than one nor more than five  
7 years. Whoever persuades, induces or entices, or  
8 attempts to persuade, induce or entice, any person who

9 is an inmate or patient of any such institution, private  
10 prison or facility to escape therefrom, or whoever  
11 conceals or harbors any such person, knowing him or  
12 her to have run away from any such institution, private  
13 prison or facility, shall be guilty of a misdemeanor, and,  
14 upon conviction thereof, shall be fined not less than one  
15 hundred nor more than one thousand dollars, and in  
16 addition thereto, in the discretion of the court, may be  
17 imprisoned in the county jail not less than one nor more  
18 than six months.

19 Any fugitive from any state benevolent or correctional  
20 institution, private prison or mental health facility, may,  
21 on the order of the superintendent or other officer of  
22 such institution or facility, be arrested and returned to  
23 such institution or facility, or to any officer or agent  
24 thereof, by any sheriff, police officer or other person,  
25 and may also be arrested and returned by any officer  
26 or agent of such institution, private prison or facility.

27 Whoever trespasses, idles, lounges or loiters upon the  
28 grounds of any other state benevolent or correctional  
29 institution, private prison or mental health facility or  
30 communicates, or attempts to communicate, by signals,  
31 signs, writings or otherwise with any inmate or patient  
32 of such institution, private prison or facility, or conveys  
33 or assists in any way in establishing communication  
34 between an inmate or patient of such institution, private  
35 prison or facility and any person or persons outside  
36 thereof, except as authorized by the rules or regulations  
37 in force by the authority governing the same, shall be  
38 guilty of a misdemeanor, and, upon conviction, shall be  
39 fined not less than twenty nor more than five hundred  
40 dollars, or imprisoned not less than ten nor more than  
41 thirty days in the county jail, or both, in the discretion  
42 of the court or magistrate. Whoever, with intent to  
43 defraud, purchases, accepts as a gift, or secures by  
44 barter or trade, or in any other manner, any article of  
45 clothing from an inmate or patient of any state benev-  
46 olent or correctional institution, private prison or mental  
47 health facility issued to him or her, by any officer of  
48 such institution or facility, or by any private correc-  
49 tional officer of such private prison for his or her use,

50 or, with such intent, secures any other article or articles  
51 belonging to any inmate or patient of such institution,  
52 private prison or facility or to such institution, private  
53 prison or facility from an inmate or patient thereof,  
54 shall be guilty of a misdemeanor, and, upon conviction  
55 thereof, shall be fined a sum not less than double the  
56 value of such articles, except that in no case shall the  
57 fine be less than one hundred dollars. Magistrates shall  
58 have jurisdiction of all misdemeanors included in this  
59 paragraph, concurrently with the circuit court.

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## CHAPTER 54

(H. B. 4007—By Delegates Love and Schadler)

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[Passed February 2, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section two, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the division of corrections.

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

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

### ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

#### §25-1-2. Reestablishment of division; findings.

1 Pursuant to the provisions of section four, article ten,  
2 chapter four of this code, the division of corrections shall  
3 continue to exist until the first day of July, one thousand  
4 nine hundred ninety-one, to allow for the completion of  
5 an audit by the joint committee on government opera-  
6 tions.

## CHAPTER 55

(H. B. 4780—By Delegates Roop and Jones)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen, relating to permitting the commissioner of the division of corrections to monitor telephone calls from inmates and patients of penal or correctional institutions; providing for procedures and restrictions; providing an exception for calls to attorneys; and granting the commissioner authority to promulgate legislative rules.

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

That article one, chapter twenty-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 seventeen, to read as follows:

### ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

#### §25-1-17. Monitoring of inmate and patient telephone calls; procedures and restrictions; calls to attorneys excepted.

1 (a) The commissioner of corrections or his or her  
2 designee shall have authority to monitor, intercept,  
3 record, and disclose any telephone calls from an adult  
4 inmate or patient of any state penal or correctional  
5 institution in accordance with the following provisions:

6 (1) All adult inmates or patients of the state penal or  
7 correctional institutions shall be notified in writing that  
8 their telephone conversations may be monitored, inter-  
9 cepted, recorded, and disclosed;

10 (2) Except as provided for in this subsection, only the  
11 commissioner and his or her designee shall have access  
12 to any such recordings of telephone calls;

13 (3) A notice shall be prominently placed on or  
14 immediately near every telephone on which monitoring  
15 may take place;

16 (4) The contents of a telephone conversation shall be  
17 disclosed only if the disclosure is:

18 (A) Necessary to safeguard the orderly operation of  
19 the penal or correctional institution;

20 (B) Necessary for the investigation of a crime;

21 (C) Necessary for the prevention of a crime;

22 (D) Necessary for the prosecution of a crime; or

23 (E) Required by an order of a court of competent  
24 jurisdiction;

25 (5) All recordings of telephone conversations, unless  
26 being disclosed in accordance with the preceding  
27 subdivision, shall be destroyed within twelve months  
28 after the recording; and

29 (6) To safeguard the sanctity of the attorney-client  
30 privilege, a separate telephone line shall be made  
31 available and no conversation between an inmate or  
32 patient and an attorney shall be monitored, intercepted,  
33 recorded or disclosed in any manner.

34 (b) The commissioner shall promulgate legislative  
35 rules in accordance with the provisions of chapter  
36 twenty-nine-a of this code for such monitoring, inter-  
37 cepting, recording or disclosing of telephone calls.

38 (c) The provisions of this section shall only apply to  
39 those persons serving a sentence of imprisonment while  
40 imprisoned in a facility under the direction of the  
41 commissioner of corrections.

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## CHAPTER 56

(H. B. 2259—By Delegate Wilson)

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[Passed March 8, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to repeal sections nine, ten and eleven, article one, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to payment by counties of costs of detention of youths by commissioner of corrections.



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

**ARTICLE 1. COMMITMENT OF YOUTHFUL MALE OFFENDERS.**

**§1. Repeal of sections relating to payment by counties of costs of detention of youths by commissioner of corrections.**

- 1 Sections nine, ten and eleven, article one, chapter
- 2 twenty-eight of the code of West Virginia, one thousand
- 3 nine hundred thirty-one, as amended, are hereby
- 4 repealed.

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## CHAPTER 57

(Com. Sub. for S. B. 438—By Senator Chafin, By Request)

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[Passed March 7, 1990; in effect July 1, 1990. Approved by the Governor.]

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AN ACT to amend and reenact sections thirteen and fourteen, article five-b, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the maximum amount allowed on deposit in the prison industries account; and appropriation for buildings, equipment, etc.

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

That sections thirteen and fourteen, 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-13. Appropriation for buildings, equipment, etc.; self-liquidating contracts.

§28-5B-14. Prison industries account.

**§28-5B-13. Appropriation for buildings, equipment, etc.; self-liquidating contracts.**

- 1 In order to carry out the provisions of this article
- 2 there is hereby appropriated out of the moneys in the
- 3 state fund, general revenue, not otherwise appropriated,
- 4 the sum of fifty thousand dollars, and the commissioner

5 of the division of corrections is authorized to expend  
6 such moneys from such appropriation as may be  
7 necessary to erect buildings, to purchase equipment, to  
8 procure tools, supplies and materials, to purchase,  
9 install or replace equipment, to employ personnel, and  
10 otherwise to defray the necessary expenses incident to  
11 the employment of convicts as herein provided, and  
12 further to aid in the above purposes the commissioner  
13 of the division of corrections is empowered to enter into  
14 contracts and agreements with any person or persons  
15 upon a self-liquidating basis respecting the acquisition  
16 and purchase of any such equipment, tools, supplies and  
17 materials, to the end that the same may be paid for over  
18 a period of not exceeding three years, and the aggregate  
19 amount of such purchases or acquisitions not to exceed  
20 one million dollars, such amounts to be payable solely  
21 out of the revenues derived from the activities autho-  
22 rized by this article. Nothing in this section shall be so  
23 construed or interpreted as to authorize or permit the  
24 incurring of a state debt of any kind or nature as  
25 contemplated by the constitution of this state in relation  
26 to such debt.

**§28-5B-4. Prison industries account.**

1 All moneys collected by the commissioner of the  
2 division of corrections from the sale or disposition of  
3 articles and products manufactured or produced by  
4 convict labor in accordance with the provisions of this  
5 article, shall be forthwith deposited with the state  
6 treasurer to be there kept and maintained as a special  
7 revolving account designated the "prison industries  
8 account" and such moneys so collected and deposited  
9 shall be used solely for the purchase of manufacturing  
10 supplies, equipment, machinery and materials used to  
11 carry out the purposes of this article, as well as for the  
12 payment of the necessary personnel in charge thereof  
13 and to otherwise defray the necessary expenses incident  
14 thereto, all of which are under the direction and subject  
15 to the approval of the commissioner: *Provided*, That the  
16 "prison industries account" shall never be maintained in  
17 excess of the amount necessary to efficiently and  
18 properly carry out the intentions of this article, and in

19 no event may the "prison industries account" be  
20 maintained in excess of the sum of one million dollars.  
21 When, in the opinion of the governor, the "prison  
22 industries account" has reached a sum in excess of the  
23 requirements of this article, the excess shall be trans-  
24 ferred by the commissioner of the division of corrections  
25 to the state fund, general revenue, and if the governor  
26 does not make such determination, any excess above one  
27 million dollars shall be transferred to the state fund,  
28 general revenue, by the commissioner of the division of  
29 corrections at the end of each fiscal year.

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## CHAPTER 58

(H. B. 4553—By Delegates Otte and McKinley)

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[Passed March 8, 1990: in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section one-a, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to extending the January term of court in Ohio County for one month.

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

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

### ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

#### §51-2-1a. First circuit.

1 For the county of Ohio, on the second Monday in  
2 January, May and September.

3 For the county of Brooke, on the first Monday in  
4 March, June and November.

5 For the county of Hancock, beginning with the month  
6 of September, one thousand nine hundred thirty-three,  
7 on the Tuesday after the second Monday in January,  
8 April and September.

## CHAPTER 59

(H. B. 4679—By Delegates Prezioso and C. Starcher)

[Passed March 8, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-p, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the date of the terms of court for the sixteenth judicial circuit in Marion County.

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

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

### ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

#### §51-2-1p. Sixteenth circuit.

- 1 For the county of Marion, on the second Monday in
- 2 February, June and October.

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## CHAPTER 60

(H. B. 4121—By Delegates Berry and Roop)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article four, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to preservation and destruction of papers filed in circuit courts; authorizing the establishment of a "Record Retention Schedule" for circuit court files; and authorizing storage of permanent record series by electronic as well as microphotographic means.

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

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

**ARTICLE 4. GENERAL PROVISIONS RELATING TO CLERKS OF COURTS.****§51-4-3. Preservation and destruction of papers; micro-photography and electronic storage.**

1 All papers lawfully returned to or filed in the clerk's  
2 office shall be preserved therein, subject to the condi-  
3 tions set out herein, until legally delivered out.

4 Notwithstanding any other provision of this code to  
5 the contrary, the clerk may destroy all documents,  
6 records, instruments, books, papers, depositions and  
7 transcripts in any action or proceeding in the circuit  
8 court or other court of record, or otherwise filed in his  
9 office pursuant to law, provided that:

10 (a) Destruction is done in accordance with a "Record  
11 Retention Schedule" to be adopted, promulgated and  
12 amended, from time to time, by the Supreme Court of  
13 Appeals; and

14 (b) The clerk maintains for the use of the public a  
15 microphotographic film or electronic storage media  
16 record of all documents required to be permanently  
17 preserved under the "Record Retention Schedule,"  
18 together with an index and a mechanical or electronic  
19 device by which such microphotographic film or  
20 electronic storage media record may be conveniently  
21 examined. The clerk shall promptly seal and store at  
22 least one original of each microphotographic film or  
23 electronic storage media record in such manner and  
24 place as will reasonably assure its preservation indefi-  
25 nitely against loss, theft, defacement, intentional  
26 alteration, fire or other destruction. Any electronic  
27 method used must provide an exact copy of each  
28 document so stored and must be secure to the point that  
29 an attempt to alter a document is readily recognized.

30 A photographic reproduction or electronic media  
31 reproduction of any of the records described in this  
32 section, the negative or film or electronic record of  
33 which has been certified by the clerk in charge of such  
34 reproduction as being an exact replica of the original,  
35 shall be received in evidence in all courts, and in

- 36 hearings before any officer, board or commission having  
 37 jurisdiction or authority to conduct such hearings, in  
 38 like manner as the original.

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## CHAPTER 61

(S. B. 22—By Senator Chafin)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article seven, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing court reporter original fees and fees for copies.

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

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

### ARTICLE 7. OFFICIAL REPORTERS.

#### §51-7-4. Transcript of notes; fees; authenticity; transcript for judge in criminal cases.

1 The reporter shall furnish, upon request, to any party  
 2 to a case, a typewritten transcript of his shorthand notes  
 3 of the testimony or other proceedings, which shall be  
 4 upon paper measuring eight and one-half inches in  
 5 width and eleven inches in length, with margins of one-  
 6 half inch on the right side and bottom, one inch at the  
 7 top and one and one-half inches on the left, with the page  
 8 filled as completely as practicable, with at least twenty-  
 9 four complete lines on each page, with no more than  
 10 double spacing used between lines, with no more than  
 11 five spaces used for indentation from the left margin,  
 12 with no larger than ten point pica type being used, and  
 13 shall certify the same as being correct and shall be paid  
 14 therefor, by the party requesting such transcript, at the  
 15 rate of two dollars for each page so transcribed and  
 16 certified; and for each carbon copy of such transcript,  
 17 ordered at the same time, he shall be paid seventy-five  
 18 cents for each page so furnished: *Provided*, That if any  
 19 transcript shall not conform with the specifications set

20 forth in this section, the party requesting the transcript  
21 shall not be obligated to pay for said transcript.

22 A transcript of such testimony or proceedings, when  
23 certified by the official reporter and by the judge of the  
24 court, shall be authentic for all purposes, and shall be  
25 used by the parties to the cause in any further proceed-  
26 ing therein wherein the use of the same may be  
27 required. It may be used, without further authentica-  
28 tion, in making up the record on appeal, as provided in  
29 sections thirty-six and thirty-seven, article six, chapter  
30 fifty-six of this code; and in all cases of appeal such  
31 reporter shall also make a carbon copy of such trans-  
32 cript, which copy shall be filed in the office of the clerk  
33 of the court in which the trial or proceedings were had,  
34 to be used, if necessary, in making up the record on  
35 appeal, and, if so used, the clerk shall not be entitled  
36 to any fee for that part of the record. If, upon appeal  
37 or writ of error, the judgment, decree or order entered  
38 in the cause be reversed, the cost of such transcript shall  
39 be taxed as other costs; and if such transcript be  
40 requested or required for the purpose of demurring to  
41 the evidence, the cost thereof shall be taxed in favor of  
42 the party prevailing on the demurrer.

43 It shall also be the duty of such reporter in any  
44 criminal case, upon the request of the court or the judge  
45 thereof, and for his use, to furnish a transcript of his  
46 notes of the testimony and proceedings without extra  
47 charge.

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## CHAPTER 62

(S. B. 307—By Senators Chafin and Jackson)

[Passed March 10, 1990; in effect July 1, 1990. Approved by the Governor.]

AN ACT to amend and reenact sections four, sixteen and seventeen, article five, chapter fifty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reducing the time period for petitioning for an appeal from, or writ of error or supersedeas to a judgment, decree or order, and

reducing other time limitations related to such petitions; providing for the dismissal of an appeal, writ of error or supersedeas upon failure to timely give bond; specifying the persons to whom a copy or copies of the record shall be delivered; and requiring that an unsuccessful party on appeal be assessed with the costs associated with the printing or reproduction of the copies of the documents submitted in support of, or in opposition to, any appeal.

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

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

**ARTICLE 5. APPELLATE RELIEF IN SUPREME COURT OF APPEALS.**

§58-5-4. Time for appeal or writ of error; notice of intent to file petition in criminal cases to be filed with clerk stating grounds.

§58-5-16. Time for giving bond.

§58-5-17. Court to prescribe method and form of reproducing record; reproduction of record by clerk; distribution; costs.

**§58-5-4. Time for appeal or writ of error; notice of intent to file petition in criminal cases to be filed with clerk stating grounds.**

1 No petition shall be presented for an appeal from, or  
2 writ of error or supersedeas to, any judgment, decree  
3 or order, whether the state be a party thereto or not,  
4 which shall have been rendered or made more than four  
5 months before such petition is filed with the clerk of the  
6 court where the judgment, decree or order being  
7 appealed was entered: *Provided*, That the judge of the  
8 circuit court may, prior to the expiration of such period  
9 of four months, by order entered of record extend and  
10 reextend such period for such additional period or  
11 periods, not to exceed a total extension of two months,  
12 for good cause shown, if the request for preparation of  
13 the transcript was made by the party seeking such  
14 appellate review within thirty days of the entry of such  
15 judgment, decree or order.

16 In criminal cases no petition for appeal or writ of



17 error shall be presented unless a notice of intent to file  
18 such petition shall have been filed with the clerk of the  
19 court in which the judgment or order was entered  
20 within thirty days after such judgment or order was  
21 entered. The notice shall fairly state the grounds for the  
22 petition without restricting the right to assign addi-  
23 tional grounds in the petition.

**§58-5-16. Time for giving bond.**

1 An appeal, writ of error or supersedeas allowed from  
2 or to a final judgment, decree or order shall be  
3 dismissed whenever it appears that two months have  
4 elapsed since the date when the appeal, writ of error or  
5 supersedeas was granted before such bond is given as  
6 is required to be given before the appeal, writ of error  
7 or supersedeas takes effect.

**§58-5-17. Court to prescribe method and form of repro-  
ducing record; reproduction of record by  
clerk; distribution; costs.**

1 The supreme court of appeals shall by order prescribe  
2 the method and form of reproducing records. Such order  
3 shall prescribe the number of copies to be reproduced,  
4 the contents thereof, the type size and quality of paper  
5 and the maximum rate per page that may be charged  
6 for the printing or reproduction of such records.

7 The cost of printing or reproduction, photostating and  
8 blueprinting, if any, shall be included at the end of the  
9 record with the date the same was printed or otherwise  
10 reproduced.

11 The clerk shall have the record printed or reproduced  
12 when the party obtaining the appeal, writ of error or  
13 supersedeas shall deposit with him a sufficient sum to  
14 pay for same. The clerk shall deliver one copy to counsel  
15 on each side and retain the remaining copies in his  
16 office. He shall cause all copies of the record remaining  
17 in his office to be compared with the typewritten  
18 transcript certified to the supreme court of appeals and  
19 correct all errors that may appear therein. The cost of  
20 such printing or reproduction, unless otherwise ordered  
21 by the court, shall be taxed against the unsuccessful

22 party. In every felony and misdemeanor case, the clerk  
23 shall have the usual number of records printed or  
24 otherwise reproduced at a cost not exceeding the amount  
25 fixed by the court, and dispose of the same as in other  
26 cases; and upon the certificate of the chief justice of the  
27 supreme court of appeals stating that such record has  
28 been printed or otherwise reproduced as required by the  
29 court, and the amount said clerk is entitled to, the cost  
30 of printing or reproducing the same shall be paid to said  
31 clerk out of the treasury of the state, and the auditor  
32 shall draw his warrant on the treasury for the payment  
33 thereof out of the fund for criminal charges.

34 Any increased rate for printing or reproducing  
35 records, as may be prescribed by order of the court,  
36 shall apply to all cases docketed in the supreme court  
37 of appeals on the effective date of the order of the court,  
38 pending reproduction of the record. Such latter cases,  
39 however, shall not be subject to dismissal because of any  
40 increased rate, where statement for estimated costs has  
41 been rendered and paid as provided in this section, but  
42 they shall not be placed upon the argument docket until  
43 the increased cost thereof shall have been paid in full.

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## CHAPTER 63

(Com. Sub. for S. B. 327—By Senators Warner and Felton)

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[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article one, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine, relating to providing for the misdemeanor offense of impersonating a law-enforcement officer or official; definitions; and criminal penalty.

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

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

## ARTICLE 1. CRIMES AGAINST THE GOVERNMENT.

**§61-1-9. Impersonation of law-enforcement officer or official; penalty.**

1 Any person who shall falsely represent himself or  
2 herself to be a law-enforcement officer or law-enforce-  
3 ment official or to be under the order or direction of any  
4 such person, or any person not a law-enforcement officer  
5 or law-enforcement official who shall wear the uniform  
6 prescribed for such persons, or the badge or other  
7 insignia adopted for use by such persons with the intent  
8 to deceive another person, is guilty of a misdemeanor,  
9 and, upon conviction thereof, shall be fined not less than  
10 one hundred dollars nor more than one thousand dollars.

11 For purposes of this section, the terms law-enforce-  
12 ment officer and law-enforcement official shall be  
13 defined by section one, article twenty-nine, chapter  
14 thirty of this code, except that such terms shall not  
15 include members of the division of public safety and  
16 shall not include individuals hired by nonpublic entities  
17 for the provision of security services.

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## CHAPTER 64

(H. B. 4749—By Delegates Basham and Reid)

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[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section forty-nine, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to purchase of metals by junk dealers, salvage yard or recycling facility owners or operators; maintaining records thereof; requiring proof of ownership; and providing criminal penalties.

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

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

## ARTICLE 3. CRIMES AGAINST PROPERTY.

**§61-3-49. Purchase of metals by junk dealers, salvage yard or recycling facilities owners or operators; records of such purchases; penalties.**

1 (a) Any person in the business of purchasing scrap  
2 metal, such as a junk dealer, a salvage yard owner or  
3 operator or a public or commercial recycling facility  
4 owner or operator, or any agent or employee thereof,  
5 who purchases any form of copper, or aluminum wire,  
6 brass bearings or fittings, mercury, lead or other  
7 metallic material of any kind, shall make a permanent  
8 record of such purchase. Such record shall accurately  
9 list the name, permanent and business addresses and  
10 telephone number of the seller, the motor vehicle license  
11 number of any vehicle used to transport the metals to  
12 the place of purchase, the time and date of the transac-  
13 tion and a complete description of the kind and  
14 character of the materials purchased. The person  
15 purchasing the scrap metal shall also require from the  
16 seller, and retain in the permanent record, affidavit of  
17 ownership of the materials being sold. It shall be  
18 unlawful for any of the aforementioned persons to  
19 purchase any metallic materials without affidavit of  
20 ownership, or authorization from the owner to sell, on  
21 the part of the seller. Such record shall be available for  
22 inspection by any law-enforcement officer and must be  
23 maintained for not less than one year after the date of  
24 the purchase. On or before the first day of January,  
25 April, July and October of each year, a purchaser of  
26 scrap metal shall forward to the division of public safety  
27 a copy of all records of purchases made in the preceding  
28 three months.

29 (b) Should the transaction involve one hundred or  
30 more pounds of copper or aluminum, in any form, the  
31 purchaser of the scrap metal, or his or her agent, shall  
32 report in writing to the chief of police of the municipal-  
33 ity or the sheriff of the county wherein he or she is  
34 transacting business and to the local detachment of the  
35 division of public safety all the information obtained.  
36 The report must be filed within twenty-four hours after  
37 the transaction. The purchaser may not alter the form

38 or substance of, dispose of or remove from this state,  
39 such copper or aluminum for a period of ten days after  
40 the purchase.

41 (c) Every nonresident, before transporting from the  
42 state any of the items hereinbefore mentioned, shall file  
43 with the sheriff of the county where such purchase was  
44 made a complete description of the property he or she  
45 proposes to transport from the state, showing the date  
46 of purchase, the names of the buyer and seller, the party  
47 to whom consigned, and the license number of any  
48 automobile or truck which may be employed in trans-  
49 porting such junk or materials hereinbefore mentioned.

50 (d) Nothing in this section applies to scrap purchases  
51 by manufacturing facilities that melt, or otherwise alter  
52 the form of scrap metal and transform it into a new  
53 product or to the purchase or transportation of food and  
54 beverage containers or other nonindustrial metallic  
55 materials having a marginal value per individual unit.

56 (e) Any person violating the provisions of this section,  
57 including the knowing falsification of any required  
58 information, is guilty of a misdemeanor, and, upon  
59 conviction, shall be fined not less than one hundred nor  
60 more than five hundred dollars or imprisoned in the  
61 county jail for not more than six months, or both fined  
62 and imprisoned.

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## CHAPTER 65

(Com. Sub. for S. B. 184—By Senators Wehrle, Humphreys and M. Manchin)

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[Passed March 7, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eight-e, relating to the display of video ratings or the lack thereof; setting forth the legislative purpose; defining certain terms; prohibiting business entities from selling, offering for sale, renting or offering to rent, video movies without certain designations dis-

played upon the cassettes or jackets thereof; creating a misdemeanor crime; and establishing penalties therefor.

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

That chapter sixty-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 eight-e, to read as follows:

**ARTICLE 8E. DISPLAY OF VIDEO RATINGS OR LACK THEREOF.**

§61-8E-1. Legislative purpose.

§61-8E-2. Definitions.

§61-8E-3. Labeling of video movies designated for sale or rental; penalties.

**§61-8E-1. Legislative purpose.**

1       The Legislature finds that the motion picture industry  
2       has had an effective voluntary film rating system for  
3       many years. It further finds that with the advent of  
4       movie video cassette sales and rentals that the variety  
5       and number of movie video cassettes available to the  
6       consumer for home use has significantly increased. This  
7       growth in the marketplace has resulted in some film  
8       makers and distributors choosing not to be subject to the  
9       voluntary rating system, putting the consumer in the  
10      position of being without the guidance of such rating  
11      system in making rental or purchase decisions. The  
12      Legislature believes that the public has a right to be  
13      informed about movie video cassette ratings or the lack  
14      thereof in making rental or purchase decisions.

**§61-8E-2. Definitions.**

1       In this article, unless a different meaning is plainly  
2       required:

3       (1) "Business entity" means any sole proprietorship,  
4       partnership or corporation;

5       (2) "Official rating" means an official rating of the  
6       Motion Picture Association of America and the Film  
7       Advisory Board, Inc.; and

8       (3) "Video movie" means a video tape or video disc  
9       copy of a motion picture film.

**§61-8E-3. Labeling of video movies designated for sale or rental; penalties.**

1 (a) No business entity in this state shall sell, offer for  
2 sale, rent or offer for rent, any video movie which does  
3 not have visibly and legibly displayed on the cassette  
4 case or jacket, an official rating or, if the motion picture  
5 film has obtained no such rating, the designation "NOT  
6 RATED" or "N.R."

7 (b) Any business entity which knowingly violates the  
8 provisions of subsection (a) of this section shall be guilty  
9 of a misdemeanor and for a first offense conviction shall  
10 be fined not more than twenty-five dollars. A conviction  
11 for a second or subsequent offense shall subject the  
12 offender to a fine not to exceed one hundred dollars.

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## CHAPTER 66

(S. B. 147—By Senator Tomblin)

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[Passed February 8, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section one, article two, chapter five-f of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to transferring the administration of the crime victims compensation fund from the department of public safety to the court of claims.

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

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

**ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.**

**\*§5F-2-1. Transfer and incorporation of agencies and boards.**

1 (a) The following agencies and boards, including all  
2 of the allied, advisory, affiliated or related entities and

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\* Clerk's Note: §5F-2-1 was also amended by S. B. 615 (Chapter 187), which passed subsequent to this act.

3 funds associated with any such agency or board, are  
4 hereby transferred to and incorporated in and shall be  
5 administered as a part of the department of  
6 administration:

7 (1) Building commission provided for in article six,  
8 chapter five of this code;

9 (2) Records management and preservation advisory  
10 committee provided for in article eight, chapter five of  
11 this code;

12 (3) Public employees retirement system and board of  
13 trustees provided for in article ten, chapter five of this  
14 code;

15 (4) Public employees insurance agency and public  
16 employees advisory board provided for in article sixteen,  
17 chapter five of this code;

18 (5) Department of finance and administration and  
19 council of finance and administration provided for in  
20 article one, chapter five-a of this code;

21 (6) Employee suggestion award board provided for in  
22 article one-a, chapter five-a of this code;

23 (7) Governor's mansion advisory committee provided  
24 for in article four-a, chapter five-a of this code;

25 (8) Advisory commission to the information system  
26 services division in the department of finance and  
27 administration provided for in article seven, chapter  
28 five-a of this code;

29 (9) Teachers retirement system and teachers' retire-  
30 ment board provided for in article seven-a, chapter  
31 eighteen of this code;

32 (10) Commission on uniform state laws provided for  
33 in article one-a, chapter twenty-nine of this code;

34 (11) Department of personnel of the civil service  
35 system and the civil service commission provided for in  
36 article six, chapter twenty-nine of this code;



37 (12) Education and state employees grievance board  
38 provided for in article twenty-nine, chapter eighteen  
39 and article six-a, chapter twenty-nine of this code;

40 (13) Board of risk and insurance management pro-  
41 vided for in article twelve, chapter twenty-nine of this  
42 code;

43 (14) Boundary commission provided for in article  
44 twenty-three, chapter twenty-nine of this code;

45 (15) Public legal services council provided for in  
46 article twenty-one, chapter twenty-nine of this code;

47 (16) Division of personnel which may be hereafter  
48 created by the Legislature; and

49 (17) The West Virginia ethics commission which may  
50 be hereafter created by the Legislature.

51 (b) The following agencies and boards, including all  
52 of the allied, advisory, affiliated or related entities and  
53 funds associated with any such agency or board, are  
54 hereby transferred to and incorporated in and shall be  
55 administered as a part of the department of commerce,  
56 labor and environmental resources:

57 (1) Forest management review commission provided  
58 for in article twenty-four, chapter five of this code;

59 (2) Department of commerce provided for in article  
60 one, chapter five-b of this code;

61 (3) Office of community and industrial development  
62 provided for in article two, chapter five-b of this code;

63 (4) Enterprise zone authority provided for in article  
64 two-b, chapter five-b of this code;

65 (5) Office of federal procurement assistance provided  
66 for in article two-c, chapter five-b of this code;

67 (6) Export development authority provided for in  
68 article three, chapter five-b of this code;

69 (7) Labor-management council provided for in article  
70 four, chapter five-b of this code;

- 71 (8) Industry and jobs development corporation pro-  
72 vided for in article one, chapter five-c of this code;
- 73 (9) Public energy authority and board provided for in  
74 chapter five-d of this code;
- 75 (10) Air pollution control commission provided for in  
76 article twenty, chapter sixteen of this code;
- 77 (11) Resource recovery—solid waste disposal author-  
78 ity provided for in article twenty-six, chapter sixteen of  
79 this code;
- 80 (12) Division of forestry and forestry commission  
81 provided for in article one-a, chapter nineteen of this  
82 code;
- 83 (13) Department of natural resources and natural  
84 resources commission provided for in article one,  
85 chapter twenty of this code;
- 86 (14) Water resources board provided for in article  
87 five, chapter twenty of this code;
- 88 (15) Water development authority and board provided  
89 for in article five-c, chapter twenty of this code;
- 90 (16) Department of labor provided for in article one,  
91 chapter twenty-one of this code;
- 92 (17) Labor-management relations board provided for  
93 in article one-b, chapter twenty-one of this code;
- 94 (18) Public employees occupational safety and health  
95 advisory board provided for in article three-a, chapter  
96 twenty-one of this code;
- 97 (19) Minimum wage rate board provided for in article  
98 five-a, chapter twenty-one of this code;
- 99 (20) Board of manufactured housing construction and  
100 safety provided for in article nine, chapter twenty-one  
101 of this code;
- 102 (21) Department of energy provided for in article one,  
103 chapter twenty-two of this code;

- 104 (22) Reclamation board of review provided for in  
105 article four, chapter twenty-two of this code;
- 106 (23) Board of appeals provided for in article five,  
107 chapter twenty-two of this code;
- 108 (24) Board of coal mine health and safety and coal  
109 mine safety and technical review committee provided  
110 for in article six, chapter twenty-two of this code;
- 111 (25) Shallow gas well review board provided for in  
112 article seven, chapter twenty-two of this code;
- 113 (26) Oil and gas conservation commission provided for  
114 in article eight, chapter twenty-two of this code;
- 115 (27) Board of miner training, education and certifica-  
116 tion provided for in article nine, chapter twenty-two of  
117 this code;
- 118 (28) Mine inspectors' examining board provided for in  
119 article eleven, chapter twenty-two of this code;
- 120 (29) Oil and gas inspectors' examining board provided  
121 for in article thirteen, chapter twenty-two of this code;
- 122 (30) Geological and economic survey provided for in  
123 article two, chapter twenty-nine of this code;
- 124 (31) Blennerhassett historical park commission pro-  
125 vided for in article eight, chapter twenty-nine of this  
126 code;
- 127 (32) Tourist train and transportation board provided  
128 for in article twenty-four, chapter twenty-nine of this  
129 code;
- 130 (33) Economic development authority provided for in  
131 article fifteen, chapter thirty-one of this code;
- 132 (34) Board of members of the forest industries  
133 industrial foundation provided for in article sixteen,  
134 chapter thirty-one of this code;
- 135 (35) Department of banking provided for in article  
136 two, chapter thirty-one-a of this code;

137 (36) Board of banking and financial institutions  
138 provided for in article three, chapter thirty-one-a of this  
139 code;

140 (37) Consumer affairs advisory council provided for in  
141 article seven, chapter forty-six-a of this code; and

142 (38) Lending and credit rate board provided for in  
143 chapter forty-seven-a of this code.

144 (c) The following agencies and boards, including all  
145 of the allied, advisory, affiliated or related entities and  
146 funds associated with any such agency or board, are  
147 hereby transferred to and incorporated in and shall be  
148 administered as a part of the department of education  
149 and the arts:

150 (1) Library commission provided for in article one,  
151 chapter ten of this code;

152 (2) Educational broadcasting authority provided for  
153 in article five, chapter ten of this code;

154 (3) Board of regents provided for in article twenty-six,  
155 chapter eighteen of this code; and

156 (4) Department of culture and history, archives and  
157 history commission and commission on the arts provided  
158 for in article one, chapter twenty-nine of this code.

159 (d) The following agencies and boards, including all  
160 of the allied, advisory, affiliated or related entities and  
161 funds associated with any such agency or board, are  
162 hereby transferred to and incorporated in and shall be  
163 administered as a part of the department of health and  
164 human resources:

165 (1) Human rights commission provided for in article  
166 eleven, chapter five of this code;

167 (2) Department of human services provided for in  
168 article two, chapter nine of this code;

169 (3) Department of veterans' affairs and veterans'  
170 council provided for in article one, chapter nine-a of this  
171 code;

- 172 (4) Department of health and board of health pro-  
173 vided for in article one, chapter sixteen of this code;
- 174 (5) Health care planning council provided for in  
175 article two-d, chapter sixteen of this code;
- 176 (6) Office of emergency medical services and advisory  
177 council thereto provided for in article four-c, chapter  
178 sixteen of this code;
- 179 (7) Continuum of care board for the elderly, disabled  
180 and terminally ill provided for in article five-d, chapter  
181 sixteen of this code;
- 182 (8) Hospital finance authority provided for in article  
183 twenty-nine-a, chapter sixteen of this code;
- 184 (9) Health care cost review authority provided for in  
185 article twenty-nine-b, chapter sixteen of this code;
- 186 (10) Structural barriers compliance board provided  
187 for in article ten-f, chapter eighteen of this code;
- 188 (11) Department of employment security, state advi-  
189 sory council thereto and board of review provided for  
190 in chapter twenty-one-a of this code;
- 191 (12) Office of workers' compensation commissioner,  
192 advisory board thereto and workers' compensation  
193 appeal board provided for in chapter twenty-three of  
194 this code;
- 195 (13) Commission on aging provided for in article  
196 fourteen, chapter twenty-nine of this code;
- 197 (14) Commission on mental retardation and advisory  
198 committee thereto provided for in article fifteen,  
199 chapter twenty-nine of this code;
- 200 (15) Women's commission provided for in article  
201 twenty, chapter twenty-nine of this code; and
- 202 (16) Commission on children and youth provided for  
203 in article six-c, chapter forty-nine of this code.
- 204 (e) The following agencies and boards, including all  
205 of the allied, advisory, affiliated or related entities and

206 funds associated with any such agency or board, are  
207 hereby transferred to and incorporated in and shall be  
208 administered as a part of the department of public  
209 safety:

210 (1) Adjutant general's department provided for in  
211 article one-a, chapter fifteen of this code;

212 (2) Armory board provided for in article six, chapter  
213 fifteen of this code;

214 (3) Military awards board provided for in article one-  
215 g, chapter fifteen of this code;

216 (4) Department of public safety and commission on  
217 drunk driving prevention provided for in article two,  
218 chapter fifteen of this code;

219 (5) Office of emergency services and emergency  
220 services advisory council provided for in article five,  
221 chapter fifteen of this code;

222 (6) Sheriffs' bureau provided for in article eight,  
223 chapter fifteen of this code;

224 (7) Department of corrections provided for in chapter  
225 twenty-five of this code;

226 (8) Fire commission and state fire administrator  
227 provided for in article three, chapter twenty-nine of this  
228 code;

229 (9) Regional jail and prison authority provided for in  
230 article twenty, chapter thirty-one of this code; and

231 (10) Board of probation and parole provided for in  
232 article twelve, chapter sixty-two of this code.

233 (f) The following agencies and boards, including all of  
234 the allied, advisory, affiliated or related entities and  
235 funds associated with any such agency or board, are  
236 hereby transferred to and incorporated in and shall be  
237 administered as a part of the department of tax and  
238 revenue:

239 (1) Tax department provided for in article one,  
240 chapter eleven of this code;

- 241 (2) Appraisal control and review commission provided  
242 for in article one-a, chapter eleven of this code;
- 243 (3) Office of nonintoxicating beer commissioner  
244 provided for in article sixteen, chapter eleven of this  
245 code;
- 246 (4) Board of investments provided for in article six,  
247 chapter twelve of this code;
- 248 (5) Municipal bond commission provided for in article  
249 three, chapter thirteen of this code;
- 250 (6) Racing commission provided for in article twenty-  
251 three, chapter nineteen of this code;
- 252 (7) Lottery commission and position of lottery director  
253 provided for in article twenty-two, chapter twenty-nine  
254 of this code;
- 255 (8) Agency of insurance commissioner provided for in  
256 article two, chapter thirty-three of this code;
- 257 (9) Office of alcohol beverage control commissioner  
258 provided for in article two, chapter sixty of this code;  
259 and
- 260 (10) Division of professional and occupational licenses  
261 which may be hereafter created by the Legislature.
- 262 (g) The following agencies and boards, including all  
263 of the allied, advisory, affiliated or related entities and  
264 funds associated with any such agency or board, are  
265 hereby transferred to and incorporated in and shall be  
266 administered as a part of the department of  
267 transportation:
- 268 (1) Road commission provided for in article two,  
269 chapter seventeen of this code;
- 270 (2) Department of highways provided for in article  
271 two-a, chapter seventeen of this code;
- 272 (3) Turnpike commission provided for in article  
273 sixteen-a, chapter seventeen of this code;

274 (4) Department of motor vehicles provided for in  
275 article two, chapter seventeen-a of this code;

276 (5) Driver's licensing advisory board provided for in  
277 article two, chapter seventeen-b of this code;

278 (6) Motorcycle safety standards and specifications  
279 board provided for in article fifteen, chapter seventeen-  
280 c of this code;

281 (7) Aeronautics commission provided for in article  
282 two-a, chapter twenty-nine of this code;

283 (8) Railroad maintenance authority provided for in  
284 article eighteen, chapter twenty-nine of this code; and

285 (9) Port authority which may be hereafter created by  
286 the Legislature.

287 (h) Except for such powers, authority and duties as  
288 have been delegated to the secretaries of the depart-  
289 ments by the provisions of section two of this article, the  
290 existence of the position of administrator and of the  
291 agency and the powers, authority and duties of each  
292 administrator and agency shall not be affected by the  
293 enactment of this chapter.

294 (i) Except for such powers, authority and duties as  
295 have been delegated to the secretaries of the depart-  
296 ments by the provisions of section two of this article, the  
297 existence, powers, authority and duties of boards and  
298 the membership, terms and qualifications of members  
299 of such boards shall not be affected by the enactment  
300 of this chapter, and all boards which are appellate  
301 bodies or were otherwise established to be independent  
302 decision-makers shall not have their appellate or  
303 independent decision-making status affected by the  
304 enactment of this chapter.

305 (j) Wherever elsewhere in this code, in any act, in  
306 general or other law, in any rule or regulation, or in any  
307 ordinance, resolution or order, reference is made to any  
308 department transferred to and incorporated in a  
309 department created in section two, article one of this  
310 chapter, such reference shall henceforth be read,



311 construed and understood to mean a division of the  
312 appropriate department so created, and any such  
313 reference elsewhere to a division of a department so  
314 transferred and incorporated shall henceforth be read,  
315 construed and understood to mean a section of the  
316 appropriate division of the department so created.

317 (k) The crime victims compensation fund provided for  
318 in article two-a, chapter fourteen of this code, including  
319 all of the allied, advisory, affiliated or related entities  
320 and funds associated therewith, is hereby transferred to  
321 and incorporated in and shall be administered as a part  
322 of the court of claims.

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## CHAPTER 67

(H. B. 4256—By Delegates Rowe and Pitrolo)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, fourteen and twenty-six, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to imposing costs on persons convicted of driving under the influence, such costs being deposited in the crime victims fund, and to the award of compensation from the crime victims compensation fund to the spouse of, person living in the same household with, parent, child, brother or sister of the offender or his accomplice.

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

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

### ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

- §14-2A-4. Creation of crime victims compensation fund.  
§14-2A-14. Grounds for denial of claim or reduction of awards; maximum awards; awards for emotional distress; mental anguish, etc.  
§14-2A-26. Rules and regulations.

**§14-2A-4. Creation of crime victims compensation fund.**

1 (a) Every person within the state who is convicted of  
2 or pleads guilty to a misdemeanor or felony offense,  
3 other than a traffic offense that is not a moving  
4 violation, shall pay the sum of three dollars as costs in  
5 the case, in addition to any other court costs that the  
6 court is required by law to impose upon such convicted  
7 person. In addition to the three dollar sums required to  
8 be collected as costs under the provisions of this  
9 subsection, there shall be collected from every person so  
10 convicted in any magistrate court and circuit court (and  
11 excluding municipal courts) the sum of one dollar which  
12 shall be in addition to any other court cost required by  
13 this section or which may be required by law. In  
14 addition to any other costs previously specified, every  
15 person within the state who is convicted of or pleads  
16 guilty to a violation of section two, article five, chapter  
17 seventeen-c, shall pay the following cost:

18 (1) For a first offense, ten dollars;

19 (2) For a second offense, twenty-five dollars;

20 (3) For a third or subsequent offense, fifty dollars.

21 This shall be in addition to any other court cost  
22 required by this section or which may be required by  
23 law.

24 (b) The clerk of the circuit court, magistrate court or  
25 municipal court wherein such additional costs are  
26 imposed under the provisions of subsection (a) of this  
27 section shall, on or before the last day of each month,  
28 transmit all such costs received under this article to the  
29 state treasurer for deposit in the state treasury to the  
30 credit of a special revenue fund to be known as the  
31 "Crime Victims Compensation Fund," which is hereby  
32 created. All moneys heretofore collected and received  
33 under the prior enactment or reenactments of this  
34 article and deposited or to be deposited in the "Crime  
35 Victims Reparation Fund" are hereby transferred to the  
36 crime victims compensation fund, and the treasurer  
37 shall so deposit such moneys in the state treasury. All

38 moneys collected and received under this article and  
39 paid into the state treasury and credited to the crime  
40 victims compensation fund in the manner prescribed in  
41 section two, article two, chapter twelve of this code, shall  
42 be kept and maintained for the specific purposes of this  
43 article, and shall not be treated by the auditor and  
44 treasurer as part of the general revenue of the state.

45 (c) Moneys in the crime victims compensation fund  
46 shall be available for the payment of the costs of  
47 administration of this article in accordance with the  
48 budget of the court approved therefor: *Provided*, That  
49 the services of the office of the attorney general, as may  
50 be required or authorized by any of the provisions of this  
51 article, shall be rendered without charge to the fund.

**\*§14-2A-14. Grounds for denial of claim or reduction of  
awards; maximum awards; awards for  
emotional distress; mental anguish, etc.**

1 (a) Except as provided in subsection (b), section ten  
2 of this article, the judge or commissioner shall not  
3 approve an award of compensation to a claimant who  
4 did not file his application for an award of compensation  
5 within two years after the date of the occurrence of the  
6 criminally injurious conduct that caused the injury or  
7 death for which he is seeking an award of compensation.

8 (b) An award of compensation shall not be approved  
9 if the criminally injurious conduct upon which the claim  
10 is based was not reported to a law-enforcement officer  
11 or agency within seventy-two hours after the occurrence  
12 of the conduct, unless it is determined that good cause  
13 existed for the failure to report the conduct within the  
14 seventy-two hour period.

15 (c) The judge or commissioner shall not approve an  
16 award of compensation to a claimant who is the offender  
17 or an accomplice of the offender who committed the  
18 criminally injurious conduct, nor to any claimant if the  
19 award would unjustly benefit the offender or his accomplice.

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\*Clerk's Note: §14-2A-14 was also amended by H. B. 4559 (Chapter 53), which passed prior to this act.

20 (d) A judge or commissioner, upon a finding that the  
21 claimant or victim has not fully cooperated with  
22 appropriate law-enforcement agencies, or the claim  
23 investigator, may deny a claim, reduce an award of  
24 compensation, and may reconsider a claim already  
25 approved.

26 (e) An award of compensation shall not be approved  
27 if the injury occurred while the victim was confined in  
28 any state, county or city jail, prison, private prison or  
29 correctional facility.

30 (f) After reaching a decision to approve an award of  
31 compensation, but prior to announcing such approval,  
32 the judge or commissioner shall require the claimant to  
33 submit current information as to collateral sources on  
34 forms prescribed by the clerk of the court of claims. The  
35 judge or commissioner shall reduce an award of  
36 compensation or deny a claim for an award of compen-  
37 sation that is otherwise payable to a claimant to the  
38 extent that the economic loss upon which the claim is  
39 based is or will be recouped from other persons,  
40 including collateral sources, or if such reduction or  
41 denial is determined to be reasonable because of the  
42 contributory misconduct of the claimant or of a victim  
43 through whom he claims. If an award is reduced or a  
44 claim is denied because of the expected recoupment of  
45 all or part of the economic loss of the claimant from a  
46 collateral source, the amount of the award or the denial  
47 of the claim shall be conditioned upon the claimant's  
48 economic loss being recouped by the collateral source:  
49 *Provided*, That if it is thereafter determined that the  
50 claimant will not receive all or part of the expected  
51 recoupment, the claim shall be reopened and an award  
52 shall be approved in an amount equal to the amount of  
53 expected recoupment that it is determined the claimant  
54 will not receive from the collateral source, subject to the  
55 limitation set forth in subsection (g) of this section.

56 (g) Except in the case of death, compensation payable  
57 to a victim and to all other claimants sustaining  
58 economic loss because of injury to that victim shall not  
59 exceed thirty-five thousand dollars in the aggregate.  
60 Compensation payable to a victim of criminally injur-

61 ious conduct which causes permanent injury may  
62 include, in addition to economic loss, an amount up to  
63 fifteen thousand dollars for emotional distress and pain  
64 and suffering which are proximately caused by such  
65 conduct. Compensation payable to all claimants because  
66 of the death of the victim shall not exceed fifty thousand  
67 dollars in the aggregate, but may include, in addition  
68 to economic loss, compensation to the claimants specified  
69 in paragraph (2), subdivision (a), section three of this  
70 article, for sorrow, mental anguish and solace.

§14-2A-26. Rules and regulations.

1 (a) The court of claims may promulgate legislative  
2 rules in accordance with the provisions of chapter  
3 twenty-nine-a of this code to implement the provisions  
4 of this article.

5 (b) The court of claims shall promulgate legislative  
6 rules in accordance with the provisions of chapter  
7 twenty-nine-a of this code to govern the award of  
8 compensation to the spouse of, person living in the same  
9 household with, parent, child, brother or sister of the  
10 offender or his accomplice in order to avoid an unjust  
11 benefit to or the unjust enrichment of the offender or  
12 his accomplice.

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## CHAPTER 68

(Com. Sub. for H. B. 2727—By Delegate Damron)

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[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen-b, article fourteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to counties; civil service for deputy sheriffs; increasing the maximum days of sick leave for deputy sheriffs; and allowing unlimited unpaid sick leave.

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

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

## ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

## §7-14-17b. Sick leave for deputy sheriffs.

1 (a) The county commission of each county shall allow  
2 the sheriff's deputies sick leave with pay to be computed  
3 as follows: Full-time deputies shall be entitled to one and  
4 one-half days sick leave for each calendar month  
5 worked, or greater part thereof; part-time deputies shall  
6 be entitled to sick leave at the same rate and in the same  
7 proportion that hours actually worked bears to hours  
8 regularly scheduled for full-time deputies: *Provided*,  
9 That deputies may accumulate not more than one  
10 hundred twenty sick leave days.

11 (b) Sick leave may be granted only when illness on the  
12 part of or injury to the deputy incapacitates him for  
13 duty: *Provided*, That the sheriff of the county in which  
14 the deputy is employed shall have the authority to  
15 require the deputy to produce a statement from an  
16 attending physician for each day of sick leave beyond  
17 two days. This statement shall include dates of treat-  
18 ment and also state that the deputy was unable to work.  
19 In the absence of the physician's statement, if required,  
20 annual leave shall be charged for the entire period.

21 (c) In the event of illness, a full-time deputy may take  
22 without limit emergency sick leave without pay after all  
23 accrued sick leave, annual leave and compensatory time  
24 available to such full-time deputy has been exhausted.

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## CHAPTER 69

(S. B. 18—By Senator Holliday)

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[Passed March 9, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to repeal section sixteen, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to marriages between colored persons.

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

## ARTICLE 1. MARRIAGE.

**§1. Repeal of section relating to marriages between colored persons.**

- 1 Section sixteen, article one, chapter forty-eight of the
- 2 code of West Virginia, one thousand nine hundred
- 3 thirty-one, as amended, is hereby repealed.

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## CHAPTER 70

(Com. Sub. for H. B. 4109—By Delegates Murphy and Given)

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[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections one, two, three, four, five, six, seven, eight, nine and ten, article two-a, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prevention of domestic violence; purposes; definitions; jurisdiction; priority of petitions; commencement of proceedings; temporary orders of courts; hearings; protective orders; testimony of husband and wife; record keeping and reporting requirements; contempt; purposes; penalty for contempt; and enforcement.

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

That sections one, two, three, four, five, six, seven, eight, nine and ten, article two-a, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 2A. PREVENTION OF DOMESTIC VIOLENCE.**

- §48-2A-1. Purpose.
- §48-2A-2. Definitions.
- §48-2A-3. Jurisdiction; effect of complaining party leaving residence; priority of petitions filed under this article.
- §48-2A-4. Commencement of proceeding; counterclaim.
- §48-2A-5. Temporary orders of court; hearings.
- §48-2A-6. Protective orders.
- §48-2A-7. Contempt.
- §48-2A-8. Testimony of husband and wife.
- §48-2A-9. Record keeping and reporting.
- §48-2A-10. Enforcement procedure for temporary and protective order.

**§48-2A-1. Purpose.**

1 The purpose of this article is to prevent continuing  
2 abuse of one family or household member at the hands  
3 of another family or household member. Nothing  
4 contained in this article shall be construed as affecting  
5 the abused party's rights of action or claims which are  
6 otherwise provided for in this code or by common law.  
7 An abusing party will remain subject to a damage claim  
8 or charges of criminal conduct. It is the intent of the  
9 Legislature to provide temporary and immediate relief  
10 for an abused party so that he or she may make rational  
11 decisions regarding their future, thus enabling them to  
12 initiate procedures for appropriate permanent remedies.  
13 It is further intended that magistrates fully explain to  
14 persons alleging spousal abuse the procedures involved  
15 pursuant to a domestic violence petition. Magistrates  
16 shall also inform such persons alleging abuse to the  
17 existence of the nearest residential or other protective  
18 facility. It is further intended that no proceeding under  
19 this article shall be initiated during the pendency of a  
20 divorce action between the person seeking relief under  
21 the provisions of this article and the alleged defendant.  
22 Any order entered by virtue of this article, unless it has  
23 expired by virtue of the provisions herein regarding  
24 periods of time the order remains in effect, shall remain  
25 in full force and effect upon the filing by either party  
26 of a complaint for divorce, annulment or separate  
27 maintenance until such time as the family law master  
28 or circuit judge, having jurisdiction over said action,  
29 enters an order superseding such protective order.

**§48-2A-2. Definitions.**

1 As used in this article, unless the context clearly  
2 requires otherwise:

3 (a) "Abuse" means the occurrence of one or more of  
4 the following acts between family or household members  
5 who reside together or who formerly resided together;

6 (1) Attempting to cause or intentionally, knowingly or  
7 recklessly causing bodily injury with or without  
8 dangerous or deadly weapons;



9 (2) Placing by physical menace another in fear of  
10 imminent serious bodily injury;

11 (3) Creating fear of bodily injury by harassment,  
12 psychological abuse or threatening acts;

13 (4) Sexual abuse.

14 (b) "Family or household member" means spouses,  
15 persons living as spouses, persons who formerly resided  
16 as spouses, parents, children and stepchildren, or other  
17 persons related by consanguinity or affinity.

18 (c) "Sexual abuse" has the same meaning as the  
19 definitions of "sexual assault" and "sexual abuse" in this  
20 code.

**§48-2A-3. Jurisdiction; effect of complaining party  
leaving residence; priority of petitions filed  
under this article.**

1 Circuit courts and magistrate courts, as constituted  
2 under chapter fifty of this code, shall have concurrent  
3 jurisdiction over proceedings under this article. The  
4 complaining party's right to relief under this article  
5 shall not be affected by his or her leaving the residence  
6 or household to avoid further abuse. Any petition filed  
7 under the provisions of this article shall be given  
8 priority over any other civil action before the court  
9 except actions in which trial is in progress, and shall  
10 be docketed immediately upon filing.

**§48-2A-4. Commencement of proceeding; counterclaim.**

1 (a) A person may seek relief under this article for  
2 himself or herself, or any parent or adult household  
3 member may seek relief under this article on behalf of  
4 a minor child, by filing a verified petition alleging abuse  
5 by the respondent. No person shall be refused the right  
6 to file a petition under the provisions of this article if  
7 he or she presents facts sufficient under the provisions  
8 of this article for the relief sought.

9 (b) The West Virginia supreme court of appeals shall  
10 prescribe a form which shall be used for preparing a  
11 petition under this article, and the court shall distribute  
12 such forms to the clerk of the circuit court of each  
13 county within the state.

14 (c) The respondent named in any petition alleging  
15 abuse may file a counterclaim or raise any affirmative  
16 defenses.

17 (d) No person accompanying a person who is seeking  
18 to file a petition under the provisions of this article shall  
19 be precluded from being present if his or her presence  
20 is desired by the person seeking a petition unless the  
21 person's behavior is disruptive to the proceeding or is  
22 otherwise in violation of court rules.

**§48-2A-5. Temporary orders of court; hearings.**

1 (a) Upon filing of a verified petition under this article,  
2 the court may enter such temporary orders as it may  
3 deem necessary to protect the complainant or minor  
4 children from abuse, and, upon good cause shown, may  
5 do so ex parte without the necessity of bond being given  
6 by the plaintiff. Clear and convincing evidence of  
7 immediate and present danger of abuse to the complain-  
8 ant or minor children shall constitute good cause for  
9 purposes of this section. If the defendant is not present  
10 at the proceeding, complainant or complainant's legal  
11 representative shall certify to the court, in writing, the  
12 efforts which have been made to give notice to the  
13 defendant or just cause why notice should not be  
14 required. Following such proceeding, the court shall  
15 order a copy of the petition to be served immediately  
16 upon the defendant, together with a copy of any  
17 protective order issued pursuant to the proceeding,  
18 notice setting forth the time and place of the full hearing  
19 and a statement of the right of the defendant to be  
20 present and to be represented by counsel. Such initial  
21 protective order shall remain effective until such time  
22 as a hearing is held.

23 (b) Within five days following the issuance of the  
24 court's temporary order, a full hearing shall be held at  
25 which the complainant must prove the allegation of  
26 abuse by a preponderance of the evidence, or such  
27 petition shall be dismissed. Copies of medical reports  
28 may be admitted into evidence to the same extent as  
29 though the original thereof, upon proper authentication,  
30 by the custodian of such records. At the hearing, the

31 court may make any protective order or approve any  
32 consent agreement authorized by this article.

33 (c) No person requested by a party to be present  
34 during a hearing held under the provisions of this  
35 article shall be precluded from being present unless  
36 such person is to be a witness in the proceeding and a  
37 motion for sequestration has been made and such has  
38 been granted or is found by the court to be disruptive  
39 or otherwise in violation of court rules.

40 (d) If a hearing is continued, the court may make or  
41 extend such temporary orders as it deems necessary.

**§48-2A-6. Protective orders.**

1 (a) The court may grant any protective order it deems  
2 necessary to bring about a cessation of abuse of the  
3 complainant or minor children, which may include:

4 (1) Directing the defendant to refrain from abusing  
5 the complainant or minor children;

6 (2) Granting possession to the complainant of the  
7 residence or household to the exclusion of the defendant  
8 when the residence or household is jointly owned or  
9 leased by the parties;

10 (3) When the defendant has a duty to support the  
11 complainant or minor children living in the residence  
12 or household and the defendant is the sole owner or  
13 lessee, granting possession to the complainant of the  
14 residence or household to the exclusion of the defendant  
15 or by consent agreement allowing the defendant to  
16 provide suitable alternate housing;

17 (4) Awarding temporary custody of or establishing  
18 temporary visitation rights with regard to minor  
19 children;

20 (5) Ordering the defendant to pay to the complainant  
21 a sum for temporary support and maintenance of the  
22 abused party. This order is of a temporary nature and,  
23 on the sixtieth day following issuance of the order, that  
24 portion of the order requiring the defendant to pay  
25 support, becomes void unless the beneficiary of that  
26 order has filed a petition for divorce with a prayer for

27 temporary support and maintenance under section  
28 thirteen, article two, chapter forty-eight of this code or  
29 has initiated an action for separate maintenance under  
30 section twenty-eight, article two, chapter forty-eight of  
31 this code. When there is a subsequent ruling on a  
32 petition for support under section thirteen, article two,  
33 chapter forty-eight of this code, that portion of the order  
34 requiring the defendant to pay support becomes void;

35 (6) Ordering the defendant to refrain from entering  
36 the school, business or place of employment of the  
37 complainant or household members or family members  
38 for the purpose of violating the protective order;

39 (7) Directing the parties or a party to participate in  
40 counseling;

41 (8) Ordering the defendant to refrain from contacting,  
42 telephoning, communicating, harassing or verbally  
43 abusing the complainant in any public place.

44 (b) Any protective order shall be for a fixed period of  
45 time not to exceed sixty days. The court may amend its  
46 order at any time upon subsequent petition filed by  
47 either party.

48 (c) No order under this article shall in any manner  
49 affect title to any real property.

50 (d) Certified copies of any order made under the  
51 provisions of this article shall be issued to the plaintiff,  
52 the defendant and any law-enforcement agency having  
53 jurisdiction to enforce the order or agreement, including  
54 the city police, the county sheriff's office or local office  
55 of the state police.

#### §48-2A-7. Contempt.

1 (a) Upon violation of any order issued pursuant to this  
2 article, the court shall, upon the filing of appropriate  
3 pleadings by or on behalf of any aggrieved party, issue  
4 an order to show cause why the person violating any  
5 provisions of the court's order should not be held in  
6 contempt of court and set a time for a hearing thereon  
7 within five days of the filing of said motion.

8 (b) Notwithstanding any other provision of law to the

9 contrary, any sentence for contempt hereunder may  
10 include imprisonment up to thirty days and a fine not  
11 to exceed one thousand dollars or both. In lieu of  
12 confinement, the court may allow the contemnor to post  
13 bond as surety for the faithful compliance with the  
14 orders of the court.

**§48-2A-8. Testimony of husband and wife.**

1 Husband and wife are competent witnesses in such  
2 proceedings and cannot refuse to testify on the grounds  
3 of the privileged nature of their communications.

**§48-2A-9. Record keeping and reporting.**

1 (a) Each law-enforcement agency shall maintain  
2 records on all incidents of family or household abuse  
3 reported to it, and shall monthly make and deliver to  
4 the department of public safety a report on a form  
5 prescribed by the department, listing all such incidents  
6 of family or household abuse. Such reports shall include:

7 (1) The age and sex of the abused and abusing parties;

8 (2) The relationship between the parties;

9 (3) The type and extent of abuse;

10 (4) The number and type of weapons involved;

11 (5) Whether the law-enforcement agency responded to  
12 the complaint and if so, the time involved, the action  
13 taken and the time lapse between the agency's action  
14 and the abused's request for assistance;

15 (6) Whether the complaining party reported having  
16 filed complaints with regard to family or household  
17 abuse on any prior occasion and if so, the number of  
18 such prior complaints; and

19 (7) The effective dates and terms of any order of  
20 protection issued prior to or following the incident to  
21 protect the abused party: *Provided*, That no information  
22 which will permit the identification of the parties  
23 involved in any incident of abuse shall be included in  
24 such report.

25 (b) The department of public safety shall tabulate and

26 analyze any statistical data derived from the reports  
27 made by law-enforcement agencies pursuant to this  
28 section, and publish a statistical compilation in the  
29 department's annual uniform crime report, as provided  
30 for in section twenty-four, article two, chapter fifteen of  
31 this code.

32 (c) The statistical compilation shall include, but is not  
33 limited to, the following:

34 (1) The number of family violence complaints  
35 received;

36 (2) The number of complaints investigated;

37 (3) The number of complaints received from alleged  
38 victims of each sex;

39 (4) The average time lapse in responding to such  
40 complaints;

41 (5) The number of complaints received from alleged  
42 victims who have filed such complaints on prior  
43 occasions;

44 (6) The number of aggravated assaults and homicides  
45 resulting from such repeat incidents;

46 (7) The type of police action taken in disposition of the  
47 cases; and

48 (8) The number of alleged violations of orders of  
49 protection.

50 (d) As used in this section, the terms "abuse" and  
51 "family or household members" shall have the meanings  
52 given them in section two, article two-a, chapter forty-  
53 eight of this code; and the term "law-enforcement  
54 agency" shall include the West Virginia department of  
55 health and human resources in those instances of child  
56 abuse reported to the department which are not  
57 otherwise reported to any other law-enforcement  
58 agency.

59 (e) The department of public safety shall develop and  
60 implement policies and procedures to guide law-  
61 enforcement officers in responding to and investigating  
62 domestic violence episodes, making arrests for domestic

63 violence episodes and in accordance with this section.  
64 Such policies and procedures are to be in effect by the  
65 first day of July, one thousand nine hundred ninety.  
66 Copies of said policies and procedures are to be  
67 distributed to all law-enforcement departments in this  
68 state.

69 (f) Nothing in this section shall be construed to  
70 authorize the inclusion of information contained in a  
71 report of an incident of abuse in any local, state,  
72 interstate, national or international systems of criminal  
73 identification pursuant to section twenty-four, article  
74 two, chapter fifteen of this code: *Provided*, That nothing  
75 in this section shall prohibit the department of public  
76 safety from processing information through its criminal  
77 identification bureau with respect to any actual charge  
78 or conviction of a crime.

**§48-2A-10. Enforcement procedure for temporary and protective order.**

1 (a) Upon issuance of a temporary order as provided  
2 in section five of this article, and service thereof upon  
3 the defendant, or under relief granted in a protective  
4 order as provided in subsections (a) and (b), section six  
5 of this article of which the defendant has notice, a copy  
6 of such order shall, no later than the close of the next  
7 business day, be delivered to a local office of the city  
8 police, the county sheriff, and the West Virginia  
9 department of public safety, where it shall be placed in  
10 a confidential file, with access provided only to the law-  
11 enforcement agency and the respondent named on said  
12 order: *Provided*, That upon the expiration of any order  
13 issued pursuant to section five or six of this article, any  
14 such law-enforcement agency which has any such order  
15 on file, shall immediately expunge its confidential file  
16 of any reference thereto and destroy all copies of such  
17 order in its possession, custody or control. A sworn  
18 affidavit may be executed by the party awarded  
19 exclusive possession of the residence or household,  
20 pursuant to an order entered under subsection (b) of  
21 section six of this article, and delivered to such law-  
22 enforcement agency simultaneously with any such  
23 order, giving his consent for a law-enforcement officer

24 to enter such residence or household, without a warrant,  
25 to enforce such protective order or temporary order.

26 (b) Any person who observes a violation of such order  
27 or the violated party may call a local law-enforcement  
28 agency, which shall verify the existence of a current  
29 order, and shall direct a law-enforcement officer to  
30 immediately investigate the alleged violation.

31 (c) Where a law-enforcement officer observes a  
32 violation of a valid order, he may immediately arrest the  
33 subject of the order. In cases of violation of such orders  
34 occurring outside the presence of the investigating  
35 officer, the complainant may apply to a court in session  
36 for a warrant of arrest. If the court finds probable cause  
37 to believe that a valid order has been violated, the court  
38 shall issue such warrant for the arrest of the subject of  
39 the order wherever he may be found.

40 (d) Where there is an arrest, the officer shall take the  
41 arrested person before a court or the magistrate  
42 assigned to be available at such time and upon a finding  
43 of probable cause to believe a violation of an order has  
44 taken place, the court or magistrate shall set a time and  
45 place for a hearing, to take place within five days, and  
46 serve forthwith upon the alleged violator an order to  
47 show cause why he or she should not be held in contempt  
48 for violation of the prior order, which unless waived by  
49 the defendant shall be by trial by a jury of six persons.  
50 The remedies provided by this section shall be limited  
51 to violations of a temporary order or protective order  
52 entered pursuant to subsection (a) or (b), section six of  
53 this article.

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## CHAPTER 71

(Com. Sub. for H. B. 4799—By Delegate Phillips)

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[Passed March 10, 1990; in effect July 1, 1990. Approved by the Governor.]

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AN ACT to repeal article three, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section five, article two of said



chapter five-b; to amend and reenact sections one, two, four, five, six, six-a, seven, eight, ten, twelve, twelve-b, thirteen, fifteen, sixteen, seventeen and eighteen, article one, chapter five-b; to amend and reenact section three, article two, chapter five-b; to further amend said article by adding thereto a new section, designated section two-a; and to amend said chapter five-b by adding thereto a new article, designated article two-d, all relating to creating the division of tourism and parks; short title; legislative findings; sections created; appointment; compensation and qualifications of commissioner; general powers of the division; sections created; continuation of civil service coverage for persons employed in the former department of commerce; program and policy action statement; submission to joint committee on government and finance; section of tourism; purpose; powers and duties generally; section of advertising and promotion; purpose; powers and duties generally; section of product marketing; purpose; powers and duties generally; section of parks and recreation created; duties; records and equipment previously transferred from the department of natural resources to the department of commerce; funds; conveyance of Grandview State Park to the national park service; governor; director of the division of natural resources and director of the division of tourism and parks; section of parks and recreation; incorporating Moncove Lake public hunting and fishing area as a state park to be named Moncove Lake State Park; contracts for operation of commissaries; renewal option; purchase of investment and price determination; master plan development; public hearing on proposed contracts; promulgation of rules; purpose; powers and duties generally; acquisition of former railroad subdivision for establishment of Greenbrier River Trail; development; protection; operation and maintenance of trail; correlation of projects and services; sunset provision; governor's office of community and industrial development; general powers of the office; divisions created; creation of the West Virginia guaranteed work force program; short title; definitions; development of business and industrial training program; funding of program; program

activities; reports to Legislature and governor and joint commission on vocational, technical, and occupational education; and marketing of program.

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

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

**Article**

1. Division of Tourism and Parks.
2. Office of Community and Industrial Development.
- 2D. West Virginia Guaranteed Work Force Program.

**ARTICLE 1. DIVISION OF TOURISM AND PARKS.**

- §5B-1-1. Short title.
- §5B-1-2. Legislative findings.
- §5B-1-4. Division created; appointment, compensation and qualifications of commissioner.
- §5B-1-5. General powers of the division.
- §5B-1-6. Sections created; continuation of civil service coverage for persons employed in the former department of commerce.
- §5B-1-6a. Program and policy action statement; submission to joint committee on government and finance.
- §5B-1-7. Section of tourism; purpose; powers and duties generally.
- §5B-1-8. Section of advertising and promotion; purpose; powers and duties generally.
- §5B-1-10. Section of sales and marketing; purpose; powers and duties generally.
- §5B-1-12. Section of parks and recreation created; duties, records and equipment previously transferred from the department of natural resources to the department of commerce; funds.
- §5B-1-12b. Conveyance of Grandview State Park to the National Park Service; governor, director of the division of natural resources and director of the division of tourism and parks.
- §5B-1-13. Section of parks and recreation; purpose; powers and duties generally.

- §5B-1-15. Contracts for operation of commissaries, restaurants, recreational facilities and other establishments limited to ten years' duration; renewal at option of commissioner; termination of contract by the commissioner; contracts for development of revenue producing facilities within the state parks and recreational facilities; level of investment of contracts; term of investment contract; reservation of option to renew; and purchase of investment in event of default and price determination upon such event.
- §5B-1-16. Acquisition of former railroad subdivision for establishment of Greenbrier River Trail; development, protection, operation and maintenance of trail.
- §5B-1-17. Correlation of projects and services.
- §5B-1-18. Sunset provision.

**§5B-1-1. Short title.**

- 1 This chapter shall be known and may be cited as "The  
2 Economic Development Act of 1990."

**§5B-1-2. Legislative findings.**

- 1 It is hereby determined and declared as a matter of  
2 legislative finding:
- 3 (a) That seriously high unemployment exists in many  
4 areas of the state;
- 5 (b) That economic insecurity due to unemployment  
6 undermines the health, safety and general welfare of the  
7 people of the entire state;
- 8 (c) That the absence of employment and business  
9 opportunities for youth is a serious threat and has  
10 resulted in families leaving the state to find opportu-  
11 nities elsewhere, adversely affecting the tax base of the  
12 state, counties and municipalities;
- 13 (d) That the present and future welfare of the people  
14 of the state require as a public purpose a renewed effort  
15 toward the promotion and development of business  
16 enterprises with potential to help;
- 17 (e) That the legislative and executive branches of  
18 state government must seek out and recruit exception-  
19 ally qualified individuals and organizations to adminis-  
20 ter, advise and manage the state's economic develop-  
21 ment programs;
- 22 (f) That the state's leaders of business, labor, educa-  
23 tion and government must cooperate and advance

24 together on common ground, with the common purpose  
25 of the economic revitalization of our state; and

26 (g) That the industrial products and natural resources  
27 of the state need to be more thoroughly managed,  
28 developed and promoted and the various industries  
29 better coordinated and developed to provide a healthy  
30 industry environment that will decrease unemployment,  
31 promote the use of, while also protecting the renewable  
32 natural resources of West Virginia, and otherwise  
33 provide for the economic revitalization of our state.

34 In recognition of these findings, it is in the best  
35 interest of the citizens of this state to transfer the  
36 management and responsibility of the division of parks  
37 and recreation to the division of tourism and parks.

**§5B-1-4. Division created; appointment, compensation  
and qualifications of commissioner.**

1 Effective the first day of July, one thousand nine  
2 hundred ninety, there is hereby created in the executive  
3 branch of state government a division of tourism and  
4 parks and the office of commissioner of tourism and  
5 parks. The commissioner shall be the chief executive  
6 officer of the division with control and supervision of its  
7 operations and shall be appointed by the governor with  
8 the advice and consent of the Senate and shall be paid  
9 a salary of sixty-five thousand dollars a year. The  
10 commissioner shall have control and supervision of the  
11 division and shall be responsible for the work of each  
12 of its sections. Under the control and supervision of the  
13 commissioner, each section director shall be responsible  
14 for the work of his section. The commissioner shall have  
15 the authority to employ such assistants as may be  
16 necessary for the efficient operation of the division.

17 The commissioner may appoint such deputy commis-  
18 sioners and assign them such duties as may be necessary  
19 for the efficient management and operation of the  
20 division.

**§5B-1-5. General powers of the division.**

1 The division of tourism and parks shall have the  
2 authority and duty to:

- 3 (1) Promote, encourage and facilitate the expansion  
4 and development of markets for West Virginia products  
5 and services and the state's national and international  
6 image and prestige by any and all reasonable methods;
- 7 (2) Compile periodically a census of the crafts, trades,  
8 skills and occupations of all adult persons in the state,  
9 in cooperation with other agencies, and analyze and  
10 publish the information in such form as to be most  
11 valuable to business and industry;
- 12 (3) Advertise and publicize the material, economic  
13 quality of life, recreational and other advantages of the  
14 state which render it a desirable place for commerce  
15 and residence;
- 16 (4) Collect, compile and distribute information and  
17 literature concerning the advantages and attractions of  
18 the state, its historic and scenic points of interest and  
19 the highway, transportation and other facilities of the  
20 state;
- 21 (5) Plan and carry out a program of information and  
22 publicity designed to attract to West Virginia tourists,  
23 visitors and other interested persons from outside the  
24 state;
- 25 (6) Manage the state's park and recreation system for  
26 the benefit of the people of this state, and effectively  
27 promote and advertise the same to increase public  
28 knowledge and use thereof;
- 29 (7) To acquire for the state in the name of the division  
30 of tourism and parks by purchase, lease or agreement,  
31 or accept or reject for the state, in the name of the  
32 division, gifts, donations, contributions, bequests or  
33 devises of money, security or property, both real and  
34 personal, and any interest in such property, including  
35 lands and water, for state park or recreational areas for  
36 the purpose of providing public recreation: *Provided*,  
37 That any sale, exchange or transfer of such property  
38 shall be subject to the procedures of article one-a,  
39 chapter twenty of this code: *Provided, however*, That no  
40 lands or waters which, on or before December thirty-  
41 first, one thousand nine hundred eighty-five, were part

42 of the state's system of parks, or which were held or used  
 43 for recreational purposes, shall be subject to such sale,  
 44 exchange or transfer, by the division: *Provided further,*  
 45 That nothing herein contained shall be construed to  
 46 prevent the division from selling, transferring or  
 47 conveying to any other division or agency of this state  
 48 any lands or waters to which it has title and which was  
 49 sold, conveyed or transferred to the division from the  
 50 division or agency to which it is being sold, conveyed or  
 51 transferred;

52 (8) Make recommendations to the governor and the  
 53 Legislature of any legislation deemed necessary to  
 54 facilitate the carrying out of any of the foregoing powers  
 55 and duties, and to exercise any other power that may  
 56 be necessary or proper for the orderly conduct of the  
 57 business of the division and the effective discharge of the  
 58 duties of the division; and

59 (9) To cooperate and assist in the production of motion  
 60 pictures and television and other communications.

**§5B-1-6. Sections created; continuation of civil service  
 coverage for persons employed in the former  
 department of commerce.**

1 There is hereby created within the division of tourism  
 2 and parks:

- 3 (1) The section of tourism;
- 4 (2) The section of advertising and promotion;
- 5 (3) The section of sales and marketing; and
- 6 (4) The section of parks and recreation.

7 Each said section shall be under the control of a  
 8 director to be appointed by the commissioner who shall  
 9 be qualified by reason of exceptional training and  
 10 experience in the field of activities of his respective  
 11 section and shall serve at the will and pleasure of the  
 12 commissioner. The commissioner shall have authority to  
 13 establish such additional sections as may be determined  
 14 necessary to carry out the purposes of this chapter.

15 All persons employed on the effective date of this

16 chapter in the department of commerce, the duties and  
17 functions of which have been transferred to the division  
18 of tourism and parks created by virtue of the provisions  
19 of the economic development act of one thousand nine  
20 hundred ninety, are hereby assigned and transferred to  
21 the division of tourism and parks, and no person's  
22 employment shall be eliminated, nor shall any person's  
23 salary, benefits or position classification be reduced or  
24 diminished by reason of the provisions of this chapter.  
25 All persons affected shall retain their coverage under  
26 the civil service system and all matters relating to job  
27 classification, job tenure, salary and conditions of  
28 employment shall remain in force and effect from and  
29 after the effective date of this chapter: *Provided*, That  
30 nothing herein shall prohibit the disciplining or  
31 dismissal of any employee for cause, or the dismissal of  
32 any nonclassified supervising employees appointed by  
33 the governor and serving at the will and pleasure of the  
34 governor.

**§5B-1-6a. Program and policy action statement; submission to joint committee on government and finance.**

1 The division of tourism and parks, the office of  
2 community and industrial development and any other  
3 authorities, boards, commissions, corporations or other  
4 entities created or amended under chapters five-b and  
5 article eleven, chapter eighteen-b of this code, shall  
6 prepare and submit to the joint committee on govern-  
7 ment and finance on/or before the first day of De-  
8 cember, one thousand nine hundred ninety, and each  
9 year thereafter, a program and policy action statement  
10 which shall outline in specific detail according to the  
11 purpose, powers and duties of the office or section, its  
12 procedure, plan and program to be used in accomplish-  
13 ing its goals and duties as required under this article.

**§5B-1-7. Section of tourism; purpose; powers and duties generally.**

1 It shall be the duty of the section of tourism:  
2 (a) To promote and enhance the tourist industry and  
3 improve tourist facilities and attractions;

4 (b) To compile a listing of all tourist facilities in this  
5 state, whether public or private, including, but not  
6 limited to, state parks and forests, camping grounds,  
7 back-packing and hiking trails, public and private  
8 hunting areas (including the game or fowl indigenous  
9 thereto), fishing lakes, ponds, rivers and streams  
10 (including the type of fish indigenous thereto; and the  
11 dates of the stocking thereof), ski resorts and areas, ice  
12 skating rinks or facilities, rifle and pistol target practice  
13 areas, skeet and other shooting facilities, archery  
14 ranges, swimming pools, lakes, ponds, rivers and  
15 streams, hotels, motels, resorts and lodges (including  
16 any attendant restaurant, banquet, meeting or conven-  
17 tion facilities or services), health spas or mineral water  
18 or spring water health facilities, museums, cultural  
19 centers, live performance theaters, colleges, schools,  
20 universities, technical centers, airports, railroad sta-  
21 tions, bus stations, river docks, boating areas, govern-  
22 ment or military installations (which are not restricted  
23 to public access), historical places, markers or places of  
24 events, birthplaces of famous West Virginians, or any  
25 other thing of like kind and nature, and to develop  
26 relative thereto a series of films, videotapes, pamphlets,  
27 brochures and other advertising or promotional media,  
28 and to distribute the same in such a manner as to  
29 enhance the public's knowledge about West Virginia  
30 and its many attractions;

31 (c) Develop a plan for tourist facility expansion and  
32 new development, including financing;

33 (d) To develop a system, means and mechanism to  
34 distribute the promotional media described in subdivi-  
35 sion (b) of this section, both nationally and internation-  
36 ally; and to make the same available to travel agents,  
37 tour groups, senior citizen organizations, airlines,  
38 railroads, bus companies, newspapers, magazines, radio  
39 and television stations, and the travel editors thereof; to  
40 develop, in cooperation with the division of highways, a  
41 series of information stations along interstate and other  
42 major highways of this state, utilizing existing rest stop  
43 areas and other areas at or near the main points of



44 egress and ingress of this state for the purpose of  
45 making said information available to the public at large;

46 (e) To develop and implement a marketing strategy,  
47 employing radio, television, magazine and newspaper  
48 advertising, or any combination thereof, in those major  
49 metropolitan areas of the nation, in order to attract the  
50 residents thereof to visit and enjoy the tourist facilities  
51 of this state;

52 (f) To encourage, cooperate with and participate in,  
53 any group or organization, including regional travel  
54 councils, the purpose of which is to promote and  
55 advertise, or encourage the use of, tourist facilities in  
56 West Virginia;

57 (g) To provide professional assistance, technical  
58 advice or marketing strategies to any privately owned  
59 facility or attraction, as described in subdivision (b) of  
60 this section, which is open and available to the general  
61 public, which has developed or is attempting to develop  
62 its own advertising program;

63 (h) To employ, train and supervise a corps of infor-  
64 mation specialists or tour guides in state parks and  
65 facilities only who possess, or through their employment  
66 and training will possess, specific knowledge and  
67 information about the historic, scenic, cultural, indus-  
68 trial, educational, governmental, recreational and  
69 geographical significance of the state and the various  
70 facilities or attractions described in subdivision (b) of  
71 this section. In hiring the information specialists herein  
72 provided, special preference shall be given to senior  
73 citizens (those over sixty-two years of age) and college  
74 students who are bona fide residents of the state and  
75 enrolled in any college or university of this state,  
76 whether public or private, all of whom shall be hired  
77 on a part-time basis and whose periods of employment  
78 may be seasonable;

79 (i) To assist tour groups, travel agencies, public  
80 carriers or other entities of like kind or nature in  
81 developing a program of preplanned tours, visits or  
82 vacations in West Virginia; and, in conjunction there-  
83 with, to coordinate the activities of said tour groups,  
84 travel agencies, public carriers or other entities with the

85 services offered by any of the facilities set forth in  
86 subdivision (b) of this section; and to encourage said  
87 facilities to offer special or discount rates to any party  
88 traveling with said tour groups, travel agencies, public  
89 carriers or other entities of like kind or nature; and

90 (j) To cooperate with the division of highways in  
91 developing a system of informational highway signing  
92 relating to the recreational, scenic, historic and trans-  
93 portational facilities and attractions of the state that  
94 comply with the current federal and state regulations  
95 as related to outdoor advertising and signing as  
96 required by the Manual of Uniform Traffic Control  
97 Devices.

**§5B-1-8. Section of advertising and promotion; purpose;  
powers and duties generally.**

1 It shall be the duty of the section of advertising and  
2 promotion:

3 (a) Based upon the information, statistics, facts,  
4 studies and conclusions produced by or for the  
5 governor's office of community and industrial develop-  
6 ment, to develop a program of advertising strategies and  
7 plans to inform the public at large and specific target  
8 groups about various aspects of the state of West  
9 Virginia, including, but not limited to, agriculture,  
10 natural resources, timber and timber byproducts, coal,  
11 oil, gas and their byproducts, existing industries and  
12 existing and proposed industrial sites, educational,  
13 research and technical institutions, the labor force,  
14 transportation, public utilities, navigable waterways,  
15 rivers, lakes and streams, taxation, revenue bonding  
16 availability and assistance, governmental rules and  
17 regulations relative to business and industry, and any  
18 other fact, statistic or item of information which is or  
19 may be helpful to or of interest to any corporation,  
20 partnership, association, individual or individuals who  
21 or which is or may be interested in engaging in business  
22 in the state of West Virginia;

23 (b) To develop such films, videotapes, computer  
24 software, phonograph records, tape recordings, pam-  
25 phlets, brochures, booklets, information sheets, radio,

26 television or newspaper advertising, magazine inserts,  
27 advertisements or supplements, billboards or any other  
28 thing of like kind or nature which is, or may be, likely  
29 to inform the public at large or any specifically targeted  
30 group or industry about the benefits of living in,  
31 investing in, producing in, buying from, contracting  
32 with, or in any other way related to, the state of West  
33 Virginia or any business, industry, agency, institution or  
34 other entity therein;

35 (c) To employ or contract with such professional or  
36 technical experts or consultants as may be necessary to  
37 create and produce the items set forth in subdivision (b)  
38 of this section;

39 (d) To spend such sums of money as may be necessary,  
40 within legislative appropriation therefor, to purchase  
41 advertising time or space in or upon any medium  
42 generally engaged or employed for said purpose to  
43 distribute or disseminate the items of advertising  
44 described in subdivision (b) of this section;

45 (e) To provide professional assistance, technical  
46 advice or marketing strategies to any privately owned  
47 business or industry in this state which has developed  
48 or is attempting to develop its own advertising program;

49 (f) To cooperate with, or participate in, any group or  
50 organization, whether public or private, the purpose of  
51 which is to promote, enhance or develop a positive image  
52 of the state of West Virginia or any business, industry,  
53 institution or facility therein;

54 (g) To use such resources as are available to it to  
55 distribute the items of advertising and promotion  
56 described in subdivision (b) of this section, to such  
57 group or groups, audience or audiences, corporations,  
58 partnerships, associations, including public and private  
59 colleges and universities, and to individuals, who or  
60 which are, or may be, interested in some aspect of the  
61 state of West Virginia;

62 (h) To engage in, participate in, promote or sponsor,  
63 such trade shows, fairs, information seminars or  
64 symposiums, or other event or events of like kind and

65 nature, including privately funded trade shows, fairs,  
66 information seminars or symposiums, or other event or  
67 events of like kind and nature, whether located within  
68 or without this state, or beyond the borders of the  
69 United States, to promote generally the state of West  
70 Virginia or to assist any business, industry or other  
71 entity, whether public or private, in promoting, adver-  
72 tising or advancing the reputation of the state of West  
73 Virginia or any corporation, association, partnership,  
74 institution, business, industry or other entity which is,  
75 or may be, likely to produce additional employment or  
76 employment opportunities, business or business oppor-  
77 tunities in the state of West Virginia; and

78 (i) To perform such other duties or functions, or to  
79 engage in such other activities, as the commissioner may  
80 from time to time direct.

**§5B-1-10. Section of sales and marketing; purpose;  
powers and duties generally.**

1 It shall be the duty of the section of sales and  
2 marketing:

3 (a) To develop such programs as are necessary for the  
4 promotion and marketing of West Virginia arts, crafts  
5 and products, and to implement said program in this  
6 state, in the United States and in other countries;

7 (b) To design, develop and create, or to provide for the  
8 design, development and creation of, such films,  
9 videotapes, pamphlets, brochures, and other advertising  
10 and promotional media, and to distribute the same in  
11 such a manner as to enhance the public's knowledge of  
12 West Virginia arts, crafts and products;

13 (c) To sponsor or participate in trade shows, trade  
14 fairs or other events the purpose of which is to display,  
15 sell, or increase public awareness of, West Virginia arts,  
16 crafts and products;

17 (d) To design and implement a program of direct  
18 sales of West Virginia arts, crafts and products; and to  
19 provide for the publication and distribution of a catalog  
20 which adequately displays and describes the arts, crafts  
21 and products being offered for sale, employing such

22 direct mail or other means of distribution as the director  
23 deems appropriate;

24 (e) To cooperate with artists, craftsmen, guilds,  
25 cooperatives and other organizations, the purposes of  
26 which are to enhance or promote West Virginia arts,  
27 crafts and products, and to assist said artists, craftsmen,  
28 guilds, cooperatives and organizations in the develop-  
29 ment of their own marketing programs;

30 (f) To develop markets in West Virginia, other states  
31 and other nations for said arts, crafts and products by  
32 employing persons who shall act as sales agents for said  
33 arts, crafts and products;

34 (g) To cooperate with other governmental divisions,  
35 and with other groups, guilds, cooperatives or other  
36 entities, whether public or private, the purpose of which  
37 is to further enhance and promote the sale, use,  
38 distribution or public knowledge of West Virginia arts,  
39 crafts and products; and

40 (h) To perform such other duties or functions, or to  
41 engage in such other activities, as the director may from  
42 time to time direct.

**§5B-1-12. Section of parks and recreation created; duties,  
records and equipment previously trans-  
ferred from the department of natural  
resources to the department of commerce;  
funds.**

1 (a) The duties, powers and functions of the section of  
2 parks and recreation within the division of natural  
3 resources previously transferred to the division of  
4 commerce are hereby transferred to the division of  
5 tourism and parks.

6 (b) All books, papers, maps, charts, plans, literature  
7 and other records, and all equipment in the possession  
8 of the division of commerce shall be delivered or turned  
9 over to the division of tourism and parks.

10 (c) The division of tourism and parks shall have the  
11 duty and authority to administer those properties which  
12 are a part of the state parks and public recreation

13 system, but the legal title to such properties shall  
14 remain with the division of natural resources.

15 (d) All existing contracts and obligations of the  
16 division of parks and recreation shall remain in full  
17 force and effect and any existing contracts and obliga-  
18 tions relating to parks and recreation shall be per-  
19 formed by the division of tourism and parks.

20 (e) The unexpended balance existing on the effective  
21 date of this chapter in any appropriation made to the  
22 division of commerce is hereby transferred and approp-  
23 riated to the division of tourism and parks.

24 The director of the division of natural resources and  
25 the commissioner of tourism and parks shall cooperate  
26 fully and exercise their powers to facilitate the devel-  
27 opment of new or the expansion of existing park  
28 facilities, including, but not limited to, the authorities  
29 as set forth in this chapter relating to the division of  
30 tourism and parks, and as set forth in section twenty,  
31 article one, chapter twenty of this code, relating to the  
32 division of natural resources, as amended from time to  
33 time.

**§5B-1-12b. Conveyance of Grandview State Park to the  
National Park Service; governor, director  
of the division of natural resources and  
director of the division of tourism and  
parks.**

1 The governor and the director of the division of  
2 natural resources may convey, within one year of the  
3 effective date of this section, the lands and property of  
4 Grandview State Park to the National Park Service of  
5 the government of the United States of America:  
6 *Provided*, That the National Park Service agrees to  
7 accept the conveyance: *Provided, however*, That the  
8 division of natural resources shall hold public hearings  
9 prior to making said conveyance. At least one public  
10 hearing shall be held in the county where the park is  
11 located.

12 The commissioner of the division of tourism and parks  
13 shall cooperate with and aid the division of natural

14 resources in the conveyance. The conveyance is subject  
15 to the provisions of article one-a, chapter twenty of the  
16 code of West Virginia, one thousand nine hundred  
17 thirty-one, as amended.

**\*§5B-1-13. Section of parks and recreation; purpose;  
powers and duties generally.**

1 It shall be the duty of the section of parks and  
2 recreation to have within its jurisdiction and  
3 supervision:

4 (a) All state parks and state recreation areas, includ-  
5 ing all lodges, cabins, swimming pools, motorboating  
6 and all other recreational facilities therein, except the  
7 roads therein which, by reason of section one, article  
8 four, chapter seventeen of this code, are transferred to  
9 the state road system and to the responsibility of the  
10 commissioner of highways with respect to the construc-  
11 tion, reconstruction and maintenance of the roads or any  
12 future roads for public usage on publicly owned lands  
13 in future state parks, state forests and public hunting  
14 and fishing areas;

15 (b) The authority and responsibility to do the neces-  
16 sary cutting and planting of vegetation along road  
17 rights-of-way in state parks and recreational areas;

18 (c) The administration of all laws and regulations  
19 relating to the establishment, development, protection,  
20 use and enjoyment of all state parks and state recrea-  
21 tional facilities consistent with the provisions of this  
22 article: *Provided*, That nothing herein shall be construed  
23 to assign to the section of parks and recreation of the  
24 division of tourism and parks the law-enforcement  
25 duties set forth in article seven, chapter twenty of this  
26 code, which duties shall remain the responsibility of the  
27 division of natural resources;

28 (d) The Berkeley Springs sanitarium in Morgan  
29 County shall be continued as a state recreational facility  
30 under the jurisdiction and supervision of the division of

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\*Clerk's Note: §5B-1-13 was also amended by S. B. 563 (Chapter 103), which passed prior to this act.

31 tourism and parks and shall be managed, directed and  
32 controlled as prescribed in this article and in article one,  
33 chapter twenty of this code.

34 The commissioner shall have and is hereby granted all  
35 of the powers and authority and shall perform all of the  
36 functions and duties with regard to Berkeley Springs  
37 sanitarium that were previously vested in and per-  
38 formed by the director of the division of natural  
39 resources, who shall no longer have such power and  
40 authority and whose power and authority with regard  
41 to Berkeley Springs sanitarium is hereby abolished;

42 (e) The Washington Carver camp in Fayette County  
43 is hereby transferred from the division of natural  
44 resources to the commissioner who shall have the  
45 jurisdiction and supervision of the camp subject to the  
46 jurisdiction and authority of the division of culture and  
47 history as provided under section thirteen, article one,  
48 chapter twenty-nine of this code. The commissioner shall  
49 manage the Washington Carver camp as a state  
50 recreational facility and a component of the state park  
51 system;

52 (f) The improved recreational area of Camp Creek  
53 State Forest in Mercer County, as delineated according  
54 to section three, article one-a, chapter nineteen of this  
55 code, is hereby renamed as the Camp Creek State Park  
56 and under that name shall be managed as a state  
57 recreational facility;

58 (g) The improved recreational area of Moncove Lake  
59 public hunting and fishing area, consisting of all  
60 improved recreational facilities, including all land  
61 between the lake and private property beginning at the  
62 main entrance on secondary route eight to the first  
63 stream on the southwest side of the improved recrea-  
64 tional area, approximately two hundred feet southwest  
65 of the private property corner where it meets the  
66 Roxalia Springs trail, thence northwest to a stream and  
67 along this stream northward to and across the Diamond  
68 Hollow trail to the area boundary, thence continuing  
69 around area boundary to the lake shore, thence follow-  
70 ing the lake shore around the shoreline to meet the line



71 drawn from the main entrance where the boundary  
72 begins. This area is hereby renamed as the Moncove  
73 Lake State Park and under that name shall be managed  
74 as a state recreational facility: *Provided*, That the  
75 boundary, as herein described, shall be plainly marked  
76 within ninety days of the effective date of this article;  
77 and

78 (h) The commissioner of the division of tourism and  
79 parks shall be primarily responsible for the execution  
80 and administration of the provisions herein as an  
81 integral part of the parks and recreation program of the  
82 state and shall organize and staff his section for the  
83 orderly, efficient and economical accomplishment of  
84 these ends.

**§5B-1-15. Contracts for operation of commissaries, restaurants, recreational facilities and other establishments limited to ten years' duration; renewal at option of commissioner; termination of contract by the commissioner; contracts for development of revenue producing facilities within the state parks and recreational facilities; level of investment of contracts; term of investment contract; reservation of option to renew; and purchase of investment in event of default and price determination upon such event.**

1 (a) When it is deemed necessary by the commissioner  
2 to enter into a contract with a person, firm or corpora-  
3 tion for the operation of a commissary, restaurant,  
4 recreational facility or other such establishment within  
5 the state parks and public recreation system, such  
6 contract shall be for a duration not to exceed ten years,  
7 but a contract so made may provide for an option to  
8 renew at the commissioner's discretion for an additional  
9 term or terms not to exceed ten years at the time of  
10 renewal.

11 Any contract entered into by the commissioner shall  
12 provide an obligation upon the part of the operator that  
13 he or she maintain a level of performance satisfactory

14 to the commissioner, and shall further provide that any  
15 such contract may be terminated by the commissioner  
16 in the event he or she determines that such performance  
17 is unsatisfactory and has given the operator reasonable  
18 notice thereof.

19 (b) When it is deemed necessary by the commissioner  
20 to enter into a contract with a person, firm or corpora-  
21 tion for the development of revenue producing facilities  
22 within the state parks and public recreation system for  
23 a period of more than ten years, such contract shall be  
24 at least a one million dollar level of investment for such  
25 revenue producing facilities. The term of the investment  
26 contract may be up to twenty-five years of duration at  
27 the determination of the commissioner and based upon  
28 the amount of the investment and the achievement of the  
29 environmental, recreational and cultural goals of the  
30 state park or recreation areas system of this state.

31 Any contract so entered into may provide for an option  
32 to renew at the discretion of the commissioner for an  
33 additional term not to exceed an additional fifteen-year  
34 term at the time of renewal.

35 Any such investment contract entered into by the  
36 commissioner shall contain a provision for the purchase  
37 of the investment upon an event of default on the part  
38 of the investor on the contract. Such purchase may be  
39 exercised only for default. The purchase price of the  
40 investment shall be determined by determining a  
41 percentage by dividing the number of years remaining  
42 in the term of the contract at the time of default by the  
43 number of years of the term of the contract and then  
44 reducing the purchase price by such percentage of the  
45 amount of the investment. The amount of the investment  
46 shall be the actual cost of constructing the facilities, not  
47 including overhead, called for in the contract, as  
48 certified by a certified public accountant at the time the  
49 facilities are completed. The contract shall provide that  
50 the payments to the defaulting investor shall be made  
51 in equal payments yearly during the remaining period  
52 of the term of the contract.

53 (c) The commissioner may not solicit nor enter into

54 contracts, except for the operation of a commissary,  
55 restaurant or marina for a period of less than ten years,  
56 until a master plan for the administration of that state  
57 park or recreation area has been developed. He or she  
58 shall supervise the preparation of the plan and may  
59 utilize the staff of the division of natural resources or  
60 any other state governmental agency whose expertise he  
61 or she desires to enlist in the preparation thereof. The  
62 commissioner shall solicit public participation and  
63 involvement in all stages of the preparation of the plan  
64 and in the preparation of any requests for proposals for  
65 the development of a revenue producing facility, as  
66 described herein, with a contract duration in excess of  
67 ten years. The plan shall be consistent with the  
68 environmental, recreational and cultural goals of the  
69 state park and recreation areas system of the state and,  
70 to the extent practical, with the public comments and  
71 input received during plan development.

72 (d) If the commissioner considers a proposal for the  
73 development of a revenue producing facility, as des-  
74 cribed herein, such proposal shall be made available to  
75 the public in a convenient location in the county wherein  
76 the proposed facility may be located. The commissioner  
77 shall publish a notice of the proposal by Class I legal  
78 advertisement in accordance with the provisions of  
79 article three, chapter fifty-nine of this code. The  
80 publication area is the county in which the proposed  
81 facility would be located. Any citizen may communicate  
82 by writing to the commissioner his or her opposition or  
83 approval to such proposal within a period of not less  
84 than thirty days from the date of the publication of  
85 notice.

86 (e) No contract of a term greater than ten years may  
87 be entered into by the commissioner until a public  
88 hearing is held in the vicinity of the location of the  
89 proposed facility with at least two weeks notice of such  
90 hearing by Class I publication pursuant to section two,  
91 article three, chapter fifty-nine of this code. The  
92 commissioner shall make findings prior to rendering a  
93 decision on any proposed contract of a duration of more  
94 than ten years. All studies, records, documents and

95 other materials which are considered by the commis-  
96 sioner in making such findings as required herein shall  
97 be made available for public inspection at the time of  
98 the publication of the notice of public hearing and at a  
99 convenient location in the county where the proposed  
100 development may be located.

101 The commissioner shall make rules in accordance  
102 with chapter twenty-nine-a of this code for the conduct  
103 of the hearing required by this section. Persons attend-  
104 ing such hearings shall be permitted a reasonable  
105 opportunity to be heard on the proposed development.

106 At such hearing the commissioner shall present in  
107 writing the following findings and supporting state-  
108 ments therefor:

109 (1) That the proposed development will not deprive  
110 users of the state park or recreational area of existing  
111 recreational facilities in any significant fashion;

112 (2) That the proposed development will not have  
113 substantial negative impact on the environmental,  
114 scenic or cultural qualities of the said park or area; and

115 (3) That the proposed development, considered as a  
116 whole, is of benefit to the recreational goals of the state  
117 and is consistent with the master plan developed for that  
118 park or recreational area.

119 (f) Following a public hearing as prescribed herein  
120 any interested person may submit to the commissioner  
121 written comments on the proposed development. All  
122 comments made at a hearing, in addition to those  
123 received in writing within thirty days after any such  
124 hearing, shall be considered by the commissioner in the  
125 determination of whether to approve the proposed  
126 development.

127 (g) The commissioner may not enter into any contract  
128 of a duration of more than ten years unless all proce-  
129 dures and requirements as prescribed by this section  
130 have been complied with.

131 (h) The commissioner shall make a decision whether  
132 to approve any proposal to enter into a contract for a

133 duration of more than ten years within sixty days after  
134 the conclusion of the hearing as specified herein.

**§5B-1-16. Acquisition of former railroad subdivision for establishment of Greenbrier River Trail; development, protection, operation and maintenance of trail.**

1 The commissioner may acquire from the West Virgi-  
2 nia railroad maintenance authority approximately  
3 seventy-five miles of right-of-way along the former  
4 Greenbrier subdivision of the Chessie Railroad System  
5 between Caldwell in Greenbrier County and Cass in  
6 Pocahontas County to be developed as the "Greenbrier  
7 River Trail." The acquired property shall be operated  
8 under the authority of the division of tourism and parks  
9 and used for:

10 (1) The construction and maintenance of barriers for  
11 the protection of the trail from motorized vehicular  
12 traffic and for the protection of adjacent public and  
13 private property; and

14 (2) The development, construction, operation and  
15 maintenance of bicycle and hiking trails, horseback  
16 trails, primitive camping facilities and other compatible  
17 recreational facilities to be so designated by the  
18 commissioner.

**§5B-1-17. Correlation of projects and services.**

1 The commissioner of the division of tourism and parks  
2 shall correlate and coordinate his park and recreation  
3 programs, projects and developments with the functions  
4 and services of other offices and sections of the division  
5 and other agencies of the state government so as to  
6 provide, consistent with the provisions of this chapter,  
7 suitable and adequate facilities, landscaping, personnel  
8 and other services at and about all state parks and  
9 public recreation facilities under his jurisdiction.

**§5B-1-18. Sunset provision.**

1 Unless sooner terminated by law, the division of  
2 tourism and parks shall terminate on the first day of  
3 July, one thousand nine hundred ninety-three, in

- 4 accordance with the provisions of article ten, chapter  
5 four of this code.

**ARTICLE 2. OFFICE OF COMMUNITY AND INDUSTRIAL  
DEVELOPMENT.**

§5B-2-2a. General powers of the office.

§5B-2-3. Divisions created.

**§5B-2-2a. General powers of the office.**

1 The office of community and industrial development  
2 shall have the authority and duty to:

3 (1) Promote and encourage the location and develop-  
4 ment of new business in the state and the maintenance  
5 and expansion of existing business;

6 (2) Investigate and study conditions affecting West  
7 Virginia business, industry and commerce; collect and  
8 disseminate information, and engage in technical  
9 studies, scientific investigations, statistical research and  
10 educational activities necessary or useful for the proper  
11 execution of the powers and duties of the department;

12 (3) Plan and develop an effective economic informa-  
13 tion service that will directly assist business, education  
14 and labor and also encourage businesses outside the  
15 state to use industrial office facilities, professional,  
16 labor, financial and recreational facilities, services and  
17 products from within the state;

18 (4) Encourage and develop commerce with other  
19 states and nations and devise methods of removing trade  
20 barriers that hamper the free flow of commerce between  
21 this and other states and nations and for these purposes  
22 cooperate with governmental, quasi-public and private  
23 organizations in formulating and promoting the adop-  
24 tion of compacts and agreements helpful to commerce  
25 and labor;

26 (5) Conduct or encourage research designed to further  
27 new and more extensive uses of the natural, human,  
28 professional, technical and other resources of the state  
29 with a view to the development of new products,  
30 industrial processes, services and markets;

31 (6) Compile periodically a census of business and

32 industry in the state, in cooperation with other agencies,  
33 and analyze and publish the information in such form  
34 as to be most valuable to business and industry;

35 (7) Study long-range trends and developments in the  
36 industries, commerce and economic health of the state,  
37 and analyze the reasons underlying such trends; study  
38 costs and other factors affecting successful operation  
39 and location of businesses within the state;

40 (8) Initiate, promote and conduct, or cause to be  
41 conducted, research designed to further new and more  
42 extensive uses and consumption of natural and other  
43 resources and their byproducts; and for such purposes,  
44 to enter into contracts and agreements with research  
45 laboratories maintained by educational or endowed  
46 institutions in this state;

47 (9) To establish as an independent entity at West  
48 Virginia University in cooperation with and involving  
49 other West Virginia colleges and universities a center  
50 for economic research. The center shall be under the  
51 control and supervision of a director, who shall be  
52 appointed by the president of West Virginia University.  
53 The center shall employ such staff economists or  
54 statisticians, such research assistants and secretaries,  
55 each of whom shall serve on a part-time basis and may  
56 be members of the faculty or staff of West Virginia  
57 University or any other college or university in the state.  
58 In addition, the center may employ student interns;

59 (10) The center shall provide the governor's office of  
60 community and industrial development, commissioner  
61 of tourism and parks and the Legislature with an  
62 analysis of the quality of economic data pertaining to  
63 West Virginia. The center shall recommend ways to  
64 obtain additional information necessary to better  
65 understand the state's economy and to devise better  
66 economic development strategies. The center is directed  
67 to establish priorities and coordinate its economic  
68 research functions with the governor and the Legisla-  
69 ture. To accomplish this purpose the advisory board  
70 created for the institute of public affairs in section one,  
71 article twenty-six-b, chapter eighteen of this code, shall

72 serve as the advisory board to the center. The director  
73 of the center shall serve as the chairman of the advisory  
74 board. The center shall publish results of its research,  
75 maintain a comprehensive library with supporting  
76 computer data bases and shall, upon request, provide a  
77 review of the economy and major policy issues to the  
78 joint committee on government and finance;

79 (11) During its first year of operation, the center shall  
80 include in its research topics the desirability of estab-  
81 lishing a detailed gross state products series, modeled  
82 after the national income and products accounts and the  
83 desirability of constructing a periodic input/output table  
84 for the state. It shall review the quality of current  
85 statistics relating to employment and prices and  
86 statistics relating to poverty and the distribution of  
87 income and wealth. The center may study the feasibility  
88 of, and, based upon such study, establish a West  
89 Virginia econometric model project;

90 (12) Where deficiencies are found in existing data  
91 sources, the center shall publish conclusions regarding  
92 the benefits to be derived from gathering additional or  
93 better information and shall make operational recom-  
94 mendations on the best possible methods for obtaining  
95 the desired information;

96 (13) The director of the center or members of its staff  
97 shall meet on a regular basis with the director of the  
98 governor's office of community and industrial develop-  
99 ment, the commissioner of tourism and parks, other  
100 officials of the department and members of the Legis-  
101 lature to provide the results of its research and to  
102 provide policy advice and analysis;

103 (14) The center shall develop and maintain an inven-  
104 tory of research efforts of universities and colleges and  
105 other institutions or businesses within the state and a  
106 register of scientific and technological research facilities  
107 in the state. That function may be performed by  
108 contract with the center for education and research with  
109 industry of the board of regents;

110 (15) The governor's office of community and indus-  
111 trial development shall assist, promote, encourage,



112 develop and advance economic prosperity and employ-  
113 ment throughout this state by fostering the expansion  
114 of exports of manufactured goods and services to foreign  
115 purchasers and the investment of capital by foreign  
116 countries in this state;

117 (16) The governor's office of community and indus-  
118 trial development shall cooperate and act in conjunction  
119 with other organizations, public and private, the objects  
120 of which are the promotion and advancement of export  
121 trade and foreign investment activities in the state of  
122 West Virginia;

123 (17) The governor's office of community and indus-  
124 trial development shall consider establishing a source of  
125 funding credit guarantees and insurance to support  
126 export development not otherwise available to West  
127 Virginia small and medium sized businesses;

128 (18) The governor's office of community and indus-  
129 trial development shall develop a strategic plan for the  
130 economic development of the state, its regions and  
131 specific industries including tourism, manufacturing,  
132 timber, agriculture and other rural development, coal,  
133 oil, gas and other extractive resources, retail, service,  
134 distribution and small businesses. Such a plan shall  
135 emphasize a coordinated effort of the public and private  
136 sector toward balanced growth for the state. Such plan  
137 shall include, but is not limited to, the following:

138 (A) Assessing the state's economic strengths and  
139 weaknesses;

140 (B) Developing and recommending short, interme-  
141 diate and long-term economic goals and plans, together  
142 with options;

143 (C) Identifying barriers to economic growth and  
144 diversification in the state;

145 (D) Recommending implementation procedures and  
146 options utilizing and maximizing existing public and  
147 private mechanism;

148 (E) Fostering and supporting scientific and techno-  
149 logical research in this state in cooperation with the

150 federal government, the various offices and divisions of  
151 the department of commerce and other state and local  
152 governmental agencies, educational institutions, non-  
153 profit institutions and organizations, business enter-  
154 prises and others concerned with scientific and techno-  
155 logical research development;

156 (F) Developing a program to attract investment in  
157 research and development in high technology industries;

158 (G) Conducting a series of studies to determine the  
159 feasibility of constructing natural gas transmission  
160 lines, electric power generating facilities and coal  
161 processing plants to be owned, either in whole or in part,  
162 or to be operated, either in whole or in part, by the state  
163 of West Virginia; and

164 (H) Maintaining a library of research materials,  
165 including computer data bases, to accomplish the goals  
166 of the division.

**§5B-2-3. Divisions created.**

1 There are hereby created within the office of commun-  
2 ity and industrial development:

- 3 (1) The division of community development;
- 4 (2) The division of financial and technical assistance;
- 5 (3) The division of administration;
- 6 (4) The division of industrial development;
- 7 (5) The division of employment and training;
- 8 (6) The division of small business development; and
- 9 (7) The division of small business.

10 Each said division shall be under the control of a  
11 director to be appointed by the director of the office of  
12 community and industrial development and who shall be  
13 qualified by reason of exceptional training and expe-  
14 rience in the field of activities of his respective division  
15 and shall serve at the will and pleasure of the director.

16 The governor is hereby authorized to establish and  
17 maintain foreign trade offices, personnel for same and  
18 attendant services.

**ARTICLE 2D. WEST VIRGINIA GUARANTEED WORK FORCE PROGRAM.**

- §5B-2D-1. Short title.
- §5B-2D-2. Definitions.
- §5B-2D-3. Training program.
- §5B-2D-4. Funds.
- §5B-2D-5. Program activities.
- §5B-2D-6. Reporting.
- §5B-2D-7. Marketing.

**§5B-2D-1. Short title.**

- 1 This article shall be known and may be cited as the
- 2 "West Virginia Guaranteed Work Force Program."

**§5B-2D-2. Definitions.**

- 1 (a) "GOCID" shall mean the Governor's Office of
- 2 Community and Industrial Development;
- 3 (b) "Employer" shall mean an individual, partnership,
- 4 corporation, or other legal entity that employs or plans
- 5 to employ skilled workers;
- 6 (c) "Retraining and job upgrade" shall mean the
- 7 specialized training that is given to an identified level
- 8 of employees to enable them to advance to a higher level
- 9 of employment;
- 10 (d) "Program" shall mean the West Virginia Guarante-
- 11 ted Work Force Program established pursuant to
- 12 section three;
- 13 (e) "Training" shall mean custom-designed training
- 14 given to employees or prospective employees of new or
- 15 expanding businesses and industries within the state;
- 16 (f) "Training provider" shall mean any persons, public
- 17 or private educational institutions, agencies, companies
- 18 or other entities that may be utilized for training or
- 19 consultative services for an employer.

**§5B-2D-3. Training program.**

- 1 The GOCID shall develop a business and industrial
- 2 training program, the purpose of which is to provide
- 3 assistance for new or expanding businesses for the
- 4 training, retraining or upgrading of the skills of

5 potential employees. The program shall emphasize  
6 employee training specifically designed to accommodate  
7 the needs of individual employers. The program shall  
8 encourage the expansion of existing businesses and  
9 industries within the state, promote retention of  
10 businesses and industries within the state, promote  
11 retention of existing jobs within the state, prevent  
12 economic and industrial out-migration, and assist in the  
13 relocation of out-of-state businesses and industries in the  
14 state. Under this program, GOCID may pay up to one  
15 hundred percent (100%) or one thousand dollars (\$1,000)  
16 per employee, whichever is less, of the training costs of  
17 new employees in firms creating at least fifty (50) jobs  
18 in a one-year period. Training assistance may also be  
19 provided to existing businesses in cases in which  
20 training, retraining or upgrading services will result in  
21 the creation of additional jobs: *Provided*, That GOCID  
22 may pay up to one hundred percent (100%) or one  
23 thousand dollars (\$1,000) per employee, whichever is  
24 less, for the training, retraining or upgrading. Training  
25 costs associated with this program will be paid directly  
26 by GOCID to the training provider.

27 Provision of training services will depend upon  
28 employer hiring performance and projections which  
29 meet the fifty (50) jobs per year requirement. The state  
30 of West Virginia guarantees if employer satisfaction is  
31 not achieved, GOCID will upon a review of the program  
32 with the employer and the training provider arrange  
33 retraining of employees to meet the employer's speci-  
34 fications and satisfaction: *Provided*, That in no instance  
35 may the cost of training and retraining an employee  
36 exceed two thousand dollars (\$2,000).

#### §5B-2D-4. Funds.

1 The funds made available by this section shall  
2 supplement but not displace funds available through  
3 existing programs conducted by employers themselves  
4 and public programs such as the Job Training Partner-  
5 ship Act (JTPA), the Carl D. Perkins Vocational  
6 Education Act, the Stewart B. McKinney Homeless  
7 Assistance Act, and the JOBS Act, or apportionment  
8 fund allocated to the community colleges, regional

9 occupational centers and programs, or other local  
10 educational agencies. In addition, it is further the  
11 intention of the Governor's Office of Community and  
12 Industrial Development that the program established  
13 pursuant to this section shall not replace, parallel,  
14 supplant, compete with, or duplicate in any way  
15 existing, approved apprenticeship programs.

16 The fund shall consist of all moneys which may be  
17 transferred to it by the West Virginia Economic  
18 Development Authority (WVEDA) and also any contri-  
19 butions, grants or bequests received from federal,  
20 private or other sources. Appropriations made from the  
21 funds shall be for the purpose of providing contractual  
22 services through GOCID for vocational related training  
23 or retraining provided by public or private training  
24 institutions within West Virginia and for contracted  
25 services through the GOCID for vocational related  
26 training, retraining or upgrading provided by public or  
27 private training institutions located outside of West  
28 Virginia and for vocational related training or retrain-  
29 ing provided on site, within West Virginia by any  
30 training provider as defined in this article.

#### §5B-2D-5. Program activities.

1 The primary concern in the provision of training  
2 services shall be the needs and type of services identified  
3 by the employer. A college or university, community  
4 college or area vocational education center shall be  
5 given initial consideration to provide any training,  
6 retraining, or job upgrade training. The employer will  
7 have the opportunity to participate in the selection of a  
8 training provider. Training services may begin upon  
9 execution of a written agreement between GOCID and  
10 the employer.

11 Program activities may include, but not be limited to,  
12 the following:

13 (a) Perform a job skills analysis and design a training  
14 curriculum for an employer.

15 (b) Recruit and refer trainee applicants to an em-  
16 ployer.

17 (c) Provide off site preemployment training, or on site  
18 preemployment training if off site preemployment  
19 training is not practical, to prospective employees of a  
20 new or expanding business or industry and to existing  
21 employees for purposes of retraining or upgrading.

22 (d) Retrain employees in response to a technological  
23 change.

24 (e) Provide job upgrade training if the training will  
25 increase the employer's total work force.

26 (f) Contract with persons, public or private educa-  
27 tional institutions, agencies, or other bodies for training  
28 or consultative services for an employer.

29 (g) Provide materials and supplies used in the  
30 training process, instructors with specialized skills,  
31 instructional training aids and equipment, consultative  
32 services relative to highly specific or technical data, and  
33 other services.

34 (h) Assist a foreign employer locating or expanding in  
35 this state by familiarizing the employer's foreign  
36 personnel with the work attitudes, work methods,  
37 expectations, customs, and life style of employees who  
38 work within this state.

39 (i) Take other action that is considered to be necessary  
40 or desirable for the furtherance of this article.

41 (j) No funds shall be awarded or reimbursed to any  
42 business or industry for the training, retraining or  
43 upgrading of skills of potential employees with the  
44 purpose of replacing or supplanting employees engaged  
45 in an authorized work stoppage.

#### §5B-2D-6. Reporting.

1 The office shall file a report with the Legislature and  
2 the governor at the end of each fiscal year, commencing  
3 June thirtieth, one thousand nine hundred ninety. This  
4 report shall include the following:

5 (a) The number of persons trained and their  
6 demographics.

7 (b) The number of persons placed in employment.

8 (c) The number of employers for which persons have  
9 been trained and placed.

10 (d) The number of persons trained and placed for  
11 each employer.

12 (e) The types of work for which persons have been  
13 trained.

14 (f) The source of training fund.

15 (g) The overall effectiveness of this article in contri-  
16 buting to economic stabilization and business and  
17 industrial growth within this state. In addition, the  
18 Governor's Office of Community and Industrial Devel-  
19 opment shall report on a quarterly basis to the joint  
20 commission on vocational, technical and occupational  
21 education, the following as they relate to the training  
22 program established by this article:

23 (1) The names of all companies approved for training  
24 during the reporting quarter.

25 (2) The names of all companies receiving funding for  
26 training during the reporting quarter.

27 (3) The amount and source of funds utilized for each  
28 training program.

29 (4) The type of training being delivered.

30 (5) The number of employees trained.

31 (6) Those agencies providing the training.

#### §5B-2D-7. Marketing.

1 The Governor's Office of Community and Industrial  
2 Development shall market and promote the program.

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## CHAPTER 72

(Com. Sub. for H. B. 4800—By Mr. Speaker, Mr. Chambers, and Delegate Farley)

[Passed March 10, 1990: in effect from passage. Approved by the Governor.]

AN ACT to amend article fifteen, chapter thirty-one 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 West Virginia Economic Development Authority; reciting legislative

findings; creating special fund to be used for job training program; authorizing transfers into such fund by authority; specifying source of such transfers, and specifying maximum amount thereof.

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

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

**ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT  
AUTHORITY.**

**§31-15-6a. Special power of authority to transfer funds;  
limitations; fund created; use of funds to  
provide customized job training program  
by governor's office of economic and com-  
munity development.**

1 (a) The Legislature finds and declares that in order  
2 to attract the new business and industry to this state and  
3 retain the business and industry in this state which  
4 provide the citizens of this state with economic security;  
5 to advance the business prosperity and economic welfare  
6 of this state and to assure a pool of qualified employees  
7 it is necessary that a training program exist to provide  
8 both unemployed and under-employed workers of this  
9 state a means to acquire or improve their working skills  
10 so as to insure availability of qualified employees that  
11 is fundamental for business and industry to prosper.

12 (b) The authority is hereby empowered to transfer to  
13 the special revenue fund herein created, a sum of money  
14 not to exceed two million five hundred thousand dollars,  
15 to be used by the governor's office of community  
16 development to establish, administer and operate a  
17 customized job training program. The authority may  
18 only make transfers to said fund between the time  
19 period commencing with the effective date of this  
20 section and ending the last day of June, one thousand  
21 nine hundred ninety-one. Such transfers may only be  
22 made from repayments of principal amounts from loans  
23 made by the authority where such repayments of  
24 principal are available for such use and are not



25 otherwise restricted. Transfers into the special revenue  
26 fund created above may be made at such times and in  
27 such amounts as the authority, in its discretion, deems  
28 reasonable: *Provided*, That the total amount of all such  
29 transfers may not exceed two million five hundred  
30 thousand dollars in the aggregate.

31 (c) There is hereby created in the state treasury a  
32 special revenue fund entitled the "Governor's Office of  
33 Community and Industrial Development Customized  
34 Job Training Program Fund." This fund shall consist of  
35 moneys paid into such fund in accordance with this  
36 section. Moneys in said fund shall be used by the  
37 governor's office of community and industrial develop-  
38 ment to establish and administer a customized job  
39 training program to meet the needs of expanding  
40 business and industry or to create new jobs, and the  
41 governor's office of community and industrial develop-  
42 ment may make such withdrawals from this fund as  
43 required to establish and administer said customized job  
44 training program.

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## CHAPTER 73

(S. B. 193—By Senators Holliday and Blatnik)

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[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section one-a, article two, chapter two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section fifteen, article five, chapter eighteen of said code; and to amend and reenact section two, article five, chapter eighteen-a of said code, all relating to reducing the number of out of school environment days from seven to six; designating Martin Luther King's birthday as a legal school holiday; removing an obsolete term from the code; and repealing an obsolete code section to comport with the bill.

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

That section one-a, article two, chapter two of the code of

West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section fifteen, article five, chapter eighteen of said code be amended and reenacted; and that section two, article five, chapter eighteen-a of said code be amended and reenacted, all to read as follows:

## Chapter

### 18. Education.

#### 18A. School Personnel.

## CHAPTER 18. EDUCATION.

### ARTICLE 5. COUNTY BOARD OF EDUCATION.

#### §18-5-15. School term; exception; levies; ages of persons to whom schools are open.

1 (a) The board shall provide a school term for its  
2 schools which shall be comprised of (1) an employment  
3 term for teachers, and (2) an instructional term for  
4 pupils. Nothing in this section shall prohibit the  
5 establishment of year-round schools in accordance with  
6 rules to be established by the state board.

7 The employment term for teachers shall be no less  
8 than ten months, a month to be defined as twenty  
9 employment days exclusive of Saturdays and Sundays:  
10 *Provided*, That the board may contract with all or part  
11 of the personnel for a longer term. The employment  
12 term shall be fixed within such beginning and closing  
13 dates as established by the state board: *Provided*,  
14 *however*, That the time between the beginning and  
15 closing dates does not exceed forty-three weeks.

16 Within the employment term there shall be an  
17 instructional term for pupils of not less than one  
18 hundred eighty nor more than one hundred eighty-five  
19 instructional days: *Provided*, That the minimum instruc-  
20 tional term may be decreased, by order of the state  
21 superintendent of schools, in any West Virginia county  
22 declared to be a federal disaster area by the federal  
23 emergency management agency. Instructional and  
24 noninstructional activities may be scheduled during the  
25 same employment day. Noninstructional interruptions  
26 to the instructional day shall be minimized to allow the  
27 classroom teacher to teach. The instructional term shall

28 commence no earlier than the first day of September  
29 and shall terminate no later than the eighth day of June.

30 Noninstructional days in the employment term may  
31 be used for making up canceled instructional days,  
32 curriculum development, preparation for opening and  
33 closing of the instructional term, in-service and profes-  
34 sional training of teachers, teacher-pupil-parent confer-  
35 ences, professional meetings and other related activities.  
36 In addition, each board shall designate and schedule for  
37 teachers and service personnel six days to be used by  
38 the employee outside the school environment. However,  
39 no more than eight noninstructional days, except  
40 holidays, may be scheduled prior to the first day of  
41 January in a school term.

42 Notwithstanding any other provisions of the law to the  
43 contrary, if the board has canceled instructional days  
44 equal to the difference between the total instructional  
45 days scheduled and one hundred seventy-eight, each  
46 succeeding instructional day canceled shall be resched-  
47 uled, utilizing only the remaining noninstructional  
48 days, except holidays, following such cancellation, which  
49 are available prior to the second day before the end of  
50 the employment term established by such county board.

51 Where the employment term overlaps a teacher's or  
52 service personnel's participation in a summer institute  
53 or institution of higher education for the purpose of  
54 advancement or professional growth, the teacher or  
55 service personnel may substitute, with the approval of  
56 the county superintendent, such participation for not  
57 more than five of the noninstructional days of the  
58 employment term.

59 The board may extend the instructional term beyond  
60 one hundred eighty-five instructional days provided the  
61 employment term is extended an equal number of days.  
62 If the state revenues and regular levies, as provided by  
63 law, are insufficient to enable the board of education to  
64 provide for the school term, the board may at any  
65 general or special election, if petitioned by at least five  
66 percent of the qualified voters in the district, submit the  
67 question of additional levies to the voters. If at the

68 election a majority of the qualified voters cast their  
69 ballots in favor of the additional levy, the board shall  
70 fix the term and lay a levy necessary to pay the cost of  
71 the additional term. The additional levy fixed by the  
72 election shall not continue longer than five years without  
73 submission to the voters. The additional rate shall not  
74 exceed by more than one hundred percent the maximum  
75 school rate prescribed by article eight, chapter eleven  
76 of the code, as amended.

77 (b) The Legislature finds and declares that excess  
78 levies as they currently exist create unequal educational  
79 opportunities from county to county based on the  
80 difference in the will of the voters and also based on the  
81 differences in property wealth among the counties; that  
82 prior to the first day of July, one thousand nine hundred  
83 ninety-four, the Legislature shall proceed to equalize  
84 educational opportunities over and above the opportuni-  
85 ties afforded by each county's property values by  
86 considering the existence or nonexistence of excess  
87 levies as a factor in the distribution of equity moneys;  
88 and that on and after the first day of July, one thousand  
89 nine hundred ninety-four, the Legislature shall imple-  
90 ment a plan for the equitable distribution of funds so  
91 as to eliminate the inequities resulting from county  
92 excess levies.

93 (c) The public schools shall be open for the full  
94 instructional term to all persons who have attained the  
95 entrance age as stated in section five, article two and  
96 section eighteen, article five, chapter eighteen of this  
97 code: *Provided*, That persons over the age of twenty-one  
98 may enter only those programs or classes authorized by  
99 the state board of education and deemed appropriate by  
100 the county board of education conducting any such  
101 program or class: *Provided, however*, That authorization  
102 for such programs or classes shall in no way serve to  
103 affect or eliminate programs or classes offered by  
104 county boards of education at the adult level for which  
105 fees are charged to support such programs or classes.

## CHAPTER 18A. SCHOOL PERSONNEL.

### ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

**§18A-5-2. Holidays; closing of schools; time lost because of such; special Saturday classes.**

1 Schools shall not be kept open on any Saturday nor  
2 on the following days which are designated as legal  
3 school holidays, namely: Independence Day, Labor Day,  
4 Veterans Day, Thanksgiving Day, Christmas Day, New  
5 Year's Day, Martin Luther King's birthday, Memorial  
6 Day and any day on which a primary election, general  
7 election or special election is held throughout the state  
8 or school district and any day appointed and set apart  
9 by the president or the governor as a holiday of special  
10 observance by the people of the state.

11 When any such holiday falls within the employment  
12 term, it shall be considered as a day of the employment  
13 term and the full-time school personnel shall receive his  
14 or her pay for same. When any of the above designated  
15 holidays, except a special election, falls on Saturday, the  
16 schools shall be closed on the preceding Friday; when  
17 any such falls on Sunday, the schools shall be closed on  
18 the following Monday.

19 Special classes may be conducted on Saturdays,  
20 provided they are conducted on a voluntary basis, for  
21 pupils and by teachers and service personnel, and that  
22 such teachers and service personnel shall be remunerated  
23 in ratio to the regularly contracted pay.

24 Any school or schools may be closed by proper  
25 authorities on account of the prevalence of contagious  
26 disease, conditions of weather or any other calamitous  
27 cause over which the board has no control. Under any  
28 or all of the above provisions, the time lost by the closing  
29 of schools is counted as days of employment and as  
30 meeting a part of the requirements of the minimum  
31 term of one hundred eighty days of instruction. On such  
32 day or days, county boards of education may provide  
33 appropriate alternate work schedules for professional  
34 and service personnel affected by the closing of any  
35 school or schools under any or all of the above provisions.  
36 Professional and service personnel shall receive pay the  
37 same as if school were in session. Insofar as funds are  
38 available or can be made available during the school

39 year, the board may extend the employment term for  
40 the purpose of making up time that might affect the  
41 instructional term.

42 In addition to any other provisions of this chapter, the  
43 board is further authorized to provide in its annual  
44 budget for meetings, workshops, vacation time or other  
45 holidays through extended employment of personnel at  
46 the same rate of pay.

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## CHAPTER 74

(Com. Sub. for H. B. 2219—By Delegate Sattes)

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[Passed March 10, 1990: in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section five-a, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three, article one, chapter twenty-nine-a of said code; to amend and reenact sections one and eleven-a, article three-a, chapter twenty-nine-a of said code; and to further amend said chapter twenty-nine-a by adding thereto a new article, designated article three-b, all relating to providing for adequate public participation in the promulgation of state board of education rules; exempting the secondary schools activities commission from the provisions of this article; redefining "board"; providing for the collection and preservation of state board of education rules in a manner easily accessible to the public; providing a process for clarification of legislative intent of statutes upon which state board of education rules are based; and changing obsolete code language and code references.

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

That section five-a, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section three, article one, chapter twenty-nine-a of said code be amended and reenacted; that sections one and eleven-a, article three-a, chapter twenty-nine-a be amended and reenacted; and that said chapter twenty-nine-a be further amended by adding

thereto a new article, designated article three-b, all to  
as follows:

**Chapter**

18. Education.

29A. State Administrative Procedures.

**CHAPTER 18. EDUCATION.**

**ARTICLE 2. STATE BOARD OF EDUCATION.**

**§18-2-5a. Board rules to be filed with Legislature.**

1 The state board of education shall file a copy of any  
2 rule that it proposes to promulgate, adopt, amend or  
3 repeal under the authority of the constitution or of this  
4 code with the legislative oversight commission on  
5 education accountability pursuant to article three-b,  
6 chapter twenty-nine-a of this code. "Rule," as used  
7 herein, means a regulation, standard, statement of  
8 policy, or interpretation of general application and  
9 future effect.

**CHAPTER 29A. STATE  
ADMINISTRATIVE PROCEDURES.**

**Article**

- 1. Definitions and Application of Chapter.
- 3A. Higher Education Rule Making.
- 3B. State Board of Education Rule Making.

**ARTICLE 1. DEFINITIONS AND APPLICATION OF CHAPTER.**

**§29A-1-3. Application of chapter; limitations.**

1 (a) The provisions of this chapter do not apply in any  
2 respect whatever to executive orders of the governor,  
3 which orders to the extent otherwise lawful shall be  
4 effective according to their terms: *Provided*, That the  
5 executive orders shall be admitted to record in the state  
6 register when and to the extent the governor deems  
7 suitable and shall be included therein by the secretary  
8 of state when tendered by the governor.

9 (b) Except as to requirements for filing in the state  
10 register, and with the Legislature or its rule-making  
11 review committee, provided in this chapter or other law,  
12 the provisions of this chapter do not apply in any respect

13 whatever to the West Virginia board of probation and  
14 parole, the public service commission, the board of  
15 public works sitting as such and the secondary schools  
16 activities commission: *Provided*, That rules of such  
17 agencies shall be filed in the state register in the form  
18 prescribed by this chapter and be effective no sooner  
19 than sixty consecutive days after being so filed:  
20 *Provided, however*, That the rules promulgated by the  
21 state colleges and universities shall only be filed with  
22 the higher education governing boards: *Provided*  
23 *further*, That such agencies may promulgate emergency  
24 rules in conformity with section fifteen, article three of  
25 this chapter.

26 (c) The provisions of this chapter do not apply to rules  
27 relating to or contested cases involving the conduct of  
28 inmates or other persons admitted to public institutions,  
29 the open seasons and the bag, creel, size, age, weight and  
30 sex limits with respect to the wildlife in this state, the  
31 conduct of persons in military service or the receipt of  
32 public assistance. Such rules shall be filed in the state  
33 register in the form prescribed by this chapter and be  
34 effective upon filing.

35 (d) Nothing herein shall be construed to affect, limit  
36 or expand any express and specific exemption from this  
37 chapter contained in any other statute relating to a  
38 specific agency, but such exemptions shall be construed  
39 and applied in accordance with the provisions of this  
40 chapter to effectuate any limitations on such exemptions  
41 contained in any such other statute.

#### ARTICLE 3A. HIGHER EDUCATION RULE MAKING.

§29A-3A-1. Definitions.

§29A-3A-11a. Additional powers and duties; subpoena powers.

##### §29A-3A-1. Definitions.

1 As used in this article:

2 (a) "Commission" means the legislative oversight  
3 commission on education accountability;

4 (b) "Board" means the university of West Virginia  
5 board of trustees or the board of directors of the state  
6 college system as defined in chapter eighteen-b of this



7 code, or both, or any person employed by such boards  
8 who is granted rule-making authority under the  
9 provisions of said chapter.

**§29A-3A-11a. Additional powers and duties; subpoena powers.**

1 (a) In addition to the powers and duties conferred  
2 upon the commission pursuant to the provisions of this  
3 article, the commission shall make a continuing inves-  
4 tigation, study and review of the practices, policies and  
5 procedures of the board and of any and all matters  
6 related to education in the state and shall make annual  
7 reports to the Legislature of the results of such  
8 investigation, study and review.

9 (b) These reports shall describe and evaluate in a  
10 concise manner:

11 (1) The major activities of the board for the fiscal year  
12 immediately past, including important policy decisions  
13 reached on initiatives undertaken during that year,  
14 especially as such activities, decisions and initiatives  
15 relate to the implementation of (1) the constitutional  
16 requirement of providing a thorough and efficient  
17 education to the children of this state and (2) the  
18 objective of improving the quality of education at all  
19 levels in this state.

20 (2) Other information considered by the commission  
21 to be important, including recommendations for statu-  
22 tory, fiscal or other reform and reasons for such  
23 recommendations.

24 Further, these reports may specify in what manner  
25 said practices, policies and procedures may or should be  
26 modified to satisfy said constitutional requirement and  
27 to improve the quality of education at all levels in this  
28 state.

29 The commission may meet as often as may be  
30 necessary and employ such professional, clerical and  
31 technical personnel as it considers necessary to perform  
32 effectively the duties herein prescribed.

33 (c) The commission shall conduct a study to determine

34 whether the bureaucracies of the state board of educa-  
35 tion and each county board of education are of such size  
36 and complexity that they do not best serve the educa-  
37 tional needs of the children of the state. The commission  
38 may request assistance from the legislative auditor to  
39 conduct this study.

40 (d) For purposes of carrying out its duties, the  
41 commission is hereby empowered and authorized to  
42 examine witnesses and to subpoena such persons and  
43 books, records, documents, papers or any other tangible  
44 things as it believes should be examined to make a  
45 complete investigation. All witnesses appearing before  
46 the commission shall testify under oath or affirmation,  
47 and any member of the commission may administer  
48 oaths or affirmations to such witnesses. To compel the  
49 attendance of witnesses at such hearings or the produc-  
50 tion of any books, records, documents, papers or any  
51 other tangible thing, the commission is hereby empow-  
52 ered and authorized to issue subpoenas, signed by one  
53 of the cochairmen, in accordance with section five,  
54 article one, chapter four of this code. Such subpoenas  
55 shall be served by any person authorized by law to serve  
56 and execute legal process and service shall be made  
57 without charge. Witnesses subpoenaed to attend hear-  
58 ings shall be allowed the same mileage and per diem  
59 as is allowed witnesses before any petit jury in this state.

60 If any person subpoenaed to appear at any hearing  
61 shall refuse to appear or to answer inquiries there  
62 propounded, or shall fail or refuse to produce books,  
63 records, documents, papers or any other tangible thing  
64 within his control when the same are demanded, the  
65 commission shall report the facts to the circuit court of  
66 Kanawha County or any other court of competent  
67 jurisdiction and such court may compel obedience to the  
68 subpoena as though such subpoena had been issued by  
69 such court in the first instance.

#### ARTICLE 3B. STATE BOARD OF EDUCATION RULE MAKING.

- §29A-3B-1. Definitions.
- §29A-3B-2. Rules to be promulgated in accordance with this article.
- §29A-3B-3. Rules of procedure required.
- §29A-3B-4. Filing of proposed rules.

- §29A-3B-5. Notice of proposed rule making.
- §29A-3B-6. Filing findings and determinations for rules in state register; evidence deemed public record.
- §29A-3B-7. Notice of hearings.
- §29A-3B-8. Adoption of rules.
- §29A-3B-9. Submission of legislative rules to the legislative oversight commission on education accountability.
- §29A-3B-10. Emergency legislative rules; procedure for promulgation; definition.
- §29A-3B-11. Legislative review of procedural rules, interpretive rules and existing legislative rules.
- §29A-3B-12. Prior rules.

**§29A-3B-1. Definitions.**

- 1 As used in this article:
- 2 (a) "Commission" means the legislative oversight  
3 commission on education accountability created in  
4 section eleven, article three-a of this chapter.
- 5 (b) "Board" means the West Virginia board of  
6 education.

**§29A-3B-2. Rules to be promulgated in accordance with this article.**

- 1 In addition to other rule-making requirements im-  
2 posed by law and except to the extent specifically  
3 exempted by the provisions of this chapter or other  
4 applicable law, every rule and regulation (including any  
5 amendment of or rule to repeal any other rule) shall be  
6 promulgated by the board in accordance with this  
7 article and shall be and remain effective only to the  
8 extent that it has been or is promulgated in accordance  
9 with this article.

**§29A-3B-3. Rules of procedure required.**

- 1 In addition to other rule-making requirements im-  
2 posed by law:
- 3 (a) The board shall adopt procedural rules governing  
4 the formal and informal procedures prescribed or  
5 authorized by this chapter. Procedural rules shall  
6 include rules of practice before the board, together with  
7 forms and instructions.
- 8 (b) To assist interested persons dealing with it, the

9 board shall, so far as deemed practicable, supplement  
10 its rules or regulations with descriptive statements of its  
11 procedures.

**§29A-3B-4. Filing of proposed rules.**

1 (a) When the board proposes a procedural, interpre-  
2 tive or legislative rule, the agency shall file in the state  
3 register a notice of its action, including the text of the  
4 rule as proposed.

5 (b) All proposed rules filed under subsection (a) of this  
6 section shall have a fiscal note attached itemizing the  
7 cost of implementing the rules as they relate to this state  
8 and to persons affected by the rules and regulations.  
9 Such fiscal note shall include all information included  
10 in a fiscal note for either house of the Legislature and  
11 a statement of the economic impact of the rule on the  
12 state or its residents. The objectives of the rules shall  
13 be clearly and separately stated in the fiscal note by the  
14 agency issuing the proposed rules. No procedural or  
15 interpretive rule shall be void or voidable by virtue of  
16 noncompliance with this subsection.

**§29A-3B-5. Notice of proposed rule making.**

1 When the board proposes to promulgate a rule other  
2 than an emergency rule, it shall file in the state register  
3 a notice of its action, including a text of the rule  
4 proposed, a fiscal note as defined in subsection (b) of  
5 section four, and any request for the submission of  
6 evidence to be presented on any factual determinations  
7 or inquiries required by law to promulgate such rule.  
8 If the board is considering alternative draft proposals,  
9 it may include the text thereof.

10 The notice shall fix a date, time and place for the  
11 taking of evidence for any findings and determinations  
12 which are a condition precedent to promulgation of the  
13 proposed rule and contain a general description of the  
14 issues to be decided. If no findings and determinations  
15 are required as a condition precedent to promulgation,  
16 the notice shall fix a date, time and place for receipt of  
17 public comment on such proposed rule.

18 If findings and determinations are a condition

19 precedent to the promulgation of such rule, then an  
20 opportunity for public comment on the merits of the rule  
21 shall be afforded after such findings and determinations  
22 are made. In such event, notice of the hearing, or of the  
23 period for receiving public comment on the proposed  
24 rule, shall be attached to and filed as a part of the  
25 findings and determinations of the board when filed in  
26 the state register.

27 In any hearing for public comment on the merits of  
28 the rule, the board may limit presentations to written  
29 material. The time, date and place fixed in the notice  
30 shall constitute the last opportunity to submit any  
31 written material relevant to any hearing, all of which  
32 may be earlier submitted by filing with the board.

33 The board may also, at its expense, cause to be  
34 published as a Class I legal publication in every county  
35 of the state, any notice required by this section.

36 Any citizen or other interested party may appear and  
37 be heard at such hearings as are required by this  
38 section.

**§29A-3B-6. Filing findings and determinations for rules  
in state register; evidence deemed public  
record.**

1 (a) Incident to fixing a date for public comment on a  
2 proposed rule, the board shall promulgate the findings  
3 and determinations required as a condition precedent  
4 thereto, and state fully and succinctly the reasons  
5 therefor and file such findings and determinations in the  
6 state register. If the board amends the proposed rule as  
7 a result of the evidence or comment presented pursuant  
8 to section five, such amendment shall be filed with a  
9 description of any changes and statement listed for the  
10 amendment.

11 (b) The statement of reasons and a transcript of all  
12 evidence and public comment received pursuant to  
13 notice are public records and shall be carefully pre-  
14 served by the board and be open for public inspection  
15 and copying for a period of not less than five years from  
16 the date of the hearing.

**§29A-3B-7. Notice of hearings.**

1 Notices of hearings required by section five of this  
2 article shall be filed in the state register not less than  
3 thirty nor more than sixty days before the date of such  
4 hearing or the last day specified therein for receiving  
5 written material. Any hearing may be continued from  
6 time to time and place to place by the board which shall  
7 have the effect of extending the last day for receipt of  
8 evidence or public comment. Notice of such continuance  
9 shall be promptly filed thereafter in the state register.

**§29A-3B-8. Adoption of rules.**

1 A rule shall be considered by the board for adoption  
2 not later than six months after the close of public  
3 comment and a notice of withdrawal or adoption shall  
4 be filed in the state register within that period. Failure  
5 to file such notice shall constitute withdrawal and the  
6 secretary of state shall note such failure in the state  
7 register immediately upon the expiration of the six-  
8 month period.

9 A rule may be amended by the board prior to final  
10 adoption without further hearing or public comment. No  
11 such amendment may change the main purpose of the  
12 rule. If the fiscal implications have changed since the  
13 rule was proposed, a new fiscal note shall be attached  
14 to the notice of filing. Upon adoption of the rule  
15 (including any such amendment), the board shall file the  
16 text of the adopted rule with its notice of adoption in  
17 the state register and the same shall be effective on the  
18 date specified in the rule or thirty days after such filing,  
19 whichever is later.

**§29A-3B-9. Submission of legislative rules to the legislative oversight commission on education accountability.**

1 (a) When the board finally adopts a legislative rule,  
2 the board shall submit to the legislative oversight  
3 commission on education accountability at its offices or  
4 at a regular meeting of such commission ten copies of  
5 (1) the full text of the legislative rule as finally approved  
6 by the board, with new language underlined and with

7 language to be deleted from any existing rule stricken  
8 through but clearly legible; (2) a brief summary of the  
9 content of the legislative rule and a description and a  
10 copy of any existing rule which the agency proposes to  
11 amend or repeal; (3) a statement of the circumstances  
12 which require the rule; (4) a fiscal note containing all  
13 information included in a fiscal note for either house of  
14 the Legislature and a statement of the economic impact  
15 of the rule on the state or its residents; and (5) any other  
16 information which the commission may request or  
17 which may be required by law.

18 (b) The commission shall review each proposed  
19 legislative rule and, in its discretion, may hold public  
20 hearings thereon. Such review shall include, but not be  
21 limited to, a determination of:

22 (1) Whether the board has exceeded the scope of its  
23 statutory authority in approving the proposed legislative  
24 rule;

25 (2) Whether the proposed legislative rule is in confor-  
26 mity with the legislative intent of the statute which the  
27 rule is intended to implement, extend, apply, interpret  
28 or make specific;

29 (3) Whether the proposed legislative rule conflicts  
30 with any other provision of this code or with any other  
31 rule adopted by the same or a different agency;

32 (4) Whether the proposed legislative rule is necessary  
33 to fully accomplish the objectives of the statute under  
34 which the proposed rule was promulgated;

35 (5) Whether the proposed legislative rule is reason-  
36 able, especially as it affects the convenience of the  
37 general public or of persons particularly affected by it;

38 (6) Whether the proposed legislative rule could be  
39 made less complex or more readily understandable by  
40 the general public; and

41 (7) Whether the proposed legislative rule was promul-  
42 gated in compliance with the requirements of this  
43 article and with any requirements imposed by any other  
44 provision of this code.

45 (c) After reviewing the legislative rule, the commis-  
46 sion shall recommend to the Legislature any statutory  
47 changes needed to clarify the legislative intent of the  
48 statute upon which the rule is based or to otherwise  
49 modify the activity subject to the rule, or may make  
50 such other recommendations to the Legislature or the  
51 board, or both, as it deems appropriate.

**§29A-3B-10. Emergency legislative rules; procedure for promulgation; definition.**

1 (a) The board may, without hearing, find that an  
2 emergency exists requiring that emergency rules be  
3 promulgated and promulgate the same in accordance  
4 with this section. Such emergency rules, together with  
5 a statement of the facts and circumstances constituting  
6 the emergency, shall be filed in the state register and  
7 shall become effective immediately upon such filing.  
8 Such emergency rules may adopt, amend or repeal any  
9 legislative rule, but the circumstances constituting the  
10 emergency requiring such adoption, amendment or  
11 repeal shall be stated with particularity and be subject  
12 to de novo review by any court having original jurisdic-  
13 tion of an action challenging their validity. Ten copies  
14 of the rules and of the required statement shall be filed  
15 forthwith with the legislative oversight commission on  
16 education accountability.

17 An emergency rule shall be effective for not more  
18 than fifteen months and shall expire earlier if any of the  
19 following occurs:

20 (1) The board has not previously filed and fails to file  
21 a notice of public hearing on the proposed rule within  
22 sixty days of the date the proposed rule was filed as an  
23 emergency rule; in which case the emergency rule  
24 expires on the sixty-first day.

25 (2) The board has not previously filed and fails to file  
26 the proposed rule with the legislative oversight commis-  
27 sion on education accountability within one hundred  
28 eighty days of the date the proposed rule was filed as  
29 an emergency rule; in which case the emergency rule  
30 expires on the one hundred eighty-first day.



31 (3) The board adopts a legislative rule dealing with  
32 substantially the same subject matter since such  
33 emergency rule was first promulgated, and in which  
34 case the emergency rule expires on the date the  
35 authorized rule is made effective.

36 (b) Any amendment to an emergency rule made by  
37 the board shall be filed in the state register and does  
38 not constitute a new emergency rule for the purpose of  
39 acquiring additional time or avoiding the expiration  
40 dates in subdivision (1), (2) or (3), subsection (a) of this  
41 section.

42 (c) Once an emergency rule expires due to the  
43 conclusion of fifteen months or due to the effect of  
44 subdivision (1), (2) or (3), subsection (a) of this section,  
45 the board may not refile the same or similar rule as an  
46 emergency rule.

47 (d) Emergency legislative rules currently in effect  
48 under the prior provisions of this section may be refiled  
49 under the provisions of this section.

50 (e) The provision of this section shall not be used to  
51 avoid or evade any provision of this article or any other  
52 provisions of this code, including any provisions for  
53 legislative review of proposed rules. Any emergency  
54 rule promulgated for any such purpose may be contested  
55 in a judicial proceeding before a court of competent  
56 jurisdiction.

57 (f) The legislative oversight commission on education  
58 accountability may review any emergency rule to  
59 determine (1) whether the board has exceeded the scope  
60 of its statutory authority in promulgating the emer-  
61 gency rule; (2) whether there exists an emergency  
62 justifying the promulgation of such rule; and (3)  
63 whether the rule was promulgated in compliance with  
64 the requirements and prohibitions contained in this  
65 section. The commission may recommend to the board,  
66 the Legislature, or the secretary of state such action as  
67 it may deem proper.

**§29A-3B-11. Legislative review of procedural rules,  
interpretive rules and existing legislative  
rules.**

1 The legislative oversight commission on education  
 2 accountability may review any procedural rules, inter-  
 3 pretive rules or existing legislative rules and may make  
 4 recommendations concerning such rules to the Legisla-  
 5 ture, or to the board, or to both the Legislature and the  
 6 board.

**§29A-3B-12. Prior rules.**

1 Any rule lawfully promulgated prior to the effective  
 2 date of this chapter shall remain in full force and effect  
 3 until:

4 (1) Such rule is expressly made ineffective by the  
 5 provisions of this chapter; or

6 (2) Such rule should expire by reason of failure to  
 7 refile the same as provided in section five of article two,  
 8 or expires pursuant to its own terms and provisions  
 9 lawfully made before the effective date of this section;  
 10 or

11 (3) Such rule is repealed by the lawful act of the  
 12 board, in conformity with this chapter; or

13 (4) Such rule is invalidated by an act of the Legisla-  
 14 ture or the force and effect of another law.

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## CHAPTER 75

(Com. Sub. for H. B. 4648—By Delegates Mezzatesta and Murensky)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four, relating to school personnel; providing that the cost of a commercial driver's license of a school employee or qualified applicant who becomes an employee be paid for by the county board of education if the license is a condition of employment; and requiring the division of motor vehicles to accept other test results in certain instances.

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

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

**ARTICLE 2. SCHOOL PERSONNEL.**

**§18A-2-4. Commercial driver's license for school personnel.**

1 If a commercial driver's license is required as a  
2 condition of employment for any school employee or  
3 qualified applicant who becomes an employee by a  
4 county board of education, the cost shall be paid in full  
5 by the employer.

6 It is unlawful for any county board of education to  
7 require any employee or applicant who becomes an  
8 employee of the board to pay the cost of acquiring a  
9 commercial driver's license as a condition of  
10 employment.

11 The division of motor vehicles shall accept the West  
12 Virginia department of education and the arts physical  
13 and psychomotor test result forms in lieu of the division  
14 of motor vehicles vision report form.

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## CHAPTER 76

(Com. Sub. for H. B. 4560—By Delegates Long and Ashcraft)

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[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to in-field master's degree generally; revising the definition; establishing the conditions for additional compensation; and providing for availability of course work.

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

That section one, 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-4-1. Definitions.**

1 For the purpose of this section, salaries shall be  
2 defined as: (a) "Basic salaries" which shall mean the  
3 salaries paid to teachers with zero years of experience  
4 and in accordance with the classification of certification  
5 and of training of said teachers; and (b) "advanced  
6 salaries" which shall mean the basic salary plus an  
7 experience increment based on the allowable years of  
8 experience of the respective teachers in accordance with  
9 the schedule established herein for the applicable  
10 classification of certification and of training of said  
11 teachers.

12 "Classification of certification" means the class or type  
13 of certificate issued by the state superintendent of  
14 schools under the statutory provisions of this chapter.  
15 "Classification of training" means the number of  
16 collegiate or graduate hours necessary to meet the  
17 requirements stipulated in the definitions set forth in  
18 the next paragraph in items (2) to (11), inclusive.

19 The column heads of the state minimum salary  
20 schedule set forth in section two of this article are  
21 defined as follows:

22 (1) "Years of experience" means the number of years  
23 the teacher has been employed in the teaching profes-  
24 sion, including active work in educational positions  
25 other than the public schools, and service in the armed  
26 forces of the United States if the teacher was under  
27 contract to teach at the time of induction. For a  
28 registered professional nurse employed by a county  
29 board of education, "years of experience" means the  
30 number of years the nurse has been employed as a  
31 public school health nurse, including active work in a  
32 nursing position related to education, and service in the  
33 armed forces if the nurse was under contract with the  
34 county board at the time of induction. For the purpose

35 of section two of this article, the experience of a teacher  
36 or a nurse shall be limited to that allowed under their  
37 training classification as found in the minimum salary  
38 schedule.

39 (2) "Fourth class" means all certificates previously  
40 identified as (a) "certificates secured by examination,"  
41 and (b) "other first grade certificates."

42 (3) "Third class" means all certificates previously  
43 identified as (a) "standard normal certificates" and (b)  
44 "third class temporary (sixty-four semester hours)  
45 certificates."

46 (4) "Second class" means all certificates previously  
47 identified as "second class temporary certificates based  
48 upon the required ninety-six hours of college work."

49 (5) "B.A." means a bachelor's degree, from an accre-  
50 dited institution of higher education, which has been  
51 issued to, or for which the requirements for such have  
52 been met by, a person who qualifies for or holds a  
53 professional certificate or its equivalent. A registered  
54 professional nurse with a bachelor's degree, who is  
55 licensed by the West Virginia board of examiners for  
56 registered professional nurses and employed by a county  
57 board of education, shall be within this classification for  
58 payment in accordance with sections two and two-a of  
59 this article.

60 (6) "B.A. plus 15" means a bachelor's degree as  
61 defined above plus fifteen hours of graduate work, from  
62 an accredited institution of higher education certified to  
63 do graduate work, in an approved planned program at  
64 the graduate level which requirements have been met  
65 by a person who qualifies for or holds a professional  
66 certificate or its equivalent.

67 (7) "M.A." means a master's degree, earned in an  
68 institution of higher education approved to do graduate  
69 work, which has been issued to, or the requirements for  
70 such have been met by, a person who qualifies for or  
71 holds a professional certificate or its equivalent.

72 (8) "M.A. plus 15" means the above-defined master's  
73 degree plus fifteen hours of graduate work, earned in

74 an institution of higher education approved to do  
75 graduate work, if the person is qualified for or holds a  
76 professional certificate or its equivalent.

77 (9) "M.A. plus 30" means the above-defined master's  
78 degree plus thirty graduate hours, earned in an  
79 institution approved to do graduate work, if the person  
80 is qualified for or holds a professional certificate or its  
81 equivalent.

82 (10) "Doctorate" means a doctor's degree, earned from  
83 a university qualified and approved to confer such a  
84 degree, which has been issued to or the requirements for  
85 such have been met by a person who qualifies for or  
86 holds a professional certificate or its equivalent.

87 (11) "In-field master's" means the above-defined  
88 master's degree and one of the following:

89 (a) Twenty-four (24) semester hours of post baccalau-  
90 reate graduate credit, within or external to the ad-  
91 vanced degree, confined to one specialization completed  
92 at the undergraduate level on the educator's professional  
93 certificate or its equivalent, or

94 (b) A master's degree earned prior to the first day of  
95 July, one thousand nine hundred ninety-four, in (i) a  
96 program specialization completed at the undergraduate  
97 level, or (ii) a state approved subarea of the specializa-  
98 tion which is consistent with a specialization, completed  
99 at the undergraduate level, on the educator's profes-  
100 sional certificate or its equivalent, or

101 (c) Twelve (12) semester hours of graduate credit  
102 above and beyond the course work completed for the  
103 endorsement recognized for in-field master's classifica-  
104 tion only if the course work for the endorsement was also  
105 completed at the graduate level: *Provided*, That in  
106 certification areas where the total course work require-  
107 ments for initial certification exceed the minimum  
108 required for in-field classification, the state department  
109 of education may by rule establish exceptions.

110 Notwithstanding the requirements set forth in subdivi-  
111 sions (6), (8) and (9) of this section relating to hours  
112 of graduate work at an institution certified to do such

113 work, fifteen undergraduate credit hours from a  
114 regionally accredited institution of higher education,  
115 earned after the effective date of this section, may be  
116 utilized for advanced salary classification if such hours  
117 are in accordance with (a) the teacher's current  
118 classification of certification and of training, (b) a  
119 designated instructional shortage area documented by  
120 the employing county superintendent, or (c) an identi-  
121 fied teaching deficiency documented through the state  
122 approved county personnel evaluation system.

123 In-field master's compensation is contingent upon  
124 recognition of the in-field master's classification and the  
125 educator's assignment. The West Virginia board of  
126 education shall establish regulations for the administra-  
127 tion and implementation of the in-field master's salary  
128 schedule.

129 Only those professional educators who are assigned to  
130 teach, for a minimum of fifty (50) percent of the  
131 instructional day, subjects which are consistent with the  
132 endorsement(s) recognized as meeting the in-field  
133 master's classification shall be eligible for compensation  
134 based on the in-field master's schedule. If scheduling  
135 constraints prevent the educator from being assigned to  
136 endorsements recognized for the in-field master's  
137 classification for a minimum of fifty (50) percent of the  
138 instructional day, the educator may petition the county  
139 board of education for such compensation. After review,  
140 the county board of education shall submit the petition  
141 to the state department of education on behalf of the  
142 educator for determination of in-field master's compen-  
143 sation. Such petitions must be filed on an annual basis.

144 If a professional educator, who was previously  
145 employed in an area recognized for in-field master's  
146 classification, is reassigned to work full-time in an area  
147 not recognized on said educator's certificate for in-field  
148 master's classification as a result of (1) voluntary  
149 reassignment to assist the county in meeting a critical  
150 staffing need or (2) a reduction in force, the educator  
151 may petition the county board of education for continued  
152 payment under the in-field master's salary schedule.  
153 After review, the county board of education shall

154 petition the state department of education on an annual  
155 basis to continue such payment. In no case shall  
156 approval be granted for more than three years. The  
157 county board of education must provide documentation  
158 to justify each request.

159 Upon request for a specific master's degree program,  
160 the appropriate governing board of higher education  
161 shall provide all of the course work for a master's degree  
162 program that is designated as in-field for the certifica-  
163 tion area of the professional educator who makes the  
164 request. The course work for such program shall be  
165 initiated no later than two years from the date requested  
166 and shall be provided to the greatest extent feasible  
167 within each regional educational service agency area in  
168 which the request has been made as follows: (1) Via  
169 satellite instruction; (2) via public television home  
170 instruction; or (3) in a manner prescribed by such  
171 governing board. If the governing board fails to initiate  
172 the course work within the above time period, an  
173 individual shall be compensated at the appropriate level  
174 of years of experience on the in-field master's salary  
175 schedule whenever the individual has obtained any  
176 master's degree related to the public school program.

177 The appropriate governing board of higher education  
178 shall develop a plan to provide "M. A." classification  
179 programs to professional educators throughout this state  
180 by the first day of January, one thousand nine hundred  
181 ninety-one, with the objective being to provide course  
182 work enabling professional educators to achieve an "M.  
183 A." degree classification in their teaching field.

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## CHAPTER 77

(H. B. 4846—By Delegates Long and D. Miller)

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[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated



section eight-e, relating to requiring state board of education to develop competency tests for all service personnel classification titles; establishing the classifications to be included in the same testing category; providing for the method, location and administration of such tests; designating the subject matter of such tests; addressing the utilization of such tests; providing for retaking such tests in certain instances; requiring county boards to schedule and a vocational center to administer such tests; permitting employees in certain instances to be excused from work with pay to take said competency tests; requiring a one day minimum of appropriate inservice training to be provided; and establishing the effective implementation date.

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

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

**ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.**

**§18A-4-8e. Competency testing for service personnel.**

1       The state board of education shall develop and cause  
2       to be made available competency tests for all of the  
3       classification titles defined in section eight and listed in  
4       section eight-a of this article for service personnel. Each  
5       classification title defined and listed shall be considered  
6       a separate classification category of employment for  
7       service personnel and shall have a separate competency  
8       test, except for those class titles having Roman numeral  
9       designations, which shall be considered a single classi-  
10      fication of employment and shall have a single compet-  
11      ency test. The cafeteria manager class title shall be  
12      included in the same classification category as cooks and  
13      shall have the same competency test. The executive  
14      secretary class title shall be included in the same  
15      classification category as secretaries and shall have the  
16      same competency test. The classification titles of chief  
17      mechanic, mechanic, and assistant mechanic shall be  
18      included in one classification title and shall have the  
19      same competency test.

20 The purpose of these tests shall be to provide county  
21 boards of education a uniform means of determining  
22 whether school service personnel employees who do not  
23 hold a classification title in a particular category of  
24 employment can meet the definition of the classification  
25 title in another category of employment as defined in  
26 section eight of this article. Competency tests shall not  
27 be used to evaluate employees who hold the classification  
28 title in the category of their employment.

29 The competency test shall consist of an objective  
30 written and/or performance test: *Provided*, That appli-  
31 cants shall have the opportunity of taking the written  
32 test orally if requested. Oral tests shall be recorded  
33 mechanically and kept on file. Persons administering  
34 the oral test shall not know the applicant personally. The  
35 performance test for all classifications and categories  
36 other than Bus Operator shall be administered by a  
37 vocational school which serves the county board of  
38 education. A standard passing score shall be established  
39 by the state department of education for each test and  
40 shall be used by county boards of education. The subject  
41 matter of each competency test shall be commensurate  
42 with the requirements of the definitions of the classifi-  
43 cation titles as provided in section eight of this article.  
44 The subject matter of each competency test shall be  
45 designed in such a manner that achieving a passing  
46 grade will not require knowledge and skill in excess of  
47 the requirements of the definitions of the classification  
48 titles. Achieving a passing score shall conclusively  
49 demonstrate the qualification of an applicant for a  
50 classification title. Once an employee passes the compet-  
51 ency test of a classification title, said applicant shall be  
52 fully qualified to fill vacancies in that classification  
53 category of employment as provided in subsection (b),  
54 section eight-b of this article and shall not be required  
55 to take the competency test again.

56 An applicant who fails to achieve a passing score shall  
57 be given other opportunities to pass the competency test  
58 when making application for another vacancy within the  
59 classification category.

60 Competency tests shall be administered to applicants

61 in a uniform manner under uniform testing conditions.  
62 County boards of education shall be responsible for  
63 scheduling competency tests and shall not utilize a  
64 competency test other than the test authorized by this  
65 section.

66 When scheduling of the competency test conflicts with  
67 the work schedule of a school employee who has applied  
68 for a vacancy, said employee must be excused from work  
69 to take said competency test without loss of pay.

70 A minimum of one day of appropriate inservice  
71 training shall be provided employees to assist them in  
72 preparing to take the competency tests.

73 Competency tests shall be utilized to determine the  
74 qualification of new applicants seeking initial employ-  
75 ment in a particular classification title as either a  
76 regular or substitute employee. Once an employee holds  
77 a classification title in a category of employment, that  
78 employee shall be deemed qualified for said classifica-  
79 tion title even though that employee no longer holds that  
80 classification title.

81 The requirements of this section shall not be construed  
82 to alter the definitions of class titles as provided in  
83 section eight of this article nor the procedure and  
84 requirements of subsection (b), section eight-b of this  
85 article.

86 The testing procedures of this section shall be  
87 implemented effective the first day of July, one thousand  
88 nine hundred ninety-one.

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## CHAPTER 78

(S. B. 302—By Senator Brackenrich)

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[Passed March 8, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections two and four, article six, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to higher education; providing for two-year terms for

members of faculty and classified employee advisory councils; beginning such terms in July of even-numbered years; and changing required month of one quarterly meeting from May to July.

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

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

**ARTICLE 6. OTHER BOARDS AND ADVISORY COUNCILS.**

§18B-6-2. Advisory councils of faculty.

§18B-6-2. Advisory councils of classified employees.

**§18B-62. Advisory councils of faculty.**

1       Effective the first day of July, one thousand nine  
2       hundred eighty-nine, each governing board shall be  
3       assisted by an advisory council of faculty.

4       During the month of April of each year, each pres-  
5       ident or other administrative head of a state institution  
6       of higher education, including Potomac State College of  
7       West Virginia University and West Virginia University  
8       at Parkersburg, at the direction of the councils and in  
9       accordance with procedures established by the councils,  
10      shall convene a meeting or otherwise institute a  
11      balloting process to elect one faculty to serve on the  
12      appropriate governing board's advisory council of  
13      faculty, which shall consist of one faculty, so elected,  
14      from each such institution under the appropriate  
15      governing board. Terms of the members of each council  
16      shall be for two years and shall begin on the first day  
17      of July of each even-numbered year, and members of  
18      each advisory council shall be eligible to succeed  
19      themselves.

20      The advisory councils of faculty shall meet at least  
21      once each quarter. One of the quarterly meetings shall  
22      be during the month of July, at which meeting each  
23      council shall elect a chairman, who shall be by virtue  
24      of the office a voting member of the appropriate  
25      governing board. No member may vote by proxy at such  
26      election. In the event of a tie in the last vote taken for

27 such election, a member authorized by the council shall  
28 select the chairman by lot from the names of those  
29 persons tied. Immediately following the election of a  
30 chairman, each council shall elect, in the manner  
31 prescribed by this section for the election of a chairman,  
32 a member of that council to preside over meetings of the  
33 council in the chairman's absence. Should the chairman  
34 vacate the position, the council shall meet and elect a  
35 new chairman to fill the unexpired term within thirty  
36 days following such vacancy.

37 Each advisory council of faculty, through its chairman  
38 and in any other appropriate manner, shall consult and  
39 advise its governing board in matters of higher educa-  
40 tion in which the faculty members may have an interest.

41 Members of each advisory council shall serve without  
42 compensation, but shall be entitled to reimbursement  
43 for actual and necessary expenses incurred in the  
44 performance of their official duties from funds allocated  
45 to the state institution of higher education served.

46 Each governing board shall furnish secretarial  
47 services to its advisory council of faculty, and each  
48 advisory council shall cause to be prepared minutes of  
49 its meetings, which minutes shall be available, upon  
50 request, to any faculty member of a state institution of  
51 higher education represented on the council. Such  
52 minutes shall be forwarded to the advisory council of  
53 faculty serving the other governing board.

#### §18B-6-4. Advisory councils of classified employees.

1 Effective the first day of July, one thousand nine  
2 hundred eighty-nine, each governing board shall be  
3 assisted by an advisory council of classified employees.

4 During the month of April of each year, each pres-  
5 ident or other administrative head of a state institution  
6 of higher education, including Potomac State College of  
7 West Virginia University and West Virginia University  
8 at Parkersburg, at the direction of the councils and in  
9 accordance with procedures established by the councils,  
10 shall convene a meeting or otherwise institute a  
11 balloting process to elect one classified employee to serve

12 on the appropriate governing board's advisory council of  
13 classified employees, which shall consist of one classified  
14 employee, so elected, from each such institution under  
15 the appropriate governing board. Terms of the members  
16 of such councils shall be for two years and shall begin  
17 on the first day of July of each even-numbered year, and  
18 members of the advisory councils shall be eligible to  
19 succeed themselves. For the purpose of this section the  
20 term "institution of higher education" includes the  
21 facilities and staff supervised by the senior administra-  
22 tor employed by the governing boards, who shall be  
23 deemed a part of the state college system, and the West  
24 Virginia network for telecomputing, who shall be  
25 deemed a part of the state university system.

26 Each advisory council of classified employees shall  
27 meet at least once each quarter. One of the quarterly  
28 meetings shall be during the month of July, at which  
29 meeting each council shall elect a chairman, who shall  
30 be by virtue of the office a voting member of the  
31 appropriate governing board: *Provided*, That the board  
32 of directors' advisory council for classified employees'  
33 chairman shall not be a member of the staff supervised  
34 by the central administrative official. No member may  
35 vote by proxy at such election. In the event of a tie in  
36 the last vote taken for such election, a member autho-  
37 rized by the council shall select the chairman by lot  
38 from the names of those persons tied. Immediately  
39 following the election of a chairman, each council shall  
40 elect, in the manner prescribed by this section for the  
41 election of a chairman, a member of the council to  
42 preside over meetings of the council in the chairman's  
43 absence. Should the chairman vacate the position, the  
44 council shall meet and elect a new chairman to fill the  
45 unexpired term within thirty days following such  
46 vacancy.

47 Each advisory council of classified employees, through  
48 its chairman and in any other appropriate manner, shall  
49 consult and advise its governing board in matters of  
50 higher education in which the classified employees may  
51 have an interest.

52 Members of each advisory council shall serve without

53 compensation, but shall be entitled to reimbursement  
54 for actual and necessary expenses incurred in the  
55 performance of their official duties from funds allocated  
56 to the state institution of higher education served.

57 Each governing board shall furnish secretarial  
58 services to its advisory council of classified employees,  
59 and each advisory council shall cause to be prepared  
60 minutes of its meetings, which minutes shall be  
61 available, upon request, to any classified employee of a  
62 state institution of higher education represented on the  
63 council. Such minutes shall be forwarded to the advisory  
64 council of classified employees serving the other  
65 governing board.

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## CHAPTER 79

(Com. Sub. for H. B. 2305—By Mr. Speaker, Mr. Chambers)

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[Passed February 12, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section seventeen, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twelve, article four-a of said chapter; to amend and reenact sections four and seven, article five of said chapter; to amend and reenact section three, article ten of said chapter; and to amend and reenact section one, article two, chapter fifty-one of said code, relating to the election of circuit judges generally; providing for numbered divisions within multi-judge circuits for election purposes only beginning with the primary and general elections to be held in the year one thousand nine hundred ninety-two; providing for the filing of a certificate of candidacy in the numbered division of the circuit for which the candidate seeks office; establishing the method whereby vacancies in the office of certain state officials, United States senators and circuit judges are filled; and providing for the nomination or election of the candidate for circuit judge receiving the highest number of votes within a division.

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

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

## Chapter

### 3. Elections.

#### 51. Courts and Their Officers.

## CHAPTER 3. ELECTIONS.

### Article

#### 1. General Provisions and Definitions.

#### 4A. Electronic Voting Systems.

#### 5. Primary Elections and Nominating Procedures.

#### 10. Filling Vacancies.

### ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

#### §3-1-17. Election of circuit judges; county and district officers; magistrates.

1       There shall be elected, at the general election to be  
 2 held in the year one thousand nine hundred ninety-two,  
 3 and in every eighth year thereafter, one judge of the  
 4 circuit court of every judicial circuit entitled to but one  
 5 judge, and one judge for each numbered division of the  
 6 judicial circuit in those judicial circuits entitled to two  
 7 or more circuit judges; and at the general election to be  
 8 held in the year one thousand nine hundred ninety-two,  
 9 and in every fourth year thereafter, a sheriff, prosecut-  
 10 ing attorney, surveyor of lands, and the number of  
 11 assessors prescribed by law for the county, and the  
 12 number of magistrates prescribed by law for the county;  
 13 and at the general election to be held in the year one  
 14 thousand nine hundred ninety, and in every second year  
 15 thereafter, a commissioner of the county commission for  
 16 each county; and at the general election to be held in  
 17 the year one thousand nine hundred ninety-two, and in  
 18 every sixth year thereafter, a clerk of the county  
 19 commission and a clerk of the circuit court for each  
 20 county.



## ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

**\*§3-4A-12. Ballot label arrangement in vote recording devices; when uniform numbering required; drawing by lot to determine position of candidates on ballots or ballot labels; sealing of devices; record of identifying numbers.**

1 When the ballot labels are printed and delivered to the  
 2 clerk of the county commission, he shall place them in  
 3 the vote recording devices in such manner as will most  
 4 nearly conform to the arrangement prescribed for paper  
 5 ballots, and as will clearly indicate the party designation  
 6 or emblem of each candidate. Each column, row or page  
 7 containing the names of the office and candidates for  
 8 such office shall be so arranged as to clearly indicate  
 9 the office for which the candidate is running. The names  
 10 of the candidates for each office indicated shall be  
 11 placed on the ballot label. The ballot label and the  
 12 arrangement of the ballot shall conform as nearly as  
 13 practicable to the plan herein given:

14	Democratic Ticket	Republican Ticket
15	For House of Delegates	For House of Delegates
16	Name	Name
17		
18	70 ←	→ 69
19		
20	72 ←	→ 71
21		
22	74 ←	→ 73
23		
24	76 ←	→ 75

25 The secretary of state shall assign a uniform number  
 26 applicable to all counties using electronic voting for all  
 27 straight party tickets and for all candidates running for  
 28 offices to be voted upon by all of the voters of the state.  
 29 The number so designated by the secretary of state shall  
 30 be used by all counties using electronic voting systems  
 31 irrespective of the fact that in one or more such counties

\*Clerk's Note: §3-4A-12 was also amended by H. B. 4770 (Chapter 80), which passed subsequent to this act.

32 the number or numbers so designated may result in  
33 other than strict sequential ballot arrangement. After  
34 taking into account the numbers so assigned by the  
35 secretary of state to straight party tickets and all  
36 candidates for offices to be voted upon by all the voters  
37 of the state, the clerk of the circuit court shall appoint  
38 a time at which all candidates whose ballot positions are  
39 to be determined by drawing by lot are to appear before  
40 the clerk for such drawing. Candidates whose ballot  
41 positions are to be determined by drawing by lot are  
42 those candidates for an office for which the voters will  
43 elect more than one person to represent the electoral  
44 districts, including, but not limited to, House of  
45 Delegates contests in multi-delegate districts, contests  
46 for the office of county board of education, magistrate  
47 and delegate to a political party national convention.  
48 The clerk shall give due notice of such time to each  
49 candidate by United States mail, directed to the address  
50 given by the candidate in his announcement of candi-  
51 dacy. It shall be the duty of the secretary of state to  
52 provide each circuit clerk with a list of names and  
53 addresses of candidates running for office in such clerk's  
54 county who have filed their announcement of candidacy  
55 with the secretary of state, and who are candidates  
56 whose ballot positions are to be determined by drawing  
57 by lot. At the time appointed, all such candidates whose  
58 ballot positions are to be determined by lot shall  
59 assemble in the office of such clerk and such candidates  
60 shall then proceed to draw by lot to determine where  
61 their names shall appear on the ballots or ballot labels.  
62 The number so drawn by each such candidate shall  
63 determine where his or her name shall appear on the  
64 ballots or ballot labels. In the event any candidate or  
65 candidates fail to appear at the time appointed, the clerk  
66 shall draw for such absent candidate or candidates in  
67 the presence of those candidates assembled, if any, and  
68 the number so drawn by the clerk shall determine  
69 where the name of any absent candidate or candidates  
70 shall appear on the ballots or ballot labels. The circuit  
71 clerk shall record the number drawn by each candidate  
72 and his name in an appropriate book. The ballot  
73 commissioners shall proceed to have the ballot labels

74 printed according to the provisions of this article. After  
75 receiving the printed ballot labels, the clerk of the  
76 circuit court shall ascertain their accuracy and the clerk  
77 of the county commission shall proceed to have the ballot  
78 labels placed in the vote recording devices. The clerk of  
79 the county commission shall then seal the vote recording  
80 devices so as to prevent tampering with ballot labels,  
81 and enter in an appropriate book, opposite the number  
82 of each precinct, the identifying or distinguishing  
83 number of the specific vote recording device or devices  
84 to be used in that precinct.

#### ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-4. Nomination of candidates in primary elections.

§3-5-7. Filing announcements of candidates; re-requirements; when section applicable.

#### §3-5-4. Nomination of candidates in primary elections.

1 At each primary election, the candidate or candidates  
2 of each political party for all offices to be filled at the  
3 ensuing general election by the voters of the entire state,  
4 of each congressional district, of each state senatorial  
5 district, of each delegate district, of each judicial circuit  
6 of West Virginia, of each county, and of each magisterial  
7 district in the state shall be nominated by the voters of  
8 the different political parties, except that no presiden-  
9 tial elector shall be nominated at a primary election.

10 In primary elections a plurality of the votes cast shall  
11 be sufficient for the nomination of candidates for office.  
12 Where only one candidate of a political party for any  
13 office in a political division, including party commit-  
14 men and delegates to national conventions, is to be  
15 chosen, or where a judicial circuit has two or more  
16 circuit judges and one circuit judge is to be chosen for  
17 each numbered division within the circuit, the candidate  
18 receiving the highest number of votes therefor in the  
19 primary election shall be declared the party nominee for  
20 such office. Where two or more such candidates are to  
21 be chosen in the primary election, the candidates  
22 constituting the proper number to be so chosen who  
23 shall receive the highest number of votes cast in the

24 political division in which they are candidates shall be  
 25 declared the party nominees and choices for such offices,  
 26 except that: (1) Candidates for the office of commis-  
 27 sioner of the county commission shall be nominated and  
 28 elected in accordance with the provisions of section ten,  
 29 article nine of the Constitution of the state of West  
 30 Virginia; (2) members of county boards of education  
 31 shall be elected at primary elections in accordance with  
 32 the provisions of sections five and six of this article; (3)  
 33 candidates for the House of Delegates shall be nomi-  
 34 nated and elected in accordance with the residence  
 35 restrictions provided in section two, article two, chapter  
 36 one of this code; and (4) in judicial circuits having  
 37 numbered divisions, each numbered division shall be  
 38 tallied separately and the candidate in each division  
 39 receiving a plurality of the votes cast shall be declared  
 40 the party nominee for the office in that numbered  
 41 division.

42 In case of tie votes between candidates for party  
 43 nominations or elections in primary elections, the choice  
 44 of the political party shall be determined by lot by the  
 45 executive committee of the party for the political  
 46 division in which such persons are candidates.

**§3-5-7. Filing announcements of candidacies; require-  
 ments; when section applicable.**

1 Any person who is eligible to hold and seeks to hold  
 2 an office (including that of member of any political  
 3 party executive committee) shall file with the secretary  
 4 of state, if it be an office to be filled by the voters of  
 5 more than one county, or with the clerk of the circuit  
 6 court, if it be for an office to be filled by the voters of  
 7 a county or subdivision less than a county, a certificate  
 8 declaring himself a candidate for the nomination for  
 9 such office, which certificate shall be in form or effect  
 10 as follows:

11 I, \_\_\_\_\_, hereby certify that I am  
 12 a candidate for the nomination for the office of  
 13 \_\_\_\_\_ to represent the \_\_\_\_\_  
 14 Party, and desire my name printed on the official ballot  
 15 of said party to be voted at the primary election to be

16 held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_;  
 17 that I am a legally qualified voter of the County of  
 18 \_\_\_\_\_, State of West Virginia; that my  
 19 residence is number \_\_\_\_\_ of \_\_\_\_\_  
 20 Street in the City (or Town) of \_\_\_\_\_ in  
 21 \_\_\_\_\_ County in said State; that I am  
 22 eligible to hold the said office; that I am a member of  
 23 and affiliated with said political party; that I am a  
 24 candidate for said office in good faith.

25

26

---

 Candidate

27

28

Signed and acknowledged before me this \_\_\_\_\_  
 day of \_\_\_\_\_, 19\_\_\_\_\_.

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 Signature and official title of  
 person before whom signed.

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Any candidate for circuit judge in a judicial circuit  
 containing numbered divisions shall state in the  
 certificate the numbered division in the judicial circuit  
 for which the candidate seeks nomination. No person  
 shall be a candidate for circuit judge in more than one  
 such numbered division.

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Any candidate for delegate to the national convention  
 of any political party shall provide, on a form prescribed  
 by the secretary of state, the information required in the  
 certificate hereinbefore described and shall also provide  
 the name of the person he prefers as the presidential  
 nominee of his party upon the first convention ballot, or  
 if he has no preference, a statement that he is uncom-  
 mitted: *Provided*, That any candidate for delegate may  
 change his statement of presidential preference by  
 notifying the secretary of state by registered letter, at  
 least seventy-seven days prior to the day fixed for the  
 primary election.

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Such announcement shall be signed and acknowl-  
 edged by the candidate before some officer qualified to  
 administer oaths, who shall certify the same. Any person  
 who knowingly provides false information on said  
 certificate shall be guilty of an offense and shall be

55 punished as set forth in section twenty-three, article  
56 nine of this chapter.

57 Such certificate shall be filed with the secretary of  
58 state or the clerk of the circuit court, as the case may  
59 be, not earlier than the second Monday in January next  
60 preceding the primary election day, and not later than  
61 the first Saturday of February next preceding the  
62 primary election day, and must be received before  
63 midnight, eastern standard time, of that day or, if  
64 mailed, shall be postmarked before that hour.

65 The provisions of this section shall apply to the primary  
66 election held in the year one thousand nine hundred ninety  
67 and every primary election held thereafter.

#### ARTICLE 10. FILLING VACANCIES.

##### **§3-10-3. Vacancies in offices of state officials, United States senators and judges.**

1 Any vacancy occurring in the office of secretary of  
2 state, auditor, treasurer, attorney general, commissioner  
3 of agriculture, United States senator, judge of the  
4 supreme court of appeals, or in any office created or  
5 made elective, to be filled by the voters of the entire  
6 state, or judge of a circuit court, shall be filled by the  
7 governor of the state by appointment. If the unexpired  
8 term of a judge of the supreme court of appeals, or a  
9 judge of the circuit court, be for less than two years; or  
10 if the unexpired term of any other office named in this  
11 section be for a period of less than two years and six  
12 months, the appointment to fill the vacancy shall be for  
13 the unexpired term. If the unexpired term of any office  
14 be for a longer period than above specified, the  
15 appointment shall be until a successor to the office has  
16 timely filed a certificate of candidacy, has been  
17 nominated at the primary election next following such  
18 timely filing and has thereafter been elected and  
19 qualified to fill the unexpired term. Proclamation of any  
20 election to fill an unexpired term shall be made by the  
21 governor of the state, and, in the case of an office to be  
22 filled by the voters of the entire state, shall be published  
23 prior to such election as a Class II-0 legal advertisement  
24 in compliance with the provisions of article three,

25 chapter fifty-nine of this code, and the publication area  
26 for such publication shall be each county of the state.  
27 If the election be to fill a vacancy in the office of judge  
28 of a circuit court, the proclamation shall be published  
29 prior to such election as a Class II-0 legal advertisement  
30 in compliance with the provisions of article three,  
31 chapter fifty-nine of this code, and the publication area  
32 for such publication shall be each county in the judicial  
33 circuit.

## CHAPTER 51. COURTS AND THEIR OFFICERS.

### ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

#### §51-2-1. Judicial circuits; terms of office; legislative findings and declarations; elections; terms of court.

1 (a) The state shall be divided into the following  
2 judicial circuits with the following number of judges:

3 The counties of Brooke, Hancock and Ohio shall  
4 constitute the first circuit and shall have four judges;  
5 the counties of Marshall, Tyler and Wetzel shall  
6 constitute the second circuit and shall have two judges;  
7 the counties of Doddridge, Pleasants and Ritchie shall  
8 constitute the third circuit and shall have one judge; the  
9 counties of Wood and Wirt shall constitute the fourth  
10 circuit and shall have three judges; the counties of  
11 Calhoun, Jackson and Roane shall constitute the fifth  
12 circuit and shall have one judge; the county of Cabell  
13 shall constitute the sixth circuit and shall have four  
14 judges; the county of Logan shall constitute the seventh  
15 circuit and shall have two judges; the county of  
16 McDowell shall constitute the eighth circuit and shall  
17 have two judges; the county of Mercer shall constitute  
18 the ninth circuit and shall have two judges; the county  
19 of Raleigh shall constitute the tenth circuit and shall  
20 have three judges; the counties of Greenbrier, Monroe,  
21 Pocahontas and Summers shall constitute the eleventh  
22 circuit and shall have two judges; the county of Fayette  
23 shall constitute the twelfth circuit and shall have two  
24 judges; the county of Kanawha shall constitute the  
25 thirteenth circuit and shall have seven judges; the  
26 counties of Braxton, Clay, Gilmer and Webster shall

27 constitute the fourteenth circuit and shall have two  
28 judges; the county of Harrison shall constitute the  
29 fifteenth circuit and shall have two judges; the county  
30 of Marion shall constitute the sixteenth circuit and shall  
31 have two judges; the county of Monongalia shall  
32 constitute the seventeenth circuit and shall have two  
33 judges; the county of Preston shall constitute the  
34 eighteenth circuit and shall have one judge; the counties  
35 of Barbour and Taylor shall constitute the nineteenth  
36 circuit and shall have one judge; the county of Randolph  
37 shall constitute the twentieth circuit and shall have one  
38 judge; the counties of Grant, Mineral and Tucker shall  
39 constitute the twenty-first circuit and shall have two  
40 judges; the counties of Hampshire, Hardy and Pendleton  
41 shall constitute the twenty-second circuit and shall have  
42 one judge; the counties of Berkeley, Jefferson and  
43 Morgan shall constitute the twenty-third circuit and  
44 shall have one judge; the county of Wayne shall  
45 constitute the twenty-fourth circuit and shall have one  
46 judge; the counties of Lincoln and Boone shall constitute  
47 the twenty-fifth circuit and shall have two judges; the  
48 counties of Lewis and Upshur shall constitute the  
49 twenty-sixth circuit and shall have one judge; the county  
50 of Wyoming shall constitute the twenty-seventh circuit  
51 and shall have one judge; the county of Nicholas shall  
52 constitute the twenty-eighth circuit and shall have one  
53 judge; the counties of Mason and Putnam shall consti-  
54 tute the twenty-ninth circuit and shall have two judges;  
55 the county of Mingo shall constitute the thirtieth circuit  
56 and shall have one judge; and the counties of Berkeley,  
57 Jefferson and Morgan shall constitute the thirty-first  
58 circuit and shall have one judge.

59 (b) The terms of office of all circuit court judges shall  
60 be for eight years, the first commencing on the first day  
61 of January, one thousand nine hundred eighty-five, and  
62 ending on the thirty-first day of December, one thousand  
63 nine hundred ninety-two. Subsequent terms of said  
64 judges shall be for eight years.

65 (c) Beginning with the primary and general elections  
66 to be conducted in the year one thousand nine hundred  
67 ninety-two, in all judicial circuits having two or more



68 judges there shall be, for election purposes, numbered  
69 divisions corresponding to the number of circuit judges  
70 in each circuit. Each judge shall be elected at large from  
71 the entire circuit. In each numbered division of a  
72 judicial circuit, the candidates for nomination or  
73 election shall be voted upon and the votes cast for the  
74 candidates in each division shall be tallied separately  
75 from the votes cast for candidates in other numbered  
76 divisions within the circuit. The candidate receiving the  
77 highest number of the votes cast within a numbered  
78 division shall be nominated or elected, as the case may  
79 be.

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## CHAPTER 80

(Com. Sub. for H. B. 4770—By Delegates Merow and Buchanan)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, nine, ten, ten-a, twelve, thirteen, fifteen, sixteen, seventeen, nineteen, nineteen-a, twenty, twenty-one, twenty-two, twenty-four and twenty-five, article four-a, chapter three 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 eleven-a, all relating to electronic voting systems; updating terminology to allow for systems by which votes are recorded by means of marking with electronically sensible ink or pencil; setting forth the method by which straight party tickets are to be counted, consistent with the counting in other voting systems; clarifying that a voter in primary elections may vote for candidates of a party for which he or she is legally entitled to vote; providing that the clerk of the county commission is the custodian of the tabulating equipment; prescribing the form for ballots upon which votes may be recorded by means of marking with electronically sensible ink or pencil; removing certain candidates whose ballot positions are determined by drawing by lot; and providing for criminal penalties upon violation of certain provisions.

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

That sections two, nine, ten, ten-a, twelve, thirteen, fifteen, sixteen, seventeen, nineteen, nineteen-a, twenty, twenty-one, twenty-two, twenty-four and twenty-five, article four-a, chapter three 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 eleven-a, all to read as follows:

#### ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

- §3-4A-2. Definitions.
- §3-4A-9. Minimum requirements of electronic voting systems.
- §3-4A-10. County clerk to be custodian of vote re-recording devices and tabulating equipment; duties.
- §3-4A-10a. Proportional distribution of vote recording devices.
- §3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.
- §3-4A-12. Ballot label arrangement in vote recording devices; when uniform numbering required; drawing by lot to determine position of candidates on ballots or ballot labels; sealing of devices; record of identifying numbers.
- §3-4A-13. Inspection of ballots and vote recording devices; duties of county commission, ballot commissioners and election commissioners; records relating to ballots and vote recording devices; receipt of election materials by ballot commissioners.
- §3-4A-15. Instructions and help to voters; vote recording device models; facsimile diagrams; sample ballots; legal ballot advertisements.
- §3-4A-16. Delivery of vote recording devices; time, arrangement for voting.
- §3-4A-17. Check of vote recording devices before use; corrections; reserve vote recording devices.
- §3-4A-19. Conducting electronic voting system elections generally; duties of election officers.
- §3-4A-19a. Form of ballots; requiring the signatures of poll clerks; prohibiting the counting of votes cast on ballots without such signatures.
- §3-4A-20. "Independent" voting in primary elections.
- §3-4A-21. Absent voter ballots; issuance, processing and tabulation.
- §3-4A-22. Assistance to illiterate and disabled voters.
- §3-4A-24. Voting by challenged voter.
- §3-4A-25. Closing polls.

#### §3-4A-2. Definitions.

- 1 As used in this article, unless otherwise specified:
- 2 (a) "Automatic tabulating equipment" means all

3 apparatus necessary to electronically count votes  
4 recorded on ballots and tabulate the results;

5 (b) "Ballot" means a tabulating card or paper on  
6 which votes may be recorded by means of perforating  
7 or marking with electronically sensible ink or pencil;

8 (c) "Ballot labels" means the cards, papers, booklet,  
9 pages or other material showing the names of offices  
10 and candidates and the statements of measures to be  
11 voted on, which are placed on the vote recording device  
12 used for recording votes by means of perforating;

13 (d) "Central counting center" means a facility  
14 equipped with suitable and necessary automatic tabulat-  
15 ing equipment, selected by the county commission, for  
16 the electronic counting of votes recorded on ballots;

17 (e) "Electronic voting system" is a means of conduct-  
18 ing an election whereby votes are recorded on ballots by  
19 means of an electronically sensible marking ink or by  
20 perforating, and such votes are subsequently counted by  
21 automatic tabulating equipment at the central counting  
22 center;

23 (f) "Program deck" means the actual punch card deck  
24 or decks, or a computer program disk, diskette, tape or  
25 other programming media, containing the program for  
26 counting and tabulating the votes, including the  
27 "application program deck";

28 (g) "Application program deck" means the punch  
29 card deck or equivalent capacity in other program  
30 medias as provided, containing specific options used and  
31 necessary to modify the program of general application,  
32 to conduct and tabulate a specific election according to  
33 applicable law;

34 (h) "Standard validation test deck" means a group of  
35 ballots wherein all voting possibilities which can occur  
36 in an election are represented; and

37 (i) "Vote recording device" means equipment in which  
38 ballot labels and ballots are placed to allow a voter to  
39 record his vote by perforating.

**§3-4A-9. Minimum requirements of electronic voting systems.**

1 An electronic voting system of particular make and  
2 design shall not be approved by the state election  
3 commission or be purchased, leased or used, by any  
4 county commission unless it shall fulfill the following  
5 requirements:

6 (1) It shall secure or ensure the voter absolute secrecy  
7 in the act of voting, or, at the voter's election, shall  
8 provide for open voting;

9 (2) It shall be so constructed that no person except in  
10 instances of open voting, as herein provided for, can see  
11 or know for whom any voter has voted or is voting;

12 (3) It shall permit each voter to vote at any election  
13 for all persons and offices for whom and which he is  
14 lawfully entitled to vote, whether or not the name of any  
15 such person appears on a ballot or ballot label as a  
16 candidate; and it shall permit each voter to vote for as  
17 many persons for an office as he is lawfully entitled to  
18 vote for; and to vote for or against any question upon  
19 which he is lawfully entitled to vote. The automatic  
20 tabulating equipment used in such electronic voting  
21 systems shall reject choices recorded on any ballot if the  
22 number of such choices exceeds the number to which a  
23 voter is entitled;

24 (4) It shall permit each voter to deposit, write in, or  
25 affix upon a ballot, card or envelope to be provided for  
26 that purpose, ballots containing the names of persons for  
27 whom he desires to vote whose names do not appear  
28 upon the ballots or ballot labels;

29 (5) It shall permit each voter to change his vote for  
30 any candidate and upon any question appearing upon  
31 the ballots or ballot labels up to the time when his ballot  
32 is deposited in the ballot box;

33 (6) It shall contain a program deck consisting of cards  
34 that are sequentially numbered, or consisting of a  
35 computer program disk, diskette, tape or other pro-  
36 gramming media containing sequentially numbered  
37 program instructions and coded or otherwise protected  
38 from tampering or substitution of the media or program

39 instructions by unauthorized persons, and capable of  
40 tabulating all votes cast in each election;

41 (7) It shall contain two standard validation test decks  
42 approved as to form and testing capabilities by the state  
43 election commission;

44 (8) It shall correctly record and count accurately all  
45 votes cast for each candidate and for and against each  
46 question appearing upon the ballots or ballot labels;

47 (9) It shall permit each voter at any election other  
48 than primary elections, by one mark or punch to vote  
49 a straight party ticket, as provided in section five,  
50 article six of this chapter.

51 (10) It shall permit each voter in primary elections to  
52 vote only for the candidates of the party for which he  
53 or she is legally permitted to vote, and preclude him  
54 from voting for any candidate seeking nomination by  
55 any other political party, permit him to vote for the  
56 candidates, if any, for nonpartisan nomination or  
57 election, and permit him to vote on public questions;

58 (11) It shall, where applicable, be provided with  
59 means for sealing the vote recording device to prevent  
60 its use and to prevent tampering with ballot labels, both  
61 before the polls are open or before the operation of the  
62 vote recording device for an election is begun and  
63 immediately after the polls are closed or after the  
64 operation of the vote recording device for an election is  
65 completed;

66 (12) It shall have the capacity to contain the names  
67 of candidates constituting the tickets of at least nine  
68 political parties, and to accommodate the wording of at  
69 least fifteen questions;

70 (13) Where vote recording devices are used, they  
71 shall:

72 (A) Be durably constructed of material of good  
73 quality and in a workmanlike manner and in a form  
74 which shall make it safely transportable;

75 (B) Be so constructed with frames for the placing of  
76 ballot labels and with suitable means for the protection

77 of such labels, that the labels on which are printed the  
78 names of candidates and their respective parties, titles  
79 of offices, and wording of questions shall be so reason-  
80 ably protected from mutilation, disfigurement or  
81 disarrangement;

82 (C) Bear a number that will identify it or distinguish  
83 it from any other machine;

84 (D) Be so constructed that a voter may easily learn the  
85 method of operating it and may expeditiously cast his  
86 vote for all candidates of his choice, and upon any public  
87 question; and

88 (E) Be accompanied by a mechanically operated  
89 instruction model which shall show the arrangement of  
90 ballot labels, party columns or rows, and questions.

**§3-4A-10. County clerk to be custodian of vote recording devices and tabulating equipment; duties.**

1 When an electronic voting system is acquired by any  
2 county commission, the vote recording devices, where  
3 applicable, and the tabulating equipment shall be  
4 immediately placed in the custody of the county clerk,  
5 and shall remain in his or her custody at all times except  
6 when in use at an election or when in custody of a court  
7 or court officers during contest proceedings. The clerk  
8 shall see that the vote recording devices and the  
9 tabulating equipment are properly protected and  
10 preserved from damage or unnecessary deterioration,  
11 and shall not permit any unauthorized person to tamper  
12 with them. The clerk shall also be charged with the duty  
13 of keeping the vote recording devices and tabulating  
14 equipment in repair and of preparing the same for  
15 voting.

**§3-4A-10a. Proportional distribution of vote recording devices.**

1 Where vote recording devices are used, the county  
2 commission of each county shall, upon the close of  
3 registration, review the total number of registered  
4 voters and the number of registered voters of each party  
5 in each precinct. Prior to each election, the commission  
6 shall determine the number of voting devices needed to

7 accommodate voters without long delays and shall  
8 assign an appropriate number to each precinct. For the  
9 purposes of the primary election, the commission shall  
10 assign the number of vote recording devices in each  
11 precinct to be prepared for each party based as nearly  
12 as practicable on the proportion of registered voters of  
13 each party to the total: *Provided*, That a minimum of  
14 one vote recording device per party be provided, except  
15 for "independent" voters, which shall be determined  
16 under section twenty of this article.

**§3-4A-11a. Ballots tabulated electronically; arrangement,  
quantity to be printed, ballot stub  
numbers.**

1 (a) The board of ballot commissioners in counties  
2 using ballots upon which votes may be recorded by  
3 means of marking with electronically sensible ink or  
4 pencil and which marks are tabulated electronically  
5 shall cause the ballots to be printed for use in elections.

6 (b) (1) The heading of the ballot, the arrangement of  
7 offices in columns, the spaces for marking votes, the  
8 printing of offices, instructions and candidates names  
9 shall conform as nearly as possible to that prescribed in  
10 this chapter for paper ballots, except that the secretary  
11 of state may prescribe necessary modifications to  
12 accommodate the tabulating system. Nonpartisan  
13 elections for board of education and any question to be  
14 voted upon shall be separated from the partisan ballot  
15 and separately headed in display type with a title clearly  
16 identifying the purpose of the election, and such  
17 separate section shall constitute a separate ballot  
18 wherever a separate ballot is required under the  
19 provisions of this chapter.

20 (2) Both the face and the reverse side of the ballot  
21 may contain the names of candidates, only if means to  
22 ensure the secrecy of the ballot are provided and lines  
23 for the signatures of the poll clerks on the ballot are  
24 printed on a portion of the ballot which is deposited in  
25 the ballot box and upon which marks do not interfere  
26 with the proper tabulation of the votes.

27 (3) The arrangement of candidates within each office  
28 shall be determined in the same manner as for other

29 electronic voting systems, as prescribed in this chapter.  
30 On the general election ballot only, lines for entering  
31 write-in votes shall be provided below the names of  
32 candidates for each office, and the number of lines  
33 provided for any office shall equal the number of  
34 persons to be elected. The words "WRITE-IN, IF ANY"  
35 shall be printed directly under each line for write-ins.  
36 Such lines shall be opposite a position to mark the vote.  
37 Write-in votes which appear on the ballot in places other  
38 than the lines provided for write-ins shall not be  
39 counted, but any name entered on a line for a write-in  
40 vote shall be counted in accordance with the rules for  
41 counting write-ins in a general election in other voting  
42 systems.

43 (c) The ballot shall be printed in black ink on paper  
44 suitable for automatic tabulation and in the color  
45 specified by the secretary of state, and shall contain a  
46 perforated stub at the top or bottom of the ballot which  
47 shall be numbered sequentially in the same manner as  
48 provided in this article for ballots upon which votes are  
49 recorded by means of perforating. The number of ballots  
50 printed and the packaging of ballots for the precincts  
51 shall conform to the requirements for paper ballots as  
52 provided in this chapter.

53 (d) In addition to the official ballots, the ballot  
54 commissioners shall provide all other materials and  
55 equipment necessary to the proper conduct of the  
56 election.

**\*§3-4A-12. Ballot label arrangement in vote recording devices; when uniform numbering required; drawing by lot to determine position of candidates on ballots or ballot labels; sealing of devices; record of identifying numbers.**

1 (a) When the ballot labels are printed and delivered  
2 to the clerk of the county commission of a county using  
3 vote recording devices, he shall place them in the vote  
4 recording devices in such manner as will most nearly  
5 conform to the arrangement prescribed for paper

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\* Clerk's Note: §3-4A-12 was also amended by H. B. 2305 (Chapter 79), which passed prior to this act.



6 ballots, and as will clearly indicate the party designation  
 7 or emblem of each candidate. Each column, row or page  
 8 containing the names of the office and candidates for  
 9 such office shall be so arranged as to clearly indicate  
 10 the office for which the candidate is running. The names  
 11 of the candidates for each office indicated shall be  
 12 placed on the ballot label. The ballot label and the  
 13 arrangement of the ballot shall conform as nearly as  
 14 practicable to the plan herein given:

Democratic Ticket		Republican Ticket	
For House of Delegates		For House of Delegates	
Name		Name	
		→	69
	70 ←		
		→	71
	72 ←		
		→	73
	74 ←		
		→	75
	76 ←		

26 (b) The secretary of state shall assign a uniform  
 27 number applicable to all counties using electronic voting  
 28 for all straight party tickets and for all candidates  
 29 running for offices to be voted upon by all of the voters  
 30 of the state. The number so designated by the secretary  
 31 of state shall be used by all counties using electronic  
 32 voting systems irrespective of the fact that in one or  
 33 more such counties the number or numbers so desig-  
 34 nated may result in other than strict sequential ballot  
 35 arrangement.

36 (c) After taking into account the numbers so assigned  
 37 by the secretary of state to straight party tickets and  
 38 all candidates for offices to be voted upon by all the  
 39 voters of the state, the clerk of the circuit court shall  
 40 appoint a time at which all candidates whose ballot  
 41 positions are to be determined by drawing by lot are to  
 42 appear before the clerk for such drawing. Candidates  
 43 whose ballot positions are to be determined by drawing  
 44 by lot are those candidates for an office for which the  
 45 voters will elect more than one person to represent the  
 46 electoral districts, including, but not limited to, House

47 of Delegates contests in multi-delegate districts, contests  
48 for the office of county board of education, magistrate  
49 and delegate to a political party national convention.  
50 The clerk shall give due notice of such time to each  
51 candidate by United States mail, directed to the address  
52 given by the candidate in his announcement of  
53 candidacy.

54 (d) It shall be the duty of the secretary of state to  
55 provide each circuit clerk with a list of names and  
56 addresses of candidates running for office in such clerk's  
57 county who have filed their announcement of candidacy  
58 with the secretary of state, and who are candidates  
59 whose ballot positions are to be determined by drawing  
60 by lot. At the time appointed, all such candidates whose  
61 ballot positions are to be determined by lot shall  
62 assemble in the office of such clerk and such candidates  
63 shall then proceed to draw by lot to determine where  
64 their names shall appear on the ballots or ballot labels.  
65 The number so drawn by each such candidate shall  
66 determine where his or her name shall appear on the  
67 ballots or ballot labels. In the event any candidate or  
68 candidates fail to appear at the time appointed, the clerk  
69 shall draw for such absent candidate or candidates in  
70 the presence of those candidates assembled, if any, and  
71 the number so drawn by the clerk shall determine  
72 where the name of any absent candidate or candidates  
73 shall appear on the ballots or ballot labels. The circuit  
74 clerk shall record the number drawn by each candidate  
75 and his name in an appropriate book. The ballot  
76 commissioners shall proceed to have the ballots or ballot  
77 labels printed according to the provisions of this article.  
78 After receiving the printed ballots or ballot labels, the  
79 clerk of the circuit court shall ascertain their accuracy  
80 and the clerk of the county commission shall, in counties  
81 utilizing vote recording devices, proceed to have the  
82 ballot labels placed in the vote recording devices. The  
83 clerk of the county commission shall then seal the vote  
84 recording devices so as to prevent tampering with ballot  
85 labels, and enter in an appropriate book, opposite the  
86 number of each precinct, the identifying or distinguish-  
87 ing number of the specific vote recording device or  
88 devices to be used in that precinct.

**§3-4A-13. Inspection of ballots and vote recording devices; duties of county commission, ballot commissioners and election commissioners; records relating to ballots and vote recording devices; receipt of election materials by ballot commissioners.**

1       When the clerk of the county commission has com-  
2       pleted the preparation of the ballots and vote recording  
3       devices as provided in sections eleven, eleven-a and  
4       twelve of this article and as provided in section twenty-  
5       one, article one of this chapter, and not later than seven  
6       days before the day of the election, he or she shall notify  
7       the members of the county commission and the ballot  
8       commissioners that the ballots and devices, where  
9       applicable, are ready for use. Thereupon the members  
10       of the county commission and the ballot commissioners  
11       shall convene at the office of the clerk or at such other  
12       place wherein the vote recording devices, where  
13       applicable, and ballots are stored, not later than five  
14       days before the day of the election, and shall inspect the  
15       devices and the ballots to determine whether the  
16       requirements of this article have been met. Notice of the  
17       place and time of such inspection shall be published, no  
18       less than three days prior thereto, as a Class I-0 legal  
19       advertisement in compliance with the provisions of  
20       article three, chapter fifty-nine of this code, and the  
21       publication area for such publication shall be the county  
22       involved. Any candidate and one representative of each  
23       political party on the ballot may be present during such  
24       examination. If the devices, where applicable, and  
25       ballots are found to be in proper order, the members of  
26       the county commission and the ballot commissioners  
27       shall, where applicable, endorse their approval in the  
28       book in which the clerk entered the numbers of the  
29       devices opposite the numbers of the precincts. The vote  
30       recording devices and the ballots shall then be secured  
31       in double lock rooms. The county clerk and the president  
32       or president pro tempore of the county commission shall  
33       each have a key. The rooms shall be unlocked only in  
34       their presence and only for the removal of the devices,  
35       where applicable, and the ballots for transportation to  
36       the polls. Upon such removal of the devices and ballots,

37 the county clerk and president or president pro tempore  
38 of the county commission shall certify in writing signed  
39 by them that the devices, where applicable, and  
40 packages of ballots were found to be sealed when  
41 removed for transportation to the polls.

42 Not later than one day before the election, the election  
43 commissioner of each precinct who shall have been  
44 previously designated by the ballot commissioners, shall  
45 attend at the office of the clerks of the circuit court and  
46 county commission of such county to receive the  
47 necessary election records, books and supplies required  
48 by law. Such election commissioners shall receive the  
49 per diem mileage rate prescribed by law for this service.  
50 Such election commissioners shall give the ballot  
51 commissioners a sequentially numbered written receipt,  
52 on a printed form, provided by the clerk of the county  
53 commission, for such records, books and supplies. Such  
54 receipt shall be prepared in duplicate. One copy of the  
55 receipt shall remain with the clerk of the county  
56 commission and one copy shall be delivered to the  
57 president or president pro tempore of the county  
58 commission.

**§3-4A-15. Instructions and help to voters; vote recording  
device models; facsimile diagrams; sample  
ballots; legal ballot advertisements.**

1 (a) For the instruction of the voters on any election  
2 day in counties utilizing an electronic voting system  
3 where votes are to be recorded by means of perforating,  
4 there shall be provided for each polling place one  
5 instruction model for each vote recording device. Each  
6 such instruction model shall be constructed so as to  
7 provide a replica of a vote recording device, and shall  
8 contain the arrangement of the ballot labels, party  
9 columns or rows, office columns or rows, and questions.  
10 Fictitious names shall be inserted in the ballot labels of  
11 the models. Such models shall be located on the election  
12 officers' tables or in some other place in which the voter  
13 must pass to reach the vote recording device. Each  
14 voter, upon request, before voting, shall be offered  
15 instruction by the election officers in the operation of the  
16 vote recording device by use of the instruction model,

17 and each voter shall be given ample opportunity to  
18 operate the model himself.

19 (b) The ballot commissioners shall also provide  
20 facsimile ballots or ballot labels, as may be appropriate,  
21 at least two of which, or complete sets of which, shall  
22 be posted on the walls of each polling place. The  
23 facsimile diagrams shall be exact diagrams of the  
24 ballots or ballot labels or paper ballots to the end that  
25 the voter may become familiar with the location of the  
26 parties, offices, candidates and questions as they appear  
27 on the ballot to be used in his precinct.

28 (c) The ballot commissioners may, with the consent of  
29 the county commission, or the county commission may,  
30 prepare and mail to each qualified voter at his address  
31 as shown on the registration books a facsimile sample  
32 of the ballot or ballot labels for his precinct.

33 (d) In counties where an electronic voting system has  
34 been adopted, the legal ballot advertisements required  
35 by articles five and six of this chapter, shall consist of  
36 a facsimile of the ballot or ballot labels with the names  
37 of the candidates and the offices for which they are  
38 running shown in their proper positions.

**§3-4A-16. Delivery of vote recording devices; time,  
arrangement for voting.**

1 The clerk of the county commission shall deliver or  
2 cause to be delivered each vote recording device, where  
3 applicable, and the package of ballots to the polling  
4 place where they are to be employed. Such delivery shall  
5 be made not less than one hour prior to the opening of  
6 the polls and shall be made in the presence of the  
7 precinct election commissioners. At the time of the  
8 delivery of such vote recording device, where applicable,  
9 and the ballots, the device shall be sealed in such a way  
10 to prevent its use prior to the opening of the polls and  
11 any tampering with the ballot labels and the ballots  
12 shall be packaged and sealed in such a way to prevent  
13 any tampering with the ballots. Immediately prior to  
14 the opening of the polls on election day, the sealed  
15 packages of ballots shall be opened, and the seal of the  
16 vote recording device shall be broken in the presence of

17 the precinct election commissioners, who shall certify in  
18 writing signed by them to the clerk of the county  
19 commission, that the devices, where applicable, and the  
20 ballots have been delivered in their presence, that the  
21 devices and packages of ballots were found to be sealed  
22 upon such delivery, and that the seals have been broken  
23 and the devices opened in their presence, as may be  
24 appropriate. The election commissioners shall then  
25 cause the vote recording device, where applicable, to be  
26 arranged in the voting booth in such manner that the  
27 front of the vote recording device on which the ballot  
28 labels appear will not be visible, when the vote record-  
29 ing device is being operated, to any person other than  
30 the voter if the voter shall elect to close the curtain,  
31 screen or hood to the voting booth.

**§3-4A-17. Check of vote recording devices before use;  
corrections; reserve vote recording devices.**

1 In counties utilizing an electronic voting system where  
2 votes are to be recorded by means of perforating before  
3 permitting the first voter to vote, the election commis-  
4 sioners shall examine the vote recording devices to  
5 ascertain whether the ballot labels are arranged as  
6 specified on the facsimile diagram furnished to the  
7 precinct. If the ballot labels are arranged incorrectly,  
8 the commissioners shall immediately notify the clerk of  
9 the county commission of the foregoing facts in writing,  
10 indicating the number of the device, and obtain from  
11 such clerk a reserve vote recording device, and thereaf-  
12 ter proceed to conduct the election. Any reserve vote  
13 recording device so used shall be prepared for use by  
14 the clerk or his duly appointed deputy and said reserve  
15 vote recording device shall be prepared, inspected and  
16 sealed, and delivered to the polling place wherein the  
17 seal shall be broken and such device opened in the  
18 presence of the precinct election commissioners who  
19 shall certify in writing signed by them to the clerk of  
20 the county commission, that the reserve vote recording  
21 device was found to be sealed upon delivery to the  
22 polling place, that the seal was broken and the device  
23 opened in their presence at the polling place. The vote  
24 recording device found to have been with incorrect

25 ballot labels shall be returned immediately to the  
26 custody of the clerk who shall then promptly cause such  
27 vote recording device to be repaired, prepared and  
28 resealed in order that it may be used as a reserve vote  
29 recording device if needed.

**§3-4A-19. Conducting electronic voting system elections generally; duties of election officers.**

1 (1) The election officers shall constantly and diligently  
2 maintain a watch in order to see that no person votes  
3 more than once and to prevent any voter from occupying  
4 the voting booth for more than five minutes.

5 (2) In primary elections, before a voter is permitted  
6 to occupy the voting booth, the election commissioner  
7 representing the party to which the voter belongs shall  
8 direct the voter to the vote recording device or supply  
9 the voter with a ballot, as may be appropriate, which  
10 will allow the voter to vote only for the candidates who  
11 are seeking nomination on the ticket of the party with  
12 which the voter is affiliated.

13 (3) The poll clerk shall issue to each voter when he  
14 signs the pollbook a card or ticket numbered to  
15 correspond to the number on the pollbook of such voter,  
16 and in the case of a primary election, indicating the  
17 party affiliation of such voter, which numbered card or  
18 ticket shall be presented to the election commissioner in  
19 charge of the voting booth.

20 (4) One hour before the opening of the polls the  
21 precinct election commissioners shall arrive at the  
22 polling place and set up the voting booths so that they  
23 will be in clear view of the election commissioners.  
24 Where applicable, they shall open the vote recording  
25 devices, place them in the voting booths, examine them  
26 to see that they have the correct ballots or ballot labels  
27 by comparing them with the sample ballots, and  
28 determine whether they are in proper working order.  
29 They shall open and check the ballots, supplies, records  
30 and forms, and post the sample ballots or ballot labels  
31 and instructions to voters. Upon ascertaining that all  
32 ballots, supplies, records and forms arrived intact, the  
33 election commissioners shall so certify in writing their

34 findings upon forms provided and collected by the clerk  
35 of the county commission over their signatures to the  
36 clerk of the county commission. Any discrepancies shall  
37 be so noted and reported immediately to the clerk of the  
38 county commission. The election commissioners shall  
39 then number in sequential order the ballot stub of each  
40 ballot in their possession and report in writing to the  
41 clerk of the county commission the number of ballots  
42 received. They shall issue such ballots in sequential  
43 order to each voter.

44 (5) Where applicable, each voter shall be instructed  
45 how to operate the vote recording device before he  
46 enters the voting booth.

47 (6) Any voter who shall spoil, deface or mutilate the  
48 ballot delivered to him, on returning the same to the poll  
49 clerks, shall receive another in place thereof. Every  
50 person who does not vote any ballot delivered to him  
51 shall, before leaving the election room, return such  
52 ballot to the poll clerks. When a spoiled or defaced ballot  
53 is returned, the poll clerks shall make a minute of the  
54 fact on the pollbooks, at the time, and the word "spoiled"  
55 shall be written across the face of the ballot and it shall  
56 be placed in an envelope for spoiled ballots.

57 Immediately on closing the polls, the election commis-  
58 sioners shall ascertain the number of spoiled ballots  
59 during the election and the number of ballots remaining  
60 not voted. The election commissioners shall also ascer-  
61 tain from the pollbooks the number of persons who voted  
62 and shall report, in writing signed by them to the clerk  
63 of the county commission, any irregularities in the ballot  
64 boxes, the number of ballots cast, the number of ballots  
65 spoiled during the election and the number of ballots  
66 unused. All unused ballots shall at the same time be  
67 returned to the clerk of the county commission who shall  
68 count them and record the number. If there is no  
69 discrepancy, the unused ballots shall be destroyed  
70 forthwith, before a representative of each party on the  
71 ballot, by fire or otherwise, by the clerk of the county  
72 commission or a duly designated deputy clerk. If there  
73 is a discrepancy, the unused ballots shall be impounded  
74 and secured under double locks until the discrepancy is



75 resolved. The county clerk and the president or presi-  
76 dent pro tempore of the county commission shall each  
77 have a key. Upon resolution of the discrepancy, the  
78 unused ballots shall forthwith, before a representative  
79 of each party on the ballot, be destroyed by fire or  
80 otherwise, by the clerk of the county commission or a  
81 duly designated deputy clerk.

82 Each commissioner who is a member of an election  
83 board which fails to account for every ballot delivered  
84 to it shall be guilty of a misdemeanor, and, upon  
85 conviction thereof, shall be fined not more than one  
86 thousand dollars or confined in the county jail for not  
87 more than one year, or both.

88 The board of ballot commissioners of each county, or  
89 the chairman thereof, shall preserve the ballots that are  
90 left over in their hands, after supplying the precincts as  
91 provided, until the close of the polls on the day of  
92 election, and such ballots shall then be destroyed by such  
93 board, or the chairman thereof, by fire or otherwise.

94 (7) Where ballots are used, the voter, after he has  
95 marked his ballot shall, before leaving the voting booth,  
96 place the ballot inside the envelope provided for this  
97 purpose, with the stub extending outside said envelope,  
98 and return it to an election commissioner who shall  
99 remove the stub and deposit the envelope with the ballot  
100 inside in the ballot box. No ballot from which the stub  
101 has been detached shall be accepted by the officer in  
102 charge of the ballot box, but such ballot shall be marked  
103 "spoiled" and placed with the spoiled ballots.

104 (8) The precinct election commissioners shall prepare  
105 a report in quadruplicate of the number of voters who  
106 have voted, as indicated by the pollbooks, and shall place  
107 two copies of this report in the ballot box, which  
108 thereupon shall be sealed with a paper seal signed by  
109 the election commissioners so that no additional ballots  
110 may be deposited or removed from the ballot box. Two  
111 election commissioners of different political parties shall  
112 forthwith deliver the ballot box to the clerk of the county  
113 commission at the central counting center and receive  
114 a signed numbered receipt therefor, which receipt shall

115 carefully set forth in detail any and all irregularities  
116 pertaining to the ballot boxes and noted by the precinct  
117 election officers.

118 The receipt shall be prepared in duplicate, a copy of  
119 which shall remain with the clerk of the county  
120 commission who shall have any and all irregularities  
121 noted. The time of their departure from the polling  
122 place shall be noted on the two remaining copies of the  
123 report, which shall be immediately mailed to the clerk  
124 of the county commission.

125 (9) The pollbooks, register of voters, unused ballots,  
126 spoiled ballots and other records and supplies shall be  
127 delivered to the clerk of the county commission, all in  
128 conformity with the provisions of this section.

**§3-4A-19a. Form of ballots; requiring the signatures of  
poll clerks; prohibiting the counting of  
votes cast on ballots without such  
signatures.**

1 Every ballot utilized during the course of any  
2 electronic voting system election conducted under the  
3 provisions of this article shall provide two lines for the  
4 signatures of the poll clerks. Both of the signature lines  
5 shall be printed on a portion of the ballot where votes  
6 are not recorded by perforation or marking, but which  
7 portion is an actual part of the ballot deposited in the  
8 ballot box after the voter has perforated or marked his  
9 ballot and after the ballot stub has been removed.

10 Each of the two poll clerks shall sign his name on one  
11 of the designated lines provided on each ballot before  
12 any ballot is distributed to a voter. After a voter has  
13 signed the pollbook, as required in section nineteen of  
14 this article, the two poll clerks shall deliver a ballot to  
15 the voter, which ballot has been signed by each of the  
16 two poll clerks as provided herein.

17 In the course of an election contest, if it is established  
18 that a ballot does not contain the two signatures  
19 required by this section, such ballot shall be null, void  
20 and of no effect, and shall not be counted.

**§3-4A-20. "Independent" voting in primary elections.**

1 If at any primary elections, nonpartisan candidates

2 for office and public questions are submitted to the  
3 voters and on which candidates and questions persons  
4 registered as "independent" are entitled to vote, as  
5 provided in section eighteen, article two of this chapter,  
6 the election officers shall provide a vote recording  
7 device, where applicable, or the appropriate ballot to be  
8 marked by an electronically sensible pen or ink, so that  
9 such "independent" voters may vote only those portions  
10 of the ballot relating to the nonpartisan candidates and  
11 the public questions submitted, or provide a ballot  
12 containing only provision for voting for those candidates  
13 and/or upon those issues common to the ballots provided  
14 to all voters regardless of political party affiliation.

15 In counties utilizing electronic voting systems in  
16 which votes are recorded by perforating, if vote  
17 recording devices are not available for the "independ-  
18 ent" voters, provision shall be made for sealing the  
19 partisan section or sections of the ballot or ballot labels  
20 on a vote recording device using temporary seals, thus  
21 permitting the independent voter to vote for the  
22 nonpartisan section or sections of the ballot or ballot  
23 labels. After the "independent" voter has voted, the  
24 temporary seals may be removed and the device may  
25 then be used by partisan voters.

**§3-4A-21. Absent voter ballots; issuance, processing and tabulation.**

1 Absentee voters shall cast their votes on absent voter  
2 ballots. If absentee voters shall be deemed eligible to  
3 vote in person at the office of the clerk of the circuit  
4 court, in accordance with the provisions of article three  
5 of this chapter, the clerk of the circuit court of each  
6 county shall provide a vote recording device or other  
7 means, as may be appropriate for votes recorded by  
8 electronically sensible ink or pencil, for the use of such  
9 absentee voters. For all absentee voters deemed eligible  
10 to vote an absent voter's ballot by mail, in accordance  
11 with the provisions of article three of this chapter, the  
12 clerk of the circuit court of each county shall prepare  
13 and issue an absent voter ballot packet consisting of the  
14 following:

- 15 (a) One official absent voter ballot;
- 16 (b) One punching tool for perforating or a device for  
17 marking by electronically sensible pen or ink, as may  
18 be appropriate;
- 19 (c) If a punching tool is to be utilized, one disposable  
20 styrofoam block to be placed behind the ballot card for  
21 voting purposes and to be discarded after use by the  
22 voter;
- 23 (d) One absent voter instruction ballot;
- 24 (e) One absent voter's ballot envelope No. 1, unsealed,  
25 which shall have no writing thereon and which shall be  
26 identical to the secrecy envelope used for placement of  
27 ballots at the polls; and
- 28 (f) One absent voter's ballot envelope No. 2, which  
29 envelope shall be marked with the proper precinct  
30 number and shall provide a place on its seal for the  
31 absent voter to affix his signature. Such envelope shall  
32 also otherwise contain the forms and instructions as  
33 provided in section five, article three of this chapter,  
34 relating to the absentee voting of paper ballots.
- 35 Upon receipt of an absent voter's ballot by mail, the  
36 voter shall mark the ballot with the punch tool or  
37 marking device, whichever is appropriate, and the voter  
38 may receive assistance in voting his absent voter's ballot  
39 in accordance with the provisions of section six, article  
40 three of this chapter.
- 41 After the voter has voted his absent voter's ballot, he  
42 shall (1) enclose the same in absent voter's ballot  
43 envelope No. 1, and seal that envelope, (2) enclose sealed  
44 absent voter's ballot envelope No. 1 in absent voter's  
45 ballot envelope No. 2, (3) complete and sign the forms,  
46 if any, on absent voter's ballot envelope No. 2 according  
47 to the instructions thereon, and (4) mail, postage  
48 prepaid, sealed absent voter's ballot envelope No. 2 to  
49 the clerk of the circuit court of the county in which he  
50 is registered to vote, unless the voter has appeared in  
51 person, in which event he shall hand deliver the sealed  
52 absent voter's ballot envelope No. 2 to the clerk.

53       Upon receipt of such sealed envelope, the circuit clerk  
54 shall (1) enter onto the envelope such information as may  
55 be required of him according to the instructions thereon;  
56 (2) enter his challenge, if any, to the absent voter's  
57 ballot; (3) enter the required information into a record  
58 of persons making application for and voting an absent  
59 voter's ballot by personal appearance or by mail (the  
60 form of which record and information to be entered  
61 therein shall be prescribed by the secretary of state);  
62 and (4) place such sealed envelope in a secure location  
63 in his office, there to remain until delivered to the  
64 polling place in accordance with the provisions of this  
65 article or, in case of a challenged ballot, to the county  
66 commission sitting as a board of canvassers.

67       When absent voters' ballots have been delivered to the  
68 election board of any precinct, the election commission-  
69 ers shall, at the close of the polls, proceed to determine  
70 the legality of such ballots as prescribed in article three  
71 of this chapter. The commissioners shall then open all  
72 of the absent voter's ballot envelopes No. 2 which contain  
73 ballots not challenged and remove therefrom the absent  
74 voter's ballot envelopes No. 1. These ballot envelopes No.  
75 1 shall then be shuffled and intermingled. The election  
76 commissioners and poll clerks, in the presence of each  
77 other, shall next open all of the absent voter's ballot  
78 envelopes No. 1 and remove the ballots therefrom. The  
79 poll clerks shall then affix their signatures thereto as  
80 provided in section nineteen-a of this article. The  
81 commissioners shall then insert each ballot into a  
82 secrecy envelope identical to the secrecy envelopes used  
83 for the placement of ballots of voters who are voting in  
84 person at the polls and shall deposit the ballot in the  
85 ballot box.

**§3-4A-22. Assistance to illiterate and disabled voters.**

1       (a) Any duly registered voter, who requires assistance  
2 to vote by reason of blindness, disability, advanced age  
3 or inability to read and write, may be given assistance  
4 by one of the following means:

5       (1) By a person of the voter's choice: *Provided*, That  
6 such assistance may not be given by the voter's present

7 or former employer or agent of that employer or by an  
8 officer or agent of a labor union of which the voter is  
9 a past or present member; or

10 (2) If no person of the voter's choice be present at the  
11 polling place, the voter may request such assistance  
12 from the poll clerks or ballot commissioners present at  
13 the polling place, whereupon such assistance may be  
14 given by any two of such election officers of opposite  
15 political party affiliation to whom such voter shall  
16 thereupon declare his or her choice of candidates and  
17 his or her position on public questions appearing on the  
18 ballot. Such election officers, in the presence of the voter  
19 and in the presence of each other, shall thereupon cause  
20 such voter's declared choices to be recorded on the ballot  
21 or a vote recording device, as may be appropriate, as  
22 votes.

23 (b) A person other than an election officer who assists  
24 a voter in voting under the provisions of this section  
25 shall sign a written oath or affirmation before assisting  
26 such voter, stating that he or she will not override the  
27 actual preference of the voter being assisted or mislead  
28 the voter into voting for someone other than the  
29 candidate of the voter's choice. Such person assisting the  
30 voter shall also swear or affirm that he or she believes  
31 that the voter is voting free of intimidation or manip-  
32 ulation.

#### §3-4A-24. Voting by challenged voter.

1 If the right of any person to vote be challenged in  
2 accordance with the provisions of article one of this  
3 chapter, relating to the challenging of voters, and a vote  
4 recording device or ballot is used that tabulates the vote  
5 as an individual vote, such person shall be permitted to  
6 cast his vote by use of the vote recording device or ballot,  
7 as may be appropriate. He shall be provided with a  
8 challenged ballot and ballot envelopes for the insertion  
9 of the ballot after voting. There shall be an inner  
10 envelope marked with the precinct number for the  
11 challenged ballot. There shall also be another envelope  
12 for the inner envelope and the challenged voter stub,

13 which envelope shall provide a place for the challenged  
14 voter to affix his signature on the seal of such outer  
15 envelope.

16 After the county commission, as prescribed in article  
17 one of this chapter, has determined that the challenges  
18 are unfounded, the commissioners shall remove the  
19 outer envelopes. Without opening the inner envelope, the  
20 commissioners shall shuffle and intermingle such inner  
21 envelopes. The commissioners shall then open the inner  
22 envelopes, remove the ballots and add the votes to the  
23 previously counted totals.

### §3-4A-25. Closing polls.

1 As soon as the polls have been closed and the last  
2 qualified voter has voted, no further voting on any ballot  
3 may be had and the vote recording devices utilized in  
4 counties with electronic voting systems where votes are  
5 recorded by perforating shall be sealed against further  
6 voting. All unused ballots shall be placed in a container  
7 for return to the clerk of the county commission.

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## CHAPTER 81

(S. B. 518—By Senators Burdette, Mr. President, and Harman,  
By Request of the Executive)

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[Passed March 7, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section one, article three, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to implementing the 1987 amendments to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; and expanding the definition of the term "acquiring agency".

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

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

**ARTICLE 3. IMPLEMENTATION OF UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 AND THE 1987 AMENDMENTS THERETO KNOWN AS TITLE IV OF THE SURFACE TRANSPORTATION AND UNIFORM RELOCATION ASSISTANCE ACT OF 1987.**

**§54-3-1. Definitions.**

1 As used in this article, the term:

2 (1) "Federal act" means the "Uniform Relocation  
3 Assistance and Real Property Acquisition Policies Act  
4 of 1970", being Public Law 91-646, enacted by the  
5 Ninety-first Congress of the United States of America,  
6 and the 1987 amendments thereto known as Title IV of  
7 the Surface Transportation and Uniform Relocation  
8 Assistance Act of 1987 being Public Law 100-17 enacted  
9 by the One Hundredth Congress of the United States of  
10 America.

11 (2) "Acquiring agency" means the state of West  
12 Virginia or any department, agency or instrumentality  
13 thereof, or any county, municipality or other political  
14 subdivision thereof or any department, agency or  
15 instrumentality of two or more states or of two or more  
16 political subdivisions of a state or states, and any person  
17 carrying out a program or project with federal financial  
18 assistance which causes a person to be a displaced  
19 person within the intent and meaning of the federal act.

20 (3) "Person" means any individual, partnership,  
21 association or corporation.

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## CHAPTER 82

(H. B. 4735—By Delegate Farley)

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[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-a; and to amend and reenact section eleven, article three, chapter twenty-two-a of said code, all



relating to the use of special revenue funds by the commissioner of energy to administer the division of energy; providing that federal funds may not be expended contrary to federal law; providing that moneys in the special reclamation fund are reserved for certain purposes; requiring the commissioner to develop a long-range planning process; restricting the amount of moneys which the commissioner may use for certain purposes; increasing the fee per ton of clean coal mined and specifying when it shall be collected; and removing provisions regarding assessments when the fund goes below a certain amount.

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

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

**Chapter**

**22. Energy.**

**22A. Mines and Minerals.**

**CHAPTER 22. ENERGY.**

**ARTICLE 1. TITLE; PURPOSES; DIVISION OF ENERGY.**

**§22-1-5a. Special revenue.**

1 Except as herein exempted and notwithstanding any  
 2 other provisions in this code to the contrary, the  
 3 commissioner may, with the exception of the special  
 4 reclamation fund established in section eleven, article  
 5 three, chapter twenty-two-a of this code, expend, in  
 6 accordance with the provisions of chapter five-a of this  
 7 code, from special revenue accounts, and funds estab-  
 8 lished pursuant to this chapter and chapters twenty-two-  
 9 a and twenty-two-b of this code, amounts necessary to  
 10 implement and administer the general powers, duties  
 11 and responsibilities of the division of energy: *Provided,*  
 12 That federal funds required by law to be expended for  
 13 a specific purpose may not be expended for any purpose  
 14 contrary to the laws, rules or regulations of the federal  
 15 government.

## CHAPTER 22A. MINES AND MINERALS.

## ARTICLE 3. WEST VIRGINIA SURFACE COAL MINING AND RECLAMATION ACT.

**§22A-3-11. Performance bonds; amount and method of bonding; bonding requirements; special reclamation tax and fund; prohibited acts; period of bond liability.**

1 (a) After a surface-mining permit application has  
2 been approved pursuant to this article, but before a  
3 permit has been issued, each operator shall furnish  
4 bond, on a form to be prescribed and furnished by the  
5 commissioner, payable to the state of West Virginia and  
6 conditioned upon the operator faithfully performing all  
7 of the requirements of this article and of the permit. The  
8 amount of the bond shall be one thousand dollars for  
9 each acre or fraction thereof. The bond shall cover (1)  
10 the entire permit area, or (2) that increment of land  
11 within the permit area upon which the operator will  
12 initiate and conduct surface-mining and reclamation  
13 operations within the initial term of the permit. If the  
14 operator chooses to use incremental bonding, as succeed-  
15 ing increments of surface mining and reclamation  
16 operations are to be initiated and conducted within the  
17 permit area, the operator shall file with the commis-  
18 sioner an additional bond or bonds to cover such  
19 increments in accordance with this section: *Provided,*  
20 That once the operator has chosen to proceed with  
21 bonding either the entire permit area or with incremen-  
22 tal bonding, he shall continue bonding in that manner  
23 for the term of the permit: *Provided, however,* That the  
24 minimum amount of bond furnished shall be ten  
25 thousand dollars.

26 (b) The period of liability for performance bond  
27 coverage shall commence with issuance of a permit and  
28 continue for the full term of the permit plus any  
29 additional period necessary to achieve compliance with  
30 the requirements in the reclamation plan of the permit.

31 (c) (1) The form of the performance bond shall be  
32 approved by the commissioner and may include, at the  
33 option of the operator, surety bonding, collateral

34 bonding (including cash and securities), establishment  
35 of an escrow account, self-bonding or a combination of  
36 these methods. If collateral bonding is used, the operator  
37 may elect to deposit cash, or collateral securities or  
38 certificates as follows: Bonds of the United States or its  
39 possessions, of the federal land bank, or of the ho-  
40 meowners' loan corporation; full faith and credit general  
41 obligation bonds of the state of West Virginia, or other  
42 states, and of any county, district or municipality of the  
43 state of West Virginia or other states; or certificates of  
44 deposit in a bank in this state, which certificates shall  
45 be in favor of the division. The cash deposit or market  
46 value of such securities or certificates shall be equal to  
47 or greater than the sum of the bond. The commissioner  
48 shall, upon receipt of any such deposit of cash, securities  
49 or certificates, promptly place the same with the  
50 treasurer of the state of West Virginia whose duty it  
51 shall be to receive and hold the same in the name of the  
52 state in trust for the purpose for which the deposit is  
53 made when the permit is issued. The operator making  
54 the deposit shall be entitled from time to time to receive  
55 from the state treasurer, upon the written approval of  
56 the commissioner, the whole or any portion of any cash,  
57 securities or certificates so deposited, upon depositing  
58 with him in lieu thereof, cash or other securities or  
59 certificates of the classes herein specified having value  
60 equal to or greater than the sum of the bond.

61 (2) The commissioner may approve an alternative  
62 bonding system if it will (A) reasonably assure that  
63 sufficient funds will be available to complete the  
64 reclamation, restoration and abatement provisions for  
65 all permit areas which may be in default at any time,  
66 and (B) provide a substantial economic incentive for the  
67 permittee to comply with all reclamation provisions.

68 (d) The commissioner may accept the bond of the  
69 applicant itself without separate surety when the  
70 applicant demonstrates to the satisfaction of the  
71 commissioner the existence of a suitable agent to receive  
72 service of process and a history of financial solvency and  
73 continuous operation sufficient for authorization to self-  
74 insure.

75 (e) It shall be unlawful for the owner of surface or  
76 mineral rights to interfere with the present operator in  
77 the discharge of his obligations to the state for the  
78 reclamation of lands disturbed by him.

79 (f) All bond releases shall be accomplished in accor-  
80 dance with the provisions of section twenty-three of this  
81 article.

82 (g) All special reclamation taxes deposited by the  
83 commissioner with the treasurer or the state of West  
84 Virginia to the credit of the special reclamation fund  
85 prior to the effective date of this article shall be  
86 transferred to the special reclamation fund created by  
87 this section and shall be expended pursuant to the  
88 provisions of this subsection: *Provided*, That no taxes  
89 transferred into the special reclamation fund created by  
90 this section shall be subject to refund. The moneys  
91 accrued in the fund, including interest, are reserved  
92 solely and exclusively for the purposes set forth in this  
93 subsection. The fund shall be administered by the  
94 commissioner, and he is authorized to expend the  
95 moneys in the fund for the reclamation and rehabilita-  
96 tion of lands which were subjected to permitted surface-  
97 mining operations and abandoned after the third day of  
98 August, one thousand nine hundred seventy-seven,  
99 where the amount of the bond posted and forfeited on  
100 such land is less than the actual cost of reclamation. The  
101 commissioner shall develop a long-range planning  
102 process for selection and prioritization of sites to be  
103 reclaimed so as to avoid inordinate short-term obliga-  
104 tions of the assets in the fund of such magnitude that  
105 the solvency of the fund is jeopardized. The commis-  
106 sioner may use an amount, not to exceed twenty-five  
107 percent of the annual amount of the fees collected, for  
108 the purpose of designing, constructing and maintaining  
109 water treatment systems when they are required for a  
110 complete reclamation of the affected lands described in  
111 this subsection. The commissioner may also expend an  
112 amount not to exceed ten percent of the total annual  
113 assets in the fund to implement and administer the  
114 provisions of this chapter and chapters twenty-two and  
115 twenty-two-b of this code.

116 After the effective date of this subsection, every  
117 person then conducting coal surface-mining operations  
118 shall contribute into the fund a sum equal to three cents  
119 per ton of clean coal mined thereafter. This fee shall be  
120 collected by the state tax commissioner in the same  
121 manner as the West Virginia business and occupation  
122 tax in accordance with the provisions of chapter eleven  
123 of this code. Such tax shall be collected whenever the  
124 liabilities of the state established in this subsection  
125 exceed the accrued amount in the fund. The tax  
126 commissioner shall deposit the fees collected with the  
127 treasurer of the state of West Virginia to the credit of  
128 the special reclamation fund. The moneys in the fund  
129 shall be placed by the treasurer in interest bearing  
130 account with the interest being returned to the fund on  
131 an annual basis. At the beginning of each quarter, the  
132 commissioner shall advise the state tax commissioner  
133 and the governor of the assets, excluding payments,  
134 expenditures and liabilities, in the fund.

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## CHAPTER 83

(Com. Sub. for H. B. 4596—By Mr. Speaker, Mr. Chambers,  
and Delegate R. Burk, By Request)

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[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section four, article one, chapter six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three, four, five, seven and eight, article two of said chapter; to amend said chapter by adding thereto a new article, designated article two-a; and to amend and reenact section four, article three of said chapter, all relating generally to ethical standards of governmental officials and employees and disclosure of financial interest of such persons; providing additional immunity from sanctions for persons acting in good faith reliance on ethics commission advisory opinions; the selection of investigative panel members; providing public disclosure of certain commission actions;

providing that members of an investigative panel which finds probable cause cannot serve on the commission panel which renders final decision in case; the finding of truth or falsity of charges by the commission; requiring public disclosure of conciliation agreements; abeyance of commission action pending referral for criminal investigation; use of public office for private gain; permitting solicitation for charitable purposes; interests of public officials, public employees in public contracts; exemption from prohibited activities for persons employed in higher education; requiring disclosure of identity and nature of additional sources of income; excluding spouse's income from reporting requirements; disclosure of debtors and creditors; exempting certain debts and loans from being reported; requiring additional disclosure of gifts; emergency rule revoked; all disclosures made in manner prescribed by legislative rules; changes in expenditures to be reported by lobbyists; and deletion of provisions for requiring lobbyists to report additional information by legislative rule.

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

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

**Article**

1. **Short Title; Legislative Findings, Purposes and Intent; Construction and Application of Chapter; Severability.**
2. **West Virginia Ethics Commission; Powers and Duties; Disclosure of Financial Interest by Public Officials and Employees; Appearances Before Public Agencies.**
- 2A. **Rules.**
3. **Lobbyists.**

**ARTICLE 1. SHORT TITLE; LEGISLATIVE FINDINGS, PURPOSES AND INTENT; CONSTRUCTION AND APPLICATION OF CHAPTER; SEVERABILITY.**

**§6B-1-4. Remedies and penalties in addition to other applicable remedies and penalties.**

1 The provisions of this chapter shall be in addition to  
2 any other applicable provisions of this code and except  
3 for the immunity provided by section three, article two  
4 of this chapter shall not be deemed to be in derogation  
5 of or as a substitution for any other provisions of this  
6 code, including, but not limited to, article five-a, chapter  
7 sixty-one of this code and except for the immunity  
8 provided by section three, article two of this chapter the  
9 remedies and penalties provided in this chapter shall be  
10 in addition to any other remedies or penalties which  
11 may be applicable to any circumstances relevant to both.

**ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES.**

§6B-2-3. Advisory opinions.

§6B-2-4. Complaints; dismissals; hearings; disposition; judicial review.

§6B-2-5. Ethical standards for elected and appointed officials and public employees.

§6B-2-7. Financial disclosure statement; contents.

§6B-2-8. Exceptions to financial disclosure requirements and conflicts of interest provisions.

**§6B-2-3. Advisory opinions.**

1 A person subject to the provisions of this chapter may  
2 make application in writing to the ethics commission for  
3 an advisory opinion on whether an action or proposed  
4 action violates the provisions of this chapter or the  
5 provisions of section fifteen, article ten, chapter sixty-  
6 one of this code and would thereby expose the person  
7 to sanctions by the commission or criminal prosecution.  
8 The commission shall respond within thirty days from  
9 the receipt of the request by issuing an advisory opinion  
10 on the matter raised in the request. All advisory  
11 opinions shall be published and indexed in the code of  
12 state rules by the secretary of state: *Provided*, That  
13 before an advisory opinion is made public, any material  
14 which may identify the person who is the subject of the  
15 opinion shall, to the fullest extent possible, be deleted

16 and the identity of the person shall not be revealed. A  
17 person subject to the provisions of this chapter may rely  
18 upon the published guidelines or an advisory opinion of  
19 the commission, and any person acting in good faith  
20 reliance on any such guideline or opinion shall be  
21 immune from the sanctions of this chapter and the  
22 sanctions of section fifteen, article ten, chapter sixty-one  
23 of this code, and shall have an absolute defense to any  
24 criminal prosecution for actions taken in good faith  
25 reliance upon any such opinion or guideline in regard  
26 to the sanctions of this chapter and the sanctions of  
27 section fifteen, article ten, chapter sixty-one of this code.

**§6B-2-4. Complaints; dismissals; hearings; disposition;  
judicial review.**

1 (a) Upon the filing by any person with the commission  
2 of a complaint which is duly verified by oath or  
3 affirmation, the executive director of the commission or  
4 his or her designee shall, within three working days,  
5 acknowledge the receipt of the complaint by first class  
6 mail, unless the complainant or his or her representative  
7 personally filed the complaint with the commission and  
8 was given a receipt or other acknowledgement evidenc-  
9 ing the filing. Within fourteen days after the receipt of  
10 a complaint, an investigative panel shall be appointed  
11 to investigate the substance of the allegations in the  
12 complaint and to determine whether there is probable  
13 cause to believe that a violation of this chapter has  
14 occurred. The commission shall establish by legislative  
15 rule promulgated in accordance with chapter twenty-  
16 nine-a of this code a rotation system for the selection of  
17 commission members to sit on investigative panels  
18 whereby the caseload of commission investigations is  
19 distributed among commission members as evenly and  
20 randomly as possible.

21 (b) In the case of a filed complaint, the first inquiry  
22 of the investigative panel shall be a question as to  
23 whether or not the allegations of the complaint, if taken  
24 as true, would constitute a violation of law upon which  
25 the commission could properly act under the provisions  
26 of this chapter. If the complaint is determined by a  
27 majority vote of the investigative panel to be insufficient



28 in this regard, the investigative panel shall dismiss the  
29 complaint.

30 (c) After the commission receives a complaint found  
31 by the investigative panel to be sufficient, the executive  
32 director shall give notice of a pending investigation by  
33 the investigative panel to the complainant and respond-  
34 ent. The notice of investigation shall be mailed to the  
35 parties, and, in the case of the respondent, shall be  
36 mailed as certified mail, return receipt requested,  
37 marked "Addressee only, personal and confidential".  
38 The notice shall describe the conduct of the respondent  
39 which is the basis for an alleged violation of law, and  
40 if a complaint has been filed, a copy of the complaint  
41 shall be appended to the notice mailed to the respondent.  
42 Each notice of investigation shall inform the respondent  
43 that the purpose of the investigation is to determine  
44 whether probable cause exists to believe that a violation  
45 of law has occurred which may subject the respondent  
46 to administrative sanctions by the commission, criminal  
47 prosecution by the state, or civil liability. The notice  
48 shall further inform the respondent that he or she has  
49 a right to appear before the investigative panel, and that  
50 he or she may respond in writing to the commission  
51 within thirty days after the receipt of the notice, but  
52 that no fact or allegation shall be taken as admitted by  
53 a failure or refusal to timely respond.

54 (d) Within the forty-five day period following the  
55 mailing of a notice of investigation, the investigative  
56 panel shall proceed to consider (1) the allegations raised  
57 in the complaint, (2) any timely received written  
58 response of the respondent, and (3) any other competent  
59 evidence gathered by or submitted to the commission  
60 which has a proper bearing on the issue of probable  
61 cause. A respondent shall be afforded the opportunity  
62 to appear before the investigative panel and make an  
63 oral response to the complaint. The commission shall, in  
64 promulgating legislative rules pursuant to the provi-  
65 sions of subsection (a), section two of this article,  
66 prescribe the manner in which a respondent may  
67 present his or her oral response to the investigative  
68 panel. The commission may request a respondent to

69 disclose specific amounts received from a source, and  
70 other detailed information not otherwise required to be  
71 set forth in a statement or report filed under the  
72 provisions of this chapter, if the information sought is  
73 deemed to be probative as to the issues raised by a  
74 complaint or an investigation initiated by the commis-  
75 sion. Any information thus received shall be confidential  
76 except as provided by subsection (f) of this section. If  
77 the person so requested fails or refuses to furnish the  
78 information to the commission, the commission may  
79 exercise its subpoena power as provided for elsewhere  
80 in this chapter, and any subpoena issued thereunder  
81 shall have the same force and effect as a subpoena issued  
82 by a circuit court of this state, and enforcement of any  
83 such subpoena may be had upon application to a circuit  
84 court of the county in which the investigative panel is  
85 conducting an investigation, through the issuance of a  
86 rule or an attachment against the respondent as in cases  
87 of contempt.

88 (e) (1) All investigations, complaints, reports, records,  
89 proceedings, and other information received by the  
90 commission and related to complaints made to the  
91 commission or investigations conducted by the commis-  
92 sion pursuant to this section, including the identity of  
93 the complainant or respondent, shall be confidential and  
94 shall not be knowingly and improperly disclosed by any  
95 member or former member of the commission or its  
96 staff, except as follows:

97 (A) Upon a finding that probable cause exists to  
98 believe that a respondent has violated the provisions of  
99 this chapter, the complaint and all reports, records, non-  
100 privileged and nondeliberative material introduced at  
101 any probable cause hearing held pursuant to the  
102 complaint are thereafter not confidential: *Provided,*  
103 That confidentiality of such information shall remain in  
104 full force and effect until the respondent has been served  
105 by the commission with a copy of the investigative  
106 panel's order finding probable cause and with the  
107 statement of charges prepared pursuant to the provi-  
108 sions of subsection (g) of this section.

109 (B) After a finding of probable cause as aforesaid, any

110 subsequent hearing held in the matter for the purpose  
111 of receiving evidence or the arguments of the parties or  
112 their representatives shall be open to the public and all  
113 reports, records and nondeliberative materials intro-  
114 duced into evidence at such subsequent hearing, as well  
115 as the commission's orders, are not confidential.

116 (C) The commission may release any information  
117 relating to an investigation at any time if the release has  
118 been agreed to in writing by the respondent.

119 (D) The complaint as well as the identity of the  
120 complainant shall be disclosed to a person named as  
121 respondent in any such complaint filed with the  
122 commission immediately upon such respondent's  
123 request.

124 (E) Where the commission is otherwise required by  
125 the provisions of this chapter to disclose such informa-  
126 tion or to proceed in such a manner that disclosure is  
127 necessary and required to fulfill such requirements.

128 (2) If, in a specific case, the commission finds that  
129 there is a reasonable likelihood that the dissemination  
130 of information or opinion in connection with a pending  
131 or imminent proceeding will interfere with a fair  
132 hearing or otherwise prejudice the due administration  
133 of justice, the commission shall order that all or a  
134 portion of the information communicated to the commis-  
135 sion to cause an investigation and all allegations of  
136 ethical misconduct or criminal acts contained in a  
137 complaint shall be confidential, and the person provid-  
138 ing such information or filing a complaint shall be  
139 bound to confidentiality until further order of the  
140 commission.

141 (f) If a majority of the members of the investigative  
142 panel fails to find probable cause, the proceedings shall  
143 be dismissed by the commission in an order signed by  
144 the majority members of the panel, and copies of the  
145 order of dismissal shall be sent to the complainant and  
146 served upon the respondent forthwith. If the investiga-  
147 tive panel decides by a majority vote that there is  
148 probable cause to believe that a violation under this  
149 chapter has occurred, the majority members of the  
150 investigative panel shall sign an order directing the

151 commission staff to prepare a statement of charges, to  
152 assign the matter for hearing to the commission or a  
153 hearing examiner as the commission may subsequently  
154 direct, and to schedule a hearing to determine the truth  
155 or falsity of the charges, such hearing to be held within  
156 ninety days after the date of the order. For the purpose  
157 of this section, service of process upon the respondent  
158 is obtained at the time the respondent or the respond-  
159 ent's agent physically receives the process, regardless of  
160 whether the service of process is in person or by  
161 certified mail.

162 (g) At least eighty days prior to the date of the  
163 hearing, the respondent shall be served by certified  
164 mail, return receipt requested, with the statement of  
165 charges and a notice of hearing setting forth the date,  
166 time and place for the hearing. The scheduled hearing  
167 may be continued only upon a showing of good cause by  
168 the respondent or under such other circumstances as the  
169 commission shall, by legislative rule, direct.

170 (h) The commission members who have not served as  
171 members of an investigative panel in a particular case  
172 may sit as a hearing board to adjudicate the case or may  
173 permit an assigned hearing examiner employed by the  
174 commission to preside at the taking of evidence. The  
175 commission shall, by legislative rule, establish the  
176 general qualifications for hearing examiners. Such  
177 legislative rule shall also contain provisions which seek  
178 to ensure that the functions of a hearing examiner will  
179 be conducted in an impartial manner, and shall describe  
180 the circumstances and procedures for disqualification of  
181 hearing examiners.

182 (i) A member of the commission or a hearing exa-  
183 miner presiding at a hearing may:

184 (1) Administer oaths and affirmations, compel the  
185 attendance of witnesses and the production of docu-  
186 ments, examine witnesses and parties, and otherwise  
187 take testimony and establish a record;

188 (2) Rule on offers of proof and receive relevant  
189 evidence;

190 (3) Take depositions or have depositions taken when  
191 the ends of justice may be served;

192 (4) Regulate the course of the hearing;

193 (5) Hold conferences for the settlement or simplifica-  
194 tion of issues by consent of the parties;

195 (6) Dispose of procedural requests or similar matters;

196 (7) Accept stipulated agreements;

197 (8) Take other action authorized by the ethics commis-  
198 sion consistent with the provisions of this chapter.

199 (j) With respect to allegations of a violation under this  
200 chapter, the complainant has the burden of proof. The  
201 West Virginia rules of evidence as used to govern  
202 proceedings in the courts of this state shall be given like  
203 effect in hearings held before the commission or a  
204 hearing examiner. The commission shall, by legislative  
205 rule, regulate the conduct of hearings so as to provide  
206 full procedural due process to a respondent. Hearings  
207 before a hearing examiner shall be recorded electron-  
208 ically. When requested by either of the parties, the  
209 presiding officer shall make a transcript, verified by  
210 oath or affirmation, of each hearing held and so  
211 recorded. In the discretion of the commission, a record  
212 of the proceedings may be made by a certified court  
213 reporter. Unless otherwise ordered by the commission,  
214 the cost of preparing a transcript shall be paid by the  
215 party requesting the transcript. Upon a showing of  
216 indigency, the commission may provide a transcript  
217 without charge. Within fifteen days following the  
218 hearing, either party may submit to the hearing  
219 examiner that party's proposed findings of fact. The  
220 hearing examiner shall thereafter prepare his or her  
221 own proposed findings of fact and make copies of the  
222 findings available to the parties. The hearing examiner  
223 shall then submit the entire record to the commission  
224 for final decision.

225 (k) The recording of the hearing or the transcript of  
226 testimony, as the case may be, and the exhibits, together  
227 with all papers and requests filed in the proceeding, and  
228 the proposed findings of fact of the hearing examiner

229 and the parties, constitute the exclusive record for  
230 decision by the commission members who have not  
231 served as members of the investigative panel, unless by  
232 leave of the commission a party is permitted to submit  
233 additional documentary evidence or take and file  
234 depositions or otherwise exercise discovery.

235 (l) The commission shall set a time and place for the  
236 hearing of arguments by the complainant and respond-  
237 ent, or their respective representatives, and shall notify  
238 the parties thereof, and briefs may be filed by the  
239 parties in accordance with procedural rules promul-  
240 gated by the commission. The final decision of the  
241 commission shall be made by the commission members  
242 who have not served as members of the investigative  
243 panel in writing within forty-five days of the receipt of  
244 the entire record of a hearing held before a hearing  
245 examiner or, in the case of an evidentiary hearing held  
246 by the board in lieu of a hearing examiner, within  
247 twenty-one days following the close of the evidence.

248 (m) A decision on the truth or falsity of the charges  
249 against the respondent and a decision to impose  
250 sanctions must be approved by at least six members of  
251 the commission who have not served as members of the  
252 investigative panel.

253 (n) Members of the commission shall recuse them-  
254 selves from a particular case upon their own motion  
255 with the approval of the commission or for good cause  
256 shown upon motion of a party. The remaining members  
257 of the commission shall, by majority vote, select a  
258 temporary member of the commission to replace a  
259 recused member: *Provided*, That the temporary member  
260 selected to replace a recused member shall be a person  
261 of the same status or category, provided by subsection  
262 (b), section one of this article, as the recused member.

263 (o) A complainant may be assisted by a member of the  
264 commission staff assigned by the commission after a  
265 determination of probable cause.

266 (p) No member of the commission staff may partic-  
267 ipate in the commission deliberations or communicate

268 with commission members concerning the merits of a  
269 complaint after being assigned to prosecute a complaint.

270 (q) If the commission finds by evidence beyond a  
271 reasonable doubt that the facts alleged in the complaint  
272 are true and constitute a material violation of this  
273 article, it may impose one or more of the following  
274 sanctions:

275 (1) Public reprimand;

276 (2) Cease and desist orders;

277 (3) Orders of restitution for money, things of value, or  
278 services taken or received in violation of this chapter;  
279 or

280 (4) Fines not to exceed one thousand dollars per  
281 violation.

282 In addition to imposing such sanctions, the commis-  
283 sion may recommend to the appropriate governmental  
284 body that a respondent be terminated from employment  
285 or removed from office.

286 The commission may institute civil proceedings in the  
287 circuit court of the county wherein a violation occurred  
288 for the enforcement of sanctions.

289 (r) At any stage of the proceedings under this section,  
290 the commission may enter into a conciliation agreement  
291 with a respondent if such agreement is deemed by a  
292 majority of the members of the commission to be in the  
293 best interest of the state and the respondent. Any  
294 conciliation agreement must be disclosed to the public:  
295 *Provided*, That negotiations leading to a conciliation  
296 agreement, as well as information obtained by the  
297 commission during such negotiations, shall remain  
298 confidential except as may be otherwise set forth in the  
299 agreement.

300 (s) Decisions of the commission involving the issuance  
301 of sanctions may be appealed to the circuit court of  
302 Kanawha County, West Virginia, or to the circuit court  
303 of the county where the violation is alleged to have  
304 occurred, only by the respondent, and only upon the  
305 grounds set forth in section four, article five, chapter  
306 twenty-nine-a of this code.

307 (t) In the event the commission finds in favor of the  
308 person complained against, the commission shall order  
309 reimbursement of all actual costs incurred, including,  
310 but not limited to, attorney fees to be paid to the person  
311 complained against by the complainant, if the commis-  
312 sion finds that the complaint was brought or made in  
313 bad faith. In addition, the aggrieved party shall have a  
314 cause of action and be entitled to compensatory dam-  
315 ages, punitive damages, costs and attorney fees for a  
316 complaint made or brought in bad faith.

317 (u) If at any stage in the proceedings under this  
318 section, it appears to an investigative panel, a hearing  
319 examiner or the commission that a criminal violation  
320 may have been committed by a respondent, such  
321 situation shall be brought before the full commission for  
322 its consideration. If, by a vote of two thirds of the full  
323 commission, it is determined that probable cause exists  
324 to believe a criminal violation has occurred, it may  
325 recommend to the appropriate county prosecuting  
326 attorney having jurisdiction over the case that a  
327 criminal investigation be commenced. Deliberations of  
328 the commission with regard to a recommendation for  
329 criminal investigation by a prosecuting attorney shall be  
330 private and confidential. Notwithstanding any other  
331 provision of this article, once a referral for criminal  
332 investigation is made under the provisions of this  
333 subsection, the ethics proceedings shall be held in  
334 abeyance until action on the referred matter is con-  
335 cluded. If the commission determines that a criminal  
336 violation has not occurred, the commission shall remand  
337 the matter to the investigative panel, the hearing  
338 examiner or the commission itself as a hearing board,  
339 as the case may be, for further proceedings under this  
340 article.

341 (v) The provisions of this section shall apply to  
342 violations of this chapter occurring after the thirtieth  
343 day of September, one thousand nine hundred eighty-  
344 nine, and within one year before the filing of a  
345 complaint under subsection (a) of this section or the  
346 appointment of an investigative panel by the commission  
347 under subsection (b) of this section.



**§6B-2-5. Ethical standards for elected and appointed officials and public employees.**

1 (a) *Persons subject to section.*—The provisions of this  
2 section apply to all elected and appointed public officials  
3 and public employees, whether full or part time, in  
4 state, county, municipal governments and their respec-  
5 tive boards, agencies, departments, and commissions  
6 and in any other regional or local governmental agency,  
7 including county school boards.

8 (b) *Use of public office for private gain.*—(1) A public  
9 official or public employee may not knowingly and  
10 intentionally use his or her office or the prestige of his  
11 or her office for his or her own private gain or that of  
12 another person. The performance of usual and custom-  
13 ary duties associated with the office or position or the  
14 advancement of public policy goals or constituent  
15 services, without compensation, does not constitute the  
16 use of prestige of office for private gain.

17 (2) The Legislature, in enacting this subsection (b),  
18 relating to the use of public office or public employment  
19 for private gain, recognizes that there may be certain  
20 public officials or public employees who bring to their  
21 respective offices or employment their own unique  
22 personal prestige which is based upon their intelligence,  
23 education, experience, skills and abilities, or other  
24 personal gifts or traits. In many cases, these persons  
25 bring a personal prestige to their office or employment  
26 which inures to the benefit of the state and its citizens.  
27 Such persons may, in fact, be sought by the state to  
28 serve in their office or employment because, through  
29 their unusual gifts or traits, they bring stature and  
30 recognition to their office or employment and to the  
31 state itself. While the office or employment held or to  
32 be held by such persons may have its own inherent  
33 prestige, it would be unfair to such individuals and  
34 against the best interests of the citizens of this state to  
35 deny such persons the right to hold public office or be  
36 publicly employed on the grounds that they would, in  
37 addition to the emoluments of their office or employ-  
38 ment, be in a position to benefit financially from the  
39 personal prestige which otherwise inheres to them.

40 Accordingly, the commission is directed, by legislative  
41 rule, to establish categories of such public officials and  
42 public employees, identifying them generally by the  
43 office or employment held, and offering persons who fit  
44 within such categories the opportunity to apply for an  
45 exemption from the application of the provisions of this  
46 subsection. Such exemptions may be granted by the  
47 commission, on a case-by-case basis, when it is shown  
48 that: (A) The public office held or the public employ-  
49 ment engaged in is not such that it would ordinarily be  
50 available or offered to a substantial number of the  
51 citizens of this state; (B) the office held or the employ-  
52 ment engaged in is such that it normally or specifically  
53 requires a person who possesses personal prestige; and  
54 (C) the person's employment contract or letter of  
55 appointment provides or anticipates that the person will  
56 gain financially from activities which are not a part of  
57 his or her office or employment.

58 (c) *Gifts.*—(1) A public official or public employee  
59 may not solicit any gift unless the solicitation is for a  
60 charitable purpose with no resulting direct pecuniary  
61 benefit conferred upon the official or employee or his or  
62 her immediate family: *Provided*, That no public official  
63 or public employee may solicit for a charitable purpose  
64 any gift from any person who is also an official or  
65 employee of the state and whose position as such is  
66 subordinate to the soliciting official or employee:  
67 *Provided, however*, That nothing herein shall prohibit a  
68 candidate for public office from soliciting a lawful  
69 political contribution. No official or employee may  
70 knowingly accept any gift, directly or indirectly, from  
71 a lobbyist or from any person whom the official or  
72 employee knows or has reason to know:

73 (A) Is doing or seeking to do business of any kind with  
74 his or her agency;

75 (B) Is engaged in activities which are regulated or  
76 controlled by his or her agency; or

77 (C) Has financial interests which may be substantially  
78 and materially affected, in a manner distinguishable

79 from the public generally, by the performance or  
80 nonperformance of his official duties.

81 (2) Notwithstanding the provisions of subdivision (1)  
82 of this subsection, a person who is a public official or  
83 public employee may accept a gift described in this  
84 subdivision, and there shall be a presumption that the  
85 receipt of such gift does not impair the impartiality and  
86 independent judgment of the person. This presumption  
87 may be rebutted only by direct objective evidence that  
88 the gift did impair the impartiality and independent  
89 judgment of the person or that the person knew or had  
90 reason to know that the gift was offered with the intent  
91 to impair his or her impartiality and independent  
92 judgment. The provisions of subdivision (1) of this  
93 subsection do not apply to:

94 (A) Meals and beverages;

95 (B) Ceremonial gifts or awards which have insignif-  
96 icant monetary value;

97 (C) Unsolicited gifts of nominal value or trivial items  
98 of informational value;

99 (D) Reasonable expenses for food, travel and lodging  
100 of the official or employee for a meeting at which the  
101 official or employee participates in a panel or speaking  
102 engagement at the meeting;

103 (E) Gifts of tickets or free admission extended to a  
104 public official or public employee to attend charitable,  
105 cultural or political events, if the purpose of such gift  
106 or admission is a courtesy or ceremony customarily  
107 extended to the office;

108 (F) Gifts that are purely private and personal in  
109 nature; or

110 (G) Gifts from relatives by blood or marriage, or a  
111 member of the same household.

112 (3) The acceptance of an honorarium by an elected  
113 public official is prohibited. The commission shall, by  
114 legislative rule, establish guidelines for the acceptance  
115 of reasonable honorariums by all other public officials  
116 and public employees other than elected public officials.

117 (4) Nothing in this section shall be construed so as to  
118 prohibit the giving of a lawful political contribution as  
119 defined by law.

120 (5) The governor or his designee may, in the name of  
121 the state of West Virginia, accept and receive gifts from  
122 any public or private source. Any such gift so obtained  
123 shall become the property of the state and shall, within  
124 thirty days of the receipt thereof, be registered with the  
125 commission and the division of culture and history.

126 (d) *Interests in public contracts.*—(1) In addition to the  
127 provisions of section fifteen, article ten, chapter sixty-  
128 one of this code, no elected or appointed public official  
129 or public employee or member of his or her immediate  
130 family or business with which he or she is associated  
131 may be a party to or have an interest in the profits or  
132 benefits of a contract which such official or employee  
133 may have direct authority to enter into, or over which  
134 he or she may have control: *Provided*, That nothing  
135 herein shall be construed to prevent or make unlawful  
136 the employment of any person with any governmental  
137 body: *Provided, however*, That nothing herein shall be  
138 construed to prohibit a member of the Legislature from  
139 entering into a contract with any governmental body, or  
140 prohibit a part-time appointed public official from  
141 entering into a contract which such part-time appointed  
142 public official may have direct authority to enter into  
143 or over which he or she may have control when such  
144 official has been recused from deciding or evaluating  
145 and excused from voting on such contract and has fully  
146 disclosed the extent of such interest in the contract.

147 (2) In the absence of bribery or a purpose to defraud,  
148 an elected or appointed public official or public  
149 employee or a member of his or her immediate family  
150 or a business with which he or she is associated shall  
151 not be considered as having an interest in a public  
152 contract when such a person has a limited interest as  
153 an owner, shareholder or creditor of the business which  
154 is the contractor on the public contract involved. A  
155 limited interest for the purposes of this subsection is:

156 (A) An interest:

157 (i) Not exceeding ten percent of the partnership or the  
158 outstanding shares of a corporation; or

159 (ii) Not exceeding thirty thousand dollars interest in  
160 the profits or benefits of the contract; or

161 (B) An interest as a creditor:

162 (i) Not exceeding ten percent of the total indebtedness  
163 of a business; or

164 (ii) Not exceeding thirty thousand dollars interest in  
165 the profits or benefits of the contract.

166 (3) Where the provisions of subdivisions (1) and (2) of  
167 this subsection would result in the loss of a quorum in  
168 a public body or agency, in excessive cost, undue  
169 hardship, or other substantial interference with the  
170 operation of a state, county, municipality, county school  
171 board or other governmental agency, the affected  
172 governmental body or agency may make written  
173 application to the ethics commission for an exemption  
174 from subdivisions (1) and (2) of this subsection.

175 (e) *Confidential information.*—No present or former  
176 public official or employee may knowingly and improp-  
177 erly disclose any confidential information acquired by  
178 him or her in the course of his or her official duties nor  
179 use such information to further his or her personal  
180 interests or the interests of another person.

181 (f) *Prohibited representation.*—No present or former  
182 elected or appointed public official or public employee  
183 shall during or after his or her public employment or  
184 service represent a client or act in a representative  
185 capacity with or without compensation on behalf of any  
186 person in a contested case, rate-making proceeding,  
187 license or permit application, regulation filing or other  
188 specific matter which arose during his or her period of  
189 public service or employment and in which he or she  
190 personally participated in a decision-making, advisory  
191 or staff support capacity.

192 (g) *Limitation on practice before a board, agency,*  
193 *commission or department.*—(1) No elected or appointed  
194 public official and no full-time staff attorney or

195 accountant shall, during his or her public service or  
196 public employment or for a period of six months after  
197 the termination of his or her public service or public  
198 employment with a governmental entity authorized to  
199 hear contested cases or promulgate regulations, appear  
200 in a representative capacity before the governmental  
201 entity in which he or she serves or served or is or was  
202 employed in the following matters:

203 (A) A contested case involving an administrative  
204 sanction, action or refusal to act;

205 (B) To support or oppose a proposed regulation;

206 (C) To support or contest the issuance or denial of a  
207 license or permit;

208 (D) A rate-making proceeding; and

209 (E) To influence the expenditure of public funds.

210 (2) As used in this subsection, "represent" includes  
211 any formal or informal appearance before, or any  
212 written or oral communication with, any public agency  
213 on behalf of any person: *Provided*, That nothing  
214 contained in this subsection shall prohibit, during any  
215 period, a former public official or employee from being  
216 retained by or employed to represent, assist, or act in  
217 a representative capacity on behalf of the public agency  
218 by which he or she was employed or in which he or she  
219 served. Nothing in this subsection shall be construed to  
220 prevent a former public official or employee from  
221 representing another state, county, municipal or other  
222 governmental entity before the governmental entity in  
223 which he or she served or was employed within six  
224 months after the termination of his or her employment  
225 or service in the entity.

226 (3) A present or former public official or employee  
227 may appear at any time in a representative capacity  
228 before the Legislature, a county commission, city or  
229 town council or county school board in relation to the  
230 consideration of a statute, budget, ordinance, rule,  
231 resolution or enactment.

232 (4) Members and former members of the Legislature

233 and professional employees and former professional  
234 employees of the Legislature shall be permitted to  
235 appear in a representative capacity on behalf of clients  
236 before any governmental agency of the state, or of  
237 county or municipal governments including county  
238 school boards.

239 (5) An elected or appointed public official, full-time  
240 staff attorney or accountant who would be adversely  
241 affected by the provisions of this subsection (g) may  
242 apply to the ethics commission for an exemption from  
243 the six months prohibition against appearing in a  
244 representative capacity, when the person's education  
245 and experience is such that the prohibition would, for  
246 all practical purposes, deprive the person of the ability  
247 to earn a livelihood in this state outside of the govern-  
248 mental agency. The ethics commission shall by legisla-  
249 tive rule establish general guidelines or standards for  
250 granting an exemption or reducing the time period, but  
251 shall decide each application on a case-by-case basis.

252 (h) *Seeking employment with regulated person prohi-*  
253 *bited.*—(1) No full-time public official or full-time public  
254 employee who exercises policymaking, nonministerial or  
255 regulatory authority may seek employment with, or  
256 allow himself or herself to be employed by, any person  
257 who is or may be regulated by the governmental body  
258 which he or she serves while he or she is employed or  
259 serves in the governmental agency. The term "employ-  
260 ment" within the meaning of this section includes  
261 professional services and other services rendered by the  
262 public official or public employee whether rendered as  
263 an employee or as an independent contractor.

264 (2) No person regulated by a governmental agency  
265 shall offer employment to a full-time public official or  
266 full-time public employee of the regulating governmen-  
267 tal agency during the period of time the public official  
268 or employee works or serves in such agency.

269 (3) A full-time public official or full-time public  
270 employee who would be adversely affected by the  
271 provisions of this subsection may apply to the ethics  
272 commission for an exemption from the prohibition

273 against seeking employment with a person who is or  
274 may be regulated, when the person's education and  
275 experience is such that the prohibition would, for all  
276 practical purposes, deprive the person of the ability to  
277 earn a livelihood in this state outside of the governmen-  
278 tal agency. The ethics commission shall by legislative  
279 rule establish general guidelines or standards for  
280 granting an exemption, but shall decide upon each  
281 application on a case-by-case basis.

282 (i) *Members of the Legislature required to vote.*—  
283 Members of the Legislature who have asked to be  
284 excused from voting or who have made inquiry as to  
285 whether they should be excused from voting on a  
286 particular matter and who are required by the presid-  
287 ing officer of the House of Delegates or Senate of West  
288 Virginia to vote under the rules of the particular house  
289 shall not be guilty of any violation of ethics under the  
290 provisions of this section for a vote so cast.

291 (j) *Limitations on participation in licensing and rate-*  
292 *making proceedings.*—No public official or employee  
293 may participate within the scope of his or her duties as  
294 a public official or employee, except through ministerial  
295 functions as defined in section three, article one of this  
296 chapter, in any license or rate-making proceeding that  
297 directly affects the license or rates of any person,  
298 partnership, trust, business trust, corporation, or  
299 association in which the public official or employee or  
300 his or her immediate family owns or controls more than  
301 ten percent. No public official or public employee may  
302 participate within the scope of his or her duties as a  
303 public official or public employee, except through  
304 ministerial functions as defined in section three, article  
305 one of this chapter, in any license or rate-making  
306 proceeding that directly affects the license or rates of  
307 any person to whom the public official or public  
308 employee or his or her immediate family, or a partner-  
309 ship, trust, business trust, corporation, or association of  
310 which the public official or employee, or his or her  
311 immediate family, owns or controls more than ten  
312 percent, has sold goods or services totaling more than  
313 one thousand dollars during the preceding year, unless



314 the public official or public employee has filed a written  
315 statement acknowledging such sale with the public  
316 agency and the statement is entered in any public record  
317 of the agency's proceedings. This subsection shall not be  
318 construed to require the disclosure of clients of attorneys  
319 or of patients or clients of persons licensed pursuant to  
320 articles three, eight, fourteen, fourteen-a, fifteen,  
321 sixteen, twenty, twenty-one or thirty-one, chapter thirty  
322 of this code.

323 (k) *Certain expenses prohibited.*—No public official or  
324 public employee shall knowingly request or accept from  
325 any governmental entity compensation or reimburse-  
326 ment for any expenses actually paid by a lobbyist and  
327 required by the provisions of this chapter to be reported,  
328 or actually paid by any other person.

329 (l) Any person who is employed as a member of the  
330 faculty or staff of a public institution of higher  
331 education and who is engaged in teaching, research,  
332 consulting or publication activities in his or her field of  
333 expertise with public or private entities and thereby  
334 derives private benefits from such activities shall be  
335 exempt from the prohibitions contained in subsections  
336 (b), (c) and (d) of this section when the activity is  
337 approved as a part of an employment contract with the  
338 governing board of such institution or has been ap-  
339 proved by the employees' department supervisor or the  
340 president of the institution by which the faculty or staff  
341 member is employed.

342 (m) The commission by legislative rule promulgated  
343 in accordance with chapter twenty-nine-a of this code  
344 may define further exemptions from this section as  
345 necessary or appropriate.

#### §6B-2-7. Financial disclosure statement; contents.

1 The financial disclosure statement required under this  
2 article shall contain the following information:

3 (1) The name, residential and business addresses of  
4 the person filing the statement and all names under  
5 which the person does business.

6 (2) The name and address of each employer of the  
7 person.

8 (3) The identification, by category, of every source of  
9 income over five thousand dollars received during the  
10 preceding calendar year, in his or her own name or by  
11 any other person for his or her use or benefit, by the  
12 person filing the statement, and a brief description of  
13 the nature of the services for which the income was  
14 received. This subdivision does not require a person  
15 filing the statement who derives income from a business,  
16 profession or occupation to disclose the individual  
17 sources and items of income that constitute the gross  
18 income of that business, profession or occupation, nor  
19 does this subdivision require a person filing the  
20 statement to report the source or amount of income  
21 derived by his or her spouse.

22 (4) If the person profited or benefited in the year prior  
23 to the date of filing from a contract for the sale of goods  
24 or services to a state, county, municipal or other local  
25 governmental agency either directly or through a  
26 partnership, corporation or association in which such  
27 person owned or controlled more than ten percent, the  
28 person shall describe the nature of the goods or services  
29 and identify the governmental agencies which pur-  
30 chased the goods or services.

31 (5) Each interest group or category listed below doing  
32 business in this state with which the person filing the  
33 statement did business or furnished services and from  
34 which the person received more than twenty percent of  
35 the person's gross income during the preceding calendar  
36 year. The groups or categories are electric utilities, gas  
37 utilities, telephone utilities, water utilities, cable  
38 television companies, interstate transportation compan-  
39 ies, intrastate transportation companies, oil or gas retail  
40 companies, banks, savings and loan associations, loan or  
41 finance companies, manufacturing companies, surface  
42 mining companies, deep mining companies, mining  
43 equipment companies, chemical companies, insurance  
44 companies, retail companies, beer, wine or liquor  
45 companies or distributors, recreation related companies,  
46 timbering companies, hospitals or other health care

47 providers, trade associations, professional associations,  
48 associations of public employees or public officials,  
49 counties, cities or towns, labor organizations, waste  
50 disposal companies, wholesale companies, groups or  
51 associations seeking to legalize gambling, advertising  
52 companies, media companies, race tracks and promo-  
53 tional companies.

54 (6) The names of all persons, excluding that person's  
55 immediate family, parents, or grandparents residing or  
56 transacting business in the state to whom the person  
57 filing the statement owes, on the date of execution of this  
58 statement in the aggregate in his or her own name or  
59 in the name of any other person more than twelve  
60 thousand five hundred dollars: *Provided*, That nothing  
61 herein shall require the disclosure of a mortgage on the  
62 person's primary and secondary residences or of  
63 automobile loans on automobiles maintained for the use  
64 of the person's immediate family, or of a student loan,  
65 nor shall this section require the disclosure of debts  
66 which result from the ordinary conduct of such person's  
67 business, profession, or occupation or of debts of the  
68 person filing the statement to any financial institution,  
69 credit card company, or business, in which the person  
70 has an ownership interest: *Provided, however*, That the  
71 previous proviso shall not exclude from disclosure loans  
72 obtained pursuant to the linked deposit program  
73 provided for in article one-a, chapter twelve of this code  
74 or any other loan or debt incurred which requires  
75 approval of the state or any of its political subdivisions.

76 (7) The names of all persons except immediate family  
77 members, parents and grandparents residing or tran-  
78 sacting business in the state (other than a demand or  
79 savings account in a bank, savings and loan association,  
80 credit union or building and loan association or other  
81 similar depository) who owes on the date of execution  
82 of this statement, more, in the aggregate, than twelve  
83 thousand five hundred dollars to the person filing the  
84 statement, either in his or her own name or to any other  
85 person for his or her use or benefit. This subdivision  
86 does not require the disclosure of debts owed to the  
87 person filing the statement which debts result from the

88 ordinary conduct of such person's business, profession or  
89 occupation or of loans made by the person filing the  
90 statement to any business in which the person has an  
91 ownership interest.

92 (8) The source of each gift having a value of over one  
93 hundred dollars, received from a person having a direct  
94 and immediate interest in a governmental activity over  
95 which the person filing the statement has control, shall  
96 be reported by the person filing the statement when  
97 such gift is given to said person in his or her name or  
98 for his or her use or benefit during the preceding  
99 calendar year: *Provided*, That gifts received by will or  
100 by virtue of the laws of descent and distribution, or  
101 received from one's spouse, child, grandchild, parents or  
102 grandparents, or received by way of distribution from  
103 an inter vivos or testamentary trust established by the  
104 spouse or child, grandchild, or by an ancestor of the  
105 person filing the statement are not required to be  
106 reported. As used in this subdivision any series or  
107 plurality of gifts which exceeds in the aggregate the  
108 sum of one hundred dollars from the same source or  
109 donor, either directly or indirectly, and in the same  
110 calendar year, shall be regarded as a single gift in  
111 excess of that aggregate amount.

**§6B-2-8. Exceptions to financial disclosure requirements  
and conflicts of interest provisions.**

1 (a) Any person regulated by the provisions of this  
2 article need not report the holdings of or the source of  
3 income from any of the holdings of:

4 (1) Any qualified blind trust; or

5 (2) A trust—

6 (A) Which was not created directly by such individ-  
7 ual, his spouse, or any dependent child, and

8 (B) The holdings or sources of income of which such  
9 individual, or a member of his or her immediate family,  
10 have no knowledge.

11 Failure to report the holdings of or the source of  
12 income of any trust referred to herein in good faith

13 reliance upon this section shall not constitute a violation  
14 of sections six or seven of this article.

15 (b) The provisions of subsection (d), section five of this  
16 article shall not apply to holdings which are assets  
17 within the trusts referred to in subsection (a) of this  
18 section.

19 (c) For purposes of this section, the term "qualified  
20 blind trust" includes a trust in which a regulated person  
21 or immediate family has a beneficial interest in the  
22 principal or income, and which meets the following  
23 requirements:

24 (1) The trustee of the trust is a financial institution,  
25 an attorney, a certified public accountant, a broker, or  
26 an investment adviser, who (in the case of a financial  
27 institution or investment company, any officer or  
28 employee involved in the management or control of the  
29 trust)—

30 (A) Is independent of and unassociated with any  
31 interested party so that the trustee cannot be controlled  
32 or influenced in the administration of the trust by any  
33 interested party;

34 (B) Is not or has not been an employee of any  
35 interested party, or any organization affiliated with any  
36 interested party and is not a partner of, or involved in  
37 any joint venture or other investment with, any inter-  
38 ested party; and

39 (C) Is not a relative of any interested party.

40 (2) Any asset transferred to the trust by an interested  
41 party is free of any restriction with respect to its  
42 transfer or sale unless such restriction is expressly  
43 approved by the ethics commission;

44 (3) The trust instrument which establishes the trust  
45 provides that—

46 (A) Except to the extent provided in paragraph (F)  
47 of this subdivision the trustee in the exercise of his  
48 authority and discretion to manage and control the  
49 assets of the trust shall not consult or notify any  
50 interested party;

51 (B) The trust shall not contain any asset the holding  
52 of which by an interested party is prohibited by any law  
53 or regulation;

54 (C) The trustee shall promptly notify the regulated  
55 person and the ethics commission when the holdings of  
56 any particular asset transferred to the trust by any  
57 interested party are disposed of;

58 (D) The trust tax return shall be prepared by the  
59 trustee or his designee, and such return and any  
60 information relating thereto (other than the trust  
61 income summarized in appropriate categories necessary  
62 to complete an interested party's tax return), shall not  
63 be disclosed to any interested party;

64 (E) An interested party shall not receive any report  
65 on the holdings and sources of income of the trust,  
66 except a report at the end of each calendar quarter with  
67 respect to the total cash value of the interest of the  
68 interested party in the trust or the net income or loss  
69 of the trust or any reports necessary to enable the  
70 interested party to complete an individual tax return  
71 required by law, but such report shall not identify any  
72 asset or holding;

73 (F) Except for communications which solely consist of  
74 requests for distribution of cash or other unspecified  
75 assets of the trust, there shall be no direct or indirect  
76 communication between the trustee and an interested  
77 party with respect to the trust unless such communica-  
78 tion is in writing and unless it relates only (i) to the  
79 general financial interest and needs of the interested  
80 party (including, but not limited to, an interest in  
81 maximizing income or long-term capital gain), (ii) to the  
82 notification of the trustee of a law or regulation  
83 subsequently applicable to the reporting individual  
84 which prohibits the interested party from holding an  
85 asset, which notification directs that the asset not be  
86 held by the trust, or (iii) to directions to the trustee to  
87 sell all of an asset initially placed in the trust by an  
88 interested party which in the determination of the  
89 reporting individual creates a conflict of interest or the  
90 appearance thereof due to the subsequent assumption of

91 duties by the reporting individual (but nothing herein  
92 shall require any such direction); and

93 (G) The interested parties shall make no effort to  
94 obtain information with respect to the holdings of the  
95 trust, including obtaining a copy of any trust tax return  
96 filed or any information relating thereto except as  
97 otherwise provided in this section.

98 (4) The proposed trust instrument and the proposed  
99 trustee is approved by the ethics commission and  
100 approval shall be given if the conditions of this section  
101 are met.

#### ARTICLE 2A. RULES.

##### §6B-2A-1. Legislative rules; revocation of existing commission emergency rules; manner of reporting.

1 (a) West Virginia ethics commission emergency rule  
2 one hundred fifty-eight is hereby revoked.

3 (b) Any disclosure form, statement or report required  
4 under any provision of this chapter shall be made in a  
5 manner prescribed by legislative rule of the commission.

#### ARTICLE 3. LOBBYISTS.

##### §6B-3-4. Reporting by lobbyists.

1 (a) A lobbyist shall file with the commission reports  
2 of his lobbying activities, signed under oath or affirma-  
3 tion by the lobbyist. Lobbyists who are required under  
4 this article to file copies of their registration statements  
5 with the clerks of the respective houses of the Legisla-  
6 ture shall also contemporaneously file copies of all  
7 reports required under this section with the clerks. Such  
8 reports shall be filed as follows:

9 (1) On or before the second Monday in January of  
10 each year, a lobbyist shall file an annual report of all  
11 lobbying activities which he or she engaged in during  
12 the preceding calendar year; and

13 (2) If a lobbyist engages in lobbying with respect to  
14 legislation, then:

15 (A) Between the fortieth and forty-fifth days of any  
16 regular session of the Legislature in which any such  
17 lobbying occurred, the lobbyist shall file a report  
18 describing all of his or her lobbying activities which  
19 occurred since the beginning of the calendar year; and

20 (B) Within twenty-one days after the adjournment  
21 *sine die* of any regular or extraordinary session of the  
22 Legislature in which any such lobbying occurred, the  
23 lobbyist shall file a report describing all of his or her  
24 lobbying activities which occurred since the beginning  
25 of the calendar year or since the filing of the last report  
26 required by this section, whichever is later.

27 (b) (1) Except as otherwise provided in this section,  
28 each report filed by a lobbyist shall show the total  
29 amount of all expenditures for lobbying made or  
30 incurred by such lobbyist, or on behalf of such lobbyist  
31 by the lobbyist's employer, during the period covered by  
32 the report. The report shall also show subtotals segre-  
33 gated according to financial category, including meals  
34 and beverages; living accommodations; advertising;  
35 travel; contributions; gifts to public officials or em-  
36 ployees or to members of the immediate family of such  
37 persons; and other expenses or services.

38 (2) Lobbyists are not required to report the following:

39 (A) Unreimbursed personal living and travel ex-  
40 penses not incurred directly for lobbying;

41 (B) Any expenses incurred for his or her own living  
42 accommodations;

43 (C) Any expenses incurred for his or her own travel  
44 to and from public meetings or hearings of the legisla-  
45 tive and executive branches;

46 (D) Any expenses incurred for telephone, and any  
47 office expenses, including rent and salaries and wages  
48 paid for staff and secretarial assistance; and

49 (E) Separate expenditures to or on behalf of a public  
50 official or employee in an amount of less than five  
51 dollars.

52 (c) If a lobbyist is employed by more than one



53 employer, the report shall show the proportionate  
54 amount of such expenditures in each category incurred  
55 on behalf of each of his employers.

56 (d) The report shall describe the subject matter of the  
57 lobbying activities in which the lobbyist has been  
58 engaged during the reporting period.

59 (e) If, during the period covered by the report, the  
60 lobbyist made expenditures in the reporting categories  
61 of meals and beverages, living accommodations, travel,  
62 gifts or other expenditures, other than for those  
63 expenditures governed by subsection (f) of this section,  
64 which expenditures in any such reporting category total  
65 more than twenty-five dollars to or on behalf of any  
66 particular public official or employee, the lobbyist shall  
67 report the name of the public official or employee to  
68 whom or on whose behalf the expenditures were made,  
69 the total amount of the expenditures, and the subject  
70 matter of the lobbying activity, if any. Under this  
71 subsection (e), no portion of the amount of an expendi-  
72 ture for a dinner, party, or other function sponsored by  
73 a lobbyist or a lobbyist's employer need be attributed to  
74 or counted toward the reporting amount of twenty-five  
75 dollars for a particular public official or employee who  
76 attends such function if the sponsor has invited to the  
77 function all the members of (1) the Legislature, (2)  
78 either house of the Legislature, (3) a standing or select  
79 committee of either house, or (4) a joint committee of the  
80 two houses of the Legislature. However, the amount  
81 spent for such function shall be added to other expendi-  
82 tures for the purpose of determining the total amount  
83 of expenditures reported under subsection (b) of this  
84 section.

85 (f) If, during the period covered by the report, the  
86 lobbyist made expenditures in the reporting categories  
87 of meals and beverages, lodging, travel, gifts and  
88 scheduled entertainment, which reporting expenditures  
89 in any such reporting category total more than twenty-  
90 five dollars for or on behalf of a particular public official  
91 or public employee in return for the participation of the  
92 public official or employee in a panel or speaking  
93 engagement at the meeting, the lobbyist shall report the

94 name of the public official or employee to whom or on  
95 whose behalf the expenditures were made and the total  
96 amount of the expenditures.

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## CHAPTER 84

(Com. Sub. for S. B. 61—By Senators Wolfe, Boley, Harman, Jackson, Whitlow,  
Thomas, Heck, Helmick, Sharpe, Warner and Wiedebusch)

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[Passed March 10, 1990: in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article three, chapter fifty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine, relating to authorized priests, nuns, members of the clergy or rabbis not being compelled to testify in criminal, grand jury or domestic relations proceedings as to communications made to them in their professional capacities.

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

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

### ARTICLE 3. COMPETENCY OF WITNESSES.

#### §57-3-9. Communications to priests, nuns, clergymen, rabbis or other religious counselors not subject to being compelled as testimony.

1 No priest, nun, rabbi or member of the clergy  
2 authorized to celebrate the rites of marriage in this state  
3 pursuant to the provisions of article one, chapter forty-  
4 eight of this code shall be compelled to testify in any  
5 criminal or grand jury proceedings or in any domestic  
6 relations action in any court of this state:

7 (1) With respect to any confession or communication,  
8 made to such person, in his or her professional capacity  
9 in the course of discipline enjoined by the church or

10 other religious body to which he or she belongs, without  
11 the consent of the person making such confession or  
12 communication; or

13 (2) With respect to any communication made to such  
14 person, in his or her professional capacity, by either  
15 spouse, in connection with any effort to reconcile  
16 estranged spouses, without the consent of the spouse  
17 making the communication. This subsection is in  
18 addition to the protection and privilege afforded  
19 pursuant to section ten-a, article two, chapter forty-eight  
20 of this code.

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## CHAPTER 85

(S. B. 614—Originating in the Senate Committee on the Judiciary)

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[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article five, chapter fifty-seven 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 evidence and witnesses; and certain reproductions deemed duplicates.

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

That article five, chapter fifty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted by adding thereto a new section, designated section twelve, to read as follows:

### ARTICLE 5. MISCELLANEOUS PROVISIONS.

#### §57-5-12. Certain documents deemed duplicates.

1 A reproduction of a document acquired from the  
2 employment of a system of microphotography, optical  
3 discs or computerized techniques which system does not  
4 permit additions, deletions or changes to the record of  
5 the original document contained within the system shall  
6 be deemed to be a duplicate for purposes of admission  
7 into evidence in the courts of this state.

8 A reproduction deemed a duplicate pursuant to the

9 provisions of this section shall be authenticated by  
10 competent testimony or by an attestation which shall  
11 recite the type of recording system employed, that such  
12 system does not permit additions, deletions or changes  
13 to the record and that the attestant has actual knowl-  
14 edge of the aforementioned facts.

15 The provisions of this section shall be construed to  
16 provide an additional method of qualifying original  
17 writings or recordings and duplicates thereof as  
18 admissible in evidence, and shall not replace or derogate  
19 any other methods set forth elsewhere in this code or  
20 provided for in the West Virginia rules of evidence as  
21 adopted by the supreme court of appeals.

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## CHAPTER 86

(Com. Sub. for H. B. 4502—By Delegates Mezzatesta and Kelly)

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[Passed March 10, 1990: in effect from passage. Approved by the Governor.]

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AN ACT to repeal section nine, article twelve-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three, five, six and eight of said article; and to further amend said article twelve-a by adding thereto a new section, designated section six-a, all relating to the farm management commission; deleting penalty; continuing commission to allow for completion of performance audit; powers and duties of commission; management plan; requiring the purchase and sale of food produced at institutional farms at prevailing wholesale prices; transfer of certain lands to the public land corporation to be sold; special revenue account; employees.

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

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

**CHAPTER 19. AGRICULTURE.****ARTICLE 12A. FARM MANAGEMENT COMMISSION.**

§19-12A-3. Farm management commission continued; composition; chairman; quorum; meetings; vacancies.

§19-12A-5. Powers, duties and responsibilities of commission.

§19-12A-6. Appointment of farm management director; qualifications; powers and duties.

§19-12A-6a. Special revenue account.

§19-12A-8. Effect of management plan on employees.

**§19-12A-3. Farm management commission continued; composition; chairman; quorum; meetings; vacancies.**

1 The farm management commission heretofore created  
2 is hereby continued and shall be composed of three  
3 members who are the commissioner of agriculture, who  
4 shall be chairman, the secretary of the department of  
5 administration, and the dean of the West Virginia  
6 University College of Agriculture and Forestry. No  
7 business may be transacted by the commission in the  
8 absence of a quorum which consists of two members  
9 including the chairman. The farm management com-  
10 mission shall hold meetings at least once every two  
11 months, and on call of the chairman.

12 If a vacancy occurs on the commission, the farm  
13 management director, as provided in this article, shall  
14 act as a member of the commission until the vacancy  
15 is filled.

16 If a vacancy occurs in the office of the commissioner  
17 of agriculture, the members of the commission and the  
18 farm management director shall select, from among  
19 them, a chairman to serve until a commissioner of  
20 agriculture is appointed or elected and qualified.

21 Pursuant to the provisions of section four, article ten,  
22 chapter four of this code, the farm management  
23 commission shall continue to exist until the first day of  
24 July, one thousand nine hundred ninety-two, to allow for  
25 the completion of an audit by the joint committee on  
26 government operations.

**§19-12A-5. Powers, duties and responsibilities of commission.**

1 (a) On or before the first day of July, one thousand  
2 nine hundred ninety, the commission shall meet and  
3 confer with respect to the development of a management  
4 plan to determine the optimum use or disposition of all  
5 institutional farms, at which time the farm management  
6 director shall provide the commission with a complete  
7 inventory of all institutional farms, and such informa-  
8 tion relating to easements, mineral rights, appurtenan-  
9 ces, farm equipment, agricultural products, livestock,  
10 inventories and farm facilities as may be necessary to  
11 develop such management plan. The commission shall  
12 complete and provide to the governor a management  
13 plan, which plan shall set forth the objectives of the  
14 commission with respect to institutional farms, the  
15 criteria by which the commission shall determine the  
16 optimum use or disposition of such property, and  
17 determinations as to whether each institutional farm  
18 shall be used in production, sold, or leased, in whole or  
19 in part. Prior to the adoption of any plan, the commis-  
20 sion shall consult with the secretaries of the various  
21 departments of state government and shall request from  
22 such secretaries suggestions for land use and resource  
23 development on farm commission lands. On or before  
24 the first day of December, one thousand nine hundred  
25 ninety, such management plan shall be presented to the  
26 Legislature, by providing a copy to the president of the  
27 Senate and the speaker of the House of Delegates. The  
28 commission may confer with any other agency or  
29 individual in implementing and adjusting its manage-  
30 ment plan. The management plan established pursuant  
31 to this subsection may be amended, from time to time,  
32 as may be necessary.

33 (b) The commission shall manage its institutional  
34 farms, equipment and other property in order to most  
35 efficiently produce food products for state institutions  
36 and shall implement the intent of the Legislature as set  
37 forth by this article. From the total amount of food, milk  
38 and other commodities produced on institutional farms,  
39 the commission shall sell, at prevailing wholesale prices,

40 and each of the institutions under the control of the  
41 division of health and the division of corrections shall  
42 purchase, a proportionate amount of these products  
43 based on the dietary needs of each institution.

44 (c) If requested by the commissioner of corrections,  
45 the commission may authorize the division of corrections  
46 to operate a farm or other enterprise using inmates as  
47 labor on such lands. The commissioner of corrections  
48 shall be responsible for the selection, direction and  
49 supervision of the inmates and shall assign the work to  
50 be performed by inmates.

51 (d) The commission is hereby authorized and empow-  
52 ered to:

53 (1) Lease to public or private parties, for purposes  
54 including agricultural production or experimentation,  
55 public necessity, or other purposes permitted by the  
56 management plan, any land, easements, equipment, or  
57 other property, except that property may not be leased  
58 for any use in any manner that would render the land  
59 toxic for agricultural use, nor may toxic or hazardous  
60 materials as identified by the commissioner of agricul-  
61 ture be used or stored upon such property unless all  
62 applicable state and federal permits necessary are  
63 obtained. Any lease for an annual consideration of one  
64 thousand dollars or more shall be by sealed bid auction  
65 and the commission shall give notice of such auction by  
66 publication thereof as a Class II-0 legal advertisement  
67 in compliance with the provisions of article three,  
68 chapter fifty-nine of this code, and the publication area  
69 for such publication shall be the county in which the  
70 property to be leased is located;

71 (2) Transfer to the public land corporation land  
72 designated in its management plan as land to be  
73 disposed of, which land shall be sold, exchanged or  
74 otherwise transferred pursuant to sections four and five,  
75 article one-a, chapter twenty of this code: *Provided*, That  
76 the net proceeds of the sale of farm commission lands  
77 shall be deposited in the general revenue fund of the  
78 state: *Provided, however*, That no sale may be concluded  
79 until on or after the fifteenth day of March, one

80 thousand nine hundred ninety-one, except with respect  
81 to any properties located at institutions closed on or  
82 before the effective date of this section.

83 (3) Develop lands to which it has title for the public  
84 use including forestation, recreation, wildlife, stock  
85 grazing, agricultural production, rehabilitation and/or  
86 other conservation activities and may contract or lease  
87 for the proper development of timber, oil, gas or mineral  
88 resources, including coal by underground mining or by  
89 surface mining where reclamation as required by  
90 specifications of the division of energy will increase the  
91 beneficial use of such property. Any such contract or  
92 lease shall be by sealed bid auction as provided for in  
93 subdivision (1) above;

94 (4) Exercise all other powers and duties necessary to  
95 effectuate the purposes of this article.

96 (e) Notwithstanding the provisions of subsection (d)  
97 herein, no timberland may be leased, sold, exchanged or  
98 otherwise disposed of, unless the division of forestry of  
99 the department of commerce, labor and environmental  
100 resources certifies that there is no commercially salable  
101 timber on the timberland, an inventory is provided, an  
102 appraisal of the timber is provided, and the sale, lease,  
103 exchange or other disposition is accomplished by the  
104 sealed bid auction procedure provided above in subdivi-  
105 sions (1) or (2), as applicable.

106 (f) The commission shall promulgate, pursuant to  
107 chapter twenty-nine-a of this code, rules and regulations  
108 relating to the powers and duties of the commission as  
109 enumerated in this section.

**§19-12A-6. Appointment of farm management director;  
qualifications; powers and duties.**

1 The commission shall appoint a farm management  
2 director who, in addition to qualifications established by  
3 the commission, shall have owned, operated or managed  
4 a farm for at least five years within ten years imme-  
5 diately prior to being appointed. The farm management  
6 director is the chief executive officer of the commission  
7 and is responsible for conducting the operations of the



8 farms. The director shall prepare an annual report of  
9 the farming operations, including a listing of all receipts  
10 and expenditures and shall present it to the commission  
11 and the Legislature at the end of each fiscal year.

12 As authorized or directed by the commission, the  
13 director shall also:

14 (1) Prepare the annual budget request for the oper-  
15 ation of the institutional farms and submit it to the  
16 commission for approval and submission to the secretary  
17 of the department of administration.

18 (2) Receive and approve all requisitions for farm  
19 supplies and equipment.

20 (3) Supervise the operation of all canneries and  
21 determine what foods are to be canned.

22 (4) Recruit and approve assistant farm managers to  
23 supervise each institutional farm.

24 (5) Implement all orders of the commission.

25 (6) Supervise all other employees of the commission.

26 (7) Transfer farm supplies, farm equipment, farm  
27 facilities, food stuffs and produce from one institutional  
28 farm to another to promote efficiency and improve farm  
29 management.

30 With the approval of the commission, the farm  
31 management director may rent or lease additional land  
32 for farm use.

33 By the thirtieth day of September each year, each  
34 institution under the control of the division of health and  
35 the division of corrections shall present to the farm  
36 management director a purchase order for its food  
37 requirements during the next fiscal year as determined  
38 by the institution. If, during the year, an institution  
39 finds that it needs other or additional food, milk, or  
40 commodities not included in its purchase order for the  
41 year, the institutional superintendent may forward a  
42 supplemental request to the farm management director,  
43 which order may be filled depending on availability. If  
44 institutional farms produce more food, milk and other

45 commodities than can be sold to the institutions, the  
46 farm management director may sell the surplus to other  
47 state agencies willing to purchase. If any surplus  
48 remains after sales to other state agencies, the director  
49 may sell the surplus on the open market, or at the  
50 discretion of the director, turn over any surplus food  
51 products to appropriate public, nonprofit agencies upon  
52 application.

53 On the first day of July, one thousand nine hundred  
54 ninety, the division of health and the division of  
55 corrections shall each transfer, by interdepartmental  
56 transfer, the sum of two hundred thousand dollars to the  
57 farm management commission to be credited toward  
58 their purchase of food products from the commission.  
59 Such credits shall be treated as advance payments for  
60 food products purchased by these divisions pursuant to  
61 this section and such divisions shall not be required to  
62 make actual payments for food products until such  
63 credits have been completely expended.

**§19-12A-6a. Special revenue account.**

1 All funds collected by the commission by virtue of this  
2 article, whether from the sale of food, the disposition of  
3 assets other than land, the lease of land or minerals, or  
4 any other source, shall be paid into a special revenue  
5 account to be used for the purposes of this article:  
6 *Provided,* That when the aggregate of said funds so  
7 collected and deposited in the special revenue account  
8 in any fiscal year total one million five hundred  
9 thousand dollars, the commission shall deposit any funds  
10 collected in excess thereof in the general revenue fund  
11 of the state.

**§19-12A-8. Effect of management plan on employees.**

1 Nothing contained in section five of this article shall  
2 be construed to abridge the rights of farm employees of  
3 the commission within the classified service of the state  
4 to the procedures and protections of sections ten and ten-  
5 a, article six, chapter twenty-nine of this code, subject  
6 to the limitations set forth in subsection (d), section two,  
7 article two, chapter five-f of this code.

## CHAPTER 87

(S. B. 548—By Senator Dittmar)

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[Passed March 6, 1990: in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section five-b, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing the requirement that a copy of the state fire code and amendments to the code be filed with each county clerk.

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

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

### ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

#### §29-3-5b. Promulgation of rules, regulations and state-wide building code.

1 (a) The state fire commission shall promulgate and  
2 repeal rules and regulations to safeguard life and  
3 property and to ensure the quality of construction of all  
4 structures erected or renovated throughout this state  
5 pursuant to the provisions of chapter twenty-nine-a of  
6 this code through the adoption of a state building code.  
7 Such rules, regulations, amendments or repeals thereof  
8 shall be in accordance with standard safe practices so  
9 embodied in widely recognized standards of good  
10 practice for building construction and all aspects related  
11 thereto and shall have force and effect in those counties  
12 and municipalities adopting the state building code.

13 (b) Pursuant to the provisions of chapter twenty-nine-  
14 a of this code, on the first day of July, 1988, the state  
15 fire commission shall commence promulgation of  
16 comprehensive rules and regulations regarding building  
17 construction, renovation and all other aspects as related  
18 to the construction and mechanical operations of a

19 structure. Upon the completion of the promulgation of  
20 the rules and regulations, such rules and regulations  
21 shall be known as the "State Building Code".

22 (c) For the purpose of this section the term "building  
23 code" is intended to include all aspects of safe building  
24 construction and mechanical operations and all safety  
25 aspects related thereto: *Provided*, That the state fire  
26 marshal shall provide compliance alternatives for  
27 historic structures and sites as provided for in section  
28 five, article one of this chapter, which compliance  
29 alternatives shall take into account the historic integrity  
30 of said historic structures and sites. Whenever any other  
31 state law, county or municipal ordinance or regulation  
32 of any agency thereof is more stringent or imposes a  
33 higher standard than is required by the state fire code,  
34 the provisions of such state law, county or municipal  
35 ordinance or regulation of any agency thereof shall  
36 govern, provided they are not inconsistent with the laws  
37 of West Virginia and are not contrary to recognized  
38 standards and good engineering practices. In any  
39 question, the decision of the state fire commission  
40 determines the relative priority of any such state law,  
41 county or municipal ordinance or regulation of any  
42 agency thereof and determines compliance with state  
43 fire regulations by officials of the state, counties,  
44 municipalities and political subdivisions of the state.

45 (d) Enforcement of the provisions of the state building  
46 code is the responsibility of the respective local jurisdic-  
47 tion. Also, any county or municipality may enter into an  
48 agreement with any other county or municipality to  
49 provide inspection and enforcement services.

50 (e) After the state fire commission has promulgated  
51 rules and regulations as provided herein, each county or  
52 municipality intending to adopt the state building code  
53 shall notify the state fire commission of its intent.

54 The state fire commission may conduct public meet-  
55 ings in each county or municipality adopting the state  
56 building code to explain the provisions of such rules and  
57 regulations.

## CHAPTER 88

(Com. Sub. for H. B. 2609—By Delegate Murphy)

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[Passed March 8, 1990; in effect ninety days from passage. Approved by the Governor.]

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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 sixteen-b, relating to the fire prevention and control act; and authorizing the use of live trees in public buildings.

*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 sixteen-b, to read as follows:

### ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

#### §29-3-16b. Use of live trees in public buildings; exceptions.

1 Notwithstanding any other provision of law to the  
2 contrary, live trees may be displayed in public buildings  
3 if the trees are not decorated with electrical lights or  
4 are decorated with U.L. approved miniature lights. The  
5 provisions of this section do not apply to public buildings  
6 used for education, health care, nursing homes or  
7 correctional facilities.

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## CHAPTER 89

(Com. Sub. for H. B. 4012—By Delegate Gallagher)

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[Passed March 8, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article ten, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six-a, relating to the posting of the alcoholic content of gasoline offered for retail sale.

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

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

**ARTICLE 10. LIQUID FUELS AND LUBRICATING OILS.**

**§47-10-6a. Posting of the alcoholic content of gasoline.**

- 1 Any retail distributor of gasoline who sells gasoline to
- 2 which has been added any alcohol, whether methanol,
- 3 ethanol or other form of alcohol, shall post upon or near
- 4 every pump maintained for the delivery of gasoline to
- 5 a consumer a prominent notice stating the name of the
- 6 alcoholic additive and the percentage it comprises of the
- 7 gasoline delivered through the pumps.

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## CHAPTER 90

(H. B. 4011—By Delegate Love)

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[Passed January 26, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen-d, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the United States geological survey program within the department of natural resources.

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

That section eighteen-d, 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.**

**§20-1-18d. United States geological survey continued and reestablished.**

- 1 After having conducted a performance and fiscal
- 2 audit through its joint committee on government
- 3 operations, pursuant to section nine, article ten, chapter
- 4 four of this code, the Legislature hereby finds and

5 declares that the United States geological survey  
6 program within the department of natural resources  
7 should be continued and reestablished. Accordingly,  
8 notwithstanding the provisions of section four, article  
9 ten, chapter four of this code, the United States  
10 geological survey program within the department of  
11 natural resources shall continue to exist until the first  
12 day of July, one thousand nine hundred ninety-six.

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## CHAPTER 91

(Com. Sub. for H. B. 4344—By Mr. Speaker, Mr. Chambers,  
By Request of the Executive)

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[Passed February 28, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section ten, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to powers and duties of the director of health and providing the director, upon gubernatorial approval, the power to close, sell, lease or contract out the operation of specified health care facilities; providing for a report to the joint committee on government and finance relative to patient transfers; requiring public hearings under specified conditions; providing certain employment preferences in state agencies for specified employees; and requiring an annual report to the Legislature.

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

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

### ARTICLE 1. STATE DIVISION OF HEALTH.

#### §16-1-10. Powers and duties of the director of health.

1 The director shall be the chief executive, administra-  
2 tive and fiscal officer of the division of health and shall  
3 have the following powers and duties:

4 (1) To supervise and control the business, fiscal,

5 administrative and health affairs of the division of  
6 health, and in that regard and in accordance with law,  
7 employ, fix the compensation of, and discharge all  
8 persons necessary for the proper execution of the laws  
9 of this state relating to health and mental health, and  
10 the efficient and proper discharge of the duties imposed  
11 upon, and execution of powers vested in the director by  
12 law; to that end the director may promulgate such  
13 written rules as are necessary and proper to delegate  
14 functions, establish subdivisions, specify duties and  
15 responsibilities, prescribe qualifications of subdivision  
16 directors and otherwise administer or supervise the  
17 division, subject to the safeguards of the state civil  
18 service system as it now exists;

19 (2) To enforce all laws of this state concerning public  
20 health, health and mental health; to that end, the  
21 director shall make, or cause to be made, sanitary  
22 investigations and inquiries respecting the cause of  
23 disease, especially of epidemics and endemic conditions,  
24 and the means of prevention, suppression or control of  
25 such conditions; the source of sickness and mortality,  
26 and the effects of environment, employment, habits and  
27 circumstances of life on the public health. The director  
28 shall further make, or cause to be made, inspections and  
29 examinations of food, drink and drugs offered for sale  
30 or public consumption in such manner as the director  
31 shall deem necessary to protect the public health and  
32 shall report all violations of laws and regulations  
33 relating thereto to the prosecuting attorney of the county  
34 in which such violations occur;

35 (3) To make complaint or cause proceedings to be  
36 instituted against any person, corporation or other entity  
37 for the violation of any health law before any court or  
38 agency, without being required to give security for costs;  
39 such action may be taken without the sanction of the  
40 prosecuting attorney of the county in which the proceed-  
41 ings are instituted or to which the proceedings relate;

42 (4) To supervise and coordinate the administration  
43 and operation of the state hospitals named in article two,  
44 chapter twenty-seven of this code, and any other state



45 facility hereafter created for the mentally ill, mentally  
46 retarded or addicted: *Provided*, That notwithstanding  
47 any other provisions of this code, in the interest of  
48 promoting cost effective health care in government, the  
49 director, with the approval of the secretary of the  
50 department of health and human resources and the  
51 governor, has the power to close, sell or lease or  
52 otherwise transfer the Greenbrier School for Retarded  
53 Children or Spencer State Hospital, or to arrange for  
54 the administration and operation of said facility by  
55 contract or other means: *Provided, however*, That  
56 savings realized pursuant to the closure, sale or lease of  
57 the facility or the contracting out of the operation of the  
58 facility shall remain in the "Hospital Services Revenue  
59 Account": *Provided further*, That prior to any transfer  
60 of patients as a result of any closure, sale, lease,  
61 contracting out of the operations, or other transfer made  
62 pursuant to this subdivision, a comprehensive plan  
63 detailing specifically which hospitals are to be closed,  
64 sold, leased or managed under contract in whole or in  
65 part; an analysis of the impact such action will have on  
66 other state facilities, their patients and their staff; a  
67 detailed plan for the care, placement and movement of  
68 patients including offering relocation counseling; a plan  
69 to assist affected employees in finding other employ-  
70 ment, including retraining and education and relocation  
71 counseling; an economic and community impact state-  
72 ment detailing savings and costs associated with the  
73 proposed closing, sale, lease or management of such  
74 state facilities, and the effect on local and state  
75 employment, revenues and services, shall be submitted  
76 to the joint committee on government and finance: *And*  
77 *provided further*, That prior to any closure, sale, lease,  
78 contracting out of the operations, or other transfer, the  
79 joint committee on government and finance shall  
80 conduct a public hearing on the proposal in the affected  
81 area of the state. Any person to whom such facility is  
82 sold, leased, or otherwise transferred or by contract or  
83 other means administers and operates such facility or  
84 who operates such facility as an intermediate care  
85 facility for the mentally retarded shall operate such  
86 facility in accordance with applicable federal laws and

87 regulations and with chapter twenty-seven of this code  
88 and shall use best efforts to employ qualified persons  
89 who were employed at the facility by the state immediately  
90 prior to such transfer or contract: *And provided*  
91 *further*, That, notwithstanding any other provision of the  
92 code to the contrary, in filling vacancies at other  
93 facilities or state agencies the director and other  
94 directors of state agencies shall, for a period of twenty-  
95 four months after such transfer or contract, give  
96 preference, over all but existing employees in such other  
97 facilities named in article two, chapter twenty-seven and  
98 article five-c, chapter sixteen of this code, to qualified  
99 persons who were permanently employed at the facility  
100 immediately prior to such transfer or contract: *And*  
101 *provided further*, That qualified persons who were  
102 permanently employed at the facility immediately prior  
103 to such transfer or contract shall not supersede those  
104 employees with recall rights in other state agencies: *And*  
105 *provided further*, That preferential consideration be  
106 given to West Virginia businesses or corporations  
107 headquartered in West Virginia, whenever possible, for  
108 the purchase, lease or other transfer of a facility under  
109 the provisions of this subsection;

110 (5) To supervise and coordinate the administration  
111 and operation of the health and other facilities named  
112 in chapter twenty-six of this code, except as otherwise  
113 therein provided, and any other state facility hereafter  
114 created relating to health, not otherwise provided for:  
115 *Provided*, That notwithstanding any other provisions of  
116 this code, in the interest of promoting cost effective  
117 health care in government, the director, with the  
118 approval of the secretary of the department of health  
119 and human resources and the governor, has the power  
120 to close, sell or lease or otherwise transfer Andrew S.  
121 Rowan Memorial Home and the Denmar State Hospital,  
122 or to arrange for the administration and operation of  
123 such facilities by contract or other means: *Provided*,  
124 *however*, That savings realized pursuant to the closure,  
125 sale or lease of any facility or the contracting out of the  
126 operation of any facility shall remain in the "Hospital  
127 Services Revenue Account": *Provided further*, That prior  
128 to any transfer of patients as a result of any closure, sale,

129 lease, contracting out of the operations, or other transfer  
130 made pursuant to this subdivision, a comprehensive plan  
131 detailing specifically which hospitals are to be closed,  
132 sold, leased or managed under contract in whole or in  
133 part; an analysis of the impact such action will have on  
134 other state facilities, their patients and their staff; a  
135 detailed plan for the care, placement and movement of  
136 patients including offering relocation counseling; a plan  
137 to assist affected employees in finding other employ-  
138 ment, including retraining and education and relocation  
139 counseling; an economic and community impact state-  
140 ment detailing savings and costs associated with the  
141 proposed closing, sale, lease or management of such  
142 state facilities, and the effect on local and state  
143 employment, revenues and services, shall be submitted  
144 to the joint committee on government and finance: *And*  
145 *provided further*, That prior to any closure, sale, lease,  
146 contracting out of the operations, or other transfer, the  
147 joint committee on government and finance shall  
148 conduct a public hearing on the proposal in the affected  
149 area of the state. Any person to whom such facility is  
150 sold, leased, or otherwise transferred, or by contract or  
151 other means administers and operates such facility or  
152 who operates such facility as a personal care home or  
153 nursing home for the mentally retarded, shall operate  
154 such facility in accordance with applicable federal laws  
155 and regulations and with chapter twenty-seven or  
156 article five-c, chapter sixteen of this code and shall use  
157 best efforts to employ qualified persons who were  
158 employed at the facility by the state immediately prior  
159 to such transfer or contract: *And provided further*, That,  
160 notwithstanding any other provision of the code to the  
161 contrary, in filling vacancies at other facilities or other  
162 state agencies the director and the directors of other  
163 state agencies shall, for a period of twenty-four months  
164 after such transfer or contract, give preference, over all  
165 but existing employees in such other facilities named in  
166 article two, chapter twenty-seven and article five-c,  
167 chapter sixteen of this code, to qualified persons who  
168 were permanently employed at the facility immediately  
169 prior to such transfer or contract: *And provided further*,  
170 That qualified persons who were permanently employed

171 at the facility immediately prior to such transfer or  
172 contract shall not supersede those employees with recall  
173 rights in other state agencies: *And provided further,*  
174 That preferential consideration be given to West  
175 Virginia businesses or corporations headquartered in  
176 West Virginia, whenever possible, for the purchase,  
177 lease or other transfer of a facility under the provisions  
178 of this subsection;

179 (6) To supervise and coordinate the administration  
180 and operation of the county and municipal boards of  
181 health and health officers;

182 (7) To develop and maintain a state plan of operation  
183 which sets forth the needs of the state in the areas of  
184 health and mental health; goals and objectives for  
185 meeting those needs; methods for achieving the stated  
186 goals and objectives; and needed personnel, funds and  
187 authority for achieving the goals and objectives;

188 (8) To collect data as may be required to foster  
189 knowledge on the citizenry's health status, the health  
190 system and costs of health care;

191 (9) To delegate to any appointee, assistant or employee  
192 any and all powers and duties vested in the director,  
193 including, but not limited to, the power to execute  
194 contracts and agreements in the name of the division:  
195 *Provided,* That the director shall be responsible for the  
196 acts of such appointees, assistants and employees;

197 (10) To transfer, notwithstanding other provisions of  
198 this code, any patient or resident between hospitals and  
199 facilities under the control of the director and, by  
200 agreement with the state commissioner of corrections or  
201 successor thereto and otherwise in accord with law,  
202 accept a transfer of a resident of a facility under the  
203 jurisdiction of the state commissioner of corrections or  
204 successor thereto;

205 (11) To make periodic reports to the governor and to  
206 the Legislature relative to specific subject areas of  
207 public health or mental health, the state facilities under  
208 the supervision of the director, or other matters  
209 affecting the health or mental health of the people of the  
210 state;

211 (12) To accept and use for the benefit of the state, for  
212 the benefit of the health of the people of this state, any  
213 gift or devise of any property or thing which is lawfully  
214 given: *Provided*, That if any gift is for a specific purpose  
215 or for a particular state hospital or facility, it shall be  
216 used as specified. Any profit which may arise from any  
217 such gift or devise of any property or thing shall be  
218 deposited in a special revenue fund with the state  
219 treasurer and shall be used only as specified by the  
220 donor or donors;

221 (13) To acquire by condemnation or otherwise any  
222 interest, right, privilege, land or improvement and hold  
223 title thereto, for the use or benefit of the state or a state  
224 hospital or facility, and, by and with the consent of the  
225 governor, to sell, exchange or otherwise convey any  
226 interest, right, privilege, land or improvement acquired  
227 or held by the state, state hospital or state facility and  
228 deposit the proceeds from such sale, exchange or other  
229 conveyance into the hospital services revenue account.  
230 Any condemnation proceedings shall be conducted  
231 pursuant to chapter fifty-four of this code;

232 (14) To inspect and enforce rules and regulations to  
233 control the sanitary conditions of and license all  
234 institutions and health care facilities as set forth in this  
235 chapter, including, but not limited to, schools, whether  
236 public or private, public conveyances, dairies, slaughter-  
237 houses, workshops, factories, labor camps, places of  
238 entertainment, hotels, motels, tourist camps, all other  
239 places open to the general public and inviting public  
240 patronage or public assembly, or tendering to the public  
241 any item for human consumption and places where  
242 trades or industries are conducted;

243 (15) To make inspections, conduct hearings, and to  
244 enforce the rules and regulations of the board concern-  
245 ing occupational and industrial health hazards, the  
246 sanitary condition of streams, sources of water supply,  
247 sewerage facilities, and plumbing systems, and the  
248 qualifications of personnel connected with such supplies,  
249 facilities or systems without regard to whether they are  
250 publicly or privately owned; and to make inspections,  
251 conduct hearings and enforce the rules and regulations

252 of the board concerning the design of chlorination and  
253 filtration facilities and swimming pools;

254 (16) To reorganize the functions and subdivisions of  
255 the division of health, structuring all functions pre-  
256 viously assigned to the board of health, department of  
257 health, department of mental health, and otherwise  
258 assigned to the division of health by this chapter, to the  
259 end of establishing the most efficient and economic  
260 delivery of health services in accord with the purposes  
261 of this chapter; to achieve such goal the director shall  
262 establish such subdivisions, and delegate and assign  
263 such responsibilities and functions as he deems neces-  
264 sary to accomplish such reorganization;

265 (17) To direct and supervise the provision of dental  
266 services in all state institutions;

267 (18) To provide for, except as otherwise specified  
268 herein, a comprehensive system of community mental  
269 health and mental retardation supportive services to the  
270 end of preventing the unnecessary institutionalization of  
271 persons and promoting the community placement of  
272 persons presently residing in mental health and mental  
273 retardation facilities and other institutions and for the  
274 planning of the provisions of comprehensive mental  
275 health and mental retardation services throughout the  
276 state;

277 (19) To provide in accordance with this subdivision  
278 and the definitions and other provisions of article one-  
279 a, chapter twenty-seven of the code, for a comprehensive  
280 program for the care, treatment and rehabilitation of  
281 alcoholics and drug abusers; for research into the cause  
282 and prevention of alcoholism and drug abuse; for the  
283 training and employment of personnel to provide the  
284 requisite rehabilitation of alcoholics and drug abusers;  
285 and for the education of the public concerning alcoho-  
286 lism and drug abuse;

287 (20) To provide in accordance with this subdivision  
288 for a program for the care, treatment and rehabilitation  
289 of the parents of sudden infant death syndrome victims;  
290 for the training and employment of personnel to provide  
291 the requisite rehabilitation of parents of sudden infant

292 death syndrome victims; for the education of the public  
293 concerning sudden infant death syndrome; for the  
294 responsibility of reporting to the Legislature on a  
295 quarterly basis the incidence of sudden infant death  
296 syndrome cases occurring in West Virginia; for the  
297 education of police, employees and volunteers of all  
298 emergency services concerning sudden infant death  
299 syndrome; for the state sudden infant death syndrome  
300 advisory council to develop regional family support  
301 groups to provide peer support to families of sudden  
302 infant death syndrome victims; and for requesting  
303 appropriation of funds in both federal and state budgets  
304 to fund the sudden infant death syndrome program;

305 (21) To exercise all other powers delegated to the  
306 division by this chapter or otherwise in this code, to  
307 enforce all health laws and the rules and regulations  
308 promulgated by the board, and to pursue all other  
309 activities necessary and incident to the authority and  
310 area of concern entrusted to the division or director; and

311 (22) To provide to the Legislature, after approval by  
312 the secretary of the department of health and human  
313 resources, a report on the long term plans for state  
314 hospitals named in article two, chapter twenty-seven of  
315 this code and the health facilities named in chapter  
316 twenty-six of this code on or before the fifteenth day of  
317 January, one thousand nine hundred ninety-one, and  
318 annually updated thereafter.

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## CHAPTER 92

(Com. Sub. for H. B. 4660—By Delegates White and B. Hatfield)

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[Passed March 10, 1990; in effect July 1, 1990. Approved by the Governor.]

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AN ACT to amend article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-one, relating to authorizing the administrator of the division of health to charge for services rendered; creating a special revolving fund for moneys

received; allowing the administrator to authorize county or municipal boards of health to charge for services; and directing the administrator to promulgate rules establishing the fees.

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

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

**ARTICLE 1. STATE DIVISION OF HEALTH.**

**§16-1-21. Fees for services; health services fund.**

1 (a) Notwithstanding any other provisions of this  
2 chapter, the administrator of the division of health may  
3 assess and charge reasonable fees for the provision of  
4 services provided by the division of health: *Provided,*  
5 That no individual may be denied health care services  
6 because of the inability of the individual to pay for  
7 services when services are provided to similarly situated  
8 individuals who have the ability to pay for them.  
9 Payments of fees shall be deposited into a special  
10 revolving fund in the state treasury.

11 (b) Any balance including accrued interest in the  
12 special revolving fund at the end of any fiscal year shall  
13 not revert to the general revenue fund but shall remain  
14 in the special revolving fund for use by the administra-  
15 tor of the division of health for funding health programs  
16 in the ensuing fiscal years.

17 (c) The administrator of the division of health may  
18 authorize reasonable fees for the provision of services by  
19 county or municipal boards of health as created in  
20 article two or article two-a of this chapter: *Provided,*  
21 That no individual may be denied health care services  
22 because of the inability of the individual to pay for  
23 services when services are provided to similarly situated  
24 individuals who have the ability to pay for them.  
25 Payments of fees shall be deposited into the local board  
26 of health account for use by the local board of health  
27 for funding health programs. The fees established will  
28 be created on a sliding fee basis determined by an



29 individual's ability to pay: *Provided, however,* That the  
30 board of health may submit a request through the  
31 administrator for third party reimbursement where  
32 such request is appropriate: *Provided further,* That  
33 boards of health which establish such fees shall annually  
34 submit a schedule of fees, a sliding fee scale and an  
35 accounting of amounts collected to the administrator of  
36 the division of health for approval on an annual basis.

37 (d) The administrator of the division of health shall  
38 promulgate rules in accordance with article three,  
39 chapter twenty-nine-a of this code, setting forth the fees  
40 established, assessed, charged, authorized, or approved  
41 by the administrator.

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## CHAPTER 93

(H. B. 4230—By Delegates White and Warner)

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[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections two and four, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the certificate of need program; restricting certificate of need exemption for private office practice for certain medical technologies; providing the health care cost review authority shall adopt rules on what technology can be exempted from the certificate of need program; requiring the health care cost review authority to annually review existing technologies to determine if shared services exemptions should be expanded.

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

That sections two and four, article two-d, 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 2D. CERTIFICATE OF NEED.

§16-2D-2. Definitions.

§16-2D-4. Exemptions from certificate of need program.

**§16-2D-2. Definitions.**

1 As used in this article, unless otherwise indicated by  
2 the context:

3 (a) "Affected person" means:

4 (1) The applicant;

5 (2) An agency or organization representing  
6 consumers;

7 (3) Any individual residing within the geographic  
8 area served or to be served by the applicant;

9 (4) Any individual who regularly uses the health care  
10 facilities within that geographic area;

11 (5) The health care facilities which provide services  
12 similar to the services of the facility under review and  
13 which will be significantly affected by the proposed  
14 project;

15 (6) The health care facilities which, prior to receipt  
16 by the state agency of the proposal being reviewed, have  
17 formally indicated an intention to provide similar  
18 services in the future;

19 (7) Third party payers who reimburse health care  
20 facilities similar to those proposed for services;

21 (8) Any agency which establishes rates for health care  
22 facilities similar to those proposed; or

23 (9) Organizations representing health care providers.

24 (b) "Ambulatory health care facility" means a facility  
25 which is free-standing and not physically attached to a  
26 health care facility and which provides health care to  
27 noninstitutionalized and nonhomebound persons on an  
28 outpatient basis. This definition does not include the  
29 private office practice of any one or more health  
30 professionals licensed to practice in this state pursuant  
31 to the provisions of chapter thirty of this code: *Provided,*  
32 That such exemption from review of private office  
33 practice shall not be construed to include such practices  
34 where major medical equipment otherwise subject to  
35 review under the provisions of this article is acquired,

36 offered or developed: *Provided, however,* That such  
37 exemption from review of private office practice shall  
38 not be construed to include certain health services  
39 otherwise subject to review under the provisions of  
40 subdivision (1), subsection (a), section four, of this  
41 article.

42 (c) "Ambulatory surgical facility" means a facility  
43 which is free-standing and not physically attached to a  
44 health care facility and which provides surgical treat-  
45 ment to patients not requiring hospitalization. This  
46 definition does not include the private office practice of  
47 any one or more health professionals licensed to practice  
48 surgery in this state pursuant to the provisions of  
49 chapter thirty of this code: *Provided,* That such exemp-  
50 tion from review of private office practice shall not be  
51 construed to include such practices where major  
52 medical equipment otherwise subject to review under  
53 the provisions of this article is acquired, offered or  
54 developed: *Provided, however,* That such exemption from  
55 review of private office practice shall not be construed  
56 to include certain health services otherwise subject to  
57 review under the provisions of subdivision (1), subsec-  
58 tion (a), section four, of this article.

59 (d) "Applicant" means: (1) The governing body or the  
60 person proposing a new institutional health service who  
61 is, or will be, the health care facility licensee wherein  
62 the new institutional health service is proposed to be  
63 located, and (2) in the case of a proposed new institu-  
64 tional health service not to be located in a licensed  
65 health care facility, the governing body or the person  
66 proposing to provide such new institutional health  
67 service. Incorporators or promoters who will not  
68 constitute the governing body or persons responsible for  
69 the new institutional health service may not be an  
70 applicant.

71 (e) "Bed capacity" means the number of beds for  
72 which a license is issued to a health care facility, or, if  
73 a facility is unlicensed, the number of adult and  
74 pediatric beds permanently staffed and maintained for  
75 immediate use by inpatients in patient rooms or wards.

76 (f) "Capital expenditure" means an expenditure:  
77 (1) Made by or on behalf of a health care facility; and  
78 (2) (A) Which (i) under generally accepted accounting  
79 principles is not properly chargeable as an expense of  
80 operation and maintenance, or (ii) is made to obtain  
81 either by lease or comparable arrangement any facility  
82 or part thereof or any equipment for a facility or part;  
83 and (B) which (i) exceeds the expenditure minimum, or  
84 (ii) is a substantial change to the bed capacity of the  
85 facility with respect to which the expenditure is made,  
86 or (iii) is a substantial change to the services of such  
87 facility. For purposes of part (i), subparagraph (B),  
88 subdivision (2) of this definition, the cost of any studies,  
89 surveys, designs, plans, working drawings, specifica-  
90 tions, and other activities, including staff effort and  
91 consulting and other services, essential to the acquisi-  
92 tion, improvement, expansion, or replacement of any  
93 plant or equipment with respect to which an expendi-  
94 ture described in subparagraph (B), subdivision (2) of  
95 this definition is made shall be included in determining  
96 if such expenditure exceeds the expenditure minimum.  
97 Donations of equipment or facilities to a health care  
98 facility which if acquired directly by such facility would  
99 be subject to review shall be considered capital expen-  
100 ditures, and a transfer of equipment or facilities for less  
101 than fair market value shall be considered a capital  
102 expenditure for purposes of such subdivisions if a  
103 transfer of the equipment or facilities at fair market  
104 value would be subject to review. A series of expendi-  
105 tures, each less than the expenditure minimum, which  
106 when taken together are in excess of the expenditure  
107 minimum, may be determined by the state agency to be  
108 a single capital expenditure subject to review. In  
109 making its determination, the state agency shall  
110 consider: Whether the expenditures are for components  
111 of a system which is required to accomplish a single  
112 purpose; whether the expenditures are to be made over  
113 a two-year period and are directed towards the accomp-  
114 lishment of a single goal within the health care facility's  
115 long-range plan; or, whether the expenditures are to be  
116 made within a two-year period within a single depart-

117 ment such that they will constitute a significant  
118 modernization of the department.

119 (g) "Expenditure minimum" means one million  
120 dollars for the twelve-month period beginning the first  
121 day of October, one thousand nine hundred eighty-seven.  
122 For each twelve-month period thereafter, the state  
123 agency may, by regulations adopted pursuant to section  
124 eight of this article, adjust the expenditure minimum to  
125 reflect the impact of inflation.

126 (h) "Health," used as a term, includes physical and  
127 mental health.

128 (i) "Health care facility" is defined as including  
129 hospitals, skilled nursing facilities, kidney disease  
130 treatment centers, including free-standing hemodialysis  
131 units, intermediate care facilities, ambulatory health  
132 care facilities, ambulatory surgical facilities, home  
133 health agencies, rehabilitation facilities and health  
134 maintenance organizations; community mental health  
135 and mental retardation facilities, whether under public  
136 or private ownership, or as a profit or nonprofit  
137 organization and whether or not licensed or required to  
138 be licensed in whole or in part by the state. For purposes  
139 of this definition, "community mental health and mental  
140 retardation facility" means a private facility which  
141 provides such comprehensive services and continuity of  
142 care as emergency, outpatient, partial hospitalization,  
143 inpatient and consultation and education for individuals  
144 with mental illness, mental retardation or drug or  
145 alcohol addiction.

146 (j) "Health care provider" means a person, partner-  
147 ship, corporation, facility or institution licensed or  
148 certified or authorized by law to provide professional  
149 health care service in this state to an individual during  
150 that individual's medical care, treatment or  
151 confinement.

152 (k) "Health maintenance organization" means a  
153 public or private organization, organized under the laws  
154 of this state, which:

155 (1) Is a qualified health maintenance organization

156 under Section 1310(d) of the Public Health Service Act,  
157 as amended, Title 42 United States Code Section 300e-  
158 9(d); or

159 (2) (A) Provides or otherwise makes available to  
160 enrolled participants health care services, including  
161 substantially the following basic health care services:  
162 Usual physician services, hospitalization, laboratory, X  
163 ray, emergency and preventive services and out-of-area  
164 coverage; and

165 (B) Is compensated except for copayments for the  
166 provision of the basic health care services listed in  
167 subparagraph (2)(A), subdivision (k) of this definition to  
168 enrolled participants on a predetermined periodic rate  
169 basis without regard to the date the health care services  
170 are provided and which is fixed without regard to the  
171 frequency, extent or kind of health service actually  
172 provided; and

173 (C) Provides physicians' services primarily (i) directly  
174 through physicians who are either employees or  
175 partners of such organization, or (ii) through arrange-  
176 ments with individual physicians or one or more groups  
177 of physicians organized on a group practice or individ-  
178 ual practice basis.

179 (l) "Health services" means clinically related preven-  
180 tive, diagnostic, treatment or rehabilitative services,  
181 including alcohol, drug abuse and mental health  
182 services.

183 (m) "Home health agency" is an organization primar-  
184 ily engaged in providing directly or through contract  
185 arrangements, professional nursing services, home  
186 health aide services, and other therapeutic and related  
187 services, including, but not limited to, physical, speech  
188 and occupational therapy and nutritional and medical  
189 social services to persons in their place of residence on  
190 a part-time or intermittent basis.

191 (n) "Hospital" means an institution which is primarily  
192 engaged in providing to inpatients, by or under the  
193 supervision of physicians, diagnostic and therapeutic  
194 services for medical diagnosis, treatment, and care of

195 injured, disabled or sick persons, or rehabilitation  
196 services for the rehabilitation of injured, disabled or sick  
197 persons. This term also includes psychiatric and  
198 tuberculosis hospitals.

199 (o) "Intermediate care facility" means an institution  
200 which provides, on a regular basis, health-related care  
201 and services to individuals who do not require the  
202 degree of care and treatment which a hospital or skilled  
203 nursing facility is designed to provide, but who, because  
204 of their mental or physical condition require health-  
205 related care and services above the level of room and  
206 board.

207 (p) "Long-range plan" means a document formally  
208 adopted by the legally constituted governing body of an  
209 existing health care facility or by a person proposing a  
210 new institutional health service. Each long-range plan  
211 shall consist of the information required by the state  
212 agency in regulations adopted pursuant to section eight  
213 of this article.

214 (q) "Major medical equipment" means a single unit of  
215 medical equipment or a single system of components  
216 with related functions which is used for the provision  
217 of medical and other health services and which costs in  
218 excess of seven hundred fifty thousand dollars, except  
219 that such term does not include medical equipment  
220 acquired by or on behalf of a clinical laboratory to  
221 provide clinical laboratory services if the clinical  
222 laboratory is independent of a physician's office and a  
223 hospital and it has been determined under Title XVIII  
224 of the Social Security Act to meet the requirements of  
225 paragraphs ten and eleven of Section 1861(s) of such act,  
226 Title 42 United States Code Sections 1395x (10) and (11).  
227 In determining whether medical equipment costs more  
228 than seven hundred fifty thousand dollars, the cost of  
229 studies, surveys, designs, plans, working drawings,  
230 specifications, and other activities essential to the  
231 acquisition of such equipment shall be included. If the  
232 equipment is acquired for less than fair market value,  
233 the term "cost" includes the fair market value.

234 (r) "Medically underserved population" means the

235 population of an urban or rural area designated by the  
236 state agency as an area with a shortage of personal  
237 health services or a population having a shortage of such  
238 services, after taking into account unusual local condi-  
239 tions which are a barrier to accessibility or availability  
240 of such services. Such designation shall be in regulations  
241 adopted by the state agency pursuant to section eight of  
242 this article, and the population so designated may  
243 include the state's medically underserved population  
244 designated by the Federal Secretary of Health and  
245 Human Services under Section 330(b)(3) of the Public  
246 Health Service Act, as amended, Title 42 United States  
247 Code Section 254(b)(3).

248 (s) "New institutional health service" means such  
249 service as described in section three of this article.

250 (t) "Offer" when used in connection with health  
251 services, means that the health care facility or health  
252 maintenance organization holds itself out as capable of  
253 providing, or as having the means for the provision of,  
254 specified health services.

255 (u) "Person" means an individual, trust, estate,  
256 partnership, committee, corporation, association and  
257 other organizations such as joint-stock companies and  
258 insurance companies, a state or a political subdivision  
259 or instrumentality thereof or any legal entity recognized  
260 by the state.

261 (v) "Physician" means a doctor of medicine or osteo-  
262 pathy legally authorized to practice medicine and  
263 surgery by the state.

264 (w) "Proposed new institutional health service" means  
265 such service as described in section three of this article.

266 (x) "Psychiatric hospital" means an institution which  
267 primarily provides to inpatients, by or under the  
268 supervision of a physician, specialized services for the  
269 diagnosis, treatment and rehabilitation of mentally ill  
270 and emotionally disturbed persons.

271 (y) "Rehabilitation facility" means an inpatient  
272 facility which is operated for the primary purpose of  
273 assisting in the rehabilitation of disabled persons



274 through an integrated program of medical and other  
275 services which are provided under competent profes-  
276 sional supervision.

277 (z) "Review agency" means an agency of the state,  
278 designated by the governor as the agency for the review  
279 of state agency decisions.

280 (aa) "Skilled nursing facility" means an institution or  
281 a distinct part of an institution which is primarily  
282 engaged in providing to inpatients skilled nursing care  
283 and related services for patients who require medical or  
284 nursing care, or rehabilitation services for the rehabil-  
285 itation of injured, disabled or sick persons.

286 (bb) "State agency" means the health care cost review  
287 authority created, established, and continued pursuant  
288 to article twenty-nine-b of this chapter.

289 (cc) "State health plan" means the document approved  
290 by the governor after preparation by the former  
291 statewide health coordinating council, or that document  
292 as approved by the governor after amendment by the  
293 health care planning council.

294 (dd) "Health care planning council" means the body  
295 established by section five-a of this article to participate  
296 in the preparation and amendment of the state health  
297 plan and to advise the state agency.

298 (ee) "Substantial change to the bed capacity" of a  
299 health care facility means a change, with which a  
300 capital expenditure is associated, in any two-year period  
301 of ten or more beds or more than ten percent, whichever  
302 is less, of the bed capacity of such facility that increases  
303 or decreases the bed capacity, or relocates beds from one  
304 physical facility or site to another, but does not include  
305 a change by which a health care facility reassigns  
306 existing beds as swing beds between acute care and  
307 long-term care categories. A series of changes to the bed  
308 capacity of a health care facility in any two-year period,  
309 each less than ten beds or ten percent of the bed capacity  
310 of such facility, but which when taken together comprise  
311 ten or more beds or more than ten percent of the bed  
312 capacity of such facility, whichever is less, is a substan-  
313 tial change to the bed capacity.

314 (ff) "Substantial change to the health services" of a  
315 health care facility means the addition of a health  
316 service which is offered by or on behalf of the health  
317 care facility and which was not offered by or on behalf  
318 of the facility within the twelve-month period before the  
319 month in which the service is first offered, or the  
320 termination of a health service which was offered by or  
321 on behalf of the facility, but does not include the  
322 providing of hospice care, ambulance service, wellness  
323 centers or programs, adult day care, or respite care by  
324 acute care facilities.

325 (gg) "To develop," when used in connection with  
326 health services, means to undertake those activities  
327 which upon their completion will result in the offer of  
328 a new institutional health service or the incurring of a  
329 financial obligation, in relation to the offering of such  
330 a service.

**§16-2D-4. Exemptions from certificate of need program.**

1 (a) Except as provided in subdivision (h), section three  
2 of this article, nothing in this article or the rules and  
3 regulations adopted pursuant to the provisions of this  
4 article may be construed to authorize the licensure,  
5 supervision, regulation or control in any manner of: (1)  
6 Private office practice of any one or more health  
7 professionals licensed to practice in this state pursuant  
8 to the provisions of chapter thirty of this code: *Provided,*  
9 That such exemption from review of private office  
10 practice shall not be construed to include such practices  
11 where major medical equipment otherwise subject to  
12 review under the provisions of this article is acquired,  
13 offered or developed: *Provided, however,* That such  
14 exemption from review of private office practice shall  
15 not be construed to include the acquisition, offering or  
16 development of one or more health services, including  
17 ambulatory surgical facilities or centers, lithotripsy,  
18 magnetic resonance imaging and radiation therapy by  
19 one or more health professionals. The state agency shall  
20 adopt rules pursuant to section eight of this article  
21 which specify the health services acquired, offered or  
22 developed by health professionals which are subject to

23 certificate of need review; (2) dispensaries and first-aid  
24 stations located within business or industrial establish-  
25 ments maintained solely for the use of employees:  
26 *Provided further*, That such facility does not contain  
27 inpatient or resident beds for patients or employees who  
28 generally remain in the facility for more than twenty-  
29 four hours; (3) establishments, such as motels, hotels and  
30 boardinghouses, which provide medical, nursing person-  
31 nel and health related services; and (4) the remedial care  
32 or treatment of residents or patients in any home or  
33 institution conducted only for those who rely solely upon  
34 treatment by prayer or spiritual means in accordance  
35 with the creed or tenets of any recognized church or  
36 religious denomination.

37 (b) (1) A certificate of need is not required for the  
38 offering of an inpatient institutional health service or  
39 the acquisition of major medical equipment for the  
40 provision of an inpatient institutional health service or  
41 the obligation of a capital expenditure for the provisions  
42 of an inpatient institutional health service, if with  
43 respect to such offering, acquisition or obligation, the  
44 state agency has, upon application under subdivision (2),  
45 subsection (b) of this section, granted an exemption to:

46 (A) A health maintenance organization or a combina-  
47 tion of health maintenance organizations if (i) the  
48 organization or combination of organizations has, in the  
49 service area of the organization or the service areas of  
50 the organizations in the combination, an enrollment of  
51 at least fifty thousand individuals, (ii) the facility in  
52 which the service will be provided is or will be  
53 geographically located so that the service will be  
54 reasonably accessible to such enrolled individuals, and  
55 (iii) at least seventy-five percent of the patients who can  
56 reasonably be expected to receive the institutional  
57 health service will be individuals enrolled with such  
58 organization or organizations in the combination;

59 (B) A health care facility if (i) the facility primarily  
60 provides or will provide inpatient health services, (ii) the  
61 facility is or will be controlled, directly or indirectly, by  
62 a health maintenance organization or a combination of  
63 health maintenance organizations which has, in the

64 service area of the organization or service areas of the  
65 organizations in the combination, an enrollment of at  
66 least fifty thousand individuals, (iii) the facility is or will  
67 be geographically located so that the service will be  
68 reasonably accessible to such enrolled individuals, and  
69 (iv) at least seventy-five percent of the patients who can  
70 reasonably be expected to receive the institutional  
71 health service will be individuals enrolled with such  
72 organization or organizations in the combination; or

73 (C) A health care facility, or portion thereof, if (i) the  
74 facility is or will be leased by a health maintenance  
75 organization or combination of health maintenance  
76 organizations which has, in the service area of the  
77 organization or the service areas of the organizations in  
78 the combination, an enrollment of at least fifty thousand  
79 individuals and on the date the application is submitted  
80 under subdivision (2), subsection (b) of this section, at  
81 least fifteen years remain in the term of the lease, (ii)  
82 the facility is or will be geographically located so that  
83 the service will be reasonably accessible to such enrolled  
84 individuals, and (iii) at least seventy-five percent of the  
85 patients who can reasonably be expected to receive the  
86 new institutional health service will be individuals  
87 enrolled with such organization.

88 (2) (A) A health maintenance organization, combina-  
89 tion of health maintenance organizations, or other health  
90 care facility is not exempt under subdivision (1),  
91 subsection (b) of this section from obtaining a certificate  
92 of need unless:

93 (i) It has submitted, at such time and in such form  
94 and manner as the state agency shall prescribe, an  
95 application for such exemption to the state agency;

96 (ii) The application contains such information respect-  
97 ing the organization, combination or facility and the  
98 proposed offering, acquisition or obligation as the state  
99 agency may require to determine if the organization or  
100 combination meets the requirements of subdivision (1),  
101 subsection (b) of this section or the facility meets or will  
102 meet such requirements; and

103 (iii) The state agency approves such application.

104 (B) The state agency shall approve an application  
105 submitted under subparagraph (A), subdivision (2),  
106 subsection (b) of this section, if it determines that the  
107 applicable requirements of subdivision (1), subsection  
108 (b) of this section, are met or will be met on the date  
109 the proposed activity for which an exemption was  
110 requested will be undertaken.

111 (3) A health care facility, or any part thereof, or  
112 medical equipment with respect to which an exemption  
113 was granted under subdivision (1), subsection (b) of this  
114 section, may not be sold or leased and a controlling  
115 interest in such facility or equipment or in a lease of  
116 such facility or equipment may not be acquired and a  
117 health care facility described in subparagraph (C),  
118 subdivision (1), subsection (b) of this section, which was  
119 granted an exemption under subdivision (1), subsection  
120 (b) of this section, may not be used by any person other  
121 than the lessee described in subparagraph (C), subdivi-  
122 sion (1), subsection (b) of this section, unless:

123 (A) The state agency issues a certificate of need  
124 approving the sale, lease, acquisition or use; or

125 (B) The state agency determines, upon application,  
126 that the entity to which the facility or equipment is  
127 proposed to be sold or leased, which intends to acquire  
128 the controlling interest in or to use the facility is:

129 (i) A health maintenance organization or a combina-  
130 tion of health maintenance organizations which meets  
131 the enrollment requirements of part (i), subparagraph  
132 (A), subdivision (1), subsection (b) of this section, and  
133 with respect to such facility or equipment, the entity  
134 meets the accessibility and patient enrollment require-  
135 ments of parts (ii) and (iii), subparagraph (A), subdivi-  
136 sion (1), subsection (b) of this section; or

137 (ii) A health care facility which meets the inpatient,  
138 enrollment and accessibility requirements of parts (i),  
139 (ii) and (iii), subparagraph (B), subdivision (1), subsec-  
140 tion (b) of this section and with respect to its patients  
141 meets the enrollment requirements of part (iv), subpar-

142 agraph (B), subdivision (1), subsection (b) of this  
143 section.

144 (4) In the case of a health maintenance organization  
145 or an ambulatory care facility or health care facility  
146 which ambulatory or health care facility is controlled,  
147 directly or indirectly, by a health maintenance organ-  
148 ization or a combination of health maintenance organ-  
149 izations, the certificate of need requirements apply only  
150 to the offering of inpatient institutional health services,  
151 the acquisition of major medical equipment, and the  
152 obligation of capital expenditures for the offering of  
153 inpatient institutional health services and then only to  
154 the extent that such offering, acquisition or obligation  
155 is not exempt under subdivision (1), subsection (b) of this  
156 section.

157 (5) The state agency shall establish the period within  
158 which approval or disapproval by the state agency of  
159 applications for exemptions under subdivision (1),  
160 subsection (b) of this section, shall be made.

161 (c) (1) A health care facility is not required to obtain  
162 a certificate of need for the acquisition of major medical  
163 equipment to be used solely for research, the addition  
164 of health services to be offered solely for research, or the  
165 obligation of a capital expenditure to be made solely for  
166 research if the health care facility provides the notice  
167 required in subdivision (2), subsection (c) of this section,  
168 and the state agency does not find, within sixty days  
169 after it receives such notice, that the acquisition,  
170 offering or obligation will, or will have the effect to:

171 (A) Affect the charges of the facility for the provision  
172 of medical or other patient care services other than the  
173 services which are included in the research;

174 (B) Result in a substantial change to the bed capacity  
175 of the facility; or

176 (C) Result in a substantial change to the health  
177 services of the facility.

178 (2) Before a health care facility acquires major  
179 medical equipment to be used solely for research, offers  
180 a health service solely for research, or obligates a capital

181 expenditure solely for research, such health care facility  
182 shall notify in writing the state agency of such facility's  
183 intent and the use to be made of such medical equip-  
184 ment, health service or capital expenditure.

185 (3) If major medical equipment is acquired, a health  
186 service is offered, or a capital expenditure is obligated  
187 and a certificate of need is not required for such  
188 acquisition, offering or obligation as provided in  
189 subdivision (1), subsection (c) of this section, such  
190 equipment or service or equipment or facilities acquired  
191 through the obligation of such capital expenditure may  
192 not be used in such a manner as to have the effect or  
193 to make a change described in subparagraphs (A), (B)  
194 and (C), subdivision (1), subsection (c) of this section  
195 unless the state agency issues a certificate of need  
196 approving such use.

197 (4) For purposes of this subsection, the term "solely  
198 for research" includes patient care provided on an  
199 occasional and irregular basis and not as part of a  
200 research program.

201 (d) (1) The state agency may adopt regulations  
202 pursuant to section eight of this article to specify the  
203 circumstances under which a certificate of need may not  
204 be required for the obligation of a capital expenditure  
205 to acquire, either by purchase or under lease or  
206 comparable arrangement, an existing health care  
207 facility: *Provided*, That a certificate of need shall be  
208 required for the obligation of a capital expenditure to  
209 acquire, either by purchase or under lease or compar-  
210 able arrangement, an existing health care facility if:

211 (A) The notice required by subdivision (2), subsection  
212 (d) of this section is not filed in accordance with that  
213 subdivision with respect to such acquisition; or (B) the  
214 state agency finds, within thirty days after the date it  
215 receives a notice in accordance with subdivision (2),  
216 subsection (d) of this section, with respect to such  
217 acquisition, that the services or bed capacity of the  
218 facility will be changed by reason of said acquisition.

219 (2) Before any person enters into a contractual  
220 arrangement to acquire an existing health care facility,

221 such person shall notify the state agency of his or her  
222 intent to acquire the facility and of the services to be  
223 offered in the facility and its bed capacity. Such notice  
224 shall be made in writing and shall be made at least  
225 thirty days before contractual arrangements are entered  
226 into to acquire the facility with respect to which the  
227 notice is given. The notice shall contain all information  
228 the state agency requires in accordance with subsections  
229 (e) and (s), section seven of this article.

230 (e) The state agency shall adopt regulations, pursuant  
231 to section eight of this article, wherein criteria are  
232 established to exempt from review the addition of  
233 certain health services, not associated with a capital  
234 expenditure, that are projected to entail annual operat-  
235 ing costs of less than the expenditure minimum for  
236 annual operating costs. For purposes of this subsection,  
237 "expenditure minimum for annual operating costs"  
238 means five hundred thousand dollars for the twelve-  
239 month period beginning the first day of October, one  
240 thousand nine hundred eighty-five, and for each twelve-  
241 month period thereafter, the state agency may, by  
242 regulations adopted pursuant to section eight of this  
243 article, adjust the expenditure minimum for annual  
244 operating costs to reflect the impact of inflation.

245 (f) The state agency may adopt regulations pursuant  
246 to section eight of this article to specify the circumstan-  
247 ces under which and the procedures by which a  
248 certificate of need may not be required for the obligation  
249 of a capital expenditure to acquire, either by purchase  
250 or under lease or comparable arrangement, major  
251 medical equipment which merely replaces medical  
252 equipment which is already owned by the health care  
253 facility and which has become outdated, worn-out or  
254 obsolete.

255 (g) The state agency may adopt regulations pursuant  
256 to section eight of this article to specify the circumstan-  
257 ces under which and the procedures by which a  
258 certificate of need may not be required for the obligation  
259 of a capital expenditure in excess of the expenditure  
260 minimum for certain items not directly related to the  
261 provision of health services. The state agency shall



262 specify the types of items in the regulations which may  
263 be so exempted from review.

264 (h) The state agency shall adopt rules within ninety  
265 days of the effective date of the amendment of this  
266 section in the year one thousand nine hundred ninety  
267 pursuant to section eight of this article to specify the  
268 circumstances under which and the procedures by  
269 which a certificate of need may not be required for  
270 shared services between two or more acute care  
271 facilities providing services made available through  
272 existing technology that can reasonably be mobile. The  
273 state agency shall specify the types of items in the  
274 regulations and under what circumstances mobile MRI  
275 and mobile lithotripsy may be so exempted from review.  
276 In no case, however, will mobile cardiac catheterization  
277 be exempted from certificate of need review. In  
278 addition, if the shared services mobile unit proves less  
279 cost effective than a fixed unit, the acute care facility  
280 will not be exempted from certificate of need review.

281 On a yearly basis, the state agency shall review  
282 existing technologies to determine if other shared  
283 services should be included under this exemption.

284 (i) Nothing in this article shall be construed to require  
285 the filing of a certificate of need application for any  
286 expenditure, health service, or change in health service  
287 which is exempt from review under this article.  
288 However, the state agency may promulgate rules and  
289 regulations pursuant to section eight of this article to  
290 require the filing of a notice with the state agency by  
291 a health care facility that proposes to make such an  
292 expenditure, initiate a health service, or effect a change  
293 in a health service for which the health care facility  
294 claims an exemption from review. The state agency  
295 shall, within ten days of a receipt of such notice, make  
296 one of the following responses:

297 (1) Accept the claim of exemption;

298 (2) Require the health care facility to furnish the state  
299 agency with additional information;

300 (3) Reject the claim of exemption; or

301 (4) Determine that a certificate of need application is  
302 necessary for a review of the proposed expenditure, new  
303 health service, or change in a health service in order to  
304 determine if the claim of exemption may be upheld:  
305 *Provided*, That when a new health service is proposed  
306 to be developed, the state agency shall, within the ten  
307 days of receipt of the required notice, determine  
308 whether or not economic and geographic factors within  
309 the geographic area of the proposed addition to service  
310 are such that the proposed new health service will be  
311 offered in competition with other health care facilities  
312 providing the same or similar service. In the event that  
313 an affirmative determination is made on the issue of  
314 competition, then the state agency shall require a  
315 certificate of need application for the proposed new  
316 health service.

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## CHAPTER 94

(H. B. 4820—By Delegates White and S. Cook)

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[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section five, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers and duties of the state health planning and development agency.

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

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

**§16-2D-5. Powers and duties of state health planning and development agency.**

1 (a) The state agency is hereby empowered to admin-  
2 ister the certificate of need program as provided by this  
3 article.

4 (b) The state agency shall cooperate with the health  
5 care planning council in developing rules and regula-

6 tions for the certificate of need program to the extent  
7 appropriate for the achievement of efficiency in their  
8 reviews and consistency in criteria for such reviews.

9 (c) The state agency may seek advice and assistance  
10 of other persons, organizations, and other state agencies  
11 in the performance of the state agency's responsibilities  
12 under this article.

13 (d) For health services for which competition approp-  
14 riately allocates supply consistent with the state health  
15 plan, the state agency shall, in the performance of its  
16 functions under this article, give priority, where  
17 appropriate to advance the purposes of quality assu-  
18 rance, cost effectiveness and access, to actions which  
19 would strengthen the effect of competition on the supply  
20 of such services.

21 (e) For health services for which competition does not  
22 or will not appropriately allocate supply consistent with  
23 the state health plan, the state agency shall, in the  
24 exercise of its functions under this article, take actions,  
25 where appropriate to advance the purposes of quality  
26 assurance, cost effectiveness and access and the other  
27 purposes of this article, to allocate the supply of such  
28 services.

29 (f) The state agency is hereby empowered to order a  
30 moratorium upon the processing of an application or  
31 applications for the acquisition of major medical  
32 equipment filed pursuant to section three of this article  
33 and considered by the agency to be new medical  
34 technology, when criteria and guidelines for evaluating  
35 the need for such new medical technology have not yet  
36 been adopted. Such moratoriums shall be declared by  
37 a written order which shall detail the circumstances  
38 requiring the moratorium. Upon the adoption of criteria  
39 for evaluating the need for the new medical technology  
40 affected by the moratorium, or ninety days from the  
41 declaration of a moratorium, whichever is less, the  
42 moratorium shall be declared to be over and affected  
43 applications shall be processed pursuant to section six  
44 of this article.

45 (g) Notwithstanding the provisions of section seven of

46 this article, the state agency may charge a fee for the  
47 filing of any application, the filing of any notice in lieu  
48 of an application, the filing of any exemption determi-  
49 nation request, or the filing of any request for a  
50 declaratory ruling. The fees charged may vary accord-  
51 ing to the type of matter involved, the type of health  
52 service or facility involved, or the amount of capital  
53 expenditure involved. The state agency shall implement  
54 this subsection by filing procedural rules pursuant to  
55 chapter twenty-nine-a of this code. The fees charged  
56 shall be deposited into a special fund known as the  
57 certificate of need program fund to be expended for the  
58 purposes of this article.

59 (h) No additional intermediate care facility/skilled  
60 nursing facility (ICF/SNF) nursing home beds shall be  
61 granted a certificate of need, except for applicants  
62 which have filed letters of intent or applications for  
63 certificates of need for such facilities prior to the  
64 fifteenth day of March, one thousand nine hundred  
65 eighty-seven, and except in the case of facilities designed  
66 to replace existing beds in unsafe or substandard  
67 existing facilities.

68 (i) No additional intermediate care facility for the  
69 mentally retarded (ICF/MR) beds shall be granted a  
70 certificate of need, except that prohibition does not  
71 apply to ICF/MR beds approved under the Kanawha  
72 County circuit court order of the third day of August,  
73 one thousand nine hundred eighty-nine, civil action  
74 number MISC-81-585 issued in the case of *E. H. v.*  
75 *Matin*, 168 W.Va. 248, 284 S.E.2d 232 (1981), and does  
76 not apply to existing ICF/MR beds to be replaced, sold,  
77 leased, transferred, or operated under contract or other  
78 means.

79 (j) Notwithstanding the provisions of subsection (h),  
80 section five of this article, and, further, notwithstanding  
81 the provisions of subsection (d), section three of this  
82 article, an existing acute care hospital with no skilled  
83 nursing beds may apply to the health care cost review  
84 authority for a certificate of need to convert acute care  
85 beds to skilled nursing beds provided the proposed  
86 skilled beds are medicare certified only. On a statewide

87 basis a maximum of one hundred acute care beds may  
88 be converted to skilled beds which are medicare  
89 certified only pursuant to this subsection. The health  
90 care cost review authority shall adopt rules to imple-  
91 ment this subsection which shall include:

92 (1) A requirement that the one hundred beds be  
93 distributed statewide on a regional basis. The agency  
94 shall determine the hospitals to be included in each  
95 region.

96 (2) There shall be a minimum of ten beds and a  
97 maximum of twenty-five beds in each approved unit.

98 (3) In converting beds, the hospital must convert one  
99 acute care bed into one medicare certified only skilled  
100 nursing bed.

101 (4) All acute care beds converted shall be perman-  
102 ently deleted from the hospital's acute care bed comple-  
103 ment and the hospital may not thereafter add by  
104 conversion or otherwise, acute care beds to its bed  
105 complement without satisfying the requirements of  
106 subsection (d), section three of this article for which  
107 purposes such an addition, whether by conversion or  
108 otherwise, shall be considered a substantial change to  
109 the bed capacity of the hospital notwithstanding the  
110 definition of that term found in subsection (ee), section  
111 two of this article.

112 (5) The hospital shall meet all federal and state  
113 licensing certification and operational requirements  
114 applicable to nursing homes including a requirement  
115 that all skilled care beds created under this subsection  
116 shall be located in distinct-part, long-term care units.

117 (6) The hospital must demonstrate a need for the  
118 project.

119 (7) The hospital must use existing space for the  
120 medicare certified only skilled nursing beds. Under no  
121 circumstances shall the hospital construct, lease or  
122 acquire additional space for purposes of this subsection.

123 (8) The hospital must notify the acute care patient,  
124 prior to discharge, of facilities with skilled nursing beds

125 which are located in or near the patient's county of  
126 residence.

127 Nothing in this subsection shall negatively affect the  
128 rights of inspection and certification which are other-  
129 wise required by federal law or regulations or by this  
130 code of duly adopted regulations of an authorized state  
131 entity.

132 (k) The provisions of this article are severable and if  
133 any provision, section or part thereby shall be held  
134 invalid, unconstitutional or inapplicable to any person or  
135 circumstance, such invalidity, unconstitutionality or  
136 inapplicability shall not affect or impair any other  
137 remaining provisions contained herein.

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## CHAPTER 95

(S. B. 610—Originating in the Senate Committee on the Judiciary)

[Passed March 7, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and two, article twenty-nine, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to revising methods by which health care records are furnished to patients; and limiting copying fees.

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

That sections one and two, article twenty-nine, 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 29. HEALTH CARE RECORDS.

§16-29-1. Copies of health care records to be furnished to patients.

§16-29-2. Reasonable expenses to be reimbursed.

**§16-29-1. Copies of health care records to be furnished to patients.**

1     Any licensed, certified or registered health care

2 provider so licensed, certified or registered under the  
3 laws of this state shall, upon the written request of a  
4 patient, his authorized agent or authorized representa-  
5 tive, within a reasonable time, furnish a copy, as  
6 requested, of all or a portion of the patient's record to  
7 the patient, his authorized agent or authorized represen-  
8 tative subject to the following exceptions:

9 (a) In the case of a patient receiving treatment for  
10 psychiatric or psychological problems, a summary of the  
11 record shall be made available to the patient, his  
12 authorized agent or authorized representative following  
13 termination of the treatment program.

14 (b) Nothing in this article shall be construed to  
15 require a health care provider responsible for diagnosis,  
16 treatment or administering health care services in the  
17 case of minors for birth control, prenatal care, drug  
18 rehabilitation or related services, or venereal disease  
19 according to any provision of the code, to release patient  
20 records of such diagnosis, treatment or provision of  
21 health care as aforesaid to a parent or guardian, without  
22 prior written consent therefor from the patient, nor  
23 shall anything in this article be construed to apply to  
24 persons regulated under the provisions of chapter  
25 eighteen of this code or the rules and regulations  
26 established thereunder.

27 (c) The furnishing of a copy, as requested, of the  
28 reports of X-ray examinations, electrocardiograms and  
29 other diagnostic procedures shall be deemed to comply  
30 with the provisions of this article.

31 (d) This article shall not apply to records subpoenaed  
32 or otherwise requested through court process.

33 (e) The provisions of this article may be enforced by  
34 a patient, authorized agent or authorized representative,  
35 and any health care provider found to be in violation of  
36 this article shall pay any attorney fees and costs,  
37 including court costs incurred in the course of such  
38 enforcement.

39 (f) Nothing in this article shall be construed to apply  
40 to health care records maintained by health care

41 providers governed by the AIDS-related medical testing  
 42 and records confidentiality act under the provisions of  
 43 article three-c of this chapter.

**§16-29-2. Reasonable expenses to be reimbursed.**

1 The provider shall be reimbursed by the person  
 2 requesting in writing a copy of such records at the time  
 3 of delivery for all reasonable expenses incurred in  
 4 complying with this article. However, such cost shall not  
 5 exceed seventy-five cents per page for the copying of any  
 6 such record or records which have already been reduced  
 7 to written form.

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## CHAPTER 96

(H. B. 4128—By Delegate White)

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[Passed March 6, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections four and five, article twenty-nine-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the termination date of the task force on uncompensated health care and medicaid expenditures.

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

That sections four and five, article twenty-nine-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 29C. INDIGENT CARE.**

§16-29C-4. Legislative study; appointment of members; expenses; reports; termination.

§16-29C-5. Effective date and termination date.

**§16-29C-4. Legislative study; appointment of members; expenses; reports; termination.**

1 Not later than the first day of June, one thousand nine  
 2 hundred eighty-five, the president of the Senate and  
 3 speaker of the House of Delegates of the West Virginia



4 Legislature shall appoint a legislative task force on  
5 uncompensated health care and medicaid expenditures  
6 which shall meet, study and make recommendations as  
7 herein provided.

8 The task force shall be composed of three members  
9 of the Senate appointed by the president from the  
10 membership of the Senate standing committee on health  
11 and human resources, three members of the House of  
12 Delegates appointed by the speaker from the member-  
13 ship of the House of Delegates standing committee on  
14 health and human resources, and a number of citizens  
15 appointed jointly by the president and speaker which,  
16 in their discretion, adequately provides for the approp-  
17 riate representation of the interests of the providers of  
18 health care services, the providers of health care  
19 insurance, state departments involved in the administra-  
20 tion of health care and health care related programs and  
21 the citizens of this state. Of the members of the Senate  
22 appointed by the president, not more than two shall be  
23 from the same political party. Of the members of the  
24 House of Delegates appointed by the speaker, not more  
25 than two shall be from the same political party.

26 Members originally appointed to the task force shall  
27 serve for terms beginning on the date of appointment  
28 and ending on the thirtieth day of June, one thousand  
29 nine hundred ninety-three, unless sooner replaced by the  
30 president or the speaker as applicable, or, in the  
31 discretion of the president and the speaker, unless the  
32 work of the task force is completed or the need for the  
33 task force no longer exists prior to that date. The task  
34 force shall cease to exist on the thirtieth day of June,  
35 one thousand nine hundred ninety-three.

36 The task force shall meet on such dates as may be  
37 approved by the joint committee on government and  
38 finance for the regular meetings of its subcommittees  
39 unless approval is first obtained from the joint commit-  
40 tee on government and finance for additional meetings.  
41 The task force shall conduct studies on the amount of  
42 funds expended by hospitals and other health care  
43 providers of this state for services to persons who are  
44 unable to pay for those services and for which they

45 receive no other form of reimbursement, the extent to  
46 which persons in this state forego needed medical  
47 services because of insufficient income and assets to pay  
48 for those services, the extent to which the state is  
49 maximizing available federal programs and moneys in  
50 providing health care services to the citizens of this  
51 state, the operation of the programs and funds created  
52 by this article and the roles of the public, private and  
53 private nonprofit sectors in providing health care  
54 services to the citizens of this state. The task force shall  
55 also study the state medicaid program in order to  
56 determine if the state medicaid agency, as the payor of  
57 last resort, is expending maximum effort to identify  
58 alternate private insurance resources for medicaid  
59 beneficiaries and shall study the feasibility and financial  
60 impact upon the state of assuring increased access to  
61 medicaid beneficiaries to primary health care in the  
62 nonhospital setting by requiring enrollment in a  
63 primary care clinic program, if available, and of the  
64 establishment of different and lesser schedules of  
65 payment for primary health services delivered by a  
66 hospital emergency room as compared to the schedule  
67 of payments for emergency room services of a true  
68 medical emergency nature. On or before the first day  
69 of January, one thousand nine hundred ninety-one, the  
70 task force shall contact, review and study the indigent  
71 care program of the health care access committee in the  
72 state of Kentucky. The task force shall make such  
73 recommendations as it deems appropriate to address the  
74 needs identified in the studies.

75 The task force shall file an interim report with the  
76 joint committee on government and finance and the  
77 Legislature on the date of the last meeting of the joint  
78 committee on government and finance prior to com-  
79 mencement of the regular session of the Legislature in  
80 each year before the final report of the task force is filed  
81 with the joint committee on government and finance and  
82 the Legislature on or before the thirtieth day of June,  
83 one thousand nine hundred ninety-three.

84 The members of the task force shall be entitled to  
85 compensation at the rate authorized for members of the

86 Legislature participating in legislative interim meetings  
87 and to reimbursement for reasonable and necessary  
88 expenses actually incurred in attending meetings of the  
89 task force, except that any employee of the state  
90 appointed to the task force is not entitled to such  
91 compensation. Funds necessary for the work of the task  
92 force shall be paid from joint appropriations to the  
93 Senate and House of Delegates but no such funds shall  
94 be spent or obligations incurred in the conduct of such  
95 work without prior approval of the joint committee on  
96 government and finance.

**§16-29C-5. Effective date and termination date.**

1 This article shall be effective from passage, and,  
2 notwithstanding the provisions of section four of this  
3 article, shall terminate on the thirtieth day of June, one  
4 thousand nine hundred ninety-three.

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## CHAPTER 97

**(Com. Sub. for H. B. 4197—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk  
By Request of the Executive)**

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[Passed March 1, 1990; in effect from passage. Approved by the Governor.]

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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-a, relating to the adoption of a medical power of attorney act for the state of West Virginia.

*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-a, to read as follows:

**ARTICLE 30A. MEDICAL POWER OF ATTORNEY.**

- §16-30A-1. Short title.
- §16-30A-2. Statement of purpose and legislative findings.
- §16-30A-3. Medical power of attorney.
- §16-30A-4. Powers of representative.

- §16-30A-5. Successor representative.
- §16-30A-6. Executing a medical power of attorney.
- §16-30A-7. Nomination of committee or guardian.
- §16-30A-8. Presumption of validity.
- §16-30A-9. Proof of continuance of medical power of attorney by affidavit.
- §16-30A-10. Protection of health care providers.
- §16-30A-11. Medical power of attorney to be made part of the medical records.
- §16-30A-12. Right to receive information regarding proposed health care; medical records.
- §16-30A-13. Revocation.
- §16-30A-14. Insurance; other laws.
- §16-30A-15. Preservation of existing rights.
- §16-30A-16. Prohibition.
- §16-30A-17. Reciprocity.
- §16-30A-18. Standard form.
- §16-30A-19. Public education; guidelines for execution in health care facilities.
- §16-30A-20. Severability.

**§16-30A-1. Short title.**

- 1 This article may be cited as the “Medical Power of
- 2 Attorney Act.”

**§16-30A-2. Statement of purpose and legislative findings.**

- 1 (a) *Purpose*.—It is the purpose of this article to ensure
- 2 that a patient’s right to self-determination in health care
- 3 decisions be communicated and protected.
- 4 (b) *Findings*.—The Legislature hereby finds that:
  - 5 (1) Common law tradition and the medical profession
  - 6 in general have traditionally recognized the right of a
  - 7 capable adult to accept or reject medical or surgical
  - 8 intervention affecting one’s own medical condition;
  - 9 (2) The application of recent advances in medical
  - 10 science and technology increasingly involves patients
  - 11 who are unconscious or otherwise unable to accept or
  - 12 reject medical or surgical treatment affecting their
  - 13 medical conditions;
  - 14 (3) Such advances have also made it possible to
  - 15 prolong the dying process artificially through the use of
  - 16 intervening treatments or procedures which, in some
  - 17 cases, offer no medical hope of benefit;
  - 18 (4) Capable adults should be encouraged to issue

19 advance directives designating their health care repre-  
20 sentatives so that in the event any such adult becomes  
21 unconscious or otherwise incapable of making health  
22 care decisions, the decisions may be made by others who  
23 are aware of such person's own wishes and values; and

24 (5) While providers of services have a duty to respect  
25 the known wishes of patients even in the absence of  
26 written directives, increased awareness of medical  
27 powers of attorney as a vehicle of patient decision-  
28 making would enhance and protect patient participation  
29 in health care decisions.

30 Therefore, in recognition of a patient's reasonable  
31 expectations of dignity and privacy, the Legislature  
32 hereby declares that all capable adults shall have the  
33 right to have their decisions for medical treatment or  
34 diagnostic procedures, including decisions regarding  
35 life-prolonging intervention, carried out by the use of  
36 advance directives when such adults are no longer able  
37 to communicate those decisions.

38 It is the intent of the Legislature to establish an  
39 effective method for use of advance directives, and it is  
40 also the intent of the Legislature that the courts should  
41 not be the usual venue for making such decisions. It is  
42 not the intent of the Legislature that the procedures  
43 described herein be the only means or form of advance  
44 directives concerning the provision of medical treatment  
45 or withholding thereof for persons who become incap-  
46 able of communicating their desires relating thereto.

### §16-30A-3. Medical power of attorney.

1 A medical power of attorney is a springing durable  
2 power of attorney by which any person (hereinafter the  
3 "principal") designates another person (hereinafter the  
4 "representative") in writing to make health care  
5 decisions for him or her in the event he or she is unable  
6 to do so. The instrument shall contain the following  
7 words, or words of like import, "THIS MEDICAL  
8 POWER OF ATTORNEY SHALL BECOME EFFEC-  
9 TIVE ONLY UPON MY INCAPACITY TO GIVE,  
10 WITHDRAW OR WITHHOLD INFORMED CON-  
11 SENT TO MY OWN MEDICAL CARE." For purposes

12 of this article, "incapacity" or words of like import shall  
13 mean the inability, because of physical or mental  
14 impairment, to appreciate the nature and implications  
15 of a health care decision, to make an informed choice  
16 regarding the alternatives presented, and to commun-  
17 icate that choice in an unambiguous manner, as  
18 determined by two physicians or by one physician and  
19 one licensed psychologist, both of whom are licensed to  
20 practice in this state, and additionally, have examined  
21 the principal. The principal's attending physician shall  
22 be one of those who makes the determination required  
23 herein.

**§16-30A-4. Powers of representative.**

1 (a) The desires of a principal having capacity at all  
2 times supersede the effect of the medical power of  
3 attorney.

4 (b) In exercising the authority under the medical  
5 power of attorney, the representative has the duty to act  
6 consistently with the desires of the principal either as  
7 expressed in such medical power of attorney or which  
8 have otherwise been made known to such representative.  
9 If the principal's desires are unknown, then such  
10 representative shall act in the best interests of the  
11 principal.

12 (c) A medical power of attorney may include a  
13 statement of the personal values of the principal and  
14 specific instructions to the representative to cover  
15 particular circumstances.

16 (d) A representative shall have the authority to give,  
17 withhold or withdraw informed consent to the health  
18 care of the principal, which authority shall include, but  
19 not be limited to, the following, unless the principal  
20 expressly provides to the contrary:

21 (1) Making decisions relating to medical treatment,  
22 surgical treatment, nursing care, medication, hospital-  
23 ization, care and treatment in a nursing home or other  
24 facility, and home health care;

25 (2) Permitting or gaining access to all medical  
26 records;

27 (3) Acknowledging receipt of notifications of rights or  
28 responsibilities and any applicable rules of medical or  
29 health care facilities;

30 (4) Employing or discharging medical providers;

31 (5) Making decisions about measures for the relief of  
32 pain;

33 (6) Consenting to, refusing or withdrawing any and  
34 all medical treatment or diagnostic procedures, includ-  
35 ing, but not limited to, life-prolonging intervention when  
36 in the opinion of two physicians who have examined the  
37 principal, one of whom being the principal's attending  
38 physician, such life-prolonging intervention offers no  
39 medical hope of benefit;

40 (7) Making decisions about the gift or donation of a  
41 body organ or tissue;

42 (8) Enforcing a declaration made pursuant to the  
43 West Virginia Natural Death Act, as provided in  
44 chapter sixteen, article thirty of this code: *Provided,*  
45 That where the provisions of such a declaration and the  
46 special directives to the representative hereunder are in  
47 conflict, the provisions of the document executed later  
48 in time shall control or govern.

49 (e) If proceedings are initiated before a county  
50 commission for the appointment of a committee or  
51 guardian for the person of the principal subsequent to  
52 the execution of a medical power of attorney by the  
53 principal, the county commission shall, provided it has  
54 notice of a duly executed medical power of attorney,  
55 name the representative so designated as committee or  
56 guardian of the person for medical decision-making  
57 purposes, absent good cause shown against such desig-  
58 nation.

#### §16-30A-5. Successor representative.

1 (a) The principal may appoint one or more successor  
2 representatives in the medical power of attorney in the  
3 event the original representative named therein is  
4 unable, unwilling or disqualified to serve. In such case,  
5 the successor representative shall succeed to all duties

6 and powers given to the original representative, unless  
7 the principal expressly provides to the contrary.

8 (b) Should the representative and the successor  
9 representative(s) named in the medical power of  
10 attorney be unable, unwilling or disqualified to serve,  
11 then the medical power of attorney shall lapse. However,  
12 such lapse shall not prevent any advance directives,  
13 statement of personal values or specific instructions  
14 therein from serving as guidelines for the medical or  
15 health care of the principal.

**§16-30A-6. Executing a medical power of attorney.**

1 (a) Any person eighteen years of age or older having  
2 the capacity to do so may execute a medical power of  
3 attorney. A medical power of attorney made pursuant  
4 to this article shall be: (1) In writing; (2) signed by the  
5 person making the medical power of attorney or by  
6 another person in the principal's presence at the  
7 principal's express direction; (3) dated; (4) signed in the  
8 presence of two or more witnesses at least eighteen years  
9 of age; and (5) acknowledged before a notary public.

10 (b) Each witness shall attest that he or she is not: (1)  
11 The person who signed the medical power of attorney  
12 on behalf of and at the direction of the principal; (2)  
13 related to the principal by blood or marriage; (3)  
14 entitled to any portion of the estate of the principal  
15 according to the laws of intestate succession of the state  
16 of the principal's domicile or under any will of the  
17 principal or any codicil thereto: *Provided*, That the  
18 validity of the medical power of attorney shall not be  
19 affected when a witness at the time of witnessing the  
20 same was unaware that he or she was named a bene-  
21 ficiary of the principal's will; (4) legally responsible for  
22 the costs of the principal's medical or other care; (5) the  
23 attending physician; or (6) the representative or any  
24 successor representative appointed pursuant to this  
25 article.

26 (c) The following persons may not serve as a repre-  
27 sentative or successor representative: (1) A treating  
28 health care provider of the principal; (2) an employee  
29 of a treating health care provider not related to the



30 principal; (3) an operator of a health care facility  
31 serving the principal; or (4) an employee of an operator  
32 of a health care facility not related to the principal.

**§16-30A-7. Nomination of committee or guardian.**

1 A principal may nominate, by a medical power of  
2 attorney, the committee or guardian of his person for  
3 consideration by the court or county commission if  
4 protective proceedings for the principal's person are  
5 thereafter commenced. The court or county commission  
6 shall make its appointment in accordance with the  
7 principal's most recent nomination in a medical power  
8 of attorney, except for good cause or disqualification.

**§16-30A-8. Presumption of validity.**

1 If the principal is incapacitated at the time of any  
2 health care decision, a medical power of attorney  
3 executed in accordance with this article is presumed to  
4 be valid. For the purposes of this article, a physician or  
5 health care facility may presume, in the absence of  
6 actual notice to the contrary, that a principal who  
7 executed a medical power of attorney was of sound mind  
8 when it was executed. The fact that an individual  
9 executed a medical power of attorney is not an indica-  
10 tion of the principal's incapacity. In addition, a physi-  
11 cian or health care facility may presume, in the absence  
12 of actual notice to the contrary, that any witness who  
13 executed a medical power of attorney in accordance  
14 with this article was qualified to do so.

**§16-30A-9. Proof of continuance of medical power of attorney by affidavit.**

1 When acts are undertaken in good-faith reliance upon  
2 a medical power of attorney as prescribed herein, an  
3 affidavit given by a representative stating that he or she  
4 did not have, at the time of any exercise of such power,  
5 knowledge concerning any revocation thereof, shall be  
6 considered to be clear and convincing evidence of the  
7 validity of the power at that time. This section shall not  
8 affect any provision in a medical power of attorney for  
9 its termination by expiration of time or occurrence of  
10 any event other than express revocation by the princi-  
11 pal.

**§16-30A-10. Protection of health care providers.**

1 (a) A physician, licensed health care professional,  
2 health facility or employee thereof shall not be subject  
3 to criminal or civil liability for good-faith compliance  
4 with or reliance upon the directions of the representa-  
5 tive in accordance with this article.

6 (b) An attending physician who cannot or will not  
7 comply with or act in reliance upon the directions of the  
8 representative shall, in conjunction with the represen-  
9 tative, cause the transfer of the principal to another  
10 physician who will comply with the directions of the  
11 representative. Transfer under such circumstances does  
12 not constitute abandonment of the principal.

**§16-30A-11. Medical power of attorney to be made part of the medical records.**

1 A physician or other health care provider who  
2 receives a copy of a medical power of attorney or the  
3 revocation thereof shall make it part of the principal's  
4 then current medical record.

**§16-30A-12. Right to receive information regarding proposed health care; medical records.**

1 Except to the extent the right is limited by a medical  
2 power of attorney, a representative designated to make  
3 health care decisions under a medical power of attorney  
4 has the same legal right as the principal to receive  
5 information, including information requiring a special  
6 release under applicable laws, regarding the proposed  
7 health care, to receive and review medical records, and  
8 to consent to the disclosure of medical records.

**§16-30A-13. Revocation.**

1 A medical power of attorney may be revoked at any  
2 time by the principal by any of the following methods:

3 (a) By destruction thereof, either by the principal or  
4 by some person in the principal's presence and at his or  
5 her direction;

6 (b) By written revocation, signed and dated by the

7 principal or other person acting at the direction of the  
8 principal. Such revocation shall become effective only  
9 upon communication thereof to the attending physician  
10 by the principal or by a person acting on behalf of the  
11 principal. The attending physician shall record in the  
12 patient's medical record the time and date when he or  
13 she receives notification of the written revocation;

14 (c) By a verbal expression of the intent to revoke in  
15 the presence of a witness eighteen years of age or older  
16 who contemporaneously signs and dates a writing  
17 confirming such expression was made. Any verbal  
18 revocation shall become effective only upon communica-  
19 tion of the revocation to the attending physician by the  
20 principal or by a person acting on behalf of the  
21 principal. The attending physician shall record, in the  
22 patient's medical record, the time, date and place  
23 wherein he or she received such notification; or

24 (d) The grant of a final divorce decree shall act as an  
25 automatic revocation of the designation of the former  
26 spouse to act as a representative or successor represen-  
27 tative.

#### §16-30A-14. Insurance; other laws.

1 (a) The compliance by a health care provider with any  
2 direction from a representative that results in the  
3 withholding or withdrawal of medical treatment or  
4 diagnostic procedures, including life-prolonging inter-  
5 vention, from a principal shall not be considered for any  
6 purpose homicide, suicide or assisting suicide. A  
7 representative's refusal to give consent to, withdrawal  
8 or withholding of any such treatment or procedure  
9 pursuant to the authority granted by the principal shall  
10 not be considered for any purpose as homicide or  
11 assisting suicide.

12 (b) The making of a medical power of attorney  
13 pursuant to this article may not affect in any manner  
14 the sale, procurement or issuance of any policy of life  
15 insurance, nor may it modify the terms of any existing  
16 policy of life insurance. No policy of life insurance may  
17 be legally impaired or invalidated in any manner by the  
18 withholding or withdrawal of life-prolonging interven-

19 tion from an insured principal, notwithstanding any  
20 provision of the policy to the contrary.

**§16-30A-15. Preservation of existing rights.**

1 (a) Any durable power of attorney that was executed  
2 in accordance with the provisions of article four, chapter  
3 thirty-nine of this code prior to the effective date of this  
4 article and which expressly delegates to the attorney in  
5 fact named therein any health care decisions by and on  
6 behalf of the principal is hereby recognized as a valid  
7 grant of authority, as though it were executed in  
8 compliance with the provisions of this article.

9 (b) Subsequent to the effective date of this article, an  
10 instrument made in accordance with article four,  
11 chapter thirty-nine of this code and also in accordance  
12 with the terms of this article shall be effective to  
13 authorize the exercise of health care decision-making  
14 and other authority as provided in such instrument.

15 (c) This article creates no presumption concerning the  
16 intention of an individual who has not executed a  
17 medical power of attorney to consent to, refuse or  
18 withdraw any and all medical treatment or diagnostic  
19 procedures, including, but not limited to, life-prolonging  
20 intervention.

**§16-30A-16. Prohibition.**

1 (a) Nothing in this article may be construed to  
2 condone, authorize or approve mercy killing or to permit  
3 any affirmative or deliberate act or omission to end a  
4 human life other than to permit the natural process of  
5 dying.

6 (b) Under no circumstances may the presence or  
7 absence of a medical power of attorney be used to deny  
8 a patient admission to a health care facility.

**§16-30A-17. Reciprocity.**

1 A durable power of attorney executed in another state  
2 is validly executed for purposes of this article if it is  
3 executed in compliance with the laws of this state or the  
4 laws of the state where executed and expressly delegates  
5 health care decisions.

**§16-30A-18. Standard form.**

1 A medical power of attorney shall be drafted in the  
2 following form or in such form which substantially  
3 complies with the requirements set forth herein. The  
4 provision of medical power of attorney forms substan-  
5 tially in compliance with this article by health care  
6 providers, medical practitioners, social workers, social  
7 service agencies, senior citizens centers, hospitals,  
8 nursing homes, personal care homes, community care  
9 facilities or any other similar person or group, without  
10 separate compensation, does not constitute the unauth-  
11 orized practice of law within this state.

12 **MEDICAL POWER OF ATTORNEY**

13 Dated: \_\_\_\_\_, 19 \_\_\_\_.

14 I, \_\_\_\_\_, (insert your name  
15 and address), hereby appoint \_\_\_\_\_  
16 (insert the name, address, area code and telephone  
17 number of the person you wish to designate as your  
18 representative) as my representative to act on my behalf  
19 to give, withhold or withdraw informed consent to  
20 health care decisions in the event that I am not able to  
21 do so myself. If my representative is unable, unwilling  
22 or disqualified to serve, then I appoint  
23 \_\_\_\_\_ as my successor representative.

24 This appointment shall extend to (but not be limited  
25 to) decisions relating to medical treatment, surgical  
26 treatment, nursing care, medication, hospitalization,  
27 care and treatment in a nursing home or other facility,  
28 and home health care. The representative appointed by  
29 this document is specifically authorized to act on my  
30 behalf to consent to, refuse or withdraw any and all  
31 medical treatment or diagnostic procedures, if my  
32 representative determines that I, if able to do so, would  
33 consent to, refuse or withdraw such treatment or  
34 procedures. Such authority shall include, but not be  
35 limited to, the withholding or withdrawal of life-  
36 prolonging intervention when in the opinion of two  
37 physicians who have examined me, one of whom is my  
38 attending physician, such life-prolonging intervention  
39 offers no medical hope of benefit.

40 I appoint this representative because I believe this  
41 person understands my wishes and values and will act  
42 to carry into effect the health care decisions that I would  
43 make if I were able to do so, and because I also believe  
44 that this person will act in my best interests when my  
45 wishes are unknown. It is my intent that my family, my  
46 physician and all legal authorities be bound by the  
47 decisions that are made by the representative appointed  
48 by this document, and it is my intent that these decisions  
49 should not be the subject of review by any health care  
50 provider, or administrative or judicial agency.

51 It is my intent that this document be legally binding  
52 and effective. In the event that the law does not  
53 recognize this document as legally binding and effective,  
54 it is my intent that this document be taken as a formal  
55 statement of my desire concerning the method by which  
56 any health care decisions should be made on my behalf  
57 during any period when I am unable to make such  
58 decisions.

59 In exercising the authority under this medical power  
60 of attorney, my representative shall act consistently with  
61 my special directives or limitations as stated below.

62 SPECIAL DIRECTIVES OR LIMITATIONS ON  
63 THIS POWER: (If none, write "none.")

64 \_\_\_\_\_

65 \_\_\_\_\_

66 \_\_\_\_\_

67 THIS MEDICAL POWER OF ATTORNEY SHALL  
68 BECOME EFFECTIVE ONLY UPON MY INCAPAC-  
69 ITY TO GIVE, WITHHOLD OR WITHDRAW IN-  
70 FORMED CONSENT TO MY OWN MEDICAL  
71 CARE.

72 These directives shall supersede any directives made  
73 in any previously executed document concerning my  
74 health care.

75 X \_\_\_\_\_

76 Signature of Principal

77 I did not sign the principal's signature above. I am  
 78 at least eighteen years of age and am not related to the  
 79 principal by blood or marriage. I am not entitled to any  
 80 portion of the estate of the principal according to the  
 81 laws of intestate succession of the state of the principal's  
 82 domicile or to the best of my knowledge under any will  
 83 of the principal or codicil thereto, or legally responsible  
 84 for the costs of the principal's medical or other care. I  
 85 am not the principal's attending physician, nor am I the  
 86 representative or successor representative of the  
 87 principal.

88 WITNESS: \_\_\_\_\_ DATE:  
 89 \_\_\_\_\_

90 WITNESS: \_\_\_\_\_ DATE:  
 91 \_\_\_\_\_

92 STATE OF \_\_\_\_\_,

93 COUNTY OF \_\_\_\_\_, to-wit:

94 I, \_\_\_\_\_, a Notary Public  
 95 of said County, do certify that \_\_\_\_\_,  
 96 as principal, and \_\_\_\_\_ and  
 97 \_\_\_\_\_, as witnesses, whose names are  
 98 signed to the writing above bearing date on the  
 99 \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, have this  
 100 day acknowledged the same before me.

101 Given under my hand this \_\_\_\_\_ day of  
 102 \_\_\_\_\_, 19 \_\_\_\_\_.

103 My commission expires: \_\_\_\_\_  
 104 \_\_\_\_\_

105 \_\_\_\_\_  
 Notary Public

**§16-30A-19. Public education; guidelines for execution in health care facilities.**

- 1 (a) The secretary of health and human resources, no

2 later than one year after the effective date of this article,  
3 shall develop and implement a statewide educational  
4 effort to inform the public of the option to execute a  
5 medical power of attorney and of patients' rights to  
6 participate in and direct health care decisions.

7 (b) The secretary of health and human resources shall  
8 publish, and may revise from time to time, guidelines  
9 concerning the manner of execution and revocation of  
10 medical powers of attorney while a person is a patient  
11 in a health care facility. The guidelines shall (1) inform  
12 patients of their right to execute a medical power of  
13 attorney concerning their health care; (2) assure patients  
14 that their decision concerning the execution of a medical  
15 power of attorney will not be used to deny them  
16 admission to or continued stay at the health care facility;  
17 (3) inform patients of their right to revoke such medical  
18 power of attorney at any time; and (4) address such  
19 other matters as the secretary may consider approp-  
20 riate.

#### §16-30A-20. Severability.

1 The provisions of this article are severable and if any  
2 provision, section or part thereof shall be held invalid,  
3 unconstitutional or inapplicable to any person or  
4 circumstance, such invalidity, unconstitutionality or  
5 inapplicability shall not affect or impair any other  
6 remaining provisions contained herein.

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## CHAPTER 98

(S. B. 466—By Senator Holliday)

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[Passed March 9, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section four, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the board of medicine and definitions permitting a designee of the director of health to be a member of the board and to act as its secretary.



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

That section four, 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.**

**§30-3-4. Definitions.**

1 As used in this article:

2 (1) "Board" means the West Virginia board of med-  
3 icine established in section five of this article. Whenever  
4 any other provision of this code refers to the "medical  
5 licensing board of West Virginia", such reference shall  
6 be construed to mean and refer to the "West Virginia  
7 board of medicine" as created and established in this  
8 article.

9 (2) "Medical peer review committee" means a commit-  
10 tee of, or appointed by, a state or local professional  
11 medical society, or a committee of, or appointed by, a  
12 medical staff of a licensed hospital, long-term care  
13 facility or other health care facility, or any health care  
14 peer review organization as defined in section one,  
15 article three-c of this chapter, or any other organization  
16 of professionals in this state formed pursuant to state or  
17 federal law and authorized to evaluate medical and  
18 health care services.

19 (3) "Practice of medicine and surgery" means the  
20 diagnosis or treatment of, or operation or prescription  
21 for, any human disease, pain, injury, deformity or other  
22 physical or mental condition.

23 (4) "Practice of podiatry" means the examination,  
24 diagnosis, treatment, prevention and care of conditions  
25 and functions of the human foot by medical, surgical  
26 and other scientific knowledge and methods; and  
27 medical and surgical treatment of warts and other  
28 dermatological lesions of the hand which similarly occur  
29 in the foot. When a podiatrist uses other than local  
30 anesthesia, in surgical treatment of the foot, such  
31 anesthesia must be administered by, or under the  
32 direction of, an anesthesiologist or certified nurse

33 anesthetist authorized under the state of West Virginia  
34 to administer anesthesia. A medical evaluation shall be  
35 made by a physician of every patient prior to the  
36 administration of other than local anesthesia.

37 (5) "State director of health" means the state director  
38 of health or his or her designee, which designee shall  
39 act as secretary of the board and shall carry out any and  
40 all responsibilities assigned in this article to the  
41 secretary of the board.

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## CHAPTER 99

(Com. Sub. for S. B. 338—By Senator Lucht)

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[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to powers and authority of racing commission.

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

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

### ARTICLE 23. HORSE AND DOG RACING.

#### §19-23-6. Powers and authority of racing commission.

1 The racing commission shall have full jurisdiction  
2 over and shall supervise all horse race meetings, all dog  
3 race meetings and all persons involved in the holding  
4 or conducting of horse or dog race meetings, and, in this  
5 regard, it shall have plenary power and authority:

6 (1) To investigate applicants and determine the  
7 eligibility of such applicants for a license or permit or  
8 construction permit under the provisions of this article;

9 (2) To fix, from time to time, the annual fee to be paid  
10 to the racing commission for any permit required under  
11 the provisions of section two of this article;

- 12 (3) To promulgate reasonable rules and regulations  
13 implementing and making effective the provisions of  
14 this article and the powers and authority conferred and  
15 the duties imposed upon the racing commission under  
16 the provisions of this article, including, but not limited  
17 to, reasonable rules and regulations under which all  
18 horse races, dog races, horse race meetings and dog race  
19 meetings shall be held and conducted, all of which  
20 reasonable rules and regulations shall be promulgated  
21 in accordance with the provisions of article three,  
22 chapter twenty-nine-a of this code;
- 23 (4) To register colors and assumed names and to fix,  
24 from time to time, the annual fee to be paid to the racing  
25 commission for any such registration;
- 26 (5) To fix and regulate the minimum purse to be  
27 offered during any horse or dog race meeting;
- 28 (6) To fix a minimum and a maximum number of  
29 horse races or dog races to be held on any respective  
30 racing day;
- 31 (7) To enter the office, horse racetrack, dog racetrack,  
32 kennel, facilities and other places of business of any  
33 licensee to determine whether the provisions of this  
34 article and its reasonable rules and regulations are  
35 being complied with, and for this purpose, the racing  
36 commission, its racing secretary, representatives and  
37 employees may visit, investigate and have free access to  
38 any such office, horse racetrack, dog racetrack, kennel,  
39 facilities and other places of business;
- 40 (8) To investigate alleged violations of the provisions  
41 of this article, its reasonable rules and regulations,  
42 orders and final decisions and to take appropriate  
43 disciplinary action against any licensee or permit holder  
44 or construction permit holder for the violation thereof  
45 or institute appropriate legal action for the enforcement  
46 thereof or take such disciplinary action and institute  
47 such legal action;
- 48 (9) By reasonable rules and regulations, to authorize  
49 stewards, starters and other racing officials to impose  
50 reasonable fines or other sanctions upon any person

51 connected with or involved in any horse or dog racing  
52 or any horse or dog race meeting; and to authorize  
53 stewards to rule off the grounds of any horse or dog  
54 racetrack any tout, bookmaker or other undesirable  
55 individual deemed inimical to the best interests of horse  
56 and dog racing or the pari-mutuel system of wagering  
57 in connection therewith;

58 (10) To require at any time the removal of any racing  
59 official or racing employee of any licensee, for the  
60 violation of any provision of this article, any reasonable  
61 rule and regulation of the racing commission or for any  
62 fraudulent practice;

63 (11) To acquire, establish, maintain and operate, or to  
64 provide by contract for the maintenance and operation  
65 of, a testing laboratory and related facilities, for the  
66 purpose of conducting saliva, urine and other tests on  
67 the horse or dog or horses or dogs run or to be run in  
68 any horse or dog race meeting, and to purchase all  
69 equipment and supplies deemed necessary or desirable  
70 in connection with the acquisition, establishment,  
71 maintenance and operation of any such testing labora-  
72 tory and related facilities and all such tests;

73 (12) To hold up, in any disputed horse or dog race, the  
74 payment of any purse, pending a final determination of  
75 the results thereof;

76 (13) To require each licensee to file an annual balance  
77 sheet and profit and loss statement pertaining to such  
78 licensee's horse or dog racing activities in this state,  
79 together with a list of each such licensee's stockholders  
80 or other persons having any beneficial interest in the  
81 horse or dog racing activities of such licensee;

82 (14) To issue subpoenas for the attendance of wit-  
83 nesses and subpoenas duces tecum for the production of  
84 any books, records and other pertinent documents, and  
85 to administer oaths and affirmations to such witnesses,  
86 whenever, in the judgment of the racing commission, it  
87 is necessary to do so for the effective discharge of its  
88 duties under the provisions of this article;

89 (15) To keep accurate and complete records of its

90 proceedings and to certify the same as may be  
91 appropriate;

92 (16) To take such other action as may be reasonable  
93 or appropriate to effectuate the provisions of this article  
94 and its reasonable rules and regulations;

95 (17) To provide breeders' awards, purse supplements  
96 and moneys for capital improvements at racetracks in  
97 compliance with section thirteen-b of this article; and

98 (18) The racing commission shall, upon request of  
99 either party, mediate on site, all disputes existing  
100 between the racetrack licensees' located in this state and  
101 representatives of a majority of the horse owners and  
102 trainers licensed at the track, which threaten to disrupt  
103 any scheduled racing event or events. When any such  
104 request is made, the commission shall designate from  
105 among its members, one person to act as mediator in  
106 each such dispute that arises. Each opposing party  
107 involved in any dispute shall negotiate in good faith with  
108 the goal of reaching a fair and mutual resolution. The  
109 mediator may issue recommendations designed to assist  
110 each side toward reaching a fair compromise: *Provided,*  
111 That no owner or operator or any horse owner or trainer  
112 licensed at the track may be required to abide by any  
113 recommendation made by any mediator acting pursuant  
114 to this subsection.

115 The racing commission shall not interfere in the  
116 internal business or internal affairs of any licensee.

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## CHAPTER 100

(Com. Sub. for S. B. 270—By Senator Blatnik)

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[Passed March 9, 1990; 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 twelve-b, relating to the West Virginia racing commission; permitting televised racing days for racetrack licensees and authorizing commission to assign such days; permitting the commingling of pari-mutuel wagering pools on televised interstate races;

providing certain definitions; requiring commission's auditor or steward to preside at televised racing day; providing for tax on licensees for televised racing days; providing for deposit into purse fund, and making certain federal law controlling in determining intent.

*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 twelve-b, to read as follows:

**ARTICLE 23. HORSE AND DOG RACING.**

**§19-23-12b. Televised racing days; merging of pari-mutuel wagering pools.**

1 (a) For the purposes of this section:

2 (1) "Televised racing day" means a day, assigned by  
3 the commission, at a licensed racetrack on which pari-  
4 mutuel betting is conducted on horse or dog races run  
5 at racetracks outside of the state which are broadcast  
6 by television at a licensed racetrack and which day or  
7 days have had the prior written approval of the  
8 representative of the majority of the owners and trainers  
9 who hold permits required by section two of this article;  
10 and

11 (2) "Host racing association" means any person who,  
12 pursuant to a license or other permission granted by the  
13 host state, conducts the horse or dog race subject to the  
14 interstate wager.

15 (b) A licensee conducting not less than two hundred  
16 twenty live racing dates for each horse or dog race  
17 meeting may, with the prior approval of the state racing  
18 commission, contract with any legal wagering entity in  
19 any other state to receive telecasts and accept wagers  
20 on races conducted by such legal wagering entity:  
21 *Provided*, That a track licensed to conduct only horse  
22 racing may not receive telecasts of dog races, and a  
23 track licensed to conduct only dog racing may not  
24 receive telecasts of horse races other than nationally  
25 televised special events such as the Kentucky Derby, the

26 Preakness, the Belmont Stakes and not more than  
27 fifteen other special events deemed by the racing  
28 commission to be of national significance. The telecasts  
29 may be received and wagers accepted at any location  
30 authorized by the provisions of section twelve-a of this  
31 article. Such contract must receive the approval of the  
32 representative of the majority of the owners and trainers  
33 who hold permits required by section two of this article  
34 at the receiving racetrack.

35 (c) The commission may allow the licensee to commin-  
36 gle its wagering pools with the wagering pools of the  
37 host racing association. If the pools are commingled, the  
38 wagering at the licensee's racetrack must be on  
39 tabulating equipment capable of issuing pari-mutuel  
40 tickets and be electronically linked with the equipment  
41 at the sending racetrack. Subject to the approval of the  
42 commission, the types of betting, licensee commissions  
43 and distribution of winnings on pari-mutuel pools of the  
44 sending licensee racetrack are those in effect at the  
45 licensee racetrack. Breakage for pari-mutuel pools on a  
46 televised racing day must be calculated in accordance  
47 with the law or rules governing the sending racetrack,  
48 and must be distributed in a manner agreed to between  
49 the licensee and the sending racetrack.

50 (d) The commission may assign televised racing days  
51 at any time. When a televised racing day is assigned,  
52 the commission shall assign either a steward or an  
53 auditor to preside over the televised races at the licensee  
54 racetrack.

55 (e) From the licensee commissions authorized by  
56 subsection (c) of this section, there is imposed and the  
57 licensee shall pay, for each televised racing day on  
58 which the total pari-mutuel pool exceeds fifty thousand  
59 dollars, the greater of either: (i) The total of the daily  
60 license tax and the pari-mutuel pools tax required by  
61 section ten of this article; or (ii) a daily license tax of  
62 five hundred dollars. For each televised racing day on  
63 which the total pari-mutuel pool is fifty thousand dollars  
64 or less the licensee shall pay a daily license tax of five  
65 hundred dollars. Payments of the tax imposed by this

66 section are subject to the requirements of subsection (e),  
67 section ten of this article.

68 (f) After deducting the tax required by subsection (e)  
69 of this section, the amount required to be paid under the  
70 terms of the contract with the legal wagering entity of  
71 another state and the cost of transmission, the horse  
72 racing association shall make a deposit equal to fifty  
73 percent of the remainder into the purse fund established  
74 under the provisions of subdivision (b) (1), section nine  
75 of this article.

76 (g) The provisions of the "Federal Interstate Horse-  
77 racing Act of 1978", also known as Public Law 95-515,  
78 Section 3001-3007 of Title 15, U.S. Code, as amended,  
79 shall be controlling in determining the intent of this  
80 section.

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## CHAPTER 101

(Com. Sub. for S. B. 507—By Senators Thomas and Blatnik)

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[Passed March 9, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section fourteen, article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing provisions regarding the reimbursement of capital costs for certain health care facilities financed by public bonded indebtedness and limiting the amount of reimbursement.

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

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

### ARTICLE 5. MISCELLANEOUS PROVISIONS.

**§9-5-14. Medicaid program; health care facilities financed by bonds; rules regarding reimbursement of capital costs.**

1 (a) The Legislature finds and declares that a number



2 of health care facilities have been financed by public  
3 bonded indebtedness, and as a result of policies, rules  
4 and standards which may be in conflict, the facilities  
5 and the health and welfare of those citizens served by  
6 such facilities are in jeopardy. The provisions of  
7 subsection (b) are enacted for the purpose of addressing  
8 this as a short-term solution. The provisions of subsec-  
9 tion (d) are enacted for the purpose of further address-  
10 ing such conflicting policies, rules and standards.

11 (b) As to any health care facility licensed under  
12 article five-c, chapter sixteen of this code, constructed  
13 after the first day of April, one thousand nine hundred  
14 eighty-one, and affected on or after that date by the  
15 reimbursement methodology implemented by the de-  
16 partment regarding standard appraised value, begin-  
17 ning on the first day of April, one thousand nine  
18 hundred eighty-eight, and for a two-year period only,  
19 ending on the thirty-first day of March, one thousand  
20 nine hundred ninety, all in compliance with federal  
21 rules and regulations, the department shall reimburse  
22 such health care facilities no less than any actual annual  
23 capital costs, including, but not limited to, debt service,  
24 lease payments or costs of comparable financing  
25 arrangements incurred in connection with any capital  
26 expenditure approved pursuant to article two-d, chapter  
27 sixteen of this code or any rule promulgated thereunder  
28 or in conjunction with the financing of such capital  
29 expenditure pursuant to article two-c, chapter thirteen  
30 of this code, whichever is greater; and in no event, for  
31 the purpose of reimbursement of such capital costs, may  
32 the value of any health care facility licensed pursuant  
33 to article five-c, chapter sixteen of this code be deemed  
34 to be less than the greater of the aggregate principal  
35 amount of any public bond issue undertaken pursuant  
36 to the provisions of article two-c, chapter thirteen of this  
37 code or the maximum capital expenditure approved  
38 pursuant to article two-d, chapter sixteen of this code  
39 or any rule promulgated thereunder, and any appraisal  
40 made by the department in connection therewith shall  
41 include costs related to the financing of the bond issue  
42 or the maximum capital expenditure approved pursuant  
43 to article two-d, chapter sixteen of this code, as

44 applicable: *Provided*, That said values may be reduced  
45 by (A) any functional obsolescence which is determined  
46 and identified annually pursuant to any rule promul-  
47 gated hereunder and (B) the pro rata share of such value  
48 which is attributable to capital expenditures incurred  
49 with respect to facilities which provide services which  
50 are not eligible for reimbursement under Title XIX of  
51 the social security act: *Provided, however*, That the  
52 department may not exceed the medicare upper pay-  
53 ment limit for medicaid in making any reimbursement  
54 pursuant to this section.

55 As to any health care facility constructed after the  
56 first day of April, one thousand nine hundred eighty-  
57 one, and affected on or after that date by the reimbur-  
58 sement methodology implemented by the department  
59 regarding standard appraised value, with respect to  
60 reimbursement to the state by such health care facility  
61 arising from adjustment of projected rates, the depart-  
62 ment shall provide for the adjustment of projected rates  
63 based upon values which are consistent with the  
64 provisions of this section and based upon the actual  
65 occupancy experience of the health care facility during  
66 the projected rate period, all in compliance with federal  
67 rules and regulations.

68 (c) The medicaid payments that a long-term care  
69 facility would otherwise receive may not be reduced in  
70 any manner as a result of the operation of this section.

71 (d) For the rate setting cycle beginning on the first  
72 day of April, one thousand nine hundred ninety, and for  
73 a period ending on the first day of July, one thousand  
74 nine hundred ninety-two, the department shall reim-  
75 burse health care facilities described in subsection (b),  
76 with sixty or more licensed beds, for actual annual  
77 capital costs in the manner prescribed in subsection (b):  
78 *Provided*, That the capital costs reimbursement attrib-  
79 utable to subsection (b) of this section may not exceed  
80 the medicare upper payment limit based upon presumed  
81 occupancy of ninety percent or actual occupancy of the  
82 facility, whichever is greater: *Provided, however*, That  
83 any capital cost reimbursement attributable to the  
84 computation made pursuant to the provisions of this

85 subsection (d) shall not exceed the per patient day cost  
86 of capital as computed under the rules of the depart-  
87 ment, without reference to this section, plus six dollars  
88 per patient day. Requests for information from the  
89 department regarding reimbursement pursuant to this  
90 subsection (d) shall be completed and submitted to the  
91 department not later than sixty days subsequent to the  
92 receipt of the department's request by the facility.

93 The department shall provide for the adjustment of  
94 projected rates for health care facilities described in  
95 subsection (b), with sixty or more licensed beds, in the  
96 manner prescribed in subsection (b).

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## CHAPTER 102

(H. B. 4720—By Delegates Wilson and Pitrolo)

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[Passed March 9, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend article one, chapter five-b 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 prohibiting the department of commerce, labor and environmental resources from transferring authority from the division of commerce to the division of natural resources for Plum Orchard Lake, Pleasants Creek, Big Ditch Lake and Teeter Creek.

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

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

### ARTICLE 1. DIVISION OF COMMERCE.

#### §5B-1-12a. Certain hunting and fishing areas prohibited from transfer.

1 Notwithstanding the provisions of article two, chapter  
2 five-f the following state hunting and fishing areas may

3 not be transferred from the authority of the division of  
4 commerce:

5 (a) Plum Orchard Lake in Fayette County;

6 (b) Pleasants Creek in Taylor County;

7 (c) Big Ditch Lake in Webster County; and

8 (d) Teeter Creek in Barbour County.

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## CHAPTER 103

(S. B. 563—By Senator Parker)

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[Passed March 7, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the department of commerce, labor and environmental resources and incorporating Moncove Lake public hunting and fishing area as a state park to be named Moncove Lake State Park.

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

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

### ARTICLE 1. DIVISION OF COMMERCE.

#### \*§5B-1-13. Division of parks and recreation; purpose; powers and duties generally.

1 The division of parks and recreation has within its  
2 jurisdiction and supervision:

3 (a) All state parks and state recreation areas, includ-  
4 ing all lodges, cabins, swimming pools, motorboating  
5 and all other recreational facilities therein, except the  
6 roads therein which, by reason of section one, article

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\* Clerk's Note: §5B-1-13 was also amended by H. B. 4799 (Chapter 71), which passed subsequent to this act.

7 four, chapter seventeen of this code, are transferred to  
8 the state road system and to the responsibility of the  
9 commissioner of highways with respect to the construc-  
10 tion, reconstruction and maintenance of the roads or any  
11 future roads for public usage on publicly owned lands  
12 in future state parks, state forests and public hunting  
13 and fishing areas;

14 (b) The authority and responsibility to do the neces-  
15 sary cutting and planting of vegetation along road  
16 rights-of-way in state parks and recreational areas;

17 (c) The administration of all laws and rules relating  
18 to the establishment, development, protection, use and  
19 enjoyment of all state parks and state recreational  
20 facilities consistent with the provisions of this article;

21 (d) The Berkeley Springs sanitarium in Morgan  
22 County shall be continued as a state recreational facility  
23 under the jurisdiction and supervision of the department  
24 of commerce, labor and environmental resources and  
25 shall be managed, directed and controlled as prescribed  
26 here in this article and in article one, chapter twenty  
27 of this code.

28 The commissioner has all of the powers and authority  
29 and shall perform all of the functions and duties with  
30 regard to Berkeley Springs sanitarium as are necessary  
31 to carry out the provisions of this article;

32 (e) The Washington Carver camp in Fayette County  
33 subject to the jurisdiction and authority of the divi-  
34 sion of culture and history as provided under section  
35 thirteen, article one, chapter twenty-nine of this code  
36 shall be managed by the commissioner as a state  
37 recreational facility and a component of the state park  
38 system;

39 (f) The improved recreational area of Camp Creek  
40 State Forest in Mercer County, as delineated according  
41 to section three, article one-a, chapter nineteen of this  
42 code, is hereby renamed as the Camp Creek State Park  
43 and under that name shall be managed as a state  
44 recreational facility;

45 (g) The improved recreational area of Moncove Lake

46 public hunting and fishing area, consisting of all  
47 improved recreational facilities, including all land  
48 between the lake and private property beginning at the  
49 main entrance on secondary route eight to the first  
50 stream on the southwest side of the improved recrea-  
51 tional area, approximately two hundred feet southwest  
52 of the private property corner where it meets the  
53 Roxalia Springs trail, thence northwest to a stream and  
54 along this stream northward to and across the Diamond  
55 Hollow trail to the area boundary, thence continuing  
56 around area boundary to the lake shore, thence follow-  
57 ing the lake shore around the shoreline to meet the line  
58 drawn from the main entrance where the boundary  
59 begins. This area is hereby renamed as the Moncove  
60 Lake State Park and under that name shall be managed  
61 as a state recreational facility: *Provided*, That the  
62 boundary, as herein described, shall be plainly marked  
63 within ninety days of the effective date of this act; and

64 (h) The secretary of the department of commerce,  
65 labor and environmental resources shall be primarily  
66 responsible for the execution and administration of the  
67 provisions herein as an integral part of the parks and  
68 recreation program of the state and shall organize and  
69 staff the department for the orderly, efficient and  
70 economical accomplishment of these ends.

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## CHAPTER 104

(Com. Sub. for H. B. 4176—By Delegates Schoonover and Tribett)

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[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section thirty-three, article two, chapter twenty of the code West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the compensation paid to county officials and agents for the issuance of hunting, trapping and fishing licenses.

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

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

**ARTICLE 2. WILDLIFE RESOURCES.**

**§20-2-33. Authority of director to designate agents to issue licenses; bonds; fees.**

1       The director may appoint, in addition to the clerk of  
2       the county commission, agents to issue licenses under  
3       the provisions of this article to serve the convenience of  
4       the public. Each person, so appointed, shall, before  
5       issuing any license, file with the director a bond payable  
6       to the state of West Virginia, in the amount to be fixed  
7       by the director at not less than one thousand dollars,  
8       conditioned upon the faithful performance of his or her  
9       obligation to issue licenses only in conformity with the  
10      provisions of this article and to account for all license  
11      fees received by him or her. The form of the bond shall  
12      be prescribed by the attorney general. No person, other  
13      than those designated as issuing agents by the director,  
14      shall sell licenses or buy the same for the purposes of  
15      resale.

16      After the thirtieth day of June, one thousand nine  
17      hundred ninety, except when a license is purchased  
18      from a state official, every person making application  
19      for a license shall pay, in addition to the license fee  
20      prescribed therefor in the later sections of this article,  
21      an additional fee of seventy-five cents to any county  
22      official issuing the license and all fees collected by  
23      county officials shall be paid by them into the general  
24      fund of the county treasury or, in the case of an agent  
25      issuing the license, an additional fee of one dollar as  
26      compensation: *Provided*, That only one fee of seventy-  
27      five cents or one dollar shall be collected by county  
28      officials or authorized agents, respectively, for issuing  
29      two or more licenses at the same time for use by the  
30      same person or for issuing combination resident  
31      statewide hunting, trapping and fishing Class AB  
32      licenses.

## CHAPTER 105

(Com. Sub. for H. B. 4097—By Delegate Love)

[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-b, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to Class A-1 small arms hunting licenses; allowing nonresident Class A-1 licenses; providing for a lifetime Class A-1 hunting license; requiring a fee for the issuance of a lifetime Class A-1 hunting license; and permitting clerks of county commissions to issue Class A-1 licenses.

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

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

### ARTICLE 2. WILDLIFE RESOURCES.

#### §20-2-40b. Class A-1 small arms hunting license.

1 Notwithstanding the provisions of section two, article  
2 seven, chapter sixty-one of this code, a Class A-1 license  
3 shall be a small arms hunting license. If a person is  
4 otherwise qualified, a Class A-1 license may be issued  
5 by the division, pursuant to rules and regulations  
6 promulgated by the director, which regulations shall  
7 include provisions for the establishment of a voluntary  
8 program available to citizens of the state pertaining to  
9 safety and proficiency in the use of a revolver or pistol,  
10 to a person twenty-one years of age or older who holds  
11 a valid resident or nonresident hunting license, or to a  
12 person who is a resident and sixty-five years of age or  
13 older, but a Class A-1 license shall never be issued to  
14 a person who has been convicted of a misdemeanor in  
15 any way associated with the use of firearms or danger-  
16 ous weapons or who has been convicted of any felony.

17 A Class A-1 license shall entitle the licensee to hunt,  
18 as otherwise permitted by the provisions of this chapter,  
19 but only during small game and big game seasons as



20 established annually by the director, with either a  
21 revolver or pistol which has a barrel at least four inches  
22 in length. A Class A-1 license shall entitle the licensee  
23 to carry or have in his possession one, and only one,  
24 revolver or pistol when going to and from his home or  
25 residence and a place of hunting and while hunting in  
26 the place: *Provided*, That such Class A-1 license shall not  
27 be valid unless the licensee have in his possession a valid  
28 resident or nonresident hunting license or to a person  
29 who is a resident and sixty-five years of age or older:  
30 *Provided, however*, That at all times, when not actually  
31 hunting, the revolver or pistol shall be unloaded.

32 While hunting, the licensee shall carry the revolver or  
33 pistol outside of his person in an unconcealed and easily  
34 visible place. At all other times the revolver or pistol  
35 shall be cased or dismantled in a way to cause it not to  
36 operate. When being transported in a vehicle it shall be  
37 kept in a locked compartment of the vehicle which shall  
38 not be accessible from the inside of such vehicle.

39 The fee shall be five dollars for a Class A-1 license.  
40 All such fees collected shall be deposited in the state  
41 treasury and credited to the law-enforcement division of  
42 the division of natural resources. Such fees shall be paid  
43 out of the state treasury on order of the director and  
44 used solely for law-enforcement purposes.

45 For a fee of seventy-five dollars, a lifetime Class A-  
46 1 license may be issued to anyone otherwise qualified  
47 and holding a valid Class A or Class AB license issued  
48 for a lifetime or to a person who is a resident and sixty-  
49 five years of age or older. All fees collected for the  
50 issuance of a lifetime Class A-1 license shall be deposited  
51 in the state treasury and credited to the law-enforce-  
52 ment division of the division of natural resources. The  
53 fees collected shall be paid out of the state treasury on  
54 order of the director and used solely for law-enforce-  
55 ment purposes: *Provided*, That upon conviction of a  
56 misdemeanor in any way associated with the use of  
57 firearms or dangerous weapons or conviction of any  
58 felony, a lifetime Class A-1 licensee shall immediately  
59 surrender said license to the division of natural  
60 resources.

## CHAPTER 106

(Com. Sub. for H. B. 4354—By Mr. Speaker, Mr. Chambers, and Delegate Love)

[Passed February 27, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-six-j, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to Class V resident and Class VV nonresident muzzle-loading deer hunting licenses; limitations removed; and specifying the bore diameter of thirty-eight one-hundredths inch as the minimum legal bore diameter permitted.

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

That section forty-six-j, 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.**

**§20-2-46j. Class V resident and Class VV nonresident muzzle-loading deer hunting licenses.**

1       There shall be a special season of at least three days  
2       each year for the taking of deer with muzzle-loading  
3       firearms, either rifles or pistols, to be set at such time  
4       and to be of such duration as determined by the  
5       commission. For a minimum of two days during this  
6       season, deer of either sex may be taken with muzzle-  
7       loading firearms in all counties open for the taking of  
8       antlerless deer as provided in section forty-six-b of this  
9       article. Antlered deer only may be taken in all other  
10      counties open for the taking of deer with firearms.

11      Only single shot muzzle-loading firearms with iron  
12      sights having a bore diameter of no less than thirty-  
13      eight one-hundredths inch are legal firearms for the  
14      taking of deer during the special season provided herein.

15      The special season provided herein shall be concurrent  
16      with all other seasons designated for the taking of game.

17      Any person wishing to hunt for and kill deer during

18 the special muzzle-loading season must possess a valid  
19 Class V or Class VV license, except that this require-  
20 ment does not apply to a resident of West Virginia who  
21 is not required to obtain a license or permit to hunt as  
22 provided in this chapter. A Class V license shall be a  
23 resident muzzle-loading deer hunting license. A Class  
24 VV license shall be a nonresident muzzle-loading deer  
25 hunting license. The licenses shall be issued in a form  
26 prescribed by the director, are in addition to a Class A,  
27 Class AB or Class E license and are valid only when  
28 accompanied thereby. The fee for the Class V license  
29 shall be five dollars. The fee for the Class VV license  
30 shall be ten dollars.

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## CHAPTER 107

(Com. Sub. for H. B. 4151—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)

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[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section five-c, article twelve, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing the amount and type of insurance coverage for obstetric treatment of medicaid patients; including provisions for primary insurance coverage for specified medical practitioners; excess insurance coverage for specified medical practitioners; and authorizing the board of risk and insurance management, with approval of the insurance commissioner, to promulgate rules and regulations.

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

That section five-c, article twelve, 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 12. STATE INSURANCE.

§29-12-5c. Insurance for damages allegedly resulting from obstetric treatment of medicaid patients.

1 (a) In accordance with the provisions of this article,

2 the state board of risk and insurance management shall  
3 provide professional malpractice insurance for all  
4 medical practitioners who provide obstetric treatment to  
5 patients which is reimbursed or reimbursable by state  
6 medicaid funds: *Provided*, That such medical practi-  
7 tioner has, prior to the alleged negligent act or acts,  
8 become a participant in the primary professional  
9 malpractice insurance program.

10 Said primary insurance shall cover any claim,  
11 demand, action, suit or judgment by reason of alleged  
12 negligence in the course of providing such obstetric  
13 treatment which results in injury. Such primary  
14 insurance coverage shall be in an amount to be deter-  
15 mined by the state board of risk and insurance manage-  
16 ment, but in no event less than one million dollars for  
17 each occurrence.

18 Such primary insurance coverage shall be mandatory  
19 for medical practitioners covered for obstetric treatment  
20 by the board of risk and insurance management. Such  
21 primary coverage shall be optional for any other  
22 medical practitioner who treats medicaid obstetric  
23 patients.

24 The board of risk and insurance management shall  
25 establish the criteria for the program for the approval  
26 of the insurance commissioner on or before the fifteenth  
27 day of June, one thousand nine hundred ninety.

28 The insurance coverage specified in this subsection  
29 shall not apply to any hospital which is the site of the  
30 obstetric treatment or to any employee of said hospital,  
31 except that a medical practitioner providing the  
32 obstetric treatment who is also an employee of the  
33 hospital which is the site of the treatment shall be  
34 included in the insurance coverage required by this  
35 section.

36 (b) In accordance with the provisions of this article,  
37 the state board of risk and insurance management shall  
38 provide optional excess professional malpractice insu-

39 rance for all medical practitioners who provide obstetric  
40 treatment to patients which is reimbursed or reimbur-  
41 sable by state medicaid funds: *Provided*, That such  
42 medical practitioner has, prior to the alleged negligent  
43 act or acts, become a participant in the excess insurance  
44 program. Such excess insurance coverage shall, in no  
45 event, exceed three million dollars.

46 For the purposes of this subsection, excess insurance  
47 shall be defined as coverage over and above any other  
48 primary or collectible malpractice liability coverage. In  
49 no event shall this coverage be primary. Each insured  
50 must carry primary insurance of at least one million  
51 dollars. Such liability excess malpractice coverage shall  
52 be in an amount to be determined by the state board  
53 of risk and insurance management, but in no event less  
54 than one million dollars for each occurrence.

55 The board of risk and insurance management shall  
56 establish the criteria for an optional program of excess  
57 professional malpractice insurance for the approval of  
58 the insurance commissioner on or before the fifteenth  
59 day of June, one thousand nine hundred ninety.

60 (c) For the purpose of this section, the definition of  
61 medical practitioner shall be limited to physicians,  
62 obstetric/gynecological nurse practitioners, certified  
63 nurse midwives, nurse anesthetists, and physicians  
64 assistants.

65 (d) Any premiums assessed and collected under the  
66 provisions of this section, or rules and regulations  
67 promulgated pursuant to the provisions of this section,  
68 shall be placed in a separate insurance pool known as  
69 the obstetrical/gynecological liability pool. Said pool is  
70 to be administered and maintained by the board of risk  
71 and insurance management.

72 (e) The board of risk and insurance management,  
73 with approval of the insurance commissioner, shall have  
74 the authority to make needful rules and regulations for  
75 the administration of this section, as provided in the  
76 State Administrative Procedures Act in chapter twenty-  
77 nine-a of this code: *Provided*, That the board of risk and  
78 insurance management, with approval of the insurance

79 commissioner, shall have the authority to promulgate  
 80 rules and regulations regarding the discontinuance of  
 81 the program if participation in the program is insuffi-  
 82 cient to make said program economically feasible.

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## CHAPTER 108

(Com. Sub. for H. B. 4493—By Delegates Susman and Ashley, By Request)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections five-b and seventeen, relating to insurance licensing fees and taxation; capital and surplus requirements; and taxation of insurers.

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

That article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections five-b and seventeen, to read as follows:

### ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-5b. Capital and surplus requirements.

§33-3-17. Minimum tax payable.

#### §33-3-5b. Capital and surplus requirements.

1 No insurer shall hereafter be licensed to transact the  
 2 business of insurance in the state of West Virginia  
 3 unless it has fully paid in capital stock, if a stock  
 4 insurer, or surplus, if a mutual insurer, of at least one  
 5 million dollars. In addition, each such insurer shall have  
 6 and maintain additional surplus funds of at least one  
 7 million dollars: *Provided*, That insurers duly licensed to  
 8 transact insurance in West Virginia prior to the  
 9 effective date of this section whose capital and surplus  
 10 requirements are increased by virtue of this section  
 11 shall have until the first day of January, one thousand  
 12 nine hundred ninety-three, to meet such increased  
 13 requirements.

**§33-3-17. Minimum tax payable.**

1 The minimum amount of tax payable by any insurer  
2 licensed in the state of West Virginia when considering  
3 the aggregate payments due from all of the taxes  
4 imposed by this article shall be two hundred dollars  
5 (\$200.00) for any calendar year. This minimum tax shall  
6 be payable annually on or before the first day of March  
7 and shall be calculated on a form prescribed by the  
8 commissioner. Except as otherwise provided in this  
9 section, all provisions of this article relating to the levy,  
10 imposition and collection of the regular premium tax  
11 shall be applicable to the levy, imposition and collection  
12 of this minimum tax. All moneys received by the  
13 commissioner from this minimum tax shall be paid into  
14 the state treasury for the benefit of the state fund.

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## CHAPTER 109

(Com. Sub. for H. B. 4130—By Mr. Speaker, Mr. Chambers,  
and Delegate Ashcraft)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article twelve of said chapter by adding thereto a new section, designated section two-a, all relating to establishing a continuing education program for agents; suspension for failure to meet requirements; and giving the insurance commissioner certain responsibilities.

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

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

**ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.****§33-3-13. Fees and charges.**

1 (a) Except where it is otherwise specially provided,

2 the commissioner shall demand and receive the follow-  
3 ing fees from all insurers: For annual fee for each  
4 license, two hundred dollars; for receiving and filing  
5 annual reports, one hundred dollars; for valuation of  
6 policies of life insurers organized under the laws of this  
7 state, one and one-half cents for each one thousand  
8 dollars of insurance; for valuation of policies of life  
9 insurers organized under the laws of any other state  
10 licensed to transact insurance in this state the rate for  
11 each one thousand dollars of insurance valued as is  
12 imposed by the other state upon any similar insurer  
13 organized under the laws of this state licensed to  
14 transact insurance in the other state; for filing certified  
15 copy of articles of incorporation, fifty dollars; for filing  
16 copy of its charter, fifty dollars; for filing statements  
17 preliminary to admission, one hundred dollars; for filing  
18 any additional paper required by law or furnishing  
19 copies thereof, one dollar; for every certificate of  
20 valuation, copy of report or certificate of condition of  
21 company to be filed in any other state, fifteen dollars;  
22 for each licensed agent, twenty-five dollars. The  
23 commissioner may by regulation set reasonable charges  
24 for printed forms for the annual statements required by  
25 law. He may sell at cost publications purchased by, or  
26 printed on behalf of the commissioner.

27 (b) Such fees and charges collected by the commis-  
28 sioner under the provisions of this section or elsewhere  
29 in this chapter and designated for use by the commis-  
30 sioner for the operation of the department of insurance  
31 or for the purposes of this section, shall be paid into a  
32 special revenue account, hereby created in the state  
33 treasury, to be expended and used by the commissioner,  
34 upon his requisition and after appropriation by the  
35 Legislature, for the operation of the department of  
36 insurance. Notwithstanding any provisions in this code  
37 to the contrary, the commissioner may expend, in  
38 accordance with the provisions of section two-a, article  
39 twelve of this chapter, from the special revenue account  
40 established pursuant to this section, amounts necessary  
41 to establish and maintain a system of continuing  
42 education for agents as provided in section two-a, article  
43 twelve of this chapter.



**ARTICLE 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.****§33-12-2a. Duty to receive continuing education; educational requirements; compliance; penalties.**

1 The purpose of this provision is to provide continuing  
2 education under guidelines set up under the insurance  
3 commissioner's office effective the first day of July, one  
4 thousand nine hundred ninety-two, with the guidelines  
5 to be set up under the board of insurance agent  
6 education. Nothing in this section shall prohibit an  
7 individual from receiving commissions which have been  
8 vested and earned while that individual maintained an  
9 approved insurance agent's license.

10 (a) This section applies to persons licensed to engage  
11 in the sale of the following types of insurance:

12 (1) Life insurance, annuity contracts, variable annuity  
13 contracts and variable life insurance;

14 (2) Sickness, accident and health insurance;

15 (3) All lines of property and casualty insurance; and

16 (4) All other lines of insurance for which an exami-  
17 nation is required for licensing.

18 (b) This section does not apply to:

19 (1) Persons holding resident licenses for any kind or  
20 kinds of insurance offered in connection with loans or  
21 other credit transactions or insurance for which an  
22 examination is not required by the commissioner, nor  
23 does it apply to any such limited or restricted license  
24 as the commissioner may exempt;

25 (2) Individuals selling credit life or credit accident  
26 and health insurance.

27 (c) (1) The board of insurance agent education as  
28 established by section two of this article shall develop  
29 a program of continuing insurance education and  
30 submit the proposal for the approval of the commis-  
31 sioner on or before the thirty-first day of December of  
32 each year. No program shall be approved by the  
33 commissioner that includes a requirement that any

34 agent complete more than thirty hours of continuing  
35 insurance education biennially.

36 (2) The commissioner and the board, under standards  
37 established by the board, may approve any course or  
38 program of instruction developed or sponsored by an  
39 authorized insurer, accredited college or university,  
40 agents' association, insurance trade association or  
41 independent program of instruction that presents the  
42 criteria and the number of hours that the board and  
43 commissioner determine appropriate for the purpose of  
44 this section.

45 (d) Persons licensed to sell insurance and who are not  
46 otherwise exempt shall satisfactorily complete the  
47 courses or programs of instruction as the commissioner  
48 may prescribe.

49 (e) Every person, subject to the continuing education  
50 requirements shall furnish, at intervals and on forms as  
51 may be prescribed by the commissioner, written  
52 certification listing the courses, programs or seminars  
53 of instruction successfully completed by the person. The  
54 certification shall be executed by, or on behalf of, the  
55 organization sponsoring the courses, programs or  
56 seminars of instruction.

57 (f) Any person, failing to meet the requirements  
58 mandated in this section, and who has not been granted  
59 an extension of time, with respect to such requirements,  
60 or who has submitted to the commissioner a false or  
61 fraudulent certificate of compliance shall, after a  
62 hearing thereon, which hearing may be waived by the  
63 person, be subjected to suspension of all licenses issued  
64 for any kind or kinds of insurance. No further license  
65 may be issued to the person for any kind or kinds of  
66 insurance until he or she has demonstrated to the  
67 satisfaction of the commissioner that he or she has  
68 complied with all of the requirements mandated by this  
69 section and all other applicable laws or rules.

70 (g) Hearings for the violation of any provision of this  
71 section, and the administrative procedure prior to,  
72 during and following these hearings shall be conducted

73 in accordance with the provisions of article two of this  
74 chapter.

75 (h) The commissioner is authorized to hire personnel  
76 and make reasonable expenditures as deemed necessary  
77 for purposes of establishing and maintaining a system  
78 of continuing education for insurers.

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## CHAPTER 110

(Com. Sub. for H. B. 4195—By Mr. Speaker, Mr. Chambers,  
and Delegate R. Burk)

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[Passed March 10, 1990: in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections one, two, three, four, five, seven, eight, ten, fourteen, eighteen, nineteen-a, twenty-one, twenty-nine and thirty-six, article ten, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article ten by adding thereto three new sections, designated sections thirty-seven, thirty-eight and thirty-nine; to amend and reenact section two, article twenty-two; section two, article twenty-three; section four, article twenty-four; section six, article thirty-one; and section three, article thirty-two, all of chapter thirty-three; to further amend said article twenty-four by adding thereto twenty-nine new sections, designated sections fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one and forty-two; to amend article twenty-five of said chapter thirty-three by adding thereto a new section, designated section nineteen; to amend article twenty-five-a of said chapter thirty-three by adding thereto a new section, designated section thirty; and to further amend chapter thirty-three by adding thereto two new articles, designated articles thirty-four and thirty-five, all relating to insurance; rehabilitation and

liquidation; definitions; jurisdiction; venue; appeal of delinquency proceedings; exclusive remedy; commencement of delinquency proceedings; injunction or other orders; grounds for rehabilitation of domestic insurers; grounds for conserving assets of foreign and alien insurer; order of rehabilitation; conduct of delinquency proceedings against domestic or alien insurers; proof of claims; priority of distribution; uniform insurers liquidation act; allowance of certain claims; creating preference among creditors; disbursement of assets; distribution of assets; unclaimed and withheld funds; immunity in receivership proceedings; representation of the special deputy supervisor; farmers' mutual fire insurance companies, applicability of other provisions; fraternal benefit societies, applicability of other provisions; hospital service corporations; medical service corporations; dental service corporations; exemptions; applicability of insurance laws; definitions; jurisdiction; venue and appeal of delinquency proceedings; exclusive remedy; commencement of delinquency proceedings; ex parte orders; injunctions and other orders; grounds for rehabilitation of a corporation; grounds for liquidation; grounds for administrative supervision; order of rehabilitation; order of liquidation; conduct of delinquency proceedings against a corporation; claims of nonresidents against a corporation; proof of claims; priority of certain claims; order of distribution; attachment; garnishment; execution; deposit of moneys collected; exemption of commissioner from fees; borrowing on pledge of assets; date rights fixed on liquidation; voidable transfers; priority of claims for compensation; offsets; allowance of claims; time within which claims to be filed; assessment; creating preference among creditors; disbursement of assets; distribution of assets; unclaimed and withheld funds; immunity in receivership proceedings; health care corporations, administrative supervision; health maintenance organization act, administrative supervision; captive insurance, corporate organization; risk retention act, charter and license requirements for domestic groups; administrative supervision; definitions; applicability; notice to comply with written require-

ments of commissioner; noncompliance; administrative supervision; confidentiality of certain proceedings and records; prohibited acts during period of supervision; administrative election of proceedings; rules; meetings between the commissioner and the special deputy supervisor; special deputy supervisor appointed; expenses; immunity; severability; criminal sanctions for failure to report impairment; definitions; duty to notify; and penalty.

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

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

### CHAPTER 33. INSURANCE.

#### Article

10. Rehabilitation and Liquidation.
22. Farmers' Mutual Fire Insurance Companies.
23. Fraternal Benefit Societies.

24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.
25. Health Care Corporations.
- 25A. Health Maintenance Organization Act.
31. Captive Insurance.
32. Risk Retention Act.
34. Administrative Supervision.
35. Criminal Sanctions for Failure to Report Impairment.

#### ARTICLE 10. REHABILITATION AND LIQUIDATION.

- §33-10-1. Definitions.
- §33-10-2. Jurisdiction, venue and appeal of delinquency proceedings; exclusive remedy.
- §33-10-3. Commencement of delinquency proceedings.
- §33-10-4. Injunctions or other orders.
- §33-10-5. Grounds for rehabilitation of domestic insurers.
- §33-10-7. Grounds for conserving assets of foreign insurers.
- §33-10-8. Grounds for conserving assets of alien insurers.
- §33-10-10. Order of rehabilitation.
- §33-10-14. Conduct of delinquency proceedings against domestic or alien insurers.
- §33-10-18. Proof of claims.
- §33-10-19a. Priority of distribution.
- §33-10-21. Uniform Insurers Liquidation Act.
- §33-10-29. Allowance of certain claims.
- §33-10-36. Creating preference among creditors; disbursement of assets.
- §33-10-37. Distribution of assets.
- §33-10-38. Unclaimed and withheld funds.
- §33-10-39. Immunity in receivership proceedings and representation of the special deputy supervisor.

#### §33-10-1. Definitions.

1 For the purpose of this article the following defini-  
2 tions shall apply:

3 (a) "Impairment" or "insolvency" means when the  
4 capital of a stock insurer, or the surplus of a mutual or  
5 reciprocal insurer shall not at least equal all liabilities  
6 and required reserves together with its total issued and  
7 outstanding capital stock if a stock insurer, or the  
8 minimum surplus if a mutual or reciprocal insurer,  
9 required by this chapter to be maintained for the kind  
10 or kinds of insurance it is then licensed to transact.

11 (b) "Insurer" means any person, firm, corporation,  
12 association or aggregation of persons doing an insurance  
13 business and which is or has been subject to the  
14 insurance supervisory authority of, or to liquidation,

15 rehabilitation, reorganization or conservation by the  
16 commissioner or the equivalent insurance supervisory  
17 official of another state.

18 (c) "Delinquency proceeding" means any proceeding  
19 commenced against an insurer pursuant to this article  
20 for the purpose of liquidating, rehabilitating, reorgan-  
21 izing or conserving such insurer.

22 (d) "State" means any state, district or territory of the  
23 United States.

24 (e) "Foreign country" means any other jurisdiction not  
25 in any state.

26 (f) "Domiciliary state" means the state in which an  
27 insurer is incorporated or organized, or in the case of  
28 an alien insurer as defined in section eight, article one  
29 of this chapter, the state in which such insurer, having  
30 become authorized to do business in such state, has at  
31 the commencement of delinquency proceedings, the  
32 largest amount of its assets held in trust and assets held  
33 on deposit for the benefit of its policyholders or  
34 policyholders and creditors in the United States or its  
35 state of entry.

36 (g) "Ancillary state" means any state other than a  
37 domiciliary state.

38 (h) "Reciprocal state" means any state other than this  
39 state in which in substance and effect the provisions of  
40 the Uniform Insurers Liquidation Act, as defined in  
41 section twenty-one of this article, are in force, including  
42 the provisions requiring that the insurance commis-  
43 sioner or equivalent insurance supervisory official be the  
44 receiver of a delinquent insurer.

45 (i) "General assets" means all property, real, personal  
46 or otherwise, not specifically mortgaged, pledged,  
47 deposited or otherwise encumbered for the security or  
48 benefit of specified persons or a limited class or classes  
49 of persons, and as to such specifically encumbered  
50 property the term includes all such property or its  
51 proceeds in excess of the amount necessary to discharge  
52 the sum or sums secured thereby. Assets held in trust  
53 and assets held on deposit for the security or benefit of

54 all policyholders or all policyholders and creditors in  
55 more than a single state shall be deemed general assets.

56 (j) "Preferred claim" means any claim with respect to  
57 which the terms of this article accord priority of  
58 payments from the general assets of the insurer.

59 (k) "Special deposit claim" means any claim secured  
60 by a deposit made pursuant to statute for the security  
61 or benefit of a limited class or classes of persons, but  
62 not including any general assets.

63 (l) "Secured claim" means any claim secured by  
64 mortgage, trust deed, pledge, deposit as security,  
65 escrow, or otherwise, but not including special deposit  
66 claim or claims against general assets. The term also  
67 includes claims which more than four months prior to  
68 the commencement of delinquency proceedings in the  
69 state of the insurer's domicile have become liens upon  
70 specific assets by reason of judicial process.

71 (m) "Receiver" means receiver, liquidator, rehabilita-  
72 tor, or conservator as the context may require.

73 (n) "Guaranty association" means the West Virginia  
74 Insurance Guaranty Association created by article  
75 twenty-six of this chapter, the West Virginia Life and  
76 Health Insurance Guaranty Association Act created by  
77 article twenty-six-a of this chapter, and any other  
78 similar entity now or hereafter created by the Legisla-  
79 ture of this state for the payment of claims of insolvent  
80 insurers.

81 (o) "Foreign guaranty association" means any similar  
82 entities now in existence in or hereafter created by the  
83 Legislature of any other state.

**§33-10-2. Jurisdiction, venue and appeal of delinquency  
proceedings; exclusive remedy.**

1 (a) The circuit courts of this state or the judges thereof  
2 in vacation are vested with exclusive original jurisdic-  
3 tion of delinquency proceedings under this article, and  
4 are authorized to make all necessary and proper orders  
5 to carry out the purposes of this article.

6 (b) The venue of delinquency proceedings against a  
7 domestic insurer shall be in the circuit court of the



8 county of the insurer's principal place of business. The  
9 venue of such proceedings against foreign insurers, alien  
10 insurers or domestic insurers in which their principal  
11 place of business is outside of the State of West Virginia  
12 shall be in the circuit court of Kanawha county.

13 (c) With the exception of administrative supervision  
14 pursuant to article thirty-four of this chapter, delin-  
15 quency proceedings pursuant to this article shall  
16 constitute the sole and exclusive method of liquidating,  
17 rehabilitating, reorganizing or conserving an insurer,  
18 and no court shall entertain a petition for the commence-  
19 ment of such proceedings unless the same has been filed  
20 in the name of the state on the relation of the insurance  
21 commissioner.

22 (d) An appeal shall lie to the supreme court of appeals  
23 from an order granting or refusing rehabilitation,  
24 liquidation, or conservation, and from every other order  
25 in delinquency proceedings having the character of a  
26 final order as to the particular portion of the proceed-  
27 ings embraced therein.

28 (e) At any time after an order is made under section  
29 ten or eleven of this article, the commissioner may  
30 remove the principal office of the insurer proceeded  
31 against to Kanawha County. In the event of such  
32 removal, the court wherein the proceeding was origi-  
33 nally commenced shall, upon the application of the  
34 commissioner, direct its clerk to transmit all the  
35 pleadings, motions and other papers filed therein with  
36 such clerk to the clerk of the circuit court of Kanawha  
37 County. The proceeding shall thereafter be subject to the  
38 jurisdiction of the Kanawha County circuit court and  
39 conducted in the same manner as though it had been  
40 commenced in the Kanawha County circuit court.

### §33-10-3. Commencement of delinquency proceedings.

1 (a) The commissioner may file in the appropriate  
2 circuit court of this state, as provided in section two of  
3 this article, a petition alleging, with respect to a  
4 domestic insurer:

5 (1) That there exists any grounds that would justify

6 a court order for a delinquency proceeding against an  
7 insurer under this act;

8 (2) That the interests of policyholders, creditors or the  
9 public will be endangered by delay; and

10 (3) The contents of an order deemed necessary by the  
11 commissioner.

12 (b) Upon a filing under subsection (a), the court may  
13 issue forthwith, ex parte and without a hearing, the  
14 requested order which shall direct the commissioner to  
15 take possession and control of all or a part of the  
16 property, books, accounts, documents, and other records  
17 of an insurer, and of the premises occupied by it for  
18 transaction of its business; and until further order of the  
19 court enjoin the insurer and its officers, managers,  
20 agents, and employees from disposition of its property  
21 and from the transaction of its business except with the  
22 written consent of the commissioner.

23 (c) The court shall specify in the order what its  
24 duration shall be, which shall be such time as the court  
25 deems necessary for the commissioner to ascertain the  
26 condition of the insurer. On motion of either party or  
27 on its own motion, the court may from time to time hold  
28 such hearings as it deems desirable after such notice as  
29 it deems appropriate, and may extend, shorten, or  
30 modify the terms of the seizure order. The court shall  
31 vacate the seizure order if the commissioner fails to  
32 commence a delinquency proceeding under this article  
33 after having had a reasonable opportunity to do so. An  
34 order of the court pursuant to a formal proceeding  
35 under this article shall ipso facto vacate the seizure  
36 order.

37 (d) Entry of a seizure order under this section shall  
38 not constitute an anticipatory breach of any contract of  
39 the insurer.

40 (e) An insurer subject to an ex parte order under this  
41 section may petition the court at any time after the  
42 issuance of such order for a hearing and review of the  
43 order. The court shall hold such hearing and review not  
44 more than fifteen days after the request. Subject to the

45 approval of the court, a hearing under this subsection  
46 may be held privately in chambers if the insurer  
47 proceeded against so requests.

48 (f) If, at any time after the issuance of such an order,  
49 it appears to the court that any person whose interest  
50 is or will be substantially affected by the order did not  
51 appear at the hearing and has not been served, the court  
52 may order that notice be given. An order that notice be  
53 given shall not stay the effect of any order previously  
54 issued by the court.

#### §33-10-4. Injunctions or other orders.

1 (a) Upon application by the commissioner for an order  
2 under this article:

3 (1) The court may without notice issue an injunction  
4 restraining the insurer, its officers, directors, stock-  
5 holders, members, subscribers, agents and all other  
6 persons from the transaction of its business or the waste  
7 or disposition of its property until the further order of  
8 the court.

9 (2) The court may at any time during a proceeding  
10 under this article issue such other injunctions or orders  
11 as may be deemed necessary to prevent interference  
12 with the commissioner or the proceeding, or waste of the  
13 assets of the insurer, or the commencement or prosecu-  
14 tion of any actions, or the obtaining of preferences,  
15 judgments, attachments or other liens, or the making of  
16 any levy against the insurer or against its assets or any  
17 part thereof.

18 (3) The court may order any managing general agent  
19 or attorney in fact to release to the commissioner any  
20 books, records, accounts, documents or other writings  
21 relating to the business of such person: *Provided*, That  
22 any of the same or the property of such an agent or  
23 attorney shall be returned when no longer necessary to  
24 the commissioner or at any time the court after notice  
25 and hearing shall so direct.

26 (b) Any person having possession of and refusing to  
27 deliver any of the books, records, or assets of an insurer  
28 against whom a seizure order has been issued by the

29 commissioner, shall be guilty of a misdemeanor and  
30 punishable by fine not exceeding one thousand dollars  
31 or imprisoned not more than one year, or both such fine  
32 and imprisonment.

33 (c) Whenever the commissioner makes any seizure as  
34 provided in section three, it shall be the duty of the  
35 sheriff of any county of this state, and of the police  
36 department of any municipality therein, to furnish the  
37 commissioner, upon demand, with such deputies,  
38 patrolmen or officers as may be necessary to assist the  
39 commissioner in making and enforcing any such seizure.

40 (d) Notwithstanding any other provision of law, no  
41 bond shall be required of the commissioner as a  
42 prerequisite for the issuance of any injunction or  
43 restraining order pursuant to this section.

**§33-10-5. Grounds for rehabilitation of domestic insurers.**

1 The commissioner may apply to the court for an order  
2 appointing him as receiver of and directing him to  
3 rehabilitate a domestic insurer or the United States  
4 branch of an alien insurer having trusteed assets in this  
5 state, upon one or more of the following grounds. That  
6 the insurer:

7 (a) Is impaired or insolvent.

8 (b) Has refused to submit to reasonable examination  
9 by the commissioner, its property, books, records,  
10 accounts or affairs or those of any subsidiary or related  
11 company within the control of the insurer, or those of  
12 any person having executive authority in the insurer as  
13 far as they pertain to the insurer.

14 (c) Has failed to comply with an order of the commis-  
15 sioner to make good an impairment of capital or surplus  
16 or both.

17 (d) Has transferred or attempted to transfer substan-  
18 tially its entire property or business, or has entered into  
19 any transaction the effect of which is to merge substan-  
20 tially its entire property or business in that of any other  
21 insurer or other legal entity without having first  
22 obtained the written approval of the commissioner.

23 (e) Has willfully violated its charter, articles of  
24 incorporation, its bylaws, any law of this state or any  
25 valid order of the commissioner.

26 (f) Has an officer, director, or manager who has  
27 refused to be examined under oath concerning its  
28 affairs, for which purpose the commissioner is hereby  
29 authorized to conduct and to enforce by all appropriate  
30 and available means any such examination under oath  
31 in any other state or territory of the United States, in  
32 which any such officer, director, or manager may then  
33 presently be, to the full extent permitted by the laws of  
34 such other state or territory, this special authorization  
35 considered.

36 (g) Has been the subject of an application for the  
37 appointment of a receiver, trustee, custodian, or  
38 sequestrator of the insurer or its property otherwise  
39 than pursuant to the provisions of this chapter, but only  
40 if such appointment has been made or is imminent and  
41 its effect is or would be to oust the courts of this state  
42 of jurisdiction hereunder.

43 (h) Has consented to such an order through a majority  
44 of its directors, stockholders, members or subscribers.

45 (i) Has failed to pay a final judgment rendered against  
46 it in this state upon any insurance contract issued or  
47 assumed by it, within thirty days after the judgment  
48 became final or within thirty days after the time for  
49 taking an appeal has expired or within thirty days after  
50 dismissal of an appeal before final determination,  
51 whichever date is the later.

**§33-10-7. Grounds for conserving assets of foreign  
insurers.**

1 The commissioner may apply to the court for an order  
2 appointing him as receiver or ancillary receiver, and  
3 directing him to conserve the assets within this state, of  
4 a foreign insurer upon any of the following grounds:

5 (a) Upon any of the grounds specified in sections five  
6 or six of this article, or

7 (b) Upon the ground that its property has been

8 sequestrated in its domiciliary state or in any other  
9 state.

**§33-10-8. Grounds for conserving assets of alien insurers.**

1 The commissioner may apply to the court for an order  
2 appointing him as receiver or ancillary receiver, and  
3 directing him to conserve the assets within this state, of  
4 any alien insurer upon any of the following grounds:

5 (a) Upon any of the grounds specified in sections five  
6 or six of this article,

7 (b) Upon the ground that the insurer has failed to  
8 comply, within the time designated by the commis-  
9 sioner, with an order made by him to make good an  
10 impairment of its trusted funds, or

11 (c) Upon the ground that the property of the insurer  
12 has been sequestrated in a country other than the  
13 United States.

**§33-10-10. Order of rehabilitation.**

1 (a) An order to rehabilitate a domestic insurer or the  
2 United States branch of an alien insurer having trusted  
3 assets in this state shall direct the commissioner  
4 forthwith to take possession of the property of the  
5 insurer and to conduct the business thereof, and to take  
6 such steps toward removal of the causes and conditions  
7 which have made rehabilitation necessary as the court  
8 may direct.

9 (b) If at any time the commissioner deems that further  
10 efforts to rehabilitate the insurer would be useless, he  
11 may apply to the court for an order of liquidation.

12 (c) The commissioner, or any interested person upon  
13 due notice to the commissioner, at any time may apply  
14 to the court for an order terminating the rehabilitation  
15 proceedings and permitting the insurer to resume  
16 possession of its property and the conduct of its business,  
17 but no such order shall be granted except when, after  
18 a full hearing, the court has determined that the  
19 purposes of the proceeding have been fully accomp-  
20 lished.

**§33-10-14. Conduct of delinquency proceedings against domestic or alien insurers.**

1 (a) Whenever under this article a receiver is to be  
2 appointed in delinquency proceedings for a domestic or  
3 alien insurer, the court shall appoint the insurance  
4 commissioner as such receiver. The court shall order the  
5 commissioner forthwith to take possession of the assets  
6 of the insurer and to administer the same under the  
7 orders of the court.

8 (b) As domiciliary receiver, the commissioner shall be  
9 vested by operation of law with the title to all the  
10 property, contracts, and rights of action and all of the  
11 books and records of the insurer, wherever located, as  
12 of the date of entry of the order directing him to  
13 rehabilitate or liquidate a domestic insurer or to  
14 liquidate the United States branch of an alien insurer  
15 domiciled in this state and he shall have the right to  
16 recover the same and reduce the same to possession;  
17 except that ancillary receivers in reciprocal states shall  
18 have, as to assets located in their respective states, the  
19 rights and powers which are herein prescribed for  
20 ancillary receivers appointed in this state as to assets  
21 located in this state.

22 (c) The recording of a certified copy of the order  
23 directing possession to be taken in the office of the clerk  
24 of the county commission of the county where the  
25 proceedings are pending and in the office of the clerk  
26 of the county commission of any county wherein the  
27 insurer has property or other assets, recorded in the  
28 same manner as deeds to real property are recorded,  
29 shall impart the same notice as would be imparted by  
30 a deed, bill of sale, or other evidence of title duly  
31 recorded or filed.

32 (d) The commissioner as domiciliary receiver shall be  
33 responsible for the proper administration of all assets  
34 coming into his possession or control. The court may at  
35 any time require a bond from him or his deputies if  
36 deemed desirable for the protection of such assets. The  
37 cost of such shall be paid out of the assets of the insurer  
38 as a cost of administration.

39 (e) Upon taking possession of the assets of an insurer,  
40 the domiciliary receiver shall, subject to the direction of  
41 the court, immediately proceed to conduct the business  
42 of the insurer or to take such steps as are authorized  
43 by this article for the purpose of rehabilitating,  
44 liquidating, or conserving the affairs or assets of the  
45 insurer.

46 (f) In connection with delinquency proceedings, the  
47 commissioner may appoint one or more special deputy  
48 commissioners of insurance to act for him and may  
49 employ such counsel, clerks, and assistants as he deems  
50 necessary. The compensation of the special deputies,  
51 counsel, clerks, or assistants and all expenses of taking  
52 possession of the insurer and of conducting the proceed-  
53 ings shall be fixed by the receiver, subject to the  
54 approval of the court, and shall be paid out of the funds  
55 or assets of the insurer. In the event the property of such  
56 person does not contain cash or liquid assets sufficient  
57 to defray the cost of the service required to be per-  
58 formed under the terms of this article, the commissioner  
59 may pay the cost of such services out of the commission-  
60 er's "Operating-Additional Fees" account. Any amount  
61 so paid shall be deemed expenses of administration and  
62 shall be repaid to said fund out of the first available  
63 moneys in the estate. Within the limits of duties imposed  
64 upon them, special deputies shall possess all the powers  
65 given to and, in the exercise of those powers, shall be  
66 subject to all of the duties imposed upon the receiver  
67 with respect to such proceedings.

**§33-10-18. Proof of claims.**

1 (a) All claims against an insurer against which  
2 delinquency proceedings have begun shall set forth in  
3 reasonable detail the amount of the claim, or the basis  
4 upon which such amount can be ascertained, the facts  
5 upon which the claim is based, and the priorities  
6 asserted, if any. All such claims shall be verified by the  
7 affidavit of the claimant, or someone authorized to act  
8 on his behalf and having knowledge of the facts, and  
9 shall be supported by such documents as may be  
10 material thereto.



11 (b) All claims filed in this state shall be filed with the  
12 receiver, whether domiciliary or ancillary, in this state,  
13 on or before the last date for filing as specified in this  
14 article.

15 (c) When a claim is denied in whole or in part by the  
16 liquidator, written notice of the determination shall be  
17 given to the claimant or his attorney by first class mail  
18 at the address shown in the proof of claim. Within sixty  
19 days from the mailing of the notice, the claimant may  
20 file his objections with the liquidator. If no such filing  
21 is made, the claimant may not further object to the  
22 determination.

23 (d) Whenever objections are filed with the liquidator  
24 and the liquidator does not alter his denial of the claim  
25 as a result of the objections, the liquidator shall ask the  
26 court for a hearing as soon as practicable and give notice  
27 of the hearing by first class mail to the claimant or his  
28 attorney and to any other persons directly affected, not  
29 less than ten nor more than thirty days before the date  
30 of the hearing. The matter may be heard by the court  
31 or by a court-appointed referee who shall submit  
32 findings of fact along with his recommendation. Upon  
33 receipt of such report, the court shall fix a time for  
34 hearing the claim and shall direct that the claimant or  
35 the receiver, as the court shall specify, shall give such  
36 notice as the court shall determine to such persons as  
37 shall appear to the court to be interested therein. All  
38 such notices shall specify the time and place of the  
39 hearing and shall concisely state the amount and nature  
40 of the claim, the priorities asserted, if any, and the  
41 recommendation of the receiver with reference thereto.

42 (e) At the hearing, all persons interested shall be  
43 entitled to appear and the court shall enter an order  
44 allowing, allowing in part, or disallowing the claim. Any  
45 such order shall be deemed to be an appealable order.

### §33-10-19a. Priority of distribution.

1 The priority of distribution of claims from the  
2 insurer's estate shall be in accordance with the order in  
3 which each class of claims is herein set forth. Every  
4 claim in each class shall be paid in full or adequate

5 funds retained for such payment before the members of  
6 the next class receive any payment. No subclasses shall  
7 be established within any class. No claim by a share-  
8 holder, policyholder or other creditor shall be permitted  
9 to circumvent the priority classes through the use of  
10 equitable remedies. The order of distribution shall be:

11 (a) Class I. The costs and expenses of administration,  
12 including, but not limited to, the following:

13 (1) The actual and necessary costs of preserving or  
14 recovering the assets of the insurer;

15 (2) Compensation for all services rendered in the  
16 liquidation;

17 (3) Any necessary filing fees;

18 (4) The fees and mileage payable to witnesses;

19 (5) Reasonable attorney's fees; and

20 (6) All expenses incurred by the department of  
21 insurance arising out of the enforcement of chapter  
22 thirty-three and its regulations.

23 (b) Class II. Debts due to employees for compensation  
24 under the provisions of section twenty-seven of this  
25 article.

26 (c) Class III. All claims for refund of unearned  
27 premiums under nonassessable policies and all claims of  
28 policyholders including such claims of the federal or any  
29 state or local government for losses incurred and third  
30 party claims of an insolvent insurer and all reasonable  
31 claims of the West Virginia insurance guaranty associ-  
32 ations and associations or entities performing a similar  
33 function in other states.

34 (d) Class IV. Claims of general creditors including  
35 claims of ceding and assuming companies in their  
36 capacity as such.

37 (e) Class V. Claims of the federal or any state or local  
38 government. Claims, including those of any governmen-  
39 tal body for a penalty or forfeiture, shall be allowed in  
40 this class only to the extent of the pecuniary loss  
41 sustained from the act, transaction or proceeding out of

42 which the penalty or forfeiture arose, with reasonable  
43 and actual costs occasioned thereby. The remainder of  
44 such claims shall be postponed to the class of claims  
45 under subdivision (h) of this section.

46 (f) Class VI. Claims filed late or any other claims other  
47 than claims under subdivisions (g) and (h) of this section.

48 (g) Class VII. Surplus or contribution notes, or similar  
49 obligations and premium refunds on assessable policies.  
50 Payments to members of domestic mutual insurance  
51 companies shall be limited in accordance with law.

52 (h) Class VIII. The claims of shareholders or other  
53 owners.

### §33-10-21. Uniform Insurers Liquidation Act.

1 (a) Paragraphs (b) to (m), inclusive, of section one of  
2 this article, together with sections four, and fourteen to  
3 twenty, inclusive, of this article constitute and may be  
4 referred to as the Uniform Insurers Liquidation Act.

5 (b) The Uniform Insurers Liquidation Act shall be so  
6 interpreted and construed as to effectuate its general  
7 purpose to make uniform the law of those states that  
8 enact it. To the extent that its provisions when appli-  
9 cable conflict with other provisions of this article the  
10 provisions of such act shall control.

### §33-10-29. Allowance of certain claims.

1 (a) No contingent claim shall share in a distribution  
2 of the assets of an insurer which has been adjudicated  
3 to be insolvent by an order made pursuant to this article,  
4 except that such claim shall be considered, if properly  
5 presented, and may be allowed to share where:

6 (1) It does not prejudice the orderly administration of  
7 the liquidation, or

8 (2) There is a surplus and the liquidation is thereafter  
9 conducted upon the basis that such insurer is solvent.

10 (b) Where an insurer has been so adjudicated to be  
11 insolvent any person who has a cause of action against  
12 an insured of such insurer under a liability insurance  
13 policy issued by such insurer shall have the right to file

14 a claim in the liquidation proceeding, regardless of the  
15 fact that such claim may be contingent, and such claim  
16 may be allowed:

17 (1) If it may be reasonably inferred from the proof  
18 presented upon such claim that such person would be  
19 able to obtain a judgment upon such cause of action  
20 against such insured, and

21 (2) If such person shall furnish suitable proof, unless  
22 the court for good cause shown shall otherwise direct,  
23 that no further valid claim against such insurer arising  
24 out of his cause of action other than those already  
25 presented can be made, and

26 (3) If the total liability of such insurer to all claimants  
27 arising out of the same act of its insured shall be no  
28 greater than its maximum liability would be were it not  
29 in liquidation.

30 (c) No judgment against such an insured taken after  
31 the date of entry of the liquidation order shall be  
32 considered in the liquidation proceedings as evidence of  
33 liability, or of the amount of damages, and no judgment  
34 against an insured taken by default or by collusion prior  
35 to the entry of the liquidation order shall be considered  
36 as conclusive evidence in the liquidation proceedings,  
37 either of the liability of such insured to such person upon  
38 such cause of action or of the amount of damages to  
39 which such person is therein entitled.

40 A claim by a third party founded upon an insurance  
41 policy may be allowed without requiring such claim to  
42 be reduced to judgment, provided it can be reasonably  
43 inferred from the proof presented that the claimant  
44 would be able to obtain a judgment upon his cause of  
45 action against the insured and that such judgment  
46 would represent a liability of the insurer in liquidation  
47 under the policy of insurance upon which such claim is  
48 founded.

49 (d) No claim of any secured claimant shall be allowed  
50 at a sum greater than the difference between the value  
51 of the claim without security and the value of the  
52 security itself as of the date of the entry of the order

53 of liquidation or such other date set by the court for  
54 determining rights and liabilities as provided in section  
55 twenty-five of this article unless the claimant shall  
56 surrender his security to the commissioner, in which  
57 event the claim shall be allowed in the full amount for  
58 which it is valued.

59 (e) Whenever a creditor, whose claim against an  
60 insurer is secured, in whole or in part, by the under-  
61 taking of another person, fails to prove and file that  
62 claim, the other person may do so in the creditor's name,  
63 and shall be subrogated to the rights of the creditor,  
64 whether the claim has been filed by the creditor or by  
65 the other person in the creditor's name, to the extent  
66 that he discharges the undertaking. In the absence of  
67 an agreement with the creditor to the contrary, the  
68 other person shall not be entitled to any distribution,  
69 however, until the amount paid to the creditor on the  
70 undertaking plus the distributions paid on the claim  
71 from the insurer's estate to the creditor equals the  
72 amount of the entire claim of the creditor. Any excess  
73 received by the creditor shall be held by him in trust  
74 for such other person. The term "other person", as used  
75 in this section, is not intended to apply to a guaranty  
76 association or foreign guaranty association.

77 (f) Unless such claim is filed in the manner and within  
78 the time provided in section eighteen, it shall not be  
79 entitled to filing or allowance, and no action may be  
80 maintained thereon. In the liquidation, pursuant to the  
81 provisions of this article, of any domestic insurer which  
82 has issued policies insuring the lives of persons, the  
83 commissioner shall, within thirty days after the last day  
84 set for the filing of claims, make a list of the persons  
85 who have not filed proofs of claim with him and to  
86 whom, according to the books of said insurer, there are  
87 amounts owing under such policies, and he shall set  
88 opposite the name of each such person the amount so  
89 owing to such person. Each person whose name shall  
90 appear upon said list shall be deemed to have duly filed,  
91 prior to the last day set for the filing of claims, a claim  
92 for the amount set opposite his name on said list.

93 (g) Claims founded upon unliquidated or undeter-

94 mined demands must be filed within the time limit  
95 provided in this article for the filing of claims, but  
96 claims founded upon such demands shall not share in  
97 any distribution to creditors of a person proceeded  
98 against under section nineteen-a, until such claims have  
99 been definitely determined, proved and allowed.  
100 Thereafter, such claims shall share ratably with other  
101 claims of the same class in all subsequent distributions.

102 An unliquidated or undetermined claim or demand  
103 within the meaning of this article shall be deemed to be  
104 any such claim or demand upon which a right of action  
105 has accrued at the date of the order of liquidation and  
106 upon which the liability has not been determined or the  
107 amount thereof liquidated.

108 (h) The commissioner may require, as a condition of  
109 payment of the final liquidation dividend to a lender, or  
110 his assignee, who has filed a claim for an unearned  
111 premium as an assignee of the insured for valuable  
112 consideration:

113 That such assignee of the insured shall assign to the  
114 liquidator all his right, title, and interest in any  
115 unsatisfied debt of the insured to such assignee,  
116 pertaining to policies of the insolvent insurer, remaining  
117 unpaid after crediting the final liquidation dividend, if  
118 the amount of such unsatisfied debt is less than one  
119 hundred dollars and one cent.

120 That all of the documents giving rise to such debt be  
121 delivered to him or her.

122 (i) The commissioner may determine whether or not  
123 it will be feasible to attempt to collect any such assigned  
124 debt. If he determines not to pursue collection of any  
125 such debt, he shall file a declaration to that effect with  
126 the liquidation court and be relieved of any further  
127 responsibility in respect to such debt.

128 (j) As used in this section, "insured" means a natural  
129 person who purchased insurance from the insolvent  
130 insurer for personal, family, or household purposes.

**§33-10-36. Creating preference among creditors; disbursement of assets.**

1 (a) Within one hundred twenty days of a final

2 determination of insolvency of an insurance company by  
3 the circuit court, the commissioner shall make applica-  
4 tion to the court for approval of a proposal to disburse  
5 assets out of such company's marshaled assets, from  
6 time to time as such assets become available, to the West  
7 Virginia insurance guaranty association and any similar  
8 organization performing a similar function in another  
9 state. The West Virginia insurance guaranty association  
10 and any entity or person performing a similar function  
11 in other states shall hereinafter be referred to collec-  
12 tively as the associations. If the commissioner deter-  
13 mines that there are insufficient assets to disburse, the  
14 application required by this section shall be satisfied by  
15 a filing by the commissioner stating the reasons for this  
16 determination.

17 (b) Such proposal shall at least include provisions for:

18 (1) Reserving amounts for the payment of expenses of  
19 administration and of claims falling within the priori-  
20 ties established in the Uniform Insurers Liquidation Act  
21 but only with respect to such priorities higher than that  
22 of the associations;

23 (2) Disbursement of the assets marshaled to date and  
24 subsequent disbursement of assets as they become  
25 available;

26 (3) Equitable allocation of disbursements to each of  
27 the associations entitled thereto;

28 (4) The securing by the commissioner from each of the  
29 associations entitled to disbursements pursuant to this  
30 section of an agreement to return to the commissioner  
31 such assets, together with income earned on assets  
32 previously disbursed, as may be required to pay claims  
33 of secured creditors and claims falling within the  
34 priorities established in section twenty-seven of this  
35 article. No bond shall be required of any such associ-  
36 ation; and

37 (5) A full report to be made by the association to the  
38 commissioner accounting for all assets so disbursed to  
39 the association, all disbursements made therefrom, any

40 interest earned by the association on such assets and any  
41 other matter as the court may direct.

42 (c) The commissioner's proposal shall provide for  
43 disbursements to the associations in amounts estimated  
44 at least equal to the claim payments made or to be made  
45 thereby for which such associations could assert a claim  
46 against the commissioner, and shall further provide that  
47 if the assets available for disbursement from time to  
48 time do not equal or exceed the amount of such claim  
49 payments made or to be made by the association, then  
50 disbursements shall be in the amount of available assets.

51 (d) Notice of such application shall be given to the  
52 associations in and to the commissioners of insurance of  
53 each of the states. Any such notice shall be deemed to  
54 have been given when deposited in the United States  
55 mail, first class postage prepaid, at least thirty days  
56 prior to submission of such application to the court.  
57 Action on the application may be taken by the court  
58 provided the above required notice has been given and  
59 provided that the commissioner's proposal complies with  
60 subdivisions (1) and (2), subsection (b) hereof.

**§33-10-37. Distribution of assets.**

1 Under the direction of court, the liquidator shall pay  
2 distributions in a manner that will assure the proper  
3 recognition of priorities and a reasonable balance  
4 between the expeditious completion of the liquidation  
5 and the protection of unliquidated and undetermined  
6 claims, including third party claims. Distribution of  
7 assets in kind may be made at valuations set by  
8 agreement between the liquidator and the creditor and  
9 approved by the court.

**§33-10-38. Unclaimed and withheld funds.**

1 All unclaimed funds subject to distribution remaining  
2 in the liquidator's hands when he is ready to apply to  
3 the court for discharge, including the amount distrib-  
4 utable to any creditor, shareholder, member or other  
5 person who is unknown or cannot be found, shall be  
6 deposited with the state treasurer, and shall be paid  
7 without interest to the person entitled thereto or his



8 legal representative upon proof satisfactory to the state  
9 treasurer of his right thereto. Any amount on deposit not  
10 claimed within six years from the discharge of the  
11 liquidator shall be deemed to have been abandoned and  
12 shall be escheated to the state of West Virginia without  
13 formal escheat proceedings and be deposited with the  
14 general fund.

**§33-10-39. Immunity in receivership proceedings and representation of the special deputy supervisor.**

1 (a) No claim of any nature whatsoever that is directly  
2 related to the receivership of an insurer shall arise  
3 against, and no liability shall be imposed upon, the  
4 insurance commissioner, deputy commissioner, special  
5 deputy supervisor, or any person or entity acting as a  
6 receiver of an insurer, including surety, in rehabilita-  
7 tion, liquidation, or conservation as a result of a court  
8 order issued on or after the effective date of this article  
9 for any statement made or actions taken or not taken  
10 in the good faith exercise of their powers under law.  
11 However, this immunity shall not extend to acts or  
12 omissions which are malicious or grossly negligent. This  
13 qualified immunity extends to agents and employees of  
14 the receiver.

15 (b) In any civil proceeding filed against a special  
16 deputy supervisor appointed pursuant to this article, the  
17 special deputy supervisor shall be entitled to be  
18 represented by the attorney general.

**ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.**

**§33-22-2. Applicability of other provisions.**

1 Each company to the same extent such provisions are  
2 applicable to domestic mutual insurers shall be gov-  
3 erned by and be subject to the following articles of this  
4 chapter: Article one (definitions), article two (insurance  
5 commissioner), article four (general provisions) except  
6 that section sixteen of article four shall not be applicable  
7 thereto, article ten (rehabilitation and liquidation)  
8 except that under the provisions of section thirty-two of  
9 said article ten no assessment shall be levied against any

10 former member of a farmers' mutual fire insurance  
11 company who is no longer a member of the company at  
12 the time the order to show cause was issued, article  
13 eleven (unfair practices and frauds), article twelve  
14 (agents, brokers and solicitors) except that the agents'  
15 license fee shall be five dollars, article twenty-six (West  
16 Virginia Insurance Guaranty Association Act), article  
17 thirty (mine subsidence insurance) except that under the  
18 provisions of section six, article thirty, a farmers'  
19 mutual insurance company shall have the option of  
20 offering mine subsidence coverage to all of its policy-  
21 holders but shall not be required to do so, article thirty-  
22 three (annual audited financial report), and article  
23 thirty-four (administrative supervision), but only to the  
24 extent these provisions are not inconsistent with the  
25 provisions of this article.

#### ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.

##### §33-23-2. Applicability of other provisions.

1 Every fraternal benefit society shall be governed and  
2 be subject, to the same extent as other insurers  
3 transacting like kinds of insurance, to the following  
4 articles of this chapter: Article one (definitions), article  
5 two (insurance commissioner), article four (general  
6 provisions), article six, section thirty (fee for form and  
7 rate filing), article ten (rehabilitation and liquidation),  
8 article eleven (unfair trade practices), article twelve  
9 (agents, brokers, solicitors and excess lines), article  
10 thirteen (life insurance), article fifteen-a (long-term care  
11 insurance), article thirty-three (annual audited financial  
12 report) and article thirty-four (administrative supervi-  
13 sion).

#### ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

- §33-24-4. Exemptions; applicability of insurance laws.
- §33-24-14. Definitions.
- §33-24-15. Jurisdiction, venue and appeal of delinquency proceedings;  
exclusive remedy.
- §33-24-16. Commencement of delinquency proceedings.
- §33-24-17. Ex parte orders, injunctions and other orders.

- §33-24-18. Grounds for rehabilitation of a corporation.
- §33-24-19. Grounds for liquidation.
- §33-24-20. Grounds for administrative supervision.
- §33-24-21. Order of rehabilitation.
- §33-24-22. Order of liquidation of corporation.
- §33-24-23. Conduct of delinquency proceedings against a corporation.
- §33-24-24. Claims of nonresidents against a corporation.
- §33-24-25. Proof of claims.
- §33-24-26. Priority of certain claims.
- §33-24-27. Order of distribution.
- §33-24-28. Attachment, garnishment or execution.
- §33-24-29. Deposit of moneys collected.
- §33-24-30. Exemption of commissioner from fees.
- §33-24-31. Borrowing on pledge of assets.
- §33-24-32. Date rights fixed on liquidation.
- §33-24-33. Voidable transfers.
- §33-24-34. Priority of claims for compensation.
- §33-24-35. Offsets.
- §33-24-36. Allowance of claims.
- §33-24-37. Time within which claims to be filed.
- §33-24-38. Assessment.
- §33-24-39. Creating preference among creditors; disbursement of assets.
- §33-24-40. Distribution of assets.
- §33-24-41. Unclaimed and withheld funds.
- §33-24-42. Immunity in receivership proceedings.

**\*§33-24-4. Exemptions; applicability of insurance laws.**

1 Every such corporation is hereby declared to be a  
2 scientific, nonprofit institution and as such exempt from  
3 the payment of all property and other taxes. Every such  
4 corporation, to the same extent such provisions are  
5 applicable to insurers transacting similar kinds of  
6 insurance and not inconsistent with the provisions of this  
7 article, shall be governed by and be subject to the  
8 provisions as hereinbelow indicated, of the following  
9 articles of this chapter: Article two (insurance commis-  
10 sioner) except that under section nine of article two  
11 examinations shall be conducted at least once every four  
12 years, article four (general provisions) except that  
13 section sixteen of article four shall not be applicable  
14 thereto, article six, section thirty-four (fee for form and  
15 rate filing), article ten (rehabilitation and liquidation),  
16 article eleven (unfair practices and frauds), article

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\* Clerk's Note: §33-24-4 was also amended by S. B. 481 (Chapter 117), which passed prior to this act.

17 twelve (agents, brokers and solicitors) except that the  
18 agent's license fee shall be five dollars, article fifteen-  
19 a (long-term care insurance), section three-a, article  
20 sixteen (mental illness), section three-c, article sixteen  
21 (group accident and sickness insurance), section three-  
22 d, article sixteen (medicare supplement), section three-  
23 f, article sixteen (treatment of temporomandibular joint  
24 disorder and craniomandibular disorder), article  
25 twenty-eight (individual accident and sickness insurance  
26 minimum standards), article thirty-three (annual  
27 audited financial report) and article thirty-four (admi-  
28 nistrative supervision); and no other provision of this  
29 chapter shall apply to such corporations unless specif-  
30 ically made applicable by the provisions of this article.  
31 If, however, any such corporation shall be converted into  
32 a corporation organized for a pecuniary profit, or if it  
33 shall transact business without having obtained a license  
34 as required by section five of this article, it shall  
35 thereupon forfeit its right to these exemptions.

#### §33-24-14. Definitions.

1 For the purpose of sections fourteen through forty-six  
2 of this article:

3 (a) "Impairment" or "insolvency". A corporation shall  
4 be deemed to be impaired and the corporation shall be  
5 deemed to be insolvent, when such corporation shall not  
6 be possessed of assets at least equal to all liabilities and  
7 required reserves.

8 (b) "Corporation" shall be defined in section two of this  
9 article.

10 (c) "Delinquency proceeding" means any proceeding  
11 commenced against a corporation pursuant to this  
12 article for the purpose of liquidating, rehabilitating,  
13 supervising, reorganizing or conserving such  
14 corporation.

15 (d) "State" means any state, district or territory of the  
16 United States.

17 (e) "Foreign country" means any other jurisdiction not  
18 in any state.

19 (f) "Domiciliary state" means the state of West  
20 Virginia for any corporation.

21 (g) "Ancillary state" means any state other than West  
22 Virginia.

23 (h) "Reciprocal state" means any state other than this  
24 state in which in substance and effect the provisions of  
25 the Uniform Insurers Liquidation Act, as defined in  
26 section twenty-one of article ten of chapter thirty-three,  
27 are in force, including the provisions requiring that the  
28 insurance commissioner or equivalent insurance super-  
29 visory official be the receiver of a delinquent insurer.

30 (i) "General assets" means all property, real, personal  
31 or otherwise, not specifically mortgaged, pledged,  
32 deposited or otherwise encumbered for the security or  
33 benefit of specified persons or a limited class or classes  
34 of persons, and as to such specifically encumbered  
35 property the term includes all such property or its  
36 proceeds in excess of the amount necessary to discharge  
37 the sum or sums secured thereby. Assets held in trust  
38 and assets held on deposit for the security or benefit of  
39 all policyholders or all policyholders and creditors in  
40 more than a single state shall be deemed general assets.

41 (j) "Preferred claim" means any claim with respect to  
42 which the terms of this article accord priority of  
43 payments from the general assets of the insurer.

44 (k) "Special deposit claim" means any claim secured  
45 by a deposit made pursuant to statute for the security  
46 or benefit of a limited class or classes of persons, but  
47 not including any general assets.

48 (l) "Secured claim" means any claim secured by  
49 mortgage, trust, deed, pledge, deposit as security,  
50 escrow, or otherwise, but not including special deposit  
51 claim or claims against general assets. The term also  
52 includes claims which more than four months prior to  
53 the commencement of delinquency proceedings have  
54 become liens upon specific assets by reason of judicial  
55 process.

56 (m) "Receiver" means receiver, liquidator, rehabilita-  
57 tor, supervisor or conservator as the context may  
58 require.

**§33-24-15. Jurisdiction, venue and appeal of delinquency proceedings; exclusive remedy.**

1 (a) The circuit courts of this state or the judges thereof  
2 in vacation are vested with exclusive original jurisdic-  
3 tion of delinquency proceedings under this article, and  
4 are authorized to make all necessary and proper orders  
5 to carry out the purposes of this article.

6 (b) The venue of delinquency proceedings against a  
7 corporation shall be in the circuit court of the county  
8 of the corporation's principal place of business.

9 (c) Delinquency proceedings pursuant to this article  
10 shall constitute the sole and exclusive method of  
11 liquidating, rehabilitating, supervising, reorganizing or  
12 conserving a corporation, and no court shall entertain  
13 a petition for the commencement of such proceedings  
14 unless the same has been filed in the name of the state  
15 on the relation of the insurance commissioner.

16 (d) An appeal shall lie to the supreme court of appeals  
17 from an order granting or refusing rehabilitation,  
18 liquidation, supervision or conservation, and from every  
19 other order in delinquency proceedings having the  
20 character of a final order as to the particular portion  
21 of the proceedings embraced therein.

22 (e) At any time after an order is made under section  
23 sixteen or seventeen of this article the commissioner  
24 may remove the principal office of the corporation  
25 proceeded against to Kanawha County. In the event of  
26 such removal, the court wherein the proceeding was  
27 originally commenced shall, upon the application of the  
28 commissioner, direct its clerk to transmit all the  
29 pleadings, motions and other papers filed therein with  
30 such clerk to the clerk of the circuit court of Kanawha  
31 County. The proceeding shall thereafter be subject to the  
32 jurisdiction of the Kanawha County circuit court and  
33 conducted in the same manner as though it had been  
34 commenced in the Kanawha County circuit court.

**§33-24-16. Commencement of delinquency proceedings.**

1 The insurance commissioner shall commence any such

2 proceeding by an application to the court for an order  
3 directing the corporation to show cause why the  
4 commissioner should not have the relief prayed for. On  
5 the return of such order to show cause, and after a full  
6 hearing, the court, after consideration of the best  
7 interest of the insurer, policyholders, members, sub-  
8 scribers, creditors and the public, shall either deny the  
9 application or, upon a finding that there exists any  
10 ground set forth in this article for a delinquency  
11 proceeding and a finding that the relief prayed for by  
12 the commissioner is necessary, grant the application,  
13 together with such other relief as the nature of the case  
14 and the interest of policyholders, creditors, stockholders,  
15 members, subscribers, or the public require.

**§33-24-17. Ex parte orders, injunctions and other orders.**

1 (a) The commissioner may file in the appropriate  
2 circuit court of this state a petition for an ex parte order  
3 alleging, with respect to a corporation:

4 (1) That there exists any ground that would justify an  
5 application for a court order for a delinquency proceed-  
6 ing against a corporation under this article;

7 (2) That there exist sufficient exigent circumstances  
8 for an order to be issued without prior notice to the  
9 corporation and that the interests of policyholders,  
10 creditors or the public will be significantly endangered  
11 by delay or prior notice to the corporation; and

12 (3) The contents of a proposed order deemed necessary  
13 by the commissioner.

14 (b) Upon a filing under subsection (a), the court may  
15 issue forthwith, ex parte and without a hearing, the  
16 requested order, with such modifications as the court  
17 may deem necessary and appropriate, which shall direct  
18 the commissioner to take possession and control of all  
19 or a part of the property, books, accounts, documents,  
20 and other records of a corporation, and of the premises  
21 occupied by it for transaction of its business, and until  
22 further order of the court enjoin the corporation and its  
23 officers, managers, agents and employees from disposi-

24 tion of its property and from the transaction of its  
25 business except with the written consent of the  
26 commissioner.

27 (c) The court shall specify in the order what its  
28 duration shall be, which shall be such time as the court  
29 deems necessary for the commissioner to ascertain the  
30 condition of the corporation. On motion of either party  
31 or on its own motion, the court may from time to time  
32 hold such hearings as it deems desirable after such  
33 notice as it deems appropriate, and may extend, shorten,  
34 or modify the terms of the order. The court shall vacate  
35 the seizure order if the commissioner fails to commence  
36 a delinquency proceeding under this article within a  
37 reasonable time after entry of the ex parte order or the  
38 conclusion of any hearing held pursuant to subsection (e)  
39 whichever is later. An order of the court pursuant to a  
40 formal proceeding under this article shall ipso facto  
41 vacate the order.

42 (d) Entry of an order under this section shall not  
43 constitute an anticipatory breach of any contract of the  
44 corporation.

45 (e) A corporation subject to an ex parte order under  
46 this section may petition the court at any time after the  
47 issuance of such order for a hearing and review of the  
48 order. The court shall hold such hearing and review not  
49 more than fifteen days after the request. Subject to the  
50 approval of the court, a hearing under this subsection  
51 may be held privately in chambers if the corporation  
52 proceeded against so requests.

53 (f) If, at any time after the issuance of such an order,  
54 it appears to the court that any person whose interest  
55 is or will be substantially affected by the order did not  
56 appear at the hearing and has not been served, the court  
57 may order that notice be given. An order that notice be  
58 given shall not stay the effect of any order previously  
59 issued by the court.

60 (g) Upon application by the commissioner for an order  
61 under this article, or at any time thereafter:

62 (1) The court may without notice issue an injunction



63 restraining the corporation, its officers, directors,  
64 members, subscribers, agents and all other persons from  
65 the transaction of its business or the waste or disposition  
66 of its property until the further order of the court.

67 (2) The court may at any time during a proceeding  
68 under this article issue such other injunctions or orders  
69 as may be deemed necessary to prevent interference  
70 with the commissioner or the proceeding, or waste of the  
71 assets of the corporation, or the commencement or  
72 prosecution of any actions, or the obtaining of preferen-  
73 ces, judgments, attachments or other liens, or the  
74 making of any levy against the insurer or against its  
75 assets or any part thereof.

76 (3) The court may order any managing general agent  
77 or attorney in fact to release to the commissioner any  
78 books, records, accounts, documents or other writing  
79 relating to the business of such person: *Provided*, That  
80 any of the same or the property of such an agent or  
81 attorney shall be returned when no longer necessary to  
82 the commissioner or at any time the court after notice  
83 and hearing shall so direct.

84 (h) Any person having possession of and refusing to  
85 deliver any of the books, records, or assets of a  
86 corporation against whom a seizure order has been  
87 issued by the commissioner shall be guilty of a misde-  
88 meanor and punishable by fine not exceeding one  
89 thousand dollars or imprisonment not exceeding one  
90 year, or both such fine and imprisonment.

91 (i) Whenever the commissioner makes any seizures as  
92 provided in this article, it shall, on the demand of the  
93 commissioner, be the duty of the sheriff of any county  
94 of this state, and of the police department of any  
95 municipality therein, to furnish him with such deputies,  
96 patrolmen or officers as may be necessary to assist the  
97 commissioner in making and enforcing any such seizure.

98 (j) Notwithstanding any other provision of law, no  
99 bond shall be required of the commissioner as a  
100 prerequisite for the issuance of any injunction or  
101 restraining order pursuant to this section.

**§33-24-18. Grounds for rehabilitation of a corporation.**

1 The commissioner may apply to the court for an order  
2 appointing him as receiver of and directing him to  
3 rehabilitate a corporation upon one or more of the  
4 following grounds. That the corporation:

5 (a) Is impaired or insolvent.

6 (b) Has refused to submit to reasonable examination  
7 by the commissioner its property, books, records,  
8 accounts or affairs or those of any subsidiary or related  
9 company within the control of the insurer, or those of  
10 any person having executive authority in the corporation  
11 as far as they pertain to the corporation.

12 (c) Has failed to comply with an order of the commis-  
13 sioner to make good an impairment of surplus.

14 (d) Has transferred or attempted to transfer substan-  
15 tially its entire property or business, or has entered into  
16 any transaction the effect of which is to merge substan-  
17 tially its entire property or business in that of any other  
18 corporation or other legal entity without having first  
19 obtained the written approval of the commissioner.

20 (e) Has willfully violated its charter, articles of  
21 incorporation, its bylaws, or any law of this state or any  
22 valid order of the commissioner.

23 (f) Has an officer, director, or manager who has  
24 refused to be examined under oath concerning its  
25 affairs, for which purpose the commissioner is hereby  
26 authorized to conduct and to enforce by all appropriate  
27 and available means any such examination under oath  
28 in any other state or territory of the United States, in  
29 which any such officer, director, or manager may then  
30 presently be, to the full extent permitted by the laws of  
31 such other state or territory, this special authorization  
32 considered.

33 (g) Has been the subject of an application for the  
34 appointment of a receiver, trustee, custodian, or  
35 sequestrator of the corporation or its property otherwise  
36 than pursuant to the provisions of this chapter, but only  
37 if such appointment has been made or is imminent and

38 its effect is or would be to oust the courts of this state  
39 of jurisdiction hereunder.

40 (h) Has consented to such an order through a majority  
41 of its directors, stockholders, members or subscribers.

42 (i) Has failed to pay a final judgment rendered against  
43 it in this state upon any insurance contract issued or  
44 assumed by it, within thirty days after the judgment  
45 became final or within thirty days after the time for  
46 taking an appeal has expired or within thirty days after  
47 dismissal of an appeal before final determination,  
48 whichever date is the later.

**§33-24-19. Grounds for liquidation.**

1 The commissioner may apply to the court for an order  
2 appointing him as a receiver (if his appointment as  
3 receiver shall not be then in effect) and directing him  
4 to liquidate the business of such corporation regardless  
5 of whether or not there has been a prior order directing  
6 him to rehabilitate such corporation, upon any of the  
7 grounds specified in this article, or if such corporation:

8 (a) Has ceased transacting business for a period of one  
9 year, or

10 (b) Is an insolvent corporation and has commenced  
11 voluntary liquidation or dissolution, or attempts to  
12 commence or prosecute any action or proceeding to  
13 liquidate its business or affairs, or to dissolve its  
14 corporate charter, or to procure the appointment of a  
15 receiver, trustee, custodian, or sequestrator under any  
16 law except this chapter.

**§33-24-20. Grounds for administrative supervision.**

1 (a) Whenever the commissioner has reasonable cause  
2 to believe, and determines after a hearing held under  
3 subsection (e) of this section, that any such corporation  
4 has committed or engaged in, or is about to commit or  
5 engage in, any act, practice, or transaction that would  
6 subject it to delinquency proceedings under this article,  
7 he may make and serve upon such corporation and any  
8 other persons involved, such orders as are reasonably  
9 necessary to correct, eliminate or remedy such conduct,  
10 condition or ground.

11 (b) If upon examination or at any other time the  
12 commissioner has reasonable cause to believe that such  
13 corporation is in such condition as to render the  
14 continuance of its business hazardous to the public or  
15 to holders of its policies or certificates of insurance, or  
16 if such corporation gives its consent, then the commis-  
17 sioner shall upon his determination:

18 (1) Notify such corporation of his determination; and

19 (2) Furnish to the insurer a written list of the  
20 commissioner's requirements to abate his determination;  
21 or

22 (3) File an application with the court for an order of  
23 administrative supervision pursuant to sections sixteen  
24 and seventeen of this article.

25 (c) Upon the issuance of a court order of administra-  
26 tive supervision to the commissioner, the commissioner  
27 may appoint a supervisor to supervise such corporation.  
28 The order appointing a supervisor shall direct the  
29 supervisor to enforce orders issued by the court  
30 including orders requiring that such corporation may  
31 not do any of the following things during the period of  
32 supervision, without the prior approval of the commis-  
33 sioner or his supervisor:

34 (1) Dispose of, convey or encumber any of its assets  
35 or its business in force;

36 (2) Withdraw from any of its bank accounts;

37 (3) Lend any of its funds;

38 (4) Invest any of its funds;

39 (5) Transfer any of its property;

40 (6) Incur any debt, obligation or liability;

41 (7) Merge or consolidate with any company;

42 (8) Enter into any new reinsurance contract or treaty;

43 (9) Approve new premiums or renew any policies;

44 (10) Terminate, surrender, forfeit, convert or lapse

45 any insurance policy, certificate or contract, except for  
46 nonpayment of premiums due;

47 (11) Release, pay or refund premium deposits, accrued  
48 cash or loan values, unearned premiums, or other  
49 reserves on any insurance policy, certificate or contract;

50 (12) Make any material change in management; or

51 (13) Increase salaries and benefits of officers or  
52 directors or the preferential payment of bonuses,  
53 dividends, or other payments deemed preferential.

54 (d) Any such corporation subject to an order under  
55 this section shall comply with the lawful requirements  
56 of the commissioner and, if placed under supervision,  
57 shall have sixty days from the date the supervision order  
58 is served within which to comply with the requirements  
59 of the commissioner. In the event of such corporation's  
60 failure to comply within such times, the commissioner  
61 may institute proceedings under section sixteen of this  
62 article to have a rehabilitator or liquidator appointed,  
63 or extend the period of supervision.

64 (e) The notice of hearing under subsection (a) and any  
65 order issued pursuant to such subsection shall be served  
66 upon the insurer pursuant to the applicable rules of civil  
67 or administrative procedure. The notice of hearing shall  
68 state the time and place of hearing, and the conduct,  
69 condition or ground upon which the commissioner would  
70 base his order. Unless mutually agreed between the  
71 commissioner and the insurer, the hearing shall occur  
72 not less than ten days nor more than thirty days after  
73 the notice is served and shall be either in Kanawha  
74 County or in some other place convenient to the parties  
75 to be designated by the commissioner. The commissioner  
76 shall hold all hearings under subsection (a) privately  
77 unless the insurer requests a public hearing, in which  
78 case the hearing shall be public. Any order issued by  
79 the commissioner under subsection (a) shall be subject  
80 to immediate review by the appropriate circuit court  
81 upon application by the corporation or any party whose  
82 interests are substantially affected thereby.

83 (f) If any person has violated any supervision order

84 issued under this section which as to him was then still  
85 in effect, he shall be liable to pay a civil penalty imposed  
86 by the circuit court not to exceed ten thousand dollars:  
87 *Provided*, That the provisions of this subsection shall not  
88 apply to the commissioner, his employees or the  
89 supervisor.

90 (g) The commissioner may, at any time, pursuant to  
91 section sixteen or seventeen of this article, apply to the  
92 court which issued the order of administrative supervi-  
93 sion for such orders as may reasonably be necessary and  
94 proper to enforce its orders of supervision, including,  
95 but not limited to, restraining orders, preliminary  
96 injunctions and permanent injunctions.

97 (h) In the event that any person, subject to the  
98 provisions of this article, including officers, managers,  
99 directors, trustees, owners, employees or agents or any  
100 person with authority over or in charge of the corpora-  
101 tion's affairs, shall knowingly violate any valid order of  
102 the commissioner issued under the provisions of this  
103 section and, as a result of such violation, the net worth  
104 of the corporation shall be reduced or the corporation  
105 shall suffer loss it would not otherwise have suffered,  
106 said person shall become personally liable to the  
107 corporation for the amount of any such reduction or loss.  
108 The commissioner or supervisor is authorized to bring  
109 an action on behalf of the corporation in the circuit court  
110 to recover the amount of the reduction or loss together  
111 with any costs.

### §33-24-21. Order of rehabilitation.

1 (a) An order to rehabilitate a corporation shall direct  
2 the commissioner forthwith to take possession of the  
3 property of the corporation and to conduct the business  
4 thereof, and to take such steps toward removal of the  
5 causes and conditions which have made rehabilitation  
6 necessary as the court may direct.

7 (b) If at any time the commissioner deems that further  
8 efforts to rehabilitate the corporation would be useless,  
9 he may apply to the court for an order of liquidation.

10 (c) The commissioner, or any interested person upon

11 due notice to the commissioner, at any time may apply  
12 to the court for an order terminating the rehabilitation  
13 proceedings and permitting the corporation to resume  
14 possession of its property and the conduct of its business,  
15 but no such order shall be granted except when, after  
16 a full hearing, the court has determined that the  
17 purposes of the proceedings have been fully accom-  
18 plished.

**§33-24-22. Order of liquidation of corporation.**

1 (a) An order to liquidate the business of a corporation  
2 shall direct the commissioner forthwith to take posses-  
3 sion of the property of the corporation, to liquidate its  
4 business, to deal with the corporation's property and  
5 business in his own name as insurance commissioner or  
6 in the name of the corporation, as the court may direct,  
7 and to give notice to all creditors who may have claims  
8 against the corporation to present such claims.

9 (b) The commissioner may apply for and secure an  
10 order dissolving the corporate existence of a corporation  
11 upon his application for an order of liquidation of such  
12 corporation or at any time after such order has been  
13 granted.

**§33-24-23. Conduct of delinquency proceedings against a corporation.**

1 (a) Whenever under this article a receiver is to be  
2 appointed in delinquency proceedings for a corporation,  
3 the court shall appoint the insurance commissioner as  
4 such receiver. The court shall order the commissioner  
5 forthwith to take possession of the assets of the corpo-  
6 ration and to administer the same under the orders of  
7 the court.

8 (b) As domiciliary receiver, the commissioner shall be  
9 vested by operation of law with the title to all the  
10 property, contracts, and rights of action and all of the  
11 books and records of the corporation, wherever located,  
12 as of the date of entry of the order directing him to  
13 rehabilitate or liquidate a corporation and he shall have  
14 the right to recover the same and reduce the same to  
15 possession; except ancillary receivers in reciprocal states

16 shall have, as to assets located in their respective states,  
17 the rights and powers which are herein prescribed for  
18 ancillary receivers appointed in this state as to assets  
19 located in this state.

20 (c) The recording of a certified copy of the order  
21 directing possession to be taken in the office of the clerk  
22 of the county commission of the county where the  
23 proceedings are pending and in the office of the clerk  
24 of the county commission of any county wherein the  
25 corporation has property or other assets, recorded in the  
26 same manner as deeds to real property are recorded,  
27 shall impart the same notice as would be imparted by  
28 a deed, bill of sale, or other evidence of title duly  
29 recorded or filed.

30 (d) The commissioner as domiciliary receiver shall be  
31 responsible for the proper administration of all assets  
32 coming into his possession or control. The court may at  
33 any time require a bond from him or his deputies if  
34 deemed desirable for the protection of such assets. The  
35 cost of such shall be paid out of the assets of the  
36 corporation as a cost of administration.

37 (e) Upon taking possession of the assets of an insurer,  
38 the domiciliary receiver shall, subject to the direction of  
39 the court, immediately proceed to conduct the business  
40 of the corporation or to take such steps as are authorized  
41 by this article for the purpose of rehabilitating,  
42 liquidating, supervising or conserving the affairs or  
43 assets of the corporation.

44 (f) In connection with delinquency proceedings, the  
45 commissioner may appoint one or more special deputy  
46 commissioners of insurance to act for him and may  
47 employ such counsel, clerks, and assistants as he deems  
48 necessary. The compensation of the special deputies,  
49 counsel, clerks, or assistants and all expenses of taking  
50 possession of the corporation and of conducting the  
51 proceedings shall be fixed by the receiver, subject to the  
52 approval of the court, and shall be paid out of the funds  
53 or assets of the corporation. In the event the property  
54 of such person does not contain cash or liquid assets  
55 sufficient to defray the cost of the service required to



56 be performed under the terms of this article, the  
57 commissioner may pay the cost of such services out of  
58 the commissioner's "Operating-Additional Fees" ac-  
59 count. Any amount so paid shall be deemed expenses of  
60 administration and shall be repaid to said fund out of  
61 the first available moneys in the estate. Within the  
62 limits of duties imposed upon them, special deputies  
63 shall possess all the powers given to and, in the exercise  
64 of those powers, shall be subject to all of the duties  
65 imposed upon the receiver with respect to such proceed-  
66 ings.

**§33-24-24. Claims of nonresidents against a corporation.**

1 (a) In a delinquency proceeding begun in this state  
2 against a corporation, claimants residing in reciprocal  
3 states may file claims either with the ancillary receiv-  
4 ers, if any, in their respective states, or with the  
5 domiciliary receiver. All such claims must be filed on  
6 or before the last date fixed for the filing of claims in  
7 the domiciliary delinquency proceedings.

8 (b) Controverted claims belonging to claimants  
9 residing in reciprocal states may either be proved in this  
10 state, or if ancillary proceedings have been commenced  
11 in such reciprocal states, may be proved in those  
12 proceedings. In the event a claimant elects to prove his  
13 claim in ancillary proceeding, if notice of the claim and  
14 opportunity to appear and be heard is afforded the  
15 domiciliary receiver of this state as provided in section  
16 seventeen, article ten of this chapter with respect to  
17 ancillary proceedings in this state, the final allowance  
18 of such claim by the courts in the ancillary state shall  
19 be accepted in this state as conclusive as to its amount  
20 and shall also be accepted as conclusive as to its priority,  
21 if any, against special deposits or other security located  
22 within the ancillary state.

**§33-24-25. Proof of claims.**

1 (a) All claims against a corporation against which  
2 delinquency proceedings have begun shall set forth in  
3 reasonable detail the amount of the claim, or the basis  
4 upon which such amount can be ascertained, the facts  
5 upon which the claim is based, and the priorities

6 asserted, if any. All such claims shall be verified by the  
7 affidavit of the claimant, or someone authorized to act  
8 on his behalf and having knowledge of the facts, and  
9 shall be supported by such documents as may be  
10 material thereto.

11 (b) All claims filed in this state shall be filed with the  
12 receiver, whether domiciliary or ancillary, in this state,  
13 on or before the last date for filing as specified in this  
14 article.

15 (c) When a claim is denied in whole or in part by the  
16 liquidator, written notice of the determination shall be  
17 given to the claimant or his attorney by first class mail  
18 at the address shown in the proof of claim. Within sixty  
19 days from the mailing of the notice, the claimant may  
20 file his objections with the liquidator. If no such filing  
21 is made, the claimant may not further object to the  
22 determination.

23 (d) Whenever objections are filed with the liquidator  
24 and the liquidator does not alter his denial of the claim  
25 as a result of the objections, the liquidator shall ask the  
26 court for a hearing by first class mail to the claimant  
27 or his attorney and to any other persons directly  
28 affected, not less than ten nor more than thirty days  
29 before the date of the hearing. The matter may be heard  
30 by the court or by a court-appointed referee who shall  
31 submit findings of fact along with his recommendation.  
32 Upon receipt of such report, the court shall fix a time  
33 for hearing the claim and shall direct that the claimant  
34 or the receiver, as the court shall specify, shall give such  
35 notice as the court shall determine to such persons as  
36 shall appear to the court to be interested therein. All  
37 such notices shall specify the time and place of the  
38 hearing and shall concisely state the amount and nature  
39 of the claim, the priorities asserted, if any, and the  
40 recommendation of the receiver with reference thereto.

41 (e) At the hearing, all persons interested shall be  
42 entitled to appear and the court shall enter an order  
43 allowing, allowing in part, or disallowing the claim. Any  
44 such order shall be deemed to be an appealable order.

**§33-24-26. Priority of certain claims.**

1 (a) In a delinquency proceeding against a corporation  
2 domiciled in this state, claims owing to residents of  
3 ancillary states shall be preferred claims if like claims  
4 are preferred under the laws of this state. All such  
5 claims owing to residents or nonresidents shall be given  
6 equal priority of payment from general assets regard-  
7 less of where such assets are located.

8 (b) The owners of special deposit claims against a  
9 corporation for which a receiver is appointed in this or  
10 any other state shall be given priority against their  
11 several special deposits in accordance with the provi-  
12 sions of the statutes governing the creation and main-  
13 tenance of such deposits. If there is a deficiency in any  
14 such deposit so that the claims secured thereby are not  
15 fully discharged therefrom, the claimants may share in  
16 the general assets, but such sharing shall be deferred  
17 until general creditors, and also claimants against other  
18 special deposits who have received smaller percentages  
19 from their respective special deposits, have been paid  
20 percentages of their claims equal to the percentage paid  
21 from the special deposit.

22 (c) The owner of a secured claim against a corporation  
23 for which a receiver has been appointed in this or any  
24 other state may surrender his security and file his claim  
25 as a general creditor, or the claim may be discharged  
26 by resort to the security, in which case the deficiency,  
27 if any, shall be treated as a claim against the general  
28 assets of the corporation on the same basis as claims of  
29 unsecured creditors. If the amount of the deficiency has  
30 been adjudicated in ancillary proceedings as provided in  
31 this article or if it has been adjudicated by a court of  
32 competent jurisdiction in proceedings in which the  
33 domiciliary receiver has had notice and opportunity to  
34 be heard, such amounts shall be conclusive; otherwise  
35 the amount shall be determined in the delinquency  
36 proceeding in the domiciliary state.

**§33-24-27. Order of distribution.**

1 The priority of distribution of claims from the  
2 corporation estate shall be in accordance with the order

3 in which each class of claims is herein set forth. Every  
4 claim in each class shall be paid in full or adequate  
5 funds retained for such payment before the members of  
6 the next class receive any payment. No subclasses shall  
7 be established within any class. No claim by a policy-  
8 holder or other creditor shall be permitted to circum-  
9 vent the priority classes through the use of equitable  
10 remedies. The order of distribution shall be:

11 (a) Class I. The costs and expenses of administration,  
12 including, but not limited to, the following:

13 (1) The actual and necessary costs of preserving or  
14 recovering the assets of the corporation;

15 (2) Compensation for all services rendered in the  
16 liquidation;

17 (3) Any necessary filing fees;

18 (4) The fees and mileage payable to witnesses;

19 (5) Reasonable attorney's fees; and

20 (6) All expenses incurred by the division of insurance  
21 arising out of the enforcement of chapter thirty-three  
22 and its regulations.

23 (b) Class II. Debts due to employees for compensation  
24 under the provision of section thirty-four of this article.

25 (c) Class III. All claims for refund of unearned  
26 premiums under nonassessable policies and all claims of  
27 policyholders including such claims of the federal or any  
28 state or local government for losses incurred and third  
29 party claims of an insolvent insurer.

30 (d) Class IV. Claims of general creditors including  
31 claims of ceding and assuming companies in their  
32 capacity as such.

33 (e) Class V. Claims of the federal or any state or local  
34 government. Claims, including those of any government-  
35 tal body for a penalty or forfeiture, shall be allowed in  
36 this class only to the extent of the pecuniary loss  
37 sustained from the act, transaction, or proceeding out of  
38 which the penalty or forfeiture arose, with reasonable  
39 and actual costs occasioned thereby. The remainder of

40 such claims shall be postponed to the class of claims  
41 under subdivision (h) of this section.

42 (f) Class VI. Claims filed late or any other claims other  
43 than claims under subdivisions (g) and (h) of this section.

44 (g) Class VII. Surplus or contribution notes, or similar  
45 obligations and premium refunds on assessable policies.  
46 Payments to members of domestic mutual corporations  
47 shall be limited in accordance with law.

**§33-24-28. Attachment, garnishment or execution.**

1 During the pendency of delinquency proceedings in  
2 this or any reciprocal state, no action or proceeding in  
3 the nature of an attachment, garnishment or execution  
4 shall be commenced or maintained in the courts of this  
5 state against a delinquent corporation or its assets. Any  
6 lien obtained by any such action or proceeding within  
7 four months prior to the commencement of any such  
8 delinquency proceeding or at any time thereafter shall  
9 be void as against any rights arising in such delinquency  
10 proceeding.

**§33-24-29. Deposit of moneys collected.**

1 The moneys collected by the commissioner in a  
2 proceeding under this article shall be from time to time  
3 deposited in one or more state or national banks, savings  
4 banks, or trust companies, and in the case of the  
5 insolvency or voluntary or involuntary liquidation of any  
6 such depository which is an institution organized and  
7 supervised under the laws of this state, such deposits  
8 shall be entitled to priority of payment on an equality  
9 with any other priority given by the banking laws of this  
10 state. The commissioner may in his discretion deposit  
11 such moneys or any part thereof in a national bank or  
12 trust company as a trust fund.

**§33-24-30. Exemption of commissioner from fees.**

1 The commissioner shall not be required to pay any fee  
2 to any public officer in this state for filing, recording,  
3 issuing a transcript or certificate or authenticating any  
4 paper or instrument pertaining to the exercise by the  
5 commissioner of any of the powers or duties conferred  
6 upon him under this article, whether or not such paper

7 or instrument be executed by the commissioner or his  
8 deputies, employees or attorneys of record and whether  
9 or not it is connected with the commencement of any  
10 action or proceeding by or against the commissioner, or  
11 with the subsequent conduct of such action or proceed-  
12 ing.

**§33-24-31. Borrowing on pledge of assets.**

1 For the purpose of facilitating the rehabilitation,  
2 liquidation, supervision, conservation or dissolution of a  
3 corporation pursuant to this article, the commissioner  
4 may, subject to the approval of the court, borrow money  
5 and execute, acknowledge and deliver notes or other  
6 evidences of indebtedness therefor and secure the  
7 repayment of the same by the mortgage, pledge,  
8 assignment, transfer in trust, or hypothecation of any or  
9 all of the property, whether real, personal or mixed, of  
10 such corporation, and the commissioner, subject to the  
11 approval of the court, shall have power to take any and  
12 all other action necessary and proper to consummate  
13 any such loan and to provide for the repayment thereof.  
14 The commissioner shall be under no obligation person-  
15 ally or in his official capacity to repay any loan made  
16 pursuant to this section.

**§33-24-32. Date rights fixed on liquidation.**

1 The rights and liabilities of the corporation and of its  
2 creditors, policyholders, members, subscribers, and all  
3 other persons interested in its estate shall, unless  
4 otherwise directed by the court, be fixed as of the date  
5 on which the order directing the liquidation of the  
6 corporation is entered in the office of the clerk of the  
7 court which made the order, subject to the provisions of  
8 this article with respect to the rights of claimants  
9 holding contingent claims.

**§33-24-33. Voidable transfers.**

1 (a) Any transfer of, or lien upon, the property of a  
2 corporation which is made or created within four  
3 months prior to the granting of an order to show cause  
4 under this article with the intent of giving to any  
5 creditor or of enabling him to obtain a greater percen-

6 tage of his debt than any other creditor of the same class  
7 and which is accepted by such creditor having reason-  
8 able cause to believe that such preference will occur,  
9 shall be voidable.

10 (b) Every director, officer, employee, member, sub-  
11 scriber, and any other person acting on behalf of such  
12 corporation who shall be concerned in any such act or  
13 deed and every person receiving thereby any property  
14 of such corporation or the benefit thereof shall be  
15 personally liable therefor and shall be bound to account  
16 to the insurance commissioner.

17 (c) The insurance commissioner as a receiver in any  
18 proceeding under this article may avoid any transfer of  
19 or lien upon the property of a corporation which any  
20 creditor, subscriber or member of such corporation  
21 might have avoided and may recover the property so  
22 transferred unless such person was a bona fide holder  
23 for value prior to the date of the granting of an order  
24 to show cause under this article. Such property or its  
25 value may be recovered from anyone who has received  
26 it except a bona fide holder for value as herein specified.

#### §33-24-34. Priority of claims for compensation.

1 (a) Compensation actually owing to employees other  
2 than officers of an insurer, for services rendered within  
3 three months prior to the commencement of a proceed-  
4 ing against the corporation under this article, but not  
5 exceeding three hundred dollars for each such employee,  
6 shall be paid prior to the payment of any other debt or  
7 claim, and in the discretion of the commissioner may be  
8 paid as soon as practicable after the proceeding has been  
9 commenced; except that at all times the commissioner  
10 shall reserve such funds as will in his opinion be  
11 sufficient for the expenses of administration.

12 (b) Such priority shall be in lieu of any other similar  
13 priority which may be authorized by law as to wages  
14 or compensation of such employees.

#### §33-24-35. Offsets.

1 (a) In all cases of mutual debts or mutual credits  
2 between the corporation and another person in connec-

3 tion with any action or proceeding under this article,  
4 such credits and debts shall be set off and the balance  
5 only shall be allowed or paid, except as provided in  
6 subsection (b) below.

7 (b) No offset shall be allowed in favor of any such  
8 person where (1) the obligation of the corporation to  
9 such person would not at the date of the entry of any  
10 liquidation order or otherwise, as provided in section  
11 thirty-two of this article, entitle him to share as a  
12 claimant in the assets of the corporation, or (2) the  
13 obligation of the corporation to such person was  
14 purchased by or transferred to such person with a view  
15 of its being used as an offset, or (3) the obligation of such  
16 person is to pay any assessment levied against the  
17 members of a mutual insurer.

**§33-24-36. Allowance of claims.**

1 (a) No contingent claim shall share in a distribution  
2 of the assets of a corporation which has been adjudicated  
3 to be insolvent by an order made pursuant to this article,  
4 except that such claim shall be considered, if properly  
5 presented, and may be allowed to share where:

6 (1) It does not prejudice the orderly administration of  
7 the liquidation, or

8 (2) There is a surplus and the liquidation is thereafter  
9 conducted upon the basis that such corporation is  
10 solvent.

11 (b) Where a corporation has been so adjudicated to be  
12 insolvent any person who has a cause of action against  
13 a member of such corporation under a policy issued by  
14 such corporation shall have the right to file a claim in  
15 the liquidation proceeding, regardless of the fact that  
16 such claim may be contingent, and such claim may be  
17 allowed:

18 (1) If it may be reasonably inferred from the proof  
19 presented upon such claim that such person would be  
20 able to obtain a judgment upon such cause of action  
21 against such member, and

22 (2) If such person shall furnish suitable proof, unless



23 the court for good cause shown shall otherwise direct,  
24 that no further valid claim against such corporation  
25 arising out of his cause of action other than those  
26 already presented can be made, and

27 (3) If the total liability of such corporation to all  
28 claimants arising on behalf of its member shall be no  
29 greater than its maximum liability would be were it not  
30 in liquidation.

31 (c) (1) No judgment against such a member taken  
32 after the date of entry of the liquidation order shall be  
33 considered in the liquidation proceedings as evidence of  
34 liability, or of the amount of damages, and no judgment  
35 against a member taken by default or by collusion prior  
36 to the entry of the liquidation order shall be considered  
37 as conclusive evidence in the liquidation proceedings,  
38 either of the liability of such member to such person  
39 upon such cause of action or of the amount of damages  
40 to which such person is therein entitled.

41 (2) A claim by a third party founded upon a policy  
42 may be allowed without requiring such claim to be  
43 reduced to judgment, provided it can be reasonably  
44 inferred from the proof presented that the claimant  
45 would be able to obtain a judgment upon his cause of  
46 action against the member and that such judgment  
47 would represent a liability of the corporation in  
48 liquidation under the policy upon which such claim is  
49 founded.

50 (d) No claim of any secured claimant shall be allowed  
51 at a sum greater than the difference between the value  
52 of the claim without security and the value of the  
53 security itself as of the date of the entry of the order  
54 of liquidation or such other date set by the court for  
55 determining rights and liabilities as provided in section  
56 thirty-two of this article unless the claimant shall  
57 surrender his security to the commissioner, in which  
58 event the claim shall be allowed in the full amount for  
59 which it is valued.

60 (e) Whenever a creditor whose claim against a  
61 corporation is secured, in whole or in part, by the  
62 undertaking of another person fails to prove and file

63 that claim, the other person may do so in the creditor's  
64 name, and shall be subrogated to the rights of the  
65 creditor, whether the claim has been filed by the  
66 creditor or by the other person in the creditor's name,  
67 to the extent that he discharges the undertaking. In the  
68 absence of an agreement with the creditor to the  
69 contrary, the other person shall not be entitled to any  
70 distribution, however, until the amount paid to the  
71 creditor on the undertaking plus the distributions paid  
72 on the claim from the insurer's estate to the creditor  
73 equals the amount of the entire claim of the creditor.  
74 Any excess received by the creditor shall be held by him  
75 in trust for such other person. The term "other person",  
76 as used in this section, is not intended to apply to a  
77 guaranty association or foreign guaranty association.

78 (f) Unless such claim is filed in the manner and within  
79 the time provided in section twenty-five, it shall not be  
80 entitled to filing or allowance, and no action may be  
81 maintained thereon. In the liquidation, pursuant to the  
82 provisions of this article, of any domestic corporation  
83 which has issued policies insuring the lives of persons,  
84 the commissioner shall, within thirty days after the last  
85 day set for the filing of claims, make a list of the persons  
86 who have not filed proofs of claim with him and to  
87 whom, according to the books of said insurer, there are  
88 amounts owing under such policies, and he shall set  
89 opposite the name of each such person the amount so  
90 owing to such person. Each person whose name shall  
91 appear upon said list shall be deemed to have duly filed,  
92 prior to the last day set for the filing of claims, a claim  
93 for the amount set opposite his name on said list.

94 (g) (1) Claims founded upon unliquidated or undeter-  
95 mined demands must be filed within the time limit  
96 provided in this article for the filing of claims, but  
97 claims founded upon such demands shall not share in  
98 any distribution to creditors of a person proceeded  
99 against under section twenty-seven until such claims  
100 have been definitely determined, proved and allowed.  
101 Thereafter, such claims shall share ratably with other  
102 claims of the same class in all subsequent distributions.

103 (2) An unliquidated or undetermined claim or demand

104 within the meaning of this article shall be deemed to be  
105 any such claim or demand upon which a right of action  
106 has accrued at the date of the order of liquidation and  
107 upon which the liability has not been determined or the  
108 amount thereof liquidated.

109 (h) (1) The commissioner may require, as a condition  
110 of payment of the final liquidation dividend to a lender,  
111 or his assignee, who has filed a claim for an unearned  
112 premium as an assignee of the member for valuable  
113 consideration:

114 (A) That such assignee of the member shall assign to  
115 the liquidator all his right, title, and interest in any  
116 unsatisfied debt of the member to such assignee,  
117 pertaining to policies of the insolvent corporation,  
118 remaining unpaid after crediting the final liquidation  
119 dividend, if the amount of such unsatisfied debt is less  
120 than one hundred dollars and one cent.

121 (B) The delivery to him of all the documents giving  
122 rise to such debt.

123 (2) The commissioner may determine whether or not  
124 it will be feasible to attempt to collect any such assigned  
125 debt. If he determines not to pursue collection of any  
126 such debt, he shall file a declaration to that effect with  
127 the liquidation court and be relieved of any further  
128 responsibility in respect to such debt.

129 (3) As used in this subsection, "member" means a  
130 natural person who purchased coverage from the  
131 insolvent corporation for personal or family purposes.

### §33-24-37. Time within which claims to be filed.

1 (a) If upon the granting of an order of liquidation  
2 under this article or at any time thereafter during the  
3 liquidation proceeding, the corporation shall not be  
4 clearly solvent, the court shall, after such notice and  
5 hearing as it deems proper, make an order declaring the  
6 corporation to be insolvent. Thereupon regardless of any  
7 prior notice which may have been given to creditors, the  
8 commissioner shall notify all persons who may have  
9 claims against such corporation and who have not filed  
10 proper proofs thereof to present the same to him, at a

11 place specified in such notice, within four months from  
12 the date of entry of such order, or if the commissioner  
13 shall certify that it is necessary, within such longer time  
14 as the court shall prescribe. The last day for filing of  
15 proofs of claims shall be specified in the notice, and  
16 notice shall be given in a manner to be determined by  
17 the court.

18 (b) Proofs of claim may be filed subsequent to the date  
19 specified, but no such claim shall share in the distribu-  
20 tion of the assets until all allowed claims, proofs of  
21 which have been filed before said date, have been paid  
22 in full with interest.

#### **§33-24-38. Assessment.**

1 The provisions of sections thirty-one, thirty-two,  
2 thirty-three, thirty-four and thirty-five, article ten of  
3 this chapter shall apply to any corporation organized  
4 under this article as a mutual corporation.

#### **§33-24-39. Creating preference among creditors; disbursement of assets.**

1 (a) Within one hundred twenty days of a final  
2 determination of insolvency of a corporation by the  
3 circuit court, the commissioner shall make application  
4 to the court for approval of a proposal to disburse assets  
5 out of such company's marshaled assets, from time to  
6 time as such assets become available. If the commis-  
7 sioner determines that there are insufficient assets to  
8 disburse, the application required by this section shall  
9 be satisfied by a filing by the commissioner stating the  
10 reasons for this determination.

11 (b) Such proposal shall at least include provisions for:

12 (1) Reserving amounts for the payment of expenses of  
13 administration and of claims falling within the priori-  
14 ties established in this article but only with respect to  
15 such priorities higher than that of the associations;

16 (2) Disbursement of the assets marshaled to date and  
17 subsequent disbursement of assets as they become  
18 available.

19 (c) Action on the application may be taken by the

20 court provided the above required notice has been given  
21 and provided that the commissioner's proposal complies  
22 with subdivisions (1) and (2) of subsection (b) hereof.

**§33-24-40. Distribution of assets.**

1 Under the direction of the court, the liquidator shall  
2 pay distributions in a manner that will assure the  
3 proper recognition of priorities and a reasonable balance  
4 between the expeditious completion of the liquidation  
5 and the protection of unliquidated and undetermined  
6 claims, including third party claims. Distribution of  
7 assets in kind may be made at valuations set by  
8 agreement between the liquidator and the creditor and  
9 approved by the court.

**§33-24-41. Unclaimed and withheld funds.**

1 All unclaimed funds subject to distribution remaining  
2 in the liquidator's hands when he is ready to apply to  
3 the court for discharge, including the amount distrib-  
4 utable to any creditor, member or other person who is  
5 unknown or cannot be found, shall be deposited with the  
6 state treasurer, and shall be paid without interest to the  
7 person entitled thereto or his legal representative upon  
8 proof satisfactory to the state treasurer of his right  
9 thereto. Any amount on deposit not claimed within six  
10 years from the discharge of the liquidator shall be  
11 deemed to have been abandoned and shall be escheated  
12 to the state of West Virginia without formal escheat  
13 proceedings and be deposited with the general fund.

**§33-24-42. Immunity in receivership proceedings.**

1 (a) No claim of any nature whatsoever that is directly  
2 related to the receivership of a corporation shall rise  
3 against, and no liability shall be imposed upon, the  
4 insurance commissioner, special deputy commissioner,  
5 or any person or entity acting as a receiver of a  
6 corporation, including surety, in rehabilitation, liquida-  
7 tion, supervision or conservation as a result of a court  
8 order issued on or after the first day of January, one  
9 thousand nine hundred eighty-five, for any statement  
10 made or actions taken or not taken in the good faith  
11 exercise of their powers under law. However, this

12 immunity shall not extend to acts or omissions which are  
13 malicious or grossly negligent. This qualified immunity  
14 extends to agents and employees of the receiver.

15 (b) Representation of special deputy commissioners. In  
16 any civil proceeding filed against a special deputy  
17 commissioner appointed pursuant to this subtitle, the  
18 special deputy commissioner shall be entitled to be  
19 represented by the attorney general.

#### ARTICLE 25. HEALTH CARE CORPORATIONS.

##### §33-25-19. Administrative supervision.

1 Every health care corporation subject to the provi-  
2 sions of this article is subject to the provisions of article  
3 thirty-four of this chapter.

#### ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

##### §33-25A-30. Administrative supervision.

1 Every health maintenance organization subject to the  
2 provisions of this article is subject to the provisions of  
3 article thirty-four of this chapter.

#### ARTICLE 31. CAPTIVE INSURANCE.

##### §33-31-6. Corporate organization.

1 (a) A pure captive insurance company shall be  
2 incorporated as a stock insurer with its capital divided  
3 into shares and held by the stockholders.

4 (b) An association captive insurance company or an  
5 industrial insured captive insurance company may be  
6 incorporated:

7 (1) As a stock insurer with its capital divided into  
8 shares and held by the stockholders; or

9 (2) As a mutual insurer without capital stock, the  
10 governing body of which is elected by the member  
11 organizations of its association.

12 (c) A captive insurance company shall have at least  
13 one incorporator who shall be a resident of this state.

14 (d) Before the articles of association are transmitted  
15 to the secretary of state, the incorporators shall petition

16 the commissioner to issue a certificate setting forth his  
17 finding that the establishment and maintenance of the  
18 proposed corporation will promote the general good of  
19 the state. In arriving at such finding the commissioner  
20 shall consider:

21 (1) The character, reputation, financial standing and  
22 purpose of the incorporators;

23 (2) The character, reputation, financial responsibility,  
24 insurance experience and business qualifications of the  
25 officers and directors; and

26 (3) Such other aspects as the commissioner shall deem  
27 advisable.

28 (e) The articles of association, such certificate and the  
29 organization fee shall be transmitted to the secretary of  
30 state, who shall thereupon record both the articles of  
31 incorporation and the certificate.

32 (f) The capital stock of a captive insurance company  
33 incorporated as a stock insurer shall be issued at not less  
34 than par value.

35 (g) At least one of the members of the board of  
36 directors of a captive insurance company incorporated  
37 in this state shall be a resident of this state.

38 (h) Captive insurance companies formed under the  
39 provisions of this chapter shall have the privileges and  
40 be subject to the provisions of the general corporation  
41 law as well as the applicable provisions contained in this  
42 chapter. Captive insurance companies are subject to the  
43 provisions of article thirty-three and article thirty-four  
44 of this chapter. In the event of conflict between the  
45 provisions of said general corporation law and the  
46 provisions of this chapter, the latter shall control.

#### ARTICLE 32. RISK RETENTION ACT.

##### §33-32-3. Charter and license requirements for domestic groups.

1 A risk retention group seeking to be chartered in this  
2 state must be chartered and licensed as a liability  
3 insurance company authorized by the insurance laws of

4 this state and, except as provided elsewhere in this  
 5 article, must comply with all of the laws, rules,  
 6 regulations and requirements applicable to such insur-  
 7 ers chartered and licensed in this state and with section  
 8 four of this article to the extent such requirements are  
 9 not a limitation on laws, rules, regulations or require-  
 10 ments of this state. Risk retention groups are subject to  
 11 the provisions of article thirty-three and article thirty-  
 12 four of this chapter. Before it may offer insurance in any  
 13 state, each risk retention group shall also submit for  
 14 approval to the insurance commissioner of this state a  
 15 plan of operation or a feasibility study and revisions of  
 16 such plan or study if the group intends to offer any  
 17 additional lines of liability insurance.

#### ARTICLE 34. ADMINISTRATIVE SUPERVISION.

§33-34-1. Definitions.

§33-34-2. Applicability.

§33-34-3. Notice to comply with written requirements of commissioner,  
 noncompliance and administrative supervision.

§33-34-4. Confidentiality of certain proceedings and records.

§33-34-5. Prohibited acts during periods of supervision.

§33-34-6. Administrative election of proceedings.

§33-34-7. Rules.

§33-34-8. Meetings between the commissioner and the special deputy  
 supervisor.

§33-34-9. Special deputy supervisor appointed and expenses.

§33-34-10. Immunity.

§33-34-11. Severability.

#### §33-34-1. Definitions.

1 For the purposes of this article the following defini-  
 2 tions shall apply:

3 (a) "Insurer" means and includes every person  
 4 engaged as indemnitor, surety or contractor in the  
 5 business of entering into contracts of insurance or of  
 6 annuities as limited to:

7 Any insurer who is doing an insurer business, or has  
 8 transacted insurance in this state, and against whom  
 9 claims arising from that transaction may exist now or  
 10 in the future;

11 This shall include, but not be limited to, any domestic  
 12 insurer as defined in section six, article one of chapter



13 thirty-three and any foreign insurer as defined in  
14 section seven, article one of said chapter thirty-three  
15 including any stock insurer, mutual insurer, reciprocal  
16 insurer, farmers' mutual fire insurance company,  
17 fraternal benefit society, hospital service corporation,  
18 medical service corporation, dental service corporation,  
19 health service corporation, health care corporation,  
20 health maintenance organization, captive insurance  
21 company or risk retention group.

22 (b) "Exceeded its powers" means the following  
23 conditions:

24 (1) The insurer has refused to permit examination of  
25 its books, papers, accounts, records or affairs by the  
26 commissioner, his deputy, employees, or duly commis-  
27 sioned examiners;

28 (2) A domestic insurer has unlawfully removed from  
29 this state books, papers, accounts or records necessary  
30 for an examination of the insurer;

31 (3) The insurer has failed to promptly comply with the  
32 applicable financial reporting statutes or rules and  
33 departmental requests relating thereto;

34 (4) The insurer has neglected or refused to observe an  
35 order of the commissioner to make good, within the time  
36 prescribed by law, any prohibited deficiency in its  
37 capital, capital stock or surplus;

38 (5) The insurer is continuing to transact business or  
39 write insurance after its license has been revoked or  
40 suspended by the commissioner;

41 (6) The insurer, by contract or otherwise, has unlaw-  
42 fully or has in violation of an order of the commissioner  
43 or has without first having obtained written approval of  
44 the commissioner if approval is required by law;

45 (A) Totally reinsured its entire outstanding business;  
46 or

47 (B) Merged or consolidated substantially its entire  
48 property or business with another insurer.

49 (7) The insurer engaged in any transaction in which

50 it is not authorized to engage under the laws of this  
51 state; or

52 (8) The insurer refused to comply with a lawful order  
53 of the commissioner.

54 (c) "Consent" means agreement to administrative  
55 supervision by the insurer.

**§33-34-2. Applicability.**

1 The provisions of this article shall only apply to:

2 (a) All domestic insurers; and

3 (b) Any other insurer doing business in this state  
4 whose state of domicile has asked the commissioner to  
5 apply the provisions of this article as regards such  
6 insurer.

**§33-34-3. Notice to comply with written requirements of  
commissioner, noncompliance and adminis-  
trative supervision.**

1 (a) An insurer may be subject to administrative  
2 supervision by the commissioner if upon examination or  
3 at any other time it appears in the commissioner's  
4 discretion that:

5 (1) The insurer's condition renders the continuance of  
6 its business hazardous to the public or to its insureds;

7 (2) The insurer has or appears to have exceeded its  
8 powers granted under its certificate of authority and  
9 applicable law;

10 (3) The insurer has failed to comply with the appli-  
11 cable provisions of the insurance code;

12 (4) The business of the insurer is being conducted  
13 fraudulently; or

14 (5) The insurer gives its consent.

15 (b) If the commissioner determines that the conditions  
16 set forth in subsection (a) of this section exist, the  
17 commissioner shall:

18 (1) Notify the insurer of his determination;

19 (2) Furnish to the insurer a written list of his  
20 requirements to abate his determination; and

21 (3) Notify the insurer that it is under the supervision  
22 of the commissioner and that the commissioner is  
23 applying and effectuating the provisions of the article.  
24 Such action by the commissioner shall be subject to  
25 review pursuant to applicable state administrative  
26 procedures under article two of this chapter.

27 (c) If placed under administrative supervision, within  
28 sixty days the insurer shall comply with the require-  
29 ments of the commissioner subject to the provisions of  
30 this article.

31 (d) If it is determined after notice and hearing that  
32 conditions giving rise to the supervision still exist at the  
33 end of the supervision period specified above, the  
34 commissioner may extend such period.

35 (e) If it is determined by the commissioner that  
36 conditions giving rise to the supervision have been  
37 corrected, said commissioner shall release the insurer  
38 from supervision.

#### §33-34-4. Confidentiality of certain proceedings and records.

1 Proceedings, hearings, notices, correspondence, re-  
2 ports, records and other information in the possession of  
3 the commissioner or the division relating to the super-  
4 vision of any insurer shall not be subject to disclosure  
5 as provided in article one, chapter twenty-nine-b of this  
6 code.

#### §33-34-5. Prohibited acts during period of supervision.

1 An insurer may not engage in the following actions  
2 during the period of supervision, without the prior  
3 approval of the commissioner or his or her special  
4 deputy supervisor:

5 (1) Dispose of, convey, or encumber any of its assets  
6 or its business in force;

7 (2) Withdraw any of its bank accounts;

8 (3) Lend any of its funds;

- 9 (4) Invest any of its funds;
- 10 (5) Transfer any of its property;
- 11 (6) Incur any debt, obligation or liability;
- 12 (7) Merge or consolidate with another company;
- 13 (8) Approve new premiums or renew any policies;
- 14 (9) Enter into any new reinsurance contract or treaty;
- 15 (10) Terminate, surrender, forfeit, convert or lapse
- 16 any insurance policy, certificate or contract, except for
- 17 nonpayment of premiums due;
- 18 (11) Release, pay or refund premium deposits,
- 19 accrued cash or loan values, unearned premiums, or
- 20 other reserves on any insurance policy, certificate or
- 21 contract;
- 22 (12) Make any material change in management; or
- 23 (13) Increase salaries and benefits of officers or
- 24 directors or the preferential payment of bonuses,
- 25 dividends, or other payments deemed preferential.

**§33-34-6. Administrative election of proceedings.**

1 Nothing contained in this article shall preclude the  
2 commissioner from initiating judicial proceedings to  
3 place an insurer in rehabilitation or liquidation proceed-  
4 ings or other delinquency proceedings, however desig-  
5 nated under the laws of this state, regardless of whether  
6 the commissioner has previously initiated administra-  
7 tive supervision proceedings under this article against  
8 the insurer.

**§33-34-7. Rules.**

1 The division is empowered to adopt reasonable rules  
2 pursuant to chapter twenty-nine-a of this code deemed  
3 necessary for the implementation of this article.

**§33-34-8. Meetings between the commissioner and the  
special deputy supervisor.**

1 Notwithstanding any other provision of this code to  
2 the contrary, the commissioner may meet with a special  
3 deputy supervisor appointed under this article and with

4 the attorney or other representative of the special  
5 deputy supervisor, without the presence of any other  
6 person, at the time of any proceeding or during the  
7 pendency of any proceeding held under authority of this  
8 article to carry out the commissioner's responsibilities  
9 as provided in this article or for the special deputy  
10 supervisor to carry out his or her duties as provided in  
11 this article.

**§33-34-9. Special deputy supervisor appointed and expenses.**

1 (1) During the period of supervision the division by  
2 contract or otherwise may appoint a special deputy  
3 supervisor to supervise the insurer. In the event that a  
4 special deputy supervisor is not appointed, the commis-  
5 sioner shall serve in such capacity.

6 (2) Each insurer which is subject to administrative  
7 supervision by the department shall pay to the division  
8 the expenses of its administrative supervision at the  
9 rates established by the division. Expenses shall include  
10 actual travel expenses, a reasonable living expense  
11 allowance, compensation of the special deputy supervi-  
12 sor or other persons employed or appointed by the  
13 division for purposes of the supervision, and necessary  
14 attendant administrative cost of the division directly  
15 related to the supervision. The travel expense and living  
16 expense allowance shall be limited to those expenses  
17 necessarily incurred in the performance of official  
18 duties relating to the administrative supervision and  
19 shall be paid by the insurer together with compensation  
20 upon presentation by the division to the insurer of a  
21 detailed account of the charges and expenses after a  
22 detailed statement has been filed by the special deputy  
23 supervisor or other person employed or appointed by the  
24 division and approved by the division.

25 (3) All moneys collected from insurers for the ex-  
26 penses of administrative supervision shall be deposited  
27 into an account created in the state treasury designated  
28 the "Insurance Commissioner's Regulatory Trust Fund",  
29 and the division is authorized to make deposits when

30 required into this fund from moneys collected in the  
31 commissioner's "Operating-Additional Fees" account.

32 (4) The division is authorized to pay to the special  
33 deputy supervisor or person employed or appointed by  
34 the division for purposes of the supervision out of such  
35 trust fund, as created in subsection three of this section,  
36 the actual travel expenses, reasonable living expense  
37 allowance, and compensation in accordance with the  
38 statement filed with the division by the special deputy  
39 supervisor or other person, as provided in subsection (2),  
40 upon approval by the division.

41 (5) The division may in whole or in part defer payment  
42 of expenses due from the insurer pursuant to this section  
43 upon a showing that payment would adversely impact  
44 the financial condition of the insurer and jeopardize its  
45 rehabilitation. The payment shall be made by the  
46 insurer when the condition is removed and the payment  
47 would no longer jeopardize the insurer's financial  
condition.

#### **§33-34-10. Immunity.**

1 There shall be no liability on the part of, and no cause  
2 of action of any nature shall arise against, the insurance  
3 commissioner or the division or its employees or agents  
4 thereof for any action taken by them in the performance  
5 of their powers and duties under this article.

#### **§33-34-11. Severability.**

1 In the event any part or provision of this article be  
2 held to be unconstitutional by any court of competent  
3 jurisdiction, such holding and decision of the court shall  
4 not affect the validity and constitutionality of the  
5 remaining parts and provisions of this article.

### **ARTICLE 35. CRIMINAL SANCTIONS FOR FAILURE TO REPORT IMPAIRMENT.**

§33-35-1. Definitions.

§33-35-2. Duty to notify.

§33-35-3. Penalty.

#### **§33-35-1. Definitions.**

1 For the purposes of this article, the following words  
2 shall mean:

3 (a) "Insurer" means any insurance company or other  
4 insurer licensed to do business in this state. This  
5 includes, but is not limited to, any domestic insurer as  
6 defined in section six, article one of this chapter and  
7 includes any domestic stock insurance company, mutual  
8 insurance company, reciprocal insurance company,  
9 farmers' mutual fire insurance company, fraternal  
10 benefit society, hospital service corporation, medical  
11 service corporation, dental service corporation, health  
12 service corporation, health care corporation, health  
13 maintenance organization, captive insurance company  
14 or risk retention group.

15 (b) "Impaired" means a financial situation in which,  
16 based upon the requirements of this chapter for the  
17 preparation of the insurer's annual statement, the  
18 insurer's assets are less than the insurer's liabilities and  
19 the required reserves together with the insurer's  
20 minimum required capital and minimum required  
21 surplus as required by this chapter to be maintained to  
22 transact the type of business for which the insurer is  
23 authorized by this chapter to transact.

24 (c) "Chief executive officer" means the person,  
25 irrespective of their title, designated by the board of  
26 directors or board of trustees or other similar governing  
27 body of an insurer as the person charged with the  
28 responsibility and authority of administering and  
29 implementing the insurer's policies and procedures.

### §33-35-2. Duty to notify.

1 (a) Whenever an insurer is impaired, its chief  
2 executive officer shall immediately notify the commis-  
3 sioner in writing of such impairment and shall also  
4 immediately notify in writing all of the members of the  
5 board of directors, board of trustees or other similar  
6 governing body of the insurer.

7 (b) Any officer, director or trustee of an insurer shall  
8 immediately notify the person serving as chief executive  
9 officer of the impairment of such insurer in the event  
10 such officer, director, or trustee knows or has reason to  
11 know that the insurer is impaired.

**§33-35-3. Penalty.**

- 1 (a) Any person who knowingly violates section two of  
2 this article is guilty of a misdemeanor, and, upon  
3 conviction thereof, shall be fined not more than fifty  
4 thousand dollars or be imprisoned in the county jail not  
5 more than one year, or both fined and imprisoned.
- 6 (b) Any person who knowingly:
- 7 (1) Conceals any property belonging to an insurer;
- 8 (2) Transfers or conceals in contemplation of a state  
9 insolvency proceeding his own property or property  
10 belonging to an insurer;
- 11 (3) Conceals, destroys, mutilates, alters or makes a  
12 false entry in any document which affects or relates to  
13 the property of an insurer or withholds any such  
14 document from a receiver, trustee or other officer of a  
15 court entitled to its possession; or
- 16 (4) Gives, obtains or receives a thing of value for  
17 acting or forbearing to act in any court proceeding, and  
18 any such act results in or contributes to an insurer  
19 becoming impaired or insolvent, is guilty of a felony,  
20 and, upon conviction thereof, shall be imprisoned in the  
21 penitentiary not more than five years.

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## CHAPTER 111

(Com. Sub. for H. B. 4501—By Delegates Susman and Ashley, By Request)

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[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections two and six, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend article twelve by adding thereto two new sections, designated sections eight-a and twenty-nine, all relating to insurance; agents; brokers; solicitors; excess line; the discontinuance of the broker's license and solicitor's license classification; expanding representation of the board of insurance agent educa-



tion; fees charged to agents for the issuance of certain documents; the licensing of nonresident property and casualty agents; and the requirements that all agents, brokers, solicitors, excess line brokers and service representatives file and maintain their current mailing address with the insurance commissioner.

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

That sections two and six, article twelve, chapter thirty-three 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 eight-a and twenty-nine, all to read as follows:

**ARTICLE 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.**

§33-12-2. Qualifications.

§33-12-6. Fees.

§33-12-8a. Licensing of nonresident property casualty agents.

§33-12-29. Change of address.

**§33-12-2. Qualifications.**

1 For the protection of the people of West Virginia, the  
2 commissioner shall not issue, renew or permit to exist  
3 any agent's, broker's or solicitor's license except to an  
4 individual who:

5 (a) Is eighteen years of age or more.

6 (b) Is a resident of West Virginia, except that a  
7 broker's license shall be issued only to nonresidents, and  
8 except for nonresident life and accident and sickness  
9 agents as provided in section eight of this article.

10 Effective the first day of June, one thousand nine  
11 hundred ninety-one, brokers' licenses shall cease to exist.  
12 Licensing of nonresidents for property casualty will be  
13 made pursuant to section eight (a) of this article.

14 (c) Is, in the case of an agent applicant, appointed as  
15 agent by a licensed insurer for the kind or kinds of  
16 insurance for which application is made, subject to  
17 issuance of license, or, in the case of a solicitor applicant,  
18 appointed as solicitor by a licensed resident agent,

19 subject to issuance of license, except that on or after the  
20 first day of June, one thousand nine hundred ninety, no  
21 solicitor's license will be issued which is not a renewal  
22 of an existing license.

23 (d) Does not intend to use the license principally for  
24 the purpose, in the case of life or accident and sickness  
25 insurance, of procuring insurance on himself, members  
26 of his family or his relatives; or, as to insurance other  
27 than life and accident and sickness, upon his property  
28 or insurable interests of those of his family or his  
29 relatives or those of his employer, employees or firm, or  
30 corporation in which he owns a substantial interest, or  
31 of the employees of such firm or corporation, or on  
32 property or insurable interests for which the applicant  
33 or any such relative, employer, firm or corporation is the  
34 trustee, bailee or receiver. For the purposes of this  
35 provision, a vendor's or lender's interest in property sold  
36 or being sold under contract or which is the security for  
37 any loan, shall not be deemed to constitute property or  
38 an insurable interest of such vendor or lender.

39 (e) Satisfies the commissioner that he is trustworthy  
40 and competent. The commissioner may test the compet-  
41 ency of an applicant for a license under this section by  
42 examination. Each examinee shall pay a twenty-five  
43 dollar examination fee for each examination to the  
44 commissioner who shall deposit said examination fee  
45 into the state treasury for the benefit of the state fund,  
46 general revenue. The commissioner may, at his discre-  
47 tion, designate an independent testing service to prepare  
48 and administer such examination subject to direction  
49 and approval by the commissioner, and examination fees  
50 charged by such service shall be paid by the applicant.

51 (f) For new agents first licensed on or after the first  
52 day of July, one thousand nine hundred eighty-nine,  
53 completes a program of insurance education as estab-  
54 lished below.

55 There is hereby created the board of insurance agent  
56 education. The board of insurance agent education shall  
57 consist of the commissioner of insurance and six  
58 members appointed by the commissioner. The members

59 appointed by the commissioner shall be two licensed  
60 property and casualty insurance agents, one licensed life  
61 insurance agent, one licensed health and accident  
62 insurance agent, one representative of a domestic  
63 insurance company, and one representative of a foreign  
64 insurance company: *Provided*, That no board shall be  
65 appointed that fails to include companies or agents for  
66 companies representing at least two thirds of the net  
67 written insurance premiums in the state. Each member  
68 shall serve a term of three years and shall be eligible  
69 for reappointment.

70 (1) The board of insurance agent education shall  
71 establish the criteria for a program of insurance  
72 education and submit the proposal for the approval of  
73 the commissioner on or before the thirty-first day of  
74 December of each year.

75 (2) The commissioner and the board, under standards  
76 established by the board, may approve any course or  
77 program of instruction developed or sponsored by an  
78 authorized insurer, accredited college or university,  
79 agents association, insurance trade association, or  
80 independent program of instruction that presents the  
81 criteria and the number of hours that the board and  
82 commissioner determine appropriate for the purpose of  
83 this article: *Provided*, That any person who was a  
84 licensed agent, broker or solicitor on the first day of  
85 July, one thousand nine hundred eighty-nine, and who  
86 subsequently terminates the contractual relationship  
87 with the insurer or employing agent, may have that  
88 license renewed within five years of such termination  
89 without complying with the competency testing provi-  
90 sions of subdivision (e) or the education provisions of  
91 subdivision (f) of this section.

### §33-12-6. Fees.

1 The fee for an agent's license shall be twenty-five  
2 dollars as provided in section thirteen, article three of  
3 this chapter, the fee for a solicitor's license shall be  
4 twenty-five dollars, and the fee for a broker's license  
5 shall be twenty-five dollars. The commissioner shall  
6 receive the following fees from insurance agents,

7 brokers, solicitors and excess line brokers: For letters  
8 of certification, five dollars; for letters of clearance, ten  
9 dollars; for duplicate license, five dollars. All fees and  
10 moneys so collected shall be used for the purposes set  
11 forth in section thirteen, article three of this chapter.

**§33-12-8a. Licensing of nonresident property casualty agents.**

1 (a) Nonresidents otherwise complying with the provi-  
2 sions of this chapter may be licensed as a property  
3 casualty agent but all policies issued as a result of  
4 solicitation on the part of such nonresident in this state  
5 shall be reported, placed, countersigned, and consum-  
6 mated by and through a duly licensed resident agent of  
7 the issuing insurer.

8 (b) An individual otherwise complying with the  
9 provisions of this chapter, who is a resident of another  
10 state and who is a licensed property casualty agent of  
11 such state, may be licensed as a nonresident property  
12 casualty agent in this state, if the state of residence of  
13 such nonresident has established, by law or regulation,  
14 like requirements for the licensing of a resident of this  
15 state as a nonresident property casualty agent. All  
16 policies issued as a result of solicitation by such  
17 nonresident property casualty agents shall be reported,  
18 placed, countersigned and consummated by and through  
19 a duly licensed resident agent of the issuing insurer.

**§33-12-29. Change of address.**

1 When applying for a license to act as an agent, broker,  
2 solicitor, excess line broker, or service representative,  
3 each applicant shall report his or her mailing address  
4 to the commissioner. An agent, broker, solicitor, excess  
5 line broker, or service representative shall notify the  
6 commissioner of any change in his or her mailing  
7 address within thirty days of such change. The commis-  
8 sioner shall maintain the mailing address of each agent,  
9 broker, solicitor, excess line broker, and service  
10 representative on file.

## CHAPTER 112

(H. B. 4515—By Delegates Susman and Minard, By Request)

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[Passed March 10, 1990: in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section seven, article fourteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the amount of group life insurance coverage permissible on dependents of the group member.

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

That section seven, article fourteen, 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 14. GROUP LIFE INSURANCE.

#### §33-14-7. Dependent coverage.

1 Any policy issued pursuant to sections two, four and  
2 five of this article may be extended to insure the  
3 employees or members against loss due to the death of  
4 their spouses and minor children, or any class or classes  
5 thereof, subject to the following requirements:

6 (a) The premium for the insurance shall be paid by  
7 the policyholder, either from the employer's or union's  
8 funds or funds contributed by the employer or union, or  
9 from funds contributed by the insured employees or  
10 members, or from both. If any part of the premium is  
11 to be derived from funds contributed by the insured  
12 employees or members, the insurance with respect to  
13 spouses and children may be placed in force only if at  
14 least seventy-five percent of the then eligible employees  
15 or members, excluding any as to whose family members  
16 evidence of insurability is not satisfactory to the insurer,  
17 elect to make the required contribution. If no part of the  
18 premium is to be derived from funds contributed by the  
19 employees or members, all eligible employees or

20 members, excluding any as to whose family members  
21 evidence of insurability is not satisfactory to the insurer,  
22 must be insured with respect to their spouses and  
23 children.

24 (b) The amounts of insurance must be based upon  
25 some plan precluding individual selection either by the  
26 employees or members or by the policyholder, employer  
27 or union.

28 (c) Upon termination of the insurance with respect to  
29 the members of the family of any employee or member  
30 by reason of the employee's or member's termination of  
31 employment, termination of membership in the class or  
32 classes eligible for coverage under the policy, or death,  
33 the spouse shall be entitled to have issued by the insurer,  
34 without evidence of insurability, an individual policy of  
35 life insurance without disability or other supplementary  
36 benefits, providing application for the individual policy  
37 shall be made, and the first premium paid to the  
38 insurer, within thirty-one days after such termination,  
39 subject to the requirements of paragraphs (a), (b) and  
40 (c) of section sixteen of this article. If the group policy  
41 terminates or is amended so as to terminate the  
42 insurance of any class of employees or members and the  
43 employee or member is entitled to have issued an  
44 individual policy under section seventeen of this article,  
45 the spouse shall also be entitled to have issued by the  
46 insurer an individual policy, subject to the conditions  
47 and limitations provided above. If the spouse dies within  
48 the period during which he would have been entitled to  
49 have an individual policy issued in accordance with this  
50 provision, the amount of life insurance which he would  
51 have been entitled to have issued under such individual  
52 policy shall be payable as a claim under the group  
53 policy, whether or not application for the individual  
54 policy or the payment of the first premium therefor has  
55 been made.

56 (d) Notwithstanding section fifteen of this article, only  
57 one certificate need be issued for delivery to an insured  
58 person if a statement concerning any dependent's  
59 coverage is included in such certificate.

## CHAPTER 113

(H. B. 4467—By Delegate Berry)

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[Passed March 8, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article fifteen, 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 four-d; to amend article sixteen, chapter thirty-three of said code by adding thereto a new section, designated section three-h; to amend article twenty-four of said chapter thirty-three by adding thereto a new section, designated section seven-c; to amend article twenty-five of said chapter by adding thereto a new section, designated section eight-b; and to amend article twenty-five-a of said chapter by adding thereto a new section, designated section eight-b, all relating to insurance; and requiring third party reimbursement for rehabilitation services.

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

That article fifteen, 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 four-d; that article sixteen, chapter thirty-three of said code be amended by adding thereto a new section, designated section three-h; that article twenty-four of chapter thirty-three of said code be amended by adding thereto a new section, designated section seven-c; that article twenty-five of chapter thirty-three of said code be amended by adding thereto a new section, designated section eight-b; and that article twenty-five-a of said chapter be amended by adding thereto a new section, designated section eight-b, all to read as follows:

### Article

15. Accident and Sickness Insurance.
16. Group Accident and Sickness Insurance.
24. Hospital Service Corporations, Medical Service Corporations,  
Dental Service Corporations and Health Service Corporations.
25. Health Care Corporations.
- 25A. Health Maintenance Organization Act.

**ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.**

**§33-15-4d. Third party reimbursement for rehabilitation services.**

1 (a) Notwithstanding any provision of any policy,  
2 provision, contract, plan or agreement to which this  
3 article applies, any entity regulated by this article shall,  
4 on or after the first day of July, one thousand nine  
5 hundred ninety, make available as benefits to all  
6 subscribers and members coverage for rehabilitation  
7 services as hereinafter set forth.

8 (b) For purposes of this article and section, "rehabil-  
9 itation services" includes those services which are  
10 designed to remediate patient's condition or restore  
11 patients to their optimal physical, medical, psychologi-  
12 cal, social, emotional, vocational and economic status.  
13 Rehabilitative services include by illustration and not  
14 limitation diagnostic testing, assessment, monitoring or  
15 treatment of the following conditions individually or in  
16 a combination:

17 (1) Stroke;

18 (2) Spinal cord injury;

19 (3) Congenital deformity;

20 (4) Amputation;

21 (5) Major multiple trauma;

22 (6) Fracture of femur;

23 (7) Brain injury;

24 (8) Polyarthrits, including rheumatoid arthritis;

25 (9) Neurological disorders, including, but not limited  
26 to, multiple sclerosis, motor neuron diseases, polyneuro-  
27 pathy, muscular dystrophy and Parkinson's disease;

28 (10) Cardiac disorders, including, but not limited to,  
29 acute myocardial infarction, angina pectoris, coronary  
30 arterial insufficiency, angioplasty, heart transplanta-  
31 tion, chronic arrhythmias, congestive heart failure,  
32 valvular heart disease;

33 (11) Burns. Rehabilitation services do not include  
34 services for mental health, chemical dependency,



35 vocational rehabilitation, long-term maintenance or  
36 custodial services.

37 (c) Rehabilitation services includes care rendered by  
38 any of the following:

39 (1) A hospital duly licensed by the state of West  
40 Virginia that meets the requirements for rehabilitation  
41 hospitals as described in Section 2803.2 of the Medicare  
42 Provider Reimbursement Manual, Part 1, as published  
43 by the U. S. Health Care Financing Administration;

44 (2) A distinct part rehabilitation unit in a hospital  
45 duly licensed by the state of West Virginia. The distinct  
46 part unit must meet the requirements of Section 2803.61  
47 of the Medicare Provider Reimbursement Manual, Part  
48 1, as published by the U. S. Health Care Financing  
49 Administration;

50 (3) A hospital duly licensed by the state of West  
51 Virginia which meets the requirements for cardiac  
52 rehabilitation as described in Section 35-25, Transmittal  
53 41, dated August, 1989, as promulgated by the U. S.  
54 Health Care Financing Administration.

55 (d) A policy, provision, contract, plan or agreement  
56 may apply to rehabilitation services the same deducti-  
57 bles, coinsurance and other limitations as apply to other  
58 covered services.

#### ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

##### §33-16-3h. Third party reimbursement for rehabilitation services.

1 (a) Notwithstanding any provision of any policy,  
2 provision, contract, plan or agreement to which this  
3 article applies, any entity regulated by this article shall,  
4 on or after the first day of July, one thousand nine  
5 hundred ninety, make available as benefits to all  
6 subscribers and members coverage for rehabilitation  
7 services as hereinafter set forth.

8 (b) For purposes of this article and section, "rehabil-  
9 itation services" includes those services which are  
10 designed to remediate patient's condition or restore  
11 patients to their optimal physical, medical, psychologi-

12 cal, social, emotional, vocational and economic status.  
13 Rehabilitative services include by illustration and not  
14 limitation diagnostic testing, assessment, monitoring or  
15 treatment of the following conditions individually or in  
16 a combination:

17 (1) Stroke;

18 (2) Spinal cord injury;

19 (3) Congenital deformity;

20 (4) Amputation;

21 (5) Major multiple trauma;

22 (6) Fracture of femur;

23 (7) Brain injury;

24 (8) Polyarthritis, including rheumatoid arthritis;

25 (9) Neurological disorders, including, but not limited  
26 to, multiple sclerosis, motor neuron diseases, polyneuro-  
27 pathy, muscular dystrophy and Parkinson's disease;

28 (10) Cardiac disorders, including, but not limited to,  
29 acute myocardial infarction, angina pectoris, coronary  
30 arterial insufficiency, angioplasty, heart transplanta-  
31 tion, chronic arrhythmias, congestive heart failure,  
32 valvular heart disease;

33 (11) Burns. Rehabilitation services do not include  
34 services for mental health, chemical dependency,  
35 vocational rehabilitation, long-term maintenance or  
36 custodial services.

37 (c) Rehabilitative services includes care rendered by  
38 any of the following:

39 (1) A hospital duly licensed by the state of West  
40 Virginia that meets the requirements for rehabilitation  
41 hospitals as described in Section 2803.2 of the Medicare  
42 Provider Reimbursement Manual, Part 1, as published  
43 by the U. S. Health Care Financing Administration;

44 (2) A distinct part rehabilitation unit in a hospital  
45 duly licensed by the state of West Virginia. The distinct  
46 part unit must meet the requirements of Section 2803.61

47 of the Medicare Provider Reimbursement Manual, Part  
48 1, as published by the U. S. Health Care Financing  
49 Administration;

50 (3) A hospital duly licensed by the state of West  
51 Virginia which meets the requirements for cardiac  
52 rehabilitation as described in Section 35-25, Transmittal  
53 41, dated August, 1989, as promulgated by the U. S.  
54 Health Care Financing Administration.

55 (d) A policy, provision, contract, plan or agreement  
56 may apply to rehabilitation services the same deducti-  
57 bles, coinsurance and other limitations as apply to other  
58 covered services.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL  
SERVICE CORPORATIONS, DENTAL SERVICE  
CORPORATIONS AND HEALTH SERVICE  
CORPORATIONS.**

**§33-24-7c. Third party reimbursement for rehabilitation  
services.**

1 (a) Notwithstanding any provision of any policy,  
2 provision, contract, plan or agreement to which this  
3 article applies, any entity regulated by this article shall,  
4 on or after the first day of July, one thousand nine  
5 hundred ninety, make available as benefits to all  
6 subscribers and members coverage for rehabilitation  
7 services as hereinafter set forth.

8 (b) For purposes of this article and section, "rehabil-  
9 itation services" includes those services which are  
10 designed to remediate patient's condition or restore  
11 patients to their optimal physical, medical, psychologi-  
12 cal, social, emotional, vocational and economic status.  
13 Rehabilitative services include by illustration and not  
14 limitation diagnostic testing, assessment, monitoring or  
15 treatment of the following conditions individually or in  
16 a combination:

- 17 (1) Stroke;  
18 (2) Spinal cord injury;  
19 (3) Congenital deformity;  
20 (4) Amputation;

- 21 (5) Major multiple trauma;
- 22 (6) Fracture of femur;
- 23 (7) Brain injury;
- 24 (8) Polyarthritis, including rheumatoid arthritis;
- 25 (9) Neurological disorders, including, but not limited  
26 to, multiple sclerosis, motor neuron diseases, polyneuro-  
27 pathy, muscular dystrophy and Parkinson's disease;
- 28 (10) Cardiac disorders, including, but not limited to,  
29 acute myocardial infarction, angina pectoris, coronary  
30 arterial insufficiency, angioplasty, heart transplanta-  
31 tion, chronic arrhythmias, congestive heart failure,  
32 valvular heart disease;
- 33 (11) Burns. Rehabilitation services do not include  
34 services for mental health, chemical dependency,  
35 vocational rehabilitation, long-term maintenance or  
36 custodial services.
- 37 (c) Rehabilitative services includes care rendered by  
38 any of the following:
- 39 (1) A hospital duly licensed by the state of West  
40 Virginia that meets the requirements for rehabilitation  
41 hospitals as described in Section 2803.2 of the Medicare  
42 Provider Reimbursement Manual, Part 1, as published  
43 by the U. S. Health Care Financing Administration;
- 44 (2) A distinct part rehabilitation unit in a hospital  
45 duly licensed by the state of West Virginia. The distinct  
46 part unit must meet the requirements of Section 2803.61  
47 of the Medicare Provider Reimbursement Manual, Part  
48 1, as published by the U. S. Health Care Financing  
49 Administration;
- 50 (3) A hospital duly licensed by the state of West  
51 Virginia which meets the requirements for cardiac  
52 rehabilitation as described in Section 35-25, Transmittal  
53 41, dated August, 1989, as promulgated by the U. S.  
54 Health Care Financing Administration.
- 55 (d) A policy, provision, contract, plan or agreement  
56 may apply to rehabilitation services the same deducti-  
57 bles, coinsurance and other limitations as apply to other  
58 covered services.

## ARTICLE 25. HEALTH CARE CORPORATIONS.

**§33-25-8b. Third party reimbursement for rehabilitation services.**

1 (a) Notwithstanding any provision of any policy,  
2 provision, contract, plan or agreement to which this  
3 article applies, any entity regulated by this article shall,  
4 on or after the first day of July, one thousand nine  
5 hundred ninety, make available as benefits to all  
6 subscribers and members coverage for rehabilitation  
7 services as hereinafter set forth.

8 (b) For purposes of this article and section, "rehabil-  
9 itation services" includes those services which are  
10 designed to remediate patient's condition or restore  
11 patients to their optimal physical, medical, psychologi-  
12 cal, social, emotional, vocational and economic status.  
13 Rehabilitative services include by illustration and not  
14 limitation diagnostic testing, assessment, monitoring or  
15 treatment of the following conditions individually or in  
16 a combination:

17 (1) Stroke;

18 (2) Spinal cord injury;

19 (3) Congenital deformity;

20 (4) Amputation;

21 (5) Major multiple trauma;

22 (6) Fracture of femur;

23 (7) Brain injury;

24 (8) Polyarthritis, including rheumatoid arthritis;

25 (9) Neurological disorders, including, but not limited  
26 to, multiple sclerosis, motor neuron diseases, polyneuro-  
27 pathy, muscular dystrophy and Parkinson's disease;

28 (10) Cardiac disorders, including, but not limited to,  
29 acute myocardial infarction, angina pectoris, coronary  
30 arterial insufficiency, angioplasty, heart transplanta-  
31 tion, chronic arrhythmias, congestive heart failure,  
32 valvular heart disease;

33 (11) Burns. Rehabilitation services do not include  
34 services for mental health, chemical dependency,  
35 vocational rehabilitation, long-term maintenance or  
36 custodial services.

37 (c) Rehabilitative services includes care rendered by  
38 any of the following:

39 (1) A hospital duly licensed by the state of West  
40 Virginia that meets the requirements for rehabilitation  
41 hospitals as described in Section 2803.2 of the Medicare  
42 Provider Reimbursement Manual, Part 1, as published  
43 by the U. S. Health Care Financing Administration;

44 (2) A distinct part rehabilitation unit in a hospital  
45 duly licensed by the state of West Virginia. The distinct  
46 part unit must meet the requirements of Section 2803.61  
47 of the Medicare Provider Reimbursement Manual, Part  
48 1, as published by the U. S. Health Care Financing  
49 Administration;

50 (3) A hospital duly licensed by the state of West  
51 Virginia which meets the requirements for cardiac  
52 rehabilitation as described in Section 35-25, Transmittal  
53 41, dated August, 1989, as promulgated by the U. S.  
54 Health Care Financing Administration.

55 (d) A policy, provision, contract, plan or agreement  
56 may apply to rehabilitation services the same deducti-  
57 bles, coinsurance and other limitations as apply to other  
58 covered services.

**ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.**

**§33-25A-8b. Third party reimbursement for rehabilita-  
tion services.**

1 (a) Notwithstanding any provision of any policy,  
2 provision, contract, plan or agreement to which this  
3 article applies, any entity regulated by this article shall,  
4 on or after the first day of July, one thousand nine  
5 hundred ninety, make available as benefits to all  
6 subscribers and members coverage for rehabilitation  
7 services as hereinafter set forth.

8 (b) For purposes of this article and section, "rehabil-  
9 itation services" includes those services which are

10 designed to remediate patient's condition or restore  
11 patients to their optimal physical, medical, psychologi-  
12 cal, social, emotional, vocational and economic status.  
13 Rehabilitative services include by illustration and not  
14 limitation diagnostic testing, assessment, monitoring or  
15 treatment of the following conditions individually or in  
16 a combination:

17 (1) Stroke;

18 (2) Spinal cord injury;

19 (3) Congenital deformity;

20 (4) Amputation;

21 (5) Major multiple trauma;

22 (6) Fracture of femur;

23 (7) Brain injury;

24 (8) Polyarthritis, including rheumatoid arthritis;

25 (9) Neurological disorders, including, but not limited  
26 to, multiple sclerosis, motor neuron diseases, polyneuro-  
27 pathy, muscular dystrophy and Parkinson's disease;

28 (10) Cardiac disorders, including, but not limited to,  
29 acute myocardial infarction, angina pectoris, coronary  
30 arterial insufficiency, angioplasty, heart transplanta-  
31 tion, chronic arrhythmias, congestive heart failure,  
32 valvular heart disease;

33 (11) Burns. Rehabilitation services do not include  
34 services for mental health, chemical dependency,  
35 vocational rehabilitation, long-term maintenance or  
36 custodial services.

37 (c) Rehabilitative services includes care rendered by  
38 any of the following:

39 (1) A hospital duly licensed by the state of West  
40 Virginia that meets the requirements for rehabilitation  
41 hospitals as described in Section 2803.2 of the Medicare  
42 Provider Reimbursement Manual, Part 1, as published  
43 by the U. S. Health Care Financing Administration;

44 (2) A distinct part rehabilitation unit in a hospital

45 duly licensed by the state of West Virginia. The distinct  
46 part unit must meet the requirements of Section 2803.61  
47 of the Medicare Provider Reimbursement Manual, Part  
48 1, as published by the U. S. Health Care Financing  
49 Administration;

50 (3) A hospital duly licensed by the state of West  
51 Virginia which meets the requirements for cardiac  
52 rehabilitation as described in Section 35-25, Transmittal  
53 41, dated August, 1989, as promulgated by the U. S.  
54 Health Care Financing Administration.

55 (d) A policy, provision, contract, plan or agreement  
56 may apply to rehabilitation services the same deducti-  
57 bles, coinsurance and other limitations as apply to other  
58 covered services.

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## CHAPTER 114

(H. B. 4126—By Delegate Deem)

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[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section fourteen, article sixteen-a, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to group health insurance conversion; benefit levels; election to provide group coverage; notification of conversion privilege; and policies delivered outside state.

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

That section fourteen, article sixteen-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 16A. GROUP HEALTH INSURANCE CONVERSION.

**§33-16A-14. Benefit levels; election to provide group coverage; notification of conversion privilege; policy delivered outside state.**

1 If the benefit levels required in section nine of this



2 article exceed the benefit levels provided under the  
3 group policy, the conversion policy may offer benefits  
4 which are substantially similar to those provided under  
5 the group policy in lieu of those required in section nine.

6 The insurer may elect to provide group insurance  
7 coverage in lieu of the issuance of a converted individual  
8 policy.

9 The insurer, prior to terminating the policy for any  
10 reason, shall notify each employee or member, or such  
11 employee's or member's spouse, child or dependent  
12 entitled to the conversion privilege under this article, at  
13 least forty-five days in advance of the termination, in  
14 writing, of the pending termination. The notice shall  
15 inform the employee or member of the conversion  
16 privilege provided in this article.

17 A notification of the conversion privilege shall also be  
18 included in each certificate of coverage.

19 A converted policy which is delivered outside this  
20 state must be on a form which could be delivered in such  
21 other jurisdiction as a converted policy had the group  
22 policy been issued in that jurisdiction.

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## CHAPTER 115

(Com. Sub. for S. B. 162—By Senators Burdette, Mr. President, and Harman,  
By Request of the Executive)

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[Passed March 8, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article seventeen-a, relating to insurance; and providing a mechanism to regulate the declination and termination of property insurance policies and to provide for disclosure of the reasons for declinations and terminations.

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

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

**ARTICLE 17A. PROPERTY INSURANCE DECLINATION, TERMINATION AND DISCLOSURE.**

§33-17A-1. Purpose of article.

§33-17A-2. Scope of article.

§33-17A-3. Definitions.

§33-17A-4. Notification and reasons for a transfer, declination or termination.

§33-17A-5. Permissible cancellations.

§33-17A-6. Discriminatory terminations and declinations prohibited.

§33-17A-7. Hearings and administrative procedure.

§33-17A-8. Sanctions.

§33-17A-9. Civil liability and actions.

§33-17A-10. Immunity.

§33-17A-11. Severability.

**§33-17A-1. Purpose of article.**

1 The purpose of this article is to regulate declinations,  
2 cancellations and refusals to renew certain policies of  
3 property insurance and to provide for disclosure of the  
4 reasons for these actions.

**§33-17A-2. Scope of article.**

1 This article applies to policies of property insurance,  
2 other than policies of inland marine insurance and  
3 policies of property insurance issued through a residual  
4 market mechanism, covering risks to property located  
5 in this state which take effect or are renewed after the  
6 effective date of this article and which insure any of the  
7 following contingencies:

8 (a) Loss of or damage to real property which is used  
9 predominantly for the residential purposes of the named  
10 insured and which consists of not more than four  
11 dwelling units; or

12 (b) Loss of or damage to personal property in which  
13 the named insured has an insurable interest where:

14 (1) The personal property is used for personal, family  
15 or household purposes; and

16 (2) The personal property is within a residential  
17 dwelling.

**§33-17A-3. Definitions.**

1 (a) "Declination" is the refusal of an insurer to issue  
2 a property insurance policy on a written application or  
3 written request for coverage. For the purposes of this  
4 article, the offering of insurance coverage with a  
5 company within an insurance group which is different  
6 from the company requested on the application or  
7 written request for coverage or the offering of insurance  
8 upon different terms than requested in the application  
9 or written request for coverage is not considered a  
10 declination if such offering of such insurance is based  
11 upon any valid underwriting reason which involves a  
12 substantial increase in the risk. Each company or  
13 groups of companies instituting such transfer shall give  
14 notice in the manner provided in subsection (c), section  
15 four of this article, to the insured as to the reasons for  
16 such transfer.

17 (b) "Nonpayment of premium" means the failure of  
18 the named insured to discharge any obligation in  
19 connection with the payment of premiums on policies of  
20 property insurance, subject to this article, whether the  
21 payments are directly payable to the insurer or its agent  
22 or indirectly payable to the insurer or its agent or  
23 indirectly payable under a premium finance plan or  
24 extension of credit. "Nonpayment of premium" includes  
25 the failure to pay dues or fees where payment of dues  
26 or fees is a prerequisite to obtaining or continuing  
27 property insurance coverage.

28 (c) "Renewal" or "to renew" means the issuance and  
29 delivery by an insurer at the end of a policy period of  
30 a policy superseding a policy previously issued and  
31 delivered by the same insurer, or the issuance and  
32 delivery of a certificate or notice extending the term of  
33 an existing policy beyond its policy period or term. For  
34 the purpose of this article, any policy period or term of  
35 less than six months is considered a policy period or  
36 term of six months, and any policy period or term of  
37 more than one year or any policy with no fixed

38 expiration date is considered a policy period or term of  
39 one year.

40 (d) "Termination" means either a cancellation or  
41 nonrenewal of property insurance coverage in whole or  
42 in part. A cancellation occurs during the policy term.  
43 A nonrenewal occurs at the end of the policy term as  
44 set forth in subsection (c) of this section. For purposes  
45 of this article, the transfer of a policyholder between  
46 companies within the same insurance group is not  
47 considered a termination, if such transfer is based upon  
48 any valid underwriting reason which involves a substan-  
49 tial increase in the risk. Each company or group of  
50 companies instituting such transfer shall give notice in  
51 the manner provided in subsection (c), section four of  
52 this article, to the insured as to the reasons for such  
53 transfer. Requiring a reasonable deductible, reasonable  
54 changes in the amount of insurance or reasonable  
55 reductions in policy limits or coverage is not considered  
56 a termination if the requirements are directly related  
57 to the hazard involved and are made on the renewal date  
58 of the policy.

**§33-17A-4. Notification and reasons for a transfer,  
declination or termination.**

1 (a) Upon declining to insure any real or personal  
2 property, subject to this article, the insurer making a  
3 declination shall provide the insurance applicant with a  
4 written explanation of the specific reason or reasons for  
5 the declination at the time of the declination. The  
6 provision of such insurance application form by an  
7 insurer shall create no right to coverage on the behalf  
8 of the insured to which the insured is not otherwise  
9 entitled.

10 (b) A notice of cancellation of property insurance  
11 coverage by an insurer shall be in writing, shall be  
12 delivered to the named insured or sent by first class  
13 mail to the named insured at the last known address of  
14 the named insured, shall state the effective date of the  
15 cancellation and shall be accompanied by a written  
16 explanation of the specific reason or reasons for the  
17 cancellation.

18 (c) At least thirty days before the end of a policy  
19 period, as described in subsection (c), section three of  
20 this article, an insurer shall deliver or send by first class  
21 mail to the named insured at the last known address of  
22 the named insured, notice of its intention regarding the  
23 renewal of the property insurance policy. Notice of an  
24 intention not to renew a property insurance policy shall  
25 be accompanied by an explanation of the specific  
26 reasons for the nonrenewal: *Provided*, That no insurer  
27 shall fail to renew an outstanding property insurance  
28 policy which has been in existence for four years or  
29 longer except for the reasons as set forth in section five  
30 of this article; or for other valid underwriting reasons  
31 which involve a substantial increase in the risk.

**§33-17A-5. Permissible cancellations.**

1 After coverage has been in effect for more than sixty  
2 days or after the effective date of a renewal policy, a  
3 notice of cancellation may not be issued unless it is based  
4 on at least one of the following reasons:

5 (a) Nonpayment of premium;

6 (b) Conviction of the insured of any crime having as  
7 one of its necessary elements an act increasing any  
8 hazard insured against;

9 (c) Discovery of fraud or material misrepresentation  
10 made by or with the knowledge of the named insured  
11 in obtaining the policy, continuing the policy or in  
12 presenting a claim under the policy;

13 (d) Discovery of willful or reckless acts or omissions  
14 on the part of the named insured which increase any  
15 hazard insured against;

16 (e) The occurrence of a change in the risk which  
17 substantially increases any hazard insured against after  
18 insurance coverage has been issued or renewed;

19 (f) A violation of any local fire, health, safety, building  
20 or construction regulation or ordinance with respect to  
21 any insured property or the occupancy thereof which  
22 substantially increases any hazard insured against;

23 (g) A determination by the commissioner that the

24 continuation of the policy would place the insurer in  
25 violation of the insurance laws of this state;

26 (h) Real property taxes owing on the insured property  
27 have been delinquent for two or more years and continue  
28 delinquent at the time notice of cancellation is issued;

29 (i) The insurer which issues said policy of insurance  
30 ceases writing the particular type or line of insurance  
31 coverage contained in said policy throughout the state  
32 or should such insurer discontinue operations within the  
33 state; or

34 (j) Substantial breach of the provisions of the policy.

**§33-17A-6. Discriminatory terminations and declinations  
prohibited.**

1 No insurer may decline to issue or terminate a policy  
2 or insurance subject to this article if the declination or  
3 termination is:

4 (a) Based upon the race, religion, nationality, ethnic  
5 group, age, sex or marital status of the applicant or  
6 named insured;

7 (b) Based solely upon the lawful occupation or  
8 profession of the applicant or named insured, unless  
9 such decision is for a business purpose which is not a  
10 mere pretext for unfair discrimination: *Provided*, That  
11 this provision shall not apply to any insurer, agent or  
12 broker which limits its market to one lawful occupation  
13 or profession or to several related lawful occupations or  
14 professions;

15 (c) Based upon the age or location of the residence of  
16 the applicant or named insured unless the decision is for  
17 a business purpose which is not a mere pretext for  
18 unfair discrimination or unless the age or location  
19 materially affects the risk;

20 (d) Based upon the fact that another insurer pre-  
21 viously declined to insure the applicant or terminated  
22 an existing policy in which the applicant was the named  
23 insured;

24 (e) Based upon the fact that the applicant or named  
25 insured previously obtained insurance coverage through  
26 a residual market insurance mechanism;

27 (f) Based upon the fact that the applicant has not  
28 previously been insured; or

29 (g) Based upon the fact that the applicant did not  
30 have insurance coverage for a period of time prior to the  
31 application.

**§33-17A-7. Hearings and administrative procedure.**

1 Hearings for the violation of any provision of this  
2 article, and the administrative procedure prior to,  
3 during and following these hearings, shall be conducted  
4 in accordance with the provisions of article two of this  
5 chapter.

**§33-17A-8. Sanctions.**

1 If the commissioner determines in a final order that:

2 (a) An insurer has violated section five or six of this  
3 article, he may require the insurer to:

4 (1) Accept the application or written request for  
5 insurance coverage at a rate and on the same terms and  
6 conditions as are available to other risks similarly  
7 situated;

8 (2) Reinstate insurance coverage to the end of the  
9 policy period; or

10 (3) Continue insurance coverage at a rate and on the  
11 same terms and conditions as are available to other risks  
12 similarly situated.

13 (b) Any person has violated any provision of this  
14 article, he may:

15 (1) Issue a cease and desist order to restrain the  
16 person from engaging in practices which violate this  
17 article; and

18 (2) Assess a penalty against the person of up to five  
19 thousand dollars for each willful and knowing violation  
20 of this article.

**§33-17A-9. Civil liability and actions.**

1 (a) If the commissioner determines in a final order  
2 that an insurer has violated section five or six of this  
3 article, the applicant or named insured aggrieved by the  
4 violation may bring an action in a court of competent  
5 jurisdiction in this state to recover from the insurer any

6 loss, not otherwise recovered through insurance, which  
7 would have been paid under the insurance coverage that  
8 was declined or terminated in violation of this article.

9 (b) Any amount recovered under subsection (a) of this  
10 section may not be duplicative of any recovery obtained  
11 through the exercise of any other statutory or common  
12 law cause of action arising out of the same occurrence.  
13 No action under this section may be brought two years  
14 after the date of a final order of the commissioner  
15 finding a violation of section five or six of this article.

#### §33-17A-10. Immunity.

1 (a) There is no liability on the part of and no cause  
2 of action shall arise against the commissioner, any  
3 insurer or its authorized representative, or any licensed  
4 insurance agent or broker for furnishing information to  
5 an insurer as to reasons for a termination or declination,  
6 or for any communication giving notice of, or specifying  
7 the reasons for, a declination or termination.

8 (b) Subsection (a) above does not apply to statements  
9 made in bad faith with malice in fact.

#### §33-17A-11. Severability.

1 If any provisions of this article or the application  
2 thereof to any person or circumstances is for any reason  
3 held to be invalid, the remainder of the article and the  
4 application of such provision to other persons or  
5 circumstances shall not be affected thereby.

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## CHAPTER 116

(Com. Sub. for H. B. 4384—By Delegates Susman and Flanigan)

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[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section eighteen, article  
twenty, chapter thirty-three of the code of West  
Virginia, one thousand nine hundred thirty-one, as  
amended, relating to motor vehicle insurance and  
providing a premium reduction for drivers fifty-five



years of age or older who have successfully completed an approved accident prevention course.

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

That section eighteen, article twenty, 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 20. RATES AND RATING ORGANIZATIONS.**

**§33-20-18. Reduction of premium charges for persons fifty-five years of age or older.**

1 (a) Any rates, rating schedules or rating manuals for  
2 the liability, personal injury protection and collision  
3 coverages of a motor vehicle insurance policy submitted  
4 to or filed with the insurance commissioner shall  
5 provide for an appropriate reduction in premium  
6 charges as to such coverages when the principal  
7 operator and spouse on the covered vehicle is an insured  
8 who is fifty-five years of age or older and who has  
9 successfully completed a motor vehicle accident preven-  
10 tion course approved by the division of motor vehicles.  
11 Such reductions of premium rates shall be made in  
12 compliance with the provisions of subsections (a) and (b),  
13 section three of this article. Any discount used by an  
14 insurer shall be presumed appropriate unless credible  
15 data demonstrates otherwise.

16 (b) The premium reduction required by this section  
17 shall be effective for an insured and spouse for a three-  
18 year period after successful completion of the approved  
19 course, except that the insurer may require, as a  
20 condition of maintaining the discount, that the insured  
21 and spouse:

22 (1) Not be involved in an accident for which the  
23 insured or spouse is at fault;

24 (2) Not be convicted, plead guilty or nolo contendere  
25 to a moving traffic violation, or to a traffic related  
26 alcohol or narcotics offense; and

27 (3) Have maintained a driving record free of viola-  
28 tions and liability for accidents for a three-year period  
29 prior to course completion.

30 (c) Upon successfully completing the approved course,  
31 each person shall be issued a certificate by the organ-  
32 ization offering the course which shall be used to qualify  
33 for the premium discount required by this section.

34 (d) This section shall not apply in the event the  
35 approved course is taken as punishment specified by a  
36 court or other governmental entity resulting from a  
37 moving traffic violation.

38 (e) An insured shall only be entitled to a discount  
39 equal to the greater of the premium reduction required  
40 by this section or any discretionary discount offered by  
41 insurers to persons fifty-five years of age or older who  
42 have not completed the approved motor vehicle accident  
43 course and specifically shall not be entitled to more than  
44 one discount.

45 (f) Each participant shall take an approved course  
46 every three years to continue to be eligible for the  
47 reduction in premiums.

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## CHAPTER 117

(S. B. 481—By Senator Hawse)

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[Passed March 8, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section four, article twenty-four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to insurance; hospital service corporations, medical service corporations and dental service corporations; and requiring such corporations to provide coverage for mental illness.

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

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

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

**\*§33-24-4. Exemptions; applicability of other laws.**

1 Every such corporation is hereby declared to be a  
2 scientific, nonprofit institution and as such exempt from  
3 the payment of all property and other taxes. Every such  
4 corporation, to the same extent such provisions are  
5 applicable to insurers transacting similar kinds of  
6 insurance and not inconsistent with the provisions of this  
7 article, shall be governed by and be subject to the  
8 provisions as hereinbelow indicated, of the following  
9 articles of this chapter: Article two (insurance commis-  
10 sioner) except that under section nine of article two  
11 examinations shall be conducted at least once every four  
12 years, article four (general provisions) except that  
13 section sixteen of article four shall not be applicable  
14 thereto, article six, section thirty-four (fee for form and  
15 rate filing), article ten (rehabilitation and liquidation),  
16 article eleven (unfair practices and frauds), article  
17 twelve (agents, brokers and solicitors) except that the  
18 agent's license fee shall be five dollars, article fifteen-  
19 a (long-term care insurance), section three-a, article  
20 sixteen (mental illness), section three-c, article sixteen  
21 (group accident and sickness insurance), section three-  
22 d, article sixteen (medicare supplement), section three-  
23 f, article sixteen (treatment of temporomandibular joint  
24 disorder and craniomandibular disorder), article  
25 twenty-eight (individual accident and sickness insurance  
26 minimum standards) and article thirty-three (annual  
27 audited financial report); and no other provision of this  
28 chapter shall apply to such corporations unless specif-  
29 ically made applicable by the provisions of this article.  
30 If, however, any such corporation shall be converted into  
31 a corporation organized for a pecuniary profit, or if it  
32 shall transact business without having obtained a license  
33 as required by section five of this article, it shall  
34 thereupon forfeit its right to these exemptions.

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\*Clerk's Note: §33-24-4 was also amended by H. B. 4195 (Chapter 110), which passed subsequent to this act.

## CHAPTER 118

(Com. Sub. for S. B. 15—By Senator Holliday)

[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-b, relating to creating the home detention act; providing for a short title; providing definitions; providing the requirements for an order for home detention; describing circumstances for not granting an order for home detention; requiring fees; mandating the creation of a special fund; making offender responsible for certain expenses; describing information to be provided law-enforcement agencies; prescribing penalties for violation of conditions of an order, procedures therein; and providing that provisions may be applied as an alternate means of detention.

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

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

### CHAPTER 62. CRIMINAL PROCEDURE.

#### ARTICLE 11B. HOME DETENTION ACT.

- §62-11B-1. Short title.
- §62-11B-2. Applicability.
- §62-11B-3. Definitions.
- §62-11B-4. Home detention; period of home detention; applicability.
- §62-11B-5. Requirements for order for home detention.
- §62-11B-6. Circumstances under which home detention may not be ordered.
- §62-11B-7. Home detention fees; special fund.
- §62-11B-8. Offender responsible for certain expenses.
- §62-11B-9. Violation of order of home confinement; procedures; penalties.
- §62-11B-10. Information to be provided law-enforcement agencies.
- §62-11B-11. Provisions of article not exclusive.

#### §62-11B-1. Short title.

- 1 This article may be cited as the "Home Detention
- 2 Act."

**§62-11B-2. Applicability.**

1 This article applies to adult offenders and to juveniles  
2 who have committed a delinquent act that would be a  
3 crime if committed by an adult.

**§62-11B-3. Definitions.**

1 As used in this article:

2 (1) "Home" means the actual living area of the  
3 temporary or permanent residence of an offender. The  
4 term includes, but is not limited to, a hospital, health  
5 care facility, hospice, group home, residential treatment  
6 facility and boarding house.

7 (2) "Monitoring device" means an electronic device  
8 that is:

9 (A) Limited in capability to the recording or trans-  
10 mitting of information regarding an offender's presence  
11 or absence from the offender's home;

12 (B) Minimally intrusive upon the privacy of the  
13 offender or other persons residing in the offender's  
14 home; and

15 (C) Incapable of recording or transmitting:

16 (i) Visual images;

17 (ii) Oral or wire communications or any auditory  
18 sound; or

19 (iii) Information regarding the offender's activities  
20 while inside the offender's home.

21 (3) "Offender" means any adult convicted of a crime  
22 punishable by imprisonment or detention in a county jail  
23 or state penitentiary; or a juvenile convicted of a  
24 delinquent act that would be a crime punishable by  
25 imprisonment or incarceration in the state penitentiary  
26 or county jail, if committed by an adult.

**§62-11B-4. Home detention; period of home detention;  
applicability.**

1 (a) As a condition of probation or as an alternative

2 sentence to another form of incarceration, a court may  
3 order an offender confined to the offender's home for a  
4 period of home detention.

5 (b) The period of home detention may be continuous  
6 or intermittent, as the court orders. However, the  
7 aggregate time actually spent in home detention may  
8 not exceed the term of imprisonment or incarceration  
9 prescribed by this code for the offense committed by the  
10 offender.

**§62-11B-5. Requirements for order for home detention.**

1 An order for home detention of an offender under  
2 section four of this article shall include, but not be  
3 limited to, the following:

4 (1) A requirement that the offender be confined to the  
5 offender's home at all times except when the offender  
6 is:

7 (A) Working at employment approved by the court or  
8 traveling to or from approved employment;

9 (B) Unemployed and seeking employment approved  
10 for the offender by the court;

11 (C) Undergoing medical, psychiatric, mental health  
12 treatment, counseling or other treatment programs  
13 approved for the offender by the court;

14 (D) Attending an educational institution or a program  
15 approved for the offender by the court;

16 (E) Attending a regularly scheduled religious service  
17 at a place of worship;

18 (F) Participating in a community work release or  
19 community service program approved for the offender  
20 by the court; or

21 (G) Engaging in other activities specifically approved  
22 for the offender by the court.

23 (2) Notice to the offender of the penalties which may  
24 be imposed if the court subsequently finds the offender  
25 to have violated the terms and conditions in the order  
26 of home detention.

27 (3) A requirement that the offender abide by a  
28 schedule prepared by the probation officer specifically  
29 setting forth the times when the offender may be absent  
30 from the offender's home and the locations the offender  
31 is allowed to be during the scheduled absences.

32 (4) A requirement that the offender is not to commit  
33 another crime during the period of home detention  
34 ordered by the court.

35 (5) A requirement that the offender obtain approval  
36 from the probation officer before the offender changes  
37 residence or the schedule described in subdivision (3) of  
38 this section.

39 (6) A requirement that the offender maintain:

40 (A) A working telephone in the offender's home;

41 (B) If ordered by the court, a monitoring device in the  
42 offender's home, or on the offender's person, or both; and

43 (C) Electric service in the offender's home if use of a  
44 monitoring device is ordered by the court.

45 (7) A requirement that the offender pay a home  
46 detention fee set by the court.

47 (8) A requirement that the offender abide by other  
48 conditions of probation set by the court.

**§62-11B-6. Circumstances under which home detention  
may not be ordered.**

1 (a) A court may not order home detention for an  
2 offender unless the offender agrees to abide by all of the  
3 requirements set forth in the court's order issued under  
4 this article.

5 (b) A court may not order home detention for an  
6 offender who is being held under a detainer, warrant  
7 or process issued by a court of another jurisdiction.

**§62-11B-7. Home detention fees; special fund.**

1 All home detention fees shall be deposited with the

2 circuit clerk who shall deposit the fees into the county  
3 sheriff's special adult or juvenile probation services  
4 fund, which fund is hereby mandated. The county  
5 commission shall appropriate money from the fund to  
6 administer a home detention program, including the  
7 purchase of monitoring devices and other supervision  
8 expenses, and may as necessary supplement the fund  
9 with additional appropriations.

**§62-11B-8. Offender responsible for certain expenses.**

1 An offender ordered to undergo home detention under  
2 section four of this article is responsible for providing  
3 his own food, housing, clothing, medical care and other  
4 treatment expenses. The offender is eligible to receive  
5 government benefits allowable for persons on probation,  
6 parole or other conditional discharge from confinement.

**§62-11B-9. Violation of order of home confinement;  
procedures; penalties.**

1 (a) If at any time during the period of home detention  
2 there shall be reasonable cause to believe that a  
3 participant in a home detention program has violated  
4 the terms and conditions of the court's home confine-  
5 ment order, he or she shall be subject to the procedures  
6 and penalties set forth in section ten, article twelve of  
7 this chapter.

8 (b) If at any time during the period of home detention  
9 there shall be reasonable cause to believe that a  
10 participant has violated the terms and conditions of the  
11 court's order of home detention and said participant's  
12 participation was imposed as an alternative sentence to  
13 another form of incarceration, said participant shall be  
14 subject to the same procedures involving revocation as  
15 would a probationer charged with a violation of the  
16 order of home detention. Any participant under an order  
17 of home detention shall be subject to the same penalty  
18 or penalties, upon the court's finding of a violation of the  
19 order of home detention, as he or she could have received  
20 at the initial disposition hearing: *Provided*, That the  
21 participant shall receive credit towards any sen-



22 tence imposed after a finding of violation for the time  
23 spent in home confinement.

**§62-11B-10. Information to be provided law-enforcement agencies.**

1 A probation department charged by a court with  
2 supervision of offenders ordered to undergo home  
3 detention shall provide all law-enforcement agencies  
4 having jurisdiction in the place where the probation  
5 department is located with a list of offenders under  
6 home detention supervised by the probation department.  
7 The list must include the following information about  
8 each offender:

9 (1) The offender's name, any known aliases, and the  
10 location of the offender's home detention;

11 (2) The crime for which the offender was convicted;

12 (3) The date the offender's home detention expires;  
13 and

14 (4) The name, address and telephone number of the  
15 offender's supervising probation officer for home  
16 detention.

**§62-11B-11. Provisions of article not exclusive.**

1 The provisions of this article are not to be considered  
2 exclusive nor do they supersede existing statutes  
3 relating to the detention of adult or juvenile offenders.  
4 The provisions of this article may be applied at the  
5 discretion of the trial court as an alternate means of  
6 detention.

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## CHAPTER 119

(Com. Sub. for H. B. 4666—By Delegate Spencer)

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[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections fifteen-a and nineteen-a, article fourteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as

amended; and to amend and reenact section three, article fourteen, chapter eight of said code, all relating to prohibiting off-duty employment of law-enforcement officers in labor disputes.

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

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

### Chapter

7. County Commissions and Officers.
8. Municipal Corporations.

## CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

### ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

§7-14-15a. Additional part-time police work permitted.

§7-14-19a. Additional police work for deputy sheriffs in noncivil service counties.

#### §7-14-15a. Additional part-time police work permitted.

1 Deputy sheriffs shall be allowed to engage in police  
2 work for pay in addition to their regular work as a  
3 deputy sheriff. However, they may not engage in such  
4 police work for any party engaged in or involved in any  
5 labor trouble or dispute between employer and  
6 employee.

7 The deputy sheriffs civil service commission shall  
8 prescribe and enforce rules and regulations fixing the  
9 terms and conditions under which deputy sheriffs may  
10 engage in police work in addition to their normal duties  
11 as deputy sheriffs. These rules and regulations must  
12 prohibit discrimination, as far as practicable, between  
13 deputy sheriffs with regard to the allocation of addi-  
14 tional police work. No sheriff may have a direct or  
15 indirect pecuniary interest in any outside employment.  
16 A deputy sheriff performing additional police work  
17 shall wear an identifying armband to indicate special  
18 duty.

**§7-14-19a. Additional police work for deputy sheriffs in noncivil service counties.**

1 The sheriff of any county with a population of less  
2 than twelve thousand five hundred which has not  
3 adopted civil service for deputy sheriffs pursuant to the  
4 provisions of section nineteen, article fourteen, chapter  
5 seven, may allow his deputy sheriffs to do additional  
6 police work in addition to their normal duties as a  
7 deputy sheriff. However, they may not be allowed to  
8 engage in such police work for any party engaged in or  
9 involved in any labor trouble or dispute between  
10 employer and employee. Before such sheriff shall be  
11 allowed to grant such additional police work to his  
12 deputy sheriffs, he must prepare a plan setting forth the  
13 terms and conditions under which his deputy sheriffs  
14 may engage in additional police work. Such terms and  
15 conditions must prohibit discrimination between depu-  
16 ties with regard to the allocation of additional police  
17 work. Such plans shall be submitted to the county  
18 commission of such county and shall be subject to the  
19 approval of said county commission. No sheriff may  
20 have a direct or indirect pecuniary interest in any  
21 outside employment. A deputy sheriff performing  
22 additional police work shall wear an identifying  
23 armband to indicate special duty.

**CHAPTER 8. MUNICIPAL CORPORATIONS.**

**ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPART-  
MENTS; POWERS, AUTHORITY AND DUTIES OF  
LAW-ENFORCEMENT OFFICIALS AND POLICE-  
MEN; POLICE MATRONS; SPECIAL SCHOOL  
ZONE AND PARKING LOT OR PARKING BUILD-  
ING POLICE OFFICERS; CIVIL SERVICE FOR  
CERTAIN POLICE DEPARTMENTS.**

**§8-14-3. Powers, authority and duties of law-enforcement officials and policemen.**

1 The chief and any member of the police force or  
2 department of a municipality and any municipal  
3 sergeant shall have all of the powers, authority, rights  
4 and privileges within the corporate limits of the  
5 municipality with regard to the arrest of persons, the

6 collection of claims, and the execution and return of any  
7 search warrant, warrant of arrest or other process,  
8 which can legally be exercised or discharged by a  
9 deputy sheriff of a county. In order to arrest for the  
10 violation of municipal ordinances and as to all matters  
11 arising within the corporate limits and coming within  
12 the scope of his official duties, the powers of any chief,  
13 policeman or sergeant shall extend anywhere within the  
14 county or counties in which the municipality is located,  
15 and any such chief, policeman or sergeant shall have the  
16 same authority of pursuit and arrest beyond his normal  
17 jurisdiction as has a sheriff. For an offense committed  
18 in his presence, any such officer may arrest the offender  
19 without a warrant and take him before the mayor or  
20 police court or municipal court to be dealt with  
21 according to law. He and his sureties shall be liable to  
22 all the fines, penalties and forfeitures which a deputy  
23 sheriff is liable to, for any failure or dereliction in such  
24 office, to be recovered in the same manner and in the  
25 same courts in which such fines, penalties and forfei-  
26 tures are recovered against a deputy sheriff. In addition  
27 to the mayor, or police court judge or municipal court  
28 judge, if any, of a city, the chief of police of any  
29 municipality and in the absence from the station house  
30 of the chief of police the captains of police and lieuten-  
31 ants of police shall each have authority to administer  
32 oaths to complainants and to issue arrest warrants  
33 thereon for all violations of the ordinances of such  
34 municipality.

35 It shall be the duty of the mayor and police officers  
36 of every municipality and any municipal sergeant to aid  
37 in the enforcement of the criminal laws of the state  
38 within the municipality, independently of any charter  
39 provision or any ordinance or lack of an ordinance with  
40 respect thereto, and to cause the arrest of or arrest any  
41 offender and take him before a magistrate to be dealt  
42 with according to the law. Failure on the part of any  
43 such official or officer to discharge any duty imposed by  
44 the provisions of this section shall be deemed official  
45 misconduct for which he may be removed from office.  
46 Any such official or officer shall have the same authority  
47 to execute a warrant issued by a magistrate, and the

48 same authority to arrest without a warrant for offenses  
49 committed in his presence, as a deputy sheriff.

50 No officer or member of the police force or depart-  
51 ment of a municipality may aid or assist either party  
52 in any labor trouble or dispute between employer and  
53 employee. They shall in such cases see that the statutes  
54 and laws of this state and municipal ordinances are  
55 enforced in a legal way and manner. Nor shall he or she  
56 engage in off-duty police work for any party engaged  
57 in or involved in such labor dispute or trouble between  
58 employer and employee.

59 The chief of police shall be charged with the keeping  
60 and security of the jail and at any time that one or more  
61 prisoners are being held in the jail, he shall require that  
62 the jail be attended by a police officer or other  
63 responsible person.

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## CHAPTER 120

(S. B. 243—By Senator Jackson)

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[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to legislative authorization of legislative rules proposed by various executive agencies following review by the legislative rule-making review committee and recommended by the legislative rule-making review committee as filed, with modifications as filed, as amended, or as directed and authorized; declaration by the Legislature of legislative rules authorized as complying with the intent of the statute under which the legislative rule was proposed.

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

That 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:

**CHAPTER 64. LEGISLATIVE RULES.****Article**

1. **General Legislative Authorization.**
2. **Authorization for Department of Administration to Promulgate Legislative Rules.**
3. **Authorization for Department of Commerce, Labor and Environmental Resources to Promulgate Legislative Rules.**
4. **Authorization for Department of Education and the Arts to Promulgate Legislative Rules.**
5. **Authorization for Department of Health and Human Resources to Promulgate Legislative Rules.**
6. **Authorization for Department of Public Safety to Promulgate Legislative Rules.**
7. **Authorization for Department of Tax and Revenue to Promulgate Legislative Rules.**
8. **Authorization for Department of Transportation to Promulgate Legislative Rules.**
9. **Authorization for Miscellaneous Agencies and Boards to promulgate Legislative Rules.**

**ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.**

§64-1-1. Legislative authorization.

§64-1-2. Effective date of rules.

§64-1-3. Technical deficiencies waived.

**§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 nine of this chapter,  
5 subject only to the limitations set forth with respect to  
6 each such rule in the section or sections of this chapter  
7 authorizing its promulgation. The Legislature further  
8 declares that all rules now or hereafter authorized  
9 under articles two through nine of this chapter are  
10 within the legislative intent of the statute which the rule  
11 is intended to implement, extend, apply or interpret.

**§64-1-2. Effective date of rules.**

1 The effective date of the legislative rules authorized  
2 in articles two through nine of this chapter shall be  
3 governed by the provisions of section thirteen, article  
4 three, chapter twenty-nine-a, unless the agency promul-  
5 gating the rules establishes an effective date which is  
6 earlier than that provided by section thirteen, article  
7 three, chapter twenty-nine-a, in which case the effective  
8 date established by the agency shall control, unless the

9 Legislature in the bill authorizing the rules establishes  
10 an effective date for such rules in which case the  
11 effective date established by the Legislature shall  
12 control.

**§64-1-3. Technical deficiencies waived.**

1 The Legislature further declares each legislative rule  
2 now or hereafter authorized under articles two through  
3 nine of this chapter to have been validly promulgated  
4 notwithstanding any failure to comply with any require-  
5 ment of chapter twenty-nine-a for the promulgation of  
6 rules at any stage of the promulgation process prior to  
7 authorization by the Legislature in articles two through  
8 nine of this chapter.

**ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINIS-  
TRATION TO PROMULGATE LEGISLATIVE  
RULES.**

- §64-2-1. Employee suggestion award board.
- §64-2-2. Division of finance and administration.
- §64-2-3. Division of personnel.
- §64-2-4. Public employees insurance agency.
- §64-2-5. Board of risk and insurance management.
- §64-2-6. Teachers retirement board.

**§64-2-1. Employee suggestion award board.**

1 The legislative rules filed in the state register on the  
2 twenty-third day of July, one thousand nine hundred  
3 eighty-two, relating to the employee suggestion award  
4 board (public employee suggestion program), are  
authorized.

**§64-2-2. Division of finance and administration.**

1 The legislative rules filed in the state register on the  
2 eighteenth day of November, one thousand nine hundred  
3 eighty-eight, modified by the director of the purchasing  
4 division of the department of finance and administration  
5 to meet the objections of the legislative rule-making  
6 review committee and refiled in the state register on the  
7 nineteenth day of January, one thousand nine hundred  
8 eighty-nine, relating to the director of the purchasing  
9 division of the department of finance and administration  
10 (purchasing division), are authorized.

**§64-2-3. Division of personnel.**

1 (a) The legislative rules filed in the state register on  
2 the nineteenth day of November, one thousand nine  
3 hundred eighty-six, modified by the civil service  
4 commission to meet the objection of the legislative rule-  
5 making review committee and refiled in the state  
6 register on the fifteenth day of December, one thousand  
7 nine hundred eighty-six, relating to the civil service  
8 commission (civil service system), are authorized.

9 (b) The legislative rules filed in the state register on  
10 the first day of November, one thousand nine hundred  
11 eighty-eight, modified by the civil service commission to  
12 meet the objections of the legislative rule-making review  
13 committee and refiled in the state register on the  
14 twenty-third day of February, one thousand nine  
15 hundred eighty-nine, relating to the civil service  
16 commission (civil service system), are authorized with  
17 the amendments set forth below:

18 On page fifteen, section 5.05(d), after the words  
19 "established in" by striking out the remainder of the  
20 sentence and inserting in lieu thereof the words  
21 "Chapter 29-6A of the Code of West Virginia, as  
22 amended."

23 On page fifteen, section 5.06, after the words "estab-  
24 lished in" by striking out the remainder of the sentence  
25 and inserting in lieu thereof the words "Chapter 29-6A  
26 of the Code of West Virginia, as amended."

27 And

28 On pages sixteen and seventeen by deleting all of  
29 section 5.07.

30 And,

31 On page 46, section 13(f) line 2 by striking the words  
32 "previously held".

**§64-2-4. Public employees insurance agency.**

1 (a) The legislative rules filed in the state register on  
2 the sixteenth day of May, one thousand nine hundred  
3 eighty-three, relating to the public employees insurance



4 board (public employees insurance plan), are authorized  
5 with the amendments set forth below:

6 §6.03.—In the second sentence delete the words  
7 “Executive Secretary” and insert the word “Board”.

8 (b) The legislative rules filed in the state register on  
9 the twenty-seventh day of September, one thousand nine  
10 hundred eighty-four, modified by the public employees  
11 insurance board to meet the objections of the legislative  
12 rule-making review committee and refiled in the state  
13 register on the fourth day of March, one thousand nine  
14 hundred eighty-five, relating to the public employees  
15 insurance board (credit for accrued sick/annual leave  
16 and optional life insurance), are authorized.

17 (c) The legislative rules filed in the state register on  
18 the twelfth day of September, one thousand nine  
19 hundred eighty-four, relating to the public employees  
20 insurance board (late enrollment in the public em-  
21 ployees insurance program), are authorized with the  
22 amendments set forth below:

23 §2.01(b) shall read as follows:

24 “(b) ‘children’ shall mean unmarried children between  
25 birth and age nineteen and shall include: (1) The  
26 employee’s natural children, (2) legally adopted child-  
27 ren, including children living with the employee during  
28 the period of probation, (3) stepchildren residing in the  
29 employee’s household and (4) other children fully  
30 dependent upon the employee for support and mainte-  
31 nance and residing in the household of which the  
32 employee is head and actually being supported by the  
33 employee. Children may be included after the attain-  
34 ment of age nineteen, but not beyond the attainment of  
35 age twenty-five, if they are enrolled as full-time  
36 students, are unmarried, and are dependent upon the  
37 employee for support. Children may also be included  
38 after the attainment of age nineteen while incapable of  
39 self-support because of mental illness, mental retarda-  
40 tion or a permanent physical disability, if the child was  
41 dependent upon the employee for support and mainte-  
42 nance at the onset of the mental illness, mental  
43 retardation or permanent physical disability. For the

44 purpose of this section, mental illness includes addiction  
45 as defined in Code 27-1-11 as is defined as a manifes-  
46 tation in a person of significantly impaired capacity to  
47 maintain acceptable levels of functioning in the areas of  
48 intellect, emotion and physical well-being, only if such  
49 impairment renders the person dangerous to himself or  
50 others or such person is substantially unable to protect  
51 himself from significant hazard: *Provided*, That child-  
52 ren included because of addiction as hereinbefore  
53 defined shall not be included beyond the attainment of  
54 age twenty-five.”

55 On page six, at 4.01(g)(2) shall read as follows:

56 “The end of any 12 month period after enrollment  
57 during which no diagnosis or treatment is received, and  
58 no expenses are incurred for care of the injury, illness  
59 or related conditions.”

60 Also, insert a new section, designated section 5.07, to  
61 read as follows:

62 “5.07.—Coverage for dependents shall terminate at the  
63 end of the month in which they no longer meet the  
64 definition of ‘dependent’ as set forth in section 2.01 of  
65 these rules.”

#### §64-2-5. Board of risk and insurance management.

1 (a) The legislative rules filed in the state register on  
2 the twenty-first day of October, one thousand nine  
3 hundred eighty-three, relating to the board of risk and  
4 insurance management (mine subsidence), are  
5 authorized.

6 (b) The legislative rules filed in the state register on  
7 the twenty-sixth day of November, one thousand nine  
8 hundred eighty-five, modified by the state board of risk  
9 and insurance management to meet the objections of the  
10 legislative rule-making review committee and refiled in  
11 the state register on the eighth day of December, one  
12 thousand nine hundred eighty-six, relating to the state  
13 board of risk and insurance management (mine subsi-  
14 dence insurance program), are authorized.

15 (c) The legislative rules filed in the state register on

16 the twenty-eighth day of July, one thousand nine  
17 hundred eighty-nine, modified by the board of risk and  
18 insurance management to meet the objections of the  
19 legislative rule-making review committee and refiled in  
20 the state register on the seventeenth day of October, one  
21 thousand nine hundred eighty-nine, relating to the  
22 board of risk and insurance management (West Virginia  
23 board of risk and insurance management), are autho-  
24 rized.

#### **§64-2-6. Teachers retirement board.**

1 The legislative rules filed in the state register on the  
2 eleventh day of August, one thousand nine hundred  
3 eighty-two, relating to the teachers retirement board,  
4 are authorized with the following amendments:

5 Section VI, subsection 6, D, (a)(ii) of the rules is to be  
6 amended on line two by striking out the words "(3) thru  
7 (7)" and inserting in lieu thereof the words "(3) thru  
8 (13)"; Section VII, subsection 7, B, (c) of the rules is to  
9 be amended on line three after the word "100" by  
10 striking out the word "consecutive," and by redesignat-  
11 ing the subsection as subsection "(a)"; and Section X,  
12 subsection 10, A, (c), of the rules is to be amended on  
13 line one after the word "physicians," by striking out the  
14 words "of member's choice," and inserting in lieu thereof  
15 the words "one selected by the Board and one selected  
16 by the member".

#### **ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COM- MERCE, LABOR AND ENVIRONMENTAL RE- SOURCES TO PROMULGATE LEGISLATIVE RULES.**

- §64-3-1. Air pollution control commission.
- §64-3-2. Division of banking.
- §64-3-3. Division of commerce.
- §64-3-4. Division of energy.
- §64-3-5. Enterprise zone authority.
- §64-3-6. West Virginia industrial and trade jobs development corporation.
- §64-3-7. Division of labor.
- §64-3-8. Division of natural resources.
- §64-3-9. Water development authority.
- §64-3-10. Water resources board.
- §64-3-11. Economic development authority.

**§64-3-1. Air pollution control commission.**

1 (a) The legislative rules filed in the state register on  
2 the thirteenth day of August, one thousand nine hundred  
3 eighty-two, relating to the air pollution control commis-  
4 sion (series VII), are authorized.

5 (b) The legislative rules filed in the state register on  
6 the thirteenth day of August, one thousand nine hundred  
7 eighty-two, relating to the air pollution control commis-  
8 sion (series XIX), are authorized.

9 (c) The legislative rules filed in the state register on  
10 the sixteenth day of November, one thousand nine  
11 hundred eighty-three, relating to the air pollution  
12 control commission (emission standards for hazardous  
13 air pollutants) (series XV), are authorized.

14 (d) The legislative rules filed in the state register on  
15 the sixteenth day of November, one thousand nine  
16 hundred eighty-three, relating to the air pollution  
17 control commission (standards of performance for new  
18 stationary sources) (series XVI), are authorized.

19 (e) The legislative rules filed in the state register on  
20 the sixth day of January, one thousand nine hundred  
21 eighty-four, relating to the air pollution control commis-  
22 sion (to prevent and control air pollution from hazardous  
23 waste treatment, storage or disposal facilities)(series  
24 XXV), are authorized with the amendments set forth  
25 below:

26 Page 3, §1.06, change the § title from "Enforcement"  
27 to "Procedure"; place an "(a)" in front of the existing  
28 paragraph and add the following:

29 "(b) Permit applications filed pursuant to this regu-  
30 lation shall be processed in accordance with the  
31 permitting procedures as set forth in code §20-5E of this  
32 regulation. Permit procedures set forth in code §16-20  
33 and any other regulation of this commission are not  
34 applicable to any permit application filed pursuant to  
35 this regulation."

36 Such rules shall also include a section which shall  
37 read as follows:

38 "The commission shall report to the legislative rule-  
39 making review committee as required by that commit-  
40 tee, but in no event later than the first day of the regular  
41 session of the Legislature in the year one thousand nine  
42 hundred eighty-five. Such report shall include informa-  
43 tion regarding the commission's data gathering efforts,  
44 the development of compliance programs, the progress  
45 in implementation, and such other matters as the  
46 committee may require, pertaining to the regulations  
47 hereby authorized."

48 (f) The legislative rules filed in the state register on  
49 the ninth day of January, one thousand nine hundred  
50 eighty-four, relating to the air pollution control commis-  
51 sion (permits for construction and modification of  
52 stationary sources of air pollution for the prevention of  
53 significant deterioration) (series XIV), are authorized.

54 (g) The legislative rules filed in the state register on  
55 the thirtieth day of December, one thousand nine  
56 hundred eighty-eight, modified by the air pollution  
57 control commission to meet the objections of the  
58 legislative rule-making review committee and refiled in  
59 the state register on the twenty-third day of February,  
60 one thousand nine hundred eighty-nine, relating to the  
61 air pollution control commission (prevention and control  
62 of air pollution from hazardous waste treatment, storage  
63 or disposal facilities), are authorized.

64 (h) The legislative rules filed in the state register on  
65 the thirtieth day of December, one thousand nine  
66 hundred eighty-eight, modified by the air pollution  
67 control commission to meet the objections of the  
68 legislative rule-making review committee and refiled in  
69 the state register on the twenty-third day of February,  
70 one thousand nine hundred eighty-nine, relating to the  
71 air pollution control commission (good engineering  
72 practice as applicable to stack heights), are authorized.

73 (i) The legislative rules filed in the state register on  
74 the thirtieth day of December, one thousand nine  
75 hundred eighty-eight, modified by the air pollution  
76 control commission to meet the objections of the  
77 legislative rule-making review committee and refiled in

78 the state register on the twenty-third day of February,  
79 one thousand nine hundred eighty-nine, relating to the  
80 air pollution control commission (TP-2, compliance test  
81 procedures for regulation 2—to prevent and control  
82 particulate air pollution from combustion of fuel in  
83 indirect heat exchangers), are authorized.

84 (j) The legislative rules filed in the state register on  
85 the sixth day of September, one thousand nine hundred  
86 eighty-nine, modified by the air pollution control  
87 commission to meet the objections of the legislative rule-  
88 making review committee and refiled in the state  
89 register on the tenth day of January, one thousand nine  
90 hundred ninety, relating to the air pollution control  
91 commission (ambient air quality standards for sulfur  
92 oxides and particulate matter), are authorized.

93 (k) The legislative rules filed in the state register on  
94 the sixth day of September, one thousand nine hundred  
95 eighty-nine, modified by the air pollution control  
96 commission to meet the objections of the legislative rule-  
97 making review committee and refiled in the state  
98 register on the tenth day of January, one thousand nine  
99 hundred ninety, relating to the air pollution control  
100 commission (prevention of air pollution emergency  
101 episodes), are authorized.

102 (l) The legislative rules filed in the state register on  
103 the sixth day of September, one thousand nine hundred  
104 eighty-nine, modified by the air pollution control  
105 commission to meet the objections of the legislative rule-  
106 making review committee and refiled in the state  
107 register on the tenth day of January, one thousand nine  
108 hundred ninety, relating to the air pollution control  
109 commission (permits for construction and major modi-  
110 fication of major stationary sources of air pollution for  
111 the prevention of significant deterioration), are  
112 authorized.

113 (m) The legislative rules filed in the state register on  
114 the sixth day of September, one thousand nine hundred  
115 eighty-nine, relating to the air pollution control commis-  
116 sion (standards of performance for new stationary  
117 sources), are authorized.

118 (n) The legislative rules filed in the state register on  
119 the sixth day of September, one thousand nine hundred  
120 eighty-nine, relating to the air pollution control commis-  
121 sion (emission standards for hazardous air pollutants),  
122 are authorized.

123 (o) The legislative rules filed in the state register on  
124 the sixteenth day of October, one thousand nine hundred  
125 eighty-nine, modified by the air pollution control  
126 commission to meet the objections of the legislative rule-  
127 making review committee and refiled in the state  
128 register on the tenth day of January, one thousand nine  
129 hundred ninety, relating to the air pollution control  
130 commission (prevention and control of emissions of toxic  
131 air pollutants), are authorized.

**§64-3-2. Division of banking.**

1 (a) The legislative rules filed in the state register on  
2 the eleventh day of June, one thousand nine hundred  
3 eighty-two, relating to commissioner of banking (com-  
4 munication terminals and interchange systems), are  
5 authorized.

6 (b) The legislative rules filed in the state register on  
7 the fifteenth day of December, one thousand nine  
8 hundred eighty-three, relating to the commissioner of  
9 banking (consumer credit sales), are authorized.

10 (c) The legislative rules filed in the state register on  
11 the nineteenth day of August, one thousand nine  
12 hundred eighty-three, relating to the commissioner of  
13 banking (legal lending limit), are authorized.

14 (d) The legislative rules filed in the state register on  
15 the seventh day of November, one thousand nine  
16 hundred eighty-six, modified by the commissioner of  
17 banking to meet the objections of the legislative rule-  
18 making review committee and refiled in the state  
19 register on the eleventh day of December, one thousand  
20 nine hundred eighty-six, relating to the commissioner of  
21 banking (implementing the West Virginia community  
22 reinvestment act), are authorized.

23 (e) The legislative rules filed in the state register on  
24 the twenty-fifth day of October, one thousand nine

25 hundred eighty-eight, modified by the commissioner of  
26 banking to meet the objections of the legislative rule-  
27 making review committee and refiled in the state  
28 register on the seventh day of December, one thousand  
29 nine hundred eighty-eight, relating to the commissioner  
30 of banking (subsidiary bank holding the stock of its  
31 parent company as collateral), are authorized.

**§64-3-3. Division of commerce.**

1 (a) The legislative rules filed in the state register on  
2 the eighteenth day of February, one thousand nine  
3 hundred eighty-seven, modified by the commissioner of  
4 commerce to meet the objections of the legislative rule-  
5 making review committee and refiled in the state  
6 register on the ninth day of October, one thousand nine  
7 hundred eighty-seven, relating to the commissioner of  
8 commerce (public use of West Virginia state parks,  
9 forests, and hunting and fishing areas), are authorized  
10 with the amendments as set forth below:

11 On page 1, section 2.1 after the words "fishing area."  
12 add "This rule does not apply to the erection of  
13 temporary blinds or tree stands in public hunting  
14 areas."

15 And, on page 3, section 2.12 after the word "guests"  
16 by adding "licensed hunters and fishermen while  
17 hunting or fishing".

18 And, on page 5, section 2.22 by adding at the end of  
19 the section the following sentence: "Any person may  
20 apply to the Superintendent of the park for a special  
21 event permit and pay an application fee for use of  
22 firearms during historical reenactments, or the use of  
23 hay, straw, boughs, pine needles or similar materials for  
24 special events. The Park Superintendent may issue a  
25 permit to limit areas of use of any of these exceptions  
26 and require damage assessments, if necessary."

27 On page 8, section 4.5 by deleting the word "water"  
28 and inserting in lieu thereof the word "swimming pool",  
29 and on page 9 section 4.5 after the word "water." add  
30 the following: "These restrictions do not apply to  
31 swimming areas which are natural bodies of water."



32 (b) The legislative rules filed in the state register on  
33 the thirteenth day of September, one thousand nine  
34 hundred eighty-nine, modified by the commissioner of  
35 commerce to meet the objections of the legislative rule-  
36 making review committee and refiled in the state  
37 register on the thirteenth day of December, one  
38 thousand nine hundred eighty-nine, relating to the  
39 commissioner of commerce (public use of state recrea-  
40 tional areas), are authorized with the following  
41 amendment:

42 On page 9, after the word "Code", by adding a new  
43 section, designated section six, to read as follows:

44 "144-1-6. Contracts, public hearings and procedural  
45 requirements.

46 6.1 The commissioner may not solicit nor enter into  
47 contracts, except for the operation of a commissary,  
48 restaurant or marina for a period of less than ten years,  
49 until a master plan for the administration of that state  
50 park or recreation area has been developed. He or she  
51 shall supervise the preparation of the plan and may  
52 utilize the staff of the division of natural resources or  
53 any other state governmental agency whose expertise he  
54 or she desires to enlist in the preparation thereof. The  
55 commissioner shall solicit public participation and  
56 involvement in all stages of the preparation of the plan  
57 and in the preparation of any requests for proposals for  
58 the development of a revenue producing facility, as  
59 described herein, with a contract duration in excess of  
60 ten years. The plan shall be consistent with the  
61 environmental, recreational and cultural goals of the  
62 state park and recreation areas system of the state and,  
63 to the extent practicable, with the public comments and  
64 input received during plan development.

65 6.2 If the commissioner intends to accept a proposal  
66 for the development of a revenue producing facility, as  
67 described herein, such proposal shall be made available  
68 to the public in a convenient location in the county  
69 wherein the proposed facility may be located. The  
70 commissioner shall publish a notice of the proposal by  
71 Class I legal advertisement in accordance with the

72 provisions of article three, chapter fifty-nine of this code.  
73 The publication area is the county in which the proposed  
74 facility would be located. Any citizen may communicate  
75 by writing to the commissioner his or her opposition or  
76 approval to such proposal within a period of not less  
77 than thirty days from the date of the publication of  
78 notice.

79 6.3 No contract of a term greater than ten years may  
80 be entered into by the commissioner until a public  
81 hearing is held in the vicinity of the location of the  
82 proposed facility with at least two weeks notice of such  
83 hearing by Class I publication pursuant to section two,  
84 article three, chapter fifty-nine of this code. The  
85 commissioner shall make findings prior to rendering a  
86 decision on any proposed contract of a duration of more  
87 than ten years. All studies, records, documents and  
88 other materials which are considered by the commis-  
89 sioner in making such findings as required herein shall  
90 be made available for public inspection at the time of  
91 the publication of the notice of public hearing and at a  
92 convenient location in the county where the proposed  
93 development may be located. Persons attending such  
94 hearings shall be permitted a reasonable opportunity to  
95 be heard on the proposed development.

96 6.4 At such hearing the commissioner shall present in  
97 writing the following findings and supporting state-  
98 ments therefor:

99 (A) That the proposed development will not deprive  
100 users of the state park or recreational area of existing  
101 recreational facilities in any significant fashion;

102 (B) That the proposed development will not have  
103 substantial negative impact on the environmental,  
104 scenic or cultural qualities of the said park or area; and

105 (C) That the proposed development, considered as a  
106 whole, is of benefit to the recreational goals of the state  
107 and is consistent with the master plan developed for that  
108 park or recreational area.

109 6.5 Following a public hearing as prescribed herein  
110 any interested person may submit to the commissioner

111 written comments on the proposed development. All  
112 comments made at a hearing, in addition to those  
113 received in writing within thirty days after any such  
114 hearing, shall be considered by the commissioner in the  
115 determination of whether to approve the proposed  
116 development.

117 6.6 The commissioner may not enter into any contract  
118 of a duration of more than ten years unless all proce-  
119 dures and requirements as prescribed by this section  
120 have been complied with.

121 6.7 The commissioner shall make a decision whether  
122 to approve any proposal to enter into a contract for a  
123 duration of more than ten years within sixty days after  
124 the conclusion of the hearing as specified herein.”

**§64-3-4. Division of energy.**

1 (a) The legislative rules filed in the state register on  
2 the thirty-first day of March, one thousand nine hundred  
3 eighty-two, relating to the department of mines (energy)  
4 (mine safety program), are authorized.

5 (b) The legislative rules filed in the state register on  
6 the seventeenth day of August, one thousand nine  
7 hundred eighty-three, relating to the department of  
8 energy (governing the safety of those employed in and  
9 around surface mines), are authorized.

10 (c) The legislative rules filed in the state register on  
11 the seventh day of December, one thousand nine  
12 hundred eighty-three, relating to the office of oil and  
13 gas, department of mines (energy) (oil and gas and other  
14 wells), are authorized with the amendments set forth  
15 below:

16 Page viii, place an \* in front of section 32.02.

17 Page ix, after section 35.04 add the following:

18 “\*35.05 Extra Powers of the Administrator . . . . .64.”

19 Page 1, section 1.03 in the list of additional regula-  
20 tions, add 35.05; in the list of revised regulations, add  
21 32.02, 32.03 and 33.00.

22 Page 52, section 32.04 and section 32.05 add at the end  
23 of (ii) the words “and (iii) definition of proration unit”.

24 Page 53, section 33 after the word "definitions" add  
25 the following sentence: "The following definitions are  
26 applicable to these regulations used for purposes of  
27 implementing the Natural Gas Policy Act of 1978 and  
28 are not intended to be used in any other context."

29 Page 55, section 33.02 (b)(16) after the word "forma-  
30 tions" in the third lines of (i) and (ii), add the words "for  
31 which a well has been".

32 Page 64, after section 35.04 add the following section:

33 "35.05 Extra Powers of the Administrator.

34 The administrator may also certify or provide a  
35 waiver for a well located within a proration unit as  
36 defined in 32.02 (b)(16) or any other well sought to be  
37 certified under these regulations after notice and  
38 hearing."

39 (d) The legislative rules filed in the state register on  
40 the eleventh day of August, one thousand nine hundred  
41 eighty-six, modified by the director of the division of oil  
42 and gas of the department of energy to meet the  
43 objections of the legislative rule-making review commit-  
44 tee and refiled in the state register on the fifteenth day  
45 of December, one thousand nine hundred eighty-six,  
46 relating to the director of the division of oil and gas of  
47 the department of energy (oil and gas wells and other  
48 wells), are authorized.

49 (e) The legislative rules filed in the state register on  
50 the eleventh day of August, one thousand nine hundred  
51 eighty-six, modified by the director of the oil and gas  
52 division of the department of energy to meet the  
53 objections of the legislative rule-making review commit-  
54 tee and refiled in the state register on the fifteenth day  
55 of December, one thousand nine hundred eighty-six,  
56 relating to the director of the division of oil and gas of  
57 the department of energy (certification of gas wells), are  
58 authorized.

59 (f) The legislative rules filed in the state register on  
60 the eleventh day of August, one thousand nine hundred

61 eighty-six, modified by the director of the division of oil  
62 and gas of the department of energy to meet the  
63 objections of the legislative rule-making review commit-  
64 tee and refiled in the state register on the fifteenth day  
65 of December, one thousand nine hundred eighty-six,  
66 relating to the director of the division of oil and gas of  
67 the department of energy (underground injection  
68 control), are authorized.

69 (g) The legislative rules filed in the state register on  
70 the eleventh day of August, one thousand nine hundred  
71 eighty-six, modified by the director of the division of oil  
72 and gas of the department of energy to meet the  
73 objections of the legislative rule-making review commit-  
74 tee and refiled in the state register on the fifteenth day  
75 of December, one thousand nine hundred eighty-six,  
76 relating to the director of the division of oil and gas of  
77 the department of energy (state national pollutant  
78 discharge elimination system (NPDES) program), are  
79 authorized.

80 (h) The legislative rules filed in the state register on  
81 the fourteenth day of November, one thousand nine  
82 hundred eighty-six, modified by the commissioner of the  
83 department of energy to meet the objections of the  
84 legislative rule-making review committee and refiled in  
85 the state register on the sixteenth day of December, one  
86 thousand nine hundred eighty-six, relating to the  
87 commissioner of the department of energy (standards  
88 for certification of coal mine electricians), are autho-  
89 rized with the following amendments:

90 Page one, §2.1, subsection (a), following the second  
91 word, "electrician" by striking the colon and inserting  
92 the following: "under the supervision required by section  
93 4.1(d) of these rules:".

94 Page one, §2.1, subsection (a), by deleting all of  
95 subdivision (6) and renumbering the subsequent  
96 subdivisions.

97 Page two, §2.1, subsection (a), by deleting all of  
98 subdivision (9).

99 Page two, §2.1, subsection (b), by deleting all of

100 subdivision (14) and inserting in lieu thereof a new  
101 subdivision (14) to read as follows: "(14) Replace blown  
102 fuses on trolley poles and nips."

103 Page five, §4.1, subsection (d), line three, following the  
104 words "certified electrician prior" by inserting the  
105 words "to any work being performed and again prior".

106 (i) The legislative rules filed in the state register on  
107 the fifteenth day of December, one thousand nine  
108 hundred eighty-six, modified by the commissioner of the  
109 department of energy to meet the objections of the  
110 legislative rule-making review committee and refiled in  
111 the state register on the twenty-first day of January, one  
112 thousand nine hundred eighty-seven, relating to the  
113 commissioner of the department of energy (safety  
114 training program for prospective underground coal  
115 miners in West Virginia), are authorized.

116 (j) The legislative rules filed in the state register on  
117 the eleventh day of August, one thousand nine hundred  
118 eighty-six, modified by the commissioner of the depart-  
119 ment of energy to meet the objections of the legislative  
120 rule-making review committee and refiled in the state  
121 register on the fifteenth day of December, one thousand  
122 nine hundred eighty-six, relating to the commissioner of  
123 the department of energy (miscellaneous water pollution  
124 control), are authorized.

125 (k) The legislative rules filed in the state register on  
126 the eleventh day of August, one thousand nine hundred  
127 eighty-six, modified by the commissioner of the depart-  
128 ment of energy to meet the objections of the legislative  
129 rule-making review committee and refiled in the state  
130 register on the fifteenth day of December, one thousand  
131 nine hundred eighty-six, relating to the commissioner of  
132 the department of energy (dam control), are authorized.

133 (l) The legislative rules filed in the state register on  
134 the eleventh day of August, one thousand nine hundred  
135 eighty-six, modified by the commissioner of the depart-  
136 ment of energy to meet the objections of the legislative  
137 rule-making review committee and refiled in the state  
138 register on the fifteenth day of December, one thousand  
139 nine hundred eighty-six, relating to the commissioner of

140 the department of energy (solid waste management), are  
141 authorized.

142 (m) The legislative rules filed in the state register on  
143 the eleventh day of August, one thousand nine hundred  
144 eighty-six, modified by the commissioner of the depart-  
145 ment of energy to meet the objections of the legislative  
146 rule-making review committee and refiled in the state  
147 register on the fifteenth day of December, one thousand  
148 nine hundred eighty-six, relating to the commissioner of  
149 the department of energy (hazardous waste manage-  
150 ment), are authorized.

151 (n) The legislative rules filed in the state register on  
152 the twentieth day of April, one thousand nine hundred  
153 eighty-seven, relating to the commissioner of the  
154 department of energy (roof control), are authorized.

155 (o) The legislative rules filed in the state register on  
156 the third day of April, one thousand nine hundred  
157 eighty-seven, relating to the department of energy  
158 (standards for certification of underground belt examin-  
159 ers for underground coal mines), are authorized.

160 (p) The legislative rules filed in the state register on  
161 the ninth day of April, one thousand nine hundred  
162 eighty-seven, relating to the commissioner of the  
163 department of energy (performance standards for  
164 blasting on surface mines), are authorized.

165 (q) The legislative rules filed in the state register on  
166 the twelfth day of January, one thousand nine hundred  
167 eighty-seven, modified by the commissioner of the  
168 department of energy to meet the objections of the  
169 legislative rule-making review committee and refiled in  
170 the state register on the twentieth day of February, one  
171 thousand nine hundred eighty-seven, relating to the  
172 commissioner of the department of energy (state  
173 national pollutant discharge elimination system  
174 (NPDES) for mines and minerals), are authorized.

175 (r) The Legislature hereby authorizes and directs the  
176 department of energy to promulgate the procedural  
177 rules filed in the state register on the twenty-first day  
178 of October, one thousand nine hundred eighty-seven,

179 relating to the department of energy (requests for  
180 information) with the amendments set forth below:

181 On page two, subsection 3.1, by striking subdivision  
182 (d) and renumbering the remaining subdivisions.

183 And,

184 On page three, section 6, by striking all of subsection  
185 6.1 and inserting in lieu thereof, the following:

186 "6.1 The department shall establish fixed rate fees for  
187 reproduction of documents, records, and files on the  
188 basis of the actual cost of such reproduction and shall  
189 document such costs: *Provided*, That where total costs  
190 are less than five dollars, no fee shall be charged."

191 (s) The legislative rules filed in the state register on  
192 the twelfth day of May, one thousand nine hundred  
193 eighty-seven, modified by the commissioner of the  
194 department of energy to meet the objections of the  
195 legislative rule-making review committee and refiled in  
196 the state register on the fourteenth day of August, one  
197 thousand nine hundred eighty-seven, relating to the  
198 commissioner of the department of energy (blasters  
199 certification for surface coal mines and surface areas of  
200 coal mines), are authorized.

201 (t) The legislative rules filed in the state register on  
202 the twentieth day of January, one thousand nine  
203 hundred eighty-eight, modified by the commissioner of  
204 the department of energy to meet the objections of the  
205 legislative rule-making review committee and refiled in  
206 the state register on the twenty-eighth day of November,  
207 one thousand nine hundred eighty-eight, relating to the  
208 commissioner of the department of energy (abandoned  
209 mine reclamation), are authorized.

210 (u) The legislative rules filed in the state register on  
211 the nineteenth day of September, one thousand nine  
212 hundred eighty-eight, and modified to meet the objec-  
213 tions of the West Virginia Legislature and refiled in the  
214 state register on the sixth day of April, one thousand  
215 nine hundred eighty-nine, relating to the commissioner  
216 of the department of energy (West Virginia surface  
217 mining reclamation regulations (repealer)), are autho-  
218 rized.



219 (v) The legislative rules filed in the state register on  
220 the sixteenth day of November, one thousand nine  
221 hundred eighty-nine, modified by the department of  
222 energy to meet the objections of the legislative rule-  
223 making review committee and refiled in the state  
224 register on the ninth day of January, one thousand nine  
225 hundred ninety, relating to the department of energy  
226 (submission and approval of a comprehensive mine  
227 safety program for coal mining operations in the State  
228 of West Virginia), are authorized.

229 (w) The legislative rules filed in the state register on  
230 the sixteenth day of November, one thousand nine  
231 hundred eighty-nine, modified by the division of energy  
232 to meet the objections of the legislative rule-making  
233 review committee and refiled in the state register on the  
234 twenty-fifth day of January, one thousand nine hundred  
235 ninety, relating to the division of energy (surface mining  
236 reclamation), are authorized with the amendments set  
237 forth below:

238 On page 64, section 3.25(a)(2), after the words "section  
239 18 of the Act and paragraph" by deleting the "(c)" and  
240 inserting in lieu thereof the following: "(a), (b), (c), (d),  
241 (i), (j), and (k)".

242 And,

243 On page 148, section 12.4(d)(2), by deleting the current  
244 language and inserting in lieu thereof the following:

245 "(2) In the event the Commissioner is unable to collect  
246 the costs from the permittee, the Commissioner shall in  
247 a timely manner but not later than one hundred eighty  
248 days after forfeiture of the site-specific bond utilize  
249 moneys in the Special Reclamation Fund created by  
250 Subsection (g), Section 11 of the Act, to accomplish the  
251 completion of reclamation, including the requirements  
252 of Section 23 of the Act and Subsection 14.5 of these  
253 regulations governing water quality."

#### **§64-3-5. Enterprise zone authority.**

1 The legislative rules filed in the state register on the

2 twenty-sixth day of October, one thousand nine hundred  
3 eighty-eight, modified by the enterprise zone authority  
4 to meet the objections of the legislative rule-making  
5 review committee and refiled in the state register on the  
6 twenty-third day of February, one thousand nine  
7 hundred eighty-nine, relating to the enterprise zone  
8 authority (creation of enterprise zone authority to  
9 designate certain enterprise zones and provide for tax  
10 benefits within those zones), are authorized.

**§64-3-6. West Virginia industrial and trade jobs develop-  
ment corporation.**

1 The legislative rules filed in the state register on the  
2 fifteenth day of October, one thousand nine hundred  
3 eighty-six, modified by the West Virginia industrial and  
4 trade jobs development corporation to meet the objec-  
5 tions of the legislative rule-making review committee  
6 and refiled in the state register on the twelfth day of  
7 January, one thousand nine hundred eighty-seven,  
8 relating to the West Virginia industrial and trade jobs  
9 development corporation (general administration of the  
10 West Virginia capital company act and establishment of  
11 application procedures to implement the act), are  
12 authorized.

**§64-3-7. Division of labor.**

1 (a) The legislative rules filed in the state register on  
2 the tenth day of May, one thousand nine hundred eighty-  
3 two, relating to the commissioner of labor (steam boiler  
4 rules) as modified by the legislative rule-making review  
5 committee are authorized.

6 (b) The legislative rules filed in the state register on  
7 the seventh day of December, one thousand nine  
8 hundred eighty-three, relating to the department of  
9 labor (hazardous chemical substances), are authorized.

10 (c) The legislative rules filed in the state register on  
11 the second day of February, one thousand nine hundred  
12 eighty-four, relating to the department of labor (poly-  
13 graph examinations), are authorized.

14 (d) The legislative rules filed in the state register on  
15 the twenty-second day of December, one thousand nine

16 hundred eighty-seven, relating to the commissioner of  
17 labor (West Virginia occupational safety and health act),  
18 are authorized.

19 (e) The legislative rules filed in the state register on  
20 the twenty-second day of December, one thousand nine  
21 hundred eighty-seven, modified by the commissioner of  
22 labor to meet the objections of the legislative rule-  
23 making review committee and refiled in the state  
24 register on the twentieth day of January, one thousand  
25 nine hundred eighty-eight, relating to the commissioner  
26 of labor (wage payment and collection act), are  
27 authorized.

28 (f) The legislative rules filed in the state register on  
29 the sixteenth day of November, one thousand nine  
30 hundred eighty-seven, relating to the commissioner of  
31 the department of labor (standards for weights and  
32 measures inspectors—adoption of NBS Handbook 130,  
33 1987), are authorized.

34 (g) The legislative rules filed in the state register on  
35 the twelfth day of January, one thousand nine hundred  
36 eighty-eight, relating to the commissioner of labor  
37 (steam boiler inspection fee schedule), are authorized.

38 (h) The legislative rules filed in the state register on  
39 the thirteenth day of September, one thousand nine  
40 hundred eighty-eight, modified by the department of  
41 labor to meet the objections of the legislative rule-  
42 making review committee and refiled in the state  
43 register on the seventh day of December, one thousand  
44 nine hundred eighty-eight, relating to the department of  
45 labor (amusement rides and amusement attractions  
46 safety act), are authorized.

47 (i) The legislative rules filed in the state register on  
48 the sixteenth day of June, one thousand nine hundred  
49 eighty-nine, modified by the department of labor to meet  
50 the objections of the legislative rule-making review  
51 committee and refiled in the state register on the first  
52 day of August, one thousand nine hundred eighty-nine,  
53 relating to the department of labor (wage payment and  
54 collection act), are authorized.

**§64-3-8. Division of natural resources.**

1 (a) The legislative rules filed in the state register on  
2 the eighth day of December, one thousand nine hundred  
3 eighty-three, relating to the department of natural  
4 resources (surface mining), are authorized with the  
5 amendments set forth below:

6 Page 3-4, §3E.01 by adding after the word "engineer"  
7 the words "or licensed land surveyor".

8 Page 3-5, §3E.02, subsection (a), by adding after the  
9 word "mining" the words "or civil".

10 Page 3-5, §3E.02, subsection (b), by adding after the  
11 first sentence — "Those persons who have been approved  
12 to date need not make said demonstration."

13 (b) The legislative rules filed in the state register on  
14 the twentieth day of January, one thousand nine  
15 hundred eighty-four, relating to the department of  
16 natural resources (solid waste management), are  
17 authorized with the amendments set forth below:

18 Page 9, section 4.04, line five, add the following  
19 paragraph:

20 "Upon request of any applicant, the division shall  
21 meet with the applicant for pre-filing review of the  
22 application. The division, with the cooperation of the  
23 solid waste authority, shall assist the applicant in  
24 preparing a complete and proper application which  
25 would not be rejected as incomplete."

26 On page 15, section 6.03 (c)(1) in the first full sentence,  
27 after the word "cease", strike the remainder of the  
28 sentence and insert in lieu thereof the words "within  
29 fifteen (15) days of receipt of an order of suspension" and  
30 in the second sentence strike the word "recommence"  
31 and insert the words "continue beyond fifteen (15) days";  
32 (c)(2) in the first full sentence, after the word "cease"  
33 by striking out the remainder of the sentence and insert  
34 in lieu thereof the words "immediately upon receipt of  
35 an order of revocation."

36 (c) The legislative rules filed in the state register on  
37 the twenty-sixth day of September, one thousand nine

38 hundred eighty-four, relating to the department of  
39 natural resources (public use of state parks, forests,  
40 hunting and fishing areas), are authorized.

41 (d) The legislative rules filed in the state register on  
42 the seventh day of November, one thousand nine  
43 hundred eighty-four, relating to the department of  
44 natural resources (surface mining reclamation), are  
45 authorized.

46 (e) The legislative rules filed in the state register on  
47 the seventh day of November, one thousand nine  
48 hundred eighty-four, relating to the department of  
49 natural resources (coal refuse disposal), are authorized.

50 (f) The legislative rules filed in the state register on  
51 the ninth day of November, one thousand nine hundred  
52 eighty-four, relating to the department of natural  
53 resources (transfer of the state national pollutant  
54 discharge elimination system program), are authorized  
55 with the amendments set forth below:

56 Page 10-5, by striking § 10B.19 and inserting in lieu  
57 thereof a new § 10B.19, to read as follows: “‘Effluent  
58 limitations guidelines’ means a regulation published by  
59 the Administrator under Section 304(b) or Section  
60 301(b)(1)(B) of the CWA to adopt or revise effluent  
61 limitations or levels of effluent quality attainable  
62 through the application of secondary or equivalent  
63 treatment. For the coal industry these regulations are  
64 published at 40 C.F.R. Parts 434 and 133. (See:  
65 Appendix G and H)”.

66 (g) The legislative rules filed in the state register on  
67 the twenty-eighth day of August, one thousand nine  
68 hundred eighty-four, relating to the department of  
69 natural resources (small arms hunting), are authorized.

70 (h) The legislative rules filed in the state register on  
71 the sixth day of January, one thousand nine hundred  
72 eighty-four, relating to the department of natural  
73 resources (hazardous waste management), are  
74 authorized.

75 (i) The legislative rules filed in the state register on  
76 the third day of December, one thousand nine hundred

77 eighty-four, modified by the department of natural  
78 resources to meet the objections of the legislative rule-  
79 making review committee and refiled in the state  
80 register on the thirteenth day of February, one thousand  
81 nine hundred eighty-five, relating to the department of  
82 natural resources (hazardous waste management), are  
83 authorized.

84 (j) The legislative rules filed in the state register on  
85 the tenth day of October, one thousand nine hundred  
86 eighty-five, relating to the department of natural  
87 resources (hazardous waste management: small quantity  
88 generators and waste minimization certification), are  
89 authorized with the amendments set forth below:

90 On page 1, §3.1.4b, delete the word "or" in the  
91 reference to "paragraph (g) or (j)" and insert in lieu  
92 thereof the words "and, if applicable".

93 (k) The legislative rules filed in the state register on  
94 the ninth day of September, one thousand nine hundred  
95 eighty-five, relating to the department of natural  
96 resources (WV/NPDES regulations for the coal mining  
97 point source category and related sewage facilities), are  
98 authorized.

99 (l) The legislative rules filed in the state register on  
100 the eleventh day of December, one thousand nine  
101 hundred eighty-five, modified by the department of  
102 natural resources to meet the objections of the legislative  
103 rule-making review committee and refiled in the state  
104 register on the twentieth day of February, one thousand  
105 nine hundred eighty-six, relating to the department of  
106 natural resources (hazardous waste management), are  
107 authorized.

108 (m) The legislative rules filed in the state register on  
109 the twenty-sixth day of September, one thousand nine  
110 hundred eighty-six, modified by the department of  
111 natural resources to meet the objections of the legislative  
112 rule-making review committee and refiled in the state  
113 register on the ninth day of December, one thousand  
114 nine hundred eighty-six, relating to the department of  
115 natural resources (hazardous waste management regu-  
116 lations), are authorized.

117 (n) The legislative rules filed in the state register on  
118 the seventh day of August, one thousand nine hundred  
119 eighty-six, relating to the director of the department of  
120 natural resources (procedures for transporting and  
121 dealing in furbearing animals), are authorized.

122 (o) The legislative rules filed in the state register on  
123 the thirtieth day of December, one thousand nine  
124 hundred eighty-six, relating to the department of  
125 natural resources (WV/NPDES program for coal mines  
126 and preparation plants, and the refuse and waste  
127 therefrom), are authorized with the amendments set  
128 forth below:

129 On page four, § 1.9.1.a by inserting the words “five  
130 thousand dollars or” after the words “‘significant  
131 portion of income’ means”,

132 And,

133 On page four, § 1.9.1.a by inserting the words  
134 “whichever is less,” after the words “ten percent or more  
135 of gross personal income for a calendar year”.

136 (p) The legislative rules filed in the state register on  
137 the fifth day of March, one thousand nine hundred  
138 eighty-six, relating to the department of natural  
139 resources (hazardous waste management), are  
140 authorized.

141 (q) The legislative rules filed in the state register on  
142 the twelfth day of August, one thousand nine hundred  
143 eighty-seven, relating to the department of natural  
144 resources (WV/NPDES regulations for coal mining  
145 facilities), are authorized.

146 (r) The legislative rules filed in the state register on  
147 the tenth day of June, one thousand nine hundred  
148 eighty-seven, relating to the director of the department  
149 of natural resources (outfitters and guides), are  
150 authorized.

151 (s) The legislative rules filed in the state register on  
152 the ninth day of January, one thousand nine hundred  
153 eighty-seven, relating to the department of natural  
154 resources (hazardous waste management regulations),  
155 are authorized.

156 (t) The legislative rules filed in the state register on  
157 the fifth day of March, one thousand nine hundred  
158 eighty-seven, relating to the department of natural  
159 resources (hazardous waste management regulations,  
160 series 35), are authorized.

161 (u) The legislative rules filed in the state register on  
162 the seventh day of December, one thousand nine  
163 hundred eighty-seven, relating to the department of  
164 natural resources (hazardous waste management regu-  
165 lations, series 35), are authorized.

166 (v) The legislative rules filed in the state register on  
167 the sixteenth day of December, one thousand nine  
168 hundred eighty-seven, modified by the department of  
169 natural resources to meet the objections of the legislative  
170 rule-making review committee and refiled in the state  
171 register on the fourteenth day of January, one thousand  
172 nine hundred eighty-eight, relating to the department of  
173 natural resources (solid waste management), are  
174 authorized.

175 (w) The legislative rules filed in the state register on  
176 the twenty-eighth day of July, one thousand nine  
177 hundred eighty-seven, modified by the director of the  
178 department of natural resources to meet the objections  
179 of the legislative rule-making review committee and  
180 refiled in the state register on the seventh day of  
181 August, one thousand nine hundred eighty-seven,  
182 relating to the director of the department of natural  
183 resources (boating regulations), are authorized with the  
184 amendment set forth below:

185 On page 16, section 6.2, line 3 by inserting following  
186 the period "This regulation does not apply to licensed  
187 outfitters and guides." These rules were proposed by the  
188 director of the department of natural resources pursu-  
189 ant to section seven, article one and section twenty-two,  
190 article seven, chapter twenty of this code.

191 (x) The legislative rules filed in the state register on  
192 the second day of September, one thousand nine  
193 hundred eighty-eight, modified by the department of



194 natural resources to meet the objections of the legislative  
195 rule-making review committee and refiled in the state  
196 register on the seventeenth day of October, one thousand  
197 nine hundred eighty-eight, relating to the department of  
198 natural resources (hazardous waste management), are  
199 authorized.

200 (y) The legislative rules filed in the state register on  
201 the thirty-first day of August, one thousand nine  
202 hundred eighty-eight, relating to the director of the  
203 department of natural resources (boating), are  
204 authorized.

205 (z) The legislative rules filed in the state register on  
206 the eighth day of March, one thousand nine hundred  
207 eighty-eight, modified by the director of the department  
208 of natural resources to meet the objections of the  
209 legislative rule-making review committee and refiled in  
210 the state register on the thirtieth day of August, one  
211 thousand nine hundred eighty-eight, relating to the  
212 director of the department of natural resources (com-  
213 mercial sale of wildlife), are authorized.

214 (aa) The legislative rules filed in the state register on  
215 the twenty-seventh day of January, one thousand nine  
216 hundred eighty-eight, relating to the director of the  
217 department of natural resources (catching and selling  
218 bait fish), are authorized.

219 (bb) The legislative rules filed in the state register on  
220 the twenty-fifth day of March, one thousand nine  
221 hundred eighty-eight, relating to the director of the  
222 department of natural resources (West Virginia public  
223 hunting and fishing areas), are authorized with the  
224 following amendment:

225 On page three, section 3.8.4, by inserting after the  
226 word "vehicle" the following: ", all terrain vehicle  
227 (ATV)".

228 (cc) The legislative rules filed in the state register on  
229 the seventeenth day of March, one thousand nine  
230 hundred eighty-nine, modified by the division of natural  
231 resources to meet the objections of the legislative rule-  
232 making review committee and refiled in the state

233 register on the sixteenth day of January, one thousand  
234 nine hundred ninety, relating to the division of natural  
235 resources (solid waste management), are authorized  
236 with the amendments set forth below:

237 On page 13, section 3.2.6, by deleting the current  
238 language and inserting in lieu thereof the following:

239 "3.2.6. Within two hundred (200) feet of faults that  
240 have had displacement in Holocene time (i.e., during  
241 the last eleven thousand years);"

242 On page 64, section 3.14.25, by deleting the current  
243 language and inserting in lieu thereof the following  
244 language:

245 "3.14.25. Environmental Compliance History. The  
246 chief or the director may refuse to grant any permit if  
247 he has reasonable cause to believe, as indicated by  
248 documented evidence, that the applicant, or any officer,  
249 director or manager, thereof, or shareholder owning  
250 twenty percent (20%) or more of its capital stock,  
251 beneficial or otherwise, or other person conducting or  
252 managing the affairs of the applicant or of the proposed  
253 permitted premises, in whole or part, has exhibited a  
254 pattern of violation of the environmental statutes or  
255 regulations of this state, any other state, or the federal  
256 government."

257 On page 104, section 4.5.4.a, by inserting after the  
258 words "at that landfill" the following:

259 "Nothing within these regulations shall be construed  
260 to allow the installations of any liner or system on areas  
261 not lined as of November 30, 1989, that is not in  
262 conformance with section 4.5.4.a.E or 4.5.4.a.G. of these  
263 regulations. Landfills that do have an article 5f permit  
264 and a liner installed as of November 30, 1989, may  
265 install a liner as approved by the chief."

266 And,

267 On pages 147 through 151, sections 4.11.5 and 4.11.6,  
268 by deleting the current language and inserting in lieu  
269 thereof the following:

270 "4.11.5 Corrective Action Program.

271 Whenever a statistically significant increase is found  
272 in a Phase II or Phase III monitoring parameter, or  
273 when groundwater contamination is otherwise identified  
274 by the Chief at sites without monitoring programs,  
275 which is determined by the Chief to have resulted in a  
276 significant adverse effect on an aquifer, and which is  
277 attributable to a solid waste facility, the Chief may  
278 require appropriate corrective or remedial action  
279 pursuant to West Virginia Code Chapter 20, Article 5A,  
280 and Chapter 20, Article 5F to abate, remediate or  
281 correct such pollution. Any such corrective or remedial  
282 action order shall take into account any applicable  
283 groundwater quality protection standards, the existing  
284 use of such waters, the reasonable uses of such waters,  
285 background water quality, and the protection of human  
286 health and the environment.”

287 (dd) The legislative rules filed in the state register on  
288 the seventeenth day of February, one thousand nine  
289 hundred eighty-nine, relating to the director of the  
290 department of natural resources (underground storage  
291 tanks), are authorized.

292 (ee) The legislative rules filed in the state register on  
293 the twenty-seventh day of January, one thousand nine  
294 hundred eighty-nine, relating to the director of the  
295 department of natural resources (transporting and  
296 selling wildlife pelts), are authorized.

297 (ff) The legislative rules filed in the state register on  
298 the seventeenth day of February, one thousand nine  
299 hundred eighty-nine, modified by the director of the  
300 department of natural resources to meet the objections  
301 of the legislative rule-making review committee and  
302 refiled in the state register on the ninth day of August,  
303 one thousand nine hundred eighty-nine, relating to the  
304 director of the department of natural resources (under-  
305 ground storage tank fee assessments), are authorized.

306 (gg) The legislative rules filed in the state register on  
307 the twenty-fourth day of April, one thousand nine  
308 hundred eighty-nine, modified by the director of the  
309 department of natural resources to meet the objections  
310 of the legislative rule-making review committee and

311 refiled in the state register on the twenty-second day of  
 312 May, one thousand nine hundred eighty-nine, relating to  
 313 the director of the department of natural resources  
 314 (public hunting and fishing areas), are authorized.

315 (hh) The legislative rules filed in the state register on  
 316 the first day of December, one thousand nine hundred  
 317 eighty-nine, relating to the department of natural  
 318 resources (water pollution control permit fee schedules),  
 319 are authorized with the amendment set forth below:

320 On page five, section 3.3, by deleting the following:  
 321 "Submitted fees are not refundable."

322 On page two, after section 2.6, by inserting the  
 323 following:

324 "‘customer’ means any person that purchases waste  
 325 disposal services from a facility permitted under article  
 326 five-a, chapter twenty, of the code of West Virginia, one  
 327 thousand nine hundred thirty-one, as amended. For the  
 328 purposes of these regulations, commercial and other  
 329 non-single family dwelling customers shall be translated  
 330 into customer equivalents by dividing the total daily  
 331 estimated volume of waste water by three hundred and  
 332 fifty gallons per day." and renumbering the remaining  
 333 subsections.

334 On page nine, section 7.2, by striking out the words  
 335 "seven hundred fifty dollars (\$750)." and inserting in  
 336 lieu thereof the following:

337 "determined using Table D, but in no case shall be less  
 338 than two hundred and fifty dollars (\$250)."

339 And,

340 On page thirteen, by striking out all of Table D,  
 341 Schedule of Annual Permit Fees, and inserting in lieu  
 342 thereof a new Table D, designated "Schedule of Annual  
 343 Permit Fees", to read as follows:

344

"TABLE D

345

SCHEDULE OF ANNUAL PERMIT FEES

346

SEWAGE FACILITIES

	<b>Number of Customers</b>	<b>Annual Permit Fee</b>
347		
348	less than 1000	\$ 250

349	1000 to 1499	\$ 500
350	1500 to 1999	\$ 750
351	2000 to 2499	\$ 1000
352	2500 to 2999	\$ 1250
353	3000 to 3499	\$ 1500
354	3500 to 3999	\$ 1750
355	4000 to 4499	\$ 2000
356	4500 to 4999	\$ 2250
357	greater than 5000	\$ 2500

### 358 INDUSTRIAL OR OTHER WASTE FACILITIES

359	Average Discharge Volume	Annual Permit Fee
360	(gallons per day)	
361	less than 1,000	\$ 50
362	1,001 to 10,000	\$ 500
363	10,001 to 50,000	\$ 1000
364	greater than 50,000	\$ 2500"

365 (ii) The legislative rules filed in the state register on  
 366 the twenty-fifth day of July, one thousand nine hundred  
 367 eighty-nine, modified by the director of the department  
 368 of natural resources to meet the objections of the  
 369 legislative rule-making review committee and refiled in  
 370 the state register on the fifteenth day of September, one  
 371 thousand nine hundred eighty-nine, relating to the  
 372 director of the department of natural resources (revoca-  
 373 tion of hunting and fishing licenses), are authorized.

374 (jj) The legislative rules filed in the state register on  
 375 the twentieth day of December, one thousand nine  
 376 hundred eighty-nine, modified by the division of natural  
 377 resources to meet the objections of the legislative rule-  
 378 making review committee and refiled in the state  
 379 register on the twenty-fourth day of January, one  
 380 thousand nine hundred ninety, relating to the division  
 381 of natural resources (state water pollution control  
 382 revolving fund program), are authorized.

### §64-3-9. Water development authority.

1 (a) The legislative rules filed in the state register on  
 2 the thirtieth day of August, one thousand nine hundred

3 eighty-four, relating to the water development authority  
4 (hardship grant funds), are authorized.

5 (b) The legislative rules filed in the state register on  
6 the fourteenth day of August, one thousand nine  
7 hundred eighty-six, relating to the water development  
8 authority (requirements governing disbursements of  
9 loans and grants to governmental agencies for the  
10 acquisition or construction of water development  
11 projects), are authorized.

**§64-3-10. Water resources board.**

1 (a) The legislative rules filed in the state register on  
2 the sixth day of January, one thousand nine hundred  
3 eighty-three, relating to the state water resources board  
4 (underground injection control program), are  
5 authorized.

6 (b) The legislative rules filed in the state register on  
7 the fifteenth day of November, one thousand nine  
8 hundred eighty-three, relating to the state water  
9 resources board (special regulations), are authorized.

10 (c) The legislative rules filed in the state register on  
11 the third day of August, one thousand nine hundred  
12 eighty-three, relating to the state water resources board  
13 (groundwater protection standards), are authorized.

14 (d) The legislative rules filed in the state register on  
15 the fifteenth day of November, one thousand nine  
16 hundred eighty-three, relating to the state water  
17 resources board (state national pollutant discharge  
18 elimination system (NPDES) program), are authorized.

19 (e) The Legislature hereby authorizes and directs the  
20 state water resources board to promulgate rules relating  
21 to water quality standards in exact conformity with the  
22 rules relating to water quality standards tendered to the  
23 secretary of state on the seventh day of March, one  
24 thousand nine hundred eighty-four, by the executive  
25 secretary of the state water resources board, to be  
26 received and filed for inclusion in the state register by  
27 the secretary of state.

28 (f) The legislative rules filed in the state register on

29 the seventeenth day of October, one thousand nine  
30 hundred eighty-five, and modified by the state water  
31 resources board to meet the objections of the legislative  
32 rule-making review committee and refiled in the state  
33 register on the twenty-fourth day of February, one  
34 thousand nine hundred eighty-seven, relating to the  
35 state water resources board (special regulations), are  
36 authorized.

37 (g) The legislative rules filed in the state register on  
38 the seventh day of January, one thousand nine hundred  
39 eighty-five, modified by the water resources board to  
40 meet the objections of the legislative rule-making review  
41 committee and refiled in the state register on the  
42 thirteenth day of February, one thousand nine hundred  
43 eighty-five, relating to the water resources board (water  
44 quality standards), are authorized.

45 (h) The legislative rules filed in the state register on  
46 the seventeenth day of October, one thousand nine  
47 hundred eighty-five, modified by the state water  
48 resources board to meet the objections of the legislative  
49 rule-making review committee and refiled in the state  
50 register on the eighth day of January, one thousand nine  
51 hundred eighty-seven, and further modified by the state  
52 water resources board to meet the objections of the  
53 legislative rule-making review committee and refiled in  
54 the state register on the twenty-fourth day of February,  
55 one thousand nine hundred eighty-seven, relating to the  
56 state water resources board (water quality standards),  
57 are authorized.

58 (i) The legislative rules filed in the state register on  
59 the seventeenth day of October, one thousand nine  
60 hundred eighty-five, modified by the state water  
61 resources board to meet the objections of the legislative  
62 rule-making review committee and refiled in the state  
63 register on the eighth day of January, one thousand nine  
64 hundred eighty-seven, and further modified by the state  
65 water resources board to meet the objections of the  
66 legislative rule-making review committee and refiled in  
67 the state register on the twenty-fourth day of February,  
68 one thousand nine hundred eighty-seven, relating to the  
69 state water resources board (state national pollutant

70 discharge elimination system (NPDES) program), are  
71 authorized.

72 (j) The legislative rules filed in the state register on  
73 the seventeenth day of October, one thousand nine  
74 hundred eighty-five, and modified by the state water  
75 resources board to meet the objections of the legislative  
76 rule-making review committee and refiled in the state  
77 register on the twenty-fourth day of February, one  
78 thousand nine hundred eighty-seven, relating to the  
79 state water resources board (underground injection  
80 control program), are authorized.

81 (k) The legislative rules filed in the state register on  
82 the seventeenth day of October, one thousand nine  
83 hundred eighty-five, and modified by the state water  
84 resources board to meet the objections of the legislative  
85 rule-making review committee and refiled in the state  
86 register on the twenty-fourth day of February, one  
87 thousand nine hundred eighty-seven, relating to the  
88 state water resources board (special regulations), are  
89 authorized.

90 (l) The legislative rules filed in the state register on  
91 the thirtieth day of June, one thousand nine hundred  
92 eighty-seven, relating to the water resources board  
93 (water quality standards), are authorized.

94 (m) The legislative rules filed in the state register on  
95 the fourteenth day of October, one thousand nine  
96 hundred eighty-eight, relating to the water resources  
97 board (water quality standards), are authorized.

**§64-3-11. Economic development authority.**

1 The legislative rules filed in the state register on the  
2 twenty-sixth day of May, one thousand nine hundred  
3 eighty-nine, modified by the West Virginia economic  
4 development authority to meet the objections of the  
5 legislative rule-making review committee and refiled in  
6 the state register on the twenty-fifth day of January, one  
7 thousand nine hundred ninety, relating to the West  
8 Virginia economic development authority (general  
9 administration of the West Virginia capital company act  
10 and the establishment of the application procedures to  
11 implement the act), are authorized.



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

§64-4-1. Archives and history division.

§64-4-2. Library commission.

**§64-4-1. Archives and history division.**

1 (a) The legislative rules filed in the state register on  
2 the fourteenth day of September, one thousand nine  
3 hundred eighty-four, relating to the archives and history  
4 commission (certified local government program) are  
5 authorized with the following amendments:

6 §4.02, subsections a, b, c, d, e, g and i are amended  
7 in their entirety to read as follows:

8 "a. The local government shall have created a historic  
9 landmark commission or commission, consisting of five  
10 (5) members, to carry out the provisions of the ordinance  
11 or order."

12 "b. HLC or commission membership shall be drawn  
13 from among persons with demonstrated interest,  
14 competence, or knowledge in historic preservation and  
15 local history. To the extent available in the community,  
16 members of the HLC shall be preservation-related  
17 professionals (including the professions of history,  
18 architecture, architectural history, planning, real estate,  
19 American studies, geography, landscape architecture,  
20 law, engineering, or archaeology). When a discipline is  
21 not represented in the Commission membership, com-  
22 missioners shall seek expertise in this area when  
23 reporting on National Register nominations and other  
24 actions that will impact properties which are normally  
25 evaluated by a professional in such discipline. This may  
26 be accomplished through consultation with universities  
27 or colleges. Prior to the consultation process, the  
28 Commission must notify the State Historic Preservation  
29 Officer in writing that the appropriate professional  
30 assistance has been obtained and identified."

31 "c. The local government, be certified without the  
32 minimum number or types of professional disciplines,

33 must report to the SHPO's satisfaction that it has made  
34 a reasonable effort to fill those positions. The require-  
35 ments for professional representation on the Commission  
36 shall not exceed those of the State Review Board."

37 "d. Commission meetings shall be held at regular  
38 intervals at least four times each year, advertised in  
39 advance, and open to the public. The Commission shall  
40 establish rules of procedure or bylaws including a code  
41 of conduct."

42 "e. The Commission shall transmit an annual report  
43 of its activities to the State Historic Preservation  
44 Officer. Such reports shall include, at a minimum, new  
45 designations made, progress on survey activities, and  
46 attendance records. Reports shall be submitted within  
47 sixty days after the end of the fiscal year for the local  
48 government or portion of the fiscal year in the first year  
49 of the establishment of the commission. These reports  
50 will be reviewed and evaluated by the SHPO to ensure  
51 that the Commission's activities are consistent with the  
52 State Historic Preservation Plan."

53 "g. Records of proceedings shall be transmitted to the  
54 State Historic Preservation Officer at the same time  
55 they are transmitted to members of the Commission."

56 "i. Commission responsibilities must be complemen-  
57 tary to and carried out in coordination with those of the  
58 State Historic Preservation Office as outlined in 36 CFR  
59 61.4(b). The State Historic Preservation Office shall  
60 cooperate with the HLC or Commission by making  
61 available materials and training to provide a working  
62 knowledge of the roles and operations of federal, state  
63 and local preservation programs."

64 §5.01, subsections a and d are amended to read in  
65 their entirety as follows:

66 "a. A written assurance by the chief elected official  
67 that the local government does fulfill all the standards  
68 for certification outlined above."

69 "d. Resumes of each of the members of the historic  
70 landmark commission including credentials of member  
71 expertise in fields related to historic preservation.

72 Where no professional members have been appointed an  
73 explanation and information demonstrating good faith  
74 efforts to obtain such members shall be included.”

75 §5.03 is amended in its entirety to read as follows:

76 “5.03—*Determination that Local Government Fulfills*  
77 *Requirements for Certification*—If the State Historic  
78 Preservation Officer determines that the local govern-  
79 ment fulfills the requirements for certification, the State  
80 Historic Preservation Officer will prepare a written  
81 certification agreement with the local government that  
82 lists the specific responsibilities of the local government  
83 where certified. These responsibilities will include those  
84 powers and duties as stated in 4.02. The SHPO will  
85 notify the United States Secretary of the Interior, or  
86 designee and furnish a copy of the approved request and  
87 the certification agreement and shall respond to the  
88 local government within fifteen days of the Secretary’s  
89 response.”

90 The fourth line of §5.04 is amended to read as follows:  
91 “Secretary of the Interior within 15 working days. The  
92 certification”.

93 The last line of §6 is amended to read as follows:  
94 “(National Historic Preservation Act, Section 101(c)(2)”.

95 The section heading to §6.01 is amended in its entirety  
96 to read as follows: “6.01 Notification of Commission by  
97 SHPO of National Register Nomination of Property  
98 Within Local Government Jurisdiction—”

99 The last three lines of §6.01 are amended in their  
100 entirety to read as follows: “101(a) of the National  
101 Historic Preservation Act, as amended. The State may  
102 expedite such process with the concurrence of the  
103 certified local government.”

104 The first line after the section heading of §6.02 is  
105 amended to read as follows: “(National Historic Preser-  
106 vation Act, Sec. 101(c)(2)(b). If” and the third sentence  
107 of said §6.02 is amended in its entirety to read as follows:  
108 “If such an appeal is filed, the State shall follow the  
109 procedures for making a nomination pursuant to  
110 established procedures (section 101(a) of the Act).”

111 The second sentence of §6.03 is amended in its entirety  
112 to read as follows: "If an HLC or commission does not  
113 have a professional member with the necessary federal  
114 qualifications in the area, the HLC can obtain the  
115 opinion of a qualified professional in the area and  
116 consider their opinion in their recommendation."

117 §6.04 is amended in its entirety to read as follows:

118 "6.04—*Commission Qualifications for Federal Pass*  
119 *Through Funds*—Federal regulations also require that  
120 commissions possess certain qualifications in order to  
121 receive federal pass through funds. These are explained  
122 in Section 4.02."

123 §7.01 is amended in its entirety to read as follows:

124 "7.01—*Performance Review of Certified Local Govern-*  
125 *ment by SHPO*—The SHPO will review the commission's  
126 annual report to ensure that the performance of the local  
127 government is consistent with the State Historic  
128 Preservation Plan. If the SHPO determines that the  
129 performance of a certified local government is not in  
130 conformance with the certification agreement and the  
131 State Historic Preservation Plan the State Historic  
132 Preservation Officer shall document that determination  
133 and recommend to the certified local government steps  
134 which may be taken to improve their performance. The  
135 Historic Preservation Officer shall also review the  
136 administration of funds allocated from the Historic  
137 Preservation Fund and other documents as necessary.  
138 The SHPO shall maintain written records for all SHPO  
139 evaluation of CLG's so that they may be available to the  
140 Secretary at any time."

141 The last sentence of §7.03 is amended in its entirety  
142 to read as follows: "This closeout will follow procedures  
143 specified in National Register Programs Guidelines."

144 The first sentence of §8.01 is amended in its entirety  
145 to read as follows: "A minimum of 10% of the state's  
146 annual apportionment from the Historic Preservation  
147 Fund of the Department of the Interior will be set aside  
148 for transfer to qualified CLG's in accordance with the  
149 National Historic Preservation Act as amended. In any

150 year in which the total Historic Preservation Fund  
151 appropriation exceeds sixty-five (65) million dollars, one  
152 half (1/2) of the amount over sixty-five (65) million  
153 dollars will also be transferred to CLG according to  
154 procedures to be provided by the Secretary."

155 The third line of the first sentence of §8.04 is amended  
156 in its entirety to read as follows: "consistent with  
157 35CFR61.7(f)(1) which states that the amount awarded  
158 to".

159 §8.05 is amended in its entirety to read as follows:

160 "8.05—*Application and Selection Criteria*—Project  
161 application forms and selection criteria will be made  
162 available through individual notification and public  
163 advertisement from the SHPO of the West Virginia  
164 Department of Culture and History in June of each year.  
165 The criteria will be coordinated with those used to select  
166 survey and planning grants during the fiscal year.  
167 Funds must be applied for by August 30 of each year.  
168 Funding in any prior year does not guarantee continued  
169 funding. The project schedule and deadlines may vary  
170 from year to year and is dependent upon the time frame  
171 in which the Secretary of the Interior notifies the state  
172 of its apportionment from the annual Historic Preser-  
173 vation Fund."

174 The third sentence of §8.06 is amended in its entirety  
175 to read as follows: "The SHPO is responsible for proper  
176 accounting of Historic Preservation Fund grants to  
177 CLG's in accordance with Office Management and  
178 Budget Circular A-102, Attachment P Audit  
179 Requirement."

180 (b) The legislative rules filed in the state register on  
181 the nineteenth day of September, one thousand nine  
182 hundred eighty-eight, modified by the director of the  
183 division of archives and history of the department of  
184 culture and history to meet the objections of the  
185 legislative rule-making review committee and refiled in  
186 the state register on the fourteenth day of December,  
187 one thousand nine hundred eighty-eight, relating to the  
188 director of the division of archives and history of the  
189 department of culture and history (standards and

190 procedures for administering state historic preservation  
191 programs), are authorized with the amendment set forth:

192 Section 3.2.b.A after the word "days" by inserting the  
193 words "after receipt of actual notice".

**§64-4-2. Library commission.**

1 The legislative rules filed in the state register on the  
2 twenty-second day of October, one thousand nine  
3 hundred eighty-five, modified by the West Virginia  
4 library commission to meet the objections of the  
5 legislative rule-making review committee and refiled in  
6 the state register on the twelfth day of November, one  
7 thousand nine hundred eighty-five, relating to the West  
8 Virginia library commission (designating a grace period  
9 for the return of library materials), are authorized.

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

§64-5-1. Department of health and human resources.

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

§64-5-3. West Virginia health care cost review authority.

§64-5-4. West Virginia hospital finance authority.

§64-5-5. Division of human services; director of the child advocate office.

§64-5-6. Office of workers' compensation commissioner.

**§64-5-1. Department of health and human resources.**

1 (a) The legislative rules filed in the state register on  
2 the twenty-second day of January, one thousand nine  
3 hundred ninety, modified by the secretary of the  
4 department of health and human resources to meet the  
5 objections of the legislative rule-making review commit-  
6 tee and refiled in the state register on the twenty-fifth  
7 day of January, one thousand nine hundred ninety,  
8 relating to the secretary of the department of health and  
9 human resources (implementation of omnibus health  
10 care act), are authorized.

11 (b) The legislative rules filed in the state register on  
12 the twenty-second day of January, one thousand nine  
13 hundred ninety, modified by the secretary of the  
14 department of health and human resources to meet the  
15 objections of the legislative rule-making review commit-  
16 tee and refiled in the state register on the twenty-fifth

17 day of January, one thousand nine hundred ninety,  
18 relating to the secretary of the department of health and  
19 human resources (implementation of omnibus health  
20 care act payment provisions), are authorized.

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

1 (a) The legislative rules filed in the state register on  
2 the second day of June, one thousand nine hundred  
3 eighty-two, relating to the state board of health (waste  
4 water treatment works operations), are authorized.

5 (b) The legislative rules filed in the state register on  
6 the second day of June, one thousand nine hundred  
7 eighty-two, relating to the state board of health  
8 (laboratory reporting of syphilis and gonorrhoea), are  
9 authorized.

10 (c) The legislative rules filed in the state register on  
11 the second day of June, one thousand nine hundred  
12 eighty-two, relating to the state board of health (public  
13 water supply operators) with the modification of §11.02  
14 as presented to the legislative rule-making review  
15 committee on the ninth day of November, one thousand  
16 nine hundred eighty-two, are authorized.

17 (d) The legislative rules filed in the state register on  
18 the twenty-second day of October, one thousand nine  
19 hundred eighty-two, relating to the state board of health  
20 (sewage systems) with the modification presented to the  
21 legislative rule-making review committee on the sixth  
22 day of December, one thousand nine hundred eighty-  
23 two, are authorized except lines ten through seventeen,  
24 page eight of the rules shall be stricken in their entirety  
25 and the remaining paragraphs renumbered.

26 (e) The legislative rules filed in the state register on  
27 the second day of June, one thousand nine hundred  
28 eighty-two, relating to the state board of health  
29 (approval of laboratories), are authorized.

30 (f) The legislative rules filed in the state register on  
31 the twenty-fourth day of November, one thousand nine  
32 hundred eighty-two, relating to the state board of health  
33 (permit fees), are authorized.

34 (g) The legislative rules filed in the state register on  
35 the third day of June, one thousand nine hundred eighty-  
36 two, relating to the state board of health (certificate of  
37 need), are authorized.

38 (h) The legislative rules filed in the state register on  
39 the sixteenth day of August, one thousand nine hundred  
40 eighty-two, relating to the state board of health (eyes of  
41 newborn children), are authorized.

42 (i) The legislative rules filed in the state register on  
43 the thirteenth day of August, one thousand nine hundred  
44 eighty-two, and filed with amendments on the eleventh  
45 day of January, one thousand nine hundred eighty-three,  
46 relating to the state board of health (nursing home  
47 licensure), are authorized with the amendment of  
48 §5.15.02 of those rules as set forth below:

49 By striking the word "and" at the end of subdivision  
50 (f), by changing the period at the end of subdivision (g)  
51 to a semicolon, and by adding the following after  
52 subdivision (g): "(h) one (1) member who represents  
53 social work services."

54 (j) The legislative rules filed in the state register on  
55 the twenty-fourth day of November, one thousand nine  
56 hundred eighty-two, relating to the state board of health  
57 (guardianship service), are authorized with the excep-  
58 tion of section 9.3 of those rules which may not be  
59 promulgated.

60 (k) The legislative rules filed in the state register on  
61 the third day of June, one thousand nine hundred eighty-  
62 two, relating to the state board of health (controlled  
63 substances research program and certification), are  
64 authorized.

65 (l) The legislative rules filed in the state register on  
66 the fifth day of November, one thousand nine hundred  
67 eighty-two, relating to the state board of health  
68 (chemical test for intoxication), are authorized.

69 (m) The legislative rules filed in the state register on  
70 the nineteenth day of December, one thousand nine  
71 hundred eighty-three, relating to the state board of  
72 health (birthing center licensure), are authorized.



73 (n) The legislative rules filed in the state register on  
74 the fourteenth day of November, one thousand nine  
75 hundred eighty-three, relating to the state board of  
76 health (licensure of behavioral health centers), are  
77 authorized with the amendments set forth below:

78 Page 45, §12.8.2. In the first sentence delete the words  
79 “without delay” and insert in lieu thereof the words  
80 “within twenty-four hours after receiving a report of a  
81 complaint.”

82 (o) The legislative rules filed in the state register on  
83 the nineteenth day of December, one thousand nine  
84 hundred eighty-three, relating to the state board of  
85 health (procedures for recovery of corneal tissue for  
86 transplant), are authorized.

87 (p) The legislative rules filed in the state register on  
88 the seventh day of September, one thousand nine  
89 hundred eighty-three, relating to the state board of  
90 health (well water regulations), are authorized with the  
91 amendments set forth below:

92 §4.1. In the first sentence delete the word “obtaining”  
93 and insert in lieu thereof the words “applying for”. In  
94 the second sentence after “4.3” add “and 4.5”.

95 §4.2. At the end of the second sentence, strike the  
96 period and add the words “unless emergency conditions  
97 prevail as noted under §4.3.”

98 With the balance of §4.2 and create a new §4.3 with  
99 the following changes: In the first sentence delete the  
100 word “deadline” and insert in lieu thereof the word  
101 “requirements”. Add after the first sentence the  
102 sentence, “Emergency conditions and unavoidable  
103 circumstances are those conditions involving acts of God,  
104 water outages or disruption of water service, unsatisfac-  
105 tory water quality or quantity or public health threats.”  
106 In the third sentence delete the word “exceed” and insert  
107 in lieu thereof the words “be made in excess of”.

108 Renumber §4.3 as §4.4 and add the following two  
109 sentences at the end of the section: “Such standards shall  
110 constitute the minimum standards for the installation,  
111 the alteration or the deepening of water wells. Any plans

112 approved by the director pursuant to these regulations  
113 shall be in substantial compliance with the heretofore  
114 mentioned standards.”

115 Renumber §4.4 as §4.5, §4.5 as §4.6, §4.6 as §4.7, §4.7  
116 as §4.8 and §4.8 as §4.9.

117 §5.2. Delete the words “four (4)” and insert in lieu  
118 thereof the words “two (2)” and delete the words “active,  
119 continuous”.

120 (q) The legislative rules filed in the state register on  
121 the third day of October, one thousand nine hundred  
122 eighty-four, relating to the state board of health (trauma  
123 center or facility designation), are authorized.

124 (r) The legislative rules filed in the state register on  
125 the twenty-first day of December, one thousand nine  
126 hundred eighty-four, relating to the state board of  
127 health (reportable diseases), are authorized.

128 (s) The legislative rules filed in the state register on  
129 the twenty-first day of December, one thousand nine  
130 hundred eighty-four, relating to the state board of  
131 health (licensure of medical adult day care centers), are  
132 authorized.

133 (t) The legislative rules filed in the state register on  
134 the third day of October, one thousand nine hundred  
135 eighty-four, relating to the state board of health (retail  
136 food store sanitation), are authorized.

137 (u) The legislative rules filed in the state register on  
138 the seventeenth day of December, one thousand nine  
139 hundred eighty-five, modified by the director of health  
140 to meet the objections of the legislative rule-making  
141 review committee and refiled in the state register on the  
142 fifteenth day of January, one thousand nine hundred  
143 eighty-six, relating to the director of health (adult group  
144 home licensure), are authorized.

145 (v) The legislative rules filed in the state register on  
146 the twenty-ninth day of October, one thousand nine  
147 hundred eighty-five, modified by the state board of  
148 health to meet the objections of the legislative rule-  
149 making review committee and refiled in the state

150 register on the twenty-seventh day of December, one  
151 thousand nine hundred eighty-five, relating to the state  
152 board of health (licensure of hospice care programs), are  
153 authorized.

154 (w) The legislative rules filed in the state register on  
155 the thirty-first day of October, one thousand nine  
156 hundred eighty-five, modified by the director of health  
157 to meet the objections of the legislative rule-making  
158 review committee and refiled in the state register on the  
159 twenty-seventh day of December, one thousand nine  
160 hundred eighty-five, relating to the director of health  
161 (rules governing emergency medical services), are  
162 authorized with the amendments set forth below:

163 On page 3, §3.9 shall read as follows:

164 "3.9 Quorum—When applied to the EMSAC, a major-  
165 ity of the members thereof, except in the instance when  
166 at any meeting of the EMSAC, where a quorum is not  
167 present and the director causes to be deposited in the  
168 United States mail, postage prepaid, return receipt  
169 requested, to each member of the EMSAC within three  
170 days, a notice calling a meeting of the EMSAC at some  
171 convenient place in the state of West Virginia two weeks  
172 after the meeting at which no quorum was present.  
173 Quorum means any number of members of the EMSAC  
174 who attend such subsequent meeting. Any member  
175 missing two consecutive meetings shall be removed from  
176 the EMSAC."

177 On page 6, §4.7.1 shall be deleted in its entirety;

178 And,

179 On page 7, §4.10.1 shall read as follows:

180 "4.10.1 Every applicant for certification as an EMSP  
181 prior to such certification, shall demonstrate his or her  
182 knowledge and ability by undergoing a written exam-  
183 ination and a demonstration of skills, and by attaining  
184 a passing score on the same. Passing score shall be the  
185 same for all testing programs."

186 (x) The legislative rules filed in the state register on  
187 the fifth day of September, one thousand nine hundred

188 eighty-five, relating to the state department of health  
189 (revising the list of hazardous substances), are  
190 authorized.

191 (y) The legislative rules filed in the state register on  
192 the thirteenth day of August, one thousand nine hundred  
193 eighty-six, modified by the director of the department  
194 of health to meet the objections of the legislative rule-  
195 making review committee and refiled in the state  
196 register on the sixteenth day of October, one thousand  
197 nine hundred eighty-six, relating to the director of the  
198 department of health (hazardous material treatment  
199 information repository), are authorized.

200 (z) The legislative rules filed in the state register on  
201 the seventeenth day of July, one thousand nine hundred  
202 eighty-six, modified by the state board of health to meet  
203 the objections of the legislative rule-making review  
204 committee and refiled in the state register on the  
205 sixteenth day of October, one thousand nine hundred  
206 eighty-six, relating to the state board of health (methods  
207 and standards for chemical tests for intoxication), are  
208 authorized.

209 (aa) The legislative rules filed in the state register on  
210 the twenty-first day of November, one thousand nine  
211 hundred eighty-six, modified by the state board of  
212 health to meet the objections of the legislative rule-  
213 making review committee and refiled in the state  
214 register on the twenty-third day of December, one  
215 thousand nine hundred eighty-six, relating to the state  
216 board of health (licensure of behavioral health centers),  
217 are authorized.

218 (bb) The legislative rules filed in the state register on  
219 the eighteenth day of April, one thousand nine hundred  
220 eighty-six, modified by the state board of health to meet  
221 the objections of the legislative rule-making review  
222 committee and refiled in the state register on the  
223 seventeenth day of October, one thousand nine hundred  
224 eighty-six, relating to the state board of health (hospital  
225 licensure), are authorized.

226 (cc) The legislative rules filed in the state register on  
227 the ninth day of December, one thousand nine hundred

228 eighty-six, modified by the state board of health to meet  
229 the objections of the legislative rule-making review  
230 committee and refiled in the state register on the  
231 twenty-third day of December, one thousand nine  
232 hundred eighty-six, relating to the state board of health  
233 (hospital licensure and allowing hospitals to have  
234 licensed hospital professionals, other than licensed  
235 physicians, on their medical staff), are authorized.

236 (dd) The legislative rules filed in the state register on  
237 the ninth day of December, one thousand nine hundred  
238 eighty-six, modified by the state board of health to meet  
239 the objections of the legislative rule-making review  
240 committee and refiled in the state register on the  
241 twenty-third day of December, one thousand nine  
242 hundred eighty-six, relating to the state board of health  
243 (vital statistics), are authorized.

244 (ee) The legislative rules filed in the state register on  
245 the eleventh day of September, one thousand nine  
246 hundred eighty-seven, relating to the director of the  
247 department of health (immunization criteria for  
248 transfer students), are authorized.

249 (ff) The legislative rules filed in the state register on  
250 the sixteenth day of November, one thousand nine  
251 hundred eighty-seven, relating to the director of the  
252 department of health (hazardous substances), are  
253 authorized with the amendment set forth below:

254 Page 33, section 8, line 8 (unnumbered), by adding at  
255 the end of section 8 the following proviso: "*Provided,*  
256 That the owner's or operator's submissions are based on  
257 the threshold reporting requirements contained in  
258 section 5, article 31, chapter 16."

259 (gg) The legislative rules filed in the state register on  
260 the eighteenth day of November, one thousand nine  
261 hundred eighty-seven, relating to the director of the  
262 department of health (trauma center or facility desig-  
263 nation), are authorized.

264 (hh) The legislative rules filed in the state register on  
265 the twenty-second day of June, one thousand nine  
266 hundred eighty-eight, modified by the state board of

267 health to meet the objections of the legislative rule-  
268 making review committee and refiled in the state  
269 register on the fifteenth day of September, one thousand  
270 nine hundred eighty-eight, relating to the state board of  
271 health (licensure of hospice care programs), are  
272 authorized.

273 (ii) The legislative rules filed in the state register on  
274 the fifteenth day of September, one thousand nine  
275 hundred eighty-eight, modified by the state board of  
276 health to meet the objections of the legislative rule-  
277 making review committee and refiled in the state  
278 register on the third day of November, one thousand  
279 nine hundred eighty-eight, relating to the state board of  
280 health (water wells) are authorized with the amendment  
281 set forth below:

282 On page 2, §3.8, shall read as follows:

283 "3.8 Water Well—Any excavation or penetration in  
284 the ground, whether drilled, bored, cored, driven or  
285 jetted that enters or passes through an aquifer for  
286 purposes that may include, but are not limited to: A  
287 water supply, exploration for water, dewatering or heat  
288 pump wells, except that this definition shall not include  
289 groundwater monitoring activities and all activities for  
290 the exploration, development, production, storage and  
291 recovery of coal, oil and gas and other mineral resources  
292 which are regulated under chapter 22, 22A or 22B of  
293 the code."

294 (jj) The legislative rules filed in the state register on  
295 the twenty-second day of June, one thousand nine  
296 hundred eighty-eight, modified by the state board of  
297 health to meet the objections of the legislative rule-  
298 making review committee and refiled in the state  
299 register on the fifteenth day of September, one thousand  
300 nine hundred eighty-eight, relating to the state board of  
301 health (plumbing requirements), are authorized.

302 (kk) The legislative rules filed in the state register on  
303 the twenty-second day of June, one thousand nine  
304 hundred eighty-eight, modified by the state board of  
305 health to meet the objections of the legislative rule-  
306 making review committee and refiled in the state

307 register on the fifteenth day of September, one thousand  
308 nine hundred eighty-eight, relating to the state board of  
309 health (public water supply operators), are authorized.

310 (ll) The legislative rules filed in the state register on  
311 the nineteenth day of October, one thousand nine  
312 hundred eighty-eight, modified by the state board of  
313 health to meet the objections of the legislative rule-  
314 making review committee and refiled in the state  
315 register on the twentieth day of December, one thousand  
316 nine hundred eighty-eight, relating to the state board of  
317 health (volatile synthetic organic chemicals), are  
318 authorized.

319 (mm) The legislative rules filed in the state register  
320 on the second day of January, one thousand nine  
321 hundred ninety, modified by the division of health to  
322 meet the objections of the legislative rule-making review  
323 committee and refiled in the state register on the  
324 seventeenth day of January, one thousand nine hundred  
325 ninety, relating to the division of health (asbestos  
326 abatement licensing), are authorized.

327 (nn) The legislative rules filed in the state register on  
328 the thirtieth day of August, one thousand nine hundred  
329 eighty-nine, modified by the division of health to meet  
330 the objections of the legislative rule-making review  
331 committee and refiled in the state register on the  
332 seventeenth day of November, one thousand nine  
333 hundred eighty-nine, relating to the division of public  
334 health (AIDS-related medical testing and confidential-  
335 ity), are authorized.

336 (oo) The legislative rules filed in the state register on  
337 the nineteenth day of December, one thousand nine  
338 hundred eighty-nine, modified by the state board of  
339 health to meet the objections of the legislative rule-  
340 making review committee and refiled in the state  
341 register on the twenty-fourth day of January, one  
342 thousand nine hundred ninety, relating to the state  
343 board of health (nursing home licensure), are  
344 authorized.

345 (pp) The legislative rules filed in the state register on  
346 the nineteenth day of December, one thousand nine

347 hundred eighty-nine, relating to the state board of  
348 health (licensure of behavioral health centers), are  
349 authorized.

350 (qq) The legislative rules filed in the state register on  
351 the twenty-eighth day of December, one thousand nine  
352 hundred eighty-nine, relating to the state board of  
353 health (methods and standards for chemical test for  
354 intoxication), are authorized.

**§64-5-3. West Virginia health care cost review authority.**

1 (a) The legislative rules filed in the state register on  
2 the twenty-first day of October, one thousand nine  
3 hundred eighty-three, relating to the health care cost  
4 review authority (limitation on hospital gross patient  
5 revenue), are authorized.

6 (b) The legislative rules filed in the state register on  
7 the nineteenth day of December, one thousand nine  
8 hundred eighty-three, relating to the health care cost  
9 review authority (freeze on hospital rates and granting  
10 temporary rate increases), are authorized.

11 (c) The legislative rules filed in the state register on  
12 the twenty-first day of December, one thousand nine  
13 hundred eighty-four, relating to the health care cost  
14 review authority (implementation of the utilization  
15 review and quality assurance program), are authorized.

16 (d) The legislative rules filed in the state register on  
17 the fifteenth day of August, one thousand nine hundred  
18 eighty-four, relating to the health care cost review  
19 authority (hospital cost containment methodology), are  
20 authorized.

21 (e) The legislative rules filed in the state register on  
22 the twenty-fifth day of November, one thousand nine  
23 hundred eighty-five, modified by the West Virginia  
24 health care cost review authority to meet the objections  
25 of the legislative rule-making review committee and  
26 refiled in the state register on the twenty-eighth day of  
27 January, one thousand nine hundred eighty-six, relating  
28 to the West Virginia health care cost review authority  
29 (interim standards for lithotripsy services), are  
30 authorized.



31 (f) The legislative rules filed in the state register on  
32 the third day of September, one thousand nine hundred  
33 eighty-seven, modified by the West Virginia health care  
34 cost review authority to meet the objections of the  
35 legislative rule-making review committee and refiled in  
36 the state register on the twenty-seventh day of January,  
37 one thousand nine hundred eighty-eight, relating to the  
38 West Virginia health care cost review authority (exemp-  
39 tions from certificate of need review), are authorized.

40 (g) The legislative rules filed in the state register on  
41 the nineteenth day of September, one thousand nine  
42 hundred eighty-eight, modified by the health care cost  
43 review authority to meet the objections of the legislative  
44 rule-making review committee and refiled in the state  
45 register on the twenty-first day of February, one  
46 thousand nine hundred eighty-nine, relating to the  
47 health care cost review authority (financial disclosure),  
48 are authorized.

49 (h) The legislative rules filed in the state register on  
50 the fourteenth day of August, one thousand nine  
51 hundred eighty-nine, modified by the West Virginia  
52 health care cost review authority to meet the objections  
53 of the legislative rule-making review committee and  
54 refiled in the state register on the fifth day of December,  
55 one thousand nine hundred eighty-nine, relating to the  
56 West Virginia health care cost review authority (expe-  
57 dited review for rate changes), are authorized with the  
58 amendments set forth below:

59 On page 5, Section 4.1, after the words: "affected by  
60 the increase." by inserting the following language: "The  
61 hospital shall also reconcile any excesses in gross  
62 revenue, gross patient revenue, gross inpatient revenue  
63 or charges per discharge. Within fifteen days of  
64 submission the Authority shall inform the hospital if it  
65 accepts the justification for excesses provided by the  
66 hospital."

67 And,

68 On page 6, section 4.2, after the words "the excess in  
69 gross outpatient revenue" by striking the period and  
70 inserting the following:

71 “or if any excesses in the above categories (1 through  
72 4) have been sufficiently justified to the Authority as  
73 required in Section 4.1 of this rule.”

74 (i) The legislative rules filed in the state register on  
75 the eleventh day of September, one thousand nine  
76 hundred eighty-nine, modified by the West Virginia  
77 health care cost review authority to meet the objections  
78 of the legislative rule-making review committee and  
79 refiled in the state register on the fifth day of December,  
80 one thousand nine hundred eighty-nine, relating to the  
81 West Virginia health care cost review authority (exemp-  
82 tion for conversion of acute care beds to skilled nursing  
83 care beds), are authorized.

**§64-5-4. West Virginia hospital finance authority.**

1 The legislative rules filed in the state register on the  
2 tenth day of June, one thousand nine hundred eighty-  
3 six, modified by the West Virginia hospital finance  
4 authority to meet the objections of the legislative rule-  
5 making review committee and refiled in the state  
6 register on the ninth day of January, one thousand nine  
7 hundred eighty-seven, relating to the West Virginia  
8 hospital finance authority (establishment of fee schedule  
9 and cost allocation applicable to issuance of bonds), are  
10 authorized.

**§64-5-5. Division of human services; director of the child advocate office.**

1 (a) The Legislature hereby authorizes and directs the  
2 director of the child advocate office of the department  
3 of human services to promulgate rules relating to  
4 guidelines for child support awards in exact conformity  
5 with the rules relating to guidelines for child support  
6 awards tendered to the secretary of state by the Senate  
7 committee on the judiciary on the twelfth day of March,  
8 one thousand nine hundred eighty-eight.

9 (b) The legislative rules filed in the state register on  
10 the twenty-seventh day of May, one thousand nine  
11 hundred eighty-eight, modified by the director of the  
12 child advocate office of the department of human  
13 services to meet the objections of the legislative rule-

14 making review committee and refiled in the state  
15 register on the twenty-third day of September, one  
16 thousand nine hundred eighty-eight, relating to the  
17 director of the child advocate office of the department  
18 of human services (interstate income withholding), are  
19 authorized.

20 (c) The legislative rules filed in the state register on  
21 the twenty-seventh day of May, one thousand nine  
22 hundred eighty-eight, modified by the director of the  
23 child advocate office of the department of human  
24 services to meet the objections of the legislative rule-  
25 making review committee and refiled in the state  
26 register on the twenty-third day of September, one  
27 thousand nine hundred eighty-eight, relating to the  
28 director of the child advocate office of the department  
29 of human services (obtaining support from federal and  
30 state income tax refunds), are authorized.

31 (d) The legislative rules filed in the state register on  
32 the twenty-seventh day of May, one thousand nine  
33 hundred eighty-eight, modified by the director of the  
34 child advocate office of the department of human  
35 services to meet the objections of the legislative rule-  
36 making review committee and refiled in the state  
37 register on the twenty-third day of September, one  
38 thousand nine hundred eighty-eight, relating to the  
39 director of the child advocate office of the department  
40 of human services (termination of income withholding),  
41 are authorized.

42 (e) The legislative rules filed in the state register on  
43 the twenty-seventh day of May, one thousand nine  
44 hundred eighty-eight, modified by the director of the  
45 child advocate office of the department of human  
46 services to meet the objections of the legislative rule-  
47 making review committee and refiled in the state  
48 register on the twenty-third day of September, one  
49 thousand nine hundred eighty-eight, relating to the  
50 director of the child advocate office of the department  
51 of human services (providing information to credit  
52 reporting agencies), are authorized.

**§64-5-6. Office of workers' compensation commissioner.**

1 (a) The legislative rules filed in the state register on  
2 the fourteenth day of November, one thousand nine  
3 hundred eighty-three, relating to the workers' compen-  
4 sation commissioner (employers' excess liability fund),  
5 are authorized.

6 (b) The legislative rules filed in the state register on  
7 the twenty-fifth day of October, one thousand nine  
8 hundred eighty-four, relating to the workers' compensa-  
9 tion commissioner (time limits for the administrative  
10 proceedings of adjudications and awards), are  
11 authorized.

12 (c) The legislative rules filed in the state register on  
13 the twenty-fifth day of October, one thousand nine  
14 hundred eighty-four, modified by the workers' compen-  
15 sation commissioner to meet the objections of the  
16 legislative rule-making review committee and refiled in  
17 the state register on the ninth day of January, one  
18 thousand nine hundred eighty-five, relating to the  
19 workers' compensation commissioner (self-insured  
20 employers), are authorized.

21 (d) The legislative rules filed in the state register on  
22 the twenty-fifth day of October, one thousand nine  
23 hundred eighty-four, modified by the workers' compen-  
24 sation commissioner to meet the objections of the  
25 legislative rule-making review committee and refiled in  
26 the state register on the fifth day of December, one  
27 thousand nine hundred eighty-four, relating to the  
28 workers' compensation commissioner (payment of  
29 attorney's fees), are authorized.

30 (e) The legislative rules filed in the state register on  
31 the sixth day of August, one thousand nine hundred  
32 eighty-five, relating to the workers' compensation  
33 commissioner (standards for medical examination in  
34 occupational pneumoconiosis claims), are authorized  
35 with the amendments set forth below:

36 On page 1, the second and third unnumbered para-  
37 graphs on page one are amended to read as follows:

38 "When two or more ventilatory function tests per-  
39 formed in reasonably close proximity in time produce

40 differing but acceptable results, the Commissioner, at  
41 the request of the O. P. Board, may direct the parties  
42 to furnish additional evidence and/or order additional  
43 testing at the laboratory utilized by the O. P. Board or  
44 other laboratories, all for the purpose of determining  
45 whether any of the results are unreliable or incorrect  
46 or are clearly attributable to some identifiable disease  
47 or illness other than occupational pneumoconiosis.

48 When blood gas studies are performed and abnormal  
49 values are obtained and thereafter new blood gas studies  
50 are performed and normal or significantly higher values  
51 are further obtained, the Commissioner, at the request  
52 of the O. P. Board, may direct the parties to furnish  
53 additional evidence and/or order additional studies at  
54 the laboratory utilized by the O. P. Board or other  
55 laboratories, all for the purpose of determining whether  
56 any of the values are unreliable or incorrect or are  
57 clearly attributable to some identifiable disease or  
58 illness other than occupational pneumoconiosis."

59 And,

60 On page 7, paragraph (11) is amended to read as  
61 follows:

62 "(11) It is recognized that arterial blood gas studies  
63 done in laboratories throughout this state are obtained  
64 at different altitudes. Only by 'standardizing' for  
65 altitude can an equitable assessment be made of  
66 impairment when values of arterial oxygen are being  
67 measured at remarkably different altitudes. Therefore,  
68 the results reported from laboratories should include the  
69 name of the laboratory and the date and time of the  
70 testing, altitude of the laboratory and barometric  
71 pressure at the laboratory on the day the samples were  
72 collected. The O. P. Board will evaluate the arterial  
73 blood gas values by converting those values to the  
74 average altitude of Charleston, West Virginia. For this  
75 purpose, it shall be sufficient to add 1 mmHg to each  
76 arterial oxygen tension for each 300 feet or fraction  
77 thereof that the testing laboratory is located above the  
78 average altitude of Charleston, because the relationship  
79 of barometric pressure (altitude) and alveolar oxygen is

80 approximately linear up to 4,000 feet as long as the  
81 subject breathes room air.

82 As an example, Bluefield is located approximately  
83 2,600 feet above sea level. Charleston is approximately  
84 600 feet above sea level. Thus, arterial oxygen values  
85 obtained in Bluefield should have 6.67 mmHg added to  
86 them before applying the table to them to obtain  
87 'percent impairment'. The calculations are as follows:

88 'Bluefield (2,600') minus Charleston (600') equals  
89 2,000'

90 differential 2,000' divided by 300' altitude equals 6.67

91 6.67 multiplied by 1 mmHg per 300' altitude equals  
92 6.67

93 mmHg.'"

94 (f) The legislative rules filed in the state register on  
95 the ninth day of August, one thousand nine hundred  
96 eighty-five, modified by the workers' compensation  
97 commissioner to meet the objections of the legislative  
98 rule-making review committee and refiled in the state  
99 register on the fifteenth day of January, one thousand  
100 nine hundred eighty-six, relating to the workers'  
101 compensation commissioner (administration of the coal-  
102 workers' pneumoconiosis fund), are authorized.

103 (g) The legislative rules filed in the state register on  
104 the thirtieth day of November, one thousand nine  
105 hundred eighty-nine, modified by the division of  
106 workers' compensation to meet the objections of the  
107 legislative rule-making review committee and refiled in  
108 the state register on the tenth day of January, one  
109 thousand nine hundred ninety, relating to the division  
110 of workers' compensation (enforcement of reporting and  
111 payment requirements), are authorized.

112 (h) The legislative rules filed in the state register on  
113 the sixteenth day of January, one thousand nine hundred  
114 ninety, modified by the division of workers' compensa-  
115 tion to meet the objections of the legislative rule-making  
116 review committee and refiled in the state register on the  
117 twenty-third day of January, one thousand nine hundred

118 ninety, relating to the division of workers' compensation  
119 (self-insured employers), are authorized.

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

§64-6-1. Division of corrections.

§64-6-2. Fire commission.

§64-6-3. Jail and prison standards commission.

§64-6-4. Division of public safety.

**§64-6-1. Division of corrections.**

1 (a) The legislative rules filed in the state register on  
2 the twentieth day of September, one thousand nine  
3 hundred eighty-eight, modified by the commissioner of  
4 the department of corrections to meet the objections of  
5 the legislative rule-making review committee and  
6 refiled in the state register on the thirteenth day of  
7 January, one thousand nine hundred eighty-nine,  
8 relating to the commissioner of the department of  
9 corrections (parole supervision), are authorized.

10 (b) The legislative rules filed in the state register on  
11 the twentieth day of September, one thousand nine  
12 hundred eighty-eight, modified by the commissioner of  
13 the department of corrections to meet the objections of  
14 the legislative rule-making review committee and  
15 refiled in the state register on the thirteenth day of  
16 January, one thousand nine hundred eighty-nine,  
17 relating to the commissioner of the department of  
18 corrections (furlough programs for inmates under the  
19 custody and control of the commissioner of the depart-  
20 ment of corrections), are authorized.

**§64-6-2. Fire commission.**

1 (a) The legislative rules filed in the state register on  
2 the third day of January, one thousand nine hundred  
3 eighty-four, relating to the state fire commission (state  
4 fire code), are authorized with the amendments set forth  
5 below:

6 On page 1, section 106, line 1, after the word "to" add  
7 the words "personal care homes caring for five or less  
8 patients or";

9 And,

10 On page 26, section 11.06 (3) A. (3), strike the period  
11 at the end of the sentence and add the words "except  
12 for existing sleeping rooms owned by the state and  
13 located in dormitories or state parks."

14 (b) The legislative rules filed in the state register on  
15 the first day of August, one thousand nine hundred  
16 eighty-six, modified by the state fire commission to meet  
17 the objection of the legislative rule-making review  
18 committee and refiled in the state register on the  
19 twenty-eighth day of October, one thousand nine  
20 hundred eighty-six, relating to the state fire commission  
21 (hazardous substance emergency response training  
22 program), are authorized.

23 (c) The legislative rules filed in the state register on  
24 the sixth day of September, one thousand nine hundred  
25 eighty-eight, modified by the state fire commission to  
26 meet the objections of the legislative rule-making review  
27 committee and refiled in the state register on the eighth  
28 day of December, one thousand nine hundred eighty-  
29 eight, relating to the state fire commission (state  
30 building code), are authorized.

31 (d) The legislative rules filed in the state register on  
32 the fourteenth day of August, one thousand nine  
33 hundred eighty-nine, modified by the state fire commis-  
34 sion to meet the objections of the legislative rule-making  
35 review committee and refiled in the state register on the  
36 fifteenth day of January, one thousand nine hundred  
37 ninety, relating to the state fire commission (electrician  
38 licensing), are authorized with the following  
39 amendment:

40 On page 6, section 3.03, by deleting all of subsection  
41 (A) and inserting in lieu thereof the following:

42 "(A) Any person who performs electrical work with  
43 respect to any property owned or leased by such person.  
44 For purposes of this subparagraph: (1) 'property owner'  
45 includes the property owner, lessee, and his or her  
46 maintenance personnel; and, (2) 'performs electrical  
47 work' includes routine maintenance, repairs, and  
48 improvements to existing structures; or".



49 (e) The legislative rules filed in the state register on  
50 the fourteenth day of August, one thousand nine  
51 hundred eighty-nine, modified by the state fire commis-  
52 sion to meet the objections of the legislative rule-making  
53 review committee and refiled in the state register on the  
54 twenty-fifth day of October, one thousand nine hundred  
55 eighty-nine, relating to the state fire commission (fees  
56 for services rendered), are authorized with the amend-  
57 ment set forth below:

58 On page 1, section 2.1(G), by striking out the word  
59 "underground".

60 (f) The legislative rules filed in the state register on  
61 the eleventh day of August, one thousand nine hundred  
62 eighty-nine, modified by the state fire commission to  
63 meet the objections of the legislative rule-making review  
64 committee and refiled in the state register on the  
65 twenty-sixth day of October, one thousand nine hundred  
66 eighty-nine, relating to the state fire commission (fire  
67 code), are authorized.

### §64-6-3. Jail and prison standards commission.

1 (a) The legislative rules filed in the state register on  
2 the fifth day of November, one thousand nine hundred  
3 eighty-seven, relating to the jail and prison standards  
4 commission (West Virginia minimum standards for  
5 construction, operation and maintenance of jails), are  
6 authorized.

7 (b) The legislative rules filed in the state register on  
8 the ninth day of May, one thousand nine hundred eighty-  
9 eight, modified by the jail and prison standards  
10 commission to meet the objections of the legislative rule-  
11 making review committee and refiled in the state  
12 register on the twenty-seventh day of February, one  
13 thousand nine hundred eighty-nine, relating to the jail  
14 and prison standards commission (West Virginia  
15 minimum standards for construction, operation and  
16 maintenance of holding facilities), are authorized.

17 (c) The legislative rules filed in the state register on  
18 the eighteenth day of March, one thousand nine hundred

19 eighty-eight, modified by the jail and prison standards  
20 commission to meet the objections of the legislative rule-  
21 making review committee and refiled in the state  
22 register on the twenty-seventh day of February, one  
23 thousand nine hundred eighty-nine, relating to the jail  
24 and prison standards commission (West Virginia  
25 minimum standards for construction, operation and  
26 maintenance of prisons), are authorized.

27 (d) The Legislature hereby authorizes and directs the  
28 jail and prison standards commission to amend its rules  
29 relating to West Virginia minimum standards for  
30 construction, operation and maintenance of jails which  
31 were filed in the code of state regulations (95 CSR 1)  
32 on the fifth day of April, one thousand nine hundred  
33 eighty-eight, with the following amendment set forth  
34 below:

35 On page 7, §8.10 by striking out in the first sentence,  
36 after the word "house", the following words: "no less  
37 than four (4)" and

38 On page 30 by adding a new section 17.21 to read as  
39 follows:

40 "17.21 Visitation to Home County. To the extent that  
41 the previous subsections provide requirements for  
42 visitation with inmates housed in regional jail facilities,  
43 it is the intent that such requirements apply only to  
44 visitation provided in a regional jail facility. When  
45 visitation with family and friends is required to be  
46 provided to a person incarcerated in a regional jail  
47 facility in a location other than the regional jail, the  
48 following provisions shall apply:

49 17.21.1 The regional jail need not assume the respon-  
50 sibility for transportation to the home county seat of a  
51 person incarcerated in the regional jail facility for  
52 visitation with their family and friends unless that  
53 person has had no visits from family and friends in the  
54 previous three months.

55 17.21.2 In providing any transportation under subsec-  
56 tion 17.21.1 the regional jail has the right to schedule  
57 such transportation for visits with family and friends of

58 the person incarcerated in a manner which would utilize  
59 to the utmost the regional jail's regularly scheduled  
60 trips to each of the respective counties it serves,  
61 including the scheduling of round-trips, so long as a  
62 minimum of 30 minutes is available for visitation.

63 17.21.3 The regional jail need not assume any respon-  
64 sibility for transportation under subsection 17.21.1 when  
65 the distance from the regional jail to the respective  
66 county seat is less than two hours driving time."

**§64-6-4. Division of public safety.**

1 (a) The legislative rules filed in the state register on  
2 the twenty-third day of September, one thousand nine  
3 hundred eighty-three, relating to the department of  
4 public safety (general orders), are authorized with the  
5 amendment set forth below:

6 Page 23, §9.10, remove the period at the end of the  
7 sentence and add the words "or municipalities."

8 (b) The legislative rules filed in the state register on  
9 the twenty-second day of June, one thousand nine  
10 hundred eighty-four, modified by the department of  
11 public safety to meet the objections of the legislative  
12 rule-making review committee and refiled in the state  
13 register on the fifth day of December, one thousand nine  
14 hundred eighty-four, relating to the department of  
15 public safety (commission on drunk driving), are  
16 authorized.

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

§64-7-1. Office of alcohol beverage control commission.

§64-7-2. Agency of insurance commissioner.

§64-7-3. Board of investments.

§64-7-4. Lottery commission.

§64-7-5. Racing commission.

§64-7-6. Tax department.

**§64-7-1. Office of alcohol beverage control commission.**

1 (a) The legislative rules filed in the state register on  
2 the thirtieth day of December, one thousand nine  
3 hundred eighty-two, relating to the alcohol beverage

4 control commission (transportation of alcoholic beverages), are authorized.

6 (b) The legislative rules filed in the state register on  
7 the thirteenth day of August, one thousand nine hundred  
8 eighty-two, relating to the alcohol beverage control  
9 commissioner (lighting of licensed premises), are  
10 authorized.

11 (c) The legislative rules filed in the state register on  
12 the thirteenth day of August, one thousand nine hundred  
13 eighty-two, relating to the alcohol beverage control  
14 commissioner (kitchen and dining facilities), are  
15 authorized.

16 (d) The legislative rules filed in the state register on  
17 the twenty-fourth day of August, one thousand nine  
18 hundred eighty-two, relating to the alcohol beverage  
19 control commissioner (refusal to license private clubs),  
20 are authorized with the exception of subsection (a) of the  
21 rules which shall be promulgated as set forth below in  
22 this section as follows:

23 “(a) For purposes of this regulation, the commissioner  
24 may refuse to grant any license if he has reasonable  
25 cause to believe, as indicated by documented evidence,  
26 that the applicant, or any officer, director or manager  
27 thereof, or shareholder owning twenty percent or more  
28 of its capital stock, beneficial or otherwise, or other  
29 person conducting or managing the affairs of the  
30 applicant or of the proposed licensed premises, in whole  
31 or part:

32 (1) Is not a person of good moral character or repute;

33 (2) Has maintained a noisy, loud, disorderly or  
34 unsanitary establishment;

35 (3) Has demonstrated, either by his police record or  
36 by his record as former licensee under chapter sixty or  
37 chapter eleven, article sixteen of the West Virginia code,  
38 a lack of respect for law and order, generally, or for the  
39 laws and rules governing the sale and distribution of  
40 alcoholic beverages or nonintoxicating beer;

41 (4) Has the general reputation of drinking alcoholic

42 beverages to excess, or is addicted to the use of  
43 narcotics;

44 (5) Has misrepresented a material fact in applying to  
45 the commissioner for a license.

46 (b) For purposes of this regulation, the commissioner  
47 shall refuse to grant any license if he has reasonable  
48 cause to believe, as indicated by documented evidence  
49 that the applicant, or any officer, director or manager  
50 thereof, or shareholder owning twenty percent or more  
51 of its capital stock, beneficial or otherwise, or other  
52 person conducting or managing the affairs of the  
53 applicant or of the proposed licensed premises, in whole  
54 or part:

55 (1) Is not eighteen years of age or older;

56 (2) Has been convicted of a felony or other crime  
57 involving moral turpitude, and, upon such conviction,  
58 the applicant shall not be eligible for licensure within  
59 five years next preceding successful completion of all  
60 conditions of probation, discharge from parole supervi-  
61 sion or expiration of sentence;

62 (3) Has been convicted of violating the liquor laws of  
63 any state or the United States, and, upon such convic-  
64 tion, the applicant shall not be eligible for licensure  
65 within five years next preceding successful completion  
66 of all conditions of probation, discharge from parole  
67 supervision or expiration of sentence;

68 (4) Has had any license revoked under the liquor laws  
69 of any state or the United States within five years next  
70 preceding the filing date of the application;

71 (5) Is not the legitimate owner of the business  
72 proposed to be licensed, or other persons have ownership  
73 interests in the business which have not been disclosed;

74 (6) Is a person to whom alcoholic beverages may not  
75 be sold under the provisions of chapter sixty of the West  
76 Virginia code;

77 (7) Has been adjudicated an incompetent;

78 (8) Is an officer or employee of the alcohol beverage  
79 control commissioner of West Virginia; or

80 (9) Is violating or allowing the violation of any  
81 provision of chapter sixty, chapter sixty-one or chapter  
82 eleven, article sixteen of the code in its establishment  
83 at the time its application for a license is pending.”

**§64-7-2. Agency of insurance commissioner.**

1 (a) The legislative rules filed in the state register on  
2 the eighteenth day of October, one thousand nine  
3 hundred eighty-three, relating to the insurance commis-  
4 sioner (excess line brokers), are authorized.

5 (b) The legislative rules filed in the state register on  
6 the eighteenth day of August, one thousand nine  
7 hundred eighty-six, modified by the insurance commis-  
8 sioner to meet the objections of the legislative rule-  
9 making review committee and refiled in the state  
10 register on the twelfth day of December, one thousand  
11 nine hundred eighty-six, relating to the insurance  
12 commissioner (examiners' compensation, qualification  
13 and classification), are authorized.

14 (c) The legislative rules filed in the state register on  
15 the twentieth day of February, one thousand nine  
16 hundred eighty-seven, relating to the insurance commis-  
17 sioner (West Virginia essential property insurance  
18 association), are authorized.

19 (d) The legislative rules filed in the state register on  
20 the twenty-ninth day of May, one thousand nine hundred  
21 eighty-seven, relating to the insurance commissioner  
22 (medical malpractice annual reporting requirements),  
23 are authorized.

24 (e) The legislative rules filed in the state register on  
25 the thirty-first day of July, one thousand nine hundred  
26 eighty-seven, modified by the insurance commissioner to  
27 meet the objections of the legislative rule-making review  
28 committee and refiled in the state register on the  
29 seventh day of November, one thousand nine hundred  
30 eighty-seven, relating to the insurance commissioner  
31 (medical malpractice loss experience and loss expense  
32 reporting requirements), are authorized.

33 (f) The legislative rules filed in the state register on  
34 the thirtieth day of November, one thousand nine  
35 hundred eighty-eight, modified by the insurance com-  
36 missioner to meet the objections of the legislative rule-  
37 making review committee and refiled in the state  
38 register on the twenty-first day of February, one  
39 thousand nine hundred eighty-nine, relating to the  
40 insurance commissioner (transitional requirements for  
41 the conversion of medicare supplement insurance  
42 benefits and premiums to conform to medicare program  
43 revisions), are authorized.

44 (g) The legislative rules filed in the state register on  
45 the twenty-sixth day of May, one thousand nine hundred  
46 eighty-nine, modified by the insurance commissioner to  
47 meet the objections of the legislative rule-making review  
48 committee and refiled in the state register on the  
49 twenty-eighth day of September, one thousand nine  
50 hundred eighty-nine, relating to the insurance commis-  
51 sioner (insurance adjusters), are authorized.

**§64-7-3. Board of investments.**

1 (a) The legislative rules filed in the state register on  
2 the third day of January, one thousand nine hundred  
3 eighty-four, relating to the state board of investments  
4 (selection of state depositories for disbursement accounts  
5 through competitive bidding), are authorized.

6 (b) The legislative rules filed in the state register on  
7 the third day of January, one thousand nine hundred  
8 eighty-four, relating to the state board of investments  
9 (administration of the consolidated fund), are  
10 authorized.

11 (c) The legislative rules filed in the state register on  
12 the ninth day of January, one thousand nine hundred  
13 ninety, modified by the state board of investments to  
14 meet the objections of the legislative rule-making review  
15 committee and refiled in the state register on the  
16 twenty-fourth day of January, one thousand nine  
17 hundred ninety, relating to the state board of invest-  
18 ments (administration of the consolidated fund), are  
19 authorized.

20 (d) The legislative rules filed in the state register on  
21 the ninth day of January, one thousand nine hundred  
22 ninety, modified by the state board of investments to  
23 meet the objections of the legislative rule-making review  
24 committee and refiled in the state register on the  
25 twenty-fourth day of January, one thousand nine  
26 hundred ninety, relating to the state board of invest-  
27 ments (administration of the consolidated pension fund),  
28 are authorized.

**§64-7-4. Lottery commission.**

1 The legislative rules filed in the state register on the  
2 twenty-first day of April, one thousand nine hundred  
3 eighty-seven, modified by the state lottery commission  
4 to meet the objections of the legislative rule-making  
5 review committee and refiled in the state register on the  
6 fourteenth day of August, one thousand nine hundred  
7 eighty-seven, relating to the state lottery commission  
8 (state lottery), are authorized.

**§64-7-5. Racing commission.**

1 (a) The legislative rules filed in the state register on  
2 the twenty-third day of April, one thousand nine  
3 hundred eighty-two, relating to the West Virginia  
4 racing commission (Rule 795), are authorized.

5 (b) The legislative rules filed in the state register on  
6 the twenty-third day of April, one thousand nine  
7 hundred eighty-two, relating to the West Virginia  
8 racing commission (Rule 819), are authorized.

9 (c) The legislative rules filed in the state register on  
10 the twenty-third day of April, one thousand nine  
11 hundred eighty-two, relating to the West Virginia  
12 racing commission (Rule 107), are authorized.

13 (d) The legislative rules filed with the legislative rule-  
14 making review committee on the tenth day of January,  
15 one thousand nine hundred eighty-three, relating to the  
16 West Virginia racing commission (Rule 471), are  
17 authorized.

18 (e) The legislative rules filed in the state register on  
19 the tenth day of January, one thousand nine hundred



20 eighty-three, relating to the West Virginia racing  
21 commission (Rule 526), are authorized.

22 (f) The legislative rules filed in the state register on  
23 the twentieth day of September, one thousand nine  
24 hundred eighty-three, relating to the West Virginia  
25 racing commission (Rule 107) greyhound racing, are  
26 authorized.

27 (g) The legislative rules filed in the state register on  
28 the twentieth day of September, one thousand nine  
29 hundred eighty-three, relating to the West Virginia  
30 racing commission (Rule 108) greyhound racing, are  
31 authorized with the amendment set forth below:

32 Following the word "Association" insert a period and  
33 strike the remainder of the sentence.

34 (h) The legislative rules filed in the state register on  
35 the twentieth day of September, one thousand nine  
36 hundred eighty-three, relating to the West Virginia  
37 racing commission (Rule 108) thoroughbred racing, are  
38 authorized with the amendment set forth below:

39 Following the word "Association" insert a period and  
40 strike the remainder of the sentence.

41 (i) The legislative rules filed in the state register on  
42 the twentieth day of September, one thousand nine  
43 hundred eighty-three, relating to the West Virginia  
44 racing commission (Rule 392) greyhound racing, are  
45 authorized.

46 (j) The legislative rules filed in the state register on  
47 the twentieth day of September, one thousand nine  
48 hundred eighty-three, relating to the West Virginia  
49 racing commission (Rule 455) greyhound racing, are  
50 authorized.

51 (k) The legislative rules filed in the state register on  
52 the twentieth day of September, one thousand nine  
53 hundred eighty-three, relating to the West Virginia  
54 racing commission (Rule 609A) greyhound racing, are  
55 authorized.

56 (l) The legislative rules filed in the state register on  
57 the twentieth day of September, one thousand nine

58 hundred eighty-three, relating to the West Virginia  
59 racing commission (Rule 627) greyhound racing, are  
60 authorized.

61 (m) The legislative rules filed in the state register on  
62 the twentieth day of September, one thousand nine  
63 hundred eighty-three, relating to the West Virginia  
64 racing commission (Rule 845) thoroughbred racing, are  
65 authorized.

66 (n) The legislative rules filed in the state register on  
67 the ninth day of November, one thousand nine hundred  
68 eighty-four, relating to the West Virginia racing  
69 commission (greyhound racing — Rule 628), are  
70 authorized.

71 (o) The legislative rules filed in the state register on  
72 the twenty-fifth day of September, one thousand nine  
73 hundred eighty-four, relating to the West Virginia  
74 racing commission (greyhound racing — Rule 672), are  
75 authorized.

76 (p) The legislative rules filed in the state register on  
77 the ninth day of November, one thousand nine hundred  
78 eighty-four, relating to the West Virginia racing  
79 commission (thoroughbred racing — Rule 808), are  
80 authorized.

81 (q) The legislative rules filed in the state register on  
82 the twenty-fifth day of September, one thousand nine  
83 hundred eighty-four, relating to the West Virginia  
84 racing commission (thoroughbred racing—Rule 843),  
85 are authorized.

86 (r) The legislative rules filed in the state register on  
87 the sixth day of August, one thousand nine hundred  
88 eighty-four, relating to the West Virginia racing  
89 commission (greyhound racing — Rule 845-I), are  
90 authorized.

91 (s) The legislative rules filed in the state register on  
92 the third day of September, one thousand nine hundred  
93 eighty-seven, modified by the West Virginia racing  
94 commission to meet the objections of the legislative rule-  
95 making review committee and refiled in the state  
96 register on the twenty-first day of December, one

97 thousand nine hundred eighty-seven, relating to the  
98 West Virginia racing commission (greyhound racing),  
99 are authorized.

100 (t) The legislative rules filed in the state register on  
101 the thirty-first day of July, one thousand nine hundred  
102 eighty-seven, modified by the West Virginia racing  
103 commission to meet the objections of the legislative rule-  
104 making review committee and refiled in the state  
105 register on the eighteenth day of December, one  
106 thousand nine hundred eighty-seven, relating to the  
107 West Virginia racing commission (thoroughbred rac-  
108 ing), are authorized with the amendments set forth  
109 below:

110 On page fifty-five, Section 61.3(f), by striking all of  
111 subsection (f) and inserting in lieu thereof the existing  
112 provisions of subsection (f) as contained in 178 CSR 1,  
113 which reads as follows:

114 All moneys held by any licensee for the payment of  
115 outstanding and unredeemed pari-mutuel tickets, if not  
116 claimed within ninety (90) days after the close of the  
117 horse race meeting in connection with which the tickets  
118 were issued, shall be turned over by the licensee to the  
119 Racing Commission within fifteen (15) days after the  
120 expiration of such ninety (90) day period and the  
121 licensee shall give such information as the Racing  
122 Commission may require concerning such outstanding  
123 and unredeemed tickets; viz. The outs ledger enumer-  
124 ating all outstanding tickets at the close of each meeting,  
125 to contain a record of all tickets redeemed in the ninety  
126 (90) day following period, together with all redeemed  
127 tickets which shall bear the stamp of the cashier(s)  
128 making redemption: A stamp indicating "Outs Ticket".  
129 In addition, a statement to accompany said ledger and  
130 tickets, setting forth the quantity and amount of each  
131 denomination redeemed in the ninety (90) day period,  
132 with a grand total indicating the sum paid in "Outs".  
133 This sum subtracted from the outs on the closing day  
134 to equal the remittance of the Association in settlement  
135 of the "Out" account for the meeting.

136 (u) The legislative rules filed in the state register on

137 the ninth day of September, one thousand nine hundred  
138 eighty-eight, relating to the West Virginia racing  
139 commission (thoroughbred racing), are authorized.

140 (v) The legislative rules filed in the state register on  
141 the eighteenth day of January, one thousand nine  
142 hundred eighty-nine, modified by the West Virginia  
143 racing commission to meet the objections of the legis-  
144 lative rule-making review committee and refiled in the  
145 state register on the twentieth day of February, one  
146 thousand nine hundred eighty-nine, relating to the West  
147 Virginia racing commission (greyhound racing), are  
148 authorized.

149 (w) The legislative rules filed in the state register on  
150 the fourth day of March, one thousand nine hundred  
151 eighty-nine, modified by the West Virginia racing  
152 commission to meet the objections of the legislative rule-  
153 making review committee and refiled in the state  
154 register on the first day of June, one thousand nine  
155 hundred eighty-nine, relating to the West Virginia  
156 racing commission (thoroughbred racing), are  
157 authorized.

158 (x) The legislative rules filed in the state register on  
159 the twenty-second day of June, one thousand nine  
160 hundred eighty-nine, relating to the West Virginia  
161 racing commission (greyhound racing), are authorized.

#### §64-7-6. Tax department.

1 (a) The legislative rules filed in the state register on  
2 the fifth day of January, one thousand nine hundred  
3 eighty-four, relating to the state tax commissioner  
4 (appraisal of property for periodic statewide reapprai-  
5 sals for ad valorem property tax purposes), are autho-  
6 rized with the amendments set forth below:

7 On page 8, section 11.04 (b)(2), definition of "Active  
8 Mining Property," at the end of the first paragraph  
9 following the "period," by adding the following: "In the  
10 application of the herein provided valuation formula on  
11 'active mining property,' the appropriate formula  
12 calculation will be based upon the actual market to  
13 which the coal from that tract and seam is currently  
14 being sold, whether it is 'metallurgical' or 'steam'."

15 On page 9, section 11.04 (b)(3), definition of "Active  
16 Reserves," at the end of the subsection, following the  
17 "period," by adding the following: "In the application of  
18 the herein provided valuation formula on 'active  
19 reserves,' the appropriate formula calculation will be  
20 based upon the actual market to which the coal from  
21 that tract and seam is currently being sold, whether it  
22 is 'metallurgical' or 'steam'."

23 On page 11, section 11.04 (b)(11), definition of  
24 "Mineable Coal," by striking the subsection and substi-  
25 tuting in lieu thereof the following: "(11) Mineable Coal.  
26 Coal which can be mined under present day mining  
27 technology and economics."

28 On page 25, section 11.04 (c)(2)(C), entitled "Property  
29 Tax Component," by striking the subsection and  
30 inserting in lieu thereof the following: "(C) Property Tax  
31 Component—This component will be derived by multip-  
32 lying the assessment rate by the statewide average of  
33 tax rates on Class III property."

34 On page 30, section 11.04 (c)(4), entitled "Valuation of  
35 Mined-Out/Unmineable/Barren Coal Properties," by  
36 striking the numbers "\$5.00" and inserting in lieu  
37 thereof the following: "\$1.00".

38 On page 31, section 11.04 (c)(5)(B), by striking the  
39 words and numbers "Five Dollars (\$5.00)" and inserting  
40 in lieu thereof the following: "One Dollar (\$1.00)".

41 On page 53, section 11.05 (h) by striking the symbol  
42 and figures "(\$5.00)" and inserting in lieu the following:  
43 "\$1.00)".

44 On page 73, section 11.06 (h) by striking the symbol  
45 and figures "\$5.00" and inserting in lieu the following:  
46 "\$1.00".

47 On page 81, section 11.07 (e)(15)(B)(4) at the end of the  
48 second sentence remove the period after the word  
49 "property" and insert the words "unless the land is used  
50 for some other purpose in which case it will be taxed  
51 according to its actual use."

52 On page 86, section 11.07 (k) delete all of subsection  
53 (k).

54 On page 110, section 11.08 (c)(4) by striking the  
55 symbol and figures "\$5.00" and inserting in lieu thereof  
56 the following: "\$1.00".

57 On page 111, section 11.08 (c)(5)(B) by striking the  
58 symbol and figures "\$5.00" and inserting in lieu thereof  
59 the following: "\$1.00".

60 On page 115, section 11.09 (a)(3) in the first sentence,  
61 insert after the word "land" the words "excluding farm-  
62 land."

63 (b) The legislative rules filed in the state register on  
64 the twenty-eighth day of September, one thousand nine  
65 hundred eighty-four, relating to the state tax commis-  
66 sioner (estimated personal income tax), are authorized  
67 with the amendments set forth below:

68 55.02(a)(2)(on page 182.2) line 18, after the word  
69 "profession" strike the words "on his own account" and  
70 the comma(,).

71 55.12(b)(1)(page 182.35) at the end of the section,  
72 change the period to a comma, and add the following  
73 language: "and in the case of a court appointed agent,  
74 a copy of the court order of appointment is sufficient."

75 55.12(c)(page 182.36) after the word "for," strike the  
76 word "erroneous".

77 (c) The legislative rules filed in the state register on  
78 the twenty-eighth day of September, one thousand nine  
79 hundred eighty-four, modified by the state tax commis-  
80 sioner to meet the objections of the legislative rule-  
81 making review committee and refiled in the state  
82 register on the fourteenth day of November, one  
83 thousand nine hundred eighty-four, and on the twenty-  
84 first day of March, one thousand nine hundred eighty-  
85 five, relating to the state tax commissioner (estimated  
86 corporation net income tax), are authorized.

87 (d) The legislative rules filed in the state register on  
88 the twelfth day of March, one thousand nine hundred  
89 eighty-five, relating to the state tax commissioner

- 90 (identification and appraisal of farmland subsequent to  
91 the base year of statewide reappraisal), are authorized  
92 and directed to be promulgated with the following  
93 amendments:
- 94 Title page, Subject; following the word "Farmland,"  
95 insert the words "and of Structures Situated Thereon."
- 96 Page i, Subject; following the word "Farmland,"  
97 insert the words "and of Structures Situated Thereon."
- 98 Page i, TABLE OF CONTENTS, Section 10; follow-  
99 ing the words "Valuation of Farmland" add the words  
100 "and of Structures Situated Thereon."
- 101 Page 10.1, Title; following the word "FARMLAND"  
102 insert the words "AND STRUCTURES SITUATED  
103 THEREON."
- 104 Page 10.1, Section 10, Title; following the word  
105 "Farmland" add the words "and Structures Situated  
106 Thereon."
- 107 Page 10.1, Section 10.01(b); following the word  
108 "farmland" insert the words "and structures situated  
109 thereon."
- 110 Page 10.2, Section 10.02(a), first sentence; following  
111 the word "farmland" insert the words "and structures  
112 situated thereon."
- 113 Page 10.3, Section 10.02(b), first sentence; following  
114 the word "farmland" insert the words "and structures  
115 situated thereon." Delete the words "for purposes of the  
116 statewide reappraisal."
- 117 Page 10.3, Section 10.02(b), last sentence; following  
118 the word "farmland" insert the words "and structures  
119 situated thereon."
- 120 Page 10.8, Section 10.04(5)(B), last sentence; delete the  
121 period and add "or the incapability to be adapted to  
122 alternative uses."
- 123 Page 10.9, Section 10.04(6), first sentence; following  
124 the words "land currently being used" insert the words  
125 "as part of a farming operation."

126 Page 10.9, Section 10.04(6), following the last sent-  
127 ence; add the sentence "For the purposes of this  
128 definition, 'contiguous tracts' are farmlands which are  
129 in close proximity, but not necessarily adjacent:  
130 *Provided*, That all such contiguous tracts are operated  
131 as part of the same farm management plan."

132 Page 10.10, Section 10.04(8), is amended to read in its  
133 entirety as follows:

134 "(8) *Farm buildings*.—The term 'farm buildings' shall  
135 mean structures which directly contribute to the  
136 operation of the farm, and shall include tenant houses  
137 and quarters furnished farm employees without rent as  
138 a part of the terms of their employment."

139 Page 10.11, Section 10.04; delete the word "No-  
140 vember" and insert in lieu thereof the word "Sep-  
141 tember". Delete the period following the word "valua-  
142 tion" and add the words, "for the assessment year  
143 beginning July first of each year."

144 Page 10.11, Section 10.04, insert the following  
145 subdivision; "(12) Application Form: The application  
146 form required to be filed with the assessor on or before  
147 September first of each year shall require certification  
148 that the farm complies with criteria set forth in Section  
149 10.05(c) of these regulations, and renewal applications  
150 from year to year shall be sufficient upon statement  
151 certifying that no change has been made in the use of  
152 farm property which would disqualify 'farm use'  
153 classification for assessment purposes." Renumber the  
154 subdivisions of Section 10.04 following the new  
155 10.04(12); formerly 10.04(12) through 10.04(28), to  
156 10.04(13) through 10.04(29), respectively.

157 Page 10.14, Section 10.04(28) (formerly 10.04(27));  
158 following the words "woodland products" insert a  
159 comma and the words "such as nuts or fruits harvested"  
160 and add a comma following the words "human consump-  
161 tion" on Page 10.15.

162 Page 10.16, Section 10.05, subsection (a), following the  
163 words "land is used for farm purposes" by striking the  
164 period and inserting in lieu thereof a colon and the



165 following: *Provided*, That the true and actual value of  
166 all farm used, occupied and cultivated by their owners  
167 or bona fide tenants shall be arrived at according to the  
168 fair and reasonable value of the property for the purpose  
169 for which it is actually used regardless of what the value  
170 of the property would be if used for some other purpose;  
171 and that the true and actual value shall be arrived at  
172 by giving consideration to the fair and reasonable  
173 income which the same might be expected to earn under  
174 normal conditions in the locality wherein situated, if  
175 rented: *Provided, however*, That nothing herein shall  
176 alter the method of assessment of lands or minerals  
177 owned by domestic or foreign corporations.”

178 Page 10.16, Section 10.05(b), first clause; following the  
179 words “following factors shall be” insert the words  
180 “indicative of but not conclusive” and delete the word  
181 “considered”.

182 Page 10.16, Section 10.05(b)(2); delete the period and  
183 add the words “such as soil conservation, farmland  
184 preservation or federal farm lending agencies.”

185 Page 10.17, Section 10.05(b)(7); delete the section and  
186 insert in lieu thereof the words “(7) Whether or not the  
187 farmer practices ‘custom farming’ on the land in  
188 question.”

189 Page 10.17, Section 10.05(b)(9); following the word  
190 “type” add a comma and insert the word “utility”.

191 Page 10.17, Section 10.05(b)(11), first sentence;  
192 following the word “sales” insert the words “for nonfarm  
193 uses.”

194 Page 10.17, Section 10.05(b)(12)(A); following the  
195 words “part of” insert the words “or appurtenant to.”

196 Page 10.17, Section 10.05(b)(12)(B); following the  
197 words “contiguous to” insert the words “or operated in  
198 common with”.

199 Page 10.18, Section 10.05, subsection (c), the first  
200 sentence of which is amended in its entirety to read as  
201 follows: “Qualifying farmland and the structures  
202 situated thereon shall be subject to farm use valuation,

203 with primary consideration being given to the income  
204 which the property might be expected to earn, in the  
205 locality wherein situate, if rented.”

206 Page 10.18, Section 10.05(b)(12)(B); delete the semicol-  
207 ons and the words “it was purchased at the same time  
208 as the tract so used.” Delete the period following the  
209 word “purposes” and add the words “or any nonfarm  
210 use.”

211 Page 10.19, Section 10.05(c)(2); following the words  
212 “*Provided*, That no” delete the word “reason” and insert  
213 in lieu thereof the words “individual event”.

214 Page 10.20, Section 10.05(c)(4)(C); following the words  
215 “(1,000) minimum production value” insert the words  
216 “or the small farm five hundred dollars (\$500) minimum  
217 production and sale.”

218 Page 10.23, Section 10.05(d)(3)(B), third sentence;  
219 following the word “If” insert the words “timber from”.  
220 Delete the period following the word “purpose” and add  
221 the words “or is being converted to farm production  
222 uses.”

223 Page 10.26, Section 10.05(f)(2) is amended in its  
224 entirety to read as follows:

225 “(2) *Farm buildings*.—Rental value of farm buildings  
226 and other improvements on the farmland shall be valued  
227 by determining the replacement cost of the building or  
228 structure by usual farm construction practices, and  
229 farm labor standards and subtracting therefrom  
230 depreciation.<sup>1</sup> Both of these determinations shall be  
231 made in accordance with the tax department’s real  
232 property appraisal manual<sup>2</sup> as filed in the state register  
233 in accordance with chapter 29A of the code of West  
234 Virginia, 1931, as amended, and as it relates to  
235 agricultural buildings and structures. One (1) acre of  
236 land shall be assigned to all buildings as a unit situate  
237 on the property, regardless of the actual acreage  
238 occupied by such buildings and shall be appraised at its  
239 farm-use valuation based on the highest class of  
240 farmland present on the farm.”

241 Page 10.28, Section 10.05(f)(3)(B)(1); following the  
242 words “or more of the” insert the word “usual”.

- 243 Page 10.28, Section 10.05(f)(3)(B)(2); following the  
244 words "(50% of the" insert the word "usual".
- 245 Page 10.29, Section 10.05(f)(3)(C)(1)(a); following the  
246 words "(50% or more of the" insert the word "usual".
- 247 Page 10.29, Section 10.05(f)(3)(C)(1)(b); following the  
248 words "(50% of the" insert the word "usual".
- 249 Page 10.31, Section 10.05(f)(3)(C)(2)(b); following the  
250 last sentence insert the sentence "An individual em-  
251 ployed other than in farming is not an unincorporated  
252 business."
- 253 Page 10.35, Section 10.07, Title; following the word  
254 "Farmland" insert the words "and Structures Situated  
255 Thereon."
- 256 Page 10.35, Section 10.07(a), first sentence; following  
257 the word "farmland" insert the words "and structures  
258 situated thereon."
- 259 Page 10.46, Subject; following the word "Farmland"  
260 insert the words "and Structures Situated Thereon."
- 261 (e) The legislative rules filed in the state register on  
262 the twenty-second day of May, one thousand nine  
263 hundred eighty-five, relating to the state tax commis-  
264 sioner (rules governing the operation of a statewide  
265 electronic data processing system network, to facilitate  
266 administration of the ad valorem property tax on real  
267 and personal property), are authorized.
- 268 (f) The legislative rules filed in the state register on  
269 the twenty-sixth day of March, one thousand nine  
270 hundred eighty-six, relating to the state tax commis-  
271 sioner (listing of interests in natural resources for the  
272 first statewide reappraisal; provision for penalties), are  
273 authorized.
- 274 (g) The legislative rules filed in the state register on  
275 the twenty-sixth day of March, one thousand nine  
276 hundred eighty-six, modified by the state tax commis-  
277 sioner to meet the objections of the legislative rule-  
278 making review committee and refiled in the state

279 register on the twelfth day of February, one thousand  
280 nine hundred eighty-seven, relating to the state tax  
281 commissioner (review of appraisals by county commis-  
282 sions sitting as administrative appraisal review boards),  
283 are authorized.

284 (h) The legislative rules filed in the state register on  
285 the twenty-sixth day of March, one thousand nine  
286 hundred eighty-six, modified by the state tax commis-  
287 sioner to meet the objections of the legislative rule-  
288 making review committee and refiled in the state  
289 register on the twelfth day of February, one thousand  
290 nine hundred eighty-seven, relating to the state tax  
291 commissioner (review of appraisals by a circuit court on  
292 certiorari), are authorized with the following  
293 amendment:

294 On page 3, §18.3.1 is stricken in its entirety and a new  
295 §18.3.1 is inserted in lieu thereof to read as follows:

296 "18.3.1 *Who May Request Review.*—The property  
297 owner, Tax Commissioner, protestor or intervenor may  
298 request the county commission to certify the evidence  
299 and remove and return the record to the circuit court  
300 of the county on a writ of certiorari. Parties to the  
301 proceeding wherein review by the circuit court is sought  
302 shall pay costs and fees as they are incurred: *Provided,*  
303 That the circuit court upon rendering judgment or  
304 making any order may award costs to any party in  
305 accordance with the provisions of W. Va. Code §53-3-5."

306 (i) The legislative rules filed in the state register on  
307 the twenty-sixth day of March, one thousand nine  
308 hundred eighty-six, modified by the state tax commis-  
309 sioner to meet the objections of the legislative rule-  
310 making review committee and refiled in the state  
311 register on the twelfth day of February, one thousand  
312 nine hundred eighty-seven, relating to the state tax  
313 commissioner (administrative review of appraisals by  
314 the state tax commissioner), are authorized.

315 (j) The legislative rules filed in the state register on  
316 the eighteenth day of August, one thousand nine  
317 hundred eighty-six, modified by the state tax commis-  
318 sioner to meet the objections of the legislative rule-

319 making review committee and refiled in the state  
320 register on the twelfth day of February, one thousand  
321 nine hundred eighty-seven, relating to the state tax  
322 commissioner (additional review and implementation of  
323 property appraisals), are authorized.

324 (k) The legislative rules filed in the state register on  
325 the eleventh day of August, one thousand nine hundred  
326 eighty-six, relating to the state tax commissioner  
327 (guidelines for assessors to assure fair and uniform  
328 personal property values), are authorized.

329 (l) The legislative rules filed in the state register on  
330 the eighteenth day of August, one thousand nine  
331 hundred eighty-six, modified by the state tax commis-  
332 sioner to meet the objections of the legislative rule-  
333 making review committee and refiled in the state  
334 register on the tenth day of December, one thousand  
335 nine hundred eighty-six, relating to the state tax  
336 commissioner (registration of transient vendors), are  
337 authorized.

338 (m) The legislative rules filed in the state register on  
339 the fourth day of February, one thousand nine hundred  
340 eighty-six, modified by the state tax commissioner to  
341 meet the objection of the legislative rule-making review  
342 committee and refiled in the state register on the  
343 fourteenth day of January, one thousand nine hundred  
344 eighty-seven, relating to the state tax commissioner  
345 (business and occupation tax), are authorized.

346 (n) The legislative rules filed in the state register on  
347 the fourteenth day of August, one thousand nine  
348 hundred eighty-seven, modified by the state tax commis-  
349 sioner to meet the objections of the legislative rule-  
350 making review committee and refiled in the state  
351 register on the fourth day of November, one thousand  
352 nine hundred eighty-seven, relating to the state tax  
353 commissioner (telecommunications tax), are authorized.

354 (o) The legislative rules filed in the state register on  
355 the fourteenth day of August, one thousand nine  
356 hundred eighty-seven, relating to the state tax commis-  
357 sioner (business franchise tax), are authorized.

358 (p) The legislative rules filed in the state register on  
359 the seventeenth day of August, one thousand nine  
360 hundred eighty-seven, modified by the state tax commis-  
361 sioner to meet the objections of the legislative rule-  
362 making review committee and refiled in the state  
363 register on the twenty-second day of January, one  
364 thousand nine hundred eighty-eight, relating to the state  
365 tax commissioner (consumers sales and service tax and  
366 use tax), are authorized.

367 (q) The legislative rules filed in the state register on  
368 the fourteenth day of August, one thousand nine  
369 hundred eighty-seven, modified by the state tax commis-  
370 sioner to meet the objections of the legislative rule-  
371 making review committee and refiled in the state  
372 register on the thirteenth day of January, one thousand  
373 nine hundred eighty-eight, relating to the state tax  
374 commissioner (appraisal of property for periodic  
375 statewide reappraisals for ad valorem property tax  
376 purposes), are authorized.

377 (r) The legislative rules filed in the state register on  
378 the fourteenth day of August, one thousand nine  
379 hundred eighty-seven, modified by the state tax commis-  
380 sioner to meet the objections of the legislative rule-  
381 making review committee and refiled in the state  
382 register on the twelfth day of January, one thousand  
383 nine hundred eighty-eight, relating to the state tax  
384 commissioner (severance tax), are authorized.

385 (s) The legislative rules filed in the state register on  
386 the second day of September, one thousand nine  
387 hundred eighty-eight, modified by the state tax commis-  
388 sioner to meet the objections of the legislative rule-  
389 making review committee and refiled in the state  
390 register on the twenty-fourth day of February, one  
391 thousand nine hundred eighty-nine, relating to the state  
392 tax commissioner (solid waste assessment fee), are  
393 authorized.

394 (t) The legislative rules filed in the state register on  
395 the twelfth day of August, one thousand nine hundred  
396 eighty-eight, modified by the state tax commissioner to  
397 meet the objections of the legislative rule-making review

398 committee and refiled in the state register on the  
399 twenty-first day of September, one thousand nine  
400 hundred eighty-eight, relating to the state tax commis-  
401 sioner (electronic data processing system network for  
402 property tax administration), are authorized.

403 (u) The legislative rules filed in the state register on  
404 the nineteenth day of September, one thousand nine  
405 hundred eighty-eight, modified by the state tax commis-  
406 sioner to meet the objections of the legislative rule-  
407 making review committee and refiled in the state  
408 register on the twenty-fourth day of February, one  
409 thousand nine hundred eighty-nine, relating to the state  
410 tax commissioner (exemption of property from ad  
411 valorem property taxation), are authorized.

412 (v) The legislative rules filed in the state register on  
413 the sixteenth day of September, one thousand nine  
414 hundred eighty-eight, modified by the state tax commis-  
415 sioner to meet the objections of the legislative rule-  
416 making review committee and refiled in the state  
417 register on the thirteenth day of January, one thousand  
418 nine hundred eighty-nine, relating to the state tax  
419 commissioner (consumers sales and service tax and use  
420 tax), are authorized.

421 (w) The legislative rules filed in the state register on  
422 the twenty-third day of June, one thousand nine hundred  
423 eighty-nine, relating to the state tax department  
424 (personal income tax), are authorized.

425 (x) The legislative rules filed in the state register on  
426 the twenty-ninth day of June, one thousand nine  
427 hundred eighty-nine, relating to the state tax depart-  
428 ment (severance tax), are authorized.

429 (y) The legislative rules filed in the state register on  
430 the fourth day of August, one thousand nine hundred  
431 eighty-nine, modified by the state tax department to  
432 meet the objections of the legislative rule-making review  
433 committee and refiled in the state register on the  
434 eleventh day of December, one thousand nine hundred  
435 eighty-nine, relating to the state tax department (solid  
436 waste assessment fee), are authorized.

437 (z) The legislative rules filed in the state register on  
438 the fourteenth day of August, one thousand nine  
439 hundred eighty-nine, modified by the department of tax  
440 and revenue to meet the objections of the legislative  
441 rule-making review committee and refiled in the state  
442 register on the twelfth day of December, one thousand  
443 nine hundred eighty-nine, relating to the department of  
444 tax and revenue (business franchise tax), are authorized.

445 (aa) The legislative rules filed in the state register on  
446 the eleventh day of August, one thousand nine hundred  
447 eighty-nine, modified by the department of tax and  
448 revenue to meet the objections of the legislative rule-  
449 making review committee and refiled in the state  
450 register on the eleventh day of December, one thousand  
451 nine hundred eighty-nine, relating to the department of  
452 tax and revenue (business and occupation tax), are  
453 authorized.

454 (bb) The legislative rules filed in the state register on  
455 the fourteenth day of August, one thousand nine  
456 hundred eighty-nine, modified by the department of tax  
457 and revenue to meet the objections of the legislative  
458 rule-making review committee and refiled in the state  
459 register on the nineteenth day of January, one thousand  
460 nine hundred ninety, relating to the department of tax  
461 and revenue (consumers sales and service tax and use  
462 tax), are authorized with the amendments set forth  
463 below:

464 On page eight, Section 2.28, after the word "as" by  
465 inserting the words "art, science,".

466 On pages eight and nine, Section 2.28.1, after the word  
467 "intellectual" by deleting the word "or" and inserting in  
468 lieu thereof the words "physical and".

469 On page nine, Section 2.28.2, by deleting the words "or  
470 instruction".

471 On page nine, Section 2.28.2, after the word "training"  
472 by adding the word "or".

473 On page nine, Section 2.28.2, by deleting the words "or  
474 any portion of a school curriculum classified as physical  
475 education".



- 476 On page nine, by deleting all of Section 2.28.2.1.
- 477 On page nine, Section 2.28.2.2, by deleting the section  
478 number.
- 479 On page nine, Section 2.28.2.2, by deleting the words  
480 "or instruction".
- 481 On page nine, Section 2.28.2.2, after the word  
482 "training" by adding the word "or".
- 483 On page nine, Section 2.28.2.2, after the word  
484 "conditioning" by inserting a period and striking the  
485 remainder of the sentence.
- 486 On page one hundred twelve, Section 59.2, after the  
487 words "sales of the service of cremation" by adding the  
488 words "sales on perpetual care trust fund deposits".
- 489 And,
- 490 On page one hundred twenty-eight, Section 91.2, after  
491 the words "include food" by inserting the following: "  
492 as defined in section 2.30 of this rule,".
- 493 (cc) The legislative rules filed in the state register on  
494 the eleventh day of August, one thousand nine hundred  
495 eighty-nine, modified by the department of tax and  
496 revenue to meet the objections of the legislative rule-  
497 making review committee and refiled in the state  
498 register on the eleventh day of December, one thousand  
499 nine hundred eighty-nine, relating to the department of  
500 tax and revenue (motor carrier road tax), are  
501 authorized.
- 502 (dd) The legislative rules filed in the state register on  
503 the eleventh day of August, one thousand nine hundred  
504 eighty-nine, modified by the department of tax and  
505 revenue to meet the objections of the legislative rule-  
506 making review committee and refiled in the state  
507 register on the eleventh day of December, one thousand  
508 nine hundred eighty-nine, relating to the department of  
509 tax and revenue (gasoline and special fuel excise tax),  
510 are authorized.
- 511 (ee) The legislative rules filed in the state register on  
512 the eleventh day of August, one thousand nine hundred

513 eighty-nine, modified by the department of tax and  
514 revenue to meet the objections of the legislative rule-  
515 making review committee and refiled in the state  
516 register on the eleventh day of December, one thousand  
517 nine hundred eighty-nine, relating to the department of  
518 tax and revenue (corporation net income tax), are  
519 authorized.

520 (ff) The legislative rules filed in the state register on  
521 the eleventh day of August, one thousand nine hundred  
522 eighty-nine, modified by the department of tax and  
523 revenue to meet the objections of the legislative rule-  
524 making review committee and refiled in the state  
525 register on the eleventh day of December, one thousand  
526 nine hundred eighty-nine, relating to the department of  
527 tax and revenue (soft drinks tax), are authorized.

**ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANS-  
PORTATION TO PROMULGATE LEGISLATIVE  
RULES.**

§64-8-1. Division of highways.

§64-8-2. Division of motor vehicles.

**§64-8-1. Division of highways.**

1 (a) The legislative rules filed in the state register on  
2 the twenty-first day of October, one thousand nine  
3 hundred eighty-three, relating to the commissioner of  
4 highways (transportation of hazardous waste by high-  
5 way transporters), are authorized with the amendments  
6 set forth below:

7 Pages 3 and 7 after "40 CFR part 262" add the words  
8 "as amended through March 8, 1986,"

9 Page 7 after "49 CFR parts 171-179" add the words  
10 "as amended through March 8, 1986," and

11 Page 11 after "49 CFR part 171.16" add the words "as  
12 amended through March 8, 1986."

13 (b) The legislative rules filed in the state register on  
14 the tenth day of August, one thousand nine hundred  
15 eighty-four, relating to the commissioner of highways  
16 (construction and reconstruction of state roads), are  
17 authorized with the amendments set forth below:

18 Page 16, Sec. 8.08, line 21, (unnumbered), by inserting  
19 after the word "all" the following language: "reasonable  
20 and necessary" and after the word "project" inserting  
21 the following language: "by the Railroad".

22 Page 16, Sec. 8.08, line 22, (unnumbered), after the  
23 word "the" by striking the words "Railroad's Chief".

24 Page 19, Sec. 8.08, line 25, (unnumbered), by striking  
25 "Railroad's Chief" and adding the following new  
26 language:

27 Any approval by the Department of any activity by  
28 the Contractor upon the right-of-way or premises of any  
29 Railroad which is provided for in this Section (8.08)  
30 (including, but not limited to, approval of work,  
31 methods, or procedures of work to be done, and the  
32 condition of premises after completion of work by the  
33 Contractor) shall in no way create any liability by the  
34 Department to the Railroad except to the extent  
35 provided otherwise by law and the Contractor shall,  
36 during all periods of construction and thereafter,  
37 indemnify and save harmless the department from any  
38 and all liability to the Railroad or any third parties for  
39 any damages as a result of the work of the Contractor,  
40 the methods and procedures for performing work, the  
41 failure of the Contractor to properly remove equipment,  
42 surplus material and other debris upon the Railroad  
43 premises, or the condition of the premises of the  
44 Railroad during construction or after completion of  
45 construction by the Contractor as approved by the  
46 Department or otherwise.

47 Page 18, Sec. 8.08, subdivision (a), line 22, (unnum-  
48 bered), by striking the words "single limit" and  
49 inserting in lieu thereof the following language: "per  
50 occurrence".

51 Page 19, Sec. 8.08, subdivision (b), line 8, (unnum-  
52 bered), by striking the words "single limit" and  
53 inserting in lieu thereof the following language: "per  
54 occurrence".

55 Page 19, Sec. 8.08 (c), line 18, (unnumbered), by  
56 inserting after the word "occurrence" the following

57 language: "of"; and after the word "injury" insert a  
58 comma and strike the word "or".

59 (c) The legislative rules filed in the state register on  
60 the seventh day of September, one thousand nine  
61 hundred eighty-four, modified by the commissioner of  
62 highways to meet the objections of the legislative rule-  
63 making review committee and refiled in the state  
64 register on the fifth day of October, one thousand nine  
65 hundred eighty-four, relating to the commissioner of  
66 highways (transportation of hazardous waste), are  
67 authorized with the amendment set forth below:

68 Page 5, by amending §3.01 by adding thereto a new  
69 subsection, designated subsection (4), to read as follows:  
70 "(4) Before accepting hazardous waste from a rail  
71 transporter, a highway transporter must sign and date  
72 the manifest and provide a copy to the rail transporter."

73 (d) The legislative rules filed in the state register on  
74 the fourteenth day of August, one thousand nine  
75 hundred eighty-four, modified by the commissioner of  
76 highways to meet the objections of the legislative rule-  
77 making review committee and refiled in the state  
78 register on the fifth day of October, one thousand nine  
79 hundred eighty-four, relating to the commissioner of  
80 highways (disqualification and suspension of prequali-  
81 fied contractors), are authorized.

82 (e) The legislative rules filed in the state register on  
83 the twelfth day of December, one thousand nine hundred  
84 eighty-five, relating to the commissioner of highways  
85 (transportation of hazardous wastes by vehicle upon the  
86 roads and highways of this state), are authorized with  
87 the amendments set forth below:

88 On page 18, the first line of §3.03 shall read as follows:

89 "3.03. Transporters who only accept Hazardous Waste  
90 from".

91 (f) The legislative rules filed in the state register on

92 the first day of December, one thousand nine hundred  
93 eighty-seven, modified by the commissioner of highways  
94 to meet the objections of the legislative rule-making  
95 review committee and refiled in the state register on the  
96 fourteenth day of January, one thousand nine hundred  
97 eighty-eight, relating to the commissioner of highways  
98 (traffic and safety rules and regulations), are authorized  
99 with the amendment set forth below:

100 On page 8, section 7.2, line 9, (unnumbered), by  
101 striking everything after the word "structures".

102 (g) The legislative rules filed in the state register on  
103 the first day of December, one thousand nine hundred  
104 eighty-seven, relating to the commissioner of highways  
105 (construction and reconstruction of state roads), are  
106 authorized.

107 (h) The legislative rules filed in the state register on  
108 the twenty-fifth day of February, one thousand nine  
109 hundred eighty-seven, modified by the commissioner of  
110 highways to meet the objections of the legislative rule-  
111 making review committee and refiled in the state  
112 register on the twenty-third day of November, one  
113 thousand nine hundred eighty-seven, relating to the  
114 commissioner of highways (transportation of hazardous  
115 wastes upon the roads and highways), are authorized.

116 (i) The legislative rules filed in the state register on  
117 the fourteenth day of August, one thousand nine  
118 hundred eighty-nine, modified by the division of  
119 highways to meet the objections of the legislative rule-  
120 making review committee and refiled in the state  
121 register on the seventh day of December, one thousand  
122 nine hundred eighty-nine, relating to the division of  
123 highways (use of state road rights-of-way and areas  
124 adjacent thereto), are authorized with the amendments  
125 set forth below:

126 On Pages 14 and 15, Section 7.5, by deleting the  
127 following language:

128 "Upon receipt of a permit application an application  
129 number shall be assigned by the Division of Highways.  
130 The applicant shall be notified of the temporary

131 application number and shall then be required to  
132 publish a Class II legal advertisement in the newspap-  
133 er(s) serving the area where the proposed outdoor  
134 advertising sign, display or device is proposed to be  
135 located. A copy of the certificate of publication shall be  
136 provided to the Department within ten (10) days of the  
137 final publication date.

138 "As a minimum the advertisement shall include the  
139 application number, the location (including ownership of  
140 the property upon which the sign is to be placed) and  
141 shall notify the public that comments will be received  
142 by the Division of Highways, Highway Services Section,  
143 until 10 days after the final publication. The advertise-  
144 ment shall also state that all comments must include the  
145 specific application number to which they refer.

146 "Any person who claims to be affected by the proposed  
147 sign may submit written comments to the Division of  
148 Highways, Highway Services Section, and may request  
149 a public hearing within ten days of the final publication.  
150 Within ten working days of the close of the comment  
151 period the Division shall determine whether to approve,  
152 deny, or hold a public hearing for said permit.

153 "When the Division determines that a public hearing  
154 is required it shall notify the person(s) who requested  
155 the hearing and the permit applicant. The Division shall  
156 cause notice to be published and hold the hearing in  
157 accordance with Administrative Regulations, Commis-  
158 sioner of Highways, Chapter 17-2A, Series I (1982),  
159 Section 3, Hearing Procedures (hereinafter WV Adm.  
160 Reg. 17-2A).

161 "The Division Administrator shall assess the Div-  
162 ision's costs of the hearing against the permit applicant  
163 or against the party requesting the hearing if he finds  
164 that either the application for the permit or the request  
165 for hearing was filed in bad faith.

166 "Any party adversely affected by the final decision of  
167 the Division Administrator may apply for judicial  
168 review through application for a writ of certiorari to the  
169 Circuit Court of Kanawha County in accordance with W.  
170 Va. Code § 53-3-1 and W. Va. Code § 14-2-2.

171 "The regulations in the preceding six paragraphs  
172 relating to publication of notice of an application,  
173 comments on a pending application, notice of hearing,  
174 hearing on permit, assessment of costs and judicial  
175 review shall not apply to an application for a permit for  
176 an advertising sign, display or device to be located  
177 within the boundaries of an incorporated municipality  
178 or of a county-zoned commercial or industrial area."

179 (j) The legislative rules filed in the state register on  
180 the tenth day of August, one thousand nine hundred  
181 eighty-nine, modified by the division of highways to  
182 meet the objections of the legislative rule-making review  
183 committee and refiled in the state register on the  
184 seventh day of November, one thousand nine hundred  
185 eighty-nine, relating to the division of highways  
186 (construction and reconstruction of state roads), are  
187 authorized.

188 (k) The legislative rules filed in the state register on  
189 the fourteenth day of August, one thousand nine  
190 hundred eighty-nine, modified by the division of  
191 highways to meet the objections of the legislative rule-  
192 making review committee and refiled in the state  
193 register on the seventh day of December, one thousand  
194 nine hundred eighty-nine, relating to the division of  
195 highways (acquisition, disposal, lease and management  
196 of real property and appurtenant structures and  
197 relocation assistance), are authorized.

#### §64-8-2. Division of motor vehicles.

1 (a) The legislative rules filed in the state register on  
2 the second day of December, one thousand nine hundred  
3 eighty-two, relating to the commissioner of motor  
4 vehicles (denial of driving privileges), are authorized  
5 with the amendments set forth below:

6 By inserting the words "licensed in the United States"  
7 after the phrase "physician of the applicant's choice," on  
8 page five, line two, and page seven, line one; and by  
9 striking out the words "licensed vision specialist" and  
10 inserting in lieu thereof the words "an optometrist or  
11 ophthalmologist licensed in the United States," on page  
12 five, line three, and on page seven, line two.

13 (b) The legislative rules filed in the state register on  
14 the ninth day of November, one thousand nine hundred  
15 eighty-three, relating to the commissioner of motor  
16 vehicles (driving under the influence, drivers' license  
17 revocation administrative hearings), are authorized.

18 (c) The legislative rules filed in the state register on  
19 the fifteenth day of December, one thousand nine  
20 hundred eighty-three, relating to the department of  
21 motor vehicles (safety and treatment program), are  
22 authorized.

23 (d) The legislative rules filed in the state register on  
24 the sixteenth day of June, one thousand nine hundred  
25 eighty-three, relating to the commissioner of motor  
26 vehicles (compulsory insurance), are authorized.

27 (e) The legislative rules filed in the state register on  
28 the twentieth day of November, one thousand nine  
29 hundred eighty-four, relating to the commissioner of  
30 motor vehicles (titling a vehicle), are authorized.

31 (f) The legislative rules filed in the state register on  
32 the tenth day of September, one thousand nine hundred  
33 eighty-four, modified by the commissioner of motor  
34 vehicles to meet the objections of the legislative rule-  
35 making review committee and refiled in the state  
36 register on the fifth day of October, one thousand nine  
37 hundred eighty-four, relating to the commissioner of  
38 motor vehicles (compulsory motor vehicle liability  
39 insurance), are authorized.

40 (g) The legislative rules filed in the state register on  
41 the fifth day of August, one thousand nine hundred  
42 eighty-five, modified by the commissioner of motor  
43 vehicles to meet the objections of the legislative rule-  
44 making review committee and refiled in the state  
45 register on the fourth day of October, one thousand nine  
46 hundred eighty-five, relating to the commissioner of  
47 motor vehicles (eligibility for reinstatement following  
48 suspension or revocation of driving privileges), are  
49 authorized.

50 (h) The legislative rules filed in the state register on  
51 the fifth day of August, one thousand nine hundred



52 eighty-five, relating to the commissioner of motor  
53 vehicles (the administration and enforcement of motor  
54 vehicle inspections), are authorized.

55 (i) The legislative rules filed in the state register on  
56 the twenty-fifth day of July, one thousand nine hundred  
57 eighty-six, modified by the commissioner of motor  
58 vehicles to meet the objections of the legislative rule-  
59 making review committee and refiled in the state  
60 register on the ninth day of October, one thousand nine  
61 hundred eighty-six, relating to the commissioner of  
62 motor vehicles (seizure of a driver's license and issuance  
63 of a temporary driver's license), are authorized.

64 (j) The legislative rules filed in the state register on  
65 the twenty-fifth day of July, one thousand nine hundred  
66 eighty-six, modified by the commissioner of motor  
67 vehicles to meet the objections of the legislative rule-  
68 making review committee and refiled in the state  
69 register on the ninth day of October, one thousand nine  
70 hundred eighty-six, relating to the commissioner of  
71 motor vehicles (federal safety standards inspection  
72 program), are authorized.

73 (k) The legislative rules filed in the state register on  
74 the seventeenth day of August, one thousand nine  
75 hundred eighty-seven, modified by the commissioner of  
76 motor vehicles to meet the objections of the legislative  
77 rule-making review committee and refiled in the state  
78 register on the twenty-second day of September, one  
79 thousand nine hundred eighty-seven, relating to the  
80 commissioner of motor vehicles (denial, suspension,  
81 revocation or renewal of driving privileges), are  
82 authorized with the amendment set forth below:

83 On page 7, section 7.2 after the words "75 m.p.h.", add  
84 the words "except on highways where the established  
85 speed limit is 65 m.p.h., and conviction was in excess  
86 of 80 m.p.h.",

87 And,

88 On page 14, section 8.1 by inserting the words "not  
89 to exceed fifteen hours" after the word "course" and in  
90 section 8.2 by inserting the words "not to exceed fifteen  
91 hours" after the word "course".

92 (l) The legislative rules filed in the state register on  
 93 the twenty-second day of November, one thousand nine  
 94 hundred eighty-eight, modified by the commissioner of  
 95 motor vehicles to meet the objections of the legislative  
 96 rule-making review committee and refiled in the state  
 97 register on the twentieth day of January, one thousand  
 98 nine hundred eighty-nine, relating to the commissioner  
 99 of motor vehicles (denial, suspension, revocation or  
 100 nonrenewal of driving privileges), are authorized.

**ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGEN-  
 CIES AND BOARDS TO PROMULGATE LEGISLA-  
 TIVE RULES.**

- §64-9-1. Commissioner of agriculture.
- §64-9-2. State athletic commission.
- §64-9-3. Attorney general.
- §64-9-4. State auditor.
- §64-9-5. Board of barbers and beauticians.
- §64-9-6. Beef industry self-improvement assessment board.
- §64-9-7. State boards of examination or registration; West Virginia board of chiropractic examiners.
- §64-9-8. West Virginia board of examiners in counseling.
- §64-9-9. Governor's committee on crime, delinquency and corrections.
- §64-9-10. West Virginia board of dental examiners.
- §64-9-11. Board of embalmers and funeral directors.
- §64-9-12. West Virginia state board of registration for professional engineers.
- §64-9-13. West Virginia board of hearing-aid dealers.
- §64-9-14. West Virginia housing development fund.
- §64-9-15. State board of examiners of land surveyors.
- §64-9-16. Board of medicine.
- §64-9-17. West Virginia board of examiners for licensed practical nurses.
- §64-9-18. Board of examiners for registered professional nurses.
- §64-9-19. Nursing home administrators licensing board.
- §64-9-20. Board of pharmacy.
- §64-9-21. Board of examiners of psychologists.
- §64-9-22. Radiologic technology board of examiners.
- §64-9-23. Real estate commission.
- §64-9-24. Secretary of state.
- §64-9-25. Structural barriers compliance board.
- §64-9-26. State treasurer.
- §64-9-27. Commercial whitewater advisory board.

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

- 1 (a) The legislative rules filed in the state register on
- 2 the sixth day of April, one thousand nine hundred
- 3 eighty-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  
7 the third day of August, one thousand nine hundred  
8 eighty-three, relating to the commissioner of agriculture  
9 (licensing of auctioneers), are authorized.

10 (c) The legislative rules filed in the state register on  
11 the 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  
16 the fourth day of June, one thousand nine hundred  
17 eighty-four, relating to the commissioner of agriculture  
18 (feeding untreated garbage to swine), are authorized.

19 (e) The legislative rules filed in the state register on  
20 the fourth day of June, one thousand nine hundred  
21 eighty-four, relating to the commissioner of agriculture  
22 (registration, taxation and control of dogs), are  
23 authorized.

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

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

54 (l) The legislative rules filed in the state register on  
55 the eighteenth day of June, one thousand nine hundred  
56 eighty-six, modified by the commissioner of agriculture  
57 to meet the objections of the legislative rule-making  
58 review committee and refiled in the state register on the  
59 fifth day of January, one thousand nine hundred eighty-  
60 seven, relating to the commissioner of agriculture (West  
61 Virginia pesticide use and application act), are  
62 authorized.

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

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

78 (o) The legislative rules filed in the state register on  
79 the thirteenth day of August, one thousand nine hundred  
80 eighty-seven, modified by the commissioner of agricul-  
81 ture to meet the objections of the legislative rule-making

82 review committee and refiled in the state register on the  
83 eighth day of September, one thousand nine hundred  
84 eighty-seven, relating to the commissioner of agriculture  
85 (animal disease control), are authorized.

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

91 (q) The legislative rules filed in the state register on  
92 the fifteenth day of September, one thousand nine  
93 hundred eighty-eight, modified by the commissioner of  
94 agriculture to meet the objections of the legislative rule-  
95 making review committee and refiled in the state  
96 register on the twenty-sixth day of October, one  
97 thousand nine hundred eighty-eight, relating to the  
98 commissioner of agriculture (animal disease control),  
99 are authorized.

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

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

#### §64-9-2. State athletic commission.

1 The legislative rules filed in the state register on the  
2 twentieth day of February, one thousand nine hundred  
3 eighty-five, relating to the state athletic commission  
4 (professional and amateur boxing), are authorized.

**§64-9-3. Attorney general.**

1 (a) The legislative rules filed in the state register on  
2 the 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  
6 the 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  
9 authorized.

10 (c) The legislative rules filed in the state register on  
11 the 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  
20 to 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,  
39 apart".

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

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

52 Page 3, section 2.6, on line two thereof, after the  
53 second comma by inserting the word "replacement".

54 Page 3, section 3, by striking the words "and home  
55 construction" from the section heading.

56 Page 3, section 3.1, lines one and two, by striking the  
57 words "or home construction".

58 Page 4, section 3.1.4, on lines one and two thereof, by  
59 striking the words "or home construction".

60 Page 4, section 3.1.8, on line two thereof, by striking  
61 the words "or home construction".

62 Page 4, section 3.1.9, on lines two and three thereof,  
63 by striking the words "or home construction".

64 Page 5, section 3.1.12, on lines one and two thereof,  
65 by striking the words "or home construction".

66 Page 6, section 3.1.26, by striking all of section 3.1.26  
67 and renumbering the subsequent subsections.

68 Page 7, section 3.1.29, on lines one and two thereof,  
69 by striking the words "or home construction".

70 Page 7, section 3.1.29, on line six thereof, following the  
71 word "contract" by inserting a period and striking the  
72 remainder of the section.

73 Page 7, following section 3.1.29 by adding a new  
74 section to be designated section 3.1.29, to read as follows:

75 “failed to file a certificate in the office of the Clerk  
76 of the County Commission in the county in which the  
77 principal place of business of the seller is located, setting  
78 forth the assumed name in or by which the business is  
79 being conducted in conformity with the provisions of  
80 Chapter 47, Article 8, Section 2 of the Code of West  
81 Virginia, 1931, as amended.”

82 Page 7, section 3.2, on lines two and three thereof, by  
83 striking the words, “or home solicitation sale of home  
84 construction” and the comma on line three.

85 Page 9, section 4.1, on line eight thereof, by deleting  
86 the period and inserting the following:

87 “to the extent permitted by statute.”

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

90 “to the extent permitted by statute.”

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

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

110 On page 9, section 8.2 by striking the words “within



111 thirty days after the death of a contract beneficiary,”  
112 and inserting in lieu thereof the following: “On or before  
113 the first day of January and the first day of July of each  
114 year,” and after the word “provided” by striking the  
115 comma and inserting in lieu thereof “after the death of  
116 any contract beneficiary during the previous six-month  
117 period.”

118 On page 12, section 9.7 by striking all of 9.7.

119 Beginning on page 15, by striking the entirety of  
120 section 15.

121 And,

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

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

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

#### §64-9-4. State auditor.

1 (a) The legislative rules filed in the state register on  
2 the twenty-first day of December, one thousand nine  
3 hundred eighty-three, relating to the state auditor,  
4 securities commissioner (broker-dealers, agents and  
5 advisors), are authorized with the amendments set forth  
6 below:

7 Section 14.06, delete the words "as subsequently  
8 amended" and reinsert the words "as amended March  
9 30, 1982".

10 Section 14.07 place a period after "1976" and delete  
11 the words "as subsequently amended".

12 (b) The legislative rules filed in the state register on  
13 the eighteenth day of January, one thousand nine  
14 hundred eighty-five, relating to the state auditor,  
15 securities commissioner (filing fee), are authorized.

**§64-9-5. Board of barbers and beauticians.**

1 (a) The legislative rules filed in the state register on  
2 the tenth day of June, one thousand nine hundred  
3 eighty-eight, modified by the board of barbers and  
4 beauticians to meet the objections of the legislative rule-  
5 making review committee and refiled in the state  
6 register on the eighth day of December, one thousand  
7 nine hundred eighty-eight, relating to the board of  
8 barbers and beauticians (minimum curriculum for  
9 schools of barbering), are authorized with the amend-  
10 ment set forth below:

11 On page 9, by inserting a new section, designated  
12 section 3-6-14, to read as follows:

13 "§3-6-14. Repeal of rule—This rule will automati-  
14 cally be repealed on July 1, 1991, unless extended prior  
15 to that date by an act of the Legislature."

16 (b) The legislative rules filed in the state register on  
17 the tenth day of June, one thousand nine hundred  
18 eighty-eight, modified by the board of barbers and  
19 beauticians to meet the objections of the legislative rule-  
20 making review committee and refiled in the state  
21 register on the eighth day of December, one thousand  
22 nine hundred eighty-eight, relating to the board of  
23 barbers and beauticians (qualifications, training,  
24 examination and registration of instructors in barbering  
25 and beauty culture), are authorized with the amendment  
26 set forth below:

27 On page 6, by inserting a new section, designated  
28 section 3-2-9, to read as follows:

29       “§3-2-9. **Repeal of rule**—This rule will automati-  
30 cally be repealed on July 1, 1991, unless extended prior  
31 to that date by an act of the Legislature.”

32       (c) The legislative rules filed in the state register on  
33 the tenth day of June, one thousand nine hundred  
34 eighty-eight, modified by the board of barbers and  
35 beauticians to meet the objections of the legislative rule-  
36 making review committee and refiled in the state  
37 register on the eighth day of December, one thousand  
38 nine hundred eighty-eight, relating to the board of  
39 barbers and beauticians (operation of barber shops and  
40 schools of barbering), are authorized with the amend-  
41 ment set forth below:

42       On page 5, by inserting a new section, designated  
43 section 3-3-6, to read as follows:

44       “§3-3-6. **Repeal of rule**—This rule will automati-  
45 cally be repealed on July 1, 1991, unless extended prior  
46 to that date by an act of the Legislature.”

47       (d) The legislative rules filed in the state register on  
48 the tenth day of June, one thousand nine hundred  
49 eighty-eight, modified by the board of barbers and  
50 beauticians to meet the objections of the legislative rule-  
51 making review committee and refiled in the state  
52 register on the eighth day of December, one thousand  
53 nine hundred eighty-eight, relating to the board of  
54 barbers and beauticians (curriculum and minimum  
55 requirements, subjects and hour schedule, rules and  
56 regulations for schools of beauty culture operation in  
57 West Virginia: joint barbers and beauticians license),  
58 are authorized with the amendments set forth below:

59       On page 7, by inserting a new section, designated  
60 section 3-1-11, to read as follows:

61       “§3-1-11. **Repeal of rule**—This rule will automati-  
62 cally be repealed on July 1, 1991, unless extended prior  
63 to that date by an act of the Legislature.”

64       (e) The legislative rules filed in the state register on  
65 the tenth day of June, one thousand nine hundred  
66 eighty-eight, modified by the board of barbers and  
67 beauticians to meet the objections of the legislative rule-

68 making review committee and refiled in the state  
69 register on the eighth day of December, one thousand  
70 nine hundred eighty-eight, relating to the board of  
71 barbers and beauticians (operation of beauty shops and  
72 schools of beauty culture), are authorized with the  
73 amendments set forth below:

74 On page 4, by inserting a new section, designated  
75 section 3-4-6, to read as follows:

76 “§3-4-6. **Repeal of rule**—This rule will automati-  
77 cally be repealed on July 1, 1991, unless extended prior  
78 to that date by an act of the Legislature.”

79 And,

80 On page 4, by inserting a new subsection, designated  
81 section 3.25, to read as follows:

82 “3.25 Notwithstanding any law to the contrary or  
83 interpretation of law to the contrary, any licensed  
84 beautician may trim beards or mustaches.”

85 (f) The legislative rules filed in the state register on  
86 the tenth day of June, one thousand nine hundred  
87 eighty-eight, modified by the board of barbers and  
88 beauticians to meet the objections of the legislative rule-  
89 making review committee and refiled in the state  
90 register on the eighth day of December, one thousand  
91 nine hundred eighty-eight, relating to the board of  
92 barbers and beauticians (licensing schools of barbering  
93 or beauty culture), are authorized with the amendments  
94 set forth below:

95 On page 2, subsection 4.1, by deleting subdivision (b)  
96 and relettering the remaining subdivisions.

97 On page 6, by inserting a new section, designated  
98 section 3-5-8, to read as follows:

99 “§3-5-8. **Repeal of rule**—This rule will automati-  
100 cally be repealed on July 1, 1991, unless extended prior  
101 to that date by an act of the Legislature.”

**§64-9-6. Beef industry self-improvement assessment  
board.**

1 The legislative rules filed in the state register on the

2 nineteenth day of April, one thousand nine hundred  
3 eighty-five, relating to the beef industry self-improve-  
4 ment assessment board (beef industry self-improvement  
5 assessment program), are authorized.

**§64-9-7. State boards of examination or registration; West Virginia board of chiropractic examiners.**

1 The legislative rules filed in the state register on the  
2 twenty-sixth day of October, one thousand nine hundred  
3 eighty-seven, modified by the West Virginia board of  
4 chiropractic examiners to meet the objections of the  
5 legislative rule-making review committee and refiled in  
6 the state register on the twenty-seventh day of January,  
7 one thousand nine hundred eighty-eight, relating to the  
8 West Virginia board of chiropractic examiners (West  
9 Virginia board of chiropractic examiners), are autho-  
10 rized.

**§64-9-8. West Virginia board of examiners in counseling.**

1 The legislative rules filed in the state register on the  
2 twentieth day of March, one thousand nine hundred  
3 eighty-nine, modified by the West Virginia board of  
4 examiners in counseling to meet the objections of the  
5 legislative rule-making review committee and refiled in  
6 the state register on the twelfth day of September, one  
7 thousand nine hundred eighty-nine, relating to the West  
8 Virginia board of examiners in counseling (licensing),  
9 are authorized.

**§64-9-9. Governor's committee on crime, delinquency and corrections.**

1 The legislative rules filed in the state register on the  
2 twenty-fifth day of July, one thousand nine hundred  
3 eighty-eight, modified by the governor's committee on  
4 crime, delinquency and corrections to meet the objec-  
5 tions of the legislative rule-making review committee  
6 and refiled in the state register on the twentieth day of  
7 September, one thousand nine hundred eighty-eight,  
8 relating to the governor's committee on crime, delin-  
9 quency and corrections (basic training academy, annual  
10 in-service and biennial in-service training standards),  
11 are authorized.

**§64-9-10. West Virginia board of dental examiners.**

1 The legislative rules filed in the state register on the  
2 eighth day of August, one thousand nine hundred  
3 eighty-nine, modified by the West Virginia board of  
4 dental examiners to meet the objections of the legislative  
5 rule-making review committee and refiled in the state  
6 register on the twenty-third day of October, one  
7 thousand nine hundred eighty-nine, relating to the West  
8 Virginia board of dental examiners (West Virginia  
9 board of dental examiners), are authorized.

**§64-9-11. Board of embalmers and funeral directors.**

1 (a) The legislative rules filed in the state register on  
2 the twenty-seventh day of July, one thousand nine  
3 hundred eighty-four, modified by the board of em-  
4 balmers and funeral directors to meet the objections of  
5 the legislative rule-making review committee and  
6 refiled in the state register on the ninth day of January,  
7 one thousand nine hundred eighty-five, relating to the  
8 board of embalmers and funeral directors (apprentice-  
9 ship), are authorized.

10 (b) The legislative rules filed in the state register on  
11 the sixteenth day of October, one thousand nine hundred  
12 eighty-five, modified by the board of embalmers and  
13 funeral directors to meet the objections of the legislative  
14 rule-making review committee and refiled in the state  
15 register on the eighteenth day of July, one thousand nine  
16 hundred eighty-six, relating to the board of embalmers  
17 and funeral directors (governing the board of em-  
18 balmers and funeral directors), are authorized.

**§64-9-12. West Virginia state board of registration for professional engineers.**

1 (a) The legislative rules filed in the state register on  
2 the twenty-ninth day of November, one thousand nine  
3 hundred eighty-five, modified by the West Virginia  
4 state board of registration for professional engineers to  
5 meet the objections of the legislative rule-making review  
6 committee and refiled in the state register on the  
7 twenty-eighth day of January, one thousand nine  
8 hundred eighty-six, relating to the West Virginia state

9 board of registration for professional engineers (legisla-  
10 tive rules governing the West Virginia state board of  
11 registration for professional engineers), are authorized.

12 (b) The legislative rules filed in the state register on  
13 the twenty-third day of December, one thousand nine  
14 hundred eighty-seven, modified by the West Virginia  
15 state board of registration for professional engineers to  
16 meet the objections of the legislative rule-making review  
17 committee and refiled in the state register on the  
18 twenty-ninth day of January, one thousand nine hundred  
19 eighty-eight, relating to the West Virginia state board  
20 of registration for professional engineers (rules of the  
21 West Virginia state board of registration for profes-  
22 sional engineers), are authorized.

**§64-9-13. West Virginia board of hearing-aid dealers.**

1 The legislative rules filed in the state register on the  
2 twenty-sixth day of November, one thousand nine  
3 hundred eighty-five, modified by the West Virginia  
4 board of hearing-aid dealers to meet the objections of the  
5 legislative rule-making review committee and refiled in  
6 the state register on the twenty-eighth day of January,  
7 one thousand nine hundred eighty-six, relating to the  
8 West Virginia board of hearing-aid dealers (rules  
9 governing the West Virginia board of hearing-aid  
10 dealers), are authorized.

**§64-9-14. West Virginia housing development fund.**

1 The legislative rules filed in the state register on the  
2 twenty-seventh day of December, one thousand nine  
3 hundred eighty-two, relating to the West Virginia  
4 housing development fund (single-family mortgage  
5 loans), are authorized.

**§64-9-15. State board of examiners of land surveyors.**

1 The legislative rules filed in the state register on the  
2 thirty-first day of July, one thousand nine hundred  
3 eighty-seven, modified by the state board of examiners  
4 of land surveyors to meet the objections of the legislative  
5 rule-making review committee and refiled in the state  
6 register on the twenty-eighth day of January, one  
7 thousand nine hundred eighty-eight, relating to the state

8 board of examiners of land surveyors (practice of land  
9 surveying in West Virginia), are authorized.

**§64-9-16. Board of medicine.**

1 (a) The legislative rules filed in the state register on  
2 the twelfth day of May, one thousand nine hundred  
3 eighty-three, relating to the board of medicine (licens-  
4 ing, disciplinary and complaint procedures; podiatry;  
5 physicians assistants), are authorized with the modifica-  
6 tions set forth below:

7 "§24.12.

8 (b) It shall be the responsibility of the supervising  
9 physician to obtain consent in writing from the patient  
10 before Type A physician assistants employed in a  
11 satellite clinic may render general medical or surgical  
12 services, except in emergencies.

13 §24.16.

14 (c) No physician assistant shall render nonemergency  
15 outpatient medical services until the patient has been  
16 informed that the individual providing care is a  
17 physician assistant."

18 (b) The legislative rules filed in the state register on  
19 the twenty-sixth day of November, one thousand nine  
20 hundred eighty-five, modified by the board of medicine  
21 to meet the objections of the legislative rule-making  
22 review committee and refiled in the state register on the  
23 seventeenth day of January, one thousand nine hundred  
24 eighty-six, relating to the board of medicine (licensing,  
25 disciplinary and complaint procedures; podiatry; physi-  
26 cians assistants), are authorized.

27 (c) The legislative rules filed in the state register on  
28 the eighth day of March, one thousand nine hundred  
29 eighty-five, modified by the West Virginia board of  
30 medicine to meet the objections of the legislative rule-  
31 making review committee and refiled in the state  
32 register on the eighteenth day of December, one  
33 thousand nine hundred eighty-five, relating to the West  
34 Virginia board of medicine (rules governing the  
35 approval of medical schools not accredited by the liaison  
36 committee on medical education), are authorized.



37 (d) The legislative rules filed in the state register on  
38 the third day of June, one thousand nine hundred eighty-  
39 seven, relating to the board of medicine (fees for services  
40 rendered by the board of medicine), are authorized.

41 (e) The legislative rules filed in the state register on  
42 the sixteenth day of September, one thousand nine  
43 hundred eighty-eight, modified by the board of medicine  
44 to meet the objections of the legislative rule-making  
45 review committee and refiled in the state register on the  
46 twenty-fourth day of February, one thousand nine  
47 hundred eighty-nine, relating to the board of medicine  
48 (dispensing of legend drugs by physicians and podia-  
49 trists), are authorized with the following amendments:

50 Section 2.6 to read as follows: Dispense means to  
51 deliver a legend drug to an ultimate user or research  
52 subject by or pursuant to the lawful order of a physician  
53 or podiatrist, including the prescribing, packaging,  
54 labeling, administering or compounding necessary to  
55 prepare the drug for that delivery.

56 Section 3.3 to read as follows: Physicians or podiatrists  
57 who are not registered with the Board as dispensing  
58 physicians may not dispense legend drugs. However, the  
59 following activities by a physician or podiatrist shall be  
60 exempt from the requirements of section 3 through 8  
61 applicable to dispensing physicians:

62 a. Legend drugs administered to the patient, which  
63 are not controlled substance when an appropriate record  
64 is made in the patient's chart.

65 b. Professional samples distributed free of charge by  
66 a physician or podiatrist or certified physician assistant  
67 under his or her supervision to the patient when an  
68 appropriate record is made in the patient's chart; or

69 c. Legend drugs which are not controlled substances  
70 provided by free clinics or under West Virginia state  
71 authorized programs, including the medicaid, family  
72 planning, maternal and child health, and early and  
73 periodic screening and diagnosis and treatment pro-  
74 grams: *Provided*, That all labeling provisions of section

75 8 shall be applicable except the requirements of section  
76 8.3 (a).

**§64-9-17. West Virginia board of examiners for licensed practical nurses.**

1 (a) The legislative rules filed in the state register on  
2 the thirtieth day of July, one thousand nine hundred  
3 eighty-six, modified by the West Virginia board of  
4 examiners for licensed practical nurses to meet the  
5 objections of the legislative rule-making review commit-  
6 tee and refiled in the state register on the thirtieth day  
7 of September, one thousand nine hundred eighty-six,  
8 relating to the West Virginia board of examiners for  
9 licensed practical nurses (policies relating to licensure  
10 of the licensed practical nurse), are authorized.

11 (b) The legislative rules filed in the state register on  
12 the thirtieth day of July, one thousand nine hundred  
13 eighty-six, relating to the West Virginia board of  
14 examiners for licensed practical nurses (legal standards  
15 of nursing practice for the licensed practical nurse), are  
16 authorized.

17 (c) The legislative rules filed in the state register on  
18 the thirtieth day of July, one thousand nine hundred  
19 eighty-six, relating to the West Virginia board of  
20 examiners for licensed practical nurses (fees for services  
21 rendered by the board), are authorized.

**§64-9-18. Board of examiners for registered professional nurses.**

1 The legislative rules filed in the state register on the  
2 thirteenth day of September, one thousand nine hundred  
3 eighty-three, relating to the board of examiners for  
4 registered professional nurses (qualifications of gradu-  
5 ates of foreign nursing schools for admission to the  
6 professional nurse licensing examination), are autho-  
7 rized.

**§64-9-19. Nursing home administrators licensing board.**

1 The legislative rules filed in the state register on the  
2 eighteenth day of October, one thousand nine hundred  
3 eighty-five, modified by the nursing home administra-

4 tors licensing board to meet the objections of the  
5 legislative rule-making review committee and refiled in  
6 the state register on the twenty-eighth day of January,  
7 one thousand nine hundred eighty-six, relating to the  
8 nursing home administrators licensing board (governing  
9 nursing home administrators), are authorized.

**§64-9-20. Board of pharmacy.**

1 (a) The legislative rules filed in the state register on  
2 the second day of October, one thousand nine hundred  
3 eighty-four, modified by the board of pharmacy to meet  
4 the objections of the legislative rule-making review  
5 committee and refiled in the state register on the ninth  
6 day of January, one thousand nine hundred eighty-five,  
7 relating to the board of pharmacy (parenteral/enteral  
8 compounding), are authorized.

9 (b) The legislative rules filed in the state register on  
10 the twelfth day of September, one thousand nine  
11 hundred eighty-nine, modified by the board of phar-  
12 macy to meet the objections of the legislative rule-  
13 making review committee and refiled in the state  
14 register on the fifteenth day of November, one thousand  
15 nine hundred eighty-nine, relating to the board of  
16 pharmacy (board of pharmacy), are authorized.

**§64-9-21. Board of examiners of psychologists.**

1 (a) The legislative rules filed in the state register on  
2 the twentieth day of December, one thousand nine  
3 hundred eighty-four, relating to the board of examiners  
4 of psychologists (examination fee), are authorized.

5 (b) The legislative rules filed in the state register on  
6 the sixteenth day of September, one thousand nine  
7 hundred eighty-eight, modified by the board of examin-  
8 ers of psychologists to meet the objections of the  
9 legislative rule-making review committee and refiled in  
10 the state register on the twenty-third day of November,  
11 one thousand nine hundred eighty-eight, relating to the  
12 board of examiners of psychologists (penalties and fees),  
13 are authorized.

**§64-9-22. Radiologic technology board of examiners.**

1 The legislative rules filed in the state register on the

2 twenty-fourth day of January, one thousand nine  
3 hundred eighty-four, relating to the radiologic technol-  
4 ogy board of examiners are authorized.

**§64-9-23. Real estate commission.**

1 The legislative rules filed in the state register on the  
2 fourth day of December, one thousand nine hundred  
3 eighty-nine, modified by the real estate commission to  
4 meet the objections of the legislative rule-making review  
5 committee and refiled in the state register on the eighth  
6 day of January, one thousand nine hundred ninety,  
7 relating to the real estate commission (renewal of license  
8 -continuing education), are authorized.

**§64-9-24. Secretary of state.**

1 (a) The legislative rules filed in the state register on  
2 the fifteenth day of April, one thousand nine hundred  
3 eighty-five, modified by the secretary of state to meet  
4 the 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  
11 the seventeenth day of August, one thousand nine  
12 hundred eighty-seven, modified by the secretary of state  
13 to meet the objections of the legislative rule-making  
14 review 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  
21 the 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.

**§64-9-25. Structural barriers compliance board.**

1 The legislative rules filed in the state register on the  
2 twenty-fourth day of August, one thousand nine hundred  
3 eighty-eight, modified by the structural barriers  
4 compliance board to meet the objections of the legisla-  
5 tive rule-making review committee and refiled in the  
6 state register on the thirteenth day of January, one  
7 thousand nine hundred eighty-nine, relating to the  
8 structural barriers compliance board (elimination of  
9 structural barriers in public buildings), are authorized.

**§64-9-26. State treasurer.**

1 The legislative rules filed in the state register on the  
2 third day of January, one thousand nine hundred eighty-  
3 four, relating to the state treasurer (establishment of  
4 imprest funds), are authorized.

**§64-9-27. Commercial whitewater advisory board.**

1 The legislative rules filed in the state register on the  
2 twentieth day of December, one thousand nine hundred  
3 eighty-six, modified by the commercial whitewater  
4 advisory board to meet the objections of the legislative  
5 rule-making review committee and refiled in the state  
6 register on the sixteenth day of January, one thousand  
7 nine hundred eighty-seven, relating to the commercial  
8 whitewater advisory board (commercial whitewater  
9 outfitters), are authorized with the following  
10 amendment:

11 "On page 1, §2.1, by striking all of §2.1 and inserting  
12 in lieu thereof the following: '2.1 Commercial white-  
13 water outfitter means any person, partnership, corpora-  
14 tion or other organization, or any combination thereof,  
15 duly authorized and operating from within or from  
16 without the state, which for monetary profit or gain,  
17 provides whitewater expeditions or rents whitewater  
18 craft or equipment for use in whitewater expeditions on  
19 any river, portions of rivers or waters of the state.'"

## CHAPTER 121

(S. B. 188—Originating in the Committee on Confirmations)

[Passed March 6, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-two, relating to defining the phrase “next meeting of the Senate”.

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

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

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

**§4-1-22. “Next meeting of the Senate” defined.**

1 The phrase “next meeting of the Senate” contained in  
2 article seven, section nine of the constitution of West  
3 Virginia means any time the full Senate is convened and  
4 includes, but is not limited to, any regular session, any  
5 extraordinary session called during any recess or  
6 adjournment of the Legislature, during any impeach-  
7 ment proceeding or any time the Senate is convened  
8 pursuant to section ten-a of this article.

## CHAPTER 122

(H. B. 4257—By Mr. Speaker, Mr. Chambers, and Delegate Sattes)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend article three, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five, relating to authorizing the joint committee

on government and finance to charge state executive and judicial agencies and private persons, corporations and associations for use of the Legislature's computer subscriber system data bases and providing that the fees collected be deposited in a special revolving fund of the joint committee and be expended on the Legislature's computer system as authorized by the joint committee.

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

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

**ARTICLE 3. JOINT COMMITTEE ON GOVERNMENT AND FINANCE.**

**§4-3-5. Charges for use of the Legislature's computer subscriber system.**

1 The joint committee on government and finance is  
2 hereby authorized to charge and collect fees from  
3 agencies of state executive and judicial departments and  
4 from private persons, corporations and associations for  
5 access to and use of the Legislature's computer sub-  
6 scriber system data bases in accordance with fees,  
7 procedures and restrictions approved by the joint  
8 committee. Fees collected are to be deposited in a special  
9 revolving fund of the joint committee on government  
10 and finance and may be expended for expansion,  
11 maintenance and support of the Legislature's computer  
12 system as authorized by the joint committee.

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## CHAPTER 123

(Com. Sub. for H. B. 4712—By Delegate R. Burk)

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[Passed March 6, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article one, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to future advances secured by a credit line deed of trust;

form; priority over other liens; release; providing an alternative to the caption entitled a credit line deed of trust; to further define future advances to include obligations other than those arising from traditional loan transactions; and to clarify the distinction between obligatory and nonobligatory future advances.

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

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

**ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.**

**§38-1-14. Future advances secured by credit line deed of trust; definitions; notice requirements and form; priority over other liens; release.**

1 (a) Definitions: For purposes of this section, the  
2 following definitions shall apply:

3 (1) "Credit line deed of trust" is a deed of trust  
4 securing any obligation arising out of a loan agreement,  
5 a promissory note, a sales contract, a performance  
6 contract, or any other agreement or writing, under the  
7 terms of which the indebtedness or other obligation  
8 created may increase and/or decrease from time to time.

9 (2) "Future advance" means any form of increase in  
10 the indebtedness or obligation owed to the secured party  
11 under the terms of the credit line deed of trust,  
12 including, but not limited to, an increase arising from,  
13 but not limited to, an application for the same by the  
14 obligor; the advancement of loan proceeds pursuant to  
15 the terms of the credit line deed of trust or other  
16 agreement; the payment of any taxes, insurance premi-  
17 ums, interest, or other obligations pursuant to the terms  
18 of the credit line deed of trust or other agreement; or  
19 the occurrence of any condition, event or circumstance  
20 set forth in the credit line deed of trust.

21 (3) "Obligatory advance" means any advance which,  
22 under the terms of the credit line deed of trust or other  
23 agreement, the secured party has legally obligated itself  
24 to make in the absence of a default, breach, or other



25 such event. Obligatory advances include, but are not  
26 limited to, advances which the secured party has agreed  
27 to make as a term or condition of the credit line deed  
28 of trust or other related agreement; obligations arising  
29 out of the occurrence of a condition, event or circum-  
30 stance contemplated by the agreement; obligations  
31 arising on a specified date or time; or advances made  
32 upon application therefor by the grantor under the  
33 credit line deed of trust or by another obligor whose  
34 indebtedness is secured by the deed of trust.

35 (b) A credit line deed of trust shall comply with all  
36 the provisions of this article and shall either (i) have  
37 clearly entitled at the beginning thereof either in capital  
38 letters or in language underscored, the words, "A  
39 CREDIT LINE DEED OF TRUST", or (ii) state  
40 conspicuously either immediately above or beneath the  
41 caption at the top of the first page of the credit line deed  
42 of trust the words, "This instrument secures an obliga-  
43 tion that may increase and decrease from time to time."

44 A credit line deed of trust shall be, from the time it  
45 is duly recorded as required by law, security for all  
46 indebtedness or other obligations secured thereby at the  
47 time of recording and for all future advances secured  
48 thereby in an aggregate principal amount outstanding  
49 at any time not to exceed the maximum amount stated  
50 in the credit line deed of trust, without regard to  
51 whether the future advances are contracted for at the  
52 time of recordation of the credit line deed of trust or  
53 whether the secured party under the credit line deed of  
54 trust readvances principal sums repaid. The credit line  
55 deed of trust shall also be security for interest on the  
56 principal sums and for taxes, insurance premiums and  
57 other obligations, including interest thereon, undertaken  
58 by the secured party in the credit line deed of trust or  
59 in the related loan agreement, note, contract, or other  
60 agreement or evidences of indebtedness or obligations  
61 secured thereby. The interest, taxes, insurance premi-  
62 ums and other obligations when added to the total  
63 principal amount of the obligations outstanding at any  
64 time may increase the amount secured by the credit line  
65 deed of trust above the stated maximum amount.

66 (c) A credit line deed of trust, in addition to other  
67 provisions of this code, shall conform with the following:

68 (1) The credit line deed of trust shall contain specific  
69 provisions permitting or requiring future advances and  
70 stating whether the future advances are intended to be  
71 obligatory or nonobligatory;

72 (2) At no time may the unpaid principal balance of  
73 the obligation or indebtedness secured by the credit line  
74 deed of trust exceed the maximum amount stated  
75 therein, except as specifically provided for in subsection  
76 (b) of this section; and

77 (3) The original credit line deed of trust must be  
78 executed and recorded after the sixth day of June, one  
79 thousand nine hundred eighty-four.

80 (d) Except as otherwise provided herein, a credit line  
81 deed of trust, to the extent of the principal amount of  
82 the loan indebtedness or obligation secured thereby,  
83 interest thereon, taxes, insurance premiums and other  
84 obligations, including interest thereon, secured thereby,  
85 has priority over all other deeds of trust, liens and  
86 encumbrances of every nature, however created or  
87 arising, to the same extent and for the same amount as  
88 if all the amounts were advanced on the date and at the  
89 time the credit line deed of trust is recorded.

90 (e) Any mechanic's lien, abstract of judgment, notice  
91 of lis pendens, other deed of trust or other lien of  
92 encumbrance, which affects the property encumbered  
93 by the credit line deed of trust and which is duly  
94 recorded and perfected as required by law after the  
95 recording of the credit line deed of trust, shall have  
96 priority over any advances secured by the credit line  
97 deed of trust that are not obligatory and that are made  
98 by the secured party under the credit line deed of trust  
99 after receipt by the secured party, at the address  
100 provided for the purpose of notification in the credit line  
101 deed of trust, of written notice of such mechanic's lien,  
102 judgment lien, notice of lis pendens, other deed of trust  
103 or other lien or encumbrance. However, any obligatory  
104 advances made by the secured party that are secured  
105 by the credit line deed of trust or any other related

106 agreement, and any taxes, insurance premiums and  
107 obligations which the secured party has agreed to pay,  
108 or which under the credit line deed of trust or otherwise  
109 the secured party has the right to pay in connection with  
110 such credit line deed of trust, shall continue to have the  
111 priority created under subsection (b) of this section over  
112 a mechanic's lien, judgment lien, notice of lis pendens,  
113 deed of trust or other lien or encumbrance.

114 (f) Notwithstanding any other provision of this code,  
115 the secured party under a credit line deed of trust  
116 subject to this section shall be obligated to release the  
117 credit line deed of trust at such time as all indebtedness  
118 or other obligations secured thereby have been paid in  
119 full or otherwise satisfied and the secured party has  
120 been duly released from any further obligation to make  
121 future advances under any note or agreement secured  
122 by the credit line deed of trust. This release shall  
123 become effective upon the recording of the release and  
124 the secured party shall be released and discharged from  
125 any further obligation.

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## CHAPTER 124

(Com. Sub. for H. B. 4187—By Delegates Murphy and Manuel)

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[Passed March 10, 1990; in effect July 1, 1990. Approved by the Governor.]

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AN ACT to amend chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty, relating to the local powers act; purpose and findings; definitions; authorizing counties to collect fees; credits and offsets accruing for benefit of development; implementation criteria and requirements; establishment of new levies and fees; use and administration of impact fees; refunds of impact fees; and impact fees being required to be consistent with development regulations.

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

That chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by

adding thereto a new article, designated article twenty, to read as follows:

**ARTICLE 20. FEES AND EXPENDITURES FOR COUNTY DEVELOPMENT.**

§7-20-1. Short title.

§7-20-2. Purpose and findings.

§7-20-3. Definitions.

§7-20-4. Counties authorized to collect fees.

§7-20-5. Credits or offsets to be adjusted; incidental benefit by one development not construed as denying reasonable benefit to new development.

§7-20-6. Criteria and requirements necessary to implement collection of fees.

§7-20-7. Establishment of impact fees; levies may be used to fund existing capital improvements.

§7-20-8. Use and administration of impact fees.

§7-20-9. Refund of unexpended impact fees.

§7-20-10. Impact fees required to be consistent with other development regulations.

**§7-20-1. Short title.**

1 This article shall be known as the "Local Powers Act."

**§7-20-2. Purpose and findings.**

1 (a) It is the purpose of this article to provide for the  
2 fair distribution of costs for county development by  
3 authorizing the assessment and collection of fees to  
4 offset the cost of commercial and residential develop-  
5 ment within affected counties.

6 (b) The Legislature hereby makes the following  
7 findings:

8 (1) The residents, taxpayers and users of county  
9 facilities and services, in affected counties, have  
10 contributed significant funds in the form of taxes and  
11 user charges toward the cost of existing county facilities  
12 and services, which represent a substantial and incal-  
13 culable investment;

14 (2) Affected counties in West Virginia are experienc-  
15 ing an increased demand for development which is  
16 causing strain on tax revenues and user charges at  
17 existing levels and impairing the ability of taxpayers,  
18 residents and users to bear the cost of increased demand  
19 for county facilities and services. In some instances,

20 county borrowing has been required to meet the  
21 demand;

22 (3) Equitable considerations require that future  
23 residents and users of existing county facilities and  
24 services contribute toward the investment already made  
25 in those facilities and services;

26 (4) Sound fiscal policy in the efficient administration  
27 of county government requires that the imposition of  
28 taxes and user charges be commensurate to the actual  
29 yearly cost of county facilities and services;

30 (5) Accumulations of large financial reserves for  
31 future capital expenditures unjustly exact unneeded  
32 current funds from taxpayers and users; and

33 (6) County borrowing unnecessarily increases the cost  
34 of government by the amount of debt service and should  
35 be avoided unless considered absolutely necessary to  
36 meet an existing public need.

### §7-20-3. Definitions.

1 (a) "Capital improvements" means the following  
2 public facilities or assets that are owned, supported or  
3 established by county government:

4 (1) Water treatment and distribution facilities;

5 (2) Wastewater treatment and disposal facilities;

6 (3) Sanitary sewers;

7 (4) Storm water, drainage, and flood control facilities;

8 (5) Public primary and secondary school facilities;

9 (6) Public road systems and rights-of-way;

10 (7) Parks and recreational facilities; and

11 (8) Police, emergency medical, rescue, and fire  
12 protection facilities.

13 "Capital improvements" as defined herein is limited  
14 to those improvements that are treated as capitalized  
15 expenses according to generally accepted governmental  
16 accounting principles and that have an expected useful  
17 life of no less than three years. "Capital improvement"

18 does not include costs associated with the operation,  
19 repair, maintenance, or full replacement of capital  
20 improvements. "Capital improvement" does include  
21 reasonable costs for planning, design, engineering, land  
22 acquisition, and other costs directly associated with the  
23 capital improvements described herein.

24 (b) "County services" means the following: (1) Services  
25 provided by administration and administrative person-  
26 nel, law enforcement and its support personnel; (2)  
27 street light service; (3) fire-fighting service; (4) ambu-  
28 lance service; (5) fire hydrant service; (6) roadway  
29 maintenance and other services provided by roadway  
30 maintenance personnel; (7) public utility systems and  
31 services provided by public utility systems personnel,  
32 water; and (8) all other direct and indirect county  
33 services authorized by this code.

34 (c) "Direct county services" means those public  
35 services authorized and provided by various county  
36 agencies or departments.

37 (d) "Indirect county services" means those public  
38 services authorized and provided by commissioned  
39 agents, agencies or departments of the county.

40 (e) "Growth county" means any county within the  
41 state with an averaged population growth rate in excess  
42 of one percent per year as determined from the most  
43 recent decennial census counts and forecasted, within  
44 decennial census count years, by official records of  
45 government or generally approved standard statistical  
46 estimate procedures: *Provided*, That once "growth  
47 county" status is achieved it is permanent in nature and  
48 the powers derived hereby are continued.

49 (f) "User" means any member of the public who uses  
50 or may have occasion to use county facilities and services  
51 as defined herein.

52 (g) "Impact fees" means any charge, fee, or assess-  
53 ment levied as a condition of the following: (1) Issuance  
54 of a subdivision or site plan approval; (2) issuance of a  
55 building permit; and (3) approval of a certificate of  
56 occupancy, or other development or construction appro-

57 val when any portion of the revenues collected is  
58 intended to fund any portion of the costs of capital  
59 improvements for any public facilities or county services  
60 not otherwise permitted by law. An impact fee does not  
61 include charges for remodeling, rehabilitation, or other  
62 improvements to an existing structure or rebuilding a  
63 damaged structure, provided there is no increase in  
64 gross floor area or in the number of dwelling units that  
65 result therefrom.

66 (h) "Proportionate share" means the cost of capital  
67 improvements that are reasonably attributed to new  
68 development less any credits or offsets for construction  
69 or dedication of land or capital improvements, past or  
70 future payments made or reasonably anticipated to be  
71 made by new development in the form of user fees, debt  
72 service payments, taxes or other payments toward  
73 capital improvement costs.

74 (i) "Reasonable benefit" means a benefit received  
75 from the provision of a capital improvement greater  
76 than that received by the general public located within  
77 the county wherein an impact fee is being imposed.

78 (j) "Plan" means a county, comprehensive, general,  
79 master or other land use plan as described herein.

80 (k) "Program" means the capital improvements  
81 program described herein.

82 (l) "Unincorporated area" and "total unincorporated  
83 area" means all lands and resident estates of a county  
84 that are not included within the corporate, annexed  
85 areas or legal service areas of an incorporated or  
86 chartered municipality, city, town or village located in  
87 the state of West Virginia.

#### §7-20-4. Counties authorized to collect fees.

1 County governments affected by the construction of  
2 new development projects are hereby authorized to  
3 require the payment of fees for any new development  
4 projects constructed therein in the event any costs  
5 associated with capital improvements or the provision of  
6 other services are attributable to such project. Such fees  
7 shall not exceed a proportionate share of such costs

8 required to accommodate any such new development.  
9 Before requiring payment of any fee authorized hereunder, it must be evident that some reasonable benefit  
10 from any such capital improvements will be realized by  
11 any such development project.  
12

**§7-20-5. Credits or offsets to be adjusted; incidental benefit by one development not construed as denying reasonable benefit to new development.**

1 Credits or offsets for past or future payments toward  
2 capital improvement costs shall be adjusted for time-price differentials inherent in fair comparisons of  
3 monetary amounts paid or received at different times.  
4

5 The receipt of an incidental benefit by any development shall not be construed as denying a reasonable  
6 benefit to any other new development.  
7

**§7-20-6. Criteria and requirements necessary to implement collection of fees.**

1 (a) As a prerequisite to authorizing counties to levy  
2 impact fees related to population growth and public  
3 service needs, counties shall meet the following  
4 requirements:

5 (1) A demonstration that population growth rate  
6 history as determined from the most recent base  
7 decennial census counts of a county, utilizing generally  
8 approved standard statistical estimate procedures, in  
9 excess of one percent annually averaged over a five-year  
10 period since the last decennial census count; or a  
11 demonstration that a total population growth rate  
12 projection of one percent per annum for an ensuing five-year period, based on standard statistical estimate  
13 procedures, from the current official population estimate of the county;  
14  
15

16 (2) Adopting a county-wide comprehensive plan;

17 (3) Reviewing and updating any comprehensive plan  
18 at no less than five-year intervals;

19 (4) Drafting and adopting a comprehensive zoning  
20 ordinance;



21 (5) Drafting and adopting a subdivision control  
22 ordinance;

23 (6) Keeping in place a formal building permit and  
24 review system, which provides a process to regulate the  
25 authorization of applications relating to construction or  
26 structural modification and which further provides for  
27 the systematic and ongoing inspection of existing  
28 structures. The county shall adopt, pursuant to section  
29 three-n, article one of this chapter, the state building  
30 code into any such building permit and review system;  
31 and

32 (7) Providing an improvement program which shall  
33 include:

34 (A) Developing and maintaining a list within the  
35 county of particular sites with development potential;

36 (B) Developing and maintaining standards of service  
37 for capital improvements which are fully or partially  
38 funded with revenues collected from impact fees; and

39 (C) Lists of proposed capital improvements from all  
40 areas, containing descriptions of any such proposed  
41 capital improvements, cost estimates, projected time  
42 frames for constructing such improvements and pro-  
43 posed or anticipated funding sources.

44 (b) Capital improvement programs may include  
45 provisions to provide for the expenditure of impact fees  
46 for any legitimate county purpose. This may include the  
47 expenditure of fees for partial funding of any particular  
48 capital improvement where other funding exists from  
49 any source other than the county, or exists in combina-  
50 tion with other funds available to the county: *Provided,*  
51 That for such expenditures to be considered legitimate  
52 no county or other local authority may deny or withhold  
53 any reasonable benefit that may be derived therefrom  
54 from any development project for which such impact fee  
55 or fees have been paid.

56 (c) Capital improvement programs for public elemen-  
57 tary and secondary school facilities may include  
58 provisions to spend impact fees based on a computation  
59 related to the following: (1) The existing local tax base;

60 and (2) the adjusted value of accumulated infrastruc-  
61 ture investment, based on net depreciation, and any  
62 remaining debt owed thereon. Any such computation  
63 must establish the value of any equity shares in the net  
64 worth of an impacted school system facility, regardless  
65 of the existence of any need to expand such facility.  
66 Impact fee revenues may only be used for capital  
67 replacement or expansion.

68 (d) Additional development areas may be added to  
69 any plan or capital improvements program provided for  
70 hereunder if a county government so desires. The  
71 standards governing the construction or structural  
72 modification for any such additional area shall not  
73 deviate from those adopted and maintained at the time  
74 such addition is made.

75 (e) The county may modify annually any capital  
76 improvements plan in addition to any impact fee rates  
77 based thereon, pursuant to the following:

78 (1) The number and extent of development projects  
79 begun in the past year;

80 (2) The number and extent of public facilities existing  
81 or under construction;

82 (3) The changing needs of the general population;

83 (4) The availability of any other funding sources; and

84 (5) Any other relevant and significant factor applica-  
85 ble to a legitimate goal or goals of any such capital  
86 improvement plan.

**§7-20-7. Establishment of impact fees; levies may be used  
to fund existing capital improvements.**

1 (a) Impact fees assessed against a development  
2 project to fund capital improvements and public  
3 services may not exceed the actual proportionate share  
4 of any benefit realized by such project relative to the  
5 benefit to the resident taxpayers.

6 Notwithstanding any other provision of this code to  
7 the contrary, those counties that meet the requirements  
8 of section six of this article are hereby authorized to

9 assess, levy, collect and administer any tax or fee as has  
10 been or may be specifically authorized by the Legisla-  
11 ture by general law to the municipalities of this state:  
12 *Provided*, That any assessment, levy or collection shall  
13 be delayed sixty days from its regular effective date:  
14 *Provided, however*, That in the event fifteen percent of  
15 the qualified voters of the county by petition duly signed  
16 by them in their own handwriting and filed with the  
17 county commission within forty-five days after any  
18 impact fee or levy is imposed by the county commission,  
19 pursuant to this article, the fee or levy protested may  
20 not become effective until it is ratified by a majority of  
21 the legal votes cast thereon by the qualified voters of  
22 such county at any primary, general or special election  
23 as the county commission directs. Voting thereon may  
24 not take place until after notice of the subcommission  
25 of the fee a levy on the ballot has been given by  
26 publication of Class II legal advertisement and publica-  
27 tion area shall be the county where such fee or levy is  
28 imposed: *Provided further*, That counties may not  
29 "double tax" by applying a given tax within any  
30 corporate boundary in which that municipality has  
31 implemented such tax. Any such taxes or fees collected  
32 under this law may be used to fund a proportionate  
33 share of the cost of existing capital improvements and  
34 public services where it is shown that all or a portion  
35 of existing capital improvements and public services  
36 were provided in anticipation of the needs of new  
37 development.

38 (b) In determining a proportionate share of capital  
39 improvements and public services costs, the following  
40 factors shall be considered:

41 (1) The need for new capital improvements and public  
42 services to serve new development based on an existing  
43 capital improvements plan that shows (A) any current  
44 deficiencies in existing capital improvements and  
45 services that serve existing development and the means  
46 by which any such deficiencies may be eliminated  
47 within a reasonable period of time by means other than  
48 impact fees or additional levies; and (B) any additional  
49 demands reasonably anticipated as the result of capital

50 improvements and public services created by new  
51 development;

52 (2) The availability of other sources of revenue to fund  
53 capital improvements and public services, including  
54 user charges, existing taxes, intergovernmental  
55 transfers, in addition to any special tax or assessment  
56 alternatives that may exist;

57 (3) The cost of existing capital improvements and  
58 public services;

59 (4) The method by which the existing capital improve-  
60 ments and public services are financed;

61 (5) The extent to which any new development, re-  
62 quired to pay impact fees, has contributed to the cost  
63 of existing capital improvements and public services in  
64 order to determine if any credit or offset may be due  
65 such development as a result thereof;

66 (6) The extent to which any new development, re-  
67 quired to pay impact fees, is reasonably projected to  
68 contribute to the cost of the existing capital improve-  
69 ments and public services in the future through user  
70 fees, debt service payments, or other necessary pay-  
71 ments related to funding the cost of existing capital  
72 improvements and public services;

73 (7) The extent to which any new development is  
74 required, as a condition of approval, to construct and  
75 dedicate capital improvements and public services  
76 which may give rise to the future accrual of any credit  
77 or offsetting contribution; and

78 (8) The time-price differentials inherent in reasonably  
79 determining amounts paid and benefits received at  
80 various times that may give rise to the accrual of credits  
81 or offsets due new development as a result of past  
82 payments.

83 (c) Each county shall assess impact fees pursuant to  
84 a standard formula so as to ensure fair and similar  
85 treatment to all affected persons or projects. A county  
86 commission may provide partial or total funding from  
87 general or other nonimpact fee funding sources for

88 capital improvements and public services directly  
89 related to new development, when such development  
90 benefits some public purpose, such as providing affor-  
91 dable housing and creating or retaining employment in  
92 the community.

**§7-20-8. Use and administration of impact fees.**

1 (a) Revenues collected from the payment of impact  
2 fees shall be restricted to funding new and additional  
3 capital improvements or expanded or extended public  
4 services which benefit the particular developments from  
5 which they were paid. Except as provided herein, to  
6 ensure that developments for which impact fees have  
7 been paid receive reasonable benefits relative to such  
8 payments, the use of such funds shall be restricted to  
9 areas wherein development projects are located. County  
10 commissions shall have discretion in determining  
11 geographical configurations related to the expenditure  
12 of impact fee collections.

13 (b) Impact fees may only be spent on those projects  
14 specified in the capital improvement plan described in  
15 this article.

16 (c) When impact fees are collected, the county com-  
17 mission shall enter into agreements with any affected  
18 party providing new development in order to ensure  
19 compliance with the provisions of this article.

20 (d) Impact fee receipts shall be specifically ear-  
21 marked and retained in a special account. All receipts  
22 shall be placed in interest-bearing accounts wherein the  
23 interest gained thereon shall accrue. All accumulated  
24 interest shall be published at least once each fiscal  
25 period. The county commission shall provide an annual  
26 accounting for each account containing impact fee  
27 receipts showing the particular source and amount of all  
28 such receipts collected, earned, or received, and the  
29 capital improvements and public services that were  
30 funded, in whole or in part, thereby.

31 (e) Impact fees shall be expended only in compliance  
32 with the plan. Impact fee receipts shall be expended  
33 within six years of receipt thereof unless extraordinary

34 and compelling reasons exist to retain them beyond this  
35 period. Such extraordinary or compelling reasons shall  
36 be identified and published by the county commission  
37 in a local newspaper of general circulation for at least  
38 two consecutive weeks.

**§7-20-9. Refund of unexpended impact fees.**

1 (a) The owner or purchaser of property for which  
2 impact fees have been paid may apply for a refund of  
3 any such paid fees. Such refund shall be made when a  
4 county commission fails to expend such funds within six  
5 years from the date such fees were originally collected.  
6 The county commission shall notify potential claimants  
7 by first class mail deposited in the United States mail  
8 and directed to the last known address of any such  
9 claimant. Only the owner or purchaser may apply for  
10 such refund. Application for any refund must be  
11 submitted to the county commission within one year of  
12 the date the right to claim the refund arises. All refunds  
13 due and unclaimed shall be retained in the special  
14 account and expended as required herein, except as  
15 provided in this section. The right to claim any refund  
16 may be limited by the provisions of section five in this  
17 article.

18 (b) When a county commission seeks to terminate any  
19 impact fee requirement, all unexpended funds shall be  
20 refunded to the owner or purchaser of the property from  
21 whom such fund was initially collected. Upon the  
22 finding that any or all fee requirements are to be  
23 terminated, the county commission shall place notice of  
24 such termination and the availability of refunds in a  
25 newspaper of general circulation one time a week for  
26 two consecutive weeks and shall also notify all known  
27 potential claimants by first class mail deposited with the  
28 United States postal service at their last known address.  
29 All funds available for refund shall be retained for a  
30 period of one year. At the end of one year, any  
31 remaining funds may be transferred to the general fund  
32 and used for any public purpose. A county commission  
33 is released from this notice requirement if there are no  
34 unexpended balances within an account or funds being  
35 terminated.

**§7-20-10. Impact fees required to be consistent with other development regulations.**

1 County commissions that require the payment of  
2 impact fees in providing capital improvements and  
3 public services shall incorporate such financial require-  
4 ments within a master land use plan in order that any  
5 new development or developments are not required to  
6 contribute more than their proportionate share of the  
7 cost of providing such capital improvements and public  
8 services.

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## CHAPTER 125

(Com. Sub. for H. B. 4399—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)

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[Passed February 27, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections nine, ten, thirteen, eighteen, nineteen, twenty and twenty-one, article twenty-two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the state lottery; permitting lottery games to use certain gaming themes; permitting security other than bonds to be provided for issuance of licenses; prohibiting lottery director from having any interest in dealing in a lottery; defining and allocating net profit as a residual amount in order to increase prize payouts and total revenues; permitting the legislative auditor to accept the annual audit of an independent certified public accountant to meet the yearly post audit requirement; and permitting official's names to be used in connection with lottery tickets, materials and advertisements.

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

That sections nine, ten, thirteen, eighteen, nineteen, twenty and twenty-one, article twenty-two, 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 22. STATE LOTTERY ACT.**

- §29-22-9. Initiation and operation of lottery; restrictions; prohibited themes, games, machines or devices; distinguishing numbers; winner selection; public drawings; witnessing of results; testing and inspection of equipment; price of tickets; claim for and payment of prizes; invalid, counterfeit tickets; estimated prizes and odds of winning; participant bound by lottery rules and validation procedures; security procedures; additional games; electronic and computer systems.
- §29-22-10. Licensed lottery sales agents; restrictions; annual license and fee; factors; application; bond; age; nonassignable license; organizations qualified; commissions; display of license; geographic distribution; monopoly prohibited; lottery retailers; preprinted instant type lottery tickets; fee; certificate of authority; security; bond.
- §29-22-13. Prohibited acts; conflict of interest; prohibited gifts and gratuities.
- §29-22-18. State lottery fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus; state lottery education fund; state lottery senior citizens fund; allocation and appropriation of net profits.
- §29-22-19. Post audit of accounts and transactions of office.
- §29-22-20. Monthly and annual reports.
- §29-22-21. Officials who may appear at lottery drawing.
- §29-22-9. Initiation and operation of lottery; restrictions; prohibited themes, games, machines or devices; distinguishing numbers; winner selection; public drawings; witnessing of results; testing and inspection of equipment; price of tickets; claim for and payment of prizes; invalid, counterfeit tickets; estimated prizes and odds of winning; participant bound by lottery rules and validation procedures; security procedures; additional games; electronic and computer systems.**
- 1 (a) The commission shall initiate operation of the state  
2 lottery on a continuous basis at the earliest feasible and  
3 practical time, first initiating operation of the pre-  
4 printed instant winner type lottery. The lottery shall be  
5 initiated and shall continue to be operated so as to  
6 produce the maximum amount of net revenues to benefit  
7 the public purpose described in this article consonant  
8 with the public good. Other state government depart-



9 ments, boards, commissions, agencies and their officers  
10 shall cooperate with the lottery commission so as to aid  
11 the lottery commission in fulfilling these objectives.

12 (b) The commission shall promulgate rules and  
13 regulations specifying the types of lottery games to be  
14 conducted by the lottery: *Provided, That:*

15 (1) No lottery may use the results of any amateur or  
16 professional sporting event, dog race or horse race to  
17 determine the winner.

18 (2) Electronic video lottery systems must include a  
19 central site system of monitoring the lottery terminals  
20 utilizing an on-line or dial-up inquiry.

21 (3) In a lottery utilizing a ticket, each ticket shall bear  
22 a unique number distinguishing it from each other  
23 ticket.

24 (4) No lottery utilizing a machine may use machines  
25 which dispense coins or currency.

26 (5) Selection of the winner must be predicted totally  
27 on chance.

28 (6) Any drawings or winner selections shall be held  
29 in public and witnessed by an independent accountant  
30 designated by the director for such purposes.

31 (7) All lottery equipment and materials shall be  
32 regularly inspected and tested, before and after any  
33 drawings or winner selections, by independent qualified  
34 technicians.

35 (8) The director shall establish the price for each  
36 lottery and determine the method of selecting winners  
37 and the manner of payment of prizes, including  
38 providing for payment by the purchase of annuities for  
39 prizes payable in installments.

40 (9) All claims for prizes shall be examined and no  
41 prize shall be paid as a result of altered, stolen or  
42 counterfeit tickets or materials, or which fail to meet  
43 validation rules or regulations established for a lottery.  
44 No prize shall be paid more than once, and, in the event  
45 of a binding determination by the commission that more

46 than one person is entitled to a particular prize, the sole  
47 remedy of the claimants shall be the award to each of  
48 them of an equal share in the single prize.

49 (10) A detailed tabulation of the estimated number of  
50 prizes of each particular prize denomination that are  
51 expected to be awarded in each lottery, or the estimated  
52 odds of winning such prizes shall be printed on any  
53 lottery ticket, where feasible, or in descriptive mate-  
54 rials, and shall be available at the offices of the  
55 commission.

56 (11) No prizes shall be paid which are invalid and not  
57 contemplated by the prize structure of the lottery  
58 involved.

59 (12) By purchasing a ticket or participation in a  
60 lottery, a participant agrees to abide by, and be bound  
61 by, the lottery rules which apply to the lottery or game  
62 play involved. An abbreviated form of such rules may  
63 appear on tickets and shall appear on descriptive  
64 materials and shall be available at the offices of the  
65 commission. A participant in a lottery agrees that the  
66 determination of whether the participant is a valid  
67 winner is subject to the lottery or game play rules and  
68 the winner validation tests established by the commis-  
69 sion. The determination of the winner by the commission  
70 shall be final and binding upon all participants in a  
71 lottery and shall not be subject to review or appeal.

72 (13) The commission shall institute such security  
73 procedures as it deems necessary to ensure the honesty  
74 and integrity of the winner selection process for each  
75 lottery. All such security and validation procedures and  
76 techniques shall be, and remain, confidential, and shall  
77 not be subject to any discovery procedure in any civil  
78 judicial, administrative or other proceeding, nor subject  
79 to the provisions of article one, chapter twenty-nine-b of  
80 the code of West Virginia, one thousand nine hundred  
81 thirty-one, as amended.

82 (c) The commission shall proceed with operation of  
83 such additional lottery games, including the implemen-  
84 tation of games utilizing a variety of existing or future  
85 technological advances at the earliest feasible date. The

86 commission may operate lottery games utilizing elec-  
87 tronic computers and electronic computer terminal  
88 devices and systems, which systems must include a  
89 central site system of monitoring the lottery terminals  
90 utilizing direct communication systems, or other  
91 technological advances and procedures, ensuring hon-  
92 esty and integrity in the operation of the lottery.

**§29-22-10. Licensed lottery sales agents; restrictions; annual license and fee; factors; application; bond; age; nonassignable license; organizations qualified; commissions; display of license; geographic distribution; monopoly prohibited; lottery retailers; preprinted instant type lottery tickets; fee; certificate of authority; security; bond.**

1 (a) The commission shall promulgate rules and  
2 regulations for the licensing of lottery sales agents for  
3 the sale and dispensing of lottery tickets, materials and  
4 lottery games, and the operations of electronic computer  
5 terminals therefor, subject to the following:

6 (1) The commission shall issue its annual license to  
7 such lottery sales agents for each lottery outlet and for  
8 such fee as is established by the commission to cover its  
9 costs thereof, but not to exceed one thousand dollars.  
10 Application for licensing as a lottery sales agent shall  
11 be on forms to be prescribed and furnished by the  
12 director.

13 (2) No licensee may engage in business exclusively as  
14 a lottery sales agent.

15 (3) The commission shall ensure geographic distribu-  
16 tion of lottery sales agents throughout the state.

17 (4) Before issuance of a license to an applicant, the  
18 commission shall consider factors such as the financial  
19 responsibility, security, background, accessibility of the  
20 place of business or activity to the public, public  
21 convenience and the volume of expected sales.

22 (5) No person under the age of twenty-one may be  
23 licensed as an agent. No licensed agent shall employ any  
24 person under the age of eighteen for sales or dispensing

25 of lottery tickets or materials or operation of a lottery  
26 terminal.

27 (6) A license is valid only for the premises stated  
28 thereon.

29 (7) The director may issue a temporary license when  
30 deemed necessary.

31 (8) A license is not assignable or transferable.

32 (9) Before a license is issued, an agent shall be bonded  
33 for an amount and in the form and manner to be  
34 determined by the director, or shall provide such other  
35 security, in an amount, form and manner determined by  
36 the director, as will ensure the performance of the  
37 agent's duties and responsibilities as a licensed lottery  
38 agent or the indemnification of the commission.

39 (10) The commission may issue licenses to any legit-  
40 imate business, organization, person or entity, including,  
41 but not limited to, civic or fraternal organizations; parks  
42 and recreation commissions or similar authorities;  
43 senior citizen centers, state owned stores, persons  
44 lawfully engaged in nongovernmental business on state  
45 property, persons lawfully engaged in the sale of  
46 alcoholic beverages; political subdivisions or their  
47 agencies or departments, state agencies, commission  
48 operated agencies; persons licensed under the provisions  
49 of article twenty-three, chapter nineteen of this code,  
50 and religious, charitable or seasonal businesses.

51 (11) Licensed lottery sales agents shall receive five  
52 percent of gross sales as commission for the perfor-  
53 mance of their duties. In addition, the commission may  
54 promulgate a bonus-incentive plan as additional com-  
55 pensation not to exceed one percent of annual gross  
56 sales. The method and time of payment shall be  
57 determined by the commission.

58 (12) Licensed lottery sales agents shall prominently  
59 display the license on the premises where lottery sales  
60 are made.

61 (13) No person or entity or subsidiary, agent or  
62 subcontractor thereof shall receive or hold more than

63 twenty-five percent of the licenses to act as licensed  
64 lottery sales agent in any one county or municipality nor  
65 more than five percent of the licenses issued throughout  
66 this state: *Provided*, That the limitations of twenty-five  
67 percent and five percent in this subdivision shall not  
68 apply if it is determined by the commission that there  
69 are not a sufficient number of qualified applicants for  
70 licenses to comply with these requirements.

71 (b) The commission shall promulgate rules and  
72 regulations specifying the terms and conditions for  
73 contracting with lottery retailers for sale of preprinted  
74 instant type lottery tickets and may provide for the  
75 dispensing of such tickets through machines and  
76 devices. Tickets may be sold or dispensed in any public  
77 or private store, operation or organization, without  
78 limitation. The commission may establish an annual fee  
79 not to exceed fifty dollars for such persons, per location  
80 or site, and shall issue a certificate of authority to act  
81 as a lottery retailer to such persons. The commission  
82 shall establish procedures to ensure the security, honesty  
83 and integrity of the lottery and distribution system. The  
84 commission shall establish the method of payment,  
85 commission structure, methods of payment of winners,  
86 including payment in merchandise and tickets, and may  
87 require prepayment by lottery retailers, require bond or  
88 security for payment and require deposit of receipts in  
89 accounts established therefor. Retailers shall promi-  
90 nently display the certificate of authority issued by the  
91 commission on the premises where lottery sales are  
92 made.

**§29-22-13. Prohibited acts; conflict of interest; prohibited gifts and gratuities.**

1 (1) The commissioners, the director, the deputy  
2 directors and the employees of the lottery may not,  
3 directly or indirectly, individually, or as a member of  
4 a partnership or as a shareholder of a corporation have  
5 an interest in dealing in a lottery.

6 (2) A member of the commission, the director, and an  
7 employee of the lottery or a member of their immediate  
8 families may not ask for, offer to accept, or receive any

9 gift, gratuity or other thing of value from any person,  
10 corporation, association or firm contracting or seeking  
11 to contract with the state to supply gaming equipment  
12 or materials for use in the operation of a lottery or from  
13 an applicant for a license to sell tickets in the lottery  
14 or from a licensee.

15 (3) A person, corporation, association or firm con-  
16 tracting or seeking to contract with the state to supply  
17 gaming equipment or materials for use in the operation  
18 of a lottery, an applicant for a license to sell tickets in  
19 the lottery or a licensee may not offer a member of the  
20 commission, an employee of the lottery, or a member of  
21 their immediate families any gift, gratuity or other  
22 thing of value.

**§29-22-18. State lottery fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus; state lottery education fund; state lottery senior citizens fund; allocation and appropriation of net profits.**

1 (a) There is hereby created a special fund in the state  
2 treasury which shall be designated and known as the  
3 "state lottery fund." The fund shall consist of all  
4 appropriations to the fund and all interest earned from  
5 investment of the fund, and any gifts, grants or  
6 contributions received by the fund. All revenues  
7 received from the sale of lottery tickets, materials and  
8 games shall be deposited with the state treasurer and  
9 placed into the "state lottery fund." The revenue shall  
10 be disbursed in the manner herein provided for the  
11 purposes stated herein and shall not be treated by the  
12 auditor and treasurer as part of the general revenue of  
13 the state.

14 (b) No appropriation, loan or other transfer of state  
15 funds shall be made to the commission or lottery fund  
16 after the initial appropriation.

17 (c) A minimum annual average of forty-five percent  
18 of the gross amount received from each lottery shall be  
19 allocated and disbursed as prizes.

20 (d) Not more than fifteen percent of the gross amount  
21 received from each lottery shall be allocated to and may  
22 be disbursed as necessary for fund operation and  
23 administration expenses.

24 (e) The excess of the aggregate of the gross amount  
25 received from all lotteries over the sum of the amounts  
26 allocated by subsections (c) and (d) shall be allocated as  
27 net profit. The director is authorized to expend the  
28 necessary percentage of the amount allocated as net  
29 profit, not to exceed six percent of the gross amount  
30 received, for the purposes of entering into contractual  
31 arrangements for the acquisition, financing, lease and  
32 lease-purchase, and other financing transactions, of  
33 lottery goods and services, including tickets, equipment,  
34 machinery, electronic computer systems and terminals,  
35 and supplies and maintenance therefor, for the first  
36 thirty-six months of operation, and may apportion the  
37 costs, expenses and expenditures related thereto among  
38 the commission, vendor or vendors and licensed lottery  
39 sales agents. In the event that the percentage allotted  
40 for operations and administration generates a surplus,  
41 the surplus will be allowed to accumulate to an amount  
42 not to exceed two hundred fifty thousand dollars. On a  
43 monthly basis the director shall report to the joint  
44 committee on government and finance of the Legislature  
45 any surplus in excess of two hundred fifty thousand  
46 dollars and remit to the state treasurer the entire  
47 amount of those surplus funds in excess of two hundred  
48 fifty thousand dollars which shall be allocated as net  
49 profit.

50 (f) Annually, the Legislature shall appropriate all of  
51 the amounts allocated as net profits above, in such  
52 proportions as it deems beneficial to the citizens of this  
53 state, to (1) the lottery education fund created in  
54 subsection (g) of this section, (2) the lottery senior  
55 citizens fund created in subsection (h) of this section,  
56 and (3) the commerce division created in article one,  
57 chapter five-b of this code, in accordance with subsec-  
58 tion (i) of this section.

59 (g) There is hereby created a special fund in the state  
60 treasury which shall be designated and known as the  
61 "lottery education fund." The fund shall consist of the  
62 amounts allocated pursuant to subsection (f) of this  
63 section, which amounts shall be deposited into the  
64 lottery education fund by the state treasurer. The lottery  
65 education fund shall also consist of all interest earned  
66 from investment of the lottery education fund, and any  
67 other appropriations, gifts, grants, contributions or  
68 moneys received by the lottery education fund from any  
69 source. The revenues received or earned by the lottery  
70 education fund shall be disbursed in the manner  
71 provided below and shall not be treated by the auditor  
72 and treasurer as part of the general revenue of the state.  
73 Annually, the Legislature shall appropriate the re-  
74 venues received or earned by the lottery education fund  
75 to the state system of public and higher education for  
76 such educational programs as it considers beneficial to  
77 the citizens of this state.

78 (h) There is hereby created a special fund in the state  
79 treasury which shall be designated and known as the  
80 "lottery senior citizens fund." The fund shall consist of  
81 the amounts allocated pursuant to subsection (f) of this  
82 section, which amounts shall be deposited into the  
83 lottery senior citizens fund by the state treasurer. The  
84 lottery senior citizens fund shall also consist of all  
85 interest earned from investment of the lottery senior  
86 citizens fund, and any other appropriations, gifts,  
87 grants, contributions or moneys received by the lottery  
88 senior citizens fund from any source. The revenues  
89 received or earned by the lottery senior citizens fund  
90 shall be disbursed in the manner provided below and  
91 shall not be treated by the auditor or treasurer as part  
92 of the general revenue of the state. Annually, the  
93 Legislature shall appropriate the revenues received or  
94 earned by the lottery senior citizens fund to such senior  
95 citizens medical care and other programs as it considers  
96 beneficial to the citizens of this state.

97 (i) The commerce division may use the amounts  
98 allocated to it pursuant to subsection (f) of this section  
99 for one or more of the following purposes: (1) The



100 payment of any or all of the costs incurred in the  
101 development, construction, reconstruction, maintenance  
102 or repair of any project or recreational facility, as such  
103 terms are defined in section thirteen-a, article one,  
104 chapter five-b of this code, pursuant to the authority  
105 granted to it under article one, chapter five-b of this  
106 code, (2) the payment, funding or refunding of the  
107 principal of, interest on, or redemption premiums on  
108 any bonds, security interests or notes issued by the parks  
109 and recreation section of the commerce division under  
110 article one, chapter five-b of this code, or (3) the  
111 payment of any advertising and marketing expenses for  
112 the promotion and development of tourism or any tourist  
113 facility or attraction in this state.

**§29-22-19. Post audit of accounts and transactions of office.**

1 The legislative auditor shall conduct a yearly post  
2 audit of all accounts and transactions of the state lottery  
3 office. The cost of the audit shall be paid out of the state  
4 lottery fund moneys designated for payment of operat-  
5 ing expenses. The commission shall have an annual  
6 audit performed by an independent certified public  
7 accountant, and such audit may be accepted by the  
8 legislative auditor in lieu of performance of its yearly  
9 post audit.

**§29-22-20. Monthly and annual reports.**

1 (a) The director shall, upon the twentieth day of each  
2 month, provide the joint committee on government and  
3 finance of the Legislature with a report reviewing the  
4 lottery operations, including, but not limited to, the  
5 amount of gross sales, the amount of net profit, the types  
6 of games being played, the number of licensed sales  
7 agents, the names and amounts of winners and any other  
8 information requested by the Legislature or by the joint  
9 committee on government and finance.

10 (b) The director shall, no later than the tenth day of  
11 each regular session of the Legislature, provide to the  
12 Legislature, legislative auditor, governor and state  
13 treasurer an annual report focused upon subjects of  
14 interest concerning lottery operations, including, but not

15 limited to, an annual financial analysis of the lottery  
 16 operations, a discussion of the types of games played and  
 17 revenues generated, a statement of expenditures for the  
 18 last fiscal year, a summary of the benefit programs and  
 19 recommendations to the Legislature.

**§29-22-21. Officials who may appear at lottery drawing.**

1 No elected or appointed official, other than the  
 2 members of the lottery commission, the director or  
 3 deputy directors, may preside or appear at any lottery  
 4 drawing.

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## CHAPTER 126

(Com. Sub. for H. B. 4102—By Delegates Pettit and Murensky)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eleven, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing the requirement that a duly licensed physician treating a person subject to a competency hearing be licensed in West Virginia and providing that no person may be adjudged incompetent upon a mere written certification of incompetency if the person is denied the opportunity to cross-examine the physician making such certification.

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

That section one, article eleven, 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 11. COMMITTEE; DISPOSITION OF PROPERTY.**

**§27-11-1. Appointment of committees; hearing; appointment of guardian ad litem; certification of incompetency; appeal; habeas corpus.**

1 (a) The county commission of a person's residence  
 2 may appoint a committee for a person found to be  
 3 incompetent. Any finding of incompetency under this

4 article shall be made separately and at a different  
5 proceeding from any finding of mental illness, mental  
6 retardation or addiction under article four or five of this  
7 chapter.

8 (b) Proceedings for the appointment of a committee  
9 for an alleged incompetent may be commenced by the  
10 filing of a verified petition of a person setting forth the  
11 facts showing the incompetency of an individual with  
12 the county commission. Upon receipt of a petition, the  
13 clerk of the county commission shall give notice of the  
14 hearing thereon to the individual and to the individual's  
15 spouse, or if the individual does not have a spouse, to  
16 the individual's adult next of kin: *Provided*, That the  
17 aforesaid clerk is not required to give notice of the  
18 hearing to the spouse or adult next of kin if he or she  
19 is the petitioner: *Provided, however*, That the individual  
20 shall be served with notice of the hearing by delivering  
21 to him or her, in person, written notice with a true copy  
22 of the verified petition. The notice shall be served upon  
23 the individual alleged to be incompetent at least ten  
24 days before the time of the hearing.

25 An individual alleged to be incompetent shall be  
26 accorded the right to subpoena witnesses, to be con-  
27 fronted with witnesses and the right to cross-examine  
28 witnesses which may be offered against him or her, and  
29 the county commission on or before the commencement  
30 of the hearing shall appoint a competent attorney  
31 practicing before the bar of the circuit court of the  
32 county wherein the hearing is to be held as guardian ad  
33 litem for the purpose of representing the interest of the  
34 individual throughout the proceedings under this  
35 section. Notwithstanding any requirement hereof to the  
36 contrary, the hearing may proceed without the presence  
37 of the individual alleged to be incompetent if (1) proper  
38 notice has been served upon the individual alleged to be  
39 incompetent as required herein, and (2) a duly licensed  
40 physician certifies in writing and upon affidavit that he  
41 or she has examined the individual and that the  
42 individual is physically unable to appear at the hearing  
43 or that an appearance would likely impair or endanger  
44 the health of the individual, or (3) the individual refuses

45 to appear, and (4) upon the specific written findings by  
46 the commission of facts as will justify a hearing without  
47 the presence of the individual as provided in this  
48 subsection.

49 (c) A record shall be made of all proceedings either  
50 by the court reporter for the circuit court of that county  
51 or some other person employed by the county commis-  
52 sion for the purpose. A transcript shall be made  
53 available to the individual or his or her counsel within  
54 thirty days if requested for purposes of appeal. In any  
55 case wherein an indigent person whose incompetency is  
56 alleged pursuant to the provisions of this section seeks  
57 an appeal, the circuit court shall by order entered of  
58 record authorize and direct the person making the  
59 record of the proceeding to furnish a transcript of the  
60 hearing, and the cost shall be paid by the county  
61 commission from funds appropriated for this purpose.

62 (d) Upon completion of the hearing and upon the  
63 evidence presented therein, the county commission may  
64 find that (1) the individual is unable to manage his or  
65 her business affairs, or (2) the individual is unable to  
66 care for his or her physical well-being, or (3) both, and  
67 is therefore incompetent, or (4) that the individual is  
68 competent. Evidence of mere poor judgment or of  
69 different life style shall not be competent evidence upon  
70 which to base a finding of incompetency.

71 "Unable to manage one's business affairs" means the  
72 inability to know and appreciate the nature and effect  
73 of his or her business transactions, notwithstanding the  
74 fact that he or she may display poor judgment.

75 "Unable to care for one's physical well-being" means  
76 the substantial risk of physical harm to himself or  
77 herself as evidenced by conduct demonstrating that he  
78 or she is dangerous to himself or herself, notwithstand-  
79 ing the fact that he or she may display poor judgment.

80 (e) If the county commission finds the person to be  
81 competent, the proceedings shall be dismissed. No  
82 appointment of a committee shall be made on evidence  
83 which is uncorroborated by the testimony of a medical  
84 expert or by a certified statement upon affidavit as

85 hereinafter provided. If the individual refuses to submit  
86 to an examination by a physician, the circuit court may  
87 upon petition issue a rule against the individual to show  
88 cause why the individual should not submit to an  
89 examination. A copy of the petition shall accompany  
90 service of the rule and such rule shall be returnable at  
91 a time to be fixed by the court. Any physician duly  
92 licensed to practice medicine in this state or any state  
93 contiguous to this state who is currently treating the  
94 individual alleged to be incompetent may file with the  
95 county commission his or her certified statement upon  
96 affidavit stating that he or she is currently treating the  
97 individual and setting forth his or her opinion of the  
98 individual's ability to manage his or her business affairs  
99 and care for his or her physical well-being, and stating  
100 in detail the grounds for the opinion. The statement may  
101 be considered by the county commission as evidence in  
102 the case: *Provided*, That the circuit court upon the  
103 petition of the attorney or guardian ad litem for the  
104 alleged incompetent shall issue a subpoena for the  
105 treating physician to appear as a witness at the  
106 proceeding: *Provided, however*, That a certified state-  
107 ment upon affidavit is not admissible as evidence of  
108 incompetency under this section where

109 (1) The guardian ad litem or attorney for the individ-  
110 ual makes a timely request of the commission for the  
111 opportunity to cross-examine the treating physician who  
112 filed the certified statement upon affidavit; and

113 (2) The commission requests such treating physician  
114 to appear for cross-examination; and

115 (3) Such treating physician fails to appear and answer  
116 questions under cross-examination.

117 (f) The extent of the committee's authority shall be  
118 specified in the order of the county commission. No  
119 authority of a committee shall extend beyond what is  
120 necessary for the protection of the individual. A finding  
121 of inability to care for one's physical well-being shall  
122 entitle the committee to custody of the individual, except  
123 when the individual is under a commitment order to a

124 mental health facility, but only to the extent as is  
125 necessary for the protection of the individual.

126 (g) An individual found incompetent pursuant to  
127 subsection (d) of this section shall have the right to an  
128 appeal and hearing thereon in the circuit court of the  
129 county. The judge shall hear the matter on appeal as  
130 provided in article three, chapter fifty-eight of this code  
131 or order a hearing de novo on the matter.

132 (h) The individual or any person may apply to the  
133 county commission in the manner provided by subsec-  
134 tion (b) of this section for termination of his or her  
135 committee at any time and appeal from a determination  
136 thereon in the manner provided by this section, or in the  
137 alternative, the individual may seek such termination by  
138 habeas corpus.

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## CHAPTER 127

(Com. Sub. for H. B. 4602—By Mr. Speaker, Mr. Chambers,  
and Delegate Houvouras)

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[Passed March 10, 1990; in effect May 1, 1990. Approved by the Governor.]

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AN ACT to amend and reenact section four, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article ten of said chapter, all relating to the certification of title tax and the registration fee for certain classes of vehicles; exempting certain classes of vehicles over fifty-five thousand pounds from the certification of title tax; and providing a new registration fee for vehicles over fifty-five thousand pounds.

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

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

**Article**

3. **Original and Renewal of registration; Issuance of Certificates of Title.**
10. **Fees for Registration, Licensing, Etc.**

**ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION;  
ISSUANCE OF CERTIFICATES OF TITLE.****§17A-3-4. 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, shall not be issued or furnished by the  
4 division of motor vehicles or any other officer charged  
5 with the duty, unless the applicant therefor already has  
6 received, or at the same time makes application for and  
7 is granted, an official certificate of title of the vehicle.  
8 The application shall be upon a blank form to be  
9 furnished by the division of motor vehicles and shall  
10 contain a full description of the vehicle, which descrip-  
11 tion shall contain a manufacturer's serial or identifica-  
12 tion number or other number as determined by the  
13 commissioner and any distinguishing marks, together  
14 with a statement of the applicant's title and of any liens  
15 or encumbrances upon the vehicle, the names and  
16 addresses of the holders of the liens and any other  
17 information as the division of motor vehicles may  
18 require. The application shall be signed and sworn to  
19 by the applicant.

20 (b) A tax is hereby imposed upon the privilege of  
21 effecting the certification of title of each vehicle in the  
22 amount equal to five percent of the value of said motor  
23 vehicle at the time of such certification. If the vehicle  
24 is new, the actual purchase price or consideration to the  
25 purchaser thereof is the value of the vehicle; if the  
26 vehicle is a used or secondhand vehicle, the present  
27 market value at time of transfer or purchase is the value  
28 thereof for the purposes of this section: *Provided*, That  
29 so much of the purchase price or consideration as is  
30 represented by the exchange of other vehicles on which  
31 the tax herein imposed has been paid by the purchaser  
32 shall be deducted from the total actual price or

33 consideration paid for the vehicle, whether the same 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. No certificate of  
39 title for any vehicle shall be issued to any applicant  
40 unless the applicant has paid to the division of motor  
41 vehicles the tax imposed by this section which is five  
42 percent of the true and actual value of said vehicle  
43 whether the vehicle is acquired through purchase, by  
44 gift or by any other manner whatsoever except gifts  
45 between husband and wife or between parents and  
46 children: *Provided, however,* That the husband or wife,  
47 or the parents or children previously have paid the tax  
48 on the vehicles so transferred to the state of West  
49 Virginia: *Provided further,* That the division of motor  
50 vehicles may issue a certificate of registration and title  
51 to an applicant if the applicant provides sufficient proof  
52 to the division of motor vehicles that the applicant has  
53 paid the taxes and fees required by this section to a  
54 motor vehicle dealership that has filed bankruptcy  
55 proceedings in the United States bankruptcy court and  
56 the taxes and fees so required to be paid by the  
57 applicant have been impounded due to the bankruptcy  
58 proceedings: *And provided further,* That the applicant  
59 makes an affidavit of the same and assigns all rights to  
60 claims for money the applicant may have against the  
61 motor vehicle dealership to the division of motor  
62 vehicles.

63 The tax imposed by this section does not apply to  
64 vehicles to be registered as Class H vehicles, or Class  
65 S vehicles, as defined in section one, article ten of this  
66 chapter, which are used or to be used in interstate  
67 commerce. Nor does the tax imposed by this section  
68 apply to the titling of Class B, Class K or Class E  
69 vehicles registered at a gross weight of fifty-five  
70 thousand pounds or more, or to the titling of Class C or  
71 Class L semitrailers, full trailers, pole trailers, and  
72 converter gear: *Provided,* That, if an owner of a vehicle  
73 has previously titled the vehicle at a declared gross  
74 weight of fifty-five thousand pounds or more and title



75 was issued without the payment of the tax imposed by  
76 this section, then before the owner may obtain registra-  
77 tion for the vehicle at a gross weight less than fifty-five  
78 thousand pounds, the owner must surrender to the  
79 commissioner the exempted registration, the exempted  
80 certificate of title, and pay the tax imposed by this  
81 section based upon the current market value of the  
82 vehicle: *Provided, however,* That notwithstanding the  
83 provisions of section nine, article fifteen, chapter eleven  
84 of this code, the exemption from tax under this section  
85 for Class B, Class K or Class E vehicles in excess of fifty-  
86 five thousand pounds and Class C or Class L semitrail-  
87 ers, full trailers, pole trailers and converter gear shall  
88 not subject the sale or purchase of said vehicles to the  
89 consumers sales tax. The tax imposed by this section  
90 does not apply to titling of vehicles by a registered  
91 dealer of this state for resale only, nor does the tax  
92 imposed by this section apply to titling of vehicles by  
93 this state or any political subdivision thereof, or by any  
94 volunteer fire department or duly chartered rescue or  
95 ambulance squad organized and incorporated under the  
96 laws of the state of West Virginia as a nonprofit  
97 corporation for protection of life or property. The total  
98 amount of revenue collected by reason of this tax shall  
99 be paid into the state road fund and expended by the  
100 commissioner of highways for matching federal funds  
101 allocated for West Virginia. In addition to the tax, there  
102 shall be a charge of five dollars for each original  
103 certificate of title or duplicate certificate of title so  
104 issued: *Provided further,* That this state or any political  
105 subdivision thereof, or any volunteer fire department, or  
106 duly chartered rescue squad, is exempt from payment  
107 of such charge.

108 Such certificate is good for the life of the vehicle, so  
109 long as the same is owned or held by the original holder  
110 of such certificate, and need not be renewed annually,  
111 or any other time, except as herein provided.

112 If, by will or direct inheritance, a person becomes the  
113 owner of a motor vehicle and the tax herein imposed  
114 previously has been paid, to the division of motor

115 vehicles, on that vehicle, he or she is not required to pay  
116 such tax.

117 A person who has paid the tax imposed by this section  
118 is not required to pay the tax a second time for the same  
119 motor vehicle, but is required to pay a charge of five  
120 dollars for the certificate of retitling of that motor vehicle,  
121 except that the tax shall be paid by the person when the  
122 title to the vehicle has been transferred either in this  
123 or another state from such person to another person and  
124 transferred back to such person.

125 (c) Notwithstanding any provisions of this code to the  
126 contrary, the owners of trailers, semitrailers, recrea-  
127 tional vehicles and other vehicles not subject to the  
128 certificate of title tax prior to the enactment of this  
129 chapter are subject to the privilege tax imposed by this  
130 section: *Provided*, That the certification of title of any  
131 recreational vehicle owned by the applicant on the  
132 thirtieth day of June, one thousand nine hundred eighty-  
133 nine, is not subject to the tax imposed by this section:  
134 *Provided, however*, That mobile homes, house trailers,  
135 modular homes and similar nonmotive propelled vehi-  
136 cles, except recreational vehicles, susceptible of being  
137 moved upon the highways but primarily designed for  
138 habitation and occupancy, rather than for transporting  
139 persons or property, or any vehicle operated on a  
140 nonprofit basis and used exclusively for the transporta-  
141 tion of mentally retarded or physically handicapped  
142 children when the application for certificate of registra-  
143 tion for such vehicle is accompanied by an affidavit  
144 stating that such vehicle will be operated on a nonprofit  
145 basis and used exclusively for the transportation of  
146 mentally retarded and physically handicapped children,  
147 are not subject to the tax imposed by this section, but  
148 are taxable under the provisions of articles fifteen and  
149 fifteen-a, chapter eleven of this code.

150 (d) Any person making any affidavit required under  
151 any provision of this section, who knowingly swears  
152 falsely, or any person who counsels, advises, aids or  
153 abets another in the commission of false swearing, is on  
154 the first offense guilty of a misdemeanor, and, upon  
155 conviction thereof, shall be fined not more than five

156 hundred dollars or be imprisoned in the county jail for  
157 a period not to exceed six months, or, in the discretion  
158 of the court, both fined and imprisoned. For a second  
159 or any subsequent conviction within five years any such  
160 person is guilty of a felony, and, upon conviction thereof,  
161 shall be fined not more than five thousand dollars or be  
162 imprisoned in the penitentiary for not less than one year  
163 nor more than five years or, in the discretion of the  
164 court, fined and imprisoned.

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-3. Registration fees for vehicles equipped with  
pneumatic tires.

1 The following registration fees for the classes indi-  
2 cated shall be paid annually to the division for the  
3 registration of vehicles subject to registration hereunder  
4 when equipped with pneumatic tires:

5 Class A. The registration fee for all motor vehicles of  
6 this class is as follows:

7 (1) For motor vehicles of a weight of three thousand  
8 pounds or less—twenty-five dollars.

9 (2) For motor vehicles of a weight of three thousand  
10 and one pounds to four thousand pounds—thirty dollars.

11 (3) For motor vehicles of a weight in excess of four  
12 thousand pounds—thirty-six dollars.

13 (4) For motor vehicles designed as trucks with  
14 declared gross weights of four thousand pounds or less—  
15 twenty-five dollars.

16 (5) For motor vehicles designed as trucks with  
17 declared gross weights of four thousand and one pounds  
18 to eight thousand pounds—thirty dollars.

19 For the purpose of determining the weight, the actual  
20 weight of the vehicle shall be taken: *Provided*, That for  
21 vehicles owned by churches, or by trustees for churches,  
22 which vehicles are regularly used for transporting  
23 parishioners to and from church services, no license fee  
24 shall be charged, but notwithstanding such exemption,  
25 the certificate of registration and license plates shall be

26 obtained the same as other cards and plates under this  
27 article.

28 Class B, Class E and Class K. The registration fee for  
29 all motor vehicles of these three classes is as follows:

30 (1) For declared gross weights of eight thousand and  
31 one pounds to sixteen thousand pounds—twenty-eight  
32 dollars plus five dollars for each one thousand pounds  
33 or fraction thereof that the gross weight of such vehicle  
34 or combination of vehicles exceeds eight thousand  
35 pounds.

36 (2) For declared gross weights greater than sixteen  
37 thousand pounds, but less than fifty-five thousand  
38 pounds—seventy-eight dollars and fifty cents plus ten  
39 dollars for each one thousand pounds or fraction thereof  
40 that the gross weight of such vehicle or combination of  
41 vehicles exceeds sixteen thousand pounds.

42 (3) For declared gross weights of fifty-five thousand  
43 pounds or more—seven hundred thirty-seven dollars and  
44 fifty cents plus fifteen dollars and seventy-five cents for  
45 each one thousand pounds or fraction thereof that the  
46 gross weight of such vehicle or combination of vehicles  
47 exceeds fifty-five thousand pounds.

48 Class C and Class L. The registration fee for all  
49 vehicles of these two classes is seventeen dollars and  
50 fifty cents except that semitrailers, full trailers, pole  
51 trailers, and converter gear registered as Class C and  
52 Class L may be registered for a period of ten years at  
53 a fee of one hundred dollars.

54 Class G. The registration fee for each motorcycle is  
55 eight dollars.

56 Class H. The registration fee for all vehicles for this  
57 class operating entirely within the state is five dollars;  
58 and for vehicles engaged in interstate transportation of  
59 persons, the registration fee is the amount of the fees  
60 provided by this section for Class B, Class E and Class  
61 K reduced by the amount that the mileage of such  
62 vehicles operated in states other than West Virginia  
63 bears to the total mileage operated by such vehicles in  
64 all states under a formula to be established by the  
65 division of motor vehicles.

66 Class J. The registration fee for all motor vehicles of  
67 this class is eighty-five dollars. Ambulances and hearses  
68 used exclusively as such are exempt from the above  
69 special fees.

70 Class R. The registration fee for all vehicles of this  
71 class is twelve dollars.

72 Class S. The registration fee for all vehicles of this  
73 class is seventeen dollars and fifty cents.

74 Class T. The registration fee for all vehicles of this  
75 class is eight dollars.

76 Class U. The registration fee for all vehicles of this  
77 class is fifty-seven dollars and fifty cents.

78 Class Farm Truck. The registration fee for all motor  
79 vehicles of this class is as follows: (1) For farm trucks  
80 of declared gross weights of eight thousand and one  
81 pounds to sixteen thousand pounds—thirty dollars; (2)  
82 for farm trucks of declared gross weights of sixteen  
83 thousand and one pounds to twenty-two thousand  
84 pounds—sixty dollars; (3) for farm trucks of declared  
85 gross weights of twenty-two thousand and one pounds  
86 to twenty-eight thousand pounds—ninety dollars; (4) for  
87 farm trucks of declared gross weights of twenty-eight  
88 thousand and one pounds to thirty-four thousand  
89 pounds—one hundred fifteen dollars; (5) for farm trucks  
90 of declared gross weights of thirty-four thousand and  
91 one pounds to forty-four thousand pounds—one hundred  
92 sixty dollars; (6) for farm trucks of declared gross  
93 weights of forty-four thousand and one pounds to fifty-  
94 four thousand pounds—two hundred five dollars; and (7)  
95 for farm trucks of declared gross weights of fifty-four  
96 thousand and one pounds to sixty-four thousand  
97 pounds—two hundred fifty dollars.

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## CHAPTER 128

(Com. Sub. for H. B. 4458—By Delegates Seacrist and Anderson)

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[Passed March 9, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section fourteen, article three,  
chapter seventeen-a of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, relating to registration plates for motor vehicles; authorizing special registration plates for members of United States Armed Forces Reserve Units, veterans, survivors of the attack on Pearl Harbor, certified paramedics, and emergency medical technicians; vehicles of the survivors of the attack on Pearl Harbor are exempt from payment of registration fees; special fees to be charged to veterans, certified paramedics, and emergency medical technicians.

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

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

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

**§17A-3-14. Registration plates generally.**

1 The division upon registering a vehicle shall issue to  
2 the owner one registration plate for a motorcycle,  
3 trailer, semitrailer or other motor vehicle.

4 Every registration plate shall be of reflectorized  
5 material and have displayed upon it the registration  
6 number assigned to the vehicle for which it is issued,  
7 also the name of this state, which may be abbreviated,  
8 and the year number for which it is issued or the date  
9 of expiration thereof.

10 Such registration plate and the required letters and  
11 numerals thereon, except the year number for which  
12 issued or the date of expiration, shall be of sufficient size  
13 to be plainly readable from a distance of one hundred  
14 feet during daylight, said registration numbering to  
15 begin with number two.

16 The division shall not issue, permit to be issued, or  
17 distribute any special numbers except as follows:

18 (a) The governor shall be issued registration plates, on  
19 one of which shall be imprinted the numeral one and  
20 on the other the word one.

21 (b) Upon appropriate application, there shall be

22 issued to the secretary of state, state superintendent of  
23 free schools, auditor, treasurer, commissioner of agricul-  
24 ture, and the attorney general, the members of both  
25 houses of the Legislature, including the elected officials  
26 thereof, the justices of the supreme court of appeals of  
27 West Virginia, the representatives and senators of the  
28 state in the Congress of the United States, the judges  
29 of the United States district courts for the state of West  
30 Virginia and the judges of the United States court of  
31 appeals for the fourth circuit, if any of said judges shall  
32 be residents of West Virginia, a special registration  
33 plate for a motor vehicle owned by said official or  
34 spouse, but not to exceed two plates for each such  
35 official, which plate shall bear any combination of  
36 letters not to exceed an amount determined by the  
37 commissioner, and with a designation of the office and  
38 which plate shall supersede, during his term of office  
39 and while such motor vehicle is owned by said official  
40 or spouse, the regular numbered plate assigned to him.

41 (c) Upon receipt of an application on a form pres-  
42 cribed by the division and receipt of written evidence  
43 from the chief executive officer of the army national  
44 guard or air national guard, as appropriate, or the  
45 commanding officer of any United States Armed Forces  
46 Reserve Unit that the applicant is a member thereof, the  
47 division shall issue to any member of the national guard  
48 of this state or a member of any reserve unit of the  
49 United States Armed Forces a special registration plate  
50 designed by the commissioner for a motor vehicle owned  
51 by the member or the member's spouse, but not to  
52 exceed one plate for each such member.

53 (d) Upon appropriate application, any owner of a  
54 motor vehicle subject to Class A registration, or the  
55 owner of a motorcycle subject to Class G registration,  
56 under the provisions of this article, may request that the  
57 division issue a registration plate bearing specially  
58 arranged letters or numbers with the maximum  
59 number of letters or numbers to be determined by the  
60 commissioner. The division shall attempt to comply with  
61 such request wherever possible and shall promulgate  
62 appropriate rules and regulations for the orderly

63 distribution of such plates: *Provided*, That for purposes  
64 of this subdivision, such registration plates so requested  
65 and issued shall include all plates bearing the numbers  
66 two through two thousand and shall be subject to the  
67 provisions of subdivision (k) of this section.

68 (e) Upon appropriate application, there shall be  
69 issued to any honorably discharged veteran, of any  
70 branch of the armed services of the United States, a  
71 special registration plate with an insignia designed by  
72 the commissioner of the division of motor vehicles. A  
73 special fee of five dollars shall be charged in addition  
74 to all other fees required by law. This special fee is to  
75 compensate the division of motor vehicles for additional  
76 costs and services required in the issuing of such special  
77 registration and shall be collected by the division and  
78 deposited in a special revolving fund to be used for the  
79 administration of this section: *Provided*, That nothing in  
80 this section shall be construed to exempt said veterans  
81 from any other provision in this chapter.

82 (f) Upon appropriate application, there shall be issued  
83 to any disabled veteran, who is exempt from the  
84 payment of registration fees under the provisions of this  
85 chapter, a registration plate which bears the letters  
86 "DV" in red, and also the regular identification  
87 numerals in red.

88 (g) Upon appropriate application, there shall be  
89 issued to any armed service person holding the distin-  
90 guished purple heart medal for persons wounded in  
91 combat a registration plate bearing letters or numbers.  
92 The registration plate designed by the commissioner of  
93 motor vehicles shall denote that those individuals who  
94 are granted this special registration plate are recipients  
95 of the purple heart. All letterings as herein provided  
96 shall be in purple where practical. Further, the  
97 registration plates herein provided shall be exempt from  
98 registration fees under the provisions of this chapter.

99 (h) Upon appropriate application, the owner of a  
100 motor vehicle who was enlisted in any branch of the  
101 armed services that participated in and survived the  
102 attack on Pearl Harbor on the seventh day of December,



103 one thousand nine hundred forty-one, shall be issued a  
104 special registration plate designed by the commissioner  
105 of motor vehicles and shall be exempt from the payment  
106 of registration fees as required under the provisions of  
107 this chapter.

108 (i) Subject to rules promulgated by the commissioner,  
109 nonprofit charitable and educational organizations shall  
110 be authorized to design a logo or emblem for inclusion  
111 on a special registration plate and to market this special  
112 registration plate to organization members and the  
113 general public. Approved nonprofit organizations may  
114 accept applications for the special registration plate  
115 from the owner of motor vehicles subject to a Class A  
116 registration and payment of fees therefor under the  
117 provisions of this article and may request that the  
118 division issue a registration plate bearing a combination  
119 of letters or numbers with the organizations' logo or  
120 emblem, with the maximum number of letters or  
121 numbers to be determined by the commissioner:  
122 *Provided*, That such rules, regulations and standards  
123 that are promulgated by the commissioner for purpose  
124 of this subdivision shall be promulgated in accordance  
125 with the provisions of chapter twenty-nine-a of this code.  
126 Nonprofit organizations seeking to market such plates  
127 shall be authorized to collect a fee for successfully  
128 processing a registration plate application and shall  
129 deposit an appropriate fee, which shall be determined  
130 by the commissioner, with the division of motor vehicles  
131 to defray the administrative costs associated with  
132 designing and manufacturing special registration plates  
133 for the organization.

134 (j) Any owner of a motor vehicle who is a resident of  
135 the state of West Virginia, and who is a certified  
136 paramedic or emergency medical technician, a member  
137 of a volunteer fire company, a paid fire department, a  
138 member of the state fire commission, the state fire  
139 marshal, the state fire marshal's assistants, the state fire  
140 administrator and voluntary rescue squad members  
141 upon application, accompanied by an affidavit signed by  
142 the fire chief or department head of the applicant,  
143 stating that the applicant is justified in having a

144 registration with an insignia designed by the commis-  
145 sioner of the division of motor vehicles to denote those  
146 individuals who are granted special registration plates  
147 under this article, complying with the motor vehicle  
148 laws of the state relative to registration and licensing  
149 of motor vehicles, and upon payment of the registration,  
150 license and other fees required by law, and the payment  
151 of the additional special fee herein provided, shall be  
152 issued a license plate for a private passenger car, upon  
153 which, in lieu of the registration number prescribed by  
154 law, shall be inscribed the insignia designed by the  
155 commissioner of the division of motor vehicles to denote  
156 those individuals who are granted this special registra-  
157 tion insignia in addition to their existing registration  
158 numbers.

159 The special fee that shall be charged each applicant  
160 for the issuance of a license plate bearing the insignia  
161 designed by the commissioner of the division of motor  
162 vehicles to denote those individuals who are granted this  
163 special registration insignia in addition to their existing  
164 registration number, shall be five dollars, which special  
165 fee shall be in addition to all other fees required by law.  
166 This special fee is for the purpose of compensating the  
167 division of motor vehicles for additional costs and  
168 services required in the issuing of such special registra-  
169 tion and shall be collected by the division and deposited  
170 in a special revolving fund to be used for the adminis-  
171 tration of this section.

172 The commissioner is authorized to prescribe proper  
173 forms to be used in making application for the special  
174 license plates authorized by this section.

175 (k) In addition to the regular registration fees set  
176 forth in section three, article ten of this chapter, a fee  
177 of fifteen dollars shall be paid to the division in each  
178 case in which an application for a special registration  
179 plate is made as provided in subdivisions (a), (b), (c) and  
180 (d): *Provided*, That nothing in this section shall be  
181 construed to require a charge for a free prisoner of war  
182 license plate authorized by other provisions of this code.

183 Notwithstanding the provisions of this section, or of

184 any other provision of this chapter, the commissioner  
185 may, in his discretion, issue a type of registration plate  
186 of reflectorized material suitable for permanent use on  
187 motor vehicles, trailers and semitrailers, together with  
188 appropriate devices to be attached thereto to indicate  
189 the year for which such vehicles have been properly  
190 registered or the date of expiration of such registration.  
191 The design of such plates shall be determined by the  
192 commissioner.

193 Further, notwithstanding any provisions of this  
194 chapter to the contrary, any license plate issued or  
195 renewed pursuant to this chapter, which is paid for by  
196 a check that is returned for nonsufficient funds, shall  
197 be void without further notice to the applicant, and the  
198 applicant may not reinstate the registration until the  
199 returned check is paid by the applicant in cash, money  
200 order or certified check and all applicable fees assessed  
201 as a result thereof have been paid.

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## CHAPTER 129

(H. B. 4540—By Delegate Anderson)

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[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section ten, article four, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, four, five, ten and fifteen, article six of said chapter; and to further amend said chapter by adding thereto a new article, designated article six-b, relating to motor vehicle administration; transfers of title; providing a definition of a total loss vehicle; providing for inspection of rebuilt motor vehicles by an inspector from the division of motor vehicles; setting fees; criminal penalties; licensing of wreckers/dismantlers/rebuilder; providing definitions; authorizing a special plate; setting fees; motor vehicles; licensing of license service businesses to issue temporary registration plates; requiring a bond; fees; creating a special fund; procedure for refusal to issue; form of

license certificate; certified copies; license good for one year; renewals; investigations and confidentiality; suspension and revocation; violations and criminal penalties; injunctive relief; and promulgation of rules.

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

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

**Article**

- 4. Transfers of Title or Interest.
- 6. Licensing of Dealers and Wreckers or Dismantlers; Special Plates; Temporary Plates or Markers, Etc.
- 6B. License Services.

**ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.**

**§17A-4-10. Salvage certificates for certain wrecked or damaged vehicles; fee; penalty.**

1 In the event a motor vehicle is determined to be a total  
2 loss or otherwise designated as "totaled" by any  
3 insurance company or insurer, and upon payment of an  
4 agreed price as a claim settlement to any insured or  
5 claimant owner for the purchase of the vehicle, the  
6 insurance company or the insurer shall receive the  
7 certificate of title and the vehicle. The insurance  
8 company or insurer shall within ten days surrender the  
9 certificate of title and a copy of the claim settlement to  
10 the division of motor vehicles. The division shall issue  
11 a "salvage certificate," on a form prescribed by the  
12 commissioner, in the name of the insurance company or  
13 the insurer. Such certificate shall contain on the reverse  
14 thereof spaces for one successive assignment before a  
15 new certificate at an additional fee is required. Upon the  
16 sale of the vehicle the insurance company or insurer  
17 shall endorse the assignment of ownership on the  
18 salvage certificate and deliver it to the purchaser. The  
19 vehicle shall not be titled or registered for operation on  
20 the streets or highways of this state unless there is

21 compliance with subsection (b) of this section. In the  
22 event a motor vehicle is determined to be damaged in  
23 excess of seventy-five percent of its retail price as  
24 described in the national automobile dealers association  
25 official used car guide, a junk card will be issued in lieu  
26 of a salvage certificate.

27 (a) Any owner, who scraps, compresses, dismantles or  
28 destroys a vehicle for which a certificate of title or  
29 salvage certificate has been issued, shall, within twenty  
30 days, surrender the certificate of title or salvage  
31 certificate to the division for cancellation. Any person  
32 who purchases or acquires a vehicle as salvage or scrap,  
33 to be dismantled, compressed or destroyed, shall within  
34 twenty days surrender the certificate to the division.  
35 Should a vehicle less than eight years old be determined  
36 to be a complete fire, flood or basket, a photograph of  
37 the vehicle shall accompany the surrendered certificate:  
38 *Provided*, That the term "basket" means a vehicle which  
39 has been damaged more than seventy-five percent of the  
40 retail price as described in the national automobile  
41 dealers association official used car guide. If the vehicle  
42 is to be reconstructed, the owner must obtain a salvage  
43 certificate and comply with the provisions of subsection  
44 (b) of this section.

45 (b) If the motor vehicle is a "reconstructed vehicle" as  
46 defined in section one, article one of this chapter, it may  
47 not be titled or registered for operation until it has been  
48 inspected by an official state inspection station and by  
49 a representative of the division of motor vehicles who  
50 has been designated by the commissioner as an inves-  
51 tigator. Following an approved inspection, an applica-  
52 tion for a new certificate of title may be submitted to  
53 the division; however, the applicant shall be required to  
54 retain all receipts for component parts, equipment and  
55 materials used in the reconstruction. The salvage  
56 certificate must also be surrendered to the division  
57 before a certificate of title may be issued.

58 (c) The division shall charge a fee of fifteen dollars for  
59 the issuance of each salvage certificate but shall not  
60 require the payment of the five percent privilege tax.  
61 However, upon application for a certificate of title for

62 a reconstructed vehicle, the division shall collect the five  
63 percent privilege tax on the fair market value of the  
64 vehicle as determined by the commissioner unless the  
65 applicant is otherwise exempt from the payment of such  
66 privilege tax. A wrecker/dismantler/rebuilder is ex-  
67 empt from the five percent privilege tax upon titling a  
68 reconstructed vehicle. The division shall collect a fee of  
69 thirty-five dollars per vehicle for inspections of recon-  
70 structed vehicles. These fees shall be deposited in a  
71 special fund created in the state treasurer's office and  
72 may be expended by the division to carry out the  
73 provisions of this article. Licensed wreckers/-  
74 dismantler/rebuilders may charge a fee not to exceed  
75 twenty-five dollars for all vehicles owned by private  
76 rebuilders which are inspected at the place of business  
77 of a wrecker/dismantler/rebuilder.

78 (d) A certificate of title issued by the division for a  
79 reconstructed vehicle shall contain markings in bold  
80 print on the face of the title that it is for a reconstructed  
81 vehicle: *Provided*, That if the application for a certifi-  
82 cate of title is accompanied by a certificate of inspection  
83 certifying that no more than two major components (as  
84 that term is defined in section one of article six of this  
85 chapter) were replaced, the boldface markings "recon-  
86 structed vehicle" shall not appear on the title.

87 Any person who violates the provisions of this section  
88 shall be guilty of a misdemeanor, and, upon conviction  
89 thereof, shall be fined not less than five hundred dollars  
90 nor more than one thousand dollars, or imprisoned in  
91 the county jail for not more than one year, or both fined  
92 and imprisoned.

**ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR  
DISMANTLERS; SPECIAL PLATES; TEMPORARY  
PLATES OR MARKERS, ETC.**

**PART I. DEFINITIONS; LEGISLATIVE FINDINGS  
AND PUBLIC POLICY.**

§17A-6-1. Definitions.

§17A-6-4. Application for license certificate; insurance; bonds; investiga-  
tion; information confidential.

§17A-6-5. License certificate exemption.

§17A-6-10. Fee required for license certificate; dealer special plates.

§17A-6-15. Temporary registration plates or markers.

### §17A-6-1. Definitions.

1 (a) Unless the context in which used clearly requires  
2 a different meaning, as used in this article:

3 (1) "New motor vehicle dealer" means every person  
4 (other than his agents and employees, if any, while  
5 acting within the scope of their authority or employ-  
6 ment), engaged in, or who holds himself out to the public  
7 to be engaged in, the business in this state of selling five  
8 or more new motor vehicles or new and used motor  
9 vehicles in any fiscal year of a type required to be  
10 registered under the provisions of this chapter, except,  
11 for the purposes of this article only, motorcycles.

12 (2) "Used motor vehicle dealer" means every person  
13 (other than his agents and employees, if any, while  
14 acting within the scope of their authority or employ-  
15 ment), engaged in, or holds himself out to the public to  
16 be engaged in, the business in this state of selling five  
17 or more used motor vehicles in any fiscal year of a type  
18 required to be registered under the provisions of this  
19 chapter, except, for the purposes of this article only,  
20 motorcycles.

21 (3) "House trailer dealer" means every person (other  
22 than his agents and employees, if any, while acting  
23 within the scope of their authority or employment),  
24 engaged in, or who holds himself out to the public to be  
25 engaged in, the business in this state of selling new  
26 and/or used house trailers, or new and/or used house  
27 trailers and trailers.

28 (4) "Trailer dealer" means every person (other than  
29 his agents and employees, if any, while acting within the  
30 scope of their authority or employment), engaged in, or  
31 who holds himself out to the public to be engaged in,  
32 the business in this state of selling new and/or used  
33 trailers.

34 (5) "Motorcycle dealer" means every person (other  
35 than his agents and employees, if any, while acting

36 within the scope of their authority or employment),  
37 engaged in, or who holds himself out to the public to be  
38 engaged in, the business in this state of selling new  
39 and/or used motorcycles.

40 (6) "Used parts dealer" means every person (other  
41 than his agents and employees, if any, while acting  
42 within the scope of their authority or employment),  
43 engaged in, or who holds himself out to the public to be  
44 engaged in, the business in this state of selling any used  
45 appliance, accessory, member, portion or other part of  
46 any vehicle.

47 (7) "Wrecker/dismantler/rebuilder" means every  
48 person (other than his agents and employees, if any,  
49 while acting within the scope of their authority or  
50 employment), engaged in, or who holds himself out to  
51 the public to be engaged in, the business in this state  
52 of dealing in wrecked or damaged motor vehicles or  
53 motor vehicle parts for the purpose of selling the parts  
54 thereof or scrap therefrom or who are in the business  
55 of rebuilding salvage motor vehicles for the purpose of  
56 resale to the public.

57 (8) "New motor vehicles" means all motor vehicles,  
58 except motorcycles and used motor vehicles, of a type  
59 required to be registered under the provisions of this  
60 chapter.

61 (9) "Used motor vehicles" means all motor vehicles,  
62 except motorcycles, of a type required to be registered  
63 under the provisions of this chapter which have been  
64 sold and operated, or which have been registered or  
65 titled, in this or any other state or jurisdiction.

66 (10) "House trailers" means all trailers designed or  
67 intended for human occupancy and commonly referred  
68 to as mobile homes or house trailers, but shall not  
69 include fold down camping and travel trailers.

70 (11) "Trailers" means all types of trailers other than  
71 house trailers, and shall include, but not be limited to,  
72 pole trailers and semitrailers but excluding recreational  
73 vehicles.

74 (12) "Sales instrument" means any document result-



75 ing from the sale of a vehicle, which shall include, but  
76 not be limited to, a bill of sale, invoice, conditional sales  
77 contract, chattel mortgage, chattel trust deed, security  
78 agreement or similar document.

79 (13) "Sell," "sale" or "selling" shall, in addition to the  
80 ordinary definitions of such terms, include offering for  
81 sale, soliciting sales of, negotiating for the sale of,  
82 displaying for sale, or advertising for sale, any vehicle,  
83 whether at retail, wholesale or at auction. "Selling"  
84 shall, in addition to the ordinary definition of that term,  
85 also include buying and exchanging.

86 (14) "Applicant" means any person making applica-  
87 tion for an original or renewal license certificate under  
88 the provisions of this article.

89 (15) "Licensee" means any person holding any license  
90 certificate issued under the provisions of this article.

91 (16) "Predecessor" means the former owner or owners  
92 or operator or operators of any new motor vehicle dealer  
93 business or used motor vehicle dealer business.

94 (17) "Established place of business" shall, in the case  
95 of a new motor vehicle dealer, mean a permanent  
96 location, not a temporary stand or other temporary  
97 quarters, owned or leased by the licensee or applicant  
98 and actually occupied or to be occupied by him, as the  
99 case may be, which is or is to be used exclusively for  
100 the purpose of selling new motor vehicles or new and  
101 used motor vehicles, which shall have space under roof  
102 for the display of at least one new motor vehicle and  
103 facilities and space therewith for the servicing and  
104 repair of at least one motor vehicle, which servicing and  
105 repair facilities and space shall be adequate and suitable  
106 to carry out servicing and to make repairs necessary to  
107 keep and carry out all representations, warranties and  
108 agreements made or to be made by such dealer with  
109 respect to motor vehicles sold by him, which shall be  
110 easily accessible to the public, which shall conform to  
111 all applicable laws of the state of West Virginia and the  
112 ordinances of the municipality in which it is located, if  
113 any, which shall display thereon at least one permanent  
114 sign, clearly visible from the principal public street or

115 highway nearest said location and clearly stating the  
116 business which is or shall be conducted thereat, and  
117 which shall have adequate facilities to keep, maintain  
118 and preserve records, papers and documents necessary  
119 to carry on such business and to make the same  
120 available to inspection by the commissioner at all  
121 reasonable times: *Provided*, That the requirement of  
122 exclusive use shall be met even though (i) some new and  
123 any used motor vehicles sold or to be sold by such dealer  
124 are sold or are to be sold at a different location or  
125 locations not meeting the definition of an established  
126 place of business of a new motor vehicle dealer, if each  
127 such location is or is to be served by other facilities and  
128 space of such dealer for the servicing and repair of at  
129 least one motor vehicle, adequate and suitable as  
130 aforesaid, and each such location used for the sale of  
131 some new and any used motor vehicles otherwise meets  
132 the definition of an established place of business of a  
133 used motor vehicle dealer; (ii) house trailers, trailers  
134 and/or motorcycles are sold or are to be sold thereat, if,  
135 subject to the provisions of section five of this article,  
136 a separate license certificate is obtained for each such  
137 type of vehicle business, which license certificate  
138 remains unexpired, unsuspended and unrevoked; (iii)  
139 farm machinery is sold thereat; and (iv) accessory,  
140 gasoline and oil, or storage departments are maintained  
141 thereat, if such departments are operated for the  
142 purpose of furthering and assisting in the licensed  
143 business or businesses.

144 (18) "Farm machinery" means all machines and tools  
145 used in the production, harvesting or care of farm  
146 products.

147 (19) "Established place of business" shall, in the case  
148 of a used motor vehicle dealer, mean a permanent  
149 location, not a temporary stand or other temporary  
150 quarters, owned or leased by the licensee or applicant  
151 and actually occupied or to be occupied by him, as the  
152 case may be, which is or is to be used exclusively for  
153 the purpose of selling used motor vehicles, which shall  
154 have facilities and space therewith for the servicing and  
155 repair of at least one motor vehicle, which servicing and

156 repair facilities and space shall be adequate and suitable  
157 to carry out servicing and to make repairs necessary to  
158 keep and carry out all representations, warranties and  
159 agreements made or to be made by such dealer with  
160 respect to used motor vehicles sold by him, which shall  
161 be easily accessible to the public, shall conform to all  
162 applicable laws of the state of West Virginia, and the  
163 ordinances of the municipality in which it is located, if  
164 any, which shall display thereon at least one permanent  
165 sign, clearly visible from the principal public street or  
166 highway nearest said location and clearly stating the  
167 business which is or shall be conducted thereat, and  
168 which shall have adequate facilities to keep, maintain  
169 and preserve records, papers and documents necessary  
170 to carry on such business and to make the same  
171 available to inspection by the commissioner at all  
172 reasonable times: *Provided*, That if a used motor vehicle  
173 dealer has entered into a written agreement or agree-  
174 ments with a person or persons owning or operating a  
175 servicing and repair facility or facilities adequate and  
176 suitable as aforesaid, the effect of which agreement or  
177 agreements is to provide such servicing and repair  
178 services and space in like manner as if said servicing  
179 and repair facilities and space were located in or on said  
180 dealer's place of business, then, so long as such an  
181 agreement or agreements are in effect, it shall not be  
182 necessary for such dealer to maintain such servicing and  
183 repair facilities and space at his place of business in  
184 order for such place of business to be an established  
185 place of business as herein defined: *Provided, however*,  
186 That the requirement of exclusive use shall be met even  
187 though (i) house trailers, trailers and/or motorcycles are  
188 sold or are to be sold thereat, if, subject to the provisions  
189 of section five of this article, a separate license  
190 certificate is obtained for each such type of vehicle  
191 business, which license certificate remains unexpired,  
192 unsuspending and unrevoked; (ii) farm machinery is sold  
193 thereat; and (iii) accessory, gasoline and oil, or storage  
194 departments are maintained thereat, if such depart-  
195 ments are operated for the purpose of furthering and  
196 assisting in the licensed business or businesses.

197 (20) "Established place of business" shall, in the case

198 of a house trailer dealer, trailer dealer, recreational  
199 vehicle dealer, motorcycle dealer, used parts dealer and  
200 wrecker or dismantler, mean a permanent location, not  
201 a temporary stand or other temporary quarters, owned  
202 or leased by the licensee or applicant and actually  
203 occupied or to be occupied by him, as the case may be,  
204 which shall be easily accessible to the public, which  
205 shall conform to all applicable laws of the state of West  
206 Virginia and the ordinances of the municipality in  
207 which it is located, if any, which shall display thereon  
208 at least one permanent sign, clearly visible from the  
209 principal public street or highway nearest said location  
210 and clearly stating the business which is or shall be  
211 conducted thereat, and which shall have adequate  
212 facilities to keep, maintain and preserve records, papers  
213 and documents necessary to carry on such business and  
214 to make the same available to inspection by the  
215 commissioner at all reasonable times.

216 (21) "Manufacturer" means every person engaged in  
217 the business of reconstructing, assembling or reassem-  
218 bling vehicles with a special type body required by the  
219 purchaser if said vehicle is subject to the title and  
220 registration provision of the code.

221 (22) "Transporter" means every person engaged in the  
222 business of transporting vehicles to or from a manufac-  
223 turing, assembling or distributing plant to dealers or  
224 sales agents of a manufacturer, or purchasers.

225 (23) "Recreational vehicle dealer" means every person  
226 (other than his agents and employees, if any, while  
227 acting within the scope of their authority or employ-  
228 ment), engaged in, or who holds himself out to the public  
229 to be engaged in, the business in this state of selling new  
230 and/or used recreational vehicles.

231 (24) "Motorboat" means any vessel propelled by an  
232 electrical, steam, gas, diesel or other fuel propelled or  
233 driven motor, whether or not such motor is the principal  
234 source of propulsion, but shall not include a vessel which  
235 has a valid marine document issued by the bureau of  
236 customs of the United States government or any federal  
237 agency successor thereto.

238 (25) "Motorboat trailer" means every vehicle designed  
239 for or ordinarily used for the transportation of a  
240 motorboat.

241 (26) "All-terrain vehicle" (ATV) means any motor  
242 vehicle designed for off-highway use and designed for  
243 operator use only with no passengers, having a seat or  
244 saddle designed to be straddled by the operator, and  
245 handlebars for steering control.

246 (27) "Travel trailer" means every vehicle, mounted on  
247 wheels, designed to provide temporary living quarters  
248 for recreational, camping or travel use of such size or  
249 weight as not to require special highway movement  
250 permits when towed by a motor vehicle and of gross  
251 trailer area less than four hundred square feet.

252 (28) "Fold down camping trailer" means every vehicle  
253 consisting of a portable unit mounted on wheels and  
254 constructed with collapsible partial sidewalls which fold  
255 for towing by another vehicle and unfold at the camp  
256 site to provide temporary living quarters for recrea-  
257 tional, camping or travel use.

258 (29) "Motor home" means every vehicle, designed to  
259 provide temporary living quarters, built into an integral  
260 part of or permanently attached to a self-propelled  
261 motor vehicle, chassis or van including: (1) Type A  
262 motor home built on an incomplete truck chassis with  
263 the truck cab constructed by the second stage manufac-  
264 turer; (2) Type B motor home consisting of a van-type  
265 vehicle which has been altered to provide temporary  
266 living quarters; and (3) Type C motor home built on an  
267 incomplete van or truck chassis with a cab constructed  
268 by the chassis manufacturer.

269 (30) "Snowmobile" means a self-propelled vehicle  
270 intended for travel primarily on snow and driven by a  
271 track or tracks in contact with the snow and steered by  
272 a ski or skis in contact with the snow.

273 (31) "Recreational vehicle" means a motorboat,  
274 motorboat trailer, all-terrain vehicle, travel trailer, fold  
275 down camping trailer, motor home or snowmobile.

276 (32) "Major component" means any one of the follow-

277 ing subassemblies of a motor vehicle: (i) Front clip  
278 assembly consisting of fenders, grille, hood, bumper and  
279 related parts; (ii) engine; (iii) transmission; (iv) rear clip  
280 assembly consisting of quarter panels and floor panel  
281 assembly; or (v) two or more doors.

282 (b) Under no circumstances whatever shall the terms  
283 "new motor vehicle dealer," "used motor vehicle dealer,"  
284 "house trailer dealer," "trailer dealer," "recreational  
285 vehicle dealer," "motorcycle dealer," "used parts dealer"  
286 or "wrecker/dismantler/rebuilder" be construed or  
287 applied under this article in such a way as to include  
288 a banking institution, insurance company, finance  
289 company, or other lending or financial institution, or  
290 other person, the state or any agency or political  
291 subdivision thereof, or any municipality, who or which  
292 owns or shall come in possession or ownership of, or  
293 acquire contract rights, or security interests in or to, any  
294 vehicle or vehicles or any part thereof and shall sell such  
295 vehicle or vehicles or any part thereof for purposes other  
296 than engaging in and holding himself or itself out to the  
297 public to be engaged in the business of selling vehicles  
298 or any part thereof.

299 (c) It is recognized that throughout this code the term  
300 "trailer" or "trailers" is used to include, among other  
301 types of trailers, house trailers. It is also recognized that  
302 throughout this code the term "trailer" or "trailers" is  
303 seldom used to include semitrailers or pole trailers.  
304 However, for the purposes of this article only, the term  
305 "trailers" shall have the meaning ascribed to it in  
306 subsection (a) of this section.

**§17A-6-4. Application for license certificate; insurance;  
bonds; investigation; information confi-  
dential.**

1 (a) Application for any license certificate required by  
2 section three of this article shall be made on such form  
3 as may be prescribed by the commissioner. There shall  
4 be attached to the application a certificate of insurance  
5 certifying that the applicant has in force an insurance  
6 policy issued by an insurance company authorized to do  
7 business in this state insuring the applicant and any

8 other person, as insured, using any vehicle or vehicles  
9 owned by the applicant with the express or implied  
10 permission of such named insured, against loss from the  
11 liability imposed by law for damages arising out of the  
12 ownership, operation, maintenance or use of such vehicle  
13 or vehicles, subject to minimum limits, exclusive of  
14 interest and costs, with respect to each such vehicle, as  
15 follows: Twenty thousand dollars because of bodily  
16 injury to or death of one person in any one accident and,  
17 subject to said limit for one person, forty thousand  
18 dollars because of bodily injury to or death of two or  
19 more persons in any one accident, and ten thousand  
20 dollars because of injury to or destruction of property  
21 of others in any one accident.

22 (b) In the case of an application for a license certifi-  
23 cate to engage in the business of new motor vehicle  
24 dealer, used motor vehicle dealer or house trailer dealer,  
25 such application shall disclose, but not be limited to, the  
26 following:

27 (1) The type of business for which a license certificate  
28 is sought;

29 (2) If the applicant be an individual, the full name  
30 and address of the applicant and any trade name under  
31 which he will engage in said business;

32 (3) If the applicant be a copartnership, the full name  
33 and address of each partner therein, the name of the  
34 copartnership, its post-office address and any trade  
35 name under which it will engage in said business;

36 (4) If the applicant be a corporation, its name, the  
37 state of its incorporation, its post-office address and the  
38 full name and address of each officer and director  
39 thereof;

40 (5) The location of each place in this state at which  
41 the applicant will engage in said business and whether  
42 the same is owned or leased by the applicant;

43 (6) Whether the applicant, any partner, officer or  
44 director thereof has previously engaged in said business  
45 or any other business required to be licensed under the  
46 provisions of this article and if so, with or for whom,  
47 at what location and for what periods of time;

48 (7) Whether the applicant, any partner, officer,  
49 director or employer thereof has previously applied for  
50 a license certificate under the provisions of this article  
51 or a similar license certificate in this or any other state,  
52 and if so, whether such license certificate was issued or  
53 refused, and, if issued, whether it was ever suspended  
54 or revoked;

55 (8) A statement of previous general business experi-  
56 ence and past history of the applicant; and

57 (9) Such other information as the commissioner may  
58 reasonably require which may include information  
59 relating to any contracts, agreements or understandings  
60 between the applicant and other persons respecting the  
61 transaction of said business, and any criminal record of  
62 the applicant if an individual, or of each partner if a  
63 copartnership, or of each officer and director, if a  
64 corporation.

65 (c) In the case of an application for a license certifi-  
66 cate to engage in the business of new motor vehicle  
67 dealer, such application shall, in addition to the matters  
68 outlined in subsection (b) of this section disclose:

69 (1) The make or makes of new motor vehicles which  
70 the applicant will offer for sale in this state during the  
71 ensuing fiscal year; and

72 (2) The exact number of new motor vehicles, if any,  
73 sold at retail in this state by such applicant or his  
74 predecessor, if any, during the preceding fiscal year,  
75 and if no new motor vehicles were sold at retail in this  
76 state by such applicant or his predecessor, if any, during  
77 the preceding fiscal year, the number of new motor  
78 vehicles the applicant reasonably expects to sell at retail  
79 in this state during the ensuing fiscal year.

80 (d) In the case of an application for a license certifi-  
81 cate to engage in the business of used motor vehicle  
82 dealer, such application shall in addition to the matters  
83 outlined in subsection (b) of this section, disclose the  
84 exact number of used motor vehicles, if any, sold at  
85 retail in this state by such applicant or his predecessor,



86 if any, during the preceding fiscal year, and if no used  
87 motor vehicles were sold at retail in this state by such  
88 applicant or his predecessor, if any, during the preced-  
89 ing fiscal year, the number of used motor vehicles the  
90 applicant reasonably expects to sell at retail in this state  
91 during the ensuing fiscal year.

92 (e) In the case of an application for a license certif-  
93 icate to engage in the business of trailer dealer,  
94 recreational vehicle dealer, motorcycle dealer, used  
95 parts dealer, or wrecker/dismantler/rebuilder, such  
96 application shall disclose such information as the  
97 commissioner may reasonably require.

98 (f) Such application shall be verified by the oath or  
99 affirmation of the applicant, if an individual, or if the  
100 applicant is a copartnership or corporation, by a partner  
101 or officer thereof, as the case may be. Such application  
102 must be accompanied by a bond of the applicant in the  
103 penal sum of two thousand dollars, in such form as may  
104 be prescribed by the commissioner, conditioned that the  
105 applicant will not in the conduct of his business practice  
106 any fraud which, or make any fraudulent representation  
107 which, shall cause a financial loss to any purchaser,  
108 seller or financial institution or agency, or the state of  
109 West Virginia, with a corporate surety thereon autho-  
110 rized to do business in this state, which bond shall be  
111 effective as of the date on which the license certificate  
112 sought is issued.

113 (g) Upon receipt of any such fully completed applica-  
114 tion, together with any bond required as aforesaid, the  
115 certificate of insurance as aforesaid and the appropriate  
116 fee as hereinafter provided in section ten of this article,  
117 the commissioner may conduct such investigation, as he  
118 deems necessary to determine the accuracy of any  
119 statements contained in such application and the  
120 existence of any other facts which he deems relevant in  
121 considering such application. To facilitate such investi-  
122 gation, the commissioner may withhold issuance or  
123 refusal of the license certificate for a period not to  
124 exceed twenty days.

125 (h) Any application for a license certificate under the

126 provisions of this article and any information submitted  
 127 therewith shall be confidential for the use of the  
 128 division. No person shall divulge any information  
 129 contained in any such application or any information  
 130 submitted therewith except in response to a valid  
 131 subpoena or subpoena duces tecum issued pursuant to  
 132 law.

**§17A-6-5. License certificate exemption.**

1 Any new motor vehicle dealer, used motor vehicle  
 2 dealer, house trailer dealer, trailer dealer, recreational  
 3 vehicle dealer, motorcycle dealer or wrecker/dis-  
 4 mantler/rebuilder receiving a vehicle in trade of a type  
 5 other than that he is licensed to sell hereunder may sell  
 6 such vehicle without obtaining a license certificate to  
 7 engage in the business of selling vehicles of such type  
 8 and without being considered to be a dealer in vehicles  
 9 of such type.

PART III. FEES AND DEALER SPECIAL  
 PLATES GENERALLY.

**§17A-6-10. Fee required for license certificate; dealer special plates.**

1 (a) The initial application fee for a license certificate  
 2 to engage in the business of a new motor vehicle dealer,  
 3 used motor vehicle dealer, house trailer dealer, trailer  
 4 dealer, motorcycle dealer, recreational vehicle dealer, or  
 5 wrecker/dismantler/rebuilder shall be two hundred and  
 6 fifty dollars: *Provided*, That if an application for a  
 7 license certificate is denied or refused in accordance  
 8 with section six of this article, one hundred twenty-five  
 9 dollars shall be refunded to the applicant. The initial  
 10 application fee shall entitle the licensee to dealer special  
 11 plates as prescribed by subsections (b), (c), (d) and (e)  
 12 of this section.

13 (b) The annual renewal fee required for a license  
 14 certificate to engage in the business of new motor  
 15 vehicle dealer shall be one hundred dollars. This fee  
 16 shall also entitle such licensee to one dealer's special  
 17 plate which shall be known as a Class D special plate.  
 18 Up to nine additional Class D special plates shall be

19 issued to any such licensee upon application therefor on  
20 a form prescribed by the commissioner for such purpose  
21 and the payment of a fee of five dollars for each  
22 additional Class D special plate. Any such licensee who  
23 obtains a total of ten Class D special plates as aforesaid  
24 shall be entitled to receive additional Class D special  
25 plates on a formula basis, that is, one additional Class  
26 D special plate per twenty new motor vehicles sold at  
27 retail in this state by such licensee or his predecessor  
28 during the preceding fiscal year, upon application  
29 therefor on a form prescribed by the commissioner for  
30 such purpose and the payment of a fee of five dollars  
31 for each such additional Class D special plate: *Provided,*  
32 That in the case of a licensee who did not own or operate  
33 such business during such preceding fiscal year and who  
34 has no predecessor who owned or operated such business  
35 during the preceding fiscal year, additional Class D  
36 special plates shall be issued, for the ensuing fiscal year  
37 only, on a formula basis of one additional Class D special  
38 plate per twenty new motor vehicles which such licensee  
39 estimates on his application for his license certificate he  
40 will sell at retail in this state during said ensuing fiscal  
41 year. Any such licensee may obtain Class D special  
42 plates in addition to the ten plates authorized above and  
43 any authorized on a formula basis, but the cost of each  
44 such Class D special plate shall be thirty dollars.

45 (c) The annual renewal fee required for a license  
46 certificate to engage in the business of used motor  
47 vehicle dealer shall be one hundred dollars. This fee  
48 shall also entitle such licensee to one dealer's special  
49 plate which shall be known as a Class D-U/C special  
50 plate. Up to four additional Class D-U/C special plates  
51 shall be issued to any such licensee upon application  
52 therefor on a form prescribed by the commissioner for  
53 such purpose and the payment of a fee of five dollars  
54 for each additional Class D-U/C special plate. Any such  
55 licensee who obtains a total of five Class D-U/C special  
56 plates as aforesaid shall be entitled to receive additional  
57 Class D-U/C special plates on a formula basis, that is,  
58 one additional Class D-U/C special plate per thirty used  
59 motor vehicles sold at retail in this state by such licensee  
60 or his predecessor during the preceding fiscal year,

61 upon application therefor on a form prescribed by the  
62 commissioner for such purpose and the payment of a fee  
63 of five dollars for each such additional Class D-U/C  
64 special plate: *Provided*, That in the case of a licensee  
65 who did not own or operate such business during such  
66 preceding fiscal year and who has no predecessor who  
67 owned or operated such business during the preceding  
68 fiscal year, additional Class D-U/C special plates shall  
69 be issued, for the ensuing fiscal year only, on a formula  
70 basis of one additional Class D-U/C special plate per  
71 thirty used motor vehicles which such licensee estimates  
72 on his application for his license certificate he will sell  
73 at retail in this state during said ensuing fiscal year.  
74 Any such licensee may obtain Class D-U/C special plates  
75 in addition to the five plates authorized above and any  
76 authorized on a formula basis, but the cost of each such  
77 Class D-U/C special plate shall be thirty dollars.

78 (d) The annual renewal fee required for a license  
79 certificate to engage in the business of house trailer  
80 dealer or trailer dealer, as the case may be, shall be  
81 twenty-five dollars. This fee shall also entitle such  
82 licensee to four dealer's special plates which shall be  
83 known as Class D-T/R special plates. Additional Class  
84 D-T/R special plates shall be issued to any such licensee  
85 upon application therefor on a form prescribed by the  
86 commissioner for such purpose and the payment of a fee  
87 of five dollars for each such additional Class D-T/R  
88 special plate.

89 (e) The annual renewal fee required for a license  
90 certificate to engage in the business of recreational  
91 vehicle dealer shall be one hundred dollars. This fee  
92 shall also entitle such licensee to four dealer special  
93 plates which shall be known as Class D-R/V special  
94 plates. Additional Class D-R/V special plates shall be  
95 issued to any such licensee upon application therefor on  
96 a form prescribed by the commissioner for such purpose  
97 on the payment of a fee of twenty-five dollars for each  
98 such additional Class D-R/V special plate.

99 (f) The annual renewal fee required for a license  
100 certificate to engage in the business of motorcycle dealer  
101 shall be ten dollars. This fee shall also entitle such

102 licensee to two dealer's special plates which shall be  
103 known as Class F special plates. Additional Class F  
104 special plates shall be issued to any such dealer upon  
105 application therefor on a form prescribed by the  
106 commissioner for such purpose and the payment of a fee  
107 of five dollars for each such additional Class F special  
108 plate.

109 (g) The annual renewal fee required for a license  
110 certificate to engage in the business of  
111 wrecker/dismantler/rebuilder, shall be fifteen dollars.  
112 Upon payment of the fee for said license certificate, a  
113 licensee shall be entitled to up to four special license  
114 plates which shall be known as Class WD special plates.  
115 Such plates shall be issued to any such licensee upon  
116 application therefor on a form prescribed by the  
117 commissioner for such purpose and the payment of a fee  
118 of twenty-five dollars for each such plate. Such plate  
119 issued under the provisions of this subsection shall have  
120 the words "Towing Only" affixed thereon. A  
121 wrecker/dismantler/rebuilder is entitled to one special  
122 plate known as a Class WD/Demo special plate upon  
123 payment of a twenty-five dollar fee. This plate shall only  
124 be used for demonstrating rebuilt automobiles owned by  
125 the wrecker/dismantler/rebuilder.

126 (h) All of the special plates provided for in this section  
127 shall be of such form and design and contain such other  
128 distinguishing marks or characteristics as the commis-  
129 sioner may prescribe.

#### §17A-6-15. Temporary registration plates or markers.

1 (a) In order to permit a vehicle which is sold to a  
2 purchaser by a dealer to be operated on the streets and  
3 highways pending receipt of the annual registration  
4 plate from the division for such vehicle, the commis-  
5 sioner may, subject to the limitations and conditions  
6 hereinafter set forth, deliver temporary vehicle registra-  
7 tion plates or markers to dealers who in turn may,  
8 subject to the limitations and conditions hereinafter set  
9 forth, issue the same to purchasers of vehicles, but such  
10 purchasers must comply with the pertinent provisions  
11 of this section.

12 (b) Application by a dealer to the commissioner for  
13 such temporary registration plates or markers shall be  
14 made on the form prescribed and furnished by the  
15 commissioner for such purpose and shall be accompan-  
16 ied by a fee of three dollars for each such temporary  
17 registration plate or marker. No refund or credit of fees  
18 paid by dealers to the commissioner for temporary  
19 registration plates or markers shall be allowed, except  
20 that in the event the commissioner discontinues the  
21 issuance of such temporary plates or markers, dealers  
22 returning temporary registration plates or markers to  
23 the commissioner may petition for and be entitled to a  
24 refund or a credit thereof. No temporary registration  
25 plates or markers shall be delivered by the commis-  
26 sioner to any dealer in house trailers only, and no such  
27 temporary plates or markers shall be issued for or used  
28 on any house trailer for any purpose.

29 (c) Every dealer who has made application for and  
30 received temporary registration plates or markers shall  
31 maintain in permanent form a record of all temporary  
32 registration plates or markers delivered to him, a record  
33 of all temporary registration plates or markers issued  
34 by him, and a record of any other information pertain-  
35 ing to the receipt or the issuance of temporary registra-  
36 tion plates or markers which the commissioner may  
37 require. Each such record shall be kept for a period of  
38 at least three years from the date of the making thereof.  
39 Every dealer who issues a temporary registration plate  
40 or marker shall, within five working days after he issues  
41 such plate or marker, send to the division a copy of the  
42 temporary registration plate or marker certificate  
43 properly executed by such dealer and the purchaser. No  
44 temporary registration plates or markers may be  
45 delivered to any dealer until such dealer has fully  
46 accounted to the commissioner for the temporary  
47 registration plates or markers last delivered to such  
48 dealer, by showing the number issued to purchasers by  
49 such dealer and any on hand.

50 (d) A dealer shall not issue, assign, transfer or deliver  
51 a temporary registration plate or marker to anyone  
52 other than the bona fide purchaser of the vehicle to be

53 registered; nor shall a dealer issue a temporary  
54 registration plate or marker to anyone possessed of an  
55 annual registration plate for a vehicle which has been  
56 sold or exchanged, except a dealer may issue a tempor-  
57 ary registration plate or marker to the bona fide  
58 purchaser of a vehicle to be registered who possesses an  
59 annual registration plate of a different class and makes  
60 application to the division to exchange such annual  
61 registration plate of a different class in accordance with  
62 the provisions of section one, article four of this chapter;  
63 nor shall a dealer lend to anyone, or use on any vehicle  
64 which he may own, a temporary registration plate or  
65 marker. It shall be unlawful for any dealer to issue any  
66 temporary registration plate or marker knowingly  
67 containing any misstatement of fact, or knowingly to  
68 insert any false information upon the face thereof.

69 (e) Every dealer who issues temporary registration  
70 plates or markers shall affix or insert clearly and  
71 indelibly on the face of each temporary registration  
72 plate or marker the date of issuance and expiration  
73 thereof, and the make and motor or serial number of the  
74 vehicle for which issued.

75 (f) If the commissioner finds that the provisions of this  
76 section or his directions are not being complied with by  
77 a dealer, he may suspend the right of such dealer to  
78 issue temporary registration plates or markers.

79 (g) Every person to whom a temporary registration  
80 plate or marker has been issued shall permanently  
81 destroy such temporary registration plate or marker  
82 immediately upon receiving the annual registration  
83 plate for such vehicle from the division: *Provided*, That  
84 if the annual registration plate is not received within  
85 sixty days of the issuance of the temporary registration  
86 plate or marker, the owner shall, notwithstanding the  
87 fact that the annual registration plate has not been  
88 received, immediately and permanently destroy the  
89 temporary registration plate or marker: *Provided*,  
90 *however*, That not more than one temporary registration  
91 plate or marker shall be issued to the same bona fide  
92 purchaser for the same vehicle.

93 (h) A temporary registration plate or marker shall  
 94 expire and become void upon the receipt of the annual  
 95 registration plate from the division or upon the rescis-  
 96 sion of the contract to purchase the vehicle in question,  
 97 or upon the expiration of sixty days from the date of  
 98 issuance, depending upon whichever event shall first  
 99 occur.

100 (i) For the purpose of this section, the term "dealer"  
 101 includes a wrecker/dismantler/rebuilder.

#### ARTICLE 6B. LICENSE SERVICES.

- §17A-6B-1. License certificate required; application.
- §17A-6B-2. Applicant must be bonded.
- §17A-6B-3. Fee required for license certificate; special fund created.
- §17A-6B-4. Investigation prior to issuance of license certificate; information confidential.
- §17A-6B-5. Refusal of license certificate.
- §17A-6B-6. When application to be made; expiration of license certificate; renewal.
- §17A-6B-7. Form and display of license certificate; certified copies of license.
- §17A-6B-8. Changes in business; action required.
- §17A-6B-9. Investigation; grounds for suspending or revoking license certificate; notice of refusal, suspension or revocation of license certificate; relinquishing license certificate and temporary plates or markers.
- §17A-6B-10. Temporary registration plates or markers.
- §17A-6B-11. Inspections; violations and penalties.
- §17A-6B-12. Injunctive relief.
- §17A-6B-13. Promulgation of rules.

#### §17A-6B-1. License certificate required; application.

1 No person shall engage in the license service business  
 2 in West Virginia without a license certificate. For  
 3 purposes of this article, the term "license service or  
 4 services" shall mean any person processing division of  
 5 motor vehicle documents for compensation when such  
 6 service or services are offered to the general public.

7 Application for a license certificate shall be made on  
 8 a form prescribed by the commissioner and shall  
 9 disclose such information the commissioner requires.  
 10 Such application shall be verified by an oath or  
 11 affirmation of the applicant, if an individual, or if the  
 12 applicant is a copartnership or corporation, by a partner  
 13 or officer thereof.



**§17A-6B-2. Applicant must be bonded.**

1 An application for a license certificate must be  
2 accompanied by a bond in the penal sum of twenty-five  
3 thousand dollars and have a corporate surety authorized  
4 to do business in this state, to ensure that the applicant  
5 will not, in the conduct of his or her business, make any  
6 fraudulent representation which shall cause a financial  
7 loss to any purchaser, seller, financial institution,  
8 agency, or the state of West Virginia. The bond shall be  
9 effective on the date the license certificate is issued.

10 A licensee shall keep the bond in full force and effect  
11 at all times. The aggregate liability of the surety in no  
12 event shall exceed the principal sum of the bond. The  
13 surety on such bond shall have the right to cancel such  
14 bond upon giving thirty days notice to the commissioner  
15 and thereafter shall be relieved of liability for any  
16 breach of condition occurring after the effective date of  
17 said cancellation.

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

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

5 (b) There is hereby created in the treasury a special  
6 fund, named the "motor vehicle license service admin-  
7 istration fund," into which shall be paid all of the initial  
8 licensing fees, the renewal licensing fees, and certified  
9 copies fees. The commissioner of motor vehicles shall use  
10 the moneys in this account to administer and enforce the  
11 provisions of this article.

**§17A-6B-4. Investigation prior to issuance of license certificate; information confidential.**

1 Upon receipt of a completed application, the required  
2 bond, and the application fee, the commissioner may  
3 conduct such investigation, as necessary, to determine  
4 the accuracy of any statements contained in the  
5 application and the existence of any other facts relevant

6 in considering such application. To facilitate such  
7 investigation, the commissioner may withhold issuance  
8 or refusal of the license certificate for a period not to  
9 exceed twenty days.

10 Any application for a license certificate under the  
11 provisions of this article and any information submitted  
12 therewith shall be confidential for the use of the  
13 division. No person shall divulge any information  
14 contained in any application or any information submit-  
15 ted therewith, except in response to a valid subpoena or  
16 subpoena duces tecum issued pursuant to law.

**§17A-6B-5. Refusal of license certificate.**

1 If the commissioner finds that the applicant:

2 (1) Has failed to furnish the required bond;

3 (2) Has knowingly made a false statement of a  
4 material fact in the application;

5 (3) Has habitually defaulted on financial obligations;

6 (4) Has been convicted of a felony within five years  
7 immediately preceding receipt of the application by the  
8 commissioner;

9 (5) So far as can be ascertained, has not complied with  
10 and will not comply with the registration and title laws  
11 of this state;

12 (6) Has been guilty of any fraudulent act in connec-  
13 tion with the business of licensing service; or

14 (7) Has done any act or has failed or refused to  
15 perform any duty for which the license certificate  
16 sought could be suspended or revoked were it then  
17 issued and outstanding.

18 Then, upon the basis of the application, such findings,  
19 and all other information, the commissioner shall make  
20 and enter an order denying the application for a license  
21 certificate, which denial is final and conclusive unless  
22 an appeal is taken. Otherwise, the commissioner shall  
23 issue to the applicant the license certificate which shall  
24 entitle the licensee to engage in the license service  
25 business.

**§17A-6B-6. When application to be made; expiration of license certificate; renewal.**

1 (a) The initial application for a license certificate to  
2 engage in a license service business shall be made thirty  
3 days prior to the first day of January, one thousand nine  
4 hundred ninety-one. This license shall be valid for one  
5 year.

6 (b) Any initial application made after the first day of  
7 January, one thousand nine hundred ninety-one, and any  
8 year thereafter, shall expire on the thirty-first day of  
9 December of that year.

10 (c) A license certificate may be renewed by paying the  
11 renewal fee and after review by the commissioner.

12 (d) A license certificate issued in accordance with the  
13 provisions of this article shall not be transferable.

**§17A-6B-7. Form and display of license certificate; certified copies of license.**

1 (a) The commissioner shall prescribe the form of the  
2 license certificate for a license service business. Each  
3 license certificate shall have printed thereon the seal of  
4 the division, the location of each place of business of the  
5 licensee, the year for which the license is issued, the  
6 serial number, and such other information the commis-  
7 sioner may prescribe. The license certificate shall be  
8 delivered or mailed to the licensee.

9 (b) When a licensee conducts his or her licensed  
10 business at more than one location, he or she shall, upon  
11 application therefor, obtain from the commissioner, for  
12 each such place of business, one certified copy of the  
13 license certificate. A fee of one dollar shall be paid for  
14 each such certified copy. Each licensee shall keep his or  
15 her license certificate or certified copy thereof conspic-  
16 uously posted at each place of business.

17 (c) In the event of the loss or destruction of a license  
18 certificate or a certified copy thereof, the licensee shall  
19 immediately make application for a certified copy of the  
20 license certificate. A fee of one dollar shall be required  
21 for any such certified copy.

**§17A-6B-8. Changes in business; action required.**

1 Every license service business shall notify the commis-  
2 sioner within sixty days from the date on which any of  
3 the following changes in the business occur:

4 (1) A change of the location of any place of business;

5 (2) A change of the name or trade name under which  
6 the licensee engages or will engage in the business;

7 (3) The death of the licensee or any partner or  
8 partners thereof;

9 (4) A change in any partners, officers or directors;

10 (5) A change in ownership of the business;

11 (6) A change in the type of legal entity by and through  
12 which the licensee engages or will engage in the  
13 business; or

14 (7) The appointment of any trustee in bankruptcy,  
15 trustee under an assignment for the benefit of creditors,  
16 master or receiver.

17 When any change specified in subdivision (1), (2), (3),  
18 (4), (5) or (6) occurs, an application for a new license  
19 certificate shall immediately be filed with the commis-  
20 sioner: *Provided*, That when a subdivision (3) change is  
21 involved, an application for a new license certificate  
22 need not be filed during the balance of the license year  
23 if a member of the family of such deceased person  
24 succeeds to the interest in the business. Upon receipt  
25 and review of the application, a new license certificate  
26 shall be issued incorporating the changes. No additional  
27 fee for the balance of the license year shall be required  
28 for the issuance of any new license certificate issued as  
29 a result of any change specified in this section.

30 No new license certificate shall be required for any  
31 trustee in bankruptcy, trustee under an assignment for  
32 the benefit of creditors, receiver or master, appointed  
33 pursuant to law, who shall take charge of or operate  
34 such business for the purpose of winding up the affairs  
35 of such business or protecting the interests of the  
36 creditors of such business.

**§17A-6B-9. Investigation; grounds for suspending or revoking license certificate; notice of refusal, suspension or revocation of license certificate; relinquishing license certificate and temporary plates or markers.**

1 The commissioner may conduct an investigation to  
2 determine whether any provisions of this chapter have  
3 been violated by a licensee. Any investigation shall be  
4 kept in strictest confidence by the commissioner, the  
5 division, the licensee, any complainant and all other  
6 persons, unless and until the commissioner suspends or  
7 revokes the license certificate of the licensee involved.

8 (a) The commissioner may suspend or revoke a license  
9 certificate if the commissioner finds that the licensee:

10 (1) Has failed or refused to comply with the laws of  
11 this state relating to the registration and titling of  
12 vehicles and the giving of notices of transfers;

13 (2) Has failed or refused to comply with the provisions  
14 and requirements of this article, and the promulgated  
15 rules and regulations authorized in section nine, article  
16 two of this chapter which were implemented by the  
17 commissioner, in accordance with the provisions of  
18 article three, chapter twenty-nine-a of this code, to  
19 enforce the provisions of this article; or

20 (b) The commissioner shall suspend or revoke a  
21 license certificate if the commissioner finds that the  
22 licensee:

23 (1) Has knowingly made a false statement of a  
24 material fact in his or her application for the license  
25 certificate then issued and outstanding;

26 (2) Has habitually defaulted on financial obligations;

27 (3) Has been guilty of any fraudulent act in connec-  
28 tion with the license service business;

29 (4) Has defrauded or is attempting to defraud the  
30 state or any political subdivision of the state of any taxes  
31 or fees in connection with the sale or transfer of any  
32 vehicle;

33 (5) Has committed fraud in the registration of a  
34 vehicle;

35 (6) Has knowingly purchased, sold or otherwise dealt  
36 in a stolen vehicle or vehicles;

37 (7) Has advertised by any means, with intent to  
38 defraud, any material representation or statement of  
39 fact which is untrue, misleading or deceptive in any  
40 particular, relating to the conduct of the licensed  
41 business;

42 (8) Has a license certificate to which he is not lawfully  
43 entitled; or

44 (9) The existence of any other ground upon which the  
45 license certificate could have been refused, or any  
46 ground which would be cause for refusing a license  
47 certificate to such licensee were he then applying for the  
48 same.

49 (c) Whenever a licensee fails or refuses to keep the  
50 bond required by section two of this article in full force  
51 and effect, the license certificate of such licensee shall  
52 automatically be suspended unless and until the re-  
53 quired bond is furnished to the commissioner, in which  
54 event the suspension shall be vacated.

55 (d) Whenever the commissioner shall refuse to issue  
56 a license certificate, or shall suspend or revoke a license  
57 certificate, or shall suspend the right of a licensee to  
58 issue temporary plates or markers under the provisions  
59 of section fifteen, article six of this chapter, he or she  
60 shall make and enter an order to that effect and shall  
61 cause a copy of such order to be served in person or by  
62 certified mail, return receipt requested, on the applicant  
63 or licensee, as the case may be.

64 (e) Suspensions hereunder shall continue until the  
65 cause therefor has been eliminated or corrected.  
66 Whenever a license certificate and the right of a licensee  
67 to issue temporary registration plates or markers is  
68 suspended or revoked, the commissioner shall, in the  
69 order of suspension or revocation, direct the licensee to  
70 return to the division his or her license certificate and  
71 any temporary registration plates or markers still in the

72 licensee's possession and issued in conjunction with the  
73 issuance of such license service certificate. It is the duty  
74 of the licensee to comply with the order. Whenever a  
75 licensee fails or refuses to comply with any order herein  
76 specified, the commissioner shall proceed as provided in  
77 section seven, article nine of this chapter.

78 (f) Any applicant whose request for a license certifi-  
79 cate is refused, and any licensee whose license certifi-  
80 cate is suspended or revoked, may appeal such order  
81 in accordance with the procedures set by the  
82 commissioner.

83 (g) Revocation of a license certificate shall not  
84 preclude application for a new license certificate, which  
85 application shall be processed in the same manner. The  
86 license certificate shall be issued or refused on the same  
87 grounds as any other application for a license certificate,  
88 except that any previous suspension and revocation may  
89 be considered in deciding whether to issue or refuse  
90 such license certificate.

**§17A-6B-10. Temporary registration plates or markers.**

1 (a) In order to permit a vehicle which is to be titled  
2 and registered to be operated on the streets and  
3 highways pending receipt of the annual registration  
4 plate from the division for such vehicle, the commis-  
5 sioner may, subject to the limitations and conditions  
6 hereinafter set forth, deliver temporary vehicle registra-  
7 tion plates or markers to persons engaged in license  
8 service businesses who in turn may, subject to the  
9 limitations and conditions hereinafter set forth, issue the  
10 same to applicants for title and registration of vehicles,  
11 but such applicants must comply with the pertinent  
12 provisions of this section.

13 (b) Application by a license service business to the  
14 commissioner for such temporary registration plates or  
15 markers shall be made on the form prescribed and  
16 furnished by the commissioner for such purpose and  
17 shall be accompanied by a fee of three dollars for each  
18 such temporary registration plate or marker. No refund  
19 or credit of fees paid by license services to the commis-  
20 sioner for temporary registration plates or markers

21 shall be allowed, except that in the event the commis-  
22 sioner discontinues the issuance of such temporary  
23 plates or markers, license services returning temporary  
24 registration plates or markers to the commissioner may  
25 petition for and be entitled to a refund or a credit  
26 thereof.

27 (c) Every license service who has made application for  
28 and received temporary registration plates or markers  
29 shall maintain in permanent form a record of all  
30 temporary registration plates or markers delivered to  
31 the licensee, a record of all temporary registration  
32 plates or markers issued, and a record of any other  
33 information pertaining to the receipt or the issuance of  
34 temporary registration plates or markers which the  
35 commissioner may require. Each such record shall be  
36 kept for a period of at least three years from the date  
37 of the making thereof.

38 Every licensee who issues a temporary registration  
39 plate or marker shall, within five working days after the  
40 issuance of such plate or marker, send to the division  
41 a copy of the temporary registration plate or marker  
42 certificate properly executed by the license service and  
43 the purchaser.

44 No temporary registration plates or markers may be  
45 delivered to any license service until such license service  
46 has fully accounted to the commissioner for the tempor-  
47 ary registration plates or markers last delivered to such  
48 license service, by showing the number issued to  
49 purchasers by such license service and any on hand.

50 (d) A license service shall not issue, assign, or deliver  
51 a temporary registration plate or marker to anyone  
52 other than the bona fide applicant for title and regis-  
53 tration of the vehicle to be registered. Not more than  
54 one temporary registration plate or marker shall be  
55 issued to the same bona fide applicant for the same  
56 vehicle. A license service shall not issue a temporary  
57 registration plate or marker to anyone possessed of an  
58 annual registration plate for a vehicle which has been  
59 sold or exchanged, except a license service may issue a  
60 temporary registration plate or marker to the bona fide



61 applicant of a vehicle to be registered who possesses an  
62 annual registration plate of a different class and makes  
63 application to the division to exchange such annual  
64 registration plate of a different class in accordance with  
65 the provisions of section one, article four of this chapter.  
66 A license service shall not lend to anyone, or use on any  
67 vehicle which he may own, a temporary registration  
68 plate or marker.

69 It is unlawful for any license service to issue any  
70 temporary registration plate or marker which contains  
71 a misstatement of fact or false information.

72 No license service shall issue, assign or deliver a  
73 temporary registration plate or marker to anyone unless  
74 and until the license service has physical possession of  
75 the application and appropriate fees and taxes of the  
76 vehicle to be titled and registered. Such application,  
77 fees, and taxes shall be postmarked to the issuing  
78 agency or submitted to the division of motor vehicles  
79 within forty-eight hours after issuance of the temporary  
80 plate or marker.

81 (e) Every license service who issues temporary  
82 registration plates or markers shall affix or insert  
83 clearly and indelibly on the face of each temporary  
84 registration plate or marker the date of issuance and  
85 expiration thereof, and the make, model, and serial  
86 number of the vehicle for which issued.

87 (f) If the commissioner finds that the provisions of this  
88 section or his or her directions are not being complied  
89 with by a license service, he or she may suspend the  
90 right of such license service to issue temporary regis-  
91 tration plates or markers.

92 (g) A temporary registration plate or marker shall  
93 expire upon the receipt of the annual registration plate  
94 from the division, or upon the rescission of the contract  
95 to purchase the vehicle in question, or upon the  
96 expiration of sixty days from the date of issuance,  
97 depending upon which event occurs first.

98 (h) A license service may charge a fee not to exceed  
99 five dollars for issuing a temporary registration plate or  
100 marker.

**§17A-6B-11. Inspections; violations and penalties.**

1 (a) The commissioner and all law-enforcement offic-  
2 ers of the state, acting at the commissioner's request, are  
3 hereby authorized to inspect the place of business and  
4 pertinent records, documents and papers of any person  
5 required to be licensed under the provisions of this  
6 article to the extent deemed reasonably necessary to  
7 determine compliance with and violations of this article.  
8 For the purpose of making any such inspection, the  
9 commissioner and such law-enforcement officers are  
10 authorized, at reasonable times, to enter in and upon any  
11 such place of business.

12 (b) Any person who shall violate any provision of this  
13 article or any final order of the commissioner or board  
14 hereunder shall be guilty of a misdemeanor, and the  
15 provisions of article eleven of this chapter governing  
16 violations of this chapter generally shall be fully  
17 applicable thereto.

**§17A-6B-12. Injunctive relief.**

1 (a) Whenever it appears to the commissioner that any  
2 person or licensee has violated any provision of this  
3 article or any final order of the commissioner, the  
4 commissioner may petition, in the name of the state, the  
5 circuit court of the county in which the violation or  
6 violations occurred, for an injunction against such  
7 person or licensee. A violation or violations resulting in  
8 prosecution or conviction under the provisions of article  
9 eleven of this chapter shall not prohibit injunctive relief.

10 The circuit court may, by mandatory or prohibitory  
11 injunction, compel compliance with the provisions of this  
12 article and all final orders of the commissioner. The  
13 court may also issue temporary injunctions.

14 (b) The judgment by the circuit court shall be final  
15 unless reversed, vacated or modified on appeal to the  
16 supreme court of appeals. Any such appeal shall be  
17 sought in the manner and within the time provided by  
18 law for appeals from circuit courts in other civil cases.

**§17A-6B-13. Promulgation of rules.**

- 1 The commissioner shall promulgate rules in accor-
- 2 dance with chapter twenty-nine-a of this code in order
- 3 to effect the provisions of this article.

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## CHAPTER 130

(H. B. 4541—By Delegates D. Cook and Pitrolo)

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[Passed February 28, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a, relating to motor vehicle administration; providing a definition of automobile broker; making it unlawful to be an automobile broker; and providing criminal penalties.

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

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

**ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS, ETC..**

**§17A-6-1a. Unlawful to be an automobile broker; definition; criminal penalties.**

- 1 No person, except as provided below, shall arrange or
- 2 offer to arrange for a fee, commission, or other valuable
- 3 consideration, a transaction involving the sale of more
- 4 than two new or used motor vehicles per calendar year.
- 5 Such person shall be deemed an automobile broker:
- 6 *Provided,* That a licensed new or used motor vehicle
- 7 dealer in the state of West Virginia or an agent or
- 8 employee of such dealer; an authorized distributor or an
- 9 agent or employee of such distributor; an authorized
- 10 automobile auction held by a licensed auctioneer; any
- 11 person who sells a motor vehicle pursuant to a pledge

12 of security and lien as established in article four-a of this  
 13 chapter; and an individual or corporation, including  
 14 banks and financial institutions, who is the owner of the  
 15 new or used motor vehicle titled in the state of West  
 16 Virginia which is the object of a sale are not automobile  
 17 brokers.

18 Any person violating the provisions of this section is  
 19 guilty of a misdemeanor, and, upon conviction thereof,  
 20 shall be fined not more than one thousand dollars, or  
 21 imprisoned in the county jail not more than sixty days,  
 22 or both fined and imprisoned.

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## CHAPTER 131

(H. B. 4542—By Delegates Anderson and Peddicord)

[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight-a, relating to compensation to motor vehicle dealers for service rendered on warranty and factory recall work; compensation from manufacturers to dealers for warranty and recall work must be the same as the amount charged by the dealer for nonwarranty and nonrecall work, and cannot be based on a flat rate figure; time limit for compensation by manufacturer; dealer's limited responsibility for product liability.

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

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

**ARTICLE 6A. MOTOR VEHICLE DEALERS, DISTRIBUTORS,  
 WHOLESALERS AND MANUFACTURERS.**

**§17A-6A-8a. Compensation to dealers for service rendered.**

1 Every motor vehicle manufacturer, distributor or

2 wholesaler, factory branch or distributor branch, or  
3 officer, agent or representative thereof, shall specify in  
4 writing to each of its motor vehicle dealers, the dealer's  
5 obligation for delivery, preparation, warranty, and  
6 factory recall services on its products, shall compensate  
7 the motor vehicle dealer for warranty and factory recall  
8 service required of the dealer by the manufacturer,  
9 distributor or wholesaler, factory branch or distributor  
10 branch, or officer, agent or representative thereof, and  
11 shall provide the dealer the schedule of compensation to  
12 be paid such dealer for parts, work, and service in  
13 connection with warranty and recall services, and the  
14 time allowance for the performance of such work and  
15 service.

16 In no event shall such schedule of compensation fail  
17 to compensate such dealers for the work and services  
18 they are required to perform in connection with the  
19 dealer's delivery and preparation obligations, or fail to  
20 adequately and fairly compensate such dealers for labor,  
21 parts and other expenses incurred by such dealer to  
22 perform under and comply with manufacturer's war-  
23 ranty agreements and factory recalls. In no event shall  
24 any manufacturer, distributor or wholesaler, or repre-  
25 sentative thereof, pay its dealers an amount of money  
26 for warranty or recall work that is less than that  
27 charged by the dealer to the retail customers of the  
28 dealer for nonwarranty and nonrecall work of the like  
29 kind; and, in no event shall any manufacturer, distrib-  
30 utor or wholesaler, or representative thereof, compen-  
31 sate for warranty and recall work based on a flat rate  
32 figure that is less than what the dealer charges for retail  
33 work.

34 All claims made by motor vehicle dealers pursuant to  
35 this section for compensation for delivery, preparation,  
36 warranty and recall work including labor, parts and  
37 other expenses, shall be paid by the manufacturer  
38 within thirty days after approval and shall be approved  
39 or disapproved by the manufacturer within thirty days  
40 after receipt. When any claim is disapproved, the dealer  
41 shall be notified in writing of the grounds for disappro-  
42 val. No claim which has been approved and paid may

43 be charged back to the dealer unless it can be shown  
44 that the claim was false or fraudulent, that the repairs  
45 were not properly made or were unnecessary to correct  
46 the defective condition, or the dealer failed to reasonably  
47 substantiate the claim in accordance with the written  
48 requirements of the manufacturer or distributor in  
49 effect at the time the claim arose.

50 Notwithstanding the terms of a franchise agreement  
51 or provision of law in conflict with this section, the  
52 dealer's delivery, preparation, warranty and recall  
53 obligations shall constitute the dealer's sole responsibil-  
54 ity for product liability as between the dealer and  
55 manufacturer, and, except for a loss caused by the  
56 dealer's failure to adhere to these obligations, a loss  
57 caused by the dealer's negligence or intentional miscon-  
58 duct, or a loss caused by the dealer's modification of a  
59 product without manufacturer authorization, the manu-  
60 facturer shall reimburse the dealer for all loss incurred  
61 by the dealer, including legal fees, court costs, and  
62 damages, as a result of the dealer having been named  
63 a party in a product liability action.

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## CHAPTER 132

(Com. Sub. for H. B. 2159—By Delegate Given)

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[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section nine, article eight, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to special antitheft laws; defining the felony offense of theft of a rented or leased vehicle and establishing the penalty therefor.

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

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

## ARTICLE 8. SPECIAL ANTITHEFT LAWS.

## §17A-8-9. Theft of a rental vehicle; penalty.

1 (a) A person is guilty of theft of a rental vehicle when:

2 (1) Such person, under the terms of a written rental  
3 or lease agreement, obtains a motor vehicle and, in so  
4 doing, makes a false or fraudulent representation or  
5 utilizes a false pretense or personation, trick, artifice or  
6 device; and

7 (2) Such person thereafter possesses such motor  
8 vehicle with the intent to permanently deprive the  
9 owner of such motor vehicle of his property.

10 (b) Any person who violates the provisions of this  
11 section is guilty of a felony, and, upon conviction thereof,  
12 shall be imprisoned in the penitentiary not less than one  
13 nor more than two years, or, in the discretion of the  
14 court, be confined in the county jail not more than one  
15 year and shall be fined not more than five hundred  
16 dollars.

17 (c) For purposes of this section, the making of a false  
18 or fraudulent representation or the utilization of a false  
19 pretense or personation, trick, artifice or device shall  
20 include, but not be limited to, a false representation as  
21 to name, residence, employment, or operator's license.

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## CHAPTER 133

(H. B. 4843—By Delegates Pitrolo and Ferrell)

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[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eight, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen, relating to special antitheft laws; defining the felony offense of theft of a motor vehicle offered for sale which had been obtained for temporary use for demonstration purposes; and establishing the penalty therefor.

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

That article eight, chapter seventeen-a of the code of West

Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section thirteen, to read as follows:

**ARTICLE 8. SPECIAL ANTITHEFT LAWS.**

**§17A-8-13. Theft of a motor vehicle offered for sale which had been obtained for temporary use for demonstration purposes; penalty.**

1 (a) A person is guilty of theft of a motor vehicle when:

2 (1) Such person, under the terms of an oral agree-  
3 ment, obtains, for demonstration purposes, the tempor-  
4 ary use of a motor vehicle offered for sale and, in so  
5 doing, makes a false or fraudulent representation or  
6 utilizes a false pretense or personation, trick, artifice or  
7 device; and

8 (2) Such person thereafter possesses such motor  
9 vehicle with the intent to permanently deprive the  
10 owner of such motor vehicle of his property.

11 (b) Any person who violates the provisions of this  
12 section is guilty of a felony, and, upon conviction thereof,  
13 shall be imprisoned in the penitentiary not less than one  
14 nor more than ten years, or, in the discretion of the  
15 court, be confined in the county jail not more than one  
16 year and shall be fined not more than five hundred  
17 dollars.

18 (c) For purposes of this section, the making of a false  
19 or fraudulent representation or the utilization of a false  
20 pretense or personation, trick, artifice or device shall  
21 include, but not be limited to, a false representation as  
22 to name, residence, employment, or operator's license.

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## CHAPTER 134

(S. B. 550—By Senators Craigo, Dittmar and Blatnik)

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[Passed March 9, 1990: in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-b; to amend and reenact section one, article



one, and sections one, five, eight and twelve, article two, chapter seventeen-b of said code; to further amend said chapter seventeen-b by adding thereto a new article, designated article one-d; and to further amend article two of said chapter seventeen-b by adding thereto three new sections, designated sections seven-b, seven-c and fifteen, all relating to motorcycle safety; establishing a motorcycle safety fee; providing a definition of motorcycle; providing a definition of driver and driver license; providing for motorcycle education; establishing motorcycle education program; providing for rider training; setting forth instructor training and education; setting forth program implementation; providing for exemption from motorcycle examination; establishing motorcycle safety fund; providing division of motor vehicles with authority for regulations; establishing effective date; establishing motorcycle driver license; establishing qualifications and fee for issuance of driving instruction permits to fifteen year olds; establishing motorcycle instruction permit; providing for separate examination for motorcycle license; establishing motorcycle license examination fund; providing for motorcycle license and endorsement fee; providing division of motor vehicles and department of public safety with authority to promulgate rules.

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

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

#### **Chapter**

- 17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.**
- 17B. Motor Vehicle Driver Licenses.**

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

**ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.**

**§17A-10-3b. Motorcycle safety fee.**

1       Upon the annual registration of any motorcycle, the  
2       division shall collect a four dollar motorcycle safety fee  
3       in addition to the registration fee specified in section  
4       three of this article. The division shall deposit one half  
5       of the motorcycle safety fee into the state treasury and  
6       credit the moneys to the motorcycle safety fund. The  
7       division shall deposit the remaining one half of the  
8       motorcycle safety fee into the state treasury and credit  
9       the moneys collected to the motorcycle license examina-  
10      tion fund established in section seven-c, article two,  
11      chapter seventeen-b of this code.

**CHAPTER 17B. MOTOR VEHICLE  
DRIVER LICENSES.**

**Article**

1. Words and Phrases Defined.
- 1D. Motorcycle Safety Education.
2. Issuance of License, Expiration and Renewal.

**ARTICLE 1. WORDS AND PHRASES DEFINED.**

**§17B-1-1. Definitions.**

1       The following words and phrases when used in this  
2       chapter shall, for the purpose of this chapter, have the  
3       meanings respectively ascribed to them in this article:

4       (a) *Vehicle*.—Every device in, upon, or by which any  
5       person or property is or may be transported or drawn  
6       upon a public highway, excepting devices moved by  
7       human power or used exclusively upon stationary rails  
8       or tracks;

9       (b) *Motor vehicle*.—Every vehicle which is self-  
10      propelled and every vehicle which is propelled by  
11      electric power obtained from overhead trolley wires, but  
12      not operated upon rails;

13      (c) *Motorcycle*.—Every motor vehicle having a seat or

14 saddle for the use of the rider and designed to travel  
15 on not more than three wheels in contact with the  
16 ground, but excluding a farm tractor as defined herein,  
17 a moped as defined in section five-a, article one, chapter  
18 seventeen-c, a snowmobile as defined in section one-mm,  
19 article one, chapter seventeen-a and an all-terrain  
20 vehicle as defined in section one-ii, article one, chapter  
21 seventeen-a;

22 (d) *Farm tractor*.—Every motor vehicle designed and  
23 used primarily as a farm implement for drawing plows,  
24 mowing machines, and other implements of husbandry;

25 (e) *School bus*.—Every motor vehicle owned by a  
26 public governmental agency and operated for the  
27 transportation of children to or from school or privately  
28 owned and operated for compensation for the transpor-  
29 tation of children to or from school;

30 (f) *Person*.—Every natural person, firm, copartner-  
31 ship, association or corporation;

32 (g) *Operator*.—Every person, other than a chauffeur,  
33 who drives or is in actual physical control of a motor  
34 vehicle upon a highway or who is exercising control over  
35 or steering a vehicle being towed by a motor vehicle;

36 (h) *Chauffeur*.—Every person who is employed by  
37 another for the principal purpose of driving a motor  
38 vehicle and every person who drives a school bus  
39 transporting school children or any motor vehicle when  
40 in use for the transportation of persons or property for  
41 compensation;

42 (i) *Driver*.—Means any person who drives, operates or  
43 is in physical control of a motor vehicle, in any place  
44 open to the general public for purposes of vehicular  
45 traffic, or who is required to hold a driver license;

46 (j) *Driver License*.—Means any permit or license  
47 issued by this state to a person which authorizes the  
48 person to drive a motor vehicle of a specific class or  
49 classes subject to any restriction or endorsement  
50 contained thereon;

51 (k) *Owner*.—A person who holds the legal title of a

52 vehicle or in the event a vehicle is the subject of an  
53 agreement for the conditional sale or lease thereof with  
54 the right of purchase upon performance of the condi-  
55 tions stated in the agreement and with an immediate  
56 right of possession vested in the conditional vendee or  
57 lessee, or in the event a mortgagor of a vehicle is entitled  
58 to possession, then such conditional vendee or lessee or  
59 mortgagor shall be deemed the owner for the purpose  
60 of this chapter;

61 (l) *Nonresident*.—Every person who is not a resident  
62 of this state;

63 (m) *Street or highway*.—The entire width between the  
64 boundary lines of every way publicly maintained when  
65 any part thereof is open to the use of the public for  
66 purposes of vehicular travel;

67 (n) *Commissioner*.—The commissioner of motor vehi-  
68 cles of this state;

69 (o) *Department*.—The department of motor vehicles of  
70 this state acting directly or through its duly authorized  
71 officers or agents;

72 (p) *Suspension*.—Suspension means that the driver's  
73 license and privilege to drive a motor vehicle on the  
74 public highways are temporarily withdrawn but only  
75 during the period of such suspension;

76 (q) *Revocation*.—Revocation means that the driver's  
77 license and privilege to drive a motor vehicle on the  
78 public highways are terminated and shall not be  
79 renewed or restored, except that an application for a  
80 new license may be presented and acted upon by the  
81 division after the expiration of at least one year after  
82 the date of revocation, except as otherwise provided in  
83 section two, article five-a, chapter seventeen-c of this  
84 code;

85 (r) *Cancellation*.—Cancellation means that a driver's  
86 license is annulled and terminated because of some error  
87 or defect or because the licensee is no longer entitled to  
88 such license, but the cancellation of a license is without  
89 prejudice and application for a new license may be made  
90 at any time after such cancellation.

**ARTICLE 1D. MOTORCYCLE SAFETY EDUCATION.**

- §17B-1D-1. Legislative findings.
- §17B-1D-2. Program established.
- §17B-1D-3. Rider training.
- §17B-1D-4. Instructor training and qualification.
- §17B-1D-5. Program implementation.
- §17B-1D-6. Exemption from motorcycle license examination.
- §17B-1D-7. Motorcycle safety account.
- §17B-1D-8. Authority for regulations.
- §17B-1D-9. Effective date.

**§17B-1D-1. Legislative findings.**

- 1       The Legislature hereby finds and declares that:
- 2       (a) Motorcycles account for approximately three
- 3       percent of the state's registered motor vehicles but are
- 4       involved in over six percent of the state's motor vehicle
- 5       fatalities.
- 6       (b) In terms of fatalities per vehicle mile traveled, the
- 7       state's motorcyclists face about ten times the risk of
- 8       passenger car occupants.
- 9       (c) Lack of proper riding skills have been shown to be
- 10      largely responsible for the motorcycle fatality problem.
- 11      (d) It is therefore the purpose of this article to provide
- 12      for a motorcycle safety education program in this state.

**§17B-1D-2. Program established.**

- 1       (a) The West Virginia motorcycle safety education
- 2       program is hereby established within the division to be
- 3       administered by the commissioner. The program shall
- 4       include rider training courses and instructor training
- 5       courses. It may also include efforts to enhance public
- 6       motorcycle safety awareness, alcohol and drug effects
- 7       awareness for motorcyclists, driver improvement
- 8       efforts, licensing improvement efforts, program promo-
- 9       tion and other efforts to enhance motorcycle safety
- 10      through education.
- 11      (b) The commissioner shall appoint a program coor-
- 12      dinator who shall oversee and direct the program, and
- 13      conduct an annual evaluation.

**§17B-1D-3. Rider training.**

1 (a) The division shall establish standards for the rider  
2 training course designed to develop and instill the  
3 knowledge, attitudes, habits and skills necessary for safe  
4 operation of a motorcycle.

5 (b) Rider training courses shall be open to all resi-  
6 dents of the state who are eligible for a motorcycle  
7 learner's permit. An adequate number of rider training  
8 courses shall be provided to meet the reasonably  
9 anticipated needs of all persons in the state who are  
10 eligible and who desire to participate in the program.  
11 Program delivery may be phased in over a reasonable  
12 period of time.

13 (c) The division shall issue certificates of completion  
14 in the manner and form prescribed by the commissioner  
15 to persons who satisfactorily complete the requirements  
16 of the course.

**§17B-1D-4. Instructor training and qualification.**

1 (a) The division shall establish standards for an  
2 approved motorcycle rider education instructor prepa-  
3 ration course. Successful completion of the course shall  
4 require the participant to demonstrate knowledge of the  
5 course material, knowledge of safe motorcycle operating  
6 practices, and the necessary aptitude for instructing  
7 students.

8 (b) The division shall establish minimum require-  
9 ments for the qualification of a rider education instruc-  
10 tor.

**§17B-1D-5. Program implementation.**

1 The division may enter into contracts with either  
2 public or private organizations for technical assistance  
3 in conducting rider and instructor training courses, if  
4 the courses are administered and taught according to  
5 standards established by the division. An organization  
6 conducting such courses may charge a reasonable  
7 tuition fee. The division shall determine the maximum  
8 tuition fee an organization may charge.

**§17B-1D-6. Exemption from motorcycle license examination.**

1 The commissioner may exempt applicants for a  
2 motorcycle driver's license or endorsement from all or  
3 part of the special motorcycle license examination  
4 required by section seven-b, article two of this chapter  
5 if the applicant presents a certificate of completion of  
6 the rider training course specified in sections two and  
7 three, article one-d of this chapter.

**§17B-1D-7. Motorcycle safety account.**

1 (a) There is hereby created a special fund in the state  
2 treasury which shall be designated the "motorcycle  
3 safety fund". The fund shall consist of all moneys  
4 received from motorcycle driver licensing fees except  
5 instruction permit fees, one half of the moneys received  
6 from the motorcycle safety fee assessed with each  
7 motorcycle registration under section three-b, article  
8 ten, chapter seventeen-a of this code and any other  
9 moneys specifically allocated to the fund. The fund shall  
10 not be treated by the auditor and treasurer as part of  
11 the general revenue of the state. The fund shall be a  
12 special revolving fund to be used and paid out upon  
13 order of the commissioner of motor vehicles solely for  
14 the purposes specified in this chapter.

15 (b) The fund shall be used by the division of motor  
16 vehicles to defray the cost of implementing and admin-  
17 istering the motorcycle safety education program  
18 established in section two, article one-d of this chapter.  
19 Moneys in the special revolving fund may also be used  
20 to defray the cost of implementing and administering  
21 the motorcycle driver licensing program.

**§17B-1D-8. Authority for regulations.**

1 The division is authorized to adopt such rules and  
2 regulations as are necessary to carry out the provisions  
3 of this article in accordance with the provisions of  
4 chapter twenty-nine-a of this code.

**§17B-1D-9. Effective date.**

1 This article shall become effective on the first day of  
2 July, one thousand nine hundred ninety-two.

**ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.**

- §17B-2-1. Drivers must be licensed; chauffeur licensee need not procure driver license; licensees need not obtain local government license; motorcycle driver license.
- §17B-2-5. Qualifications, issuance and fee for instruction permits.
- §17B-2-7b. Separate examination and endorsement for a license valid for operation of motorcycle.
- §17B-2-7c. Motorcycle license examination fund.
- §17B-2-8. Issuance and contents of licenses; fees.
- §17B-2-12. Expiration of licenses; renewal; renewal fees.
- §17B-2-15. Authority for regulations.

**§17B-2-1. Drivers must be licensed; chauffeur licensee need not procure driver license; licensees need not obtain local government license; motorcycle driver license.**

1 (a) No person, except those hereinafter expressly  
2 exempted, may drive any motor vehicle upon a street or  
3 highway in this state or upon any subdivision street, as  
4 used in article twenty-four, chapter eight of this code,  
5 when the use of such subdivision street is generally used  
6 by the public unless the person has a valid driver license  
7 under the provisions of this code.

8 No person shall drive a motor vehicle as a chauffeur  
9 unless he holds a valid chauffeur license. No person may  
10 receive a chauffeur license until he surrenders to the  
11 division any driver license issued to him or an affidavit  
12 that he does not possess a driver license.

13 Any person holding a valid chauffeur license he-  
14 reunder need not procure a driver license.

15 Any person licensed to operate a motor vehicle as  
16 provided in this code may exercise the privilege thereby  
17 granted as provided in this code and, except as other-  
18 wise provided by law, shall not be required to obtain any  
19 other license to exercise such privilege by any county,  
20 municipality or local board or body having authority to  
21 adopt local police regulations.

22 (b) No person, except those hereinafter expressly  
23 exempted, shall drive any motorcycle upon a street or  
24 highway in this state or upon any subdivision street, as  
25 used in article twenty-four, chapter eight, when the use



26 of such subdivision street is generally used by the public  
27 unless the person has a valid motorcycle license or a  
28 valid license which has been endorsed under section  
29 seven-b, article two of this chapter for motorcycle  
30 operation or has a valid motorcycle instruction permit.

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

1 Any person who is at least fifteen years of age may  
2 apply to the division for an instruction permit. The  
3 division may, in its discretion, after the applicant has  
4 appeared before the department of public safety and  
5 successfully passed all parts of the examination other  
6 than the driving test and presented documentation of  
7 compliance with the provisions of section eleven, article  
8 eight, chapter eighteen of this code, issue to the  
9 applicant an instruction permit which shall entitle the  
10 applicant while having such permit in his immediate  
11 possession to drive a motor vehicle upon the public  
12 highways when accompanied by a licensed driver of at  
13 least twenty-one years of age or a driver's education or  
14 driving school instructor that is acting in an official  
15 capacity as an instructor, who is occupying a seat beside  
16 the driver, except in the event the permittee is operating  
17 a motorcycle, but in no event shall the permittee be  
18 allowed to operate a motorcycle upon a public highway  
19 until reaching sixteen years of age. Any such instruction  
20 permit issued to a person under the age of sixteen shall  
21 expire sixty days after the permittee reaches sixteen  
22 years of age: *Provided*, That only permittees who have  
23 reached their sixteenth birthday are eligible to take the  
24 driving examination as provided in section six of this  
25 article. The instruction permit may be renewed for an  
26 additional period of sixty days. Any such permit issued  
27 to a person who has reached the age of sixteen shall be  
28 valid for a period of sixty days and may be renewed for  
29 an additional period of sixty days or a new permit  
30 issued. The fee for such instruction permit shall be four  
31 dollars, one dollar of which shall be paid into the state  
32 treasury and credited to the state road fund, and the  
33 other three dollars of which shall be paid into the state  
34 treasury and credited to the general fund to be approp-

35 riated to the department of public safety for application  
36 in the enforcement of the road law.

37 Any person sixteen years of age or older may apply  
38 to the division for a motorcycle instruction permit. The  
39 division of motor vehicles may, in its discretion, after the  
40 applicant has appeared before the department of public  
41 safety and successfully passed all parts of the motorcycle  
42 examination other than the driving test, and presented  
43 documentation of compliance with the provisions of  
44 section eleven, article eight, chapter eighteen of this  
45 code, issue to the applicant an instruction permit which  
46 entitles the applicant while having such permit in his  
47 immediate possession to drive a motorcycle upon the  
48 public streets or highways for a period of sixty days,  
49 during the daylight hours between sunrise and sunset  
50 only. No holder of a motorcycle instruction permit shall  
51 operate a motorcycle while carrying any passenger on  
52 the vehicle. A motorcycle instruction permit is not  
53 renewable, but a qualified applicant may apply for a  
54 new permit. The fee for a motorcycle instruction permit  
55 shall be five dollars, which shall be paid into a special  
56 fund in the state treasury known as the motorcycle  
57 license examination fund as established in section seven-  
58 c, article two, chapter seventeen-b of this code.

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

1 The department of public safety shall administer a  
2 separate motorcycle examination for applicants for a  
3 license valid for operation of a motorcycle. Any appli-  
4 cant for a license valid for operation of a motorcycle  
5 shall be required to successfully complete the motorcy-  
6 cle examination, which shall be in addition to the  
7 examination administered pursuant to section seven,  
8 article two, chapter seventeen-b of this code: *Provided,*  
9 That the commissioner of motor vehicles may exempt an  
10 applicant for a motorcycle driver license or endorsement  
11 from all or part of the motorcycle license examination  
12 as provided in section six, article one-d of this chapter.  
13 The motorcycle examination shall test the applicant's  
14 knowledge of the operation of a motorcycle and of any  
15 traffic laws specifically relating thereto and shall

16 include an actual demonstration of the ability to exercise  
17 ordinary and reasonable control in the operation of a  
18 motorcycle. An applicant for a license valid for the  
19 operation of only a motorcycle shall be tested as  
20 provided in this section and in section seven, article two,  
21 chapter seventeen-b of this code, but need not demon-  
22 strate actual driving ability in any vehicle other than  
23 a motorcycle. The examination provided in this section  
24 shall not be made a condition upon the renewal of the  
25 license of any person under this section.

26 For an applicant who successfully completes the  
27 motorcycle examination, upon payment of the required  
28 fee, the department shall issue a motorcycle endorse-  
29 ment on the driver license of the applicant, or shall issue  
30 a special motorcycle-only license if the applicant does  
31 not possess a driver license.

32 Any person who already holds a valid driver license  
33 on or before the first day of April, one thousand nine  
34 hundred ninety-two, upon application and payment of  
35 the required fee to the division of motor vehicles at any  
36 time between the first day of April, one thousand nine  
37 hundred ninety-two, and the thirtieth day of June, one  
38 thousand nine hundred ninety-two, may be issued a  
39 motorcycle endorsement without being required to take  
40 the examination specified in this section. On or after the  
41 first day of July, one thousand nine hundred ninety-two,  
42 every person, including those holding valid driver  
43 license, shall be required to take the examination  
44 specified in this section to obtain a motorcycle license  
45 or endorsement.

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

1 There is hereby created a special revolving fund in the  
2 state treasury which shall be designated as the "motor-  
3 cycle license examination fund". The fund shall consist  
4 of all moneys received from fees collected for motorcycle  
5 instruction permits under this article and any other  
6 moneys specifically allocated to the fund. The fund shall  
7 not be treated by the auditor or treasurer as part of the  
8 general revenue of the state. The fund shall be a special  
9 revolving fund to be used and paid out upon order of

10 the superintendent of public safety solely for the  
11 purposes specified in this article.

12 The fund shall be used by the department of public  
13 safety to defray the costs of implementing and admin-  
14 istering a special motorcycle license examination,  
15 including a motorcycle driving test.

**§17B-2-8. Issuance and contents of licenses; fees.**

1 (1) The department shall, upon payment of the  
2 required fee, issue to every applicant qualifying therefor  
3 a driver license, or motorcycle-only license. Each license  
4 shall contain a coded number assigned to the licensee,  
5 the full name, date of birth, residence address, a brief  
6 description and a color photograph of the licensee and  
7 either a facsimile of the signature of the licensee or a  
8 space upon which the signature of the licensee shall be  
9 written with pen and ink immediately upon receipt of  
10 the license. No license shall be valid until it has been  
11 so signed by the licensee. A driver license which is valid  
12 for operation of a motorcycle shall contain a motorcycle  
13 endorsement. The department shall use such process or  
14 processes in the issuance of licenses that will, insofar as  
15 possible, prevent any alteration, counterfeiting, duplica-  
16 tion, reproduction, forging or modification of, or the  
17 superimposition of a photograph on, such license.

18 (2) The fee for the issuance of a driver license shall  
19 be ten dollars. The one-time only additional fee for  
20 adding a motorcycle endorsement to a driver license  
21 shall be five dollars. The fee for issuance of a motorcy-  
22 cle-only license shall be ten dollars. The fees for the  
23 motorcycle endorsement or motorcycle-only license shall  
24 be paid into a special fund in the state treasury known  
25 as the motorcycle safety fund as established in section  
26 seven, article one-d, chapter seventeen-b of this code.

27 (3) The division of motor vehicles shall mark any  
28 license which is reissued following a suspension of a  
29 person's license to operate a motor vehicle in this state  
30 with the type of violation for which the original license  
31 was suspended and shall indicate the date of the  
32 violation. For purposes of this section, any conviction  
33 under the provisions of subsections (a) and (b) of the

34 prior enactment of section two, article five, chapter  
35 seventeen-c of this code which offense was committed  
36 within a period of five years immediately preceding the  
37 effective date of the present section two, article five,  
38 chapter seventeen-c of this code, shall be treated as a  
39 violation to which this section is applicable and revoca-  
40 tions based on such convictions shall be marked on  
41 licenses which are hereafter issued.

**§17B-2-12. Expiration of licenses; renewal; renewal fees.**

1 (1) Every driver license shall expire four years from  
2 the date of its issuance, except that the driver license  
3 of any person in the armed forces shall be extended for  
4 a period of six months from the date the person is  
5 separated under honorable circumstances from active  
6 duty in the armed forces.

7 (2) A person who allows his driver license to expire  
8 may apply to the department for renewal thereof.  
9 Application shall be made upon a form furnished by the  
10 department and shall be accompanied by payment of the  
11 fee required by section eight of this article plus an  
12 additional fee of one dollar and fifty cents. The  
13 commissioner shall determine whether such person  
14 qualifies for a renewed license and may, in his discre-  
15 tion, renew any expired license without examination of  
16 the applicant.

17 (3) Each renewal of a driver license shall contain a  
18 new color photograph of the licensee. By first class mail  
19 to the address last known to the department, the  
20 commissioner shall notify each person who holds a valid  
21 driver license of the expiration date of the license. The  
22 notice shall be mailed at least thirty days prior to the  
23 expiration date of the license and shall include a  
24 renewal application form.

**§17B-2-15. Authority for regulations.**

1 (a) The commissioner of the division of motor vehi-  
2 cles is authorized to adopt such rules and regula-  
3 tions as are necessary to carry out the license and  
4 endorsement provisions of this chapter and the provi-

5 sions regarding motor vehicle registration in accordance  
6 with the provisions of chapter twenty-nine-a of this code.

7 (b) The superintendent of the department of public  
8 safety is authorized to adopt such rules and regulations  
9 as are necessary to carry out the provisions relating to  
10 the issuance of an instruction permit and conducting the  
11 license qualifying examinations provided for in this  
12 chapter in accordance with the provisions of chapter  
13 twenty-nine-a of this code.

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## CHAPTER 135

(Com. Sub. for H. B. 4544—By Delegates Ashcraft and Mezzatesta)

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[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section seven, article twelve, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to overtaking and passing school buses; and criminal penalties.

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

That section seven, article twelve, 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 12. SPECIAL STOPS REQUIRED.

**§17C-12-7. Overtaking and passing school bus; penalties; signs and warning lights upon buses; removal of warning lights, lettering, etc., upon sale of buses; highways with separate roadways.**

1 (a) The driver of a vehicle upon meeting or overtaking  
2 from either direction any school bus which has stopped  
3 for the purpose of receiving or discharging any school  
4 children shall stop the vehicle before reaching such  
5 school bus when there is in operation on said school bus

6 flashing warning signal lights, as referred to in section  
7 eight of this article, and said driver shall not proceed  
8 until such school bus resumes motion, or is signaled by  
9 the school bus driver to proceed or the visual signals are  
10 no longer actuated. This section applies wherever the  
11 school bus is receiving or discharging children, includ-  
12 ing, but not limited to, any street, highway, parking lot,  
13 private road or driveway: *Provided*, That the driver of  
14 a vehicle upon a controlled access highway need not stop  
15 upon meeting or passing a school bus which is on a  
16 different roadway or adjacent to such highway and  
17 where pedestrians are not permitted to cross the  
18 roadway. Any such driver acting in violation of this  
19 subsection is guilty of a misdemeanor, and, upon  
20 conviction thereof, shall be fined not less than fifty nor  
21 more than two hundred dollars, or imprisoned in the  
22 county jail not more than six months, or both fined and  
23 imprisoned. If the identity of the driver cannot be  
24 ascertained, then any such owner or lessee of the vehicle  
25 in violation of this subsection is guilty of a misdemeanor,  
26 and, upon conviction thereof, shall be fined not less than  
27 twenty-five nor more than one hundred dollars: *Pro-*  
28 *vided, however*, That such conviction shall not subject  
29 such owner or lessee to further administrative or other  
30 penalties for said offense, notwithstanding other provi-  
31 sions of this code to the contrary.

32 (b) Every bus used for the transportation of school  
33 children shall bear upon the front and rear thereof a  
34 plainly visible sign containing the words "school bus" in  
35 letters not less than eight inches in height. When a  
36 contract school bus is being operated upon a highway  
37 for purposes other than the actual transportation of  
38 children either to or from school, all markings thereon  
39 indicating "school bus" shall be covered or concealed.  
40 Any school bus sold or transferred to another owner by  
41 a county board of education, agency or individual shall  
42 have all flashing warning lights disconnected and all  
43 lettering removed or permanently obscured, except  
44 when sold or transferred for the transportation of school  
45 children.

## CHAPTER 136

(S. B. 386—By Senators Pritt and Holliday)

[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-eight, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to altered suspension systems of motor vehicles; unlawful acts; and providing special inspection stickers for certain specially designed or modified motor vehicles.

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

That section forty-eight, 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-15-48. Alteration of suspension system.

1 (a) No person may operate upon a public highway any  
 2 motor vehicle registered or required to be registered in  
 3 this state if it has been modified by alteration of its  
 4 bumper mounting on the frame more than four inches  
 5 from the lower edge of the original manufactured  
 6 bumper configuration for that vehicle. The bumper  
 7 must be at least three inches in vertical width, centered  
 8 on the center line of the motor vehicle and not less than  
 9 the width of the wheel track distance. The maximum  
 10 distance between the vehicle body to the vehicle frame  
 11 may not exceed three inches. The distance from the  
 12 vehicle body to the vehicle frame shall be measured  
 13 from the vehicle body mount seat to the vehicle frame  
 14 mount seat. No vehicle may be modified to cause the  
 15 vehicle body or chassis to come in contact with the  
 16 ground, expose the fuel tank to damage from collision,  
 17 or cause the wheels to come in contact with the body  
 18 under normal operation. No part of the original  
 19 suspension system may be disconnected to defeat the  
 20 safe operation of the suspension system. Front end



21 suspension by the use of lift blocks is expressly  
22 prohibited. However, nothing contained in this section  
23 prevents the installation of heavy duty equipment,  
24 including shock absorbers and overload springs. No-  
25 thing contained in this section prohibits the operation on  
26 a public highway of a motor vehicle with normal wear  
27 to the suspension system if such normal wear does not  
28 adversely affect the control of the vehicle.

29 (b) No person may operate upon a public highway any  
30 motor vehicle registered in this state if it has been  
31 modified by alteration of its altitude from the ground  
32 to the extent that its bumpers, measured to any point  
33 on the lower edge of the main horizontal bumper bar,  
34 exclusive of any bumper guards, do not fall within the  
35 limits specified herein for its gross vehicle weight rating  
36 category. The front and rear bumper height of trucks  
37 whose gross vehicle weight rating is ten thousand  
38 pounds or less may be no less than six inches and no  
39 more than thirty-one inches. The provisions of this  
40 subsection do not apply to trucks with a gross vehicle  
41 weight rating in excess of ten thousand pounds. For the  
42 purpose of this section, the term "gross vehicle weight  
43 ratings" means manufacturer's gross vehicle weight  
44 ratings established for that vehicle.

45 (c) In the absence of bumpers, and in cases where  
46 bumper heights have been lowered or modified more  
47 than four inches, height measurements under subsection  
48 (a) or (b) shall be made to the bottom of the frame rail.

49 (d) This section does not apply to specially designed  
50 or modified motor vehicles when operated off the public  
51 highways in races and similar events. Such motor  
52 vehicles may be lawfully towed on the highways of this  
53 state.

54 (e) No person may operate upon a public highway any  
55 motor vehicle registered or required to be registered in  
56 this state if it has been modified by alteration as set out  
57 in the provisions of this section unless the tires on the  
58 altered motor vehicle meet specifications approved by  
59 the United States department of transportation. In

60 addition, neither the motor vehicle nor the chassis may  
61 come in contact with the tires under normal operation.

62 (f) Modified vehicles must have a special inspection  
63 sticker which must be inspected by the thirty-first day  
64 of July, one thousand nine hundred ninety. The fee for  
65 the modified vehicle stickers will be twenty-five dollars  
66 with the department of public safety establishing rules  
67 concerning such inspection. Each municipal, county and  
68 state law-enforcement agency must record on accident  
69 report forms whether a modified vehicle was involved  
70 in the accident.

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## CHAPTER 137

(Com. Sub. for S. B. 339—By Senator Whitlow)

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[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to repeal sections one, nine, ten, eleven, thirteen and twenty, article four, chapter seventeen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections five and seven, article two-a of said chapter, relating to the suspension of the driver license; decreasing the number of days of suspension for failure to have insurance; providing the commissioner authority to withdraw suspension of driver license; and eliminating the requirement that certain persons get high risk insurance before reinstatement of their driver license.

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

That sections one, nine, ten, eleven, thirteen and twenty, article four, chapter seventeen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections five and seven, article two-a of said chapter be amended and reenacted to read as follows:

### ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.

§17D-2A-5. Cancellation of insurance policy; suspension of registration; minimum policy term.

§17D-2A-7. Suspension or revocation of license, registration; reinstatement.

**§17D-2A-5. Cancellation of insurance policy; suspension of registration; minimum policy term.**

1 (a) An insurance company shall provide the division  
2 of motor vehicles with a cancellation notice within ten  
3 days of the effective date of cancellation whenever the  
4 company issues or causes to be issued a cancellation  
5 under the provisions of subsections (b) through (e),  
6 section one, article six-a, chapter thirty-three of this  
7 code. The division shall then suspend the driver license  
8 of the owner of such vehicle for a period of thirty days  
9 and shall suspend the motor vehicle registration until  
10 proof of insurance is presented to the division.

11 (b) On or before the fifteenth day of January, one  
12 thousand nine hundred eighty-five, the commissioner of  
13 motor vehicles shall report to the Legislature upon  
14 proceedings pursuant to this section. The report shall  
15 include the total number of statements selected for  
16 verification as required by section three, article three,  
17 chapter seventeen-a, the total number of notices received  
18 from insurers, the total number of notices of pending  
19 suspensions issued and the total number of cases in  
20 which cancellation was found to have resulted in a lapse  
21 of coverage upon a vehicle operated upon the highways  
22 of this state during the prior year.

23 (c) No policy of motor vehicle liability insurance  
24 issued or delivered for issuance in this state shall be  
25 contracted for a period of less than ninety days:  
26 *Provided*, That the insurance commissioner may estab-  
27 lish exceptions thereto by rules and regulations to  
28 chapter twenty-nine-a.

**§17D-2A-7. Suspension or revocation of license, registration; reinstatement.**

1 (a) Any owner of a motor vehicle, subject to the  
2 provisions of this article, who fails to have the required  
3 security in effect at the time such vehicle is being  
4 operated upon the roads or highways of this state, shall  
5 have his or her driver license suspended by the  
6 commissioner of the division of motor vehicles for a  
7 period of thirty days and shall have his or her motor  
8 vehicle registration revoked until such time as he or she

9 shall present to the division of motor vehicles the proof  
10 of security required by this article: *Provided*, That if a  
11 motor vehicle is registered in more than one name, the  
12 driver license of only one of the owners shall be  
13 suspended by the commissioner.

14 (b) Any person who knowingly operates a motor  
15 vehicle upon the roads or highways of this state, which  
16 does not have the security required by the provisions of  
17 this article, shall have his or her driver license  
18 suspended by the commissioner for a period of thirty  
19 days.

20 (c) A person's driver license shall be suspended for a  
21 period of thirty days, if the person is operating a motor  
22 vehicle designated for off highway use upon the roads  
23 and highways of this state without the required security  
24 in effect, if the motor vehicle is not properly registered  
25 and licensed, or if the required security was cancelled.

26 (d) The commissioner may withdraw a suspension of  
27 a driver license provided that the commissioner is  
28 satisfied that there was not a violation of the provisions  
29 of required security related to operation of a motor  
30 vehicle upon the roads or highways of this state by such  
31 person. The commissioner may request additional  
32 information as needed in order to make such  
33 determination.

34 (e) No person shall have his or her driver license or  
35 motor vehicle registration suspended or revoked under  
36 any provisions of this section unless he or she shall first  
37 be given written notice of such suspension or revocation  
38 sent by certified mail, at least twenty days prior to the  
39 effective date of such suspension or revocation, and upon  
40 such person's written request, sent by certified mail, he  
41 or she shall be afforded an opportunity for a hearing  
42 thereupon as well as a stay of the commissioner's order  
43 of suspension or revocation and an opportunity for  
44 judicial review of such hearing. Upon affirmation of the  
45 commissioner's order, the owner or operator, as the case  
46 may be, shall surrender such revoked license and/or  
47 registration or have the same impounded in the manner

48 set forth in the provisions of section seven, article nine,  
49 chapter seventeen-a of the code.

50 (f) Such suspended driver license shall be reinstated  
51 following the period of suspension upon compliance with  
52 the conditions set forth in this article and such revoked  
53 motor vehicle registration shall be reissued only upon  
54 lawful compliance with the provisions of this article.

55 (g) If the commissioner has previously suspended the  
56 person's driver license under the provisions of this  
57 section or section five of this article, the period of  
58 suspension shall be for a period of ninety days.

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## CHAPTER 138

(S. B. 136—By Senators Jackson and Chafin)

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[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section thirty-one, article three, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to writs, process and orders of publication; authorizing the service of process upon nonresident motorists involved in accidents or collisions while in the state of West Virginia; appointing the secretary of state as agent or attorney-in-fact for purposes of service of process upon such nonresident motorists; appointing such nonresident defendant's insurance company as agent or attorney-in-fact for purposes of service of process upon failure of secretary of state to effect service; actions by or against nonresident's estate; bond requirements; notice of service, summons and complaint to be sent by registered or certified mail, return receipt requested, by secretary of state to nonresident defendant; fees for service; requirements for service upon nonresident defendant's insurance company upon affidavit of defendant's nonresidency and failure to obtain service by secretary of state; and definitions of terms.

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

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

**ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.**

**§56-3-31. Actions by or against nonresident operators of motor vehicles involved in highway accidents; appointment of secretary of state, insurance company, as agents; service of process.**

1 (a) Every nonresident, for the privilege of operating  
2 a motor vehicle on a public street, road or highway of  
3 this state, either personally or through an agent,  
4 appoints the secretary of state, or his or her successor  
5 in office, to be his or her agent or attorney-in-fact upon  
6 whom may be served all lawful process in any action or  
7 proceeding against him or her in any court of record in  
8 this state arising out of any accident or collision  
9 occurring in the state of West Virginia in which such  
10 nonresident may be involved: *Provided*, That in the  
11 event process against a nonresident defendant cannot be  
12 effected through the secretary of state, as provided by  
13 this section, for the purpose only of service of process,  
14 such nonresident motorist shall be deemed to have  
15 appointed as his or her agent or attorney-in-fact any  
16 insurance company which has a contract of automobile  
17 or liability insurance with said nonresident defendant.

18 (b) For purposes of service of process as provided in  
19 this section, every insurance company shall be deemed  
20 the agent or attorney-in-fact of every nonresident  
21 motorist insured by such company if the insured  
22 nonresident motorist is involved in any accident or  
23 collision in this state and service of process cannot be  
24 effected upon said nonresident through the office of the  
25 secretary of state. Upon receipt of process as hereinafter  
26 provided, the insurance company may, within thirty  
27 days, file an answer or other pleading or take any action  
28 allowed by law on behalf of the defendant.

29 (c) A nonresident operating a motor vehicle in this  
30 state, either personally or through an agent, is deemed  
31 to acknowledge the appointment of the secretary of

32 state, or, as the case may be, his or her automobile  
33 insurance company, as his or her agent or attorney-in-  
34 fact, or the agent or attorney-in-fact of his or her  
35 administrator, administratrix, executor or executrix in  
36 the event the nonresident dies, and furthermore is  
37 deemed to agree that any process against him or her or  
38 against his or her administrator, administratrix,  
39 executor or executrix, which is served in the manner  
40 hereinafter provided, shall be of the same legal force  
41 and validity as though said nonresident or his or her  
42 administrator, administratrix, executor or executrix  
43 were personally served with a summons and complaint  
44 within this state.

45 Any action or proceeding may be instituted, continued  
46 or maintained on behalf of or against the administrator,  
47 administratrix, executor or executrix of any nonresident  
48 who dies during or subsequent to an accident or collision  
49 resulting from the operation of a motor vehicle in this  
50 state by the nonresident or his or her duly authorized  
51 agent.

52 (d) At the time of filing a complaint against a  
53 nonresident motorist who has been involved in an  
54 accident or collision in the state of West Virginia and  
55 before a summons is issued thereon, the plaintiff, or  
56 someone for him or her, shall execute a bond in the sum  
57 of one hundred dollars before the clerk of the court in  
58 which the action is filed, with surety to be approved by  
59 said clerk, conditioned that on failure of the plaintiff to  
60 prevail in the action he or she will reimburse the  
61 defendant, or cause the defendant to be reimbursed, the  
62 necessary expense incurred in the defense of the action  
63 in this state. Upon the issue of a summons the clerk will  
64 certify thereon that the bond has been given and  
65 approved.

66 (e) Service of process upon a nonresident defendant  
67 shall be made by leaving the original and two copies of  
68 both the summons and complaint, together with the  
69 bond certificate of the clerk, and a fee of five dollars  
70 with the secretary of state, or in his or her office, and  
71 said service shall be sufficient upon the nonresident  
72 defendant or, if a natural person, his or her administra-

73 tor, administratrix, executor or executrix: *Provided,*  
74 That notice of service and a copy of the summons and  
75 complaint shall be sent by registered or certified mail,  
76 return receipt requested, by the secretary of state to the  
77 nonresident defendant. The return receipt signed by the  
78 defendant or his or her duly authorized agent shall be  
79 attached to the original summons and complaint and  
80 filed in the office of the clerk of the court from which  
81 process is issued. In the event the registered or certified  
82 mail sent by the secretary of state is refused or  
83 unclaimed by the addressee or if the addressee has  
84 moved without any forwarding address, the registered  
85 or certified mail returned to the secretary of state, or  
86 to his or her office, showing thereon the stamp of the  
87 post office department that delivery has been refused or  
88 not claimed or that the addressee has moved without any  
89 forwarding address, shall be appended to the original  
90 summons and complaint and filed in the clerk's office  
91 of the court from which process issued. The court may  
92 order such continuances as may be reasonable to afford  
93 the defendant opportunity to defend the action.

94 (f) The fee of five dollars, remitted to the secretary of  
95 state at the time of service, shall be taxed in the costs  
96 of the proceeding and the secretary of state shall pay  
97 into the state treasury all funds so coming into his or  
98 her hands from such service. The secretary of state shall  
99 keep a record in his or her office of all service of process  
100 and the day and hour of service thereof.

101 (g) In the event service of process upon a nonresident  
102 defendant cannot be effected through the secretary of  
103 state as provided by this section, service may be made  
104 upon the defendant's insurance company. The plaintiff  
105 must file with the clerk of the circuit court an affidavit  
106 alleging that the defendant is not a resident of this state;  
107 that process directed to the secretary of state was sent  
108 by registered or certified mail, return receipt requested;  
109 that the registered or certified mail was returned to the  
110 office of the secretary of state showing the stamp of the  
111 post office department that delivery was refused or that  
112 the notice was unclaimed or that the defendant adres-  
113 see moved without any forwarding address; and that the



114 secretary of state has complied with the provisions of  
115 subsection (e) herein. Upon receipt of process the  
116 insurance company may, within thirty days, file an  
117 answer or other pleading and take any action allowed  
118 by law in the name of the defendant.

119 (h) The following words and phrases, when used in  
120 this article, shall, for the purpose of this article and  
121 unless a different intent on the part of the Legislature  
122 is apparent from the context, have the following  
123 meanings:

124 (1) "Duly authorized agent" means and includes,  
125 among others, a person who operates a motor vehicle in  
126 this state for a nonresident as defined in this section and  
127 chapter, in pursuit of business, pleasure or otherwise, or  
128 who comes into this state and operates a motor vehicle  
129 for, or with the knowledge or acquiescence of, a  
130 nonresident; and includes, among others, a member of  
131 the family of such nonresident or a person who, at the  
132 residence, place of business or post office of such  
133 nonresident, usually receives and acknowledges receipt  
134 for mail addressed to the nonresident.

135 (2) "Motor vehicle" means and includes any self-  
136 propelled vehicle, including motorcycle, tractor and  
137 trailer, not operated exclusively upon stationary tracks.

138 (3) "Nonresident" means any person who is not a  
139 resident of this state or a resident who has moved from  
140 the state subsequent to an accident or collision, and  
141 among others includes a nonresident firm, partnership,  
142 corporation or voluntary association, or a firm, partner-  
143 ship, corporation or voluntary association that has  
144 moved from the state subsequent to an accident or  
145 collision.

146 (4) "Nonresident plaintiff or plaintiffs" means a  
147 nonresident who institutes an action in a court in this  
148 state having jurisdiction against a nonresident in  
149 pursuance of the provisions of this article.

150 (5) "Nonresident defendant or defendants" means a  
151 nonresident motorist who, either personally or through  
152 his or her agent, operated a motor vehicle on a public

153 street, highway or road in this state and was involved  
154 in an accident or collision which has given rise to a civil  
155 action filed in any court in this state.

156 (6) "Street", "road" or "highway" means the entire  
157 width between property lines of every way or place of  
158 whatever nature when any part thereof is open to the  
159 use of the public, as a matter of right, for purposes of  
160 vehicular traffic.

161 (7) "Insurance company" means any firm, corpora-  
162 tion, partnership or other organization which issues  
163 automobile insurance.

164 (i) The provision for service of process herein is  
165 cumulative and nothing herein contained shall be  
166 construed as a bar to the plaintiff in any action from  
167 having process in such action served in any other mode  
168 and manner provided by law.

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## CHAPTER 139

(Com. Sub. for S. B. 11—By Senator Jackson)

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[Passed March 7, 1990: in effect from passage. Approved by the Governor.]

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AN ACT to repeal section twenty, article twelve, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to notice of suit against municipalities.

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

**ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.**

**§1. Repeal of article relating to notice of suit against municipalities.**

1 Section twenty, article twelve, chapter eight of the  
2 code of West Virginia, one thousand nine hundred  
3 thirty-one, as amended, is hereby repealed.

## CHAPTER 140

(Com. Sub. for H. B. 4061—By Delegate Farley)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article eighteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twelve-a, article nineteen of said chapter; and to amend and reenact section ten, article twenty of said chapter, all relating to liens for delinquent sewer, water or electric service rates and charges; failure of user to cure delinquency; providing that an owner of real property may not be liable for delinquent rates or charges of a tenant; suits to collect delinquent charges; deferral of filing fees and court costs; limitations on foreclosure.

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

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

### Article

18. Assessments to Improve Streets, Sidewalks and Sewers; Sewer Connections and Board of Health; Enforcement of Duty to Pay for Service.
19. Municipal Waterworks and Electric Power Systems.
20. Combined Waterworks and Sewerage Systems.

### ARTICLE 18. ASSESSMENTS TO IMPROVE STREETS, SIDEWALKS AND SEWERS; SEWER CONNECTIONS AND BOARD OF HEALTH; ENFORCEMENT OF DUTY TO PAY FOR SERVICE.

§8-18-23. Authority to require discontinuance of water service by provider utility for nonpayment of sewer service rates and charges; lien for delinquent service rates and charges; failure to cure delinquency; civil actions; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

1 (a) When any municipality owns, maintains, operates  
2 or provides sewer facilities to its residents and custo-  
3 mers and does not own, maintain, operate or provide  
4 water facilities to them when the same is provided by  
5 any other publicly or privately owned utility, municipal-  
6 ity or public service district, the municipality providing  
7 sewer facilities may require the provider of water  
8 facilities to discontinue water service to any of its users  
9 who are delinquent in the payment of sewer service  
10 rates and charges to the municipality. The provider of  
11 water facilities is empowered and authorized hereby to  
12 discontinue water service upon demand of the munic-  
13 ipality for this purpose; however, prior to discontinuance  
14 of any water service, the municipality shall contract  
15 with the provider of water facilities which contract shall  
16 provide that the municipality shall reimburse the  
17 provider of water facilities for all costs and expenses  
18 incurred in both the termination of water service to the  
19 delinquent user of sewer facilities and the subsequent  
20 resumption of water service to such user. The contract  
21 shall provide for reasonable methods and assurances so  
22 that the provider of water facilities will be protected  
23 and held harmless from claims and damages when  
24 water service is discontinued in error or in violation of  
25 the rights of the user through the fault of the munic-  
26 ipality providing sewer facilities and making the  
27 demand for discontinuance of water service to the user  
28 of such sewer facilities. Any contract made for this  
29 purpose shall have the approval of the public service  
30 commission prior to its execution and performance. Any  
31 disconnection of water service must comply with all  
32 rules, regulations and orders of the public service  
33 commission.

34 (b) Whenever any rates and charges for services or  
35 facilities furnished remain unpaid for a period of thirty  
36 days after the same become due and payable, the user  
37 of the services and facilities provided shall be delinquent  
38 and the user shall be held liable at law until such time  
39 as all such rates and charges are fully paid.

40 (c) All rates and charges whenever delinquent, as  
41 provided by ordinance of the municipality, shall, when

42 notice thereof is duly recorded in the office of the clerk  
43 of the county commission wherein the subject real  
44 property is situate, be liens of equal dignity, rank and  
45 priority with the lien on such premises of state, county,  
46 school and municipal taxes for the amount thereof upon  
47 the real property served, and the municipality shall  
48 have plenary power and authority from time to time to  
49 enforce such lien in a civil action to recover the money  
50 due for such services rendered plus court fees and costs  
51 and a reasonable attorney's fee: *Provided*, That an owner  
52 of real property may not be held liable for the delin-  
53 quent rates or charges for services or facilities of a  
54 tenant, nor shall any lien attach to real property for the  
55 reason of delinquent rates or charges for services or  
56 facilities of a tenant of such real property, unless the  
57 owner has contracted directly with the municipality to  
58 purchase such services or facilities.

59 (d) Municipalities are hereby granted a deferral of  
60 filing fees or other fees and costs incidental to the  
61 bringing and maintenance of an action in magistrate  
62 court for the collection of the delinquent rates and  
63 charges. If the municipality collects the delinquent  
64 account, plus fees and costs, from its customer or other  
65 responsible party, the municipality shall pay to the  
66 magistrate court the filing fees or other fees and costs  
67 which were previously deferred.

68 (e) No municipality may foreclose upon the premises  
69 served by it for delinquent rates and charges for which  
70 a lien is authorized by this section except through the  
71 bringing and maintenance of a civil action for such  
72 purpose brought in the circuit court of the county  
73 wherein the municipality lies. In every such action, the  
74 court shall be required to make a finding based upon  
75 the evidence and facts presented that the municipality  
76 had exhausted all other remedies for the collection of  
77 debts with respect to such delinquencies prior to the  
78 bringing of such action. In no event shall foreclosure  
79 procedures be instituted by any municipality or on its  
80 behalf unless such delinquency has been in existence or  
81 continued for a period of two years from the date of the

82 first such delinquency for which foreclosure is being  
83 instituted.

ARTICLE 19. MUNICIPAL WATERWORKS AND ELECTRIC  
POWER SYSTEMS.

**\*§8-19-12a. Lien for delinquent service rates and  
charges; failure to cure delinquency; civil  
actions; deferral of filing fees and costs in  
magistrate court action; limitations with  
respect to foreclosure.**

1 (a) Whenever any rates and charges for water servi-  
2 ces or facilities furnished remain unpaid for a period of  
3 thirty days after the same become due and payable, the  
4 user of the services and facilities provided shall be  
5 delinquent and the user shall be held liable at law until  
6 such time as all such rates and charges are fully paid.

7 (b) All rates or charges for water service whenever  
8 delinquent, as provided by ordinance of the municipal-  
9 ity, shall be liens of equal dignity, rank and priority  
10 with the lien on such premises of state, county, school  
11 and municipal taxes for the amount thereof upon the  
12 real property served, and the municipality shall have  
13 plenary power and authority from time to time to  
14 enforce such lien in a civil action to recover the money  
15 due for such services rendered plus court fees and costs  
16 and a reasonable attorney's fee: *Provided*, That an owner  
17 of real property may not be held liable for the delin-  
18 quent rates or charges for services or facilities of a  
19 tenant, nor shall any lien attach to real property for the  
20 reason of delinquent rates or charges for services or  
21 facilities of a tenant of such real property, unless the  
22 owner has contracted directly with the municipality to  
23 purchase such services or facilities.

24 (c) Municipalities are hereby granted a deferral of  
25 filing fees or other fees and costs incidental to the  
26 bringing and maintenance of an action in magistrate  
27 court for the collection of the delinquent rates and  
28 charges. If the municipality collects the delinquent  
29 account, plus fees and costs, from its customer or other  
30 responsible party, the municipality shall pay to the

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\* Clerk's Notes: §8-19-12a was also amended by H. B. 4084 (Chapter 141),  
which passed prior to this act.

31 magistrate court the filing fees or other fees and costs  
32 which were previously deferred.

33 (d) No municipality may foreclose upon the premises  
34 served by it for delinquent rates or charges for which  
35 a lien is authorized by this section except through the  
36 bringing and maintenance of a civil action for such  
37 purpose brought in the circuit court of the county  
38 wherein the municipality lies. In every such action, the  
39 court shall be required to make a finding based upon  
40 the evidence and facts presented that the municipality  
41 had exhausted all other remedies for the collection of  
42 debts with respect to such delinquencies prior to the  
43 bringing of such action. In no event shall foreclosure  
44 procedures be instituted by any municipality or on its  
45 behalf unless such delinquency had been in existence or  
46 continued for a period of two years from the date of the  
47 first such delinquency for which foreclosure is being  
48 sought.

**ARTICLE 20. COMBINED WATERWORKS AND SEWERAGE  
SYSTEMS.**

**§8-20-10. Power and authority of municipality to enact  
ordinances and make rules and regulations  
and fix rates or charges; change in rates or  
charges; failure to cure delinquency; delin-  
quent rates or charges as liens; civil action  
for recovery thereof; deferral of filing fees  
and costs in magistrate court action;  
limitations with respect to foreclosure.**

1 (a) The governing body of any municipality availing  
2 itself of the provisions of this article shall have plenary  
3 power and authority to make, enact and enforce all  
4 needful rules and regulations for the repair, mainte-  
5 nance and operation and management of the combined  
6 waterworks and sewerage system of such municipality  
7 and for the use thereof, and shall also have plenary  
8 power and authority to make, enact and enforce all  
9 needful rules and regulations and ordinances for the  
10 care and protection of any such system, which may be  
11 conducive to the preservation of the public health,  
12 comfort and convenience and to rendering the water  
13 supply of such municipality pure and the sewerage

14 harmless insofar as it is reasonably possible so to do, and  
15 any such municipality shall have plenary power and  
16 authority to charge the users for the use and service of  
17 such combined waterworks and sewerage system and to  
18 establish rates or charges for such purpose. Separate  
19 rates or charges may be fixed for the water and sewer  
20 services respectively or combined rates or charges for  
21 the combined water and sewer services. Such rates or  
22 charges, whether separate or combined, shall be  
23 sufficient at all times to pay the cost of repair,  
24 maintenance and operation of the combined waterworks  
25 and sewerage system, provide an adequate reserve fund  
26 and adequate depreciation fund and pay the principal  
27 of and interest upon all revenue bonds issued under this  
28 article. Rates or charges shall be established, revised  
29 and maintained by ordinance and become payable as the  
30 governing body may determine by ordinance, and such  
31 rates or charges shall be changed from time to time as  
32 needful, consistent with the provisions of this article.

33 (b) Whenever any rates and charges for services or  
34 facilities furnished remain unpaid for a period of thirty  
35 days after the same become due and payable, the user  
36 of the services and facilities provided shall be delinquent  
37 and the user shall be held liable at law until such time  
38 as all such rates and charges are fully paid.

39 (c) All rates or charges for water service and sewer  
40 service whenever delinquent, as provided by ordinance  
41 of the municipality, shall be liens of equal dignity, rank  
42 and priority with the lien on such premises of state,  
43 county, school and municipal taxes for the amount  
44 thereof upon the real property served, and the munic-  
45 ipality shall have plenary power and authority from  
46 time to time to enforce such lien in a civil action to  
47 recover the money due for such services rendered plus  
48 court fees and costs and a reasonable attorney's fee:  
49 *Provided*, That an owner of real property may not be  
50 held liable for the delinquent rates or charges for  
51 services or facilities of a tenant, nor shall any lien attach  
52 to real property for the reason of delinquent rates or  
53 charges for services or facilities of a tenant of such real



54 property, unless the owner has contracted directly with  
55 the municipality to purchase such services or facilities.

56 (d) Municipalities are hereby granted a deferral of  
57 filing fees or other fees and costs incidental to the  
58 bringing and maintenance of an action in magistrate  
59 court for the collection of the delinquent rates and  
60 charges. If the municipality collects the delinquent  
61 account, plus fees and costs, from its customer or other  
62 responsible party, the municipality shall pay to the  
63 magistrate court the filing fees or other fees and costs  
64 which were previously deferred.

65 (e) No municipality may foreclose upon the premises  
66 served by it for delinquent rates, fees or charges for  
67 which a lien is authorized by this section except through  
68 the bringing and maintenance of a civil action for such  
69 purpose brought in the circuit court of the county  
70 wherein the municipality lies. In every such action, the  
71 court shall be required to make a finding based upon  
72 the evidence and facts presented that the municipality  
73 had exhausted all other remedies for the collection of  
74 debts with respect to such delinquencies prior to the  
75 bringing of such action. In no event shall foreclosure  
76 procedures be instituted by any municipality or on its  
77 behalf unless such delinquency had been in existence or  
78 continued for a period of two years from the date of the  
79 first such delinquency for which foreclosure is being  
80 sought.

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## CHAPTER 141

(Com. Sub. for H. B. 4084—By Delegates Farley and R. Burk)

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[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact article nineteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the acquisition, construction and operation of municipal and county waterworks and electric power systems; defining terms; extension of corporate and county limits; notice provi-

sions; right of eminent domain when acquiring, constructing, establishing or extending waterworks or electric power systems; providing for revenue bond financing for such projects; issuance of revenue bonds; providing for exemption from taxation of all such bonds and interest earned thereon; providing for exemption from taxation of municipally-owned waterworks systems and electric power systems; publication of abstract of ordinance or order; terms of bonds; bonds do not constitute indebtedness of municipality or county commission; lien of bondholders; covenants with bondholders; operating contract; rates or charges for water or electric power and disposition of surplus; service charges; authorizing municipality or county commission to determine amount of bonds; liens for delinquent service rates and charges; discontinuance of water or electric power service for nonpayment; bonds for additions, betterments and improvements; system of accounts; rights of bondholders; permitting acceptance of grants, loans, advances and agreements; alternative method for constructing or improving and for financing waterworks or electric power systems; alternative procedure for acquisition, construction or improvement of waterworks or electric power system; and liberal construction.

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

That article nineteen, 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 19. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS.**

**PART I. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS AUTHORIZED; DEFINITION.**

- §8-19-1. Acquisition and operation of municipal and county waterworks and electric power systems; construction of improvements to municipal and county electric power systems; extension beyond corporate limits; definitions.
- §8-19-3. Right of eminent domain; limitations.
- §8-19-4. Estimate of cost; ordinance or order for issuance of revenue bonds; interest on bonds; rates for services; exemption from taxation.
- §8-19-5. Publication of abstract of ordinance or order and notice; hearing.

- §8-19-6. Amount, negotiability and execution of bonds.
- §8-19-7. Bonds payable solely from revenues; not to constitute municipal or county indebtedness.
- §8-19-8. Lien on bondholders; deeds of trust; security agreements; priority of liens.
- §8-19-9. Covenants with bondholders.
- §8-19-10. Operating contract.
- §8-19-11. Rates or charges for water and electric power must be sufficient to pay bonds, etc.; disposition of surplus.
- §8-19-12. Service charges; sinking fund; amount of bonds; additional bonds; surplus.
- §8-19-12a. Lien for delinquent service rates and charges; notice of delinquency; failure to cure delinquency; civil actions; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.
- §8-19-13. Discontinuance of water or electric power service for nonpayment of rates or charges.
- §8-19-14. Bonds for additions, betterments and improvements.
- §8-19-15. System of accounts; audit.
- §8-19-16. Protection and enforcement of rights of bondholders, etc.; receivership.
- §8-19-17. Grants, loans, advances and agreements.
- §8-19-18. Additional and alternative method for constructing or improving and for financing waterworks or electric power system; cumulative authority.
- §8-19-19. Alternative procedure for acquisition, construction or improvement of waterworks or electric power system.
- §8-19-20. Article to be liberally construed.
- §8-19-1. Acquisition and operation of municipal and county waterworks and electric power systems; construction of improvements to municipal and county electric power systems; extension beyond corporate limits; definitions.**
- 1 (a) Subject to and in accordance with the provisions  
2 of this article, any municipality or county commission  
3 may acquire, construct, establish, extend, equip, repair,  
4 maintain and operate or lease to others for operation, a  
5 waterworks system or an electric power system or  
6 construct, maintain and operate additions, betterments  
7 and improvements to an existing waterworks system or  
8 an existing electric power system, notwithstanding any  
9 provision or limitation to the contrary in any other law  
10 or charter: *Provided*, That such municipality or county  
11 commission shall not serve or supply water facilities or  
12 electric power facilities or services within the corporate  
13 limits of any other municipality or county commission

14 without the consent of the governing body of such other  
15 municipality or county commission.

16 (b) Any municipality or county commission which  
17 intends to file an application with the federal energy  
18 regulatory commission for a license to acquire, con-  
19 struct, establish, extend, maintain and operate, or lease  
20 to others for operation, an electric power system, shall  
21 give written notice by certified mail, return receipt  
22 requested, and shall give public notice by Class I legal  
23 advertisement in compliance with the provisions of  
24 article three, chapter fifty-nine of this code and the  
25 publication area shall be the municipality or county in  
26 which the system is to be located to the governing body  
27 of the municipality or the county commission in which  
28 such system is or shall be located or, if such system is  
29 or shall be located outside of a municipality or county,  
30 to the county commission of the county in which such  
31 system is or shall be located, at least sixty days prior  
32 to the filing of such application: *Provided*, That the  
33 provisions of this subsection shall not apply to any  
34 municipality or county commission which, on the date  
35 of the passage of this act, has obtained a license from  
36 the federal energy regulatory commission to acquire,  
37 construct, establish, extend, maintain and operate, or  
38 lease to others for operation, an electric power system.  
39 If the municipality or county commission receiving such  
40 notice does not respond to the notice within sixty days  
41 of receipt of such notice, then such other municipality  
42 or the county commission shall be deemed to have  
43 consented to the application for the proposed electric  
44 power system. If such other municipality or the county  
45 commission notifies the municipality or county commis-  
46 sion that it objects to the proposed electric power  
47 system, such other municipality or the county commis-  
48 sion shall hold a public hearing on the proposed system  
49 within sixty days of receipt of such notice from the  
50 municipality or county commission.

51 (c) As used in this article:

52 (1) "Waterworks system" means a waterworks system  
53 in its entirety or any integral part thereof, including  
54 mains, hydrants, meters, valves, standpipes, storage

55 tanks, pump tanks, pumping stations, intakes, wells,  
56 impounding reservoirs, pumps, machinery, purification  
57 plants, softening apparatus and all other facilities  
58 necessary, appropriate, useful, convenient or incidental  
59 in connection with or to a water supply system.

60 (2) "Electric power system" means a system or facility  
61 which produces electric power in its entirety or provides  
62 for the distribution of electric power for local consump-  
63 tion and use or for distribution and resale or any  
64 combination thereof, or any integral part thereof,  
65 including, but not limited to, power lines and wires,  
66 power poles, guy wires, insulators, transformers,  
67 generators, cables, power line towers, voltage regula-  
68 tors, meters, power substations, machinery and all other  
69 facilities necessary, appropriate, useful or convenient or  
70 incidental in connection with or to an electric power  
71 supply system.

#### PART III. RIGHT OF EMINENT DOMAIN.

##### §8-19-3. Right of eminent domain; limitations.

1 For the purpose of acquiring, constructing, establish-  
2 ing or extending any waterworks system or electric  
3 power system, or for the purpose of constructing any  
4 additions, betterments or improvements to any water-  
5 works or electric power system, or for the purpose of  
6 acquiring any property necessary, appropriate, useful,  
7 convenient or incidental for or to any waterworks or  
8 electric power system, under the provisions of this  
9 article, the municipality or county commission shall  
10 have the right of eminent domain as provided in chapter  
11 fifty-four of this code: *Provided*, That such right of  
12 eminent domain for the acquisition of a privately owned  
13 waterworks system, or electric power system, or any  
14 part thereof, shall not be exercised without prior  
15 approval of the public service commission, and in no  
16 event shall any municipality or county commission  
17 construct, establish or extend beyond the corporate  
18 limits of said municipality or county line a municipal  
19 or county waterworks or electric power system under  
20 the provisions of this article to supply service in  
21 competition with an existing privately or municipally or

22 county owned waterworks or electric power system in  
23 such municipality or county or within the proposed  
24 extension of such system, unless a certificate of public  
25 convenience and necessity therefor shall have been  
26 issued by the public service commission: *Provided,*  
27 *however,* That a municipality or county commission may  
28 not exercise such right of eminent domain over a  
29 privately owned electric power system or any part  
30 thereof for the purpose of acquiring, constructing,  
31 establishing or extending an electric power system.

32 Subject to the provisions of this article and notwith-  
33 standing the provisions of section nineteen, article  
34 twelve of this chapter to the contrary, a municipality or  
35 county commission may acquire, construct, establish,  
36 extend, equip, repair, maintain and operate, or lease to  
37 others for operation, electric generators or electric  
38 generating systems or electric transmission systems  
39 more than one mile beyond the corporate limits of such  
40 municipality or county line and said electric generation  
41 systems shall not be under the jurisdiction of the public  
42 service commission.

#### PART IV. REVENUE BOND FINANCING.

#### **§8-19-4. Estimate of cost; ordinance or order for issuance of revenue bonds; interest on bonds; rates for services; exemption from taxation.**

1 Whenever a municipality or county commission shall,  
2 under the provisions of this article, determine to  
3 acquire, by purchase or otherwise, construct, establish,  
4 extend or equip a waterworks system or an electric  
5 power system, or to construct any additions, betterments  
6 or improvements to any waterworks or electric power  
7 system, it shall cause an estimate to be made of the cost  
8 thereof, and may, by ordinance or order, provide for the  
9 issuance of revenue bonds under the provisions of this  
10 article, which ordinance or order shall set forth a brief  
11 description of the contemplated undertaking, the  
12 estimated cost thereof, the amount, rate or rates of  
13 interest, the time and place of payment, and other  
14 details in connection with the issuance of the bonds.  
15 Such bonds shall be in such form and shall be negotiated

16 and sold in such manner and upon such terms as the  
17 governing body of such municipality or county commis-  
18 sion may by ordinance or order specify. All such bonds  
19 and the interest thereon shall be exempt from all  
20 taxation by this state, or any county, municipality or  
21 county commission, political subdivision or agency  
22 thereof. Notwithstanding any other provision of this  
23 code to the contrary, the real and personal property  
24 which a municipality or county has acquired and  
25 constructed according to the provisions of this article,  
26 and any leasehold interest therein held by other persons,  
27 shall be deemed public property and shall be exempt  
28 from taxation by the state, or any county, municipality  
29 or other levying body, so long as the same is owned by  
30 such municipality or county. Such bonds shall bear  
31 interest at a rate per annum set by the municipality or  
32 county commission, payable at such times, and shall be  
33 payable as to principal at such times, not exceeding fifty  
34 years from their date, and at such place or places,  
35 within or without the state, as shall be prescribed in the  
36 ordinance or order providing for their issuance. Unless  
37 the governing body of the municipality or county  
38 commission shall otherwise determine, such ordinance  
39 or order shall also declare that a statutory mortgage lien  
40 shall exist upon the property so to be acquired,  
41 constructed, established, extended or equipped, fix  
42 minimum rates or charges for water or electricity to be  
43 collected prior to the payment of all of said bonds and  
44 shall pledge the revenues derived from the waterworks  
45 or electric power system for the purpose of paying such  
46 bonds and interest thereon, which pledge shall definitely  
47 fix and determine the amount of revenues which shall  
48 be necessary to be set apart and applied to the payment  
49 of the principal of and interest upon the bonds and the  
50 proportion of the balance of such revenues, which are  
51 to be set aside as a proper and adequate depreciation  
52 account, and the remainder shall be set aside for the  
53 reasonable and proper maintenance and operation  
54 thereof. The rates or charges to be charged for the  
55 services from such waterworks or electric power system  
56 shall be sufficient at all times to provide for the payment  
57 of interest upon all bonds and to create a sinking fund

58 to pay the principal thereof as and when the same  
59 become due, and reasonable reserves therefor, and to  
60 provide for the repair, maintenance and operation of the  
61 waterworks or electric power system, and to provide an  
62 adequate depreciation fund, and to make any other  
63 payments which shall be required or provided for in the  
64 ordinance or order authorizing the issuance of said  
65 bonds.

**§8-19-5. Publication of abstract of ordinance or order  
and notice; hearing.**

1 After the ordinance or order for any project under this  
2 article has been adopted, an abstract of the ordinance  
3 or order, determined by the governing body to contain  
4 sufficient information as to give notice of the contents  
5 of such ordinance or order, together with the following  
6 described notice, shall be published as a Class II legal  
7 advertisement in compliance with the provisions of  
8 article three, chapter fifty-nine of this code, and the  
9 publication area for such publication shall be the  
10 municipality or county. The notice to be published with  
11 said abstract of the ordinance or order shall state that  
12 said ordinance or order has been adopted, that the  
13 municipality or county commission contemplates the  
14 issuance of the bonds described in the ordinance or  
15 order, that any person interested may appear before the  
16 governing body, upon a certain date, which shall be not  
17 less than ten days subsequent to the date of the first  
18 publication of such abstract and notice and which shall  
19 not be prior to the date of the last publication by such  
20 abstract and notice, and present protests, and that a  
21 certified copy of the ordinance or order is on file with  
22 the governing body for review by interested parties  
23 during the office hours of the governing body. At such  
24 hearing all protests and suggestions shall be heard and  
25 the governing body shall take such action as it considers  
26 proper in the premises: *Provided*, That if at such  
27 hearing written protest is filed by thirty percent or  
28 more of the freeholders of the municipality or county,  
29 then the governing body of said municipality or county  
30 shall not take further action unless four fifths of the



31 qualified members of said governing body assent  
32 thereto.

**§8-19-6. Amount, negotiability and execution of bonds.**

1 Bonds herein provided for shall be issued in such  
2 amounts as may be necessary to provide sufficient funds  
3 to pay all costs of acquisition, construction, establish-  
4 ment, extension or equipment, including engineering,  
5 legal and other expenses, together with interest to a date  
6 six months subsequent to the estimated date of comple-  
7 tion. Bonds issued under the provisions of this article are  
8 hereby declared to be negotiable instruments, and the  
9 same shall be executed by the proper legally constituted  
10 authorities of the municipality or county commission,  
11 and be sealed with the corporate seal of the municipality  
12 or certified by the county commission, and in case any  
13 of the officers whose signatures appear on the bonds or  
14 coupons shall cease to be such officers before delivery  
15 of such bonds, such signatures shall nevertheless be  
16 valid and sufficient for all purposes the same as if they  
17 had remained in office until such delivery. All signa-  
18 tures on the bonds or coupons and the corporate seal  
19 may be mechanically reproduced if authorized in the  
20 ordinance or order authorizing the issuance of the  
21 bonds.

**§8-19-7. Bonds payable solely from revenues; not to constitute municipal or county indebtedness.**

1 Bonds issued under the provisions of this article shall  
2 be payable solely from the revenues derived from such  
3 waterworks or electric power system, and such bonds  
4 shall not in any event constitute an indebtedness of such  
5 municipality or county within the meaning of any  
6 constitutional or statutory provision or limitation, and it  
7 shall be plainly stated on the face of each bond that the  
8 same has been issued under the provisions of this article,  
9 and that it does not constitute an indebtedness of such  
10 municipality or county within constitutional or statutory  
11 provision or limitation. Subject to the provisions of  
12 subsection (b), section twelve of this article, the  
13 ordinance or order authorizing the issuance of the bonds  
14 may contain such covenants and restrictions upon the  
15 issuance of additional revenue bonds thereafter as may

16 be considered necessary or advisable for the assurance  
17 of payment of the bonds thereby authorized and as may  
18 thereafter be issued.

**§8-19-8. Lien of bondholders; deeds of trust; security agreements; priority of liens.**

1 Unless the governing body shall otherwise determine  
2 in the ordinance or order authorizing the issuance of  
3 bonds under this article, there shall be and there is  
4 hereby created and granted a statutory mortgage lien  
5 upon the waterworks or electric power system so  
6 acquired, constructed, established, equipped, extended  
7 or improved from the proceeds of bonds hereby autho-  
8 rized to be issued, which shall exist in favor of the  
9 holder of said bonds and each of them, and to and in  
10 favor of the holder of the coupons attached to said bonds,  
11 and such waterworks or electric power system shall  
12 remain subject to such statutory mortgage lien until  
13 payment in full of the principal of and interest upon said  
14 bonds.

15 Any municipality or county commission in acquiring  
16 an existing waterworks system or in improving an  
17 existing waterworks or electric power system may  
18 provide that financing therefor may be made by issuing  
19 revenue bonds and delivering the same at such prices  
20 as may be agreed upon within the limitations prescribed  
21 in section six of this article. Any revenue bonds so issued  
22 to provide financing for such existing waterworks or  
23 electric power system or for any improvements to an  
24 existing waterworks or electric power system may be  
25 secured by a mortgage or deed of trust upon and  
26 security interest in the property so acquired or im-  
27 proved or any other interest of the municipality or  
28 county commission in property related thereto as  
29 determined by the municipality or county commission in  
30 the ordinance or order authorizing the issuance of such  
31 revenue bonds; and in such event the holders thereof  
32 shall have, in addition to any other remedies and rights  
33 prescribed by this article, such remedies and rights as  
34 may now or hereafter exist in law in the case of  
35 mortgages or deeds of trust on real property and  
36 security interests in personal property. Such mortgage

37 or deed of trust, upon its recordation, shall have priority  
38 over all other liens or encumbrances, however created  
39 or arising, on the property covered by such mortgage  
40 or deed of trust, to the same extent and for the same  
41 amount as if the municipality or county were obligated  
42 to pay the full amount secured by such mortgage or deed  
43 of trust immediately upon the recordation of such  
44 mortgage or deed of trust and remained so obligated  
45 until the obligations secured are fully discharged.

**§8-19-9. Covenants with bondholders.**

1 Any ordinance or order authorizing the issuance of  
2 bonds hereunder, or any trust indenture with any  
3 banking institution or trust company within or without  
4 the state for the security of said bonds, which any such  
5 municipality or county commission is hereby empow-  
6 ered and authorized to enter into and execute, may  
7 contain covenants with the holders of such bonds as to:

8 (a) The purpose or purposes to which the proceeds of  
9 sale of such bonds or the revenues derived from said  
10 waterworks or electric power system may be applied  
11 and the securing, use and disposition thereof, including,  
12 if deemed desirable, the appointment of a trustee or  
13 depository for any of such funds;

14 (b) The pledging of all or any part of the revenues  
15 derived from the ownership, control or operation of such  
16 waterworks or electric power system, including any part  
17 thereof heretofore or hereafter acquired, constructed,  
18 established, extended or equipped or derived from any  
19 other sources, to the payment of the principal of or  
20 interest thereon of bonds issued hereunder and for such  
21 reserve or other funds as may be considered necessary  
22 or desirable;

23 (c) The fixing, establishing and collecting of such  
24 rates or charges for the use of the services and facilities  
25 of the waterworks or electric power system, including  
26 the parts thereof heretofore or hereafter acquired,  
27 constructed, established, extended or equipped and the  
28 revision of same from time to time, as will always  
29 provide revenues at least sufficient to provide for all  
30 expenses of repair, maintenance and operation of such

31 waterworks or electric power system, the payment of the  
32 principal of and interest upon all bonds or other  
33 obligations payable from the revenues of such water-  
34 works or electric power system, and all reserve and  
35 other funds required by the terms of the ordinance or  
36 order authorizing the issuance of such bonds;

37 (d) The transfer from the general funds of the  
38 municipality or county commission to the account or  
39 accounts of the waterworks or electric power system of  
40 an amount equal to the cost of furnishing the municipi-  
41 pality or county commission or any of its departments,  
42 boards or agencies or the county commission with the  
43 services and facilities of such waterworks or electric  
44 power system;

45 (e) Subject to the provisions of subsection (b), section  
46 twelve of this article, limitations or restrictions upon the  
47 issuance of additional bonds or other obligations payable  
48 from the revenues of such waterworks or electric power  
49 system, and the rank or priority, as to lien and source  
50 and security for payment from the revenues of such  
51 waterworks or electric power system, between bonds  
52 payable from such revenues;

53 (f) The manner and terms upon which all bonds and  
54 other obligations issued hereunder may be declared  
55 immediately due and payable upon the happening of a  
56 default in the payment of the principal of or interest  
57 thereon, or in the performance of any covenant or  
58 agreement with bondholders, and the manner and terms  
59 upon which such defaults may be declared cured and the  
60 acceleration of the maturity of such bonds rescinded and  
61 repealed;

62 (g) Budgets for the annual repair, maintenance and  
63 operation of such waterworks or electric power system  
64 and restrictions and limitations upon expenditures for  
65 such purposes, and the manner of adoption, modifica-  
66 tion, repeal or amendment thereof, including the  
67 approval of such budgets by consulting engineers  
68 designated by holders of bonds issued hereunder;

69 (h) The amounts of insurance to be maintained upon  
70 such waterworks or electric power system, or any part

71 thereof, and the use and disposition of the proceeds of  
72 any insurance; and

73 (i) The keeping of books of account, relating to such  
74 undertakings and the audit and inspection thereof, and  
75 the furnishing to the holders of bonds issued hereunder  
76 or their representatives, reports prepared, certified or  
77 approved by accountants designated or approved by the  
78 holders of bonds issued hereunder.

79 Any such ordinance, order or trust indenture may also  
80 contain such other additional covenants as shall be  
81 considered necessary or desirable for the security of the  
82 holders of bonds issued hereunder, notwithstanding that  
83 such other covenants are not expressly enumerated  
84 above, it being the intention hereof to grant to munic-  
85 ipalities or county commissions plenary power and  
86 authority to make any and all covenants or agreements  
87 necessary in order to secure greater marketability for  
88 bonds issued hereunder as fully and to the same extent  
89 as such covenants or agreements could be made by a  
90 private corporation rendering similar services and  
91 facilities and to grant to municipalities and counties full  
92 and complete power and authority to enter into any  
93 contracts, covenants or agreements with holders of  
94 bonds issued hereunder not inconsistent with the  
95 constitution of this state.

#### §8-19-10. Operating contract.

1 Any such municipality or county commission may  
2 enter into contracts or agreements with any persons for  
3 (1) the repair, maintenance and operation and manage-  
4 ment of the facilities and properties of said waterworks  
5 or electric power system, or any part thereof, or (2) the  
6 collection and disbursement of the income and revenues  
7 therefor, or for both (1) and (2), for such period of time  
8 and under such terms and conditions as shall be agreed  
9 upon between such municipality or county commission  
10 and such persons. Any such municipality or county  
11 commission shall have plenary power and authority to  
12 provide in the ordinance or order authorizing the  
13 issuance of bonds hereunder, or in any trust indenture  
14 securing such bonds, that such contracts or agreements

15 shall be valid and binding upon the municipality and  
16 county commission as long as any of said bonds, or  
17 interest thereon, is outstanding and unpaid.

**§8-19-11. Rates or charges for water and electric power must be sufficient to pay bonds, etc.; disposition of surplus.**

1 Rates or charges for water or electric power fixed  
2 precedent to the issuance of bonds shall not be reduced  
3 until all of said bonds shall have been fully paid, and  
4 may, whenever necessary, be increased in amounts  
5 sufficient to provide for the payment of the principal of  
6 and interest upon such bonds, and to provide proper  
7 funds for the depreciation account and repair, mainte-  
8 nance and operation charges. If any surplus shall be  
9 accumulated in the repair, maintenance and operation  
10 fund which shall be in excess of the cost of repairing,  
11 maintaining and operating the waterworks or electric  
12 power system during the remainder of the fiscal year  
13 then current, and the cost of repairing, maintaining and  
14 operating the said waterworks or electric power system  
15 during the fiscal year then next ensuing, then any such  
16 excess may be transferred to either the depreciation  
17 account or to the bond and interest redemption account,  
18 and if any surplus shall be accumulated in the depre-  
19 ciation account over and above that which the munic-  
20 ipality or county commission shall find may be neces-  
21 sary for the probable replacements which may be  
22 needed during the then present fiscal year, and the next  
23 ensuing fiscal year, such excess may be transferred to  
24 the bond and interest redemption account, and, if any  
25 surplus shall exist in the bond and interest redemption  
26 account, the same shall be applied insofar as possible in  
27 the purchase or retirement of outstanding revenue  
28 bonds payable from such account.

**§8-19-12. Service charges; sinking fund; amount of bonds; additional bonds; surplus.**

1 (a) Every municipality or county commission issuing  
2 bonds under the provisions of this article shall thereaf-  
3 ter, so long as any of such bonds remain outstanding,  
4 repair, maintain and operate its waterworks or electric

5 power system as hereinafter provided and shall charge,  
6 collect and account for revenues therefrom as will be  
7 sufficient to pay all repair, maintenance and operation  
8 costs, provide a depreciation fund, retire the bonds and  
9 pay the interest requirements of the bonds as the same  
10 become due. The ordinance or order pursuant to which  
11 any such bonds are issued shall pledge the revenues  
12 derived from the waterworks or electric power system  
13 to the purposes aforesaid and shall definitely fix and  
14 determine the amount of revenues which shall be  
15 necessary and set apart in a special fund for the bond  
16 requirements. The amounts as and when so set apart  
17 into said special fund for the bond requirements shall  
18 be remitted to the West Virginia municipal bond  
19 commission to be retained and paid out by said commis-  
20 sion consistent with the provisions of this article and the  
21 ordinance or order pursuant to which such bonds have  
22 been issued: *Provided*, That payment of principal of and  
23 interest on any bonds owned by the United States of  
24 America or any agency or department thereof may be  
25 made by the municipality or county commission directly  
26 to the United States of America or said agency or  
27 department thereof. The bonds hereby authorized shall  
28 be issued in such amounts as may be determined  
29 necessary to provide funds for the purpose for which  
30 they are authorized, and in determining the amount of  
31 bonds to be issued it shall be proper to include interest  
32 on the bonds for a period not beyond six months from  
33 the estimated date of completion.

34 (b) If the proceeds of the bonds, because of error or  
35 otherwise, shall be less than the cost of the property or  
36 undertaking for which authorized, additional bonds may  
37 be issued to provide the amount of such deficit and such  
38 additional bonds shall be considered to be of the same  
39 issue and shall be entitled to payment from the same  
40 fund without preference or priority over the bonds first  
41 authorized and issued.

42 (c) If the proceeds of the bonds shall exceed the cost  
43 of the property or undertaking, the surplus shall be  
44 converted into the fund thereon.

**\*§8-19-12a. Lien for delinquent service rates and charges; notice of delinquency; failure to cure delinquency; civil actions; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.**

1 (a) Whenever any rates and charges for water servi-  
2 ces or facilities furnished remain unpaid for a period of  
3 thirty days after the same become due and payable, the  
4 property and the owner thereof, as well as the user of  
5 the services and facilities provided, shall be delinquent  
6 and the owner, user and property shall be held liable  
7 at law until such time as all such rates and charges are  
8 fully paid: *Provided*, That in the event the user is a  
9 tenant, the property owner shall be given notice of any  
10 said delinquency by certified mail, return receipt  
11 requested, and the user shall be given such notice by  
12 first-class mail: *Provided, however*, That failure of the  
13 user to cure the delinquency within a thirty-day period  
14 after receipt of such notice shall constitute grounds to  
15 terminate the user's lease of the premises concerned.

16 (b) All rates or charges for water service whenever  
17 delinquent, as provided by ordinance of the municipality  
18 or order of the county commission, shall be liens of equal  
19 dignity, rank and priority with the lien on such premises  
20 of state, county, school and municipal taxes for the  
21 amount thereof upon the real property served, and the  
22 municipality or county commission shall have plenary  
23 power and authority from time to time to enforce such  
24 lien in a civil action to recover the money due for such  
25 services rendered plus court fees and costs and a  
26 reasonable attorney's fee: *Provided*, That a municipality  
27 or county commission shall have exhausted all remedies  
28 available against such delinquent users before it may  
29 proceed in a civil action against the owner.

30 (c) Municipalities and county commissions are hereby  
31 granted a deferral of filing fees or other fees and costs

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\* Clerk's Notes: §8-19-12a was also amended by H. B. 4061 (Chapter 140), which passed subsequent to this act.



32 incidental to the bringing and maintenance of an action  
33 in magistrate court for the collection of the delinquent  
34 rates and charges. If the municipality or county  
35 commission collects the delinquent account, plus fees  
36 and costs, from its customer or other responsible party,  
37 the municipality or county commission shall pay to the  
38 magistrate court the filing fees or other fees and costs  
39 which were previously deferred.

40 (d) No municipality or county commission may  
41 foreclose upon the premises served by it for delinquent  
42 rates or charges for which a lien is authorized by this  
43 section except through the bringing and maintenance of  
44 a civil action for such purpose brought in the circuit  
45 court of the county or the county wherein the municipi-  
46 pality lies. In every such action, the court shall be  
47 required to make a finding based upon the evidence and  
48 facts presented that the municipality or county commis-  
49 sion had exhausted all other remedies for the collection  
50 of debts with respect to such delinquencies prior to the  
51 bringing of such action. In no event shall foreclosure  
52 procedures be instituted by any municipality or county  
53 commission or on its behalf unless such delinquency had  
54 been in existence or continued for a period of two years  
55 from the date of the first such delinquency for which  
56 foreclosure is being sought.

**§8-19-13. Discontinuance of water or electric power  
service for nonpayment of rates or charges.**

1 Any such municipality or county commission shall  
2 also have plenary power and authority, and may  
3 covenant with the holders of any bonds issued here-  
4 under, to shut off and discontinue the supplying of the  
5 water or electric power service of said waterworks or  
6 electric power system for the nonpayment of the rates  
7 or charges for said water or electric power service.

**§8-19-14. Bonds for additions, betterments and  
improvements.**

1 Whenever any municipality or county commission  
2 shall now or hereafter own and operate a waterworks  
3 or electric power system, whether acquired, constructed,  
4 established, extended or equipped under the provisions

5 of this article or not, and shall desire to construct  
6 additions, betterments or improvements thereto, it may  
7 issue revenue bonds under the provisions of this article  
8 to pay for the same, and the procedure therefor,  
9 including the fixing of rates or charges and the  
10 computation of the amount thereof, and the power and  
11 authority in connection therewith, shall be the same as  
12 in this article provided for the issuance of bonds for the  
13 acquisition, construction, establishment, extension or  
14 equipment of a waterworks system or electric power  
15 system in a municipality or county which has not  
16 heretofore owned and operated a waterworks or electric  
17 power system: *Provided*, That nothing in this article  
18 shall be construed as authorizing any municipality or  
19 county commission to impair or commit a breach of the  
20 obligation of any valid lien or contract created or  
21 entered into by it, the intention being to authorize the  
22 pledging, setting aside and segregation of such revenues  
23 for the construction of such additions, betterments or  
24 improvements only where and to the extent consistent  
25 with outstanding obligations of such municipality or  
26 county commission, and in accordance with the provi-  
27 sions of this article.

**§8-19-15. System of accounts; audit.**

1 Any municipality or county commission operating a  
2 waterworks or electric power system under the provi-  
3 sions of this article shall set up and maintain a proper  
4 system of accounts in accordance with the requirements  
5 of the public service commission, showing the amount  
6 of revenues received from such waterworks or electric  
7 power system and the application of the same. At least  
8 once each year such municipality or county commission  
9 shall cause such accounts to be properly audited, and a  
10 report of such audit shall be open to the public for  
11 inspection at all reasonable times.

**§8-19-16. Protection and enforcement of rights of bond-  
holders, etc.; receivership.**

1 Any holder of any bonds issued under the provisions  
2 of this article or of any coupons representing interest  
3 accrued thereon may by civil action, mandamus or other

4 proper proceeding enforce the statutory mortgage lien  
5 created and granted in section eight of this article,  
6 protect and enforce any and all rights granted here-  
7 under or under any such ordinance, order or trust  
8 indenture, and may enforce and compel performance of  
9 all duties required by the provisions of this article or  
10 by any such ordinance, order or trust indenture to be  
11 performed by the municipality or county commission, or  
12 by the governing body or any officer, including the  
13 making and collecting of reasonable and sufficient rates  
14 or charges for services rendered by the waterworks or  
15 electric power system. If there be default in the payment  
16 of the principal of or interest upon any of such bonds,  
17 or of both principal and interest, any court having  
18 jurisdiction shall appoint a receiver to administer said  
19 waterworks or electric power system on behalf of the  
20 municipality or county commission, and the bondholders  
21 or trustee, or both, with power to charge and collect  
22 rates or charges sufficient to provide for the retirement  
23 of the bonds and pay the interest thereon, and for the  
24 payment of the repair, maintenance and operation  
25 expenses, and such receiver shall apply the revenues in  
26 conformity with the provisions of this article and the  
27 ordinance or order pursuant to which such bonds have  
28 been issued or any trust indenture, or both.

PART V. GRANTS, LOANS, ADVANCES AND AGREEMENTS;  
CUMULATIVE AUTHORITY.

**§8-19-17. Grants, loans, advances and agreements.**

1 As an alternative to, or in conjunction with, the  
2 issuance of revenue bonds authorized by this article, any  
3 municipality or county commission is hereby empow-  
4 ered and authorized to accept loans or grants and  
5 procure loans or temporary advances evidenced by notes  
6 or other negotiable instruments issued in the manner,  
7 and subject to the privileges and limitations, set forth  
8 with respect to bonds authorized to be issued under the  
9 provisions of this article, or otherwise enter into  
10 agreement, including, but not limited to, agreements of  
11 indemnity, assurance or guarantee with respect to, and  
12 for the purpose of financing part or all of, the cost of  
13 acquisition, construction, establishment, extension or

14 equipment of waterworks or electric power systems and  
15 the construction of additions, betterments and improve-  
16 ments to existing waterworks systems or to existing  
17 electric power systems, and for the other purposes  
18 herein authorized, from or with any authorized agency  
19 of the state or from the United States of America or any  
20 federal or public agency or department of the United  
21 States or any private agency, corporation or individual,  
22 which loans or temporary advances, including the  
23 interest thereon, or the municipality's or county's  
24 financial obligations contained in such other agree-  
25 ments, which need not bear interest, may be repaid out  
26 of the proceeds of bonds authorized to be issued under  
27 the provisions of this article, the revenues of or proceeds  
28 from the said waterworks system or electric power  
29 system or grants to the municipality or county commis-  
30 sion from any agency of the state or from the United  
31 States of America or any federal or public agency or  
32 department of the United States or any private agency,  
33 corporation or individual or from any combination of  
34 such sources of payment, and may be secured in the  
35 manner provided in sections eight, nine and sixteen of  
36 this article to secure bonds issued under the provisions  
37 of this article, but shall not otherwise be subject to the  
38 requirements of sections eleven and twelve of this  
39 article, and to enter into the necessary contracts and  
40 agreements to carry out the purposes hereof with any  
41 agency of the state, the United States of America or any  
42 federal or public agency or department of the United  
43 States, or with any private agency, corporation or  
44 individual.

45 In no event shall any such loan or temporary advance  
46 or agreement be a general obligation of the municipality  
47 or county and such loans or temporary advances or  
48 agreements, including the interest thereon, shall be paid  
49 solely from the sources specified in this section.

**§8-19-18. Additional and alternative method for con-  
structing or improving and for financing  
waterworks or electric power system; cu-  
mulative authority.**

1 This article shall, without reference to any other

2 statute or charter provision, be deemed full authority for  
3 the acquisition, construction, establishment, extension,  
4 equipment, additions, betterment, improvement, repair,  
5 maintenance and operation of or to a waterworks or  
6 electric power system or for the construction of any  
7 additions, betterments, improvements, repairs, mainte-  
8 nance or operation of or to an existing electric power  
9 system as herein provided and for the issuance and sale  
10 of the bonds or the alternative methods of financing by  
11 this article authorized, and shall be construed as an  
12 additional and alternative method therefor and for the  
13 financing thereof, and no petition, referendum or  
14 election or other or further proceeding with respect to  
15 any such undertaking or to the issuance or sale of bonds  
16 or the alternative methods of financing under the  
17 provisions of this article and no publication of any  
18 resolution, ordinance, order, notice or proceeding  
19 relating to any such undertaking or to the issuance or  
20 sale of such bonds or the alternative methods of  
21 financing shall be required, except as prescribed by this  
22 article, any provisions of other statutes of the state to  
23 the contrary notwithstanding: *Provided*, That all  
24 functions, powers and duties of the state division of  
25 health shall remain unaffected by this article.

26 This article shall be construed as cumulative authority  
27 for any undertaking herein authorized, and shall not be  
28 construed to repeal any existing laws with respect  
29 thereto.

#### PART VI. OPERATION BY BOARD; CONSTRUCTION.

### §8-19-19. Alternative procedure for acquisition, construction or improvement of waterworks or electric power system.

1 As an alternative to the procedures hereinabove  
2 provided, any municipality or county commission is  
3 hereby empowered and authorized to acquire, construct,  
4 establish, extend, equip, repair, maintain and operate a  
5 waterworks or an electric power system or to construct,  
6 maintain and operate additions, betterments and  
7 improvements to an existing waterworks system or an  
8 existing electric power system, whether acquired,

9 constructed, established, extended or equipped under  
10 the provisions of this article or not, and to collect the  
11 revenues therefrom for the services rendered thereby,  
12 through the supervision and control of a committee, by  
13 whatever name called, composed of all or a portion of  
14 the governing body, or of a board or commission  
15 appointed by such governing body, as may be provided  
16 by the governing body, and if such alternative is  
17 followed, said committee, board or commission shall  
18 have and be limited to all the powers, authority and  
19 duties granted to and imposed upon a board as provided  
20 in article sixteen of this chapter.

**§8-19-20. 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.

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## CHAPTER 142

(Com. Sub. for H. B. 2655—By Delegate Wooton)

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[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one-b, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-three, relating to presentation of a flag of the United States to a person designated to direct disposition of the remains of a decedent who has completed an obligatory period of service in the national guard, and who has not been dishonorably discharged, and who is not otherwise eligible to receive such flag; providing that such flag shall be used for burial; and providing for the presentation of a flag to the parent or spouse of such decedent.

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

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

## ARTICLE 1B. NATIONAL GUARD.

**§15-1B-23. American flag for burial of deceased members of the national guard; presentation of flag to parent or spouse.**

1 (a) The adjutant general shall pay the necessary  
2 expenses for the presentation of a flag of the United  
3 States with care to the person designated to direct  
4 disposition of the remains of a deceased person who  
5 served in a federally recognized unit of the national  
6 guard of this state, upon request of such designated  
7 person, if the deceased member of the national guard  
8 has not been dishonorably discharged from service as  
9 provided for in section nine of this article, and if such  
10 deceased person is not otherwise eligible to receive such  
11 flag under any other provision of the laws of this state  
12 or federal law. Such flag shall be provided in order that  
13 the casket of the deceased person may be draped in a  
14 flag of the United States.

15 (b) After the burial of the deceased member, the flag  
16 so furnished pursuant to subsection (a) of this section  
17 shall be given to the parent or parents or to the spouse  
18 or children of the deceased person. If no claim is made  
19 by a parent or spouse for the flag furnished under  
20 subsection (a), the flag may be given, upon request, to  
21 a close friend or associate of the deceased member.

22 (c) For the purposes of this section, the term "parent"  
23 includes a natural parent, a step-parent, a parent by  
24 adoption or a person who for a period of not less than  
25 one year before the death of the decedent stood in loco  
26 parentis to him, and preference under this clause shall  
27 be given to the persons who exercised a parental  
28 relationship at the time of, or most nearly before, the  
29 death of the decedent.

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## CHAPTER 143

(Com. Sub. for S. B. 276—By Senator Burdette, Mr. President, By Request)

[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article one-a,  
chapter twenty of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, relating to sales of public land to federal or state entities for less than fair market value.

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

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

**ARTICLE 1A. REAL ESTATE MANAGEMENT AND PROCEDURES.**

**§20-1A-4. Public land corporation to conduct sales of public lands by competitive bidding, modified competitive bidding or direct sale.**

1 (a) Sales, exchanges or transfers of public lands under  
2 this article shall be conducted under competitive  
3 bidding procedures. However, where the secretary  
4 determines it necessary and proper in order to assure  
5 the following public policies, including, but not limited  
6 to, a preference to users, lands may be sold by modified  
7 competitive bidding or without competitive bidding. In  
8 recognizing public policies, the secretary shall give  
9 consideration to the following potential purchasers:

10 (1) The local government entities which are in the  
11 vicinity of the lands; and

12 (2) Adjoining landowners.

13 (b) The policy for selecting the methods of sale is as  
14 follows:

15 (1) Competitive sale is the general procedure for sales  
16 of public lands and shall be used in the following  
17 circumstances:

18 (A) Wherever in the judgment of the secretary the  
19 lands are accessible and usable regardless of adjoining  
20 land ownership; or

21 (B) Wherever the lands are within a developing or  
22 urbanizing area and land values are increasing due to  
23 the location of the land and interest on the competitive  
24 market.

25 (2) Modified competitive sales may be used to permit



26 the adjoining landowner or local governmental entity to  
27 meet the high bid at the public sale. Lands otherwise  
28 offered under this procedure would normally be public  
29 lands not located near urban expansion areas, or not  
30 located near areas with rapidly increasing land values,  
31 and where existing use of adjacent lands would be  
32 jeopardized by sale under competitive bidding  
33 procedures.

34 (3) Direct sale may be used when the lands offered for  
35 sale are completely surrounded by lands in one owner-  
36 ship with no public access, or where the lands are  
37 needed by local governments.

38 (4) In no event shall lands be offered for sale by  
39 "modified competitive sales" or "direct sale" unless and  
40 until the corporation makes a written finding of  
41 justification for use of an alternative bidding procedure.

42 (5) Subject to the bidding procedures set forth herein,  
43 the corporation is authorized, at its discretion, to sell  
44 public lands subject to rights-of-way, restrictive coven-  
45 ants or easements retained by the corporation, limiting  
46 the use of such lands to purposes consistent with the use  
47 of adjoining or nearby lands owned by the corporation.

48 (c) When lands have been offered for sale by one  
49 method of sale and the lands remain unsold, then the  
50 lands may be reoffered by another method of sale.

51 (d) Except as provided herein, public lands may not  
52 be sold, exchanged or transferred by the corporation for  
53 less than fair market value. Fair market value shall be  
54 determined by an appraisal made by an independent  
55 person or firm chosen by the public land corporation.  
56 The appraisal shall be performed using the principles  
57 contained in the "Uniform Appraisal Standards for  
58 Federal Land Acquisitions" published under the auspi-  
59 ces of the Interagency Land Acquisition Conference,  
60 United States Government Printing Office, 1972:  
61 *Provided*, That public lands may be sold, exchanged or  
62 transferred to any federal agency or to the state or any  
63 of its political subdivisions for less than fair market  
64 value if, upon a specific written finding of fact, the

65 corporation determines that such a transfer would be in  
66 the best interests of the corporation and the state.

67 (e) The corporation may reject all bids when such bids  
68 do not represent the corporation's considered value of  
69 the property exclusive of the fair market value.

70 (f) The corporation shall promulgate rules, in accor-  
71 dance with the provisions of chapter twenty-nine-a of  
72 this code, regarding procedures for conducting public  
73 land sales by competitive bidding, modified competitive  
74 bidding and direct sales.

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## CHAPTER 144

(Com. Sub. for S. B. 298—By Senator Burdette, Mr. President, By Request)

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[Passed March 8, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend chapter twenty 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 an interstate wildlife violator compact.

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

That chapter twenty 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. INTERSTATE WILDLIFE VIOLATOR COMPACT.

§20-2C-1. Governor's authority to execute.

§20-2C-2. When and how compact becomes operative.

§20-2C-3. Compensation and expenses of compact administrator.

#### §20-2C-1. Governor's authority to execute.

1 The governor of West Virginia, on behalf of this state,  
2 is hereby authorized to execute a compact in substan-  
3 tially the following form with any one or more of the  
4 states of the United States and the Legislature hereby  
5 signifies in advance its approval and ratification of such  
6 compact:

## INTERSTATE WILDLIFE VIOLATOR COMPACT

## ARTICLE I. FINDINGS AND DECLARATION OF POLICY AND PURPOSE.

1 (a) The participating states find that:

2 (1) Wildlife resources are managed in trust by the  
3 respective states for the benefit of all residents and  
4 visitors.

5 (2) The protection of the wildlife resources of a state  
6 is materially affected by the degree of compliance with  
7 state statutes, rules, regulations and ordinances relating  
8 to the management of such resources.

9 (3) The preservation, protection, management and  
10 restoration of wildlife resources contributes immeasur-  
11 ably to the aesthetic, recreational and economic values  
12 of a state.

13 (4) Wildlife resources are valuable without regard to  
14 political boundaries; therefore, every person should be  
15 required to comply with wildlife preservation, protec-  
16 tion, management and restoration statutes, rules,  
17 regulations and ordinances of the participating states as  
18 a condition precedent to the continuance or issuance of  
19 any license to hunt, trap, fish or otherwise possess  
20 wildlife.

21 (5) The violation of wildlife laws interferes with the  
22 management of wildlife resources and may endanger  
23 the safety of people and property.

24 (6) The mobility of many wildlife law violators  
25 necessitates the maintenance of channels of communica-  
26 tion among the participating states.

27 (7) In most instances, a person who is cited for a  
28 wildlife violation in a state other than his home state is  
29 required to post collateral or a bond to secure appear-  
30 ance for trial at a later date, is taken into custody until  
31 the collateral or bond is posted or is taken directly to  
32 court for an immediate appearance.

33 (8) The purpose of the aforementioned enforcement  
34 practices is to ensure compliance with the terms of the  
35 wildlife citation by the cited person who, if permitted

36 to continue on his way after receiving the citation, could  
37 return to his home state and disregard his duty under  
38 the terms of the citation.

39 (9) In most instances, a person receiving a wildlife  
40 citation in his home state is permitted to accept the  
41 citation from the officer at the scene of the violation and  
42 immediately continue on his way after agreeing or being  
43 instructed to comply with the terms of the citation.

44 (10) The aforementioned enforcement practices cause  
45 unnecessary inconvenience and, at times, a hardship for  
46 the person who is unable at the time to post collateral,  
47 furnish a bond, stand trial or pay a fine and thus is  
48 compelled to remain in custody until some alternative  
49 arrangement is made.

50 (11) The aforementioned enforcement practices con-  
51 sume an undue amount of law-enforcement time.

52 (b) It is the policy of the participating states to:

53 (1) Promote compliance with the statutes, rules,  
54 regulations and ordinances relating to the management  
55 of wildlife resources in their respective states.

56 (2) Recognize the suspension of wildlife license  
57 privileges of any person whose license privileges have  
58 been suspended by a participating state and treat such  
59 suspension as if it occurred in their state.

60 (3) Allow a violator, except as provided in subsection  
61 (b) of article III of this compact, to accept a wildlife  
62 citation and, without delay, proceed on his way regard-  
63 less of his state of residence: *Provided*, That the  
64 violator's home state is party to this compact.

65 (4) Report to the appropriate participating state, as  
66 provided in the compact manual, any conviction re-  
67 corded against any person whose home state was not the  
68 issuing state.

69 (5) Allow the home state to recognize and treat  
70 convictions recorded against its residents which oc-  
71 curred in a participating state as though they had  
72 occurred in the home state.

73 (6) Extend cooperation to its fullest extent among the  
74 participating states for enforcing compliance with the  
75 terms of a wildlife citation issued in one participating  
76 state to a resident of another participating state.

77 (7) Maximize the effective use of law-enforcement  
78 personnel and information.

79 (8) Assist court systems in the efficient disposition of  
80 wildlife violations.

81 (c) The purpose of this compact is to:

82 (1) Provide a means through which participating  
83 states may join in a reciprocal program to effectuate the  
84 policies enumerated in subsection (b) of article I of this  
85 compact in a uniform and orderly manner.

86 (2) Provide for the fair and impartial treatment of  
87 wildlife violators operating within participating states  
88 in recognition of the violator's right to due process and  
89 the sovereign status of a participating state.

## ARTICLE II. DEFINITIONS.

1 Unless the context in which used clearly requires a  
2 different meaning, as used in this compact:

3 (a) "Citation" means any summons, complaint, sum-  
4 mons and complaint, ticket, penalty assessment or other  
5 official document issued to a person by a wildlife officer  
6 or other peace officer for a wildlife violation which  
7 contains an order requiring the person to respond.

8 (b) "Collateral" means any cash or other security  
9 deposited to secure an appearance for trial in connection  
10 with the issuance by a wildlife officer or other peace  
11 officer of a citation for a wildlife violation.

12 (c) "Compliance" with respect to a citation means the  
13 act of answering a citation through an appearance in a  
14 court or tribunal or through the payment of fines, costs  
15 and surcharges, if any.

16 (d) "Conviction" means a conviction, including any  
17 court conviction, for any offense related to the preser-  
18 vation, protection, management or restoration of wildlife  
19 which is prohibited by state statute, rule, regulation or

20 ordinance. The term "conviction" shall also include the  
21 forfeiture of any bail, bond or other security deposited  
22 to secure appearance by a person charged with having  
23 committed any such offense, the payment of a penalty  
24 assessment, a plea of nolo contendere or the imposition  
25 of a deferred or suspended sentence by the court.

26 (e) "Court" means a court of law, including magis-  
27 trate's court.

28 (f) "Home state" means the state of primary residence  
29 of a person.

30 (g) "Issuing state" means the participating state  
31 which issues a wildlife citation to the violator.

32 (h) "License" means any license, permit or other  
33 public document which conveys to the person to whom  
34 it was issued the privilege of pursuing, possessing or  
35 taking any wildlife regulated by statute, rule, regulation  
36 or ordinance of a participating state.

37 (i) "Licensing authority" means the governmental  
38 agency within each participating state that is authorized  
39 by law to issue or approve licenses or permits to hunt,  
40 trap, fish or otherwise possess wildlife.

41 (j) "Participating state" means any state which enacts  
42 legislation to become a member of this wildlife compact.

43 (k) "Personal recognizance" means an agreement by  
44 a person made at the time of issuance of the wildlife  
45 citation that such person will comply with the terms of  
46 the citation.

47 (l) "State" means any state, territory or possession of  
48 the United States, including the District of Columbia  
49 and the Commonwealth of Puerto Rico.

50 (m) "Suspension" means any revocation, denial or  
51 withdrawal of any or all license privileges, including the  
52 privilege to apply for, purchase or exercise the benefits  
53 conferred by any license.

54 (n) "Terms of the citation" means those conditions and  
55 options expressly stated upon the citation.

56 (o) "Wildlife" means all species of animals including,

57 but not limited to, mammals, birds, fish, reptiles,  
58 amphibians, mollusks and crustaceans which are  
59 defined as "wildlife" and are protected or otherwise  
60 regulated by statute, rule, regulation or ordinance in a  
61 participating state. Species included in the definition of  
62 "wildlife" vary from state to state and determination of  
63 whether a species is "wildlife" for the purposes of this  
64 compact shall be based on the law in the issuing state.

65 (p) "Wildlife law" means any statute, rule, regulation  
66 or ordinance developed and enacted for the management  
67 of wildlife resources and the uses thereof.

68 (q) "Wildlife officer" means any individual authorized  
69 by a participating state to issue a citation for a wildlife  
70 violation.

71 (r) "Wildlife violation" means any cited violation of a  
72 statute, rule, regulation or ordinance developed and  
73 enacted for the management of wildlife resources and  
74 the uses thereof.

### ARTICLE III. PROCEDURES FOR ISSUING STATE.

1 (a) When issuing a citation for a wildlife violation, a  
2 wildlife officer shall issue a citation to any person whose  
3 primary residence is in a participating state in the same  
4 manner as though the person were a resident of the  
5 issuing state and shall not require such person to post  
6 collateral to secure appearance, subject to the exceptions  
7 noted in subsection (b) of article III of this compact, if  
8 the officer receives the recognizance of such person that  
9 he will comply with the terms of the citation.

10 (b) Personal recognizance is acceptable if not prohi-  
11 bited by law in the issuing state or by the compact  
12 manual and if the violator provides adequate proof of  
13 identification to the wildlife officer.

14 (c) Upon conviction or failure of a person to comply  
15 with the terms of a wildlife citation, the appropriate  
16 official shall report the conviction or failure to comply  
17 to the licensing authority of the participating state in  
18 which the wildlife citation was issued. The report shall  
19 be made in accordance with procedures specified by the  
20 issuing state and shall contain information as specified

21 in the compact manual as minimum requirements for  
22 effective processing by the home state.

23 (d) Upon receipt of the report of conviction or  
24 noncompliance pursuant to subsection (c) of article III  
25 of this compact, the licensing authority of the issuing  
26 state shall transmit to the licensing authority of the  
27 home state of the violator the information in form and  
28 content as prescribed in the compact manual.

#### ARTICLE IV. PROCEDURES FOR HOME STATE.

1 (a) Upon receipt of a report from the licensing  
2 authority of the issuing state reporting the failure of a  
3 violator to comply with the terms of a citation, the  
4 licensing authority of the home state shall notify the  
5 violator and shall initiate a suspension action in  
6 accordance with the home state's suspension procedures  
7 and shall suspend the violator's license privileges until  
8 satisfactory evidence of compliance with the terms of the  
9 wildlife citation has been furnished by the issuing state  
10 to the home state licensing authority. Due process  
11 safeguards shall be accorded.

12 (b) Upon receipt of a report of conviction from the  
13 licensing authority of the issuing state, the licensing  
14 authority of the home state shall enter such conviction  
15 in its records and shall treat such conviction as though  
16 it occurred in the home state for the purposes of the  
17 suspension of license privileges.

18 (c) The licensing authority of the home state shall  
19 maintain a record of actions taken and shall make  
20 reports to issuing states as provided in the compact  
21 manual.

#### ARTICLE V. RECIPROCAL RECOGNITION OF SUSPENSION.

1 (a) All participating states shall recognize the suspen-  
2 sion of license privileges of any person by any partic-  
3 ipating state as though the violation resulting in the  
4 suspension had occurred in their state and could have  
5 been the basis for suspension of license privileges in  
6 their state.

7 (b) Each participating state shall communicate



8 suspension information to other participating states in  
9 form and content as contained in the compact manual.

#### ARTICLE VI. APPLICABILITY OF OTHER LAWS.

1 Except as expressly required by the provisions of this  
2 compact, nothing herein shall be construed to affect the  
3 right of any participating state to apply any of its laws  
4 relating to license privileges to any person or circum-  
5 stance or to invalidate or prevent any agreement or  
6 other cooperative arrangement between a participating  
7 state and a nonparticipating state concerning wildlife  
8 law enforcement.

#### ARTICLE VII. BOARD OF COMPACT ADMINISTRATORS.

1 (a) For the purpose of administering the provisions of  
2 this compact and to serve as a governing body for the  
3 resolution of all matters relating to the operation of this  
4 compact, a board of compact administrators is estab-  
5 lished. The board shall be composed of one representa-  
6 tive from each of the participating states to be known  
7 as the compact administrator. The compact administra-  
8 tor shall be appointed by the head of the licensing  
9 authority of each participating state and shall serve and  
10 be subject to removal in accordance with the laws of the  
11 state he represents. A compact administrator may  
12 provide for the discharge of his duties and the perfor-  
13 mance of his functions as a board member by an  
14 alternate. An alternate shall not be entitled to serve  
15 unless written notification of his identity has been given  
16 to the board.

17 (b) Each member of the board of compact administra-  
18 tors shall be entitled to one vote. No action of the board  
19 shall be binding unless taken at a meeting at which a  
20 majority of the total number of the board's votes are cast  
21 in favor thereof. Action by the board shall be only at  
22 a meeting at which a majority of the participating states  
23 are represented.

24 (c) The board shall elect annually from its member-  
25 ship a chairman and vice-chairman.

26 (d) The board shall adopt bylaws not inconsistent with  
27 the provisions of this compact or the laws of a partic-

28 ipating state for the conduct of its business and shall  
29 have the power to amend and rescind its bylaws.

30 (e) The board may accept for any of its purposes and  
31 functions under this compact any and all donations and  
32 grants of moneys, equipment, supplies, materials and  
33 services, conditional or otherwise, from any state and  
34 may receive, utilize and dispose of same.

35 (f) The board may contract with or accept services of  
36 personnel from any governmental or intergovernmental  
37 agency, individual, firm or corporation or from any  
38 private nonprofit organization or institution.

39 (g) The board shall formulate all necessary proce-  
40 dures and develop uniform forms and documents for  
41 administering the provisions of this compact. All  
42 procedures and forms adopted pursuant to board action  
43 shall be contained in the compact manual.

#### ARTICLE VIII. ENTRY INTO COMPACT AND WITHDRAWAL.

1 (a) This compact shall become effective at such time  
2 as it is adopted in a substantially similar form by two  
3 or more states.

4 (b) (1) Entry into the compact shall be made by  
5 resolution of ratification executed by the authorized  
6 officials of the applying state and submitted to the  
7 chairman of the board.

8 (2) The resolution shall substantially be in the form  
9 and content as provided in the compact manual and  
10 shall include the following:

11 (A) A citation of the authority from which the state  
12 is empowered to become a part to this compact;

13 (B) An agreement of compliance with the terms and  
14 provisions of this compact; and

15 (C) An agreement that compact entry is with all  
16 states participating in the compact and with all  
17 additional states legally becoming a party to the  
18 compact.

19 (3) The effective date of entry shall be specified by the  
20 applying state but shall not be less than sixty days after

21 notice has been given by the chairman of the board of  
22 compact administrators or by the secretariat of the  
23 board of each participating state that the resolution  
24 from the applying state has been received.

25 (c) A participating state may withdraw from this  
26 compact by official written notice to each member state  
27 but withdrawal shall not become effective until ninety  
28 days after the notice of withdrawal is given. The notice  
29 shall be directed to the compact administrator of each  
30 member state. No withdrawal of any state shall affect  
31 the validity of this compact as to the remaining  
32 participating states.

#### ARTICLE IX. AMENDMENTS TO THE COMPACT.

1 (a) This compact may be amended from time to time.  
2 Each proposed amendment shall be presented in  
3 resolution form to the chairman of the board of compact  
4 administrators and shall be initiated by one or more  
5 participating states.

6 (b) Adoption of an amendment shall require endorse-  
7 ment by all participating states and shall become  
8 effective thirty days after the date of the last  
9 endorsement.

10 (c) Failure of a participating state to respond to the  
11 compact chairman within one hundred twenty days  
12 after receipt of a proposed amendment shall constitute  
13 endorsement thereof.

#### ARTICLE X. CONSTRUCTION AND SEVERABILITY.

1 This compact shall be liberally construed so as to  
2 effectuate the purposes stated herein. The provisions of  
3 this compact shall be severable and if any phrase,  
4 clause, sentence or provision of this compact is declared  
5 to be contrary to the constitution of any participating  
6 state or of the United States, or the applicability thereof  
7 to any government, agency, individual or circumstance  
8 is held invalid, the validity of the remainder of this  
9 compact shall not be affected thereby. If this compact  
10 shall be held contrary to the constitution of any  
11 participating state, the compact shall remain in full  
12 force and effect as to the remaining states and in full

13 force and effect as to the participating state affected as  
14 to all severable matters.

**§20-2C-2. When and how compact becomes operative.**

1 When the governor shall have executed said compact  
2 on behalf of this state and shall have caused a verified  
3 copy thereof to be filed with the secretary of state and  
4 when said compact shall have been ratified by one or  
5 more other states, then said compact shall become  
6 operative and effective between this state and such other  
7 state or states. The governor is hereby authorized and  
8 directed to take such action as may be necessary to  
9 complete the exchange of official documents between  
10 this state and any other state ratifying said compact.

**§20-2C-3. Compensation and expenses of compact administrator.**

1 The compact administrator representing this state, as  
2 provided for in article VII of the Interstate Wildlife  
3 Violator Compact, shall not be entitled to any additional  
4 compensation for his duties and responsibilities as said  
5 administrator but shall be entitled to reimbursement for  
6 reasonable expenses actually incurred in connection  
7 with his duties and responsibilities as said administrator  
8 in the same manner as for expenses incurred in  
9 connection with other duties and responsibilities of his  
10 office or employment.

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## CHAPTER 145

(Com. Sub. for S. B. 44—By Senators Spears, Jones and J. Manchin)

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[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four, relating to limiting the tort liability of persons organizing, promoting, presenting or providing equestrian activities or providing facilities for equestrian activities; describing legislative purpose; defining

certain terms; describing the duties of horsemen; describing the duties of persons who are participants in equestrian activities; providing for the liability of horsemen; providing for the liability of participants; and exempting the horse racing industry from the provisions of said article four.

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

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

**ARTICLE 4. EQUESTRIAN ACTIVITIES RESPONSIBILITY ACT.**

§20-4-1. Legislative purpose.

§20-4-2. Definitions.

§20-4-3. Duties of horsemen.

§20-4-4. Duties of participants.

§20-4-5. Liability of horsemen.

§20-4-6. Liability of participants.

§20-4-7. Applicability of article.

**§20-4-1. Legislative purpose.**

1 The Legislature finds that equestrian activities are  
2 engaged in by a large number of citizens of West  
3 Virginia and that such activities also attract to West  
4 Virginia a large number of nonresidents, significantly  
5 contributing to the economy of West Virginia. Since it  
6 is recognized that there are inherent risks in equestrian  
7 activities which should be understood by participants  
8 therein and which are essentially impossible for the  
9 operators of equestrian businesses to eliminate, it is the  
10 purpose of this article to define those areas of respon-  
11 sibility and those affirmative acts for which the  
12 operators of equestrian businesses shall be liable for  
13 loss, damage or injury suffered by participants, and to  
14 further define those risks which the participants  
15 expressly assume and for which there can be no  
16 recovery.

**§20-4-2. Definitions.**

1 In this article, unless a different meaning plainly is  
2 required:

3 (1) "Equestrian activity" means any sporting event or  
4 other activity involving a horse or horses, including, but  
5 not limited to:

6 (A) Shows, fairs, competitions, performances or  
7 parades;

8 (B) Any of the equine disciplines such as dressage,  
9 hunter and jumper shows, grand prix jumping, three  
10 day events, combined training, rodeos, driving, western  
11 games and hunting;

12 (C) Rides, trips or hunts;

13 (D) Riding classes, therapeutic riding programs,  
14 school and college sponsored classes and programs, or  
15 other classes in horsemanship;

16 (E) The boarding or keeping of horses; and

17 (F) Providing equipment or tack.

18 (2) "Horseman" or "operator of a horseman's business"  
19 means any individual, sole proprietorship, partnership,  
20 association, public or private corporation, the United  
21 States or any federal agency, this state or any political  
22 subdivision of this state, and any other legal entity  
23 which engages, with or without compensation, in  
24 organizing, promoting, presenting or providing eques-  
25 trian activities or in providing facilities for equestrian  
26 activities.

27 (3) "Horse" means each animal of the horse kind, in  
28 every class or breed of horses, and, without limitation  
29 or exception, all members of the genus *Equus* and  
30 family *Equidae*.

31 (4) "Participant" means any person using the services  
32 or facilities of a horseman so as to be directly involved  
33 in an equestrian activity.

#### §20-4-3. Duties of horsemen.

1 Every horseman shall:

2 (1) Make reasonable and prudent efforts to determine  
3 the ability of a participant to safely engage in the  
4 equestrian activity, to determine the ability of the horse

5 to behave safely with the participant, and to determine  
6 the ability of the participant to safely manage, care for  
7 and control the particular horse involved;

8 (2) Make known to any participant any dangerous  
9 traits or characteristics or any physical impairments or  
10 conditions related to a particular horse which is involved  
11 in the equestrian activity of which the horseman knows  
12 or through the exercise of due diligence could know;

13 (3) Make known to any participant any dangerous  
14 condition as to land or facilities under the lawful  
15 possession and control of the horseman of which the  
16 horseman knows or through the exercise of due dili-  
17 gence could know, by advising the participant in writing  
18 or by conspicuously posting warning signs upon the  
19 premises;

20 (4) In providing equipment or tack to a participant,  
21 make reasonable and prudent efforts to inspect such  
22 equipment or tack to assure that it is in proper working  
23 condition and safe for use in the equestrian activity;

24 (5) Prepare and present to each participant or  
25 prospective participant, for his or her inspection and  
26 signature, a statement which clearly and concisely  
27 explains the liability limitations, restrictions and  
28 responsibilities set forth in this article.

#### §20-4-4. Duties of participants.

1 It is recognized that equestrian activities are hazard-  
2 ous to participants, regardless of all feasible safety  
3 measures which can be taken.

4 Each participant in an equestrian activity expressly  
5 assumes the risk of and legal responsibility for any  
6 injury, loss or damage to person or property which  
7 results from participation in an equestrian activity.  
8 Each participant shall have the sole individual respon-  
9 sibility for knowing the range of his or her own ability  
10 to manage, care for, and control a particular horse or  
11 perform a particular equestrian activity, and it shall be  
12 the duty of each participant to act within the limits of  
13 the participant's own ability, to maintain reasonable  
14 control of the particular horse or horses at all times

15 while participating in an equestrian activity, to heed all  
16 posted warnings, to perform equestrian activities only  
17 in an area or in facilities designated by the horseman  
18 and to refrain from acting in a manner which may cause  
19 or contribute to the injury of anyone. If while actually  
20 riding in an equestrian event, any participant collides  
21 with any object or person, except an obviously intoxi-  
22 cated person of whom the horseman is aware, or if the  
23 participant falls from the horse or from a horse-drawn  
24 conveyance, the responsibility for such collision or fall  
25 shall be solely that of the participant or participants  
26 involved and not that of the horseman.

27 A participant involved in an accident shall not depart  
28 from the area or facility where the equestrian activity  
29 took place without leaving personal identification,  
30 including name and address, or without notifying the  
31 proper authorities, or without obtaining assistance when  
32 that person knows or reasonably should know that any  
33 other person involved in the accident is in need of  
34 medical or other assistance.

**§20-4-5. Liability of horsemen.**

1 (a) A horseman shall be liable for injury, loss or  
2 damage caused by failure to follow the duties set forth  
3 in section three of this article where the violation of duty  
4 is causally related to the injury, loss or damage suffered.  
5 A horseman shall not be liable for any injury, loss or  
6 damage caused by the negligence of any person who is  
7 not an agent or employee of such horseman.

8 (b) A horseman shall be liable for acts or omissions  
9 which constitute gross negligence or willful and wanton  
10 conduct which is the proximate cause of injury to a  
11 participant.

12 (c) A horseman shall be liable for an intentional injury  
13 which he or she inflicts upon a participant.

14 (d) Every horseman shall carry public liability  
15 insurance in limits of no less than one hundred thousand  
16 dollars per person, three hundred thousand dollars per  
17 occurrence and ten thousand dollars for property  
18 damage.



**§20-4-6. Liability of participants.**

1 Any participant shall be liable for injury, loss or  
2 damage resulting from violations of the duties set forth  
3 in section four of this article.

**§20-4-7. Applicability of article.**

1 The provisions of this article do not apply to the horse  
2 racing industry that is regulated by the provisions of  
3 article twenty-three, chapter nineteen of this code.

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## CHAPTER 146

(Com. Sub. for S. B. 149—By Senators Brackenrich, Parker, Chernenko and  
Hawse)

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[Passed March 7, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section two, article five-a,  
chapter twenty of the code of West Virginia, one  
thousand nine hundred thirty-one, as amended, further  
defining the term "other wastes" in the water pollution  
control act.

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

That section two, article five-a, 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 5A. WATER POLLUTION CONTROL ACT.****§20-5A-2. Definitions.**

1 Unless the context in which used clearly requires a  
2 different meaning, as used in this article:

3 (a) "Director" shall mean the director of the division  
4 of natural resources;

5 (b) "Board" shall mean the state water resources  
6 board;

7 (c) "Chief" shall mean the chief of the section of water  
8 resources of the division of natural resources;

9 (d) "Person", "persons" or "applicant" shall mean any  
10 industrial user, public or private corporation, institu-  
11 tion, association, firm or company organized or existing  
12 under the laws of this or any other state or country; state  
13 of West Virginia; governmental agency, including  
14 federal facilities; political subdivision; county commis-  
15 sion; municipal corporation; industry; sanitary district;  
16 public service district; drainage district; soil conserva-  
17 tion district; watershed improvement district; partner-  
18 ship; trust; estate; person or individual; group of persons  
19 or individuals acting individually or as a group; or any  
20 legal entity whatever;

21 (e) "Water resources", "water" or "waters" shall mean  
22 any and all water on or beneath the surface of the  
23 ground, whether percolating, standing, diffused or  
24 flowing, wholly or partially within this state, or  
25 bordering this state and within its jurisdiction, and shall  
26 include, without limiting the generality of the foregoing,  
27 natural or artificial lakes, rivers, streams, creeks,  
28 branches, brooks, ponds (except farm ponds, industrial  
29 settling basins and ponds and water treatment facili-  
30 ties), impounding reservoirs, springs, wells, water-  
31 courses and wetlands;

32 (f) "Pollution" shall mean the man-made or man-  
33 induced alteration of the chemical, physical, biological  
34 and radiological integrity of the waters of the state;

35 (g) "Sewage" shall mean water-carried human or  
36 animal wastes from residences, buildings, industrial  
37 establishments or other places, together with such  
38 groundwater infiltration and surface waters as may be  
39 present;

40 (h) "Industrial wastes" shall mean any liquid, gaseous,  
41 solid or other waste substance, or a combination thereof,  
42 resulting from or incidental to any process of industry,  
43 manufacturing, trade or business, or from or incidental  
44 to the development, processing or recovery of any  
45 natural resources; and the admixture with such indus-  
46 trial wastes of sewage or other wastes, as hereinafter  
47 defined, shall also be considered "industrial wastes"  
48 within the meaning of this article;

49 (i) "Industrial user" shall mean those industries  
50 identified in the standard industrial classification  
51 manual, United States Bureau of the Budget, 1967, as  
52 amended and supplemented, under the category "div-  
53 ision d—manufacturing" and other classes of significant  
54 waste producers identified under regulations issued by  
55 the board or the administrator of the United States  
56 environmental protection agency;

57 (j) "Other wastes" shall mean garbage, refuse, de-  
58 cayed wood, sawdust, shavings, bark and other wood  
59 debris and residues resulting from secondary process-  
60 ing; sand, lime, cinders, ashes, offal, night soil, silt, oil,  
61 tar, dyestuffs, acids, chemicals, heat or all other  
62 materials and substances not sewage or industrial  
63 wastes which may cause or might reasonably be  
64 expected to cause or to contribute to the pollution of any  
65 of the waters of the state;

66 (k) "Establishment" shall mean an industrial estab-  
67 lishment, mill, factory, tannery, paper or pulp mill,  
68 mine, colliery, breaker or mineral processing operation,  
69 quarry, refinery, well and each and every industry or  
70 plant or works in the operation or process of which  
71 industrial wastes, sewage or other wastes are produced;

72 (l) "Sewer system" shall mean pipelines or conduits,  
73 pumping stations, force mains and all other construc-  
74 tions, facilities, devices and appliances appurtenant  
75 thereto, used for collecting or conducting sewage,  
76 industrial wastes or other wastes to a point of disposal  
77 or treatment;

78 (m) "Treatment works" shall mean any plant, facility,  
79 means, system, disposal field, lagoon, pumping station,  
80 constructed drainage ditch or surface water intercept-  
81 ing ditch, diversion ditch above or below the surface of  
82 the ground, settling tank or pond, earthen pit, inciner-  
83 ator, area devoted to sanitary landfills or other works  
84 not specifically mentioned herein, installed for the  
85 purpose of treating, neutralizing, stabilizing, holding or  
86 disposing of sewage, industrial wastes or other wastes  
87 or for the purpose of regulating or controlling the  
88 quality and rate of flow thereof;

89 (n) "Publicly owned treatment works" shall mean any  
90 treatment works owned by the state or any political  
91 subdivision thereof, any municipality or any other  
92 public entity, for the treatment of pollutants;

93 (o) "Disposal system" shall mean a system for treating  
94 or disposing of sewage, industrial wastes or other  
95 wastes, or the effluent therefrom, either by surface or  
96 underground methods, and shall be construed to include  
97 sewer systems, the use of subterranean spaces, treat-  
98 ment works, disposal wells and other systems;

99 (p) "Outlet" shall mean the terminus of a sewer  
100 system or the point of emergence of any water-carried  
101 sewage, industrial wastes or other wastes, or the effluent  
102 therefrom, into any of the waters of this state, and shall  
103 include a point source;

104 (q) "Point source" shall mean any discernible, con-  
105 fined and discrete conveyance, including, but not limited  
106 to, any pipe, ditch, channel, tunnel, conduit, well,  
107 discrete fissure, container, rolling stock or vessel or  
108 other floating craft, from which pollutants are or may  
109 be discharged;

110 (r) "Activity" or "activities" shall mean any activity or  
111 activities for which a permit is required by the  
112 provisions of section five of this article;

113 (s) "Disposal well" shall mean any well drilled or used  
114 for the injection or disposal of treated or untreated  
115 sewage, industrial wastes or other wastes into under-  
116 ground strata;

117 (t) "Effluent limitation" shall mean any restriction  
118 established on quantities, rates and concentrations of  
119 chemical, physical, biological and other constituents  
120 which are discharged into the waters of this state;

121 (u) "Code" shall mean the code of West Virginia, one  
122 thousand nine hundred thirty-one, as amended;

123 (v) "Division" shall mean the division of natural  
124 resources;

125 (w) "Well" shall mean any shaft or hole sunk, drilled,  
126 bored or dug into the earth or into underground strata

127 for the extraction or injection or placement of any liquid  
 128 or gas, or any shaft or hole sunk or used in conjunction  
 129 with such extraction or injection or placement. The term  
 130 "well" shall not have included within its meaning any  
 131 shaft or hole sunk, drilled, bored or dug into the earth  
 132 for the sole purpose of core drilling or pumping or  
 133 extracting therefrom potable, fresh or usable water for  
 134 household, domestic, industrial, agricultural or public  
 135 use; and

136 (x) "Pollutant" shall mean industrial wastes, sewage  
 137 or other wastes as defined in this section.

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## CHAPTER 147

(S. B. 608—Originating in the Committee on the Judiciary)

[Passed March 7, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections six and twenty-two, article five-h, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to underground storage tank management.

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

That sections six and twenty-two, article five-h, 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 5H. WEST VIRGINIA UNDERGROUND STORAGE TANK ACT.**

§20-5H-6. Promulgation of rules, regulations and standards by director.

§20-5H-22. Underground storage tank insurance fund.

**§20-5H-6. Promulgation of rules, regulations and standards by director.**

- 1 (a) The director has overall responsibility for the
- 2 promulgation of rules and regulations under this article.
- 3 In promulgating and revising such rules and regulations
- 4 the director shall comply with the provisions of chapter

5 twenty-nine-a of this code. Such rules and regulations  
6 shall be no more stringent than the rules and regula-  
7 tions promulgated by the United States environmental  
8 protection agency pursuant to Subtitle I.

9 (b) The director shall promulgate rules and regula-  
10 tions applicable to owners or operators of underground  
11 storage tanks or other affected persons, as appropriate,  
12 as follows:

13 (1) A requirement for a yearly registration fee for  
14 underground storage tanks;

15 (2) A requirement that an owner or operator register  
16 with the director each underground storage tank after  
17 the effective date of the regulations and that an owner  
18 or operator report annually on changes in status of any  
19 underground storage tank;

20 (3) Such release detection, prevention and correction  
21 rules applicable to underground storage tanks as may  
22 be necessary to protect human health and the  
23 environment;

24 (4) Requirements for maintaining a leak detection  
25 system, inventory control systems together with tank  
26 testing, or a comparable system or method designed to  
27 identify releases from underground storage tanks in a  
28 manner consistent with the protection of human health  
29 and the environment;

30 (5) Requirements for maintaining records of any  
31 monitoring or leak detection system or inventory control  
32 system or tank testing system;

33 (6) Regulations for procedures and amount of fees to  
34 be assessed for the underground storage tank adminis-  
35 trative fund, the leaking underground storage tank  
36 response fund and the underground storage tank  
37 insurance fund established pursuant to this article,  
38 which shall include a capitalization fee to be assessed  
39 against all owners or operators of underground tanks to  
40 be used for initial establishment of the underground  
41 storage tank insurance fund;

42 (7) Procedures for making expenditures from the

- 43 underground storage tank administrative fund, the  
44 leaking underground storage tank response fund and  
45 the underground storage tank insurance fund;
- 46 (8) Acceptable methods by which an owner or oper-  
47 ator may demonstrate financial responsibility;
- 48 (9) Requirements for reporting of releases and correc-  
49 tive action taken in response to a release;
- 50 (10) Requirements for taking corrective action in  
51 response to a release from an underground storage tank;
- 52 (11) Requirements for the closure of tanks to prevent  
53 future releases of regulated substances to the  
54 environment;
- 55 (12) Requirements for certification of installation,  
56 removal, retrofit, testing and inspection of underground  
57 storage tanks and leak detection systems by a registered  
58 professional engineer or other qualified person;
- 59 (13) Requirements for public participation in the  
60 enforcement of the state underground storage tank  
61 program;
- 62 (14) Procedures establishing when and how the  
63 director shall determine if information obtained by any  
64 agency under this article is confidential;
- 65 (15) Standards of performance for new underground  
66 storage tanks; or
- 67 (16) Any other rules, regulations or standards neces-  
68 sary and appropriate for the effective implementation  
69 and administration of this article.

**§20-5H-22. Underground storage tank insurance fund.**

- 1 (a) The director may establish an underground  
2 storage tank insurance fund for the purpose of satisfying  
3 the financial responsibility requirements established  
4 pursuant to section ten of this article. In addition to the  
5 capitalization fee to be assessed against all owners or  
6 operators of underground storage tanks provided by  
7 subdivision (6), subsection (b), section six of this article,  
8 the director shall promulgate rules and regulations  
9 establishing an annual financial responsibility assess-

10 ment to be assessed on and paid by owners or operators  
 11 of underground storage tanks who are unable to obtain  
 12 insurance or otherwise meet the financial responsibility  
 13 requirements established pursuant to section ten of this  
 14 article. Such assessments shall be paid into the state  
 15 treasury into a special fund designated "the under-  
 16 ground storage tank insurance fund".

17 (b) At the end of each fiscal year, any unexpended  
 18 balance of such assessment shall not be transferred to  
 19 the general revenue fund but shall remain in the  
 20 underground storage tank insurance fund.

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## CHAPTER 148

(S. B. 277—By Senator Burdette, Mr. President, By Request)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections twelve and thirteen, article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section fifty-seven, article two, chapter twenty of said code, relating to the negligent shooting, wounding or killing of a human being or livestock while hunting and the penalty therefor; and shooting across a road or near a building or crowd and the penalty therefor.

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

That sections twelve and thirteen, article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section fifty-seven, article two, chapter twenty of said code be amended and reenacted to read as follows:

### ARTICLE 2. WILDLIFE RESOURCES.

#### §20-2-57. Negligent shooting, wounding or killing of human being or livestock while hunting; penalty.

1 It shall be unlawful for any person, while engaged in  
 2 hunting or pursuing wild animals, wild birds or wild  
 3 fowl, carelessly or negligently to shoot, wound or kill any



4 human being, or any livestock, or destroy or injure any  
5 other chattels or property.

6 It is unlawful for any person, while engaged in  
7 hunting, pursuing, taking or killing wild animals or  
8 wild birds, to carelessly or negligently shoot, wound or  
9 kill any human being or livestock, or to destroy or injure  
10 any other chattels or property.

11 Any person who, in the act of hunting, pursuing,  
12 taking or killing of wild animals or wild birds, in any  
13 manner injures any person or property shall file with  
14 the director a full description of the accident or other  
15 casualty, including such information as the director may  
16 require. Such report must be filed during a period not  
17 to exceed seventy-two hours following such incident.

18 Any person violating this section shall be deemed  
19 guilty of a misdemeanor, and, upon conviction thereof,  
20 shall be fined not exceeding one thousand dollars, and,  
21 in the discretion of the court trying the case, may in  
22 addition thereto be confined in the county jail for a  
23 period not exceeding one year.

24 Any person violating this section is guilty of a  
25 misdemeanor, and, upon conviction thereof, shall be  
26 fined not less than one thousand dollars nor more than  
27 ten thousand dollars, or imprisoned in the county jail not  
28 more than one year, or both fined and imprisoned.  
29 Restitution of the value of the livestock, chattel or  
30 property injured or destroyed shall be required upon  
31 conviction.

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## CHAPTER 149

(H. B. 4664—By Delegate Farley)

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[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to officers, boards and commissions; how costs are paid; and how costs of confinement are paid for extradition expenses incurred.

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

That section twelve, article one, 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 1. THE GOVERNOR.**

**§5-1-12. How costs paid; complainant responsible for.**

1       When the punishment of the crime shall be the  
2 confinement of the criminal in the penitentiary, ex-  
3 penses incurred shall be paid from funds available to the  
4 division of corrections. In all other cases such expenses  
5 shall be paid out of the county treasury of the county  
6 wherein the crime is alleged to have been committed.

7       The complainant in each case is answerable for all the  
8 actual costs and charges, and for the support in prison  
9 of any person so committed; and, if the charge for his  
10 or her support in prison shall not be paid when  
11 demanded, the jailer may discharge such person from  
12 prison.

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## CHAPTER 150

(Com. Sub. for H. B. 4706—By Delegates Riggs and Farmer)

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[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article three-b, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to journeyman electricians licenses; requirements; and allowing graduates of approved vocational education programs to take the journeyman electrician's test and if successful, to be granted a license.

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

That section four, article three-b, 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 3B. SUPERVISION OF ELECTRICIANS.

**§29-3B-4. Licenses; classes of licenses; issuance of licenses by commissioner; qualifications required for license; nontransferability and nonassignability of licenses; expiration of license; renewal.**

1 (a) The following three classes of license may be  
2 issued by the state fire marshal: "Master electrician  
3 license," "journeyman electrician's license" and "ap-  
4 prentice electrician license."

5 (b) The state fire marshal shall issue the appropriate  
6 class of license to a person, firm or corporation upon a  
7 finding that such person, firm or corporation possesses  
8 the qualifications for the class of license to be issued.

9 (c) The qualifications for each class of license to be  
10 issued are as follows:

11 (1) For a "master electrician license" a person must  
12 have five years of experience in electrical work of such  
13 breadth, independence and quality that such work  
14 indicates that the applicant is competent to perform all  
15 types of electrical work and can direct and instruct  
16 journeyman electricians and apprentice electricians in  
17 the performance of electrical work. Such applicant, or  
18 a member of a firm or an officer of a corporation if the  
19 applicant be a firm or corporation, must also pass the  
20 master electrician examination given by the state fire  
21 marshal with a grade of eighty percent correct or better;

22 (2) For a "journeyman electrician's license," a person  
23 must have at least two years of experience in perform-  
24 ing electrical work under the direction or instruction of  
25 a master electrician or must have completed a formal  
26 apprentice program, or a vocational education program  
27 of at least one thousand eighty hours in length and  
28 approved by the state board of education or its succes-  
29 sor, providing actual electrical work experience and  
30 training conducted by one or more master electricians.  
31 Such applicant must also pass the journeyman electri-  
32 cian's examination given by the state fire marshal with  
33 a grade of eighty percent correct or better.

34 (3) For an "apprentice electrician license," a person  
35 must pass the apprentice electrician's examination given  
36 by the state fire marshal with a grade of eighty percent  
37 correct or better.

38 (d) (1) Certificates of license for a master electrician's  
39 license issued by the state fire marshal shall specify the  
40 name of the person, firm or corporation so qualifying  
41 and the name of the person, who in the case of a firm  
42 shall be one of its members and in the case of a  
43 corporation shall be one of its officers, passing the  
44 master electrician examination.

45 (2) Licenses issued to journeyman electricians and  
46 apprentice electricians shall specify the name of the  
47 person who is thereby authorized to perform electrical  
48 work or, in the case of apprentice electricians, to work  
49 with other classes of electricians to perform electrical  
50 work.

51 (e) No license issued under this article is assignable  
52 or transferable.

53 (f) All licenses issued by the state fire marshal shall  
54 expire on the thirtieth day of June following the year  
55 of issue or renewal.

56 (g) (1) Each expiring license may be renewed without  
57 need for examination and without limit as to the number  
58 of times renewed, for the same class of license previously  
59 issued and for the same person, firm or corporation to  
60 whom it was originally issued upon payment to the state  
61 fire marshal of a renewal fee of fifty dollars if such  
62 application for renewal and payment of such fee is made  
63 before the date of expiration of the license.

64 (2) In the case of a failure to renew a license on or  
65 before the thirtieth day of June the person named in the  
66 license may, upon payment of the renewal fee and an  
67 additional fee of fifteen dollars, receive from the state  
68 fire marshal a deferred renewal of such license which  
69 shall expire on the thirtieth day of June in the ensuing  
70 year. No person, firm or corporation may perform  
71 electrical work upon expiration of such person's, firm's  
72 or corporation's license until a deferred renewal for such

73 license is issued by the state fire marshal even if such  
74 person, firm or corporation has applied for the deferred  
75 renewal of such license.

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## CHAPTER 151

(Com. Sub. for H. B. 4131—By Delegates B. Hatfield and White)

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(Passed March 6, 1990; in effect ninety days from passage. Approved by the Governor.)

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AN ACT to amend and reenact section nine, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia Medical Practice Act and the records of the board of medicine; eliminating the confidentiality of certain records and the criminal penalty for violations of the same; providing a method to encourage physicians, podiatrists and physician assistants to voluntarily seek treatment of an alcohol or chemical dependency; and providing that one voluntary agreement to seek treatment shall be confidential and not available to public access or discovery.

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

That section nine, 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.

**§30-3-9. Records of board; expungement; examination; notice; public information; voluntary agreements relating to alcohol or chemical dependency; confidentiality of same; physician-patient privileges.**

- 1 (a) The board shall maintain a permanent record of
- 2 the names of all physicians, podiatrists, and physician
- 3 assistants, licensed, certified, or otherwise lawfully
- 4 practicing in this state, and of all persons applying to
- 5 be so licensed to practice, along with an individual
- 6 historical record for each such individual containing
- 7 reports and all other information furnished the board

8 under this article or otherwise. Such record may  
9 include, in accordance with rules established by the  
10 board, additional items relating to the individual's  
11 record of professional practice that will facilitate proper  
12 review of such individual's professional competence.

13 (b) Upon a determination by the board that any  
14 report submitted to it is without merit, the report shall  
15 be expunged from the individual's historical record.

16 (c) A physician, podiatrist, physician assistant, or  
17 applicant, or authorized representative thereof, has the  
18 right, upon request, to examine his or her own individ-  
19 ual historical record maintained by the board pursuant  
20 to this article and to place into such record a statement  
21 of reasonable length of his or her own view of the  
22 correctness or relevance of any information existing in  
23 such record. Such statement shall at all times accom-  
24 pany that part of the record in contention.

25 (d) A physician, podiatrist, physician assistant or  
26 applicant has the right to seek through court action the  
27 amendment or expungement of any part of his or her  
28 historical record.

29 (e) A physician, podiatrist, physician assistant or  
30 applicant shall be provided written notice within thirty  
31 days of the placement and substance of any information  
32 in his individual historical record that pertains to him  
33 and that was not submitted to the board by him.

34 (f) Except for information relating to biographical  
35 background, education, professional training and  
36 practice, a voluntary agreement entered into pursuant  
37 to subsection (h) of this section, prior disciplinary action  
38 by any entity, or information contained on the licensure  
39 application, the board shall expunge information in an  
40 individual's historical record unless it has initiated a  
41 proceeding for a hearing upon such information within  
42 two years of the placing of the information into the  
43 historical record.

44 (g) Orders of the board relating to disciplinary action  
45 against a physician, podiatrist, or physician assistant  
46 are public information.

47 (h) (1) In order to encourage voluntary reporting of  
48 alcohol or other chemical dependency impairment and  
49 in recognition of the fact that alcoholism and chemical  
50 dependency are illnesses, a physician, podiatrist, or  
51 physician assistant licensed, certified, or otherwise  
52 lawfully practicing in this state may enter into a  
53 voluntary agreement with the board reporting his or her  
54 participation in a chemical dependency or alcohol  
55 treatment program or reporting an alcohol or chemical  
56 dependency impairment to the board and seek treat-  
57 ment for his or her dependency. Pursuant to said  
58 agreement the board shall impose limitations on the  
59 practice of said physician, podiatrist, or physician  
60 assistant.

61 (2) Any voluntary agreement entered into pursuant to  
62 this subsection shall not be considered a disciplinary  
63 action or order by the board and shall not be public  
64 information if:

65 (A) Such voluntary agreement is the result of the  
66 physician, podiatrist, or physician assistant reporting to  
67 the board his or her participation in a chemical  
68 dependency or alcohol treatment program or reporting  
69 to the board his or her alcohol or chemical dependency  
70 impairment and requesting such an agreement for the  
71 purpose of seeking treatment; and

72 (B) The board has not received nor filed any written  
73 complaints regarding said physician, podiatrist, or  
74 physician assistant relating to an alcohol or chemical  
75 dependency impairment affecting the care and treat-  
76 ment of patients, nor received any reports pursuant to  
77 subsection (b), section fourteen of this article relating to  
78 an alcohol or chemical dependency impairment.

79 (3) If any physician, podiatrist, or physician assistant  
80 enters into a voluntary agreement with the board  
81 pursuant to this subsection and then fails to comply with  
82 or fulfill the terms of said agreement, the board shall  
83 initiate disciplinary proceedings pursuant to subsection  
84 (a), section fourteen of this article.

85 (4) If the board has not instituted any disciplinary  
86 proceeding as provided for in this article, any informa-  
87 tion received, maintained, or developed by the board relating

88 to the alcohol or chemical dependency impairment of  
89 any physician, podiatrist or physician assistant and any  
90 voluntary agreement made pursuant to this subsection  
91 shall be confidential and not available for public  
92 information, discovery, or court subpoena, nor for  
93 introduction into evidence in any medical professional  
94 liability action or other action for damages arising out  
95 of the provision of or failure to provide health care  
96 services.

97 In the board's annual report of its activities to the  
98 Legislature required under section seven of this article,  
99 the board shall include information regarding the  
100 success of the voluntary agreement mechanism estab-  
101 lished therein: *Provided*, That in making such report the  
102 board shall not disclose any personally identifiable  
103 information relating to any physician, podiatrist, or  
104 physician assistant participating in a voluntary agree-  
105 ment as provided herein.

106 Notwithstanding any of the foregoing provisions, the  
107 board may cooperate with and provide documentation of  
108 any voluntary agreement entered into pursuant to this  
109 subsection to licensing boards in other jurisdictions, as  
110 may be appropriate.

111 (i) Any physician-patient privilege does not apply in  
112 any investigation or proceeding by the board or by a  
113 medical peer review committee or by a hospital govern-  
114 ing board with respect to relevant hospital medical  
115 records, while any of the aforesaid are acting within the  
116 scope of their authority: *Provided*, That the disclosure  
117 of any information pursuant to this provision shall not  
118 be considered a waiver of any such privilege in any  
119 other proceeding.

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## CHAPTER 152

(Com. Sub. for H. B. 4134—By Delegates Louderback and Wooton)

[Passed March 6, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact article twelve, chapter thirty  
of the code of West Virginia, one thousand nine hundred



thirty-one, as amended, relating to architects; the West Virginia board of architects; definitions; fees; registration qualifications; registration renewal; certificate of registration; requiring seal; disciplinary powers of board; disciplinary proceedings; registration prima facie evidence; prohibited acts; construction administration services; exceptions; enforcement of rules by attorney general or prosecuting attorney; and providing criminal penalties.

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

That article twelve, 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 12. ARCHITECTS.

- §30-12-1. Board of architects.
- §30-12-2. Definitions.
- §30-12-3. Fees.
- §30-12-4. Registration qualifications.
- §30-12-5. Registration renewal.
- §30-12-6. Certificate of registration.
- §30-12-7. Seal.
- §30-12-8. Disciplinary powers.
- §30-12-9. Disciplinary proceedings.
- §30-12-10. Registration; prima facie evidence.
- §30-12-11. Prohibition.
- §30-12-11a. Construction administration services required.
- §30-12-12. Exceptions.
- §30-12-13. Enforcement.
- §30-12-14. Penalties.

#### §30-12-1. Board of architects.

1 The West Virginia board of architects, heretofore  
2 created, shall continue in existence and shall consist of  
3 seven members, five of whom shall be architects,  
4 appointed by the governor by and with the advice and  
5 consent of the Senate and two of whom shall be lay  
6 members, not of the same political party affiliation,  
7 appointed by the governor by and with the advice and  
8 consent of the Senate. Each member who is an architect  
9 shall have been engaged in the active practice of his  
10 profession in the state of West Virginia for not fewer  
11 than ten years previous to his appointment. The  
12 members of the board in office on the date this article

13 takes effect, in the year one thousand nine hundred  
14 ninety, shall, unless sooner removed, continue to serve  
15 until their respective terms expire and until their  
16 successors have been appointed and have qualified.

17 The board, in addition to the authority, powers and  
18 duties granted to it by this article, has the authority to  
19 promulgate rules, pursuant to the provisions of chapter  
20 twenty-nine-a of this code. Any disciplinary proceedings  
21 held by the board shall be held in accordance with the  
22 provisions of the administrative procedures act for  
23 contested cases pursuant to the provisions of article five  
24 of chapter twenty-nine-a of this code.

25 Pursuant to the provisions of section four, article ten,  
26 chapter four of this code, the West Virginia board of  
27 architects shall continue to exist until the first day of  
28 July, one thousand nine hundred ninety-two.

#### §30-12-2. Definitions.

1 The following words as used in this article, unless the  
2 context otherwise requires, have the following  
3 meanings:

4 (1) "Architect" means any person who engages in the  
5 practice of architecture as hereinafter defined.

6 (2) "Board" means the West Virginia board of archi-  
7 tects established by section one of this article.

8 (3) "Direct supervision" means that degree of super-  
9 vision by a person overseeing the work of another person  
10 whereby the supervisor has both control over and  
11 detailed professional knowledge of the work prepared  
12 under his or her supervision.

13 (4) "Good moral character" means such character as  
14 will enable a person to discharge the fiduciary duties of  
15 an architect to his client and to the public for the  
16 protection of health, safety and welfare. Evidence of  
17 inability to discharge such duties include the commis-  
18 sion of an offense justifying discipline under section  
19 eight of this article.

20 (5) "Practice of architecture" means rendering or  
21 offering to render those services, hereinafter described,

22 in connection with the design and construction, enlarg-  
23 gement or alteration of a building or group of buildings  
24 and the space within and surrounding such buildings,  
25 which have as their principal purpose human occupancy  
26 or habitation; the services referred to include planning,  
27 providing preliminary studies, designs, drawings,  
28 specifications and other technical submissions and  
29 administration of construction contracts.

30 (6) "Registered architect" means an architect holding  
31 a current registration.

32 (7) "Registration" means the certificate of registration  
33 issued by board.

34 (8) "Technical submissions" means designs, drawings,  
35 specifications, studies and other technical reports  
36 prepared in the course of practicing architecture.

### §30-12-3. Fees.

1 (a) Notwithstanding any other provision of the law to  
2 the contrary, the board is authorized and empowered to  
3 establish a schedule of fees to be charged to applicants.  
4 The board shall charge for: Examination, reexamina-  
5 tion, renewal of certificates, restoration of expired  
6 certificates, reciprocal registration and for any other  
7 matters deemed appropriate by the board.

8 (b) The board shall cause such schedule of fees to be  
9 published annually in the state register. Until such time  
10 as the board establishes otherwise, the fees previously  
11 set by statute remain in effect.

### §30-12-4. Registration qualifications.

1 Every person applying to the board for initial  
2 registration shall submit an application accompanied by  
3 the fee established in accordance with section three of  
4 this article with satisfactory evidence that such person  
5 holds an accredited professional degree in architecture  
6 or has completed such other education as the board  
7 considers equivalent to an accredited professional  
8 degree and with satisfactory evidence that such person  
9 has completed such practical training in architectural  
10 work as the board requires. If an applicant is qualified,

11 the board shall, by means of a written examination,  
12 examine the applicant on such technical and profes-  
13 sional subjects as prescribed by it. None of the exam-  
14 ination materials are public records as defined in article  
15 one, chapter twenty-nine-b of this code. The board may  
16 exempt from such written examination an applicant  
17 who holds certification issued by the national council of  
18 architectural registration boards. The board may adopt  
19 as its own rules governing practical training and  
20 education those guidelines published from time to time  
21 by the national council of architectural registration  
22 boards. The board may also adopt the examinations and  
23 grading procedures of the national council of architec-  
24 tural registration board and the accreditation decisions  
25 of the national architectural accrediting board. The  
26 board shall issue its registration to each applicant who  
27 is found to be of good moral character and who satisfies  
28 the requirements set forth in this section. The registra-  
29 tion is effective upon issuance.

**§30-12-5. Registration renewal.**

1 The board shall mail each year to every registered  
2 architect an application for renewal of registration. The  
3 application, properly filled out and accompanied by the  
4 renewal fee established in accordance with section three  
5 of this article, shall be returned to the board on or before  
6 the date established by the board. After verification of  
7 the facts stated in the renewal application, the board  
8 shall issue a registration which is valid for one year,  
9 expiring on the thirtieth day of June of each year. Any  
10 holder of a registration who fails to renew his or her  
11 application on or before the prescribed date, before  
12 again engaging in the practice of architecture within  
13 the state, is required to apply for reinstatement, pay the  
14 prescribed fee and, in circumstances considered approp-  
15 riate by the board, may be required to be reexamined.

**§30-12-6. Certificate of registration.**

1 Every registered architect having a place of business  
2 or employment within the state shall display his or her  
3 certificate of registration in a conspicuous place in such  
4 place of business or employment. A new certificate of

5 registration, to replace a lost, destroyed or mutilated  
6 certificate, shall be issued by the board upon payment  
7 of a fee established in accordance with section three of  
8 this article and such certificate shall be stamped or  
9 marked "duplicate."

§30-12-7. Seal.

1 (a) Every registered architect shall have a seal of a  
2 design authorized by the board by rule. All technical  
3 submissions prepared by such architect, or under his or  
4 her direct supervision, shall be stamped with the  
5 impression of his or her seal. No architect holding a  
6 registration may impress his or her seal on any technical  
7 submissions unless they were prepared under his or her  
8 direct supervision: *Provided*, That in the case of the  
9 portions of such technical submissions prepared under  
10 the direct supervision of persons consulting with or  
11 employed by the architect, the architect may sign or seal  
12 those portions of the technical submission if the  
13 architect has reviewed such portions and has coordi-  
14 nated their preparation.

15 (b) No public official charged with the enforcement  
16 duties of a municipal building inspector may accept or  
17 approve any technical submissions involving the prac-  
18 tice of architecture unless the technical submissions  
19 have been stamped as required by this section or by a  
20 registered engineer or the applicant has certified  
21 thereon the applicability of a specific exception under  
22 section twelve of this article permitting the preparation  
23 of such technical submissions by a person not registered  
24 thereunder. A building permit issued with respect to  
25 technical submissions which do not conform with the  
26 requirements of this section is invalid.

§30-12-8. Disciplinary powers.

1 The board may revoke, suspend or annul a registra-  
2 tion, or impose a civil penalty in an amount not more  
3 than two thousand dollars for each violation, upon  
4 satisfactory proof to the board that any person has  
5 violated the provisions of this article or any rules  
6 promulgated by the board under this article. In hearing

7 matters arising under this section, the board may take  
8 into account suitable evidence of reform.

**§30-12-9. Disciplinary proceedings.**

1 Charges against any person involving any matter  
2 coming within the jurisdiction of the board shall be in  
3 writing and shall be filed with the board. Such charges,  
4 at the discretion of the board, shall be heard within a  
5 reasonable time after being so filed. The accused person  
6 has the right at such hearing to appear personally, with  
7 or without counsel, to cross-examine adverse witnesses  
8 and to produce evidence and witnesses in his or her  
9 defense. The board shall set the time and place for such  
10 hearing and shall cause a copy of the charges, together  
11 with a notice of the time and place fixed for the hearing,  
12 to be sent by registered mail to the accused person, at  
13 his or her latest place or residence or business known  
14 to the board, at least thirty days before such date. If  
15 after such hearing the board finds the accused person  
16 has violated any of the provisions of this article or any  
17 of the rules promulgated by the board, it may issue any  
18 order described in section eight of this article. If the  
19 board finds no such violation, then it shall enter an order  
20 dismissing the charges. If the order revokes, suspends  
21 or annuls an architect's registration, the board shall so  
22 notify, in writing, the secretary of state and the clerk  
23 of the municipality in the state wherein such architect  
24 has a place of business, if any.

25 The board may reissue a registration to any person  
26 whose registration has been revoked. Application for the  
27 reissuance of the registration shall be made in such a  
28 manner as the board may direct and shall be accompan-  
29 ied by a fee established in accordance with section three  
30 of this article.

**§30-12-10. Registration; prima facie evidence.**

1 Every registration issued and remaining in force is  
2 prima facie evidence in all courts of the state that the  
3 person named therein is legally registered as an  
4 architect for the period for which it is issued and of all  
5 other facts stated therein.

**§30-12-11. Prohibition.**

1 Except as hereinafter set forth in section twelve of  
2 this article, no person may directly or indirectly engage  
3 in the practice of architecture in the state or use the title  
4 "architect," "registered architect," "architectural  
5 designer," or display or use any words, letters, figures,  
6 titles, sign, card, advertisement or other symbol or  
7 device indicating that such person is an architect or is  
8 practicing architecture, unless he or she is registered  
9 under the provisions of this article. No person may aid  
10 or abet any person, not registered under the provisions  
11 of this chapter, in the practice of architecture.

**§30-12-11a. Construction administration services required.**

1 (a) The owner of any real property who allows a  
2 project to be constructed on such real property shall be  
3 engaged in the practice of architecture unless such  
4 owner may have employed or may have caused others  
5 to have employed a registered architect or registered  
6 engineer to furnish "construction administration servi-  
7 ces" with respect to such project.

8 (b) For purposes of this section, the following terms  
9 shall have the following meanings:

10 (1) "Building official" means the person appointed by  
11 the municipality or state subdivision having jurisdiction  
12 over the project to have principal responsibility for the  
13 safety of the project as finally built.

14 (2) "Construction administration services" comprises  
15 at the following services: (A) Visiting the construction  
16 site on a regular basis as is necessary to determine that  
17 the work is proceeding generally in accordance with the  
18 technical submissions submitted to the building official  
19 at the time the building permit was issued; (B) process-  
20 ing shop drawings, samples, and other submittals  
21 required of the contractor by the terms of construction  
22 contract documents; and (C) notifying an owner and the  
23 building official of any code violations, changes which  
24 affect code compliance, the use of any materials,  
25 assemblies, components, or equipment prohibited by a  
26 code, major or substantial changes between such

27 technical submissions which he or she identifies as  
28 constituting a hazard to the public, which he or she  
29 observes in the course of performing his or her duties.

30 (3) "Owner" means with respect to any real property  
31 and of the following persons: (A) The holder of a  
32 mortgage secured by such real property; (B) the holder,  
33 directly or indirectly, of an equity interest in such real  
34 property exceeding ten percent of the aggregate equity  
35 interests in such real property; (C) the record owner of  
36 such real property; or (D) the lessee of all or any portion  
37 of such real property when the lease covers all of that  
38 portion of such real property upon which the project is  
39 being constructed, the lessee has significant approval  
40 rights with respect to the project, and the lease, at the  
41 time the construction of the project begins, has a  
42 remaining term of not less than ten years.

43 (4) "Project" means the construction, enlargement, or  
44 alteration of a building, other than a building exempted  
45 by the provisions of section twelve of this article, which  
46 has as its principal purpose human occupancy or  
47 habitation.

48 (c) If the registered engineer or registered architect  
49 who sealed the technical submissions which were  
50 submitted to the building official at the time the  
51 building permit was issued has not been employed to  
52 furnish construction administration services at the time  
53 such registered architect or registered engineer issued  
54 such technical submissions, he or she shall note on such  
55 technical submissions that he or she has not been so  
56 employed. If he or she is not employed to furnish  
57 construction administration services when construction  
58 of the project begins, he or she shall file, not later than  
59 thirty days after such construction begins, with the  
60 board and with the building official, on a form pres-  
61 cribed by the board, a notice setting forth the names of  
62 the owner or owners known to him or her, the address  
63 of the project, and the name, if known to him or her,  
64 of the registered architect employed to perform con-  
65 struction administration services. If he or she believes  
66 that no registered architect or registered engineer has  
67 been so employed, he or she shall so state on the form.



68 Any registered architect or registered engineer who  
69 fails to place the note on his or her technical submissions  
70 or to file such notice, as required by this paragraph,  
71 shall have violated the provisions of this chapter and  
72 shall be subject to discipline as set forth herein.

73 (d) If the board determines, with respect to a partic-  
74 ular project or class of projects, that the public is  
75 adequately protected without the necessity of a regis-  
76 tered architect or registered engineer performing  
77 construction administrative services, the board may  
78 waive the requirements of this section with respect to  
79 such project or class of projects.

### §30-12-12. Exceptions.

1 Nothing in this article may be construed to prevent:

2 (a) Any of the activities that, apart from this exemp-  
3 tion, would constitute the practice of architecture, if  
4 performed in connection with any of the following:

5 (1) A detached single family dwelling and any sheds,  
6 storage buildings and garages incidental thereto;

7 (2) A multi-family residential structure not in excess  
8 of three stories excluding any basement area;

9 (3) Farm buildings, including barns, silos, sheds or  
10 housing for farm equipment and machinery, livestock,  
11 poultry or storage, if such structures are designed to be  
12 occupied by no more than ten persons;

13 (4) Any alteration, renovation or remodeling of a  
14 building, if such alteration, renovation or remodeling  
15 does not affect structural or other safety features of the  
16 building or if the work contemplated by the design does  
17 not require the issuance of a permit under any appli-  
18 cable building code;

19 (5) Preengineered buildings, including mobile class-  
20 rooms purchased by county school boards; and

21 (6) A commercial structure which is to contain not  
22 more than seventy-six hundred square feet and not in  
23 excess of one story excluding any basement area.

24 (b) The preparation of any detailed or shop drawings

25 required to be furnished by a contractor, or the  
26 administration of construction contracts by persons  
27 customarily engaged in contracting work.

28 (c) The preparation of technical submissions or the  
29 administration of construction contracts by employees of  
30 a person or organization lawfully engaged in the  
31 practice of architecture when such employees are acting  
32 under the direct supervision of a registered architect.

33 (d) Officers and employees of the United States of  
34 America from engaging in the practice of architecture  
35 as employees of said United States of America.

36 (e) A partnership, corporation or other business entity  
37 from performing or holding itself out as able to perform  
38 any of the services involved in the practice of architec-  
39 ture, provided such practice is actually carried on under  
40 the direct supervision of architects registered in the  
41 state of West Virginia.

42 (f) A nonresident, who holds a certificate to practice  
43 architecture in the state in which he resides and in  
44 addition holds the certification issued by the national  
45 council of architectural registration boards, from  
46 agreeing to perform or holding herself or himself out as  
47 able to perform any of the professional services involved  
48 in the practice of architecture: *Provided*, That he or she  
49 may not perform any of the professional services  
50 involved in the practice of architecture until registered  
51 as hereinbefore provided and he or she notifies the board  
52 in writing if, prior to registration, he or she engages in  
53 any of the activities permitted by this paragraph.

54 (g) The practice of landscape architecture as defined  
55 in section two, article twenty-two of this chapter.

### §30-12-13. Enforcement.

1 The board shall enforce the provisions of this article  
2 and of the rules adopted hereunder. If any person  
3 refuses to obey any decision or order of the board, the  
4 board or, upon the request of the board, the attorney  
5 general or the appropriate prosecuting attorney, may  
6 file an action for the enforcement of such decision or  
7 order, including injunctive relief, in the circuit court of

8 the county of residence of such person. After due  
9 hearing, the court shall order the enforcement of such  
10 decision or order, or any part thereof, if legally and  
11 properly made by the board and, where appropriate,  
12 injunctive relief.

#### §30-12-14. Penalties.

1 Whoever violates any provision of this article is guilty  
2 of a misdemeanor, and, upon conviction thereof, shall be  
3 fined not more than one thousand dollars or imprisoned  
4 in the county jail for not more than twelve months, or  
5 both fined and imprisoned.

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## CHAPTER 153

(H. B. 4659—By Mr. Speaker, Mr. Chambers)

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{Passed March 10, 1990: in effect ninety days from passage. Approved by the Governor.}

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AN ACT to amend and reenact sections three, five, seven, nine and twelve, article twenty-six, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting license fees for hearing-aid dealers and fitters to be established by rule.

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

That sections three, five, seven, nine and twelve, article twenty-six, 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 26. HEARING-AID DEALERS AND FITTERS.

§30-26-3. West Virginia board of hearing-aid dealers created; members; qualifications; term; oath; salary and expenses; powers and duties.

§30-26-5. Application for licenses; qualifications of applicants; fees; duties of the board with respect thereto.

§30-26-7. Results of examination disclosed to applicant; issuance of license; fees.

§30-26-9. Renewal of license.

§30-26-12. Temporary trainee permits.

**§30-26-3. West Virginia board of hearing-aid dealers created; members; qualifications; term; oath; salary and expenses; powers and duties.**

1       There is hereby created the West Virginia board of  
2 hearing-aid dealers, which shall be composed of five  
3 members to be appointed by the governor, by and with  
4 the advice and consent of the Senate. The members of  
5 the board shall be residents of this state. One member  
6 shall be a person licensed to practice medicine in this  
7 state and one member shall hold a degree in audiology  
8 from an accredited college or university. The remaining  
9 three members shall be persons having no less than five  
10 years' experience as hearing-aid dealers or fitters and  
11 shall hold a valid license under the provisions of this  
12 article, except that the hearing-aid dealers or fitters to  
13 be first appointed to the board shall obtain a license  
14 under the provisions of this article within six months  
15 following their appointment to the board.

16       The term of office of each member of the board shall  
17 be four years, excepting that as to the members first  
18 appointed to the board, one shall be appointed for two  
19 years; two shall be appointed for three years; and two  
20 shall be appointed for four years. A board member shall  
21 serve until his successor has been duly appointed and  
22 qualified and any vacancy in the office of a member  
23 shall be filled by appointment for the unexpired term  
24 of such member. Any member of the board shall be  
25 eligible for reappointment.

26       The board shall annually at its meeting first succeed-  
27 ing the first day of May elect from its own members a  
28 chairman and vice chairman.

29       Each member of the board shall receive for each day  
30 actually engaged in the duties of his office, a per diem  
31 salary of one hundred dollars and shall be reimbursed  
32 for all reasonable and necessary expenses actually  
33 incurred in the performance of his duties as a member  
34 of such board. All fees and other moneys collected by  
35 the board, pursuant to the provisions of this article, shall  
36 be kept in a separate fund and shall be expended solely  
37 for the purposes of this article. The compensation for the

38 members of the board and all expenses incurred under  
39 this article shall be paid from this special fund and no  
40 such compensation or expenses shall be paid from the  
41 general revenue fund of this state. All disbursements of  
42 funds necessary to carry out the provisions of this article  
43 shall be so disbursed only upon the authority of the  
44 board.

45 The board is hereby empowered, with the assistance  
46 of the department to generally supervise, regulate and  
47 control the practice of dealing in or fitting of hearing  
48 aids in this state, and in so doing, shall administer  
49 qualifying examinations in accordance with the provi-  
50 sions of this article to test the knowledge and proficiency  
51 of all prospective licensees or trainees.

52 The board may purchase and maintain or rent  
53 audiometric equipment and other facilities necessary to  
54 carry out the examination of applicants as provided in  
55 this article and may purchase such other equipment and  
56 supplies and employ such persons as it deems appro-  
57 priate to carry out the provisions of this article.

58 The board shall promulgate reasonable rules and  
59 regulations in accordance with and subject to the  
60 provisions of chapter twenty-nine-a of this code:

61 (a) For the proper performance of its duties;

62 (b) To define and prescribe the ethical practice of  
63 dealing in or fitting of hearing aids for the safety,  
64 protection and welfare of the public;

65 (c) To govern the time, place and manner of conduct-  
66 ing the examinations required by this article and the  
67 standard, scope and subject of such examinations, which  
68 examinations shall, as a minimum, conform with the  
69 standards, scope and subjects set forth in section six of  
70 this article and manner and form in which applications  
71 for such examinations shall be filed;

72 (d) To establish procedures for determining whether  
73 persons holding similar valid licenses from other states  
74 or jurisdictions shall be required to take and success-  
75 fully pass the appropriate qualifying examination as a  
76 condition for such licensing in this state;

- 77 (e) To establish such fees for examinations, permits,  
78 licenses and renewals as may be necessary to cover the  
79 costs of administration.

**§30-26-5. Application for licenses; qualifications of applicants; fees; duties of the board with respect thereto.**

1 Each person desiring to obtain a license from the  
2 board to engage in the practice of dealing in or fitting  
3 of hearing aids shall make application to the board. The  
4 application shall be made in such manner and form as  
5 prescribed by the board and shall be accompanied by  
6 the prescribed fee. The application shall state under  
7 oath that the applicant:

8 (1) Intends to maintain a permanent office or place of  
9 business in this state or that the applicant has at the  
10 time of application a permanent office or place of  
11 business in another state within a reasonable commut-  
12 ing distance from this state. The board shall determine  
13 and prescribe by regulation the term "reasonable  
14 distance" as used herein;

15 (2) Is a person of good moral character and that he  
16 has never been convicted of nor is presently under  
17 indictment for a crime involving moral turpitude;

18 (3) Is eighteen years of age or older;

19 (4) Has an education equivalent to a four-year course  
20 in an accredited high school; and

21 (5) Is free of chronic infectious or contagious diseases.

22 Any person who fails to meet any of the standards set  
23 forth in the next preceding paragraph shall not be  
24 eligible or qualified to take the examination nor shall  
25 any such person be eligible or qualified to engage in the  
26 practice of dealing in or fitting of hearing aids.

27 The board, after first determining that the applicant  
28 is qualified and eligible in every respect to take the  
29 examination, shall notify the applicant that he has  
30 fulfilled all of the qualifications and eligibility require-  
31 ments as required by this section and shall advise him  
32 of the date, time and place for him to appear to be

33 examined as required by the provisions of this article  
34 and the regulations promulgated by the board pursuant  
35 to this article.

36 The board, with the aid and assistance of the depart-  
37 ment, shall give at least one annual examination of the  
38 type required by this article and may give such  
39 additional examinations, at such times and places, as the  
40 board and the department may deem proper, giving  
41 consideration to the number of applications.

**§30-26-7. Results of examination disclosed to applicant;  
issuance of license; fees.**

1 (a) Any person who has taken the examination shall  
2 be notified by the board within thirty days following  
3 such examination as to whether he has satisfactorily  
4 passed the examination. If such person has failed to pass  
5 the examination, he shall be notified of the reasons for  
6 such failure and the particular portions of the exami-  
7 nation which he failed to pass. Such person shall also  
8 be advised of his right to take the examination in the  
9 future.

10 If such applicant has satisfactorily passed the exam-  
11 ination, he shall be advised of that fact by the board and,  
12 upon payment of the prescribed fee, the board shall  
13 register the applicant as a licensee and shall issue a  
14 license to such applicant. Such license shall remain in  
15 effect until the next succeeding thirtieth day of June.

16 (b) Within six months following the effective date of  
17 this article, any applicant for a license who has been  
18 engaged in the practice of dealing in or fitting of  
19 hearing aids in this state for a period of three years  
20 immediately prior to such effective date, shall be so  
21 registered and issued a license without being required  
22 to undergo or take the examination required by this  
23 article: *Provided*, That such person meets all other  
24 requirements of this article and the rules and regula-  
25 tions promulgated pursuant thereto. All of the fees  
26 which such prospective licensee would be otherwise  
27 required to pay shall be paid by such prospective  
28 licensee in the same manner and to the same extent as

29 if such prospective licensee had not so engaged in such  
30 practice in this state for such three-year period.

31 (c) The issuance of a license by the board must have  
32 the concurrence of a majority of its members.

**§30-26-9. Renewal of license.**

1 (a) A person who is engaged in the practice of dealing  
2 in or fitting of hearing aids shall renew his license  
3 annually upon payment of the prescribed renewal fee.  
4 A thirty-day period shall be allowed after expiration of  
5 a license during which any such license may be renewed  
6 upon payment of the renewal fee plus a penalty for late  
7 filing. After the expiration of such thirty-day period, the  
8 board may renew such license upon payment of twice  
9 the prescribed renewal fee. No person who applies for  
10 renewal, whose license was suspended for failure to  
11 renew, may be required to submit to any examination  
12 as a condition of renewal if application is made within  
13 two years following the date such license was so  
14 suspended.

15 (b) In each even numbered year beginning with the  
16 year one thousand nine hundred eighty-eight, each  
17 applicant for renewal of license shall present to the  
18 board evidence of continuing study and education of not  
19 less than twenty hours in a course of study approved by  
20 the board. Such twenty hours of instruction must have  
21 been gained during the immediately preceding two  
22 years.

**§30-26-12. Temporary trainee permits.**

1 A person who meets all of the qualifications and  
2 requirements set forth in subdivision (2), section five of  
3 this article may obtain a temporary trainee permit upon  
4 application to the board. All such applications for a  
5 temporary trainee permit shall be made in the manner  
6 and form prescribed in the rules and regulations of the  
7 board.

8 Upon receiving an application for a temporary trainee  
9 permit as prescribed in this section, accompanied by the  
10 prescribed fee, the board shall issue such permit which  
11 shall entitle the applicant trainee to engage in the



12 practice of dealing in or fitting of hearing aids for a  
13 period of one year under the supervision and control of  
14 a licensee, such licensee to be responsible for the  
15 supervision, training and control of such trainee.

16 If a person holding a temporary trainee permit under  
17 this section has not successfully passed the licensing  
18 examination within one year from the date of issuance  
19 of such permit, the permit may be renewed or reissued  
20 under such conditions as the board may require in its  
21 rules and regulations for an additional one-year period  
22 upon payment of the prescribed fee. No such temporary  
23 trainee permit shall be reissued, renewed or extended  
24 more than once.

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## CHAPTER 154

(Com. Sub. for H. B. 4254—By Delegates Buchanan and Gallagher)

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[Passed March 10, 1990; in effect July 1, 1990. Approved by the Governor.]

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AN ACT to amend and reenact sections two, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fifteen, sixteen, seventeen and nineteen, article twenty-one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections thirteen-a and twenty-one, all relating to public defender services; definitions of eligible proceeding; executive director; powers and duties of agency; services of criminal law research center; activation and funding of public defender corporations; appointment of public defenders; applications for funding of public defender corporations; increasing compensation and expenses for panel attorneys; authority of board of directors for public defender corporations; eligibility guidelines and supporting affidavits; audits; private practice of law by public defenders; and forgiveness of public defender services loans.

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

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

**ARTICLE 21. PUBLIC DEFENDER SERVICES.**

- §29-21-2. Definitions.
- §29-21-5. Executive director.
- §29-21-6. Powers, duties and limitations.
- §29-21-7. Criminal law research center established; functions.
- §29-21-8. Public defender corporations.
- §29-21-9. Panel attorneys.
- §29-21-10. Public defender corporations—Intent to apply for funding.
- §29-21-11. Public defender corporations—Funding applications; legal representation plans; review.
- §29-21-12. Public defender corporation funding applications.
- §29-21-13. Approval of public defender corporation funding applications; funding; record keeping by public defender corporations.
- §29-21-13a. Compensation and expenses for panel attorneys.
- §29-21-15. Public defender corporations—Board of directors.
- §29-21-16. Determination of maximum income levels; eligibility guidelines; use of form affidavit; inquiry by court; denial of services; repayment; limitation on remedies against affiant.
- §29-21-17. Private practice of law by public defenders.
- §29-21-19. Audits.
- §29-21-21. Forgiveness of loans; reversion of public defender corporation assets.

**§29-21-2. Definitions.**

1 As used in this article, the following words and  
2 phrases are hereby defined:

- 3 (1) "Eligible client": Any person who meets the  
4 requirements established by this article to receive  
5 publicly funded legal representation in an eligible  
6 proceeding as defined herein;
- 7 (2) "Eligible proceeding": Criminal charges which  
8 may result in incarceration, juvenile proceedings,  
9 proceedings to revoke parole or probation if the  
10 revocation may result in incarceration, contempts of  
11 court, child abuse and neglect proceedings which may

12 result in a termination of parental rights, mental  
13 hygiene commitment proceedings, paternity proceed-  
14 ings, extradition proceedings, proceedings brought in  
15 aid of an eligible proceeding, and appeals from or post  
16 conviction challenges to the final judgment in an eligible  
17 proceeding. Legal representation provided pursuant to  
18 the provisions of this article is limited to the court  
19 system of the state of West Virginia, but does not  
20 include representation in municipal courts unless the  
21 accused is at risk of incarceration;

22 (3) "Legal representation": The provision of any legal  
23 services or legal assistance consistent with the purposes  
24 and provisions of this article;

25 (4) "Private practice of law": The provision of legal  
26 representation by a public defender or assistant public  
27 defender to a client who is not entitled to receive legal  
28 representation under the provisions of this article, but  
29 does not include, among other activities, teaching;

30 (5) "Public defender": The staff attorney employed on  
31 a full-time basis by a public defender corporation who,  
32 in addition to providing direct representation to eligible  
33 clients, has administrative responsibility for the opera-  
34 tion of the public defender corporation. The public  
35 defender may be a part-time employee if the board of  
36 directors of the public defender corporation finds  
37 efficient operation of the corporation does not require a  
38 full-time attorney and the executive director approves  
39 such part-time employment;

40 (6) "Assistant public defender": A staff attorney  
41 providing direct representation to eligible clients whose  
42 salary and status as a full-time or part-time employee  
43 are fixed by the board of directors of the public defender  
44 corporation;

45 (7) "Public defender corporation": A corporation  
46 created under section eight of this article for the sole  
47 purpose of providing legal representation to eligible  
48 clients; and

49 (8) "Public defender office": An office operated by a  
50 public defender corporation to provide legal represen-  
51 tation under the provisions of this article.

**§29-21-5. Executive director.**

1 (a) The governor shall appoint, by and with the advice  
2 and consent of the Senate, the executive director of  
3 public defender services, who shall serve at the will and  
4 pleasure of the governor. The executive director shall be  
5 a qualified administrator as determined by the gover-  
6 nor, and shall be a member of the bar of the supreme  
7 court of appeals. In addition to the executive director  
8 there shall be such other employees as the executive  
9 director determines to be necessary. The executive  
10 director shall have the authority to promulgate rules,  
11 and shall have such other authority and perform such  
12 duties as may be required or necessary to effectuate this  
13 article. The executive director shall provide supervision  
14 and direction to the other agency employees in the  
15 performance of their duties.

16 (b) The executive director's annual salary shall be as  
17 determined by the Legislature.

**§29-21-6. Powers, duties and limitations.**

1 (a) Consistent with the provisions of this article, the  
2 agency is authorized to make grants to and contracts  
3 with public defender corporations and with individuals,  
4 partnerships, firms, corporations and nonprofit organ-  
5 izations, for the purpose of providing legal representa-  
6 tion under this article, and may make such other grants  
7 and contracts as are necessary to carry out the purposes  
8 and provisions of this article.

9 (b) The agency is authorized to accept, and employ or  
10 dispose of in furtherance of the purposes of this article,  
11 any money or property, real, personal or mixed, tangible  
12 or intangible, received by gift, devise, bequest or  
13 otherwise.

14 (c) The agency shall establish and the executive  
15 director or his designate shall operate a criminal law  
16 research center as provided for in section seven of this  
17 article. This center shall undertake directly, or by grant  
18 or contract, to serve as a clearinghouse for information;  
19 to provide training and technical assistance relating to

20 the delivery of legal representation; and to engage in  
21 research, except that broad general legal or policy  
22 research unrelated to direct representation of eligible  
23 clients may not be undertaken.

24 (d) The agency shall establish and the executive  
25 director or his designate shall operate an accounting and  
26 auditing division to require and monitor the compliance  
27 with this article by public defender corporations and  
28 other persons or entities receiving funding or compen-  
29 sation from the agency. This division shall review all  
30 plans and proposals for grants and contracts, and shall  
31 make a recommendation of approval or disapproval to  
32 the executive director. The division shall prepare, or  
33 cause to be prepared, reports concerning the evaluation,  
34 inspection, or monitoring of public defender  
35 corporations and other grantees, contractors, persons or  
36 entities receiving financial assistance under this article,  
37 and shall further carry out the agency's responsibilities  
38 for records and reports as set forth in section eighteen  
39 of this article.

40 The accounting and auditing division shall require  
41 each public defender corporation to annually report on  
42 the billable and nonbillable time of its professional  
43 employees, including time utilized in administration of  
44 the respective offices, so as to compare such time to  
45 similar time expended in nonpublic law offices for like  
46 activities.

47 The accounting and auditing division shall provide to  
48 the executive director assistance in the fiscal adminis-  
49 tration of all of the agency's divisions. Such assistance  
50 shall include, but not be limited to, budget preparation  
51 and statistical analysis.

52 (e) The agency shall establish and the executive  
53 director or a person designated by the executive director  
54 shall operate an appellate advocacy division for the  
55 purpose of prosecuting litigation on behalf of eligible  
56 clients in the supreme court of appeals. The executive  
57 director or a person designated by the executive director  
58 shall be the director of the appellate advocacy division.  
59 The appellate advocacy division shall represent eligible

60 clients upon appointment by the circuit courts, or by the  
61 supreme court of appeals. The division may, however,  
62 refuse such appointments due to a conflict of interest or  
63 if the executive director has determined the existing  
64 caseload cannot be increased without jeopardizing the  
65 appellate division's ability to provide effective represen-  
66 tation. In order to effectively and efficiently utilize the  
67 resources of the appellate division the executive director  
68 may restrict the provision of appellate representation to  
69 certain types of cases.

70 The executive director is empowered to select and  
71 employ staff attorneys to perform the duties prescribed  
72 by this subsection. The division shall maintain vouchers  
73 and records for representation of eligible clients, for  
74 record purposes only.

**§29-21-7. Criminal law research center established;  
functions.**

1 (a) Within the agency, there shall be a division known  
2 as the criminal law research center which may:

3 (1) Undertake research, studies and analyses and act  
4 as a central repository, clearinghouse and disseminator  
5 of research materials;

6 (2) Prepare and distribute a criminal law manual and  
7 other materials and establish and implement standard  
8 and specialized training programs for attorneys practic-  
9 ing criminal law;

10 (3) Provide and coordinate continuing legal education  
11 programs and services for attorneys practicing criminal  
12 law; and

13 (4) Prepare, supplement and disseminate indices and  
14 digests of decisions of the West Virginia supreme court  
15 of appeals and other courts, statutes and other legal  
16 authorities relating to criminal law.

17 (b) The services of the criminal law research center  
18 shall be offered at reasonable rates or by subscription  
19 to prosecuting attorneys and their professional staffs,  
20 panel attorneys, and private attorneys engaged in the  
21 practice of criminal law. The services may be provided

22 to public defender corporations, public defenders and  
23 assistant public defenders at reduced rates.

**§29-21-8. Public defender corporations.**

1 (a) In each judicial circuit of the state, there is hereby  
2 created a "public defender corporation" of the circuit:  
3 *Provided*, That one such public defender corporation  
4 shall serve both the twenty-third and thirty-first judicial  
5 circuits. The purpose of such public defender corpora-  
6 tions is to provide legal representation in the respective  
7 circuits in accordance with the provisions of this article.

8 (b) If the judge of a single judge circuit, the chief  
9 judge of a multijudge circuit or a majority of the active  
10 members of the bar in the circuit determine there is a  
11 need to activate the corporation they shall certify that  
12 fact in writing to the executive director. The executive  
13 director shall allocate funds to those corporations so  
14 certifying in the order in which he or she deems most  
15 efficient and cost effective.

16 (c) Public defender corporations may apply in writing  
17 to the executive director for permission to merge to form  
18 multicircuit or regional public defender corporations.  
19 Applications for mergers shall be subject to the review  
20 procedures set forth in section eleven of this article.

**§29-21-9. Panel attorneys.**

1 (a) In each circuit of the state, the circuit court shall  
2 establish and maintain regional and local panels of  
3 private attorneys-at-law who shall be available to serve  
4 as counsel for eligible clients.

5 (b) An attorney-at-law may become a panel attorney  
6 and be enrolled on the regional or local panel, or both,  
7 to serve as counsel for eligible clients, by informing the  
8 court. A prospective panel attorney shall inform the  
9 court in writing, on forms provided by the executive  
10 director, of a desire to accept appointments generally,  
11 or of the specific types of cases in which he or she will  
12 accept appointments. The attorney shall also indicate  
13 whether or not he or she will accept appointments in  
14 adjoining circuits and, if so, in which circuits. An  
15 agreement to accept cases generally or certain types of

16 cases particularly shall not prevent a panel attorney  
17 from declining an appointment in a specific case.

18 (c) In all cases where an attorney-at-law is required  
19 to be appointed for an eligible client, the appointment  
20 shall be made by the circuit judge. In circuits where a  
21 public defender office is in operation, the judge shall  
22 appoint the public defender office unless such appoint-  
23 ment is not appropriate due to a conflict of interest or  
24 unless the public defender corporation board of direc-  
25 tors or the public defender, with the approval of the  
26 board, has notified the court that the existing caseload  
27 cannot be increased without jeopardizing the ability of  
28 defenders to provide effective representation.

29 If the public defender office is not available for  
30 appointment, the court shall appoint one or more panel  
31 attorneys from the local panel. If there is no local panel  
32 attorney available, the judge shall appoint one or more  
33 panel attorneys from the regional panel. If there is no  
34 regional panel attorney available, the judge may appoint  
35 a public defender office from an adjoining circuit if such  
36 public defender office agrees to the appointment.

37 In circuits where no public defender office is in  
38 operation, the judge shall first refer to the local panel  
39 and then to the regional panel in making appointments,  
40 and if an appointment cannot be made from the panel  
41 attorneys, the judge may appoint the public defender  
42 office of an adjoining circuit if the office agrees to the  
43 appointment. In any circuit, when there is no public  
44 defender, or assistant public defender, local panel  
45 attorney or regional panel attorney available, the judge  
46 may appoint one or more qualified private attorneys to  
47 provide representation, and such private attorney or  
48 attorneys shall be treated as panel attorneys for that  
49 specific case. In any given case, the appointing judge  
50 may alter the order in which attorneys are appointed if  
51 the case requires particular knowledge or experience on  
52 the part of the attorney to be appointed.

**§29-21-10. Public defender corporation—Intent to apply  
for funding.**

1 (a) Any public defender corporation applying to



2 public defender services for financial assistance to  
3 establish a program to provide legal representation or  
4 proposing a major substantive modification to an  
5 existing program shall notify the executive director and  
6 the circuit judges in the area in which the program will  
7 deliver legal representation of the intent to apply for  
8 such assistance or modification. Such notice shall be  
9 given at least thirty days prior to the filing of an  
10 application or a proposal for modification.

11 (b) Notifications shall include a summary description  
12 of the proposed program. The summary description  
13 shall contain the following information:

14 (1) The identity of the applicant;

15 (2) The geographical area to be served by the pro-  
16 posed program;

17 (3) A brief description of the proposed program,  
18 general size or scale, estimated cost, or other character-  
19 istics which will enable the circuit court to determine  
20 how the system for representation of indigents within  
21 the circuit may be affected by the proposed program;  
22 and

23 (4) The estimated date the public defender corpora-  
24 tion expects to formally file an application or modifica-  
25 tion proposal.

**§29-21-11. Public defender corporations—Funding ap-  
plications; legal representation plans; re-  
view.**

1 (a) Any public defender corporation or any other  
2 entity wishing to secure state financial assistance  
3 through the agency shall submit a funding application  
4 to the executive director.

5 (b) The funding application, which is to be submitted  
6 in a form prescribed by the executive director, shall  
7 contain a general description of the plans and policies  
8 the applicant intends to utilize in providing legal  
9 representation, and such other information prescribed  
10 by the executive director.

11 (c) All applications for financial assistance from

12 public defender services under the provisions of this  
13 article must be submitted to the circuit judges of the  
14 circuit for review prior to their submission to public  
15 defender services.

16 Reviews shall be completed by circuit judges within  
17 fifteen days after receipt. If the public defender  
18 corporation or other applicant has not received a  
19 response within the fifteen-day period, the public  
20 defender corporation may consider the judge to have  
21 waived his or her opportunity to review and comment  
22 on the proposed program or program modification and  
23 may submit the application to public defender services.

24 (d) Completed applications shall include:

25 (1) All comments and recommendations made by the  
26 circuit judges, along with a statement that such  
27 comments have been considered prior to submission of  
28 the application; or

29 (2) If no comments have been received from circuit  
30 judges, a statement that the procedures outlined in this  
31 section have been followed and that no comments or  
32 recommendations have been received.

**§29-21-12. Public defender corporation funding applications.**

1 (a) If an application does not carry evidence that  
2 appropriate circuit judges have been given an opportu-  
3 nity to review the application, the application shall be  
4 returned with instructions to fulfill the requirements of  
5 section eleven of this article.

6 (b) The executive director shall within seven working  
7 days after taking any major action on an application  
8 notify the circuit judges who have reviewed the appli-  
9 cation of the action taken. Major actions include  
10 program approvals, rejections, returns for amendment,  
11 deferrals or withdrawals.

12 (c) If a judge has recommended against approval, or  
13 has recommended approval only with specific and major  
14 substantive changes, and the executive director ap-  
15 proves the application substantially as submitted, the

16 executive director shall provide the judge with an  
17 explanation of the approval of the application.

**§29-21-13. Approval of public defender corporation  
funding applications; funding; record  
keeping by public defender corporations.**

1 (a) The accounting and auditing division shall review  
2 all funding applications and prepare recommendations  
3 for an operating plan and budget. The executive  
4 director shall review the funding applications and the  
5 accounting and auditing recommendations and shall, in  
6 consultation with the applicants, prepare a plan for  
7 providing legal services.

8 (b) Upon final approval of a funding application by  
9 the executive director, the approved budget shall be set  
10 forth in an approval notice. The total cost to the agency  
11 shall not exceed the amount set forth in the approval  
12 notice and the agency shall not be obligated to reim-  
13 burse the recipient for costs incurred in excess of the  
14 amount unless and until a program modification has  
15 been approved in accordance with the provisions of this  
16 article.

17 (c) Funding of public defender corporations or other  
18 programs or entities providing legal representation  
19 under the provisions of this article shall be by annual  
20 grants disbursed in such periodic allotments as the  
21 executive director shall deem appropriate.

22 (d) All recipients of funding under this article shall  
23 maintain such records as required by the executive  
24 director.

**§29-21-13a. Compensation and expenses for panel  
attorneys.**

1 (a) All panel attorneys shall maintain detailed and  
2 accurate records of the time expended and expenses  
3 incurred on behalf of eligible clients, and upon comple-  
4 tion of each case, exclusive of appeal, shall submit to the  
5 appointing court a voucher for services. Claims for fees  
6 and expense reimbursements shall be submitted to the  
7 appointing court on forms approved by the executive  
8 director. The appointing court shall review the voucher

9 to determine if the time and expense claims are  
10 reasonable, necessary and valid and shall forward the  
11 voucher to the agency with an order approving payment  
12 of the claimed amount or of such lesser sum the court  
13 considers appropriate. Notwithstanding any other  
14 provision of this section, public defender services may  
15 pay by direct bill, prior to the completion of the case,  
16 litigation expenses incurred by attorneys appointed  
17 under this article: *Provided*, That a panel attorney may  
18 be compensated for services rendered and reimbursed  
19 for expenses incurred prior to the completion of the case  
20 where (1) more than six months have expired since the  
21 commencement of the panel attorney's representation in  
22 the case; and (2) no prior payment of attorney fees has  
23 been made to the panel attorney by public defender  
24 services during the case: *Provided, however*, That the  
25 amounts of any fees or expenses paid to the panel  
26 attorney on such an interim basis, when combined with  
27 any such amounts paid to the panel attorney at the  
28 conclusion of the case, shall not exceed the limitations  
29 on fees and expenses imposed by this section.

30 (b) In each case in which a panel attorney provides  
31 legal representation under this article, and in each  
32 appeal after conviction in circuit court, the panel  
33 attorney shall be compensated at the following rates for  
34 actual and necessary time expended for services  
35 performed and expenses incurred subsequent to the  
36 effective date of this article:

37 (1) For work performed out of court, compensation  
38 shall be at the rate of forty-five dollars per hour. Out-  
39 of-court work includes, but is not limited to, travel,  
40 interviews of clients or witnesses, preparation of  
41 pleadings, and prehearing or pretrial research.

42 (2) For work performed in court, compensation shall  
43 be at the rate of sixty-five dollars per hour. In-court  
44 work includes, but is not limited to, all time spent  
45 awaiting hearing or trial if the presence of the attorney  
46 is required at the time.

47 (3) The maximum amount of compensation for out-of-  
48 court and in-court work under this subsection is as

49 follows: For proceedings of any kind involving felonies  
50 for which a penalty of life imprisonment may be  
51 imposed, such amount as the court may approve; for all  
52 other eligible proceedings, three thousand dollars.

53 (c) Actual and necessary expenses incurred in provid-  
54 ing legal representation, including, but not limited to,  
55 expenses for travel, transcripts, salaried or contracted  
56 investigative services, and expert witnesses shall be  
57 reimbursed to a maximum of fifteen hundred dollars  
58 unless the court, for good cause shown, gives advance  
59 approval to incur expenses for a larger sum: *Provided,*  
60 That when an attorney is appointed to a case outside of  
61 the circuit where his or her principal office is located,  
62 travel expenses incurred for travel as the result of  
63 providing legal representation in the case shall be  
64 reimbursed notwithstanding the fifteen hundred dollar  
65 limit provided by this subsection: *Provided, however,*  
66 That notwithstanding any other provision of this article,  
67 these travel expenses incurred by an attorney appointed  
68 to a case outside of his or her circuit as aforesaid shall  
69 be reimbursed by public defender services prior to the  
70 completion of the case upon the request of the panel  
71 attorney on such forms approved by the executive  
72 director.

73 Expense vouchers shall specifically set forth the  
74 nature, amount and purpose of expenses incurred and  
75 shall provide such receipts, invoices or other documen-  
76 tation required by the executive director.

77 (d) For purposes of compensation under this section,  
78 an appeal to the supreme court of appeals from a final  
79 order of the circuit court shall be considered a separate  
80 case.

81 (e) Vouchers submitted under this section shall  
82 specifically set forth the nature of the service rendered,  
83 the stage of proceeding or type of hearing involved, the  
84 date and place the service was rendered and the amount  
85 of time expended in each instance. All time claimed on  
86 the vouchers shall be itemized to the nearest tenth of an  
87 hour. If the charge against the eligible client for which  
88 services were rendered is one of several charges

89 involving multiple warrants or indictments, the voucher  
90 shall indicate such fact and sufficiently identify the  
91 several charges so as to enable the court to avoid a  
92 duplication of compensation for services rendered. The  
93 voucher shall indicate whether the services were  
94 rendered by a local panel attorney, a regional panel  
95 attorney, or such other private attorney as may have  
96 been appointed. The executive director shall refuse to  
97 requisition payment for any voucher which is not in  
98 conformity with the record keeping, compensation or  
99 other provisions of this article and in such circumstance  
100 shall return the voucher to the court for further review.

**§29-21-15. Public defender corporations—Board of directors.**

1 (a) The governing body of each public defender  
2 corporation shall be a board of directors consisting of  
3 persons who are residents of the area to be served by  
4 the public defender corporation.

5 (1) In multi-county circuits, and in the case of multi-  
6 circuit or regional corporations, the county commission  
7 of each county within the area served shall appoint a  
8 director, who shall not be an attorney-at-law. The  
9 president of each county bar association within the area  
10 served shall appoint a director, who shall be an attorney-  
11 at-law: *Provided*, That in a county where there is not an  
12 organized and active bar association, the circuit court  
13 shall convene a meeting of the members of the bar of  
14 the court resident within the county and such members  
15 of the bar shall elect one of their number as a director.  
16 The governor shall appoint one director, who shall serve  
17 as chairman, who may be an attorney-at-law, unless  
18 such appointment would result in there being an even  
19 number of directors, in which event the governor shall  
20 appoint two directors, one of whom may be an attorney-  
21 at-law.

22 (2) In single-county circuits, the manner of selecting  
23 directors shall be the same as that described in  
24 subdivision (1) of this subsection, except that the county  
25 commission shall appoint two directors rather than one,  
26 and the bar shall appoint two directors rather than one.

27 (b) The board of directors shall have at least four  
28 meetings a year. Timely and effective prior public notice  
29 of all meetings shall be given, and all meetings shall be  
30 public except for those concerned with matters properly  
31 discussed in executive session.

32 (c) The board of directors shall establish and enforce  
33 broad policies governing the operation of the public  
34 defender corporation but shall not interfere with any  
35 attorney's professional responsibilities to clients. The  
36 duties of the board of directors shall include, but not be  
37 limited to, the following:

38 (1) Appointment of the public defender and any  
39 assistant public defenders as may be necessary to enable  
40 the public defender corporation to provide legal repres-  
41 entation to eligible clients; and

42 (2) Approval of the public defender corporation's  
43 budget and the fixing of professional and clerical  
44 salaries; and

45 (3) Renewal of the employment contract of the public  
46 defender on an annual basis except where such renewal  
47 is denied for cause: *Provided*, That the board of directors  
48 shall have the power at any time to remove the public  
49 defender for misfeasance, malfeasance or nonfeasance.

50 (d) To the extent that the provisions of chapter thirty-  
51 one of this code regarding nonprofit corporations are not  
52 inconsistent with this article, the provisions of such  
53 chapter shall be applicable to the board of directors of  
54 the public defender corporation.

55 (e) While serving on the board of directors, no  
56 member may receive compensation from the public  
57 defender corporation, but a member may receive  
58 payment for normal travel and other out-of-pocket  
59 expenses required for fulfillment of the obligations of  
60 membership.

**§29-21-16. Determination of maximum income levels;  
eligibility guidelines; use of form affidavit;  
inquiry by court; denial of services; repay-  
ment; limitation on remedies against  
affiant.**

1 (a) The agency shall establish, and periodically review

2 and update financial guidelines for determining eligibil-  
3 ity for legal representation made available under the  
4 provisions of this article. The agency shall adopt a  
5 financial affidavit form for use by persons seeking legal  
6 representation made available under the provisions of  
7 this article.

8 (b) All persons seeking legal representation made  
9 available under the provisions of this article shall  
10 complete the agency's financial affidavit form, which  
11 shall be considered as an application for the provision  
12 of publicly funded legal representation.

13 (c) Any juvenile shall have the right to be effectively  
14 represented by counsel at all stages of proceedings  
15 brought under the provisions of article five, chapter  
16 forty-nine of this code. If the child advises the court of  
17 his or her inability to pay for counsel, the court shall  
18 require the child's parent or custodian to execute a  
19 financial affidavit. If the financial affidavit demon-  
20 strates that neither of the child's parents, or, if  
21 applicable, the child's custodian, has sufficient assets to  
22 pay for counsel, the court shall appoint counsel for the  
23 child. If the financial affidavit demonstrates that either  
24 of the child's parents, or, if applicable, the child's  
25 custodian, does have sufficient assets to pay for counsel,  
26 the court shall order the parent, or, if applicable, the  
27 custodian, to provide, by paying for, legal representation  
28 for the child in the proceedings.

29 The court may disregard the assets of the child's  
30 parents or custodian and appoint counsel for the child,  
31 as provided above, if the court concludes, as a matter  
32 of law, that the child and the parent or custodian have  
33 a conflict of interest that would adversely affect the  
34 child's right to effective representation of counsel, or  
35 concludes, as a matter of law, that requiring the child's  
36 parent or custodian to provide legal representation for  
37 the child would otherwise jeopardize the best interests  
38 of the child.

39 (d) In circuits in which no public defender office is in  
40 operation, circuit judges shall make all determinations  
41 of eligibility. In circuits in which a public defender



42 office is in operation, all determinations of indigency  
43 shall be made by a public defender office employee  
44 designated by the executive director. Such determina-  
45 tions shall be made after a careful review of the  
46 financial affidavit submitted by the person seeking  
47 representation. The review of the affidavit shall be  
48 conducted in accord with the financial eligibility  
49 guidelines established by the agency pursuant to  
50 subsection (a) of this section. In addition to the financial  
51 eligibility guidelines, the person determining eligibility  
52 shall consider other relevant factors, including, but not  
53 limited to, those set forth in subdivisions (1) through (9)  
54 of subsection (e) of this section. If there is substantial  
55 reason to doubt the accuracy of information in the  
56 financial affidavit, the person determining eligibility  
57 may make such inquiries as are necessary to determine  
58 whether the affiant has truthfully and completely  
59 disclosed the required financial information.

60 After reviewing all pertinent matters the person  
61 determining eligibility may find the affiant to be  
62 eligible to have the total cost of legal representation  
63 provided by the state, or may find that the total cost of  
64 providing representation shall be apportioned between  
65 the state and the eligible person. A person whose annual  
66 income exceeds the maximum annual income level  
67 allowed for eligibility may receive all or part of the  
68 necessary legal representation, or a person whose  
69 income falls below the maximum annual income level  
70 for eligibility may be denied all or part of the necessary  
71 legal representation if the person determining eligibility  
72 finds the person's particular circumstances require that  
73 eligibility be allowed or disallowed, as the case may be,  
74 on the basis of one or more of the nine factors set forth  
75 in subsection (e) of this section. If legal representation  
76 is made available to a person whose income exceeds the  
77 maximum annual income level for eligibility, or if legal  
78 representation is denied to a person whose income falls  
79 below the maximum annual income level for eligibility,  
80 the person determining eligibility shall make a written  
81 statement of the reasons for the action and shall  
82 specifically relate those reasons to one or more of the  
83 factors set forth in subsection (e) of this section.

84 (e) The following factors shall be considered in  
85 determining eligibility for legal representation made  
86 available under the provisions of this article:

87 (1) Current income prospects, taking into account  
88 seasonal variations in income;

89 (2) Liquid assets, assets which may provide collateral  
90 to obtain funds to employ private counsel and other  
91 assets which may be liquidated to provide funds to  
92 employ private counsel;

93 (3) Fixed debts and obligations, including federal,  
94 state and local taxes and medical expenses;

95 (4) Child care, transportation and other expenses  
96 necessary for employment;

97 (5) Age or physical infirmity of resident family  
98 members;

99 (6) Whether the person seeking publicly funded legal  
100 representation has made reasonable and diligent efforts  
101 to obtain private legal representation, and the results of  
102 those efforts;

103 (7) The cost of obtaining private legal representation  
104 with respect to the particular matter in which assistance  
105 is sought;

106 (8) Whether the person seeking publicly funded legal  
107 representation has posted a cash bond for bail or has  
108 obtained release on bond for bail through the services  
109 of a professional bondsman for compensation and the  
110 amount and source of the money provided for such bond;

111 (9) The consequences for the individual if legal  
112 assistance is denied.

113 (f) Legal representation requested by the affiant may  
114 not be denied in whole or part unless the affiant can  
115 obtain legal representation without undue financial  
116 hardship. Persons determined to be ineligible by public  
117 defender personnel may have the initial determination  
118 reviewed by a local circuit judge who may amend,  
119 modify or rewrite the initial determination. At any stage  
120 of the proceedings a circuit court may determine a prior

121 finding of eligibility was incorrect or has become  
122 incorrect as the result of the affiant's changed financial  
123 circumstances, and may revoke any prior order provid-  
124 ing legal representation. In such event any attorney  
125 previously appointed shall be entitled to compensation  
126 under the provisions of law applicable to such appoint-  
127 ment for services already rendered.

128 (g) In the circumstances and manner set forth below,  
129 circuit judges may order repayment to the state,  
130 through the office of the clerk of the circuit court having  
131 jurisdiction over the proceedings, of the costs of  
132 representation provided under this article:

133 (1) In every case in which services are provided to an  
134 indigent person and an adverse judgment has been  
135 rendered against such person, the court may require  
136 that person, and in juvenile cases, may require the  
137 juvenile's parents or custodian, to pay as costs the  
138 compensation of appointed counsel, the expenses of the  
139 defense and such other fees and costs as authorized by  
140 statute.

141 (2) The court shall not order a person to pay costs  
142 unless the person is able to pay without undue hardship.  
143 In determining the amount and method of repayment of  
144 costs, the court shall take account of the financial  
145 resources of the person, the person's ability to pay and  
146 the nature of the burden that payment of costs will  
147 impose. The fact that the court initially determines, at  
148 the time of a case's conclusion, that it is not proper to  
149 order the repayment of costs does not preclude the court  
150 from subsequently ordering repayment should the  
151 person's financial circumstances change.

152 (3) When a person is ordered to repay costs, the court  
153 may order payment to be made forthwith or within a  
154 specified period of time or in specified installments. If  
155 a person is sentenced to a term of imprisonment, an  
156 order for repayment of costs is not enforceable during  
157 the period of imprisonment unless the court expressly  
158 finds, at the time of sentencing, that the person has  
159 sufficient assets to pay the amounts ordered to be paid  
160 or finds there is a reasonable likelihood the person will  
161 acquire the necessary assets in the foreseeable future.

162 (4) A person who has been ordered to repay costs, and  
163 who is not in contumacious default in the payment  
164 thereof, may at any time petition the sentencing court  
165 for modification of the repayment order. If it appears  
166 to the satisfaction of the court that continued payment  
167 of the amount ordered will impose undue hardship on  
168 the person or the person's dependents, the court may  
169 modify the method or amount of payment.

170 (5) When a person ordered to pay costs is also placed  
171 on probation or imposition or execution of sentence is  
172 suspended, the court may make the repayment of costs  
173 a condition of probation or suspension of sentence.

174 (h) Circuit clerks shall keep a record of repaid counsel  
175 fees and defense expenses collected pursuant to this  
176 section and shall, quarterly, pay the moneys to the state  
177 auditor who shall deposit the funds in the general  
178 revenue fund of the state.

179 (i) The making of an affidavit subject to inquiry  
180 under this section does not in any event give rise to  
181 criminal remedies against the affiant nor occasion any  
182 civil action against the affiant except for the recovery  
183 of costs as in any other case where costs may be  
184 recovered and the recovery of the value of services, if  
185 any, provided pursuant to this article. A person who has  
186 made an affidavit knowing the contents thereof to be  
187 false may be prosecuted for false swearing as provided  
188 by law.

**§29-21-17. Private practice of law by public defenders.**

1 (a) No full-time public defender or full-time assistant  
2 public defender may engage in any private practice of  
3 law except as provided in this section.

4 (b) A board of directors may permit a newly em-  
5 ployed full-time public defender or full-time assistant  
6 public defender to engage in the private practice of law  
7 for compensation for the sole purpose of expeditiously  
8 closing and withdrawing from existing private cases  
9 from a prior private practice. In no event shall any  
10 person employed for more than ninety days as a full-

11 time public defender or full-time assistant public  
12 defender be engaged in any other private practice of law  
13 for compensation: *Provided*, That the prohibition against  
14 the private practice of law does not apply to full-time  
15 public defenders employed in class III or class IV  
16 counties as defined by article seven, chapter seven of  
17 this code.

18 (c) A board of directors may permit a full-time public  
19 defender or full-time assistant public defender to engage  
20 in private practice for compensation if the defender is  
21 acting pursuant to an appointment made under a court  
22 rule or practice of equal applicability to all attorneys in  
23 the jurisdiction and if the defender remits to the public  
24 defender corporation all compensation received.

25 (d) A board of directors may permit a full-time public  
26 defender or full-time assistant public defender to engage  
27 in uncompensated private practice of law if the public  
28 defender or assistant public defender is acting:

29 (1) Pursuant to an appointment made under a court  
30 rule or practice of equal applicability to all attorneys in  
31 the jurisdiction; or

32 (2) On behalf of a close friend or family member; or

33 (3) On behalf of a religious, community or charitable  
34 group.

35 (e) Violation of the requirements of this section is  
36 sufficient grounds for immediate summary dismissal.

#### §29-21-19. Audits.

1 (a) The accounts of each public defender corporation  
2 shall be audited annually as soon as possible after the  
3 end of each state fiscal year. Such audits shall be  
4 conducted in accordance with generally accepted  
5 auditing standards by the state tax commissioner.

6 (b) The audits shall be conducted at the place or  
7 places where the accounts of the public defender  
8 corporation are normally kept. All books, accounts,  
9 financial records, reports, files, and other papers or  
10 property belonging to or in use by the public defender

11 corporation and necessary to facilitate the audits shall  
12 be made available to the person or persons conducting  
13 the audits; and full facilities for verifying transactions  
14 with the balances and securities held by depositories,  
15 fiscal agents, and custodians shall be afforded to any  
16 such person.

17 (c) The report of the annual audit shall be filed with  
18 the agency and shall be available for public inspection  
19 during business hours at the principal office of the  
20 public defender corporation. The report of each such  
21 audit shall be maintained for a period of at least five  
22 years at the office of the agency.

**§29-21-21. Forgiveness of loans; reversion of public  
defender corporation assets.**

1 All equipment, operational or supplemental loans  
2 heretofore made under the former provisions of article  
3 twenty-one are forgiven and declared null and void and  
4 shall not be an obligation of a public defender corpora-  
5 tion formerly established under the previous provisions  
6 of article twenty-one, nor an obligation of any successor  
7 organization or of the members of any board of directors  
8 of any public defender corporation.

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## CHAPTER 155

(S. B. 492—By Senators Burdette, Mr. President, and M. Manchin)

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[Passed March 8, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section fourteen, article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers and duties of the state library commission; and authorizing the state library commission to offer certain printed material for sale.

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

That section fourteen, article one, chapter ten of the code of

West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. PUBLIC LIBRARIES.**

**§10-1-14. Same—Powers and duties.**

1       The commission shall give assistance, advice and  
2       counsel to all school, state-institutional, free and public  
3       libraries, and to all communities in the state which may  
4       propose to establish libraries, as to the best means of  
5       establishing and administering them, selecting and  
6       cataloging books, and other details of library manage-  
7       ment, and may send any of its members to aid in  
8       organizing such libraries or assist in the improvement  
9       of those already established.

10       It may also receive gifts of money, books, or other  
11       property which may be used or held for the purpose or  
12       purposes given; and may purchase and operate traveling  
13       libraries under such conditions and rules as the  
14       commission deems necessary to protect the interests of  
15       the state and best increase the efficiency of the service  
16       it is expected to render the public.

17       It may purchase suitable books for traveling libraries  
18       and distribute them as needed to those persons and  
19       places in the state without adequate public library  
20       service. It may collect books and other suitable library  
21       matter and distribute the same among state institutions  
22       desiring the same.

23       The commission may issue and offer for sale printed  
24       material, such as lists and circulars of information, and  
25       in the publication thereof may cooperate with other state  
26       library commissions and libraries, in order to secure the  
27       more economical administration of the work for which  
28       it was formed. It may conduct courses of library  
29       instruction and hold librarians' institutes in various  
30       parts of the state.

31       The commission shall perform such other service in  
32       behalf of public libraries as it may consider for the best  
33       interests of the state.

# CHAPTER 156

(Com. Sub. for H. B. 4579—By Mr. Speaker, Mr. Chambers)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-two, relating to public libraries; and the confidential nature of certain library records.

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

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

## ARTICLE 1. PUBLIC LIBRARIES.

### §10-1-22. Confidential nature of certain library records.

1 (a) Circulation and similar records of any public  
2 library in this state which identify the user of library  
3 materials are not public records but shall be confiden-  
4 tial and may not be disclosed except:

5 (1) To members of the library staff in the ordinary  
6 course of business;

7 (2) Upon written consent of the user of the library  
8 materials or the user's parents or guardian if the user  
9 is a minor or ward; or

10 (3) Upon appropriate court order or subpoena.

11 (b) Any disclosure authorized by subsection (a) of this  
12 section or any unauthorized disclosure of materials  
13 made confidential by that subsection (a) does not in any  
14 way destroy the confidential nature of that material,  
15 except for the purpose for which an authorized disclo-  
16 sure is made. A person disclosing material as authorized  
17 by subsection (a) of this section is not liable therefor.



## CHAPTER 157

(H. B. 4690—By Delegates White and M. Burke)

[Passed March 10, 1990; in effect July 1, 1990. Approved by the Governor.]

AN ACT to repeal sections one-a and nine, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections four and five of said article, relating to the department of public safety; providing for classification of members; requiring superintendent to establish a system of classification and promotion within the department and authorizing superintendent to promulgate rules for such system; creating salary schedule for members; increasing salaries of members, and repealing certain other provisions dealing with rank restructuring, promotion and promotion evaluation.

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

That sections one-a and nine, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections four and five of said article be amended and reenacted to read as follows:

### ARTICLE 2. DIVISION OF PUBLIC SAFETY.

§15-2-4. Appointment of commissioned officers, noncommissioned officers, other members; temporary and permanent positions.

§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.

**§15-2-4. Appointment of commissioned officers, noncommissioned officers, other members; temporary and permanent positions.**

1 The superintendent shall appoint, from the enlisted  
2 membership of the department, 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  
6 department, the number of other officers and members  
7 he deems necessary to operate and maintain the  
8 executive offices, training school, scientific laboratory,

9 keep records relating to crimes and criminals, coordi-  
10 nate traffic safety activities, maintain a system of  
11 supplies and accounting and perform other necessary  
12 services.

13 The ranks within the membership of the department  
14 shall be colonel, lieutenant colonel, major, captain, first  
15 lieutenant, second lieutenant, first sergeant, sergeant,  
16 corporal, trooper first class, senior trooper or trooper.  
17 Each such member while in uniform shall wear the  
18 insignia of rank as provided by law and departmental  
19 regulations.

20 The superintendent may appoint from the member-  
21 ship of the department eleven principal supervisors who  
22 shall receive the compensation and hold the temporary  
23 rank of lieutenant colonel, major or captain at the will  
24 and pleasure of the superintendent. Such appointments  
25 shall be exempt from any eligibility requirements  
26 established by the career progression system. Any  
27 person appointed to a temporary rank under the  
28 provisions of this article shall retain his permanent rank  
29 or classification and shall remain eligible for promotion  
30 or reclassification if his permanent rank is below that  
31 of captain. Upon the termination of a temporary  
32 appointment by the superintendent, the member shall  
33 be entitled to the full rights and privileges of his  
34 permanent rank or classification and shall remain  
35 eligible for subsequent appointment to a temporary  
36 rank.

**§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 The superintendent shall establish within the depart-  
2 ment of public safety 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 The superintendent shall, only in the initial implemen-  
13 tation of this section, reclassify nonsupervisory members  
14 without benefit or requirement of a promotional or  
15 reclassification system as long as those reclassified meet  
16 the longevity requirements for advancement as follows:  
17 Trooper—less than three years; senior trooper—three  
18 years to eight years; trooper first class—nine years to  
19 fourteen years; corporal—more than fourteen years.

20 The superintendent is authorized to promulgate  
21 legislative rules in accordance with chapter twenty-  
22 nine-a of this code for the purpose of ensuring consis-  
23 tency, predictability and independent review of any  
24 system developed under the provisions of this section.

25 The superintendent shall provide to each member a  
26 written manual governing any system established under  
27 the provisions of this section and specific procedures  
28 shall be identified for the evaluation and testing of  
29 members for promotion or reclassification and the  
30 subsequent placement of any members on a promotional  
31 eligibility or reclassification recommendation list.

32 Members shall receive annual salaries as follows:

33 ANNUAL SALARY SCHEDULE (BASE PAY)  
34 SUPERVISORY AND NONSUPERVISORY RANKS

35	Cadet During Training . . . . .	\$1,600 Mo.	\$19,200
36	Cadet Trooper After Training	\$1,715 Mo.	20,580
37	Trooper Second Year . . . . .		20,976
38	Trooper Third Year . . . . .		21,300
39	Trooper Fourth & Fifth Year . . . . .		21,552
40	Senior Trooper . . . . .		23,352
41	Trooper First Class . . . . .		25,152
42	Corporal . . . . .		26,952
43	Sergeant . . . . .		30,552
44	First Sergeant . . . . .		32,352
45	Second Lieutenant . . . . .		34,152
46	First Lieutenant . . . . .		35,952
47	Captain . . . . .		37,752

48	Major .....	39,552
49	Lieutenant Colonel .....	41,352

50 ANNUAL SALARY SCHEDULE (BASE PAY)  
 51 ADMINISTRATION  
 52 SUPPORT SPECIALIST CLASSIFICATION

53	I .....	21,552
54	II .....	23,352
55	III .....	25,152
56	IV .....	26,952
57	V .....	30,552
58	VI .....	32,352
59	VII .....	34,152
60	VIII .....	35,952

61 ANNUAL SALARY SCHEDULE (BASE PAY)  
 62 CRIMINALIST CLASSIFICATION

63	I .....	21,552
64	II .....	23,352
65	III .....	25,152
66	IV .....	26,952
67	V .....	30,552
68	VI .....	32,352
69	VII .....	34,152

70 Each member of the department whose salary is fixed  
 71 and specified herein shall receive and be entitled to an  
 72 increase in salary over that hereinbefore set forth, for  
 73 grade in rank, based on length of service, including that  
 74 heretofore and hereafter served with the department as  
 75 follows: At the end of five years of service with the  
 76 department, such member shall receive a salary  
 77 increase of three hundred dollars to be effective during  
 78 his next three years of service and a like increase at  
 79 three-year intervals thereafter, with such increases to be  
 80 cumulative.

81 In applying the foregoing salary schedule where  
 82 salary increases are provided for length of service,  
 83 members of the department in service at the time this  
 84 article becomes effective shall be given credit for prior  
 85 service and shall be paid such salaries as the same

86 length of service will entitle them to receive under the  
87 provisions hereof.

88 The Legislature finds and declares that because of the  
89 unique duties of members of the department, it is not  
90 appropriate to apply the provisions of state wage and  
91 hour laws to them. Accordingly, members of the  
92 department of public safety are hereby excluded from  
93 the provisions of state wage and hour law. The express  
94 exclusion hereby enacted shall not be construed as any  
95 indication that such members were or were not here-  
96 tofore covered by said wage and hour law.

97 In lieu of any overtime pay they might otherwise have  
98 received under the wage and hour law, and in addition  
99 to their salaries and increases for length of service,  
100 members who have completed basic training and who  
101 are exempt from Federal Fair Labor Standards Act  
102 guidelines may receive supplemental pay as hereinafter  
103 provided.

104 The superintendent shall, within thirty days after the  
105 effective date hereof, promulgate a rule to establish the  
106 number of hours per month which shall constitute the  
107 standard work month for the members of the depart-  
108 ment. The rule shall further establish, on a graduated  
109 hourly basis, the criteria for receipt of a portion or all  
110 of such supplemental payment when hours are worked  
111 in excess of said standard work month. The rule shall  
112 be promulgated pursuant to the provisions of chapter  
113 twenty-nine-a of this code. The superintendent shall  
114 certify monthly to the department's payroll officer the  
115 names of those members who have worked in excess of  
116 the standard work month and the amount of their  
117 entitlement to supplemental payment.

118 The supplemental payment shall not exceed two  
119 hundred thirty-six dollars monthly. The superintendent  
120 and civilian employees of the department shall not be  
121 eligible for any such supplemental payments.

122 Each member of the department, except the superin-  
123 tendent and civilian employees, shall execute, before  
124 entering upon the discharge of his duties, a bond with  
125 security in the sum of five thousand dollars payable to

126 the state of West Virginia, conditioned upon the faithful  
127 performance of his or her duties, and such bond shall  
128 be approved as to form by the attorney general and to  
129 sufficiency by the governor.

130 Any member of the department who is called to  
131 perform active duty for training or inactive duty  
132 training in the national guard or any reserve component  
133 of the armed forces of the United States annually shall  
134 be granted upon request leave time not to exceed thirty  
135 calendar days for the purpose of performing such active  
136 duty for training or inactive duty training, and the time  
137 so granted shall not be deducted from any leave  
138 accumulated as a member of the department.

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## CHAPTER 158

(H. B. 4740—By Delegate Farley)

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[Passed March 10, 1990; in effect July 1, 1990. Approved by the Governor.]

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AN ACT to amend and reenact section twelve, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the reimbursement by the division of motor vehicles to the division of public safety for services rendered.

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

That section twelve, 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. DIVISION OF PUBLIC SAFETY.

#### §15-2-12. Mission of the division; powers of superintendent, officers and members; patrol of turnpike.

- 1 (a) The West Virginia division of public safety shall
- 2 have the mission of statewide enforcement of criminal
- 3 and traffic laws with emphasis on providing basic

4 enforcement and citizen protection from criminal  
5 depredation throughout the state and maintaining the  
6 safety of the state's public streets, roads and highways.

7 (b) The superintendent and each of the officers and  
8 members of the division are hereby empowered:

9 (1) To make arrests anywhere within the state of any  
10 persons charged with the violation of any law of this  
11 state, or of the United States, and when a witness to the  
12 perpetration of any offense or crime, or to the violation  
13 of any law of this state, or of the United States, may  
14 arrest without warrant; to arrest and detain any persons  
15 suspected of the commission of any felony or misdemea-  
16 nor whenever complaint is made and warrant is issued  
17 thereon for such arrest, and any person so arrested shall  
18 be forthwith brought before the proper tribunal for  
19 examination and trial in the county where the offense  
20 for which any such arrest has been made was  
21 committed;

22 (2) To serve criminal process issued by any court or  
23 magistrate anywhere within this state (they shall not  
24 serve civil process); and

25 (3) To cooperate with local authorities in detecting  
26 crime and in apprehending any person or persons  
27 engaged in or suspected of the commission of any crime,  
28 misdemeanor or offense against the law of this state, or  
29 of the United States, or of any ordinance of any  
30 municipality in this state; and to take affidavits in  
31 connection with any application to the division of  
32 highways, division of motor vehicles and division of  
33 public safety of West Virginia for any license, permit  
34 or certificate that may be lawfully issued by these  
35 divisions of state government.

36 (c) Members of the division of public safety are  
37 hereby created forest patrolmen and game and fish  
38 wardens throughout the state to do and perform any  
39 duties and exercise any powers of such officers, and may  
40 apprehend and bring before any court or magistrate  
41 having jurisdiction of such matters, anyone violating  
42 any of the provisions of chapters twenty, sixty and sixty-

43 one of this code, and the division of public safety shall  
44 at any time be subject to the call of the West Virginia  
45 alcohol beverage control commissioner to aid in appre-  
46 hending any person violating any of the provisions of  
47 said chapter sixty of this code. They shall serve and  
48 execute warrants for the arrest of any person and  
49 warrants for the search of any premises issued by any  
50 properly constituted authority, and shall exercise all of  
51 the powers conferred by law upon a sheriff. They shall  
52 not serve any civil process or exercise any of the powers  
53 of such officer in civil matters.

54 (d) Any member of the division of public safety  
55 knowing or having reason to believe that anyone has  
56 violated the law may make complaint in writing before  
57 any court or officer having jurisdiction and procure a  
58 warrant for such offender, execute the same and bring  
59 such person before the proper tribunal having jurisdic-  
60 tion. He shall make return on all such warrants to such  
61 tribunals and his official title shall be "member of the  
62 division of public safety." Members of the division of  
63 public safety may execute any summons or process  
64 issued by any tribunal having jurisdiction requiring the  
65 attendance of any person as a witness before such  
66 tribunal and make return thereon as provided by law,  
67 and any return by a member of the division of public  
68 safety showing the manner of executing such warrant  
69 or process shall have the same force and effect as if  
70 made by a sheriff.

71 (e) Each member of the division of public safety,  
72 when called by the sheriff of any county, or when the  
73 governor by proclamation so directs, shall have full  
74 power and authority within such county, or within the  
75 territory defined by the governor, to direct and com-  
76 mand absolutely the assistance of any sheriff, deputy  
77 sheriff, chief of police, policeman, game and fish  
78 warden, and peace officer of the state, or of any county  
79 or municipality therein, or of any able-bodied citizen of  
80 the United States, to assist and aid in accomplishing the  
81 purposes expressed in this article. When so called, any  
82 officer or person shall, during the time his assistance is  
83 required, be for all purposes, a member of the division



84 of public safety and subject to all the provisions of this  
85 article.

86 (f) The superintendent may also assign members of  
87 the division to perform police duties on any turnpike or  
88 toll road, or any section thereof, operated by the West  
89 Virginia parkways, economic development and tourism  
90 authority: *Provided*, That such authority shall reim-  
91 burse the division of public safety for salaries paid to  
92 such members, and shall either pay directly or reim-  
93 burse the division for all other expenses of such group  
94 of members in accordance with actual or estimated costs  
95 determined by the superintendent.

96 (g) The division of public safety may develop propos-  
97 als for a comprehensive county or multi-county plan on  
98 the implementation of an enhanced emergency service  
99 telephone system and for causing a public meeting on  
100 such proposals, all as set forth in section six-a, article  
101 six, chapter twenty-four of this code.

102 (h) The superintendent may also assign members of  
103 the division to administer tests for the issuance of  
104 commercial drivers' licenses, operator and junior  
105 operator licenses as provided for in section seven, article  
106 two, chapter seventeen-b of this code: *Provided*, That the  
107 division of motor vehicles shall reimburse the division  
108 of public safety for salaries and employee benefits paid  
109 to such members, and shall either pay directly or  
110 reimburse the division for all other expenses of such  
111 group of members in accordance with actual costs  
112 determined by the superintendent.

113 (i) The superintendent shall be reimbursed by the  
114 division of motor vehicles for salaries and employee  
115 benefits paid to members of the division of public safety,  
116 and shall either be paid directly or reimbursed by the  
117 division of motor vehicles for all other expenses of such  
118 group of members in accordance with actual costs  
119 determined by the superintendent, for services per-  
120 formed by such members relating to the duties and  
121 obligations of the division of motor vehicles set forth in  
122 chapters seventeen, seventeen-a, seventeen-b, seventeen-  
123 c and seventeen-d of this code.

## CHAPTER 159

(S. B. 127—By Senators Jackson and Warner)

[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-five, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to rules for the administration of the division of public safety and carrying of weapons upon retirement or medical discharge.

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

That section twenty-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. DIVISION OF PUBLIC SAFETY.

#### §15-2-25. Rules and regulations generally; carrying of weapons upon retirement or medical discharge.

1 Subject to the written approval of the governor and  
2 the provisions of this article, the superintendent may  
3 make and promulgate proper rules and regulations for  
4 the government, discipline and control of the division of  
5 public safety, and shall also cause to be established  
6 proper rules and regulations for the examinations of all  
7 applicants for appointment thereto. The members of the  
8 division of public safety shall be permitted to carry  
9 arms and weapons, and no license shall be required for  
10 such privilege.

11 Upon retirement or medical discharge from the  
12 division of public safety, and with the written consent  
13 of the superintendent, any retired or medically dis-  
14 charged member may carry a handgun for a period of  
15 five years following retirement or medical discharge  
16 notwithstanding the provisions of article seven, chapter  
17 sixty-one of this code. A retired or medically discharged  
18 member desiring to carry a handgun after retirement  
19 or medical discharge must provide his or her own

20 handgun. If, upon retirement or medical discharge, a  
21 member elects to carry a handgun as provided herein,  
22 the division of public safety shall maintain and pay for  
23 the bond required under the provisions of section five  
24 of this article for five years following such member's  
25 retirement or medical discharge. Upon request, each  
26 member shall be presented with a letter of authorization  
27 signed by the superintendent authorizing the retired or  
28 medically discharged member to carry a handgun, and  
29 the written authorization shall be carried by the retired  
30 or medically discharged member at all times that he or  
31 she has a handgun on his or her person. The superin-  
32 tendent may revoke the authority at any time without  
33 cause and without recourse. Conviction of the retired or  
34 medically discharged member for the commission of any  
35 felony or for a misdemeanor involving the improper or  
36 illegal use of a firearm shall cause this authority to  
37 terminate immediately without a hearing or other  
38 recourse and without any action on the part of the  
39 superintendent. The superintendent shall promulgate a  
40 legislative rule in accordance with the provisions of  
41 chapter twenty-nine-a of this code, which rule shall  
42 prescribe requirements necessary for the issuance and  
43 continuance of the authority herein granted. The  
44 authority granted herein shall be for a period of five  
45 years immediately following retirement or medical  
46 discharge and shall not be renewed or extended for a  
47 longer term.

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## CHAPTER 160

(Com. Sub. for S. B. 477—By Senators Jackson, Sharpe and Warner)

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[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section forty-three, relating to awarding members of the department of public safety their service revolver upon retirement.

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

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

**ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.**

**§15-2-43. Awarding service revolver upon retirement.**

1 (a) Upon the retirement of a member of the depart-  
2 ment of public safety, the superintendent shall award to  
3 the retiring member his or her service revolver, without  
4 charge, upon determining:

5 (1) That the retiring member is retiring honorably  
6 with at least twenty years of service; or

7 (2) Such retiring member is retiring with less than  
8 twenty years of service based upon a determination that  
9 such member is totally physically disabled as a result  
10 of his or her service with the department.

11 (b) Notwithstanding the provisions of subsection (a) of  
12 this section, the superintendent shall not award his or  
13 her service revolver to any member whom the superin-  
14 tendent finds to be mentally incapacitated or who  
15 constitutes a danger to any person or the community.

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## CHAPTER 161

(Com. Sub. for S. B. 520—By Senators Burdette, Mr. President, and Harman,  
By Request of the Executive)

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[Passed March 9, 1990; in effect January 1, 1991. Approved by the Governor.]

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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 three-c, relating to public service commissions; cessation of jurisdiction over rates for certain services of telephone utilities subject to competition.

*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 three-c, to read as follows:

**ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.**

**§24-2-3c. Cessation of jurisdiction over rates for certain services subject to competition.**

1 (a) Upon the application of any telephone utility, the  
2 commission shall, unless it finds that the continued  
3 availability of adequate, economical and reliable local  
4 exchange telephone service will be adversely affected  
5 thereby, permanently cease its regulation of the rates  
6 charged by the telephone utility for any commodity or  
7 service, except carrier access service, which the  
8 commission determines to be subject to workable  
9 competition: *Provided*, That if any such commodity or  
10 service thereafter ceases being subject to workable  
11 competition by reason of lawful governmental action, or,  
12 if the market forces fail to constrain monopolistic  
13 practices or anticompetitive behavior, the commission  
14 shall upon notice and hearing, reinstitute its regulation  
15 of the rates charged for such commodity or service.  
16 Evidence of ease of market entry, the presence of other  
17 competitors and the availability of like or substitute  
18 services shall, for purposes of this section, be sufficient  
19 to show that a commodity or service is subject to  
20 workable competition. In making its determination, the  
21 commission shall not be bound by any previous deter-  
22 mination of competitiveness for any other purpose. The  
23 furnishing of all such commodities and services shall in  
24 all other respects remain fully subject to the commis-  
25 sion's jurisdiction.

26 (b) The commission shall ensure through such ac-  
27 counting system as it deems appropriate that the costs  
28 and revenues associated with the furnishing of those  
29 commodities and services that the commission deter-  
30 mines to be subject to workable competition are not  
31 charged against or credited to the utility's cost of

32 furnishing other services; except, however, that the  
33 commission may, in connection with any general  
34 increase in local exchange telephone rates proposed by  
35 the telephone utility within ten years from the effective  
36 date of this section, credit to the utility's cost of  
37 furnishing local exchange telephone service the contri-  
38 bution, if any, then being yielded by those competitive  
39 commodities or services that such utility was offering as  
40 of the effective date of this section: *Provided*, That if the  
41 contribution from such competitive commodities or  
42 services is less than the contribution that was being  
43 yielded by those commodities or services during the year  
44 preceding the year in which such commodities or  
45 services were determined to be subject to workable  
46 competition, the commission may, in order to eliminate  
47 such deficiency, further credit to the cost of furnishing  
48 local exchange telephone service any contribution that  
49 is then being yielded by those competitive commodities  
50 or services that were not being offered by the utility as  
51 of the effective date of this section. In no case, however,  
52 shall the additional contribution so credited exceed the  
53 contribution that is actually being yielded by such new  
54 commodities or services, nor shall the commission, in  
55 connection with the crediting of any contribution under  
56 the provisions of this subsection, credit any amount of  
57 contribution that exceeds that which is reasonably  
58 necessary to the continued availability of adequate,  
59 economical, and reliable local exchange telephone  
60 service. Contribution shall be defined to mean the excess  
61 of revenues over costs.

62 (c) The application of the telephone utility shall be in  
63 such form as the commission may prescribe and shall  
64 contain:

65 (1) A designation of the commodities or services that  
66 are the subject of the application;

67 (2) A statement explaining why the applicant believes  
68 that each commodity or service so designated is subject  
69 to workable competition; and

70 (3) Such other information as the applicant may deem  
71 relevant or the commission may require.

72 (d) Within sixty days after the filing of the applica-  
73 tion, or if hearing shall be held thereon, within ninety  
74 days after final submission upon oral argument or brief,  
75 but in no event longer than one hundred eighty days  
76 after the filing of the application, the commission shall  
77 enter a final order granting, in whole or in part, or  
78 denying the application.

79 (e) Nothing in this section limits the commission's  
80 power to require telephone utilities to maintain uniform,  
81 statewide toll rates, or to require that public and semi-  
82 public coin telephone service be offered at a flat per  
83 message rate. Nothing in this section limits the commis-  
84 sion's power to continue to engage in incentive or other  
85 innovative forms of ratemaking in connection with its  
86 regulation of those services which it has not determined  
87 to be subject to workable competition.

88 Nothing in this section limits the power or right of the  
89 consumer advocate division to petition to decrease rates  
90 and tariffs in the event of decreases in costs of service.

91 (f) The provisions of this section do not go into effect  
92 until the first day of January, one thousand nine  
93 hundred ninety-one.

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## CHAPTER 162

(Com. Sub. for S. B. 310—By Senator Hawse)

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[Passed March 7, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section four-b, article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to conferring ratemaking jurisdiction for access charges of telephone cooperatives upon the public service commission.

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

That section four-b, 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.****§24-2-4b. Procedures for changing rates of electric and natural gas cooperatives, local exchange services of telephone cooperatives and municipally operated public utilities.**

1 (a) The rates and charges of electric cooperatives,  
2 natural gas cooperatives and municipally operated  
3 public utilities, except for municipally operated com-  
4 mercial solid waste facilities as defined in section two-  
5 h, article five-f, chapter twenty of this code, and the  
6 rates and charges for local exchange services provided  
7 by telephone cooperatives are not subject to the rate  
8 approval provisions of section four or four-a of this  
9 article, but are subject to the limited rate provisions of  
10 this section.

11 (b) All rates and charges set by electric cooperatives,  
12 natural gas cooperatives and municipally operated  
13 public utilities and all rates and charges for local  
14 exchange services set by telephone cooperatives shall be  
15 just, reasonable, applied without unjust discrimination  
16 or preference and based primarily on the costs of  
17 providing these services. Such rates and charges shall  
18 be adopted by the electric, natural gas or telephone  
19 cooperative's governing board and in the case of the  
20 municipally operated public utility by municipal  
21 ordinance to be effective not sooner than forty-five days  
22 after adoption: *Provided*, That notice of intent to effect  
23 a rate change shall be specified on the monthly billing  
24 statement of the customers of such utility for the month  
25 next preceding the month in which the rate change is  
26 to become effective or the utility shall give its customers,  
27 and in the case of a cooperative, its customers, members  
28 and stockholders, such other reasonable notices as will  
29 allow filing of timely objections to such rate change.  
30 Such rates and charges shall be filed with the commis-  
31 sion together with such information showing the basis  
32 of such rates and charges and such other information  
33 as the commission considers necessary. Any change in  
34 such rates and charges with updated information shall  
35 be filed with the commission. If a petition, as set out in



36 subdivision (1), (2) or (3), subsection (c) of this section,  
37 is received and the electric cooperative, natural gas  
38 cooperative, telephone cooperative or municipality has  
39 failed to file with the commission such rates and charges  
40 with such information showing the basis of rates and  
41 charges and such other information as the commission  
42 considers necessary, the suspension period limitation of  
43 one hundred twenty days and the one hundred day  
44 period limitation for issuance of an order by a hearing  
45 examiner, as contained in subsections (d) and (e) of this  
46 section, is tolled until the necessary information is filed.  
47 The electric cooperative, natural gas cooperative,  
48 telephone cooperative or municipality shall set the date  
49 when any new rate or charge is to go into effect.

50 (c) The commission shall review and approve or  
51 modify such rates upon the filing of a petition within  
52 thirty days of the adoption of the ordinance or resolution  
53 changing said rates or charges by:

54 (1) Any customer aggrieved by the changed rates or  
55 charges who presents to the commission a petition  
56 signed by not less than twenty-five percent of the  
57 customers served by such municipally operated public  
58 utility, or twenty-five percent of the membership of the  
59 electric, natural gas or telephone cooperative residing  
60 within the state; or

61 (2) Any customer who is served by a municipally  
62 operated public utility and who resides outside the  
63 corporate limits and who is affected by the change in  
64 said rates or charges and who presents to the commis-  
65 sion a petition alleging discrimination between custo-  
66 mers within and without the municipal boundaries. Said  
67 petition shall be accompanied by evidence of discrimi-  
68 nation; or

69 (3) Any customer or group of customers who are  
70 affected by said change in rates who reside within the  
71 municipal boundaries and who present a petition to the  
72 commission alleging discrimination between said  
73 customer or group of customers and other customers of  
74 the municipal utility. Said petition shall be accompanied  
75 by evidence of discrimination.

76 (d) (1) The filing of a petition with the commission  
77 signed by not less than twenty-five percent of the  
78 customers served by the municipally operated public  
79 utility, or twenty-five percent of the membership of the  
80 electric, natural gas or telephone cooperative residing  
81 within the state, under subdivision (1), subsection (c) of  
82 this section, shall suspend the adoption of the rate  
83 change contained in the ordinance or resolution for a  
84 period of one hundred twenty days from the date said  
85 rates or charges would otherwise go into effect, or until  
86 an order is issued as provided herein.

87 (2) Upon sufficient showing of discrimination by  
88 customers outside the municipal boundaries, or a  
89 customer or a group of customers within the municipal  
90 boundaries, under a petition filed under subdivision (2)  
91 or (3), subsection (c) of this section, the commission shall  
92 suspend the adoption of the rate change contained in the  
93 ordinance for a period of one hundred twenty days from  
94 the date said rates or charges would otherwise go into  
95 effect or until an order is issued as provided herein.

96 (e) The commission shall forthwith appoint a hearing  
97 examiner from its staff to review the grievances raised  
98 by the petitioners. Said hearing examiner shall conduct  
99 a public hearing, and shall within one hundred days  
100 from the date the said rates or charges would otherwise  
101 go into effect, unless otherwise tolled as provided in  
102 subsection (b) of this section, issue an order approving,  
103 disapproving or modifying, in whole or in part, the rates  
104 or charges imposed by the electric, natural gas or  
105 telephone cooperative or by the municipally operated  
106 public utility pursuant to this section.

107 (f) Upon receipt of a petition for review of the rates  
108 under the provisions of subsection (c) of this section, the  
109 commission may exercise the power granted to it under  
110 the provisions of section three of this article. The  
111 commission may determine the method by which such  
112 rates are reviewed and may grant and conduct a de novo  
113 hearing on the matter if the customer, electric, natural  
114 gas or telephone cooperative or municipality requests  
115 such a hearing.

116 (g) The commission may, upon petition by a munic-  
117 ipality or electric, natural gas or telephone cooperative,  
118 allow an interim or emergency rate to take effect,  
119 subject to future modification, if it is determined that  
120 such interim or emergency rate is necessary to protect  
121 the municipality from financial hardship and if that  
122 financial hardship is attributable solely to the purchase  
123 of the utility commodity sold. In such cases, the  
124 commission may waive the forty-five-day waiting period  
125 provided for in subsection (b) of this section and the one  
126 hundred twenty-day suspension period provided for in  
127 subsection (d) of this section.

128 (h) Notwithstanding any other provision, the commis-  
129 sion shall have no authority or responsibility with  
130 regard to the regulation of rates, income, services or  
131 contracts by municipally operated public utilities for  
132 services which are transmitted and sold outside of the  
133 state of West Virginia.

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## CHAPTER 163

(H. B. 4147—By Delegates Jones and Manuel)

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[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections two and three, article six, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public service commission's regulation of local emergency telephone systems and the participation by the department of public safety in these proceedings.

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

That sections two and three, article six, 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:

**CHAPTER 24. PUBLIC SERVICE COMMISSION.****ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.**

§24-6-2. Definitions.

§24-6-3. Adoption of emergency telephone system plan.

**§24-6-2. Definitions.**

1 As used in this article, unless the context clearly  
2 requires a different meaning:

3 (1) "County answering point" means a facility to  
4 which enhanced emergency telephone system calls for a  
5 county are initially routed for response, and where  
6 county personnel respond to specific requests for  
7 emergency service by directly dispatching the approp-  
8 riate emergency service provider, relaying a message to  
9 the appropriate provider or transferring the call to the  
10 appropriate provider.

11 (2) "Emergency services organization" means the  
12 organization established under article five, chapter  
13 fifteen of this code.

14 (3) "Emergency service provider" means any emer-  
15 gency services organization or public safety unit.

16 (4) "Emergency telephone system" means a telephone  
17 system which through normal telephone service facili-  
18 ties automatically connects a person dialing the primary  
19 emergency telephone number to an established public  
20 agency answering point, but does not include an  
21 enhanced emergency telephone system.

22 (5) "Enhanced emergency telephone system" means a  
23 telephone system which automatically connects the  
24 person dialing the primary emergency number to the  
25 county answering point and in which the telephone  
26 network system automatically provides to personnel  
27 receiving the call, immediately on answering the call,  
28 information on the location and the telephone number  
29 from which the call is being made, and upon direction  
30 from the personnel receiving the call routes or dis-  
31 patches such call by telephone, radio or any other  
32 appropriate means of communication to emergency

33 service providers that serve the location from which the  
34 call is made.

35 (6) "Public agency" means the state, and any munic-  
36 ipality, county, public district or public authority which  
37 provides or has authority to provide fire-fighting, police,  
38 ambulance, medical, rescue or other emergency  
39 services.

40 (7) "Public safety unit" means a functional division of  
41 a public agency which provides fire-fighting, police,  
42 medical, rescue or other emergency services.

43 (8) "Telephone company" means a public utility which  
44 is engaged in the provision of telephone service.

45 (9) "Comprehensive plan" means a plan pertaining to  
46 the installing, modifying or replacing of telephone  
47 switching equipment; telephone utilities' response in a  
48 timely manner to requests for emergency telephone  
49 service by a public agency; telephone utilities' respon-  
50 sibility to report to the public service commission;  
51 charges and tariffs for the services and facilities  
52 provided by telephone utilities; and access to emergency  
53 telephone system by emergency service organizations.

54 (10) "Technical and operational standards" means  
55 those standards of telephone equipment and processes  
56 necessary for the implementation of the comprehensive  
57 plan as defined in subdivision (9) above.

### §24-6-3. Adoption of emergency telephone system plan.

1 (a) The public service commission shall develop, adopt  
2 and periodically review a comprehensive plan establish-  
3 ing the technical and operational standards to be  
4 followed in establishing and maintaining emergency  
5 telephone systems and enhanced emergency telephone  
6 systems.

7 (b) In developing the comprehensive plan, the public  
8 service commission shall consult with telephone compan-  
9 ies, and with the various public agencies and public  
10 safety units, including, but not limited to, emergency  
11 services organizations.

12 (c) The public service commission shall annually  
13 review with each operating telephone company their  
14 construction and switching replacements projections.  
15 During this review, the public service commission shall  
16 ensure that all new switching facilities will accommo-  
17 date the emergency telephone system.

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## CHAPTER 164

(Com. Sub. for H. B. 4351—By Delegates Love and Berry)

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[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections two and seven, article twenty-one, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to definitions; including political party executive committees within the definition of "charitable or public service activity or endeavor"; and license fees for charitable raffles.

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

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

### ARTICLE 21. CHARITABLE RAFFLES.

§47-21-2. Definitions.

§47-21-7. License fee and exemption from taxes.

#### §47-21-2. Definitions.

1 For purposes of this article, unless specified other-  
2 wise:

3 (a) "Charitable or public service activity or endeavor"  
4 means any bona fide activity or endeavor which directly  
5 benefits a number of people by:

6 (1) Contributing to educational or religious purposes;  
7 or

8 (2) Relieving them from disease, distress, suffering,  
9 constraint or the effects of poverty; or

10 (3) Increasing their comprehension of and devotion to  
11 the principles upon which this nation was founded and  
12 to the principles of good citizenship; or

13 (4) Making them aware of or educating them about  
14 issues of public concern so long as the activity or  
15 endeavor is not aimed at supporting or participating in  
16 the campaign of any candidate for public office; or

17 (5) By lessening the burdens borne by government or  
18 voluntarily supporting, augmenting or supplementing  
19 services which government would normally render to  
20 the people; or

21 (6) Providing or supporting nonprofit community  
22 activities for youth, senior citizens or the disabled; or

23 (7) Providing or supporting nonprofit cultural or  
24 artistic activities; or

25 (8) Providing or supporting any political party  
26 executive committee.

27 (b) "Charitable or public service organization" means  
28 a bona fide, not for profit, tax-exempt, benevolent,  
29 educational, philanthropic, humane, patriotic, civic,  
30 religious, fraternal or eleemosynary incorporated or  
31 unincorporated association or organization; or a volun-  
32 teer fire department, rescue unit or other similar  
33 volunteer community service organization or associa-  
34 tion; but does not include any nonprofit association or  
35 organization, whether incorporated or not, which is  
36 organized primarily for the purposes of influencing  
37 legislation or supporting or promoting the campaign of  
38 any single candidate for public office.

39 (c) "Commissioner" means the state tax commissioner.

40 (d) "Concession" means any stand, booth, cart, counter  
41 or other facility, whether stationary or movable, where  
42 beverages, both alcoholic and nonalcoholic, food, snacks,  
43 cigarettes or other tobacco products, newspapers,  
44 souvenirs or any other items are sold to patrons by an  
45 individual operating the facility. Notwithstanding  
46 anything contained in subdivision (2), subsection (a),

47 section twelve, article seven, chapter sixty of this code  
48 to the contrary, "concession" includes beverages which  
49 are regulated by and shall be subject to the provisions  
50 of chapter sixty of this code.

51 (e) "Conduct" means to direct the actual holding of a  
52 raffle by activities including, but not limited to, handing  
53 out tickets, collecting money, drawing the winning  
54 numbers or names, announcing the winning numbers or  
55 names, posting the winning numbers or names, verify-  
56 ing winners and awarding prizes.

57 (f) "Expend net proceeds for charitable or public  
58 service purposes" means to devote the net proceeds of  
59 a raffle occasion or occasions to a qualified recipient  
60 organization or as otherwise provided by this article and  
61 approved by the commissioner pursuant to section  
62 fifteen of this article.

63 (g) "Gross proceeds" means all moneys collected or  
64 received from the conduct of a raffle or raffles at all  
65 raffle occasions held by a licensee during a license  
66 period; this term shall not be deemed to include any  
67 moneys collected or received from the sale of concessions  
68 at raffle occasions.

69 (h) "Joint raffle occasion" means a single gathering or  
70 session at which a series of one or more successive  
71 raffles is conducted by two or more licensees.

72 (i) "Licensee" means any organization or association  
73 granted an annual or limited occasion license pursuant  
74 to the provisions of this article.

75 (j) "Net proceeds" means all moneys collected or  
76 received from the conduct of raffle or raffles at  
77 occasions held by a licensee during a license period after  
78 payment of the raffle expenses authorized by sections  
79 eleven, thirteen and fifteen of this article; this term shall  
80 not be deemed to include moneys collected or received  
81 from the sale of concessions at raffle occasions.

82 (k) "Person" means any individual, association,  
83 society, incorporated or unincorporated organization,  
84 firm, partnership or other nongovernmental entity or  
85 institution.



86 (l) "Patron" means any individual who attends a raffle  
87 occasion other than an individual who is participating  
88 in the conduct of the occasion or in the operation of any  
89 concession, whether or not the individual is charged an  
90 entrance fee or participates in any raffle.

91 (m) "Qualified recipient organization" means any  
92 bona fide, not for profit, tax-exempt, as defined in  
93 subdivision (p) of this section, incorporated or unincor-  
94 porated association or organization which is organized  
95 and functions exclusively to directly benefit a number  
96 of people as provided in subparagraphs (1) through (7),  
97 subdivision (a) of this section. "Qualified recipient  
98 organization" includes, without limitation, any licensee  
99 which is organized and functions exclusively as provided  
100 in this subdivision.

101 (n) "Raffle" means a game involving the selling of  
102 tickets to participate in such game entitling the holder  
103 or holders to a chance on a prize or prizes.

104 (o) "Raffle occasion" or "occasion" means a single  
105 gathering or session at which a series of one or more  
106 successive raffles is conducted by a single licensee.

107 (p) "Tax-exempt association or organization" means  
108 an association or organization which is, and has received  
109 from the "Internal Revenue Service" a determination  
110 letter that is currently in effect stating that the  
111 organization is exempt from federal income taxation  
112 under subsection 501(a) and described in subsection  
113 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19) or  
114 501(d) of the Internal Revenue Code of 1986, as  
115 amended; or is exempt from income taxes under  
116 subsection 527(a) of said code.

#### §47-21-7. License fee and exemption from taxes.

1 (a) A license fee shall be paid to the tax commissioner  
2 for annual licenses in the amount of one thousand  
3 dollars. A license fee shall be paid to the tax commis-  
4 sioner for a limited occasion license in the amount of  
5 fifty dollars. The license fee imposed by this section is  
6 in lieu of all other license or franchise taxes or fees of  
7 this state, and no county, or municipality or other

8 political subdivision of this state is empowered to impose  
9 a license or franchise tax or fee on any raffle or raffle  
10 occasion.

11 (b) The gross proceeds derived from the conduct of a  
12 raffle occasion are exempt from state and local business  
13 and occupation taxes, income taxes, excise taxes and all  
14 special taxes. Any charitable or public service organi-  
15 zation conducting a raffle occasion pursuant to the  
16 provisions of this article is exempt from payment of  
17 consumers sales and service taxes, use taxes and all  
18 other taxes on all purchases for use or consumption in  
19 the conduct of a raffle occasion and is exempt from  
20 collecting consumers sales taxes on any admission fees  
21 and sales of raffle tickets.

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## CHAPTER 165

(Com. Sub. for H. B. 4224—By Delegate Minard)

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[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fourteen, relating to the creation of the West Virginia Appraiser Licensing and Certification Board to be charged with licensing and certifying real estate appraisers; requiring licenses for persons appraising real estate; exceptions; powers and duties of board; requiring certification for persons using the term "state certified real estate appraiser" or signing certified appraisal reports; hearings and orders of board; applications; qualifications for licensure and certification; education, experience, and examination requirements; continuing education requirements; complaints, investigations and disciplinary proceedings; fees; criminal penalties; waiver of license requirements; prohibited acts and omissions; nonresident licensure and certification; and attorney general opinion and duties.

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

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

**ARTICLE 14. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT.**

- §37-14-1. Short title.
- §37-14-2. Definitions.
- §37-14-3. Real estate appraiser license required.
- §37-14-4. Exceptions to license requirement.
- §37-14-5. Board created; appointment, qualifications, terms, oath, etc., of members; quorum; meetings; when members are disqualified from participation; compensation; records; office space; personnel.
- §37-14-6. General powers and duties.
- §37-14-7. Hearings and orders; entry of order without notice and hearing.
- §37-14-8. Judicial review; appeals to supreme court of appeals.
- §37-14-9. Applications for license.
- §37-14-10. Scope of real estate appraiser license.
- §37-14-11. Qualifications for license.
- §37-14-12. Courses of study.
- §37-14-13. Term of license.
- §37-14-14. Continuing education.
- §37-14-15. Renewal of license.
- §37-14-16. Complaints and investigations relating to real estate appraiser licenses.
- §37-14-17. Professional corporations.
- §37-14-18. Collection of appraisal fees.
- §37-14-19. Penalties.
- §37-14-20. Waiver of license qualification requirements.
- §37-14-21. Special waiver of license qualification requirements.
- §37-14-22. Standards of professional appraisal practice.
- §37-14-23. Prohibited acts and omissions—Licensees.
- §37-14-24. Classification of service.
- §37-14-25. Contingent fees.
- §37-14-26. State certified real estate appraiser; use of term.
- §37-14-27. Certification application.
- §37-14-28. Classes of certification.
- §37-14-29. Experience requirement.
- §37-14-30. Education requirement.
- §37-14-31. Examination required.
- §37-14-32. Term of certification.
- §37-14-33. Renewal of certification.
- §37-14-34. Basis for denial.
- §37-14-35. Use of term "state certified real estate appraiser."
- §37-14-36. Continuing education requirement.
- §37-14-37. Prohibited acts and omissions—State certified real estate appraiser.

- §37-14-38. Disciplinary proceedings.
- §37-14-39. Hearing and judicial review.
- §37-14-40. Licensing and certification fees.
- §37-14-41. Licenses, certificates and related records.
- §37-14-42. Roster of licensed appraisers and certified appraisers.
- §37-14-43. Certificate of good standing.
- §37-14-44. Licensure and certification of nonresidents.
- §37-14-45. Attorney general opinions and duties.

**§37-14-1. Short title.**

- 1 This act shall be known and may be cited as the “Real
- 2 Estate Appraiser Licensing and Certification Act.”

**§37-14-2. Definitions.**

- 1 As used in this article, the following terms shall have
- 2 the following meanings:

- 3 (a) “Appraisal” means an analysis, opinion or conclu-
- 4 sion prepared by a real estate appraiser relating to the
- 5 nature, quality, value or utility of specified interests in,
- 6 or aspects of, identified real estate or identified real
- 7 property. An appraisal may be classified by the nature
- 8 of the assignment as a valuation appraisal, an analysis
- 9 assignment, or a review assignment. The term “valua-
- 10 tion appraisal” refers to an analysis, opinion or conclu-
- 11 sion prepared by a real estate appraiser that estimates
- 12 the value of an identified parcel of real estate or
- 13 identified real property at a particular point in time. An
- 14 “analysis assignment” refers to an analysis, opinion or
- 15 conclusion prepared by a real estate appraiser that
- 16 relates to the nature, quality or utility of identified real
- 17 estate or identified real property. A “review assign-
- 18 ment” refers to an analysis, opinion or conclusion
- 19 prepared by a real estate appraiser that forms an
- 20 opinion as to the adequacy and appropriateness of a
- 21 valuation appraisal or an analysis assignment;

- 22 (b) “Appraisal foundation” means the appraisal
- 23 foundation established on the thirtieth day of November,
- 24 one thousand nine hundred eighty-seven, as a not-for-
- 25 profit corporation under the laws of Illinois;

- 26 (c) “Appraisal report” means any communication,
- 27 written or oral, of an appraisal. An appraisal report
- 28 may be classified by the nature of the assignment as a

29 "valuation report," "analysis report" or "review report."  
30 For the purposes of this act, the testimony of an  
31 appraiser dealing with the appraiser's analyses, conclu-  
32 sions or opinions concerning identified real estate or  
33 identified real property is deemed to be an oral  
34 appraisal report;

35 (d) "Board" means the real estate appraiser licensing  
36 and certification board established pursuant to the  
37 provisions of this article;

38 (e) "Certified appraisal report" means a written or  
39 oral appraisal report that is certified as such by a state  
40 certified real estate appraiser. When a state certified  
41 real estate appraiser identifies an appraisal report as  
42 "certified", such state certified real estate appraiser  
43 must indicate which type of certification he or she holds.  
44 The certification of an appraisal report by a state  
45 certified real estate appraiser represents to the public  
46 that it meets the appraisal standards established  
47 pursuant to this article;

48 (f) "Licensed real estate appraiser" means a person  
49 who holds a current, valid real estate appraiser license  
50 issued to him or her under the provisions of this article;

51 (g) "Real estate" means an identified parcel or tract  
52 of land, including improvements, if any;

53 (h) "Real estate appraisal activity" means the act or  
54 process of making an appraisal of real estate or real  
55 property and preparing an appraisal report;

56 (i) "Real estate appraiser" means a person who  
57 engages in real estate appraisal activity for a fee or  
58 other valuable consideration;

59 (j) "Real property interests" means one or more  
60 defined interests, benefits or rights inherent in the  
61 ownership of real estate; and

62 (k) "State certified real estate appraiser" means a  
63 person who holds a current, valid certification as a real  
64 estate appraiser issued to him or her under the  
65 provisions of this article.

**§37-14-3. Real estate appraiser license required.**

1 Beginning the first day of July, one thousand nine  
2 hundred ninety-one, it is unlawful for any person, for  
3 compensation or valuable consideration, to prepare a  
4 valuation appraisal or a valuation appraisal report  
5 relating to real estate or real property in this state  
6 without first obtaining a real estate appraiser license as  
7 provided in this article. This section shall not be  
8 construed to apply to persons who do not render  
9 significant professional assistance in arriving at a real  
10 estate appraisal analysis, opinion or conclusion. Nothing  
11 in this article, however, shall be construed to prohibit  
12 any person who is licensed to practice in this state under  
13 any other law from engaging in the practice for which  
14 he or she is licensed.

**§37-14-4. Exceptions to license requirement.**

1 This article does not apply to:

2 (a) A real estate broker or salesperson licensed by this  
3 state who, in the ordinary course of his or her business,  
4 gives an opinion to a potential seller or third party as  
5 to the recommended listing price of real estate or an  
6 opinion to a potential purchaser or third party as to the  
7 recommended purchase price of real estate, when this  
8 opinion as to the listing price or the purchase price is  
9 not to be referred to as an appraisal, no opinion is  
10 rendered as to the value of the real estate, and no fee  
11 is charged;

12 (b) A casual or drive-by inspection of real estate in  
13 connection with a consumer loan secured by the said  
14 real estate, when the inspection is not referred to as an  
15 appraisal, no opinion is rendered as to the value of the  
16 real estate, and no fee is charged for the inspection;

17 (c) An employee who renders an opinion as to the  
18 value of real estate for his full-time employer, for the  
19 employer's internal use only and performed in the  
20 regular course of the employee's position, when the  
21 opinion is not referred to as an appraisal and no fee is  
22 charged; and

23 (d) An appraisal or opinion with regard to the value

24 of a manufactured home, as such term is defined in  
25 section two, article nine, chapter twenty-one of this code,  
26 if the property appraised does not include real estate or  
27 an interest therein.

**§37-14-5. Board created; appointment, qualifications,  
terms, oath, etc., of members; quorum;  
meetings; when members are disqualified  
from participation; compensation; records;  
office space; personnel.**

1 (a) There is hereby created the West Virginia Real  
2 Estate Appraiser Licensing and Certification Board  
3 which consists of seven members appointed by the  
4 governor with the advice and consent of the Senate.  
5 Each member shall be a resident of the state of West  
6 Virginia. Two members shall be real estate appraisers  
7 having at least five years' experience in appraisal as a  
8 principal line of work immediately preceding their  
9 appointment, two members shall be selected from  
10 financial institutions having at least five years' exper-  
11 ience in real estate lending, and three members who  
12 shall not be engaged in the practice of real estate  
13 appraisal, real estate brokerage or sales, or have any  
14 financial interest in such practices. No member of the  
15 board may concurrently be a member of the West  
16 Virginia real estate commission. Not more than one  
17 appraiser member may be appointed from each congres-  
18 sional district.

19 (b) Appointments shall be for a three-year term,  
20 except of the members first appointed, three shall serve  
21 for two years and one for one year. Each real estate  
22 appraiser appointed after the first day of January, one  
23 thousand nine hundred ninety-one, shall have appraisal  
24 as their principal work and must be a state certified real  
25 estate appraiser under this article at the time of  
26 appointment and during the term of appointment. No  
27 member appointed shall serve for more than six  
28 consecutive years. Before entering upon the perfor-  
29 mance of his duties, each member shall subscribe to the  
30 oath required by section five, article four of the  
31 constitution of this state. The governor shall, within  
32 sixty days following the occurrence of a vacancy on the

33 board, fill the same by appointing a person for the  
34 unexpired term of, and meeting the same requirements  
35 for membership as, the person vacating said office. Any  
36 member may be removed by the governor in case of  
37 incompetency, neglect of duty, gross immorality or  
38 malfeasance in office.

39 (c) The board shall elect a chairman. A majority of  
40 the members of the board shall constitute a quorum. The  
41 board shall meet at least once in each calendar quarter  
42 on a date fixed by the board. The board may, upon its  
43 own motion, or shall upon the written request of three  
44 members of the board, call additional meetings of the  
45 board upon at least twenty-four hours' notice. No  
46 member shall participate in a proceeding before the  
47 board to which a corporation, partnership or unincor-  
48 porated association is a party, and of which he is or was  
49 at any time in the preceding twelve months a director,  
50 officer, owner, partner, employee, member or stock-  
51 holder. A member may disqualify himself from partic-  
52 ipation in a proceeding for any other cause deemed by  
53 him to be sufficient. Each member shall receive fifty  
54 dollars for each day or portion thereof spent in attending  
55 meetings of the board and shall be reimbursed for all  
56 reasonable and necessary expenses incurred incidental  
57 to his duties as a member of the board.

58 (d) The board shall keep an accurate record of all of  
59 its proceedings and make certificates thereupon as may  
60 be required by law.

**§37-14-6. General powers and duties.**

1 The board shall:

2 (a) Define by rule the type of educational experience,  
3 appraisal experience and equivalent experience that  
4 will meet the statutory requirements of this article;

5 (b) Establish examination specifications as prescribed  
6 herein and provide or procure appropriate  
7 examinations;

8 (c) Approve or disapprove applications for certifica-  
9 tion and licensure;



- 10 (d) Define by rule continuing education requirements  
11 for the renewal of certification and licenses;
- 12 (e) Censure, suspend or revoke licenses and certifica-  
13 tion as provided in this article;
- 14 (f) Hold meetings, hearings and examinations in  
15 places and at times as it shall designate;
- 16 (g) Establish procedures for submitting, approving  
17 and disapproving applications;
- 18 (h) Maintain an accurate registry of the names and  
19 addresses of all persons certified or issued a license to  
20 practice under this article;
- 21 (i) Maintain accurate records on applicants and  
22 licensed or certified real estate appraisers;
- 23 (j) Issue to each licensed or certified real estate  
24 appraiser a pocket card with the name and license or  
25 certification number on each in the size and form it may  
26 approve. The license or certification pocket card shall  
27 remain the property of the state of West Virginia, and,  
28 upon suspension or revocation of the license to practice  
29 pursuant to this article, shall be returned immediately  
30 to the commission;
- 31 (k) Deposit all fees collected by the commission in the  
32 state treasury. The state treasurer shall deposit the fees  
33 to the credit of the West Virginia appraiser licensing  
34 and certification board and shall disburse moneys from  
35 the account to pay the cost of board operation.  
36 Disbursements from the account shall not exceed the  
37 moneys credited to it;
- 38 (l) Hire employees to assist in the discharge of the  
39 duties imposed upon it by this article subject to the  
40 policies and standards of the department of administra-  
41 tion. No employee of the commission may be a paid  
42 employee of any real estate association, group or real  
43 estate dealers, brokers, appraisers or lenders;
- 44 (m) Perform any other functions and duties as may be  
45 necessary in carrying out the provisions of this article.
- 46 All rules shall be promulgated pursuant to the

47 provisions of chapter twenty-nine-a of this code. The  
48 members of the board shall be immune from any civil  
49 action or criminal prosecution for initiating or assisting  
50 in any lawful investigation of the actions of, or partic-  
51 ipating in any disciplinary proceeding concerning a  
52 licensed or certified real estate appraiser pursuant to  
53 this article: *Provided*, That such action is taken without  
54 malicious intent and in the reasonable belief that the  
55 action was taken pursuant to the powers and duties  
56 vested in the members of the board under this article.

**§37-14-7. Hearings and orders; entry of order without notice and hearing.**

1 (a) Subject to the provisions of subsection (c) of this  
2 section, notice and hearing shall be provided in advance  
3 of the entry of any order by the board. Such notice shall  
4 be given to the person with respect to whom the hearing  
5 is to be conducted and such hearing and the adminis-  
6 trative procedures in connection therewith shall be  
7 governed by all of the provisions of article five, chapter  
8 twenty-nine-a of this code, and shall be held at a time  
9 and place set by the board, but shall not be held less  
10 than ten or more than thirty days after such notice is  
11 given. A hearing may be continued by the board on its  
12 own motion or for good cause shown. At any such  
13 hearing a party may represent himself or be repres-  
14 ented by an attorney admitted to practice before any  
15 circuit court of this state.

16 (b) The board shall have the power and authority to  
17 issue subpoenas and subpoenas duces tecum, administer  
18 oaths and examine any person under oath in connection  
19 with any subject relating to duties imposed upon or  
20 powers vested in the board.

21 (c) Whenever the board shall find that extraordinary  
22 circumstances exist which require immediate action, it  
23 may forthwith without notice or hearing enter an order  
24 taking any action permitted by this article. Immediately  
25 upon the entry of such order, certified copies thereof  
26 shall be served upon all persons affected thereby and  
27 upon demand such persons shall be entitled to a hearing  
28 thereon at the earliest practicable time.

**§37-14-8. Judicial review; appeals to supreme court of appeals.**

1 (a) Any party to a hearing before the board affected  
2 by any order of the board made and entered after a  
3 hearing as provided in this chapter shall be entitled to  
4 judicial review thereof in the manner provided in article  
5 five, chapter twenty-nine-a of this code.

6 (b) Any such party adversely affected by a final  
7 judgment of a circuit court following judicial review as  
8 provided in subsection (a) of this section may seek  
9 review thereof by appeal to the supreme court of appeals  
10 in the manner provided in article six, chapter twenty-  
11 nine-a of this code.

**§37-14-9. Applications for license.**

1 An individual who desires to engage in real estate  
2 appraisal activity in this state shall make application for  
3 a license, in writing, in such form as the board may  
4 prescribe.

5 To assist the board in determining whether grounds  
6 exist to deny the issuance of a license to an applicant,  
7 the board may require the fingerprinting of every  
8 applicant for an original license.

**§37-14-10. Scope of real estate appraiser license.**

1 A licensed real estate appraiser is authorized to  
2 appraise all types of real estate and real property in this  
3 state, including, but not limited to, commercial, indus-  
4 trial, residential and special purpose.

**§37-14-11. Qualifications for license.**

1 To qualify for a real estate appraiser license, an  
2 applicant shall:

3 (a) Successfully complete not less than forty-five  
4 classroom hours in courses of study approved by the  
5 board which relate to real estate appraisal. The required  
6 forty-five classroom hours shall include (1) not less than  
7 thirty classroom hours of study relating to the basic  
8 principles of land economics and the basic principles of  
9 real estate appraising, and (2) not less than fifteen  
10 classroom hours of study specifically relating to the

11 standards of professional appraisal practice and the  
12 ethical rules to be observed by a real estate appraiser  
13 as required by section twenty-three of this article;

14 (b) Pass an examination administered by the board  
15 that is based upon forty-five classroom hours of apprai-  
16 sal study and is designed to test an individual's  
17 knowledge of the basic principles of land economics, the  
18 basic principles of real estate appraising, the standards  
19 of professional appraisal practice, and the ethical rules  
20 to be observed by a real estate appraiser; and

21 (c) Be of good moral character, in the opinion of the  
22 board.

23 The courses of study referred to in subsection (a) (1)  
24 above must be conducted by (i) an accredited university,  
25 college or junior college; (ii) an approved appraisal  
26 society, institute or association; or (iii) such other school  
27 as may be approved by the board.

#### §37-14-12. Courses of study.

1 In making its determinations with respect to the  
2 courses of study required by section eleven, the board  
3 shall give weight to courses which teach one or more of  
4 the following:

5 (a) Appropriate knowledge of technical terms com-  
6 monly used in or related to real estate appraising,  
7 appraisal report writing and economical concepts  
8 applicable to real estate;

9 (b) An understanding of the basic principles of land  
10 economics, the basic principles of the real estate  
11 appraisal process, and the problems likely to be  
12 encountered in gathering, interpreting, and processing  
13 the data required in the real estate appraisal process;

14 (c) An understanding of the standards for the devel-  
15 opment and communication of real estate appraisals as  
16 provided in this article;

17 (d) An understanding of the ethical rules that a real  
18 estate appraiser is required to observe;

19 (e) Appropriate knowledge of theories of depreciation,

20 cost estimating, methods of capitalization, and the  
21 mathematics of real estate appraisal;

22 (f) An understanding of basic real estate law; and

23 (g) An understanding of the types of misconduct for  
24 which disciplinary proceedings may be initiated against  
25 a licensed real estate appraiser.

**§37-14-13. Term of license.**

1 If the board determines that an applicant meets the  
2 requirements of this act and is qualified for a real estate  
3 appraiser license, it shall issue a license to the applicant  
4 that shall expire one year following the date of issuance  
5 unless revoked or suspended prior thereto. The board  
6 shall approve or deny each application within ninety  
7 days of receipt. If no action is taken within ninety days,  
8 the application will be deemed approved and the board  
9 shall issue the license.

**§37-14-14. Continuing education.**

1 (a) As a prerequisite to renewal of license, a licensed  
2 real estate appraiser shall present evidence satisfactory  
3 to the board of having obtained ten hours of continuing  
4 education.

5 (b) The board shall adopt rules for the implementa-  
6 tion of the provisions of this section to the end of  
7 assuring that each individual renewing his or her  
8 license as a real estate appraiser under this article has  
9 a working knowledge of current real estate appraisal  
10 theories, practices and techniques that will enable such  
11 individual to provide competent real estate appraisal  
12 services to the members of the public and to financial  
13 institutions with whom such individual deals in a  
14 professional relationship under the authority of his or  
15 her real estate appraiser license.

**§37-14-15. Renewal of license.**

1 To renew a current, valid real estate appraiser license,  
2 other than a temporary license issued under section  
3 forty-four of this article, the holder of such license shall  
4 file an application on a form approved by the board and  
5 pay the prescribed renewal fee to the board not earlier

6 than one hundred twenty days nor later than thirty days  
7 prior to the expiration date of the license then held.  
8 Each application for renewal shall be accompanied by  
9 evidence in the form prescribed by the board of having  
10 completed the continuing education requirement for  
11 renewal specified in this article.

12 If a licensee fails to apply for a renewal of his or her  
13 license as a real estate appraiser within the period  
14 prescribed above, such licensee may, within a period of  
15 two years following the expiration date of his or her  
16 license, obtain a renewal of such license by satisfying all  
17 of the requirements for renewal and paying a late  
18 renewal fee. The board may refuse to renew any license  
19 if the licensee has continued to perform real estate  
20 appraisal activities in this state following the expiration  
21 of his or her license.

**§37-14-16. Complaints and investigations relating to real estate appraiser licenses.**

1 The board may, upon its own motion, and shall, upon  
2 the written complaint of any aggrieved person, cause an  
3 investigation to be made with respect to an alleged  
4 violation of section twenty-three of this article by any  
5 licensee or applicant for license in this state. If any  
6 investigation discloses a probable violation of section  
7 twenty-three of this article by a licensee or applicant,  
8 a formal complaint shall be filed. The board shall have  
9 the power to deny, suspend, or revoke a license, issue  
10 a formal reprimand or impose a fine not to exceed five  
11 hundred dollars against an applicant or licensee if, after  
12 hearing and notice as provided in this article, the board  
13 finds that an applicant or licensee has violated the  
14 provisions of section twenty-three of this article.

**§37-14-17. Professional corporations.**

1 Nothing contained in this article shall be deemed to  
2 prohibit any licensee from engaging in the practice of  
3 real estate appraising as a professional corporation in  
4 accordance with the provisions of the professional  
5 service corporation act of this state.

**§37-14-18. Collection of appraisal fees.**

1 No person engaged in the business of real estate  
2 appraising in this state or acting in the capacity of a  
3 real estate appraiser in this state may bring or maintain  
4 any action in any court of this state to collect compen-  
5 sation for the performance of real appraisal services for  
6 which a license is required by this article without  
7 alleging and proving that he or she was the holder of  
8 a valid real estate appraiser license in this state at all  
9 times during the performance of such services.

**§37-14-19. Penalties.**

1 (a) A person required by this article to be licensed  
2 who engages in real estate appraisal activity in this state  
3 without obtaining a license therefor shall be guilty of a  
4 misdemeanor, and, upon conviction, shall be punished  
5 by fine of not less than five hundred dollars nor more  
6 than one thousand dollars and shall be ineligible to  
7 obtain a license for a period of one year from the date  
8 of his or her conviction of such offense: *Provided*, That  
9 the board, at its discretion, may grant a license to such  
10 person within such one-year period upon application,  
11 upon a finding of extenuating circumstances, and after  
12 an administrative hearing thereon.

13 (b) Any person acting or purporting to act as a  
14 certified real estate appraiser without first obtaining a  
15 license to practice under this article is guilty of a  
16 misdemeanor, and, upon conviction, shall be fined not  
17 more than two thousand five hundred dollars or  
18 imprisoned in the county jail for not more than one year,  
19 or both fined and imprisoned.

20 (c) If any person receives any money or the equivalent  
21 thereof as a fee, commission, compensation or profit by  
22 or in consequence of a violation of any provision of this  
23 article, he shall, in addition to the penalties prescribed  
24 above, be subject to a penalty of not less than the sum  
25 of money so received nor more than three times such  
26 sum as may be determined by the court, which penalty  
27 may be recovered in a court of competent jurisdiction  
28 by any person aggrieved as a result of any such  
29 violation.

**§37-14-20. Waiver of license qualification requirements.**

1       Upon an individual review of the qualifications of a  
2 real estate appraiser who is actively engaged in  
3 appraising real estate or real property in this state on  
4 the effective date of this article, the board may waive  
5 the requirements in section eleven of this article relating  
6 to the successful completion of forty-five classroom  
7 hours of appraisal study and the passing of an exam-  
8 ination administered by the board that is based upon  
9 forty-five classroom hours of appraisal study.

10       Within ninety days after the effective date of this  
11 article, the board shall develop general standards and  
12 criteria for its use in conducting an individual review  
13 of the qualifications of a real estate appraiser who is  
14 actively engaged in appraising real estate or real  
15 property in this state. These general standards and  
16 criteria shall include a requirement that an applicant  
17 for a license under this section must have obtained a  
18 minimum of two years of real estate appraisal expe-  
19 rience within the last five years preceding the date of  
20 application. The general standards and criteria devel-  
21 oped by the board shall be printed and distributed  
22 without charge to all presently practicing real estate  
23 appraisers who request a copy.

24       Each real estate appraiser who is actively engaged in  
25 appraising real estate in this state on the effective date  
26 of this article and wishes to apply for a real estate  
27 appraiser's license under the waiver provisions of this  
28 section shall file an application for a license on or before  
29 the thirty-first day of December, one thousand nine  
30 hundred ninety, on a form approved by the board. If a  
31 timely application is filed and the applicant demon-  
32 strates competence and experience satisfactory to the  
33 board, he or she shall be granted a license under the  
34 provisions of this article.

**§37-14-21. Special waiver of license qualification requirements.**

1       The board may waive the requirements of this article  
2 relating to the successful completion of forty-five  
3 classroom hours of appraisal study if an applicant:

4       (1) Submits satisfactory evidence of having obtained



5 a minimum of five years of real estate appraisal  
6 experience within the last seven years preceding the  
7 date of application; and

8 (2) Passes the examination approved by the board  
9 that satisfies the requirement in subsection (b) of section  
10 eleven of this article.

**§37-14-22. Standards of professional appraisal practice.**

1 Each real estate appraiser licensed or certified under  
2 this act shall comply with generally accepted standards  
3 of professional appraisal practice and generally ac-  
4 cepted ethical rules to be observed by a real estate  
5 appraiser. Generally accepted standards of professional  
6 appraisal practice are currently evidenced by the  
7 uniform standards of professional appraisal practice  
8 promulgated by the appraisal foundation; however, after  
9 a public hearing held in accordance with provisions of  
10 the state statutes applicable to public hearings, the  
11 board may make such modifications of or additions to  
12 the uniform standards of professional appraisal practice  
13 as may be appropriate.

**§37-14-23. Prohibited acts and omissions—Licensees.**

1 The following acts and omissions shall be considered  
2 grounds for disciplinary action by the board:

3 (1) Procuring or attempting to procure license under  
4 this article by knowingly making a false statement,  
5 submitting false information or making a material  
6 misrepresentation in an application filed with the board,  
7 or procuring or attempting to procure a license through  
8 fraud or misrepresentation;

9 (2) Paying money other than the fees provided for by  
10 this article to any member or employee of the board to  
11 procure a license under this article;

12 (3) An act or omission in the practice of real estate  
13 appraising which constitutes dishonesty, fraud or  
14 misrepresentation with the intent to substantially  
15 benefit the licensee or another person or with the intent  
16 to substantially injure another person;

17 (4) Entry of a final civil or criminal judgment against

18 a licensee on grounds of fraud, misrepresentation or  
19 deceit in the making of an appraisal of real estate;

20 (5) Conviction, including a conviction based upon a  
21 plea of guilty or nolo contendere, of a crime which is  
22 substantially related to the qualifications, functions or  
23 duties of a person developing real estate appraisals and  
24 communicating real estate appraisals to others;

25 (6) Making a false or misleading statement in that  
26 portion of a written appraisal report that deals with  
27 professional qualifications or in any testimony concern-  
28 ing professional qualifications;

29 (7) Violation of any section of this article, or any rule  
30 promulgated thereunder, other than section twenty-  
31 three;

32 (8) Violation of section twenty-three of this article, or  
33 any rule promulgated thereunder, as determined by  
34 order of the board and related findings of fact;

35 (9) Violation of the confidential nature of government-  
36 al records to which a licensee gained access through  
37 employment or engagement as an appraiser by a  
38 governmental agency; and

39 (10) Acceptance of a fee for performing an independ-  
40 ent appraisal service, when, in fact, the fee is or was  
41 contingent upon the appraiser reporting a predeter-  
42 mined analysis, opinion, or conclusion, or is or was  
43 contingent upon the analysis, opinion, conclusion or  
44 valuation reached, or upon the consequences resulting  
45 from the appraisal assignment.

46 In a disciplinary proceeding based upon a civil  
47 judgment, the licensee shall be afforded an opportunity  
48 to present matters in mitigation and extenuation but  
49 may not collaterally attack the civil judgment.

#### §37-14-24. Classification of service.

1 A client or employer may retain or employ a licensed  
2 or certified real estate appraiser to act as a disinterested  
3 third party in rendering an unbiased estimate of value  
4 or an unbiased analysis, opinion or conclusion. A client  
5 or employer may also retain or employ a licensed or

6 certified real estate appraiser to provide specialized  
7 appraisal services to facilitate the client's or employer's  
8 objectives. In either case, the appraisal and the apprai-  
9 sal report must comply with the provisions of this  
10 article.

11 The term "independent appraisal service" means an  
12 engagement for which an appraiser is employed or  
13 retained to act, or would be perceived by third parties  
14 or the public as acting, as a disinterested third party  
15 in rendering an unbiased analysis, opinion, or conclusion  
16 relating to the nature, quality, value, or utility of  
17 identified real estate or identified real property. The  
18 term "specialized appraisal service" means an engage-  
19 ment to provide an appraisal service which does not fall  
20 within the definition of independent appraisal service.  
21 The term specialized appraisal service may include  
22 valuation appraisals, analysis assignments and review  
23 assignments. Regardless of the intention of the client or  
24 employer, if the appraiser is, in fact, perceived by third  
25 parties or the public as acting as a disinterested third  
26 party in rendering an unbiased analysis, opinion or  
27 conclusion, the work is classified as an independent  
28 appraisal service and not as a specialized appraisal  
29 service.

#### §37-14-25. Contingent fees.

1 A licensed or certified real estate appraiser who  
2 enters into an agreement to perform an independent  
3 appraisal service as defined in section twenty-four of  
4 this article may not accept a fee that is contingent upon  
5 the appraiser reporting a predetermined analysis,  
6 opinion, or conclusion that is contingent upon the  
7 analysis, opinion, or conclusion reached, or is contingent  
8 upon the results achieved by the appraisal assignment.

9 A licensed or certified real estate appraiser who  
10 enters into an agreement to perform a specialized  
11 appraisal service as defined in section twenty-four of  
12 this article may be paid a fixed fee or a fee that is  
13 contingent on the results achieved by the specialized  
14 appraisal service. If a licensed or certified real estate  
15 appraiser enters into an agreement to perform a

16 specialized appraisal service for a contingent fee, this  
17 fact shall be clearly stated in each written and oral  
18 appraisal report. In each written report, this fact shall  
19 be clearly stated in a prominent location in such report  
20 and also in each letter of transmittal and in the  
21 certification statement made by the appraiser in such  
22 report.

**§37-14-26. State certified real estate appraiser; use of term.**

1 No person other than a state certified real estate  
2 appraiser under this article shall assume or use that  
3 title or any title, designation, or abbreviation likely to  
4 create the impression of certification as a real estate  
5 appraiser by this state.

6 Only an individual who has qualified as a state  
7 certified real estate appraiser under this article is  
8 authorized to prepare and sign a certified appraisal  
9 report relating to real estate or real property in this  
10 state.

11 If an appraisal report is prepared and signed by a  
12 state certified real estate appraiser and such appraisal  
13 report is certified as such by the state certified real  
14 estate appraiser, a holder of a real estate appraiser  
15 license under this article who assisted in the preparation  
16 of such appraisal report is authorized to cosign such  
17 appraisal report.

18 An individual who has not qualified as a state  
19 certified real estate appraiser under this article shall  
20 not describe or refer to any appraisal or appraisal report  
21 relating to real estate or real property in this state by  
22 the terms "certified appraisal" or "certified appraisal  
23 report."

**§37-14-27. Certification application.**

1 Applications for original certification, applications for  
2 renewal of certification and applications to take an  
3 examination shall be made in writing to the board on  
4 forms approved by the board.

5 The payment of the appropriate fee must accompany

6 all applications for original certification and renewal of  
7 certification and all applications to take an examination.

8 At the time of filing an application for original  
9 certification or for renewal of certification, each  
10 applicant shall sign a pledge to comply with the  
11 standards of professional appraisal practice and the  
12 ethical rules to be observed by an appraiser that are  
13 established from time to time for state certified real  
14 estate appraisers under this article. Each applicant  
15 shall also certify that he or she understands the types  
16 of misconduct, as set forth in this article, for which  
17 disciplinary proceedings may be initiated against a state  
18 certified real estate appraiser.

#### §37-14-28. Classes of certification.

1 There shall be two classes of certification for state  
2 certified real estate appraisers:

3 (a) *State certified residential real estate appraiser.*—  
4 The state certified residential real estate appraiser  
5 classification shall consist of those persons who meet the  
6 requirements for certification that relate to the apprai-  
7 sal of residential real estate of one to four units, and to  
8 the appraisal of residential real estate of up to twelve  
9 units when a net income capitalization analysis is not  
10 required by the terms of the assignment.

11 (b) *State certified general real estate appraiser.*—The  
12 state certified general real estate appraiser classifica-  
13 tion shall consist of those persons who meet the  
14 requirements for certification relating to the appraisal  
15 of all types of real estate.

16 Each application for original certification or for the  
17 renewal of certification and each application to take an  
18 examination shall specify the classification of certifica-  
19 tion being applied for and, if applicable, the certification  
20 previously granted.

#### §37-14-29. Experience requirement.

1 As a prerequisite to taking the examination for  
2 certification as a state certified real estate appraiser, an  
3 applicant shall present evidence satisfactory to the

4 board that he or she possesses the equivalent of two  
5 years of experience in real property appraisal supported  
6 by adequate written reports or file memoranda. Such  
7 experience, or the equivalent thereof, must be acquired  
8 within a period of five years immediately preceding the  
9 filing of the application for certification.

10 Each applicant for certification shall furnish under  
11 oath a detailed listing of the real estate appraisal reports  
12 or file memoranda for each year for which experience  
13 is claimed by the applicant. Upon request, the applicant  
14 shall make available to the board for examination a  
15 sample of appraisal reports which the applicant has  
16 prepared in the course of his or her appraisal practice.

#### §37-14-30. Education requirement.

1 (a) *Residential classification.*—As a prerequisite to  
2 taking the examination for certification as a state  
3 certified residential real estate appraiser, an applicant  
4 shall present evidence satisfactory to the board that he  
5 or she is the holder of a valid real estate appraiser  
6 license under this act, and either:

7 (1) Has a college degree; or

8 (2) Has successfully completed not less than seventy-  
9 five classroom hours in courses of study approved by the  
10 board. To meet the seventy-five classroom hour require-  
11 ment, an applicant must successfully complete not less  
12 than sixty classroom hours in courses of study approved  
13 by the board which relate to real estate appraisal theory  
14 and practice, plus fifteen classroom hours in courses of  
15 study approved by the board which relate specifically  
16 to the standards of professional appraisal practice, to the  
17 ethical rules to be observed by a real estate appraiser,  
18 and to the provisions of this article. The courses of study  
19 referred to above must be conducted by (1) an accredited  
20 university, college or junior college, (2) an approved  
21 appraisal society, institute or association, or (3) such  
22 other school as may be approved by the board.

23 (b) *General classification.*—As a prerequisite to  
24 taking the examination for certification as a state  
25 certified general real estate appraiser, an applicant

26 shall present evidence satisfactory to the board that he  
27 or she is the holder of a valid real estate appraiser  
28 license under this article, and either:

29 (1) Has a college degree; or

30 (2) Has successfully completed not less than one  
31 hundred sixty-five classroom hours in courses of study  
32 approved by the board. To meet the one hundred sixty-  
33 five classroom hour requirement, an applicant must  
34 successfully complete not less than one hundred fifty  
35 classroom hours in courses of study approved by the  
36 board which relate to real estate appraisal theory and  
37 practice, plus fifteen classroom hours in courses of study  
38 approved by the board which relate specifically to the  
39 standards of professional appraisal practice, to the  
40 ethical rules to be observed by a real estate appraiser,  
41 and to the provisions of this article. The courses of study  
42 referred to above must be conducted by (1) an accredited  
43 university, college or junior college, (2) an approved  
44 appraisal society, institute or association, or (3) such  
45 other school as may be approved by the board.

**§37-14-31. Examination required.**

1 An original certification as a state certified real estate  
2 appraiser shall not be issued to any person who has not  
3 demonstrated through a written examination process  
4 that he or she possesses the following:

5 (a) Appropriate knowledge of technical terms com-  
6 monly used in or related to real estate appraising,  
7 appraisal report writing, and economic concepts appli-  
8 cable to real estate;

9 (b) An understanding of the basic principles of land  
10 economics, the basic principles of the real estate  
11 appraisal process, and the problems likely to be  
12 encountered in gathering, interpreting, and processing  
13 the data that is required in the real estate appraisal  
14 process;

15 (c) An understanding of the standards for the devel-  
16 opment and communication of real estate appraisals as  
17 provided in this article;

18 (d) An understanding of the ethical rules that a real  
19 estate appraiser is required to observe;

20 (e) Knowledge of theories of depreciation, cost esti-  
21 mating, methods of capitalization, and the mathematics  
22 of real estate appraisal that are appropriate for the  
23 classification of certification applied for;

24 (f) Knowledge of such other principles and procedures  
25 as may be appropriate for the classification of certifi-  
26 cation applied for;

27 (g) An understanding of basic real estate law; and

28 (h) An understanding of the types of misconduct for  
29 which disciplinary proceedings may be initiated against  
30 a state certified real estate appraiser, as set forth in this  
31 article.

#### **§37-14-32. Term of certification.**

1 The initial certification issued pursuant to this article  
2 shall expire upon the expiration date of the license held  
3 by the certificate holder. Thereafter, a certification  
4 issued pursuant to this article shall expire four years  
5 from the date of issuance or upon the date that the state  
6 certified appraiser no longer holds a valid license as a  
7 real estate appraiser in this state, whichever first  
8 occurs. The scheduled expiration date of the certificate  
9 shall appear on the certificate and no other notice of its  
10 expiration need be given to its holder.

#### **§37-14-33. Renewal of certification.**

1 To obtain a renewal of certification as a state certified  
2 real estate appraiser under this act, the holder of a  
3 current, valid certification shall make application and  
4 pay the prescribed fee to the board no earlier than one  
5 hundred twenty days nor later than thirty days prior to  
6 the expiration date of the certification then held. Each  
7 application for renewal shall be accompanied by  
8 evidence in the form prescribed by the board of having  
9 completed the continuing education requirements for  
10 renewal specified in this article.

11 If the board determines that an applicant for renewal  
12 has failed to meet the requirements for renewal of



13 certification through mistake, misunderstanding, or  
14 circumstances beyond the control of the applicant, the  
15 board may extend the term of the applicant's certifica-  
16 tion for a period not to exceed six months upon payment  
17 by the applicant of a prescribed fee for the extension.  
18 If the applicant for renewal of certification satisfies the  
19 requirements for renewal during the extension period,  
20 the beginning date of his or her renewal certificate shall  
21 be the day following the expiration of the certificate  
22 previously held by the applicant.

23 If a state certified real estate appraiser under this  
24 article fails to renew his or her certification prior to its  
25 expiration or within any period of extension granted by  
26 the board pursuant to this article, such person may  
27 obtain a renewal of his or her certification by satisfying  
28 all of the requirements for renewal and filing an  
29 application for renewal, accompanied by a late renewal  
30 fee, within two years of the date that his or her  
31 certification expired.

**§37-14-34. Basis for denial.**

1 The board may deny the issuance of a certificate as  
2 a state certified real estate appraiser to an applicant on  
3 any ground enumerated in this article. Any applicant  
4 whose application for certification is denied may  
5 demand and shall be afforded a hearing pursuant to  
6 section seven of this article.

**§37-14-35. Use of term "state certified real estate appraiser."**

1 The term "state certified real estate appraiser" may  
2 be used to refer only to an individual who is a state  
3 certified real estate appraiser under this article and  
4 may not be used following, or immediately in connection  
5 with, the name or signature of a firm, partnership,  
6 corporation, group, or in such manner that it might be  
7 interpreted as referring to a firm, partnership, corpo-  
8 ration or group or to anyone other than the individual  
9 who is certified under this article. This requirement  
10 shall not be construed to prevent a state certified real  
11 estate appraiser from signing an appraisal report on  
12 behalf of a corporation, partnership, firm or group

13 practice if it is clear that only the individual is certified  
14 and that the corporation, partnership, firm or group  
15 practice is not. No certificate shall be issued under the  
16 provisions of this acticle to a corporation, partnership,  
17 firm or group.

**§37-14-36. Continuing education requirement.**

1 As a prerequisite to renewal of certification, a state  
2 certified real estate appraiser shall present evidence  
3 satisfactory to the board of having met the continuing  
4 education requirements of this section.

5 The basic continuing education requirement for  
6 renewal of certification shall be the completion by the  
7 applicant, during the immediately preceding term of  
8 certification, of not less than ten classroom hours of  
9 instruction per year in courses or seminars which have  
10 received the approval of the board.

11 In lieu of meeting the requirements set forth above,  
12 an applicant for recertification may satisfy all or part  
13 of the requirements by presenting evidence of the  
14 following:

15 (a) Completion of an educational program of study  
16 determined by the board to be equivalent, for continuing  
17 education purposes, to courses or seminars approved by  
18 the board; or

19 (b) Participation other than as a student in educa-  
20 tional processes and programs approved by the board  
21 which relate to real property appraisal theory, practices  
22 or techniques, including, but not necessarily limited to,  
23 teaching, program development and preparation of  
24 textbooks, monographs, articles and other instructional  
25 materials.

26 The board shall develop rules for the implementation  
27 of the provisions of this section to the end of assuring  
28 that an individual who renews his or her certification  
29 as a state certified real estate appraiser under this  
30 article has a working knowledge of current real estate  
31 appraisal theories, practices and techniques that will  
32 enable such individual to provide competent real estate  
33 appraisal services to the members of the public with

34 whom such individual deals in a professional relation-  
35 ship under the authority of his or her certification. All  
36 rules shall be promulgated pursuant to the provisions of  
37 chapter twenty-nine-a of this code and shall prescribe  
38 the following:

39 (1) Policies and procedures to be followed in approval  
40 of courses of instruction and seminars;

41 (2) Standards, policies and procedures to be used in  
42 evaluating an applicant's claim of equivalency;

43 (3) Standards, monitoring methods, and systems for  
44 recording attendance to be employed by course and  
45 seminar sponsors as a prerequisite to approval of  
46 courses and seminars for credit.

47 In developing and proposing rules pursuant to this  
48 section, the board shall give consideration to courses of  
49 instruction, seminars, and other appraisal education  
50 programs developed by or under the auspices of  
51 organizations or associations of professional real estate  
52 appraisers which are utilized by such organizations or  
53 associations for the purpose of awarding real estate  
54 appraisal designations or indicating compliance with  
55 the continuing education requirements of such organi-  
56 zations or associations.

57 No amendment or repeal of a rule adopted by the  
58 board pursuant to this section shall operate to deprive  
59 a state certified real estate appraiser of credit toward  
60 renewal of his or her certification for any course of  
61 instruction or seminar that has been completed by such  
62 state certified real estate appraiser prior to the adoption  
63 of the rule.

64 On or after the first day of January, one thousand nine  
65 hundred ninety-one, a certification as a state certified  
66 real estate appraiser that has been revoked or suspended  
67 as the result of a disciplinary action taken by the board  
68 shall not be reinstated unless the applicant for reinstatement  
69 presents evidence that he or she has completed the  
70 continuing education requirement that is provided in  
71 this acticle for the renewal of certification. This  
72 continuing education requirement shall not be imposed

73 upon an applicant for reinstatement who has been  
74 required by the board to successfully complete the  
75 examination for state certified real estate appraiser  
76 required by section thirty-one of this article as a  
77 condition for reinstatement of certification.

**§37-14-37. Prohibited acts and omissions—State certified  
real estate appraisers.**

1 An application for certification or recertification may  
2 be denied, and the rights of any state certified real  
3 estate appraiser may be revoked or suspended, or the  
4 holder of the certificate may be otherwise disciplined in  
5 accordance with the provisions of this article, for any of  
6 the following acts or omissions:

7 (a) Failing to meet the minimum qualifications for  
8 state certification established by or pursuant to this  
9 article;

10 (b) Procuring or attempting to procure state certifi-  
11 cation pursuant to this article by knowingly making a  
12 false statement, submitting false information, or making  
13 a material misrepresentation in an application filed  
14 with the board or procuring or attempting to procure  
15 state certification through any form of fraud or  
16 misrepresentation;

17 (c) Paying money other than the fees provided for in  
18 this article to any member or employee of the board to  
19 procure state certification under this article;

20 (d) Violation of section twenty-three of this article, or  
21 any rule promulgated thereunder;

22 (e) Failure or refusal without good cause to exercise  
23 reasonable diligence in developing an appraisal, prepar-  
24 ing an appraisal report or communicating an appraisal;  
25 and

26 (f) Negligence or incompetence in developing an  
27 appraisal, preparing an appraisal report, or communi-  
28 cating an appraisal.

**§37-14-38. Disciplinary proceedings.**

1 The board may investigate the actions of a state

2 certified real estate appraiser or an applicant for  
3 certification or recertification and may, upon com-  
4 pliance with the procedural requirements set forth in  
5 section seven of this article, revoke or suspend both the  
6 license and the certificate or otherwise discipline a state  
7 certified real estate appraiser, or deny an application,  
8 for any of the acts or omissions set forth in section  
9 thirty-seven herein.

10 If an investigation indicates that a state certified real  
11 estate appraiser under this act has violated section  
12 thirty-seven of this article, a formal complaint shall be  
13 prepared by the board staff and served upon such state  
14 certified real estate appraiser. This complaint shall  
15 require the accused party to file an answer to the  
16 complaint within twenty days of the date of service.

17 In responding to a complaint filed by the staff of the  
18 board, the accused party may admit the allegations of  
19 the complaint, deny the allegations of the complaint or  
20 otherwise plead. Failure to make a timely response shall  
21 be deemed an admission of the allegations of the  
22 complaint. Upon receipt of an answer to the complaint,  
23 the board shall refer the file to the chairperson of the  
24 board. Upon receipt of such file, the chairperson of the  
25 board shall set a date, time and place for a hearing on  
26 the complaint. The date of the hearing shall not be less  
27 than thirty nor more than ninety days from the date that  
28 the file is received, unless such date is extended by the  
29 board for good cause shown.

### §37-14-39. Hearing and judicial review.

1 The hearing on the allegations in the complaint shall  
2 be at the time and place prescribed by the board and  
3 in the manner set forth in section seven of this article.  
4 If, at the conclusion of the hearing, the board determines  
5 that a state certified real estate appraiser is guilty of  
6 a violation of any of the provisions of this article, it shall  
7 prepare a formal decision that shall contain findings of  
8 fact and a recommendation concerning the appropriate  
9 disciplinary action to be taken.

10 Upon receipt of a decision containing findings of fact  
11 and a recommendation, the board shall carefully review

12 the decision, the findings of fact and the recommenda-  
13 tion made and take such disciplinary action as the board  
14 deems appropriate. Disciplinary actions include suspen-  
15 sion and revocation of certification, suspension and  
16 revocation of license and formal reprimand.

17 Any party to a hearing before the board affected by  
18 any order of the board made and entered after a hearing  
19 as provided in this chapter shall be entitled to judicial  
20 review as provided in section eight of this article.

**§37-14-40. Licensing and certification fees.**

1 The board shall charge and collect appropriate fees  
2 annually for its services under this article. The fees  
3 charged by the board shall not exceed the amounts  
4 indicated below:

5 (1) A license application fee of fifty dollars;

6 (2) A license examination fee of twenty-five dollars;

7 (3) A license renewal fee of fifty dollars;

8 (4) A delinquent license renewal fee of seventy  
9 dollars;

10 (5) A temporary license fee of thirty dollars;

11 (6) A certification application fee of two hundred fifty  
12 dollars;

13 (7) A certification examination fee of one hundred  
14 dollars;

15 (8) A certification renewal fee of one hundred dollars;

16 (9) A delinquent certification renewal fee of two  
17 hundred dollars;

18 (10) The board is also required to collect from  
19 individuals who perform or seek to perform appraisal  
20 transactions where required by federal law an annual  
21 registry fee in an amount to be set by regulation in order  
22 to enable the board to transfer the necessary fees to the  
23 appraisal subcommittee of the Federal Financial  
24 Institution Examination Council.

25 All fees and revenues collected by the board pursuant

26 to this act shall be deposited in a special fund that shall  
27 be used solely for the purpose of paying the expenses  
28 incurred in connection with the administration of this  
29 article.

**§37-14-41. Licenses, certificates and related records.**

1 The board shall issue to each licensee a document  
2 stating that such licensee has been licensed under this  
3 article and specifying the expiration date.

4 The board shall issue to each state certified real estate  
5 appraiser under this article a certificate evidencing  
6 such certification and specifying the expiration date. A  
7 certificate issued under authority of this article shall  
8 bear a certificate number assigned by the board. When  
9 signing a certified appraisal report, a state certified real  
10 estate appraiser shall place his or her certificate  
11 number adjacent to or immediately below his or her title  
12 of "State certified residential real estate appraiser" or  
13 "State certified general real estate appraiser." Such  
14 certificate number shall also be used in all statements  
15 of qualification, contracts or other instruments, includ-  
16 ing advertising media used by the certificate holder,  
17 when reference is made to his or her status as a state  
18 certified real estate appraiser.

19 License documents and certificates shall remain the  
20 property of the state, and, upon any suspension or  
21 revocation of a license or certification pursuant to this  
22 acticle, the individual holding the related license  
23 document and certificate shall immediately return such  
24 license document and certificate to the board.

25 The board shall maintain and keep open for public  
26 inspection during office hours a complete and properly  
27 indexed record of all applications for license or certifi-  
28 cation received, licenses and certificates issued, licenses  
29 and certificates renewed, and licenses and certificates  
30 revoked, canceled or suspended under the provisions of  
31 this article. A copy of any such record shall be made  
32 available to the public, upon application to the board,  
33 at such reasonable price per copy as may be fixed by  
34 the board.

**§37-14-42. Roster of licensed appraisers and certified appraisers.**

1 The board shall publish annually a roster of all  
2 licensed and certified appraisers and transmit the roster  
3 annually to the applicable federal regulator. A copy of  
4 such roster shall be made available to the public, upon  
5 application to the board, at such reasonable price per  
6 copy as may be fixed by the board.

**§37-14-43. Certificate of good standing.**

1 The board may, upon payment of a fee in an amount  
2 specified by rule, issue a certificate of good standing to  
3 any licensed real estate appraiser or any certified real  
4 estate appraiser who is in good standing in this state.

**§37-14-44. Licensure and certification of nonresidents.**

1 (a) *Consent to service of process.*—Each applicant for  
2 licensure and each applicant for certification who is not  
3 a resident of this state shall submit, with his or her  
4 application, an irrevocable consent that service of  
5 process upon him or her may be made by delivery of  
6 the process to the secretary of state if, in an action  
7 against the applicant in a court of this state arising out  
8 of the applicant's activities as a real estate appraiser in  
9 this state, the plaintiff cannot, in the exercise of due  
10 diligence, effect personal service upon the applicant.

11 (b) *Nonresident license.*—A nonresident of this state  
12 who has complied with the provisions of subsection (a)  
13 of this section may obtain a license as a real estate  
14 appraiser in this state by complying with all of the  
15 provisions of this article relating to the licensing of real  
16 estate appraisers.

17 (c) *Temporary License.*—A nonresident of this state  
18 who has complied with the provisions of subsection (a)  
19 of this section may obtain a temporary license to  
20 perform a contract relating to the appraisal of real  
21 estate or real property in this state. To qualify for the  
22 issuance of a temporary license, an applicant shall:

23 (1) Submit an application on a form approved by the  
24 board;



25 (2) Submit evidence that he or she is licensed or  
26 otherwise authorized to appraise real estate and real  
27 property in his or her state of domicile;

28 (3) Submit a copy of the contract for appraisal  
29 services that requires the applicant to appraise real  
30 estate or real property in this state and certify that such  
31 contract is in full force and effect;

32 (4) Certify that disciplinary proceedings are not  
33 pending against the applicant in the applicant's state of  
34 domicile; and

35 (5) Pay the temporary license fee set forth in section  
36 forty of this article.

37 No more than three temporary licenses shall be  
38 granted to an individual in any three-year period.

39 A temporary license issued under this section shall be  
40 expressly limited to a grant of authority to perform the  
41 appraisal work required by the contract for appraisal  
42 services that is submitted with the application for a  
43 temporary license. Each temporary license shall expire  
44 upon the completion of the appraisal work required by  
45 the contract for appraisal services or upon the expira-  
46 tion of a period six months from the date of issuance,  
47 whichever shall first occur. A temporary license may  
48 not be renewed.

49 (d) *License by reciprocity.*—If, in the determination of  
50 the board, another state or territory or the District of  
51 Columbia is deemed to have substantially equivalent  
52 license laws for real estate appraisers, an applicant for  
53 license in this state who is licensed under the law of such  
54 other state, territory or district may obtain a license as  
55 a real estate appraiser in this state upon such terms and  
56 conditions as may be determined by the board: *Provided,*  
57 That the laws of such state, territory or district accord  
58 substantially equal reciprocal rights to a licensed real  
59 estate appraiser in good standing in this state: *Provided,*  
60 *however,* That disciplinary proceedings are not pending  
61 against such applicant in his or her state of license.

62 (e) *Nonresident certification.*—A nonresident of this  
63 state may be certified as a state certified real estate

64 appraiser under this act by complying with all of the  
65 provisions of this article relating to state certified real  
66 estate appraisers.

67 (f) *Nonresident certification by reciprocity.*—If, in the  
68 determination of the board, another state, territory or  
69 the District of Columbia is deemed to have substantially  
70 equivalent certification requirements, an applicant who  
71 is certified under the laws of such other state, territory  
72 or district may be certified as a state certified real  
73 estate appraiser upon such terms and conditions as may  
74 be determined by the board.

75 If the appraiser's business is of a temporary nature,  
76 and if the property to be appraised is part of a federally  
77 related transaction, and if the appraiser is registered  
78 with the appraiser licensing or certifying agency of  
79 another state, the board shall recognize the license or  
80 certification of such appraiser.

#### §37-14-45. Attorney general opinions and duties.

1 At the request of the board, the state attorney general  
2 shall render to the board an opinion with respect to all  
3 questions of law arising in connection with the admin-  
4 istration of this article and shall act as attorney for the  
5 board in all actions and proceedings brought by or  
6 against the board under, or pursuant to, any of the  
7 provisions of this article. All fees and expenses of the  
8 attorney general arising out of such duties shall be paid  
9 out of the special fund created under this acticle to pay  
10 the expenses of the administration of this article.

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## CHAPTER 166

(H. B. 4060—By Delegate Farley)

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[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section fourteen, article one-  
a, chapter forty-seven of the code of West Virginia, one  
thousand nine hundred thirty-one, as amended, relating  
to removing the annual registration fee for dealers and  
retailers of articles of bedding.

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

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

**ARTICLE 1A. BEDDING AND UPHOLSTERY BUSINESS.**

**§47-1A-14. Annual registration fees.**

1 The annual registration fee for all manufacturers  
2 shipping or selling articles of bedding, as defined in this  
3 article, in the state of West Virginia shall be fifty  
4 dollars, payable on the first day of the fiscal year.

5 The annual registration fee for an upholsterer or  
6 renovator of articles of bedding, as defined in this  
7 article, in the state of West Virginia shall be ten dollars,  
8 payable on the first day of the fiscal year.

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## CHAPTER 167

(Com. Sub. for H. B. 2788—By Delegates Damron and Seacrist)

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[Passed March 9, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections thirteen and twenty-six-a, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing that an actuarial valuation report is to be prepared every five years, making all retirees, surviving spouses or future retirees eligible for a supplement cost of living benefit after the first day of July, one thousand nine hundred ninety.

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

That sections thirteen and twenty-six-a, article twenty-two, 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 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.**

§8-22-13. Reports by board of trustees.

§8-22-26a. Supplemental pension benefits entitlement; benefit payable; application of section; construction.

**§8-22-13. Reports by board of trustees.**

1 The board of trustees for each retirement fund shall  
2 have regularly scheduled actuarial valuation reports  
3 prepared by a qualified actuary.

4 An actuarial valuation report shall be prepared at  
5 least once every five years commencing with the later  
6 of (1) the first day of July, one thousand nine hundred  
7 eighty-seven, or (2) five years following the most  
8 recently prepared actuarial valuation report.

9 For purposes of this section the term "qualified  
10 actuary" means only an actuary who is a member of the  
11 society of actuaries or the American academy of  
12 actuaries. The qualified actuary shall be designated a  
13 fiduciary and shall discharge his duties with respect to  
14 a fund solely in the interest of the members and  
15 members' beneficiaries of that fund. In order for the  
16 standard of this section to be met, the qualified actuary  
17 shall certify that the actuarial valuation report is  
18 complete and accurate and that in his opinion the  
19 technique and assumptions used are reasonable and  
20 meet the requirements of this section of this article.

21 The board of trustees shall submit to the governing  
22 body an annual report showing the condition of the fund  
23 under its control. It shall certify in such report the  
24 amount of accumulated cash and securities in the fund  
25 and shall present a full account of the operation of the  
26 system.

**§8-22-26a. Supplemental pension benefits entitlement;  
benefit payable; application of section;  
construction.**

1 (a) On and after the first day of July, one thousand  
2 nine hundred ninety, all retirees, surviving spouses or  
3 future retirees thereafter shall receive as a supplement-  
4 al pension benefit an amount based on a percentage  
5 increase equal to any increase in the consumer price

6 index as calculated by the United States Department of  
7 Labor, Bureau of Statistics, for the preceding year. The  
8 supplemental pension benefit payable under the provi-  
9 sions of this section shall be paid in equal monthly  
10 installments.

11 (b) This section shall be construed liberally to effec-  
12 tuate the purpose of establishing minimum pension  
13 benefits under this article for members and surviving  
14 spouses.

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## CHAPTER 168

(Com. Sub. for H. B. 4693—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)

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[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six, relating to the small business expansion assistance program; and providing that a qualified small business may be partially reimbursed by the governor's office of community and industrial development for the total cost of obtaining consulting services from a qualified consultant for the purpose of implementing a qualified plan.

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

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

### ARTICLE 6. SMALL BUSINESS EXPANSION ASSISTANCE PROGRAM.

- §5B-6-1. Legislative purpose.
- §5B-6-2. Definitions.
- §5B-6-3. Small business expansion assistance program.
- §5B-6-4. Application.
- §5B-6-5. Certification; reimbursement.

**§5B-6-1. Legislative purpose.**

1 Small businesses operating within this state, due to  
2 the rapidly changing economic environment, must  
3 compete not only with large in-state and national firms,  
4 but also with international firms with greater access to  
5 the tools and resources of modern-day businesses. Small  
6 businesses serve vital functions of enhancing competi-  
7 tion, breeding innovation, and providing much-needed  
8 jobs in West Virginia's communities. Therefore, small  
9 businesses must be encouraged and offered the oppor-  
10 tunity to improve the manner in which they operate so  
11 that they may continue to serve these vital functions.

12 The purpose of this article is to assist and encourage  
13 small businesses within this state to increase both their  
14 level and efficiency of production, and to expand the  
15 market for their products both within and without this  
16 state.

**§5B-6-2. Definitions.**

1 As used in this article:

- 2 (1) "Small business" means any business or enterprise  
3 of any type, whether sole proprietorship, partnership,  
4 corporation, or otherwise, which meets the following  
5 criteria:
- 6 (A) Employs at least ten but not more than one  
7 hundred persons;
- 8 (B) Has been engaged in the same business in the  
9 state for a minimum of one year;
- 10 (C) Is in good standing with the department of tax  
11 and revenue; and
- 12 (D) Can demonstrate that a significant portion of  
13 their product is exported out of state or that the  
14 opportunity exists for a significant portion of their  
15 product to be exported out of state;
- 16 (2) "Total cost" means any and all fees actually  
17 charged to a qualified small business by a qualified  
18 consultant as presented in the application for the small  
19 business expansion assistance program;

20 (3) "Qualified consultant" means any persons engaged  
21 in the business of providing consulting services in areas  
22 of expertise needed by a certified small business, who  
23 is registered with the governor's office of community  
24 and industrial development as a provider of services to  
25 small business and who possesses at least the following  
26 credentials:

27 (A) Has been established as a consulting business for  
28 at least five years, three years of which they must have  
29 been established in business in West Virginia; and

30 (B) Is in good standing with the department of tax  
31 and revenue;

32 (4) "Plan" means a plan by which a small business  
33 seeks to increase their level of productivity or efficiency,  
34 expand into a new product area, develop new markets  
35 or in general to overcome barriers to growth; and

36 (5) "Consultant's report" means a written report by  
37 the consultant containing recommendations on how the  
38 small business may proceed to overcome barriers they  
39 have identified in their plan. A duplicate copy of the  
40 consultant's report must also be submitted to the  
41 governor's office of community and industrial develop-  
42 ment for their review.

#### §5B-6-3. Small business expansion assistance program.

1 There is hereby created within the governor's office  
2 of community and industrial development a program for  
3 small business expansion assistance. The director of the  
4 governor's office of community and industrial develop-  
5 ment shall establish a voucher program to be utilized  
6 by qualified small businesses to defray certain costs that  
7 may be incurred by these small businesses in an effort  
8 to expand the market for their products, increase both  
9 their level and efficiency of production and address  
10 other areas that may be a hindrance to the growth of  
11 small business in this state: *Provided*, That the total  
12 expenditures for this program shall not exceed one  
13 hundred thousand dollars.

#### §5B-6-4. Application.

1 The director of the governor's office of community and  
2 industrial development shall establish criteria and an

3 application process to be used to determine approval or  
4 denial for participation in the voucher program. The  
5 application from the qualified small business shall  
6 contain at least the following information: The number  
7 of persons employed by the applicant; the total capital-  
8 ization of the small business; an explanation of the need  
9 for the service to be obtained and how that service will  
10 impact the small business; an estimate of the cost of the  
11 services to be obtained; information on product market  
12 area; and the number of years in business.

13 The governor's office of community and industrial  
14 development shall accept applications for this program  
15 on the first day of each month and shall notify the  
16 applicant of their decision for approval or denial within  
17 thirty days of the day of receipt.

**§5B-6-5. Certification; reimbursement.**

1 Any small business which satisfies the requirements  
2 for proper application as set forth in section four of this  
3 article shall be approved by the governor's office of  
4 community and industrial development as a certified  
5 small business and is eligible for reimbursement for up  
6 to fifty percent of the total cost of obtaining consulting  
7 services from a qualified consultant, or one thousand  
8 five hundred dollars, whichever is less: *Provided*, That  
9 in order for an applicant to be approved as a certified  
10 small business said applicant may not have been so  
11 certified at any time previously.

12 Upon certification, the governor's office of community  
13 and industrial development shall issue to said certified  
14 small business a voucher on which shall be stated either  
15 the percentage, not to exceed fifty percent or a certain  
16 dollar amount, not to exceed one thousand five hundred  
17 dollars of the amount which the certified small business  
18 may expect to be reimbursed for services delivered by  
19 their consultant.

20 Upon presentation to the governor's office of commun-  
21 ity and industrial development of a paid invoice or other  
22 satisfactory proof of payment to a company registered  
23 with the governor's office of community and industrial



- 24 development in the voucher program, the office shall  
25 issue reimbursement in the amount previously certified  
26 on the voucher, to the certified small business.

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## CHAPTER 169

(Com. Sub. for H. B. 4364—By Mr. Speaker, Mr. Chambers,  
and Delegate Wooton)

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[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section twenty-two, article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two and four-a, article five-f, chapter twenty of said code; to further amend said article by adding thereto a new section, designated section four-b; to amend and reenact sections five, five-b and five-c of said article; to amend and reenact sections one, two and seven, article nine of said chapter; to further amend said article by adding thereto ten new sections, designated sections ten-a, ten-b, ten-c, ten-d, ten-e, ten-f, ten-g, ten-h, ten-i and ten-j; to amend and reenact sections twelve, twelve-a, twelve-b and twelve-c of said article; and to further amend said article by adding thereto a new section, designated section twelve-d, all relating to county solid waste assessment fees; adding additional legislative findings and definitions; requiring site approval permits for all solid waste disposal facilities; establishing priority for disposal needs; establishing special provision for residential solid waste disposal; setting priorities of disposal at a permit site; requiring bonding of solid waste facilities operating under a compliance order; making performance bonds liable for thirty years after closure of a permit site; eliminating ninety-day comment period by a county or regional solid waste authority on a pre-siting notice; requiring county and regional solid waste authorities to establish a waste management hierarchy; extending until one thousand nine hundred ninety-one the time within which county and regional solid waste authorities

must submit comprehensive litter and solid waste control plans and commercial solid waste facility siting plans; providing for bonds and notes for constructing or acquiring or improving or extending solid waste facilities; allowing referendums on the continuation of establishment of Class A landfills; extending until one thousand nine hundred ninety-two the requirements regarding interim site approval; and making the solid waste assessment fee permanent.

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

That section twenty-two, article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one, two and four-a, article five-f of chapter twenty be amended and reenacted; that said article be further amended by adding thereto a new section, designated section four-b; that sections five, five-b and five-c of said article be amended and reenacted; that sections one, two and seven, article nine of said chapter be amended and reenacted; that said article be further amended by adding thereto ten new sections, designated sections ten-a, ten-b, ten-c, ten-d, ten-e, ten-f, ten-g, ten-h, ten-i and ten-j; that sections twelve, twelve-a, twelve-b and twelve-c of said article be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twelve-d, all to read as follows:

#### Chapter

- 7. County Commissions and Officers.
- 20. Natural Resources.

### CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

#### ARTICLE 5. FISCAL AFFAIRS.

##### §7-5-22. County solid waste assessment fees authorized.

- 1 Each county or regional solid waste authority is
- 2 hereby authorized to impose a similar solid waste
- 3 assessment fee to that imposed by section five, article
- 4 five-f, chapter twenty of this code at a rate not to exceed
- 5 fifty cents per ton or part thereof upon the disposal of
- 6 solid waste in that county or region. All assessments due
- 7 shall be applied to the reasonable costs of administration

8 of the county's regional or county solid waste authority  
9 including the necessary and reasonable expenses of its  
10 members, and any other expenses incurred from refuse  
11 cleanup, litter control programs, or any solid waste  
12 programs deemed necessary to fulfill its duties.

## CHAPTER 20. NATURAL RESOURCES.

### Article

#### 5F. Solid Waste Management Act.

#### 9. County and Regional Solid Waste Authorities.

### ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.

§20-5F-1. Purpose and legislative findings.

§20-5F-2. Definitions.

§20-5F-4a. Certificate for site approval required for certain solid waste disposal facilities; fee required.

§20-5F-4b. Special provision for residential solid waste disposal.

§20-5F-5. Prohibitions; permits required; priority of disposal.

§20-5F-5b. Performance bonds; amount and method of bonding; bonding requirements; period of bond liability.

§20-5F-5c. Pre-siting notice.

#### §20-5F-1. Purpose and legislative findings.

1 (a) The purpose of this article is to transfer jurisdic-  
2 tion over the management of solid waste under section  
3 nine, article one, chapter sixteen of the code from the  
4 division of health to the division of natural resources and  
5 to establish a comprehensive program of controlling  
6 solid waste disposal.

7 (b) The Legislature finds that uncontrolled, inade-  
8 quately controlled and improper collection, transporta-  
9 tion, processing and disposal of solid waste (1) is a public  
10 nuisance and a clear and present danger to people; (2)  
11 provides harborage and breeding places for disease-  
12 carrying, injurious insects, rodents and other pests  
13 harmful to the public health, safety and welfare; (3)  
14 constitutes a danger to livestock and domestic animals;  
15 (4) decreases the value of private and public property,  
16 causes pollution, blight and deterioration of the natural  
17 beauty and resources of the state and has adverse  
18 economic and social effects on the state and its citizens;  
19 (5) results in the squandering of valuable nonrenewable  
20 and nonreplenishable resources contained in solid waste;

21 (6) that resource recovery and recycling reduces the  
22 need for landfills and extends their life; and that (7)  
23 proper disposal, resource recovery or recycling of solid  
24 waste is for the general welfare of the citizens of this  
25 state.

26 (c) The Legislature further finds that disposal in West  
27 Virginia of solid waste from unknown origins threatens  
28 the environment and the public health, safety and  
29 welfare, and therefore, it is in the interest of the public  
30 to identify the type, amount and origin of solid waste  
31 accepted for disposal at West Virginia solid waste  
32 facilities.

33 (d) The Legislature further finds that other states of  
34 these United States of America have imposed stringent  
35 standards for the proper collection and disposal of solid  
36 waste and that the relative lack of such standards and  
37 enforcement for such activities in West Virginia has  
38 resulted in the importation and disposal in the state of  
39 increasingly large amounts of infectious, dangerous and  
40 undesirable solid wastes and hazardous waste from  
41 other states by persons and firms who wish to avoid the  
42 costs and requirements for proper, effective and safe  
43 disposal of such wastes in the states of origin.

44 (e) The Legislature further finds that Class A land-  
45 fills often have capacities far exceeding the needs of the  
46 state or the areas of the state which they serve and that  
47 such landfills create special environmental problems  
48 that require statewide coordination of the management  
49 of such landfills.

#### §20-5F-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 solid  
4 waste facility or practice which has a valid permit  
5 under this article;

6 (b) "Chief" shall mean the chief of the section of waste  
7 management of the division of natural resources;

8 (c) "Commercial solid waste facility" means any solid

9 waste facility which accepts solid waste generated by  
10 sources other than the owner or operator of the facility  
11 and shall not include an approved solid waste facility  
12 owned and operated by a person for the sole purpose of  
13 disposing of solid wastes created by that person or such  
14 person and other persons on a cost-sharing or nonprofit  
15 basis;

16 (d) "Division" shall mean the division of natural  
17 resources;

18 (e) "Director" shall mean the director of the division  
19 of natural resources;

20 (f) "Open dump" means any solid waste disposal  
21 which does not have a permit under this article, or is  
22 in violation of state law, or where solid waste is disposed  
23 in a manner that does not protect the environment;

24 (g) "Person," "persons" or "applicant" shall mean any  
25 industrial user, public or private corporation, institu-  
26 tion, association, firm or company organized or existing  
27 under the laws of this or any other state or country; state  
28 of West Virginia; governmental agency, including  
29 federal facilities; political subdivision; county commis-  
30 sion; municipal corporation; industry; sanitary district;  
31 public service district; drainage district; soil conserva-  
32 tion district; watershed improvement district; partner-  
33 ship; trust; estate; person or individual; group of persons  
34 or individuals acting individually or as a group; or any  
35 legal entity whatever;

36 (h) "Sludge" means any solid, semisolid, residue or  
37 precipitate, separated from or created by a municipal,  
38 commercial or industrial waste treatment plant, water  
39 supply treatment plant or air pollution control facility  
40 or any other such waste having similar origin;

41 (i) "Solid waste" means any garbage, paper, litter,  
42 refuse, cans, bottles, sludge from a waste treatment  
43 plant, water supply treatment plant or air pollution  
44 control facility, other discarded material, including  
45 carcasses of any dead animal or any other offensive or  
46 unsightly matter, solid, liquid, semisolid or contained  
47 liquid or gaseous material resulting from industrial,

48 commercial, mining or from community activities but  
49 does not include solid or dissolved material in sewage,  
50 or solid or dissolved materials in irrigation return flows  
51 or industrial discharges which are point sources and  
52 have permits under article five-a, chapter twenty of the  
53 code, or source, special nuclear or byproduct material  
54 as defined by the Atomic Energy Act of 1954, as  
55 amended, or a hazardous waste either identified or  
56 listed under article five-e, chapter twenty of the code or  
57 refuse, slurry, overburden or other wastes or material  
58 resulting from coal-fired electric power generation, the  
59 exploration, development, production, storage and  
60 recovery of coal, oil and gas, and other mineral  
61 resources placed or disposed of at a facility which is  
62 regulated under chapter twenty-two, twenty-two-a or  
63 twenty-two-b of the code, so long as such placement or  
64 disposal is in conformance with a permit issued  
65 pursuant to such chapters; "solid waste" shall not  
66 include materials which are recycled by being used or  
67 reused in an industrial process to make a product, as  
68 effective substitute for commercial products, or are  
69 returned to the original process as a substitute for raw  
70 material feed stock;

71 (j) "Solid waste disposal" means the practice of  
72 disposing of solid waste including placing, depositing,  
73 dumping or throwing or causing to be placed, deposited,  
74 dumped or thrown any solid waste;

75 (k) "Solid waste disposal shed" means the geographi-  
76 cal area which the solid waste management board  
77 designates and files in the state register pursuant to  
78 section eight, article twenty-six, chapter sixteen of this  
79 code;

80 (l) "Solid waste facility" means any system, facility,  
81 land, contiguous land, improvements on the land,  
82 structures or other appurtenances or methods used for  
83 processing, recycling or disposing of solid waste,  
84 including landfills, transfer stations, resource recovery  
85 facilities and other such facilities not herein specified.  
86 Such facility shall be deemed to be situated, for  
87 purposes of this article, in the county where the majority  
88 of the spatial area of such facility is located;

89 (m) "Class A facility" means a commercial solid waste  
90 disposal facility which handles an aggregate of ten  
91 thousand tons or more of solid waste per month; and

92 (n) "Applicant" means the person applying for a  
93 commercial solid waste disposal permit or similar  
94 renewal permit and any person related to such person  
95 by virtue of common ownership, common management  
96 or family relationships as the director of the division of  
97 natural resources may specify including the following:  
98 Spouses, parents and children and siblings.

**§20-5F-4a. Certificate for site approval required for  
certain solid waste disposal facilities; fee  
required.**

1 (a) (1) For each commercial solid waste disposal  
2 permit or similar renewal permit application filed with  
3 the division of natural resources on and after the first  
4 day of January, one thousand nine hundred eighty-nine,  
5 prior to filing said application, an applicant shall first  
6 obtain a certificate of site approval from the county or  
7 regional solid waste authority, as the case may be,  
8 established in accordance with article nine of this  
9 chapter, covering the geographic area in which the solid  
10 waste disposal facility is to be located.

11 (2) For each such solid waste permit or renewal  
12 permit application filed with the division of natural  
13 resources after the effective date of this act but before  
14 the first day of January, one thousand nine hundred  
15 eighty-nine, an applicant shall first obtain a certificate  
16 of site approval from the county commission of the  
17 county in which the solid waste disposal facility is to be  
18 located.

19 (3) For each such solid waste permit or renewal  
20 permit application pending before the division of  
21 natural resources on the effective date of this act, an  
22 applicant shall within thirty days of the effective date  
23 of this act obtain a certificate of site approval from the  
24 county commission of the county in which the solid  
25 waste disposal facility is to be located.

26 (4) Notwithstanding anything in this section to the

27 contrary, nothing contained in this section shall be  
28 construed to require an applicant for such a solid waste  
29 disposal permit or renewal permit to obtain more than  
30 one certificate of site approval from the county or  
31 authority relating to the same solid waste disposal  
32 facility.

33 (b) The fee for the certificate of site approval is  
34 twenty-five dollars payable upon the filing of the  
35 application therefor with the county, county solid waste  
36 authority or regional solid waste authority, as the case  
37 may be.

38 (c) Each county commission and authority shall as  
39 soon as practicable promulgate reasonable rules includ-  
40 ing, but not limited to, rules for determining the effect  
41 of the proposed solid waste facility on residential,  
42 business or commercial property investment and values,  
43 and the social, economic, aesthetic and environmental  
44 impact on community growth and development in  
45 utilities, health, education, recreation, safety, welfare  
46 and convenience, if any, before issuing any certificate of  
47 site approval pursuant to this section. Each county  
48 commission and authority may deny a certificate of site  
49 approval based upon said rules and regulations or upon  
50 a finding of adverse public sentiment.

51 (d) Any person adversely affected by a decision of a  
52 county commission or authority under the provisions of  
53 this section may appeal that decision to the circuit court  
54 for the county in which the proposed facility is to be  
55 located.

**§20-5F-4b. Special provision for residential solid waste disposal.**

1 All commercial and public solid waste disposal  
2 facilities shall establish and publish a yearly schedule  
3 providing for one day per month on which a person not  
4 in the business of hauling or disposing of solid waste  
5 may dispose of an amount of residential solid waste up  
6 to one pick-up truckload or its equivalent, free of all  
7 charges and fees.



**§20-5F-5. Prohibitions; permits required; priority of disposal.**

1 (a) Open dumps are prohibited and it shall be  
2 unlawful for any person to create, contribute to or  
3 operate an open dump or for any landowner to allow an  
4 open dump to exist on his property unless that open  
5 dump is under a compliance schedule approved by the  
6 chief. Such compliance schedule shall contain an  
7 enforceable sequence of actions leading to compliance  
8 and shall not exceed two years. Open dumps operated  
9 prior to the first day of April, one thousand nine  
10 hundred eighty-eight, by a landowner or tenant for the  
11 disposal of solid waste generated by the landowner or  
12 tenant at his or her residence or farm shall not be  
13 deemed to constitute a violation of this section if such  
14 open dump did not constitute a violation of law on the  
15 first day of January, one thousand nine hundred eighty-  
16 eight, and unauthorized dumps which were created by  
17 unknown persons shall not constitute a violation of this  
18 section: *Provided*, That no person shall contribute  
19 additional solid waste to any such dump after the first  
20 day of April, one thousand nine hundred eighty-eight,  
21 except that the owners of the land on which unautho-  
22 rized dumps have been or are being made shall not be  
23 liable for such unauthorized dumping unless such  
24 landowners refuse to cooperate with the division of  
25 natural resources in stopping such unauthorized  
26 dumping.

27 (b) It shall be unlawful for any person, unless he holds  
28 a valid permit from the division to install, establish,  
29 construct, modify, operate or abandon any solid waste  
30 facility. All approved solid waste facilities shall be  
31 installed, established, constructed, modified, operated or  
32 abandoned in accordance with this article, plans,  
33 specifications, orders, instructions and rules in effect.

34 (c) Any permit issued under this article shall be  
35 issued in compliance with the requirements of this  
36 article, its rules and article five-a and the rules  
37 promulgated thereunder, so that only a single permit  
38 shall be required of a solid waste facility under these  
39 two articles. Each permit issued under this article shall

40 have a fixed term not to exceed five years: *Provided,*  
41 That the chief may administratively extend a permit  
42 beyond its five-year term if the approved solid waste  
43 facility is in compliance with this article, its rules and  
44 article five-a of this chapter and the rules promulgated  
45 thereunder: *Provided, however,* That such administra-  
46 tive extension may not be for more than one year. Upon  
47 expiration of a permit, renewal permits may be issued  
48 in compliance with rules and regulations promulgated  
49 by the director of the division of natural resources.

50 (d) All existing permits of the division of health for  
51 solid waste facilities under section nine, article one,  
52 chapter sixteen of the code shall continue in full force  
53 and effect until a permit is issued for that approved  
54 solid waste facility under this article: *Provided,* That all  
55 such existing permits of the division of health shall  
56 expire within five years of the effective date of this  
57 article. Within four years of the effective date of this  
58 article, all persons holding such division of health  
59 permits shall apply to the chief for a permit under this  
60 article: *Provided, however,* That the chief may require  
61 persons holding such existing health division permits to  
62 reapply under this section prior to four years from the  
63 effective date of this article if persistent violations of  
64 this article, any permit term or condition, orders or  
65 rules promulgated under this article, exist at that  
66 facility. Notwithstanding any other provision contained  
67 in this subsection, the division of natural resources may  
68 enter an extension order for a period of two years while  
69 an application for a permit pursuant to this article is  
70 pending.

71 (e) No person may dispose in the state of any solid  
72 waste, whether such waste originates in state or out of  
73 state, in a manner which endangers the environment or  
74 the public health, safety or welfare as determined by the  
75 director of the division of natural resources. Upon  
76 request by the director of the division of natural  
77 resources, the director of the division of health shall  
78 provide technical advice concerning the disposal of solid  
79 waste within the state.

80 (f) To the extent permissible by law, a commercial

81 solid waste facility shall first ensure that the disposal  
82 needs of the county, or if applicable the region, in which  
83 it is located are met. If the county solid waste authority,  
84 or regional solid waste authority if applicable, in which  
85 the facility is located determines that the present or  
86 future disposal needs of the county, or if applicable the  
87 region, are not being, or will not be, met by the  
88 commercial solid waste facility, such authority may  
89 apply to the director of the division of natural resources  
90 to modify the applicable permit in order to reduce the  
91 total monthly tonnage of out of county waste, or if  
92 applicable, out of region waste, the facility is permitted  
93 to accept by an amount that shall not exceed the total  
94 monthly tonnage generated by the county, or if appli-  
95 cable the region, in which the facility is located.

96 The director of the division of natural resources shall  
97 promulgate legislative rules pursuant to chapter twenty-  
98 nine-a of this code which reflect the purposes as set forth  
99 in this article.

**§20-5F-5b. 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  
3 have commenced pursuant to a compliance order, but  
4 before a permit has been issued, each operator of a  
5 commercial solid waste facility shall furnish bond, on a  
6 form to be prescribed and furnished by the director,  
7 payable to the state of West Virginia and conditioned  
8 upon the operator faithfully performing all of the  
9 requirements of this article, regulations promulgated  
10 hereunder and the permit: *Provided*, That the director  
11 shall have the discretion to waive the requirement of a  
12 bond from the operator of a commercial solid waste  
13 facility, other than a Class A facility, which is operating  
14 under a compliance order. The amount of the bond  
15 required shall be one thousand dollars per acre and may  
16 include an additional amount determined by the  
17 director based upon the total estimated cost to the state  
18 of completing final closure according to the permit  
19 granted to such facility and such measures as are

20 necessary to prevent adverse effects upon the environ-  
21 ment; such measures shall include, but not be limited  
22 to, satisfactory monitoring, post-closure care and  
23 remedial measures: *Provided, however,* That the amount  
24 of the bond shall not exceed eight thousand dollars per  
25 acre. All permits shall be bonded for at least ten  
26 thousand dollars. The bond shall cover either (1) the  
27 entire area to be used for the disposal of solid waste, or  
28 (2) that increment of land within the permit area upon  
29 which the operator will initiate and conduct commercial  
30 solid waste facility operations within the initial term of  
31 the permit pursuant to legislative rules promulgated by  
32 the director pursuant to chapter twenty-nine-a of this  
33 code. If the operator chooses to use incremental bonding,  
34 as succeeding increments of commercial solid waste  
35 facility operations are to be initiated and conducted  
36 within the permit area, the operator shall file with the  
37 director an additional bond or bonds to cover such  
38 increments in accordance with this section: *Provided*  
39 *further,* That once the operator has chosen to proceed  
40 with bonding either the entire area to be used for the  
41 disposal of solid waste or with incremental bonding, the  
42 operator shall continue bonding in that manner for the  
43 term of the permit.

44 (b) The period of liability for performance bond  
45 coverage shall commence with issuance of a permit and  
46 continue for the full term of the permit and for a period  
47 of up to thirty full years after final closure of the permit  
48 site: *Provided,* That any further time period necessary  
49 to achieve compliance with the requirements in the  
50 closure plan of the permit shall be considered an  
51 additional liability period.

52 (c) The form of the performance bond shall be  
53 approved by the director and may include, at the option  
54 of the director, surety bonding, collateral bonding  
55 (including cash and securities), establishment of an  
56 escrow account, letters of credit, performance bonding  
57 fund participation (as established by the director), self-  
58 bonding or a combination of these methods. If collateral  
59 bonding is used, the operator may elect to deposit cash,  
60 or collateral securities or certificates as follows: Bonds

61 of the United States or its possessions, of the federal  
62 land bank, or of the homeowners' loan corporation; full  
63 faith and credit general obligation bonds of the state of  
64 West Virginia, or other states, and of any county,  
65 district or municipality of the state of West Virginia or  
66 other states; or certificates of deposit in a bank in this  
67 state, which certificates shall be in favor of the division.  
68 The cash deposit or market value of such securities or  
69 certificates shall be equal to or greater than the sum of  
70 the bond. The director shall, upon receipt of any such  
71 deposit of cash, securities or certificates, promptly place  
72 the same with the treasurer of the state of West Virginia  
73 whose duty it shall be to receive and hold the same in  
74 the name of the state in trust for the purpose for which  
75 the deposit is made when the permit is issued. The  
76 operator making the deposit shall be entitled from time  
77 to time to receive from the state treasurer, upon the  
78 written approval of the director, the whole or any  
79 portion of any cash, securities or certificates so depos-  
80 ited, upon depositing with him in lieu thereof, cash or  
81 other securities or certificates of the classes herein  
82 specified having value equal to or greater than the sum  
83 of the bond.

84 (d) Within twelve months prior to the expiration of  
85 the thirty-year period following final closure, the  
86 division will conduct a final inspection of the facility.  
87 The purpose of the inspection shall be to determine  
88 compliance with this article, the division's regulations,  
89 the terms and conditions of the permit, orders of the  
90 division and the terms and conditions of the bond. Based  
91 upon this determination, the division will either forfeit  
92 the bond prior to the expiration of the thirty-year period  
93 following final closure, or release the bond at the  
94 expiration of the thirty-year period following final  
95 closure. Bond release requirements shall be provided in  
96 regulations promulgated by the director.

97 (e) If the operator of a commercial solid waste facility  
98 abandons the operation of a solid waste disposal facility  
99 for which a permit is required by this article or if the  
100 permittee fails or refuses to comply with the require-  
101 ments of this article in any respect for which liability

102 has been charged on the bond, the director shall declare  
103 the bond forfeited and shall certify the same to the  
104 attorney general who shall proceed to enforce and collect  
105 the amount of liability forfeited thereon, and where the  
106 operation has deposited cash or securities as collateral  
107 in lieu of corporate surety, the secretary shall declare  
108 said collateral forfeited and shall direct the state  
109 treasurer to pay said funds into a waste management  
110 fund to be used by the director to effect proper closure  
111 and to defray the cost of administering this article.  
112 Should any corporate surety fail to promptly pay, in full,  
113 forfeited bond, it shall be disqualified from writing any  
114 further surety bonds under this article.

**§20-5F-5c. Pre-siting notice.**

1 Any person investigating an area for the purpose of  
2 siting a commercial solid waste facility where no  
3 current solid waste permit exists, in order to determine  
4 a feasible, approximate location, shall prior to filing an  
5 application for a solid waste permit publish a Class II  
6 legal advertisement in a qualified newspaper serving  
7 the county where the proposed site is to be located. Such  
8 notice shall inform the public of the location, nature and  
9 other details of the proposed activity as prescribed in  
10 rules and regulations to be promulgated as soon as  
11 practicable by the director. Within five days of such  
12 publication such person shall file with the director a  
13 pre-siting notice, which shall be made in writing on  
14 forms prescribed by the director and shall be signed and  
15 verified by the applicant. Such notice shall contain a  
16 certification of publication from a qualified newspaper,  
17 description of the area, the period of investigative  
18 review, a United States geological survey topographic  
19 map and a map showing the location of property  
20 boundaries of the area proposed for siting and other  
21 such information as required by rules and regulations  
22 promulgated pursuant to this section. The director shall  
23 hold a public hearing on the pre-siting notice in the area  
24 affected. The director shall define pre-siting activities  
25 by promulgating legislative rules pursuant to chapter  
26 twenty-nine-a of this code. On or after the first day of  
27 January, one thousand nine hundred eighty-nine, the

28 pre-siting notice, as prescribed by the director, shall also  
29 be filed with the county or regional solid waste  
30 authority, established pursuant to article nine, chapter  
31 twenty of this code, in which the proposed site is located  
32 within five days of the publication of the notice.

#### ARTICLE 9. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

- §20-9-1. Legislative findings and purposes.
- §20-9-2. Definitions.
- §20-9-7. Authority to develop litter and solid waste control plan; approval by solid waste management board; development of plan by director; advisory rules.
- §20-9-10a. Bonds and notes.
- §20-9-10b. Items included in cost of properties.
- §20-9-10c. Bonds or notes may be secured by trust indenture.
- §20-9-10d. Sinking fund for bonds or notes.
- §20-9-10e. Collection, etc., of revenues and funds and enforcement of covenants; default; suit, etc., by bondholder or noteholder or trustee to compel performance of duties; appointment and powers of receiver.
- §20-9-10f. Operating contracts.
- §20-9-10g. Statutory mortgage lien created unless otherwise provided; foreclosure thereof.
- §20-9-10h. Refunding bonds or notes.
- §20-9-10i. Indebtedness of authority.
- §20-9-10j. Property, bonds or notes and obligations of authority exempt from taxation.
- §20-9-12. Powers, duties and responsibilities of authority generally.
- §20-9-12a. Commercial solid waste facility siting plan; facilities subject to plan; criteria; approval by West Virginia state solid waste management board; effect on facility siting; public hearings; rules and regulations.
- §20-9-12b. Interim siting approval for commercial solid waste facilities.
- §20-9-12c. Approval of establishment or continuation of Class A facility by county commission and/or referendum.
- §20-9-12d. Solid waste assessment interim fee; regulated motor carriers; dedication of proceeds; criminal penalties.

#### §20-9-1. Legislative findings and purposes.

1 The Legislature finds that the improper and uncon-  
2 trolled collection, transportation, processing and dispo-  
3 sal of domestic and commercial garbage, refuse and  
4 other solid wastes in the state of West Virginia results  
5 in: (1) A public nuisance and a clear and present danger  
6 to the citizens of West Virginia, (2) the degradation of  
7 the state's environmental quality including both surface

8 and groundwaters which provide essential and irre-  
9 placeable sources of domestic and industrial water  
10 supplies, (3) provides harborages and breeding places  
11 for disease-carrying, injurious insects, rodents and other  
12 pests injurious to the public health, safety and welfare,  
13 (4) decreases public and private property values and  
14 results in the blight and deterioration of the natural  
15 beauty of the state, (5) has adverse social and economic  
16 effects on the state and its citizens, and (6) results in the  
17 waste and squandering of valuable nonrenewable  
18 resources contained in such solid wastes which can be  
19 recovered through proper recycling and resource-  
20 recovery techniques with great social and economic  
21 benefits for the state.

22 The Legislature further finds that the proper collec-  
23 tion, transportation, processing, recycling and disposal  
24 of solid waste is for the general welfare of the citizens  
25 of the state and that the lack of proper and effective  
26 solid waste collection services and disposal facilities  
27 demands that the state of West Virginia and its political  
28 subdivisions act promptly to secure such services and  
29 facilities in both the public and private sectors.

30 The Legislature further finds that other states of these  
31 United States of America have imposed stringent  
32 standards for the proper collection and disposal of solid  
33 waste and that the relative lack of such standards and  
34 enforcement for such activities in West Virginia has  
35 resulted in the importation and disposal into the state  
36 of increasingly large amounts of infectious, dangerous  
37 and undesirable solid waste and hazardous waste from  
38 other states by persons and firms who wish to avoid the  
39 costs and requirements for proper, effective and safe  
40 disposal of such wastes in the states of origin.

41 Therefore, it is the purpose of the Legislature to  
42 protect the public health and welfare by providing for  
43 a comprehensive program of solid waste collection,  
44 processing, recycling and disposal to be implemented by  
45 state and local government in cooperation with the  
46 private sector. The Legislature intends to accomplish  
47 this goal by establishing county and regional solid waste  
48 authorities throughout the state to develop and imple-



49 ment litter and solid waste control plans. It is the  
50 further purpose of the Legislature to restrict and  
51 regulate persons and firms from exploiting and endan-  
52 gering the public health and welfare of the state by  
53 disposing of solid wastes and other dangerous materials  
54 which would not be accepted for disposal in the location  
55 where such wastes or materials were generated.

56 It is further the purpose of the Legislature to reduce  
57 our solid waste management problems and to meet the  
58 purposes of this article by requiring county and regional  
59 solid waste authorities to establish programs and plans  
60 based on an integrated waste management hierarchy. In  
61 order of preference, the hierarchy is as follows:

62 (1) *Source reduction.*—This involves minimizing waste  
63 production and generation through product design,  
64 reduction of toxic constituents of solid waste, and  
65 similar activities.

66 (2) *Recycling, reuse and resource recovery.*—This  
67 involves separating and recovering valuable resources  
68 from the waste stream, composting food and yard waste,  
69 marketing of recyclables and, if environmentally  
70 acceptable, incineration.

71 (3) *Landfilling.*—This is the lowest priority in the  
72 hierarchy and involves the waste management option of  
73 last resort. To the maximum extent possible, it should  
74 be reserved for nonrecyclables and other materials that  
75 cannot practically be managed in any other way.

76 The Legislature further finds that the potential  
77 impacts of proposed commercial solid waste facilities  
78 may have a deleterious and debilitating impact upon the  
79 transportation network, property values, economic  
80 growth, environmental quality, other land uses and the  
81 public health and welfare in affected communities. The  
82 Legislature also finds that the siting of such facilities  
83 is not being adequately addressed to protect these  
84 compelling interests of counties and local communities.

85 The Legislature further finds that affected citizens  
86 and local governments often look to state environmental  
87 regulatory agencies to resolve local land use conflicts  
88 engendered by these proposed facilities. The Legislature

89 also finds that such local land use conflicts are most  
90 effectively resolved in a local governmental forum  
91 where citizens can most easily participate in the  
92 decision-making process and the land use values of local  
93 communities most effectively identified and incorpo-  
94 rated into a comprehensive policy which reflects the  
95 values and goals of those communities.

96 Therefore, it is the purpose of the Legislature to  
97 enable local citizens to resolve the land-use conflicts  
98 which may be created by proposed commercial solid  
99 waste facilities through the existing forum of county or  
100 regional solid waste authorities.

#### §20-9-2. 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 commer-  
4 cial solid waste facility or practice which has a valid  
5 permit or compliance order under article five-f of this  
6 chapter;

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 shall 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 shall not include the legitimate reuse and  
15 recycling of materials for structural fill, road base, mine  
16 reclamation, and similar applications;

17 (c) "Compliance order" means an administrative  
18 order issued pursuant to section five, article five-f,  
19 chapter twenty of this code authorizing a solid waste  
20 facility to operate without a solid waste permit;

21 (d) "Open dump" means any solid waste disposal  
22 which does not have a permit under this article, or is  
23 in violation of state law, or where solid waste is disposed  
24 in a manner that does not protect the environment;

25 (e) "Person" means any industrial user, public or

26 private corporation, institution, association, firm or  
27 company organized or existing under the laws of this or  
28 any other state or country; the state of West Virginia;  
29 governmental agency, including federal facilities;  
30 political subdivision; county commission; municipal  
31 corporation; industry; sanitary district; public service  
32 district; drainage district; soil conservation district;  
33 watershed improvement district; partnership; trust;  
34 estate; person or individual; group of persons or  
35 individuals acting individually or as a group; or any  
36 legal entity whatever;

37 (f) "Sludge" means any solid, semisolid, residue or  
38 precipitate, separated from or created by a municipal,  
39 commercial or industrial waste treatment plant, water  
40 supply treatment plant or air pollution control facility  
41 or any other such waste having similar origin;

42 (g) "Solid waste" means any garbage, paper, litter,  
43 refuse, cans, bottles, sludge from a waste treatment  
44 plant, water supply treatment plant or air pollution  
45 control facility, other discarded material, including  
46 carcasses of any dead animal or any other offensive or  
47 unsightly matter, solid, liquid, semisolid or contained  
48 liquid or gaseous material resulting from industrial,  
49 commercial, mining or from community activities but  
50 does not include solid or dissolved material in sewage,  
51 or solid or dissolved materials in irrigation return flows  
52 or industrial discharges which are point sources and  
53 have permits under article five-a, chapter twenty of this  
54 code, or source, special nuclear or byproduct material  
55 as defined by the Atomic Energy Act of 1954, as  
56 amended, or a hazardous waste either identified or  
57 listed under article five-e, chapter twenty of this code,  
58 or refuse, slurry, overburden or other waste or material  
59 resulting from coal-fired electric power generation, the  
60 exploration, development, production, storage and  
61 recovery of coal, oil and gas, and other mineral  
62 resources placed or disposed of at a facility which is  
63 regulated under chapter twenty-two, twenty-two-a or  
64 twenty-two-b of this code, so long as such placement or  
65 disposal is in conformance with a permit issued  
66 pursuant to said chapters; "solid waste" shall also not

67 include materials which are recycled by being used or  
68 reused in an industrial process to make a product, as  
69 effective substitutes for commercial products, or are  
70 returned to the original process as a substitute for raw  
71 material feedstock;

72 (h) "Solid waste disposal" means the practice of  
73 disposing of solid waste including placing, depositing,  
74 dumping or throwing or causing to be placed, deposited,  
75 dumped or thrown any solid waste;

76 (i) "Solid waste disposal shed" means the geographical  
77 area which the solid waste management board design-  
78 nates and files in the state register pursuant to section  
79 eight, article twenty-six, chapter sixteen of this code;

80 (j) "Solid waste facility" means any system, facility,  
81 land, contiguous land, improvements on the land,  
82 structures or other appurtenances or methods used for  
83 processing, recycling or disposing of solid waste,  
84 including landfills, transfer stations, resource recovery  
85 facilities and other such facilities not herein specified.  
86 Such facility shall be deemed to be situated, for  
87 purposes of this article, in the county where the majority  
88 of the spatial area of such facility is located; and

89 (k) "Class A facility" means a commercial solid waste  
90 disposal facility which handles an aggregate of ten  
91 thousand tons or more of solid waste per month.

**§20-9-7. Authority to develop litter and solid waste  
control plan; approval by solid waste man-  
agement board; development of plan by  
director; advisory rules.**

1 (a) Each county and regional solid waste authority  
2 shall be required to develop a comprehensive litter and  
3 solid waste control plan for its geographic area and to  
4 submit said plan to the solid waste management board  
5 on or before the first day of July, one thousand nine  
6 hundred ninety-one. Each authority shall submit a draft  
7 litter and solid waste control plan to the solid waste  
8 management board by the thirty-first day of March, one  
9 thousand nine hundred ninety-one. The comments  
10 received by the county or regional solid waste authority

11 at public hearings, two of which shall be required, shall  
12 be considered in 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  
16 in 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  
21 where residential collection is not practicable. In  
22 developing such collection services, primacy shall be  
23 given to private collection services currently operating  
24 with a certificate of convenience and necessity from the  
25 motor carrier division 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  
29 purpose of facilitating the efficient and effective  
30 recycling of such wastes and the reduction of those  
31 wastes which must be disposed of in landfills or by other  
32 nonrecycling means;

33 (4) The establishment of an appropriate mandatory  
34 garbage disposal program which shall include methods  
35 whereby residents must prove either (i) payment of  
36 garbage collection fee or (ii) proper disposal at an  
37 approved solid waste facility or in an otherwise lawful  
38 manner;

39 (5) A recommendation for the siting of one or more  
40 properly permitted public or private solid waste  
41 landfills and other facilities, whether existing or  
42 proposed, to serve the solid waste needs of the county  
43 or the region, as the case may be, consistent with the  
44 comprehensive county plan prepared by the county  
45 planning commission;

46 (6) A timetable for the implementation of said plan;

47 (7) A program for the cleanup, reclamation and  
48 stabilization of any open and unpermitted dumps;

49 (8) The coordination of the plan with the related solid  
50 waste collection and disposal services of municipalities  
51 and, if applicable, other counties;

52 (9) A program to enlist the voluntary assistance of  
53 private industry and civic groups in volunteer cleanup  
54 efforts to the maximum practicable extent;

55 (10) Innovative incentives to promote recycling  
56 efforts;

57 (11) A program to identify the disposal of solid wastes  
58 which are not generated by sources situated within the  
59 boundaries of the county or the region established  
60 pursuant to this section;

61 (12) Coordination with the division of highways and  
62 other local, state and federal agencies in the control and  
63 removal of litter and the cleanup of open and unpermit-  
64 ted dumps;

65 (13) Establishment of a program to encourage and  
66 utilize those individuals incarcerated in the county jail  
67 and those adults and juveniles sentenced to probation for  
68 the purposes of litter pickup; and

69 (14) Provision for the safe and sanitary disposal of all  
70 refuse from commercial and industrial sources within  
71 the county or region, as the case may be, including  
72 refuse from commercial and industrial sources, but  
73 excluding refuse from sources owned or operated by the  
74 state or federal governments.

75 (c) The solid waste management board shall establish  
76 advisory rules to guide and assist the counties in the  
77 development of the plans required by this section.

78 (d) Each plan prepared under this section shall be  
79 subject to approval by the solid waste management  
80 board. Any plan rejected by the solid waste manage-  
81 ment board shall be returned to the regional or county  
82 solid waste authority with a statement of the insufficien-  
83 cies in such plan. The authority shall revise the plan to  
84 eliminate the insufficiencies and submit it to the  
85 director within ninety days.

86 (e) The solid waste management board shall develop

87 a litter and solid waste control plan for any county or  
88 regional solid waste authority which fails to submit such  
89 a plan on or before the first day of July, one thousand  
90 nine hundred ninety-one: *Provided*, That in preparing  
91 such plans the director may determine in his discretion  
92 whether to prepare a regional or county based plan for  
93 those counties which fail to complete such a plan.

**§20-9-10a. Bonds and notes.**

1 For constructing or acquiring any solid waste facil-  
2 ities for the authorized purposes of the authority, or  
3 necessary or incidental thereto, and for constructing  
4 improvements and extension thereto, and also for  
5 reimbursing or paying the costs and expenses of  
6 creating the authority, if any, the board of any such  
7 authority is hereby authorized to borrow money from  
8 time to time and in evidence thereof issue the bonds or  
9 notes of such authority, payable from the revenues  
10 derived from the operation of the solid waste facilities  
11 under control of the authority or from such other funds  
12 as are available to the authority for such purpose. Such  
13 bonds or notes may be issued in one or more series, may  
14 bear such date or dates, may mature at such time or  
15 times not to exceed forty years from their respective  
16 dates, may bear interest at such rate or rates, payable  
17 at such times, may be in such form, may carry such  
18 registration privileges, may be executed in such  
19 manner, may be payable at such place or places, may  
20 be subject to such terms of redemption with or without  
21 premium, may be declared or become due before  
22 maturity date thereof, may be authenticated in any  
23 manner, and upon compliance with such conditions, and  
24 may contain such terms and covenants as may be  
25 provided by resolution or resolutions of the board.  
26 Notwithstanding the form or tenor thereof, and in the  
27 absence of any express recital on the face thereof, that  
28 the bond or note is nonnegotiable, all such bonds or notes  
29 shall be, and shall be treated as, negotiable instruments  
30 for all purposes. The bonds or notes shall be executed  
31 by the chairman of the board, who may use a facsimile  
32 signature. The official seal of the authority or a  
33 facsimile thereof shall be affixed to or printed on each

34 bond or note and attested, manually or by facsimile  
35 signature, by the secretary-treasurer of the board, and  
36 any coupons attached to any bond or note shall bear the  
37 signature or facsimile signature of the chairman of the  
38 board. Bonds or notes bearing the signatures of officers  
39 in office on the date of the signing thereof shall be valid  
40 and binding for all purposes notwithstanding that  
41 before the delivery thereof any or all of the persons  
42 whose signatures appear thereon shall have ceased to be  
43 such officers. Notwithstanding the requirements or  
44 provisions of any other law, any such bonds or notes may  
45 be negotiated or sold in such manner and at such time  
46 or times as is found by the board to be most advantage-  
47 ous. Any resolution or resolutions providing for the  
48 issuance of such bonds or notes may contain such  
49 covenants and restrictions upon the issuance of addi-  
50 tional bonds or notes thereafter as may be deemed  
51 necessary or advisable for the assurance of the payment  
52 of the bonds or notes thereby authorized.

**§20-9-10b. Items included in cost of properties.**

1 The cost of any solid waste facilities acquired under  
2 the provisions of this article shall be deemed to include  
3 the cost of the acquisition or construction thereof, costs  
4 of closure of solid waste facilities, the cost of all property  
5 rights, easements and franchises deemed necessary or  
6 convenient therefor and for the improvements and  
7 extensions thereto; interest upon bonds or notes prior to  
8 and during construction or acquisition and for twelve  
9 months after completion of construction or of acquisition  
10 of the improvements and extensions; engineering, fiscal  
11 agents and legal expenses; expenses for estimates of cost  
12 and of revenues, expenses for plans, specifications and  
13 surveys; other expenses necessary or incident to deter-  
14 mining the feasibility or practicability of the enterprise,  
15 administrative expense, and such other expenses as may  
16 be necessary or incident to the financing herein  
17 authorized, and the construction or acquisition of the  
18 properties and the placing of same in operation, and the  
19 performance of the things herein required or permitted,  
20 in connection with any thereof.



**§20-9-10c. Bonds or notes may be secured by trust indenture.**

1 In the discretion and at the option of the board such  
2 bonds or notes may be secured by a trust indenture by  
3 and between the authority and a corporate trustee,  
4 which may be a trust company or bank having powers  
5 of a trust company within or without the state of West  
6 Virginia. The resolution authorizing the bonds or notes  
7 and fixing the details thereof may provide that such  
8 trust indenture may contain such provisions for protect-  
9 ing and enforcing the rights and remedies of bond-  
10 holders as may be reasonable and proper, not in  
11 violation of law, including covenants setting forth the  
12 duties of the authority and the members of its board and  
13 officers in relation to the construction or acquisition of  
14 solid waste facilities and the improvement, extension,  
15 operation, repair, maintenance and insurance thereof,  
16 and the custody, safeguarding and application of all  
17 moneys, and may provide that all or any part of the  
18 construction work shall be contracted for, constructed  
19 and paid for, under the supervision and approval of  
20 consulting engineers employed or designated by the  
21 board and satisfactory to the original bond purchasers,  
22 their successors, assignees or nominees, who may be  
23 given the right to require the security given by  
24 contractors and by any depository of the proceeds of  
25 bonds or notes or revenues of the solid waste facilities  
26 or other money pertaining thereto be satisfactory to such  
27 purchasers, their successors, assignees or nominees.  
28 Such indenture may set forth the rights and remedies  
29 of the bondholders or noteholders and such trustee.

**§20-9-10d. Sinking fund for bonds or notes.**

1 At or before the time of the issuance of any bonds or  
2 notes under this article, the board may by resolution or  
3 in the trust indenture provide for the creation of a  
4 sinking fund and for payments into such fund from the  
5 revenues of the solid waste facilities operated by the  
6 authority or from other funds available thereto such  
7 sums in excess of the cost of maintenance and operation  
8 of such properties as will be sufficient to pay the  
9 accruing interest and retire the bonds or notes at or

10 before the time each will respectively become due and  
11 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 principal and for the  
15 retirement of such bonds or notes or at prior to maturity  
16 as may be provided or required by such resolution.

**§20-9-10e. Collection, etc., of revenues and funds and enforcement of covenants; default; suit, etc., by bondholder or noteholder or trustee to compel performance of duties; appointment and powers of receiver.**

1 The board for any such authority shall have power to  
2 insert enforceable provisions in any resolution authoriz-  
3 ing the issuance of bonds or notes relating to the  
4 collection, custody and application of revenues or of the  
5 authority from the operation of the solid waste facilities  
6 under its control or other funds available to the  
7 authority and to the enforcement of the covenants and  
8 undertakings of the authority. In the event there shall  
9 be default in the sinking fund provisions aforesaid or in  
10 the payment of the principal or interest on any of such  
11 bonds or notes or, in the event the authority or its board  
12 or any of its officers, agents or employees, shall fail or  
13 refuse to comply with the provisions of this article, or  
14 shall default in any covenant or agreement made with  
15 respect to the issuance of such bonds or notes or offered  
16 as security therefor, then any holder or holders of such  
17 bonds or notes and any such trustee under the trust  
18 indenture, if there be one, shall have the right by suit,  
19 action, mandamus or other proceeding instituted in the  
20 circuit court for the county or any of the counties  
21 wherein the authority extends, or in any other court of  
22 competent jurisdiction, to enforce and compel perfor-  
23 mance of all duties required by this article or under-  
24 taken by the authority in connection with the issuance  
25 of such bonds or notes, and upon application of any such  
26 holder or holders, or such trustee, such court shall, upon  
27 proof of such defaults, appoint a receiver for the affairs  
28 of the authority and its properties, which receiver so  
29 appointed shall forthwith directly, or by his agents and

30 attorneys, enter into and upon and take possession of the  
31 affairs of the authority and each and every part thereof,  
32 and hold, use, operate, manage and control the same,  
33 and in the name of the authority exercise all of the  
34 rights and powers of such authority as shall be deemed  
35 expedient, and such receiver shall have power and  
36 authority to collect and receive all revenues and apply  
37 same in such manner as the court shall direct. Whenever  
38 the default causing the appointment of such receiver  
39 shall have been cleared and fully discharged and all  
40 other defaults shall have been cured, the court may in  
41 its discretion and after such notice and hearing as it  
42 deems reasonable and proper direct the receiver to  
43 surrender possession of the affairs of the authority to its  
44 board. Such receiver so appointed shall have no power  
45 to sell, assign, mortgage, or otherwise dispose of any  
46 assets of the authority except as hereinbefore provided.

**§20-9-10f. Operating contracts.**

1 The board may enter into contracts or agreements  
2 with any persons, firms or corporations for the operation  
3 and management of the solid waste facilities for such  
4 period of time and under such terms and conditions as  
5 shall be agreed upon between the board and such  
6 persons, firms or corporations. The board shall have  
7 power to provide in the resolution authorizing the  
8 issuance of bonds or notes, or in any trust indenture  
9 securing such bonds or notes, that such contracts or  
10 agreements shall be valid and binding upon the  
11 authority as long as any of said bonds or notes, or  
12 interest thereon, are outstanding and unpaid.

**§20-9-10g. Statutory mortgage lien created unless otherwise provided; foreclosure thereof.**

1 Unless otherwise provided by resolution of the board,  
2 there shall be and is hereby created a statutory  
3 mortgage lien upon such solid waste facilities of the  
4 authority, which shall exist in favor of the holders of  
5 bonds or notes hereby authorized to be issued, and each  
6 of them, and the coupons attached to said bonds or notes,  
7 and such solid waste facilities shall remain subject to  
8 such statutory mortgage lien until payment in full of all

9 principal of and interest on such bonds or notes. Any  
10 holder of such bonds or notes, of any coupons attached  
11 thereto, may, either at law or in equity, enforce said  
12 statutory mortgage lien conferred hereby and upon  
13 default in the payment of the principal of or interest on  
14 said bonds or notes, and may foreclose such statutory  
15 mortgage lien in the manner now provided by the laws  
16 of the state of West Virginia for the foreclosure of  
17 mortgages on real property.

**§20-9-10h. Refunding bonds or notes.**

1 The board of any authority having issued bonds or  
2 notes under the provisions of this article is hereby  
3 empowered thereafter by resolution to issue refunding  
4 bonds or notes of such authority for the purpose of  
5 retiring or refinancing any or all outstanding bonds or  
6 notes, together with any unpaid interest thereon and  
7 redemption premium thereunto appertaining and all of  
8 the provisions of this article relating to the issuance,  
9 security and payment of bonds or notes shall be  
10 applicable to such refunding bonds or notes, subject,  
11 however, to the provisions of the proceedings which  
12 authorized the issuance of the bonds or notes to be so  
13 refunded.

**§20-9-10i. Indebtedness of authority.**

1 No constitutional or statutory limitation with respect  
2 to the nature or amount of or rate of interest on  
3 indebtedness which may be incurred by municipalities,  
4 counties or other public or governmental bodies shall  
5 apply to the indebtedness of an authority. No indebted-  
6 ness of any nature of authority shall constitute an  
7 indebtedness of the state of West Virginia or any  
8 municipality or county therein or a charge against any  
9 property of said state of West Virginia or any munic-  
10 ipalities or counties. No indebtedness or obligation  
11 incurred by any authority shall give any right against  
12 any member of the governing body of any municipality  
13 or any member of the authority of any county or any  
14 member of the board of any authority. The rights of  
15 creditors of any authority shall be solely against the  
16 authority as a corporate body and shall be satisfied only  
17 out of property held by it in its corporate capacity.

**§20-9-10j. Property, bonds or notes and obligations of authority exempt from taxation.**

1 The authority shall be exempt from the payment of  
2 any taxes or fees to the state or any subdivisions thereof  
3 or any municipalities or to any officer or employee of  
4 the state or of any subdivision thereof or of any  
5 municipalities. The property of the authority shall be  
6 exempt from all local and municipal taxes. Bonds, notes,  
7 debentures and other evidence of indebtedness of the  
8 authority are declared to be issued for a public purpose  
9 and to be public instrumentalities, and, together with  
10 interest thereon, shall be exempt from taxes.

**§20-9-12. Powers, duties and responsibilities of authority generally.**

1 The authority may exercise all powers necessary or  
2 appropriate to carry out the purposes and duties  
3 provided in this article, including the following:

4 (1) Sue and be sued, plead and be impleaded and have  
5 and use a common seal.

6 (2) To conduct its business in the name of the county  
7 solid waste authority or the regional solid waste  
8 authority, as the case may be, in the names of the  
9 appropriate counties.

10 (3) The authority board of directors shall promulgate  
11 rules and regulations to implement the provisions of  
12 sections eight and nine of this article and is authorized  
13 to promulgate rules and regulations for purposes of this  
14 article and the general operation and administration of  
15 authority affairs.

16 (4) Adopt, and from time to time, amend and repeal  
17 bylaws necessary and proper for the conduct of its  
18 affairs consistent with this article.

19 (5) To promulgate such rules and regulations as may  
20 be proper and necessary to implement the purposes and  
21 duties of this article.

22 (6) Acquire, construct, reconstruct, enlarge, improve,  
23 furnish, equip, maintain, repair, operate, lease or rent  
24 to, or contract for the operation by any person, partner-

25 ship, corporation or governmental agency, any solid  
26 waste facility or collection, transportation and process-  
27 ing facilities related thereto.

28 (7) Issue negotiable bonds, notes, debentures or other  
29 evidences of indebtedness and provide for the rights of  
30 the holders thereof, incur any proper indebtedness and  
31 issue any obligations and give any security therefor  
32 which it may deem necessary or advisable in connection  
33 with exercising powers as provided herein.

34 (8) Make available the use or services of any solid  
35 waste facility collection, transportation and processing  
36 facilities related thereto, to any person, partnership,  
37 corporation or governmental agency consistent with this  
38 article.

39 (9) Acquire by gift or purchase, hold and dispose of  
40 real and personal property in the exercise of its powers  
41 and duties.

42 (10) Make and enter all contracts, leases and agree-  
43 ments and to execute all instruments necessary or  
44 incidental to the performance of its duties and powers.

45 (11) Employ managers, engineers, accountants, attor-  
46 neys, planners and such other professional and support  
47 personnel as are necessary in its judgment to carry out  
48 the provisions of this article.

49 (12) Receive and accept from any source such grants,  
50 fees, real and personal property, contributions and funds  
51 of any nature as may become available to the authority  
52 in order to carry out the purposes of this article.

53 (13) Cooperate with and make such recommendations  
54 to local, state and federal government and the private  
55 sector in the technical, planning and public policy  
56 aspects of litter control and solid waste management as  
57 the authority may find appropriate and effective to  
58 carry out the purposes of this article.

59 (14) Charge, alter and collect rentals, fees, service  
60 charges and other charges for the use or services of any  
61 solid waste facilities or any solid waste collection,  
62 transportation and processing services provided by the  
63 authority.

64 (15) Do all acts necessary and proper to carry out the  
65 powers expressly granted to the authority by this article  
66 and powers conferred upon the authority by this article.

67 All rules and regulations promulgated by the author-  
68 ity pursuant to this article are exempt from the  
69 provisions of article three, chapter twenty-nine-a of the  
70 code.

**§20-9-12a. Commercial solid waste facility siting plan;  
facilities subject to plan; criteria; approval  
by West Virginia state solid waste manage-  
ment board; effect on facility siting; public  
hearings; rules and regulations.**

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 commer-  
4 cial solid waste facilities siting plan for the county or  
5 counties within its jurisdiction: *Provided*, That the West  
6 Virginia state solid waste management board may  
7 authorize any reasonable extension of up to one year for  
8 the completion of the said siting plan by any county or  
9 regional solid waste authority. The siting plan shall  
10 identify zones within each county where siting of the  
11 following facilities is authorized or prohibited:

12 (1) Commercial solid waste landfills which may  
13 accept an aggregate of more than ten thousand tons of  
14 solid waste per month.

15 (2) Commercial solid waste landfills which shall  
16 accept only less than an aggregate of ten thousand tons  
17 of solid 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 all solid waste generated within the county or region,  
29 economic development, transportation facilities, prop-  
30 erty values, groundwater and surface waters, geological  
31 and hydrological conditions, aesthetic and environmen-  
32 tal quality, historic and cultural resources, the present  
33 or potential land uses for residential, commercial,  
34 recreational, environmental conservation or industrial  
35 purposes and the public health, welfare and conven-  
36 ience. The plan shall be developed based upon informa-  
37 tion readily available. Due to the limited funds and time  
38 available the plan need not be an exhaustive and  
39 technically detailed analysis of the criteria set forth  
40 above. Unless the information readily available clearly  
41 establishes that an area is suitable for the location of a  
42 commercial solid waste facility or not suitable for such  
43 a facility, the area shall be designated as an area in  
44 which the location of a commercial solid waste facility  
45 is tentatively prohibited. Any person making an  
46 application for the redesignation of a tentatively  
47 prohibited area shall make whatever examination is  
48 necessary and submit specific detailed information in  
49 order to meet the provision established in subsection (g)  
50 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  
57 and encourage and solicit other public participation in  
58 the preparation of the siting plan as required by the  
59 rules and regulations promulgated by the West Virginia  
60 state solid waste management board for this purpose.  
61 Upon completion of the siting plan, the county or  
62 regional solid waste authority shall file said plan with  
63 the West Virginia state solid waste authority.

64 (d) The siting plan shall take effect upon approval by  
65 the West Virginia state solid waste management board  
66 pursuant to the rules and regulations promulgated for



67 this purpose. Upon approval of said plan, the West  
68 Virginia state solid waste management board shall  
69 transmit a copy thereof to the director of the division  
70 of natural resources and to the clerk of the county  
71 commission of the county encompassed by said plan  
72 which county clerk shall file the plan in an appropriate  
73 manner and shall make the plan available for inspection  
74 by the public.

75 (e) Effective upon approval of the siting plan by the  
76 West Virginia state solid waste management board, it  
77 shall be unlawful for any person to establish, construct,  
78 install or operate a commercial solid waste landfill or  
79 transfer station at a site not authorized by the siting  
80 plan: *Provided*, That an existing commercial solid waste  
81 landfill or transfer station which, on the effective date  
82 of this section, held a valid solid waste permit or  
83 compliance order issued by the division of natural  
84 resources pursuant to article five-f of this chapter may  
85 continue to operate but may not expand the spatial land  
86 area of the said facility beyond that authorized by said  
87 solid waste permit or compliance order, and may not  
88 increase the aggregate monthly solid waste capacity in  
89 excess of ten thousand tons monthly unless such a  
90 facility is authorized by the siting plan.

91 (f) The county or regional solid waste authority may,  
92 from time to time, amend the siting plan in a manner  
93 consistent with the requirements of this section for  
94 completing the initial siting plan and the rules and  
95 regulations promulgated by the West Virginia state  
96 solid waste management board for the purpose of such  
97 amendments.

98 (g) Notwithstanding any provision of this code to the  
99 contrary, upon application from a person who has filed  
100 a pre-siting notice pursuant to section five-c, article five-  
101 f of this chapter, the county or regional solid waste  
102 authority or county commission, as appropriate, may  
103 amend the siting plan by redesignating a zone that has  
104 been designated as an area where a commercial solid  
105 waste facility is tentatively prohibited to an area where  
106 one is authorized. In such case, the person seeking the  
107 change has the burden to affirmatively and clearly

108 demonstrate, based on the criteria set forth in subsection  
109 (b) of this section, that a solid waste facility could be  
110 appropriately operated in the public interest at such  
111 location. The West Virginia state solid waste manage-  
112 ment board shall provide, within available resources,  
113 technical support to a county or regional solid waste  
114 authority, or county commission as appropriate, when  
115 requested by such authority or commission to assist it  
116 in reviewing an application for any such amendment.

117 (h) The West Virginia state solid waste management  
118 board shall prepare and adopt a siting plan for any  
119 county or regional solid waste authority which does not  
120 complete and file with the said state authority such a  
121 siting plan in compliance with the provisions of this  
122 section and the rules and regulations promulgated  
123 thereunder. Any siting plan adopted by the West  
124 Virginia state solid waste authority pursuant to this  
125 subsection shall comply with the provisions of this  
126 section, and the rules and regulations promulgated  
127 thereunder, and shall have the same effect as a siting  
128 plan prepared by a county or regional solid waste  
129 authority and approved by the said state authority.

130 (i) The siting plan adopted pursuant to this section  
131 shall incorporate the provisions of the litter and solid  
132 waste control plan, as approved by the West Virginia  
133 state solid waste management board pursuant to section  
134 seven of this article, regarding collection and disposal  
135 of solid waste and the requirements, if any, for addi-  
136 tional commercial solid waste landfill and transfer  
137 station capacity.

138 (j) The West Virginia state solid waste management  
139 board is authorized and directed to promulgate rules  
140 and regulations specifying the public participation  
141 process, content, format, amendment, review and  
142 approval of siting plans for the purposes of this section.

**§20-9-12b. Interim siting approval for commercial solid waste facilities.**

1 (a) Until the first day of July, one thousand nine  
2 hundred ninety-two, or the effective date of the commer-  
3 cial solid waste facility siting plan authorized by section

4 twelve-a of this article, whichever date occurs first, it  
5 shall be unlawful for any person to establish, construct  
6 or install a commercial solid waste landfill or transfer  
7 station, or to expand the spatial land area of such an  
8 existing facility, without a certificate of site approval  
9 from the county or regional solid waste authority for the  
10 county in which the facility would be situated: *Provided*,  
11 That a person, who, on the effective date of this section,  
12 holds a valid Class A approval permit issued by a county  
13 commission, may obtain site approval from the county  
14 commission for the county in which the facility would  
15 be situated: *Provided, however*, That no such certificate  
16 will be required for such an existing commercial solid  
17 waste facility which on the effective date of this section  
18 held a valid solid waste permit or compliance order  
19 issued by the division of natural resources unless such  
20 facility increases its spatial land area beyond that  
21 authorized by such solid waste permit or compliance  
22 order.

23 (b) The county or regional solid waste authority, or  
24 county commission, as appropriate, shall issue or deny  
25 the certificate of site approval based upon the consid-  
26 eration of the effects of the proposed commercial solid  
27 waste landfill or transfer station upon one or more of  
28 the following criteria: The efficient disposal of solid  
29 waste generated within the county or region, economic  
30 development, transportation facilities, property values,  
31 groundwater and surface waters, geological and hydro-  
32 logical conditions, aesthetic and environmental quality,  
33 historic or cultural resources, the present or potential  
34 land uses for residential, commercial, recreational,  
35 industrial or environmental conservation purposes and  
36 the public health, welfare and convenience.

37 (c) The county or regional solid waste authority, or  
38 county commission, as appropriate, shall issue or deny  
39 the certificate of site approval within a reasonable  
40 period upon receiving the pre-siting notice for the  
41 proposed commercial solid waste facility required by  
42 section five-c, article five-f of this chapter.

43 (d) The county or regional solid waste authority, or  
44 county commission, as appropriate, shall hold a public

45 hearing prior to the issuance of a certificate of site  
46 approval for the purpose of receiving public comment  
47 upon the siting of the proposed commercial solid waste  
48 facility. The authority shall provide notice of such public  
49 hearing with publication of a Class II legal advertise-  
50 ment in a qualified newspaper serving the county where  
51 the proposed site is situated.

52 (e) The county or regional solid waste authority, or  
53 county commission, as appropriate, shall complete  
54 findings of fact and conclusions relating to the criteria  
55 authorized in subsection (b) hereof which support its  
56 decision to issue or deny a certificate of site approval.

57 (f) Any person adversely affected by a decision of a  
58 county or regional solid waste authority, or county  
59 commission, as appropriate, to issue or deny a certificate  
60 of site approval pursuant to this section may appeal that  
61 decision to the circuit court for the county in which the  
62 proposed commercial solid waste facility would be  
63 located.

**§20-9-12c. Approval of establishment or continuation of  
Class A facility by county commission  
and/or referendum.**

1 (a) If a Class A applicant obtains a certificate of site  
2 approval from the county or regional solid waste  
3 authority regarding establishing, constructing or  
4 operating a commercial solid waste landfill, said  
5 applicant shall also file a notice with the county  
6 commission of the county within whose boundaries such  
7 landfill would be situated or of the county commission  
8 where it would be situated if its spatial area covers more  
9 than one county. The applicant shall request the  
10 approval of the county commission of the affected county  
11 to establish, construct or operate such landfill within the  
12 county. The county commission must act on such request  
13 and either grant or deny its approval within thirty days  
14 after the filing of such notice and request. The county  
15 commission may hold public hearings and solicit public  
16 comment for the purposes of this section.

17 Following the decision by the county commission and  
18 upon the written petition of registered voters residing

19 in the county equal to not less than fifteen percent of  
20 the number of votes cast within the county for governor  
21 at the preceding gubernatorial election, which petition  
22 shall be filed with the county commission within sixty  
23 days after it has rendered its decision, the county  
24 commission shall, upon verification of the required  
25 number of signatures on the petition, and not less than  
26 fifty-six days before the election, order a referendum be  
27 placed upon the ballot.

28 Any referendum conducted pursuant to this section  
29 shall be held at the next primary, general or other  
30 county-wide election: *Provided*, That the election shall  
31 be held within nine months following the decision of the  
32 county commission. If no primary, general or county-  
33 wide election is scheduled within such nine-month  
34 period, then the county commission shall schedule a  
35 special election to be held within such time period.

36 (1) Such referendum will be to determine whether it  
37 is the will of the voters of the county that a solid waste  
38 facility handling ten thousand tons or more of solid  
39 waste per month be located in the county. Any election  
40 at which the question of locating a solid waste disposal  
41 facility is voted upon shall be held at the voting  
42 precincts established for holding primary or general  
43 elections. All of the provisions of the general election  
44 laws, when not in conflict with the provisions of this  
45 article, shall apply to voting and elections hereunder,  
46 insofar as practicable. The secretary of state shall  
47 prescribe the form of the petition which shall include  
48 the printed name, address and date of birth of each  
49 person whose signature appears on the petition.

50 (2) The ballot, or the ballot labels where voting  
51 machines are used, shall have printed thereon substan-  
52 tially the following:

53 "Shall a solid waste disposal facility handling ten  
54 thousand tons or more of solid waste per month be  
55 located within \_\_\_\_\_ County, West Virginia?

56  For the Facility

57  Against the Facility

58 (Place a cross mark in the square opposite your  
59 choice.)”

60 (3) If a majority of the legal votes cast upon the  
61 question be against the siting of a Class A landfill within  
62 the county, then the county commission, the county or  
63 regional solid waste authority and the division of natural  
64 resources shall not proceed any further with the pending  
65 notice or application nor may any of them allow to be  
66 filed subsequent notices or applications to site a Class  
67 A landfill within the county. If a majority of the legal  
68 votes cast upon the question be for siting a Class A  
69 landfill within the county, then the application process  
70 as set forth in this article and article five-f of this  
71 chapter may proceed, but such vote shall not be binding  
72 on or require the county or regional solid waste  
73 authority or the division of natural resources to approve  
74 an application to establish, construct or operate a Class  
75 A landfill. If the majority of the legal votes cast be  
76 against the question, that does not prevent the question  
77 from again being submitted to a vote at any subsequent  
78 election in the manner herein provided.

79 (b) Notwithstanding any other provisions of this  
80 chapter to the contrary, a person who, on the effective  
81 date of this section, holds a valid Class A approval  
82 permit or compliance order issued by the division of  
83 natural resources, pursuant to article five-f of this  
84 chapter, may continue to operate if, by the first day of  
85 June, one thousand nine hundred ninety, the county  
86 commission of the county in which such facility is  
87 located approves the continued handling of ten thousand  
88 tons or more of solid waste per month: *Provided*, That  
89 the decision of the county commission is subject to  
90 review by referendum of the citizens of the county in  
91 which such facility is located.

92 (1) Any referendum held pursuant to this subsection  
93 shall comply with the procedure set forth in subsection  
94 (a) of this section. Further, the ballot, or ballot labels  
95 where voting machines are used, shall have printed  
96 thereon substantially the following: “Shall the \_\_\_\_\_  
97 \_\_\_\_\_ landfill continue to handle ten  
98 thousand tons or more of solid waste per month?”

99      For continued handling of ten thousand tons or  
100 more of solid waste per month

101      Against continued handling of ten thousand tons  
102 or more of solid waste per month

103     (Place a cross mark in the square opposite your  
104 choice.)”

105     (2) If a majority of the legal votes cast upon the  
106 question are against the continued handling of ten  
107 thousand tons or more of solid waste per month, or if  
108 the county commission disapproves the continued  
109 operation of such facility, the director of the division of  
110 natural resources shall, within thirty days following  
111 certification of the election results, or the decision of the  
112 county commission, amend the permit or compliance  
113 order to require a decrease, over a period lasting no  
114 more than one year, in total tonnage to a level below ten  
115 thousand tons of solid waste per month.

**§20-9-12d. Solid waste assessment interim fee; regulated  
motor carriers; dedication of proceeds;  
criminal penalties.**

1     (a) *Imposition.*—Effective the first day of July, one  
2 thousand nine hundred eighty-nine, a solid waste  
3 assessment fee is hereby levied and imposed upon the  
4 disposal of solid waste at any solid waste disposal facility  
5 in this state to be collected at the rate of one dollar per  
6 ton or part thereof of solid waste. The fee imposed by  
7 this section shall be in addition to all other fees levied  
8 by law.

9     (b) *Collection, return, payment and record.*—The fee  
10 herein imposed shall be paid by the person disposing of  
11 solid waste at a solid waste disposal facility and shall  
12 be collected by the operator of such facility and remitted  
13 to the state tax commissioner. The fee accrues at the  
14 time the solid waste is disposed of in this state. The fee  
15 imposed by this section shall be due and payable on or  
16 before the fifteenth day of the month next succeeding  
17 the month in which the fee accrued together with a  
18 return on such form or forms as prescribed by the state  
19 tax commissioner. Each person disposing of solid waste

20 at a solid waste disposal facility and each person  
21 required to collect the fee imposed by this section shall  
22 keep complete and accurate records in such form as the  
23 state tax commissioner may by regulation require.

24 (c) *Regulated motor carriers.*—The fee imposed by this  
25 section and section twenty-two, article five, chapter  
26 seven of this code shall be considered a necessary and  
27 reasonable cost for motor carriers of solid waste subject  
28 to the jurisdiction of the public service commission  
29 under chapter twenty-four-a of this code.  
30 Notwithstanding any provision of law to the contrary,  
31 upon the filing of a petition by an affected motor carrier,  
32 the public service commission shall, within fourteen  
33 days, reflect the cost of said fee in said motor carrier's  
34 rates for solid waste removal service.

35 (d) *Definition of solid waste disposal facility.*—For  
36 purposes of this section, the term "solid waste disposal  
37 facility" means any approved solid waste facility or open  
38 dump in this state. Nothing herein shall be construed  
39 to authorize in any way the creation or operation of or  
40 contribution to an open dump.

41 (e) *Exemptions.*—The following transactions shall be  
42 exempt from the fee imposed by this section:

43 (1) Disposal of solid waste at a solid waste disposal  
44 facility by the person who owns, operates or leases the  
45 solid waste disposal facility if it is used exclusively to  
46 dispose of waste originally produced by such person in  
47 such person's regular business or personal activities or  
48 by persons utilizing the facility on a cost-sharing or  
49 nonprofit basis;

50 (2) Reuse or recycling of any solid waste; and

51 (3) Disposal of residential solid waste by an individual  
52 not in the business of hauling or disposing of solid waste  
53 on such days and times as designated by the director of  
54 the division of natural resources by regulation as  
55 exempt from the fee imposed pursuant to section five-  
56 a, article five-f, chapter twenty of this code.

57 (f) *Procedure and administration.*—Each and every  
58 provision of the "West Virginia Tax Procedure and



59 Administration Act" set forth in article ten, chapter  
60 eleven of this code shall apply to the fee imposed by this  
61 section with like effect as if said act were applicable  
62 only to the fee imposed by this section and were set forth  
63 in extenso herein.

64 (g) *Criminal penalties.*—Notwithstanding section two,  
65 article nine, chapter eleven of this code, sections three  
66 through seventeen, article nine, chapter eleven of this  
67 code shall apply to the fee imposed by this section with  
68 like effect as if said sections were the only fee imposed  
69 by this section and were set forth in extenso herein.

70 (h) *Dedication of proceeds.*—The net proceeds of the  
71 fee collected pursuant to this section shall be transferred  
72 to a special revenue account designated as the "Solid  
73 Waste Planning Fund" as such proceeds are received by  
74 the state tax commissioner. The West Virginia state  
75 solid waste management board shall allocate the  
76 proceeds of the said fund as follows:

77 (1) Fifty percent of the total proceeds shall be divided  
78 equally among, and paid over to, each county solid waste  
79 authority to be expended for the purposes of this article:  
80 *Provided*, That where a regional solid waste authority  
81 exists, such funds shall be paid over to the regional solid  
82 waste authority to be expended for the purposes of this  
83 article in an amount equal to the total share of all  
84 counties within the jurisdiction of said regional solid  
85 waste authority; and

86 (2) Fifty percent of the total proceeds shall be  
87 expended by the West Virginia state solid waste  
88 management board for: (i) Grants to the county or  
89 regional solid waste authorities for the purposes of this  
90 article; (ii) administration, technical assistance or other  
91 costs of the state solid waste management board  
92 necessary to implement the purposes of this article and  
93 article twenty-six, chapter sixteen of the code of West  
94 Virginia, one thousand nine hundred thirty-one, as  
95 amended.

96 (i) *Severability.*—If any provision of this section or the  
97 application thereof shall for any reason be adjudged by  
98 any court of competent jurisdiction to be invalid, such

99 judgment shall not affect, impair or invalidate the  
 100 remainder of this section, but shall be confined in its  
 101 operation to the provision thereof directly involved in  
 102 the controversy in which such judgment shall have been  
 103 rendered, and the applicability of such provision to other  
 104 persons or circumstances shall not be affected thereby.

105 (j) *Effective date.*—This section is effective on the first  
 106 day of July, one thousand nine hundred ninety.

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## CHAPTER 170

(S. B. 41—By Senators Burdette, Mr. President, and Warner)

[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article eleven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to specifying the percentage of registered voters required for petitions to establish or rescind a county recycling program for solid waste; establishing filing deadlines; giving the secretary of state the authority to prescribe the form of the petition; and including certain identifying information on the petition.

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

That section five, 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.

**§20-11-5. Establishment of county recycling programs for solid waste; petition for referendum; ballot contents; election procedure; effect of such election.**

1 (a) A comprehensive recycling program for solid  
 2 waste may be established in any county of this state by  
 3 action of a county commission in accordance with the  
 4 provisions of this section. Such program shall require:

5 (1) That, prior to collection at its source, all solid

6 waste shall be segregated into separate identifiable  
7 recyclable materials by each person, partnership,  
8 corporation and governmental agency subscribing to a  
9 solid waste collection service in the county or transport-  
10 ing solid waste to a commercial solid waste facility in  
11 the county;

12 (2) That each commercial solid waste facility located  
13 in the county and each person engaged in the commer-  
14 cial collection, transportation, processing or disposal of  
15 solid waste within the county shall accept only such solid  
16 waste from which recyclable materials in accordance  
17 with said county's comprehensive recycling program  
18 have been segregated; and

19 (3) That the provisions of the recycling plan prepared  
20 pursuant to section four of this article shall, to the extent  
21 practicable, be incorporated in said county's comprehen-  
22 sive recycling program.

23 (b) For the purposes of this article, recyclable  
24 materials shall include, but not be limited to, steel and  
25 bi-metallic cans, aluminum, glass, paper and such other  
26 solid waste materials as may be specified by the county  
27 commission with the advice of the county or regional  
28 solid waste authority.

29 (c) A comprehensive recycling program for solid  
30 waste may be established in any county of this state by:  
31 (1) A petition filed with the county commission bearing  
32 the signatures of registered voters of the county equal  
33 to not less than five percent of the number of votes cast  
34 within the county for governor at the preceding  
35 gubernatorial election; and (2) approval by a majority  
36 of the voters in a subsequent referendum on the issue.  
37 A referendum to determine whether it is the will of the  
38 voters of a county that a comprehensive recycling  
39 program for solid waste be established in the county  
40 may be held at any regular primary or general election  
41 or in conjunction with any other countywide election.  
42 Any election at which the question of establishing a  
43 policy of comprehensive recycling for solid waste is  
44 voted upon shall be held at the voting precincts  
45 established for holding primary or general elections. All

46 of the provisions of the general election laws, when not  
47 in conflict with the provisions of this article, shall apply  
48 to voting and elections hereunder, insofar as practicable.  
49 The secretary of state shall prescribe the form of the  
50 petition which shall include the printed name, address  
51 and date of birth of each person whose signature  
52 appears on the petition. Upon verification of the  
53 required number of signatures on the petition, the  
54 county commission shall, not less than seventy days  
55 before the election, order that the issue be placed on the  
56 ballot and referendum held at the next primary, general  
57 or special election to determine whether it is the will of  
58 the voters of said county that a policy of comprehensive  
59 recycling of solid waste be established in the county:  
60 *Provided*, That the petition bearing the necessary  
61 signatures has been filed with the county commission at  
62 least one hundred days prior to the election.

63 The ballot, or the ballot labels where voting machines  
64 are used, shall have printed thereon substantially the  
65 following:

66 "Shall the County Commission be required to establish  
67 a comprehensive recycling program for solid waste in  
68 \_\_\_\_\_ County, West Virginia?

69  For Recycling

70  Against Recycling

71 (Place a cross mark in the square opposite your  
72 choice.)"

73 If a majority of legal votes cast upon the question be  
74 for the establishment of a policy of comprehensive  
75 recycling of solid waste, the county commission shall,  
76 after the certification of the results of the referendum,  
77 thereafter establish by ordinance a comprehensive  
78 recycling program for solid waste in the county within  
79 ninety days of said certification. If a majority of the  
80 legal votes cast upon the question be against the  
81 establishment of a policy of comprehensive recycling of  
82 solid waste, said policy shall not take effect, but the  
83 question may again be submitted to a vote at any  
84 subsequent election in the manner herein provided.

85 (d) A comprehensive recycling program for solid  
86 waste established by petition and referendum may be  
87 rescinded only pursuant to the procedures set out herein  
88 to establish the program.

89 To rescind the program, the ballot, or the ballot labels  
90 where voting machines are used, shall have printed  
91 thereon substantially the following:

92 "Shall the County Commission be required to termi-  
93 nate the comprehensive recycling program for solid  
94 waste in \_\_\_\_\_ County, West Virginia?

95  Continue Recycling

96  End Recycling

97 (Place a cross mark in the square opposite your  
98 choice.)"

99 (e) If a majority of legal votes cast upon the question  
100 be for the termination of a policy of comprehensive  
101 recycling of solid waste previously established in the  
102 county, the county commission shall, after the certifica-  
103 tion of the results of the referendum, thereafter rescind  
104 by ordinance the comprehensive recycling program for  
105 solid waste in the county within ninety days of said  
106 certification. If a majority of the legal votes cast upon  
107 the question be for the continuation of the policy of  
108 comprehensive recycling of solid waste, said ordinance  
109 shall not be rescinded, but the question may again be  
110 submitted to a vote at any subsequent election in the  
111 manner herein provided.

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## CHAPTER 171

(Com. Sub. for S. B. 92—By Senators Brackenrich and Spears)

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[Passed March 10, 1990; in effect July 1, 1990. Approved by the Governor.]

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AN ACT to amend and reenact section four, article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to scheduling governmental agencies or programs for termination pursuant to the West Virginia sunset law.

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

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

**ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.**

**§4-10-4. Termination of governmental entities or programs.**

1       The following governmental entities and programs  
2 shall be terminated on the date indicated but no  
3 governmental entity or program shall be terminated  
4 under this article unless a performance audit has been  
5 conducted of such entity or program, except as autho-  
6 rized under section fourteen of this article:

7       (1) On the first day of July, one thousand nine  
8 hundred eighty-one: Judicial council of West Virginia;  
9 motor vehicle certificate appeal board; child welfare  
10 licensing board.

11       (2) On the first day of July, one thousand nine  
12 hundred eighty-two: Ohio River basin commission;  
13 commission on postmortem examination; state commis-  
14 sion on manpower, training and technology.

15       (3) On the first day of July, one thousand nine  
16 hundred eighty-three: Anatomical board; economic  
17 opportunity advisory committee; community develop-  
18 ment authority board.

19       (4) On the first day of July, one thousand nine  
20 hundred eighty-four: The following programs of the  
21 department of natural resources: Rabies control, work  
22 incentive program; West Virginia alcoholic beverage  
23 control licensing advisory board.

24       (5) On the first day of July, one thousand nine  
25 hundred eighty-five: Beautification commission; labor  
26 management advisory council.

27       (6) On the first day of July, one thousand nine  
28 hundred eighty-six: Health resources advisory council.

29       (7) On the first day of July, one thousand nine

30 hundred eighty-seven: Civil service commission advisory  
31 board; council of finance and administration; and the  
32 motorcycle safety standards and specifications board.

33 (8) On the first day of July, one thousand nine  
34 hundred eighty-eight: Veteran's council; labor manage-  
35 ment relations board; records management and preser-  
36 vation advisory committee; minimum wage rate board;  
37 commission on mass transportation; and the public  
38 employees insurance board.

39 (9) On the first day of July, one thousand nine  
40 hundred eighty-nine: Mental retardation advisory  
41 committee; board of school finance; veteran's affairs  
42 advisory council; and the reclamation commission.

43 (10) On the first day of July, one thousand nine  
44 hundred ninety: Consumer affairs advisory council;  
45 savings and loan association; forest industries industrial  
46 foundation; and drivers' license advisory board.

47 (11) On the first day of July, one thousand nine  
48 hundred ninety-one: State advisory council of the  
49 division of employment security; department of health  
50 and human resources; oil and gas conservation commis-  
51 sion; the family law masters system; state lottery  
52 commission; the department of commerce, labor and  
53 environmental resources; West Virginia health care cost  
54 review authority; the following divisions or programs of  
55 the department of agriculture: Soil conservation com-  
56 mittee, rural resource division, meat inspection pro-  
57 gram; interagency committee on pesticides; pesticides  
58 board of review; and the geological and economic  
59 survey; women's commission, child advocate office,  
60 department of health and human resources; the division  
61 of corrections; and the office of workers' compensation  
62 commissioner.

63 (12) On the first day of July, one thousand nine  
64 hundred ninety-two: State water resources board; water  
65 resources division, division of natural resources; white-  
66 water advisory board; state board of risk and insurance  
67 management; West Virginia's membership in the  
68 interstate commission on the Potomac River basin;  
69 board of banking and financial institutions; the farm

70 management commission; state building commission;  
71 the capitol building commission; the board of examiners  
72 in counseling; and the public service commission:  
73 *Provided*, That in the case of the public service  
74 commission, the performance and fiscal audit required  
75 by this article shall be completed and transmitted to the  
76 joint committee on government and finance on or before  
77 the first day of July, one thousand nine hundred ninety-  
78 one, in order that the joint committee or its designated  
79 subcommittee may review the audit pursuant to the  
80 provisions of section one, article one, chapter twenty-  
81 four of this code.

82 (13) On the first day of July, one thousand nine  
83 hundred ninety-three: Commission on uniform state  
84 laws; state structural barriers compliance board; and  
85 the oil and gas inspectors examining board.

86 (14) On the first day of July, one thousand nine  
87 hundred ninety-four: Ohio River valley water sanitation  
88 commission; the southern regional education board; real  
89 estate commission; the division of labor and the section  
90 of archives and history of the division of culture and  
91 history.

92 (15) On the first day of July, one thousand nine  
93 hundred ninety-five: Emergency medical services  
94 advisory council; commission on charitable organiza-  
95 tions; information system advisory commission; and the  
96 board of social work examiners.

97 (16) On the first day of July, one thousand nine  
98 hundred ninety-six: U.S. geological survey program  
99 within the division of natural resources; and the board  
100 of investments.

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## CHAPTER 172

(Com. Sub. for H. B. 4127—By Delegates Sattes and Susman)

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[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

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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 one-c; to amend article eight of said chapter eleven by adding thereto two new sections, designated sections six-e and six-f; and to amend and reenact section eleven, article nine-a, chapter eighteen of said code, all relating to taxation and property valuation; reciting legislative findings; defining terms; creating property valuation training and procedures commission; providing for composition of commission, terms of members and their compensation; prescribing powers and duties of commission; authorizing commission to borrow from board of investments; authorizing commission to make rules; requiring certain training for assessors, their staffs and county commissioners; specifying certain duties of county assessors relating to appraisal of property; prescribing additional powers and duties of tax commissioner relating to property valuation; providing for additional funding for assessors' offices; requiring periodic valuations of property; providing criminal penalties for failure to list property or file return or report; creating classification designated managed timberland; requiring assessment at certain percent of appraisal value for all property including property assessed by board of public works; providing severability clause; requiring reduction in levy rate when appraisal results in tax increase; requiring notice and public hearing prior to decision in lieu of such reduction by county commissions and municipalities; providing that Legislature effects any increase of school board levy rate after public hearing; transferring certain existing duties regarding appraisal to new article one-c; providing for total assessed taxable value for next fiscal year; and deleting outdated provisions of code.

*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 one-c; that article eight of said chapter eleven be amended by adding thereto two new sections, designated sections six-e and six-f; and that section eleven, article nine-a, chapter eighteen of said code, be amended and reenacted, all to read as follows:

**Chapter****11. Taxation.****18. Education.****CHAPTER 11. TAXATION.****Article****1C. Fair and Equitable Property Valuation.****8. Levies.****ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.****§11-1C-1. Legislative findings.****§11-1C-2. Definitions.****§11-1C-3. Property valuation training and procedures commission generally; appointment; term of office; meetings; compensation.****§11-1C-4. Commission powers and duties; rule making.****§11-1C-5. Tax commissioner powers and duties.****§11-1C-6. Required training for assessors, their staffs and county commissioners.****§11-1C-7. Duties of county assessors; property to be appraised at fair market value; exceptions; initial equalization; valuation plan.****§11-1C-8. Additional funding for assessors' offices; maintenance funding.****§11-1C-9. Periodic valuations.****§11-1C-10. Valuation of industrial property and natural resources property by tax commissioner; penalties; methods; values sent to assessors.****§11-1C-11. Managed timberland.****§11-1C-12. Board of equalization and review; assessments; board of public works.****§11-1C-13. Severability.****§11-1C-1. Legislative findings.**

1 (a) The Legislature hereby finds and declares that all  
 2 property in this state should be fairly and equitably  
 3 valued wherever it is situated so that all citizens will  
 4 be treated fairly and no individual species or class of  
 5 property will be overvalued or undervalued in relation  
 6 to all other similar property within each county and  
 7 throughout the state.

8 (b) The Legislature by this article seeks to create a  
 9 method to establish and maintain fair and equitable  
 10 values for all property. The Legislature does not intend  
 11 by this article to implement the reappraisal as con-  
 12 ducted under articles one-a and one-b of this chapter,  
 13 nor does it intend to affect tax revenue in any manner.

14 (c) The Legislature finds that requiring the valuation  
 15 of property to occur in three-year cycles with an annual

16 adjustment of assessments as to those properties for  
17 which a change in value is discovered shall not violate  
18 the equal and uniform provision of section one, article  
19 ten of the West Virginia Constitution, the Legislature  
20 further finding that such three-year cycle and annual  
21 adjustment are an integral and indispensable part of a  
22 systematic review of all properties in order to achieve  
23 equality of assessed valuation within and among the  
24 counties of this state.

25 (d) The Legislature deems that the goal of this article  
26 is that by the end of the three-year cycle contemplated  
27 by this article, and thereafter from year to year, all  
28 property shall be annually assessed at sixty percent of  
29 its then current fair market value except for the values  
30 derived for farms and managed timberland properties,  
31 which are to be valued as prescribed by articles one-c  
32 and four of this chapter.

#### §11-1C-2. Definitions.

1 For the purposes of this article, the following words  
2 shall have the meanings hereafter ascribed to them  
3 unless the context clearly indicates otherwise:

4 (a) "Timberland" means any surface real property  
5 except farm woodlots of not less than ten contiguous  
6 acres which is primarily in forest and which, in  
7 consideration of their size, has sufficient numbers of  
8 commercially valuable species of trees to constitute at  
9 least forty percent normal stocking of forest trees which  
10 are well distributed over the growing site.

11 (b) "Managed timberland" means surface real prop-  
12 erty, except farm woodlots, of not less than ten contig-  
13 uous acres which is devoted primarily to forest use and  
14 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  
17 forest trees which are well distributed over the growing  
18 site, and that is managed pursuant to a plan provided  
19 for in section 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.

**§11-1C-3. Property valuation training and procedures  
commission generally; appointment; term of  
office; meetings; compensation.**

1 (a) There is hereby created, under the department of  
2 tax and revenue, a property valuation training and  
3 procedures commission which consists of the state tax  
4 commissioner, or a designee, who shall serve as chair-  
5 person of the commission, three county assessors, four  
6 citizens of the state, one of which shall be a certified  
7 appraiser, and two county commissioners. The assessors,  
8 four citizen members and two county commissioners  
9 shall be appointed by the governor with the advice and  
10 consent of the Senate. For each assessor to be appointed,  
11 the West Virginia Assessors Association shall nominate  
12 three assessors, no more than two of whom shall belong  
13 to the same political party, and shall submit such list  
14 of nominees to the governor. For each of the two county  
15 commissioners to be appointed, the County Commission-  
16 er's Association of West Virginia shall nominate three  
17 commissioners, no more than two of whom shall belong  
18 to the same political party, and shall submit such list  
19 of nominees to the governor. Except for the tax  
20 commissioner, there may not be more than one member  
21 from any one county. No more than seven members of  
22 the commission shall belong to the same political party:  
23 *Provided*, That any member of the commission who is  
24 a direct party to any dispute before the board shall  
25 excuse himself or herself from any consideration or vote  
26 regarding the dispute.

27 A list of nine assessor nominees shall be submitted to  
28 the governor by the assessors association within thirty  
29 days of the effective date of this article, and not more  
30 than six of such nominees shall belong to the same  
31 political party. Within sixty days of such effective date,  
32 the governor shall appoint the assessor and citizen  
33 members of the commission.

34 A list of six county commissioner nominees shall be  
35 submitted to the governor by the county commissioners  
36 association within thirty days of the effective date of this  
37 article, and not more than four of such nominees shall  
38 belong to the same political party. Within sixty days of  
39 such effective date, the governor shall appoint two  
40 county commission members of the commission.

41 (b) All members, except the tax commissioner, shall  
42 serve for four-year terms: *Provided*, That of the  
43 members initially appointed, two assessors, one county  
44 commission member and one citizen shall serve two-year  
45 terms, and one assessor, one county commissioner  
46 member and three citizen members shall serve four-  
47 year terms. Any assessor member and county commis-  
48 sioner member ceases to be a member immediately upon  
49 leaving the office of assessor or county commissioner.  
50 Members shall remain members of the commission until  
51 their successors have been appointed. In case of a  
52 vacancy occurring prior to the end of the term of a  
53 member, a replacement shall be appointed within thirty  
54 days in the same manner as the member was appointed  
55 and shall serve until the end of the term of the member  
56 so replaced.

57 (c) The tax commissioner shall call the first meeting  
58 of the commission within thirty days of the appointment  
59 of the assessor, county commissioner and citizen  
60 members. Subsequently, meetings shall be at the call of  
61 the chairperson or at the written request of any four  
62 members, except that the commission shall meet at least  
63 twice annually. Assessor members, county commissioner  
64 members and the tax commissioner shall serve without  
65 compensation, and citizen members shall receive fifty  
66 dollars per day for each day of actual service rendered.  
67 All members shall be reimbursed for all reasonable and  
68 necessary expenses actually incurred in the perfor-  
69 mance of their duties as members of the commission.

70 (d) The commission shall be funded by an appropri-  
71 ation by the Legislature through a separate line item  
72 appropriated to the state tax commissioner.

**§11-1C-4. Commission powers and duties; rule making.**

1 (a) On or before the first day of October, one thousand  
2 nine hundred ninety, and thereafter as necessary, the  
3 property valuation training and procedures commission  
4 shall perform the following duties:

5 (1) Devise training and certification criteria for  
6 county assessors and their employees and members of  
7 county commissions, which shall include a definition of  
8 "appropriate staff member" as the term is used in  
9 section six of this article relating to required training,  
10 which definition shall include deputy assessors as  
11 provided for in section three, article two of this chapter;

12 (2) Establish uniform, statewide procedures and  
13 methodologies for the mapping, visitation, identification  
14 and collection of information on the different species of  
15 property, which procedures and methodologies shall  
16 include reasonable requirements for visitation of  
17 property, including a requirement that a good faith  
18 effort be made to contact any owner of owner-occupied  
19 residential property: *Provided*, That the commission is  
20 not authorized to establish the methods to value real and  
21 personal property, but shall have the authority to  
22 approve such methods;

23 (3) Develop an outline of items to be included in the  
24 county property valuation plan required in section seven  
25 of this article, which shall include information to assist  
26 the property valuation training and procedures commis-  
27 sion in its determination of the distribution of state  
28 funds provided pursuant to section eight of this article.

29 (b) On or before the first day of July, one thousand  
30 nine hundred ninety-one, the commission shall establish  
31 objective criteria for the evaluation of the performance  
32 of the duties of county assessors and the tax  
33 commissioner.

34 (c) In the event the tax commissioner and a county  
35 assessor cannot agree on the content of the plan required  
36 under section seven of this article, the commission shall  
37 examine the plan and the objections of the tax commis-  
38 sioner and shall resolve the dispute on or before the first

39 day of the fiscal year following the fiscal year in which  
40 the plan was submitted to the commission for resolution.

41 (d) The commission shall have the power to make such  
42 rules as it deems necessary to carry out the provisions  
43 of this section. Any rules adopted by the commission  
44 prior to the first day of October, one thousand nine  
45 hundred ninety, under subsection (a) of this section are  
46 exempt from the provisions of article three of chapter  
47 twenty-nine-a of this code: *Provided*, That the commis-  
48 sion shall file a copy of any rule so exempted from the  
49 provisions of chapter twenty-nine-a of this code with the  
50 legislative rule-making review committee created  
51 pursuant to section eleven, article three of said chapter  
52 prior to the thirtieth day of November, one thousand  
53 nine hundred ninety.

54 (e) The commission shall have the authority to make  
55 and enter into all contracts and agreements necessary  
56 or incidental to the performance of its duties and the  
57 execution of its powers under this article.

58 (f) In order to fund the costs of the requirements of  
59 this article, the valuation commission shall have the  
60 authority, on a one time basis, to borrow five million  
61 dollars and to distribute such funds according to need  
62 and the valuation plan submitted by the counties. Upon  
63 request of the valuation commission, the state board of  
64 investments shall loan, under commercially reasonable  
65 terms to be determined by the parties, up to five million  
66 dollars to the valuation commission, on a one time basis,  
67 from one of the various funds administered by the state  
68 board of investments.

69 (g) The commission shall be required, in the event  
70 that the tax commissioner has failed to do so, to appoint  
71 one or more special assessors if it is the determination  
72 of the commission that an assessor has substantially  
73 failed to perform the duties required by sections seven  
74 and eight of this article. A writ of mandamus shall be  
75 the proper remedy if the commission fails to perform  
76 any of its duties required by law.

**§11-1C-5. Tax commissioner powers and duties.**

1 (a) In addition to the powers and duties of the tax  
2 commissioner in other provisions of this article and this  
3 code, the tax commissioner shall have the power and  
4 duty to:

5 (1) Perform such duties and exercise such powers as  
6 may be necessary to accomplish the purposes of this  
7 article;

8 (2) Determine the methods of valuation for both real  
9 and personal property in accordance with the following:

10 (A) As to personal property, the tax commissioner  
11 shall provide a method to appraise each major specie of  
12 personal property in the state so that all such items of  
13 personal property are valued in the same manner no  
14 matter where situated in the state, shall transmit these  
15 methods to each county assessor who shall use these  
16 methods to value the various species of personal  
17 property. The tax commissioner shall periodically  
18 conduct such studies as are necessary to determine that  
19 such methods are being followed. Such method shall be  
20 in accordance with the provisions of article five of this  
21 chapter: *Provided*, That notwithstanding any other  
22 provision of this code to the contrary, the several county  
23 assessors shall appraise motor vehicles as follows: The  
24 state tax commissioner shall annually compile a sche-  
25 dule of automobile values based upon the lowest values  
26 shown in a nationally accepted used car guide, which  
27 said schedule shall be furnished to each assessor and  
28 shall be used by the several county assessors to deter-  
29 mine the assessed value for all motor vehicles in an  
30 amount equal to sixty percent of said lowest values.

31 (B) As to managed timberland as defined in section  
32 two of this article, the tax commissioner shall provide  
33 a method to appraise such property in the state so that  
34 all such property is valued in the same manner no  
35 matter where it is situated in the state, which shall be  
36 a valuation based on its use and productive potential as  
37 managed timberland, which may be accorded special  
38 valuation as forestlands as authorized by section fifty-  
39 three, article six of the Constitution of West Virginia:  
40 *Provided*, That timberland that does not qualify for



41 identification as managed timberland shall be valued at  
42 market value: *Provided, however*, That the tax commis-  
43 sioner may not implement any rules or regulations in  
44 title one hundred ten, which relate to valuation or  
45 classification of timberland: *Provided further*, That on or  
46 before the first day of October, one thousand nine  
47 hundred ninety, the tax commissioner shall, in accor-  
48 dance with chapter twenty-nine-a of this code, promul-  
49 gate new rules relating to the valuation and classifica-  
50 tion of timberland.

51 (C) As to farmland used, occupied and cultivated by  
52 an owner or bona fide tenant, the tax commissioner shall  
53 provide a method to appraise such property in the state  
54 so that all such property is valued in the same manner  
55 no matter where it is situated in the state, which  
56 valuation shall be arrived at according to the fair and  
57 reasonable value of the property for the purpose for  
58 which it is actually used regardless of what the value  
59 of the property would be if used for some other purpose,  
60 in accordance with section one, article three of this  
61 chapter and as authorized by subsection B, section one-  
62 b, article X of the Constitution of West Virginia.

63 (D) As to public utility property, the tax commis-  
64 sioner shall prescribe appropriate methods for the  
65 appraisal of the various types of property subject to  
66 taxation as public utilities and the types of property  
67 which are to be included in the operating property of  
68 a public utility and thereby not subject to taxation by  
69 the county assessor. Only parcels or other property, or  
70 portions thereof, which are an integral part of the public  
71 utility's function as a utility shall be included as  
72 operating property and assessed by the board of public  
73 works under provisions of article six of this chapter;

74 (3) Evaluate the performance of each assessor based  
75 upon the criteria established by the commission and  
76 each county's approved plan and take appropriate  
77 measures to require any assessor who does not meet  
78 these criteria or adequately carry out the provisions of  
79 the plan to correct any deficiencies. Such evaluation  
80 shall include the periodic review of the progress of each  
81 assessor in conducting the appraisals required in

82 sections seven and nine of this article and in following  
83 the approved valuation plan. If the tax commissioner  
84 determines that an assessor has substantially failed to  
85 perform the duties required by said sections, the tax  
86 commissioner shall take all necessary steps, including  
87 the appointment of one or more special assessors in  
88 accordance with the provisions of section one, article  
89 three of this chapter, or utilize such other authority as  
90 the commissioner has over county assessors pursuant to  
91 other provisions of this code as may be necessary to  
92 complete the tasks and duties imposed by this article:  
93 *Provided*, That a writ of mandamus shall be the  
94 appropriate remedy if the tax commissioner fails to  
95 perform his or her statutory duty provided for in section  
96 five, article one of this chapter;

97 (4) Submit to the Legislature, on or before the  
98 fifteenth day of February of each year, a preliminary  
99 statewide aggregate tax revenue projection and other  
100 information which shall assist the Legislature in its  
101 deliberations regarding county board of education levy  
102 rates pursuant to section six-f, article eight of this  
103 chapter, which information shall include any amount of  
104 reduction required by said section six-f;

105 (5) Maintain the valuations each year by making or  
106 causing to be made such surveys, examinations, audits  
107 and investigations of the value of the several classes of  
108 property in each county which should be listed and  
109 taxed under the several classifications; and

110 (6) Establish by uniform rules a procedure for the  
111 sale of computer generated material, appraisal manuals  
112 and reproduction of microfilm, photography and maps.  
113 Any funds received as a result of the sale of such  
114 reproductions shall be deposited to the appropriate  
115 account from which the payment for reproduction is  
116 made.

117 (b) The tax commissioner may adopt any regulation  
118 adopted prior to the first day of January, one thousand  
119 nine hundred ninety, pursuant to article one-a of this  
120 chapter, which adoption shall not constitute an imple-  
121 mentation of the statewide mass reappraisal of property.

122 Such adoption, including context modifications made  
123 necessary by the enactment of this article, shall occur  
124 on or before the first day of July, one thousand nine  
125 hundred ninety-one, through inclusion in the plan  
126 required by section ten of this article or inclusion in the  
127 minute record of the valuation commission. Upon the  
128 adoption of any such regulations, any modification or  
129 repeal of such regulation shall be in accordance with the  
130 provisions of article three, chapter twenty-nine-a of this  
131 code.

**§11-1C-6. Required training for assessors, their staffs and county commissioners.**

1 (a) All county assessors and their appropriate staff  
2 members are required to participate in a training  
3 program which meets the basic criteria set by the  
4 property valuation training and procedures commission.  
5 The tax commissioner shall provide the training  
6 programs, which shall commence on or before the first  
7 day of December, one thousand nine hundred ninety.  
8 The tax commissioner shall determine which persons  
9 have met the basic criteria established by the property  
10 valuation training and procedures commission for  
11 certification in their respective positions. Those persons  
12 who have met the basic criteria shall be issued appropriate  
13 certificates so signifying. Those persons who have  
14 failed to meet the basic criteria shall be required to take  
15 additional training in those areas in which they are  
16 deficient. Any staff person employed as of the effective  
17 date of this section who fails to meet the basic criteria  
18 within one calendar year of his or her first training shall  
19 be placed on probationary status for six months and,  
20 upon continued failure to meet the criteria, shall be  
21 dismissed of any duties related to the actual valuation  
22 of property. Any staff person employed after the  
23 effective date of this section shall become certified  
24 within six months of his or her first training, and  
25 otherwise shall be placed on probationary status for six  
26 months and, unless becoming certified, shall be dis-  
27 missed of any duties related to the actual valuation of  
28 property. The tax commissioner shall conduct periodic  
29 training sessions of a continuing education nature for all

30 assessors and appropriate staff members whether  
31 certified or not. These sessions shall be held at least once  
32 a year. All newly elected or newly appointed assessors  
33 shall participate in a basic training program prior to  
34 taking office. Newly appointed appropriate staff  
35 members are required to participate in the next  
36 available basic training program. The commission shall  
37 further establish requirements for minimum continuing  
38 education for each appropriate staff member in order  
39 to maintain a certification.

40 (b) All county commissioners are required to partic-  
41 ipate in a training program which meets the criteria set  
42 by the property valuation training and procedures  
43 commission. The tax commissioner shall conduct such  
44 programs to educate county commissioners in their  
45 duties as a board of equalization and review and to make  
46 them generally familiar with appraisal techniques.

**§11-1C-7. Duties of county assessors; property to be  
appraised at fair market value; exceptions;  
initial equalization; valuation plan.**

1 (a) Except for property appraised by the state tax  
2 commissioner under section ten of this article and  
3 property appraised and assessed under article six of this  
4 chapter, all assessors shall, within three years of the  
5 approval of the county valuation plan required pursuant  
6 to this section, appraise all real and personal property  
7 in their jurisdiction at fair market value except for  
8 special valuation provided for farmland and managed  
9 timberland. They shall utilize the procedures and  
10 methodologies established by the property valuation  
11 training and procedures commission and the valuation  
12 system established by the tax commissioner.

13 (b) In determining the fair market value of the  
14 property in their jurisdictions, assessors may use as an  
15 aid to valuation any information available on the  
16 character and values of such property including, but not  
17 limited to, the updated information found on any  
18 statewide electronic data processing system network  
19 established pursuant to section twenty-one, article one-  
20 a of this chapter. Valuations shall not be based exclu-

21 sively on such statewide electronic data processing  
22 system network, and usage of the information on such  
23 files as an aid to proper valuation shall not constitute  
24 an implementation of the statewide mass reappraisal of  
25 property.

26 (c) Before beginning the valuation process, each  
27 assessor shall develop a county valuation plan for using  
28 information currently available, for checking its  
29 accuracy and for correcting any errors found. The plan  
30 must be submitted to the tax commissioner on or before  
31 the first day of December, one thousand nine hundred  
32 ninety, for review and approval, and such plan must be  
33 revised as necessary and resubmitted every three years  
34 thereafter. Whenever a plan is submitted to the tax  
35 commissioner, a copy shall also be submitted to the  
36 county commission of that county and the property  
37 valuation training and procedures commission, and that  
38 county commission and the property valuation training  
39 and procedures commission may forward comments to  
40 the tax commissioner. The tax commissioner shall  
41 respond to any plan submitted or resubmitted within  
42 sixty days of its receipt. The valuation process shall not  
43 begin nor shall funds provided in section eight of this  
44 article be available until the plan has received approval  
45 by the tax commissioner: *Provided*, That any initial plan  
46 that has not received approval by the commissioner  
47 prior to the first day of May, one thousand nine hundred  
48 ninety-one, shall be submitted on or by such date to the  
49 valuation commission for resolution prior to the first day  
50 of July, one thousand nine hundred ninety-one, by which  
51 date all counties shall have an approved valuation plan  
52 in effect.

53 (d) Upon approval of the valuation plan, the assessor  
54 shall immediately begin implementation of the valuation  
55 process. Any change in value discovered subsequent to  
56 the certification of values by the assessor to the county  
57 commission, acting as the board of equalization and  
58 review, in any given year shall be placed upon the  
59 property books for the next certification of values.

60 (e) Willing and knowing refusal of the assessor or the  
61 county commission to comply with and effect the

62 provisions of this article, or to correct any deficiencies  
63 as may be ordered by the tax commissioner with the  
64 concurrence of the valuation commission under any  
65 authority granted pursuant to this article or other  
66 provisions of this code, shall constitute grounds for  
67 removal from office. Such removal may be appealed to  
68 the circuit court.

**§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,  
3 there is hereby created a revolving valuation fund in  
4 each county which shall be used exclusively to fund the  
5 assessor's office. The valuation and training programs,  
6 for the fiscal year commencing on the first day of July,  
7 one thousand nine hundred ninety, shall be funded  
8 through the valuation commission and distributed in  
9 accordance with need on a county by county basis and  
10 the county's approved plan. The necessary funds shall  
11 be transferred to each county's valuation fund following  
12 approval of the plans submitted by the respective  
13 assessors. The said funds shall be transferred by the  
14 valuation commission on condition that no persons shall  
15 be hired hereunder without the approval of the valua-  
16 tion commission and such hirings shall be without  
17 regard to political favor or affiliation. And further, such  
18 persons hired hereunder shall be subject to the provi-  
19 sions of the ethics act, chapter six-b of this code,  
20 including, but not limited to, the conflict of interest  
21 provisions thereunder.

22 During the fiscal year commencing the first day of  
23 July, one thousand nine hundred ninety-four, and  
24 thereafter as necessary, any county receiving moneys  
25 provided by the valuation commission under this section,  
26 shall use the county's valuation fund first to repay the  
27 valuation commission the money so received plus  
28 accrued interest, provided that the fund should not drop  
29 below one percent of the total municipal, county  
30 commission and county school board revenues generated  
31 by application of the respective regular levy rates.

32 (b) To finance the ongoing extra costs associated with  
33 the valuation and training mandated by this article,  
34 beginning with the fiscal year commencing on the first  
35 day of July, one thousand nine hundred ninety-one, and  
36 for a period of three consecutive years, an amount equal  
37 to two percent of the previous year's projected tax  
38 collections from the regular levy set by, or for, the  
39 county commission, the county school board and any  
40 municipality in the county shall be prorated as to each  
41 levying body, set aside and placed in the valuation fund.  
42 Commencing on the first day of July, one thousand nine  
43 hundred ninety-four, and each year thereafter, the  
44 valuation fund shall be continued at an annual amount  
45 of one percent of the previous year's projected tax  
46 collections from such regular levies: *Provided*, That  
47 county commissions and municipalities may present  
48 written evidence, prior to the thirty-first day of March  
49 each year, acceptable to the valuation commission  
50 showing that a lesser amount would be adequate to fund  
51 the extra costs associated with the valuation mandated  
52 by section seven of this article: *Provided, however*, That  
53 the valuation commission shall meet prior to the  
54 fifteenth day of April to consider and decide upon all  
55 written evidence so submitted: *Provided further*, That  
56 the county commissions, in addition, shall fund the  
57 county assessor's office at least the level of funding  
58 provided during the fiscal year in which this section was  
59 initially enacted.

60 These additional funds are intended to enable assess-  
61 sors to maintain current valuations and to perform the  
62 periodic reevaluation required under section nine of this  
63 article. Beginning with the fiscal year ending June  
64 thirtieth, one thousand nine hundred ninety-six, any  
65 unexpended balance in the valuation fund at the end of  
66 the fiscal year shall expire back proportionately into the  
67 respective accounts of the levying bodies.

68 (c) Any funds provided by the valuation commission  
69 shall be distributed among the counties by the property  
70 valuation training and procedures commission based  
71 upon workload, need and other relevant factors as shown

72 by the valuation plans developed under section seven of  
73 this article.

74 (d) Moneys due the valuation fund shall be deposited  
75 by the sheriff of the county on a monthly basis for the  
76 benefit of the assessor and shall be available to and may  
77 be spent by the assessor without prior approval of the  
78 county commission, which shall not exercise any control  
79 over the fund.

**§11-1C-9. Periodic valuations.**

1 (a) After completion of the initial valuation required  
2 under section seven of this article, each assessor shall  
3 maintain current values on the real and personal  
4 property within the county. In repeating three-year  
5 cycles, every parcel of real property shall be visited by  
6 a member of the assessor's staff who has been trained  
7 pursuant to section six of this article to determine if any  
8 changes have occurred which would affect the valuation  
9 for the property. With this information and information  
10 such as sales ratio studies provided by the tax commis-  
11 sioner, the assessor shall make such adjustments as are  
12 necessary to maintain accurate, current valuations of all  
13 the real and personal property in the county and shall  
14 adjust the assessments accordingly.

15 (b) In any year the assessed value of a property or  
16 species of property be less than or exceed sixty percent  
17 of current market value, the tax commissioner shall  
18 direct the assessor to make the necessary adjustments.  
19 If any assessor fails to comply with the provisions of this  
20 section, the tax commissioner may, at the county  
21 commission's expense, take reasonable steps to remedy  
22 the assessment deficiencies.

**§11-1C-10. Valuation of industrial property and natural  
resources property by tax commissioner;  
penalties; methods; values sent to assessors.**

1 (a) As used in this section:

2 (1) "Industrial property" means real and personal  
3 property integrated as a functioning unit intended for  
4 the assembling, processing and manufacturing of  
5 finished or partially finished products.



6       (2) "Natural resources property" means coal, oil,  
7 natural gas, limestone, fireclay, dolomite, sandstone,  
8 shale, sand and gravel, salt, lead, zinc, manganese, iron  
9 ore, radioactive minerals, oil shale, managed timberland  
10 as defined in section two of this article, and other  
11 minerals.

12       (b) All owners of industrial property and natural  
13 resources property each year shall make a return to the  
14 state tax commissioner and, if requested in writing by  
15 the assessor of the county where situated, to such county  
16 assessor at a time and in the form specified by the  
17 commissioner of all industrial or natural resources  
18 property owned by them. The commissioner may  
19 require any information to be filed which would be  
20 useful in valuing the property covered in the return.  
21 Any penalties provided for in this chapter or elsewhere  
22 in this code relating to failure to list any property or  
23 to file any return or report may be applied to any owner  
24 of property required to make a return pursuant to this  
25 section.

26       (c) The state tax commissioner shall value all indus-  
27 trial property in the state at its fair market value within  
28 three years of the approval date of the plan for  
29 industrial property required in subsection (e) of this  
30 section. The commissioner shall thereafter maintain  
31 accurate values for all such property. The tax commis-  
32 sioner shall forward each industrial property appraisal  
33 to the county assessor of the county in which that  
34 property is located and the assessor shall multiply each  
35 such appraisal by sixty percent and include the result-  
36 ing assessed value in the landbook or the personal  
37 property book, as appropriate for each tax year. The  
38 commissioner shall supply support data that the assessor  
39 might need to evaluate the appraisal.

40       (d) Within three years of the approval date of the plan  
41 required for natural resources property required  
42 pursuant to subsection (e) of this section, the state tax  
43 commissioner shall determine the fair market value as  
44 defined in section one, article three of this chapter of all  
45 natural resources property in the state. The commis-

46 sioner shall thereafter maintain accurate values for all  
47 such property.

48 (1) In order to qualify for identification as managed  
49 timberland for property tax purposes the owner must  
50 annually certify, in writing to the division of forestry,  
51 that the property meets the definition of managed  
52 timberland as set forth in this article and contracts to  
53 manage property according to a plan that will maintain  
54 the property as managed timberland. In addition, each  
55 owner's certification must state that forest management  
56 practices will be conducted in accordance with approved  
57 practices from the publication "Best Management  
58 Practices for Forestry." Property certified as managed  
59 timberland shall be valued according to its use and  
60 productive potential. The tax commissioner shall  
61 promulgate rules and regulations for certification as  
62 managed timberland.

63 (2) In the case of all other natural resources property,  
64 the commissioner shall develop an inventory on a county  
65 by county basis of all such property and may use any  
66 resources, including, but not limited to, geological  
67 survey information; exploratory, drilling, mining and  
68 other information supplied by natural resources prop-  
69 erty owners; and maps and other information on file  
70 with the state department of energy. Any information  
71 supplied by natural resources owners or any proprietary  
72 or otherwise privileged information supplied by the  
73 state division of energy shall be kept confidential unless  
74 needed to defend an appraisal challenged by a natural  
75 resources owner. Formulas for natural resources  
76 valuation may contain differing variables based upon  
77 known geological or other common factors. The tax  
78 commissioner shall forward each natural resources  
79 property appraisal to the county assessor of the county  
80 in which that property is located and the assessor shall  
81 multiply each such appraisal by sixty percent and  
82 include the resulting assessed value in the landbook or  
83 the personal property book, as appropriate, for each tax  
84 year. The commissioner shall supply support data that  
85 the assessor might need to explain or defend the  
86 appraisal. The commissioner shall directly defend any

87 challenged appraisal when the assessed value of the  
88 property in question exceeds two million dollars or an  
89 owner challenging an appraisal holds or controls  
90 property situated in the same county with an assessed  
91 value exceeding two million dollars. At least every five  
92 years, the commissioner shall review current technology  
93 for the recovery of natural resources property to  
94 determine if valuation methodologies need to be ad-  
95 justed to reflect changes in value which result from  
96 development of new recovery technologies.

97 (e) The tax commissioner shall develop a plan for the  
98 valuation of industrial property and a plan for the  
99 valuation of natural resources property. The plans shall  
100 include expected costs and reimbursements, and shall be  
101 submitted to the property valuation training and  
102 procedures commission on or before the first day of  
103 January, one thousand nine hundred ninety-one, for its  
104 approval on or before the first day of July of such year.  
105 Such plan shall be revised, resubmitted to the commis-  
106 sion and approved every three years thereafter.

107 (f) To perform the valuation duties under this section,  
108 the state tax commissioner shall have the authority to  
109 contract with a competent property appraisal firm or  
110 firms to assist with or to conduct the valuation process  
111 as to any discernible species of property statewide if the  
112 contract and the entity performing such contract is  
113 specifically included in a plan required by subsection  
114 (e) of this section or otherwise approved by the commis-  
115 sion. If the tax commissioner desires to contract for  
116 valuation services only in one county or a group of  
117 counties, the contract must be approved by the assessor  
118 of the county and by the commission.

119 (g) The county assessor may accept the appraisal  
120 provided, pursuant to this section, by the state tax  
121 commissioner: *Provided*, That if the county assessor fails  
122 to accept the appraisal provided by the state tax  
123 commissioner, the county assessor shall show just cause  
124 to the valuation commission for the failure to accept  
125 such appraisal and shall further provide to the valuation

126 commission a plan by which a different appraisal will  
127 be conducted.

128 (h) The tax commissioner may charge each county  
129 assessor's office the costs of appraising the industrial  
130 and natural resources property within that county, and  
131 any costs of defending same: *Provided*, That the office  
132 of the state attorney general shall provide legal  
133 representation on behalf of the tax commissioner or  
134 assessor, at no cost, in the event the industrial and  
135 natural resources appraisal is challenged in court. Such  
136 charges shall be paid from the county valuation fund.  
137 Any moneys so received from the counties shall be  
138 placed in a revolving state fund established in the state  
139 treasurer's office and shall be expended only to carry out  
140 the duties imposed upon the commissioner under this  
141 section.

142 (i) For purposes of revaluing managed timberland as  
143 defined in section two of this article, any increase or  
144 decrease in valuation by the commissioner shall not  
145 become effective prior to the first day of July, one  
146 thousand nine hundred ninety-one. The property owner  
147 may request a hearing by the director of the division of  
148 forestry, who may thereafter rescind the disqualification  
149 or allow the property owner a reasonable period of time  
150 in which to qualify the property. A property owner may  
151 appeal a disqualification to the circuit court in which  
152 the property is located.

#### §11-1C-11. Managed timberland.

1 Upon request of state, county or other taxing author-  
2 ities of appropriate jurisdiction, the division of forestry  
3 shall inspect property under contract as managed  
4 timberland and determine whether or not such proper-  
5 ties do qualify. In the event that a property is found not  
6 to qualify by reason of a change in use, or it is  
7 discovered that a material misstatement of fact was  
8 made by the owner in the certification required in  
9 subdivision (1), subsection (d), section ten of this article,  
10 the division of forestry shall notify the state tax  
11 commissioner that the property is disqualified from its  
12 identification as managed timberland.

**§11-1C-12. Board of equalization and review; assessments; board of public works.**

1 (a) As valuations of property in a county are com-  
2 pleted to the extent that a total valuation for each class  
3 of property can be determined, such valuation shall be  
4 delivered by the assessor to the county commission, and  
5 the county commission, sitting as a board of equalization  
6 and review, shall use such appraised valuations as a  
7 basis for determining the true and actual value for  
8 assessment purposes of the several classes of property.

9 (b) For the tax year subsequent to the end of the  
10 initial valuation period in each county, and for each year  
11 thereafter, each county shall implement a uniform  
12 assessment that is equal to sixty percent of the most  
13 current appraised value for all real and personal  
14 property situated within the county. Such implementa-  
15 tion shall be in accordance with provisions to be  
16 included in the plan required by section seven of this  
17 article.

18 (c) Until such time as the uniform sixty percent  
19 assessment required in subsection (b) is effected, the  
20 total assessed valuation in each of the four classes of  
21 property shall not be less than sixty percent nor more  
22 than one hundred percent of the appraised valuation of  
23 each said class of property.

24 (d) The board of public works, in performing the  
25 duties required in article six of this chapter relating to  
26 the assessment of public service businesses, shall submit  
27 on or before the first day of January, one thousand nine  
28 hundred ninety-one, a plan to the property valuation  
29 training and procedures commission for implementing  
30 on or before the first day of July, one thousand nine-  
31 hundred ninety-four, and for each year thereafter, a  
32 uniform assessment that is equal to sixty percent of the  
33 most current valuation for all property valued by the  
34 board of public works. Such plan shall be approved on  
35 or before the first day of July, one thousand nine  
36 hundred ninety-one.

**§11-1C-13. 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  
6 this end the provisions of this article are declared to be  
7 severable.

**ARTICLE 8. LEVIES.**

§11-8-6e. Effect on levy rate when appraisal results in tax increase; public hearings.

§11-8-6f. Effect on school board levy rate when appraisal results in tax increase.

**§11-8-6e. Effect on levy rate when appraisal results in tax increase; public hearings.**

1 (a) Notwithstanding any other provision of law, where  
2 any annual appraisal, triennial appraisal or general  
3 valuation of property would produce an assessment that  
4 would cause an increase of one percent or more in the  
5 total projected property tax revenues that would be  
6 realized were the then current levy rates by the county  
7 commission and the municipalities to be imposed, the  
8 rate of levy shall be reduced proportionately as between  
9 the county commission and the municipalities and for all  
10 classes of property for the forthcoming tax year so as  
11 to cause such rate of levy to produce no more than one  
12 hundred one percent of the previous year's projected  
13 property tax revenues from extending the county  
14 commission and municipality levy rates, unless there  
15 has been compliance with subsection (c) of this section.  
16 An additional appraisal or valuation due to new  
17 construction or improvements to existing real property,  
18 including beginning recovery of natural resources, and  
19 newly acquired personal property shall not be an annual  
20 appraisal or general valuation within the meaning of  
21 this section, nor shall the assessed value of such  
22 improvements be included in calculating the new tax  
23 levy for purposes of this section. Special levies shall not  
24 be included in the reduced levy calculation set forth in  
25 subsection (b) of this section, but shall be continued for  
26 the remainder of the established period on the basis of

27 the property values and levy rates in effect on the  
28 effective date of this bill.

29 (b) The reduced rates of levy shall be calculated in the  
30 following manner:

31 (1) The total assessed value of each class of property  
32 as is defined by section five, article eight of this chapter  
33 for the assessment period just concluded shall be  
34 reduced by deducting the total assessed value of newly  
35 created properties not assessed in the previous year's tax  
36 book for each class of property;

37 (2) The resulting net assessed value of Class I  
38 property shall be multiplied by .01; the value of Class  
39 II by .02; and the values of Class III and IV, each by  
40 .04;

41 (3) Total the current year's property tax revenue  
42 resulting from regular levies for each county commis-  
43 sion and municipality and multiply the resulting sum by  
44 one hundred one percent: *Provided*, That the one  
45 hundred one percent figure shall be increased by the  
46 amount the county's or municipality's increased levy  
47 provided for in subsection (b), section eight, article one-  
48 c of this chapter.

49 (4) Divide the total regular levy tax revenues, thus  
50 increased in subdivision (3), above, by the total weighted  
51 net assessed value as calculated in paragraph two of this  
52 section and multiply the resulting product by one  
53 hundred; the resulting number is the Class I regular  
54 levy rate, stated as cents-per-one hundred dollars of  
55 assessed value;

56 (5) The Class II rate is two times the Class I rate;  
57 Classes III and IV, four times the Class I rate as  
58 calculated in the preceding subdivision.

59 (c) The governing body of a county or municipality  
60 may, after conducting a public hearing, which may be  
61 held at the same time and place as the annual budget  
62 hearing, increase the rate above the reduced rate  
63 required in this section if any such increase is deemed  
64 to be necessary by such governing body: *Provided*, That

65 in no event shall the governing body of a county or  
66 municipality increase the rate above the reduced rate  
67 required by subsection (b) of this section for any single  
68 year in a manner which would cause total property tax  
69 revenues accruing to the governing body of the county  
70 or municipality, excepting additional revenue attributa-  
71 ble to assessed valuations of newly created properties  
72 not assessed in the previous year's tax book for each  
73 class of property, to exceed by more than ten percent  
74 those property tax revenues received by the governing  
75 body of the county or municipality for the next preced-  
76 ing year: *Provided, however,* That this provision shall not  
77 restrict the ability of a county or municipality to enact  
78 excess levies as authorized under existing statutory or  
79 constitutional provisions.

80 Notice of the public hearing and the meeting in which  
81 the levy rate shall be on the agenda shall be given at  
82 least seven days before the date for each public hearing  
83 by the publication of a notice in at least one newspaper  
84 of general circulation in such county or municipality:  
85 *Provided,* That a Class IV town or village as defined in  
86 section two, article one, chapter eight of this code, in lieu  
87 of the publication notice required by this subsection,  
88 may post no less than four notices of each public  
89 hearing, which posted notices shall contain the informa-  
90 tion required by the publication notice and which shall  
91 be in available, visible locations including the town hall.  
92 The notice shall be at least the size of one-eighth page  
93 of a standard size newspaper or one-fourth page of a  
94 tabloid size newspaper, and the headline in the adver-  
95 tisement shall be in a type no smaller than twenty-four  
96 point. The publication notice shall be placed outside that  
97 portion, if any, of the newspaper reserved for legal  
98 notices and classified advertisements and shall also be  
99 published as a Class II-O legal advertisement in  
100 accordance with the provisions of article three, chapter  
101 fifty-nine of this code. The publication area is the  
102 county. The notice shall be in the following form and  
103 contain the following information, in addition to such  
104 other information as the local governing body may elect  
105 to include:



## 106 NOTICE OF PROPOSED TAX INCREASE

107 The (name of the county or municipality) proposes to  
108 increase property tax levies.

109 1. Appraisal/Assessment Increase: Total assessed  
110 value of property, excluding additional assessments due  
111 to new or improved property, exceeds last year's total  
112 assessed value of property by \_\_\_\_ percent.

113 2. Lowered Rate Necessary to Offset Increased  
114 Assessment: The tax rate which would levy the same  
115 amount of property tax as last year, when multiplied by  
116 the new total assessed value of property with the  
117 exclusions mentioned above, would be \$\_\_\_\_ per \$100 of  
118 assessed value for Class I property, \$\_\_\_\_ per \$100 of  
119 assessed value for Class II property, \$\_\_\_\_ per \$100 of  
120 assessed value for Class III and \$\_\_\_\_ per \$100 of  
121 assessed value for Class IV property. These rates will  
122 be known as the "lowered tax rates."

123 3. Effective Rate Increase: The (name of the county  
124 or municipality) proposes to adopt a tax rate of \$\_\_\_\_  
125 per \$100 of assessed value for Class I property, \$\_\_\_\_  
126 per \$100 of assessed value for Class II property, \$\_\_\_\_  
127 per \$100 of assessed value for Class III property and  
128 \$\_\_\_\_ per \$100 of assessed value for Class IV property.  
129 The difference between the lowered tax rates and the  
130 proposed rates would be \$\_\_\_\_ per \$100, or \_\_\_\_ percent  
131 for Class I; \$\_\_\_\_ per \$100, or \_\_\_\_ percent for Class II;  
132 \$\_\_\_\_ per \$100, or \_\_\_\_ percent for Class III; and \$\_\_\_\_  
133 per \$100, or \_\_\_\_ percent for Class IV. These differences  
134 will be known as the "effective tax rate increases."

135 Individual property taxes may, however, increase at  
136 a percentage greater than or less than the above  
137 percentage.

138 4. Revenue produced last year: \$\_\_\_\_

139 5. Revenue projected under the effective rate in-  
140 creases: \$\_\_\_\_

141 6. Revenue projected from new property or improve-  
142 ments: \$\_\_\_\_

143 7. General areas in which new revenue is to be  
144 allocated: \_\_\_\_\_.

145 A public hearing on the increases will be held on (date  
146 and time) at (meeting place). A decision regarding the  
147 rate increase will be made on (date and time) at  
148 (meeting place).

149 (d) All hearings are open to the public. The governing  
150 body shall permit persons desiring to be heard an  
151 opportunity to present oral testimony within such  
152 reasonable time limits as are determined by the  
153 governing body.

154 (e) This section shall be effective as to any regular  
155 levy rate imposed by the county commission or a  
156 municipality for taxes due and payable on or after the  
157 first day of July, one thousand nine hundred ninety-one.  
158 If any provision of this section is held invalid, such  
159 invalidity shall not affect other provisions or applica-  
160 tions of this section which can be given effect without  
161 the invalid provision or its application and to this end  
162 the provisions of this section are declared to be  
163 severable.

**§11-8-6f. Effect on school board levy rate when appraisal  
results in tax increase.**

1 (a) Notwithstanding any other provision of law, where  
2 any annual appraisal, triennial appraisal or general  
3 valuation of property would produce a statewide  
4 aggregate assessment that would cause an increase of  
5 one percent or more in the total property tax revenues  
6 that would be realized were the then current levy rates  
7 of the county boards of education to be imposed, the rate  
8 of levy for county boards of education shall be reduced  
9 uniformly statewide and proportionately for all classes  
10 of property for the forthcoming tax year so as to cause  
11 such rate of levy to produce no more than one hundred  
12 one percent of the previous year's projected statewide  
13 aggregate property tax revenues from extending the  
14 county board of education levy rate, unless subsection (b)  
15 of this section is complied with. The reduced rates of  
16 levy shall be calculated in the following manner: (1) The  
17 total assessed value of each class of property as it is

18 defined by section five, article eight of this chapter for  
19 the assessment period just concluded shall be reduced  
20 by deducting the total assessed value of newly created  
21 properties not assessed in the previous year's tax book  
22 for each class of property; (2) the resulting net assessed  
23 value of Class I property shall be multiplied by .01; the  
24 value of Class II by .02; and the values of Class III and  
25 IV, each by .04; (3) Total the current year's property tax  
26 revenue resulting from regular levies for the boards of  
27 education throughout this state and multiply the  
28 resulting sum by one hundred one percent: *Provided,*  
29 That the one hundred one percent figure shall be  
30 increased by the amount the boards of educations'  
31 increased levy provided for in subsection (b), section  
32 eight, article one-c of this chapter; (4) Divide the total  
33 regular levy tax revenues, thus increased in subdivision  
34 (3), above, by the total weighted net assessed value as  
35 calculated in paragraph two of this section and multiply  
36 the resulting product by one hundred; the resulting  
37 number is the Class I regular levy rate, stated as cents-  
38 per-one hundred dollars of assessed value; and (5) The  
39 Class II rate is two times the Class I rate; Classes III  
40 and IV, four times the Class I rate as calculated in the  
41 preceding subdivision. An additional appraisal or  
42 valuation due to new construction or improvements,  
43 including beginning recovery of natural resources, to  
44 existing real property or newly acquired personal  
45 property shall not be an annual appraisal or general  
46 valuation within the meaning of this section, nor shall  
47 the assessed value of such improvements be included in  
48 calculating the new tax levy for purposes of this section.  
49 Special levies shall not be included in any calculations  
50 under this section, but shall be continued for the  
51 remainder of the established period on the basis of the  
52 property values and levy rates in effect on the effective  
53 date of this bill.

54 (b) After conducting a public hearing, the Legislature  
55 may, by act, increase the rate above the reduced rate  
56 required in subsection (a) of this section if any such  
57 increase is deemed to be necessary.

58 (c) This section shall be effective as to any regular

59 levy rate imposed for the county boards of education for  
60 taxes due and payable on or after the first day of July,  
61 one thousand nine hundred ninety-one. If any provision  
62 of this section is held invalid, such invalidity shall not  
63 affect other provisions or applications of this section  
64 which can be given effect without the invalid provision  
65 or its application and to this end the provisions of this  
66 section are declared to be severable.

## CHAPTER 18. EDUCATION.

### §18-9A-11. Computation of local share; appraisal and assessment of property.

1 (a) For the fiscal year beginning on the first day of  
2 July, one thousand nine hundred ninety, the total  
3 assessed taxable value required for each class of  
4 property in each county shall not exceed the value so  
5 required by the tax commissioner for the fiscal year  
6 beginning on the first day of July, one thousand nine  
7 hundred eighty-nine. Thereafter, on the basis of the  
8 most recent property valuations in the state as to all  
9 classes of property in all counties as determined and  
10 published by the tax commissioner in reliance upon the  
11 appraised values annually developed by each county  
12 assessor pursuant to the provisions of article one-c and  
13 article three, chapter eleven of this code, the state board  
14 shall for each county compute by application of the  
15 levies for general current expense purposes, as defined  
16 in section two of this article, the amount of revenue  
17 which such levies would produce if levied upon one  
18 hundred percent of the appraised value of each of the  
19 several classes of property contained in the report or  
20 revised report of such value, made to it by the tax  
21 commissioner as follows:

22 (1) The state board shall first take ninety-seven and  
23 one-half percent of the amount ascertained by applying  
24 these rates to the total assessed public utility valuation  
25 in each classification of property in the county.

26 (2) The state board shall then apply these rates to the  
27 assessed taxable value of other property in each  
28 classification in the county as determined by the tax  
29 commissioner and shall deduct therefrom five percent

30 as an allowance for the usual losses in collections due  
31 to discounts, exonerations, delinquencies and the like.  
32 All of the amount so determined shall be added to the  
33 ninety-seven and one-half percent of public utility taxes  
34 computed as provided above and this total shall be the  
35 local share of the particular county.

36 (b) Whenever in any year a county assessor or a  
37 county commission shall fail or refuse to comply with  
38 the provisions of this section in setting the valuations of  
39 property for assessment purposes in any class or classes  
40 of property in the county, the state tax commissioner  
41 shall review the valuations for assessment purposes  
42 made by the county assessor and the county commission  
43 and shall direct the county assessor and the county  
44 commission to make such corrections in the valuations  
45 as may be necessary so that they shall comply with the  
46 requirements of chapter eleven of this code and this  
47 section, and the tax commissioner shall enter the county  
48 and fix the assessments at the required ratios. Refusal  
49 of the assessor or the county commission to make such  
50 corrections shall constitute ground for removal from  
51 office.

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## CHAPTER 173

(H. B. 4475—By Delegate Murensky)

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[Passed March 7, 1990; in effect from passage. Approved by the Governor.]

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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 exempting from taxation property used by nonprofit corporations providing natural gas for public purposes.

*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 All property, real and personal, described in this  
2 section, and to the extent herein limited, shall be exempt  
3 from taxation, that is to say: Property belonging to the  
4 United States, other than property permitted by the  
5 United States to be taxed under state law; property  
6 belonging exclusively to the state; property belonging  
7 exclusively to any county, district, city, village or town  
8 in this state, and used for public purposes; property  
9 located in this state, belonging to any city, town, village,  
10 county or any other political subdivision of another state,  
11 and used for public purposes; property used exclusively  
12 for divine worship; parsonages, and the household goods  
13 and furniture pertaining thereto; mortgages, bonds and  
14 other evidence of indebtedness in the hands of bona fide  
15 owners and holders hereafter issued and sold by  
16 churches and religious societies for the purposes of  
17 securing money to be used in the erection of church  
18 buildings used exclusively for divine worship, or for the  
19 purpose of paying indebtedness thereon; cemeteries;  
20 property belonging to, or held in trust for, colleges,  
21 seminaries, academies and free schools, if used for  
22 educational, literary or scientific purposes, including  
23 books, apparatus, annuities and furniture; property  
24 belonging to, or held in trust for, colleges or universities  
25 located in West Virginia, or any public or private  
26 nonprofit foundation or corporation which receives  
27 contributions exclusively for such college or university,  
28 if the property or dividends, interest, rents or royalties  
29 derived therefrom are used or devoted to educational  
30 purposes of such college or university; public and family  
31 libraries; property used for charitable purposes, and not  
32 held or leased out for profit; property used for the public  
33 purposes of distributing water or natural gas, or  
34 providing sewer service by a duly chartered nonprofit  
35 corporation when such property is not held, leased out  
36 or used for profit; property used for area economic  
37 development purposes by nonprofit corporations when  
38 such property is not leased out for profit; all real estate

39 not exceeding one-half acre in extent, and the buildings  
40 thereon, and used exclusively by any college or univer-  
41 sity society as a literary hall, or as a dormitory or  
42 clubroom, if not leased or otherwise used with a view  
43 to profit; all property belonging to benevolent associa-  
44 tions, not conducted for private profit; property belong-  
45 ing to any public institution for the education of the  
46 deaf, dumb or blind, or any hospital not held or leased  
47 out for profit; house of refuge, lunatic or orphan asylum;  
48 homes for children or for the aged, friendless or infirm,  
49 not conducted for private profit; fire engines and  
50 implements for extinguishing fires, and property used  
51 exclusively for the safekeeping thereof, and for the  
52 meeting of fire companies; all property on hand to be  
53 used in the subsistence of livestock on hand at the  
54 commencement of the assessment year; household goods  
55 to the value of two hundred dollars, whether or not held  
56 or used for profit; bank deposits and money; household  
57 goods (which term is deemed for purposes of this section  
58 to mean only personal property and household goods  
59 commonly found within the house and items used to care  
60 for the house and its surrounding property) when not  
61 held or used for profit, and personal effects (which term  
62 is deemed for purposes of this section to mean only  
63 articles and items of personal property commonly worn  
64 on or about the human body, or carried by a person and  
65 normally thought to be associated with the person) when  
66 not held or used for profit; dead victuals laid away for  
67 family use and any other property or security exempted  
68 by any other provision of law; but no property shall be  
69 exempt from taxation which shall have been purchased  
70 or procured for the purpose of evading taxation,  
71 whether temporarily holding the same over the first day  
72 of the assessment year or otherwise: *Provided*, That real  
73 property which is exempt from taxation by this section  
74 shall be entered upon the assessor's books, together with  
75 the true and actual value thereof, but no taxes shall be  
76 levied upon the same or extended upon the assessor's  
77 books.

78 Notwithstanding any other provisions of this section,  
79 however, no language herein shall be construed to  
80 exempt from taxation any property owned by, or held

81 in trust for, educational, literary, scientific, religious or  
82 other charitable corporations or organizations, including  
83 any public or private nonprofit foundation or corpora-  
84 tion existing for the support of any college or university  
85 located in West Virginia, unless such property, or the  
86 dividends, interest, rents or royalties derived therefrom,  
87 is used primarily and immediately for the purposes of  
88 such corporations or organizations.

89 The tax commissioner shall, by issuance of regula-  
90 tions, provide each assessor with guidelines to ensure  
91 uniform assessment practices statewide to effect the  
92 intent of this section.

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## CHAPTER 174

(Com. Sub. for H. B. 4005—By Delegates Louderback and Jones)

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[Passed March 8, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section three, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article one, chapter eleven-a of said code, relating to providing that ad valorem taxes on real or personal property will be considered as being timely filed and paid when delivered to the sheriff by the same methods prescribed for timely filing and payment with the state tax commissioner or state tax department.

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

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

### Chapter

#### 11. Taxation.

##### 11A. Collection and Enforcement of Property Taxes.



**CHAPTER 11. TAXATION.****ARTICLE 10. PROCEDURE AND ADMINISTRATION.****§11-10-3. Application of this article.**

1 (a) The provisions of this article shall apply to the  
2 inheritance and transfer taxes, the estate tax, and  
3 interstate compromise and arbitration of inheritance  
4 and death taxes, the business franchise registration  
5 certificate tax, the annual tax on incomes of certain  
6 carriers, the business and occupation tax, the consumers  
7 sales and service tax, the use tax, the cigarette tax, the  
8 soft drinks tax, the personal income tax, the corporation  
9 net income tax, the gasoline and special fuel excise tax,  
10 the motor carrier road tax and the tax relief for elderly  
11 homeowners and renters administered by the state tax  
12 commissioner. This article shall not apply to ad valorem  
13 taxes on real and personal property, the corporate  
14 license tax or any other tax not listed hereinabove,  
15 except that in the case of ad valorem taxes on real and  
16 personal property, when any return, claim, statement or  
17 other document is required to be filed, or any payment  
18 is required to be made within a prescribed period or  
19 before a prescribed date, and the applicable law  
20 requires delivery to the office of the sheriff of a county  
21 of this state, the methods prescribed in section five-f of  
22 this article for timely filing and payment to the tax  
23 commissioner or state tax department shall be the same  
24 methods utilized for timely filing and payment with  
25 such sheriff.

26 (b) The provision of this article shall also apply to any  
27 other article of this chapter when such application is  
28 expressly provided for by the Legislature.

**CHAPTER 11A. COLLECTION AND ENFORCEMENT OF PROPERTY TAXES.****ARTICLE 1. ACCRUAL AND COLLECTION OF TAXES.****§11A-1-3. Accrual; time for payment; interest on delinquent taxes.**

1 (a) All current taxes assessed on real and personal  
2 property may be paid in two installments. The first

3 installment shall be payable on September first of the  
4 year for which the assessment is made, and shall become  
5 delinquent on October first; the second installment shall  
6 be payable on the first day of the following March and  
7 shall become delinquent on April first. Taxes paid on  
8 or before the date when they are payable, including both  
9 first and second installments, shall be subject to a  
10 discount of two and one-half percent. If taxes are not  
11 paid on or before the date on which they become  
12 delinquent, including both first and second installments,  
13 interest at the rate of nine percent per annum shall be  
14 added from the date they become delinquent until paid.

15 (b) With regard to real and personal property taxes,  
16 when any return, claim, statement or other document is  
17 required to be filed, or any payment is required to be  
18 made within a prescribed period or before a prescribed  
19 date, and the applicable law requires delivery to the  
20 office of the sheriff of a county of this state, the methods  
21 prescribed in section five-f, article ten, chapter eleven  
22 of this code for timely filing and payment to the tax  
23 commissioner or department of tax and revenue shall be  
24 the same methods utilized for timely filing and payment  
25 with such sheriff. Nothing contained in this subsection  
26 (b) shall prohibit the sheriff from establishing additional  
27 methods of payment in accordance with the provisions  
28 of section eight-a of this article.

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## CHAPTER 175

(Com. Sub. for H. B. 4247—By Delegates Pitrolo and Prezioso)

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[Passed March 10, 1990; in effect July 1, 1990. Approved by the Governor.]

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AN ACT to repeal section ten-a, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, nine and thirty-three, article fifteen of said chapter eleven; to amend and reenact section eighteen, article twenty-one of said chapter; and to further amend said article twenty-one by adding thereto a new section,

designated section seventy-one-a, relating generally to taxation; repealing the authority of the tax commissioner to use staff attorneys rather than the office of attorney general; exempting governmental units of other states from payment of the sales tax; providing that charitable or nonprofit organizations are able to claim an exemption from the state sales tax for sales or donations of food made to persons in need thereof; exempting from consumers sales tax charges for opening and closing burial lots; exempting sales of livestock, poultry or other farm products from consumers sales tax under certain circumstances; exempting from consumers sales tax sales of motion pictures and video arcade games under certain circumstances; exempting sales of certain services and tangible personal property relating to aircraft under certain circumstances; providing that lump sum distributions be added to the taxable income of resident estates or trusts; requiring pass through entities to deduct and withhold tax from distributions, whether actual or deemed distributions for federal income tax purposes, of West Virginia source income to nonresident partners, nonresident shareholders in S corporations, and nonresident beneficiaries of trusts; including corporations subject to corporation net income tax; providing administrative procedures for payment and collection of tax including liability for withheld tax; and providing for administrative procedures and effective dates.

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

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

**Article**

15. Consumers Sales Tax.
21. Personal Income Tax.

**ARTICLE 15. CONSUMERS SALES TAX.**

§11-15-2. Definitions.

§11-15-9. Exemptions.

§11-15-33. Effective date.

**§11-15-2. Definitions.**

1 For the purpose of this article:

2 (a) "Persons" means any individual, partnership,  
3 association, corporation, state or its political subdivi-  
4 sions or agency of either, guardian, trustee, committee,  
5 executor or administrator.

6 (b) "Tax commissioner" means the state tax  
7 commissioner.

8 (c) "Gross proceeds" means the amount received in  
9 money, credits, property or other consideration from  
10 sales and services within this state, without deduction  
11 on account of the cost of property sold, amounts paid for  
12 interest or discounts or other expenses whatsoever.  
13 Losses shall not be deducted, but any credit or refund  
14 made for goods returned may be deducted.

15 (d) "Sale," "sales" or "selling" includes any transfer of  
16 the possession or ownership of tangible personal  
17 property for a consideration, including a lease or rental,  
18 when the transfer or delivery is made in the ordinary  
19 course of the transferor's business and is made to the  
20 transferee or his agent for consumption or use or any  
21 other purpose.

22 (e) "Vendor" means any person engaged in this state  
23 in furnishing services taxed by this article or making  
24 sales of tangible personal property.

25 (f) "Ultimate consumer" or "consumer" means a  
26 person who uses or consumes services or personal  
27 property.

28 (g) "Business" includes all activities engaged in or  
29 caused to be engaged in with the object of gain or  
30 economic benefit, direct or indirect, and all activities of  
31 the state and its political subdivisions which involve  
32 sales of tangible personal property or the rendering of  
33 services when those service activities compete with or  
34 may compete with the activities of other persons.

35 (h) "Tax" includes all taxes, interest and penalties  
36 levied hereunder.

37 (i) "Service" or "selected service" includes all nonpro-  
38 fessional activities engaged in for other persons for a  
39 consideration, which involve the rendering of a service  
40 as distinguished from the sale of tangible personal  
41 property, but shall not include contracting, personal  
42 services or the services rendered by an employee to his  
43 employer or any service rendered for resale.

44 (j) "Purchaser" means a person who purchases tang-  
45 ible personal property or a service taxed by this article.

46 (k) "Personal service" includes those:

47 (1) Compensated by the payment of wages in the  
48 ordinary course of employment;

49 (2) Rendered to the person of an individual without,  
50 at the same time, selling tangible personal property,  
51 such as nursing, barbering, shoe shining, manicuring  
52 and similar services.

53 (l) "Taxpayer" means any person liable for the tax  
54 imposed by this article.

55 (m) "Drugs" includes all sales of drugs or appliances  
56 to a purchaser, upon prescription of a physician or  
57 dentist and any other professional person licensed to  
58 prescribe.

59 (n) (1) "Directly used or consumed" in the activities of  
60 manufacturing, transportation, transmission, communi-  
61 cation or the production of natural resources means used  
62 or consumed in those activities or operations which  
63 constitute an integral and essential part of such  
64 activities, as contrasted with and distinguished from  
65 those activities or operations which are simply inciden-  
66 tal, convenient or remote to such activities.

67 (2) Uses of property or consumption of services which  
68 constitute direct use or consumption in the activities of  
69 manufacturing, transportation, transmission, communi-  
70 cation or the production of natural resources includes  
71 only:

- 72 (A) In the case of tangible personal property, physical  
73 incorporation of property into a finished product  
74 resulting from manufacturing production or the produc-  
75 tion of natural resources;
- 76 (B) Causing a direct physical, chemical or other  
77 change upon property undergoing manufacturing  
78 production or production of natural resources;
- 79 (C) Transporting or storing property undergoing  
80 transportation, communication, transmission, manufac-  
81 turing production or production of natural resources;
- 82 (D) Measuring or verifying a change in property  
83 directly used in transportation, communication, trans-  
84 mission, manufacturing production or production of  
85 natural resources;
- 86 (E) Physically controlling or directing the physical  
87 movement or operation of property directly used in  
88 transportation, communication, transmission, manufac-  
89 turing production or production of natural resources;
- 90 (F) Directly and physically recording the flow of  
91 property undergoing transportation, communication,  
92 transmission, manufacturing production or production  
93 of natural resources;
- 94 (G) Producing energy for property directly used in  
95 transportation, communication, transmission, manufac-  
96 turing production or production of natural resources;
- 97 (H) Facilitating the transmission of gas, water, steam  
98 or electricity from the point of their diversion to  
99 property directly used in transportation, communica-  
100 tion, transmission, manufacturing production or produc-  
101 tion of natural resources;
- 102 (I) Controlling or otherwise regulating atmospheric  
103 conditions required for transportation, communication,  
104 transmission, manufacturing production or production  
105 of natural resources;
- 106 (J) Serving as an operating supply for property  
107 undergoing transmission, manufacturing production or  
108 production of natural resources, or for property directly  
109 used in transportation, communication, transmission,

- 110 manufacturing production or production of natural  
111 resources;
- 112 (K) Maintenance or repair of property directly used  
113 in transportation, communication, transmission, manu-  
114 facturing production or production of natural resources;
- 115 (L) Storage, removal or transportation of economic  
116 waste resulting from the activities of manufacturing,  
117 transportation, communication, transmission or the  
118 production of natural resources;
- 119 (M) Pollution control or environmental quality or  
120 protection activity directly relating to the activities of  
121 manufacturing, transportation, communication, trans-  
122 mission or the production of natural resources and  
123 personnel, plant, product or community safety or  
124 security activity directly relating to the activities of  
125 manufacturing, transportation, communication, trans-  
126 mission or the production of natural resources; or
- 127 (N) Otherwise be used as an integral and essential  
128 part of transportation, communication, transmission,  
129 manufacturing production or production of natural  
130 resources.
- 131 (3) Uses of property or services which would not  
132 constitute direct use or consumption in the activities of  
133 manufacturing, transportation, transmission, communi-  
134 cation or the production of natural resources includes,  
135 but are not limited to:
- 136 (A) Heating and illumination of office buildings;
- 137 (B) Janitorial or general cleaning activities;
- 138 (C) Personal comfort of personnel;
- 139 (D) Production planning, scheduling of work, or  
140 inventory control;
- 141 (E) Marketing, general management, supervision,  
142 finance, training, accounting and administration; or
- 143 (F) An activity or function incidental or convenient to  
144 transportation, communication, transmission, manufac-  
145 turing production or production of natural resources,  
146 rather than an integral and essential part of such  
147 activities.

## 148 (o) "Contracting."

149 (1) *In general.*—"Contracting" means and includes the  
150 furnishing of work, or both materials and work, for  
151 another (by a sole contractor, general contractor, prime  
152 contractor or subcontractor) in fulfillment of a contract  
153 for the construction, alteration, repair, decoration or  
154 improvement of a new or existing building or structure,  
155 or any part thereof, or for removal or demolition of a  
156 building or structure, or any part thereof, or for the  
157 alteration, improvement or development of real  
158 property.

159 (2) *Form of contract not controlling.*—An activity that  
160 falls within the scope of the definition of contracting  
161 shall constitute contracting regardless of whether such  
162 contract governing the activity is written or verbal and  
163 regardless of whether it is in substance or form a lump  
164 sum contract, a cost-plus contract, a time and materials  
165 contract (whether or not open-ended), or any other kind  
166 of construction contract.

167 (3) *Special rules.*—For purposes of this definition:

168 (A) The term "structure" includes, but is not limited  
169 to, everything built up or composed of parts joined  
170 together in some definite manner and attached or  
171 affixed to real property, or which adds utility to real  
172 property or any part thereof, or which adds utility to  
173 a particular parcel of property and is intended to  
174 remain there for an indefinite period of time.

175 (B) The term "alteration" means and is limited to  
176 alterations which are capital improvements to a build-  
177 ing or structure or to real property.

178 (C) The term "repair" means and is limited to repairs  
179 which are capital improvements to a building or  
180 structure or to real property.

181 (D) The term "decoration" means and is limited to  
182 decorations which are capital improvements to a  
183 building or structure or to real property.

184 (E) The term "improvement" means and is limited to



185 improvements which are capital improvements to a  
186 building or structure or to real property.

187 (F) The term "capital improvement" means improve-  
188 ments that are affixed to or attached to and become a  
189 part of a building or structure or the real property or  
190 which add utility to real property or any part thereof  
191 and that last, or are intended to be relatively permanent.  
192 As used herein, "relatively permanent" means lasting at  
193 least a year or longer in duration without the necessity  
194 for regularly scheduled recurring service to maintain  
195 such capital improvement. "Regular recurring service"  
196 means regularly scheduled service intervals of less than  
197 one year.

198 (G) Contracting does not include the furnishing of  
199 work, or both materials and work in the nature of  
200 hookup, connection, installation or other services if such  
201 service is incidental to the retail sale of tangible  
202 personal property from the service provider's inventory:  
203 *Provided*, That such hookup, connection or installation  
204 of the foregoing is incidental to the sale of the same and  
205 performed by the seller thereof or performed in  
206 accordance with arrangements made by the seller  
207 thereof. Examples of transactions that are excluded  
208 from the definition of contracting pursuant hereto  
209 include, but are not limited to, the sale of wall-to-wall  
210 carpeting and the installation of wall-to-wall carpeting,  
211 the sale, hookup, and connection of mobile homes,  
212 window air conditioning units, dishwashers, clothing  
213 washing machines or dryers, other household applian-  
214 ces, drapery rods, window shades, venetian blinds,  
215 canvas awnings, free standing industrial or commercial  
216 equipment and other similar items of tangible personal  
217 property. Repairs made to the foregoing are within the  
218 definition of contracting if such repairs involve perman-  
219 ently affixing to or improving real property or some-  
220 thing attached thereto which extends the life of the real  
221 property or something affixed thereto or allows or is  
222 intended to allow such real property or thing perman-  
223 ently attached thereto to remain in service for a year  
224 or longer.

225 (p) "Manufacturing" means a systematic operation or

226 integrated series of systematic operations engaged in as  
227 a business or segment of a business which transforms  
228 or converts tangible personal property by physical,  
229 chemical or other means into a different form, compo-  
230 sition or character from that in which it originally  
231 existed.

232 (q) "Transportation" means the act or process of  
233 conveying, as a commercial enterprise, passengers or  
234 goods from one place or geographical location to another  
235 place or geographical location.

236 (r) "Transmission" means the act or process of causing  
237 liquid, natural gas or electricity to pass or be conveyed  
238 from one place or geographical location to another place  
239 or geographical location through a pipeline or other  
240 medium for commercial purposes.

241 (s) "Communication" means all telephone, radio, light,  
242 light wave, radio telephone, telegraph and other  
243 communication or means of communication, whether  
244 used for voice communication, computer data transmis-  
245 sion or other encoded symbolic information transfers  
246 and shall include commercial broadcast radio, commer-  
247 cial broadcast television and cable television.

248 (t) "Production of natural resources" means the  
249 performance, by either the owner of the natural  
250 resources or another, of the act or process of exploring,  
251 developing, severing, extracting, reducing to possession  
252 and loading for shipment for sale, profit or commercial  
253 use of any natural resource products and any reclama-  
254 tion, waste disposal or environmental activities asso-  
255 ciated therewith.

#### §11-15-9. Exemptions.

1 The following sales and services are exempt:

2 (a) Sales of gas, steam and water delivered to consu-  
3 mers through mains or pipes, and sales of electricity;

4 (b) Sales of textbooks required to be used in any of  
5 the schools of this state or in any institution in this state  
6 which qualifies as a nonprofit or educational institution  
7 subject to the West Virginia department of education

8 and the arts; board of trustees of the university system  
9 of West Virginia, or the board of directors for colleges  
10 located in this state;

11 (c) Sales of property or services to the state, its  
12 institutions or subdivisions, governmental units, institu-  
13 tions or subdivisions of other states: *Provided*, That the  
14 law of such other state provides the same exemption to  
15 governmental units or subdivisions of this state and to  
16 the United States, including agencies of federal, state or  
17 local governments for distribution in public welfare or  
18 relief work;

19 (d) Sales of vehicles which are titled by the division  
20 of motor vehicles and which are subject to the tax  
21 imposed by section four, article three, chapter seven-  
22 teen-a of this code, or like tax;

23 (e) Sales of property or services to churches and bona  
24 fide charitable organizations who make no charge  
25 whatsoever for the services they render: *Provided*, That  
26 the exemption herein granted shall apply only to  
27 services, equipment, supplies, food for meals and  
28 materials directly used or consumed by these organiza-  
29 tions, and shall not apply to purchases of gasoline or  
30 special fuel;

31 (f) Sales of tangible personal property or services to  
32 a corporation or organization which has a current  
33 registration certificate issued under article twelve of  
34 this chapter is exempt from federal income taxes under  
35 section 501(c)(3) or (c)(4) of the Internal Revenue Code  
36 of one thousand nine hundred eighty-six, as amended,  
37 and is:

38 (1) A church or a convention or association of  
39 churches as defined in section 170 of the Internal  
40 Revenue Code of one thousand nine hundred eighty-six,  
41 as amended;

42 (2) An elementary or secondary school which main-  
43 tains a regular faculty and curriculum and has a  
44 regularly enrolled body of pupils or students in attend-  
45 ance at the place in this state where its educational  
46 activities are regularly carried on;

47 (3) A corporation or organization which annually  
48 receives more than one half of its support from any  
49 combination of gifts, grants, direct or indirect charita-  
50 ble contributions, or membership fees;

51 (4) An organization which has no paid employees and  
52 its gross income from fund raisers, less reasonable and  
53 necessary expenses incurred to raise such gross income  
54 (or the tangible personal property or services purchased  
55 with such net income), is donated to an organization  
56 which is exempt from income taxes under section  
57 501(c)(3) or (c)(4) of the Internal Revenue Code of one  
58 thousand nine hundred eighty-six, as amended; or

59 (5) A youth organization, such as the Girl Scouts of  
60 the United States of America, the Boy Scouts of  
61 America, or the YMCA Indian Guide/Princess Pro-  
62 gram, and the local affiliates thereof, which is organized  
63 and operated exclusively for charitable purposes and  
64 has as its primary purpose the nonsectarian character  
65 development and citizenship training of its members.

66 (6) For purposes of this subsection:

67 (A) The term "support" includes, but is not limited to:

68 (i) Gifts, grants, contributions or membership fees;

69 (ii) Gross receipts from fund raisers which include  
70 receipts from admissions, sales of merchandise, perfor-  
71 mance of services or furnishing of facilities in any  
72 activity which is not an unrelated trade or business  
73 within the meaning of section 513 of the Internal  
74 Revenue Code of one thousand nine hundred eighty-six,  
75 as amended;

76 (iii) Net income from unrelated business activities,  
77 whether or not such activities are carried on regularly  
78 as a trade or business;

79 (iv) Gross investment income as defined in section  
80 509(e) of the Internal Revenue Code of one thousand  
81 nine hundred eighty-six, as amended;

82 (v) Tax revenues levied for the benefit of a corpora-  
83 tion or organization either paid to or expended on behalf  
84 of such organization; and

85 (vi) The value of services or facilities (exclusive of  
86 services or facilities generally furnished to the public  
87 without charge) furnished by a governmental unit  
88 referred to in section 170(c)(1) of the Internal Revenue  
89 Code of one thousand nine hundred eighty-six, as  
90 amended, to an organization without charge. This term  
91 does not include any gain from the sale or other  
92 disposition of property which would be considered as  
93 gain from the sale or exchange of a capital asset, or the  
94 value of an exemption from any federal, state or local  
95 tax or any similar benefit;

96 (B) The term "charitable contribution" means a  
97 contribution or gift to or for the use of a corporation or  
98 organization, described in section 170(c)(2) of the  
99 Internal Revenue Code of one thousand nine hundred  
100 eighty-six, as amended;

101 (C) The term "membership fee" does not include any  
102 amounts paid for tangible personal property or specific  
103 services rendered to members by the corporation or  
104 organization;

105 (7) The exemption allowed by this subsection (f) does  
106 not apply to sales of gasoline or special fuel or to sales  
107 of tangible personal property or services to be used or  
108 consumed in the generation of unrelated business  
109 income as defined in section 513 of the Internal Revenue  
110 Code of one thousand nine hundred eighty-six, as  
111 amended. The provisions of this subsection as amended  
112 by this act shall apply to sales made after the thirtieth  
113 day of June, one thousand nine hundred eighty-nine:  
114 *Provided*, That the exemption herein granted shall  
115 apply only to services, equipment, supplies and mate-  
116 rials used or consumed in the activities for which such  
117 organizations qualify as tax exempt organizations under  
118 the Internal Revenue Code by these organizations and  
119 shall not apply to purchases of gasoline or special fuel;

120 (g) Sales of property or services to persons engaged  
121 in this state in the business of manufacturing, transpor-  
122 tation, transmission, communication or in the produc-  
123 tion of natural resources: *Provided*, That the exemption  
124 herein granted shall apply only to services, machinery,

125 supplies and materials directly used or consumed in the  
126 businesses or organizations named above, and shall not  
127 apply to purchases of gasoline or special fuel: *Provided,*  
128 *however,* That on and after the first day of July, one  
129 thousand nine hundred eighty-seven, the exemption  
130 provided in this subsection shall apply only to services,  
131 machinery, supplies and materials directly used or  
132 consumed in the activities of manufacturing, transpor-  
133 tation, transmission, communication or the production of  
134 natural resources in the businesses or organizations  
135 named above and shall not apply to purchases of  
136 gasoline or special fuel;

137 (h) An isolated transaction in which any taxable  
138 service or any tangible personal property is sold,  
139 transferred, offered for sale or delivered by the owner  
140 thereof or by his representative for the owner's account,  
141 such sale, transfer, offer for sale or delivery not being  
142 made in the ordinary course of repeated and successive  
143 transactions of like character by such owner or on his  
144 account by such representative: *Provided,* That nothing  
145 contained herein may be construed to prevent an owner  
146 who sells, transfers or offers for sale tangible personal  
147 property in an isolated transaction through an auction-  
148 eer from availing himself or herself of the exemption  
149 provided herein, regardless where such isolated sale  
150 takes place. The tax commissioner may adopt such  
151 legislative rule pursuant to chapter twenty-nine-a of this  
152 code as he deems necessary for the efficient administra-  
153 tion of this exemption;

154 (i) Sales of tangible personal property or of any  
155 taxable services rendered for use or consumption in  
156 connection with the commercial production of an  
157 agricultural product the ultimate sale of which will be  
158 subject to the tax imposed by this article or which would  
159 have been subject to tax under this article: *Provided,*  
160 That sales of tangible personal property and services to  
161 be used or consumed in the construction of or permanent  
162 improvement to real property and sales of gasoline and  
163 special fuel shall not be exempt;

164 (j) Sales of tangible personal property to a person for  
165 the purpose of resale in the form of tangible personal

166 property: *Provided*, That sales of gasoline and special  
167 fuel by distributors and importers shall be taxable  
168 except when the sale is to another distributor for resale:  
169 *Provided, however*, That sales of building materials or  
170 building supplies or other property to any person  
171 engaging in the activity of contracting, as defined in this  
172 article, which is to be installed in, affixed to or  
173 incorporated by such person or his agent into any real  
174 property, building or structure shall not be exempt  
175 under this subsection, except that sales of tangible  
176 personal property to a person engaging in the activity  
177 of contracting pursuant to a written contract with the  
178 United States, this state, or with a political subdivision  
179 thereof, or with a public corporation created by the  
180 Legislature or by another government entity pursuant  
181 to an act of the Legislature, for a building or structure,  
182 or improvement thereto, or other improvement to real  
183 property that is or will be owned and used by the  
184 governmental entity for a governmental or proprietary  
185 purpose, who incorporates such property in such  
186 building, structure or improvement shall, with respect  
187 to such tangible personal property, nevertheless be  
188 deemed to be the vendor of such property to the  
189 governmental entity and any person seeking to qualify  
190 for and assert this exception must do so pursuant to such  
191 legislative rules and regulations as the tax commissioner  
192 may promulgate and upon such forms as the tax  
193 commissioner may prescribe. A subcontractor who,  
194 pursuant to a written subcontract with a prime contrac-  
195 tor who qualifies for this exception, provides equipment,  
196 or materials, and labor to such a prime contractor shall  
197 be treated in the same manner as the prime contractor  
198 is treated with respect to the prime contract under this  
199 exception and the legislative rules and regulations  
200 promulgated by the tax commissioner;

201 (k) Sales of property or services to nationally char-  
202 tered fraternal or social organizations for the sole  
203 purpose of free distribution in public welfare or relief  
204 work: *Provided*, That sales of gasoline and special fuel  
205 shall be taxable;

206 (l) Sales and services, fire fighting or station house

207 equipment, including construction and automotive,  
208 made to any volunteer fire department organized and  
209 incorporated under the laws of the state of West  
210 Virginia: *Provided*, That sales of gasoline and special  
211 fuel shall be taxable;

212 (m) Sales of newspapers when delivered to consumers  
213 by route carriers;

214 (n) Sales of drugs dispensed upon prescription and  
215 sales of insulin to consumers for medical purposes;

216 (o) Sales of radio and television broadcasting time,  
217 preprinted advertising circulars and newspaper and  
218 outdoor advertising space for the advertisement of goods  
219 or services;

220 (p) Sales and services performed by day-care centers;

221 (q) Casual and occasional sales of property or services  
222 not conducted in a repeated manner or in the ordinary  
223 course of repetitive and successive transactions of like  
224 character by a corporation or organization which is  
225 exempt from tax under subsection (f) of this section on  
226 its purchases of tangible personal property or services:

227 (1) For purposes of this subsection, the term "casual  
228 and occasional sales not conducted in repeated manner  
229 or in the ordinary course of repetitive and successive  
230 transactions of like character" means sales of tangible  
231 personal property or services at fund raisers sponsored  
232 by a corporation or organization which is exempt, under  
233 subsection (f) of this section, from payment of the tax  
234 imposed by this article on its purchases, when such fund  
235 raisers are of limited duration and are held no more  
236 than six times during any twelve-month period and  
237 limited duration means no more than eighty-four  
238 consecutive hours;

239 (2) The provisions of this subsection (q), as amended  
240 by this act, shall apply to sales made after the thirtieth  
241 day of June, one thousand nine hundred eighty-nine;

242 (r) Sales of property or services to a school which has  
243 approval from the board of trustees of the university  
244 system of West Virginia or the board of directors of the



245 state college system to award degrees, which has its  
246 principal campus in this state, and which is exempt  
247 from federal and state income taxes under section  
248 501(c)(3) of the Internal Revenue Code of one thousand  
249 nine hundred eighty-six, as amended: *Provided*, That  
250 sales of gasoline and special fuel shall be taxable;

251 (s) Sales of mobile homes to be utilized by purchasers  
252 as their principal year-round residence and dwelling:  
253 *Provided*, That these mobile homes shall be subject to  
254 tax at the three-percent rate;

255 (t) Sales of lottery tickets and materials by licensed  
256 lottery sales agents and lottery retailers authorized by  
257 the state lottery commission, under the provisions of  
258 article twenty-two, chapter twenty-nine of this code;

259 (u) Leases of motor vehicles titled pursuant to the  
260 provisions of article three, chapter seventeen-a of this  
261 code to lessees for a period of thirty or more consecutive  
262 days. This exemption shall apply to leases executed on  
263 or after the first day of July, one thousand nine hundred  
264 eighty-seven, and to payments under long-term leases  
265 executed before such date, for months thereof beginning  
266 on or after such date;

267 (v) Notwithstanding the provisions of subsection  
268 (g) of this section or any provisions of this article to the  
269 contrary, sales of property and services to persons  
270 subject to tax under article thirteen, thirteen-a or  
271 thirteen-b of this chapter: *Provided*, That the exemption  
272 herein granted shall apply both to property or services  
273 directly or not directly used or consumed in the conduct  
274 of privileges which are subject to tax under such articles  
275 but shall not apply to purchases of gasoline or special  
276 fuel;

277 (w) Sales of propane to consumers for poultry house  
278 heating purposes, with any seller to such consumer who  
279 may have prior paid such tax in his price, to not pass  
280 on the same to the consumer, but to make application  
281 and receive refund of such tax from the tax commis-  
282 sioner, pursuant to rules and regulations which shall be  
283 promulgated by the tax commissioner; and notwith-  
284 standing the provisions of section eighteen of this article  
285 or any other provisions of such article to the contrary;

286 (x) Any sales of tangible personal property or services  
287 purchased after the thirtieth day of September, one  
288 thousand nine hundred eighty-seven, and lawfully paid  
289 for with food stamps pursuant to the federal food stamp  
290 program codified in 7 United States Code, §2011, et seq.,  
291 as amended, or with drafts issued through the West  
292 Virginia special supplemental food program for women,  
293 infants and children codified in 42 United States Code,  
294 §1786;

295 (y) Sales of tickets for activities sponsored by elemen-  
296 tary and secondary schools located within this state;

297 (z) Sales of electronic data processing services and  
298 related software: *Provided*, That for the purposes of this  
299 subsection (z) "electronic data processing services"  
300 means (1) the processing of another's data, including all  
301 processes incident to processing of data such as key-  
302 punching, keystroke verification, rearranging or sorting  
303 of previously documented data for the purpose of data  
304 entry or automatic processing, and changing the  
305 medium on which data is sorted, whether these pro-  
306 cesses are done by the same person or several persons;  
307 and (2) providing access to computer equipment for the  
308 purpose of processing data or examining or acquiring  
309 data stored in or accessible to such computer equipment;

310 (aa) Tuition charged for attending educational  
311 summer camps;

312 (bb) Sales of building materials or building supplies  
313 or other property to an organization qualified under  
314 section 501 (c)(3) or (c)(4) of the Internal Revenue Code  
315 of one thousand nine hundred eighty-six, as amended,  
316 which are to be installed in, affixed to or incorporated  
317 by such organization or its agent into real property, or  
318 into a building or structure which is or will be used as  
319 permanent low-income housing, transitional housing,  
320 emergency homeless shelter, domestic violence shelter  
321 or emergency children and youth shelter if such shelter  
322 is owned, managed, developed or operated by an  
323 organization qualified under section 501(c)(3) or  
324 (c)(4) of the Internal Revenue Code of one thousand nine  
325 hundred eighty-six, as amended;

326 (cc) Dispensing of services performed by one corpora-  
327 tion for another corporation when both corporations are  
328 members of the same controlled group. Control means  
329 ownership, directly or indirectly, of stock possessing  
330 fifty percent or more of the total combined voting power  
331 of all classes of the stock of a corporation entitled to vote  
332 or ownership, directly or indirectly, of stock possessing  
333 fifty percent or more of the value of the corporation;

334 (dd) Food for the following shall be exempt:

335 (1) Food purchased or sold by public or private  
336 schools, school sponsored student organizations, or  
337 school sponsored parent-teacher associations to students  
338 enrolled in such school or to employees of such school  
339 during normal school hours; but not those sales of food  
340 made to the general public;

341 (2) Food purchased or sold by a public or private  
342 college or university or by a student organization  
343 officially recognized by such college or university to  
344 students enrolled at such college or university when  
345 such sales are made on a contract basis so that a fixed  
346 price is paid for consumption of food products for a  
347 specific period of time without respect to the amount of  
348 food product actually consumed by the particular  
349 individual contracting for the sale and no money is paid  
350 at the time the food product is served or consumed;

351 (3) Food purchased or sold by a charitable or private  
352 nonprofit organization, a nonprofit organization or a  
353 governmental agency under a program to provide food  
354 to low-income persons at or below cost;

355 (4) Food sold in an occasional sale by a charitable or  
356 nonprofit organization including volunteer fire depart-  
357 ments and rescue squads, if the purpose of the sale is  
358 to obtain revenue for the functions and activities of the  
359 organization and the revenue so obtained is actually  
360 expended for that purpose;

361 (5) Food sold by any religious organization at a social  
362 or other gathering conducted by it or under its auspices,  
363 if the purpose in selling the food is to obtain revenue

364 for the functions and activities of the organization and  
365 the revenue obtained from selling the food is actually  
366 used in carrying on such functions and activities:  
367 *Provided*, That purchases made by such organizations  
368 shall not be exempt as a purchase for resale;

369 (ee) Sales of food by little leagues, midget football  
370 leagues, youth football or soccer leagues and similar  
371 types of organizations including scouting groups and  
372 church youth groups if the purpose in selling the food  
373 is to obtain revenue for the functions and activities of  
374 the organization and the revenues obtained from selling  
375 the food is actually used in supporting or carrying on  
376 functions and activities of the groups: *Provided*, That  
377 such purchases made by such organizations shall not be  
378 exempt as a purchase for resale;

379 (ff) Charges for room and meals by fraternities and  
380 sororities to their members: *Provided*, That such  
381 purchases made by a fraternity or sorority shall not be  
382 exempt as a purchase for resale;

383 (gg) Sales of or charges for the transportation of  
384 passengers in interstate commerce;

385 (hh) Sales of tangible personal property or services to  
386 any person which this state is prohibited from taxing  
387 under the laws of the United States or under the  
388 constitution of this state;

389 (ii) Sales of tangible personal property or services to  
390 any person who claims exemption from the tax imposed  
391 by this article or article fifteen-a of this chapter  
392 pursuant to the provisions of any other chapter of this  
393 code;

394 (jj) Charges for the services of opening and closing a  
395 burial lot;

396 (kk) Sales of livestock, poultry or other farm products  
397 in their original state by the producer thereof (or a  
398 member of the producer's immediate family) who is not  
399 otherwise engaged in making retail sales of tangible  
400 personal property; and sales of livestock sold at public  
401 sales sponsored by breeder's or registry associations or  
402 livestock auction markets: *Provided*, That the exemp-

403 tions allowed by this subsection shall apply to sales  
404 made on or after the first day of July, one thousand nine  
405 hundred ninety, and may be claimed without presenting  
406 or obtaining exemption certificates: *Provided, however,*  
407 That the farmer shall maintain adequate records;

408 (ll) Sales of motion picture films to motion picture  
409 exhibitors for exhibition if the sale of tickets or the  
410 charge for admission to the exhibition of the film is  
411 subject to the tax imposed by this article and sales of  
412 coin operated video arcade machines, or video arcade  
413 games, to a person engaged in the business of providing  
414 such machines to the public for a charge upon which the  
415 tax imposed by this article is remitted to the tax  
416 commissioner: *Provided,* That the exemption provided in  
417 this subsection shall apply to sales made on or after the  
418 first day of July, one thousand nine hundred ninety, and  
419 may be claimed by presenting to the seller a properly  
420 executed exemption certificate; and

421 (mm) Sales of aircraft repair, remodeling and main-  
422 tenance services when such services are to an aircraft  
423 operated by a certificated or licensed carrier of persons  
424 or property, or by a governmental entity, or to an engine  
425 or other component part of an aircraft operated by a  
426 certificated or licensed carrier of persons or property,  
427 or by a governmental entity, and sales of tangible  
428 personal property that is permanently affixed or  
429 permanently attached as a component part of an aircraft  
430 owned or operated by a certificated or licensed carrier  
431 of persons or property, or by a governmental entity, as  
432 part of the repair, remodeling or maintenance service  
433 and sales of machinery, tools, or equipment, directly  
434 used or consumed exclusively in the repair, remodeling,  
435 or maintenance of aircraft, aircraft engines, or aircraft  
436 component parts, for a certificated or licensed carrier  
437 of persons or property, or for a governmental entity.

#### §11-15-33. Effective date.

- 1 (a) The provisions of this article as amended or added
- 2 by Senate Bill No. 1 took effect on the first day of
- 3 March, one thousand nine hundred eighty-nine, and
- 4 apply to all sales made on or after that date: *Provided,*

5 That if an effective date was expressly provided in a  
6 provision of such act, that specific effective date  
7 controlled in lieu of this general effective date provision.

8 (b) The provisions of this article as amended or added  
9 by chapter two hundred one, Acts of the Legislature, one  
10 thousand nine hundred eighty-nine, took effect on the  
11 first day of July, one thousand nine hundred eighty-nine,  
12 and apply to all sales made on or after that date:  
13 *Provided*, That if an effective date is expressly provided  
14 in any provision, that specific effective date shall control  
15 in lieu of this general effective date provision.

16 (c) The provisions of this article as amended or added  
17 by Committee Substitute for House Bill No. 4247 shall  
18 take effect on the first day of July, one thousand nine  
19 hundred ninety, and apply to all sales made on or after  
20 that date: *Provided*, That if an effective date is expressly  
21 provided in any provision of such act, that specific  
22 effective date shall control in lieu of this general  
23 effective date provision with respect to such provision.

#### ARTICLE 21. PERSONAL INCOME TAX.

§11-21-18. West Virginia taxable income of resident estate or trust.

§11-21-71a. Withholding tax on effectively connected income of nonresident partners, shareholders or beneficiaries.

#### §11-21-18. West Virginia taxable income of resident estate or trust.

1 The West Virginia taxable income of a resident estate  
2 or trust means its federal taxable income as defined in  
3 the laws of the United States for the taxable year, with  
4 the following modifications:

5 (1) There shall be subtracted six hundred dollars as  
6 the West Virginia exemption of the estate or trust, and  
7 there shall be added the amount of its federal deduction  
8 for a personal exemption.

9 (2) There shall be subtracted the modification des-  
10 cribed in subdivision (3), subsection (c), section twelve  
11 of this article, with respect to gains from the sale or  
12 other disposition of property, to the extent such gains  
13 are excluded from distributable net income of the estate  
14 or trust for federal income tax purposes.

15 (3) There shall be added or subtracted (as the case  
16 may be) the share of the estate or trust in the West  
17 Virginia fiduciary adjustment determined under section  
18 nineteen.

19 (4) There shall be added to federal adjusted gross  
20 income, unless already included therein, the amount of  
21 a lump sum distribution for which the taxpayer has  
22 elected under section 402(e) of the Internal Revenue  
23 Code of one thousand nine hundred eighty-six, as  
24 amended, to be separately taxed for federal income tax  
25 purposes: *Provided*, That the provisions of this subdivi-  
26 sion shall be effective for taxable year beginning after  
27 the thirty-first day of December, one thousand nine  
28 hundred ninety.

**§11-21-71a. Withholding tax on effectively connected  
income of nonresident partners, share-  
holders or beneficiaries.**

1 (a) *General Rule.*—For the privilege of doing business  
2 in this state or deriving rents or royalties from realty  
3 property located in this state, including natural resour-  
4 ces in place and standing timber, a partnership, S  
5 corporation, or trust, treated as a pass through entity  
6 for federal income tax purposes, which has effectively  
7 connected taxable income for the taxable year any  
8 portion of which is allocable to a nonresident partner,  
9 nonresident shareholder, or nonresident beneficiary, as  
10 the case may be, shall pay a withholding tax under this  
11 section.

12 (b) *Amount of withholding tax.*

13 (1) *In general.*—The amount of the withholding tax  
14 payable by any partnership, S corporation, or trust,  
15 under subsection (a) shall be equal to the applicable  
16 percentage of the effectively connected taxable income  
17 of the partnership, S corporation, or trust, as the case  
18 may be, which is allocable to a nonresident partner,  
19 nonresident shareholder, or nonresident beneficiary of a  
20 trust.

21 (2) *Applicable percentage.*—For purposes of subdivi-  
22 sion (1), the term “applicable percentage” means:

23 (A) Four percent in the case of the portion of the  
24 effectively connected taxable income which is allocable  
25 to nonresident persons who are not corporations, and

26 (B) Nine percent in the case of the portion of effec-  
27 tively connected taxable income which is allocable to  
28 nonresident persons who are corporations taxable under  
29 article twenty-four of this chapter.

30 (c) *Payment of withheld tax.*—Each partnership, S  
31 corporation, or trust, required to withhold tax under  
32 this section shall pay the amount required to be  
33 withheld to the tax commissioner no later than:

34 (1) *S corporations.*—The fifteenth day of the third  
35 month following the close of the taxable year of the S  
36 corporation with the annual information return due  
37 under article twenty-four of this chapter unless para-  
38 graph (3) applies.

39 (2) *Partnerships and trusts.*—The fifteenth day of the  
40 fourth month following the close of the taxable year of  
41 the partnership or trust, with the annual return of the  
42 partnership or trust due under this article, unless  
43 paragraph (3) applies.

44 (3) *Composite returns.*—The fifteenth day of the  
45 fourth month of the taxable year with the composite  
46 return filed under section fifty-one-a of this article.

47 (d) *Effectively connected taxable income.*—For pur-  
48 poses of this section, the term “effectively connected  
49 taxable income” means the federal taxable income or  
50 portion thereof of a partnership, S corporation, or trust,  
51 as the case may be, which is derived from or attribu-  
52 table to West Virginia sources as determined under  
53 section thirty-two of this article and such regulations as  
54 the tax commissioner may prescribe, whether such  
55 amount is actually distributed or is deemed to have been  
56 distributed for federal income tax purposes.

57 (e) *Treatment of nonresident partners, S corporation*  
58 *shareholders or beneficiaries of a trust.*

59 (1) *Allowance of credit.*—Each nonresident partner,  
60 nonresident shareholder, or nonresident beneficiary



61 shall be allowed a credit for such partner's or share-  
62 holder's or beneficiary's share of the tax withheld by the  
63 partnership, S corporation, or trust, under this section:  
64 *Provided*, That when the distribution is to a corporation  
65 taxable under article twenty-four of this chapter, the  
66 credit allowed by this section shall be applied against  
67 the corporation's liability for tax under article twenty-  
68 four of this chapter.

69 (2) *Credit treated as distributed to partner, share-*  
70 *holder or beneficiary.*—Except as provided in regula-  
71 tions, a nonresident partner's share, a nonresident  
72 shareholder's share, or a nonresident beneficiary's share,  
73 of any withholding tax paid by the partnership, S  
74 corporation, or trust, under this section shall be treated  
75 as distributed to such partner by such partnership, or  
76 to such shareholder by such S corporation, or to such  
77 beneficiary by such trust, on the earlier of:

78 (A) The day on which such tax was paid by the  
79 partnership, S corporation, or trust; or

80 (B) The last day of the taxable year for which such  
81 tax was paid by partnership, S corporation or trust.

82 (f) *Regulations.*—The tax commissioner shall pres-  
83 scribe such regulations as may be necessary to carry out  
84 the purposes of this section.

85 (g) *Information statement.*—Every person required to  
86 deduct and withhold tax under this section shall furnish  
87 to each nonresident partner, or nonresident shareholder,  
88 or nonresident beneficiary, as the case may be, on or  
89 before the fifteenth day of February of the succeeding  
90 taxable year of the partner, shareholder, or beneficiary,  
91 a written statement as prescribed by the tax commis-  
92 sioner showing the amount of distributions by such  
93 partnership, S corporation, or trust to such nonresident  
94 partner, or nonresident shareholder, or nonresident  
95 beneficiary for federal income tax purposes; the amount  
96 deducted and withheld as tax under this section; and  
97 such other information as the tax commissioner may  
98 require.

99 (h) *Liability for withheld tax.*—Every person required

100 to deduct and withhold tax under this section is hereby  
101 made liable for the payment of such tax. The amount  
102 of tax required to be withheld and paid over to the tax  
103 commissioner shall be considered the tax of the partner-  
104 ship, S corporation, or trust, as the case may be, for  
105 purposes of articles nine and ten of this chapter. Any  
106 amount of tax withheld under this section shall be held  
107 in trust for the tax commissioner. No partner, S  
108 corporation shareholder, or beneficiary of a trust, shall  
109 have a right of action against the partnership, S  
110 corporation, or trust, in respect to any moneys deducted  
111 and withheld from such person's distributive share and  
112 paid over to the tax commissioner in compliance with  
113 or in intended compliance with this section.

114 (i) *Failure to withhold.*—If any partnership, S corpo-  
115 ration, or trust, fails to deduct and withhold tax as  
116 required by this section, and thereafter the tax against  
117 which such tax may be credited is paid, the tax so  
118 required to be deducted and withheld under this section  
119 shall not be collected from the partnership, S corpora-  
120 tion, or trust, as the case may be, but the partnership,  
121 S corporation, or trust, shall not be relieved from  
122 liability for any penalties, interest, on additions to tax  
123 otherwise applicable in respect of such failure to  
124 withhold.

125 (j) *Effective date.*—The provisions of this section shall  
126 apply to taxable years ending after the effective date of  
127 this acticle.

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## CHAPTER 176

(Com. Sub. for S. B. 333—By Senators Burdette, Mr. President, and Harman,  
By Request of the Executive)

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[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend article thirteen-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen, relating generally to the

business investment and jobs expansion tax credits; narrowing, restricting and otherwise limiting the availability and benefits of such credits to taxpayers; making legislative findings; providing rule of construction; prohibiting application of credit against severance taxes, subject to transition rules; requiring persons who will claim credit under transition rules to timely file notice of intent with tax commissioner; limiting credit available to project successors under certain circumstances; defining or redefining certain terms; requiring timely filing of application for credit; providing for forfeiture of credit under specified circumstances; providing other administration provisions; and specifying internal effective dates.

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

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

**ARTICLE 13C. BUSINESS INVESTMENT AND JOBS EXPANSION CREDIT.**

**§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 hereto-  
3 fore enacted have not effectively and efficiently in-  
4 creased employment through investment in certain  
5 industry segments; that while there has been a signif-  
6 icant net decrease in employment in the coal industry  
7 in recent years the amount of credit being claimed by  
8 producers of coal has significantly increased; that the  
9 increasing cost of the credits allowed by this article to  
10 coal producers is eroding the state's ability to reasonably  
11 fund essential state services such as public education,  
12 public safety and basic human services; and that this  
13 erosion will continue unless remedial legislation is  
14 enacted.

15 (b) *Construction.*—The rule of statutory construction  
16 codified in subsection (b), section twelve of this article,  
17 is hereby replaced with a rule of reasonable construction

18 in which the burden of proof is on the taxpayer to  
19 establish by clear and convincing evidence that the  
20 taxpayer is entitled to the benefits allowed by this  
21 article.

22 (c) *Credit not to be applied against severance taxes.*

23 (1) Notwithstanding any provision in this chapter to  
24 the contrary, no credit shall be allowed against the taxes  
25 imposed by article thirteen-a of this chapter for taxable  
26 years ending on or after the date of passage of this  
27 section unless one of the transition rules in paragraph  
28 (2) of this subsection (c) applies.

29 (2) *Transition rules.*—The general rule stated in  
30 paragraph (1) of this subsection (c) shall not apply:

31 (A) To qualified investment property placed in service  
32 or use prior to the date of passage of this section.

33 (B) To property purchased or leased for business  
34 expansion that is placed in service or use on or after the  
35 date of passage of this section, if at least one of the  
36 following clauses applies to such property:

37 (i) The new or expanded business facility was con-  
38 structed, reconstructed or erected, pursuant to a written  
39 construction contract executed prior to the date of  
40 passage of this section, as limited to the provisions of  
41 such contract as of such date then binding on the  
42 taxpayer, but only to the extent such new or expanded  
43 business facility is placed in service or use prior to the  
44 first day of January, one thousand nine hundred ninety-  
45 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 construc-  
50 tion contract executed prior to the date of passage of this  
51 section, as limited to the provisions of such contract as  
52 of such date then binding on the taxpayer: *Provided,*  
53 That only that portion of the contract price attributable  
54 to that percentage of the construction contract com-  
55 pleted prior to the first day of January, one thousand  
56 nine hundred ninety-two (determined under principles

57 set forth in Section 460(b) of the Internal Revenue Code  
58 of 1986, as in effect before the date of passage of this  
59 section) which is placed in service or use prior to the  
60 first day of January, one thousand nine hundred ninety-  
61 four, may be treated as property purchased for business  
62 expansion under section six of this article.

63 (iii) The new or expanded business facility was  
64 purchased or leased pursuant to a written contract  
65 executed prior to the date of passage of this section, as  
66 limited to the provisions then binding on the taxpayer  
67 as of such date, but only to the extent such new or  
68 expanded business facility is placed in service or use  
69 prior to the first day of January, one thousand nine  
70 hundred ninety-two.

71 (iv) The machinery or equipment or other tangible  
72 personal property purchased or leased for business  
73 expansion at a new or expanded business facility was  
74 purchased or leased by the taxpayer pursuant to a  
75 written contract to purchase or lease identifiable  
76 tangible personal property executed before the date of  
77 passage of this section, as limited to the provisions of  
78 such written contract then binding on the taxpayer, but  
79 only to the extent the tangible personal property  
80 purchased or leased under such contract is placed in  
81 service or use before the first day of January, one  
82 thousand nine hundred ninety-two: *Provided*, That when  
83 such tangible personal property is purchased or leased  
84 as aforesaid as part of a project described in clause (ii)  
85 of this subparagraph (B), such tangible personal  
86 property must be placed in service or use prior to the  
87 first day of January, one thousand nine hundred ninety-  
88 four, to be treated as property purchased or leased for  
89 business expansion under section six of this article.

90 (C) To property purchased or leased for business  
91 expansion that is placed in service or use on or after the  
92 date of passage of this section as part of a project  
93 otherwise eligible for the credit under subsection (a),  
94 section four-b of this article, if all of the requirements  
95 of clauses (i), (ii), (iii) and (iv) of this subparagraph are  
96 satisfied:

97 (i) The taxpayer and other participants in the project,  
98 if any, have made investments in property purchased or  
99 leased for business expansion as defined in subsection  
100 (b)(19), section three of this article prior to the date of  
101 passage of this section in excess of ten million dollars.

102 (ii) The investments described in clause (i) were made  
103 pursuant to a plan for an integrated project to be  
104 developed over a period of one or more years and with  
105 the expectation of making additional investments in the  
106 integrated project.

107 (iii) The portion of the project constructed, purchased  
108 or leased after the date of passage of this section meets  
109 the definition of new business facility in subsection (e)(3)  
110 of this section.

111 (iv) The new jobs created by the project after the date  
112 of passage of this section are filled by new employees  
113 as defined in subsection (e) (4) of this section.

114 (3) *Notice of claim under transition rules.*

115 (A) *Notice required.*—Any person intending to assert  
116 a claim for credit based in whole or in part on  
117 application of the transition rules in subparagraph (B)  
118 or (C), paragraph (2) of this subsection (c), shall file  
119 written notice of such intention with the tax commis-  
120 sioner on or before the first day of July, one thousand  
121 nine hundred ninety. In the case of a multiparticipant  
122 project, this notice may be filed by the managing project  
123 participant on behalf of all participants in such project.  
124 Such notice shall be in a form prescribed by the tax  
125 commissioner and all information required by such form  
126 shall be provided.

127 (B) *Failure to file notice.*—If any person fails to timely  
128 file the notice required by this paragraph (3), such  
129 person shall be precluded from claiming credit under  
130 this article for such investment.

131 (d) *Treatment of successor project participants.*—  
132 Whenever a participant in a project certified under  
133 paragraph (2) or (3), subsection (a), section four-b of this  
134 article, is replaced by another participant in that project  
135 on or after the date of passage of this section, the tax

136 credits available to such successor participant as a  
137 result of the transfer shall not exceed the amount of  
138 credits that would have been available to the predeces-  
139 sor participant had the transfer to the successor  
140 participant not occurred: *Provided*, That if the project  
141 plan provides for annual recalculation of the division of  
142 the credit allowable for each year among the partici-  
143 pants in the project in order to maximize the collective  
144 use of such credit by the project participants, or for any  
145 other purpose, then the credit available to the successor  
146 participant as a result of the transfer shall be limited  
147 each year to the amount of credit actually used by the  
148 predecessor participant to offset taxes for the taxable  
149 year immediately preceding the taxable year in which  
150 such participant's obligations or interest in the project,  
151 as described in the project plan certified by the tax  
152 commissioner, passed to the successor participant in the  
153 project.

154 (e) *Certain terms redefined.*—Notwithstanding the  
155 provisions of subsection (b), section three of this article,  
156 or any other provision of this article, to the contrary, the  
157 following terms have the meanings assigned to them by  
158 this section.

159 (1) *Construction contract.*—The term “construction  
160 contract” means any contract for the building, construc-  
161 tion, reconstruction or rehabilitation of, or the installa-  
162 tion of any integral components to, or improvements of,  
163 a new or existing business facility.

164 (2) *Excluded property.*—The term “property pur-  
165 chased or leased for business expansion” shall not  
166 include:

167 (A) Property owned or leased by the taxpayer and for  
168 which the taxpayer was previously allowed tax credit  
169 for industrial expansion, tax credit for industrial  
170 revitalization, tax credit for coal loading facilities or the  
171 tax credits allowed by this article.

172 (B) Property owned or leased by the taxpayer and for  
173 which the seller, lessor, or other transferor, was  
174 previously allowed tax credit for industrial expansion,  
175 tax credit for industrial revitalization, tax credit for

176 coal loading facilities, or the tax credits allowed by this  
177 article.

178 (C) Repair costs, including materials used in the  
179 repair, unless for federal income tax purposes the cost  
180 of the repair must be capitalized and not expensed.

181 (D) Airplanes.

182 (E) Property which is primarily used outside this  
183 state, with use being determined based upon the amount  
184 of time the property is actually used both within and  
185 without this state.

186 (F) Property which is acquired incident to the  
187 purchase of the stock or assets of the seller, unless for  
188 good cause shown, the tax commissioner consents to  
189 waiving this requirement.

190 (G) Natural resources in place purchased or leased  
191 prior to the first day of March, one thousand nine  
192 hundred eighty-five, or purchased or leased after such  
193 date pursuant to an option to purchase or lease such  
194 natural resources in place acquired prior to such date  
195 but exercised in whole or in part on or after the date  
196 of passage of this section; and natural resources in place  
197 purchased or leased on or after the date of passage of  
198 this section unless pursuant to a written contract to  
199 purchase or lease executed prior to the passage of this  
200 section.

201 (H) Property purchased or leased on or after the date  
202 of passage of this section, unless pursuant to a written  
203 contract to purchase or lease executed prior to the  
204 passage of this section, the cost or consideration for  
205 which cannot be quantified with any reasonable degree  
206 of accuracy at the time such property is placed in  
207 service or use: *Provided*, That when the contract of  
208 purchase or lease specifies a minimum purchase price  
209 or minimum annual rent the amount thereof shall be  
210 used to determine the qualified investment in such  
211 property under section six of this article if the property  
212 otherwise qualifies as property purchased or leased for  
213 business expansion.

214 (3) *New business facility*.—The term “new business



215 facility" means a business facility which satisfies all the  
216 requirements of subparagraphs (A), (B), (C) and (D) of  
217 this paragraph.

218 (A) The facility is employed by the taxpayer in the  
219 conduct of a business the net income of which is or  
220 would be taxable under article twenty-one or twenty-  
221 four of this chapter. Such facility shall not be considered  
222 a new business facility in the hands of the taxpayer if  
223 the taxpayer's only activity with respect to such facility  
224 is to lease it to another person or persons.

225 (B) Such facility is purchased by, or leased to, the  
226 taxpayer after the first day of March, one thousand nine  
227 hundred eighty-five.

228 (C) The facility was not purchased or leased by the  
229 taxpayer from a related person or a project participant,  
230 or related person of a project participant, in any  
231 certified project in which the taxpayer is a participant.  
232 The tax commissioner may waive this requirement if the  
233 facility was acquired from a related party for its fair  
234 market value and the acquisition was not tax motivated.

235 (D) Such facility was not in service or use during the  
236 ninety days immediately prior to transfer of the title to  
237 such facility, or prior to the commencement of the term  
238 of the lease of such facility: *Provided*, That this ninety  
239 day period may be waived by the tax commissioner if  
240 the commissioner determines that persons employed at  
241 the facility may be treated as "new employees" as that  
242 term is defined under paragraph (4) of this subsection.

243 (4) *New Employee.*—

244 (A) The term "new employee" means a person resid-  
245 ing and domiciled in this state, hired by the taxpayer  
246 to fill a position or a job in this state which previously  
247 did not exist in taxpayer's business enterprise in this  
248 state prior to the date on which the taxpayer's qualified  
249 investment is placed in service or use in this state. In  
250 no case shall the number of new employees directly  
251 attributable to such investment for purposes of this  
252 credit exceed the total net increase in the taxpayer's  
253 employment in this state: *Provided*, That with respect

254 to taxpayers who file application for certification after  
255 the date of passage of this section, the tax commissioner  
256 may require that the net increase in the taxpayer's  
257 employment in this state be determined and certified for  
258 the taxpayer's controlled group; and in the case of a  
259 project involving more than one person for the con-  
260 trolled groups of all participants, taken as a whole:  
261 *Provided, however,* That persons filling jobs saved as a  
262 direct result of taxpayer's qualified investment in  
263 property purchased or leased for business expansion on  
264 or after the effective date of this section may be treated  
265 as new employees filling new jobs if the taxpayer  
266 certifies the material facts to the tax commissioner and  
267 the tax commissioner expressly finds that:

268 (i) But for the new employer purchasing the assets of  
269 a business in bankruptcy under chapter seven or eleven  
270 of the United States Bankruptcy Code and such new  
271 employer making qualified investment in property  
272 purchased or leased for business expansion, the assets  
273 would have been sold by the United States bankruptcy  
274 court in a liquidation sale and the jobs so saved would  
275 have been lost; or

276 (ii) But for taxpayer's qualified investment in prop-  
277 erty purchased or leased for business expansion in this  
278 state, taxpayer would have closed its business facility in  
279 this state and the employees of the taxpayer located at  
280 such facility would have lost their jobs: *Provided,* That  
281 the tax commissioner shall not make this certification  
282 unless the tax commissioner finds that the taxpayer is  
283 insolvent as defined in 11 U.S.C. §101 (31) or that the  
284 taxpayer's business facility was destroyed in whole or in  
285 significant 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  
292 less 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 em-  
296 ployment 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  
303 six months during the taxable year.

304 (5) *Leased property*.—The term "leased property" does  
305 not include property which the taxpayer is required to  
306 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  
311 section if the property was purchased on or after the  
312 date of passage of this section.

313 (6) *Small business*.—The term "small business" means  
314 a small business which has an annual payroll of one  
315 million seven hundred thousand dollars or less, and  
316 annual gross receipts of not more than five million five  
317 hundred thousand dollars: *Provided*, That on or before  
318 the 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 pre-  
321 scribe amounts which shall apply in lieu of the above  
322 amounts for taxable years beginning on or after the first  
323 day of January of the calendar year in which determi-  
324 nation is made: *Provided, however*, That this determi-  
325 nation shall not apply to small business projects which  
326 have received certification from the tax commissioner  
327 prior to the passage of this section if the said small  
328 business projects which have previously received  
329 certification continue to meet the requirements of a  
330 small business as in effect at the time of the certification  
331 of the project. Such prescribed amounts shall be  
332 determined in accordance with section seven-a of this

333 article and notice thereof shall be filed in the state  
334 register. For purposes of this definition:

335 (A) *Annual Payroll*.—The annual payroll of a busi-  
336 ness shall include the employees of its domestic and  
337 foreign affiliates, whether employed on a full-time, part-  
338 time, temporary, or other basis, during the preceding  
339 twelve months. If a business has not been in existence  
340 for twelve months, the payroll of the business shall be  
341 divided by the number of weeks, including fractions of  
342 a week, that it has been in business, and the result  
343 multiplied by fifty-two. That amount shall then be  
344 added to the twelve month payrolls of its domestic and  
345 foreign affiliates to determine the annual payroll of the  
346 business for purposes of this section.

347 (B) *Annual gross receipts*.—The annual gross receipts  
348 of a business shall include the annual gross receipts of  
349 its foreign and domestic affiliates.

350 (i) The “annual gross receipts” of a business which has  
351 been in business for three or more complete fiscal years  
352 means the annual gross revenues of the business for the  
353 last three fiscal years. For purposes of this definition,  
354 the gross revenues of the business includes revenues  
355 from sales of tangible personal property and services,  
356 interest, rents, royalties, fees, commissions and receipts  
357 from any other source, but less returns and allowances,  
358 sales of fixed assets, interaffiliated transactions between  
359 a business and its domestic and foreign affiliates, and  
360 taxes collected for remittance to a third party, as shown  
361 on its books for federal income tax purposes.

362 (ii) The annual receipts of a business that has been in  
363 business for less than three complete fiscal years means  
364 its total receipts for the period it has been in business,  
365 divided by the number of weeks including fractions of  
366 a week that it has been in business, and multiplied by  
367 fifty-two.

368 (C) *Affiliates*.—The term “affiliates” includes all  
369 concerns which are affiliates of each other when either  
370 directly or indirectly (i) one concern controls or has the  
371 power to control the other or (ii) a third party or parties  
372 controls or has the power to control both. In determining  
373 whether concerns are independently owned and oper-

374 ated and whether or not affiliation exists, consideration  
375 shall be given to all appropriate factors, including  
376 common ownership, common management and contrac-  
377 tual relationships.

378 (D) *Concern*.—The term “concern” means any busi-  
379 ness entity organized for profit (even if its ownership is  
380 in the hands of a nonprofit entity), having a place of  
381 business located in this state, and which makes a  
382 contribution to the economy of this state through  
383 payment of taxes, or the sale or use in this state of  
384 tangible personal property, or the procurement or  
385 providing of services in this state, or the hiring of  
386 employees who work in this state. “Concern” includes,  
387 but is not limited to, any person as defined in paragraph  
388 eighteen, subsection (b), section three of this article.

389 (f) *Application for credit required*.

390 (1) *Application required*.—Notwithstanding any pro-  
391 vision of this article to the contrary, no credit shall be  
392 allowed or applied under this article for any qualified  
393 investment property placed in service or use on or after  
394 the first day of January, one thousand nine hundred  
395 ninety, until the person asserting a claim for the  
396 allowance of credit under this article makes written  
397 application to the tax commissioner for allowance of  
398 credit as provided in this subsection and receives  
399 written acknowledgement of its receipt from tax  
400 commissioner: *Provided*, That in the case of a multipar-  
401 ticipant project this notice may be filed by the managing  
402 project participant on behalf of all participants in that  
403 project. An application for credit shall be filed no later  
404 than the last day of the due date, without extensions, for  
405 filing the tax returns required under article twenty-one  
406 or twenty-four of this chapter for the taxable year in  
407 which the property to which the credit relates is placed  
408 in service or use and all information required by such  
409 form shall be provided.

410 (2) *Failure to file*.—The failure to timely apply for the  
411 credit shall result in the forfeiture of fifty percent of the  
412 annual credit allowance otherwise allowable under this  
413 article. This penalty shall apply annually until such  
414 application is filed.

415 (g) *Regulations.*—Within one hundred eighty days  
416 after the effective date of this section, the tax commis-  
417 sioner shall promulgate emergency regulations for this  
418 section, which shall also be filed as proposed legislative  
419 rules, in conformity with the provisions of article three,  
420 chapter twenty-nine-a of this code; and, if such regula-  
421 tions are timely filed, the Legislature shall act upon  
422 such proposed legislative regulations at its next regular  
423 session to begin in the year one thousand nine hundred  
424 ninety-one.

425 (h) *Studies and reviews.*—The tax commissioner shall  
426 review the accounts of all taxpayers who are currently  
427 claiming tax credits under this article for the purpose  
428 of ensuring that such credits are being claimed only in  
429 accordance with this article. The tax commissioner shall  
430 report his findings and conclusions based on such  
431 reviews at the next regular session of the Legislature  
432 along with recommendations for any further legislative  
433 change: *Provided*, That the confidentiality of all  
434 taxpayers and taxpayer information shall be preserved  
435 in such report and that this report shall in no way be  
436 deemed to affect future enforcement of this section.

437 (i) *Effective date.*

438 (1) Except as otherwise expressly provided in this  
439 section, the provisions of this section shall apply to  
440 property placed in service or use on or after the date  
441 of passage of this section by the Legislature, notwith-  
442 standing any provision of prior law which may be in  
443 conflict with this section. In the case of any such  
444 ambiguity, the provisions of this section shall control  
445 resolution of such ambiguity.

446 (2) The term “date of passage of this section” means  
447 the date on which this bill, as enacted, becomes an  
448 enrolled bill.

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## CHAPTER 177

(S. B. 545—By Senator Jones)

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[Passed March 7, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article twenty-one, chapter eleven of the  
code of West Virginia, one thousand nine hundred

thirty-one, as amended, by adding thereto six new sections, designated sections eight-a, eight-b, eight-c, eight-d, eight-e and eight-f; and to amend article twenty-four of said chapter eleven by adding thereto six new sections, designated sections twenty-three-a, twenty-three-b, twenty-three-c, twenty-three-d, twenty-three-e and twenty-three-f, all relating to allowing a tax credit against the personal income tax liability of individuals and the corporate net income tax of businesses for investments in rehabilitated buildings.

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

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

**Article**

- 21. Personal Income Tax.
- 24. Corporate Net Income Tax.

**ARTICLE 21. PERSONAL INCOME TAX.**

- §11-21-8a. Credit for qualified rehabilitated buildings investment.
- §11-21-8b. Definitions.
- §11-21-8c. Procedures.
- §11-21-8d. Standards.
- §11-21-8e. Fees.
- §11-21-8f. Termination of credit by law.

**§11-21-8a. Credit for qualified rehabilitated buildings investment.**

1 A credit against the tax imposed by the provisions of  
2 this article shall be allowed as follows:

3 *Certified historic structures.*—For certified historic  
4 structures, the credit is equal to ten percent of qualified  
5 rehabilitation expenditures. This credit is available for  
6 both residential and nonresidential buildings that are  
7 designated by the National Park Service, United States

8 department of the interior as “certified historic struc-  
9 tures”, and further defined as a “qualified rehabilitated  
10 structure”, as defined under §48g, Title 26, of the United  
11 States Code, and the Tax Reform Act of 1986 (PL99-514)  
12 and amendments thereto.

**§11-21-8b. Definitions.**

1 (a) “Certified historic structure” means any building  
2 that is listed individually in the national register of  
3 historic places or located in a registered historic district  
4 and certified as being of historic significance to the  
5 district.

6 (b) “Certified rehabilitation” means any rehabilitation  
7 of a certified historic structure that is certified by the  
8 National Park Service and the Internal Revenue Service  
9 as being consistent with the historic character of the  
10 property and, where applicable, the district in which it  
11 is located.

12 (c) “Historic district” means any district that is listed  
13 in the national register of historic places or designated  
14 under a state or local statute which has been certified  
15 as containing criteria which will substantially achieve  
16 the purpose of preserving and rehabilitating buildings  
17 of significance to the district and which is certified as  
18 substantially meeting all of the requirements for listing  
19 of districts in the national register of historic places.

20 (d) “Historic preservation certification application”  
21 means the application forms published by the National  
22 Park Service, United States department of the interior,  
23 Parts 1, 2 and 3, form No. 10-168.

24 (e) “Secretary of the interior standards” means  
25 standards and guidelines adopted and published by the  
26 National Park Service, United States department of the  
27 interior for rehabilitation of historic properties.

28 (f) “State historic preservation officer” means the  
29 state official designated by the governor pursuant to  
30 provisions in the National Historic Preservation Act of  
31 1966, as amended and further defined in section six,  
32 article one, chapter twenty-nine of this code.



**§11-21-8c. Procedures.**

1 Application and processing procedures for provisions  
2 of this section shall be the same as any required under  
3 provisions of Title 36 of the Code of Federal Regulations,  
4 Part 67, and Title 26 of the Code of Federal Regulations,  
5 Part 1. Successful completion of a historic preservation  
6 certification application automatically qualifies the  
7 applicant to be considered for tax credits under this  
8 section.

9 Successful certification by the National Park Service  
10 of a certified rehabilitation automatically qualifies the  
11 applicant for tax credits under this section. The state  
12 historic preservation officer's role in the application  
13 procedure shall be identical to that in Title 36 of the  
14 Code of Federal Regulations, Part 67, and Title 26 of  
15 the Code of Federal Regulations, Part 1.

**§11-21-8d. Standards.**

1 All standards including the secretary of the interior  
2 standards and provisions in Title 36 of the Code of  
3 Federal Regulations, Part 67, and Title 26 of the Code  
4 of Federal Regulations, Part 1, that apply to tax credits  
5 available from the United States government apply to  
6 this section as well.

**§11-21-8e. Fees.**

1 The state tax department shall set fees as appropriate  
2 for applicants.

**§11-21-8f. Termination of credit by law.**

1 The tax credit allowed by this section shall be  
2 terminated on the thirty-first day of December, one  
3 thousand nine hundred ninety-two, unless review of the  
4 tax credit shall be undertaken pursuant to the provi-  
5 sions of sections nine, ten and eleven, article ten, chapter  
6 four of this code: *Provided*, That for those structures  
7 certified prior to that date, the credit shall continue to  
8 be allowed pursuant to this article.

**ARTICLE 24. CORPORATE NET INCOME TAX.**

§11-24-23a. Credit for qualified rehabilitated buildings investment.

§11-24-23b. Definitions.

- §11-24-23c. Procedures.  
§11-24-23d. Standards.  
§11-24-23e. Fees.  
§11-24-23f. Termination of credit by law.

**§11-24-23a. Credit for qualified rehabilitated buildings investment.**

1 A credit against the tax imposed by the provisions of  
2 this article shall be allowed as follows:

3 *Certified historic structures.*—For certified historic  
4 structures, the credit is equal to ten percent of qualified  
5 rehabilitation expenditures. This credit is available for  
6 both residential and nonresidential buildings that are  
7 designated by the National Park Service, United States  
8 department of the interior as “certified historic struc-  
9 tures”, and further defined as a “qualified rehabilitated  
10 structure”, as defined under §48g, Title 26, of the United  
11 States Code, and the Tax Reform Act of 1986 (PL99-514)  
12 and amendments.

**§11-24-23b. Definitions.**

1 (a) “Certified historic structure” means any building  
2 that is listed individually in the national register of  
3 historic places or located in a registered historic district  
4 and certified as being of historic significance to the  
5 district.

6 (b) “Certified rehabilitation” means any rehabilitation  
7 of a certified historic structure that is certified by the  
8 National Park Service and the Internal Revenue Service  
9 as being consistent with the historic character of the  
10 property and, where applicable, the district in which it  
11 is located.

12 (c) “Historic district” means any district that is listed  
13 in the national register of historic places or designated  
14 under a state or local statute which has been certified  
15 as containing criteria which will substantially achieve  
16 the purpose of preserving and rehabilitating buildings  
17 of significance to the district and which is certified as  
18 substantially meeting all of the requirements for listing  
19 of districts in the national register of historic places.

20 (d) “Historic preservation certification application”

21 means application forms published by the National Park  
22 Service, United States department of the interior, Parts  
23 1, 2 and 3, form No. 10-168.

24 (e) "Secretary of the interior standards" means  
25 standards and guidelines adopted and published by the  
26 National Park Service, United States department of the  
27 interior for rehabilitation of historic properties.

28 (f) "State historic preservation officer" means the  
29 state official designated by the governor pursuant to  
30 provisions in the National Historic Preservation Act of  
31 1966 as amended and further defined in section six,  
32 article one, chapter twenty-nine of this code.

#### §11-24-23c. Procedures.

1 Application and processing procedures for provisions  
2 of this section shall be the same as any required under  
3 provisions of Title 36 of the Code of Federal Regulations,  
4 Part 67, and Title 26 of the Code of Federal Regulations,  
5 Part 1. Successful completion of a historic preservation  
6 certification application shall automatically qualify the  
7 applicant to be considered for tax credits under this  
8 section.

9 Successful certification by the National Park Service  
10 of a certified rehabilitation shall automatically qualify  
11 the applicant for tax credits under this section. The state  
12 historic preservation officer's role in the application  
13 procedure shall be identical to that in Title 36 of the  
14 Code of Federal Regulations, Part 67, and Title 26 of  
15 the Code of Federal Regulations, Part 1.

#### §11-24-23d. Standards.

1 All standards including the secretary of the interior  
2 standards and provisions in Title 36 of the Code of  
3 Federal Regulations, Part 67, and Title 26 of the Code  
4 of Federal Regulations, Part 1, that apply to tax credits  
5 available from the United States government shall  
6 apply to this section as well.

#### §11-24-23e. Fees.

1 The state department of tax and revenue shall set fees  
2 as appropriate for applicants.

**§11-24-23f. Termination of credit by law.**

1 The tax credit allowed by section twenty-three-a of  
2 this article shall be terminated on the thirty-first day  
3 of December, one thousand nine hundred ninety-two,  
4 unless review of the tax credit shall be undertaken  
5 pursuant to the provisions of sections nine, ten and  
6 eleven, article ten, chapter four of this code: *Provided,*  
7 That for those structures certified prior to that date, the  
8 credit shall continue to be allowed pursuant to this  
9 article.

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## CHAPTER 178

(H. B. 4793—By Delegates Farley and Kiss)

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[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections nine and fifty-five, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to annual updating of meaning of certain terms used in personal income tax law to bring them into conformity with their meanings for federal income tax purpose for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-eight; and allowing the annual return of farmers to be treated as a declaration of estimated tax if filed on or before the first day of March of succeeding tax year.

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

That sections nine and fifty-five, 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.

§11-21-55. Declaration of estimated tax.

**§11-21-9. 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  
3 laws of the United States relating to income taxes,  
4 unless a different meaning is clearly required. Any  
5 reference in this article to the laws of the United States  
6 shall mean the provisions of the Internal Revenue Code  
7 of 1986, as amended, and such other provisions of the  
8 laws of the United States as relate to the determination  
9 of income for federal income tax purposes. All amend-  
10 ments made to the laws of the United States prior to  
11 the first day of January, one thousand nine hundred  
12 ninety, shall be given effect in determining the taxes  
13 imposed by this article for any taxable year beginning  
14 the first day of January, one thousand nine hundred  
15 eighty-nine, or thereafter, but no amendment to the laws  
16 of the United States made on or after the first day of  
17 January, one thousand nine hundred ninety, shall be  
18 given effect.

**§11-21-55. Declaration of estimated tax.**

- 1 (a) *Requirement of declaration.*—Every resident and  
2 nonresident individual shall make a declaration of his  
3 estimated tax for the taxable year, containing such  
4 information as the tax commissioner may prescribe by  
5 regulations or instructions, if his West Virginia adjusted  
6 gross income, other than from wages on which tax is  
7 withheld under this article, can reasonably be expected  
8 to exceed four hundred dollars plus the sum of the West  
9 Virginia personal exemptions to which he is entitled.
- 10 (b) *Definition of estimated tax.*—The term “estimated  
11 tax” means the amount which an individual estimates  
12 to be his income tax under this article for the taxable  
13 year, less the amount which he estimates to be the sum  
14 of any credits allowable against the tax.
- 15 (c) *Joint declaration of husband and wife.*—A husband  
16 and wife may make a joint declaration of estimated tax  
17 as if they were one taxpayer, in which case the liability  
18 with respect to the estimated tax shall be joint and  
19 several. No joint declaration may be made if husband  
20 and wife are separated under a decree of divorce or of  
21 separate maintenance, or if they have different taxable

22 years. If a joint declaration is made but husband and  
23 wife elect to determine their taxes under this article  
24 separately, the estimated tax for such year may be  
25 treated as the estimated tax of either husband or wife,  
26 or may be divided between them, as they may elect.

27 (d) *Time for filing declaration.*—A declaration of  
28 estimated tax of an individual other than a farmer shall  
29 be filed on or before the fifteenth day of April of the  
30 taxable year, except that if the requirements of  
31 subsection (a) are first met:

32 (1) After the first day of April and before the second  
33 day of June of the taxable year, the declaration shall be  
34 filed on or before the fifteenth day of June, or

35 (2) After the first day of June and before the second  
36 day of September of the taxable year, the declaration  
37 shall be filed on or before the fifteenth day of Sep-  
38 tember, or

39 (3) After the first day of September of the taxable  
40 year, the declaration shall be filed on or before the  
41 fifteenth day of January of the succeeding year.

42 (e) *Declaration of estimated tax by a farmer.*—A  
43 declaration of estimated tax of an individual having an  
44 estimated West Virginia adjusted gross income from  
45 farming for the taxable year which is at least two thirds  
46 of his total estimated West Virginia adjusted gross  
47 income for the taxable year may be filed at any time  
48 on or before the fifteenth day of January of the  
49 succeeding year, in lieu of the time otherwise  
50 prescribed.

51 (f) *Declaration of estimated tax of forty dollars or*  
52 *less.*—A declaration of estimated tax of an individual  
53 having a total estimated tax for the taxable year of forty  
54 dollars or less may be filed at any time on or before the  
55 fifteenth day of January of the succeeding year under  
56 regulations of the tax commissioner.

57 (g) *Amendments of declaration.*—An individual may  
58 amend a declaration under regulations of the tax  
59 commissioner.

60 (h) *Return as declaration or amendment.*—If on or  
61 before the fifteenth day of February of the succeeding  
62 taxable year an individual other than a farmer files his  
63 return for the taxable year for which the declaration is  
64 required, and pays therewith the full amount of the tax  
65 shown to be due on the return:

66 (1) Such return shall be considered as his declaration,  
67 if no declaration was required to be filed during the  
68 taxable year, but is otherwise required to be filed on or  
69 before the fifteenth day of January.

70 (2) Such return, if filed on or before the fifteenth day  
71 of January, shall be considered an amendment permit-  
72 ted by subsection (g) if the tax shown on the return is  
73 greater than the estimated tax shown in a declaration  
74 previously made.

75 (i) *Fiscal year.*—This section shall apply to a taxable  
76 year other than a calendar year by the substitution of  
77 the months of such fiscal year for the corresponding  
78 months specified in this section.

79 (j) *Short taxable year.*—An individual having a  
80 taxable year of less than twelve months shall make a  
81 declaration in accordance with regulations of the tax  
82 commissioner.

83 (k) *Declaration for individual under a disability.*—  
84 The declaration of estimated tax for an individual who  
85 is unable to make a declaration by reason of minority  
86 or other disability shall be made and filed by his  
87 guardian, committee, fiduciary or other person charged  
88 with the care of his person or property (other than a  
89 receiver in possession of only a part of his property), or  
90 by his duly authorized agent.

91 (l) *Return of farmer as declaration of estimated tax.*—  
92 If on or before the first day of March of the succeeding  
93 taxable year an individual who is a farmer files his  
94 return for the taxable year for which the declaration is  
95 required, and pays therewith the full amount of the tax  
96 shown to be due on the return, such return shall be  
97 considered as his declaration, if no declaration was  
98 required to be filed during the taxable year, but is

99 otherwise required to be filed on or before the fifteenth  
100 day of January, for a taxable year ending after the  
101 thirty-first day of December, one thousand nine hundred  
102 eighty-nine.

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## CHAPTER 179

(H. B. 4794—By Delegates Farley and Kiss)

[Passed March 8, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three-a and five, article twenty-three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three, thirteen and thirteen-a, article twenty-four of said chapter eleven, all relating generally to business franchise and corporation net income taxes; updating meaning of certain terms used in such tax laws to bring them into conformity with their meanings for federal income tax purposes for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-eight; making the business franchise tax rules for allocation of other sales conform with the corporation net income tax rules for apportionment of such other sales; authorizing use of combined business franchise tax and corporation net income tax returns and combined forms for declaring estimated tax and making installment payments of estimated tax; providing rule for when amount remitted with combined return is less than the taxes show due on such combined return; requiring the method of filing for business franchise tax to be the same as the method of filing for corporation net income tax and specifying effective date.

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

That sections three-a and five, article twenty-three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections three, thirteen and thirteen-a, article twenty-four of said chapter eleven be amended and reenacted, all to read as follows:



## Article

23. Business Franchise Tax.

24. Corporation Net Income Tax.

## ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-3a. Meaning of terms; general rule.

§11-23-5. Apportionment of tax base.

## §11-23-3a. Meaning of terms; general rule.

1 Any term used in this article shall have the meaning  
2 as when used in a comparable context in the laws of the  
3 United States relating to federal income taxes, unless a  
4 different meaning is clearly required by the context or  
5 by definition of this article. Any reference in this article  
6 to the laws of the United States, or to the Internal  
7 Revenue Code, or to the federal income tax law shall  
8 mean the provisions of the laws of the United States as  
9 related to the determination of income for federal  
10 income tax purposes. All amendments made to the laws  
11 of the United States prior to the first day of January,  
12 one thousand nine hundred ninety, shall be given effect  
13 in determining the taxes imposed by this article for the  
14 tax period beginning the first day of January, one  
15 thousand nine hundred eighty-nine, and thereafter, but  
16 no amendment to laws of the United States made on or  
17 after the first day of January, one thousand nine  
18 hundred ninety, shall be given effect.

## §11-23-5. Apportionment of tax base.

1 (a) A taxpayer subject to the tax imposed by this  
2 article and also taxable in another state shall, for the  
3 purposes of this tax, apportion its tax base to this state  
4 by multiplying its tax base by a fraction, the numerator  
5 of which is the sum of the property factor, plus the  
6 payroll factor, plus two times the sales factor, all of  
7 which shall be determined as hereinafter provided in  
8 this section, and the denominator of which is four,  
9 reduced by the number of factors, if any, having no  
10 denominator, with the sales factor counting as two  
11 factors.

12 (b) *Property factor.*—The property factor is a fraction,  
13 the numerator of which is the average value of the

14 taxpayer's real and tangible personal property owned or  
15 rented and used by it in this state during the taxable  
16 year, and the denominator of which is the average value  
17 of all real and tangible personal property owned or  
18 rented by the taxpayer and used by it during the taxable  
19 year, which is reported on Schedule L of Federal Form  
20 1120 (or 1065 for partnerships), plus the average value  
21 of all real and tangible personal property leased and  
22 used by the taxpayer during the taxable year.

23 (c) *Value of property.*—Property owned by the tax-  
24 payer shall be valued at its original cost, adjusted by  
25 subsequent capital additions or improvements thereto  
26 and partial disposition thereof, by reason of sale,  
27 exchange, abandonment, etc.: *Provided*, That where  
28 records of original cost are unavailable or cannot be  
29 obtained without unreasonable expense, property shall  
30 be valued at original cost as determined under regula-  
31 tions of the tax commissioner. Property rented by the  
32 taxpayer from others shall be valued at eight times the  
33 net annual rental rate. Net annual rental rate is the  
34 annual rental paid, directly or indirectly, by the  
35 taxpayer, or for its benefit, in money or other consid-  
36 eration for the use of the property and includes:

37 (1) Any amount payable for the use of real or tangible  
38 personal property, or any part thereof, whether desig-  
39 nated as a fixed sum of money or as a percentage of  
40 sales, profits or otherwise.

41 (2) Any amount payable as additional rent or in lieu  
42 of rents, such as interest, taxes, insurance, repairs or  
43 any other items which are required to be paid by the  
44 terms of the lease or other arrangement, not including  
45 amounts paid as service charges, such as utilities,  
46 janitor services, etc. If a payment includes rent and  
47 other charges unsegregated, the amount of rent shall be  
48 determined by consideration of the relative values of the  
49 rent and the other items.

50 (d) *Movable property.*—The value of movable tangible  
51 personal property used both within and without this  
52 state shall be included in the numerator to the extent  
53 of its utilization in this state. The extent of such

54 utilization shall be determined by multiplying the  
55 original cost of such property by a fraction, the  
56 numerator of which is the number of days of physical  
57 location of the property in this state during the taxable  
58 period, and the denominator of which is the number of  
59 days of physical location of the property everywhere  
60 during the taxable year. The number of days of physical  
61 location of the property may be determined on a  
62 statistical basis or by such other reasonable method  
63 acceptable to the tax commissioner.

64 (e) *Leasehold improvements.*—Leasehold improve-  
65 ments shall, for the purposes of the property factor, be  
66 treated as property owned by the lessee regardless of  
67 whether the lessee is entitled to remove the improve-  
68 ments or the improvements revert to the lessor upon  
69 expiration of the lease. Leasehold improvements shall be  
70 included in the property factor at their original cost.

71 (f) *Average value of property.*—The average value of  
72 property shall be determined by averaging the values  
73 at the beginning and ending of the taxable year:  
74 *Provided,* That the tax commissioner may require the  
75 averaging of monthly values during the taxable year if  
76 substantial fluctuations in the values of the property  
77 exist during the taxable year, or where property is  
78 acquired after the beginning of the taxable year, or is  
79 disposed of, or whose rental contract ceases, before the  
80 end of the taxable year.

81 (g) *Payroll factor.*—The payroll factor is a fraction,  
82 the numerator of which is the total compensation paid  
83 in this state during the taxable year by the taxpayer,  
84 and the denominator of which is the total compensation  
85 paid by the taxpayer during the taxable year as shown  
86 on the taxpayer's federal income tax return as filed with  
87 the internal revenue service, as reflected in the schedule  
88 of wages and salaries and that portion of cost of goods  
89 sold which reflects compensation, or as shown on a pro  
90 forma return.

91 (h) *Compensation.*—The term "compensation" means  
92 wages, salaries, commissions and any other form of  
93 remuneration paid to employees for personal services.

94 Payments made to an independent contractor or to any  
95 other person not properly classifiable as an employee  
96 shall be excluded. Only the amounts paid directly to  
97 employees shall be included in the payroll factor.  
98 Amounts considered paid directly to employees include  
99 the value of board, rent, housing, lodging, and other  
100 benefits or services furnished to employees by the  
101 taxpayer in return for personal services, provided such  
102 amounts constitute income to the recipient for federal  
103 income tax purposes.

104 (i) *Employee*.—The term “employee” means:

105 (1) Any officer of a corporation; or

106 (2) Any individual who, under the usual common-law  
107 rules applicable in determining the employer-employee  
108 relationship, has the status of an employee.

109 (j) *Compensation paid in this state*.—Compensation is  
110 paid in this state if:

111 (1) The employee’s service is performed entirely  
112 within the state;

113 (2) The employee’s service is performed both within  
114 and without the state, but the service performed without  
115 the state is incidental to the individual’s service within  
116 the state. The word “incidental” means any service  
117 which is temporary or transitory in nature, or which is  
118 rendered in connection with an isolated transaction; or

119 (3) Some of the service is performed in the state and:

120 (A) The employee’s base of operations or, if there is  
121 no base of operations, the place from which the service  
122 is directed or controlled is in the state, or

123 (B) The base of operations or the place from which the  
124 service is directed or controlled is not in any state in  
125 which some part of the service is performed, but the  
126 employee’s residence is in this state.

127 The term “base of operations” is the place of more or  
128 less permanent nature from which the employee starts  
129 his work and to which he customarily returns in order  
130 to receive instructions from the taxpayer or communi-

131 cations from his customers or other persons or to  
132 replenish stock or other materials, repair equipment, or  
133 perform any other functions necessary to the exercise of  
134 his trade or profession at some other point or points. The  
135 term "place from which the service is directed or  
136 controlled" refers to the place from which the power to  
137 direct or control is exercised by the taxpayer.

138 (k) *Sales factor*.—The sales factor is a fraction, the  
139 numerator of which is the gross receipts of the taxpayer  
140 derived from transactions and activity in the regular  
141 course of its trade or business in this state during the  
142 taxable year (business income), less returns and allow-  
143 ances. The denominator of the fraction shall be the total  
144 gross receipts derived by the taxpayer from transactions  
145 and activity in the regular course of its trade or business  
146 during the taxable year (business income), and reflected  
147 in its gross income reported and as appearing on the  
148 taxpayer's Federal Form 1120 or 1065, and consisting  
149 of those certain pertinent portions of the (gross income)  
150 elements set forth: *Provided*, That if either the numer-  
151 ator or the denominator includes interest or dividends  
152 from obligations of the United States government which  
153 are exempt from taxation by this state, the amount of  
154 such interest and dividends, if any, shall be subtracted  
155 from the numerator or denominator in which it is  
156 included.

157 (l) *Allocation of sales of tangible personal property*.

158 (1) Sales of tangible personal property are in this  
159 state if:

160 (A) The property is received in this state by the  
161 purchaser, other than the United States government,  
162 regardless of the f.o.b. point or other conditions of the  
163 sale. In the case of delivery by common carrier or other  
164 means of transportation, the place at which such  
165 property is ultimately received after all transportation  
166 has been completed shall be considered as the place at  
167 which such property is received by the purchaser.  
168 Direct delivery in this state, other than for purposes of  
169 transportation, to a person or firm designated by the  
170 purchaser, constitutes delivery to the purchaser in this

171 state, and direct delivery outside this state to a person  
172 or firm designated by the purchaser does not constitute  
173 delivery to the purchaser in this state, regardless of  
174 where title passes or other conditions of sale; or

175 (B) The property is shipped from an office, store,  
176 warehouse, factory or other place of storage in this state  
177 and the purchaser is the United States government.

178 (2) All other sales of tangible personal property  
179 delivered or shipped to a purchaser within a state in  
180 which the taxpayer is not taxed as defined in subsection  
181 (b), section seven, article twenty-four of this chapter  
182 shall be excluded from the denominator of the sales  
183 factor.

184 (m) *Allocation of other sales.*—Sales, other than sales  
185 of tangible personal property, are in this state if:

186 (1) The income-producing activity is performed in this  
187 state; or

188 (2) The income-producing activity is performed both  
189 in and outside this state and a greater proportion of the  
190 income-producing activity is performed in this state  
191 than in any other state, based on costs of performance.

192 (n) *Income-producing activity.*—The term “income-  
193 producing activity” applies to each separate item of  
194 income and means the transactions and activity directly  
195 engaged in by the taxpayer in the regular course of its  
196 trade or business for the ultimate purpose of obtaining  
197 gain or profit. Such activity does not include transac-  
198 tions and activities performed on behalf of the taxpayer,  
199 such as those conducted on its behalf by an independent  
200 contractor. “Income-producing activity” includes, but is  
201 not limited to, the following:

202 (1) The rendering of personal services by employees  
203 with utilization of tangible and intangible property by  
204 the taxpayer in performing a service;

205 (2) The sale, rental, leasing, licensing or other use of  
206 real property;

207 (3) The sale, rental, leasing, licensing or other use of  
208 tangible personal property; or

209 (4) The sale, licensing or other use of intangible  
210 personal property. The mere holding of intangible  
211 personal property is not, in itself, an income-producing  
212 activity.

213 (o) *Cost of performance.*—The term “cost of perfor-  
214 mance” means direct costs determined in a manner  
215 consistent with generally accepted accounting principles  
216 and in accordance with accepted conditions or practices  
217 in the trade or business of the taxpayer.

218 (p) *Other methods of allocation.*

219 (1) *General.*—If the allocation and apportionment  
220 provisions of subsection (a) do not fairly represent the  
221 extent of the taxpayer’s business activities in this state,  
222 the taxpayer may petition for, or the tax commissioner  
223 may require, in respect to all or any part of the  
224 taxpayer’s business activities, if reasonable:

225 (A) Separate accounting;

226 (B) The exclusion of one of the factors;

227 (C) The inclusion of one or more additional factors  
228 which will fairly represent the taxpayer’s business  
229 activity in this state; or

230 (D) The employment of any other method to effectuate  
231 an equitable allocation or apportionment of the taxpay-  
232 er’s tax base. Such petition shall be filed no later than  
233 the due date of the annual return for the taxable year  
234 for which the alternative method is requested, deter-  
235 mined without regard to any extension of time for filing  
236 such return, and the petition shall include a statement  
237 of the petitioner’s objections and of such alternative  
238 method of allocation or apportionment as it believes to  
239 be proper under the circumstances with such detail and  
240 proof as the tax commissioner may require.

241 (2) *Burden of proof.*—In any proceeding before the tax  
242 commissioner or in any court in which employment of  
243 one of the methods of allocation or apportionment  
244 provided for in subdivision (1) of this subsection is  
245 sought, on the ground that the allocation and apportion-  
246 ment provisions of subsection (a) do not fairly represent

247 the extent of the taxpayer's business activities in this  
248 state, the burden of proof shall:

249 (A) If the tax commissioner seeks employment of one  
250 of such methods, be on the tax commissioner, or

251 (B) If the taxpayer seeks employment of one of such  
252 other methods, be on the taxpayer.

253 (q) *Effective date.*—The amendments to this section  
254 made by this act shall apply to all taxable years ending  
255 after the effective date of this act.

#### ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

§11-24-13. Returns; time for filing.

§11-24-13a. Method of filing for business taxes.

##### §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  
3 laws of the United States relating to federal income  
4 taxes, unless a different meaning is clearly required by  
5 the context or by definition in this article. Any reference  
6 in this article to the laws of the United States shall mean  
7 the 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  
10 for federal income tax purposes. All amendments made  
11 to the laws of the United States prior to the first day  
12 of January, one thousand nine hundred ninety, shall be  
13 given effect in determining the taxes imposed by this  
14 article for any taxable year beginning the first day of  
15 January, one thousand nine hundred eighty-nine, and  
16 thereafter, but no amendment to the laws of the United  
17 States effective on or after the first day of January, one  
18 thousand nine hundred ninety, shall be given any effect.

19 (b) The term "Internal Revenue Code of 1986" means  
20 the Internal Revenue Code of the United States enacted  
21 by the "Federal Tax Reform Act of 1986" and includes  
22 the provisions of law formerly known as the Internal  
23 Revenue Code of 1954, as amended, and in effect when  
24 the "Federal Tax Reform Act of 1986" was enacted, that  
25 were not amended or repealed by the "Federal Tax



26 Reform Act of 1986." Except when inappropriate, any  
27 references in any law, executive order, or other  
28 document:

29 (1) To the Internal Revenue Code of 1954 shall include  
30 reference to the Internal Revenue Code of 1986, and

31 (2) To the Internal Revenue Code of 1986 shall include  
32 a reference to the provisions of law formerly known as  
33 the Internal Revenue Code of 1954.

**§11-24-13. Returns; time for filing.**

1 (a) On or before the fifteenth day of the third month  
2 following the close of a taxable year, an income tax  
3 return under this article shall be made and filed by or  
4 for every corporation subject to the tax imposed by this  
5 article.

6 (b) The tax commissioner may combine into one form  
7 the annual return due under this article and the annual  
8 return due under article twenty-three of this chapter.  
9 When a combined business franchise tax and corpora-  
10 tion net income tax annual return is filed by a taxpayer,  
11 the amount of tax remitted shall be applied first against  
12 any business franchise tax that may be due for the  
13 taxable year under article twenty-three of this chapter  
14 and then against any corporation net income tax that  
15 may be due for the taxable year. The tax commissioner  
16 may also combine the forms for filing declarations of  
17 estimated tax and the forms for making installment  
18 payments of estimated tax.

19 (c) *Effective date.*—The amendments to this section  
20 made by this act shall apply to all taxable years ending  
21 after the effective date of this act.

**§11-24-13a. Method of filing for business taxes.**

1 (a) *Privilege to file.*—An "affiliated group" of corpora-  
2 tions (as defined for purposes of filing a consolidated  
3 federal income tax return) shall, subject to the provi-  
4 sions of this section and in accordance with any  
5 regulations prescribed by the tax commissioner, have  
6 the privilege of filing a consolidated return with respect  
7 to the tax imposed by this article for the taxable year

8 in lieu of separate returns. The making of a consolidated  
9 return shall be upon the condition that all corporations  
10 which at any time during the taxable year have been  
11 members of the affiliated group and which are included  
12 in such return consent to the filing of such return. The  
13 filing of a consolidated return shall be considered as  
14 such consent. In the case of a corporation which is a  
15 member of the affiliated group for a fractional part of  
16 the year, the consolidated return shall include the  
17 income of such corporation for such part of the year as  
18 it is a member of the affiliated group.

19 (b) *Election binding.*—If an affiliated group of corpo-  
20 rations elects to file a consolidated return under this  
21 article for any taxable year ending after June thirtieth,  
22 one thousand nine hundred eighty-seven, such elections  
23 once made, shall not be revoked for any subsequent  
24 taxable year without the written approval of the tax  
25 commissioner consenting to the revocation.

26 (c) *Method of filing under this article deemed*  
27 *controlling for filing under other business taxes arti-*  
28 *cles.*—The taxpayer shall file on the same basis under  
29 article twenty-three of this chapter as such taxpayer has  
30 filed pursuant to this article. Such filing method may  
31 not be changed in respect of this article or article  
32 twenty-three of this chapter without the written consent  
33 of the tax commissioner.

34 (d) *Regulations.*—The tax commissioner shall pres-  
35 cribe such regulations as he may deem necessary in  
36 order that the tax liability of any affiliated group of  
37 corporations making a consolidated return and of each  
38 corporation in the group, both during and after the  
39 period of affiliation, may be returned, determined,  
40 computed, assessed, collected and adjusted, in such  
41 manner as the tax commissioner deems necessary to  
42 clearly reflect the income tax liability and the income  
43 factors necessary for the determination of such liability,  
44 and in order to prevent avoidance of such tax liability.

45 (e) *Computation and payment of tax.*—In any case in  
46 which a consolidated return is filed, or is required to be  
47 filed, the tax due under this article from the affiliated

48 group, shall be determined, computed, assessed, col-  
49 lected and adjusted in accordance with regulations  
50 prescribed by the tax commissioner, in effect on the last  
51 day prescribed by law for the filing of such return, and  
52 such affiliated group shall be treated as the taxpayer.

53 (f) *Consolidated return required.*—If any affiliated  
54 group of corporations has not elected to file a consoli-  
55 dated return, the tax commissioner may require such  
56 corporations to make a consolidated return in order to  
57 clearly reflect the taxable income of such corporations.

58 (g) *Effective date.*—The amendments to this section  
59 made by this act shall apply to all taxable years ending  
60 after the effective date of this acticle.

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## CHAPTER 180

(Com. Sub. for H. B. 4035—By Delegate D. Cook)

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[Passed February 27, 1990; 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 to prohibiting nonhandicapped people from parking in parking spaces in privately owned parking lots, parking garages, or other parking areas clearly marked for people with handicapping conditions or people who are physically disabled, and providing a penalty.

*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 disabled; qualification; application; violation.

- 1 (a) Any owner of a Class A motor vehicle subject to
- 2 registration under the provisions of article three,
- 3 chapter seventeen-a of this code, who is:

4 (1) A physically handicapped person with limited  
5 mobility;

6 (2) A relative of a person who is a physically handi-  
7 capped person with limited mobility;

8 (3) A person who regularly resides with a person who  
9 is a physically handicapped person with limited mobil-  
10 ity; or

11 (4) A person who regularly transports a person who  
12 is a physically handicapped person with limited mobil-  
13 ity, may apply for a special registration plate or a  
14 mobile windshield placard by submitting to the  
15 commissioner:

16 (i) An application therefor on a form prescribed and  
17 furnished by the commissioner, specifying whether the  
18 applicant desires a special registration plate or a mobile  
19 windshield placard; and

20 (ii) A certificate issued by a person licensed to  
21 practice medicine stating that the applicant or the  
22 applicant's spouse or a member of the applicant's  
23 immediate family residing with him is a physically  
24 handicapped person with limited mobility as defined in  
25 this section.

26 Upon receipt of the application, the physician's  
27 certificate and the registration fee, if he finds that the  
28 applicant qualifies for the special registration plate or  
29 mobile windshield placard provided for in this subsec-  
30 tion, the commissioner shall issue to such applicant an  
31 appropriately designed and appropriately designated  
32 special registration plate or mobile windshield placard.  
33 The special plate shall be used in place of a regular  
34 license plate.

35 As used in this section, a physically handicapped  
36 person with limited mobility is any person who suffers  
37 from a permanent physical condition making it unduly  
38 difficult and burdensome for such person to walk.

39 Any person who falsely or fraudulently obtains or  
40 seeks to obtain the special plate or the mobile windshield  
41 placard provided for in this subsection (a), and any  
42 person who falsely certifies that a person is physically  
43 handicapped with limited mobility in order that an

44 applicant may be issued the special plate, is guilty of  
45 a misdemeanor, and, upon conviction thereof, in addition  
46 to any other penalty he may otherwise incur, shall be  
47 fined not less than one hundred dollars nor more than  
48 one thousand dollars, or imprisoned in the county jail  
49 not more than one year, or both fined and imprisoned.

50 (b) Any physically disabled person, any person who is  
51 a relative of a physically disabled person, any person  
52 who regularly resides with a physically disabled person,  
53 or any person who regularly transports a physically  
54 disabled person, may apply for a vehicle decal for a  
55 Class A vehicle by submitting to the commissioner:

56 (1) An application therefor on a form prescribed and  
57 furnished by the commissioner;

58 (2) A certificate issued by a person licensed to  
59 practice medicine stating that the applicant or the  
60 applicant's relative is a physically disabled person, or  
61 that the person regularly residing with the applicant or  
62 regularly transported by the applicant is a physically  
63 disabled person, as defined in this section, and stating  
64 the expected duration of the disability; and

65 (3) A fee of one dollar.

66 Upon receipt of the application, the physician's  
67 certificate and the registration fee, if he finds that the  
68 applicant qualifies for the vehicle decal provided for in  
69 this subsection, the commissioner shall issue to such  
70 applicant an appropriately designed decal. The decal  
71 shall be displayed on the motor vehicle in the manner  
72 prescribed by the commissioner and shall be valid for  
73 such period of time as the certifying physician has  
74 determined that the disability will continue, which  
75 period of time, reflecting the date of expiration, shall be  
76 conspicuously shown on the face of the decal.

77 As used in this section "physically disabled person"  
78 means any person who has sustained a temporary  
79 disability rendering it unduly difficult and burdensome  
80 for him to walk.

81 Any person who falsely or fraudulently obtains or  
82 seeks to obtain the vehicle decal provided for in this  
83 subsection, and any person who falsely certifies that a  
84 person is physically disabled in order that an applicant  
85 may be issued the vehicle decal, is guilty of a misdemea-  
86 nor, and, upon conviction thereof, in addition to any  
87 other penalty he may otherwise incur, shall be fined not  
88 less than fifty nor more than one hundred dollars, or  
89 imprisoned in the county jail not more than thirty days,  
90 or both fined and imprisoned.

91 (c) Free stopping, standing or parking places marked  
92 "reserved for disabled persons" shall be designated in  
93 close proximity to all state, county and municipal  
94 buildings and other public facilities. Such places shall  
95 be reserved solely for physically disabled and handi-  
96 capped persons during the hours that such buildings are  
97 open for business.

98 Any person whose vehicle properly displays a valid  
99 special registration plate, mobile windshield placard or  
100 decal may park the vehicle for unlimited periods of time  
101 in parking zones unrestricted as to length of parking  
102 time permitted: *Provided*, That this privilege does not  
103 mean that the vehicle may park in any zone where  
104 stopping, standing or parking is prohibited or which  
105 creates parking zones for special types of vehicles or  
106 which prohibits parking during heavy traffic periods  
107 during specified rush hours or where parking would  
108 clearly present a traffic hazard. To the extent any  
109 provision of any ordinance of any political subdivision  
110 of this state is contrary to the provisions of this section,  
111 the provisions of this section shall take precedence and  
112 shall apply.

113 The privileges provided for in this subsection shall  
114 apply only during those times when the vehicle is being  
115 used for the transportation of a physically handicapped  
116 or disabled person. Any person who knowingly exer-  
117 cises, or attempts to exercise, such privileges at a time  
118 when the vehicle is not being used for the transportation  
119 of a physically handicapped or disabled person is guilty  
120 of a misdemeanor, and, upon conviction thereof, in  
121 addition to any other penalty he may otherwise incur,

122 shall be fined not less than ten nor more than fifty  
123 dollars, or imprisoned in the county jail for not more  
124 than thirty days, or both fined and imprisoned.

125 (d) No person may stop, stand or park a motor vehicle  
126 in an area designated, zoned or marked for the handi-  
127 capped or physically disabled, and no person may stop,  
128 stand or park any motor vehicle at special, clearly  
129 marked, parking locations provided for the handicapped  
130 or physically disabled in or on privately owned parking  
131 lots, parking garages, or other parking areas, when such  
132 person is not physically disabled or handicapped and  
133 does not have displayed upon his vehicle a distinguish-  
134 ing insignia for the handicapped issued by the commis-  
135 sioner: *Provided*, That any person in the act of transport-  
136 ing a handicapped or physically disabled person, as  
137 defined by this article, may stop, stand or park a motor  
138 vehicle not displaying a distinguishing insignia for the  
139 handicapped in an area designated, zoned or marked for  
140 the handicapped or physically disabled for the limited  
141 purposes of loading or unloading his handicapped or  
142 physically disabled passenger: *Provided, however*, That  
143 such vehicle shall be promptly moved after the comple-  
144 tion of such limited purposes.

145 Any person who violates the provisions of this  
146 subsection is guilty of a misdemeanor, and, upon  
147 conviction thereof, shall be fined not more than twenty-  
148 five dollars.

149 (e) The commissioner shall adopt and promulgate  
150 rules and regulations in accordance with the provisions  
151 of chapter twenty-nine-a of this code to effectuate the  
152 provisions of this section.

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## CHAPTER 181

(Com. Sub. for S. B. 109—By Senators Brackenrich and Spears)

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[Passed March 5, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section ten, 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 thirteen; to amend and reenact section five, article five of said chapter; and to amend and reenact sections four, five, six, nine, nine-c and fifteen, article six of said chapter, all relating to responsibilities of state treasurer; removing certain reporting requirements; requiring monthly reconciliation of statements and records; authorizing payment for banking services; protection and handling of securities; requiring the board to appoint an executive secretary upon vacancy; term; organization; qualifications of executive secretary; allowing board of investments to appoint its own staff; powers of and removing board of investments; authorizing contracting with in or out-of-state banks; costs and expenses of board; special revenue account established; requiring the deposit of charges against earnings into the general revenue fund; authorizing expenditure of certain funds for expenses for claims, for restructuring and expenses relating to third party liability for certain losses; permitting transfer of certain funds into special revenue account; permitting transfer of excess funds in liquidity investment pool; permissible investments; providing quarterly audits of transactions of board of investments; providing itemized accounts; and permitting state board of investments and removing authority of certain state agencies to make independent investments.

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

That section ten, 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 amended by adding thereto a new section, designated section thirteen; that section five, article five of said chapter be amended and reenacted; and that sections four, five, six, nine, nine-c and fifteen, article six of said chapter be amended and reenacted, all to read as follows:

**Article**

- 1. State Depositories.**
- 5. Public Securities.**
- 6. West Virginia Board of Investments.**



**ARTICLE 1. STATE DEPOSITORIES.**

§12-1-10. Treasurer to keep accounts with depositories; settlements with depositories; statements of depository balances; reconciliation of statements and records.

§12-1-13. Payment of banking services.

**§12-1-10. Treasurer to keep accounts with depositories; settlements with depositories; statements of depository balances; reconciliation of statements and records.**

1 The treasurer shall keep in his or her office a record  
2 showing the account of each depository. Under the  
3 account of each depository entry shall be made showing  
4 the amount and date of each deposit, the amount and  
5 date of each withdrawal and the balance on deposit. The  
6 treasurer shall cause the state's account with each  
7 depository to be settled at the end of every month of the  
8 year and the balance in the depository to the credit of  
9 the treasury to be carried forward to the account of the  
10 next month.

11 All the statements and records shall be reconciled  
12 monthly and the reconciled reports showing the average  
13 daily balances of each month shall be kept in the  
14 treasurer's office. The reconciled records of the average  
15 daily balance for each month shall be kept in the  
16 treasurer's office for a period of five years.

**§12-1-13. Payment of banking services.**

1 The treasurer is authorized to pay for banking  
2 services, and services ancillary thereto, by either a  
3 compensating balance in a noninterest bearing account  
4 maintained at the financial institution providing the  
5 services or with a state warrant as described in section  
6 one, article five of this chapter.

7 If payment is made by a state warrant, the board of  
8 investments is authorized to establish within the  
9 consolidated fund an investment pool which will  
10 generate sufficient income to pay for all banking service  
11 provided to the state. All income earned by the invest-  
12 ment pool shall be paid into a special account of the state  
13 treasurer of West Virginia to be known as the banking  
14 services account and shall be used solely for the purpose

15 of paying for all banking services and services ancillary  
 16 thereto, provided to the state.

**ARTICLE 5. PUBLIC SECURITIES.**

**§12-5-5. Protection and handling of securities.**

1 The securities retained in the treasury shall be kept  
 2 in a vault. The treasurer shall use due diligence in  
 3 protecting the securities against loss from any cause.  
 4 The treasurer shall designate certain employees to take  
 5 special care of the securities. Only the treasurer and the  
 6 designated employees may have access to such securi-  
 7 ties, and at least two of these persons shall be present  
 8 whenever the securities are handled in any manner. The  
 9 treasurer may, with the approval of the board of  
 10 investments, contract with one or more banking insti-  
 11 tutions in or outside the state for the custody, safekeep-  
 12 ing and management of such securities, which contract  
 13 shall prescribe the rules for the handling and protection  
 14 thereof.

**ARTICLE 6. WEST VIRGINIA BOARD OF INVESTMENTS.**

§12-6-4. Officers; executive secretary; term; organization; board staff;  
 surety bonds for members and employees.

§12-6-5. Powers of the board.

§12-6-6. Costs and expenses; fees for services; special revenue account; costs  
 of determining third parties' liability; recoupment of invest-  
 ment losses.

§12-6-9. Permissible investments.

§12-6-9c. Authorization of additional investments.

§12-6-15. Audits.

**§12-6-4. Officers; executive secretary; term; organization;  
 board staff; surety bonds for members and  
 employees.**

1 (a) The governor shall be the chairman and the  
 2 custodian of all funds, securities and assets held by the  
 3 board. The office of the state treasurer shall act as a  
 4 depository for all funds, that may, from time to time,  
 5 from whatever source, be made available to the board  
 6 for investment. The board shall elect an executive  
 7 secretary to serve for a term of six years, such election  
 8 to be held at the board's first meeting after the first  
 9 effective date of this article. Effective with any vacancy  
 10 in the position of executive secretary, the board shall

11 appoint an executive secretary to serve at the will and  
12 pleasure of the board, which executive secretary may  
13 not be a member of the board: *Provided*, That the  
14 executive secretary shall have at least a bachelor's  
15 degree in either business administration or accounting  
16 in an accredited program and/or have at least five years'  
17 experience in investment management or securities  
18 markets, said experience to have occurred within the ten  
19 years next preceding the date of appointment of the  
20 secretary: *Provided, however*, That the executive secre-  
21 tary may be paid a salary as determined by the board  
22 out of appropriations by the Legislature. The office of  
23 the state treasurer may act as staff agency for the board:  
24 *Provided further*, That effective the first day of July, one  
25 thousand nine hundred ninety, the board may appoint  
26 a staff to act for the board.

27 (b) The board shall meet quarterly and may include  
28 in its bylaws procedures for the calling and holding of  
29 additional meetings.

30 (c) Each member of the board shall give a separate  
31 and additional fidelity bond from a surety company  
32 qualified to do business within this state in a penalty  
33 amount of two hundred fifty thousand dollars for the  
34 faithful performance of his duties as a member of the  
35 board. In addition, the board will purchase a blanket  
36 bond for the faithful performance of its duties in the  
37 amount of five million dollars excess of the two hundred  
38 fifty thousand dollar individual bond required of each  
39 member by the provisions of this section. The board may  
40 require a fidelity bond from a surety company qualified  
41 to do business in this state for any person who has  
42 charge of, or access to, any securities, funds or other  
43 moneys held by the board, and the amount of such  
44 fidelity bond shall be fixed by the board. The premiums  
45 payable on all fidelity bonds shall be an expense of the  
46 board.

#### §12-6-5. Powers of the board.

1 The board may exercise all powers necessary or  
2 appropriate to carry out and effectuate its corporate  
3 purposes. The board may:

- 4 (1) Adopt and use a common seal and alter the same  
5 at pleasure;
- 6 (2) Sue and be sued;
- 7 (3) Enter into contracts and execute and deliver  
8 instruments;
- 9 (4) Acquire (by purchase, gift or otherwise), hold, use  
10 and dispose of real and personal property, deeds,  
11 mortgages and other instruments;
- 12 (5) Promulgate and enforce bylaws and rules for the  
13 management and conduct of its affairs;
- 14 (6) Retain and employ legal, accounting, financial and  
15 investment advisors and consultants;
- 16 (7) Acquire (by purchase, gift or otherwise), hold,  
17 exchange, pledge, lend and sell or otherwise dispose of  
18 securities and invest funds in interest earning deposits;
- 19 (8) Maintain accounts with banks, securities dealers  
20 and financial institutions both within and outside this  
21 state;
- 22 (9) Engage in financial transactions whereby securi-  
23 ties are purchased by the board under an agreement  
24 providing for the resale of such securities to the original  
25 seller at a stated price;
- 26 (10) Engage in financial transactions whereby secur-  
27 ities held by the board are sold under an agreement  
28 providing for the repurchase of such securities by the  
29 board at a stated price;
- 30 (11) Consolidate and manage moneys, securities and  
31 other assets of the pension funds and other funds and  
32 accounts of the state and the moneys of political  
33 subdivisions which may be made available to it under  
34 the provisions of this article;
- 35 (12) Enter into agreements with political subdivisions  
36 of the state whereby moneys of such political subdivi-  
37 sions are invested on their behalf by the board;
- 38 (13) Charge and collect administrative fees from  
39 political subdivisions for its services;

40 (14) Exercise all powers generally granted to and  
41 exercised by the holders of investment securities with  
42 respect to management thereof; and

43 (15) Contract with one or more banking institutions in  
44 or outside the state for the custody, safekeeping and  
45 management of securities held by the board.

**§12-6-6. Costs and expenses; fees for services; special  
revenue account; costs of determining third  
parties' liability; recoupment of investment  
losses.**

1 (a) The board shall make a charge against the  
2 earnings of the various funds managed by the board for  
3 all necessary expenses of the board. The charge shall be  
4 on a pro rata basis of actual earnings of the various  
5 funds managed by the board. The charge shall be  
6 deposited to the credit of the general revenue fund. All  
7 expenses relating to the responsibilities of the office of  
8 the state treasurer as staff agency for the board of  
9 investments shall be paid from the general appropria-  
10 tion for that office.

11 (b) There is hereby created in the state treasury a  
12 special revenue account to be known as the "loss  
13 expenses account". The purpose of this account is to pay  
14 costs, fees and expenses incurred, or to be incurred, for  
15 the following: (1) Investigation and pursuit of claims  
16 against third parties for the investment losses incurred  
17 during the period beginning the first day of August, one  
18 thousand nine hundred eighty-four, and ending on the  
19 thirty-first day of January, one thousand nine hundred  
20 eighty-nine; (2) for consulting services regarding the  
21 restructuring of the office of the treasurer following said  
22 losses; and (3) for implementation of the recommenda-  
23 tions made as a result of the consultations regarding  
24 restructuring. That special revenue account shall be  
25 funded by depositing income derived by the board from  
26 securities lending and recoveries from third parties. The  
27 board is authorized to deposit into the special revenue  
28 account, and to expend in accordance with the provi-  
29 sions of this section, those funds received from such  
30 recoveries and not more than two million dollars

31 annually from income derived by the board from  
32 securities lending. Funds in the loss expenses account  
33 in excess of reasonably estimated costs, fees and  
34 expenses for any fiscal year and any funds remaining  
35 in such special revenue account at the end of each fiscal  
36 year after expenditures, for the purposes specified  
37 above, may be transferred by the board to its "liquidity  
38 investment pool", to be used, in such manner as the  
39 board determines, to eliminate the present imbalance in  
40 the state accounts caused by the investment losses  
41 described above in this subsection. The authority for this  
42 special revenue account expires on the thirtieth day of  
43 June, one thousand nine hundred ninety-five.

**§12-6-9. Permissible investments.**

1 Notwithstanding the restrictions which may otherwise  
2 be provided by law as to the investment of funds, the  
3 board may invest funds made available to it in any of  
4 the following:

5 (a) Any direct obligation of, or obligation guaranteed  
6 as to the payment of both principal and interest by, the  
7 United States of America;

8 (b) Any evidence of indebtedness issued by any  
9 United States government agency guaranteed as to the  
10 payment of both principal and interest, directly or  
11 indirectly, by the United States of America, including,  
12 but not limited to, the following: Government National  
13 Mortgage Association, Federal Land Banks, Federal  
14 Home Loan Banks, Federal Intermediate Credit Banks,  
15 Banks for Cooperatives, Tennessee Valley Authority,  
16 United States Postal Service, Farmers Home Adminis-  
17 tration, Export-Import Bank, Federal Financing Bank,  
18 Federal Home Loan Mortgage Corporation, Student  
19 Loan Marketing Association and Federal Farm Credit  
20 Banks;

21 (c) Any evidence of indebtedness issued by the  
22 Federal National Mortgage Association to the extent  
23 such indebtedness is guaranteed by the Government  
24 National Mortgage Association;

25 (d) Any evidence of indebtedness that is secured by a

26 first lien deed of trust or mortgage upon real property  
27 situate within this state, if the payment thereof is  
28 substantially insured or guaranteed by the United  
29 States of America or any agency thereof;

30 (e) Direct and general obligations of this state;

31 (f) Any undivided interest in a trust, the corpus of  
32 which is restricted to mortgages on real property and,  
33 unless all of such property is situate within the state and  
34 insured, such trust at the time of the acquisition of such  
35 undivided interest, is rated in one of the three highest  
36 rating grades by an agency which is nationally known  
37 in the field of rating pooled mortgage trusts;

38 (g) Any bond, note, debenture, commercial paper or  
39 other evidence of indebtedness of any private corpora-  
40 tion or association organized and operating in the  
41 United States: *Provided*, That any such security is, at  
42 the time of its acquisition, rated in one of the three  
43 highest rating grades by an agency which is nationally  
44 known in the field of rating corporate securities:  
45 *Provided, however*, That if any commercial paper and/or  
46 any such security will mature within one year from the  
47 date of its issuance, it shall, at the time of its acquisition,  
48 be rated in one of the two highest rating grades by such  
49 an agency: *Provided further*, That any such security not  
50 rated in one of the two highest rating grades by any  
51 such agency and commercial paper or other evidence of  
52 indebtedness of any private corporation or association  
53 shall be purchased only upon the written recommenda-  
54 tion from an investment adviser that has over three  
55 hundred million dollars in other funds under its  
56 management;

57 (h) Negotiable certificates of deposit issued by any  
58 bank, trust company, national banking association or  
59 savings institution organized and operating in the  
60 United States, which mature in less than one year and  
61 are fully collateralized; and

62 (i) Interest earning deposits including certificates of  
63 deposit, with any duly designated state depository,  
64 which deposits are fully secured by a collaterally

65 secured bond as provided in section four, article one of  
66 this chapter.

**§12-6-9c. Authorization of additional investments.**

1 Notwithstanding the restrictions which may otherwise  
2 be provided by law with respect to the investment of  
3 funds, the state board of investments, all administrators,  
4 custodians or trustees of pension funds, each political  
5 subdivision of this state and each county board of  
6 education is authorized to invest funds in the securities  
7 of or any other interest in any investment company or  
8 investment trust registered under the Investment  
9 Company Act of 1940, 15 U.S.C. §80a, the portfolio of  
10 which is limited to direct obligations of or obligations  
11 guaranteed as to the payment of both principal and  
12 interest by the United States of America and to  
13 repurchase agreements fully collateralized by United  
14 States government obligations: *Provided*, That the  
15 investment company or investment trust takes delivery  
16 of the collateral either directly or through an authorized  
17 custodian.

**§12-6-15. Audits.**

1 There shall be a continuous postaudit conducted by  
2 the legislative auditor of the investment transactions of  
3 the board, and a copy thereof for the preceding calendar  
4 year shall be furnished to each member of the Legisla-  
5 ture on or before the first day of February of each year.  
6 The board shall further cause to be conducted a  
7 quarterly internal audit, by the state treasurer's staff  
8 using generally accepted government auditing stand-  
9 ards, of all investment transactions of the board and an  
10 annual external audit, by a nationally recognized  
11 accounting firm in conjunction with the annual federal  
12 audit, of all investment transactions of the board:  
13 *Provided*, That the board shall on a monthly basis  
14 provide to each political subdivision, state agency and  
15 any other entity investing moneys in the consolidated  
16 fund or consolidated pension fund an itemized account  
17 reflecting the portfolio value of the investments of each  
18 said political subdivision, state agency and any other  
19 entity in the consolidated fund or consolidated pension



20 fund. The board shall further provide a monthly  
21 statement reflecting the interest earned by each said  
22 political subdivision, state agency or other investing  
23 entity and the method by which said interest has been  
24 calculated.

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## CHAPTER 182

(Com. Sub. for S. B. 581—By Senator Tomblin)

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[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend article four, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen, relating to the state treasurer; making certain legislative findings regarding unreconciled items in state bank accounts; requiring treasurer to reconcile items and make certain transfers; requiring treasurer to make certain reports; creating special account known as "single audit account" and authorizing board of investments to apply balances in single audit account toward imbalances caused by investment losses.

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

That article four, 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 thirteen, to read as follows:

### ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

#### §12-4-13. Bank reconciliations; balancing state accounts.

1 The Legislature finds that the bank accounts of the  
2 treasury contain numerous unreconciled items and that  
3 the single audit report for the period ending on the  
4 thirtieth day of June, one thousand nine hundred eighty-  
5 nine, states that as of the end of the audit period there  
6 were forty million, ninety-three thousand, six hundred  
7 eighty-one dollars and forty-seven cents more in the  
8 bank accounts maintained by the state treasurer than

9 recorded on the accounting records of the state.  
10 Therefore, the Legislature directs that:

11 (a) The state treasurer shall take all necessary actions  
12 to identify all unreconciled items on the bank accounts  
13 maintained by the state treasurer. All items identified  
14 on or before the thirtieth day of June, one thousand nine  
15 hundred ninety, shall be recorded in the state account(s)  
16 to which they have been identified. Any unreconciled  
17 items not identified on or before the thirtieth day of  
18 June, one thousand nine hundred ninety, shall be  
19 recorded in a special revenue account known as the  
20 "single audit account".

21 (b) All moneys identified in the single audit report as  
22 not having been recorded on the accounting records of  
23 the state treasurer shall be recorded in the single audit  
24 account. If after the recording of said moneys in the  
25 single audit account, the treasurer is able to identify the  
26 appropriate state accounts the moneys should be  
27 credited to, he is hereby authorized to transfer such  
28 moneys from the single audit account to the appropriate  
29 account.

30 (c) Effective on the first day of July, one thousand  
31 nine hundred ninety, the state treasurer shall file a  
32 report with the governor reflecting all actions taken  
33 concerning unreconciled items in bank accounts main-  
34 tained by the state treasurer through the period ending  
35 on the thirtieth day of June, one thousand nine hundred  
36 ninety. After the governor has reviewed the report and  
37 determined that the state treasurer has complied with  
38 all previous provisions of this code section, the governor  
39 shall certify the report to the board of investments. The  
40 board of investments is then authorized to use, in such  
41 manner as it determines, the balance in the single audit  
42 account to eliminate any imbalance in the state accounts  
43 caused by the investment losses incurred during the  
44 period beginning on the first day of August, one  
45 thousand nine hundred eighty-four, and ending on the  
46 thirty-first day of January, one thousand nine hundred  
47 eighty-nine.

48 (d) Effective on the first day of July, one thousand

49 nine hundred ninety, the state treasurer shall take  
50 action to ensure that all bank accounts of the state  
51 treasurer are reconciled each month. If after six months  
52 from receipt of a bank statement, any items remain as  
53 unreconcilable, the state treasurer shall record such  
54 amounts as a debit or credit to the state's general  
55 revenue fund.

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## CHAPTER 183

(Com. Sub. for S. B. 101—By Senator Chafin)

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[Passed February 8, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section eighteen, article sixteen-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eighteen-a, permitting the continued toll collection at the intersection of U.S. Route 19 and the West Virginia Turnpike; implementing a system of commuter passes; and providing for the application of rule making to certain toll increases.

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

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

**ARTICLE 16A. WEST VIRGINIA PARKWAYS, ECONOMIC DEVELOPMENT AND TOURISM AUTHORITY.**

§17-16A-18. Cessation of tolls; commuter pass system.

§17-16A-18a. Corridor "L" toll fees authorized; commuter pass; annual report.

**§17-16A-18. Cessation of tolls; commuter pass system.**

- 1 (a) Except as provided herein, when all bonds issued
- 2 under the provisions of this article in connection with
- 3 any parkway project or projects and the interest thereon
- 4 shall have been paid or a sufficient amount for the

5 payment of all such bonds and the interest thereon to  
6 the maturity thereof shall have been set aside in trust  
7 for the benefit of the bondholders, such project or  
8 projects, if then in good condition and repair to the  
9 satisfaction of the commissioner of the state division of  
10 highways, shall be transferred to the state division of  
11 highways and shall thereafter be maintained by the  
12 state division of highways free of tolls: *Provided*, That  
13 the parkways authority may thereafter charge tolls for  
14 the use of any such project and for the reconstruction,  
15 improvement, maintenance and repair thereof, except as  
16 may be limited by applicable federal laws, and pledge  
17 such tolls to the payment of bonds issued under the  
18 provisions of this article in connection with another  
19 project or projects, or any combination thereof, but any  
20 such pledge of tolls of a parkway project to the payment  
21 of bonds issued in connection with another project or  
22 projects shall not be effectual until the principal of and  
23 the interest on the bonds issued in connection with the  
24 first mentioned project shall have been paid or provision  
25 made for their payment.

26 (b) No later than the first day of February, one  
27 thousand nine hundred ninety, the parkways authority  
28 shall discontinue, remove and not relocate all toll  
29 collection facilities on the West Virginia Turnpike as the  
30 same existed on June first, one thousand nine hundred  
31 eighty-nine, except for the three main toll barriers and  
32 collection facilities, and provided solely that the  
33 provisions of section eighteen-a are complied with, the  
34 toll collection facilities at the intersection of U.S. Route  
35 19 (Corridor "L") and said turnpike: *Provided*, That  
36 nothing herein may be construed to prohibit placement  
37 of new tolls to the extent permitted by federal law for  
38 any new expressway, turnpike, trunkline, feeder road,  
39 state local service road, or park and forest road  
40 connected to the West Virginia Turnpike and con-  
41 structed after the first day of June, one thousand nine  
42 hundred eighty-nine.

**§17-16A-18a. Corridor "L" toll fees authorized; commuter pass; annual report.**

1 (a) The parkways authority is hereby authorized to

2 operate the currently existing toll collection facility  
3 located at the interchange of U.S. Route 19 (Corridor  
4 "L") and said turnpike subject to the following:

5 (1) The toll fee charges by the parkways, economic  
6 development and tourism authority at its toll facilities  
7 located at the interchange of U.S. Route 19 (Corridor  
8 "L") and said turnpike shall not exceed those toll  
9 charges levied and collected by the authority at said  
10 interchange as of the first day of January, one thousand  
11 nine hundred ninety, and hereafter, no proposed  
12 increase in such toll fees shall be implemented by the  
13 parkways authority unless the authority shall have first  
14 complied with validly promulgated and legislatively  
15 approved rules and regulations pursuant to the applica-  
16 ble provisions of chapter twenty-nine-a of this code;

17 (2) As soon as reasonably possible after the effective  
18 date of this legislation, but in no event later than the  
19 first day of July, one thousand nine hundred ninety, the  
20 authority shall establish, advertise, implement and  
21 otherwise make generally available to all qualified  
22 members of the public, resident or nonresident, a system  
23 of commuter passes, in a form to be determined by the  
24 authority: *Provided*, That said system of commuter  
25 passes shall, at a minimum, permit the holder of such  
26 pass or passes, after paying the applicable fee to the  
27 authority, to travel through the U.S. Route 19 (Corridor  
28 "L") turnpike interchange and toll facilities on an  
29 unlimited basis, without additional charge therefor, for  
30 a period of one year after the issuance of said commuter  
31 pass or passes: *Provided, however*, That the cost for such  
32 commuter pass or passes shall in no event aggregate  
33 more than five dollars per year for a full calendar year  
34 of unlimited travel through the U.S. Route 19 (Corridor  
35 "L") turnpike interchange toll facilities.

36 To the extent required or necessary, the parkways  
37 authority is further hereby authorized and empowered,  
38 in addition to the extent previously authorized and  
39 empowered pursuant to section six and section thirteen-  
40 b, article sixteen-a of this chapter, to promulgate rules  
41 in accordance with chapter twenty-nine-a of this code  
42 with regard to the implementation of proposed future

43 toll increases at the U.S. Route 19 (Corridor "L")  
44 turnpike toll facility;

45 (3) The system of commuter passes implemented in  
46 accordance with the provisions of subdivision (2),  
47 subsection (a), above, shall be available only for use  
48 when operating or traveling in a Class "A" motor vehicle  
49 as herein defined. Whoever shall knowingly or intention-  
50 ally utilize any commuter pass issued in accordance  
51 with this section while operating other than a Class "A"  
52 motor vehicle, as herein defined, at the U.S. Route 19  
53 (Corridor "L") turnpike toll facility, or any other toll  
54 facility at or upon which such pass may later be usable,  
55 shall be guilty of a misdemeanor, and for every such  
56 offense shall, upon conviction thereof, be punished in  
57 accordance with the provisions of section seventeen,  
58 article sixteen-a of this chapter; and the parkways  
59 authority shall hereafter be authorized and empowered  
60 to cancel any such commuter pass or passes improperly  
61 used in accordance with this section;

62 (4) In addition to the annual report required by  
63 section twenty-six of this article, the parkways authority  
64 will prepare and deliver to the governor, the speaker of  
65 the house of delegates and the president of the senate  
66 a separate annual report of toll revenues collected from  
67 the U.S. Route 19 (Corridor "L") turnpike toll facility.  
68 The report shall disclose separately the toll revenues  
69 generated from regular traffic and the commuter pass  
70 created herein. The reports shall include, but not be  
71 limited to, disclosing separately the expenditure of said  
72 toll revenues generated from the U.S. Route 19 (Corri-  
73 dor "L") turnpike toll facility including a description of  
74 the purposes for which such toll revenues are expended;

75 (5) In the event any court of competent jurisdiction  
76 shall issue an order which adjudges that any portion of  
77 subdivision (1), (2) or (3), subsection (a) of this section  
78 is illegal, unconstitutional, unenforceable or in any  
79 manner invalid, the parkways authority shall discon-  
80 tinue, remove and not otherwise relocate the U.S. Route  
81 19 (Corridor "L") turnpike toll facility within three  
82 hundred sixty-five days after the date upon which said

83 court order is final or all appeals to said order have been  
84 exhausted;

85 (6) For the purpose of this section, a Class "A" vehicle  
86 shall be defined as a motor vehicle of passenger type and  
87 truck with a gross weight of not more than 8,000 pounds  
88 and registered or eligible for registration as a Class "A"  
89 vehicle in accordance with section one, article ten,  
90 chapter seventeen-a of this code as the same is currently  
91 constituted; and

92 (7) Notwithstanding any other provisions of the code  
93 to the contrary, the parkways authority may not  
94 promulgate emergency rules in accordance with section  
95 fifteen, article three, chapter twenty-nine-a of this code  
96 to increase or decrease toll fees or the commuter pass  
97 fee established herein.

98 (b) Nothing in this section is to be construed to apply  
99 to, regulate, or in any manner affect the operation of the  
100 three main line toll barriers and toll collection facilities  
101 currently located on the West Virginia Turnpike and  
102 operated by the parkways authority as Barrier A,  
103 Barrier B and Barrier C (I-64, I-77).

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## CHAPTER 184

(H. B. 4722—By Delegates Farley and Kiss)

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[Passed March 6, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections eight, eleven, sixteen and eighteen, article eight, chapter thirty-six 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 eight-a and eight-b, all relating to the uniform disposition of unclaimed property act; property held by courts; providing for recovery of abandoned property; presumption of abandonment by federal government; report of abandoned property; statute of limitations; and deposit to state general fund.

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

That sections eight, eleven, sixteen and eighteen, article eight, chapter thirty-six 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 eight-a and eight-b, all to read as follows:

**ARTICLE 8. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT.**

- §36-8-8. Property held by courts and public officers and agencies.
- §36-8-8a. Providing for recovery of abandoned property.
- §36-8-8b. Presumption of abandonment of personal property held by federal government.
- §36-8-11. Report of abandoned property.
- §36-8-16. Periods of limitation not a bar.
- §36-8-18. Deposits of funds; trust and expense fund; records of deposits.

**§36-8-8. Property held by courts and public officers and agencies.**

1 (a) All intangible personal property held for the  
2 owner by any state or federal court, public corporation,  
3 public authority, or public officer in this state, or a  
4 political subdivision thereof, that has remained un-  
5 claimed by the owner for more than seven years is  
6 presumed abandoned: *Provided*, That this provision  
7 shall in no way affect such property in the custody or  
8 control of any state or federal court in any pending  
9 action.

10 (b) Notwithstanding the provisions of subsection (a) of  
11 this section, all intangible personal property in the  
12 custody or control of a general receiver of a state court  
13 of record appointed pursuant to the provisions of article  
14 six, chapter fifty-one of this code, that has remained  
15 unclaimed by the owner for more than seven years is  
16 presumed abandoned: *Provided*, That any such property  
17 in the custody or control of any such general receiver  
18 in which there is any contingent remainder interest, or  
19 any vested remainder interest which is subject to open  
20 to let in persons not yet in being or to open to let in  
21 members of any class, or any executory interest, or  
22 executory devise interest, or any base, qualified,  
23 conditional, or limited fee estate or interest, or any other



24 qualified, conditional, limited or determinable estate or  
25 interest, shall not be presumed abandoned until such  
26 property has remained unclaimed for more than seven  
27 years after such estate or interest has vested or any such  
28 class has closed and the persons entitled to such  
29 property have been determined.

**§36-8-8a. Providing for recovery of abandoned property.**

1 With respect to property originated or issued by this  
2 state, any political subdivision thereof or any entity  
3 incorporated, organized or created therein, the following  
4 provision shall apply:

5 (a) Unless presumed abandoned and subject to the  
6 custody of this state by any other provision of law, all  
7 intangible property, including, but not limited to, any  
8 interest, dividend, or other earnings thereon, less any  
9 lawful charges, that is held by a business association,  
10 federal, state or local government or governmental  
11 subdivision, agency or entity, or any other person or  
12 entity, regardless of where the holder may be found, is  
13 presumed abandoned and subject to the custody of this  
14 state as unclaimed property if:

15 (1) The address of the owner was never known or the  
16 last-known address of the owner is unknown; and

17 (2) The entity originating or issuing the intangible  
18 property is in this state or any of its political subdivi-  
19 sions or is incorporated, organized or created in this  
20 state.

21 (b) Subsection (a) shall apply to all property held at  
22 the time of enactment, or at any time thereafter,  
23 regardless of when such property became or becomes  
24 presumptively abandoned.

**§36-8-8b. Presumption of abandonment of personal property held by federal government.**

1 (a) All tangible personal property or intangible  
2 personal property, including choses in action in amounts  
3 certain, and all debts owed, entrusted funds or other  
4 property held by any federal, state or local government  
5 or governmental subdivision, agency, entity, officer or

6 appointee thereof, shall be presumed abandoned in this  
7 state if the last-known address of the owner of the  
8 property is in this state and the property has remained  
9 unclaimed for seven years: *Provided*, That if another  
10 provision of law provides for a presumption of abandon-  
11 ment and custodial taking of the subject property by this  
12 state upon the passage of a longer period of time, such  
13 longer period of time shall control.

14 (b) This section shall apply to all abandoned property  
15 held by any federal, state or local government or  
16 governmental subdivision, agency, entity, officer or  
17 appointee thereof, at the time of enactment, or at any  
18 time thereafter, regardless of when such property  
19 became or becomes presumptively abandoned.

**§36-8-11. Report of abandoned property.**

1 (a) Every person holding funds or other property,  
2 tangible or intangible, presumed abandoned under this  
3 article shall report to the state treasurer with respect  
4 to the property as hereinafter provided.

5 (b) The report shall be verified and shall include:

6 (1) The name, if known, and last-known address, if  
7 any, of each person appearing from the records of the  
8 holder to be the owner of any property of the value of  
9 fifty dollars or more presumed abandoned under this  
10 article;

11 (2) In case of unclaimed funds of life insurance  
12 corporations, the full name of the insured or annuitant  
13 and his last-known address according to the life  
14 insurance corporation's records;

15 (3) The nature and identifying number, if any, or  
16 description of the property and the amount appearing  
17 from the records to be due, except that items of value  
18 under fifty dollars each may be reported in aggregate;

19 (4) The date when the property became payable,  
20 demandable or returnable, and the date of the last  
21 transaction with the owner with respect to the property;  
22 and

23 (5) Other information which the state treasurer

24 prescribes by rule as necessary for the administration  
25 of this article.

26 (c) If the person holding property presumed aban-  
27 doned is a successor to other persons who previously  
28 held the property for the owner, or if the holder has  
29 changed his name while holding the property, he shall  
30 file with his report all prior known names and addresses  
31 of each holder of the property.

32 (d) The report shall be filed before the thirty-first day  
33 of March of each year as of the thirty-first day of  
34 December next preceding. The state treasurer may  
35 postpone the reporting date upon written request by any  
36 person required to file a report.

37 (e) If the holder of property presumed abandoned  
38 under this article knows the whereabouts of the owner  
39 and if the owner's claim has not been barred by the  
40 statute of limitations, the holder shall, before filing the  
41 annual report, attempt to communicate with the owner  
42 so that the owner may take necessary steps to prevent  
43 abandonment from being presumed. A notice from the  
44 holder to the owner sent to the owner's last-known  
45 address by United States mail, postage prepaid, shall  
46 satisfy the requirements of this subsection (e).

47 (f) Verification, if made by a partnership, shall be  
48 executed by a partner; if made by an unincorporated  
49 association or private corporation, by an officer, and if  
50 made by a public corporation, by its chief fiscal officer.

51 (g) The initial report filed under this article shall  
52 include all items of property which, under the provisions  
53 hereof, would have been presumed abandoned on the  
54 effective date of this article had this article been in  
55 effect on the first day of July, one thousand nine  
56 hundred fifty-two.

57 (h) The state treasurer may at reasonable times and  
58 upon reasonable notice examine the records of any  
59 person if he has reason to believe that the person has  
60 failed to report property that should have been reported  
61 pursuant to this section.

62 (i) Every person filing a report shall deliver or pay

63 to the state treasurer all abandoned property specified  
64 in the report, at the time of the report.

65 If an examination of the records of a person results  
66 in disclosure of property reportable and deliverable  
67 under this section, the treasurer may assess the cost of  
68 the examination against the holder at a rate established  
69 by administrative regulation promulgated pursuant to  
70 chapter twenty-nine-a of this code, but in no case may  
71 the charges exceed the value of the property found to  
72 be reportable and deliverable.

**§36-8-16. Periods of limitation not a bar.**

1 (1) The expiration of any period of time specified by  
2 statute or court order, during which an action or  
3 proceeding may be commenced or enforced to obtain  
4 payment of a claim for money or recovery of property,  
5 shall not prevent the money or property from being  
6 presumed abandoned property, nor affect any duty to  
7 file a report required by this article or to pay or deliver  
8 abandoned property to the state treasurer.

9 (2) Notwithstanding any other provision of law, the  
10 expiration of any period of time specified by law during  
11 which an action or proceeding may be commenced or  
12 enforced to obtain payment of a claim for money or  
13 recovery of property shall not serve as a defense in any  
14 action or proceeding brought by or on behalf of the state  
15 treasurer against any federal, state or local government  
16 or governmental subdivision, agency, entity, officer or  
17 appointee thereof, for the payment or delivery of any  
18 abandoned property to the state treasurer pursuant to  
19 this chapter or to enforce or collect any penalty provided  
20 by this article.

21 (3) This section shall apply to all abandoned property  
22 held by any federal, state or local government or  
23 governmental subdivision, agency, entity, officer or  
24 appointee thereof, at the time of enactment, or at any  
25 time thereafter, regardless of when such property  
26 became or becomes presumptively abandoned.

**§36-8-18. Deposits of funds; trust and expense fund; records of deposits.**

1 (a) All funds received under this article, including the  
2 proceeds from the sale of abandoned property under  
3 section seventeen, shall forthwith be deposited by the  
4 state treasurer in a special fund to be known as the  
5 "trust and expense fund". Effective the first day of July,  
6 one thousand nine hundred ninety, all funds received  
7 under this article, including the proceeds from the sale  
8 of abandoned property under section seventeen of this  
9 article, shall forthwith be deposited by the state  
10 treasurer in the general fund.

11 (b) From said fund the state treasurer shall make  
12 prompt payment of claims duly allowed as hereinafter  
13 provided, and shall pay the necessary costs of selling  
14 abandoned property, of mailing notices, of making  
15 publications required by this article and of paying other  
16 operating expenses and administrative expenses reason-  
17 ably incurred by the treasurer in the administration and  
18 enforcement of the provisions of this article. At any time  
19 when the balance of said fund shall exceed one hundred  
20 fifty thousand dollars, the state treasurer may, and at  
21 least once every fiscal year shall, transfer to the general  
22 revenue fund the balance of the trust and expense fund  
23 which shall exceed one hundred fifty thousand dollars.  
24 The treasurer is authorized to draw his requisitions for  
25 such sums upon the auditor in the manner provided by  
26 law. Effective the first day of July, one thousand nine  
27 hundred ninety, all operating expenses and administra-  
28 tive expenses incurred by the treasurer in the admin-  
29 istration and enforcement of the provisions of this article  
30 shall be paid from an appropriation from the general  
31 revenue fund. The treasurer is further directed to make  
32 prompt payment of claims duly allowed as hereinafter  
33 provided from the general revenue fund.

34 (c) Before making any deposit to said fund, the state  
35 treasurer shall record the name and last-known address  
36 of each person appearing from the holder's reports to be  
37 entitled to the abandoned property, and the name and  
38 last-known address of each insured person or annuitant,  
39 and with respect to each policy or contract listed in the

40 report of a life insurance corporation, its number, the  
41 name of the corporation and the amount due. Such  
42 records shall be available for public inspection at all  
43 reasonable business hours.

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## CHAPTER 185

(S. B. 301—Originating in the Committee on the Judiciary)

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[Passed February 16, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article four, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections ten and ten-a, article five; section three, article six; and section eight, article eight-a, all of chapter twenty-one-a; to amend article nine, chapter twenty-one-a by adding thereto a new section, designated section nine; and to amend and reenact sections seven, eight, eleven and nineteen, article ten, chapter twenty-one-a of said code, all relating to unemployment compensation generally; providing for meetings of the board of review; establishing formulas and tables to determine payment rates; providing for the termination of solvency assessments on employers and employees; describing the conditions under which an individual is disqualified for benefits; providing for assessments on employers and employees to retire bonds and notes and pay interest owing to the federal government; defining the felony offense of failing to remit assessments, and establishing the penalty therefor; appropriating certain funds made available to the state under federal law; defining the misdemeanor offense of fraudulently obtaining or attempting to obtain benefits, and establishing the penalty therefor; providing for the recovery of benefits paid on misrepresentation; authorizing the commissioner to require certain information, and providing for the dissemination or confidentiality of information; and providing for the disclosure of information to child support agencies.

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

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

**Article**

4. **Board of Review.**
5. **Employee Coverage and Responsibility.**
6. **Employee Eligibility; Benefits.**
- 8A. **Employment Security Debt Funds.**
9. **Employment Security Administration Fund.**
10. **General Provisions.**

**ARTICLE 4. BOARD OF REVIEW.**

**§21A-4-6. Offices; meetings.**

- 1 The offices and meeting place of the board shall be
- 2 at the capital; but the board may sit at such other places
- 3 as the prompt and efficient hearing of claims may
- 4 require. The board shall sit for hearing of appeals at
- 5 least every ten days.

**ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.**

§21A-5-10. Experience ratings; decreased rates; adjustment of accounts and rates; debit balance account rates.

§21A-5-10a. Optional assessments on employers and employees.

**§21A-5-10. Experience ratings; decreased rates; adjustment of accounts and rates; debit balance account rates.**

- 1 (a) On and after July first, one thousand nine hundred
- 2 eighty-one, an employer's payment shall remain two and
- 3 seven-tenths percent, until:
- 4 (1) There have elapsed thirty-six consecutive months
- 5 immediately preceding the computation date throughout
- 6 which an employer's account was chargeable with
- 7 benefits.

8 (2) His payments credited to his account for all past  
 9 years exceed the benefits charged to his account by an  
 10 amount equal to at least the percent of his average  
 11 annual payroll as shown in Column B of Table II. His  
 12 rate shall be the amount appearing in Column C of  
 13 Table II on line with the percentage in Column B.

14 When the total assets of the fund as of January first  
 15 of a calendar year equal or exceed one hundred percent  
 16 but are less than one hundred twenty-five percent of the  
 17 average benefit payments from the trust fund for the  
 18 three preceding calendar years, an employer's rate shall  
 19 be the amount appearing in Column D of Table II on  
 20 line with the percentage in Column B.

21 When the total assets of the fund as of January first  
 22 of a calendar year equal or exceed one hundred twenty-  
 23 five percent but are less than one hundred fifty percent,  
 24 an employer's rate shall be the amount appearing in  
 25 Column E of Table II on line with the percentage in  
 26 Column B.

27 When the total assets of the fund as of January first  
 28 of a calendar year equal or exceed one hundred fifty  
 29 percent, an employer's rate shall be the amount  
 30 appearing in Column F of Table II on line with the  
 31 percentage in Column B.

32

TABLE II

33 Col. A	34 Col. B	35 Col. C	36 Col. D	37 Col. E	38 Col. F	
	39 <b>Percentage of Average Annual Payroll By Which Credits Exceed Charges</b>	40 <b>Employer's Rate</b>				
41 (1)	0.0 to 6.0	4.5	3.5	2.5	1.5	
42 (2)	6.0	4.1	3.1	2.1	1.1	
43 (3)	7.0	3.9	2.9	1.9	0.9	
44 (4)	8.0	3.7	2.7	1.7	0.7	
45 (5)	9.0	3.5	2.5	1.5	0.5	
46 (6)	10.0	3.3	2.3	1.3	0.3	
47 (7)	10.5	3.1	2.1	1.1	0.1	
	(8)	11.0	2.9	1.9	0.9	0.0



48	(9)	11.5	2.7	1.7	0.7	0.0
49	(10)	12.0	2.5	1.5	0.5	0.0
50	(11)	12.5	2.3	1.3	0.3	0.0
51	(12)	13.0	2.1	1.1	0.1	0.0
52	(13)	14.0	1.9	0.9	0.0	0.0
53	(14)	16.0	1.7	0.7	0.0	0.0
54	(15)	18.0 and over	1.5	0.5	0.0	0.0

55 All employer accounts in which charges for all past  
56 years exceed credits for such past years shall be  
57 adjusted effective June thirtieth, one thousand nine  
58 hundred sixty-seven, so that as of said date, for the  
59 purpose of determining such employer's rate of contri-  
60 bution, the credits for all past years shall be deemed to  
61 equal the charges to such accounts.

62 Effective on and after the computation date of June  
63 thirtieth, one thousand nine hundred eighty-four, the  
64 noncredited contribution identified in section seven of  
65 this article shall not be added to the employer's debit  
66 balance to determine the employer contribution rate.

67 Effective on and after the computation date of June  
68 thirtieth, one thousand nine hundred sixty-seven, all  
69 employers with a debit balance account in which the  
70 benefits charged to their account for all past years  
71 exceed the payments credited to their account for such  
72 past years by an amount up to and including ten percent  
73 of their average annual payroll shall make payments to  
74 the unemployment compensation fund at the rate of  
75 three percent of wages paid by them with respect to  
76 employment; except that effective on and after July  
77 first, one thousand nine hundred eighty-one, all employ-  
78 ers with a debit balance account in which the benefits  
79 charged to their account for all past years exceed the  
80 payments credited to their account for such past years  
81 by an amount up to and including five percent of their  
82 average annual payroll shall make payments to the  
83 unemployment compensation fund at the rate of five and  
84 five-tenths percent of wages paid by them with respect  
85 to employment.

86 Effective on or after July first, one thousand nine  
87 hundred eighty-one, all employers with a debit balance

88 account in which the benefits charged to their account  
89 for all past years exceed the payments credited to their  
90 account for such past years by an amount in excess of  
91 five percent but less than ten percent of their average  
92 annual payroll shall make payments to the unemploy-  
93 ment compensation fund at the rate of six and five-  
94 tenths percent of wages paid by them with respect to  
95 employment.

96 Effective on and after the computation date of June  
97 thirtieth, one thousand nine hundred sixty-seven, all  
98 employers with a debit balance account in which the  
99 benefits charged to their account for all past years  
100 exceed the payments credited to their account for such  
101 past years by an amount of ten percent or above of their  
102 average annual payroll shall make payments to the  
103 unemployment compensation fund at the rate of three  
104 and three-tenths percent of wages paid by them with  
105 respect to employment; except that effective on and  
106 after July first, one thousand nine hundred eighty-one,  
107 such payments to the unemployment compensation fund  
108 shall be at the rate of seven and five-tenths percent of  
109 wages paid by them with respect to employment or at  
110 such other rate authorized by this article.

111 "Debit balance account" for the purpose of this section  
112 means an account in which the benefits charged for all  
113 past years exceed the payments credited for such past  
114 years.

115 "Credit balance account" for the purposes of this  
116 section means an account in which the payments  
117 credited for all past years exceed the benefits charged  
118 for such past years.

119 Once a debit balance account rate is established for  
120 an employer's account for a year, it shall apply for the  
121 entire year.

122 "Due date" means the last day of the month next  
123 following a calendar quarter. In determining the  
124 amount in the fund on any due date, contributions  
125 received, but not benefits paid, for such month next  
126 following the end of a calendar quarter shall be  
127 included.

128 (b) Notwithstanding any other provision of this  
129 section, every debit balance employer subject to the  
130 provisions of this chapter, and any foreign corporation  
131 or business entity engaged in the construction trades  
132 which has not been an employer in the state of West  
133 Virginia for thirty-six consecutive months ending on the  
134 computation date, shall, in addition to any other tax  
135 provided for in this section, pay contributions at the rate  
136 of one percent surtax on wages paid by him with respect  
137 to employment for a period of eight years, beginning  
138 January first, one thousand nine hundred eighty-six.

139 (c) Effective June thirtieth, one thousand nine  
140 hundred eighty-five, and each computation date thereaf-  
141 ter, the reserve balance of a debit balance employer  
142 shall be reduced to fifteen percent if such balance  
143 exceeds fifteen percent. The amount of noncredited tax  
144 shall be reduced by an amount equal to the eliminated  
145 charges. If the eliminated charges exceed the amount of  
146 noncredited tax, the noncredited tax shall be reduced to  
147 zero.

148 (d) On and after January first, one thousand nine  
149 hundred ninety-one, an employer's payment shall  
150 remain two and seven-tenths percent, until:

151 (1) There have elapsed thirty-six consecutive months  
152 immediately preceding the computation date throughout  
153 which an employer's account was chargeable with  
154 benefits; and

155 (2) The payments credited to the account for all past  
156 years exceed the benefits charged to the account by an  
157 amount equal to at least the percent of the average  
158 annual payroll as shown in Column B of Table III. The  
159 rate shall be the amount appearing in Column C of  
160 Table II on line with the percentage in Column B.

161 When the total assets of the fund as of January first  
162 of a calendar year equal or exceed one and seventy-five  
163 one-hundredths percent but are less than two and  
164 twenty-five one-hundredths percent of gross covered  
165 wages for the twelve-month period ending on June

166 thirtieth of the preceding year, an employer's rate shall  
 167 be the amount appearing in Column D of Table III on  
 168 line with the percentage in Column B.

169 When the total assets of the fund as of January first  
 170 of a calendar year equal or exceed two and twenty-five  
 171 one-hundredths percent but are less than two and  
 172 seventy-five one-hundredths percent of gross covered  
 173 wages for the twelve-month period ending on June  
 174 thirtieth of the preceding year, an employer's rate shall  
 175 be the amount appearing in Column E of Table III on  
 176 line with the percentage in Column B.

177 When the total assets of the fund as of January first  
 178 of a calendar year equal or exceed two and seventy-five  
 179 one-hundredths percent but are less than three percent  
 180 of gross covered wages for the twelve-month period  
 181 ending on June thirtieth of the preceding year, an  
 182 employer's rate shall be the amount appearing in  
 183 Column F of Table III on line with the percentage in  
 184 Column B.

185 When the total assets of the fund as of January first  
 186 of a calendar year equal or exceed three percent of gross  
 187 covered wages for the twelve-month period ending on  
 188 June thirtieth of the preceding year, an employer's rate  
 189 shall be the amount appearing in Column G of Table III  
 190 on line with the percentage in Column B.

191

TABLE III

192	Col. A	Col. B	Col. C	Col. D	Col. E	Col. F	Col. G
193		Percentage of					
194		Average					
195		Annual Payroll					
196		By Which					
197	Rate	Credits Exceed	Employer's				
198	Class	Charges	Rate				
199	(1)	0.0 to 6.0	4.5	4.0	3.5	3.0	2.0
200	(2)	6.0	4.1	3.6	3.1	2.6	1.6
201	(3)	7.0	3.9	3.4	2.9	2.4	1.4
202	(4)	8.0	3.7	3.2	2.7	2.2	1.2
203	(5)	9.0	3.5	3.0	2.5	2.0	1.0
204	(6)	10.0	3.3	2.8	2.3	1.8	0.8
205	(7)	10.5	3.1	2.6	2.1	1.6	0.6
206	(8)	11.0	2.9	2.4	1.9	1.4	0.4

207	(9)	11.5	2.7	2.2	1.7	1.2	0.2
208	(10)	12.0	2.5	2.0	1.5	1.0	0.0
209	(11)	12.5	2.3	1.8	1.3	0.8	0.0
210	(12)	13.0	2.1	1.6	1.1	0.6	0.0
211	(13)	14.0	1.9	1.4	0.9	0.4	0.0
212	(14)	16.0	1.7	1.2	0.7	0.2	0.0
213	(15)	18.0 and over	1.5	1.0	0.5	0.0	0.0

214 (e) Notwithstanding any other provision of this  
 215 section, all employers' rates for the calendar year  
 216 beginning January first, one thousand nine hundred  
 217 ninety, and ending on the thirty-first day of December,  
 218 one thousand nine hundred ninety, shall be the amount  
 219 in Column D of Table II on line with the percentage in  
 220 Column B.

**§21A-5-10a. Optional assessments on employers and employees.**

1 (a) On and after the first day of July, one thousand  
 2 nine hundred eighty-seven, if the commissioner deter-  
 3 mines for a given projected quarter that the rates  
 4 established under the provisions of section ten of this  
 5 article will not result in payments being made to the  
 6 unemployment compensation fund in an amount suffi-  
 7 cient to finance the payment of benefits during such  
 8 quarter, the commissioner shall certify such fact to the  
 9 governor, and the governor shall, by executive order,  
 10 direct the commissioner to establish a level of assess-  
 11 ment for employees and employers in accordance with  
 12 the provisions of this section which is sufficient to  
 13 prevent, to the extent possible, a deficit in the funds  
 14 available to pay benefits to eligible individuals.

15 (b) Pursuant to such executive order, every employer,  
 16 contributing and reimbursable, subject to this chapter,  
 17 shall be required to withhold from all persons in his  
 18 employment an assessment which shall be in an amount  
 19 not to exceed fifteen one-hundredths (15/100) of one  
 20 percent of an employee's gross wages, which amount,  
 21 together with an assessment contributed by the em-  
 22 ployer in an amount as determined in accordance with  
 23 the provisions of subsection (c) of this section, except for  
 24 reimbursable employers who shall not be assessed, shall

25 be paid to the division of employment security on a  
26 form prescribed by the commissioner, at the same time  
27 and under the same conditions as the quarterly contri-  
28 bution payments required under the provisions of  
29 section seven, article five, chapter twenty-one-a of this  
30 code. The commissioner shall have the right to collect  
31 any delinquent assessments under this section in the  
32 same manner as provided for in section sixteen, article  
33 five, chapter twenty-one-a of this code; and in addition,  
34 any delinquency hereunder shall bear interest as set  
35 forth in section seventeen, article five, chapter twenty-  
36 one-a of this code.

37 (c) The commissioner shall establish the exact  
38 amounts of the employers' and employees' assessments  
39 at a level sufficient to generate the revenues needed to  
40 prevent a deficit which would otherwise result from the  
41 payment of benefits to eligible individuals, subject only  
42 to the limitation established in the preceding subsection  
43 (b) of this section. After determining the level of  
44 assessment on the gross wages of employees, the  
45 commissioner shall determine a rate of assessment to be  
46 imposed upon employers, except reimbursable employ-  
47 ers, which rate shall be expressed as a percentage of  
48 wages as defined in section three, article one of this  
49 chapter, and which is sufficient to cause the total  
50 statewide assessment on such employers to equal the  
51 total statewide assessment imposed upon employees.

52 Notwithstanding any other provision of this section to  
53 the contrary, the solvency assessments on employers and  
54 employees established by this section hereby terminate  
55 on the first day of April, one thousand nine hundred  
56 ninety.

#### **ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.**

##### **§21A-6-3. Disqualification for benefits.**

1 Upon the determination of the facts by the commis-  
2 sioner, an individual shall be disqualified for benefits:

3 (1) For the week in which he left his most recent work  
4 voluntarily without good cause involving fault on the  
5 part of the employer and until the individual returns to

6 covered employment and has been employed in covered  
7 employment at least thirty working days.

8 For the purpose of this subdivision (1), an individual  
9 shall not be deemed to have left his most recent work  
10 voluntarily without good cause involving fault on the  
11 part of the employer, if such individual leaves his most  
12 recent work with an employer and if he in fact, within  
13 a fourteen-day calendar period, does return to employ-  
14 ment with the last preceding employer with whom he  
15 was previously employed within the past year prior to  
16 his return to work day, and which last preceding  
17 employer, after having previously employed such  
18 individual for thirty working days or more, laid off such  
19 individual because of lack of work, which layoff  
20 occasioned the payment of benefits under this chapter  
21 or could have occasioned the payment of benefits under  
22 this chapter had such individual applied for such  
23 benefits. It is the intent of this paragraph to cause no  
24 disqualification for benefits for such an individual who  
25 complies with the foregoing set of requirements and  
26 conditions. Further, for the purpose of this subdivision,  
27 an individual shall not be deemed to have left his most  
28 recent work voluntarily without good cause involving  
29 fault on the part of the employer, if such individual was  
30 compelled to leave his work for his own health-related  
31 reasons and presents certification from a licensed  
32 physician that his work aggravated, worsened, or will  
33 worsen the individual's health problem.

34 (2) For the week in which he was discharged from his  
35 most recent work for misconduct and the six weeks  
36 immediately following such week; or for the week in  
37 which he was discharged from his last thirty-day  
38 employing unit for misconduct and the six weeks  
39 immediately following such week. Such disqualification  
40 shall carry a reduction in the maximum benefit amount  
41 equal to six times the individual's weekly benefit.  
42 However, if the claimant returns to work in covered  
43 employment for thirty days during his benefit year,  
44 whether or not such days are consecutive, the maximum  
45 benefit amount shall be increased by the amount of the

46 decrease imposed under the disqualification; except  
47 that:

48 If he were discharged from his most recent work for  
49 one of the following reasons, or if he were discharged  
50 from his last thirty days employing unit for one of the  
51 following reasons: Misconduct consisting of willful  
52 destruction of his employer's property; assault upon the  
53 person of his employer or any employee of his employer;  
54 if such assault is committed at such individual's place  
55 of employment or in the course of employment; report-  
56 ing to work in an intoxicated condition, or being  
57 intoxicated while at work; reporting to work under the  
58 influence of any controlled substance, or being under the  
59 influence of any controlled substance while at work;  
60 arson, theft, larceny, fraud or embezzlement in connec-  
61 tion with his work; or any other gross misconduct; he  
62 shall be and remain disqualified for benefits until he has  
63 thereafter worked for at least thirty days in covered  
64 employment: *Provided*, That for the purpose of this  
65 subdivision the words "any other gross misconduct"  
66 shall include, but not be limited to, any act or acts of  
67 misconduct where the individual has received prior  
68 written warning that termination of employment may  
69 result from such act or acts.

70 (3) For the week in which he failed without good  
71 cause to apply for available, suitable work, accept  
72 suitable work when offered, or return to his customary  
73 self-employment when directed to do so by the commis-  
74 sioner, and for the four weeks which immediately follow  
75 for such additional period as any offer of suitable work  
76 shall continue open for his acceptance. Such disqualifi-  
77 cation shall carry a reduction in the maximum benefit  
78 amount equal to four times the individual's weekly  
79 benefit amount.

80 (4) For a week in which his total or partial unemploy-  
81 ment is due to a stoppage of work which exists because  
82 of a labor dispute at the factory, establishment or other  
83 premises at which he was last employed, unless the  
84 commissioner is satisfied that he (1) was not participat-  
85 ing, financing, or directly interested in such dispute,  
86 and (2) did not belong to a grade or class of workers who



87 were participating, financing or directly interested in  
88 the labor dispute which resulted in the stoppage of  
89 work. No disqualification under this subdivision shall be  
90 imposed if the employees are required to accept wages,  
91 hours or conditions of employment substantially less  
92 favorable than those prevailing for similar work in the  
93 locality, or if employees are denied the right of collective  
94 bargaining under generally prevailing conditions, or if  
95 an employer shuts down his plant or operation or  
96 dismisses his employees in order to force wage reduc-  
97 tion, changes in hours or working conditions.

98 For the purpose of this subdivision, if any stoppage  
99 of work continues longer than four weeks after the  
100 termination of the labor dispute which caused stoppage  
101 of work, there shall be a rebuttable presumption that  
102 part of the stoppage of work which exists after said  
103 period of four weeks after the termination of said labor  
104 dispute did not exist because of said labor dispute; and  
105 in such event the burden shall be upon the employer or  
106 other interested party to show otherwise.

107 (5) For a week with respect to which he is receiving  
108 or has received:

109 (a) Wages in lieu of notice;

110 (b) Compensation for temporary total disability under  
111 the workers' compensation law of any state or under a  
112 similar law of the United States; or

113 (c) Unemployment compensation benefits under the  
114 laws of the United States or any other state.

115 (6) For the week in which an individual has voluntar-  
116 ily quit employment to marry or to perform any marital,  
117 parental or family duty, or to attend to his or her  
118 personal business or affairs and until the individual  
119 returns to covered employment and has been employed  
120 in covered employment at least thirty working days.

121 (7) Benefits shall not be paid to any individual on the  
122 basis of any services, substantially all of which consist  
123 of participating in sports or athletic events or training  
124 or preparing to so participate, for any week which  
125 commences during the period between two successive  
126 sport seasons (or similar periods) if such individual

127 performed such services in the first of such seasons (or  
128 similar periods) and there is a reasonable assurance that  
129 such individual will perform such services in the later  
130 of such seasons (or similar periods).

131 (8) (a) Benefits shall not be paid on the basis of  
132 services performed by an alien unless such alien is an  
133 individual who was lawfully admitted for permanent  
134 residence at the time such services were performed, was  
135 lawfully present for purposes of performing such  
136 services, or was permanently residing in the United  
137 States under color of law at the time such services were  
138 performed (including an alien who is lawfully present  
139 in the United States as a result of the application of the  
140 provisions of section 203(a)(7) or section 212(d)(5) of the  
141 Immigration and Nationality Act): *Provided*, That any  
142 modifications to the provisions of section 3304(a)(14) of  
143 the federal unemployment tax act as provided by Public  
144 Law 94-566 which specify other conditions or other  
145 effective date than stated herein for the denial of  
146 benefits based on services performed by aliens and  
147 which modifications are required to be implemented  
148 under state law as a condition for full tax credit against  
149 the tax imposed by the federal unemployment tax act  
150 shall be deemed applicable under the provisions of this  
151 section;

152 (b) Any data or information required of individuals  
153 applying for benefits to determine whether benefits are  
154 not payable to them because of their alien status shall  
155 be uniformly required from all applicants for benefits;

156 (c) In the case of an individual whose application for  
157 benefits would otherwise be approved, no determination  
158 that benefits to such individual are not payable because  
159 of his alien status shall be made except upon a preponderance of the evidence.

161 (9) For each week in which an individual is unem-  
162 ployed because, having voluntarily left employment to  
163 attend a school, college, university or other educational  
164 institution, he is attending such school, college, univer-  
165 sity or other educational institution, or is awaiting  
166 entrance thereto or is awaiting the starting of a new

167 term or session thereof, and until the individual returns  
168 to covered employment.

169 (10) For each week in which he is unemployed  
170 because of his request, or that of his duly authorized  
171 agent, for a vacation period at a specified time that  
172 would leave the employer no other alternative but to  
173 suspend operations.

174 (11) For each week with respect to which he is  
175 receiving or has received benefits under Title II of the  
176 social security act or similar payments under any act of  
177 Congress and/or remuneration in the form of an  
178 annuity, pension or other retirement pay from a base  
179 period and/or chargeable employer or from any trust or  
180 fund contributed to by a base period and/or chargeable  
181 employer, the weekly benefit amount payable to such  
182 individual for such week shall be reduced (but not below  
183 zero) by the prorated weekly amount of said benefits,  
184 payments and/or remuneration: *Provided*, That if such  
185 amount of benefits is not a multiple of one dollar, it shall  
186 be computed to the next lowest multiple of one dollar:  
187 *Provided, however*, That there shall be no disqualifica-  
188 tion if in the individual's base period there are no wages  
189 which were paid by the base period and/or chargeable  
190 employer paying such remuneration, or by a fund into  
191 which the employer has paid during said base period.  
192 Claimant may be required to certify as to whether or  
193 not he is receiving or has been receiving remuneration  
194 in the form of an annuity, pension or other retirement  
195 pay from a base period and/or chargeable employer or  
196 from a trust fund contributed to by a base period and/or  
197 chargeable employer.

198 (12) For each week in which and for fifty-two weeks  
199 thereafter, beginning with the date of the decision, if the  
200 commissioner finds such individual who within twenty-  
201 four calendar months immediately preceding such  
202 decision, has made a false statement or representation  
203 knowing it to be false or knowingly fails to disclose a  
204 material fact, to obtain or increase any benefit or  
205 payment under this article: *Provided*, That disqualifica-  
206 tion under this subdivision shall not preclude prosecu-  
207 tion under section seven, article ten of this chapter.

**ARTICLE 8A. EMPLOYMENT SECURITY DEBT FUNDS.****§21A-8A-8. Assessments; dedication of assessments; commissioner's authority to adjust assessments.**

1 (a) On and after the first day of July, one thousand  
2 nine hundred eighty-seven, every employer, contribut-  
3 ing and reimbursable, subject to this chapter, shall be  
4 required to withhold from all persons in his employment  
5 an assessment which shall be in an amount not to exceed  
6 thirty-five one-hundredths (35/100) of one percent of  
7 said employee's gross wages, which amount, together  
8 with an assessment contributed by the employer in an  
9 amount as determined in accordance with the provisions  
10 of subsection (b) of this section, except for reimbursable  
11 employers who shall not be assessed, shall be paid to the  
12 division of employment security on a form prescribed by  
13 the commissioner, at the same time and under the same  
14 conditions as the quarterly contribution payments  
15 required under the provisions of section seven, article  
16 five, chapter twenty-one-a of this code. The commis-  
17 sioner shall have the right to collect any delinquent  
18 assessments under this section in the same manner as  
19 provided for in section sixteen, article five, chapter  
20 twenty-one-a of this code; and in addition, any delin-  
21 quency hereunder shall bear interest as set forth in  
22 section seventeen, article five, chapter twenty-one-a of  
23 this code.

24 (b) The commissioner shall establish the exact  
25 amounts of the employers' and employees' assessments  
26 at a level sufficient to generate the revenues needed to  
27 retire the bonds or notes issued pursuant to this article  
28 and to pay deferred interest owed to the federal  
29 government when due, subject only to the limitation  
30 established in the preceding subsection (a) of this  
31 section. After determining the level of assessment on the  
32 gross wages of employees, the commissioner shall  
33 determine a rate of assessment to be imposed upon  
34 employers, except reimbursable employers, which rate  
35 shall be expressed as a percentage of wages, as defined  
36 in section three, article one of this chapter, except that  
37 for purposes of this section such wages shall include all

38 of that part of the remuneration paid to an employee  
39 that is less than twenty-one thousand dollars during any  
40 calendar year, and which is sufficient to cause the total  
41 statewide assessment on such employers to equal the  
42 total statewide assessment imposed upon employees.

43 (c) The proceeds derived from the assessments pro-  
44 vided for in this section shall be placed in the special  
45 nonrevolving revenue funds established pursuant to the  
46 provisions of section two of this article to be held by the  
47 commissioner separate and apart from all other funds  
48 and accounts created under this chapter and the funds,  
49 together with the interest derived therefrom, shall be  
50 pledged and utilized only for the repayment of bonds or  
51 notes issued under the provisions of this article and the  
52 payment of deferred interest owed to the federal  
53 government as the same becomes due. At such time as  
54 there are no longer any bonds, notes or other evidences  
55 of indebtedness outstanding which are payable from the  
56 special nonrevolving revenue funds, any remaining  
57 balance in these special accounts shall be paid into the  
58 unemployment compensation trust fund. The commis-  
59 sioner may establish additional special accounts and  
60 subaccounts with the employment security administra-  
61 tion fund for the purpose of identifying more precisely  
62 the sources of payments into and disbursements from  
63 the employment security administration fund.

64 (d) Prior to the beginning of any quarter during  
65 which bonds or notes authorized by this article will be  
66 outstanding, the commissioner may adjust the amount  
67 of the assessment set forth in subsection (a) of this  
68 section; however, the amount is never to exceed thirty-  
69 five one-hundredths ( $35/100$ ) of one percent of each said  
70 employee's gross wages. The assessment shall cease  
71 when all the bonds or notes are repaid.

72 (e) Any employer or corporate officer if employer is  
73 a corporation, who fails to remit to the division of  
74 employment security the assessments provided for  
75 under this section shall be guilty of a felony, and, upon  
76 conviction, shall be punished by a fine of not less than  
77 five thousand dollars nor more than ten thousand

78 dollars, or by imprisonment of not less than one year,  
79 or both.

**ARTICLE 9. EMPLOYMENT SECURITY ADMINISTRATION FUND.**

**§21A-9-9. Reed Act appropriations.**

1 (1) There is hereby appropriated out of funds made  
2 available to this state under section 903 of the social  
3 security act, as amended, the sum of one million, two  
4 hundred eighty-nine thousand, eight hundred thirty-  
5 nine dollars, or so much thereof as may be necessary,  
6 to be used, for the purpose of property improvements  
7 and/or automation enhancements of the unemployment  
8 insurance or job service activities within the division of  
9 employment security.

10 (2) No part of the money hereby appropriated may be  
11 obligated after the expiration of the two-year period  
12 beginning on the date of enactment of this act.

13 (3) The amount obligated pursuant to this act during  
14 any twelve-month period beginning on the first day of  
15 July and ending on June thirtieth shall not exceed the  
16 amount by which (a) the aggregate of the amounts  
17 credited to the account of this state pursuant to section  
18 903 of the social security act during such twelve-month  
19 period and the thirty-four preceding twelve-month  
20 periods exceeds (b) the aggregate of the amounts  
21 obligated for administration and paid out for benefits  
22 and charged against the amounts credited to the account  
23 of this state during such thirty-five twelve-month  
24 periods.

**ARTICLE 10. GENERAL PROVISIONS.**

§21A-10-7. False representations; penalties.

§21A-10-8. Recovery of benefits paid on misrepresentation; limitations.

§21A-10-11. Requiring information; use of information; libel and slander actions prohibited.

§21A-10-19. Disclosure of information to child support agencies.

**§21A-10-7. False representations; penalties.**

1 A person who makes a false statement or representa-  
2 tion knowing it to be false or who knowingly fails to  
3 disclose a material fact in order to obtain or attempt to  
4 obtain or increase a benefit, either for himself or

5 another, under this chapter, or under an employment  
6 security law of any other state or of the federal  
7 government for either of which jurisdictions this state  
8 is acting as an agent, shall be guilty of a misdemeanor,  
9 and, upon conviction, punished by a fine of not less than  
10 one hundred dollars nor more than one thousand dollars,  
11 or by imprisonment for not longer than thirty days, or  
12 both, and by full repayment of all benefits so obtained  
13 fraudulently. Each false statement or representation, or  
14 failure to disclose a material fact, shall constitute a  
15 separate offense.

**§21A-10-8. Recovery of benefits paid on misrepresentation; limitations.**

1 A person who, by reason of nondisclosure or misre-  
2 presentation, either by himself or another (irrespective  
3 of whether such nondisclosure or misrepresentation was  
4 known or fraudulent), has received a sum as a benefit  
5 under this chapter, shall either have such sum deducted  
6 from a future benefit payable to him or shall repay to  
7 the commissioner the amount which he has received.  
8 Collection shall be made in the same manner as  
9 collection of past-due payments against employers as set  
10 forth in section sixteen of article five of this chapter,  
11 which specifically includes the institution of civil action  
12 and collection procedures thereon enumerated in said  
13 section: *Provided*, That such collection or deduction of  
14 benefits shall be barred after the expiration of five  
15 years, except for known or fraudulent nondisclosure or  
16 misrepresentation which shall be barred after the  
17 expiration of ten years, from the date of the filing of the  
18 claim in connection with which such nondisclosure or  
19 misrepresentation occurred.

**§21A-10-11. Requiring information; use of information; libel and slander actions prohibited.**

- 1 (a) The commissioner may require an employing unit  
2 to provide sworn or unsworn reports concerning:
- 3 (1) The number of individuals in its employ.
  - 4 (2) Individually their hours of labor.
  - 5 (3) Individually the rate and amount of wages.

6 (4) Such other information as is reasonably connected  
7 with the administration of this chapter.

8 (b) Information thus obtained shall not be published  
9 or be open to public inspection so as to reveal the  
10 identity of the employing unit or the individual.

11 (c) Notwithstanding the provisions of subsection (b) of  
12 this section, the commissioner may provide information  
13 thus obtained to the following governmental entities for  
14 purposes consistent with state and federal laws:

15 (1) The United States department of agriculture;

16 (2) The state agency responsible for enforcement of  
17 the medicaid program under Title Nineteen of the social  
18 security act;

19 (3) The United States department of health and  
20 human services or any state or federal program  
21 operating and approved under Title One, Title Two,  
22 Title Ten, Title Fourteen or Title Sixteen of the social  
23 security act;

24 (4) Those agencies of state government responsible for  
25 economic and community development; secondary, post-  
26 secondary and vocational education; vocational rehabil-  
27 itation, employment and training, including, but not  
28 limited to, the administration of the perkins act and the  
29 job training and partnership act;

30 (5) The tax division, but only for the purposes of  
31 collection and enforcement;

32 (6) The division of labor for purposes of enforcing the  
33 wage bond provisions of chapter twenty-one of this code;

34 (7) Any agency of this or any other state, or any  
35 federal agency, charged with the administration of an  
36 unemployment compensation law or the maintenance of  
37 a system of public employment offices;

38 (8) Any claimant for benefits or any other interested  
39 party to the extent necessary for the proper presentation  
40 or defense of a claim.

41 (d) The agencies or organizations which receive  
42 information under subsection (c) shall agree that such



43 information shall remain confidential so as not to reveal  
44 the identity of the employing unit or the individual  
45 consistent with the provisions of this chapter.

46 (e) The commissioner may, before furnishing any  
47 information permitted under this section, require that  
48 those who request the information shall reimburse the  
49 division of employment security for any cost associated  
50 therewith.

51 (f) The commissioner may refuse to provide any  
52 information requested under this section if the agency  
53 or organization making the request does not certify that  
54 it will comply with the state and federal law protecting  
55 the confidentiality of such information.

56 A person who violates the provisions of this section  
57 shall be guilty of a misdemeanor, and, upon conviction,  
58 shall be fined not less than twenty dollars nor more than  
59 two hundred dollars, or imprisoned not longer than  
60 ninety days, or both.

61 No action for slander or libel, either criminal or civil,  
62 shall be predicated upon information furnished by any  
63 employer or any employee to the commissioner in  
64 connection with the administration of any of the  
65 provisions of this chapter.

**§21A-10-19. Disclosure of information to child support agencies.**

1 (1) The division of employment security shall disclose,  
2 upon request, to officers or employees of any state or  
3 local child support enforcement agency, to employees of  
4 the secretary of health and human services, any wage  
5 and benefit information with respect to an identified  
6 individual 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  
10 described in sections 453 and 454 of the social security  
11 act, which has been approved by the secretary of health  
12 and human services under Part D, Title IV of the social  
13 security act.

14 (2) The requesting agency shall agree that such  
15 information is to be used only for the purpose of  
16 establishing and collecting child support obligations  
17 from, and locating, individuals owing such obligations  
18 which are being enforced pursuant to a plan described  
19 in sections 453 and 454 of the social security act which  
20 has been approved by the secretary of health and human  
21 services under Part D, Title IV of the social security act.

22 (3) The information shall not be released unless the  
23 requesting agency agrees to reimburse the costs  
24 involved for furnishing such information.

25 (4) In addition to the requirements of this section, all  
26 other requirements with respect to confidentiality of  
27 information obtained in the administration of this  
28 chapter and the sanctions imposed on improper disclo-  
29 sure shall apply to the use of such information by  
30 officers and employees of child support agencies.

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## CHAPTER 186

(S. B. 62—By Senators Dittmar and Heck)

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[Passed March 6, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one-a, 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 two-a, relating to the commission on uniform state laws; and adding life members to the commission.

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

That article one-a, 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 two-a, to read as follows:

### ARTICLE 1A. COMMISSION ON UNIFORM STATE LAWS.

#### §29-1A-2a. Life members.

1 In addition to the commissioners appointed and

2 serving pursuant to other provisions of this article, any  
3 person who serves as a member of the commission for  
4 twenty years and because of such years of service is  
5 appointed by the national conference of commissioners  
6 on uniform state laws as a life member of such  
7 conference shall remain as an additional member of the  
8 commission, and shall have the same duties, responsibil-  
9 ities and privileges as any member of the commission  
10 appointed by the governor.

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## CHAPTER 187

(S. B. 615—Originating in the Committee on Government Organization)

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[Passed March 9, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section one, article two, chapter five-f of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to transferring the administration of the department of veterans' affairs and veterans' council from the department of health and human resources to the department of public safety.

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

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

### ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

#### **\*§5F-2-1. Transfer and incorporation of agencies and boards.**

1 (a) The following agencies and boards, including all  
2 of the allied, advisory, affiliated or related entities and  
3 funds associated with any such agency or board, are  
4 hereby transferred to and incorporated in and shall be  
5 administered as a part of the department of  
6 administration:

7 (1) Building commission provided for in article six,  
8 chapter five of this code;

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\* Clerk's Notes: §5F-2-1 was also amended by S. B. 147 (Chapter 66), which passed prior to this act.

- 9       (2) Records management and preservation advisory  
10 committee provided for in article eight, chapter five of  
11 this code;
- 12       (3) Public employees retirement system and board of  
13 trustees provided for in article ten, chapter five of this  
14 code;
- 15       (4) Public employees insurance agency and public  
16 employees advisory board provided for in article sixteen,  
17 chapter five of this code;
- 18       (5) Department of finance and administration and  
19 council of finance and administration provided for in  
20 article one, chapter five-a of this code;
- 21       (6) Employee suggestion award board provided for in  
22 article one-a, chapter five-a of this code;
- 23       (7) Governor's mansion advisory committee provided  
24 for in article five, chapter five-a of this code;
- 25       (8) Advisory commission to the information system  
26 services division in the department of finance and  
27 administration provided for in article seven, chapter  
28 five-a of this code;
- 29       (9) Teachers retirement system and teachers' retire-  
30 ment board provided for in article seven-a, chapter  
31 eighteen of this code;
- 32       (10) Commission on uniform state laws provided for  
33 in article one-a, chapter twenty-nine of this code;
- 34       (11) Department of personnel of the civil service  
35 system and the civil service commission provided for in  
36 article six, chapter twenty-nine of this code;
- 37       (12) Education and state employees grievance board  
38 provided for in article twenty-nine, chapter eighteen  
39 and article six-a, chapter twenty-nine of this code;
- 40       (13) Board of risk and insurance management pro-  
41 vided for in article twelve, chapter twenty-nine of this  
42 code;
- 43       (14) Boundary commission provided for in article  
44 twenty-three, chapter twenty-nine of this code;

45 (15) Public legal services council provided for in  
46 article twenty-one, chapter twenty-nine of this code;

47 (16) Division of personnel which may be hereafter  
48 created by the Legislature; and

49 (17) The West Virginia ethics commission which may  
50 be hereafter created by the Legislature.

51 (b) The following agencies and boards, including all  
52 of the allied, advisory, affiliated or related entities and  
53 funds associated with any such agency or board, are  
54 hereby transferred to and incorporated in and shall be  
55 administered as a part of the department of commerce,  
56 labor and environmental resources:

57 (1) Forest management review commission provided  
58 for in article twenty-four, chapter five of this code;

59 (2) Department of commerce provided for in article  
60 one, chapter five-b of this code;

61 (3) Office of community and industrial development  
62 provided for in article two, chapter five-b of this code;

63 (4) Enterprise zone authority provided for in article  
64 two-b, chapter five-b of this code;

65 (5) Office of federal procurement assistance provided  
66 for in article two-c, chapter five-b of this code;

67 (6) Export development authority provided for in  
68 article three, chapter five-b of this code;

69 (7) Labor-management council provided for in article  
70 four, chapter five-b of this code;

71 (8) Industry and jobs development corporation pro-  
72 vided for in article one, chapter five-c of this code;

73 (9) Public energy authority and board provided for in  
74 chapter five-d of this code;

75 (10) Air pollution control commission provided for in  
76 article twenty, chapter sixteen of this code;

77 (11) Resource recovery—solid waste disposal author-  
78 ity provided for in article twenty-six, chapter sixteen of  
79 this code;

- 80 (12) Division of forestry and forestry commission  
81 provided for in article one-a, chapter nineteen of this  
82 code;
- 83 (13) Department of natural resources and natural  
84 resources commission provided for in article one,  
85 chapter twenty of this code;
- 86 (14) Water resources board provided for in article  
87 five, chapter twenty of this code;
- 88 (15) Water development authority and board provided  
89 for in article five-c, chapter twenty of this code;
- 90 (16) Department of labor provided for in article one,  
91 chapter twenty-one of this code;
- 92 (17) Labor-management relations board provided for  
93 in article one-b, chapter twenty-one of this code;
- 94 (18) Public employees occupational safety and health  
95 advisory board provided for in article three-a, chapter  
96 twenty-one of this code;
- 97 (19) Minimum wage rate board provided for in article  
98 five-a, chapter twenty-one of this code;
- 99 (20) Board of manufactured housing construction and  
100 safety provided for in article nine, chapter twenty-one  
101 of this code;
- 102 (21) Department of energy provided for in article one,  
103 chapter twenty-two of this code;
- 104 (22) Reclamation board of review provided for in  
105 article four, chapter twenty-two of this code;
- 106 (23) Board of appeals provided for in article five,  
107 chapter twenty-two of this code;
- 108 (24) Board of coal mine health and safety and coal  
109 mine safety and technical review committee provided  
110 for in article six, chapter twenty-two of this code;
- 111 (25) Shallow gas well review board provided for in  
112 article seven, chapter twenty-two of this code;
- 113 (26) Oil and gas conservation commission provided for  
114 in article eight, chapter twenty-two of this code;

- 115 (27) Board of miner training, education and certifica-  
116 tion provided for in article nine, chapter twenty-two of  
117 this code;
- 118 (28) Mine inspectors' examining board provided for in  
119 article eleven, chapter twenty-two of this code;
- 120 (29) Oil and gas inspectors' examining board provided  
121 for in article thirteen, chapter twenty-two of this code;
- 122 (30) Geological and economic survey provided for in  
123 article two, chapter twenty-nine of this code;
- 124 (31) Blennerhassett historical park commission pro-  
125 vided for in article eight, chapter twenty-nine of this  
126 code;
- 127 (32) Tourist train and transportation board provided  
128 for in article twenty-four, chapter twenty-nine of this  
129 code;
- 130 (33) Economic development authority provided for in  
131 article fifteen, chapter thirty-one of this code;
- 132 (34) Board of members of the forest industries  
133 industrial foundation provided for in article sixteen,  
134 chapter thirty-one of this code;
- 135 (35) Department of banking provided for in article  
136 two, chapter thirty-one-a of this code;
- 137 (36) Board of banking and financial institutions  
138 provided for in article three, chapter thirty-one-a of this  
139 code;
- 140 (37) Consumer affairs advisory council provided for in  
141 article seven, chapter forty-six-a of this code; and
- 142 (38) Lending and credit rate board provided for in  
143 chapter forty-seven-a of this code.
- 144 (c) The following agencies and boards, including all  
145 of the allied, advisory, affiliated or related entities and  
146 funds associated with any such agency or board, are  
147 hereby transferred to and incorporated in and shall be  
148 administered as a part of the department of education  
149 and the arts:

150 (1) Library commission provided for in article one,  
151 chapter ten of this code;

152 (2) Educational broadcasting authority provided for  
153 in article five, chapter ten of this code;

154 (3) Board of regents provided for in article twenty-six,  
155 chapter eighteen of this code; and

156 (4) Department of culture and history, archives and  
157 history commission and commission on the arts provided  
158 for in article one, chapter twenty-nine of this code.

159 (d) The following agencies and boards, including all  
160 of the allied, advisory, affiliated or related entities and  
161 funds associated with any such agency or board, are  
162 hereby transferred to and incorporated in and shall be  
163 administered as a part of the department of health and  
164 human resources:

165 (1) Human rights commission provided for in article  
166 eleven, chapter five of this code;

167 (2) Department of human services provided for in  
168 article two, chapter nine of this code;

169 (3) Department of health and board of health pro-  
170 vided for in article one, chapter sixteen of this code;

171 (4) Health care planning council provided for in  
172 article two-d, chapter sixteen of this code;

173 (5) Office of emergency medical services and advisory  
174 council thereto provided for in article four-c, chapter  
175 sixteen of this code;

176 (6) Continuum of care board for the elderly, disabled  
177 and terminally ill provided for in article five-d, chapter  
178 sixteen of this code;

179 (7) Hospital finance authority provided for in article  
180 twenty-nine-a, chapter sixteen of this code;

181 (8) Health care cost review authority provided for in  
182 article twenty-nine-b, chapter sixteen of this code;

183 (9) Structural barriers compliance board provided for  
184 in article ten-f, chapter eighteen of this code;



185 (10) Department of employment security, state advi-  
186 sory council thereto and board of review provided for  
187 in chapter twenty-one-a of this code;

188 (11) Office of workers' compensation commissioner,  
189 advisory board thereto and workers' compensation  
190 appeal board provided for in chapter twenty-three of  
191 this code;

192 (12) Commission on aging provided for in article  
193 fourteen, chapter twenty-nine of this code;

194 (13) Commission on mental retardation and advisory  
195 committee thereto provided for in article fifteen,  
196 chapter twenty-nine of this code;

197 (14) Women's commission provided for in article  
198 twenty, chapter twenty-nine of this code; and

199 (15) Commission on children and youth provided for  
200 in article six-c, chapter forty-nine of this code.

201 (e) The following agencies and boards, including all  
202 of the allied, advisory, affiliated or related entities and  
203 funds associated with any such agency or board, are  
204 hereby transferred to and incorporated in and shall be  
205 administered as a part of the department of public  
206 safety:

207 (1) Adjutant general's department provided for in  
208 article one-a, chapter fifteen of this code;

209 (2) Armory board provided for in article six, chapter  
210 fifteen of this code;

211 (3) Military awards board provided for in article one-  
212 g, chapter fifteen of this code;

213 (4) Department of public safety and commission on  
214 drunk driving prevention provided for in article two,  
215 chapter fifteen of this code;

216 (5) Office of emergency services and emergency  
217 services advisory council provided for in article five,  
218 chapter fifteen of this code;

219 (6) Sheriffs' bureau provided for in article eight,  
220 chapter fifteen of this code;

- 221 (7) Department of corrections provided for in chapter  
222 twenty-five of this code;
- 223 (8) Fire commission and state fire administrator  
224 provided for in article three, chapter twenty-nine of this  
225 code;
- 226 (9) Regional jail and prison authority provided for in  
227 article twenty, chapter thirty-one of this code;
- 228 (10) Board of probation and parole provided for in  
229 article twelve, chapter sixty-two of this code; and
- 230 (11) Department of veterans' affairs and veterans'  
231 council provided for in article one, chapter nine-a of this  
232 code.
- 233 (f) The following agencies and boards, including all of  
234 the allied, advisory, affiliated or related entities and  
235 funds associated with any such agency or board, are  
236 hereby transferred to and incorporated in and shall be  
237 administered as a part of the department of tax and  
238 revenue:
- 239 (1) Tax department provided for in article one,  
240 chapter eleven of this code;
- 241 (2) Appraisal control and review commission provided  
242 for in article one-a, chapter eleven of this code;
- 243 (3) Office of nonintoxicating beer commissioner  
244 provided for in article sixteen, chapter eleven of this  
245 code;
- 246 (4) Board of investments provided for in article six,  
247 chapter twelve of this code;
- 248 (5) Municipal bond commission provided for in article  
249 three, chapter thirteen of this code;
- 250 (6) Racing commission provided for in article twenty-  
251 three, chapter nineteen of this code;
- 252 (7) Lottery commission and position of lottery director  
253 provided for in article twenty-two, chapter twenty-nine  
254 of this code;
- 255 (8) Agency of insurance commissioner provided for in  
256 article two, chapter thirty-three of this code;

257 (9) Office of alcohol beverage control commissioner  
258 provided for in article two, chapter sixty of this code;  
259 and

260 (10) Division of professional and occupational licenses  
261 which may be hereafter created by the Legislature.

262 (g) The following agencies and boards, including all  
263 of the allied, advisory, affiliated or related entities and  
264 funds associated with any such agency or board, are  
265 hereby transferred to and incorporated in and shall be  
266 administered as a part of the department of  
267 transportation:

268 (1) Road commission provided for in article two,  
269 chapter seventeen of this code;

270 (2) Department of highways provided for in article  
271 two-a, chapter seventeen of this code;

272 (3) Turnpike commission provided for in article  
273 sixteen-a, chapter seventeen of this code;

274 (4) Department of motor vehicles provided for in  
275 article two, chapter seventeen-a of this code;

276 (5) Driver's licensing advisory board provided for in  
277 article two, chapter seventeen-b of this code;

278 (6) Motorcycle safety standards and specifications  
279 board provided for in article fifteen, chapter seventeen-  
280 c of this code;

281 (7) Aeronautics commission provided for in article  
282 two-a, chapter twenty-nine of this code;

283 (8) Railroad maintenance authority provided for in  
284 article eighteen, chapter twenty-nine of this code; and

285 (9) Port authority which may be hereafter created by  
286 the Legislature.

287 (h) Except for such powers, authority and duties as  
288 have been delegated to the secretaries of the depart-  
289 ments by the provisions of section two of this article, the  
290 existence of the position of administrator and of the  
291 agency and the powers, authority and duties of each  
292 administrator and agency shall not be affected by the  
293 enactment of this chapter.

294 (i) Except for such powers, authority and duties as

295 have been delegated to the secretaries of the depart-  
 296 ments by the provisions of section two of this article, the  
 297 existence, powers, authority and duties of boards and  
 298 the membership, terms and qualifications of members  
 299 of such boards shall not be affected by the enactment  
 300 of this chapter, and all boards which are appellate  
 301 bodies or were otherwise established to be independent  
 302 decision-makers shall not have their appellate or  
 303 independent decision-making status affected by the  
 304 enactment of this chapter.

305 (j) Wherever elsewhere in this code, in any act, in  
 306 general or other law, in any rule or regulation, or in any  
 307 ordinance, resolution or order, reference is made to any  
 308 department transferred to and incorporated in a  
 309 department created in section two, article one of this  
 310 chapter, such reference shall henceforth be read,  
 311 construed and understood to mean a division of the  
 312 appropriate department so created, and any such  
 313 reference elsewhere to a division of a department so  
 314 transferred and incorporated shall henceforth be read,  
 315 construed and understood to mean a section of the  
 316 appropriate division of the department so created.

317 (k) The crime victims compensation fund provided for  
 318 in article two-a, chapter fourteen of this code, including  
 319 all of the allied, advisory, affiliated or related entities  
 320 and funds associated therewith is hereby transferred to  
 321 and incorporated in and shall be administered as a part  
 322 of the court of claims.

323 (l) The department of veterans' affairs and veterans'  
 324 council provided for in article one, chapter nine-a of this  
 325 code, including all of the allied, advisory, affiliated or  
 326 related entities and funds associated therewith is hereby  
 327 transferred to and incorporated in and shall be admin-  
 328 istered as a part of the department of public safety.

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## CHAPTER 188

(H. B. 4769—By Mr. Speaker, Mr. Chambers, and Delegate Houvouras)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two,  
 chapter nine-a of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, relating to state homes for veterans.

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

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

## ARTICLE 2. STATE HOMES FOR VETERANS.

### §9A-2-1. State homes for veterans.

1 In consultation with the governor and other appropriate state agencies, the division of veterans' affairs shall  
2 establish and maintain throughout the state a home or  
3 homes for qualified veterans. The present Soldiers  
4 Home at Weston State Hospital shall be reidentified as  
5 Veterans Unit of Weston State Hospital and continued  
6 as formerly constituted. As used in this article the term  
7 "qualified veteran" means a veteran as determined by  
8 the division of veterans' affairs, who: (a) Is ambulatory  
9 and is able to attend to his personal needs, dress himself  
10 and attend a general mess; (b) served on active duty in  
11 the armed forces of the United States of America or a  
12 nation allied therewith; and (c) was discharged or  
13 separated with an honorable discharge or with a general  
14 discharge under honorable conditions.  
15

16 A veteran who meets conditions (b) and (c) but due  
17 to worsening conditions of health cannot meet condition  
18 (a), and therefore requires a higher level of health care,  
19 shall be deemed a qualified veteran.

20 Any individual enlisting for the first time on or after  
21 the eighth day of September, one thousand nine hundred  
22 eighty, who fails to complete at least twenty-four months  
23 of his enlistment is not eligible for any right, privilege  
24 or benefit for which eligibility is based on active duty  
25 in the armed forces. This provision does not apply when  
26 a person (a) is discharged because of hardship, (b) is  
27 retired or separated because of disability or (c) is later  
28 determined to have a service connected disability  
29 incurred during a completed period of enlistment.

30 In the event that a residential vacancy exists at any

31 veterans home or facility created and established  
32 pursuant to this article, a veteran who has been a  
33 resident of the state of West Virginia for one year or  
34 more prior to filing for admission shall be given  
35 preference in filling such residential vacancy over  
36 nonresident veterans.

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## CHAPTER 189

(Com. Sub. for S. B. 559—By Senators Jones, Heck, Burdette, Mr. President,  
Brackenrich, Craig, Dittmar, Blatnik, Chernenko, Tomblin, Jackson and Spears)

[Passed March 10, 1990; in effect July 1, 1990. 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 sixteen-c, relating to creation of the West Virginia wayport authority; board of directors; members; officers; qualifications; terms; oath; compensation; quorum; delegation of power; executive director; purpose of authority; transportation development; definitions; powers and duties of authority; wayport revenue bonds; and special West Virginia wayport authority operations fund.

*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 sixteen-c, to read as follows:

### CHAPTER 17. ROADS AND HIGHWAYS.

#### ARTICLE 16C. WAYPORT AUTHORITY.

- §17-16C-1. Creation of authority.
- §17-16C-2. Board of directors; members; officers; qualifications; terms; oath; compensation; quorum and delegation of power.
- §17-16C-3. Executive director.
- §17-16C-4. Purposes of authority; transportation development.
- §17-16C-5. Definitions.
- §17-16C-6. Powers and duties of authority.
- §17-16C-7. Wayport revenue bonds—Generally.

- §17-16C-8. Wayport revenue bonds—Trust agreements.
- §17-16C-9. Tolls, rents, fees, charges and revenues.
- §17-16C-10. Trust funds.
- §17-16C-11. Remedies.
- §17-16C-12. Exemption from taxes.
- §17-16C-13. Preliminary expenses.
- §17-16C-14. Wayport revenue refunding bonds—Generally.
- §17-16C-15. Special West Virginia Wayport Authority operations fund.
- §17-16C-16. Severability.

#### §17-16C-1. Creation of authority.

1 The West Virginia Wayport Authority is hereby  
2 created and shall be under the supervision of the  
3 secretary of transportation pursuant to the provisions of  
4 chapter five-f of this code.

#### §17-16C-2. Board of directors; members; officers; qualifications; terms; oath; compensation; quorum and delegation of power.

1 (a) The governing and administrative powers of the  
2 authority shall be vested in a board of directors  
3 consisting of seven members, including the transporta-  
4 tion secretary, or his or her designee, who shall serve  
5 as the chairman of the wayport authority, and six  
6 individuals shall be appointed by the governor with the  
7 advice and consent of the Senate: *Provided*, That no  
8 more than four members shall be members of the same  
9 political party.

10 All directors of the authority shall be residents of the  
11 state of West Virginia.

12 The directors shall annually elect one of their  
13 members as vice chairman, one as secretary and one as  
14 treasurer. The board may elect such other officers from  
15 its membership or from its staff as it deems proper, and  
16 prescribe their powers and duties. Appointments to fill  
17 a vacancy of one of the appointed members shall be  
18 made in the same manner as the original appointment.

19 (b) All appointed members of the board shall be from  
20 the private sector, with one member of the board from  
21 each congressional district of the state as of the effective  
22 date of this article, and shall represent the public  
23 interest generally. At least one member may be

24 appointed that has recognized ability and practical  
25 experience in transportation. At least one member may  
26 be appointed that has recognized ability and practical  
27 experience in banking and finance. At least one member  
28 may be appointed that has recognized ability and  
29 practical experience in accounting.

30 (c) The governor shall appoint two members of the  
31 board whose terms shall expire on the first day of July,  
32 one thousand nine hundred ninety-one; two members of  
33 the board whose term shall expire on the first day of  
34 July, one thousand nine hundred ninety-two; two  
35 members of the board whose term shall expire on the  
36 first day of July, one thousand nine hundred ninety-  
37 three. Their respective successors shall be appointed for  
38 terms of three years from the first day of July of the  
39 year of appointment. Each member shall serve until his  
40 successor is appointed and qualified.

41 (d) Each director, before entering upon the duties of  
42 the board, shall take and subscribe to the oath or  
43 affirmation required by the West Virginia constitution.  
44 A record of each such oath or affirmation shall be filed  
45 in the office of the secretary of state.

46 (e) Members of the board shall not be entitled to  
47 compensation for their services but shall be reimbursed  
48 for all necessary expenses actually incurred in connec-  
49 tion with the performance of their duties as members.

50 (f) Four members of the board shall constitute a  
51 quorum and the affirmative vote of the majority of  
52 members present at a meeting of the board shall be  
53 necessary and sufficient for any action taken by the  
54 board, except that the affirmative vote of at least four  
55 members is required for the approval of any resolution  
56 authorizing the issuance of any wayport bonds pursuant  
57 to this article.

58 (g) No vacancy in the membership or the board  
59 impairs the right of a quorum to exercise all rights and  
60 perform all duties of the board. Any action taken by the  
61 board may be authorized by resolution at any regular  
62 or special meeting and shall take effect upon the date  
63 the chairman certifies the action of the authority by



64 affixing his or her signature to the resolution unless  
65 some other date is otherwise provided in the resolution.

66 (h) The board may delegate to one or more of its  
67 members or to its officials, agents or employees such  
68 powers and duties as it may deem proper.

**§17-16C-3. Executive director.**

1 The executive director of the West Virginia Public  
2 Port Authority shall serve as the executive director of  
3 the wayport authority pursuant to article sixteen-b of  
4 this chapter.

**17-16C-4. Purposes of authority; transportation develop-  
ment.**

1 The Legislature finds that the state of West Virginia  
2 must look to new opportunities to expand and diversify  
3 its economy; that there exists a continuing need for  
4 gainful employment for the citizens of this state and that  
5 innovative concepts must be explored in order for the  
6 state of West Virginia to maintain our competitive edge  
7 with the rest of the world.

8 The Legislature further finds that transportation is  
9 about to enter a new era. The Legislature finds that to  
10 ensure our global competitiveness, to successfully  
11 provide for the demands of our domestic economy, to  
12 maintain our military defense readiness, our transpor-  
13 tation system must be renewed with the future in mind.

14 The Legislature further finds that America's unity  
15 and vitality are inextricably entwined with the growth  
16 of transportation. The Legislature finds that annual  
17 expenditures for transportation products and services in  
18 the United States total nearly eight hundred billion  
19 dollars and therefore, that growth and demand for  
20 transportation services parallels economic activity.

21 The Legislature further finds that as the national  
22 economy grows, so will the demand for transportation  
23 services and transportation-related products. The  
24 Legislature finds that higher levels of economic activity  
25 will mean more jobs, more goods to be shipped, higher  
26 incomes and greater demand for travel. The Legislature  
27 finds that continuation of this trend will affect the total

28 demand for freight transportation and alter the pattern  
29 of commodity movements.

30 The Legislature further finds that one of the new,  
31 innovative proposals being investigated is the creation  
32 of wayports. The Legislature finds that if it is to keep  
33 and attract industry, it should explore the concept of the  
34 wayport, that is an airport located in a rural area, used  
35 primarily as a location at which passengers and cargo  
36 may be transferred between connecting flights of air  
37 carriers engaged in commerce. The Legislature finds  
38 that there exists substantial economic benefits to new  
39 airports: Economic activity attracts growth industry to  
40 the area; the property values increase; transportation  
41 centers develop and businesses will go where they can  
42 go in an efficient manner.

43 The Legislature further finds that Congress has  
44 introduced two bills that "provide for the establishment  
45 of a revolving loan fund for the development of wayports  
46 and to establish a commission to propose areas suitable  
47 for the locations of such wayports". The Legislature  
48 finds that these bills allow for the creation of a wayport  
49 revolving loan fund, with authorization of appropri-  
50 ations from unobligated amounts in the airport and  
51 airway trust fund.

52 The Legislature further finds that it would be to the  
53 benefit of the people and the state of West Virginia to  
54 pursue the opportunity of identifying potential sites for  
55 a wayport designation. The Legislature finds that the  
56 creation of a West Virginia Wayport Authority could  
57 assist and develop in the application and location of a  
58 wayport in West Virginia.

59 The Legislature further finds that it is a corollary  
60 purpose of the wayport authority to coordinate and  
61 cooperate with the public port authority to keep and  
62 attract industry, to provide for a modern and efficient  
63 transportation infrastructure that will allow and  
64 facilitate business to compete on a regional, national and  
65 international basis.

**§17-16C-5. Definitions.**

1 As used in this article, the following words and terms  
2 shall have the following meanings, unless the context  
3 shall indicate another or different meaning or intent:

4 (a) The word "authority" means the West Virginia  
5 Wayport Authority as created by section one of this  
6 article.

7 (b) The words "operation fund" means the special  
8 West Virginia Wayport Authority operation fund as  
9 created by section seven of this article.

10 (c) The word "wayport" means an airport used  
11 primarily as a location at which passengers and cargo  
12 may be transferred between connecting flights of air  
13 carriers engaged in air commerce; but also allows  
14 passengers to initiate and terminate flights, and  
15 shipments of cargo to originate and terminate at said  
16 airport or similar type facility.

17 (d) The words "wayport development" means any  
18 activities which are undertaken with respect to a  
19 wayport by a wayport authority.

**§17-16C-6. Powers and duties of authority.**

1 The authority is granted the following powers and  
2 duties:

3 (1) The authority is hereby designated and empo-  
4 wered to act on behalf of the state on submitting a siting  
5 proposal for a wayport.

6 (2) The authority is empowered to take all steps  
7 appropriate and necessary to effect siting, development,  
8 and operation of a wayport within the state.

9 (3) To adopt bylaws for the regulations of its affairs  
10 and the conduct of its business.

11 (4) To adopt an official seal and alter the same at  
12 pleasure.

13 (5) To maintain an office at such place or places  
14 within the state as it may designate.

15 (6) The powers of a body corporate, including the  
16 power to sue and be sued.

17 (7) To construct, reconstruct, improve, maintain,  
18 repair and operate infrastructure projects at the  
19 designated wayport site as determined by the wayport  
20 authority.

21 (8) To enter into agreements, contracts or other  
22 transactions with any federal, state, county, municipal  
23 agency or private entity.

24 (9) To receive and accept from any federal agency  
25 grants for or in aid of the construction of any project,  
26 and to receive and accept aid or contributions from any  
27 sources of either money, property, labor or other things  
28 of value, to be held, used and applied only for the  
29 purposes for which such grants and contributions may  
30 be made.

31 (10) The wayport authority is authorized and empo-  
32 wered to acquire by purchase, whenever it shall deem  
33 such purchase expedient, any land, property, rights,  
34 rights-of-way, franchises, easements and other interests  
35 in lands as it may deem necessary or convenient for the  
36 construction or operation of any project upon such terms  
37 and at such price as may be considered by it to be  
38 reasonable and to take title in the name of the state; and  
39 for the purpose of acquiring any lands, rights or  
40 easements deemed necessary or incidental for the  
41 purposes of the wayport authority, the authority has the  
42 right of eminent domain to the same extent and to be  
43 exercised in the same manner as now or hereafter  
44 provided by law for such right of eminent domain by  
45 cities, incorporated towns, and other municipal  
46 corporations.

47 (11) If the state is selected as a site for a wayport, the  
48 authority is hereby designated and empowered to act on  
49 behalf of the state and to represent the state in the  
50 planning, financing, development, construction and  
51 operation of the project or any facility related to the  
52 project, with the concurrence of the affected public  
53 agency. Other state agencies and local governmental  
54 entities in this state, including the West Virginia  
55 housing development fund, shall cooperate to the fullest  
56 extent the authority deems appropriate to effectuate the

57 duties of the authority. If requested to do so by the  
58 authority, the West Virginia housing development fund  
59 shall, subject to the provisions of article eighteen,  
60 chapter thirty-one of the code of West Virginia, one  
61 thousand nine hundred thirty-one, as amended, includ-  
62 ing without limitation the approval of its board of  
63 directors, issue or use its best efforts to issue, either in  
64 its own name or on behalf of the authority, such bonds  
65 and notes as may be required to finance the planning,  
66 development, construction and operation of a project or  
67 any facility related to a project. In the event such bonds  
68 or notes are issued by the West Virginia housing  
69 development fund, the authority shall enter into all such  
70 agreements as the West Virginia housing development  
71 fund may determine are necessary to pledge revenues  
72 from projects or other funds of the authority sufficient  
73 to pay such bonds and notes and to pay all related fees,  
74 costs and expenses.

75 (12) The authority shall initiate meetings with local  
76 and area wayport committees in the development of a  
77 possible wayport site designation. The authority shall  
78 seek coordination, cooperation, and feasibility studies  
79 from local and area wayport committees.

80 (13) The authority shall take affirmative steps to  
81 coordinate freely all aspects of the submission of a siting  
82 proposal for the wayport project, and if the state is  
83 selected as a site, to coordinate fully the development of  
84 the project or any facility related to the project with the  
85 federal government agency.

86 (14) To do any and all things necessary to carry out  
87 and accomplish the purposes of this article, including  
88 issuing wayport revenue bonds or requesting other  
89 appropriate state agencies to issue and administer  
90 wayport revenue bonds to finance wayport projects.

#### §17-16C-7. Wayport revenue bonds—Generally.

1 The wayport authority is hereby authorized to provide  
2 by resolution at one time or from time to time, for the  
3 issuance of wayport revenue bonds of the state for the  
4 purpose of paying all or any part of the cost of one or  
5 more wayport projects. The principal of and the interest

6 on such bonds shall be payable solely from the funds  
7 herein provided for such payment. The bonds of each  
8 issue shall be dated, shall bear interest at such rate or  
9 rates as may be determined by the authority in its sole  
10 discretion, shall mature at such time or times not  
11 exceeding forty years from their date or dates, as may  
12 be determined by the authority, and may be made  
13 redeemable before maturity, at the option of the  
14 wayport authority, at such price or prices and under  
15 such terms and conditions as may be fixed by the  
16 wayport authority prior to the issuance of the bonds. The  
17 wayport authority shall determine the form of the  
18 bonds, including any interest coupons to be attached  
19 thereto, and shall fix the denomination or denominations  
20 of the bonds and the place or places of payment of  
21 principal and interest, which may be at any bank or  
22 trust company within or without the state. The bonds  
23 shall be executed by manual or facsimile signature by  
24 the governor and by the chairman of the wayport  
25 authority, and the official seal of the wayport authority  
26 shall be affixed to or printed on each bond, and attested,  
27 manually or by facsimile signature, by the secretary of  
28 the wayport authority, and any coupons attached to any  
29 bond shall bear the manual or facsimile signature of the  
30 chairman of the wayport authority. In case any officer  
31 whose signature or a facsimile of whose signature  
32 appears on any bonds or coupons shall cease to be such  
33 officer before the delivery of such bonds, such signature  
34 or facsimile shall nevertheless be valid and sufficient for  
35 all purposes the same as if he had remained in office  
36 until such delivery; and, in case the seal of the wayport  
37 authority has been changed after a facsimile has been  
38 imprinted on such bonds, such facsimile seal will  
39 continue to be sufficient for all purposes. All bonds  
40 issued under the provisions of this article shall have and  
41 are hereby declared to have all the qualities and  
42 incidents of negotiable instruments under the negotiable  
43 instruments law of the state. The bonds may be issued  
44 in coupon or in registered form, or both, as the wayport  
45 authority may determine, and provision may be made  
46 for the registration of any coupon bonds as to principal  
47 alone and also as to both principal and interest, and for

48 the reconversion into coupon bonds of any bonds  
49 registered as to both principal and interest. The wayport  
50 authority may sell such bonds in such manner, either at  
51 public or at private sale, and for such price as it may  
52 determine to be in the best interests of the state.

53 The proceeds of the bonds of each issue shall be used  
54 solely for the payment of the cost of the wayport  
55 authority project or projects for which such bonds shall  
56 have been issued, and shall be disbursed in such manner  
57 and under such restrictions, if any, as the wayport  
58 authority may provide in the resolution authorizing the  
59 issuance of such bonds or in the trust agreement  
60 hereinafter mentioned securing the same. If the pro-  
61 ceeds of the bonds of any issue, by error of estimates or  
62 otherwise, shall be less than such cost, additional  
63 wayport bonds may in like manner be used to provide  
64 the amount of such deficit, and, unless otherwise  
65 provided in the resolution authorizing the issuance of  
66 such bonds or in the trust agreement securing the same,  
67 shall be deemed to be of the same issue and shall be  
68 entitled to payment from the same fund without  
69 preference or priority of the bonds first issued. If the  
70 proceeds of the bonds of any issue shall exceed the cost  
71 of the project or projects for which the same shall have  
72 been issued, the surplus shall be deposited to the credit  
73 of the sinking fund for such bonds.

74 Prior to the preparation of definitive bonds, the  
75 wayport authority may, under like restrictions, issue  
76 interim receipts or temporary bonds, with or without  
77 coupons, exchangeable for definitive bonds when such  
78 bonds shall have been executed and are available for  
79 delivery. The wayport authority may also provide for the  
80 replacement of any bonds which shall become mutilated  
81 or shall be destroyed or lost. Bonds may be issued under  
82 the provisions of this article without obtaining the  
83 consent of any department, division, commission, board,  
84 bureau or agency of the state, and without any other  
85 proceedings or the happening of any other conditions or  
86 things than those proceedings, conditions or things  
87 which are specifically required by this article.

**§17-16C-8. Wayport revenue bonds—Trust agreements.**

1 In the discretion of the wayport authority any wayport  
2 bonds issued under the provisions of this article may be  
3 secured by a trust agreement by and between the  
4 wayport authority and a corporate trustee, which may  
5 be any trust company or bank having the powers of a  
6 trust company within or without the state. Any such  
7 trust agreement may pledge or assign the tolls, rents,  
8 fees, charges and other revenues to be received, but shall  
9 not convey or mortgage any project or any part thereof.  
10 Any such trust agreement or any resolution providing  
11 for the issuance of such bonds may contain such  
12 provisions for protecting and enforcing the rights and  
13 remedies of the bondholders as may be reasonable and  
14 proper and not in violation of law, including covenants  
15 setting forth the duties of the wayport authority in  
16 relation to the acquisition of property and the construc-  
17 tion, reconstruction, improvement, maintenance, repair,  
18 operation and insurance of the project or projects in  
19 connection with which such bonds shall have been  
20 authorized, and the custody, safeguarding and applica-  
21 tion of all moneys, and provisions for the employment  
22 of consulting engineers in connection with the construc-  
23 tion or operation of such project or projects. It shall be  
24 lawful for any bank or trust company incorporated  
25 under the laws of the state which may act as depository  
26 of the proceeds of bonds or of revenues to furnish such  
27 indemnifying bonds or to pledge such securities as may  
28 be required by the wayport authority. Any such trust  
29 agreement may set forth the rights and remedies of the  
30 bondholders and of the trustee, and may restrict the  
31 individual right of action by bondholders as is custom-  
32 ary in trust agreements securing bonds and debentures  
33 of corporations. In addition to the foregoing, any such  
34 trust agreement may contain such other provisions as  
35 the wayport authority may deem reasonable and proper  
36 for the security of the bondholders. All expenses  
37 incurred in carrying out the provisions of any such trust  
38 agreement may be treated as a part of the cost of the  
39 operation of the project or projects to which the trust  
40 agreement applies.



**§17-16C-9. Tolls, rents, fees, charges and revenues.**

1 (a) The wayport authority is hereby authorized to fix,  
2 revise, charge and collect tolls for the use of each  
3 wayport project and the different parts or sections  
4 thereof, and to fix, revise, charge and collect rents, fees,  
5 charges and other revenues, of whatever kind or  
6 character, for the use of each economic development  
7 project or tourism project, or any part or section thereof,  
8 and to contract with any person, partnership, association  
9 or corporation desiring the use of any part thereof,  
10 including the right-of-way adjoining the paved portion,  
11 for placing thereon telephone, telegraph, electric light,  
12 power or other utility lines, gas stations, garages, stores,  
13 hotels, restaurants and advertising signs, or for any  
14 other purpose, and to fix the terms, conditions, rents and  
15 rates of charges for such use. Such tolls, rents, fees and  
16 charges shall be so fixed and adjusted in respect of the  
17 aggregate of tolls, or in respect of the aggregate rents,  
18 fees and charges, from the project or projects in  
19 connection with which the bonds of any issue shall have  
20 been issued as to provide a fund sufficient with other  
21 revenues, if any, to pay (A) the cost of maintaining,  
22 repairing and operating such project or projects and (B)  
23 the principal of and the interest on such bonds as the  
24 same shall become due and payable, and to create  
25 reserves for such purposes. Such tolls, rents, fees and  
26 other charges shall not be subject to supervision or  
27 regulation by any other commission, board, bureau,  
28 department or agency of the state. The tolls, rents, fees,  
29 charges and all other revenues derived from the project  
30 or projects in connection with which the bonds of any  
31 issue shall have been issued, except such part thereof as  
32 may be necessary to pay such cost of maintenance,  
33 repair and operation and to provide such reserves  
34 therefor as may be provided for in the resolution  
35 authorizing the issuance of such bonds or in the trust  
36 agreement securing the same shall be set aside at such  
37 regular intervals as may be provided in such resolution  
38 or such trust agreement in a sinking fund which is  
39 hereby pledged to, and charged with, the payment of (1)  
40 the interest upon such bonds as such interest shall fall

41 due, (2) the principal of such bonds as the same shall  
42 fall due, (3) the necessary charges of paying agents for  
43 paying principal and interest and (4) the redemption  
44 price or the purchase price of bonds retired by call or  
45 purchase as therein provided. The use and disposition  
46 of moneys to the credit of such sinking fund shall be  
47 subject to the provisions of the resolution authorizing the  
48 issuance of such wayport bonds or of such trust  
49 agreement. Except as may otherwise be provided in  
50 such resolution or such trust agreement, such sinking  
51 fund shall be a fund for all such bonds without  
52 distinction or priority of one over another. The moneys  
53 in the sinking fund, less such reserve as may be  
54 provided in such resolution or trust agreement, if not  
55 used within a reasonable time for the purchase of bonds  
56 for cancellation as above provided, shall be applied to  
57 the redemption of bonds at the redemption price then  
58 applicable.

**§17-16C-10. Trust funds.**

1 All moneys received pursuant to the authority of this  
2 article, whether as proceeds from the sale of bonds or  
3 as revenues, shall be deemed to be trust funds, to be held  
4 and applied solely as provided in this article. The  
5 resolution authorizing the issuance of bonds of any issue  
6 of the trust agreement securing such bonds shall provide  
7 that any officer to whom, or any bank or trust company  
8 to which, such moneys shall be paid shall act as trustee  
9 of such moneys and shall hold and apply the same for  
10 the purposes hereof, subject to such regulations as this  
11 article and such resolution or trust agreement may  
12 provide.

**§17-16C-11. Remedies.**

1 Any holder of bonds issued under the provisions of this  
2 article or any of the coupons appertaining thereto, and  
3 the trustee under any trust agreement, except to the  
4 extent the rights herein given may be restricted by such  
5 trust agreement, may either at law or in equity, by suit,  
6 action, mandamus or other proceeding, protect and  
7 enforce any and all rights under the laws of the state  
8 or granted hereunder or under such trust agreement or

9 the resolution authorizing the issuance of such bonds,  
10 and may enforce and compel the performance of all  
11 duties required by this article or by such trust agree-  
12 ment or resolution to be performed by the wayport  
13 authority or by any officer thereof, including the fixing,  
14 charging and collecting of tolls, rents, fees and charges.

**§17-16C-12. Exemption from taxes.**

1 (a) The exercise of the powers granted by this article  
2 will be in all respects for the benefit of the people of  
3 the state, for the increase of their commerce and  
4 prosperity, and for the improvement of their health and  
5 living conditions, and as the operation and maintenance  
6 of projects by the wayport authority will constitute the  
7 performance of essential governmental functions, the  
8 wayport authority shall not be required to pay any taxes  
9 or assessments upon any project or any property  
10 acquired or used by the wayport authority under the  
11 provisions of this article or upon the income therefrom,  
12 and the bonds issued under the provisions of this article,  
13 their transfer and the income therefrom (including any  
14 profit made on the sale thereof) shall at all times be free  
15 from taxation within the state.

16 (b) In lieu of payment by the wayport authority of  
17 county property taxes and other assessments on facilities  
18 owned by it, or upon any facility which is leased to any  
19 private person, corporation, or entity, the wayport  
20 authority shall make an annual payment as provided  
21 herein to the county commission of such county. Any  
22 wayport authority project which is leased and is exempt  
23 from taxation shall be subject to a payment in lieu of  
24 taxes. Said payment shall be made to the county  
25 commission of the county in which the project is located  
26 and shall be in an amount equal to the property taxes  
27 otherwise payable. The county commission receiving  
28 such in lieu of payment shall distribute such payment  
29 to the different levying bodies in that county in the same  
30 manner as are property taxes. Nothing contained herein  
31 may be construed to prohibit the wayport authority  
32 from collecting such in lieu of payment from any private  
33 party by contract or otherwise.

**§17-16C-13. Preliminary expenses.**

1 The secretary of transportation is hereby authorized,  
2 in his or her discretion, to expend out of any funds  
3 available for the purpose, such moneys as may be  
4 necessary for the study of any wayport economic  
5 development or tourism project or projects and to use  
6 the division of highway's engineering and other forces,  
7 including consulting engineers and traffic engineers, for  
8 the purpose of effecting such study and to pay for such  
9 additional engineering and traffic and other expert  
10 studies as he may deem expedient; and all such expenses  
11 incurred by the state department of transportation and  
12 the state division of highways prior to the issuance of  
13 wayport revenue bonds or revenue refunding bonds  
14 under the provisions of this article shall be paid by the  
15 state division of highways or the state department of  
16 transportation and charged to the appropriate project or  
17 projects, and the state division of highways and the state  
18 department of transportation shall keep proper records  
19 and accounts showing each amount so charged. Upon  
20 the sale of wayport revenue bonds or revenue refunding  
21 bonds for any wayport project or projects, the funds so  
22 expended by the state division of highways or the state  
23 department of transportation in connection with such  
24 project or projects shall be reimbursed to the state  
25 division of highways and the state department of  
26 transportation from the proceeds of such bonds.

**§17-16C-14. Wayport revenue refunding bonds—  
Generally.**

1 The wayport authority is hereby authorized to provide  
2 by resolution for the issuance of wayport revenue  
3 refunding bonds of the state for the purpose of refund-  
4 ing any bonds then outstanding which shall have been  
5 issued under the provisions of this article, including the  
6 payment of any redemption premium thereon and any  
7 interest accrued or to accrue to the date of redemption  
8 of such bonds; and if deemed advisable by the wayport  
9 authority, for the additional purpose of constructing  
10 improvements, extensions or enlargements of the project

11 or projects in connection with which the bonds to be  
12 refunded shall have been issued.

13 The wayport authority is further authorized to  
14 provide by resolution for the issuance of wayport  
15 refunding revenue bonds of the state for the combined  
16 purpose of two or more of the following: (a) Refunding  
17 any wayport bonds then outstanding which shall have  
18 been issued under the provisions of this article, includ-  
19 ing the payment of any redemption premium thereon  
20 and any interest accrued or to accrue to the date of  
21 redemption of such bonds and (b) paying all or any part  
22 of the cost of any additional wayport project or projects.

23 The issuance of such bonds, the maturities and other  
24 details thereof, the rights of the holders thereof, and the  
25 rights, duties and obligations of the wayport authority  
26 in respect of the same, shall be governed by the  
27 provisions of this article insofar as the same may be  
28 applicable.

**§17-16C-15. Special West Virginia Wayport Authority  
operations fund.**

1 There is hereby established a special West Virginia  
2 Wayport Authority operations fund which shall operate  
3 as a special revolving fund. All proceeds and revenues  
4 of the authority shall be credited to the fund by the state  
5 treasurer on a monthly basis. At the end of each fiscal  
6 year, any unexpended funds in this account shall be  
7 reappropriated and available for expenditure for the  
8 subsequent fiscal year: *Provided*, That no funds shall be  
9 appropriated from the general revenue fund of the state  
10 of West Virginia for the operation of the authority.

**§17-16C-16. Severability.**

1 If any part or provision of this article be held to be  
2 unconstitutional by any court of competent jurisdiction,  
3 such holding and decision of the court shall not affect  
4 the validity and constitutionality of the remaining parts  
5 and provisions of this article, and to this end the parts  
6 and provisions of this article are declared to be  
7 severable.

## CHAPTER 190

(S. B. 14—By Senators Spears, Brackenrich and J. Manchin)

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[Passed January 29, 1990; in effect July 1, 1990. Approved by the Governor.]

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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, relating to continuing the women's commission and correcting designation of ex officio members.

*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. Creation; 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 created within  
3 the office of the governor the West Virginia women's  
4 commission, to consist of seventeen members, six of  
5 whom shall be ex officio members, not entitled to vote:  
6 The attorney general, the state superintendent of  
7 schools, the commissioner of labor, the commissioner of  
8 human services, the director of the human rights  
9 commission and the director of the division of personnel.  
10 Each ex officio member may designate one representa-  
11 tive employed by his department to meet with the  
12 commission in his absence. The governor shall appoint  
13 the additional eleven members, by and with the advice  
14 and consent of the Senate, from among the citizens of  
15 the state. The governor shall designate the chairman  
16 and vice chairman of the commission and the commis-  
17 sion may elect such other officers as it deems necessary.  
18 The members shall serve a term beginning the first day  
19 of July, one thousand nine hundred seventy-seven, three  
20 to serve for a term of one year, four to serve for a term  
21 of two years, and the remaining four to serve for a term

22 of three years. The successors of the members initially  
23 appointed as provided herein shall be appointed for a  
24 term of three years each in the same manner as the  
25 members initially appointed under this article, except  
26 that any person appointed to fill a vacancy occurring  
27 prior to the expiration of the term for which his  
28 predecessor was appointed shall be appointed for the  
29 remainder of such term. Each member shall serve until  
30 the appointment and qualification of his successor.

31 No member may receive any salary for his services,  
32 but each may be reimbursed for actual and necessary  
33 expenses incurred by him in the performance of his  
34 duties out of funds received by the commission under  
35 section four of this article, except that in the event the  
36 expenses are paid, or are to be paid, by a third party,  
37 the members shall not be reimbursed by the  
38 commission.

39 Pursuant to the provisions of section four, article ten,  
40 chapter four of this code, the West Virginia women's  
41 commission shall continue to exist until the first day of  
42 July, one thousand nine hundred ninety-one, to allow for  
43 the completion of an audit by the joint committee on  
44 government operations.

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## CHAPTER 191

(S. B. 89—By Senators Brackenrich and Spears)

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[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one,  
chapter twenty-three of the code of West Virginia, one  
thousand nine hundred thirty-one, as amended, relating  
to continuing the office of workers' compensation  
commissioner.

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

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

**§23-1-1. Workers' compensation commissioner; appointment; term; oath; bond; conflict of interest; compensation; official seal; legal services; references to director deemed to mean commissioner; references to workmen's compensation deemed to mean workers' compensation.**

1       There shall be a state workers' compensation commis-  
2 sioner who shall be appointed by the governor by and  
3 with the advice and consent of the Senate and who shall  
4 serve at the will and pleasure of the governor during  
5 the term for which the governor was elected and until  
6 the commissioner's successor has been appointed and  
7 qualified. An appointment may be made to fill a vacancy  
8 or otherwise when the Senate is not in session, but shall  
9 be acted upon at the next session thereof. The person so  
10 appointed shall take the oath or affirmation prescribed  
11 by section five, article IV of the Constitution, and such  
12 oath shall be certified by the person who administers the  
13 same and shall be filed in the office of the secretary of  
14 state. The person so appointed shall give bond in the  
15 penalty of twenty-five thousand dollars conditioned for  
16 the faithful performance of the duties of this office,  
17 which bond shall be approved by the attorney general  
18 as to form, and by the governor as to sufficiency. The  
19 surety of such bond may be a bonding or surety  
20 company, in which case the premiums shall be paid out  
21 of the appropriation made for the administration of this  
22 chapter. The commissioner shall hold no position of trust  
23 or profit, or engage in any occupation or business,  
24 interfering or inconsistent with the duties as such  
25 commissioner. The commissioner shall have an official  
26 seal for the authentication of orders and proceedings,  
27 upon which seal shall be engraved the words "West  
28 Virginia Compensation Commissioner" and such other  
29 design as the commissioner may prescribe. The courts  
30 in this state shall take judicial notice of the seal of the  
31 commissioner and in all cases copies of orders, proceed-  
32 ings or records in the office of the West Virginia  
33 compensation commissioner shall be equal to the  
34 original in evidence.



35 The attorney general shall perform all legal services  
36 required by the commissioner under the provisions of  
37 this chapter: *Provided*, That in any case in which an  
38 application for review is prosecuted from any final  
39 decision of the workers' compensation appeal board to  
40 the supreme court of appeals, as provided by section  
41 four, article five of this chapter, or in any court  
42 proceeding before the workers' compensation appeal  
43 board, or in any proceedings before the office of judges,  
44 in which such representation shall appear to the  
45 commissioner to be desirable, the commissioner may  
46 designate a regular employee of this office, qualified to  
47 practice before such court to represent the commissioner  
48 upon such appeal or proceeding, and in no case shall the  
49 person so appearing for the commissioner before the  
50 court receive remuneration therefor other than such  
51 person's regular salary.

52 Whenever in this chapter or elsewhere in law refer-  
53 ence is made to "state director of workmen's compensa-  
54 tion" or "compensation commissioner" such reference  
55 shall henceforth be construed and understood to mean  
56 "state workers' compensation commissioner".

57 Whenever in this chapter or elsewhere in law refer-  
58 ence is made to the term "workmen's compensation" or  
59 reference is made to the "workmen's compensation  
60 advisory board", "workmen's compensation fund",  
61 "disabled workmen's relief fund" and "workmen's  
62 compensation appeal board," such references to and the  
63 titles of each such board or fund shall henceforth be  
64 construed to mean, and shall be defined to mean,  
65 respectively "workers' compensation", "workers' com-  
66 pensation advisory board", "workers' compensation  
67 fund", "disabled workers' relief fund" and "workers'  
68 compensation appeal board".

69 Pursuant to the provisions of section four, article ten,  
70 chapter four of this code, the office of workers' compen-  
71 sation commissioner shall continue to exist until the first  
72 day of July, one thousand nine hundred ninety-one, to  
73 allow for the completion of an audit by the joint  
74 committee on government operations.

## CHAPTER 192

(Com. Sub. for S. B. 441—By Senators Brackenrich, Holliday and Rundle)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT to establish the Fayette County New River Gorge Bridge Day Commission to sanction and coordinate activities associated with the annual bridge day at the New River Gorge Bridge in Fayette County, to authorize the commission to license vendors and otherwise oversee bridge day activities, to require the promulgation of rules and regulations by the division of highways respecting the closing of certain highways during bridge day activities, and to limit the liability of the state and its political subdivisions respecting such activities.

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

FAYETTE COUNTY NEW RIVER GORGE BRIDGE DAY COMMISSION.

- §1. Bridge day commission created; terms of members; vacancies.
- §2. Office space and staff support; officers; meeting; reimbursement for expenses.
- §3. Commission powers; rules and regulations promulgated by the county commission.
- §4. Restriction on use of public highways.
- §5. Limitation of liability.

§1. **Bridge day commission created; terms of members; vacancies.**

- 1 (a) The Fayette County New River Gorge Bridge Day
- 2 Commission is hereby created, which bridge day
- 3 commission shall consist of six members who shall serve
- 4 without compensation. The members shall be appointed
- 5 by the county commission of Fayette County with one
- 6 member representing each of the following: The county
- 7 commission of Fayette County, the Fayette County
- 8 chamber of commerce, the town of Fayetteville, the
- 9 sheriff of Fayette County, the secretary of the depart-
- 10 ment of transportation and the secretary of the depart-
- 11 ment of public safety.

12 (b) The terms of office for the bridge day commission  
13 members first appointed shall be two years for two  
14 members, four years for two members and six years for  
15 two members, and the successor of each appointed  
16 member shall be appointed for a term of six years in  
17 the same manner as the original appointments were  
18 made, except that any person appointed by the county  
19 commission to fill a vacancy occurring prior to the  
20 expiration of the term for which his or her predecessor  
21 was appointed shall be appointed only for the remainder  
22 of such term. Each bridge day commission member  
23 shall serve until the appointment of his or her successor.

**§2. Office space and staff support; officers; meeting;  
reimbursement for expenses.**

1 (a) The county commission of Fayette County shall  
2 supply the bridge day commission with such office space  
3 and staff support as may be necessary for the efficient  
4 conduct of the business of the bridge day commission.

5 (b) The county commission of Fayette County shall  
6 appoint a chairman of the bridge day commission. The  
7 bridge day commission shall then elect such other  
8 officers as it deems appropriate for the conduct of its  
9 business.

10 (c) The bridge day commission shall hold a regular  
11 monthly meeting on the day of each month as a majority  
12 of the members of the bridge day commission shall  
13 designate. Special meetings may be convened on the call  
14 of the chairman or a majority of the members. A  
15 majority of the members of the bridge day commission  
16 shall constitute a quorum for the conduct of business  
17 and a majority of the members present at a meeting  
18 shall be required to determine any issues brought before  
19 it.

20 (d) Each member of the bridge day commission shall  
21 be reimbursed for all reasonable and necessary expenses  
22 actually incurred in the performance of his or her duties  
23 as a member of the commission. Requisition for such  
24 expenses shall be accompanied by a sworn and itemized  
25 statement which shall be filed with the county  
commission.

**§3. Commission powers; rules and regulations promulgated by the county commission.**

1 (a) The bridge day commission shall be and is hereby  
2 designated as the official public body to sanction and  
3 coordinate all bridge day activities in accordance with  
4 the rules and regulations promulgated by the county  
5 commission as hereinafter provided.

6 (b) The county commission of Fayette County shall  
7 promulgate rules and regulations governing the plan-  
8 ning, implementation and oversight of bridge day  
9 activities by the bridge day commission, which rules and  
10 regulations shall include, but not necessarily be limited  
11 to, provisions:

12 (1) Designated the third Saturday in October of each  
13 year, or any other day as may reasonably be recom-  
14 mended by the bridge day commission, as Bridge Day  
15 in Fayette County, which day shall be the official day  
16 for activities on and associated with the New River  
17 Gorge Bridge;

18 (2) Requiring the licensure of all vendors desiring to  
19 conduct vending operations in conjunction with bridge  
20 day activities and the payment of a licensure fee  
21 therefor;

22 (3) Requiring the timely application and approval by  
23 the bridge day commission of any activity or event in  
24 which any person, firm, organization, corporation or  
25 other entity desires to operate or participate in conjunc-  
26 tion with bridge day activities;

27 (4) Requiring the execution of a release of liability by  
28 all persons who participate in any such event or activity  
29 as set forth in subdivision (3) hereof;

30 (5) Authorizing the imposition of a civil penalty not  
31 to exceed one thousand dollars or the denial of partic-  
32 ipation in any bridge day activities, or both, against any  
33 person, firm, organization, corporation, or other entity  
34 who fails to obtain a vendor's license or approval of an  
35 activity from the bridge day commission; and

36 (6) Providing for the maintenance and use of all funds

37 received by the bridge day commission, whether  
38 received through private contributions, grants, dona-  
39 tions, or licensing fees.

**§4. Restriction on use of public highways.**

1 The division of highways, in cooperation with the  
2 bridge day commission, shall promulgate rules and  
3 regulations governing the closure to motor vehicular  
4 traffic of the New River Gorge Bridge, parts of United  
5 States route nineteen and such other adjacent roadways  
6 as may be necessary for the proper and safe implemen-  
7 tation of bridge day activities.

**§5. Limitation of liability.**

1 (a) The bridge day commission is hereby declared to  
2 be a political subdivision within the intent and meaning  
3 of section three, article twelve-a, chapter twenty-nine of  
4 the code of West Virginia, one thousand nine hundred  
5 thirty-one, as amended, and as such, is subject to all the  
6 rights, privileges and immunities afforded such political  
7 subdivisions under the provisions of article twelve-a,  
8 chapter twenty-nine of said code.

9 (b) Any person who desires to base jump, parachute,  
10 rappel or otherwise participate in any similar activity  
11 on bridge day shall, prior to participation in such  
12 activity, execute a release of liability releasing the  
13 bridge day commission, the state of West Virginia and  
14 all of its political subdivisions from any liability  
15 associated with such activity, and the bridge day  
16 commission, the state of West Virginia and all other  
17 political subdivisions thereof, shall be immune from  
18 liability for any and all injuries suffered or damages  
19 sustained by any person engaging in such activities,  
20 notwithstanding that such release may not have been  
21 duly executed.

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## CHAPTER 193

(H. B. 4095—By Delegates Love and Pettit)

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[Passed March 7, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to repeal chapter one hundred fifty-one, acts of the  
Legislature, regular session, one thousand nine hundred

twenty-seven, relating to requiring the county commission of Hancock County to mark by suitable monuments or markers the frontier forts and block houses occupied by the early settlers during Indian wars, also graves of pioneers and soldiers; and care and upkeep of public cemeteries or burying grounds, where no charge was or is made for burying therein, wherein are buried the remains of pioneers, early settlers, soldiers and sailors, and authorizing said commission to lay a levy to carry out the purposes of this act.

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

**§1. Repeal of act requiring the county of Hancock to provide funds for certain monuments; marking certain graves; providing for a caretaker, bequests and endowments; providing a levy not to exceed two cents; and appointing a committee.**

1 Chapter one hundred fifty-one, acts of the Legislature,  
2 regular session, one thousand nine hundred twenty-  
3 seven, as amended, is hereby repealed.

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## CHAPTER 194

(H. B. 4356—By Delegates Flanigan and Basham)

[Passed February 16, 1990; in effect from passage. Approved by the Governor.]

AN ACT to authorize the Mercer County commission to appoint a five-member tourist train authority to operate a pilot tourist train project and to exercise certain powers.

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

**MERCER COUNTY TOURIST TRAIN AUTHORITY.**

**§1. Mercer County tourist train authority; powers and pilot project.**

1 The Mercer County commission may establish a  
2 tourist train authority. The authority shall be composed  
3 of five members appointed by the county commission. Of  
4 the members appointed, at least two members shall have

5 had experience or involvement in the management or  
6 maintenance of a railroad and at least one member shall  
7 have had experience or involvement in the development  
8 or management of a tourist attraction.

9 The authority shall have the responsibility for and  
10 shall establish the pilot project to create a tourist train  
11 network in the area involving routes between Bluefield,  
12 Bramwell and Matoaka, West Virginia, and Pocahontas,  
13 Virginia, as described in chapter one hundred fifty-  
14 seven, acts of the Legislature, one thousand nine  
15 hundred eighty-nine.

16 The authority may also:

17 (1) Sue and be sued, make contracts, and adopt and  
18 use a common seal and alter the same as may be deemed  
19 expedient;

20 (2) Acquire, purchase, install, lease, construct, own,  
21 hold, operate, maintain, equip, use and control termi-  
22 nals, buildings, roadways, rights-of-way, rails and  
23 structures, equipment, facilities or improvements and  
24 lease, install, construct, acquire, own, maintain, control  
25 and use any and every kind or character of motive  
26 powers and conveyances or appliances necessary or  
27 proper to carry persons, goods, wares and merchandise  
28 over, along, upon or through the railway system;

29 (3) Apply for and accept loans, grants or gifts of  
30 money, property or service from any federal agency or  
31 the state of West Virginia or any political subdivision  
32 thereof or from any public or private sources available  
33 for any and all of the purposes authorized in this article,  
34 or imposed thereon by any such federal agency, the state  
35 of West Virginia or any political subdivision thereof, or  
36 any public or private lender or donor, and give eviden-  
37 ces of indebtedness as may be required;

38 (4) Act as agent for the United States of America, or  
39 any agency, department, corporation or instrumentality  
40 thereof, in any manner coming within the purposes or  
41 powers of the authority;

42 (5) Initiate preservation of railroad facilities, promote  
43 economic development and tourism of a specific nature  
44 in this state;

- 45 (6) Meet and cooperate with similar authorities or  
46 bodies of any of the several states contiguous with this  
47 state, whose purpose in their respective states is to  
48 establish an interstate or intermodal transportation  
49 network;
- 50 (7) Enter into agreements, contracts or other transac-  
51 tions with any federal, state, county, municipal agency  
52 or private entity;
- 53 (8) Report annually to the county commission by the  
54 first day of January of each year on the status of  
55 projects, operations, financial condition and other  
56 necessary information relating to the tourist train  
57 project;
- 58 (9) Enter into agreements or contracts with the West  
59 Virginia railroad maintenance authority for the preser-  
60 vation, operation and use of railroad lines;
- 61 (10) Assist and encourage the West Virginia railroad  
62 maintenance authority to purchase railroad tracks being  
63 abandoned by any common carrier, and to financially  
64 assist the railroad maintenance authority in making  
65 such purchase;
- 66 (11) Collect reasonable fees and charges in connection  
67 with making and servicing loans, notes, bonds, obliga-  
68 tions, commitments and other evidence of indebtedness,  
69 and in connection with providing technical, consultive  
70 and project assistance services;
- 71 (12) Do any and all things necessary to carry out and  
72 accomplish the purposes of this act.

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## CHAPTER 195

(H. B. 4161—By Delegates Murphy and Mezzatesta)

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[Passed February 5, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section two, chapter one hundred seventy-eight, Acts of the Legislature, regular session, one thousand nine hundred forty-seven, as last amended in chapter one hundred thirty-five, Acts of the Legislature, regular session, one thousand nine hundred



eighty-eight, relating to the composition of the board of directors of the Morgan County War Memorial Hospital and to permit the representatives of an entity which has entered a management contract or affiliation agreement with Morgan County War Memorial Hospital to occupy positions on the board of directors of the hospital.

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

**WAR MEMORIAL HOSPITAL TO THE VETERANS OF THE WORLD  
WARS FROM MORGAN COUNTY.**

**§2. Board of Directors.**

1       On the first day of July, one thousand nine hundred  
2       eighty-eight, the terms of all members of the board of  
3       directors of the Morgan County War Memorial Hospital  
4       shall expire. The board of directors of the Morgan  
5       County War Memorial Hospital shall be appointed by  
6       the Morgan County commission and shall be comprised  
7       of not less than five members, plus the president of the  
8       hospital medical staff, who shall be a voting member,  
9       and hospital administrator or superintendent, who shall  
10      be an ex officio member without voting authority. The  
11      members appointed by the commission shall serve for  
12      terms of three years from the first day of July following  
13      their appointment, except that effective the first day of  
14      July, one thousand nine hundred eighty-eight, one third  
15      of the members, or as close thereto as possible, shall be  
16      appointed for one year, one third of the members, or as  
17      close thereto as possible, for two years, and one third of  
18      the members, or as close thereto as possible, for three  
19      years. Thereafter, such members shall be appointed for  
20      regular three-year terms. The terms of the president of  
21      the hospital medical staff and the hospital administrator  
22      shall be concurrent with their appointment. No person  
23      shall be ineligible to appointment by reason of sex,  
24      political or religious affiliations. The board may act as  
25      its own treasurer. Vacancies in the board shall be  
26      reported to the county commission and filled by  
27      appointment in like manner as original appointments  
28      for the unexpired term. The county commission may  
29      remove any director for misconduct or neglect of duty.  
30      No compensation shall be paid or allowed any director.

31 Notwithstanding any other provision of law, one or  
32 more representatives of an entity that has concluded a  
33 management contract or affiliation agreement with War  
34 Memorial Hospital may serve on the board of directors  
35 of the hospital so long as either the management  
36 contract or affiliation agreement is in effect or amounts  
37 under such contract or agreement are owed to the entity  
38 by War Memorial Hospital.

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## CHAPTER 196

(S. B. 551—By Senators Craigo and Dittmar)

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[Passed March 9, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to extend the time for the county commission of Putnam County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of the county an election to extend the additional county levy for parks, recreation and library services in Putnam County, from between the seventh and twenty-eighth days of March until the first Thursday in June, one thousand nine hundred ninety.

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

**PUTNAM COUNTY COMMISSION MEETING AS LEVYING BODY  
EXTENDED TO CONTINUE ADDITIONAL LEVY FOR PARKS,  
RECREATION AND LIBRARY SERVICES.**

**§1. Extending time for Putnam County Commission to  
meet as levying body for election to continue  
additional levy for parks, recreation and library  
services.**

1 Notwithstanding the provisions of article eight,  
2 chapter eleven of the code of West Virginia, one  
3 thousand nine hundred thirty-one, as amended, to the  
4 contrary, the county commission of Putnam County is  
5 hereby authorized to extend the time for its meeting as  
6 a levying body and certifying its actions to the state tax  
7 commissioner from between the seventh and twenty-  
8 eighth days of March until the first Thursday in June,  
9 one thousand nine hundred ninety, for the purpose of

- 10 submitting to the voters of Putnam County the extension  
11 for the additional county levy for parks, recreation and  
12 library services in Putnam County.

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## CHAPTER 197

(S. B. 554—By Senators Craigo and Dittmar)

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[Passed March 7, 1990; in effect from passage. Approved by the Governor.]

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AN ACT directing the division of health and the farm management commission to convey real property and the improvements thereon to the city of Spencer; requiring conditions in deeds.

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

### SPENCER STATE HOSPITAL.

§1. **Farm management commission and the division of health directed to convey Spencer State Hospital institutional farm and Spencer State Hospital to the city of Spencer.**

1 The Legislature hereby recognizes that unemploy-  
2 ment is of serious concern to the people of the county  
3 of Roane and the city of Spencer, that the problem of  
4 unemployment has been exacerbated by the closing of  
5 Spencer State Hospital, and that new economic oppor-  
6 tunities may be developed by the city of Spencer  
7 through the utilization of the Spencer State Hospital  
8 institutional farm and the Spencer State Hospital  
9 facility. Accordingly, the Legislature hereby finds and  
10 declares that the transfer of the Spencer State Hospital  
11 and the Spencer State Hospital institutional farm to the  
12 city of Spencer located in Roane County promotes the  
13 general welfare of the public and, therefore, is a public  
14 purpose.

15 The farm management commission and the division of  
16 health are hereby directed to transfer and convey unto  
17 the city of Spencer certain plots or parcels of land  
18 consisting of one hundred thirty-three acres more or less  
19 and thirty-two acres more or less and the improvements

20 thereto known as the Spencer State Hospital institu-  
21 tional farm and Spencer State Hospital, being situate in  
22 Roane County, West Virginia.

23 The deed transferring the above described thirty-two  
24 acres of property shall contain a provision that the  
25 owner of the property shall provide the division of  
26 human services, or its successor, with office space  
27 without charge for a period of time to be designated in  
28 the deed.

29 Any proper conveyance made by the farm manage-  
30 ment commission and the division of health transferring  
31 ownership of the above described parcels to the city of  
32 Spencer shall contain a provision that ownership of such  
33 property shall revert to the state should the land or the  
34 improvements thereto cease to be used for purposes  
35 approved by the city of Spencer.

**RESOLUTIONS**

(Only resolutions of general interest are included herein.)

**HOUSE CONCURRENT RESOLUTION 1**

(By Delegate Murensky)

[Adopted January 10, 1990]

Raising a Joint Assembly to hear an address by His Excellency, the Governor.

WHEREAS, His Excellency, the Governor, has advised the committee to notify him that the Legislature has assembled and is ready to receive any communication he may desire to present, that he will be pleased to address a joint assembly of the Senate and House of Delegates at the convenience of the two houses; therefore, be it

*Resolved by the Legislature of West Virginia:*

That His Excellency, the Governor, be hereby invited to address a Joint Assembly of the Legislature at 7:00 o'clock post meridian the 10th day of January, 1990; and, be it

*Further Resolved,* That the President of the Senate and the Speaker of the House of Delegates appoint three members of each of the respective houses of the Legislature as a committee to wait upon His Excellency, the Governor, and escort him into the hall of the House of Delegates at the time herein appointed for hearing the address.

**HOUSE CONCURRENT RESOLUTION 21**

(By Mr. Speaker (Mr. Chambers), Delegates Queen, Minard, Ashcraft, Warner, Kelly, Givens, Whitman, Dalton, Martin, Rutledge, Spencer, Williams, Given, Richards, C. Starcher, Damron, Ryan, Fantasia, Leggett, Schoonover, Farley, Clonch, R. Burk, Kiss, M. Miller, Reid, T. Hatfield, Cerra, Louderback, Phillips, Ferrell, Farmer, Pethel, Schadler, Morgan, Grubb, Cole, White, Moore, Pitrolo, Mezzatesta, D. Cook, Shepherd, Peddicord, S. Cook, Prezioso, Pettit, Roop, Susman, Love, Michael, Adkins, Tribett, Blake, Manuel, Basham, Anderson, Rowe, Flanigan, Bird, Katz, McKinley, Riggs, Otte, Stemple, Conley, Overington, Merow and Murensky)

[Adopted February 23, 1990]

Urging the West Virginia Congressional Delegation to continue its efforts to have the Federal Bureau of

Investigation relocate its Identification Division to West Virginia and urging the Governor of West Virginia to assist the delegation in its efforts.

WHEREAS, The Federal Bureau of Investigation is considering relocating its Identification Division employing approximately two thousand; and

WHEREAS, Several West Virginia cities are being considered as potential sites for relocation of the Identification Division; and

WHEREAS, West Virginia has many distinct advantages such as way of life, low cost of living, an outstanding higher education system, a dedicated work force and many other advantages and opportunities; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislature of West Virginia fully supports the efforts of the Congressional Delegation to have the Federal Bureau of Investigation locate its Identification Division in West Virginia, pledges its support in this endeavor and urges the Governor to assist the delegation in its efforts; and, be it

*Further Resolved,* That the Clerk of the House of Delegates be directed to forward a copy of this resolution to the West Virginia Congressional Delegation and the Governor of West Virginia.

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HOUSE CONCURRENT RESOLUTION 40  
(By Mr. Speaker (Mr. Chambers) and Delegate Grubb)

[Adopted March 10, 1990]

Requesting the Joint Committee on Government and Finance to establish an interim committee to review, examine and study matters related to solid and toxic waste management.

WHEREAS, Problems involving the proper management of solid and toxic waste continue to impact the public health, welfare and safety; and

WHEREAS, The Legislature has taken important steps in recent years to address these problems; and

WHEREAS, The public policy of the State of West Virginia

calls for the reduction of the solid waste stream by twenty percent in the year ending the thirty-first day of December, one thousand nine hundred ninety-four, and thirty percent in the year ending the thirty-first day of December, two thousand; and

WHEREAS, Pursuant to law the director of the division of administration filed a report on the thirty-first day of January, one thousand nine hundred ninety, relating to establishment of a state procurement program for recycled paper products; and

WHEREAS, Source reduction of solid and toxic waste should be considered the highest priority in the management hierarchy for such waste; and

WHEREAS, The development of markets for recycled products is essential to the implementation of effective recycling programs; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to establish an interim committee to review, examine and study potential source reduction strategies for solid and toxic waste, market development and governmental procurement programs for recycled products, and the overall status of our state and county programs designed to manage and dispose of solid waste; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, one thousand nine hundred ninety-one, on its findings, conclusions, and recommendations, together with a draft of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved,* That the expenses necessary to conduct this study, to prepare a report, and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

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## SENATE CONCURRENT RESOLUTION 19

(By Senators Holliday and Pritt)

[Adopted March 10, 1990]

Establishing a West Virginia health care delivery and

accessibility task force and directing said task force to report to the Legislature.

WHEREAS, There are 300,797 people in West Virginia without any health care insurance and no financial ability to seek health care when it is necessary; and

WHEREAS, The number of West Virginians who do not have adequate access to quality and timely health care is much greater than the 300,797 figure due to the fact that many people who are insured are not able to afford health insurance that adequately meets their real needs; and

WHEREAS, Among the uninsured in West Virginia are 96,300 children who are forced to go without adequate health care during the most important growth years of their lives; and

WHEREAS, Nearly half of all those who have no medical insurance are actively employed workers whose incomes are too inadequate to meet their health care needs; and

WHEREAS, The number of state residents decreased by 30,000 from 1980 to 1989, but the number of state residents without health insurance increased by 30,000; and

WHEREAS, The depth of the health care problem in West Virginia, in all likelihood, will worsen during the next decade to a point of crisis by the turn of the century; and

WHEREAS, These statistics represent the horrible legacy of a failed health care delivery system, the needless pain and suffering of our sister and brother West Virginians, and an unacceptable waste of human and financial resources in our state; therefore, be it

*Resolved by the Legislature of West Virginia:*

That a task force be established by this Legislature for the purpose of studying the issue of access to health care in West Virginia, such task force to be composed of the chair and four members of the House Health and Human Resources Committee, to be chosen by the Speaker of the House; the chair and four members of the Senate Health and Human Resources Committee, chosen by the President of the Senate; eight members from the public appointed by the Governor, who shall include representatives from labor; consumers; providers, one of which must be a certified advanced practice nurse;



community organizations with an interest in the subject; and one representative from the Division of Health and one representative from the Division of Human Resources of the West Virginia Department of Health and Human Resources; and, be it

*Further Resolved*, That this task force shall meet as necessary, including during interim committee meetings of the Legislature, and shall investigate all relevant issues related to health care delivery and accessibility; and, be it

*Further Resolved*, That the task force shall hold public hearings for the purpose of receiving comments on these issues; and, be it

*Further Resolved*, That the task force shall recommend options for providing adequate and accessible health care to all West Virginians; and, be it

*Further Resolved*, That such options, findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate such recommendations, shall be reported by the task force to the next regular session of the Legislature, 1991; and, be it

*Further Resolved*, That the expenses necessary to conduct this work of the task force be paid from legislative appropriations to the Joint Committee on Government and Finance.

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SENATE CONCURRENT RESOLUTION 30  
(Originating in the Committee on Finance)

[Adopted March 1, 1990]

Relating to approving the purpose and amount of certain projects of the West Virginia Regional Jail and Correctional Facilities Authority.

WHEREAS, The West Virginia Supreme Court of Appeals, in the matter of *Crain v. Bordenkircher*, 376 S.E.2d 141, on November 30, 1988 (the "November 1988 Order"), ruled that the West Virginia Penitentiary located at Moundsville must be closed before July 1, 1992, and a new facility must be constructed to eliminate unconstitutional conditions of confinement; and

WHEREAS, The West Virginia Supreme Court of Appeals, in

its November 1988 Order, made the Governor, Secretary of State, Attorney General, Treasurer, members of the State Building Commission, President of the State Senate and all members of the State Senate, Speaker of the House of Delegates and all members of the House of Delegates, Auditor and Commissioner of the Department of Administration parties to the November 1988 Order, individually and in their official capacities; and

WHEREAS, Nine county jails have been closed as a result of court actions or the extreme costs associated with the upgrading of the facilities to meet modern standards for conditions of confinement; and

WHEREAS, There are twenty-seven counties engaged in court actions which, in various ways, challenge the conditions of confinement in the county jail of each respective county; and

WHEREAS, The costs of upgrading the county jails of fifty-five counties would impose an unbearable financial burden upon the resources of the counties; and

WHEREAS, The West Virginia Legislature enacted Enrolled Committee Substitute for Senate Bill Number 389 on April 8, 1989, to be effective from passage ("S. B. 389"), which act amended the Regional Jail and Correctional Facility Authority Act (as amended by S. B. 389, the "Act"), codified as Article 20, Chapter 31 of the Code of West Virginia, 1931, as amended (the "Code"); and

WHEREAS, The Act imposed upon the Regional Jail and Correctional Facility Authority (the "Authority") the responsibility for the submission of a plan to the Joint Committee on Government and Finance (the "Joint Committee") detailing the means by which the Authority will comply with the orders of the Supreme Court of Appeals as to the structural and internal conditions and programs of the correctional facilities, including regional jails, in this state; and

WHEREAS, The Authority submitted such a plan to the Joint Committee pursuant to the Act (the "Master Plan") which details the means by which the conditions of confinement in the correctional facilities and regional jails in this state may be brought into compliance with constitutional standards; and

WHEREAS, Chapter thirty-one, article twenty, section five,

subsection (m) of the West Virginia Code requires that no bonds or other obligations may be issued or incurred by the Authority unless and until the Legislature by concurrent resolution has approved the purpose and amount of each project for which proceeds from the issuance of such bond or other obligation will be used; and

WHEREAS, The further progress toward implementation of the plan for the improvement of correctional facilities and the establishment of regional jails awaits the approval of the Legislature; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the issuance and sale by the Authority of revenue or lease/purchase bonds or other obligations permitted by the Act, or other financing or financings permitted by the Code, in an amount sufficient to fund not more than one hundred ninety-seven million, four hundred forty-eight thousand, nine hundred dollars (\$197,448,900.00) in projects, and all steps necessary or desirable to provide for the security for and sale of such obligations or other financings, are hereby approved by the Legislature for the following projects as described in the Master Plan and as may be further described in revisions of the Master Plan, as hereinafter provided.

The proceeds of the bonds or other obligations issued by the Authority pursuant to this Senate Concurrent Resolution may be used for any and all purposes, costs and expenses of any nature whatsoever under the Act, including, without limitation, the following:

(1) Acquisition of property, site preparation, design, construction, renovation, expansion, equipping, furnishing and related costs necessary to construct and prepare the following correctional facilities for operation, all at an estimated cost of sixty-one million, nine hundred thirty-two thousand dollars (\$61,932,000.00), as follows:

NEW CONSTRUCTION:

REPLACEMENT FOR  
WEST VIRGINIA PENITENTIARY ... \$ 46,200,000.00  
(Fayette County Complex)

## RENOVATION AND EXPANSION:

## HUTTONSVILLE

CORRECTIONAL CENTER ..... \$ 8,017,000.00

## PRUNTYTOWN

CORRECTIONAL CENTER ..... \$ 1,523,000.00

ANTHONY CORRECTIONAL CENTER \$ 3,712,000.00

WORK RELEASE CENTERS..... \$ 2,480,000.00

## TOTAL, CORRECTIONAL

FACILITIES ..... \$ 61,932,000.00

and,

(2) Acquisition of property, site preparation, design, construction, equipping and furnishing, including related costs necessary to construct and prepare the following regional jails for operation, all at an estimated cost of one hundred thirty-five million, five hundred sixteen thousand, nine hundred dollars (\$135,516,900.00), as follows:

SOUTH CENTRAL REGIONAL JAIL.... \$ 16,063,500.00

CENTRAL REGIONAL JAIL ..... \$ 10,360,800.00

SOUTHWESTERN REGIONAL JAIL.... \$ 11,014,200.00

## NORTHERN REGIONAL JAIL AND

CORRECTIONAL FACILITY ..... \$ 19,082,000.00

(Marshall County Complex)

WEST CENTRAL REGIONAL JAIL ..... \$ 12,721,400.00

SOUTHERN REGIONAL JAIL ..... \$ 17,669,800.00

WESTERN REGIONAL JAIL..... \$ 12,721,400.00

NORTH CENTRAL REGIONAL JAIL.... \$ 18,553,300.00

TYGART VALLEY REGIONAL JAIL.... \$ 12,432,900.00

EASTERN REGIONAL JAIL ..... \$ 4,897,600.00

REGIONAL JAIL TOTAL..... \$135,516,900.00

*Provided*, That the total amount of one hundred ninety-seven million, four hundred forty-eight thousand, nine hundred dollars (\$197,448,900.00) in project costs, exclusive of financing and issuance costs and capitalized interest costs, if any, as provided above, may not be exceeded although it is specifically recognized and authorized that the actual cost of any project may vary from the aforementioned estimated costs, in which event transfers may be made between and among the identified projects; and, be it

*Further Resolved*, That the Clerk of the Senate transmit a

copy of this resolution to the Governor, the Chief Justice of the Supreme Court of Appeals and the Chairman of the Regional Jail and Correctional Facility Authority.

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### HOUSE RESOLUTION 19

(Originating in the Committee on Rules)

[Adopted February 19, 1990]

Amending the Rules of the House of Delegates relating to prohibiting smoking and the use of all other tobacco products in the House of Delegates Chamber, galleries and in House committee rooms during meetings.

*Resolved by the House of Delegates:*

That the standing Rules of the House of Delegates be amended to read as follows:

**Smoking and use of tobacco products prohibited**

136a. Smoking and the use of tobacco products are prohibited in the House chamber and House galleries during sessions and in House committee rooms during committee meetings or public hearings; provided, however, smoking and the use of tobacco products by members shall be allowed in the vestibule of the chamber.

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### SENATE RESOLUTION 3

(By Senator Chafin)

[Adopted January 10, 1990]

Amending Senate Rule No. 27, relating to the appointment of standing committees.

*Resolved by the Senate:*

That Senate Rule No. 27 be amended to read as follows:

**Committees.**

27. At the commencement of each Legislature, standing committees shall be appointed, each committee to consist of the number of members indicated in the parentheses following the naming of the committee. The following committees shall be named:

1. On Agriculture (9).
2. On Banking and Insurance (13).
3. On Confirmations (9).
4. On Education (12).
5. On Energy, Industry and Mining (13).
6. On Finance (17).
7. On Government Organization (12).
8. On Health and Human Resources (11).
9. On Interstate Cooperation (7); (the President of the Senate is to be ex officio cochairperson).
10. On the Judiciary (16).
11. On Labor (9).
12. On Military (9).
13. On Natural Resources (13).
14. On Rules (10); (the President of the Senate is to be ex officio chairperson).
15. On Transportation (9).
16. On Small Business (9).

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### SENATE RESOLUTION 13

(Originating in the Committee on Confirmations)

[Adopted March 5, 1990]

Amending the Rules of the Senate, relating to defining "next meeting of the Senate" for the purpose of confirmations.

*Resolved by the Senate:*

That the Standing Rules of the Senate be amended by adding thereto a new rule as follows:

**Defining Next Meeting of the Senate**

57a. The phrase "next meeting of the Senate" contained in article seven, section nine of the constitution of West Virginia

means any time the full Senate is convened and includes, but is not limited to, any regular session, any extraordinary session called during any recess or adjournment of the Legislature, during any impeachment proceeding or any time the Senate is convened pursuant to section ten-a, article one, chapter four of the code of West Virginia.





# LEGISLATURE OF WEST VIRGINIA

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# ACTS

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## FIRST EXTRAORDINARY SESSION, 1990

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### CHAPTER 1

(H. B. 102—By Mr. Speaker, Mr. Chambers, and Delegate Farley)

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[Passed March 15, 1990; in effect from passage. Approved by the Governor.]

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AN ACT supplementing, amending, reducing and transferring appropriations in Account No. 2950, as specified, including all necessary adjustments of increases, reductions or transfers of appropriations and language of appropriation in specified items and those items created herein, all supplementing and amending Enrolled Com. Sub. for S. B. 35, second regular session, one thousand nine hundred ninety, known as the budget bill.

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

That specified items of Account No. 2950, as found in Com. Sub. for S.B. 35, second regular session, one thousand nine hundred ninety, known as the budget bill, be supplemented, amended, reduced and transferred by the items and language of appropriation to such extent as set forth herein to read as follows:

- 1 TITLE II. APPROPRIATIONS.
- 2 Section 1. Appropriations from general revenue.
- 3 Sec. 2. Appropriations of federal funds.

4

**DEPARTMENT OF EDUCATION**

5

*51—State Department of Education—*

6

*State Aid to Schools*

7

(WV Code Chapter 18 and 18A)

8

Acct. No. 2950

9	1	Professional		
		Educators .....	\$4,500,000	\$483,923,054
10	2	Service Personnel .....	—	173,763,615
11	3	Salary Equity .....	—	23,923,098
12	4	Fixed Charges .....	—	54,564,182
13	5	Transportation .....	—	25,022,924
14	6	Administration .....	—	6,105,288
15	7	Other Current		
		Expenses .....	—	82,773,334
16	8	Improve Instructions		
17	9	Programs.....	—	<u>53,652,893</u>
18	10	Basic Foundation		
19	11	Allowances .....	4,500,000	903,728,388
20	12	Less Local Share .....	—	<u>(149,642,825)</u>
21	13	Total Basic State Aid....	4,500,000	754,085,563
22	14	Public Employees		
23	15	Insurance Agency .....	—	78,449,000
24	16	Teachers' Retirement		
25	17	System .....	—	106,987,401
26	18	Incentive for		
		Administrative		
27	19	Efficiency .....	—	103,623
28	20	Increased Enrollment ...	—	758,745
29	21	Unclassified .....	<u>—0—</u>	<u>—0—</u>
30	22	Total .....	\$4,500,000	\$940,384,332

31 The purpose of this supplementary appropriation bill  
32 is to appropriate public moneys, as specified (general  
33 revenues and federal funds) with insertion of such  
34 moneys into accounts in the budget bill and specified  
35 items thereof, together with adjustments of increase,  
36 reduction or transfer required. These public moneys, as  
37 newly provided for, shall be available for such use and  
38 expenditure upon passage of the bill and in fiscal year  
39 1990-91, supplementing the budget bill for such fiscal  
40 year earlier enacted.

## CHAPTER 2

(H. B. 101—By Mr. Speaker, Mr. Chambers, and Delegate Sattes)

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[Passed March 15, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to repeal section fourteen, article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article two of said chapter by adding thereto a new section, designated section five-b; to amend article two-b of said chapter by adding thereto a new section, designated section two-a; to amend and reenact section thirteen, article five of said chapter; to amend and reenact section one, article eight of said chapter; to amend and reenact sections four, five, five-a, seven, nine, ten, thirteen and thirteen-b, article nine-a of said chapter; to amend article nine-b of said chapter by adding thereto a new section, designated section six-a; to amend and reenact section one, article twenty of said chapter; to further amend said article twenty by adding thereto a new section, designated section one-b; to amend and reenact section seven, article two, chapter eighteen-a of said code; to amend and reenact sections five-a, five-b and seven, article four of said chapter; to further amend said article four by adding thereto a new section, designated section five-d; and to amend article one, chapter eighteen-b of said code by adding thereto a new section, designated section eleven, all relating to public education generally; authorizing the state board to become a medicaid provider and ascertaining eligible students; permitting the state board to delegate provider status in certain instances and requiring an annual report; prohibiting withdrawal from participation in a multi-county vocational center; allowing county school boards to contract with colleges or universities or recognized campus organizations to provide school buses to transport college or university students, faculty and staff to and from such college or university; providing for the aforesaid contract to include cost of service and rules concerning student behavior; requiring certain individuals to be provided with information relating to

vocational or higher education opportunities; deleting obsolete language pertaining to meetings and reports for the joint establishment of county school systems; conforming the compulsory school attendance age with other sections of the code; requiring test publishers to norm homeschooling standardized tests; authorizing an additional test choice; requiring the standardized test to be less than ten years old; providing the test results to be reported as a national percentile; requiring test results to be made available by a certain date; decreasing the professional educator ratio of fifty-five per thousand and establishing priorities in the event of a reduction in force; providing for a minimum number of principals and central office administrators; deleting obsolete language pertaining to the foundation allowance for the fiscal year one thousand nine hundred eighty-eight; removing the prohibition that certain school employees may not be reduced-in-force in certain instances; permitting counties with increasing student populations to apply for additional bus funding; providing ninety percent of transportation costs to counties to cover certain costs in transporting certain students to and from multi-county vocational schools; delaying the increase in the allowance for other current expense for one year; providing an appropriation of fifteen million four hundred forty thousand four hundred ninety-three dollars for the school building authority for the fiscal year beginning on the first day of July, one thousand nine hundred ninety, and increasing such amount by at least seven million seven hundred thousand dollars in each subsequent year; changing the allowance for loss reduction to an allowance for counties in severe financial crisis; deleting obsolete language pertaining to total state appropriation for the basic foundation program; providing for an amount of funds for salary equity; delaying allocation of funding for remedial and accelerated programs for one year; delaying submission of county board's budget to the state board until the tenth day next following the state board's transmittal of the final state aid computations; decreasing the maximum age addressed by special education programs; permitting special education program completion by students

at least twenty-one years of age and enrolled prior to a certain date; requiring the education of exceptional and handicapped children in foster care and correctional facilities beginning on the first day of July, one thousand nine hundred ninety; deleting obsolete language pertaining to establishment of special education program for certain children; expanding the services provided to the severely handicapped to include handicapped children ages three through five, inclusive, beginning the first day of July, one thousand nine hundred ninety; broadening the definition of the term "handicapped children" beginning the first day of July, one thousand nine hundred ninety; requiring state board of education to adopt rules to assure appropriate educational programs for certain children in foster care and correctional facilities beginning the first day of July, one thousand nine hundred ninety; removing the limits placed on counties for teacher and service personnel salary supplements for one year and changing certain effective dates; authorizing a salary equity appropriation; providing for an adjustment in substitute teacher compensation; requiring state funded institutions of higher education to provide appropriate services to meet the needs of students with handicapping conditions; and repealing the section providing for incentives for staffing improvements.

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

That section fourteen, article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that article two of said chapter be amended by adding thereto a new section, designated section five-b; that article two-b of said chapter be amended by adding thereto a new section, designated section two-a; that section thirteen, article five of said chapter be amended and reenacted; that section one, article eight of said chapter be amended and reenacted; that sections four, five, five-a, seven, nine, ten, thirteen and thirteen-b, article nine-a of said chapter be amended and reenacted; that article nine-b of said chapter be amended by adding thereto a new section, designated section six-a; that section one, article twenty of said chapter be amended and reenacted; that said article twenty be further

amended by adding thereto a new section, designated section one-b; that section seven, article two, chapter eighteen-a of said code be amended and reenacted; that sections five-a, five-b and seven, article four of said chapter be amended and reenacted; that said article four be further amended by adding thereto a new section, designated section five-d; and that article one, chapter eighteen-b of said code be amended by adding thereto a new section, designated section eleven, all to read as follows:

### Chapter

- 18. Education.
- 18A. School Personnel.
- 18B. Higher Education.

## CHAPTER 18. EDUCATION.

### Article.

- 2. State Board of Education.
- 2B. Area Vocational Program.
- 5. County Board of Education.
- 8. Compulsory School Attendance.
- 9A. Public School Support.
- 9B. State Board of School Finance.
- 20. Education of Exceptional Children.

### ARTICLE 2. STATE BOARD OF EDUCATION.

#### §18-2-5b. Medicaid eligible children.

1 The state board of education shall become a medicaid  
 2 provider and seek out medicaid eligible students for the  
 3 purpose of providing medicaid and related services to  
 4 students eligible under the medicaid program and to  
 5 maximize federal reimbursement for all services  
 6 available under the Omnibus Budget Reconciliation Act  
 7 of one thousand nine hundred eighty-nine, as it relates  
 8 to medicaid expansion and any future expansions in the  
 9 medicaid program for medicaid and related services for  
 10 which state dollars are or will be expended: *Provided*,  
 11 That the state board may delegate this provider status  
 12 and subsequent reimbursement to regional educational  
 13 service agencies (RESA) and/or county boards of  
 14 education: *Provided, however*, That annually the state  
 15 board of education shall report to the Legislature the  
 16 number and age of children eligible for medicaid, the  
 17 number and age of children with medicaid coverage, the  
 18 types of medicaid eligible services provided, the

19 frequency of services provided, the medicaid dollars  
20 reimbursed; and that this report shall be on a county  
21 by county basis and made available no later than the  
22 first day of January, one thousand nine hundred ninety-  
23 one, and annually thereafter.

**ARTICLE 2B. AREA VOCATIONAL PROGRAM.**

**§18-2B-2a. Withdrawal from multi-county vocational center prohibited.**

1 Any county which participates in the operation of a  
2 multi-county vocational center shall not be permitted to  
3 withdraw from such participation.

**ARTICLE 5. COUNTY BOARD OF EDUCATION.**

**§18-5-13. Authority of boards generally.**

1 The boards, subject to the provisions of this chapter  
2 and the rules and regulations of the state board, shall  
3 have authority:

4 (1) To control and manage all of the schools and school  
5 interests for all school activities and upon all school  
6 property, whether owned or leased by the county,  
7 including the authority to require that records be kept  
8 of all receipts and disbursements of all funds collected  
9 or received by any principal, teacher, student or other  
10 person in connection therewith, any programs, activities  
11 or other endeavors of any nature operated or carried on  
12 by or in the name of the school, or any organization or  
13 body directly connected with the school, to audit such  
14 records and to conserve such funds, which shall be  
15 deemed quasi-public moneys, including securing surety  
16 bonds by expenditure of board moneys;

17 (2) To establish schools, from preschool through high  
18 school, inclusive of vocational schools; and to establish  
19 schools and programs, or both, for post high school  
20 instruction, subject to approval of the state board of  
21 education;

22 (3) To close any school which is unnecessary and to  
23 assign the pupils thereof to other schools: *Provided, That*  
24 such closing shall be officially acted upon and teachers  
25 and service personnel involved notified on or before the

26 first Monday in April, in the same manner as provided  
27 in section four of this article, except in an emergency,  
28 subject to the approval of the state superintendent, or  
29 under subdivision (5) of this section;

30 (4) To consolidate schools;

31 (5) To close any elementary school whose average  
32 daily attendance falls below twenty pupils for two  
33 months in succession and send the pupils to other schools  
34 in the district or to schools in adjoining districts. If the  
35 teachers in the school so closed are not transferred or  
36 reassigned to other schools, they receive one month's  
37 salary;

38 (6) (a) To provide at public expense adequate means  
39 of transportation, including transportation across county  
40 lines, for all children of school age who live more than  
41 two miles distance from school by the nearest available  
42 road; to provide at public expense and according to such  
43 regulations as the board may establish, adequate means  
44 of transportation for school children participating in  
45 board-approved curricular and extracurricular activi-  
46 ties; and to provide in addition thereto at public expense,  
47 by rules and regulations and within the available  
48 revenues, transportation for those within two miles  
49 distance; to provide in addition thereto, at no cost to the  
50 board and according to rules and regulations established  
51 by the board, transportation for participants in projects  
52 operated, financed, sponsored or approved by the  
53 commission on aging: *Provided*, That all costs and  
54 expenses incident in any way to transportation for  
55 projects connected with the commission on aging shall  
56 be borne by such commission, or the local or county  
57 chapter thereof: *Provided, however*, That in all cases the  
58 school buses owned by the board of education shall be  
59 driven or operated only by drivers regularly employed  
60 by the board of education: *Provided further*, That the  
61 county board may provide, under rules established by  
62 the state board, for the certification of professional  
63 employees as drivers of board-owned vehicles with a  
64 seating capacity of less than ten passengers used for the  
65 transportation of pupils for school-sponsored activities  
66 other than transporting students between school and



67 home: *And provided further*, That the use of such  
68 vehicles shall be limited to one for each school-sponsored  
69 activity: *And provided further*, That buses shall be used  
70 for extracurricular activities as herein provided only  
71 when the insurance provided for by this section shall  
72 have been effected;

73 (b) To enter into agreements with one another to  
74 provide, on a cooperative basis, adequate means of  
75 transportation across county lines for children of school  
76 age subject to the conditions and restrictions of subdi-  
77 visions (6) and (8) of this section;

78 (7) (a) To lease school buses operated only by drivers  
79 regularly employed by the board to public and private  
80 nonprofit organizations or private corporations to  
81 transport school-age children to and from camps or  
82 educational activities in accordance with rules and  
83 regulations established by the board. All costs and  
84 expenses incurred by or incidental to the transportation  
85 of such children shall be borne by the lessee;

86 (b) To contract with any college or university or  
87 officially recognized campus organizations to provide  
88 transportation for college or university students, faculty  
89 or staff to and from such college or university: *Provided*,  
90 That only college and/or university students, faculty and  
91 staff are being transported. The contract shall include  
92 consideration and compensation for bus operators,  
93 repairs and other costs of service, insurance and any  
94 rules and regulations concerning student behavior;

95 (8) To provide at public expense for insurance against  
96 the negligence of the drivers of school buses, trucks or  
97 other vehicles operated by the board; and if the  
98 transportation of pupils be contracted, then the contract  
99 therefor shall provide that the contractor shall carry  
100 insurance against negligence in such an amount as the  
101 board shall specify;

102 (9) To provide solely from county funds for all regular  
103 full-time employees of the board all or any part of the  
104 cost of a group plan or plans of insurance coverage not  
105 provided or available under the West Virginia public  
106 employees insurance act;

107 (10) To employ teacher aides, to provide in-service  
108 training for teacher aides, the training to be in  
109 accordance with rules and regulations of the state board  
110 and, in the case of service personnel assuming duties as  
111 teacher aides in exceptional children programs, to  
112 provide a four-clock-hour program of training prior to  
113 such assignment which shall, in accordance with rules  
114 and regulations of the state board, consist of training in  
115 areas specifically related to the education of exceptional  
116 children;

117 (11) To establish and conduct a self-supporting  
118 dormitory for the accommodation of the pupils attend-  
119 ing a high school or participating in a post high school  
120 program and of persons employed to teach therein;

121 (12) To employ legal counsel;

122 (13) To provide appropriate uniforms for school  
123 service personnel;

124 (14) To provide at public expense and under regula-  
125 tions as established by any county board of education for  
126 the payment of traveling expenses incurred by any  
127 person invited to appear to be interviewed concerning  
128 possible employment by such county board of education;

129 (15) To allow or disallow their designated employees  
130 to use publicly provided carriage to travel from their  
131 residences to their workplace and return: *Provided,*  
132 That such usage is subject to the supervision of such  
133 board and is directly connected with and required by  
134 the nature and in the performance of such employee's  
135 duties and responsibilities;

136 (16) To provide, at public expense, adequate public  
137 liability insurance, including professional liability  
138 insurance for board employees;

139 (17) To enter into agreements with one another to  
140 provide, on a cooperative basis, improvements to the  
141 instructional needs of each county. Said cooperative  
142 agreements may be used to employ specialists in a field  
143 of academic study or support functions or services,  
144 therefor. Such agreements shall be subject to approval  
145 by the state board of education; and

146 (18) To provide information about vocational or  
147 higher education opportunities to students with handi-  
148 capping conditions. The board shall provide in writing  
149 to the students and their parents or guardians informa-  
150 tion relating to programs of vocational education and to  
151 programs available at state funded institutions of higher  
152 education. Such information may include sources of  
153 available funding, including grants, mentorships and  
154 loans for students who wish to attend classes at  
155 institutions of higher education.

156 "Quasi-public funds" as used herein means any money  
157 received by any principal, teacher, student or other  
158 person for the benefit of the school system as a result  
159 of curricular or noncurricular activities.

160 The board of each county shall expend under such  
161 regulations as it establishes for each child an amount not  
162 to exceed the proportion of all school funds of the district  
163 that each child would be entitled to receive if all the  
164 funds were distributed equally among all the children  
165 of school age in the district upon a per capita basis.

#### ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

##### §18-8-1. Commencement and termination of compulsory school attendance; exemptions.

1 Compulsory school attendance shall begin with the  
2 school year in which the sixth birthday is reached prior  
3 to the first day of September of such year or upon  
4 enrolling in a publicly supported kindergarten program  
5 and continue to the sixteenth birthday.

6 Exemption from the foregoing requirements of  
7 compulsory public school attendance shall be made on  
8 behalf of any child for the following causes or conditions,  
9 each such cause or condition being subject to confirma-  
10 tion by the attendance authority of the county:

11 *Exemption A. Instruction in a private, parochial or*  
12 *other approved school.*—Such instruction shall be in a  
13 school approved by the county board of education and  
14 for a time equal to the school term of the county for the  
15 year. In all such schools it shall be the duty of the  
16 principal or other person in control, upon the request of

17 the county superintendent of schools, to furnish to the  
18 county board of education such information and records  
19 as may be required with respect to attendance, instruc-  
20 tion and progress of pupils enrolled between the  
21 entrance age and sixteen years;

22 *Exemption B. Instruction in home or other approved*  
23 *place.*—(a) Such instruction shall be in the home of such  
24 child or children or at some other place approved by the  
25 county board of education and for a time equal to the  
26 school term of the county. If such request for home  
27 instruction is denied by the county board of education,  
28 good and reasonable justification for such denial must  
29 be furnished in writing to the applicant by the county  
30 board of education. The instruction in such cases shall  
31 be conducted by a person or persons who, in the  
32 judgment of the county superintendent and county  
33 board of education, are qualified to give instruction in  
34 subjects required to be taught in the free elementary  
35 schools of the state. It shall be the duty of the person  
36 or persons providing the instruction, upon request of the  
37 county superintendent, to furnish to the county board of  
38 education such information and records as may be  
39 required from time to time with respect to attendance,  
40 instruction and progress of pupils enrolled between the  
41 entrance age and sixteen years receiving such instruc-  
42 tion. The state department of education shall develop  
43 guidelines for the homeschooling of special education  
44 students including alternative assessment measures to  
45 assure that satisfactory academic progress is achieved.

46 (b) Notwithstanding the provisions of subsection  
47 (a) of this Exemption B, the person or persons providing  
48 home instruction meet the requirements for Exemption  
49 B when the conditions of this subsection are met:  
50 *Provided*, That the county superintendent shall have the  
51 right to seek from the circuit court of the county an  
52 order denying the home instruction, which order may  
53 be granted upon a showing of clear and convincing  
54 evidence that the child will suffer educational neglect  
55 or that there are other compelling reasons to deny home  
56 instruction.

57 (1) The person or persons providing home instruction

58 present to the county superintendent or county board of  
59 education a notice of intent to provide home instruction  
60 and the name and address of any child of compulsory  
61 school age to be instructed: *Provided*, That if a child is  
62 enrolled in a public school, notice of intent to provide  
63 home instruction shall be given at least two weeks prior  
64 to withdrawing such child from public school;

65 (2) The person or persons providing home instruction  
66 submit satisfactory evidence of (i) a high school diploma  
67 or equivalent and (ii) formal education at least four  
68 years higher than the most academically advanced child  
69 for whom the instruction will be provided or achieve-  
70 ment of a score on the National Teachers Examination  
71 sufficient for teacher certification in this state;

72 (3) The person or persons providing home instruction  
73 outline a plan of instruction for the ensuing school year;  
74 and

75 (4) The child receiving home instruction annually  
76 takes a standardized test, to be administered at a public  
77 school in the county where the child resides, or admin-  
78 istered by a licensed psychologist or other person  
79 authorized by the publisher of the test, or administered  
80 by a person authorized by the county superintendent or  
81 county board of education. The child shall be adminis-  
82 tered a test which has been normed by the test publisher  
83 on that child's age or grade group. In no event may the  
84 child's parent or legal guardian administer the test.  
85 Where a test is administered outside of a public school,  
86 the child's parent or legal guardian shall pay the cost  
87 of administering the test. The public school or other  
88 qualified person shall administer to children of compul-  
89 sory school age the Comprehensive Test of Basic Skills,  
90 the California achievement test, the Stanford achieve-  
91 ment test, or the Iowa tests of basic skills, achievement  
92 and proficiency which test will be selected by the public  
93 school, or other person administering the test, in the  
94 subjects of English, grammar, reading, social studies,  
95 science and mathematics; and shall be administered  
96 under standardized conditions as set forth by the  
97 published instructions of the selected test. No test shall  
98 be administered if the publication date is more than ten

99 years from the date of the administration of the test.  
100 Each child's test results shall be reported as a national  
101 percentile for each of the six subjects tested. Each  
102 child's test results shall be made available on or before  
103 the thirtieth day of June of the school year in which the  
104 test is to be administered to the person or persons  
105 providing home instruction, the child's parent or legal  
106 guardian and the county superintendent. Upon request  
107 of a duly authorized representative of the West Virginia  
108 department of education, each child's test results shall  
109 be furnished by the person or persons providing home  
110 instruction, or by the child's parent or legal guardian,  
111 to the state superintendent of schools.

112 If the child's composite test results for any single year  
113 for English, grammar, reading, social studies, science  
114 and mathematics fall below the fortieth percentile on  
115 the selected tests, the person or persons providing home  
116 instruction shall initiate a remedial program to foster  
117 achievement above that level. If, after one calendar year,  
118 the child's composite test results are not above the  
119 fortieth percentile level, home instruction shall no  
120 longer satisfy the compulsory school attendance require-  
121 ment exemption.

122 The superintendent or a designee shall offer such  
123 assistance, including textbooks, other teaching materials  
124 and available resources, as may assist the person or  
125 persons providing home instruction subject to their  
126 availability. Any child receiving home instruction may,  
127 upon approval of the county board of education, exercise  
128 the option to attend any class offered by the county  
129 board of education as the person or persons providing  
130 home instruction may deem appropriate subject to  
131 normal registration and attendance requirements.

132 *Exemption C. Physical or mental incapacity.—*  
133 Physical or mental incapacity shall consist of incapacity  
134 for school attendance and the performance of school  
135 work. In all cases of prolonged absence from school due  
136 to incapacity of the child to attend, the written state-  
137 ment of a licensed physician or authorized school nurse  
138 shall be required under the provisions of this article:  
139 *Provided,* That in all cases incapacity shall be narrowly

140 defined and in no case shall the provisions of this article  
141 allow for the exclusion of the mentally, physically,  
142 emotionally or behaviorally handicapped child otherwise  
143 entitled to a free appropriate education;

144 *Exemption D. Residence more than two miles from*  
145 *school or school bus route.*—The distance of residence  
146 from a school, or school bus route providing free  
147 transportation, shall be reckoned by the shortest  
148 practicable road or path, which contemplates travel  
149 through fields by right of permission from the land-  
150 holders or their agents. It shall be the duty of the county  
151 board of education, subject to written consent of  
152 landholders, or their agents, to provide and maintain  
153 safe foot bridges across streams off the public highways  
154 where such are required for the safety and welfare of  
155 pupils whose mode of travel from home to school or to  
156 school bus route must necessarily be other than along  
157 the public highway in order for said road or path to be  
158 not over two miles from home to school or to school bus  
159 providing free transportation;

160 *Exemption E. Hazardous conditions.*—Conditions  
161 rendering school attendance impossible or hazardous to  
162 the life, health or safety of the child;

163 *Exemption F. High school graduation.*—Such ex-  
164 emption shall consist of regular graduation from a  
165 standard senior high school;

166 *Exemption G. Granting work permits.*—The county  
167 superintendent may, after due investigation, grant work  
168 permits to youths under sixteen years of age, subject to  
169 state and federal labor laws and regulations: *Provided,*  
170 That a work permit may not be granted on behalf of any  
171 youth who has not completed the eighth grade of school;

172 *Exemption H. Serious illness or death in the imme-*  
173 *diata family of the pupil.*—It is expected that the county  
174 attendance director will ascertain the facts in all cases  
175 of such absences about which information is inadequate  
176 and report same to the county superintendent of schools;

177 *Exemption I. Destitution in the home.*—Exemption  
178 based on a condition of extreme destitution in the home

179 may be granted only upon the written recommendation  
180 of the county attendance director to the county super-  
181 intendent following careful investigation of the case. A  
182 copy of the report confirming such condition and school  
183 exemption shall be placed with the county director of  
184 public assistance. This enactment contemplates every  
185 reasonable effort that may properly be taken on the part  
186 of both school and public assistance authorities for the  
187 relief of home conditions officially recognized as being  
188 so destitute as to deprive children of the privilege of  
189 school attendance. Exemption for this cause shall not be  
190 allowed when such destitution is relieved through public  
191 or private means;

192 *Exemption J. Church ordinances; observances of*  
193 *regular church ordinances.*—The county board of educa-  
194 tion may approve exemption for religious instruction  
195 upon written request of the person having legal or  
196 actual charge of a child or children: *Provided*, That such  
197 exemption shall be subject to the rules and regulations  
198 prescribed by the county superintendent and approved  
199 by the county board of education;

200 *Exemption K. Alternative private, parochial, church*  
201 *or religious school instruction.*—In lieu of the provisions  
202 of Exemption A hereinabove, exemption shall be made  
203 for any child attending any private school, parochial  
204 school, church school, school operated by a religious  
205 order, or other nonpublic school which elects to comply  
206 with the provisions of article twenty-eight, chapter  
207 eighteen of the code of West Virginia.

208 The completion of the eighth grade shall not exempt  
209 any child under sixteen years of age from the compul-  
210 sory attendance provision of this article: *Provided*, That  
211 there is a public high school or other public school of  
212 advanced grades or a school bus providing free trans-  
213 portation to any such school, the route of which is within  
214 two miles of the child's home by the shortest practicable  
215 route or path as hereinbefore specified under Exemp-  
216 tion D of this section.

#### ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-4. Foundation allowance for professional educators.



- §18-9A-5. Foundation allowance for service personnel.  
§18-9A-5a. Ratio of foundation allowances for professional educators and service personnel to net enrollment.  
§18-9A-7. Foundation allowance for transportation cost.  
§18-9A-9. Foundation allowance for other current expense and substitute employees.  
§18-9A-10. Foundation allowance to improve instructional programs.  
§18-9A-13. Allowance for counties in severe financial crisis.  
§18-9A-13b. Allowances for remedial and accelerated education programs and salary equity.

**§18-9A-4. Foundation allowance for professional educators.**

1 The basic foundation allowance to the county for  
2 professional educators shall be the amount of money  
3 required to pay the state minimum salaries, in accor-  
4 dance with provisions of article four, chapter eighteen-  
5 a of the code, to such personnel employed: *Provided,*  
6 That in making this computation no county shall receive  
7 an allowance for such personnel which number is in  
8 excess of fifty-five professional educators to each one  
9 thousand students in adjusted enrollment: *Provided,*  
10 *however,* That for the school year commencing on the  
11 first day of July, one thousand nine hundred ninety, no  
12 county shall receive an allowance for such personnel  
13 which number is in excess of fifty-four and thirty-three  
14 one-hundredths professional educators to each one  
15 thousand students in adjusted enrollment: *Provided*  
16 *further,* That for the school year commencing on the first  
17 day of July, one thousand nine hundred ninety-one and  
18 thereafter, no county shall receive an allowance for such  
19 personnel which number is in excess of fifty-three and  
20 one-half professional educators to each one thousand  
21 students in adjusted enrollment: *And provided further,*  
22 That any county not qualifying under the provision of  
23 section fourteen of this article shall be eligible for a  
24 growth rate in professional personnel in any one year  
25 not to exceed twenty percent of its total potential  
26 increase under this provision, except that in no case  
27 shall such limit be fewer than five professionals: *And*  
28 *provided further,* That the number of and the allowance  
29 for personnel paid in part by state and county funds  
30 shall be prorated: *And provided further,* That where two  
31 or more counties join together in support of a vocational

32 or comprehensive high school or any other program or  
33 service, the professional educators for such school or  
34 program may be prorated among the participating  
35 counties on the basis of each one's enrollment therein  
36 and that such personnel shall be considered within the  
37 above-stated limit: *And provided further*, That in the  
38 school year beginning the first day of July, one thousand  
39 nine hundred eighty-eight, and the succeeding school  
40 year, each county board shall establish and maintain a  
41 minimum ratio of fifty professional instructional  
42 personnel per one thousand students in adjusted  
43 enrollment, and in the school year beginning the first  
44 day of July, one thousand nine hundred ninety, and for  
45 each succeeding school year, each county board shall  
46 establish and maintain a minimum ratio of fifty-one  
47 professional instructional personnel per one thousand  
48 students in adjusted enrollment: *And provided further*,  
49 That no county shall have less than a total of five  
50 principals and central office administrators. Any county  
51 board which does not establish and maintain this  
52 minimum ratio shall suffer a pro rata reduction in the  
53 allowance for professional educators under this section,  
54 and, further, any county board which does not establish  
55 and maintain this minimum ratio shall utilize any and  
56 all allocations to it by provision of section fourteen of  
57 this article solely to employ professional instructional  
58 personnel until the minimum ratio is attained. Every  
59 county shall utilize methods other than reductions in  
60 force, such as attrition and early retirement, before  
61 implementing their reductions in force policy to comply  
62 with the limitations of this section. Any reductions  
63 resulting from the provisions of this section shall be  
64 made in the following order: (1) central office adminis-  
65 trators, (2) assistant principals, and (3) principals.

66 Every county board of education shall annually  
67 determine the number of professional educators em-  
68 ployed that exceeds the number allowed by the public  
69 school support plan and determine the amount of salary  
70 supplement that would be available per state authorized  
71 employee if all expenditures for such excess employees  
72 were converted to annual salaries for state authorized  
73 professional educators. Such information shall be

74 published annually in each school report card of each  
75 county.

**§18-9A-5. Foundation allowance for service personnel.**

1 The basic foundation allowance to the county for  
2 service personnel shall be the amount of money required  
3 to pay the annual state minimum salaries in accordance  
4 with the provisions of article four, chapter eighteen-a of  
5 the code, to such service personnel employed: *Provided,*  
6 That no county shall receive an allowance for an amount  
7 in excess of thirty-four service personnel per one  
8 thousand students in adjusted enrollment: *Provided,*  
9 *however,* That the state superintendent of schools is  
10 authorized in accordance with rules and regulations  
11 established by the state board and upon request of a  
12 county superintendent to waive the maximum ratio of  
13 thirty-four service personnel per one thousand students  
14 in adjusted enrollment and the twenty percent per year  
15 growth cap provided in this section, to the extent  
16 appropriations are provided, in those cases where the  
17 state superintendent determines that student population  
18 density and miles of bus route driven justify such  
19 waiver, except that no waiver shall be granted to any  
20 county whose financial statement shows a net balance  
21 in general current expense funds greater than three  
22 percent at the end of the previous fiscal year: *Provided*  
23 *further,* That on or before the first day of each regular  
24 session of the Legislature, the state board, through the  
25 state superintendent, shall make to the Legislature a full  
26 report concerning the number of waivers granted and  
27 the fiscal impact related thereto. Every county shall  
28 utilize methods other than reduction in force, such as  
29 attrition and early retirement, before implementing  
30 their reductions in force policy to comply with the  
31 limitations of this section.

32 For any county which has in excess of thirty-four  
33 service personnel per one thousand students in adjusted  
34 enrollment, such allowance shall be computed based  
35 upon the average state minimum pay scale salary of all  
36 service personnel in such county: *Provided,* That for any  
37 county having fewer than thirty-four service personnel  
38 per one thousand students in adjusted enrollment, in any

39 one year, the number of service personnel used in  
40 making this computation may be increased the succeed-  
41 ing years by no more than twenty percent per year of  
42 its total potential increase under this provision, except  
43 that in no case shall such limit be fewer than two service  
44 personnel until the county attains the maximum ratio  
45 set forth: *Provided, however,* That where two or more  
46 counties join together in support of a vocational or  
47 comprehensive high school or any other program or  
48 service, the service personnel for such school or program  
49 may be prorated among the participating counties on  
50 the basis of each one's enrollment therein and that such  
51 personnel shall be considered within the above-stated  
52 limit.

53 Every county board of education shall annually  
54 determine the number of service personnel employed  
55 that exceeds the number allowed by the public school  
56 support plan and determine the amount of salary  
57 supplement that would be available per state authorized  
58 employee if all expenditures for such excess employees  
59 were converted to annual salaries for state authorized  
60 service personnel. Such information shall be published  
61 annually in each school report card of each county.

**§18-9A-5a. Ratio of foundation allowances for profes-  
sional educators and service personnel to  
net enrollment.**

1 (a) The purpose of this section is to establish maxi-  
2 mum ratios between the numbers of professional  
3 educators and service personnel in the counties which  
4 are funded through the public school support plan and  
5 the net enrollment in the counties, such ratios are in  
6 addition to the ratios provided for in sections four and  
7 five of this article. It is the intent of the Legislature to  
8 adjust these ratios pursuant to legislative act as may be  
9 appropriate when additional personnel are needed to  
10 perform additional duties.

11 (b) Commencing with the school year one thousand  
12 nine hundred eighty-nine—ninety, and each year  
13 thereafter, in computing the basic foundation allowance  
14 to a county for professional educators and the basic

15 foundation allowance to a county for service personnel  
 16 under sections four and five of this article, a county shall  
 17 not receive an allowance for such personnel which  
 18 number per one thousand students in net enrollment is  
 19 in excess of the number of professional educators and  
 20 the number of service personnel in the county computed  
 21 as follows:

22		Maximum professional	Maximum service
23		educators per 1000	personnel per 1000
24	For the	net enrollment the	net enrollment the
25	school year	preceding year	preceding year
26	1989-90	76.5	45.5
27	1990-91	76.0	45.0
28	1991-92	75.5	44.5
29	1992-93	75.0	44.0
30	1993-94	74.5	43.75
31	1994-95 and	74.0	43.5
32	thereafter		

33 (c) Every county shall utilize methods other than  
 34 reductions in force, such as attrition and early retire-  
 35 ment, before implementing their reductions in force  
 36 policy to comply with the limitations of this section.

37 (d) For the school years one thousand nine hundred  
 38 eighty-nine—ninety and one thousand nine hundred  
 39 ninety—ninety-one only, if a school district loses more  
 40 than six percent of the number chargeable for the  
 41 previous school year for professional educator positions  
 42 or service personnel positions, due to the maximum  
 43 ratios established in subsection (b) of this section, it may  
 44 apply to the state board for a waiver of said ratios to  
 45 the extent that the loss exceeds either six percent of its  
 46 professional educators or service personnel: *Provided,*  
 47 That the county board of education establishes and  
 48 maintains a minimum ratio of fifty professional instruc-  
 49 tional personnel per one thousand students in adjusted  
 50 enrollment for the school year beginning the first day  
 51 of July, one thousand nine hundred eighty-nine, and  
 52 fifty-one professional instructional personnel per one  
 53 thousand students in adjusted enrollment for the school  
 54 year one thousand nine hundred ninety—ninety-one as

55 required in section four of this article. Waivers shall be  
56 determined on a case by case basis according to rules  
57 adopted by the state board and granted to the extent  
58 funds are appropriated by the Legislature for this  
59 purpose. Prior to the adoption of such rules, the state  
60 board shall conduct a thorough review of the staffing  
61 patterns in each county. Any personnel positions funded  
62 as a result of a waiver granted under the provisions of  
63 this subsection shall not be included in the computations  
64 set forth in sections four and five of this article.

**§18-9A-7. Foundation allowance for transportation cost.**

1 The allowance in the foundation school program for  
2 each county for transportation shall be the sum of the  
3 following computations:

4 (1) Eighty percent of the transportation cost within  
5 each county for maintenance, operation and related  
6 costs, exclusive of all salaries;

7 (2) The total cost, within each county, of insurance  
8 premiums on buses, buildings and equipment used in  
9 transportation: *Provided*, That such premiums were  
10 procured through competitive bidding;

11 (3) For the school year beginning the first day of July,  
12 one thousand nine hundred eighty-nine, and thereafter,  
13 an amount equal to ten percent of the current replace-  
14 ment value of the bus fleet within each county as  
15 determined by the state board, such amount to be used  
16 only for the replacement of buses. In addition, in any  
17 school year in which its net enrollment increases when  
18 compared to the net enrollment the year immediately  
19 preceding, a school district may apply to the state  
20 superintendent for funding for an additional bus.  
21 Furthermore, large, sparsely populated counties may  
22 also apply to the state superintendent for funding for  
23 additional mini-buses. The state superintendent shall  
24 make a decision regarding each application based upon  
25 an analysis of the individual school district's net  
26 enrollment history and transportation needs or, in the  
27 case of a large, sparsely populated county, the popula-  
28 tion of the county: *Provided*, That the superintendent  
29 shall not consider any application which fails to

30 document that the county has applied for federal  
31 funding for additional buses. If the state superintendent  
32 finds that a need exists, a request for funding shall be  
33 included in the budget request submitted by the state  
34 board for the upcoming fiscal year.

35 (4) Eighty percent of the cost of contracted transpor-  
36 tation services and public utility transportation with  
37 each county;

38 (5) Aid in lieu of transportation equal to the state  
39 average amount per pupil for each pupil receiving such  
40 aid within each county; and

41 (6) Ninety percent of the total cost of transportation  
42 operations and related expenses, excluding salaries and  
43 maintenance for transporting students to and from  
44 classes at a multi-county vocational center.

45 The total state share for this purpose shall be the sum  
46 of the county shares: *Provided*, That no county shall  
47 receive an allowance which is greater than one third  
48 above the computed state average allowance per mile  
49 multiplied by the total mileage in the county.

**§18-9A-9. Foundation allowance for other current ex-  
pense and substitute employees.**

1 The total allowance for other current expense and  
2 substitute employees shall be the sum of the following:

3 (1) For current expense, for the year one thousand  
4 nine hundred ninety—ninety-one only, ten percent of the  
5 sum of the computed state allocation for professional  
6 educators and service personnel as determined in  
7 sections four and five of this article, and thereafter the  
8 rate shall be ten and six-tenths percent. Distribution to  
9 the counties shall be made proportional to the average  
10 of each county's average daily attendance for the  
11 preceding year and the county's second month net  
12 enrollment; plus

13 (2) For professional educator substitutes or current  
14 expense, two and five-tenths percent of the computed  
15 state allocation for professional educators as determined  
16 in section four of this article. Distribution to the counties

17 shall be made proportional to the total county allocation  
18 for professional educators; plus

19 (3) For service personnel substitutes or current  
20 expense, two and five-tenths percent of the computed  
21 state allocation for service personnel as determined in  
22 section five of this article. Distribution to the counties  
23 shall be made proportional to the total county allocation  
24 for service personnel.

**§18-9A-10. Foundation allowance to improve instructional programs.**

1 (a) Commencing with the school year beginning on  
2 the first day of July, one thousand nine hundred ninety,  
3 and thereafter, twenty-eight million eight hundred  
4 thousand dollars, in addition to funds which accrue from  
5 allocations due to increase in total local share above that  
6 computed for the school year beginning on the first day  
7 of July, one thousand nine hundred ninety, from  
8 balances in the general school fund, or from appropri-  
9 ations for such purpose shall be allocated to increase  
10 state support of counties as follows:

11 (1) Twenty percent of these funds shall be allocated  
12 to the counties proportional to adjusted enrollment; and

13 (2) Each county whose allocation in subsection (1) is  
14 less than one hundred fifty thousand dollars in any fiscal  
15 year shall then receive an amount which equals the  
16 difference between such amount received and one  
17 hundred fifty thousand dollars.

18 (b) The remainder of these funds shall be allocated  
19 according to the following plan for progress toward  
20 basic resources per pupil equity:

21 Beginning with the county which has the lowest basic  
22 resources per pupil and progressing through the  
23 counties successively to and beyond the county with the  
24 highest basic resources per pupil, the funds available  
25 shall be allocated in amounts necessary to increase  
26 moneys available to the county or counties to the basic  
27 resources per pupil level, as nearly as is possible, of the  
28 county having the next higher basic resources per pupil:  
29 *Provided*, That to be eligible for its allocation under this



30 section, a county board shall lay the maximum regular  
31 tax rates set out in section six-c, article eight, chapter  
32 eleven of this code: *Provided, however,* That moneys  
33 allocated by provision of this section shall be used to  
34 improve instructional programs according to a plan for  
35 instructional improvement which the affected county  
36 board shall file with the state board by the first day of  
37 August of each year, to be approved by the state board  
38 by the first day of September of that year if such plan  
39 substantially complies with standards to be adopted by  
40 the state board: *Provided further,* That no part of this  
41 allocation may be used to employ professional educators  
42 in counties until and unless all applicable provisions of  
43 sections four and fourteen of this article have been fully  
44 utilized. Such instructional improvement plan shall be  
45 made available for distribution to the public at the office  
46 of each affected county board.

47 (c) Commencing with the school year beginning on the  
48 first day of July, one thousand nine hundred ninety,  
49 fifteen million, four hundred forty thousand, four  
50 hundred ninety-three dollars shall be paid into the  
51 school building capital improvements fund created by  
52 section six, article nine-d of this chapter, and shall be  
53 used solely for the purposes of said article nine-d. In  
54 each fiscal year thereafter, fifty percent of the funds  
55 which accrue due to an increase in local share above that  
56 computed for the school year beginning on the first day  
57 of July, one thousand nine hundred eighty-seven, shall  
58 be paid into the school building capital improvements  
59 fund created by section six, article nine-d of this  
60 chapter, and shall be used solely for the purposes of said  
61 article nine-d: *Provided,* That in each such subsequent  
62 fiscal year, not less than seven million seven hundred  
63 thousand dollars shall be added to the amount of the  
64 prior year's appropriation for such fund.

65 (d) There shall be appropriated seven million, four  
66 hundred ten thousand, six hundred sixty-eight dollars  
67 for aid to counties which may be expended by the county  
68 boards for the initiation, and/or improvements of special  
69 education programs including employment of new  
70 special education professional personnel solely serving

71 exceptional children; instructional programs which  
72 utilize state of the art technology; training of educa-  
73 tional personnel to work with exceptional children; and  
74 supportive costs such as materials, transportation,  
75 contracted services, minor renovations and other costs  
76 directly related to the special education delivery process  
77 prescribed by the state board. The appropriation may  
78 also be used for nonpersonnel costs associated with the  
79 maintenance of special education programs in accord-  
80 dance with such rules as established by the state board.  
81 The appropriation includes out-of-state instruction and  
82 may be expended to provide instruction, care and  
83 maintenance for educable persons who are severely  
84 handicapped and for whom the state provides no  
85 facilities.

86 (e) There shall be appropriated two million, one  
87 thousand, seven hundred thirty-two dollars to be used  
88 by the state department of education which may be  
89 expended for the purposes of paying staff and operating  
90 costs of both administrative/program personnel and  
91 instructional personnel delivering education to handi-  
92 capped children in facilities operated by the state  
93 division of health; paying state department of education  
94 staff, current expenses and equipment; supporting a  
95 gifted summer camp; and supporting special state  
96 projects, including, but not limited to, (1) an instruc-  
97 tional materials center for visually handicapped child-  
98 ren at the West Virginia Schools for the Deaf and the  
99 Blind, (2) the state special olympics program, (3) the  
100 West Virginia advisory council for the education of  
101 exceptional children at the West Virginia College of  
102 Graduate Studies, (4) statewide training activities or  
103 other programs benefiting exceptional children and  
104 (5) the state very special arts program.

**§18-9A-13. Allowance for counties in severe financial crisis.**

1 For the fiscal year beginning on the first day of July,  
2 one thousand nine hundred ninety only, there shall be  
3 an allowance for counties who have suffered a severe  
4 financial crisis for two or more consecutive years, as  
5 determined by the department of education, after taking

6 under consideration funding stability, sparcity of  
7 population and staffing ratio to students, among other  
8 factors. The amount of such allowance shall be deter-  
9 mined by policies adopted by the state board of  
10 education. The amount of such allowance shall be  
11 contingent upon appropriations provided by the Legis-  
12 lature and shall be allocated to counties in accordance  
13 with policies adopted by the state board of education.

**§18-9A-13b. Allowances for remedial and accelerated  
education programs and salary equity.**

1 For the school year one thousand nine hundred eighty-  
2 nine—ninety only, funds which accrue from allocations  
3 due to changes in adjusted enrollment above that  
4 computed for the school year beginning on the first day  
5 of July, one thousand nine hundred eighty-seven, shall  
6 be distributed for the purpose of achieving equity within  
7 the state basic foundation program.

8 Commencing with the school year beginning on the  
9 first day of July, one thousand nine hundred ninety-one  
10 and thereafter, funds which accrue from allocations due  
11 to changes in adjusted enrollment above that computed  
12 for the school year beginning on the first day of July,  
13 one thousand nine hundred eighty-seven, or from  
14 appropriations for such purpose, shall be allocated to  
15 increase state support for salary equity and to develop  
16 and implement remedial and accelerated programs in  
17 the following manner:

18 Eighty percent of these funds shall be allocated for the  
19 purpose of attaining salary equity among the counties  
20 pursuant to section five, article four, chapter eighteen-  
21 a, except that for the school year commencing on the  
22 first day of July, one thousand nine hundred ninety only,  
23 the allocation to salary equity shall be made in accor-  
24 dance with the provisions of section five-d, article four,  
25 chapter eighteen-a of this code; and

26 Twenty percent of these funds shall be allocated to  
27 implement remedial and accelerated programs as  
28 developed under guidelines of the state board, except  
29 that for the school year commencing on the first day of  
30 July, one thousand nine hundred ninety only, the

31 allocation to implement remedial and accelerated  
32 programs shall be made only to the extent funds are  
33 appropriated for such programs.

**ARTICLE 9B. STATE BOARD OF SCHOOL FINANCE.**

**§18-9B-6a. Delaying submission of budget.**

1 Notwithstanding any other provisions of the code to  
2 the contrary, the county board shall not be required to  
3 submit its budget for approval by the state board of  
4 education as provided by section twelve-a, article eight,  
5 chapter eleven of this code and sections six and seven  
6 of article nine-b, chapter eighteen of this code, until the  
7 tenth day next following the state board's transmittal of  
8 final state aid computations following the adoption of  
9 the state budget, but no later than the thirtieth day of  
10 May: *Provided, That*, in any year in which the state  
11 budget is not adopted on or before the first day of May,  
12 the state board may require the county board to adopt  
13 a preliminary budget and to submit it to the state board  
14 no later than the thirtieth day of May, and when final  
15 computations of state aid are transmitted to the county  
16 board, the county board shall make such adjustments as  
17 are necessary prior to final adoption of the budget.

**ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.**

§18-20-1. Establishment of special programs and teaching services for exceptional children.

§18-20-1b. Preschool programs for handicapped children; rules and regulations.

**§18-20-1. Establishment of special programs and teaching services for exceptional children.**

1 In accordance with the following provisions, county  
2 boards of education throughout the state shall establish  
3 and maintain for all exceptional children between five  
4 and twenty-one years of age special educational pro-  
5 grams, including, but not limited to, special schools or  
6 classes, regular classroom programs, home-teaching or  
7 visiting-teacher services for any type or classification as  
8 the state board shall approve. Special educational  
9 programs shall continue to be provided to those children  
10 who are at least twenty-one years of age and enrolled

11 in the above mentioned "special education program"  
12 prior to the first day of September, one thousand nine  
13 hundred ninety-one, until they reach twenty-three years  
14 of age. Provisions shall be made for educating excep-  
15 tional children (including the handicapped and the  
16 gifted) who differ from the average or normal in  
17 physical, mental or emotional characteristics, or in  
18 communicative or intellectual deviation characteristics,  
19 or in both communicative and intellectual deviation  
20 characteristics, to the extent that they cannot be  
21 educated safely or profitably in the regular classes of the  
22 public schools or to the extent that they need special  
23 educational provisions within the regular classroom in  
24 order to educate them in accordance with their capac-  
25 ities, limitations and needs: *Provided*, That for the school  
26 year beginning on the first day of July, one thousand  
27 nine hundred ninety, provisions shall be made for  
28 educating exceptional children, including the handi-  
29 capped, the gifted in grades one through eight, the  
30 pupils enrolled on the first day of July, one thousand  
31 nine hundred eighty-nine, in the gifted program in  
32 grades nine through twelve and the exceptional gifted  
33 in grades nine through twelve. The term "exceptional  
34 gifted" means those students in grades nine through  
35 twelve identified as gifted and at least one of the  
36 following: Behavior disorder, specific learning disabil-  
37 ities, psychological adjustment disorder, underachiev-  
38 ing, or economically disadvantaged. Exceptional gifted  
39 children shall be referred for identification pursuant to  
40 recommendation by a school psychologist, school coun-  
41 selor, principal, teacher, parent or by self-referral, at  
42 which time the placement process, including develop-  
43 ment of an individualized education program, and  
44 attendant due process rights, shall commence.  
45 Exceptional gifted children, for purposes of calculating  
46 adjusted enrollment pursuant to section two, article  
47 nine-a of this chapter, shall not exceed one percent of  
48 net enrollment in grades nine through twelve. Nothing  
49 herein shall be construed to limit the number of students  
50 identified as exceptional gifted and who receive approp-  
51 riate services. Each county board of education is  
52 mandated to provide gifted education to its students

53 according to guidelines promulgated by the state board  
54 and consistent with the provisions of this chapter. Upon  
55 the recommendation of a principal, counselor, teacher  
56 and parent, a student who does not meet the gifted  
57 eligibility criteria may participate in any school  
58 program deemed appropriate for the student provided  
59 that classroom space is available. In addition, county  
60 boards of education may establish and maintain other  
61 educational services for exceptional children as the state  
62 superintendent of schools may approve.

63 County boards of education shall establish and  
64 maintain these special educational programs, including,  
65 but not limited to, special schools classes, regular class  
66 programs, home-teaching and visiting-teacher services.  
67 The special education programs shall include home-  
68 teaching or visiting-teacher services for children who  
69 are homebound due to injury or who for any other  
70 reason as certified by a licensed physician are home-  
71 bound for a period that has lasted or will last more than  
72 three weeks: *Provided*, That pupils receiving such  
73 homebound or visiting-teacher services shall not be  
74 included when computing adjusted enrollment as  
75 defined in section two, article nine-a, chapter eighteen  
76 of this code. The state board shall adopt rules to advance  
77 and accomplish this program and to assure that all  
78 exceptional children in the state, including children in  
79 mental health facilities, residential institutions and  
80 private schools, will receive an education in accordance  
81 with the mandates of state and federal laws: *Provided*,  
82 *however*, That commencing with the school year begin-  
83 ning on the first day of July, one thousand nine hundred  
84 ninety-one, all exceptional children in the state in foster  
85 care and correctional facilities will receive an education  
86 in accordance with the mandates of state and federal  
87 laws.

**§18-20-1b. Preschool programs for handicapped children; rules and regulations.**

1 (a) During the school year beginning on the first day  
2 of July, one thousand nine hundred ninety-one, each  
3 county board of education shall develop a coordinated  
4 service delivery plan in accordance with standards for

5 preschool programs for handicapped children to be  
6 developed by the state board of education and begin  
7 services where plans are already developed.

8 (b) Each county board of education shall establish and  
9 maintain special education programs, including, but not  
10 limited to, special classes, regular classes and home-  
11 teaching and visiting-teacher services for all handi-  
12 capped children ages three through five, inclusive.

13 As used in this section, the term "handicapped  
14 children" means those children who fall in any one of  
15 the following categories as defined or to be defined in  
16 the state board of education standards for the education  
17 of exceptional children: Severe behavioral disorders,  
18 communication disordered, deaf-blind, developmentally  
19 delayed, hearing impaired, other health impaired  
20 including autism, physically handicapped, mentally  
21 impaired or visually impaired.

22 Before the first day of August, one thousand nine  
23 hundred ninety-one, the state board of education shall  
24 adopt rules to advance and accomplish this program and  
25 to assure that an appropriate educational program is  
26 available to all such children in the state, including  
27 children in mental health facilities, residential institu-  
28 tions, foster care, correctional facilities and private  
29 schools.

30 This section does not prevent county boards of  
31 education from providing special education programs,  
32 including, but not limited to, special schools or classes,  
33 regular class programs and home-teaching or visiting-  
34 teacher services for severely handicapped preschool  
35 children prior to such times as are required by this  
36 section.

## CHAPTER 18A. SCHOOL PERSONNEL.

### Article

2. School Personnel.
4. Salaries, Wages, and Other Benefits.

### ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-7. Assignment, transfer, promotion, demotion,  
suspension and recommendation of dismis-

**sal of school personnel by superintendent; preliminary notice of transfer; hearing on the transfer; proof required.**

1 The superintendent, subject only to approval of the  
2 board, shall have authority to assign, transfer, promote,  
3 demote or suspend school personnel and to recommend  
4 their dismissal pursuant to provisions of this chapter.  
5 However, an employee shall be notified in writing by the  
6 superintendent on or before the first Monday in April  
7 if he is being considered for transfer or to be trans-  
8 ferred, except that for the school year one thousand nine  
9 hundred eighty-nine—ninety only, the superintendent  
10 shall have until the fourth Monday of April to provide  
11 an employee with such written notice. Any teacher or  
12 employee who desires to protest such proposed transfer  
13 may request in writing a statement of the reasons for  
14 the proposed transfer. Such statement of reasons shall  
15 be delivered to the teacher or employee within ten days  
16 of the receipt of the request. Within ten days of the  
17 receipt of the statement of the reasons, the teacher or  
18 employee may make written demand upon the superin-  
19 tendent for a hearing on the proposed transfer before  
20 the county board of education. The hearing on the  
21 proposed transfer shall be held on or before the first  
22 Monday in May, except that for the school year one  
23 thousand nine hundred eighty-nine—ninety only, the  
24 hearing shall be held on or before the fourth Monday  
25 in May, one thousand nine hundred ninety. At the  
26 hearing, the reasons for the proposed transfer must be  
27 shown.

28 The superintendent at a meeting of the board on or  
29 before the first Monday in May shall furnish in writing  
30 to the board a list of teachers and other employees to  
31 be considered for transfer and subsequent assignment  
32 for the next ensuing school year, except that for the  
33 school year one thousand nine hundred eighty-nine—  
34 ninety only, the superintendent shall have until the  
35 fourth Monday in May to provide the board with such  
36 written list. All other teachers and employees not so  
37 listed shall be considered as reassigned to the positions  
38 or jobs held at the time of this meeting. The list of those



39 recommended for transfer shall be included in the  
40 minute record of such meeting and all those so listed  
41 shall be notified in writing, which notice shall be  
42 delivered in writing, by certified mail, return receipt  
43 requested, to such persons' last known addresses within  
44 ten days following said board meeting, of their having  
45 been so recommended for transfer and subsequent  
46 assignment and the reasons therefor. The superintend-  
47 ent's authority to suspend school personnel shall be  
48 temporary only pending a hearing upon charges filed by  
49 the superintendent with the board of education and such  
50 period of suspension shall not exceed thirty days unless  
51 extended by order of the board.

52 The provisions of this section respecting hearing upon  
53 notice of transfer shall not be applicable in emergency  
54 situations where the school building becomes damaged  
55 or destroyed through an unforeseeable act and which act  
56 necessitates a transfer of such school personnel because  
57 of the aforementioned condition of the building.

#### ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-5a. County salary supplements for teachers.

§18A-4-5b. County salary supplements for school service personnel.

§18A-4-5d. 1990 appropriation for salary equity.

§18A-4-7. Substitute teachers pay.

#### §18A-4-5a. County salary supplements for teachers.

1 County boards of education in fixing the salaries of  
2 teachers shall use at least the state minimum salaries  
3 established under the provisions of this article. The  
4 board may establish salary schedules which shall be in  
5 excess of the state minimums fixed by this article, such  
6 county schedules to be uniform throughout the county  
7 as to the above stipulated training classifications,  
8 experience, responsibility and other requirements.  
9 Beginning with the school year commencing on the first  
10 day of July, one thousand nine hundred ninety-one, no  
11 such county schedule may exceed one hundred two and  
12 one-half percent of a schedule which incorporates the  
13 state minimum salary for teachers in effect on the first  
14 day of July, one thousand nine hundred ninety-one, and  
15 adopts a supplement which equals the highest supple-

16 ment provided by a county on the first day of January,  
17 one thousand nine hundred ninety-one, so as to assist the  
18 state in meeting its objective of salary equity among the  
19 counties: *Provided*, That all teachers in the state shall  
20 be entitled to any increases in the minimum salary  
21 schedules established under the provisions of this  
22 article, and when a county schedule changes due to said  
23 increase in the state minimum salary taking effect after  
24 the first day of July, one thousand nine hundred ninety-  
25 one, it shall not be deemed to exceed the maximum  
26 salary schedule prescribed herein.

27 Counties may fix higher salaries for teachers placed  
28 in special instructional assignments, for those assigned  
29 to or employed for duties other than regular instruc-  
30 tional duties, and for teachers of one-teacher schools,  
31 and they may provide additional compensation for any  
32 teacher assigned duties in addition to the teacher's  
33 regular instructional duties wherein such noninstruc-  
34 tional duties are not a part of the scheduled hours of the  
35 regular school day. Uniformity also shall apply to such  
36 additional salary increments or compensation for all  
37 persons performing like assignments and duties within  
38 the county: *Provided*, That in establishing such local  
39 salary schedules, no county shall reduce local funds  
40 allocated for salaries in effect on the first day of  
41 January, one thousand nine hundred ninety, and used in  
42 supplementing the state minimum salaries as provided  
43 for in this article, unless forced to do so by defeat of a  
44 special levy, or a loss in assessed values or events over  
45 which it has no control and for which the county board  
46 has received approval from the state board prior to  
47 making such reduction.

48 Counties may provide, in a uniform manner, benefits  
49 for teachers which require an appropriation from local  
50 funds including, but not limited to, dental, optical,  
51 health and income protection insurance, vacation time  
52 and retirement plans excluding the state teachers  
53 retirement system. Nothing herein shall prohibit the  
54 maintenance nor result in the reduction of any benefits  
55 in effect on January one, one thousand nine hundred  
56 eighty-four, by any county board of education.

57 To further assist the state in meeting such objective,  
58 each county board of education shall provide to the state  
59 board of education on or before the first day of  
60 November, one thousand nine hundred eighty-nine, such  
61 information as the state board directs to assist the state  
62 superintendent of schools in preparing a report to be  
63 submitted to the Legislature on the first day of the  
64 regular session thereof in the year one thousand nine  
65 hundred ninety. Such report shall include findings,  
66 conclusions and recommendations with respect to  
67 benefits provided and meeting the objective of benefit  
68 equity among the counties.

**§18A-4-5b. County salary supplements for school service personnel.**

1 The county board of education may establish salary  
2 schedules which shall be in excess of the state min-  
3 imums fixed by this article. Beginning with the school  
4 year commencing on the first day of July, one thousand  
5 nine hundred ninety-one, no such schedule may exceed  
6 one hundred two and one-half percent of a schedule  
7 which incorporates the state minimum salary for school  
8 service personnel in effect on the first day of July, one  
9 thousand nine hundred ninety-one, and adopts a monthly  
10 supplement of two hundred and five dollars for zero  
11 years of experience for all pay grades and which  
12 increases said monthly supplement by two dollars for  
13 each year of experience codified for school service  
14 personnel in this article, so as to assist the state in  
15 meeting its objective of salary equity among the  
16 counties: *Provided*, That all school service personnel in  
17 the state shall be entitled to any increases in the  
18 minimum salary for school service personnel established  
19 under the provisions of this article, and when a county  
20 schedule changes due to said increase in the state  
21 minimum salary taking effect after the first day of July,  
22 one thousand nine hundred ninety-one, it shall not be  
23 deemed to exceed the maximum salary schedule pres-  
24 cribed herein. Any county supplement for any position  
25 which, on the first day of January, one thousand nine  
26 hundred ninety-one, extends the schedule beyond the  
27 maximum prescribed herein for such position shall be

28 exempt from the maximums stated herein, subject to the  
29 approval of the state board, but no such supplement  
30 shall be increased beyond the amount received on the  
31 first day of January, one thousand nine hundred ninety-  
32 one.

33 These county schedules shall be uniform throughout  
34 the county with regard to any training classification,  
35 experience, years of employment, responsibility, duties,  
36 pupil participation, pupil enrollment, size of buildings,  
37 operation of equipment or other requirements. Further,  
38 uniformity shall apply to all salaries, rates of pay,  
39 benefits, increments or compensation for all persons  
40 regularly employed and performing like assignments  
41 and duties within the county: *Provided*, That in estab-  
42 lishing such local salary schedules, no county shall  
43 reduce local funds allocated for salaries in effect on the  
44 first day of January, one thousand nine hundred ninety,  
45 and used in supplementing the state minimum salaries  
46 as provided for in this article, unless forced to do so by  
47 defeat of a special levy, or a loss in assessed values or  
48 events over which it has no control and for which the  
49 county board has received approval from the state board  
50 prior to making such reduction.

51 Counties may provide, in a uniform manner, benefits  
52 for service personnel which require an appropriation  
53 from local funds including, but not limited to, dental,  
54 optical, health and income protection insurance, vaca-  
55 tion time and retirement plans excluding the state  
56 teachers retirement system. Nothing herein shall  
57 prohibit the maintenance nor result in the reduction of  
58 any benefits in effect on January one, one thousand nine  
59 hundred eighty-four, by any county board of education.

60 To further assist the state in meeting such objective,  
61 each county board of education shall provide to the state  
62 board of education on or before the first day of  
63 November, one thousand nine hundred eighty-nine, such  
64 information as the state board directs to assist the state  
65 superintendent of schools in preparing a report to be  
66 submitted to the Legislature on the first day of the  
67 regular session thereof in the year one thousand nine  
68 hundred ninety. Such report shall include findings,

69 conclusions, and recommendations with respect to  
70 benefits provided and meeting the objective of benefit  
71 equity among the counties.

**§18A-4-5d. 1990 appropriation for salary equity.**

1 Notwithstanding any other provisions of this code to  
2 the contrary, for the fiscal year beginning on the first  
3 day of July, one thousand nine hundred ninety only, not  
4 less than twenty-seven million, four hundred thousand  
5 dollars shall be appropriated and expended for salary  
6 equity among the counties in addition to such amounts  
7 as were expended for such purpose prior to the effective  
8 date of this section: *Provided*, That for professional  
9 educators each person shall receive a minimum salary  
10 equity adjustment of five hundred thirty-five dollars per  
11 year and that for service personnel each person shall  
12 receive a minimum salary equity adjustment of twenty  
13 dollars per month: *Provided, however*, That the re-  
14 mainder of the equity money shall be distributed as  
15 directed in section five of this article: *Provided further*,  
16 That an adequate amount of such funds shall be  
17 reserved to finance the appropriate foundation allowan-  
18 ces for fixed charges as provided for in section six,  
19 article nine-a, chapter eighteen of this code: *And*  
20 *provided further*, That notwithstanding the provisions of  
21 said sections five and five-c of this article, foundation  
22 allowances other than for fixed charges shall not be  
23 financed from such funds.

**§18A-4-7. Substitute teachers pay.**

1 The pay of a substitute teacher shall not be less than  
2 eighty percent of the daily rate of the state basic salary  
3 paid to teachers: *Provided*, That any substitute teacher  
4 who teaches in excess of ten consecutive instructional  
5 days in the same position shall, thereafter, not be paid  
6 less than eighty percent of the daily rate of the state  
7 advanced salary based upon teaching experience:  
8 *Provided, however*, That any substitute teacher who  
9 teaches in excess of thirty days in the same position shall  
10 be paid the daily rate of the advanced salary, within that  
11 teacher's county.

**CHAPTER 18B. HIGHER EDUCATION.****ARTICLE 1. GOVERNANCE.****§18B-1-11. Colleges and universities to provide appropriate services to meet needs of students with handicapping conditions.**

1 Each state funded institution of higher education  
2 accepting students with handicapping conditions, such  
3 as physical, learning, or severe sensory disabilities, shall  
4 provide services in accordance with Rehabilitation Act  
5 504 appropriate to meet the educational needs of these  
6 students. Such information shall be provided to local  
7 boards of education for information dissemination to  
8 students and parents to fulfill the goals of transition.

# LEGISLATURE OF WEST VIRGINIA

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# ACTS

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## SECOND EXTRAORDINARY SESSION, 1990

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### CHAPTER 1

(S. B. 8—By Mr. Senators Burdette, Mr. President, and Harman,  
By Request of the Executive)

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[Passed June 27, 1990; in effect from passage.]

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AN ACT making supplementary appropriation of public moneys, as specified, out of the treasury with insertion thereof into appropriation accounts, as specified, and with all necessary adjustments of increase of items and language of appropriation in such specified accounts; supplementing and amending chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill.

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

That Account Nos. 1210, 1245, 1800, 2785, 2795, 2855, 3330, 3500, 3770, 4405, 5200 and 5640, chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill, be added, supplemented and amended by the items and language of appropriation to such extent as set forth herein, with all other items and language of appropriation of such accounts, as set forth in the budget bill, to remain unchanged and unaffected, to read as follows:

## 1 TITLE II—APPROPRIATIONS.

## 2 Section 8. Appropriations from surplus revenue.

3 *173b—Office of Community and*  
4 *Industrial Development*

5 (WV Code Chapter 5B)

6 Acct. No. 1210

7 1 Personal Services—Total..... \$ 400,000

1 *173c—Board of Directors of the*  
2 *State College System*  
3 *Control Account*

4 (WV Code Chapter 18B)

5 Acct. No. 2785

6 1 Unclassified—Total..... \$ 500,000

7 It is the intent of the Legislature for this appropri-  
8 ation to be used solely for increases in employee salaries.1 *173d—Board of Trustees of the*  
2 *University System of West Virginia*  
3 *Control Account*

4 (WV Code Chapter 18B)

5 Acct. No. 2795

6 1 Unclassified—Total..... \$ 1,000,000

7 It is the intent of the Legislature for this appropri-  
8 ation to be used solely for increases in employee salaries.1 *173e—Board of Trustees of the*  
2 *University System of West Virginia*  
3 *University of West Virginia*  
4 *Health Sciences Account*

5 (WV Code Chapter 18B)

6 Acct. No. 2855

7 1 Unclassified—Total..... \$ 1,500,000



8 It is the intent of the Legislature for this appropri-  
9 ation to be used solely for increases in employee salaries.

1 *173f—West Virginia Schools for the*  
2 *Deaf and the Blind*

3 (WV Code Chapters 18 and 18A)

4 Acct. No. 3330

5 1 Personal Services—Total..... \$ 200,000

1 *173g—State Board of Rehabilitation—*  
2 *Division of Rehabilitation Services*

3 (WV Code Chapter 18)

4 Acct. No. 4405

5 1 Personal Services—Total..... \$ 200,000

1 *173h—Division of Corrections—*  
2 *Correctional Units*

3 (WV Code Chapters 25, 28, 29 and 62)

4 Acct. No. 3770

5 1 Personal Services—Total..... \$ 1,200,000

1 *173i—Tax Division*

2 (WV Code Chapter 11)

3 Acct. No. 1800

4 1 Personal Services..... \$ 350,000

5 2 Unclassified..... 350,000

6 3 Total ..... \$ 700,000

7 The Unclassified appropriation above shall be used for  
8 salaries and related expenses to originate and maintain  
9 and make public on a recurring basis a tax expenditure  
10 study to identify the cost to the state in foregone  
11 revenues caused by tax credits administered by the  
12 department of tax and revenue.

1                                    *173j—Library Commission*  
 2                                    (WV Code Chapter 10)  
 3                                    Acct. No. 3500  
 4        1    Personal Services—Total..... \$    50,000

5                                    *173k—Geological and Economic Survey*  
 6                                    (WV Code Chapter 29)  
 7                                    Acct. No. 5200  
 8        1    Personal Services—Total..... \$    50,000

1                                    *173l—Governor's Office*  
 2                                    (WV Code Chapter 5)  
 3                                    Acct. No. 1245  
 4        1    Unclassified—Total..... \$ 1,000,000

5        Any part or all of this appropriation may be trans-  
 6        ferred to any other account within the general revenue  
 7        fund to provide for a salary increase for employees of  
 8        the state.

1                                    *173m—Water Resources Board*  
 2                                    (WV Code Chapter 20)  
 3                                    Acct. No. 5640  
 4        1    Personal Services..... \$    60,152  
 5        2    Annual Increment.....            864  
 6        3    Employee Benefits .....        18,690  
 7        4    Unclassified.....            41,752  
 8        5    Total ..... \$    121,458

9        The purpose of this supplementary appropriation bill  
 10       is to appropriate public money, as specified, with  
 11       insertion of such moneys into accounts in the budget bill  
 12       and specified items thereof, together with all adjust-  
 13       ments of increase required. These public moneys, as  
 14       newly provided for, shall be available for such use and

15 expenditure upon passage of the bill and in fiscal year  
16 1990-91, supplementing the budget bill for such fiscal  
17 year earlier enacted.

18 It is the intent of the Legislature that salary increases  
19 made possible by these appropriations and other funds  
20 available to agencies be implemented by the division of  
21 personnel, excluding accounts governed by the board of  
22 directors of the college system and the board of trustees  
23 of the university system, by establishing a minimum  
24 annual salary for full-time regular employees within the  
25 classified service of ten thousand dollars per annum. It  
26 is further the intent of the Legislature to increase every  
27 annual salary in the pay plan for full-time regular  
28 employees by one thousand and eight dollars unless the  
29 ten thousand dollars mentioned above establishes a  
30 higher increase: *Provided*, That any full-time state  
31 employee, except employees of the board of directors of  
32 the college system and the board of trustees of the  
33 university system, who has received a salary increase of  
34 four thousand dollars per annum or more during the last  
35 twelve months and has not changed classification shall  
36 be excluded from this salary increase.

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## CHAPTER 2

(Com. Sub. for H. B. 212—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)

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[Passed June 27, 1990; in effect from passage. Approved by the Governor.]

AN ACT making supplementary appropriation of public moneys, as specified, out of the treasury with insertion thereof into appropriation accounts, as specified, and with all necessary adjustments of increase of items and language of appropriation in such specified accounts; supplementing and amending chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill.

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

That Account No. 4190, chapter ten, acts of the Legislature,

regular session, one thousand nine hundred ninety, known as the budget bill, be added, supplemented and amended by the items and language of appropriation to such extent as set forth herein, with all other items and language of appropriation of such accounts, as set forth in the budget bill, to remain unchanged and unaffected, to read as follows:

- 1                   **TITLE II—APPROPRIATIONS.**
- 2     **Section 8. Appropriations from surplus revenue.**
- 3                   *173a—Consolidated Medical*
- 4                   *Services Fund*
- 5                   Acct. No. 4190
- 6       1 Special Supplementary
- 7       2     Food Program for Women,
- 8       3     Infants and Children ..... \$ 400,000
- 9     The purpose of this supplementary appropriation bill
- 10  is to appropriate public money, as specified (general
- 11  revenues), with insertion of such moneys into accounts
- 12  in the budget bill and specified items thereof, together
- 13  with all adjustments of increase required. These public
- 14  moneys, as newly provided for, shall be available for
- 15  such use and expenditure upon passage of the bill and
- 16  in fiscal year 1990-91, supplementing the budget bill for
- 17  such fiscal year earlier enacted.

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## CHAPTER 3

(S. B. 11—By Senators Burdette, Mr. President, and Harman,  
By Request of the Executive)

[Passed June 25, 1990; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all state road funds remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-one, to the West Virginia Department of Transportation, Division of Motor Vehicles, Account No. 6710, supplementing chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill.

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

That the total appropriations from the State Road Fund to the West Virginia Department of Transportation, Division of Motor Vehicles, Account No. 6710, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-one, as appropriated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill, be supplemented by adding the following sum to the designated line item:

1                    TITLE II—APPROPRIATIONS.  
 2            Section 5. Appropriations from other funds.  
 3                    158—*Division of Motor Vehicles*  
 4            (WV Code Chapters 17, 17A, 17B, 17C, 20 and 24)  
 5                    Acct. No. 6710  
 6                    TO BE PAID FROM STATE ROAD FUND  
 7        1 Personal Services..... \$    —    \$ 150,000

8        The purpose of this supplementary appropriation bill  
 9        is to supplement this account and the existing line item  
 10       therein for expenditure in fiscal year 1990-91. These  
 11       public moneys, as newly provided for, shall be available  
 12       for such use and expenditure upon passage of the bill  
 13       and in fiscal year 1990-91, supplementing the budget  
 14       bill for such fiscal year earlier enacted.

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## CHAPTER 4

(S. B. 13—By Senators Burdette, Mr. President, and Harman,  
 By Request of the Executive)

[Passed June 27, 1990; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring appropriations in Account Nos. 8311-10, 8311-26, 8311-31, 8311-32, 8311-34, 8324-26, 8329-07, 8350 and 8540, as specified, including all necessary adjustments of increases, reductions or transfers of appropriations and language of appropriation in specified items and those items created herein, all supplementing and

amending chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill.

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

That specified items of Account Nos. 8311-10, 8311-26, 8311-31, 8311-32, 8311-34, 8324-26, 8329-07, 8350 and 8540, as found in chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill, be supplemented, amended, reduced and transferred by the items and language of appropriation to such extent as set forth herein, to read as follows:

1	TITLE II—APPROPRIATIONS.		
2	<b>Section 5. Appropriations from other funds.</b>		
3	DEPARTMENT OF COMMERCE, LABOR		
4	AND ENVIRONMENTAL RESOURCES		
5	<i>126—Division of Natural Resources—</i>		
6	<i>Groundwater Planning</i>		
7	(WV Code Chapter 20)		
8	Acct. No. 8311-10		
9	TO BE PAID FROM SPECIAL REVENUE FUND		
10	1	Personal Services .....	\$ 55,678
11	2	Annual Increment .....	—
12	3	Employee Benefits .....	16,685
13	4	Current Expenses .....	—
14	5	Repairs and Alterations	—
15	6	Equipment .....	—
16	6a	Unclassified .....	230,297
17	7	Total .....	\$ 302,660
1	<i>127—Division of Natural Resources—</i>		
2	<i>Hazardous Waste Emergency and Response Fund</i>		
3	(WV Code Chapter 20)		
4	Acct. No. 8311-26		
5	TO BE PAID FROM SPECIAL REVENUE FUND		
6	1	Personal Services .....	\$ 350,000

Ch. 4]

## APPROPRIATIONS

1597

7	2	Annual Increment .....	—	1,080
8	3	Employee Benefits .....	—	105,324
9	4	Current Expenses .....	—	—0—
10	5	Repairs and Alterations	—	—0—
11	6	Equipment .....	—	—0—
12	6a	Unclassified .....	—	1,647,636
13	7	Total .....	\$ —	\$ 2,104,040

1                    *128—Division of Natural Resources—*  
 2                    *Solid Waste Reclamation and Environmental*  
 3                    *Response Fund*

4                    (WV Code Chapter 20)

5                    Acct. No. 8311-31

6                    TO BE PAID FROM SPECIAL REVENUE FUND

7	1	Personal Services .....	\$ —	\$ 77,844
8	2	Employee Benefits .....	—	23,353
9	3	Current Expenses .....	—	—0—
10	4	Repairs and Alterations	—	—0—
11	5	Equipment .....	—	—0—
12	5a	Unclassified .....	—	638,999
13	6	Total .....	\$ —	\$ 740,196

1                    *129—Division of Natural Resources—*  
 2                    *Solid Waste Enforcement Fund*

3                    (WV Code Chapter 20)

4                    Acct. No. 8311-32

5                    TO BE PAID FROM SPECIAL REVENUE FUND

6	1	Personal Services .....	\$ —	\$ 1,514,740
7	2	Annual Increment .....	—	8,892
8	3	Employee Benefits .....	—	457,090
9	4	Current Expenses .....	—	—0—
10	5	Repairs and Alterations	—	—0—
11	6	Equipment .....	—	—0—
12	6a	Unclassified .....	—	218,128
13	7	Total .....	\$ —	\$ 2,198,850

1	<i>130—Division of Natural Resources—</i>		
2	<i>Leaking Underground Storage Tanks</i>		
3	(WV Code Chapter 20)		
4	Acct. No. 8311-34		
5	TO BE PAID FROM SPECIAL REVENUE FUND		
6	1	Personal Services .....	\$ — \$ 290,000
7	2	Annual Increment .....	— 936
8	3	Employee Benefits .....	— 87,000
9	4	Current Expenses.....	— —0—
10	5	Repairs and Alterations	— —0—
11	6	Equipment .....	— —0—
12	6a	Unclassified .....	— 73,000
13	7	Total.....	\$ — \$ 450,936

1	<i>132—Division of Natural Resources—</i>		
2	<i>Nongame Fund</i>		
3	(WV Code Chapter 20)		
4	Acct. No. 8324-26		
5	TO BE PAID FROM SPECIAL REVENUE FUND		
6	1	Personal Services .....	\$ — \$ 67,824
7	2	Annual Increment .....	— 216
8	3	Employee Benefits .....	— 20,347
9	4	Current Expenses.....	— —0—
10	5	Repairs and Alterations	— —0—
11	6	Equipment .....	— —0—
12	6a	Unclassified .....	— 161,566
13	7	Total.....	\$ — \$ 249,953

1	<i>133—Division of Natural Resources—</i>		
2	<i>Planning and Development Division</i>		
3	(WV Code Chapter 20)		
4	Acct. No. 8329-07		
5	TO BE PAID FROM SPECIAL REVENUE FUND		
6	1	Personal Services .....	\$ — \$ 100,000
7	2	Annual Increment .....	— 2,052
8	3	Employee Benefits .....	— 30,616



9	4	Current Expenses .....	—	—0—
10	5	Repairs and Alterations	—	—0—
11	6	Equipment .....	—	—0—
12	6a	Unclassified .....	—	58,856
13	7	Total .....	\$ —	\$ 191,524

1                                    *141—Water Resources Board*

2                                    (WV Code Chapter 20)

3                                    Acct. No. 8540

## 4                                    TO BE PAID FROM SPECIAL REVENUE FUND

5	1	Personal Services .....	\$ —	\$ —0—
6	2	Annual Increment .....	—	—0—
7	3	Employee Benefits .....	—	—0—
8	4	Equipment .....	—	—0—
9	5	Total .....	\$ —	\$ —0—

1                                    *151—Division of Public Safety—*2                                    *Inspection Fees*

3                                    (WV Code Chapter 15)

4                                    Acct. No. 8350

## 5                                    TO BE PAID FROM SPECIAL REVENUE FUND

6	1	Personal Services .....	\$ —	\$ 480,000
7	2	Annual Increment .....	—	2,160
8	3	Employee Benefits .....	—	137,956
9	4	Equipment .....	—	30,000
10	5	Unclassified .....	—	93,070
11	6	Total .....	\$ —	\$ 743,186

12        The total amount of this appropriation shall be paid  
 13        from the special revenue fund out of fees collected for  
 14        inspection stickers as provided by law.

15        None of the amount of appropriation for Equipment  
 16        shall be expended for motor vehicles.

17        The purpose of this supplementary appropriation bill  
 18        is to appropriate public money, as specified, with  
 19        insertion of such moneys into accounts in the budget bill

20 and specified items thereof, together with adjustments  
 21 of increase, reduction or transfer required. These public  
 22 moneys, as newly provided for, shall be available for  
 23 such use and expenditure upon passage of the bill and  
 24 in fiscal year 1990-91, supplementing the budget bill for  
 25 such fiscal year earlier enacted.

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## CHAPTER 5

(S. B. 14—By Senators Burdette, Mr. President, and Harman,  
 By Request of the Executive)

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[Passed June 26, 1990: in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections three, six, seven, eight, nine, thirteen and fifteen, article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the repeal of administrative adjudications under the charitable solicitation act and the establishment of circuit court actions in lieu thereof; allowing secretary of state to seek injunctive reliefs, clarifying exemption status of political party executive committees; and clarifying the notice on solicitation materials.

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

That sections three, six, seven, eight, nine, thirteen and fifteen, article nineteen, 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 19. SOLICITATION OF CHARITABLE FUNDS ACT.

- §29-19-3. Commission on charitable organizations; powers and duties.
- §29-19-6. Certain persons and organizations exempt from registration.
- §29-19-7. Filing of solicitation contracts.
- §29-19-8. Limitations on activities of charitable organizations.
- §29-19-9. Registration of professional fund-raising counsel and professional solicitor; bonds; records; books.
- §29-19-13. Prohibited acts.
- §29-19-15. Enforcement and penalties.

**§29-19-3. Commission on charitable organizations; powers and duties.**

1 (a) The commission on charitable organizations,  
2 herein referred to as the "commission", consists of seven  
3 members, including the secretary of state or his or her  
4 designate, who shall be the chairman, the attorney  
5 general or his or her designate, the commissioner of  
6 human services or his or her designate, the director of  
7 the state department of health or his or her designate,  
8 and three members to be appointed by the governor who  
9 shall serve at his will and pleasure.

10 (b) The commission shall serve as body advisory to  
11 the secretary of state and, as such, shall have the  
12 following powers and duties:

13 (1) To hold investigations as provided in section  
14 fifteen of this article;

15 (2) To advise and make recommendations to the  
16 secretary of state on policies and practices to effect the  
17 purposes of this article;

18 (3) To request that the attorney general, and, when  
19 appropriate, the prosecuting attorney of any county,  
20 take action to enforce this article or protect the public  
21 from any fraudulent scheme or criminal act; and

22 (4) To meet at the request of the secretary of state or  
23 pursuant to regulations promulgated by him. Minutes of  
24 each meeting shall be public records and filed with the  
25 secretary of state.

26 (c) The secretary of state shall administer this article,  
27 prescribe forms for registration or other purposes, and  
28 promulgate rules and regulations in furtherance of this  
29 article in accordance with the provisions of chapter  
30 twenty-nine-a of this code.

**§29-19-6. Certain persons and organizations exempt from registration.**

1 (a) The following charitable organizations shall not  
2 be required to file an annual registration statement with  
3 the secretary of state:

4 (1) Educational institutions, the curriculums of which  
5 in whole or in part are registered or approved by the  
6 state board of education, either directly or by acceptance  
7 of accreditation by an accrediting body recognized by  
8 the state board of education; and any auxiliary associ-  
9 ations, foundations and support groups which are  
10 directly responsible to any such educational institutions;

11 (2) Persons requesting contributions for the relief of  
12 any individual specified by name at the time of the  
13 solicitation when all of the contributions collected  
14 without any deductions whatsoever are turned over to  
15 the named beneficiary for his or her use;

16 (3) Hospitals which are nonprofit and charitable;

17 (4) Organizations which solicit only within the  
18 membership of the organization by the members  
19 thereof: *Provided*, That the term "membership" shall not  
20 include those persons who are granted a membership  
21 upon making a contribution as the result of solicitation.  
22 For the purpose of this section, "member" means a  
23 person having membership in a nonprofit corporation,  
24 or other organization, in accordance with the provisions  
25 of its articles of incorporation, bylaws or other instru-  
26 ments creating its form and organization; and, having  
27 bona fide rights and privileges in the organization, such  
28 as the right to vote, to elect officers, directors and issues,  
29 to hold office or otherwise as ordinarily conferred on  
30 members of such organizations;

31 (5) Religious organizations, churches or any group  
32 affiliated with and forming an integral part of these  
33 organizations of which no part of the net income inures  
34 to the direct benefits of any individual and which have  
35 received a declaration of current tax-exempt status from  
36 the government of the United States; and

37 (6) Political party executive committees that are  
38 conducting raffles.

39 (b) The following charitable organizations are ex-  
40 empt from filing an annual registration statement with  
41 the secretary of state if they do not employ a professional  
42 solicitor or fund-raiser or do not intend to solicit and

43 receive and do not actually raise or receive contributions  
44 from the public in excess of ten thousand dollars during  
45 a calendar year:

46 (1) Local youth athletic organizations: *Provided*, That  
47 such organizations may solicit and receive contributions  
48 from the public in excess of ten thousand dollars during  
49 a calendar year and still be exempt from filing an  
50 annual registration statement;

51 (2) Community civic clubs;

52 (3) Community service clubs;

53 (4) Fraternal organizations;

54 (5) Labor unions;

55 (6) Local posts, camps, chapters or similarly desig-  
56 nated elements or county units of such elements of bona  
57 fide veterans organizations or auxiliaries which issue  
58 charters to such local elements throughout the state;

59 (7) Bona fide organizations of volunteer firemen or  
60 auxiliaries;

61 (8) Bona fide ambulance associations or auxiliaries;  
62 and

63 (9) Bona fide rescue squad associations or auxiliaries.

64 Charitable organizations which do not intend to solicit  
65 and receive in excess of ten thousand dollars, but do  
66 receive in excess of that amount from the public, shall  
67 file the annual registration statement within thirty days  
68 after contributions are in excess of ten thousand dollars.

69 (c) Every printed solicitation shall include the  
70 following statement: "West Virginia residents may  
71 obtain a summary of the registration and financial  
72 documents from the secretary of state, state capitol,  
73 Charleston, West Virginia 25305. Registration does not  
74 imply endorsement."

#### §29-19-7. Filing of solicitation contracts.

1 (a) Every written contract or agreement between  
2 professional fund-raising counsel and a charitable  
3 organization shall be filed with the secretary of state

4 within ten days after such contract or agreement is  
5 concluded.

6 (b) Every written contract or agreement between a  
7 professional solicitor and a charitable organization shall  
8 be filed with the secretary of state within ten days after  
9 such agreement is concluded. In the absence of a written  
10 contract or agreement between a professional solicitor  
11 and a charitable organization, a written statement of the  
12 nature of the arrangement to prevail in lieu thereof shall  
13 be filed.

14 (c) Each statement must clearly provide the amount,  
15 percentage or other method of compensation to be  
16 received by the professional solicitor or professional  
17 fund-raising counsel as a result of the contract or  
18 arrangement.

19 (d) For purposes of this section, the total moneys,  
20 funds, pledges or other property raised or received shall  
21 not include the actual cost to the charitable organization  
22 or professional solicitor of goods sold or service provided  
23 to the public in connection with the soliciting of  
24 contributions.

**§29-19-8. Limitations on activities of charitable organizations.**

1 No charitable organizations subject to this article may  
2 solicit funds from the public except for charitable  
3 purposes or expend funds raised for charitable purposes  
4 for noncharitable purposes.

5 All registered charitable organizations and their  
6 professional fund-raisers and solicitors are required to  
7 disclose in writing: (1) The name of a representative of  
8 the charitable organization to whom inquiries can be  
9 made, (2) the name of the charitable organization, (3) the  
10 purpose of the solicitation, (4) upon request of the person  
11 solicited, the estimated percentage of the money  
12 collected which will be applied to the cost of solicitation  
13 and administration or how much of the money collected  
14 will be applied directly for the charitable purpose, and  
15 (5) the number of the raffle, bingo or other such state  
16 permit used for fund-raising.

17 The disclosure statement shall be conspicuously  
18 displayed on any written or printed solicitation. Where  
19 the solicitation consists of more than one piece, the  
20 disclosure statement shall be displayed on a prominent  
21 part of the solicitation materials.

22 Organizations applying for registration shall be  
23 reviewed according to objective standards, including,  
24 but not limited to, the following:

25 (a) Charitable organizations shall include in each  
26 solicitation a clear description of programs for which  
27 funds are requested and source from which written  
28 information is available. Expenditures shall be related  
29 in a primary degree to stated purpose (programs and  
30 activities) described in solicitations and in accordance  
31 with reasonable donor expectations.

32 (b) Charitable organizations shall establish and  
33 exercise controls over fund-raising activities conducted  
34 for the organizations' benefit, including written con-  
35 tracts and agreements and assurance of fund-raising  
36 activities without excessive pressure.

37 (c) Charitable organizations shall substantiate a valid  
38 governing structure and members shall comply with the  
39 provisions for conflict of interest as defined in section  
40 twenty-five, article one, chapter thirty-one of this code.

41 (d) No charitable organization, professional fund-  
42 raiser or other person soliciting contributions for or on  
43 behalf of a charitable organization may use a name,  
44 symbol or statement so closely related or similar to that  
45 used by another charitable organization or governmen-  
46 tal agency that the use thereof would tend to confuse or  
47 mislead the public.

**§29-19-9. Registration of professional fund-raising coun-  
sel and professional solicitor; bonds; records;  
books.**

1 (a) No person may act as a professional fund-raising  
2 counsel or professional solicitor for a charitable organ-  
3 ization subject to the provisions of this article, unless he  
4 or she has first registered with the secretary of state.  
5 Applications for such registration shall be in writing

6 under oath or affirmation in the form prescribed by the  
7 secretary of state and contain such information as he or  
8 she may require. The application for registration by  
9 professional fund-raising counsel or professional solicitor shall be accompanied by an annual fee in the sum  
10 of fifty dollars. A partnership or corporation, which is  
11 a professional fund-raising counsel or professional  
12 solicitor, may register for and pay a single fee on behalf  
13 of all its members, officers, agents and employees.  
14 However, the names and addresses of all officers, agents  
15 and employees of professional fund-raising counsel and  
16 all professional solicitors, their officers, agents, servants  
17 or employees employed to work under the direction of  
18 a professional solicitor shall be listed in the application.  
19

20 (b) The applicant shall, at the time of the making of  
21 an application, file with and have approved by the  
22 secretary of state a bond in which the applicant shall  
23 be the principal obligor in the sum of ten thousand  
24 dollars and which shall have one or more sureties  
25 satisfactory to the secretary of state, whose liability in  
26 the aggregate as such sureties will at least equal the  
27 said sum and maintain said bond in effect so long as a  
28 registration is in effect. The bond shall run to the state  
29 for the use of the secretary of state and any person who  
30 may have a cause of action against the obligor of said  
31 bonds for any losses resulting from malfeasance,  
32 nonfeasance or misfeasance in the conduct of solicitation  
33 activities. A partnership or corporation which is a  
34 professional fund-raising counsel or professional solicitor  
35 may file a consolidated bond on behalf of all its  
36 members, officers and employees.

37 (c) Each registration shall be valid throughout the  
38 state for a period of one year and may be renewed for  
39 additional one-year periods upon written application  
40 under oath in the form prescribed by the secretary of  
41 state and the payment of the fee prescribed herein.

42 (d) The secretary of state or his or her designate shall  
43 examine each application, and if he or she finds it to be  
44 in conformity with the requirements of this article and  
45 all relevant rules and regulations and the registrant has  
46 complied with the requirements of this article and all



47 relevant rules and regulations, he or she shall approve  
48 the registration.

§29-19-13. Prohibited acts.

1 (a) No charitable organization, professional fund-  
2 raising counsel or professional solicitor subject to the  
3 provisions of this article may use or exploit the fact of  
4 registration so as to lead the public to believe that such  
5 registration in any manner constitutes an endorsement  
6 or approval by the state.

7 (b) No person may, in connection with the solicitation  
8 of contributions for or the sale of goods or services of  
9 a person other than a charitable organization, misre-  
10 present to or mislead anyone by any manner, means,  
11 practice or device whatsoever, to believe that the person  
12 on whose behalf such solicitation or sale is being  
13 conducted is a charitable organization or that the  
14 proceeds of such solicitation or sale will be used for  
15 charitable purposes, if such is not the fact.

16 (c) No person may in connection with the solicitation  
17 of contributions or the sale of goods or services for  
18 charitable purposes represent to or lead anyone by any  
19 manner, means, practice or device whatsoever, to  
20 believe that any other person sponsors or endorses such  
21 solicitation of contributions, sale of goods or services for  
22 charitable purposes or approves of such charitable  
23 purposes of a charitable organization connected there-  
24 with when such other person has not given consent to  
25 the use of his or her name for these purposes: *Provided,*  
26 That any member of the board of directors or trustees  
27 of a charitable organization or any other person who has  
28 agreed either to serve or to participate in any voluntary  
29 capacity in the campaign shall be deemed thereby to  
30 have given his or her consent to the use of his or her  
31 name in said campaign.

32 (d) No person may make any representation that he  
33 or she is soliciting contributions for or on behalf of a  
34 charitable organization or shall use or display any  
35 emblem, device or printed matter belonging to or  
36 associated with a charitable organization for the  
37 purpose of soliciting or inducing contributions from the

38 public without first being authorized to do so by the  
39 charitable organization.

40 (e) No professional solicitor may solicit in the name  
41 of or on behalf of any charitable organization unless  
42 such solicitor:

43 (1) Has obtained the written authorization of two  
44 officers of such organization, a copy of which shall be  
45 filed with the secretary of state. Such written author-  
46 ization shall bear the signature of the solicitor and shall  
47 expressly state on its face the period for which it is  
48 valid, which shall not exceed one year from the date  
49 issued; and

50 (2) Carries such authorization on his or her person  
51 when making solicitations and exhibits the same on  
52 request to persons solicited or police officers or agents  
53 of the secretary of state.

**§29-19-15. Enforcement and penalties.**

1 (a) The secretary of state, upon his or her own motion,  
2 upon request of the commission, or upon complaint of  
3 any person, may, if he or she finds reasonable ground  
4 to suspect a violation, investigate any charitable  
5 organization, professional fund-raising counsel or  
6 professional solicitor to determine whether such charit-  
7 able organization, professional fund-raising counsel or  
8 professional solicitor has violated the provisions of this  
9 article or has filed any application or other information  
10 required under this article which contains false or  
11 misleading statements.

12 (b) In addition to the foregoing, any person who  
13 willfully and knowingly violates any provision of this  
14 article, or who shall willfully and knowingly give false  
15 or incorrect information to the secretary of state in  
16 filing statements or reports required by this article,  
17 whether such report or statement is verified or not, shall  
18 be guilty of a misdemeanor, and, upon conviction  
19 thereof, shall be fined upon first conviction thereof in  
20 an amount not less than one hundred dollars nor more  
21 than five hundred dollars, or be imprisoned in the  
22 county jail for not more than six months, or be both

23 fined and imprisoned, and for the second and any  
24 subsequent offense to pay a fine of not less than five  
25 hundred dollars nor more than one thousand dollars, or  
26 be imprisoned for not more than one year, or be both  
27 fined and imprisoned.

28 (c) Whenever the secretary of state, attorney general  
29 or any prosecuting attorney has reason to believe that  
30 any charitable organization, professional fund-raising  
31 counsel or professional solicitor is operating in violation  
32 of the provisions of this article, the secretary of state,  
33 attorney general or prosecuting attorney may bring an  
34 action in the name of the state against such charitable  
35 organization and its officers, such professional fund-  
36 raising counsel or professional solicitor or any other  
37 person who has violated this article in the circuit court  
38 of the county wherein the cause of action arises to enjoin  
39 such charitable organization or professional fund-  
40 raising counsel or professional solicitor or other person  
41 from continuing such violation, solicitation or collection,  
42 or from engaging therein or from doing any acts in  
43 furtherance thereof and for such other relief as the court  
44 deems appropriate.

45 (d) In addition to the foregoing, any charitable  
46 organization, professional fund-raising counsel or  
47 professional solicitor who willfully and knowingly  
48 violates any provisions of this article by employing any  
49 device, scheme, artifice, false representation or promise  
50 with intent to defraud or obtain money or other property  
51 shall be guilty of a misdemeanor, and, upon conviction  
52 thereof, for a first offense, shall be fined not less than  
53 one hundred dollars nor more than five hundred dollars,  
54 or be confined in the county jail not more than six  
55 months, or be both fined and imprisoned; and for a  
56 second and any subsequent offense, shall be fined not  
57 less than five hundred dollars nor more than one  
58 thousand dollars, or confined in the county jail not more  
59 than one year, or be both fined and imprisoned.

60 At any proceeding under this section, the court shall  
61 also determine whether it is possible to return to the  
62 contributors the contributions which were thereby  
63 obtained.

64 If the court finds that the said contributions are  
65 readily returnable to the original contributors, it may  
66 order the money to be placed in the custody and control  
67 of a general receiver, appointed pursuant to the  
68 provisions of article six, chapter fifty-one of this code,  
69 who shall be responsible for its proper disbursement to  
70 such contributors.

71 If the court finds that: (1) It is impossible to obtain  
72 the names of over one half the persons who were  
73 solicited and in violation of this article, or (2) if the  
74 majority of individual contributions was of an amount  
75 less than five dollars, or (3) if the cost to the state of  
76 returning these contributions is equal to or more than  
77 the total sum to be refunded, the court shall order the  
78 money to be placed in the custody and control of a  
79 general receiver appointed pursuant to the provisions of  
80 article six, chapter fifty-one of this code. The general  
81 receiver shall maintain this money pursuant to the  
82 provisions of article eight, chapter thirty-six of this code.

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## CHAPTER 6

(Com. Sub. for H. B. 206—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)

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[Passed June 25, 1990; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section fifteen-b, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section six, article three, chapter forty-eight-a of said code, all relating to domestic relations; child and spousal support, and conforming state law to the requirements of federal law with regard to the enforcement of support obligations.

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

That section fifteen-b, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section six,

article three, chapter forty-eight-a of said code be amended and reenacted, all to read as follows:

**Chapter**

**48. Domestic Relations.**

**48A. Enforcement of Family Obligations.**

**CHAPTER 48. DOMESTIC RELATIONS.**

**ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.**

**§48-2-15b. Withholding from income on and after November 1, 1990.**

1 (a) On and after the first day of November, one  
2 thousand nine hundred ninety, every order entered or  
3 modified under the provisions of this article which  
4 requires the payment of child support or spousal support  
5 shall include a provision for automatic withholding from  
6 income of the obligor, in order to facilitate income  
7 withholding as a means of collecting support.

8 (b) Every such order as described in subsection (a) of  
9 this section shall contain language authorizing income  
10 withholding to commence without further court action,  
11 as follows:

12 (1) The order shall provide that income withholding  
13 will begin immediately, without regard to whether there  
14 is an arrearage, (A) when a child for whom support is  
15 ordered is included or becomes included in a grant of  
16 assistance from the division of human services or a  
17 similar agency of a sister state for aid to families with  
18 dependent children benefits, medical assistance only  
19 benefits, or foster care benefits; or (B) when the support  
20 obligee has applied for services from the child advocate  
21 office or the support enforcement agency of another  
22 state or is otherwise receiving services from the child  
23 advocate office as provided for in chapter forty-eight-a  
24 of this code. In any case where one of the parties  
25 demonstrates, and the court finds, that there is good  
26 cause not to require immediate income withholding, or  
27 in any case where there is filed with the court a written  
28 agreement between the parties which provides for an

29 alternative arrangement, such order shall not provide  
30 for income withholding to begin immediately.

31 (2) The order shall also provide that income withhold-  
32 ing will begin immediately upon the occurrence of any  
33 of the following:

34 (A) When the support payments required by such  
35 order are thirty days or more in arrears if the order  
36 requires payments to be made in monthly installments;

37 (B) When the support payments required by such  
38 order are twenty-eight days or more in arrears if the  
39 order requires payments to be paid in weekly or bi-  
40 weekly installments;

41 (C) When the obligor requests the child advocate  
42 office to commence income withholding; or

43 (D) When the obligee requests that such withholding  
44 begin, if the request is approved by the court in  
45 accordance with procedures and standards established  
46 by rules and regulations promulgated by the director of  
47 the child advocate office.

48 (c) For the purposes of this section, the number of  
49 days support payments are in arrears shall be consi-  
50 dered to be the total cumulative number of days during  
51 which payments required by a court order have been  
52 delinquent, whether or not such days are consecutive.

53 (d) The supreme court of appeals shall make availa-  
54 ble to the circuit courts standard language to be  
55 included in all such orders, so as to conform such orders  
56 to the applicable requirements of state and federal law  
57 regarding the withholding from income of amounts  
58 payable as support.

59 (e) Every support order entered by a circuit court of  
60 this state prior to the first day of November, one  
61 thousand nine hundred ninety, shall be considered to  
62 provide for an order of income withholding, by operation  
63 of law, which complies with the provisions of this  
64 section, notwithstanding the fact that such support  
65 order does not in fact provide for such order of  
66 withholding.

**CHAPTER 48A. ENFORCEMENT OF  
FAMILY OBLIGATIONS.**

**ARTICLE 3. CHILDREN'S ADVOCATE.**

**§48A-3-6. Investigations of support orders; notice and hearing upon modifications; petition for change.**

1 (a) In every case in which a final judgment contain-  
2 ing a child support order has been entered in a domestic  
3 relations matter, the children's advocate shall, once  
4 every three years or upon receipt of a written request  
5 from an obligee or an obligor made not more than once  
6 by a party each two years, examine the records and  
7 conduct any investigation considered necessary to  
8 determine whether the child support amount should be  
9 increased or decreased in view of a temporary or  
10 permanent change in physical custody of the child which  
11 the court has not ordered, increased need of the child  
12 or changed financial conditions, unless:

13 (1) If a child is being supported, in whole or in part,  
14 by assistance payments from the division of human  
15 services, the children's advocate has determined that  
16 such a review would not be in the best interests of the  
17 child and neither parent has requested a review;

18 (2) In the case of any other order, neither parent has  
19 requested a review.

20 (b) The office shall notify both parents of their right  
21 to request a review of a child support order, and shall  
22 give each parent at least thirty days' notice before  
23 commencing any review, and shall further notify each  
24 parent, upon completion of a review, of the results of the  
25 review, whether of a proposal to petition to seek  
26 modification or of a proposal that there should be no  
27 change.

28 (c) If the result of the review is a proposal to petition  
29 to seek modification, then each parent shall be given  
30 thirty days' notice of the hearing on the petition, the  
31 notice to be directed to the last known address of each  
32 party by first class mail.

33 If the result of the review is a proposal that there be  
34 no change, then any parent disagreeing with that  
35 proposal may, within thirty days of the notice of the  
36 results of the review, file with the court a petition for  
37 modification setting forth in full the grounds therefor.

38 (d) The office shall petition the court for modification  
39 of the amount of a child support order if modification  
40 is determined to be necessary under subsection (a). A  
41 written report and recommendation shall accompany  
42 the petition.

43 (e) As used in this section, "changed financial  
44 conditions" means increases or decreases in the resour-  
45 ces available to either party from any source. Changed  
46 financial conditions includes, but is not limited to, the  
47 application for or receipt of any form of public assist-  
48 ance payments, unemployment compensation and  
49 workers' compensation.

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## CHAPTER 7

(S. B. 15—By Senators Burdette, Mr. President, and Harman,  
By Request of the Executive)

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[Passed June 27, 1990; in effect July 1, 1990. Approved by the Governor.]

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AN ACT to amend and reenact sections two, four, twenty and twenty-three, article five, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article five by adding thereto six new sections, designated sections four-b, four-c, twenty-four, twenty-five, twenty-six and twenty-seven, all relating to the abolishment of the emergency services advisory council and the creation of a disaster recovery board; its members, terms, meetings, officers, qualifications, compensation, vacancies, quorums, powers and duties; providing definitions; providing for the creation of a disaster recovery trust fund; providing for acceptance and disbursement of assets and funds from said fund; providing for investments of funds; providing for a semi-annual report by the director relating to certain disaster prevention



measures; providing a tax exemption for the disaster recovery trust fund; providing permissible uses of funds and assets of the disaster recovery trust fund; providing for an annual report; and providing a severability clause.

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

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

#### ARTICLE 5. EMERGENCY SERVICES.

§15-5-2. Definitions.

§15-5-4. West Virginia disaster recovery board created; organization of board; appointment of board members; term of office and expenses of board members; meetings.

§15-5-4b. West Virginia disaster recovery board to disburse funds from recovery fund.

§15-5-4c. Powers and duties of the West Virginia disaster recovery board.

§15-5-20. Disaster prevention.

§15-5-23. Severability; conflicts.

§15-5-24. Disaster recovery trust fund; use of funds of authority.

§15-5-25. Prohibition on funds inuring to the benefit of or being distributable to members, officers or private persons.

§15-5-26. Tax exemption.

§15-5-27. Annual report.

#### §15-5-2. Definitions.

1 As used in this article:

2 (a) "Emergency services" means the preparation for  
3 and the carrying out of all emergency functions, other  
4 than functions for which military forces are primarily  
5 responsible, to prevent, minimize and repair injury and  
6 damage resulting from disasters caused by enemy  
7 attack, sabotage or other natural or other man-made  
8 causes. These functions include, without limitation, fire-  
9 fighting services, police services, medical and health  
10 services, communications, radiological, chemical and  
11 other special weapons defense, evacuation of persons  
12 from stricken areas, emergency welfare services,

13 emergency transportation, existing or properly assigned  
14 functions of plant protection, temporary restoration of  
15 public utility services and other functions related to  
16 civilian protection, together with all other activities  
17 necessary or incidental to the preparation for and  
18 carrying out of the foregoing functions. Disaster  
19 includes the imminent threat of disaster as well as its  
20 occurrence and any power or authority exercisable on  
21 account of a disaster may be exercised during the period  
22 when there is an imminent threat thereof;

23 (b) "Local organization for emergency services"  
24 means an organization created in accordance with the  
25 provisions of this article by state or local authority to  
26 perform local emergency service function;

27 (c) "Mobile support unit" means an organization for  
28 emergency services created in accordance with the  
29 provisions of this article by state or local authority to  
30 be dispatched by the governor to supplement local  
31 organizations for emergency services in a stricken area;

32 (d) "Political subdivision" means any county or  
33 municipal corporation in this state;

34 (e) "Board" means the West Virginia disaster recov-  
35 ery board created by this article;

36 (f) "Code" means the code of West Virginia, one  
37 thousand nine hundred thirty-one, as amended;

38 (g) "Community facilities" means a specific work or  
39 improvement within this state or a specific item of  
40 equipment or tangible personal property owned or  
41 operated by any political subdivision or nonprofit  
42 corporation and used within this state to provide any  
43 essential service to the general public;

44 (h) "Disaster" means the occurrence or imminent  
45 threat of widespread or severe damage, injury, or loss  
46 of life or property resulting from any natural or man-  
47 made cause, including fire, flood, earthquake, wind,  
48 snow, storm, chemical or oil spill or other water or soil  
49 contamination, epidemic, air contamination, blight,  
50 drought, infestation or other public calamity requiring  
51 emergency action;

52 (i) "Disaster recovery activities" means activities  
53 undertaken prior to, during or following a disaster to  
54 provide, or to participate in the provision of, emergency  
55 services, temporary housing, residential housing,  
56 essential business activities and community facilities;

57 (j) "Emergency services" means the preparation for  
58 and the carrying out of all emergency functions to  
59 prevent, minimize and repair injury and damage  
60 resulting from a disaster, including, without limitation,  
61 fire-fighting services, police services, medical and  
62 health services, communications, evacuation of persons  
63 and property from stricken areas, welfare services,  
64 transportation, temporary restoration of public utility  
65 services, and other functions related to the health, safety  
66 and welfare of the citizens of this state, together with  
67 all other activities necessary or incidental to the  
68 preparation for and the carrying out of the foregoing  
69 functions;

70 (k) "Essential business activities" means a specific  
71 work or improvement within this state or a specific item  
72 of equipment or tangible personal property used within  
73 this state by any person to provide any essential goods  
74 or service deemed by the authority to be necessary for  
75 recovery from a disaster;

76 (l) "Person" means any individual, corporation,  
77 voluntary organization or entity, partnership, firm or  
78 other association, organization or entity organized or  
79 existing under the laws of this or any other state or  
80 country;

81 (m) "Recovery fund" means the West Virginia disas-  
82 ter recovery trust fund created by this article;

83 (n) "Residential housing" means a specific work or  
84 improvement within this state undertaken primarily to  
85 provide dwelling accommodations, including the acqui-  
86 sition, construction or rehabilitation of land, buildings  
87 and improvements thereto, for residential housing,  
88 including, but not limited to, facilities for temporary  
89 housing and emergency housing, and such other non-  
90 housing facilities as may be incidental or appurtenant  
91 thereto; and

92 (o) "Temporary housing" means a specific work or  
93 improvement within this state undertaken primarily to  
94 provide dwelling accommodations, including the acqui-  
95 sition, construction or rehabilitation of land, buildings  
96 and improvements thereto, for temporary residential  
97 shelters or housing for victims of a disaster and such  
98 other nonhousing facilities as may be incidental or  
99 appurtenant thereto.

**§15-5-4. West Virginia disaster recovery board created;  
organization of board; appointment of board  
members; term of office and expenses of  
board members; meetings.**

1 (a) There is hereby created the West Virginia disas-  
2 ter recovery board. The board shall advise the governor  
3 and the director on all matters pertaining to emergency  
4 services and to perform such other duties as set forth  
5 in this article. The board shall be composed of nine  
6 members, seven of whom shall be appointed by the  
7 governor by and with the advice and consent of the  
8 Senate, and one of whom shall be the governor or his  
9 or her designee, who shall be chairman of the board and  
10 one of whom shall be the secretary of the department  
11 of public safety or his or her designee. The successor of  
12 each such appointed member shall be appointed in the  
13 same manner as the original appointments were made.  
14 No more than four of the appointed board members  
15 shall at any one time belong to the same political party:  
16 *Provided*, That each congressional district of this state  
17 shall be represented by a member of the board.

18 (b) The provisions of this subsection apply to the  
19 seven members appointed by the governor. They shall  
20 be appointed for overlapping terms of three years and  
21 until their respective successors have been appointed  
22 and have qualified. For the purpose of original appoint-  
23 ments, three members shall be appointed for a term of  
24 three years, two members shall be appointed for a term  
25 of two years, and two members shall be appointed for  
26 a term of one year. Members may be reappointed for  
27 any number of terms. Before entering upon the perfor-  
28 mance of his or her duties, each member shall take and  
29 subscribe to the oath prescribed by section five, article

30 four of the constitution of this state. Vacancies shall be  
31 filled by appointment by the governor for the unexpired  
32 term of the member whose office shall be vacant and  
33 such appointment shall be made within sixty days of the  
34 occurrence of such vacancy. Members shall receive no  
35 compensation for the performance of their duties as  
36 members, but shall be entitled to be reimbursed for all  
37 reasonable and necessary expenses actually incurred in  
38 the performance of their duties.

39 (c) A majority of the members of the board consti-  
40 tutes a quorum and meetings shall be held at the call  
41 of the chairman. No vacancy or absence in the member-  
42 ship of the board shall impair the rights of a quorum  
43 by a vote of the majority participating in such meeting  
44 to exercise all the rights and perform all the duties of  
45 the board and the authority.

46 (d) Upon the occurrence of a disaster requiring  
47 immediate action by the board, meetings of the board  
48 may be held by telephone conference call or other  
49 electronic communications and shall be exempt from the  
50 notice requirements of article nine-a, chapter six of this  
51 code. Any action taken pursuant to a vote of the board  
52 at any such meeting shall not be subject to invalidation  
53 by a person adversely affected by such action.

54 (e) The board shall annually elect one of the ap-  
55 pointed members as vice chairman, and shall appoint  
56 one of its appointed members as secretary-treasurer.  
57 The member appointed as secretary-treasurer shall give  
58 bond in the sum of fifty thousand dollars in the manner  
59 provided in article two, chapter six of this code.

60 (f) All expenses incurred by the board shall be  
61 payable solely from funds of the board or from funds  
62 appropriated for such purpose by the Legislature and  
63 no liability or obligation shall be incurred by the board  
64 beyond the extent to which moneys are available from  
65 funds of the board or from such appropriations.

66 (g) Due to the fact that a natural disaster could strike  
67 any part of the state at any time, it is necessary to  
68 effectuate a means to immediately implement the  
69 provisions of this article. Therefore, until the board has  
70 been appointed the governor shall have the authority to:

71 (1) Accept and expend any private funds and expend  
72 no more than one million dollars of the governor's  
73 contingency fund for fiscal year one thousand nine  
74 hundred ninety to provide disaster relief as authorized  
75 in this article for any counties where disasters may  
76 occur before the board is appointed; and

77 (2) Report to the board when it is appointed on  
78 moneys expended and actions taken so that the board  
79 may include this information in its annual report  
80 required by section twelve of this article.

**§15-5-4b. West Virginia disaster recovery board to disburse funds from recovery fund.**

1 The board shall have the power, upon its own  
2 determination that a disaster has occurred or is about  
3 to occur in this state, to disburse funds from the disaster  
4 relief recovery trust fund created pursuant to section  
5 twenty-four of this article to any person, political  
6 subdivision or local organization for emergency services  
7 in such amounts and in such manner, and to take such  
8 other actions, as the board may determine is necessary  
9 or appropriate in order to provide assistance to any  
10 person, political subdivision or local organization for  
11 emergency services responding to or recovering from  
12 the disaster, or otherwise involved in disaster recovery  
13 activities.

**§15-5-4c. Powers and duties of the West Virginia disaster recovery board.**

1 The board is hereby granted, has and may exercise  
2 all powers necessary or appropriate to carry out and  
3 effectuate the purposes set forth in section four-b of this  
4 article. The authority has the power:

5 (1) To accept appropriations, gifts, grants, bequests  
6 and devises from any source, public or private, for  
7 deposit into the recovery fund, and to use or dispose of  
8 the same to provide assistance to any person, political  
9 subdivision or local organization for emergency services  
10 responding to or recovering from a disaster, or other-  
11 wise involved in disaster recovery activities;

12 (2) To make and execute contracts, leases, releases  
13 and other instruments necessary or convenient for the  
14 exercise of its power;

15 (3) To make, and from time to time, amend and  
16 repeal bylaws for the governance of its activities not  
17 inconsistent with the provisions of this article;

18 (4) To sue and be sued;

19 (5) To acquire, hold and dispose of real and personal  
20 property;

21 (6) To enter into agreements or other transactions  
22 with any federal or state agency, political subdivision or  
23 person;

24 (7) To provide for the deposit of any funds or assets  
25 of the West Virginia disaster relief recovery trust fund  
26 with the state board of investments for investment;

27 (8) To procure insurance against any loss in connec-  
28 tion with its property in such amounts, and from such  
29 insurers, as may be necessary or desirable;

30 (9) To use the recovery trust fund to pay the costs  
31 incurred by any state department or agency for the  
32 purpose of obtaining property appraisals and other  
33 certifications necessary to justify the involvement of the  
34 federal emergency management agency and to allow its  
35 determination of a presidentially declared disaster;

36 (10) To establish, or assist in the establishment of,  
37 temporary housing and residential housing by, with or  
38 for political subdivisions declared to be in a disaster  
39 area by the federal emergency management agency or  
40 other agency or instrumentality of the United States or  
41 by the governor of this state;

42 (11) To enter into purchase, lease, or other arrange-  
43 ments with an agency of the United States or this state  
44 for temporary housing or residential housing units to be  
45 occupied by disaster victims and make such units  
46 available to any political subdivision or persons;

47 (12) To assist political subdivisions, local organiza-  
48 tions for emergency services and nonprofit corporations

49 in acquiring sites necessary for temporary housing or  
50 residential housing for disaster victims and in otherwise  
51 preparing the sites to receive and use temporary  
52 housing or residential housing units, including payment  
53 of transportation charges, by advancing or lending  
54 funds available to the board from the recovery fund;

55 (13) To make grants and provide technical services to  
56 assist in the purchase or other acquisition, planning,  
57 processing, design, construction, or rehabilitation,  
58 improvement or operation of temporary housing or  
59 residential housing: *Provided*, That no such grant or  
60 other financial assistance shall be provided except upon  
61 a written finding by the board that such assistance and  
62 the manner in which it will be provided constitute a  
63 disaster recovery activity;

64 (14) To make or participate in the making of insured  
65 or uninsured construction and permanent loans or  
66 grants for temporary housing or residential housing,  
67 community facilities and essential business activities:  
68 *Provided*, That no such loan or grant shall be made  
69 except upon a written finding by the board that the loan  
70 or grant and the manner in which it will be provided  
71 constitute a disaster recovery activity and that the loan  
72 or grant is not otherwise available, wholly or in part,  
73 from a private or public lender upon reasonably  
74 equivalent terms and conditions; and

75 (15) Do all acts necessary and proper to carry out the  
76 powers granted to the board under this article.

#### §15-5-20. Disaster prevention.

1 (a) In addition to disaster prevention measures as  
2 included in the state, local, regional and interjurisdic-  
3 tional disaster plans, the governor shall consider on a  
4 continuing basis steps that could be taken to prevent or  
5 reduce the harmful consequences of disasters. At his  
6 direction, and pursuant to any other authority and  
7 competence they have, state agencies, including, but not  
8 limited to, those charged with responsibilities in  
9 connection with flood plain management, stream  
10 encroachment and flow regulation, weather modifica-  
11 tion, fire prevention and control, air quality, public



12 works, land use and land-use planning and construction  
13 standards, shall make studies of disaster prevention-  
14 related matters. The governor, from time to time, shall  
15 make such recommendation to the Legislature, political  
16 subdivisions and other appropriate public and private  
17 entities as may facilitate measures for prevention or  
18 reduction of the harmful consequences of disasters.

19 (b) At the request of and in conjunction with the  
20 office of emergency services, the divisions of energy,  
21 natural resources and highways and any state depart-  
22 ment insured by the board of risk and insurance  
23 management shall keep land use and construction of  
24 structures and other facilities under continuing study  
25 and identify areas which are particularly susceptible to  
26 severe land shifting, subsidence, flooding or other  
27 catastrophic occurrences. Such studies shall concentrate  
28 on means of reducing or avoiding the dangers caused by  
29 such occurrences and the consequences thereof.

30 (c) In conjunction with the board of risk and insu-  
31 rance management and such other offices or agencies of  
32 state government as the board may deem appropriate,  
33 the director of the office of emergency services shall  
34 make a semi-annual report to the West Virginia disaster  
35 recovery board on the existence and location of aban-  
36 doned motor vehicles, trash, debris and refuse that may  
37 in the event of a disaster cause an obstruction to natural  
38 water flow and thereby cause excessive and more  
39 extensive damage to property. The report shall further  
40 set forth a plan to remove and dispose of such trash,  
41 debris and refuse within the following semi-annual  
42 reporting period.

**§15-5-23. Severability; conflicts.**

1 (a) If any section, subsection, subdivision, provision,  
2 clause or phrase of this article or the application thereof  
3 to any person or circumstance is held unconstitutional  
4 or invalid, such unconstitutionality or invalidity shall  
5 not affect other sections, subsections, subdivisions,  
6 provisions, clauses or phrases or applications of the  
7 article, and to this end each and every section, subsec-  
8 tion, subdivision, provision, clause and phrase of this

9 article is declared to be severable. The Legislature  
10 hereby declares that it would have enacted the remain-  
11 ing sections, subsections, provisions, clauses and phrases  
12 of this article even if it had known that any section,  
13 subsection, subdivision, provision, clause and phrase  
14 thereof would be declared to be unconstitutional or  
15 invalid, and that it would have enacted this article even  
16 if it had known that the application thereof to any  
17 person or circumstance would be held to be unconstitu-  
18 tional or invalid.

19 (b) The provisions of subsection (a) of this section  
20 shall be fully applicable to all future amendments or  
21 additions to this article, with like effect as if the  
22 provisions of said subsection (a) were set forth in extenso  
23 in every such amendment or addition and were ree-  
24 nacted as a part thereof.

**§15-5-24. Disaster recovery trust fund; use of funds of  
authority.**

1 (a) There is hereby created a special trust fund which  
2 shall be designated and known as the "West Virginia  
3 Disaster Recovery Trust Fund" to be administered by  
4 the West Virginia disaster recovery board. The recovery  
5 fund shall consist of (i) any appropriations, grants, gifts,  
6 contributions or revenues received by the recovery fund  
7 from any source, public or private, and (ii) all income  
8 earned on moneys, properties and assets held in the  
9 recovery fund. When any funds are received by the  
10 board from any source, they shall be paid into the  
11 recovery fund, and shall be disbursed and otherwise  
12 managed in the manner set forth in this article. The  
13 recovery fund shall be treated by the auditor and  
14 treasurer as a special revenue fund and not as part of  
15 the general revenues of the state.

16 (b) All moneys, properties and assets acquired by the  
17 West Virginia disaster recovery board shall be held by  
18 it in trust for the purposes of carrying out its powers  
19 and duties, and shall be used and re-used in accordance  
20 with the purposes and provisions of this article. Such  
21 moneys, properties and assets shall at no time be  
22 commingled with other public funds. Disbursements

23 from the recovery fund shall be made only upon the  
24 written requisition of the chairman accompanied by a  
25 certified resolution of the board. If no need exists for  
26 immediate use or disbursement, moneys, properties and  
27 assets in the recovery fund shall be invested or rein-  
28 vested by the board as provided in this article.

**§15-5-25. Prohibition on funds inuring to the benefit of  
or being distributable to members, officers  
or private persons.**

1 No portion of the recovery fund shall inure to the  
2 benefit of or be distributable to members of the West  
3 Virginia disaster recovery board or other private  
4 persons except that the board shall be authorized and  
5 empowered to make loans or grants and exercise its  
6 other powers as specified in this article in furtherance  
7 of its purpose: *Provided*, That no such loans or grants  
8 shall be made to and no property shall be purchased or  
9 leased from, or sold, leased or otherwise disposed of to,  
10 any member or officer of the board except as provided  
11 under subsection (d), section five, article two, chapter  
12 six-b of this code.

**§15-5-26. Tax exemption.**

1 The board shall not be required to pay any taxes and  
2 assessments to the state or any political subdivision of  
3 the state upon any of its moneys, properties or assets or  
4 upon its obligations or other evidences of indebtedness  
5 pursuant to the provisions of this article, or upon any  
6 moneys, funds, revenues or other income held or  
7 received by the West Virginia disaster recovery board.

**§15-5-27. Annual report.**

1 The board shall prepare and transmit to the Legis-  
2 lature annually as of the thirtieth day of June a report  
3 of its disaster recovery activities. The report shall  
4 include the number of requests for distributions, the  
5 number of distributions made and the amount of each  
6 distribution; a listing by source and amount of moneys,  
7 properties and assets that have been contributed to the  
8 recovery fund since the thirtieth day of June of the  
9 preceding year; the outstanding balance of the recovery

10 fund; and an itemized list of any administrative costs  
11 incurred.

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## CHAPTER 8

(Com. Sub. for H. B. 202—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)

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[Passed June 27, 1990; in effect July 1, 1990. Approved by the Governor.]

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AN ACT to amend and reenact sections four, five and nine, article one, chapter five-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article one by adding thereto two new sections, designated sections five-a and five-b; to amend and reenact sections two and five, article one, chapter twenty-two of said code; to further amend said article one by adding thereto a new section, designated section seven-a; and to amend and reenact section one, article four of said chapter twenty-two, relating to transferring and vesting in the public energy authority certain duties and responsibilities of the division of energy to foster, encourage and promote the mineral development industry; continuing the public energy authority; continuing the public energy board; requiring certain members on board be experienced in environmental protection; changing the compensation of members of the board; powers, duties and responsibilities of authority generally; requiring environmental impact statement or assessment under certain circumstances; requiring certain types of notice of certain meetings; requiring public hearing before certain actions of board with respect to project; expenses of authority; division of energy; declaration of legislative findings and policy; qualifications of commissioner; creating advisory board; reclamation board of review; adding two members to board; conflicts of interest affecting eligibility for board or participation in certain matters; and changing the compensation of members of the board.

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

That sections four, five and nine, article one, chapter five-d

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

### Chapter

#### 5D. Public Energy Authority Act.

#### 22. Energy.

### CHAPTER 5D. PUBLIC ENERGY AUTHORITY ACT.

#### ARTICLE 1. PUBLIC ENERGY AUTHORITY OF THE STATE OF WEST VIRGINIA.

- §5D-1-4. West Virginia public energy authority continued; West Virginia public energy board continued; organization of authority and board; appointment of board members; term, compensation and expenses; director of authority; appointment.
- §5D-1-5. Powers, duties and responsibilities of authority generally.
- §5D-1-5a. Publication of notice of certain meetings.
- §5D-1-5b. Public hearing before final consideration of bond issue or exercise of right of eminent domain.
- §5D-1-9. Expenses of authority.

#### §5D-1-4. West Virginia public energy authority continued; West Virginia public energy board continued; organization of authority and board; appointment of board members; term, compensation and expenses; director of authority; appointment.

1 The West Virginia public energy authority heretofore  
2 created is hereby continued. The authority is a govern-  
3 mental instrumentality of the state and a body corpo-  
4 rate. The exercise by the authority of the powers  
5 conferred by this article and the carrying out of its  
6 purposes and duties are determined to be essential  
7 governmental functions and for a public purpose.

8 The authority shall be controlled, managed and

9 operated by a nine member board known as the West  
10 Virginia public energy authority board which is hereby  
11 continued. The nine members of the board shall be  
12 appointed by the governor, by and with the advice and  
13 consent of the Senate. Two members shall be appointed  
14 to serve a term of two years; two members shall be  
15 appointed to serve a term of three years; two members  
16 shall be appointed to serve a term of four years; two  
17 members shall be appointed to serve a term of five  
18 years; and one member shall be appointed to serve a  
19 term of six years. The successor of each such appointed  
20 member shall be appointed for a term of five years,  
21 except that any person appointed to fill a vacancy  
22 occurring prior to the expiration of the term for which  
23 his predecessor was appointed shall be appointed only  
24 for the remainder of such term. Each board member  
25 shall serve until the appointment of his successor. No  
26 more than five of the board members shall at any one  
27 time belong to the same political party. No more than  
28 four members of the board shall be employed by or  
29 associated with any industry this authority is empow-  
30 ered to affect. Two members of the board shall be  
31 persons who have significant experience in the advocacy  
32 of environmental protection. Board members may be  
33 reappointed to serve additional terms.

34 All members of the board shall be citizens of the state.  
35 Before entering upon his or her duties, each member of  
36 the board shall comply with the requirements of article  
37 one, chapter six of this code and give bond in the sum  
38 of twenty-five thousand dollars in the manner provided  
39 in article two, chapter six of this code. The governor  
40 may remove any board member for cause as provided  
41 in article six, chapter six of this code.

42 Annually the board shall elect one of its members as  
43 chairman and another as vice chairman, and shall  
44 appoint a secretary-treasurer, who need not be a  
45 member of the board. Five members of the board shall  
46 constitute a quorum and the affirmative vote of the  
47 majority of members present at any meeting shall be  
48 necessary for any action taken by vote of the board. No  
49 vacancy in the membership of the board shall impair the

50 rights of a quorum by such vote to exercise all the rights  
51 and perform all the duties of the board and the  
52 authority. The person appointed as secretary-treasurer,  
53 including a board member if he is so appointed, shall  
54 give bond in the sum of fifty thousand dollars in the  
55 manner provided in article two, chapter six of this code.

56 Each member of the board appointed prior to the first  
57 day of July, one thousand nine hundred ninety, shall  
58 receive an annual salary of six thousand dollars. Each  
59 member appointed thereafter shall receive two hundred  
60 dollars per diem for each day or portion thereof spent  
61 in the discharge of his or her official duties, not to  
62 exceed six thousand dollars in any fiscal year. Each  
63 member of the board shall be reimbursed for all  
64 reasonable and necessary expenses actually incurred in  
65 the performance of his or her duty as a member of such  
66 board. All such expenses incurred by the board shall be  
67 payable solely from funds of the authority or from funds  
68 appropriated to the authority for such purpose by the  
69 Legislature and no liability or obligation shall be  
70 incurred by the authority beyond the extent to which  
71 moneys are available from funds of the authority or  
72 from such appropriations.

73 There shall also be a director of the authority  
74 appointed by the governor, with the advice and consent  
75 of the Senate, who shall serve at the governor's will and  
76 pleasure, who shall be responsible for managing and  
77 administering the daily functions of the authority and  
78 for performing any and all other functions necessary or  
79 helpful to the effective functioning of the authority,  
80 together with all other functions and powers as may be  
81 delegated by the board.

**§5D-1-5. Powers, duties and responsibilities of authority generally.**

1 The West Virginia public energy authority is hereby  
2 granted, has and may exercise all powers necessary or  
3 appropriate to carry out and effectuate its corporate  
4 purpose. The authority shall have the power and  
5 capacity to:

6 (1) Adopt, and from time to time, amend and repeal

7 bylaws necessary and proper for the regulation of its  
8 affairs and the conduct of its business and rules and  
9 regulations to implement and make effective its powers  
10 and duties, such rules and regulations to be promul-  
11 gated in accordance with the provisions of chapter  
12 twenty-nine-a of this code.

13 (2) Adopt and use an official seal and alter the same  
14 at pleasure.

15 (3) Maintain a principal office and, if necessary,  
16 regional suboffices at locations properly designated or  
17 provided.

18 (4) Sue and be sued in its own name and plead and  
19 be impleaded in its own name, and particularly to  
20 enforce the obligations and covenants made under this  
21 article. Any actions against the authority shall be  
22 brought in the circuit court of Kanawha County.

23 (5) Foster, encourage and promote the mineral  
24 development industry.

25 (6) Represent the state with respect to national  
26 initiatives concerning the mineral development indus-  
27 try, and international marketing activities affecting the  
28 mineral development industry.

29 (7) Engage in strategic planning to enable the state  
30 to cope with changes affecting or which may affect the  
31 mineral development industry.

32 (8) Acquire, whether by purchase, construction, gift,  
33 lease, lease-purchase or otherwise, any electric power  
34 project or natural gas transmission project. In the event  
35 that an electric power project to be constructed pursu-  
36 ant to this article is designed to utilize coal wastes for  
37 the generation of electricity or the production of other  
38 energy, such project shall also be capable of using coal  
39 as its primary energy input: *Provided*, That it shall be  
40 demonstrated to the authority's satisfaction that quan-  
41 tities of coal wastes exist in amounts sufficient to  
42 provide energy input for such project for the term of the  
43 bonds or notes issued by the authority to finance the  
44 project and are accessible to the project.



45 (9) Lease, lease with an option by the lessee to  
46 purchase, sell, by installment sale or otherwise, or  
47 otherwise dispose of, to persons other than governmental  
48 agencies, any or all of its electric power projects or  
49 natural gas transmission projects for such rentals or  
50 amounts and upon such terms and conditions as the  
51 public energy authority board may deem advisable.

52 (10) Finance one or more electric power projects or  
53 natural gas transmission projects by making secured  
54 loans to persons other than governmental agencies to  
55 provide funds for the acquisition, by purchase, construc-  
56 tion or otherwise, of any such project or projects.

57 (11) Issue bonds for the purpose of financing the cost  
58 of acquisition and construction of one or more electric  
59 power projects or natural gas transmission projects or  
60 any additions, extensions or improvements thereto  
61 which will be sold, leased with an option by the lessee  
62 to purchase, leased or otherwise disposed of to persons  
63 other than governmental agencies or for the purpose of  
64 loaning the proceeds thereof to persons other than  
65 governmental agencies for the acquisition and construc-  
66 tion of said projects or both. Such bonds shall be issued  
67 and the payment of such bonds secured in the manner  
68 provided by the applicable provisions of sections seven,  
69 eight, nine, ten, eleven, twelve, thirteen and seventeen,  
70 article two-c, chapter thirteen of this code: *Provided,*  
71 That the principal and interest on such bonds shall be  
72 payable out of the revenues derived from the lease, lease  
73 with an option by the lessee to purchase, sale or other  
74 disposition of or from loan payments in connection with  
75 the electric power project or natural gas transmission  
76 project for which the bonds are issued, or any other  
77 revenue derived from such electric power project or  
78 natural gas transmission project.

79 (12) In the event that the electric power project or  
80 natural gas transmission project is to be owned by a  
81 governmental agency, apply to the economic develop-  
82 ment authority for the issuance of bonds payable solely  
83 from revenues as provided in article fifteen, chapter  
84 thirty-one of this code: *Provided,* That the economic  
85 development authority shall not issue any such bonds

86 except by an act of general law: *Provided, however,* That  
87 the authority shall require that in the construction of  
88 any such project, prevailing wages shall be paid as part  
89 of a project specific agreement which also takes into  
90 account terms and conditions contained in the West  
91 Virginia-Ohio valley market retention and recovery  
92 agreement or a comparable agreement.

93 (13) Acquire by gift or purchase, hold and dispose of  
94 real and personal property in the exercise of its powers  
95 and the performance of its duties as set forth in this  
96 article.

97 (14) Acquire in the name of the state, by purchase or  
98 otherwise, on such terms and in such manner as it  
99 deems proper, or by the exercise of the right of eminent  
100 domain in the manner provided in chapter fifty-four of  
101 this code, such real property or parts thereof or rights  
102 therein, rights-of-way, property, rights, easements and  
103 interests it deems necessary for carrying out the  
104 provisions of this article, and compensation shall be paid  
105 for public or private lands so taken; and the authority  
106 may sell any of the real property or parts thereof or  
107 rights therein, rights-of-way, property, rights, ease-  
108 ments and interests acquired hereunder in such manner  
109 and upon such terms and conditions as the authority  
110 deems proper: *Provided,* That if the authority deter-  
111 mines that land or an interest therein acquired by the  
112 authority through the exercise of the power of eminent  
113 domain for the purpose of this article is no longer  
114 necessary or useful for such purposes, and if the  
115 authority desires to sell such land or interest therein, the  
116 authority shall first offer to sell such land or interest to  
117 the owner or owners from whom it was acquired, at a  
118 price equal to its fair market value: *Provided, however,*  
119 That if the prior owner or owners shall decline to  
120 reacquire the land or interest therein, the authority  
121 shall be authorized to dispose of such property by direct  
122 sale, auction, or competitive bidding. In no case shall  
123 such land or an interest therein acquired under this  
124 subdivision be sold for less than its fair market value.  
125 This article does not authorize the authority to take or  
126 disturb property or facilities belonging to any public

127 utility or to a common carrier, which property or  
128 facilities are required for the proper and convenient  
129 operation of such public utility or common carrier,  
130 except for the acquisition of easements or rights-of-way  
131 which will not unreasonably interfere with the operation  
132 of the property or facilities of such public utility or  
133 common carrier, and in the event of the taking or  
134 disturbance of property or facilities of public utility or  
135 common carrier, provision shall be made for the  
136 restoration, relocation or duplication of such property or  
137 facilities elsewhere at the sole cost of the authority.

138 The term "real property" as used in this article is  
139 defined to include lands, structures, franchises and  
140 interests in land, including lands under water and  
141 riparian rights, and any and all other things and rights  
142 usually included within the said term, and includes also  
143 any and all interests in such property less than full title,  
144 such as easements, rights-of-way, uses, leases, licenses  
145 and all other incorporeal hereditaments and every  
146 estate, interest or right, legal or equitable, including  
147 terms for years and liens thereon by way of judgments,  
148 mortgages or otherwise, and also all claims for damages  
149 for such real estate.

150 For the purposes of this section "fair market value"  
151 shall be determined by an appraisal made by an  
152 independent person or firm chosen by the authority. The  
153 appraisal shall be performed using the principles  
154 contained in the "Uniform Appraisal Standards for  
155 Federal Land Acquisitions" published under the auspi-  
156 ces of the Interagency Land Acquisition Conference,  
157 United States Government Printing Office, 1972.

158 (15) Make and enter into all contracts and agreements  
159 and execute all instruments necessary or incidental to  
160 the performance of its duties and the execution of its  
161 powers: *Provided*, That if any electric power project or  
162 natural gas transmission project is to be constructed by  
163 a person other than a governmental agency, and with  
164 whom the authority has contracted to lease, sell or  
165 finance such project upon its completion, then the  
166 authority shall not be required to comply with the  
167 provisions of article twenty-two, chapter five of this code

168 requiring the solicitation of competitive bids for the  
169 construction of such a project.

170 (16) Employ managers, superintendents and other  
171 employees, and retain or contract with consulting  
172 engineers, financial consultants, accountants, architects,  
173 attorneys, and such other consultants and independent  
174 contractors as are necessary in its judgment to carry out  
175 the provisions of this article, and fix the compensation  
176 or fees thereof. All expenses thereof shall be payable  
177 solely from the proceeds of bonds issued by the economic  
178 development authority, from the proceeds of bonds  
179 issued by or loan payments, lease payments or other  
180 payments received by the authority, from revenues and  
181 from funds appropriated for such purpose by the  
182 Legislature.

183 (17) Receive and accept from any federal agency, or  
184 any other source, grants for or in aid of the construction  
185 of any project or for research and development with  
186 respect to electric power projects, natural gas transmis-  
187 sion projects or other energy projects, and receive and  
188 accept aid or contribution from any source of money,  
189 property, labor or other things of value to be held, used  
190 and applied only for the purpose for which such grants  
191 and contributions are made.

192 (18) Purchase property coverage and liability insu-  
193 rance for any electric power project or natural gas  
194 transmission project or other energy project and for the  
195 principal office and suboffices of the authority, insu-  
196 rance protecting the authority and its officers and  
197 employees against liability, if any, for damage to  
198 property or injury to or death of persons arising from  
199 its operations and any other insurance which may be  
200 provided for under a resolution authorizing the issuance  
201 of bonds or in any trust agreement securing the same.

202 (19) Charge, alter and collect transportation fees and  
203 other charges for the use or services of any natural gas  
204 transmission project as provided in this article.

205 (20) Charge and collect fees or other charges from any  
206 energy project undertaken as a result of this article.

207 (21) When the electric power project is owned and  
208 operated by the authority, charge reasonable fees in  
209 connection with the making and providing of electric  
210 power and the sale thereof to corporations, states,  
211 municipalities or other entities in the furtherance of the  
212 purposes of this article.

213 (22) Purchase and sell electricity or other energy  
214 produced by an electric power project in and out of the  
215 state of West Virginia.

216 (23) Enter into wheeling contracts for the transmis-  
217 sion of electric power over the authority's or another  
218 party's lines.

219 (24) Make and enter into contracts for the construc-  
220 tion of a project facility and joint ownership with  
221 another utility, and the provisions of this article shall  
222 not constrain the authority from participating as a joint  
223 partner therein.

224 (25) Make and enter into joint ownership agreements.

225 (26) Establish or increase reserves from moneys  
226 received or to be received by the authority to secure or  
227 to pay the principal of and interest on the bonds issued  
228 by the economic development authority pursuant to the  
229 provisions of article fifteen, chapter thirty-one of this  
230 code or bonds issued by the authority.

231 (27) Broker the purchase of natural gas for resale to  
232 end-users: *Provided*, That whenever there are local  
233 distribution company pipelines already in place the  
234 authority shall arrange to transport the gas through  
235 such pipelines at the rates approved by the public  
236 service commission of West Virginia.

237 (28) Engage in market research, feasibility studies,  
238 commercial research, and other studies and research  
239 pertaining to electric power projects and natural gas  
240 transmission projects or any other functions of the  
241 authority pursuant to this article.

242 (29) Enter upon any lands, waters and premises in the  
243 state for the purpose of making surveys and examina-  
244 tions as it may deem necessary or convenient for the

245 purpose of this article, and such entry shall not be  
246 deemed a trespass, nor shall an entry for such purposes  
247 be deemed an entry under any condemnation proceed-  
248 ings which may be then pending, and the authority shall  
249 make reimbursement for any actual damages resulting  
250 to such lands, waters and premises as a result of such  
251 activities.

252 (30) Participate in any reorganization proceeding  
253 pending pursuant to the United States Code (being the  
254 act of Congress establishing a uniform system of  
255 bankruptcy throughout the United States, as  
256 amended) or any receivership proceeding in a state or  
257 federal court for the reorganization or liquidation of a  
258 responsible buyer or responsible tenant. The authority  
259 may file its claim against any such responsible buyer or  
260 responsible tenant in any of the foregoing proceedings,  
261 vote upon any question pending therein, which requires  
262 the approval of the creditors participating in any  
263 reorganization proceeding or receivership, exchange  
264 any evidence of such indebtedness for any property,  
265 security or evidence of indebtedness offered as a part of  
266 the reorganization of such responsible buyer or respon-  
267 sible tenant or of any entity formed to acquire the assets  
268 thereof and may compromise or reduce the amount of  
269 any indebtedness owing to it as a part of any such  
270 reorganization.

271 (31) Make or enter into management contracts with  
272 a second party or parties to operate any electric power  
273 project or any gas transmission project and associated  
274 facilities, or other related energy project, either during  
275 construction or permanent operation.

276 (32) Do all acts necessary and proper to carry out the  
277 powers expressly granted to the authority in this article.

278 (33) Nothing herein shall be construed to permit the  
279 transportation of gas produced outside of this state  
280 through a natural gas transmission project.

281 (34) The authority shall, after consultation with other  
282 agencies of state government having environmental  
283 regulatory functions, promulgate legislative rules  
284 pursuant to chapter twenty-nine-a of this code, to

285 establish standards and principles to be applied to all  
286 projects in assessing the effects of projects on the  
287 environment: *Provided*, That when a proposed project  
288 requires an environmental impact statement pursuant  
289 to the National Environmental Policy Act of 1969, a  
290 copy of the environmental impact statement shall be  
291 filed with the authority and be made available prior to  
292 any final decision or final approval of any project and  
293 prior to the conducting of any public hearings regarding  
294 the project, and in any such case, no assessment  
295 pursuant to the legislative rule need be made.

**§5D-1-5a. Publication of notice of certain meetings.**

1 For all meetings of the board at which a bond issue  
2 of the authority will be finally considered, and for all  
3 meetings of the board at which the exercise of the right  
4 of eminent domain will be finally considered, whether  
5 such meeting be a regular or special meeting, the  
6 chairman shall cause a notice of said meeting to be  
7 published as a class II legal advertisement in com-  
8 pliance with the provisions of article three, chapter fifty-  
9 nine of this code and the publication area shall be each  
10 county in which the project is located. In addition, notice  
11 in writing of such meeting shall be given, by regular  
12 United States mail, to any person who shall have  
13 previously made a request, in writing, to be so notified  
14 with regard to a particular project.

**§5D-1-5b. Public hearing before final consideration of  
bond issue or exercise of right of eminent  
domain.**

1 (a) Prior to any final decision of the board to take  
2 action with respect to the issuance of revenue bonds or  
3 to authorize the exercise of the right of eminent domain  
4 with respect to any electric power or natural gas  
5 transmission project, the authority shall:

6 (1) Prepare and reduce to writing the nature of the  
7 proposed project, a summary of the data supporting the  
8 board's determination and a description and location  
9 identification of the proposed real property, right of  
10 way, or easement to be acquired. The written statement  
11 under this section and the environmental impact

12 statement or assessment required pursuant to section  
13 five of this article shall be available for public inspection  
14 at the office of the county clerk at the county courthouse  
15 of each county in which the project is located during the  
16 two successive weeks before the date of the public  
17 hearing required by this section;

18 (2) Provide for a public hearing to be held at a  
19 reasonable time and place within at least one county in  
20 which the project is located to allow interested members  
21 of the public to attend the hearing without undue  
22 hardship. Members of the public may be present, submit  
23 statements and testimony and question the authority's  
24 representative appointed pursuant to this section;

25 (3) Not less than thirty days prior to such public  
26 hearing, provide notice to all members of the Legisla-  
27 ture, unless otherwise notified by a member that such  
28 member does not desire such notice, to the county  
29 commission of each county within which the project is  
30 located and to the municipal council of each municipal-  
31 ity in said county;

32 (4) Cause to be published a notice of the required  
33 public hearing. The notice shall be published as a class  
34 II legal advertisement in compliance with the provisions  
35 of article three, chapter fifty-nine of this code and the  
36 publication area shall be each county in which the  
37 project is located. The public hearing shall be held no  
38 earlier than the fourteenth successive day and no later  
39 than the twenty-first successive day following the first  
40 publication of the notice. The notice shall contain the  
41 time and place of the public hearing along with a brief  
42 description of the project and its proposed location;

43 (5) Cause a copy of the required notice to be posted  
44 at the county seat of each county within which the  
45 project is located for members of the public to observe.  
46 Such notice shall remain posted for two successive  
47 weeks prior to the date of the public hearing;

48 (6) Appoint a representative of the authority who shall  
49 conduct the required public hearing. The representative  
50 of the authority shall make a report of the public  
51 hearing available for inspection by the public or, upon



52 written request of any interested person, provide a  
53 written copy thereof and to all individuals previously  
54 receiving written notice of the hearing within thirty  
55 days following the public hearing; and

56 (7) The representative of the authority conducting the  
57 public hearing shall make the results of the hearing  
58 available to the board for its consideration prior to the  
59 board making decisions regarding the proposed project.

60 (b) No final action of the board with respect to the  
61 issuance of revenue bonds or authorizing the exercise of  
62 the right of eminent domain with respect to a proposed  
63 project may be made before the thirtieth successive day  
64 following the public hearing required by this section,  
65 but in no event shall final action of the board be made  
66 prior to fifteen days after the report of the public  
67 hearings are made available to the public in general.

#### §5D-1-9. Expenses of authority.

1 From time to time the Legislature may appropriate  
2 funds to be used for the purposes of this article. All  
3 expenses incurred in carrying out the provisions of this  
4 article shall be payable solely from funds of the  
5 authority or from funds appropriated to the authority  
6 for such purpose by the Legislature. Such article does  
7 not authorize the authority to incur indebtedness or  
8 liability on behalf of or payable by the state.

### CHAPTER 22. ENERGY.

#### Article

1. Commissioner of Energy.
4. Reclamation Board of Review.

#### ARTICLE 1. COMMISSIONER OF ENERGY.

§22-1-2. Declaration of legislative findings and policy.

§22-1-5. Commissioner of energy; appointment; duties; qualifications;  
removal; salary; expenses; oath and bond.

§22-1-7a. Advisory board.

#### §22-1-2. Declaration of legislative findings and policy.

1 The Legislature hereby finds and declares that the  
2 mineral development industry is vital to the state's  
3 economy and the employment of many of its citizens;

4 that the division of energy and sections of such division  
5 have heretofore been charged with the dual responsibil-  
6 ity of fostering, encouraging and promoting the mineral  
7 development industry, while at the same time issuing  
8 permits to and regulating the mineral development  
9 industry, and that these roles should not be vested in the  
10 same agency of state government; that the responsibility  
11 for fostering, encouraging and promoting this industry  
12 should be vested in the public energy authority of this  
13 state; that there exists a need to focus upon the  
14 comprehensive regulation of this industry by the  
15 division of energy so as to protect the environment and  
16 promote health and safety within the mineral develop-  
17 ment industry, and a need for the consolidation of  
18 regulatory power and statutes in a single act and under  
19 a single agency of state government with related boards  
20 and commissions; that such consolidation will result in  
21 more efficient administration, avoid unnecessary delays  
22 in permitting and other matters, provide better and  
23 more expeditious enforcement and application of  
24 environmental and safety laws as herein provided, result  
25 in better cooperation between agencies, provide for  
26 uniform policies and consistent treatment of entities  
27 engaged in mineral development; and that such efficient  
28 and uniform administration and regulation will make  
29 this state's industry more competitive with that in other  
30 energy-producing states.

31 Accordingly, it is hereby declared the public policy of  
32 this state and the purpose of this act:

33 (a) To effectively regulate the exploration for and the  
34 development, production, utilization and conservation of  
35 coal, oil and gas and other mineral resources of the state  
36 through the fullest practical means, and at the same  
37 time promote economic development in the state, protect  
38 the environment and enhance safety and health in these  
39 vital industries;

40 (b) To provide a comprehensive program for the  
41 exploration, conservation, development, protection,  
42 enjoyment, recovery and use of coal, oil and gas, and  
43 other mineral resources in this state;

44 (c) To aid in such a comprehensive program by  
45 creating a single department, designated the depart-  
46 ment of energy, to have the regulatory powers with  
47 respect to this industry and to have the general duties  
48 and responsibilities heretofore existing in the depart-  
49 ment of natural resources and department of mines, and  
50 that the department will perform such duties and  
51 functions in conjunction with the respective boards and  
52 commissions which are herein continued in effect;

53 (d) To expedite and facilitate, consistent with appli-  
54 cable environmental standards, the issuance of permits  
55 for mines, surface mining operations, oil and gas wells  
56 and other well work; to avoid conflicting permitting  
57 requirements and regulations in this state or with  
58 federal agencies; and to provide uniform policies with  
59 respect to this industry;

60 (e) To provide for a single agency of this state to  
61 implement requirements and programs of federal law  
62 affecting the exploration, development, production,  
63 recovery and utilization of coal, oil and gas, and other  
64 mineral resources in this state;

65 (f) To provide for an agency of this state which can  
66 be consulted with by other agencies of this state prior  
67 to the adoption or implementation of rules, regulations,  
68 standards, programs or requirements affecting the  
69 exploration, development, production, recovery and  
70 utilization of coal, oil and gas, and other mineral  
71 resources in this state.

**§22-1-5. Commissioner of energy; appointment; duties; qualifications; removal; salary; expenses; oath and bond.**

1 The commissioner shall be the chief executive officer  
2 of the division of energy. Subject to provisions of law,  
3 he shall organize the division into such offices, divisions,  
4 agencies and other units of activity as may be found by  
5 the commissioner to be desirable for the orderly,  
6 efficient and economical administration of the division  
7 and for the accomplishment of its objects and purposes.  
8 The commissioner may appoint assistants, hearing  
9 officers, clerks, stenographers, and other officers and

10 employees needed for the operation of the division and  
11 may prescribe their powers and duties and fix their  
12 compensation within amounts appropriated therefor.

13 The commissioner shall have the power to and may  
14 designate the deputy commissioner or other officers or  
15 employees of the division to substitute for him on any  
16 board or commission established under this chapter or  
17 to sit in his place in any hearings, appeals, meetings or  
18 other activities with such substitute having the same  
19 powers, duties, authority and responsibility as the  
20 commissioner. Additionally, the commissioner shall  
21 have the power to delegate to the deputy commissioner,  
22 division directors, section deputies or other personnel,  
23 his powers, duties, authority and responsibility relating  
24 to issuing permits, hiring and training inspectors and  
25 other employees of the division, conducting hearings and  
26 appeals and such other duties and functions set forth in  
27 this chapter or chapters twenty-two-a and twenty-two-  
28 b as he considers appropriate.

29 The commissioner shall be appointed by the governor  
30 with the advice and consent of the Senate, and shall  
31 serve at the will and pleasure of the governor.

32 At the time of his initial appointment, the commis-  
33 sioner shall be at least thirty years old and shall be  
34 selected with special reference and consideration given  
35 to his administrative experience and ability, to his  
36 demonstrated interest in the effective and responsible  
37 regulation of the energy industry and the conservation  
38 and wise use of natural resources. The commissioner  
39 shall not be a candidate for or hold any other public  
40 office, shall not be a member of any political party  
41 committee and shall immediately forfeit and vacate his  
42 office as commissioner in the event he becomes a  
43 candidate for or accepts appointment to any other public  
44 office or political party committee.

45 The commissioner shall receive an annual salary of  
46 sixty-five thousand dollars and shall be allowed and paid  
47 necessary expenses incident to the performance of his  
48 official duties. Prior to the assumption of the duties of  
49 his office, the commissioner shall take and subscribe to

50 the oath required of public officers prescribed by section  
51 5, article IV of the constitution of West Virginia and  
52 shall execute a bond, with surety approved by the  
53 governor, in the penal sum of ten thousand dollars,  
54 which executed oath and bond shall be filed in the office  
55 of the secretary of state. Premiums on the bond shall be  
56 paid from the department funds.

**§22-1-7a. Advisory board.**

1 On or before the first day of November, one thousand  
2 nine hundred ninety, the commissioner shall convene a  
3 division of energy advisory board consisting of nine  
4 members appointed by the governor, for terms of two  
5 years and who shall serve without compensation. Three  
6 members of the board shall have significant experience  
7 in the energy industry, three members shall have  
8 significant experience in the advocacy of environmental  
9 protection, one member shall be a representative of  
10 organized labor, one member shall be a member of the  
11 House of Delegates recommended by the speaker of the  
12 House of Delegates, and one member shall be a member  
13 of the Senate recommended by the president of the  
14 Senate. The commissioner shall serve as an ex officio  
15 member and chairman of the board. The advisory board  
16 shall meet at least every two months, or upon the call  
17 of four members, to discuss all aspects of the division  
18 of energy's environmental protection and environmental  
19 regulatory functions, collection of penalties and fines,  
20 and responsibilities.

**ARTICLE 4. RECLAMATION BOARD OF REVIEW.**

**§22-4-1. Appointment and organization of reclamation board of review; authority, compensation, expenses and removal of board members.**

1 (a) There is hereby continued a reclamation board of  
2 review consisting of seven members to be appointed by  
3 the governor with the advice and consent of the Senate.  
4 Two members shall be appointed to serve a term of two  
5 years. Two members shall be appointed to serve a term  
6 of three years. Two members shall be appointed to serve  
7 a term of four years. One member shall be appointed  
8 to serve a term of five years. The successor of each such

9 appointed member shall be appointed for a term of five  
10 years, except that any person appointed to fill a vacancy  
11 occurring prior to the expiration of the term for which  
12 his predecessor was appointed shall be appointed only  
13 for the remainder of such term. Any vacancy in the  
14 office of a member of said board shall be filled by  
15 appointment by the governor for the unexpired term of  
16 the member whose office is vacant. Each vacancy  
17 occurring on said board shall be filled by appointment  
18 within sixty days after such vacancy occurs. One of the  
19 appointees to such board shall be a person who, by  
20 reason of his previous vocation, employment or affilia-  
21 tions, can be classed as one capable and experienced in  
22 coal mining. One of the appointees to such board shall  
23 be a person who, by reason of his training and expe-  
24 rience, can be classed as one capable and experienced  
25 in the practice of agriculture. One of the appointees to  
26 such board shall be a person who, by reason of his  
27 training and experience, can be classed as one capable  
28 and experienced in modern forestry practices. One of  
29 the appointees to such board shall be a person who, by  
30 reason of his training and experience, can be classed as  
31 one capable and experienced in engineering. One of the  
32 appointees to such board shall be a person who, by  
33 reason of his training and experience, can be classed as  
34 one capable and experienced in water pollution control  
35 or water conservation problems. One of the appointees  
36 to such board shall be a person with significant  
37 experience in the advocacy of environmental protection.  
38 One of the appointees to such board shall be a person  
39 who represents the general public interest. Not more  
40 than four members shall be members of the same  
41 political party. During his tenure on the board, no  
42 member shall receive significant direct or indirect  
43 financial compensation from or exercise any control over  
44 any person or entity which holds or has held, within the  
45 two years next preceding the member's appointment, a  
46 permit to conduct activity regulated by the division of  
47 energy, or any similar agency of any other state or of  
48 the federal government: *Provided*, That the member  
49 classed as experienced in coal mining, the member  
50 classed as experienced in engineering, and the member

51 classed as experienced in water pollution control or  
52 water conservation problems may receive significant  
53 financial compensation from regulated entities for  
54 professional services or regular employment so long as  
55 the professional or employment relationship is disclosed  
56 to the board. No member shall participate in any matter  
57 before the board related to a regulated entity from  
58 which the member receives or has received within the  
59 preceding two years direct or indirect financial compen-  
60 sation. For purposes of this section, "significant direct  
61 or indirect financial compensation" means twenty  
62 percent of gross income for a calendar year received by  
63 the member, any member of his or her immediate  
64 family, or the member's primary employer.

65 (b) The board may employ supporting staff including  
66 hearings examiners to aid and assist in performing its  
67 responsibilities under this article.

68 (c) Four members shall constitute a quorum and no  
69 action of the board is valid unless it has the concurrence  
70 of at least four members. The board shall keep a record  
71 of its proceedings. Each member shall be paid as  
72 compensation for his work as such member, from funds  
73 appropriated for such purposes, one hundred dollars per  
74 day when actually engaged in the performance of his  
75 work as a board member. In addition to such compen-  
76 sation, each member shall be reimbursed for all  
77 reasonable and necessary expenses actually incurred in  
78 the performance of his duties, except that in the event  
79 the expenses are paid, or are to be paid, by a third party,  
80 the members shall not be reimbursed by the state.

81 (d) Annually, one member shall be elected as chair-  
82 man and another member shall be elected as vice  
83 chairman. Such officers shall serve for terms of one  
84 year. The governor may remove any member of the  
85 board from office for inefficiency, neglect of duty,  
86 malfeasance or nonfeasance, after delivery to such  
87 member the charges against him in writing, together  
88 with at least ten days' written notice of the time and  
89 place at which the governor will publicly hear such  
90 member, either in person or by counsel, in defense of  
91 the charges against him, and affording the member

92 such hearing. If such member is removed from office,  
93 the governor shall file in the office of the secretary of  
94 state a complete statement of the charges made against  
95 such member and a complete report of the proceedings  
96 thereon. In such case the action of the governor  
97 removing such member from office shall be final.

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## CHAPTER 9

(Com. Sub. for H. B. 201—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)

[Passed June 27, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three and twelve, article six-b, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the homestead property tax exemption allowable to senior citizens and to persons who are permanently and totally disabled; definitions; amending the requirements, limitations and conditions for the homestead exemption; and specifying that such changes shall apply when determining the measure against which property taxes are levied for the current tax year.

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

That sections two, three and twelve, article six-b, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 6B. HOMESTEAD PROPERTY TAX EXEMPTION.

§11-6B-2. Definitions.

§11-6B-3. Twenty thousand dollar homestead exemption allowed.

§11-6B-12. Effective date.

#### §11-6B-2. Definitions.

1 For purposes of this article, the term:

2 (1) "Assessed value" means the value of property as  
3 determined under article three of this chapter.



4       (2) "Claimant" means a person who is age sixty-five  
5 or older or who is certified as being permanently and  
6 totally disabled, and who owns a homestead that is used  
7 and occupied by the owner thereof exclusively for  
8 residential purposes.

9       (3) "Homestead" means a single family residential  
10 house, including a mobile or manufactured or modular  
11 home, and the land surrounding such structure; or a  
12 mobile or manufactured or modular home regardless of  
13 whether the land upon which such mobile or manufac-  
14 tured or modular home is situated is owned or leased.

15       (4) "Owner" means the person who is possessed of the  
16 homestead, whether in fee or for life. A person seized  
17 or entitled in fee subject to a mortgage or deed of trust  
18 shall be deemed the owner. A person who has an  
19 equitable estate of freehold, or is a purchaser of a  
20 freehold estate who is in possession before transfer of  
21 legal title shall also be deemed the owner. Personal  
22 property mortgaged or pledged shall, for the purpose of  
23 taxation, be deemed the property of the party in  
24 possession.

25       (5) "Permanently and totally disabled" means a  
26 person who is unable to engage in any substantial  
27 gainful activity by reason of any medically determinable  
28 physical or mental condition which can be expected to  
29 result in death or which has lasted or can be expected  
30 to last for a continuous period of not less than twelve  
31 months.

32       (6) "Sixty-five years of age or older" includes a person  
33 who attains the age of sixty-five on or before the  
34 thirtieth day of June following the July first assessment  
35 day.

36       (7) "Used and occupied exclusively for residential  
37 purposes" means that the property is used as an abode,  
38 dwelling or habitat for more than six consecutive  
39 months of the calendar year prior to the date of  
40 application by the owner thereof; and that the property  
41 is used only as an abode, dwelling or habitat to the  
42 exclusion of any commercial use: *Provided*, That failure  
43 to satisfy this six-month period shall not prevent

44 allowance of a homestead exemption to a former  
45 resident in accordance with section three of this article.

46 (8) "Tax year" means the calendar year following the  
47 July first assessment day.

48 (9) "Resident of this state" means an individual who  
49 is domiciled in this state for more than six months of  
50 the calendar year.

**§11-6B-3. Twenty thousand dollar homestead exemption  
allowed.**

1 (a) *General.*—An exemption from ad valorem prop-  
2 erty taxes shall be allowed for the first twenty thousand  
3 dollars of assessed value of a homestead that is used and  
4 occupied by the owner thereof exclusively for residential  
5 purposes, when such owner is sixty-five years of age or  
6 older or is certified as being permanently and totally  
7 disabled provided the owner has been or will be a  
8 resident of the state of West Virginia for the two  
9 consecutive calendar years preceding the tax year to  
10 which the homestead exemption relates: *Provided,* That  
11 an owner who receives a similar exemption for a  
12 homestead in another state is ineligible for the exemp-  
13 tion provided by this section. The owner's application for  
14 exemption shall be accompanied by a sworn affidavit  
15 stating that such owner is not receiving a similar  
16 exemption in another state: *Provided, however,* That  
17 when a resident of West Virginia establishes residency  
18 in another state or country and subsequently returns  
19 and reestablishes residency in West Virginia within a  
20 period of five years, such resident may be allowed a  
21 homestead exemption without satisfying the require-  
22 ment of two years consecutive residency if such person  
23 was a resident of this state for two calendar years out  
24 of the ten calendar years immediately preceding the tax  
25 year for which the homestead exemption is sought. Proof  
26 of residency includes, but is not limited to, the owner's  
27 voter's registration card issued in this state or a motor  
28 vehicle registration card issued in this state. Addition-  
29 ally, when a person is a resident of this state at the time  
30 such person enters upon active duty in the military  
31 service of this country and throughout such service

32 maintains this state as his or her state of residence, and  
33 upon retirement from the military service, or earlier  
34 separation due to a permanent and total physical or  
35 mental disability, such person returns to this state and  
36 purchases a homestead, such person is deemed to satisfy  
37 the residency test required by this section and shall be  
38 allowed a homestead exemption under this section if  
39 such person is otherwise eligible for a homestead  
40 exemption under this article; and the tax commissioner  
41 may specify, by regulation promulgated under chapter  
42 twenty-nine-a of this code, what constitutes acceptable  
43 proof of these facts. Only one exemption shall be allowed  
44 for each homestead used and occupied exclusively for  
45 residential purposes by the owner thereof, regardless of  
46 the number of qualified owners residing therein.

47 (b) *Attachment of exemption.*—This exemption shall  
48 attach to the homestead occupied by the qualified owner  
49 on the July first assessment date and shall be applicable  
50 to taxes for the following tax year. An exemption shall  
51 not be transferred to another homestead until the  
52 following July first. If the homestead of an owner  
53 qualified under this article is transferred by deed, will  
54 or otherwise, the twenty thousand dollar exemption  
55 shall be removed from the property on the next July  
56 first assessment date unless the new owner qualifies for  
57 the exemption.

58 (c) *Construction.*—The residency requirement speci-  
59 fied in subsection (a) is enacted pursuant to the  
60 Legislature's authority to prescribe by general law  
61 requirements, limitations and conditions for the homes-  
62 tead exemption, as set forth in section one-b, article ten  
63 of the constitution of this state. Should the supreme  
64 court of appeals or a federal court of competent  
65 jurisdiction determine that this residency requirement  
66 violates federal law in a decision that becomes final, this  
67 section shall then be construed and applied, beginning  
68 with the July first assessment day immediately follow-  
69 ing the date the decision became final, as if the  
70 residency requirement had not been enacted, thereby  
71 preserving the availability of the homestead exemption

72 and the fiscal integrity of local government levying  
73 bodies.

**§11-6B-12. Effective date.**

1 (a) The provisions of this article enacted in the year  
2 one thousand nine hundred eighty-one took effect on the  
3 first day of July, one thousand nine hundred eighty-one.

4 (b) Amendments to this article enacted in the year  
5 one thousand nine hundred ninety shall, regardless of  
6 the effective date of this act, be used to determine the  
7 assessed value of property on which ad valorem property  
8 taxes are levied for tax years beginning on or after the  
9 first day of January, one thousand nine hundred ninety.  
10 Assessors and county commissioners are hereby autho-  
11 rized and directed to review the claims for homestead  
12 exemption for the current tax year filed in their counties  
13 prior to the second day of October, one thousand nine  
14 hundred eighty-nine, and to make such changes in their  
15 books for the current tax year as may be needed to give  
16 these amendments their intended effect, regardless of  
17 any other provision in this chapter that may prohibit  
18 such action. Any person who has already paid property  
19 taxes for tax year one thousand nine hundred ninety,  
20 and who is considered eligible for homestead exemption  
21 under this article, may apply pursuant to section  
22 twenty-seven, article three of this chapter for a refund  
23 for property taxes erroneously paid.

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## CHAPTER 10

**(S. B. 5—By Senators Burdette, Mr. President, and Harman,  
By Request of the Executive)**

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[Passed June 27, 1990; in effect July 1, 1990. Approved by the Governor.]

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AN ACT to amend and reenact sections nineteen and twenty-two-c, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section fifty-four, all relating to retirement; requiring certain information to

be filed by employers; providing legislative findings; defining the term "contract"; prohibiting retirants under the early retirement incentive program from accepting work on a contract basis with the state or any of its political subdivisions; providing for exceptions; allowing persons who are elected or appointed to government positions and who do not receive any income from such positions to continue to receive incentive annuities under the public employees retirement system; authorizing the promulgation of rules; and establishing a procedure for termination of benefits.

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

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

**ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.**

§5-10-19. Employers to file information as to employees' service.

§5-10-22c. Temporary early retirement incentives program; legislative declaration and finding of compelling state interest and public purpose; specifying eligible and ineligible members for incentives program; options, conditions, and exceptions; certain positions abolished; special rule of eighty; effective, termination, and notice dates.

§5-10-54. Termination of benefits; procedure.

**§5-10-19. Employers to file information as to employees' service.**

1 Each participating public employer shall file with the  
2 board of trustees, in such form as the board shall from  
3 time to time prescribe, a detailed statement of all  
4 service rendered to participating public employers by  
5 each of its employees and by any retirant who retired  
6 under section twenty-two-c of this article and who is  
7 working for the employer on a contract basis, as defined  
8 in section twenty-two-c of this article, and such other  
9 information as the board shall require in the operation  
10 of the retirement system.

**§5-10-22c. Temporary early retirement incentives program; legislative declaration and finding of compelling state interest and public purpose; specifying eligible and ineligible members for incentives program; options, conditions, and exceptions; certain positions abolished; special rule of eighty; effective, termination, and notice dates.**

1 The Legislature hereby finds and declares that a  
2 compelling state interest exists in providing a tempor-  
3 ary early retirement incentives program for encourag-  
4 ing the early, voluntary retirement of those public  
5 employees who were current, active contributing  
6 members of this retirement system on the first day of  
7 April, one thousand nine hundred eighty-eight, in the  
8 reduction of the number of such employees and in  
9 reduction of governmental costs therefor; that such  
10 program constitutes a public purpose; and that the  
11 special classifications and differentiations provided in  
12 respect of such program are reasonable and equitable  
13 ones for the accomplishment of such purpose and  
14 program as enacted in Enrolled Committee Substitute  
15 for H. B. No. 4672, regular session, one thousand nine  
16 hundred eighty-eight, and as clarified and supple-  
17 mented herein, retroactive to such beginning date,  
18 aforesaid. The Legislature further finds that maintain-  
19 ing an actuarially sound retirement fund is a necessity  
20 and that the reemployment of persons who retire under  
21 this section in any manner, including reemployment on  
22 a contract basis, is contrary to the intent of the early  
23 retirement program and severely threatens the fiscal  
24 integrity of the retirement fund.

25 (a) For the purposes of this section, the term "con-  
26 tract" means any personal service agreement, not  
27 involving the sale of commodities, that cannot be  
28 performed within sixty days or that exceeds two  
29 thousand five hundred dollars in any twelve month  
30 period. The term "contract" does not include any  
31 agreement obtained by a retirant through a bidding  
32 process and which is for the furnishing of any commod-  
33 ity to a government agency.

34 (b) Beginning on the first day of April, one thousand

35 nine hundred eighty-eight, and continuing through the  
36 thirty-first day of December, one thousand nine hundred  
37 eighty-eight (or as extended by eligibility qualification  
38 requirement, as hereinafter specified), eligible  
39 members, being those active, contributing members  
40 actually and currently employed on such beginning  
41 date, retiring pursuant to this section, and from any  
42 state, county or municipal position, covered under the  
43 two divisions of this retirement system (the state  
44 division and the public employer, nonstate division)  
45 including those so employed on said beginning date and  
46 leaving the system during the incentive period and who  
47 are eligible for taking deferred retirement (but not  
48 disability retirees) may elect to participate in this  
49 incentives program and may elect any one of the three  
50 following incentive options:

51 (1) Retirement incentive option one:

52 For the purpose of computing the member's annuity,  
53 the normal final average salary shall be computed and  
54 one-eighth thereof shall be added thereto in arriving at  
55 the true final average salary for use in actual compu-  
56 tation of retirement benefit.

57 (2) Retirement incentive option two:

58 A member may elect a lump sum payment, in  
59 addition to his regular retirement annuity, equal to ten  
60 percent of his final average salary not to exceed five  
61 thousand dollars, and in the case of a deferred retire-  
62 ment electing this option, such lump sum payment shall  
63 be receivable and deferred to the time of receipt of such  
64 deferred retirement annuity.

65 (3) Retirement incentive option three:

66 A person shall be credited with an additional two  
67 years of contributing service and an additional two  
68 years of age. The years credited under this option shall  
69 in no way add to a member's final average salary factor  
70 of computation.

71 Active, contributing members who desire to retire  
72 under this section but who are unable to retire by the  
73 thirty-first day of December, one thousand nine hundred  
74 eighty-eight, and make use of the incentive retirement

75 program because an element of eligibility for retire-  
76 ment, such as age or other element, will not be met until  
77 a date after the thirty-first day of December, one  
78 thousand nine hundred eighty-eight, and before the first  
79 day of July, one thousand nine hundred eighty-nine,  
80 shall be permitted to postpone actual retirement until  
81 the date of fulfilling such element of eligibility and shall  
82 retire on such date, before the temporary retirement  
83 incentive program ends on the thirtieth day of June, one  
84 thousand nine hundred eighty-nine; with proper credit  
85 to be granted for such extended period: *Provided*, That  
86 they shall have made application for retirement,  
87 including choice of their respective option, and given  
88 notice to their respective employer by the thirty-first  
89 day of December, one thousand nine hundred eighty-  
90 eight, although postponing actual retirement, as  
91 aforesaid.

92 (c) Any member participating in this retirement  
93 incentive program is not eligible to accept further  
94 employment or accept, directly or indirectly, work on a  
95 contract basis from the state or any of its political  
96 subdivisions: *Provided*, That the executive director may  
97 approve, upon written request and for good cause  
98 shown, an exception allowing a retirant to perform work  
99 on a contract basis. The executive director shall report  
100 all approved exceptions to the board of trustees:  
101 *Provided, however*, That a person may retire under this  
102 section and thereafter serve in an elective office:  
103 *Provided further*, That he shall not receive an incentive  
104 option under this section during the term of service in  
105 said office, but shall receive his or her annuity calcu-  
106 lated on regular basis, as if originally taken not under  
107 this section but on such regular basis. At the end of such  
108 term and cessation of service in such office during which  
109 the member shall rejoin and reenter the retirement  
110 system and pay contributions therefor, such regular  
111 annuity shall be recalculated and an increased annuity  
112 due to such additional employment shall be granted and  
113 computed on regular basis and in similar manner as  
114 under section forty-eight of this article. In respect of an  
115 appointive office, as distinguished from an elective  
116 office, any person retiring under this section and



117 thereafter serving in such appointive office shall not  
118 receive an incentive option under this section during the  
119 term of service in said office, but the same shall be  
120 suspended during such period: *And provided further,*  
121 That at the end of such term and cessation of service  
122 in such appointive office the incentive option provided  
123 for under this section shall be resumed: *And provided*  
124 *further,* That any person elected or appointed to office  
125 by the state or any of its political subdivisions who  
126 waives whatever salary, wage or per diem compensation  
127 he may be entitled to by virtue of service in such office  
128 and who does not receive any income therefrom except  
129 such reimbursement of out-of-pocket costs and expenses  
130 as may be permitted by the statutes governing such  
131 office shall continue to receive an incentive option under  
132 this section. Such service shall not be counted as  
133 contributed or credited service for purposes of comput-  
134 ing retirement benefits.

135 In any event, an eligible member may retire under  
136 this section and thereafter continue to receive his  
137 incentive annuity and be employed as a substitute  
138 teacher or as adjunct faculty.

139 Any such incentive retirants, under this section, may  
140 not thereafter receive such annuity and enter or reenter  
141 any governmental retirement system established or  
142 authorized to be established by the state, notwithstand-  
143 ing any provision of the code to the contrary, unless  
144 required by constitutional provision or as hereby  
145 specifically permitted to those retiring and thereafter  
146 serving in elective office, as aforesaid.

147 The additional annuity allowed for temporary early  
148 retirement under these options, in respect of state  
149 division retirants of this system, is intended to be paid  
150 from the retirement incentive account hereby created as  
151 a special account in the state treasury and from the  
152 funds therein established with moneys required to be  
153 transferred by heads of spending units from the unused  
154 portion of salary and fringe benefits in their budgets  
155 accruing in respect of such positions vacated and  
156 subsequently canceled under this temporary early  
157 retirement program. Salary and fringe benefit moneys

158 actually saved in a particular fiscal year shall constitute  
159 the fund source for payment of such additional annuity,  
160 the funds of the retirement system to be used for  
161 payment of the base annuity under the early retirement  
162 incentive program: *Provided*, That such additional  
163 annuity shall be paid from the unused portion of both  
164 salary and fringe benefits and with any remainder of  
165 any fringe benefit moneys, as such, to remain with the  
166 spending unit and any remainder of salary, as such, to  
167 be directed as additional funding to the teachers  
168 retirement system and as a part of the assets thereof.  
169 No such additional annuity shall be disallowed even  
170 though initial receipts may not be sufficient, with funds  
171 of the system to be applied for such purpose, as for the  
172 base annuity. With respect to public employer division  
173 retirants (nonstate division retirants of the system), such  
174 incentive annuity shall be paid from the nonstate  
175 division funds of the system.

176 (d) The executive secretary of the retirement system  
177 shall provide forms for applicants. Such forms shall  
178 include a detailed description of the incentive plan  
179 options.

180 The executive secretary of the retirement system shall  
181 file a report to the Legislature no later than the fifteenth  
182 day of February, one thousand nine hundred eighty-  
183 nine, and quarterly thereafter, detailing the number of  
184 retirees who have elected to accept early retirement  
185 incentive options, the dollar cost to date by option  
186 selected, and the projected annual cost through the year  
187 two thousand.

188 (e) Within every spending unit, department, board,  
189 corporation, commission, or any other agency or entity  
190 wherein two or multiples of two members elect to retire  
191 either under the temporary early retirement incentives  
192 set forth above, or under regular, voluntary retirement,  
193 and countable on an agency-wide or entity-wide basis,  
194 no more than one of such vacated positions may be filled,  
195 with the second position being abolished upon the  
196 effective day of the member's retirement. The vacant  
197 position abolishment requirement shall not apply to  
198 elective positions or appointed public officers whose

199 positions are established by state constitutional or  
200 statutory provision. The retirant's employing entity shall  
201 decide as to which of the vacated positions made  
202 available through special early retirement or through  
203 regular, voluntary retirement are to be abolished and  
204 the head of such spending unit shall immediately notify  
205 the state auditor, the legislative auditor, and the  
206 commissioner of the department of finance and admin-  
207 istration of the decisions and shall then apply and/or  
208 transfer the remaining salary and fringe benefits as  
209 aforesaid: *Provided*, That this vacant position abolish-  
210 ment provision shall not apply to any county or  
211 municipal position except those under the authority of  
212 a county board of education, nor to any position or  
213 positions, whether designated by spending unit, depart-  
214 ment, agency, commission, entity or otherwise, which  
215 the governor in respect of the executive branch, or the  
216 chief justice of the supreme court of appeals in respect  
217 of the judicial branch, or the president of the Senate or  
218 speaker of the House of Delegates, in respect of the  
219 legislative branch, may exempt or amend, under such  
220 abolishment provision, upon his respective recommenda-  
221 tion that such exemption or amendment is necessary to  
222 provide for continuity of governmental operation or to  
223 preserve the health, welfare or safety of the people of  
224 West Virginia, and with the prior concurrence of the  
225 joint committee on government and finance in such  
226 recommendation, after the chairmen thereof shall cause  
227 such committee to meet.

228 (f) *Special rule of eighty*.—Any active, contributing  
229 member of the retirement system as of the first day of  
230 April, one thousand nine hundred eighty-eight, who  
231 selects one of the incentive options in this section, may  
232 retire under the special early retirement provisions with  
233 full pension rights, without reduction of benefits if the  
234 sum of such member's age plus years of contributing  
235 service equals or exceeds eighty: *Provided*, That such  
236 person has at least twenty years of contributing service;  
237 up to two years of which may be military service, or  
238 prior service, or any combination thereof not exceeding  
239 an aggregate of two years.

240 (g) *Termination of temporary retirement incentives*  
241 *program.*—The right to elect, choose, select or use any  
242 of the options, special rule of eighty, or other benefits  
243 set forth in this section shall terminate on the thirtieth  
244 day of June, one thousand nine hundred eighty-nine.

245 (h) The board shall promulgate rules and regulations  
246 in accordance with the provisions of article three,  
247 chapter twenty-nine of this code regarding the calcula-  
248 tion of the amount of incentive option that may be  
249 forfeited pursuant to the provisions of subsection (b) of  
250 this section.

#### §5-10-54. Termination of benefits; procedure.

1 Whenever the board determines that any person has  
2 knowingly made any false statement or falsified or  
3 permitted to be falsified any record or records of the  
4 retirement system in an attempt to defraud the system,  
5 the board shall terminate any benefit that person has  
6 received, is receiving and is entitled to receive under  
7 this article. Any termination of benefits may be  
8 appealed pursuant to the state administrative proce-  
9 dures act in chapter twenty-nine-a of this code. The  
10 board shall promulgate rules and regulations regarding  
11 the procedure for termination of benefits in accordance  
12 with the provisions of article three, chapter twenty-nine-  
13 a of this code.

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## CHAPTER 11

(Com. Sub. for H. B. 204—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)

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[Passed June 27, 1990; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section one, article two-g,  
chapter sixteen of the code of West Virginia, one  
thousand nine hundred thirty-one, as amended, relating  
to federal "WIC" program; requiring banks in the state  
to accept WIC vouchers or coupons or drafts from

vendors; requiring director of health to deposit WIC funds in state bank, authorizing advance payments from such funds, providing for method of selection of bank; and providing an effective date.

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

That section one, article two-g, 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 2G. SPECIAL SUPPLEMENTARY FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC).**

**§16-2G-1. Voucher or coupon redemption and payment.**

1 With respect to the vouchers or coupons or drafts  
2 authorized by the division of health in the administra-  
3 tion of the special supplementary food program for  
4 women, infants and children, commonly known as the  
5 WIC program, under the auspices and guidelines of the  
6 United States department of agriculture, such vouchers  
7 or coupons or drafts, when received by a vendor from  
8 a holder thereof in exchange for food, food stuffs, or  
9 authorized goods or services, may be deposited by the  
10 vendor in any federally insured bank in this state for  
11 collection and payment thereof, and such bank shall  
12 accept the same as equivalent to a negotiable instrument  
13 from a holder in due course pursuant to chapter forty-  
14 six of this code, and shall collect the funds for such  
15 vouchers or coupons so received.

16 All moneys received from the United States depart-  
17 ment of agriculture under the WIC program, except for  
18 moneys to be used for administration, shall be deposited  
19 by the director of health in a special account in a  
20 federally insured bank in this state, and notwithstand-  
21 ing other provisions of this code to the contrary, this  
22 special account shall be funded by the director of health  
23 as a special advance payment imprest funds account to  
24 be reconciled at least annually by the state treasurer  
25 from which said bank can daily make required wire  
26 transfers to pay each day's presentments of vouchers or  
27 coupons or drafts. The director of health shall select the  
28 bank by competitive bidding in the same manner as the  
29 state treasurer selects depository banks for state funds,

30 subject to applicable federal laws or regulations  
31 governing such selection.

32 The provisions of this section enacted in the year one  
33 thousand nine hundred eighty-nine shall take effect on  
34 the first day of April, one thousand nine hundred ninety,  
35 except that the director shall commence procedures for  
36 the selection of the bank and for implementation of the  
37 other provisions of this section upon the passage hereof.

38 Nothing in this section shall make such vouchers or  
39 coupons or drafts negotiable instruments for any  
40 purpose other than expressly set forth herein or as  
41 permitted by applicable federal laws or regulations.

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## CHAPTER 12

(Com. Sub. for H. B. 213—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)

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[Passed June 27, 1990; in effect July 1, 1990. Approved by the Governor.]

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AN ACT to amend and reenact sections four, five-a and nine, article two, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article two by adding thereto five new sections, designated sections fourteen through eighteen; to amend said chapter twenty-three by adding thereto a new article, designated article two-a; to amend and reenact section one, article three of said chapter; to amend and reenact sections one-d, three, three-a, six, seven-a, eight, eight-c, nine, fourteen, fifteen-b and nineteen, article four of said chapter; to further amend said article four by adding thereto four new sections, designated sections three-b, three-c, six-d and seven-b; to amend and reenact section eight, article four-b of said chapter; to amend and reenact sections one, one-a, one-b, one-c, one-d, one-e, three, three-a and four-b, article five of said chapter; to further amend said article five by adding thereto four new sections, designated sections one-f, one-g, one-h and one-i; and to amend article five-a of said chapter by adding thereto

a new section, designated section three, all relating to prospective and retroactive adjustment of premium rates; liens for payments, interest and penalties due and not paid; enforcement of liens; notice provisions for commissioner's exercise of distraint powers; mandatory employer payment into second injury reserve of surplus fund and exceptions; criteria for exceptions; establishment of classes for employers and computation of payments to be made into said second injury reserve by said employers; continuation of existing bond for employers exempted from mandatory participation in said second injury reserve; election of self-insured employer to pay into catastrophe reserve of surplus fund; employer indebtedness to commissioner becoming due and owing upon sale or transfer of business; lien for indebtedness being a personal obligation of employer; commissioner's certificate of good standing; lien against assets purchased by successor employer for indebtedness of predecessor employer to commissioner upon sale or transfer of business; duty of successor employer to verify predecessor employer's good standing with commissioner; waiver by commissioner of successor employer's payment of predecessor employer's indebtedness; publication of notice before waiver issued; hearing upon objection to waiver; circumstances under which successor employer to assume predecessor employer's premium rates; premium rates to be assigned to new corporate employer when new corporate employer is created by officers or shareholders of preexisting corporate employer; required payment of deficiency in payments to commissioner for failure of new corporate employer to make disclosure of relationship with preexisting corporate employer; employer right to object to commissioner's decisions relating to employer's obligations to the commissioner; hearings thereon and appeals; commissioner authority to promulgate rules; subrogation right of commissioner or self-insured employer to recover workers' compensation medical benefits paid from proceeds of recovery from third party tort-feasor; limitations thereon; legislative committee study of applicability of expanded subrogation; employer payment of second injury awards; employer being

credited for overpayments determined by administrative law judge; commissioner's determination in accordance with guidelines of medical services which are reasonably required; review of requests to exceed guidelines; commissioner being authorized to enter into preferred provider agreements; required disclosure of financial interest in sale or rental of medical appliances or devices by referring medical providers; commissioner being authorized to promulgate rules for enforcement of required disclosure; consequences of failure to disclose; criminal penalties for employer who contracts with hospital for treatment of compensable injuries or who requires employee to pay for services rendered by such hospital; criminal penalties for health care providers who, having had the right to receive payment for services related to work-related injuries suspended or terminated by the commissioner, fail to post notice of the suspension or termination or attempt to collect money for such services; establishment of health care advisory panel; compensation for services and expenses; liability insurance for members; duties thereof; development and utilization of guidelines for services, treatment, care and review; suspension or termination of right of certain health care providers to obtain payment for services to injured employees; exception for rendering medical services under emergency circumstances; consultation by commissioner with health care advisory panel being required prior to suspension or termination; procedures for suspension or termination; hearings; appeal; notice to injured employees by suspended or terminated medical provider; circumstances under which injured employee may pay suspended or terminated medical provider directly; commissioner's notification of injured employee of suspension or termination and assistance in obtaining new medical provider; reinstatement of suspended or terminated medical provider; commissioner being required to promulgate rules; exceptions to definitions relating to weekly wages; exception to minimum weekly benefits paid for temporary total disability; definition of part-time employee; computation of benefits for part-time employees; performance of medical examinations and evaluations in accordance



with procedures established by health care advisory panel and exceptions; suspension of temporary total disability benefits during trial return to work; eligibility for said benefits to continue; medical certification of ability to perform work or successful completion of three month trial return to work period resulting in termination of eligibility for said benefits; unsuccessful trial return to work resulting in immediate reinstatement of said benefits; rehabilitation and permanent disability evaluations; employee not otherwise being prevented from returning to work; employee not being required to return to work; provisions relating to trial return to work to terminate on the first day of July, one thousand nine hundred ninety-four; medical examinations being required to follow procedures established by health care advisory panel and exceptions; the filing of objections to findings of occupational pneumoconiosis board with office of judges beginning on the first day of July, one thousand nine hundred ninety-one; administrative law judge being required to rule thereon; physical and vocational rehabilitation; legislative findings; determination of eligibility of injured employee for rehabilitation services; development, payment for and monitoring of rehabilitation plan; computation and payment of temporary partial rehabilitation benefits when employee returns to work under rehabilitation program; commissioner being required to promulgate rules to develop comprehensive rehabilitation program; provisions relating to rehabilitation to terminate on the first day of July, one thousand nine hundred ninety-four; exception for computation of "average weekly wage earnings, wherever earned, of the injured person, at the date of injury"; chief administrative law judge being required to set hearing for and rule upon objections to commissioner's non-medical findings relating to applications for occupational pneumoconiosis benefits; appeals therefrom; increased criminal penalties for fraudulently obtaining workers' compensation benefits; restitution; legislative findings regarding surplus in coal-workers' pneumoconiosis fund; commissioner being directed to conduct audit of said fund and transfer up to two hundred fifty million dollars to workers' compen-

sation fund; expenditures of principal amount transferred being prohibited until all other assets of workers' compensation fund expended; expenditure of interest earned on amount transferred being permitted to satisfy obligations of workers' compensation fund; retention of adequate reserves in coal-workers' pneumoconiosis fund to guarantee payment of all claims; inclusion of all moneys previously transferred from and still due and owing to the coal-workers' pneumoconiosis fund as part of said amount transferred; commissioner being required to transfer such portion of said amount back to coal-workers' pneumoconiosis fund as will meet required standards of federal law for reserves if such standards change; required filing of objections made to decisions of commissioner on and after the first day of July, one thousand nine hundred ninety-one, with office of judges; transfer of all objections pending before the commissioner on or before the thirty-first day of December, one thousand nine hundred ninety-one, to office of judges for final resolution; rulings of administrative law judges upon applications for modification of prior orders and for reopening of claims; factors administrative law judges are to consider when determining whether objections and appeals have been timely filed; settlement of protests to certain permanent partial disability awards; notice to commissioner of intended settlement; participation by commissioner in settlement proceedings; the required filing of joint written memorandum of settlement; the required approval of settlement by administrative law judge; failure to approve settlement being appealable; limitations on amounts of settlement; payment of settlement; settlements being set aside upon finding of fraud, undue influence or coercion; petition to vacate settlement and hearing thereon; final order on petition and appeal therefrom; settlement not affecting future right to benefits; commissioner being permitted to approve settlements of such disputed awards which are pending for resolution before the commissioner; creation of workers' compensation office of administrative law judges within workers' compensation appeal board; appointment of chief administrative law judge; qualifi-

cations therefor; salary for and removal of chief administrative law judge; employment of administrative law judges and other personnel; qualifications for administrative law judges; budget of office of judges being included in budget of appeal board; appeal board being required to promulgate rules of practice and procedure by the first day of May, one thousand nine hundred ninety-one; powers of chief administrative law judge and delegation of powers; filing of objections to commissioner's decisions with office of judges being required after the first day of July, one thousand nine hundred ninety-one; office of judges being required to schedule hearings; notice; commissioner being a party in certain proceedings; commissioner being permitted to appear under certain circumstances; office of judges being required to keep records and make decisions thereon; commissioner being required to provide records to chief administrative law judge; rules of evidence; supplemental hearings; chief administrative law judge being required to conduct hearings and render final rulings on evidence of record; taking appeals therefrom to appeal board; appeal board being required to rule upon appeal; commissioner's right to appeal; filing of notice of appeal with office of judges; notice to other parties; duties of appeal board and administrative law judges; administrative law judge being required to act to prevent delay in determination of disputes; decisions of chief administrative law judge as to jurisdiction to hear dispute being a final, appealable order; inclusion of the termination by an employer of an injured employee off work due to a compensable injury who is receiving or eligible for temporary total disability benefits within the meaning of a discriminatory practice; exceptions; inclusion of the failure to reinstate an employee who has sustained a compensable injury to the employee's former or comparable position of employment, if available, within the meaning of a discriminatory practice; exceptions; medical certification of ability to perform duties; employee right to preferential recall where no position available; duty of employee; civil action being subject to provisions of collective bargaining agreement, arbitrator's decision, administrative or

court order, or federal statute; and employee eligibility for benefits not being affected.

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

That sections four, five-a and nine, article two, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article two be further amended by adding thereto five new sections, designated sections fourteen through eighteen; that said chapter twenty-three be further amended by adding thereto a new article, designated article two-a; that section one, article three of said chapter be amended and reenacted; that sections one-d, three, three-a, six, seven-a, eight, eight-c, nine, fourteen, fifteen-b and nineteen, article four of said chapter be amended and reenacted; that said article four be further amended by adding thereto four new sections, designated sections three-b, three-c, six-d and seven-b; that section eight, article four-b of said chapter be amended and reenacted; that sections one, one-a, one-b, one-c, one-d, one-e, three, three-a and four-b, article five of said chapter be amended and reenacted; that said article five be further amended by adding thereto four new sections, designated sections one-f, one-g, one-h and one-i; and that article five-a of said chapter be amended by adding thereto a new section, designated section three, all to read as follows:

**Article**

2. **Employers and Employees Subject to Chapter; Extraterritorial Coverage.**
- 2A. **Subrogation.**
3. **Workers' Compensation Fund.**
4. **Disability and Death Benefits.**
- 4B. **Coal-Workers' Pneumoconiosis Fund.**
5. **Review.**
- 5A. **Discriminatory Practices.**

**ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER; EXTRATERRITORIAL COVERAGE.**

- §23-2-4. Classification of industries; accounts, rate of premiums.
- §23-2-5a. Collection of premiums from defaulting employers; interest and penalties; civil remedies; creation and enforcement of lien against employer and purchaser; distraint powers; insolvency proceedings; secretary of state to withhold certificates of dissolution; injunctive relief; bond.
- §23-2-9. Election of employer to provide own system of compensation; mandatory participation in second injury reserve of surplus fund and exceptions; election to provide catastrophe coverage.

- §23-2-14. Sale or transfer of business; attachment of lien for premium, etc., payments due; criminal penalties for failure to pay; creation and avoidance or elimination of lien; enforcement of lien.
- §23-2-15. Liabilities of successor employer; waiver of payment by commissioner; assignment of predecessor employer's premium rate to successor.
- §23-2-16. Acceptance or assignment of premium rate.
- §23-2-17. Employer right to hearing; content of petition; appeal.
- §23-2-18. Rules.

**§23-2-4. Classification of industries; accounts; rate of premiums.**

1       The commissioner shall distribute into groups or  
2 classes the employments subject to this chapter, in  
3 accordance with the nature of the business and the  
4 degree of hazard incident thereto. And the commis-  
5 sioner shall have power, in like manner, to reclassify  
6 such industries into groups or classes at any time, and  
7 to create additional groups or classes. The commissioner  
8 may make necessary expenditures to obtain statistical  
9 and other information to establish the classes provided  
10 for in this section.

11       The commissioner shall keep an accurate account of  
12 all money or moneys paid or credited to the compensa-  
13 tion fund, and of the liability incurred and disburse-  
14 ments made against same; and an accurate account of  
15 all money or moneys received from each individual  
16 subscriber, and of the liability incurred and disburse-  
17 ments made on account of injuries and death of the  
18 employees of each subscriber, and of the receipts and  
19 incurred liability of each group or class.

20       In compensable fatal and total permanent disability  
21 cases, other than occupational pneumoconiosis, the  
22 amount charged against the employer's account shall be  
23 such sum as is estimated to be the average incurred loss  
24 of such cases to the fund. The amount charged against  
25 the employer's account in compensable occupational  
26 pneumoconiosis claims for total permanent disability or  
27 for death shall be such sum as is estimated to be the  
28 average incurred loss of such occupational pneumoconi-  
29 osis cases to the fund.

30 It shall be the duty of the commissioner to fix and  
31 maintain the lowest possible rates of premiums consist-  
32 ent with the maintenance of a solvent workers' compen-  
33 sation fund and the creation and maintenance of a  
34 reasonable surplus in each group after providing for the  
35 payment to maturity of all liability incurred by reason  
36 of injury or death to employees entitled to benefits under  
37 the provisions of this chapter. A readjustment of rates  
38 shall be made yearly on the first day of July, or at any  
39 time the same may be necessary: *Provided*, That on and  
40 after the first day of July, one thousand nine hundred  
41 ninety-one, the commissioner shall, at least thirty days  
42 prior to the first day of the quarter to which an  
43 adjustment of rates is to be applicable, file a schedule  
44 of the readjusted rates with the office of the secretary  
45 of state for publication in the state register pursuant to  
46 article two, chapter twenty-nine-a of this code: *Provided*,  
47 *however*, That from the effective date of this section to  
48 the thirtieth day of June, one thousand nine hundred  
49 ninety-one, the commissioner shall be permitted to  
50 retroactively readjust rates to the first day of the  
51 quarter within which notice of the readjustment is  
52 given. The determination of the lowest possible rates of  
53 premiums within the meaning hereof and of the  
54 existence of any surplus or deficit in the fund shall be  
55 predicated solely upon the experience and statistical  
56 data compiled from the records and files in the  
57 commissioner's office under this and prior workers'  
58 compensation laws of this state for the period from the  
59 first day of June, one thousand nine hundred thirteen,  
60 to the nearest practicable date prior to such adjustment:  
61 *Provided further*, That any expected future return, in  
62 the nature of interest or income from invested funds,  
63 shall be predicated upon the average realization from  
64 investments to the credit of the compensation fund for  
65 the two years next preceding. Any reserves set up for  
66 future liabilities and any commutation of benefits shall  
67 likewise be predicated solely upon prior experience  
68 under this and preceding workers' compensation laws  
69 and upon expected realization from investments deter-  
70 mined by the respective past periods, as aforesaid.

71 The commissioner may fix a rate of premiums

72 applicable alike to all subscribers forming a group or  
73 class, and such rates shall be determined from the  
74 record of such group or class shown upon the books of  
75 the commissioner: *Provided*, That if any group has a  
76 sufficient number of employers with considerable  
77 difference in their degrees of hazard, the commissioner  
78 may fix a rate for each subscriber of such group, such  
79 rate to be based upon the subscriber's record on the  
80 books of the commissioner for a period not to exceed  
81 three years ending December thirty-first of the year  
82 preceding the year in which the rate is to be effective;  
83 and the liability part of such record shall include such  
84 cases as have been acted upon by the commissioner  
85 during such three-year period, irrespective of the date  
86 the injury was received; and any subscriber in a group  
87 so rated, whose record for such period cannot be  
88 obtained, shall be given a rate based upon the subscri-  
89 ber's record for any part of such period as may be deemed  
90 just and equitable by the commissioner; and the  
91 commissioner shall have authority to fix a reasonable  
92 minimum and maximum for any group to which this  
93 individual method of rating is applied, and to add to the  
94 rate determined from the subscriber's record such  
95 amount as is necessary to liquidate any deficit in the  
96 schedule as to create a reasonable surplus.

97 It shall be the duty of the commissioner, when the  
98 commissioner changes any rate, to notify every employer  
99 affected thereby of that fact and of the new rate and  
100 when the same takes effect. It shall also be the  
101 commissioner's duty to furnish to each employer yearly,  
102 or more often if requested by the employer, a statement  
103 giving the name of each of the employer's employees  
104 who were paid for injury and the amounts so paid  
105 during the period covered by the statement.

**§23-2-5a. Collection of premiums from defaulting em-  
ployers; interest and penalties; civil reme-  
dies; creation and enforcement of lien  
against employer and purchaser; distraint  
powers; insolvency proceedings; secretary of  
state to withhold certificates of dissolution;  
injunctive relief; bond.**

1 The commissioner in the name of the state may  
2 commence a civil action against an employer who, after  
3 due notice, defaults in any payment required by this  
4 chapter. If judgment is against the employer, such  
5 employer shall pay the costs of the action. Civil action  
6 under this section shall be given preference on the  
7 calendar of the court over all other civil actions.

8 In addition to the foregoing provisions of this section,  
9 any payment, interest and penalty thereon due and  
10 unpaid under this chapter shall be a personal obligation  
11 of the employer immediately due and owing to the  
12 commissioner and shall, in addition thereto, be a lien  
13 enforceable against all the property of the employer:  
14 *Provided*, That no such lien shall be enforceable as  
15 against a purchaser (including a lien creditor) of real  
16 estate or personal property for a valuable consideration  
17 without notice, unless docketed as provided in section  
18 one, article ten-c, chapter thirty-eight of this code:  
19 *Provided, however*, That such lien may be enforced as  
20 other judgment liens are enforced through the provi-  
21 sions of chapter thirty-eight of this code and the same  
22 shall be deemed by the circuit court to be a judgment  
23 lien for this purpose.

24 In addition to all other civil remedies prescribed  
25 herein the commissioner may in the name of the state,  
26 after giving appropriate notice as required by due  
27 process, distrain upon any personal property, including  
28 intangible property, of any employer delinquent for any  
29 payment, interest and penalty thereon. If the commis-  
30 sioner has good reason to believe that such property or  
31 a substantial portion thereof is about to be removed  
32 from the county in which it is situated, upon giving  
33 appropriate notice, either before or after the seizure, as  
34 is proper in the circumstances, he or she may likewise  
35 distrain in the name of the state before such delinquency  
36 occurs. For such purpose, the commissioner may require  
37 the services of a sheriff of any county in the state in  
38 levying such distress in the county in which the sheriff  
39 is an officer and in which such personal property is  
40 situated. A sheriff so collecting any payment, interest  
41 and penalty thereon shall be entitled to such compen-



42 sation as is provided by law for his or her services in  
43 the levy and enforcement of executions.

44 In case a business subject to the payments, interest  
45 and penalties thereon imposed under this chapter shall  
46 be operated in connection with a receivership or  
47 insolvency proceeding in any state court in this state, the  
48 court under whose direction such business is operated  
49 shall, by the entry of a proper order or decree in the  
50 cause, make provisions, so far as the assets in admin-  
51 istration will permit, for the regular payment of such  
52 payments, interest and penalties as the same become  
53 due.

54 The secretary of state of this state shall withhold the  
55 issuance of any certificate of dissolution or withdrawal  
56 in the case of any corporation organized under the laws  
57 of this state or organized under the laws of any other  
58 state and admitted to do business in this state, until  
59 notified by the commissioner that all payments, interest  
60 and penalties thereon against any such corporation  
61 which is an employer under this chapter have been paid  
62 or that provision satisfactory to the commissioner has  
63 been made for payment.

64 In any case when an employer required to subscribe  
65 to the fund defaults in payments of premium, premium  
66 deposits, or interest thereon, for as many as two  
67 calendar quarters, which quarters need not be consec-  
68 utive, and remains in default after due notice, and the  
69 commissioner has been unable to collect such payments  
70 by any of the other civil remedies prescribed herein, the  
71 commissioner may bring action in the circuit court of  
72 Kanawha County to enjoin such employer from contin-  
73 uing to carry on the business in which such liability was  
74 incurred: *Provided*, That the commissioner may as an  
75 alternative to this action require such delinquent  
76 employer to file a bond in the form prescribed by the  
77 commissioner with satisfactory surety in an amount not  
78 less than fifty percent more than the payments, interest  
79 and penalties due.

**§23-2-9. Election of employer to provide own system of compensation; mandatory participation in second injury reserve of surplus fund and exceptions; election to provide catastrophe coverage.**

1 (a) (1) Notwithstanding anything contained in this  
2 chapter, employers subject to this chapter who are of  
3 sufficient financial responsibility to insure the payment  
4 of compensation to injured employees and the depend-  
5 ents of fatally injured employees, whether in the form  
6 of pecuniary compensation or medical attention, funeral  
7 expenses or otherwise as herein provided, of the value  
8 at least equal to the compensation provided in this  
9 chapter, or employers of such financial responsibility  
10 who maintain their own benefit funds, or system of  
11 compensation to which their employees are not required  
12 or permitted to contribute, or such employers as shall  
13 furnish bond or other security to insure such payments,  
14 may, upon a finding of such facts by the compensation  
15 commissioner, elect to pay individually and directly, or  
16 from such benefit funds, department or association, such  
17 compensation and expenses to injured employees or  
18 fatally injured employees' dependents. The compensa-  
19 tion commissioner shall require security or bond from  
20 such employer, to be approved by the commissioner, and  
21 of such amount as is by the commissioner considered  
22 adequate and sufficient to compel or secure to such  
23 employees, or their dependents, payment of the compen-  
24 sation and expenses herein provided for, which shall in  
25 no event be less than the compensation paid or furnished  
26 out of the state workers' compensation fund in similar  
27 cases to injured employees or the dependents of fatally  
28 injured employees whose employers contribute to such  
29 fund.

30 (2) Any employer electing under this section to insure  
31 payment of compensation to injured employees and the  
32 dependents of fatally injured employees shall on or  
33 before the last day of the first month of each quarter,  
34 for the preceding quarter, file with the commissioner a  
35 sworn statement of the total earnings of all the employ-  
36 er's employees subject to this chapter for such preceding

37 quarter, and shall pay into the workers' compensation  
38 fund:

39 (A) A sum sufficient to pay the employer's proper  
40 proportion of the expenses of the administration of this  
41 chapter; and

42 (B) A sum sufficient to pay the employer's proper  
43 portion of the expenses for claims for those employers  
44 who are delinquent in the payment of premiums; and

45 (C) A sum sufficient to pay the employer's fair  
46 portion of the expenses of the disabled workers' relief  
47 fund, as may be determined by the commissioner.

48 (3) The commissioner shall make and promulgate  
49 legislative rules in accordance with chapter twenty-  
50 nine-a of this code governing the mode and manner of  
51 making application, and the nature and extent of the  
52 proof required to justify the finding of facts by the  
53 commissioner, to consider and pass upon such election  
54 by employers subject to this chapter, which rules shall  
55 be general in their application.

56 (4) Any employer whose record upon the books of the  
57 compensation commissioner shows a liability against the  
58 workers' compensation fund incurred on account of  
59 injury to or death of any of the employer's employees,  
60 in excess of premiums paid by such employer, shall not  
61 be granted the right, individually and directly or from  
62 such benefit funds, department or association, to  
63 compensate the employer's injured employees and the  
64 dependents of the employer's fatally injured employees  
65 until the employer has paid into the workers' compen-  
66 sation fund the amount of such excess of liability over  
67 premiums paid, including the employer's proper propor-  
68 tion of the liability incurred on account of explosions,  
69 catastrophes or second injuries as defined in section one,  
70 article three of this chapter, occurring within the state  
71 and charged against such fund.

72 (b) (1) Subject to any limitations set forth herein, all  
73 employers who have heretofore elected, or shall hereaf-  
74 ter elect, to pay compensation and expenses directly as  
75 provided in subsection (a) of this section, shall, unless  
76 they be permitted under the provisions of this subsection  
77 hereinafter set forth to give the second injury security

78 or bond hereinafter provided for, pay into the second  
79 injury reserve of the surplus fund referred to in section  
80 one, article three of this chapter, upon the basis set forth  
81 herein, such payments to be made at the same time as  
82 provided in this section for the payment of proportion  
83 of expenses of administration.

84 (2) To determine the contribution for second injury  
85 coverage for self-insured employers, the commissioner  
86 shall first establish, based upon actuarial advice, the  
87 projected funding cost for incurred losses for the second  
88 injury reserve of the surplus fund for the prospective  
89 year for each industrial group or class, so that industrial  
90 groups or classes with significantly different experience  
91 in use of the second injury reserve shall pay their proper  
92 share based upon the record of that industrial group or  
93 class: *Provided*, That the commissioner shall establish  
94 industrial groups or classes as permitted by section four  
95 of this article but need not establish the same number  
96 of industrial groups or classes as the number established  
97 for purposes of section four of this article. The commis-  
98 sioner shall further allocate such cost within the  
99 industrial group or class to individual employers based  
100 upon the ratio of the individual employer's record of  
101 actual paid losses for claims chargeable to that employer  
102 to the total actual paid losses for claims chargeable to  
103 all employers in that industrial group or class. Actual  
104 paid losses shall mean cash payments made under this  
105 chapter as reflected on the books of the commissioner  
106 for a period not to exceed three years ending the thirty-  
107 first day of December of the year preceding the year in  
108 which the rate is to be effective but shall not include  
109 any payments or losses charged to any portion of the  
110 surplus fund: *Provided, however*, That any employer  
111 whose record for such period cannot be obtained shall  
112 be given a rate based upon the employer's record for any  
113 part of such period as may be deemed just and equitable  
114 by the commissioner.

115 (3) In case there be a second injury, as defined in  
116 section one, article three of this chapter, to an employee  
117 of any employer making such second injury reserve  
118 payments, the employer shall not be liable to pay

119 compensation or expenses arising from or necessitated  
120 by the second injury, and such compensation and  
121 expenses shall not be charged against such employer,  
122 but such compensation and expenses shall be paid from  
123 the second injury reserve of the surplus fund in the same  
124 manner and to the same extent as in the case of  
125 premium-paying subscribers.

126 (4) (A) Any employer who has heretofore elected to  
127 pay compensation and expenses directly under the  
128 provisions of subsection (a) of this section, and who:

129 (i) Elected prior to the first day of January, one  
130 thousand nine hundred eighty-nine, not to make pay-  
131 ments into the second injury reserve of the surplus fund,  
132 and

133 (ii) Continuously without interruption, from the first  
134 day of January, one thousand nine hundred eighty-nine,  
135 to the effective date of this section, elected not to make  
136 payments into the second injury reserve of the surplus  
137 fund, may elect to continue not to make payments into  
138 the second injury reserve of the surplus fund.

139 (B) Any employer who has heretofore elected to pay  
140 compensation and expenses directly under the provi-  
141 sions of subsection (a) of this section, and who:

142 (i) Was making payments into the second injury  
143 reserve of the surplus fund on the first day of January,  
144 one thousand nine hundred eighty-nine, and

145 (ii) Elected not to make such payments during  
146 calendar year one thousand nine hundred eighty-nine,  
147 and

148 (iii) Has not thereafter, to the effective date of this  
149 section, recommenced making such payments, shall  
150 elect one of the two following options:

151 (I) Begin payments into the second injury reserve of  
152 the surplus fund as of the first day of July, one thousand  
153 nine hundred ninety, in which event such employer shall  
154 not thereafter be permitted to elect not to make such  
155 payments; or

156 (II) Elect to continue not making such payments in  
157 which event the commissioner shall examine the

158 employer's record with regard to the second injury  
159 reserve of the surplus fund upon the books of the  
160 commissioner and if such record shows a liability  
161 against the surplus fund incurred on account of injury  
162 to any of the employer's employees, in excess of  
163 premiums paid by such employer to the second injury  
164 reserve of the surplus fund, then such employer shall  
165 pay to the commissioner the present value of that  
166 liability.

167 (C) Any employer who is permitted by paragraphs  
168 (A) and (B) of this subdivision not to make payments  
169 into the second injury reserve of the surplus fund shall,  
170 in addition to bond or security required by subsection  
171 (a) of this section, furnish second injury security or  
172 bond, approved by the commissioner, in such amount  
173 and form as the commissioner shall consider adequate  
174 and sufficient to compel or secure payment of all  
175 compensation and expenses arising from, or necessitated  
176 by, any second injury that is or remains to be paid by  
177 the employer: *Provided*, That any second injury security  
178 or bond given by any such employer pursuant to rules  
179 promulgated by the commissioner and with the approval  
180 of the commissioner prior to the effective date of this  
181 section shall remain valid upon the effective date of this  
182 section until such time thereafter as the commissioner  
183 notifies such employer to the contrary.

184 (D) Any employer permitted by paragraphs (A) and  
185 (B) of this subdivision not to make payments into the  
186 second injury reserve of the surplus fund who on or after  
187 the effective date of this section elects to make payments  
188 into the second injury reserve of the surplus fund shall  
189 not thereafter be permitted to elect not to make such  
190 payments.

191 (5) Except as provided in paragraphs (A) and (B),  
192 subdivision (4) of this subsection, all other employers  
193 who have heretofore elected or who henceforth elect to  
194 pay compensation and expenses directly under the  
195 provisions of subsection (a) of this section shall pay into  
196 the second injury reserve of the surplus fund such  
197 amounts as are determined by the commissioner  
198 pursuant to subdivision (2), subsection (b) of this

199 section: *Provided*, That all such other employers who, as  
200 of the date immediately preceding the effective date of  
201 this section, have been permitted by the commissioner  
202 not to make such payments are not required to com-  
203 mence making such payments until the first day of July,  
204 one thousand nine hundred ninety.

205 (c) (1) All employers who have heretofore elected, or  
206 shall hereafter elect, to pay compensation and expenses  
207 directly as provided in subsection (a) of this section  
208 shall, unless they give the catastrophe security or bond  
209 hereinafter provided for, pay into the catastrophe  
210 reserve of the surplus fund referred to in section one,  
211 article three of this chapter, upon the same basis and  
212 in the same percentages, subject to the limitations  
213 herein set forth, as funds are set aside for the mainte-  
214 nance of the catastrophe reserve of the surplus fund out  
215 of payments made by premium-paying subscribers, such  
216 payments to be made at the same time as hereinbefore  
217 provided with respect to payment of proportion of  
218 expenses of administration.

219 (2) In case there be a catastrophe, as defined in  
220 section one, article three of this chapter, to the em-  
221 ployees of any employer making such payments, the  
222 employer shall not be liable to pay compensation or  
223 expenses arising from or necessitated by the catas-  
224 trophe, and such compensation and expenses shall not  
225 be charged against such employer, but such compensa-  
226 tion and expenses shall be paid from the catastrophe  
227 reserve of the surplus fund in the same manner and to  
228 the same extent as in the case of premium-paying  
229 subscribers.

230 (3) If an employer elects to make payments into the  
231 catastrophe reserve of the surplus fund as aforesaid,  
232 then the bond or other security required by this section  
233 shall be of such amount as the commissioner considers  
234 adequate and sufficient to compel or secure to the  
235 employees or their dependents payments of compensa-  
236 tion and expenses, except any compensation and  
237 expenses that may arise from, or be necessitated by, any  
238 catastrophe as defined in section one, article three of this  
239 chapter, which last are secured by and shall be paid

240 from the catastrophe reserve of the surplus fund as  
241 hereinbefore provided.

242 (4) If any employer elects not to make payments into  
243 the catastrophe reserve of the surplus fund, as herein-  
244 before provided, then, in addition to bond or security in  
245 the amount hereinbefore set forth, such employer shall  
246 furnish catastrophe security or bond, approved by the  
247 commissioner, in such additional amount as the commis-  
248 sioner shall consider adequate and sufficient to compel  
249 or secure payment of all compensation and expenses  
250 arising from, or necessitated by, any catastrophe that  
251 might thereafter ensue.

252 (5) All employers hereafter making application to  
253 carry their own risk under the provisions of this  
254 subsection shall, with such application, make a written  
255 statement as to whether such employer elects to make  
256 payments as aforesaid into the catastrophe reserve of the  
257 surplus fund or not to make such payments and to give  
258 catastrophe security or bond hereinbefore in such case  
259 provided for.

260 (d) In any case under the provisions of this section  
261 that shall require the payment of compensation or  
262 benefits by an employer in periodical payments, and the  
263 nature of the case makes it possible to compute the  
264 present value of all future payments, the commissioner  
265 may, in his or her discretion, at any time compute and  
266 permit or require to be paid into the workers' compen-  
267 sation fund an amount equal to the present value of all  
268 unpaid compensation for which liability exists, in trust;  
269 and thereupon such employer shall be discharged from  
270 any further liability upon such award, and payment of  
271 the same shall be assumed by the workers' compensation  
272 fund.

273 (e) Any employer subject to this chapter who shall  
274 elect to carry the employer's own risk and who has  
275 complied with the requirements of this section and the  
276 rules of the compensation commissioner shall not be  
277 liable to respond in damages at common law or by  
278 statute for the injury or death of any employee, however  
279 occurring, after such election and during the period that



280 the employer is allowed by the commissioner to carry  
281 the employer's own risk.

**§23-2-14. Sale or transfer of business; attachment of lien for premium, etc., payments due; criminal penalties for failure to pay; creation and avoidance or elimination of lien; enforcement of lien.**

1 (a) If any employer is required to subscribe to the  
2 workers' compensation fund pursuant to section one of  
3 this article and does not elect to provide the employer's  
4 own system of compensation pursuant to section nine of  
5 this article, and shall sell or otherwise transfer substan-  
6 tially all of the employer's assets, so as to give up  
7 substantially all of the employer's capacity and ability  
8 to continue in the business in which the employer has  
9 previously engaged, then such employer's premiums,  
10 premium deposits, interest, and claims losses shall  
11 become due and owing to the commissioner upon the  
12 execution of the agreement of sale or other transfer. In  
13 addition, any repayment agreement entered into by the  
14 employer with the commissioner pursuant to section five  
15 of this article shall terminate upon the execution of the  
16 aforesaid agreement of sale or other transfer and all  
17 amounts owed to the commissioner but not yet paid shall  
18 become due. Upon execution of an agreement of sale or  
19 other transfer, as aforesaid, the commissioner shall  
20 continue to have a lien, as provided for in section five-  
21 a of this article, against all of the other property of the  
22 employer and which lien shall constitute a personal  
23 obligation of the employer. As used in this section, the  
24 term "assets" means all property of whatever type in  
25 which the employer has an interest including, but not  
26 limited to, good will, access to leases such as the right  
27 to sublease, assignment of contracts for the sale of  
28 products, inventory or stock of goods in bulk, or accounts  
29 receivable.

30 (b) If an employer subject to subsection (a) of this  
31 section pays to the commissioner, prior to the execution  
32 of an agreement of sale or other transfer, a sum  
33 sufficient to retire all of the indebtedness that the  
34 employer would owe at the time of the execution, then

35 the commissioner shall issue a certificate to the  
36 employer stating that the employer's account is in good  
37 standing with the commissioner and that the assets may  
38 be sold or otherwise transferred without the attachment  
39 of the commissioner's lien. In the event that the  
40 employer would not owe any sum to the commissioner  
41 on the aforesaid date of execution, then a certificate  
42 shall also be issued to the employer upon the employer's  
43 request stating that the employer's account is in good  
44 standing with the commissioner and that the assets may  
45 be sold or otherwise transferred without the attachment  
46 of the commissioner's lien.

**§23-2-15. Liabilities of successor employer; waiver of  
payment by commissioner; assignment of  
predecessor employer's premium rate to  
successor.**

1 (a) Notwithstanding any provisions of section five-a of  
2 this article to the contrary, in the event that a new  
3 employer acquires by sale or other transfer or assumes  
4 all or substantially all of a predecessor employer's actual  
5 business, business assets, customers, clients, contracts,  
6 operations, stock of goods, equipment, or substantially  
7 all of its employees, then any liens for payments owed  
8 to the commissioner for premiums, premium deposits,  
9 interest, or claims losses by the predecessor employer or  
10 any liens held by the commissioner against the prede-  
11 cessor employer's property shall be extended to the  
12 assets acquired as the result of the sale or transfer by  
13 the new employer and shall be enforceable against such  
14 assets by the commissioner to the same extent as  
15 provided for the enforcement of liens against the  
16 predecessor employer pursuant to section five-a of this  
17 article. As used in this section, the term "assets" is  
18 defined as provided in section fourteen of this article.  
19 The foregoing provisions are expressly intended to  
20 impose upon such new employers the duty of obtaining,  
21 prior to the date of such acquisition, verification from  
22 the commissioner that the predecessor employer's  
23 account with the commissioner is in good standing.

24 (b) At any time prior to or following the acquisition  
25 described in subsection (a) of this section, the buyer or

26 other recipient may file a verified petition with the  
27 commissioner requesting that the commissioner waive  
28 the payment by the buyer or other recipient of premi-  
29 ums, premium deposits, interest, and claims losses, or  
30 any combination thereof. The commissioner shall review  
31 the petition by considering the six factors set forth in  
32 subsection (f) of section five of this article. Unless  
33 requested by a party or by the commissioner, no hearing  
34 need be held on the petition. However, any decision  
35 made by the commissioner on the petition shall be in  
36 writing and shall include appropriate findings of fact  
37 and conclusions of law. Such decision shall be effective  
38 ten days following notice to the public of the decision  
39 unless an objection is filed in the manner herein  
40 provided. Such notice shall be given by the commission-  
41 er's publication of a Class I legal advertisement which  
42 complies with the provisions of article three, chapter  
43 fifty-nine of this code. The publication shall include a  
44 summary of the decision and a statement advising that  
45 any person objecting to the decision must file, within ten  
46 days after publication of the notice, a verified response  
47 with the commissioner setting forth the objection and  
48 the basis therefor. The publication area shall be  
49 Kanawha County, West Virginia. If any such objection  
50 is filed, the commissioner shall hold an administrative  
51 hearing, conducted pursuant to article five, chapter  
52 twenty-nine-a of this code, within fifteen days of  
53 receiving the response unless the buyer or other  
54 recipient consents to a later hearing. Nothing in this  
55 subsection shall be construed to be applicable to the  
56 seller or other transferor or to affect in any way a  
57 proceeding under sections five and five-a of this article.

58 (c) In the factual situations set forth in subsection  
59 (a) of this section, if the predecessor's modified rate of  
60 premium, as calculated in accordance with section four  
61 of this article, is greater than the manual rate of  
62 premium, as calculated in accordance with section four  
63 of this article, for other employers in the same class or  
64 group, then the new employer shall also assume the  
65 predecessor employer's modified rates for the payment  
66 of premiums as determined under sections four and five  
67 of this article until sufficient time has elapsed for the

68 new employer's experience record to be combined with  
69 the experience record of the predecessor employer.

**§23-2-16. Acceptance or assignment of premium rate.**

1 (a) If a new corporate employer which is not subject  
2 to the provisions of section fifteen of this article is  
3 created by the officers or shareholders of a preexisting  
4 corporate employer and if the new corporate employer  
5 and the preexisting corporate employer are  
6 (1) managed by the same, or substantially the same,  
7 management personnel, and (2) have a common owner-  
8 ship by at least forty percent of each corporation's  
9 shareholders, and (3) is in the same class or group as  
10 determined by the commissioner under the provisions of  
11 section four of this article, and (4) if the preexisting  
12 corporate employer's account is in good standing with  
13 the commissioner, then, at the time the new corporate  
14 employer registers with the commissioner, the new  
15 corporate employer may request that the commissioner  
16 assign to it the same rate of payment of premiums as  
17 that assigned to the preexisting corporate employer. If  
18 the commissioner decides that the granting of such a  
19 request is in keeping with his or her fiduciary obliga-  
20 tions to the workers' compensation fund, then the  
21 commissioner may grant the request of the employer.

22 (b) If a new corporate employer which is not subject  
23 to the provisions of section fifteen of this article is  
24 created by the officers or shareholders of a preexisting  
25 corporate employer and if the new corporate employer  
26 and the preexisting corporate employer are  
27 (1) managed by the same, or substantially the same,  
28 management personnel, and (2) have a common owner-  
29 ship by at least forty percent of each corporation's  
30 shareholders, and (3) is in the same class or group as  
31 determined by the commissioner under the provisions of  
32 section four of this article, then, at any time within one  
33 year of the new corporate employer's registration with  
34 the commissioner, the commissioner may decide that, in  
35 keeping with his or her fiduciary obligations to the  
36 workers' compensation fund, the new corporate em-  
37 ployer shall be assigned the same rate of payment of  
38 premiums as that assigned to the preexisting corporate

39 employer at any time within the aforesaid one year  
40 period: *Provided*, That if the new corporate employer  
41 fails to reveal to the commissioner on the forms provided  
42 by the commissioner that its situation meets the factual  
43 requirements of this section, then the commissioner may  
44 demand payment from the new corporate employer in  
45 an amount sufficient to eliminate the deficiency in  
46 payments by the new corporate employer from the date  
47 of registration to the date of discovery plus interest  
48 thereon as provided for by section thirteen of this  
49 article. The commissioner may utilize the powers given  
50 to the commissioner in section five-a of this article to  
51 collect the amount due.

**§23-2-17. Employer right to hearing; content of petition;  
appeal.**

1 Notwithstanding any provision in this chapter to the  
2 contrary other than the provisions of section six, article  
3 five of this chapter, and notwithstanding any provision  
4 in section five, article five of chapter twenty-nine-a of  
5 this code to the contrary, in any situation where an  
6 employer objects to a decision or action of the commis-  
7 sioner made under the provisions of this article, then  
8 such employer shall be entitled to file a petition  
9 demanding a hearing upon such decision or action which  
10 petition must be filed within thirty days of the employ-  
11 er's receipt of notice of the disputed commissioner's  
12 decision or action or, in the absence of such receipt,  
13 within sixty days of the date of the commissioner's  
14 making such disputed decision or taking such disputed  
15 action, such time limitations being hereby declared to  
16 be a condition of the right to litigate such decision or  
17 action and hence jurisdictional. The employer's petition  
18 shall clearly identify the decision or action disputed and  
19 the bases upon which the employer disputes the decision  
20 or action. Upon receipt of such a petition, the commis-  
21 sioner shall schedule a hearing which shall be conducted  
22 in accordance with the provisions of article five of  
23 chapter twenty-nine-a of this code. An appeal from a  
24 final decision of the commissioner shall be taken in  
25 accord with the provisions of articles five and six,  
26 chapter twenty-nine-a of this code: *Provided*, That all

27 such appeals shall be taken to the circuit court of  
28 Kanawha County.

**§23-2-18. Rules.**

1 The commissioner is authorized to promulgate legis-  
2 lative rules pursuant to the provisions of article three  
3 of chapter twenty-nine-a of this code for the implemen-  
4 tation of this article: *Provided*, That no such legislative  
5 rule may prohibit the right of an employer to perform  
6 any function not constituting the practice of law and to  
7 represent itself at any hearing to which the employer  
8 may be entitled pursuant to section seventeen of this  
9 article other than appellate proceedings and upon its  
10 election to do so without benefit of counsel or other legal  
11 representation. Such election shall be in writing upon  
12 a form prescribed by the commissioner which desig-  
13 nates its duly authorized representative in the perfor-  
14 mance of such functions.

**ARTICLE 2A. SUBROGATION.**

§23-2A-1. Subrogation; limitations; effective date.

§23-2A-2. Study of subrogation.

**§23-2A-1. Subrogation; limitations; effective date.**

1 (a) Where a compensable injury or death is caused,  
2 in whole or in part, by the act or omission of a third  
3 party, the injured worker, or if he or she is deceased or  
4 physically or mentally incompetent, his dependents or  
5 personal representative shall be entitled to compensa-  
6 tion under the provisions of this chapter and shall not  
7 by having received same be precluded from making  
8 claim against said third party.

9 (b) Notwithstanding the provisions of subsection  
10 (a) of this section, if an injured worker, his or her  
11 dependents or his or her personal representative makes  
12 a claim against said third party and recovers any sum  
13 thereby, the commissioner or a self-insured employer  
14 shall be allowed subrogation with regard to medical  
15 benefits paid as of the date of the recovery: *Provided*,  
16 That under no circumstances shall any moneys received  
17 by the commissioner or self-insured employer as  
18 subrogation to medical benefits expended on behalf of  
19 the injured or deceased worker exceed fifty percent of  
20 the amount received from the third party as a result of

21 the claim made by the injured worker, his or her  
22 dependents or personal representative, after payment of  
23 attorney's fees and costs, if such exist.

24 (c) In the event that an injured worker, his or her  
25 dependents or personal representative makes a claim  
26 against a third party, there shall be, and there is hereby  
27 created, a statutory subrogation lien upon such moneys  
28 received which shall exist in favor of the commissioner  
29 or self-insured employer. Any injured worker, his or her  
30 dependents or personal representative who receives  
31 moneys in settlement in any manner of a claim against  
32 a third party shall remain subject to the subrogation  
33 lien until payment in full of the amount permitted to be  
34 subrogated under subsection (b) of this section is paid.

35 (d) The right of subrogation granted by the provisions  
36 of this section shall not attach to any claim arising from  
37 a right of action which arose or accrued, in whole or in  
38 part, prior to the effective date of this article.

#### **§23-2A-2. Study of subrogation.**

1 The legislative joint committee on government and  
2 finance is hereby instructed to undertake a review of the  
3 applicability of expanded subrogation policies with  
4 regard to the workers' compensation fund including, but  
5 not limited to, an analysis of the cost incurred by the  
6 fund or other governmental agencies, the effect of such  
7 subrogation at various levels upon the generation of  
8 revenues for the fund, and the equity or fairness of the  
9 withholding of moneys, services or things of value from  
10 injured workers as the result of such subrogation. Such  
11 study shall be reflective of the views not only of the  
12 commissioner, but also of claimants, claimants' counsel,  
13 employers, and actuaries or others with unique or  
14 special knowledge of subrogation programs in the area  
15 of workers' compensation.

#### **ARTICLE 3. WORKERS' COMPENSATION FUND.**

**§23-3-1. Compensation fund; surplus fund; catastrophe and catastrophe payment defined; second injury and second injury reserve; compensation by employers.**

1 (a) The commissioner shall establish a workers'

2 compensation fund from the premiums and other funds  
3 paid thereto by employers, as herein provided, for the  
4 benefit of employees of employers who have paid the  
5 premiums applicable to such employers and have  
6 otherwise complied fully with the provisions of section  
7 five, article two of this chapter, and for the benefit, to  
8 the extent elsewhere in this chapter set out, of employees  
9 of employers who have elected, under section nine,  
10 article two of this chapter, to make payments into the  
11 surplus fund hereinafter provided for, and for the  
12 benefit of the dependents of all such employees, and for  
13 the payment of the administration expenses of this  
14 chapter and shall promulgate legislative rules pursuant  
15 to chapter twenty-nine-a of this code with respect to the  
16 collection, maintenance and disbursement of such fund  
17 not in conflict with the provisions of this chapter.

18 (b) A portion of all premiums that shall be paid into  
19 the workers' compensation fund by subscribers not  
20 electing to carry their own risk under section nine,  
21 article two of this chapter, shall be set aside to create  
22 and maintain a surplus fund to cover the catastrophe  
23 hazard, the second injury hazard, and all losses not  
24 otherwise specifically provided for in this chapter. The  
25 percentage to be set aside shall be determined by the  
26 commissioner as necessary to maintain a solvent surplus  
27 fund. All interest earned on investments by the workers'  
28 compensation fund, which is attributable to the surplus  
29 fund, shall be credited to the surplus fund.

30 (c) A catastrophe is hereby defined as an accident in  
31 which three or more employees are killed or receive  
32 injuries, which, in the case of each individual, consist of:  
33 Loss of both eyes or the sight thereof; or loss of both  
34 hands or the use thereof; or loss of both feet or the use  
35 thereof; or loss of one hand and one foot or the use  
36 thereof. The aggregate of all medical and hospital bills  
37 and other costs, and all benefits payable on account of  
38 a catastrophe is hereby defined as "catastrophe pay-  
39 ment". In case of a catastrophe to the employees of an  
40 employer who is an ordinary premium-paying sub-  
41 scriber to the fund, or to the employees of an employer



42 who, having elected to carry the employer's own risk  
43 under section nine, article two of this chapter, has  
44 heretofore elected, or may hereafter elect, to pay into the  
45 catastrophe reserve of the surplus fund under the  
46 provisions of that section, then the catastrophe payment  
47 arising from such catastrophe shall not be charged  
48 against, or paid by, such employer but shall be paid  
49 from the catastrophe reserve of the surplus fund.

50 (d) (1) If an employee who has a definitely ascertain-  
51 able physical impairment, caused by a previous injury,  
52 irrespective of its compensability, becomes permanently  
53 and totally disabled through the combined effect of such  
54 previous injury and a second injury received in the  
55 course of and as a result of his or her employment, the  
56 employer shall be chargeable only for the compensation  
57 payable for such second injury: *Provided*, That in  
58 addition to such compensation, and after the completion  
59 of the payments therefor, the employee shall be paid the  
60 remainder of the compensation that would be due for  
61 permanent total disability out of a special reserve of the  
62 surplus fund known as the second injury reserve,  
63 created in the manner hereinbefore set forth.

64 (2) If an employee of an employer, where the em-  
65 ployer has elected to carry his own risk under section  
66 nine, article two of this chapter, and is permitted not  
67 to make payments into the second injury reserve of  
68 surplus fund under the provisions of that section, has a  
69 definitely ascertainable physical impairment caused by  
70 a previous injury, irrespective of its compensability, and  
71 becomes permanently and totally disabled from the  
72 combined effect of such previous injury and a second  
73 injury received in the course of and as a result of his  
74 or her employment, the employee shall be granted an  
75 award of total permanent disability and his or her  
76 employer shall, upon order of the commissioner,  
77 compensate the said employee in the same manner as  
78 if the total permanent disability of the employee had  
79 resulted from a single injury while in the employ of such  
80 employer.

81 (e) Employers electing, as herein provided, to com-

82 pensate individually and directly their injured em-  
 83 ployees and their fatally injured employees' dependents  
 84 shall do so in the manner prescribed by the commis-  
 85 sioner, and shall make all reports and execute all  
 86 blanks, forms and papers as directed by the commis-  
 87 sioner, and as provided in this chapter.

#### ARTICLE 4. DISABILITY AND DEATH BENEFITS.

- §23-4-1d. Method and time of payments for permanent disability.
- §23-4-3. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; legislative approval; guidelines; preferred provider agreements; charges in excess of scheduled amounts not to be made; required disclosure of financial interest in sale or rental of medically related mechanical appliances or devices; promulgation of rules to enforce requirement; consequences of failure to disclose; contract by employer with hospital, physician, etc., prohibited; criminal penalties for violation; payments to certain providers prohibited.
- §23-4-3a. Wrongfully seeking payment for services or supplies; criminal penalties.
- §23-4-3b. Creation of health care advisory panel.
- §23-4-3c. Suspension or termination of providers of health care.
- §23-4-6. Classification of disability benefits.
- §23-4-6d. Benefits payable to part-time employees.
- §23-4-7a. Monitoring of injury claims; legislative findings; review of medical evidence; recommendation of authorized treating physician; independent medical evaluations; temporary total disability benefits and the termination thereof; mandatory action; additional authority.
- §23-4-7b. Trial return to work.
- §23-4-8. Physical examination of claimant.
- §23-4-8c. Occupational pneumoconiosis board—Reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon.
- §23-4-9. Physical and vocational rehabilitation.
- §23-4-14. Computation of benefits.
- §23-4-15b. Determination of nonmedical questions by commissioner; claims for occupational pneumoconiosis; hearing.
- §23-4-19. Wrongfully seeking compensation; criminal penalties; restitution.
- §23-4-1d. Method and time of payments for permanent disability.**
- 1 (a) If the commissioner makes an award for perman-
  - 2 ent partial or permanent total disability, the commis-
  - 3 sioner or self-insured employer shall start payment of
  - 4 benefits by mailing or delivering the amount due
  - 5 directly to the employee within fifteen days from the
  - 6 date of the award.

7 (b) If a timely protest to the award is filed, as  
8 provided in section one or section one-h, article five of  
9 this chapter, the commissioner or self-insured employer  
10 shall continue to pay to the claimant such benefits  
11 during the period of such disability unless it is subse-  
12 quently found by the commissioner or administrative  
13 law judge that the claimant was not entitled to receive  
14 the benefits, or any part thereof, so paid, in which event  
15 the commissioner shall, where the employer is a  
16 subscriber to the fund, credit said employer's account  
17 with the amount of the overpayment; and, where the  
18 employer has elected to carry the employer's own risk,  
19 the commissioner shall refund to such employer the  
20 amount of the overpayment. The amounts so credited to  
21 a subscriber or repaid to a self-insurer shall be charged  
22 by the commissioner to the surplus fund created by  
23 section one, article three of this chapter. If the final  
24 decision in any case determines that a claimant was not  
25 lawfully entitled to benefits paid to him or her pursuant  
26 to a prior decision, such amount of benefits so paid shall  
27 be deemed overpaid. The commissioner may only  
28 recover such amount by withholding, in whole or in  
29 part, as determined by the commissioner, future  
30 permanent partial disability benefits payable to the  
31 individual in the same or other claims and credit such  
32 amount against the overpayment until it is repaid in  
33 full.

**§23-4-3. Schedule of maximum disbursements for medi-  
cal, surgical, dental and hospital treatment;  
legislative approval; guidelines; preferred  
provider agreements; charges in excess of  
scheduled amounts not to be made; required  
disclosure of financial interest in sale or rental  
of medically related mechanical appliances or  
devices; promulgation of rules to enforce  
requirement; consequences of failure to dis-  
close; contract by employer with hospital,  
physician, etc., prohibited; criminal penalties  
for violation; payments to certain providers  
prohibited.**

1 The commissioner shall establish and alter from time

2 to time as he or she may determine to be appropriate  
3 a schedule of the maximum reasonable amounts to be  
4 paid to chiropractic physicians, medical physicians,  
5 osteopathic physicians, podiatrists, optometrists, voca-  
6 tional rehabilitation specialists, pharmacists, ophthal-  
7 mologists, and others practicing medicine and surgery,  
8 surgeons, hospitals or other persons, firms or corpora-  
9 tions for the rendering of treatment to injured em-  
10 ployees under this chapter. The commissioner also, on  
11 the first day of each regular session, and also from time  
12 to time, as the commissioner may consider appropriate,  
13 shall submit the schedule, with any changes thereto, to  
14 the Legislature. The promulgation of the schedule is not  
15 subject to the legislative rule-making review procedures  
16 established in sections eleven through fifteen, article  
17 three, chapter twenty-nine-a of this code.

18 The commissioner shall disburse and pay from the  
19 fund for such personal injuries to such employees as may  
20 be entitled thereto hereunder as follows:

21 (a) Such sums for medicines, medical, surgical,  
22 dental and hospital treatment, crutches, artificial limbs  
23 and such other and additional approved mechanical  
24 appliances and devices as may be reasonably required.  
25 The commissioner shall determine that which is reason-  
26 ably required within the meaning of this section in  
27 accordance with the guidelines developed by the health  
28 care advisory panel pursuant to section three-b of this  
29 article: *Provided*, That nothing herein shall prevent the  
30 implementation of guidelines applicable to a particular  
31 type of treatment or service or to a particular type of  
32 injury before guidelines have been developed for other  
33 types of treatment or services or injuries: *Provided*,  
34 *however*, That any guidelines for utilization review  
35 which are developed in addition to the guidelines  
36 provided for in section three-b of this article may be  
37 utilized by the commissioner until superseded by  
38 guidelines developed by the health care advisory panel  
39 pursuant to section three-b of this article. Each health  
40 care provider who seeks to provide services or treatment  
41 which are not within any such guideline shall submit to

42 the commissioner specific justification for the need for  
43 such additional services in the particular case and the  
44 commissioner shall have the justification reviewed by a  
45 health care professional before authorizing any such  
46 additional services. The commissioner is authorized to  
47 enter into preferred provider agreements.

48 (b) Payment for such medicine, medical, surgical,  
49 dental and hospital treatment, crutches, artificial limbs  
50 and such other and additional approved mechanical  
51 appliances and devices authorized under subdivision  
52 (a) hereof may be made to the injured employee, or to  
53 the person, firm or corporation who or which has  
54 rendered such treatment or furnished any of the items  
55 specified above, or who has advanced payment for same,  
56 as the commissioner may deem proper, but no such  
57 payments or disbursements shall be made or awarded  
58 by the commissioner unless duly verified statements on  
59 forms prescribed by the commissioner shall be filed  
60 with the commissioner within two years after the  
61 cessation of such treatment or the delivery of such  
62 appliances: *Provided*, That no payment hereunder shall  
63 be made unless such verified statement shows no charge  
64 for or with respect to such treatment or for or with  
65 respect to any of the items specified above has been or  
66 will be made against the injured employee or any other  
67 person, firm or corporation, and when an employee  
68 covered under the provisions of this chapter is injured  
69 in the course of and as a result of his or her employment  
70 and is accepted for medical, surgical, dental or hospital  
71 treatment, the person, firm or corporation rendering  
72 such treatment is hereby prohibited from making any  
73 charge or charges therefor or with respect thereto  
74 against the injured employee or any other person, firm  
75 or corporation which would result in a total charge for  
76 the treatment rendered in excess of the maximum  
77 amount set forth therefor in the commissioner's schedule  
78 established as aforesaid.

79 (c) No chiropractic physician, medical physician,  
80 osteopathic physician, podiatrist, or others practicing  
81 medicine or surgery (collectively and individually

82 referred to hereinafter as “practitioner” or “practitioner-  
83 ers”) shall refer his or her patients to the practitioner  
84 himself or herself or to a supplier of mechanical  
85 appliances or devices owned in whole or in part by the  
86 practitioner, the practitioner’s partnership or profes-  
87 sional corporation, or a member of the practitioner’s  
88 immediate family for the purchase or rental of any  
89 mechanical appliances or devices which the practitioner  
90 has prescribed or recommended to such patient except  
91 upon the terms prescribed by this section. Examples of  
92 mechanical appliances or devices are described as  
93 follows, but these examples are described for illustrative  
94 purposes only and are not intended to limit the range  
95 of items included by this phrase: Hearing aids; crutches;  
96 artificial limbs; oxygen concentrators; TENS units. For  
97 the purposes of this subsection, the term “practitioner”  
98 shall include natural persons, partnerships, and profes-  
99 sional corporations.

100 (1) In order to avoid the bar of this subdivision (c),  
101 a practitioner shall first disclose to his or her patient  
102 the ownership interest of the practitioner, or of the  
103 practitioner’s partnership or professional corporation, or  
104 of a member of the practitioner’s immediate family in  
105 the entity which would sell or rent the mechanical  
106 appliance or device to the patient. If the practitioner  
107 would sell or rent the mechanical appliance or device  
108 as part of his or her practice and not as a separate legal  
109 entity, the practitioner shall disclose this fact to the  
110 patient. These disclosures must be delivered in writing  
111 to the patient.

112 (2) The commissioner is authorized to promulgate  
113 legislative rules pursuant to chapter twenty-nine-a of  
114 this code for the enforcement and implementation of this  
115 subdivision (c). The commissioner may include in those  
116 rules a requirement that the written notice disclose to  
117 the patient that he or she is free to use any lawful  
118 supplier of the mechanical appliance or device pres-  
119 cribed or recommended and that other suppliers may  
120 offer the mechanical appliance or device for less cost but  
121 of equal or better quality elsewhere and that the patient  
122 is encouraged to comparison shop. The commissioner’s

123 rule may also provide for a differing level of reimbur-  
124 sement to the supplier if the supplier is the practitioner  
125 himself or herself or if the supplier is owned in whole  
126 or in part by the practitioner, the practitioner's  
127 partnership or professional corporation, or a member of  
128 the practitioner's immediate family as compared to the  
129 reimbursement of a supplier who is wholly independent  
130 from the practitioner.

131 (3) Failure by a practitioner to comply with the  
132 provisions of this subdivision (c) shall cause the  
133 practitioner to forfeit his, her, or its right to reimbur-  
134 sement for the services rendered by the practitioner to  
135 the patient and, if any such services have previously  
136 been reimbursed, the commissioner shall either seek  
137 recovery of such funds by any lawful means or by  
138 deducting such amounts from future payments to the  
139 practitioner on account of services rendered to the same  
140 patient or to other claimants of the workers' compensa-  
141 tion fund. In addition, failure by a practitioner to  
142 comply with the provisions of this subdivision (c) shall  
143 also result in the denial of payment to the supplier of  
144 the mechanical appliance or device if that supplier is  
145 one which is owned in whole or in part by the practi-  
146 tioner, the practitioner's partnership or professional  
147 corporation, or a member of the practitioner's imme-  
148 diate family. If such supplier has already been reim-  
149 bursed for the cost of the pertinent mechanical ap-  
150 pliance or device, then the commissioner shall either  
151 seek recovery of such funds by any lawful means or by  
152 deducting such amounts from future payments to the  
153 supplier on account of goods delivered to the same  
154 patient or to other claimants of the workers' compensa-  
155 tion fund.

156 (d) No employer shall enter into any contracts with  
157 any hospital, its physicians, officers, agents or employees  
158 to render medical, dental or hospital service or to give  
159 medical or surgical attention therein to any employee  
160 for injury compensable within the purview of this  
161 chapter, and no employer shall permit or require any  
162 employee to contribute, directly or indirectly, to any  
163 fund for the payment of such medical, surgical, dental

164 or hospital service within such hospital for such  
165 compensable injury. Any employer violating this section  
166 shall be liable in damages to the employer's employees  
167 as provided in section eight, article two of this chapter,  
168 and any employer or hospital or agent or employee  
169 thereof violating the provisions of this section shall be  
170 guilty of a misdemeanor, and, upon conviction thereof,  
171 shall be punished by a fine not less than one hundred  
172 dollars nor more than one thousand dollars or by  
173 imprisonment not exceeding one year, or both: *Provided,*  
174 That the foregoing provisions of this subdivision (d) shall  
175 not be deemed to prohibit an employer from participat-  
176 ing in a preferred provider organization or program or  
177 a health maintenance organization or other medical cost  
178 containment relationship with the providers of medical,  
179 hospital or other health care: *Provided, however,* That  
180 nothing in this section shall be deemed to restrict the  
181 right of a claimant to select a health care provider for  
182 treatment of a compensable injury or disease.

183 (e) When an injury has been reported to the commis-  
184 sioner by the employer without protest, the commis-  
185 sioner may pay, or order an employer who or which  
186 made the election and who or which received the  
187 permission mentioned in section nine, article two of this  
188 chapter to pay, within the maximum amount provided  
189 by schedule established by the commissioner as afore-  
190 said, bills for medical or hospital services without  
191 requiring the injured employee to file an application for  
192 benefits.

193 (f) The commissioner shall provide for the replace-  
194 ment of artificial limbs, crutches, hearing aids, eye-  
195 glasses and all other mechanical appliances provided in  
196 accordance with this section which later wear out, or  
197 which later need to be refitted because of the progres-  
198 sion of the injury which caused the same to be originally  
199 furnished, or which are broken in the course of and as  
200 a result of the employee's employment. The fund or self-  
201 insured employer shall pay for these devices, when  
202 needed, notwithstanding any time limits provided by  
203 law.

204 (g) No payment shall be made to a health care



205 provider who is suspended or terminated under the  
206 terms of section three-c of this article except as provided  
207 in subsection (c) of said section.

208 Notwithstanding the foregoing, the commissioner  
209 may establish fee schedules, make payments and take  
210 other actions required or allowed pursuant to article  
211 twenty-nine-d, chapter sixteen of this code.

**§23-4-3a. Wrongfully seeking payment for services or  
supplies; criminal penalties.**

1 (a) If any person who is a health care provider shall  
2 knowingly, and with intent to defraud, secure or  
3 attempt to secure payment from the workers' compen-  
4 sation fund for services or supplies when such person is  
5 not entitled to such payment or is entitled to some lesser  
6 amount of payment, such person shall be guilty of a  
7 misdemeanor, and, upon conviction thereof, shall be  
8 fined not more than ten thousand dollars, or imprisoned  
9 in the county jail not more than twelve months, or both  
10 fined and imprisoned.

11 (b) Any person who is a health care provider who  
12 fails, in violation of subsection (e), section three-c of this  
13 article, to post a notice, in the form required by the  
14 commissioner, in the provider's public waiting area that  
15 the provider cannot accept any patient whose treatment  
16 or other services or supplies would ordinarily be paid  
17 for from the workers' compensation fund unless such  
18 patient consents, in writing, prior to the provision of  
19 such treatment or other services or supplies, to make  
20 payment for that treatment or other services or supplies  
21 himself or herself, shall be guilty of a misdemeanor,  
22 and, upon conviction thereof, shall be fined one thousand  
23 dollars.

24 (c) Any person who is a health care provider, who is  
25 suspended or terminated under section three-c of this  
26 article and, who intentionally attempts to collect any  
27 sum of money from an injured employee who was not,  
28 prior to the provision of any treatment or other services  
29 or supplies, provided with the notice required by  
30 subsection (c), section three-c of this article, shall be  
31 guilty of a misdemeanor and, upon conviction thereof,

32 shall be fined not more than ten thousand dollars, or  
33 imprisoned in the county jail not more than twelve  
34 months, or both fined and imprisoned.

35 (d) For the purposes of this section, the term "person  
36 who is a health care provider" shall mean any person  
37 who has rendered, or who represents that he has  
38 rendered, any treatment to an injured employee under  
39 this chapter, or any person who has supplied, or who  
40 represents that he has supplied, any medication or any  
41 crutches, artificial limbs and other mechanical applian-  
42 ces and devices for such injured employee. The term  
43 shall include, but not be limited to, persons practicing  
44 medicine and surgery, podiatry, dentistry, nursing,  
45 pharmacy, optometry, osteopathic medicine and  
46 surgery, chiropractic, physical therapy, psychology,  
47 radiologic technology, occupational therapy or voca-  
48 tional rehabilitation, and shall also include hospitals,  
49 professional corporations, and other corporations, firms  
50 and business entities.

51 (e) Any person convicted under the provisions of this  
52 section shall, from and after such conviction, be barred  
53 from providing future services or supplies to injured  
54 employees under this chapter and shall cease to receive  
55 payment for such services or supplies.

#### §23-4-3b. Creation of health care advisory panel.

1 The commissioner shall establish a health care  
2 advisory panel consisting of representatives of the  
3 various branches and specialties among health care  
4 providers in this state. There shall be a minimum of five  
5 members of the health care advisory panel who shall  
6 receive reasonable compensation for their services and  
7 reimbursement for reasonable actual expenses. Each  
8 member of this panel shall be provided appropriate  
9 professional or other liability insurance, without  
10 additional premium, by the state board of risk and  
11 insurance management created pursuant to article  
12 twelve, chapter twenty-nine of this code. The panel shall:

13 (a) Establish guidelines for the health care which is  
14 reasonably required for the treatment of the various  
15 types of injuries and occupational diseases within the  
16 meaning of section three of this article.

17 (b) Establish protocols and procedures for the perfor-  
18 mance of examinations or evaluations performed by  
19 physicians or medical examiners pursuant to sections  
20 seven-a and eight of this article.

21 (c) Assist the commissioner in establishing guidelines  
22 for the evaluation of the care provided by health care  
23 providers to injured employees for purposes of section  
24 three-c of this article.

25 (d) Assist the commissioner in establishing guidelines  
26 as to the anticipated period of disability for the various  
27 types of injuries pursuant to subsection (b), section  
28 seven-a of this article.

29 (e) Assist the commissioner in establishing approp-  
30 priate professional review of requests by health care  
31 providers to exceed the guidelines for treatment of  
32 injuries and occupational diseases established pursuant  
33 to subsection (a) of this section.

**§23-4-3c. Suspension or termination of providers of health care.**

1 (a) The commissioner may suspend for up to one year  
2 or terminate the right of any health care provider,  
3 including a provider of rehabilitation services within the  
4 meaning of section nine of this article, to obtain payment  
5 for services rendered to injured employees if the  
6 commissioner finds that the health care provider is  
7 regularly providing excessive, medically unreasonable  
8 or unethical care to injured employees or if the  
9 commissioner finds that a health care provider is  
10 attempting to make any charge or charges against the  
11 injured employee or any other person, firm or corpora-  
12 tion which would result in a total charge for any  
13 treatment rendered in excess of the maximum amount  
14 set by the commissioner, in violation of section three of  
15 this article. The commissioner shall consult with  
16 medical experts, including the health care advisory  
17 panel established pursuant to section three-b of this  
18 article, for purposes of determining whether a health  
19 care provider should be suspended or terminated  
20 pursuant to this section.

21 (b) Upon the commissioner determining that there is  
22 probable cause to believe that a health care provider  
23 should be suspended or terminated pursuant to this  
24 section, the commissioner shall provide such health care  
25 provider with written notice which shall state the nature  
26 of the charges against the health care provider and the  
27 time and place at which such health care provider shall  
28 appear to show cause why the health care provider's  
29 right to receive payment under this chapter should not  
30 be suspended or terminated, at which time and place  
31 such health care provider shall be afforded an opportu-  
32 nity to review the commissioner's evidence and to cross-  
33 examine the commissioner's witnesses and also afforded  
34 the opportunity to present testimony and enter evidence  
35 in support of its position. The hearing shall be conducted  
36 in accordance with the provisions of article five, chapter  
37 twenty-nine-a of this code. The hearing may be con-  
38 ducted by the commissioner or a hearing officer  
39 appointed by the commissioner. The commissioner or  
40 hearing officer shall have the power to subpoena  
41 witnesses, papers, records, documents and other data  
42 and things in connection with the proceeding hereunder  
43 and to administer oaths or affirmations in any such  
44 hearing. If, after reviewing the record of such hearing,  
45 the commissioner determines that the right of such  
46 health care provider to obtain payment under this  
47 article should be suspended for a specified period of  
48 time or should be terminated, the commissioner shall  
49 issue a final order suspending or terminating the right  
50 of such health care provider to obtain payment for  
51 services under this article. Any health care provider so  
52 suspended or terminated shall be notified in writing and  
53 the notice shall specify the reasons for the action so  
54 taken. Any appeal by the health care provider shall be  
55 brought in the circuit court of Kanawha County or in  
56 the county in which the provider's principal place of  
57 business is located. The scope of the court's review of  
58 such an appeal shall be as provided in section four,  
59 article five, chapter twenty-nine-a of this code. The  
60 provider may be suspended or terminated, based upon  
61 the final order of the commissioner, pending final  
62 disposition of any appeal. Such final order may be

63 stayed by the circuit court after hearing, but shall not  
64 be stayed in or as a result of any ex parte proceeding.  
65 If the health care provider does not appeal the final  
66 order of the commissioner within thirty days, it shall be  
67 final.

68 (c) No payment shall be made to a health care  
69 provider or to an injured employee for services provided  
70 by a health care provider after the effective date of a  
71 commissioner's final order terminating or suspending  
72 the health care provider: *Provided*, That nothing herein  
73 shall prohibit payment by the commissioner or self-  
74 insured employer to a suspended or terminated health  
75 care provider for medical services rendered where the  
76 medical services were rendered to an injured employee  
77 in an emergency situation. The suspended or terminated  
78 provider is prohibited from making any charge or  
79 charges for any services so provided against the injured  
80 employee unless the injured employee, before any  
81 services are rendered, is given notice by the provider in  
82 writing that the provider does not participate in the  
83 workers' compensation program and that the injured  
84 employee will be solely responsible for all payments to  
85 the provider, and unless the injured employee also signs  
86 a written consent, before any services are rendered, to  
87 make payment directly and to waive any right to  
88 reimbursement from the commissioner or the self-  
89 insured employer. The written consent and waiver  
90 signed by the injured employee shall be filed by the  
91 provider with the commissioner and shall be made a  
92 part of the claim file.

93 (d) The commissioner shall notify each claimant,  
94 whose duly authorized treating physician or other health  
95 care provider has been suspended or terminated  
96 pursuant to this section, of the suspension or termination  
97 of the provider's rights to obtain payment under this  
98 chapter and shall assist the claimant in arranging for  
99 transfer of his or her care to another physician or  
100 provider.

101 (e) Each suspended or terminated provider shall post  
102 in the provider's public waiting area or areas a written

103 notice, in the form required by the commissioner, of the  
104 suspension or termination of the provider's rights to  
105 obtain payment under this chapter.

106 (f) A suspended or terminated provider may apply for  
107 reinstatement at the end of the term of suspension or,  
108 if terminated, after one year from the effective date of  
109 termination.

110 (g) The commissioner shall promulgate legislative  
111 rules pursuant to chapter twenty-nine-a of this code for  
112 the purpose of implementing this section.

**§23-4-6. Classification of disability benefits.**

1 Where compensation is due an employee under the  
2 provisions of this chapter for personal injury, such  
3 compensation shall be as provided in the following  
4 schedule:

5 (a) The expressions "average weekly wage earnings,  
6 wherever earned, of the injured employee, at the date  
7 of injury" and "average weekly wage in West Virginia",  
8 as used in this chapter, shall have the meaning and shall  
9 be computed as set forth in section fourteen of this  
10 article except for the purpose of computing temporary  
11 total disability benefits for part-time employees pursu-  
12 ant to the provisions of section six-d of this article.

13 (b) If the injury causes temporary total disability, the  
14 employee shall receive during the continuance thereof  
15 weekly benefits as follows: A maximum weekly benefit  
16 to be computed on the basis of seventy percent of the  
17 average weekly wage earnings, wherever earned, of the  
18 injured employee, at the date of injury, not to exceed the  
19 percentage of the average weekly wage in West Virgi-  
20 nia, as follows: On or after July one, one thousand nine  
21 hundred sixty-nine, forty-five percent; on or after July  
22 one, one thousand nine hundred seventy, fifty percent;  
23 on or after July one, one thousand nine hundred seventy-  
24 one, fifty-five percent; on or after July one, one thousand  
25 nine hundred seventy-three, sixty percent; on or after  
26 July one, one thousand nine hundred seventy-four,  
27 eighty percent; on or after July one, one thousand nine  
28 hundred seventy-five, one hundred percent.

29 The minimum weekly benefits paid hereunder shall  
30 not be less than twenty-six dollars per week for injuries  
31 occurring on or after July one, one thousand nine  
32 hundred sixty-nine; not less than thirty-five dollars per  
33 week for injuries occurring on or after July one, one  
34 thousand nine hundred seventy-one; not less than forty  
35 dollars per week for injuries occurring on or after July  
36 one, one thousand nine hundred seventy-three; not less  
37 than forty-five dollars per week for injuries occurring  
38 on or after July one, one thousand nine hundred seventy-  
39 four; and for injuries occurring on or after July one, one  
40 thousand nine hundred seventy-six, thirty-three and one-  
41 third percent of the average weekly wage in West  
42 Virginia, except as provided in section six-d of this  
43 article.

44 (c) Subdivision (b) shall be limited as follows: Aggre-  
45 gate award for a single injury causing temporary  
46 disability shall be for a period not exceeding two  
47 hundred eight weeks.

48 (d) If the injury causes permanent total disability,  
49 benefits shall be payable during the remainder of life  
50 at the maximum or minimum weekly benefits as  
51 provided in subdivision (b) of this section for temporary  
52 total disability. A permanent disability of eighty-five  
53 percent or more shall be deemed a permanent total  
54 disability for the purpose of this section. Under no  
55 circumstances shall the commissioner grant an addi-  
56 tional permanent disability award to a claimant  
57 receiving a permanent total disability award, or to a  
58 claimant who has previously been granted permanent  
59 disability awards totaling eighty-five percent or more  
60 and hence is entitled to a permanent total disability  
61 award: *Provided*, That if any such claimant thereafter  
62 sustains another compensable injury and has permanent  
63 partial disability resulting therefrom, the total perman-  
64 ent disability award benefit rate shall be computed at  
65 the highest benefit rate justified by any of the compen-  
66 sable injuries, and the cost of any increase in such  
67 permanent total disability benefit rate shall be paid  
68 from the second injury reserve created by section one,  
69 article three of this chapter.

70 (e) If the injury causes permanent disability less than  
71 permanent total disability, the percentage of disability  
72 to total disability shall be determined and the award  
73 computed on the basis of four weeks' compensation for  
74 each percent of disability determined, at the following  
75 maximum or minimum benefit rates: Seventy percent  
76 of the average weekly wage earnings, wherever earned,  
77 of the injured employee, at the date of injury, not to  
78 exceed the percentage of the average weekly wage in  
79 West Virginia, as follows: On or after July one, one  
80 thousand nine hundred sixty-nine, forty-five percent; on  
81 or after July one, one thousand nine hundred seventy,  
82 fifty percent; on or after July one, one thousand nine  
83 hundred seventy-one, fifty-five percent; on or after July  
84 one, one thousand nine hundred seventy-three, sixty  
85 percent; on or after July one, one thousand nine hundred  
86 seventy-five, sixty-six and two-thirds percent.

87 The minimum weekly benefit under this subdivision  
88 shall be as provided in subdivision (b) of this section for  
89 temporary total disability.

90 (f) If the injury results in the total loss by severance  
91 of any of the members named in this subdivision, the  
92 percentage of disability shall be determined by the  
93 commissioner, with the following table establishing the  
94 minimum percentage of disability. In determining the  
95 percentage of disability, the commissioner may be  
96 guided by, but shall not be limited to, the disabilities  
97 enumerated in the following table, and in no event shall  
98 the disability be less than that specified in the following  
99 table:

100 The loss of a great toe shall be considered a ten  
101 percent disability.

102 The loss of a great toe (one phalanx) shall be  
103 considered a five percent disability.

104 The loss of other toes shall be considered a four  
105 percent disability.

106 The loss of other toes (one phalanx) shall be consi-  
107 dered a two percent disability.

108 The loss of all toes shall be considered a twenty-five  
109 percent disability.



- 110       The loss of forepart of foot shall be considered a thirty  
111       percent disability.
- 112       The loss of a foot shall be considered a thirty-five  
113       percent disability.
- 114       The loss of a leg shall be considered a forty-five  
115       percent disability.
- 116       The loss of thigh shall be considered a fifty percent  
117       disability.
- 118       The loss of thigh at hip joint shall be considered a  
119       sixty percent disability.
- 120       The loss of a little or fourth finger (one phalanx) shall  
121       be considered a three percent disability.
- 122       The loss of a little or fourth finger shall be considered  
123       a five percent disability.
- 124       The loss of ring or third finger (one phalanx) shall be  
125       considered a three percent disability.
- 126       The loss of ring or third finger shall be considered a  
127       five percent disability.
- 128       The loss of middle or second finger (one phalanx) shall  
129       be considered a three percent disability.
- 130       The loss of middle or second finger shall be considered  
131       a seven percent disability.
- 132       The loss of index or first finger (one phalanx) shall  
133       be considered a six percent disability.
- 134       The loss of index or first finger shall be considered  
135       a ten percent disability.
- 136       The loss of thumb (one phalanx) shall be considered  
137       a twelve percent disability.
- 138       The loss of thumb shall be considered a twenty  
139       percent disability.
- 140       The loss of thumb and index finger shall be consi-  
141       dered a thirty-two percent disability.
- 142       The loss of index and middle finger shall be consi-  
143       dered a twenty percent disability.

144 The loss of middle and ring finger shall be considered  
145 a fifteen percent disability.

146 The loss of ring and little finger shall be considered  
147 a ten percent disability.

148 The loss of thumb, index and middle finger shall be  
149 considered a forty percent disability.

150 The loss of index, middle and ring finger shall be  
151 considered a thirty percent disability.

152 The loss of middle, ring and little finger shall be  
153 considered a twenty percent disability.

154 The loss of four fingers shall be considered a thirty-  
155 two percent disability.

156 The loss of hand shall be considered a fifty percent  
157 disability.

158 The loss of forearm shall be considered a fifty-five  
159 percent disability.

160 The loss of arm shall be considered a sixty percent  
161 disability.

162 The total and irrecoverable loss of the sight of one eye  
163 shall be considered a thirty-three percent disability. For  
164 the partial loss of vision in one, or both eyes, the  
165 percentages of disability shall be determined by the  
166 commissioner, using as a basis the total loss of one eye.

167 The total and irrecoverable loss of the hearing of one  
168 ear shall be considered a twenty-two and one-half  
169 percent disability. The total and irrecoverable loss of  
170 hearing of both ears shall be considered a fifty-five  
171 percent disability.

172 For the partial loss of hearing in one, or both ears,  
173 the percentage of disability shall be determined by the  
174 commissioner, using as a basis the total loss of hearing  
175 in both ears.

176 Should a claimant sustain a compensable injury  
177 which results in the total loss by severance of any of the  
178 bodily members named in this subdivision, die from  
179 sickness or noncompensable injury before the commis-

180 sioner makes the proper award for such injury, the  
181 commissioner shall make such award to claimant's  
182 dependents as defined in this chapter, if any; such  
183 payment to be made in the same installments that would  
184 have been paid to claimant if living: *Provided*, That no  
185 payment shall be made to any surviving spouse of such  
186 claimant after his or her remarriage, and that this  
187 liability shall not accrue to the estate of such claimant  
188 and shall not be subject to any debts of, or charges  
189 against, such estate.

190 (g) Should a claimant to whom has been made a  
191 permanent partial award of from one percent to eighty-  
192 four percent, both inclusive, die from sickness or  
193 noncompensable injury, the unpaid balance of such  
194 award shall be paid to claimant's dependents as defined  
195 in this chapter, if any; such payment to be made in the  
196 same installments that would have been paid to claimant  
197 if living: *Provided*, That no payment shall be made  
198 to any surviving spouse of such claimant after his or her  
199 remarriage, and that this liability shall not accrue to the  
200 estate of such claimant and shall not be subject to any  
201 debts of, or charges against, such estate.

202 (h) For the purposes of this chapter, a finding of the  
203 occupational pneumoconiosis board shall have the force  
204 and effect of an award.

205 (i) The award for permanent disabilities intermediate  
206 to those fixed by the foregoing schedule and permanent  
207 disability of from one percent to eighty-four percent  
208 shall be the same proportion and shall be computed and  
209 allowed by the commissioner.

210 (j) The percentage of all permanent disabilities other  
211 than those enumerated in subdivision (f) of this section  
212 shall be determined by the commissioner, and awards  
213 made in accordance with the provisions of subdivision  
214 (d) or (e) of this section. Where there has been an injury  
215 to a member as distinguished from total loss by  
216 severance of that member, the commissioner in deter-  
217 mining the percentage of disability may be guided by  
218 but shall not be limited to the disabilities enumerated  
219 in subdivision (f) of this section.

220 (k) Compensation payable under any subdivision of  
221 this section shall not exceed the maximum nor be less  
222 than the weekly benefits specified in subdivision (b) of  
223 this section.

224 (l) Except as otherwise specifically provided in this  
225 chapter, temporary total disability benefits payable  
226 under subdivision (b) of this section shall not be  
227 deductible from permanent partial disability awards  
228 payable under subdivision (e) or (f) of this section.  
229 Compensation, either temporary total or permanent  
230 partial, under this section shall be payable only to the  
231 injured employee and the right thereto shall not vest in  
232 his or her estate, except that any unpaid compensation  
233 which would have been paid or payable to the employee  
234 up to the time of his or her death, if he or she had lived,  
235 shall be paid to the dependents of such injured employee  
236 if there be such dependents at the time of death.

237 (m) The following permanent disabilities shall be  
238 conclusively presumed to be total in character:

239 Loss of both eyes or the sight thereof.

240 Loss of both hands or the use thereof.

241 Loss of both feet or the use thereof.

242 Loss of one hand and one foot or the use thereof.

243 In all other cases permanent disability shall be  
244 determined by the commissioner in accordance with the  
245 facts in the case, and award made in accordance with  
246 the provisions of subdivision (d) or (e).

247 (n) A disability which renders the injured employee  
248 unable to engage in substantial gainful activity requir-  
249 ing skills or abilities comparable to those of any gainful  
250 activity in which he or she has previously engaged with  
251 some regularity and over a substantial period of time  
252 shall be considered in determining the issue of total  
253 disability.

**§23-4-6d. Benefits payable to part-time employees.**

1 (a) For purposes of this section, a part-time employee

2 means an employee who, at the date of injury, is  
3 customarily employed twenty-five hours per week or less  
4 on a regular basis and is classified by the employer as  
5 a part-time employee: *Provided*, That the term "part-  
6 time employee" shall not include an employee who  
7 regularly works more than twenty-five hours per week  
8 for the employer, nor shall it include an employee who  
9 regularly works for more than one employer and whose  
10 regular combined working hours total more than  
11 twenty-five hours per week when that employee is  
12 rendered unable to perform the duties of all such  
13 employment as a result of the injury, nor shall it include  
14 any employee in the construction industry who works  
15 less than twenty-five hours per week.

16 (b) For purposes of establishing temporary total  
17 disability weekly benefits pursuant to subdivision (b),  
18 section six of this article for part-time employees, the  
19 "average weekly wage earnings, wherever earned, of the  
20 injured person, at the date of injury", shall be computed  
21 based upon the average gross pay, wherever earned,  
22 which is received by the employee during the two  
23 months, six months or twelve months immediately  
24 preceding the date of the injury, whichever is most  
25 favorable to the injured employee: *Provided*, That for  
26 part-time employees who have been employed less than  
27 two months but more than one week prior to the date  
28 of injury, the average weekly wage earnings shall be  
29 calculated based upon the average gross earnings in the  
30 weeks actually worked: *Provided, however*, That for  
31 part-time employees who have been employed one week  
32 or less, the average weekly wage earnings shall be  
33 calculated based upon the average weekly wage prevail-  
34 ing for the same or similar part-time employment at the  
35 time of injury except that when an employer has agreed  
36 to pay a certain hourly wage to such part-time employee,  
37 the average weekly wage shall be computed by multi-  
38 plying such hourly wage by the regular numbers of hours  
39 contracted to be worked each week: *Provided further*,  
40 That notwithstanding any provision of this article to the  
41 contrary, no part-time employee shall receive temporary  
42 total disability benefits greater than his or her average  
43 weekly wage earnings as so calculated.

44 (c) Notwithstanding any other provisions of this  
45 article to the contrary, benefits payable to a part-time  
46 injured employee for any permanent disability shall be  
47 computed and paid on the same basis as if the injured  
48 employee is not a part-time employee within the  
49 meaning of this section.

**§23-4-7a. Monitoring of injury claims; legislative findings; review of medical evidence; recommendation of authorized treating physician; independent medical evaluations; temporary total disability benefits and the termination thereof; mandatory action; additional authority.**

1 (a) The Legislature hereby finds and declares that  
2 injured claimants should receive the type of treatment  
3 needed as promptly as possible; that overpayments of  
4 temporary total disability benefits with the resultant  
5 hardship created by the requirement of repayment  
6 should be minimized; and that to achieve these two  
7 objectives, it is essential that the commissioner establish  
8 and operate a systematic program for the monitoring of  
9 injury claims where the disability continues longer than  
10 might ordinarily be expected.

11 (b) In view of the foregoing findings, the commis-  
12 sioner, in consultation with medical experts, shall  
13 establish guidelines as to the anticipated period of  
14 disability for the various types of injuries. Each injury  
15 claim in which temporary total disability continues  
16 beyond the anticipated period of disability so established  
17 for the injury involved shall be reviewed by the  
18 commissioner. If satisfied, after reviewing the medical  
19 evidence, that the claimant would not benefit by an  
20 independent medical evaluation, the commissioner shall  
21 mark the claim file accordingly and shall diary such  
22 claim file as to the next date for required review which  
23 shall not exceed sixty days. If the commissioner  
24 concludes that the claimant might benefit by an  
25 independent medical evaluation, he or she shall proceed  
26 as specified in subsections (d) and (e) of this section.

27 (c) When the authorized treating physician concludes

28 that the claimant has either reached his or her maxi-  
29 mum degree of improvement or is ready for disability  
30 evaluation, or when the claimant has returned to work,  
31 such authorized treating physician may recommend a  
32 permanent partial disability award for residual impair-  
33 ment relating to and resulting from the compensable  
34 injury, and the following provisions shall govern and  
35 control:

36 (1) If the authorized treating physician recommends  
37 a permanent partial disability award of fifteen percent  
38 or less, the commissioner shall enter an award of  
39 permanent partial disability benefits based upon such  
40 recommendation and all other available information,  
41 and the claimant's entitlement to temporary total  
42 disability benefits shall cease upon the entry of such  
43 award unless previously terminated under the provi-  
44 sions of subsection (e) of this section.

45 (2) If, however, the authorized treating physician  
46 recommends a permanent partial disability award in  
47 excess of fifteen percent, or recommends a permanent  
48 total disability award, the claimant's entitlement to  
49 temporary total disability benefits shall cease upon the  
50 receipt by the commissioner of such report and the  
51 commissioner shall refer the claimant to a physician or  
52 physicians of the commissioner's selection for independ-  
53 ent evaluation prior to the entry of a permanent  
54 disability award: *Provided*, That the claimant shall  
55 thereupon receive benefits which shall then be at the  
56 permanent partial disability rate as provided in  
57 subdivision (e), section six of this article until the entry  
58 of a permanent disability award, and which amount of  
59 such benefits paid prior to the receipt of such report  
60 shall be considered and deemed to be payment of the  
61 permanent disability award then granted, if any. In the  
62 event that benefits actually paid exceed the amount  
63 granted by the permanent partial disability award,  
64 claimant shall be entitled to no further benefits by such  
65 award but shall not be liable by offset or otherwise for  
66 the excess paid.

67 (d) When the commissioner concludes that an inde-  
68 pendent medical evaluation is indicated, or that a

69 claimant may be ready for disability evaluation in  
70 accordance with other provisions of this chapter, the  
71 commissioner shall refer the claimant to a physician or  
72 physicians of the commissioner's selection for examina-  
73 tion and evaluation. If the physician or physicians so  
74 selected recommend continued, additional or different  
75 treatment, the recommendation shall be relayed to the  
76 claimant and the claimant's then treating physician and  
77 the recommended treatment may be authorized by the  
78 commissioner.

79 (e) Notwithstanding any provision in subsection (c) of  
80 this section, the commissioner shall enter a notice  
81 suspending the payment of temporary total disability  
82 benefits but providing a reasonable period of time  
83 during which the claimant may submit evidence  
84 justifying the continued payment of temporary total  
85 disability benefits when:

86 (1) The physician or physicians selected by the  
87 commissioner conclude that the claimant has reached  
88 his or her maximum degree of improvement; or

89 (2) When the authorized treating physician shall  
90 advise the commissioner that the claimant has reached  
91 his or her maximum degree of improvement or that he  
92 or she is ready for disability evaluation and when the  
93 authorized treating physician has not made any recom-  
94 mendation with respect to a permanent disability award  
95 as provided in subsection (c) of this section; or

96 (3) When other evidence submitted to the commis-  
97 sioner justifies a finding that the claimant has reached  
98 his or her maximum degree of improvement: *Provided,*  
99 That in all cases a finding by the commissioner that the  
100 claimant has reached his or her maximum degree of  
101 improvement shall terminate the claimant's entitlement  
102 to temporary total disability benefits regardless of  
103 whether the claimant has been released to return to  
104 work: *Provided, however,* That under no circumstances  
105 shall a claimant be entitled to receive temporary total  
106 disability benefits either beyond the date the claimant  
107 is released to return to work or beyond the date he or  
108 she actually returns to work.



109       In the event that the medical or other evidence  
110 indicates that claimant has a permanent disability,  
111 claimant shall thereupon receive benefits which shall  
112 then be at the permanent partial disability rate as  
113 provided in subdivision (e), section six of this article  
114 until entry of a permanent disability award, pursuant  
115 to an evaluation by a physician or physicians selected  
116 by the commissioner, and which amount of benefits shall  
117 be considered and deemed to be payment of the  
118 permanent disability award then granted, if any. In the  
119 event that benefits actually paid exceed the amount  
120 granted under the permanent disability award, claimant  
121 shall be entitled to no further benefits by such  
122 order but shall not be liable by offset or otherwise for  
123 the excess paid.

124       (f) Notwithstanding the anticipated period of disability  
125 established pursuant to the provisions of subsection  
126 (b) of this section, whenever in any claim temporary  
127 total disability shall continue longer than one hundred  
128 twenty days from the date of injury (or from the date  
129 of the last preceding examination and evaluation  
130 pursuant to the provisions of this subsection or pursuant  
131 to the directions of the commissioner under other  
132 provisions of this chapter), the commissioner shall refer  
133 the claimant to a physician or physicians of the  
134 commissioner's selection for examination and evaluation  
135 in accordance with the provisions of subsection (d) of  
136 this section and the provisions of subsection (e) of this  
137 section shall be fully applicable: *Provided*, That the  
138 requirement of mandatory examinations and evaluations  
139 pursuant to the provisions of this subsection (f)  
140 shall not apply to any claimant who sustained a brain  
141 stem or spinal cord injury with resultant paralysis or  
142 an injury which resulted in an amputation necessitating  
143 a prosthetic appliance.

144       (g) The provisions of this section are in addition to  
145 and in no way in derogation of the power and authority  
146 vested in the commissioner by other provisions of this  
147 chapter or vested in the employer to have a claimant  
148 examined by a physician or physicians of the employer's  
149 selection and at the employer's expense, or vested in the

150 claimant or employer to file a protest, under other  
151 provisions of this chapter.

152 (h) All evaluations and examinations performed by  
153 physicians shall be performed in accordance with the  
154 protocols and procedures established by the health care  
155 advisory panel pursuant to section three-b of this article:  
156 *Provided*, That the physician may exceed these protocols  
157 when additional evaluation is medically necessary.

**§23-4-7b. Trial return to work.**

1 (a) The Legislature hereby finds and declares that it  
2 is in the interest of employees, employers and the  
3 commissioner that injured employees be encouraged to  
4 return to work as quickly as possible after an injury and  
5 that appropriate protections be afforded to injured  
6 employees who return to work on a trial basis.

7 (b) Notwithstanding any other provisions of this  
8 chapter to the contrary, the injured employee shall not  
9 have his or her eligibility to receive temporary total  
10 disability benefits terminated when he or she returns to  
11 work on a trial basis as set forth herein. An employee  
12 shall be eligible to return to work on a trial basis when  
13 he or she is released to work on a trial basis by the  
14 treating physician.

15 (c) When an injured employee returns to work on a  
16 trial basis, the employer shall provide a trial return to  
17 work notification to the commissioner. Upon receipt  
18 thereof, the commissioner shall note the date of the first  
19 day of work pursuant to the trial return and shall  
20 continue the claimant's eligibility for temporary total  
21 disability benefits, but shall temporarily suspend the  
22 payment of temporary total disability benefits during  
23 the period actually worked by the injured employee. The  
24 claim shall be closed on a temporary total disability  
25 basis either when the injured employee or the autho-  
26 rized treating physician notifies the commissioner that  
27 the injured employee is able to perform his or her job  
28 or automatically at the end of a period of three months  
29 from the date of the first day of work unless the  
30 employee notifies the commissioner that he or she is  
31 unable to perform the duties of the job, whichever

32 occurs first. If the injured employee is unable to  
33 continue working due to the compensable injury for a  
34 three month period, the injured employee shall notify  
35 the commissioner and temporary total disability benefits  
36 shall be reinstated immediately and he or she shall be  
37 referred for a rehabilitation evaluation as provided in  
38 section nine of this article. No provision of this section  
39 shall be construed to prohibit the commissioner from  
40 referring the injured employee for any permanent  
41 disability evaluation required or permitted by any other  
42 provision of this article.

43 (d) Nothing in this section shall prevent the employee  
44 from returning to work without a trial return to work  
45 period.

46 (e) Nothing in this section shall be construed to  
47 require an injured employee to return to work on a trial  
48 basis.

49 (f) The provisions of this section shall be terminated  
50 and be of no further force and effect on the first day  
51 of July, one thousand nine hundred ninety-four.

#### §23-4-8. Physical examination of claimant.

1 The commissioner shall have authority, after due  
2 notice to the employer and claimant, whenever in the  
3 commissioner's opinion it shall be necessary, to order a  
4 claimant of compensation for a personal injury other  
5 than occupational pneumoconiosis to appear for exam-  
6 ination before a medical examiner or examiners selected  
7 by the commissioner; and the claimant and employer,  
8 respectively, shall each have the right to select a  
9 physician of the claimant's or the employer's own  
10 choosing and at the claimant's or the employer's own  
11 expense to participate in such examination. All such  
12 examinations shall be performed in accordance with the  
13 protocols and procedures established by the health care  
14 advisory panel pursuant to section three-b of this article:  
15 *Provided*, That the physician may exceed these protocols  
16 when additional evaluation is medically necessary. The  
17 claimant and employer shall, respectively, be furnished  
18 with a copy of the report of examination made by the  
19 medical examiner or examiners selected by the commis-

20 sioner. The respective physicians selected by the  
21 claimant and employer shall have the right to concur in  
22 any report made by the medical examiner or examiners  
23 selected by the commissioner, or each may file with the  
24 commissioner a separate report, which separate report  
25 shall be considered by the commissioner in passing upon  
26 the claim. If the compensation claimed is for occupa-  
27 tional pneumoconiosis, the commissioner shall have the  
28 power, after due notice to the employer, and whenever  
29 in the commissioner's opinion it shall be necessary, to  
30 order a claimant to appear for examination before the  
31 occupational pneumoconiosis board hereinafter pro-  
32 vided. In any case the claimant shall be entitled to  
33 reimbursement for loss of wages, and to reasonable  
34 traveling and other expenses necessarily incurred by  
35 him or her in obeying such order.

36 Where the claimant is required to undergo a medical  
37 examination or examinations by a physician or physi-  
38 cians selected by the employer, as aforesaid or in  
39 connection with any claim which is in litigation, the  
40 employer shall reimburse the claimant for loss of wages,  
41 and reasonable traveling and other expenses in connec-  
42 tion with such examination or examinations, not to  
43 exceed the expenses paid when a claimant is examined  
44 by a physician or physicians selected by the commis-  
45 sioner.

**§23-4-8c. Occupational pneumoconiosis board—Reports  
and distribution thereof; presumption; find-  
ings required of board; objection to findings;  
procedure thereon.**

1 (a) The occupational pneumoconiosis board, as soon as  
2 practicable, after it has completed its investigation,  
3 shall make its written report, to the commissioner, of its  
4 findings and conclusions on every medical question in  
5 controversy, and the commissioner shall send one copy  
6 thereof to the employee or claimant and one copy to the  
7 employer, and the board shall also return to and file  
8 with the commissioner all the evidence as well as all  
9 statements under oath, if any, of the persons who appear  
10 before it on behalf of the employee or claimant, or  
11 employer and also all medical reports and X-ray

12 examinations produced by or on behalf of the employee  
13 or claimant, or employer.

14 (b) If it can be shown that the claimant or deceased  
15 employee has been exposed to the hazard of inhaling  
16 minute particles of dust in the course of and resulting  
17 from his or her employment for a period of ten years  
18 during the fifteen years immediately preceding the date  
19 of his or her last exposure to such hazard and that such  
20 claimant or deceased employee has sustained a chronic  
21 respiratory disability, then it shall be presumed that  
22 such claimant is suffering or such deceased employee  
23 was suffering at the time of his or her death from  
24 occupational pneumoconiosis which arose out of and in  
25 the course of his or her employment. This presumption  
26 shall not be conclusive.

27 (c) The findings and conclusions of the board shall set  
28 forth, among other things, the following:

29 (1) Whether or not the claimant or the deceased  
30 employee has contracted occupational pneumoconiosis,  
31 and if so, the percentage of permanent disability  
32 resulting therefrom.

33 (2) Whether or not the exposure in the employment  
34 was sufficient to have caused the claimant's or deceased  
35 employee's occupational pneumoconiosis or to have  
36 perceptibly aggravated an existing occupational pneu-  
37 moconiosis, or other occupational disease.

38 (3) What, if any, physician appeared before the board  
39 on behalf of the claimant or employer, and what, if any,  
40 medical evidence was produced by or on behalf of the  
41 claimant or employer.

42 If either party objects to the whole or any part of such  
43 findings and conclusions of the board, such party shall  
44 file with the commissioner or, on or after the first day  
45 of July, one thousand nine hundred ninety-one, with the  
46 office of judges, within thirty days from receipt of such  
47 copy to such party, unless for good cause shown, the  
48 commissioner or chief administrative law judge extends  
49 such time, such party's objections thereto in writing,  
50 specifying the particular statements of the board's

51 findings and conclusions to which such party objects.  
52 The filing of an objection within the time specified is  
53 hereby declared to be a condition of the right to litigate  
54 such findings and hence jurisdictional. After the time  
55 has expired for the filing of objections to the findings  
56 and conclusions of the board, the commissioner or  
57 administrative law judge shall proceed to act as  
58 provided in this chapter. If after the time has expired  
59 for the filing of objections to the findings and conclu-  
60 sions of the board no objections have been filed, the  
61 report of a majority of the board of its findings and  
62 conclusions on any medical question shall be taken to be  
63 plenary and conclusive evidence of the findings and  
64 conclusions therein stated. If objection has been filed to  
65 the findings and conclusions of the board, notice thereof  
66 shall be given to the board, and the members thereof  
67 joining in such findings and conclusions shall appear at  
68 the time fixed by the commissioner or office of judges  
69 for the hearing to submit to examination and cross-  
70 examination in respect to such findings and conclusions.  
71 At such hearing, evidence to support or controvert the  
72 findings and conclusions of the board shall be limited  
73 to examination and cross-examination of the members  
74 of the board, and to the taking of testimony of other  
75 qualified physicians and roentgenologists.

#### **§23-4-9. Physical and vocational rehabilitation.**

1 (a) The Legislature hereby finds that it is a goal of  
2 the workers' compensation program to assist workers to  
3 return to suitable gainful employment after an injury.  
4 In order to encourage workers to return to employment  
5 and to encourage and assist employers in providing  
6 suitable employment to injured employees, it shall be a  
7 priority of the commissioner to achieve early identifica-  
8 tion of individuals likely to need rehabilitation services  
9 and to assess the rehabilitation needs of these injured  
10 employees. It shall be the goal of rehabilitation to return  
11 injured workers to employment which shall be compar-  
12 able in work and pay to that which the individual  
13 performed prior to the injury. If a return to comparable  
14 work is not possible, the goal of rehabilitation shall be  
15 to return the individual to alternative suitable employ-

16 ment, using all possible alternatives of job modification,  
17 restructuring, reassignment and training, so that the  
18 individual will return to productivity with his or her  
19 employer or, if necessary, with another employer. The  
20 Legislature further finds that it is the shared respon-  
21 sibility of the employer, the employee, the physician and  
22 the commissioner to cooperate in the development of a  
23 rehabilitation process designed to promote re-employ-  
24 ment for the injured employee.

25 (b) In cases where an employee has sustained  
26 a permanent disability, or has sustained an injury like-  
27 ly to result in temporary disability in excess of  
28 one hundred twenty days, and such fact has been  
29 determined by the commissioner, the commissioner shall  
30 at the earliest possible time determine whether the  
31 employee would be assisted in returning to remunera-  
32 tive employment with the provision of rehabilitation  
33 services and if the commissioner determines that the  
34 employee can be physically and vocationally rehabili-  
35 tated and returned to remunerative employment by the  
36 provision of rehabilitation services including, but not  
37 limited to, vocational or on-the-job training, counseling,  
38 assistance in obtaining appropriate temporary or  
39 permanent work site, work duties or work hours  
40 modification, by the provision of crutches, artificial  
41 limbs, or other approved mechanical appliances, or  
42 medicines, medical, surgical, dental or hospital treat-  
43 ment, the commissioner shall forthwith develop a  
44 rehabilitation plan for the employee and, after due  
45 notice to the employer, expend such an amount as may  
46 be necessary for the aforesaid purposes: *Provided*, That  
47 such expenditure for vocational rehabilitation shall not  
48 exceed ten thousand dollars for any one injured em-  
49 ployee: *Provided, however*, That no payment shall be  
50 made for such vocational rehabilitation purposes as  
51 provided in this section unless authorized by the  
52 commissioner prior to the rendering of such physical or  
53 vocational rehabilitation, except that payments shall be  
54 made for reasonable medical expenses without prior  
55 authorization if sufficient evidence exists which would  
56 relate the treatment to the injury and the attending  
57 physician or physicians have requested authorization

58 prior to the rendering of such treatment: *Provided*  
59 *further*, That payment for physical rehabilitation,  
60 including the purchase of prosthetic devices and other  
61 equipment and training in use of such devices and  
62 equipment, shall be considered expenses within the  
63 meaning of section three of this article and shall be  
64 subject to the provisions of sections three, three-a, three-  
65 b, and three-c of this article. The provision of any  
66 rehabilitation services shall be pursuant to a rehabili-  
67 tation plan to be developed and monitored by a rehabil-  
68 itation professional for each injured employee.

69 (c) In every case in which the commissioner shall  
70 order physical or vocational rehabilitation of a claimant  
71 as provided herein, the claimant shall, during the time  
72 he or she is receiving any vocational rehabilitation or  
73 rehabilitative treatment that renders him or her totally  
74 disabled during the period thereof, be compensated on  
75 a temporary total disability basis for such period.

76 (d) In every case in which the claimant returns to  
77 gainful employment as part of a rehabilitation plan, and  
78 the employee's average weekly wage earnings are less  
79 than the average weekly wage earnings earned by the  
80 injured employee at the time of the injury, he or she  
81 shall receive temporary partial rehabilitation benefits  
82 calculated as follows: The temporary partial rehabilita-  
83 tion benefit shall be seventy percent of the difference  
84 between the average weekly wage earnings earned at  
85 the time of the injury and the average weekly wage  
86 earnings earned at the new employment, both to be  
87 calculated as provided in sections six, six-d and fourteen  
88 of this article as such calculation is performed for  
89 temporary total disability benefits, subject to the  
90 following limitations: In no event shall such benefits be  
91 subject to the minimum benefit amounts required by the  
92 provisions of subdivision (b), section six of this article,  
93 nor shall such benefits exceed the temporary total  
94 disability benefits to which the injured employee would  
95 be entitled pursuant to sections six, six-d and fourteen  
96 of this article during any period of temporary total  
97 disability resulting from the injury in the claim:  
98 *Provided*, That no temporary total disability benefits



99 shall be paid for any period for which temporary partial  
100 rehabilitation benefits are paid. The amount of tempor-  
101 ary partial rehabilitation benefits payable under this  
102 subsection shall be reviewed every ninety days to  
103 determine whether the injured employee's average  
104 weekly wage in the new employment has changed and,  
105 if such change has occurred, the amount of benefits  
106 payable hereunder shall be adjusted prospectively.  
107 Temporary partial rehabilitation benefits shall only be  
108 payable when the injured employee is receiving voca-  
109 tional rehabilitation services in accordance with a  
110 rehabilitation plan developed under this section.

111 (e) The commissioner shall promulgate legislative  
112 rules on or before the first day of July, one thousand  
113 nine hundred ninety-one, pursuant to the provisions of  
114 article three, chapter twenty-nine-a of this code for the  
115 purpose of developing a comprehensive rehabilitation  
116 program which will assist injured workers to return to  
117 suitable gainful employment after an injury in a manner  
118 consistent with the provisions and findings of this  
119 section. Such legislative rules shall provide definitions  
120 for rehabilitation facilities and rehabilitation services  
121 pursuant to this section.

122 (f) The provisions of this section shall be terminated  
123 and be of no further force or effect on the first day of  
124 July, one thousand nine hundred ninety-four.

#### §23-4-14. Computation of benefits.

1 The average weekly wage earnings, wherever earned,  
2 of the injured person at the date of injury, and the  
3 average weekly wage in West Virginia as determined  
4 by the commissioner of employment security, in effect  
5 at the date of injury, shall be taken as the basis upon  
6 which to compute the benefits.

7 In cases involving occupational pneumoconiosis or  
8 other occupational diseases, the "date of injury" shall be  
9 the date of the last exposure to the hazards of occupa-  
10 tional pneumoconiosis or other occupational diseases.

11 In computing benefits payable on account of occupa-  
12 tional pneumoconiosis, the commissioner shall deduct

13 the amount of all prior workers' compensation benefits  
14 paid to the same claimant on account of silicosis, but a  
15 prior silicosis award shall not, in any event, preclude an  
16 award for occupational pneumoconiosis otherwise  
17 payable under this article.

18 The expression "average weekly wage earnings,  
19 wherever earned, of the injured person, at the date of  
20 injury", within the meaning of this chapter, shall be  
21 computed based upon the daily rate of pay at the time  
22 of the injury or upon the average pay received during  
23 the two months, six months or twelve months imme-  
24 diately preceding the date of the injury, whichever is  
25 most favorable to the injured employee, except for the  
26 purpose of computing temporary total disability benefits  
27 for part-time employees pursuant to the provisions of  
28 section six-d of this article.

29 The expression "average weekly wage in West  
30 Virginia", within the meaning of this chapter, shall be  
31 the average weekly wage in West Virginia as deter-  
32 mined by the commissioner of employment security in  
33 accordance with the provisions of sections ten and  
34 eleven, article six, chapter twenty-one-a of this code, and  
35 other applicable provisions of said chapter twenty-one-  
36 a.

37 In any claim for injuries, including occupational  
38 pneumoconiosis and other occupational diseases, occur-  
39 ring on or after July one, one thousand nine hundred  
40 seventy-one, any award for temporary total, permanent  
41 partial or permanent total disability benefits or for  
42 dependent benefits, shall be paid at the weekly rates or  
43 in the monthly amount in the case of dependent benefits  
44 applicable to the claimant therein in effect on the date  
45 of such injury. If during the life of such award for  
46 temporary total, permanent partial or permanent total  
47 disability benefits or for dependent benefits, the weekly  
48 rates or the monthly amount in the case of dependent  
49 benefits are increased or decreased, the claimant shall  
50 receive such increased or decreased benefits beginning  
51 as of the effective date of said increase or decrease.

**§23-4-15b. Determination of nonmedical questions by commissioner; claims for occupational pneumoconiosis; hearing.**

1 If a claim for occupational pneumoconiosis benefits be  
2 filed by an employee within three years from and after  
3 the last day of the last continuous period of sixty days  
4 exposure to the hazards of occupational pneumoconiosis,  
5 the commissioner shall determine whether the claimant  
6 was exposed to the hazards of occupational pneumoco-  
7 niosis for a continuous period of not less than sixty days  
8 while in the employ of the employer within three years  
9 prior to the filing of his or her claim, whether in the  
10 state of West Virginia the claimant was exposed to such  
11 hazard over a continuous period of not less than two  
12 years during the ten years immediately preceding the  
13 date of his or her last exposure thereto and whether the  
14 claimant was exposed to such hazard over a period of  
15 not less than ten years during the fifteen years imme-  
16 diately preceding the date of his or her last exposure  
17 thereto. If a claim for occupational pneumoconiosis  
18 benefits be filed by an employee within three years from  
19 and after the employee's occupational pneumoconiosis  
20 was made known to the employee by a physician or  
21 otherwise should have reasonably been known to the  
22 employee, the commissioner shall determine whether  
23 the claimant filed his or her application within said  
24 period and whether in the state of West Virginia the  
25 claimant was exposed to such hazard over a continuous  
26 period of not less than two years during the ten years  
27 immediately preceding the date of last exposure thereto  
28 and whether the claimant was exposed to such hazard  
29 over a period of not less than ten years during the fifteen  
30 years immediately preceding the date of last exposure  
31 thereto. If a claim for occupational pneumoconiosis  
32 benefits be filed by a dependent of a deceased employee,  
33 the commissioner shall determine whether the deceased  
34 employee was exposed to the hazards of occupational  
35 pneumoconiosis for a continuous period of not less than  
36 sixty days while in the employ of the employer within  
37 ten years prior to the filing of the claim, whether in the  
38 state of West Virginia the deceased employee was  
39 exposed to such hazard over a continuous period of not

40 less than two years during the ten years immediately  
41 preceding the date of his or her last exposure thereto  
42 and whether the claimant was exposed to such hazard  
43 over a period of not less than ten years during the fifteen  
44 years immediately preceding the date of his or her last  
45 exposure thereto. The commissioner shall also determine  
46 such other nonmedical facts as may in the commission-  
47 er's opinion be pertinent to a decision on the validity of  
48 the claim.

49 The commissioner shall enter an order with respect  
50 to such nonmedical findings within ninety days follow-  
51 ing receipt by the commissioner of both the claimant's  
52 application for occupational pneumoconiosis benefits  
53 and the physician's report filed in connection therewith,  
54 and shall give each interested party notice in writing of  
55 these findings with respect to all such nonmedical facts  
56 and such findings and such actions of the commissioner  
57 shall be final unless the employer, employee, claimant  
58 or dependent shall, within thirty days after receipt of  
59 such notice, object to such findings, and unless an  
60 objection is filed within such thirty-day period, such  
61 findings shall be forever final, such time limitation  
62 being hereby declared to be a condition of the right to  
63 litigate such findings and hence jurisdictional. Upon  
64 receipt of such objection, the commissioner shall set a  
65 hearing as provided in section one, article five of this  
66 chapter or the chief administrative law judge shall set  
67 a hearing as provided in section one-h, article five of this  
68 chapter. In the event of an objection to such findings by  
69 the employer, the claim shall, notwithstanding the fact  
70 that one or more hearings may be held with respect to  
71 such objection, mature for reference to the occupational  
72 pneumoconiosis board with like effect as if the objection  
73 had not been filed. If the commissioner or administra-  
74 tive law judge concludes after the protest hearings that  
75 the claim should be dismissed, a final order of dismissal  
76 shall be entered, which final order shall be subject to  
77 appeal in accordance with the provisions of section one  
78 or section one-i and section three, article five of this  
79 chapter. If the commissioner or administrative law  
80 judge concludes after such protest hearings that the  
81 claim should be referred to the occupational pneumoco-

82 niosis board for its review, the order entered shall be  
83 interlocutory only and may be appealed only in conjunc-  
84 tion with an appeal from a final order with respect to  
85 the findings of the occupational pneumoconiosis board.

**§23-4-19. Wrongfully seeking compensation; criminal penalties; restitution.**

1 Any person who shall knowingly and with fraudulent  
2 intent secure or attempt to secure larger compensation,  
3 or compensation for a longer term than he or she is  
4 entitled to, from the workers' compensation fund, or  
5 knowingly and with like intent secure or attempt to  
6 secure compensation from such fund when he or she is  
7 not entitled thereto, or shall knowingly and with like  
8 intent aid and abet anyone in the commission of the  
9 offenses herein set forth, shall be guilty of a misdemea-  
10 nor, and, upon conviction thereof, shall be fined not  
11 exceeding five thousand dollars, or imprisoned not  
12 exceeding twelve months, or both, and in addition to any  
13 other penalty imposed, the court shall order any person  
14 convicted under this section to make full restitution of  
15 all moneys paid by the commissioner or self-insured  
16 employer as the result of the violation of this section. If  
17 the person so convicted is receiving compensation from  
18 such fund, he or she shall, from and after such  
19 conviction, cease to receive such compensation.

**ARTICLE 4B. COAL-WORKERS' PNEUMOCONIOSIS FUND.**

**§23-4B-8. Separable from workers' compensation fund.**

1 (a) No disbursements shall be made from the  
2 workers' compensation fund on account of any provision  
3 of this article: *Provided*, That the Legislature may at  
4 any time merge, consolidate, alter or liquidate this fund  
5 as it may determine and in no instance shall the  
6 operation of this article be construed as creating any  
7 contract which would deprive any injured employee of  
8 future benefits or increases awarded by an act of  
9 Congress, nor shall this section operate to create any  
10 liability upon the state of West Virginia.

11 (b) The Legislature hereby finds and declares that  
12 there is a substantial actuarial surplus in the coal-

13 workers' pneumoconiosis fund in excess of two hundred  
14 million dollars. The Legislature further finds and  
15 declares that there is a substantial actuarial deficit in  
16 the workers' compensation fund in excess of four  
17 hundred million dollars, and that this deficit is in large  
18 part attributable to claims arising out of the coal  
19 industry. The commissioner is hereby directed to  
20 conduct an actuarial audit to determine the amount,  
21 computed at book value, of the actuarial surplus in the  
22 coal-workers' pneumoconiosis fund as of the thirtieth  
23 day of June, one thousand nine hundred ninety, and to  
24 certify such amount, as of that date, in a written order  
25 which together with the results of said audit shall be a  
26 public record. Notwithstanding the provisions of  
27 subsection (a) of this section or any other provision of  
28 this article to the contrary, the commissioner shall, by  
29 written order, transfer the assets underlying said  
30 surplus to the workers' compensation fund, which assets  
31 shall thereupon become merged into and consolidated  
32 with the workers' compensation fund: *Provided*, That  
33 the value of the assets so transferred, when computed  
34 according to the book value of said assets on the date  
35 of transfer, shall not exceed two hundred fifty million  
36 dollars: *Provided, however*, That such assets so trans-  
37 ferred shall be held in a separate account and shall not  
38 be used for the satisfaction of obligations of the workers'  
39 compensation fund until all other assets of the workers'  
40 compensation fund have been expended: *Provided*  
41 *further*, That the income earned, from time to time, on  
42 the assets so transferred may be used to satisfy  
43 obligations of the workers' compensation fund: *And*  
44 *provided further*, That a sufficient reserve shall be  
45 retained in the coal-workers' pneumoconiosis fund to  
46 guarantee the payment of all claims incurred, including  
47 claims which were incurred but not reported, on or  
48 before the thirtieth day of June, one thousand nine  
49 hundred ninety: *And provided further*, That any moneys  
50 due and owing to the coal-workers' pneumoconiosis fund  
51 as a result of any transfer of moneys pursuant to section  
52 eight-a of this article shall be construed as an asset of  
53 the coal-workers' pneumoconiosis fund and shall be  
54 included as an asset transferred to the workers'

55 compensation fund under the provisions of this section.  
 56 If at any time subsequent to the transfer of the aforesaid  
 57 assets to the workers' compensation fund, the standards  
 58 for obtaining benefits under Title IV of the Federal Coal  
 59 Mine Health and Safety Act of 1969, as amended and  
 60 as subsequently amended, are changed such that the  
 61 actuarial audit performed hereunder may no longer  
 62 accurately reflect the liabilities of the coal-workers'  
 63 pneumoconiosis fund for claims arising prior to the first  
 64 day of July, one thousand nine hundred ninety, the  
 65 commissioner shall promptly conduct a new audit to  
 66 determine whether any portion of the foregoing separate  
 67 account should be returned to the coal-workers' pneumo-  
 68 coniosis fund in order to provide adequate reserves for  
 69 claims arising prior to the first day of July, one  
 70 thousand nine hundred ninety, and, if the results of such  
 71 new audit determine that said reserves are inadequate,  
 72 the commissioner shall transfer back to the coal-  
 73 workers' pneumoconiosis fund that portion of the assets  
 74 in the separate account necessary to provide adequate  
 75 reserves for such claims.

#### ARTICLE 5. REVIEW.

- §23-5-1. Notice by commissioner of decision; objections and hearing; appeal.
- §23-5-1a. Application by employee for further adjustment of claim—  
Objection to modification; hearing.
- §23-5-1b. Refusal to reopen claim; notice; objection.
- §23-5-1c. Application by employer for modification of award—Objection to  
modification; hearing.
- §23-5-1d. Refusal of modification; notice; objection.
- §23-5-1e. Time periods for objections and appeals; extensions.
- §23-5-1f. Compromise and settlement of permanent partial disability  
awards.
- §23-5-1g. Creation of office of administrative law judges; powers of chief  
administrative law judge and said office.
- §23-5-1h. Hearings on objections to commissioner's decisions by office of  
administrative law judges.
- §23-5-1i. Appeal from administrative law judge decision to appeal board.
- §23-5-3. Appeal to board; procedure; remand and supplemental hearing.
- §23-5-3a. Continuances and supplemental hearings; claims not to be denied  
on technicalities.
- §23-5-4b. Jurisdictional findings and decisions appealable.
- §23-5-1. Notice by commissioner of decision; objections  
and hearing; appeal.**

1 The commissioner shall have full power and authority

2 to hear and determine all questions within his or her  
3 jurisdiction, but upon the making or refusing to make  
4 any award, or upon the making of any modification or  
5 change with respect to former findings or orders, as  
6 provided by section sixteen, article four of this chapter,  
7 the commissioner shall give notice, in writing, to the  
8 employer, employee, claimant or dependent, as the case  
9 may be, of his or her action, which notice shall state the  
10 time allowed for filing an objection to such finding, and  
11 such action of the commissioner shall be final unless the  
12 employer, employee, claimant or dependent shall, within  
13 thirty days after the receipt of such notice, object in  
14 writing, to such finding, and unless an objection is filed  
15 within such thirty-day period, such finding or action  
16 shall be forever final, such time limitation being hereby  
17 declared to be a condition of the right to litigate such  
18 finding or action and hence jurisdictional. Upon receipt  
19 of such objection the commissioner shall, within fifteen  
20 days from receipt thereof, set a time and place for the  
21 hearing of evidence. Any such hearing may be con-  
22 ducted by the commissioner or the commissioner's duly  
23 authorized representative at the county seat of the  
24 county wherein the injury occurred, or at any other  
25 place which may be agreed upon by the interested  
26 parties, and in the event the interested parties cannot  
27 agree, and it appears in the opinion of the commissioner  
28 that the ends of justice require the taking of evidence  
29 elsewhere, then at such place as the commissioner may  
30 direct, having due regard for the convenience of  
31 witnesses. Both the employer and claimant shall be  
32 notified of such hearing at least ten days in advance, and  
33 the hearing shall be held within thirty days after the  
34 filing of objection to the commissioner's findings as  
35 hereinabove provided, unless such hearing be postponed  
36 by agreement of the parties or by the commissioner for  
37 good cause. The evidence taken at such hearing shall be  
38 transcribed and become part of the record of the  
39 proceedings, together with the other records thereof in  
40 the commissioner's office. At any time within thirty days  
41 after hearing, if the commissioner is of the opinion that  
42 the facts have not been adequately developed at such  
43 hearing, he or she may order supplemental hearings



44 upon due notice to the parties. After final hearing the  
45 commissioner shall, within thirty days, render his or her  
46 decision affirming, reversing or modifying his or her  
47 former action, which shall be final: *Provided*, That the  
48 claimant or the employer may apply to the appeal board  
49 herein created for a review of such decision; but no  
50 appeal or review shall lie unless application therefor be  
51 made within thirty days of receipt of notice of the  
52 commissioner's final action, or in any event within sixty  
53 days of the date of such final action, regardless of notice,  
54 and unless the application for appeal or review is filed  
55 within the time specified, no such appeal or review shall  
56 be allowed, such time limitation being hereby declared  
57 to be a condition of the right to such appeal or review  
58 and hence jurisdictional.

59 All objections to commissioner's decisions filed prior  
60 to the first day of July, one thousand nine hundred  
61 ninety-one, shall be handled in accordance with the  
62 foregoing procedures set forth in this section. All  
63 objections to commissioner's decisions which are not  
64 appealable to the appeal board and which are filed on  
65 or after the first day of July, one thousand nine hundred  
66 ninety-one, shall be filed with the office of judges in  
67 accordance with the procedures set forth in section one-  
68 g and section one-h of this article.

69 Any proceeding on an objection in which the commis-  
70 sioner has not concluded hearings and issued a final  
71 order appealable to the appeal board on or before the  
72 thirty-first day of December, one thousand nine hundred  
73 ninety-one, shall be transferred to the office of judges  
74 for final resolution. If additional evidentiary hearings  
75 are necessary in any matter so transferred, such  
76 hearings shall be conducted in accordance with section  
77 one-h of this article. Decisions on transferred cases shall  
78 likewise be rendered in accordance with section one-h  
79 of this article.

80 Where a finding or determination of the commissioner  
81 is protested only by the employer, and the employer does  
82 not prevail in its protest and, in the event the claimant  
83 is required to attend a hearing by subpoena or agree-

84 ment of counsel or at the express direction of the  
85 commissioner, then such claimant in addition to reason-  
86 able traveling and other expenses shall be reimbursed  
87 for loss of wages incurred by the claimant in attending  
88 such hearing.

**§23-5-1a. Application by employee for further adjustment of claim—Objection to modification; hearing.**

1 In any case where an injured employee makes  
2 application in writing for a further adjustment of his or  
3 her claim under the provisions of section sixteen, article  
4 four of this chapter, and such application discloses cause  
5 for a further adjustment thereof, the commissioner  
6 shall, after due notice to the employer, make such  
7 modifications or changes with respect to former findings  
8 or orders in such claim as may be justified, and any  
9 party dissatisfied with any such modification or change  
10 so made by the commissioner shall, upon proper and  
11 timely objection, be entitled to a hearing, as provided  
12 in section one or section one-h of this article.

**§23-5-1b. Refusal to reopen claim; notice; objection.**

1 If, however, in any case in which application for  
2 further adjustment of a claim is filed under the next  
3 preceding section, it shall appear to the commissioner  
4 that such application fails to disclose a progression or  
5 aggravation in the claimant's condition, or some other  
6 fact or facts which were not theretofore considered by  
7 the commissioner in his or her former findings, and  
8 which would entitle such claimant to greater benefits  
9 than the claimant has already received, the commis-  
10 sioner shall, within sixty days from the receipt of such  
11 application, notify the claimant and the employer that  
12 such application fails to establish a prima facie cause  
13 for reopening the claim. Such notice shall be in writing  
14 stating the reasons for denial and the time allowed for  
15 objection to such decision of the commissioner. The  
16 claimant may, within thirty days after receipt of such  
17 notice, object in writing to such finding and unless the  
18 objection is filed within such thirty-day period, no such  
19 objection shall be allowed, such time limitation being

20 hereby declared to be a condition of the right to such  
21 objection and hence jurisdictional. Upon receipt of an  
22 objection, the commissioner or office of judges shall  
23 afford the claimant an evidentiary hearing as provided  
24 in section one or section one-h of this article.

**§23-5-1c. Application by employer for modification of  
award—Objection to modification; hearing.**

1 In any case wherein an employer makes application  
2 in writing for a modification of any award previously  
3 made to an employee of said employer, and such  
4 application discloses cause for a further adjustment  
5 thereof, the commissioner shall, after due notice to the  
6 employee, make such modifications or changes with  
7 respect to former findings or orders in such form as may  
8 be justified, and any party dissatisfied with any such  
9 modification or change so made by the commissioner,  
10 shall upon proper and timely objection, be entitled to a  
11 hearing as provided in section one or section one-h of  
12 this article.

**§23-5-1d. Refusal of modification; notice; objection.**

1 If in any such case it shall appear to the commissioner  
2 that such application fails to disclose some fact or facts  
3 which were not theretofore considered by the commis-  
4 sioner in his or her former findings, and which would  
5 entitle such employer to any modification of said  
6 previous award, the commissioner shall, within sixty  
7 days from the receipt of such application, notify the  
8 claimant and employer that such application fails to  
9 establish a just cause for modification of said award.  
10 Such notice shall be in writing stating the reasons for  
11 denial and the time allowed for objection to such  
12 decision of the commissioner. The employer may, within  
13 thirty days after receipt of said notice, object in writing  
14 to such decision, and unless the objection is filed within  
15 such thirty-day period, no such objection shall be  
16 allowed, such time limitation being hereby declared to  
17 be a condition of the right to such objection and hence  
18 jurisdictional. Upon receipt of such objection, the  
19 commissioner or office of judges shall afford the  
20 employer an evidentiary hearing as provided in section  
21 one or section one-h of this article.

**§23-5-1e. Time periods for objections and appeals; extensions.**

1 Notwithstanding the fact that the time periods set  
2 forth for objections, protests, and appeals to or from the  
3 workers' compensation appeal board, are jurisdictional,  
4 such periods may be extended or excused upon appli-  
5 cation of either party within a period of time equal to  
6 the applicable period by requesting an extension of such  
7 time period showing good cause or excusable neglect,  
8 accompanied by the objection, protest, or appeal  
9 petition. In exercising such discretion the commissioner,  
10 administrative law judge, appeal board, or court, as the  
11 case may be, shall consider whether the applicant was  
12 represented by counsel and whether timely and proper  
13 notice was actually received by the applicant or the  
14 applicant's representative.

**§23-5-1f. Compromise and settlement of permanent partial disability awards.**

1 (a) After an objection is filed to a commissioner's  
2 decision either granting a permanent partial disability  
3 award of fifteen percent or less, or making no award  
4 upon a finding that no permanent partial disability was  
5 suffered as the result of the injury received, the parties  
6 may agree to compromise and settle the award in  
7 controversy under the conditions and limitations set out  
8 in this section. In addition, a reopening petition  
9 resulting in an increased permanent partial disability  
10 award of fifteen percent or less may similarly be  
11 compromised and settled. No other types of settlements  
12 shall be permitted. The terms of such settlement shall  
13 be reviewed by the administrative law judge as herein  
14 provided.

15 (b) In any claim involving an employer not electing  
16 to carry its own risk within the meaning of section nine,  
17 article two of this chapter, the parties shall notify the  
18 commissioner of their intent to settle a claim and the  
19 commissioner may participate, at his or her discretion,  
20 as a party in interest in any settlement proceeding  
21 under this section.

22 (c) The parties seeking to settle and compromise an  
23 objection to a commissioner's decision described in  
24 subsection (a) of this section shall jointly file with the  
25 chief administrative law judge a written memorandum  
26 of settlement, signed by all parties in interest. An  
27 administrative law judge shall review the written  
28 memorandum to determine if it is reasonable and fair,  
29 after giving due consideration to the interests of all  
30 parties, and if it is in conformity with the provisions of  
31 this chapter. The administrative law judge, in his or her  
32 discretion, may hear testimony relating to any proposed  
33 settlement. If the administrative law judge finds the  
34 settlement to be fair and reasonable, he or she shall issue  
35 an order so finding which shall, for all purposes,  
36 constitute an order appealable to the appeal board as  
37 provided under sections one and three of this article. If  
38 the settlement is not approved by the administrative law  
39 judge, the settlement agreement between the parties  
40 shall be null and void, and the administrative law judge  
41 shall issue an order so finding which shall be appealable  
42 to the appeal board.

43 (d) A settlement may provide for a final award of  
44 greater than fifteen percent permanent partial disabili-  
45 ty: *Provided*, That no settlement shall be approved  
46 which provides for or would result in a permanent total  
47 disability or second injury life award.

48 (e) The amounts of compensation payable under a  
49 settlement may be commuted to one or more lump sum  
50 payments by agreement of the parties.

51 (f) A party seeking to vacate an order approving a  
52 settlement on the grounds that a settlement was  
53 obtained by fraud, undue influence or coercion shall file  
54 a petition therefor with the office of judges within six  
55 months after the date of the order approving the  
56 settlement. The petition shall set forth in particular the  
57 facts upon which the grounds alleged therein are based  
58 and shall be served upon all other parties to the  
59 settlement. Upon request by any party to the settlement,  
60 the chief administrative law judge shall set the matter  
61 down for hearing. At the conclusion thereof, the chief  
62 administrative law judge shall enter an order setting

63 forth his or her findings of fact and conclusions of law,  
64 which order shall be appealable to the appeal board.  
65 Upon a finding, by clear and convincing evidence, that  
66 the settlement was obtained by fraud, undue influence  
67 or coercion, the chief administrative law judge shall  
68 vacate and set aside the order approving the settlement.

69 (g) A settlement approved by the administrative law  
70 judge shall be final and binding as to the particular  
71 award in controversy but shall not affect any right  
72 under article four of this chapter to future medical  
73 benefits, to physical and vocational rehabilitation, or the  
74 right to seek a reopening of the claim pursuant to  
75 section sixteen, article four of this chapter and section  
76 one-a of this article.

77 (h) For matters pending before the commissioner on  
78 the first day of July, one thousand nine hundred ninety,  
79 or thereafter, the foregoing procedures for settlement  
80 shall apply except the commissioner shall act in the  
81 place of the administrative law judge or chief adminis-  
82 trative law judge.

**§23-5-1g. Creation of office of administrative law judges;  
powers of chief administrative law judge  
and said office.**

1 (a) There is hereby created within the workers'  
2 compensation appeal board the workers' compensation  
3 office of administrative law judges which shall be  
4 referred to as the office of judges. The office of judges  
5 shall be under the supervision of a chief administrative  
6 law judge who shall be appointed by the governor, with  
7 the advice and consent of the Senate.

8 (b) The chief administrative law judge shall be a  
9 person who has been admitted to the practice of law in  
10 this state and shall also have had at least four years of  
11 experience as an attorney. The chief administrative law  
12 judge's salary shall be set by the appeal board created  
13 in section two of this article. Said salary shall be within  
14 the salary range for comparable chief administrative  
15 law judges as determined by the state personnel board  
16 created by section six, article six of chapter twenty-nine  
17 of this code. The chief administrative law judge may

18 only be removed by the appeal board and shall not be  
19 removed except for official misconduct, incompetence,  
20 neglect of duty, gross immorality, or malfeasance and  
21 then only after he or she has been presented in writing  
22 with the reasons for his or her removal and then only  
23 in the manner prescribed in article six-a of chapter  
24 twenty-nine of this code. No other provision of this code  
25 purporting to limit the term of office of any appointed  
26 official or employee or affecting the removal of any  
27 appointed official or employee shall be applicable to the  
28 chief administrative law judge.

29 (c) By and with the consent of the commissioner, the  
30 chief administrative law judge shall employ such  
31 additional administrative law judges and other person-  
32 nel as are necessary for the proper conduct of a system  
33 of administrative review of orders issued by the  
34 commissioner which orders have been objected to by a  
35 party, and all such employees shall be in the classified  
36 service of the state. Qualifications, compensation and  
37 personnel practice relating to the employees of the office  
38 of judges, other than the chief administrative law judge,  
39 shall be governed by the provisions of the statutes, rules  
40 and regulations of the classified service pursuant to  
41 article six, chapter twenty-nine of this code. All such  
42 additional administrative law judges shall be persons  
43 who have been admitted to the practice of law in this  
44 state and shall also have had at least two years of  
45 experience as an attorney. The chief administrative law  
46 judge shall supervise the other administrative law  
47 judges and other personnel which collectively shall be  
48 referred to in this chapter as the office of judges.

49 (d) The administrative expense of the office of judges  
50 shall be included by the appeal board in its annual  
51 budget when it submits that budget to the commissioner  
52 pursuant to section two of this article.

53 (e) With the advice and consent of the commissioner,  
54 on or before the first day of May, one thousand nine  
55 hundred ninety-one, the appeal board shall promulgate  
56 rules of practice and procedure for the hearing and  
57 determination of all objections to findings or orders of  
58 the commissioner pursuant to section one of this article

59 and for the settlement of claims pursuant to section one-  
60 f of this article. Such rules of practice and procedure  
61 shall be promulgated in accordance with the provisions  
62 of article three of chapter twenty-nine-a of this code. The  
63 appeal board shall not have the power to promulgate  
64 legislative rules as that phrase is defined in article three  
65 of chapter twenty-nine-a of this code.

66 (f) On and after the first day of July, one thousand  
67 nine hundred ninety-one, the chief administrative law  
68 judge shall have the power, which shall be delegated by  
69 the appeal board, to hear and determine all disputed  
70 claims in accordance with the provisions of this article,  
71 establish a procedure for the hearing of disputed claims,  
72 take oaths, examine witnesses, issue subpoenas, estab-  
73 lish the amount of witness fees, keep such records and  
74 make such reports as are necessary for disputed claims,  
75 review and approve agreements to compromise and  
76 settle claims involving permanent partial disability  
77 awards permitted by the provisions of section one-f,  
78 article five of this chapter, and exercise such additional  
79 powers, including the delegation of such powers to  
80 administrative law judges or hearing examiners as may  
81 be necessary for the proper conduct of a system of  
82 administrative review of disputed claims.

**§23-5-1h. Hearings on objections to commissioner's  
decisions by office of administrative law  
judges.**

1 On or after the first day of July, one thousand nine  
2 hundred ninety-one, objections to a commissioner's  
3 decision made pursuant to the provisions of section one  
4 of this article shall be filed with the office of judges.  
5 Upon receipt of an objection, the office of judges shall,  
6 within fifteen days from receipt thereof, set a time and  
7 place for the hearing of evidence and shall notify the  
8 commissioner of the filing of the objection. Hearings  
9 may be conducted at the county seat of the county  
10 wherein the injury occurred, or at any other place which  
11 may be agreed upon by the interested parties, and in  
12 the event the interested parties cannot agree, and it  
13 appears in the opinion of the chief administrative law



14 judge or the chief administrative law judge's authorized  
15 representative that the ends of justice require the taking  
16 of evidence elsewhere, then at such place as the chief  
17 administrative law judge or such authorized represen-  
18 tative may direct, having due regard for the convenience  
19 of witnesses. The employer, the claimant and the  
20 commissioner shall be notified of such hearing at least  
21 ten days in advance, and the hearing shall be held  
22 within thirty days after the filing of the objection unless  
23 such hearing be postponed by agreement of the parties  
24 or by the chief administrative law judge or such  
25 authorized representative for good cause. The commis-  
26 sioner shall be considered a party to any proceeding  
27 under this article which involves a claim chargeable  
28 against the workers' compensation fund, the disabled  
29 workers' relief fund or such other fund as may then be  
30 under the commissioner's management and control, and  
31 may appear only in any proceedings involving a claim  
32 that is or may be asserted against any portion of the  
33 surplus fund or any claim in which the employer fails  
34 to appear.

35 The office of judges shall keep full and complete  
36 records of all proceedings concerning a disputed claim.  
37 All testimony upon a disputed claim shall be recorded  
38 but need not be transcribed unless the claim is appealed  
39 or in such other circumstances as, in the opinion of the  
40 chief administrative law judge, may require such  
41 transcription. Upon receipt of notice of the filing of an  
42 objection, the commissioner shall forthwith forward to  
43 the chief administrative law judge all records, or copies  
44 of such records, in the commissioner's office which  
45 relate to the matter objected to. All such records or  
46 copies thereof and any evidence taken at hearings  
47 conducted by the office of judges shall constitute the  
48 record upon which the matter shall be decided. The  
49 office of judges shall not be bound by the usual common  
50 law or statutory rules of evidence. At any time within  
51 thirty days after hearing, if the chief administrative law  
52 judge or the chief administrative law judge's authorized  
53 representative is of the opinion that the facts have not  
54 been adequately developed at such hearing, he or she  
55 may order supplemental hearings or obtain such

56 additional evidence as he or she deems warranted upon  
57 due notice to the parties.

58 All hearings shall be conducted as determined by the  
59 chief administrative law judge pursuant to the rules of  
60 practice and procedure promulgated pursuant to section  
61 one-g of this article. Upon consideration of the entire  
62 record, the chief administrative law judge or an  
63 administrative law judge within the office of judges  
64 shall, within thirty days after final hearing, render a  
65 decision affirming, reversing or modifying the commis-  
66 sioner's action. Said decision shall contain findings of  
67 fact and conclusions of law and shall be mailed to all  
68 interested parties.

**§23-5-1i. Appeal from administrative law judge decision  
to appeal board.**

1 The employer, claimant or commissioner may appeal  
2 to the appeal board created in section two of this article  
3 for a review of a decision by an administrative law  
4 judge. No appeal or review shall lie unless application  
5 therefor be made within thirty days of receipt of notice  
6 of the administrative law judge's final action or in any  
7 event within sixty days of the date of such final action,  
8 regardless of notice and, unless the application for  
9 appeal or review is filed within the time specified, no  
10 such appeal or review shall be allowed, such time  
11 limitation being hereby declared to be a condition of the  
12 right of such appeal or review and hence jurisdictional.

**§23-5-3. Appeal to board; procedure; remand and supple-  
mental hearing.**

1 Any employer, employee, claimant, or dependent, who  
2 shall feel aggrieved at any final action of the commis-  
3 sioner or administrative law judge taken after a hearing  
4 held in accordance with the provisions of section one or  
5 section one-h of this article, shall have the right to  
6 appeal to the board created in section two of this article  
7 for a review of such action. The commissioner shall  
8 likewise have the right to appeal to the appeal board any  
9 final action taken in a proceeding in which he or she  
10 is a party. The aggrieved party shall file a written notice  
11 of appeal with the compensation commissioner or, after  
12 the first day of July, one thousand nine hundred ninety-

13 one, with the office of judges directed to such board,  
14 within thirty days after receipt of notice of the action  
15 complained of, or in any event, regardless of notice,  
16 within sixty days after the date of the action complained  
17 of, and unless the notice of appeal is filed within the  
18 time specified, no such appeal shall be allowed, such  
19 time limitation being hereby declared to be a condition  
20 of the right to such appeal and hence jurisdictional; and  
21 the commissioner or the office of judges shall notify the  
22 other parties immediately upon the filing of a notice of  
23 appeal. The commissioner or the office of judges shall  
24 forthwith make up a transcript of the proceedings  
25 before the commissioner or the office of judges and  
26 certify and transmit the same to the board. Such  
27 certificate shall incorporate a brief recital of the  
28 proceedings therein had and recite each order entered  
29 and the date thereof. The board shall review the action  
30 of the commissioner or administrative law judge  
31 complained of at its next meeting after the filing of  
32 notice of appeal, provided such notice of appeal shall  
33 have been filed thirty days before such meeting of the  
34 board, unless such review be postponed by agreement  
35 of parties or by the board for good cause. The board  
36 shall set a time and place for the hearing of arguments  
37 on each claim and shall notify the interested parties  
38 thereof, and briefs may be filed by the interested parties  
39 in accordance with the rules of procedure prescribed by  
40 the board. And thereupon, after a review of the case, the  
41 board shall sustain the finding of the commissioner or  
42 administrative law judge or enter such order or make  
43 such award as the commissioner or administrative law  
44 judge should have made, stating in writing its reasons  
45 therefor, and shall thereupon certify the same to the  
46 commissioner, or chief administrative law judge, who  
47 shall proceed in accordance therewith. Or, instead of  
48 affirming or reversing the commissioner or administra-  
49 tive law judge as aforesaid, the board may, upon motion  
50 of either party or upon its own motion, for good cause  
51 shown, to be set forth in the order of the board, remand  
52 the case to the commissioner or chief administrative law  
53 judge for the taking of such new, additional or further  
54 evidence as in the opinion of the board may be necessary

55 for a full and complete development of the facts of the  
56 case. In the event the board shall remand the case to  
57 the commissioner or chief administrative law judge for  
58 the taking of further evidence therein, the commissioner  
59 or administrative law judge shall proceed to take such  
60 new, additional or further evidence in accordance with  
61 any instruction given by the board, and shall take the  
62 same within thirty days after receipt of the order  
63 remanding the case, giving to the interested parties at  
64 least ten days' written notice of such supplemental  
65 hearing, unless the taking of evidence shall be postponed  
66 by agreement of parties, or by the commissioner or  
67 administrative law judge for good cause. After the  
68 completion of such supplemental hearing, the commis-  
69 sioner or administrative law judge shall, within sixty  
70 days, render his or her decision affirming, reversing or  
71 modifying the former action of the commissioner or  
72 administrative law judge, which decision shall be  
73 appealable to, and proceeded with by the appeal board  
74 in like manner as in the first instance. The board may  
75 remand any case as often as in its opinion is necessary  
76 for a full development and just decision of the case. The  
77 board may take evidence or consider ex parte state-  
78 ments furnished in support of any motion to remand the  
79 case to the commissioner or chief administrative law  
80 judge. All evidence taken by or filed with the board  
81 shall become a part of the record. All appeals from the  
82 action of the commissioner or administrative law judge  
83 shall be decided by the board at the same session at  
84 which they are heard, unless good cause for delay  
85 thereof be shown and entered of record. In all proceed-  
86 ings before the board, any party may be represented by  
87 counsel.

**§23-5-3a. Continuances and supplemental hearings;  
claims not to be denied on technicalities.**

1 It is the policy of this chapter that the rights of  
2 claimants for workers' compensation be determined as  
3 speedily and expeditiously as possible to the end that  
4 those incapacitated by injuries and the dependents of  
5 deceased workers may receive benefits as quickly as  
6 possible in view of the severe economic hardships which

7 immediately befall the families of injured or deceased  
8 workers. Therefore, the criteria for continuances and  
9 supplemental hearings "for good cause shown" are to be  
10 strictly construed by the commissioner and chief  
11 administrative law judge and their authorized represen-  
12 tatives to prevent delay when granting or denying  
13 continuances and supplemental hearings. It is also the  
14 policy of this chapter to prohibit the denial of just claims  
15 of injured or deceased workers or their dependents on  
16 technicalities.

**§23-5-4b. Jurisdictional findings and decisions  
appealable.**

1 In any case where the jurisdiction of the commissioner  
2 or chief administrative law judge is contested, the order  
3 of the commissioner or chief administrative law judge  
4 in respect thereto shall be deemed final for the purpose  
5 of appeal to the board and any decision of the board in  
6 respect to such questions of jurisdiction shall be deemed  
7 final for the purpose of appeal to the supreme court of  
8 appeals.

**ARTICLE 5A. DISCRIMINATORY PRACTICES.**

**§23-5A-3. Termination of injured employee prohibited;  
re-employment of injured employees.**

1 (a) It shall be a discriminatory practice within the  
2 meaning of section one of this article to terminate an  
3 injured employee while the injured employee is off work  
4 due to a compensable injury within the meaning of  
5 article four of this chapter and is receiving or is eligible  
6 to receive temporary total disability benefits, unless the  
7 injured employee has committed a separate discharge-  
8 able offense. A separate dischargeable offense shall  
9 mean misconduct by the injured employee wholly  
10 unrelated to the injury or the absence from work  
11 resulting from the injury. A separate dischargeable  
12 offense shall not include absence resulting from the  
13 injury or from the inclusion or aggregation of absence  
14 due to the injury with any other absence from work.

15 (b) It shall be a discriminatory practice within the  
16 meaning of section one of this article for an employer

17 to fail to reinstate an employee who has sustained a  
18 compensable injury to the employee's former position of  
19 employment upon demand for such reinstatement  
20 provided that the position is available and the employee  
21 is not disabled from performing the duties of such  
22 position. If the former position is not available, the  
23 employee shall be reinstated to another comparable  
24 position which is available and which the employee is  
25 capable of performing. A comparable position for the  
26 purposes of this section shall mean a position which is  
27 comparable as to wages, working conditions and, to the  
28 extent reasonably practicable, duties to the position held  
29 at the time of injury. A written statement from a duly  
30 licensed physician that the physician approves the  
31 injured employee's return to his or her regular employ-  
32 ment shall be prima facie evidence that the worker is  
33 able to perform such duties. In the event that neither  
34 the former position nor a comparable position is  
35 available, the employee shall have a right to preferential  
36 recall to any job which the injured employee is capable  
37 of performing which becomes open after the injured  
38 employee notifies the employer that he or she desired  
39 reinstatement. Said right of preferential recall shall be  
40 in effect for one year from the day the injured employee  
41 notifies the employer that he or she desires reinstate-  
42 ment: *Provided*, That the employee provides to the  
43 employer a current mailing address during this one year  
44 period.

45 (c) Any civil action brought under this section shall  
46 be subject to the seniority provisions of a valid and  
47 applicable collective bargaining agreement, or arbitra-  
48 tor's decision thereunder, or to any court or administra-  
49 tive order applying specifically to the injured employee's  
50 employer, and shall further be subject to any applicable  
51 federal statute or regulation.

52 (d) Nothing in this section shall affect the eligibility  
53 of the injured employee to workers' compensation  
54 benefits under this chapter.

## DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

### Regular Session, 1990 HOUSE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
2159	132	4224	165	4559	53
2219	74	4226	11	4560	76
2259	56	4227	22	4577	48
2305	79	4230	93	4579	156
2537	49	4247	175	4588	16
2609	88	4254	154	4589	15
2655	142	4256	67	4590	6
2727	68	4257	122	4592	14
2788	167	4344	91	4595	23
2813	8	4349	5	4596	83
4005	174	4351	164	4602	127
4007	54	4352	3	4648	75
4011	90	4354	106	4659	153
4012	89	4356	194	4660	92
4035	180	4359	44	4664	149
4037	50	4360	45	4666	119
4044	41	4364	169	4670	21
4045	1	4384	116	4678	17
4060	166	4386	32	4679	59
4061	140	4387	18	4690	157
4066	47	4398	40	4693	168
4084	141	4399	125	4706	150
4095	193	4400	19	4712	123
4097	105	4456	20	4720	102
4102	126	4458	128	4722	184
4109	70	4459	46	4735	82
4121	60	4467	113	4740	158
4126	114	4475	173	4749	64
4127	172	4479	33	4752	25
4128	96	4493	108	4769	188
4130	109	4501	111	4770	80
4131	151	4502	86	4780	55
4134	152	4504	4	4793	178
4147	163	4515	112	4794	179
4151	107	4540	129	4799	71
4161	195	4541	130	4800	72
4176	104	4542	131	4803	28
4187	124	4544	135	4820	94
4195	110	4553	58	4843	133
4197	97			4846	77

## SENATE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
1.....	39	162.....	115	438.....	57
5.....	51	184.....	65	441.....	192
11.....	139	188.....	121	450.....	13
14.....	190	193.....	73	459.....	37
15.....	118	243.....	120	466.....	98
18.....	69	270.....	100	477.....	160
22.....	61	276.....	143	481.....	117
35.....	10	277.....	148	492.....	155
37.....	35	279.....	34	507.....	101
41.....	170	280.....	26	518.....	81
44.....	145	298.....	144	520.....	161
61.....	84	301.....	185	532.....	43
62.....	186	302.....	78	545.....	177
67.....	36	307.....	62	548.....	87
77.....	38	310.....	162	550.....	134
89.....	191	320.....	2	551.....	196
92.....	171	327.....	63	554.....	197
101.....	183	333.....	176	559.....	189
109.....	181	337.....	9	563.....	103
127.....	159	338.....	99	581.....	182
136.....	138	339.....	137	608.....	147
138.....	30	355.....	29	609.....	52
146.....	24	386.....	136	610.....	95
147.....	66	401.....	42	614.....	85
148.....	27	419.....	7	615.....	187
149.....	146	437.....	31	624.....	12

## First Extraordinary Session, 1990

## HOUSE BILLS

Bill No.	Chapter	Bill No.	Chapter
101.....	2	102.....	1

## Second Extraordinary Session, 1990

## HOUSE BILLS

Bill No.	Chapter	Bill No.	Chapter
201.....	9	206.....	6
202.....	8	212.....	2
204.....	11	213.....	12

## SENATE BILLS

Bill No.	Chapter	Bill No.	Chapter
5.....	10	13.....	4
8.....	1	14.....	5
11.....	3	15.....	7



**INDEX**  
**SECOND REGULAR SESSION, 1990**  
**FIRST AND SECOND**  
**EXTRAORDINARY SESSIONS, 1990**

ACTIONS AND SUITS:	Ch.	Page
Statute of Frauds		
§55-1-1. When writing required.....	1	1
<b>ADMINISTRATION:</b>		
Appropriations, Expenditures and Deductions		
§12-3-17. Liabilities incurred by state boards, commissions, officers or employees which cannot be paid out of current appropriations.....	2	107
Central Nonprofit Coordinating Agency and Committee,		
Purchase of Commodities and Services from the Handicapped		
§5A-3A-1. Purpose.....	2	82
§5A-3A-2. Central nonprofit agency.....	2	82
§5A-3A-3. Committee for the purchase of commodities and services from the handicapped.....	2	83
§5A-3A-4. Responsibilities of the committee for the purchase of commodities and services from the handicapped.....	2	84
§5A-3A-5. Rules.....	2	85
§5A-3A-6. Exceptions.....	2	85
Civil Service System		
§29-6-7. Director of personnel; appointment; qualifications; powers and duties.....	2	110
§29-6-23. Special fund; appropriations; cost of administering article; acceptance of grants or contribution; disbursements.....	2	111
Department of Administration		
§5A-1-1. Definitions.....	2	17
§5A-1-2. Department of administration and office of secretary; secretary; division of finance and administration abolished; divisions; directors.....	2	18
§5A-1-3. Powers and duties of secretary, division heads and employees.....	2	19
§5A-1-4. Council of finance and administration.....	2	20
§5A-1-5. Reports by secretary.....	2	21
§5A-1-6. Oath and bond of secretary; bond required for director of the purchasing division; bonds for other directors and employees; cost of bonds.....	2	21
§5A-1-7. Delegation of powers and duties by secretary.....	2	22
§5A-1-8. Right of appeal from interference with functioning of agency.....	2	22
Employee Suggestion Award Board		
§5A-1A-1. Employee suggestion award program continued.....	2	23
§5A-1A-2. Board created; term of members.....	2	23
§5A-1A-3. Duties of board; excluded employees.....	2	23
§5A-1A-4. Awards.....	2	24
§5A-1A-5. State ownership of suggestions.....	2	25
Finance Division		
§5A-2-1. Finance division created; director; sections; powers and duties.....	2	26
§5A-2-2. General powers and duties of secretary as director of budget.....	2	26
§5A-2-3. Requests for appropriations; copies to legislative auditor.....	2	27
§5A-2-4. Contents of requests.....	2	28
§5A-2-5. Form of requests.....	2	29

	Ch.	Page
<b>ADMINISTRATION—(continued):</b>		
Finance Division—(continued):		
§5A-2-6. Information concerning state finances.....	2	29
§5A-2-7. Appropriations for judiciary.....	2	29
§5A-2-8. Examination of requests for appropriations.....	2	29
§5A-2-9. Appropriation requests by other than spending units.....	2	30
§5A-2-10. Powers of secretary in administration of expenditures.....	2	30
§5A-2-11. Estimates of revenue; reports on revenue collections; withholding department funds on noncompliance.....	2	30
§5A-2-12. Submission of expenditure schedules; contents; submission of information on unpaid obligations; copies to legislative auditor.....	2	31
§5A-2-13. Examination and approval of expenditure schedules; amendments; copies to legislative auditor.....	2	33
§5A-2-14. Reserves for emergencies.....	2	33
§5A-2-15. Requests for quarterly allotments; approval or reduction by governor.....	2	34
§5A-2-16. Limitation on expenditures.....	2	34
§5A-2-17. Transfers between items of appropriation of executive, legislative and judicial branches.....	2	34
§5A-2-18. Expenditure of excess in collections; notices to auditor and treasurer.....	2	35
§5A-2-19. Reports by spending units; copies to legislative auditor....	2	36
§5A-2-20. Reduction of appropriations—Powers of governor.....	2	36
§5A-2-21. Reduction of appropriations—Pro rata reduction of appropriations from general revenue.....	2	36
§5A-2-22. Reduction of appropriations—Pro rata reduction of appropriations from other funds.....	2	36
§5A-2-23. Approval of secretary of requests for changes and receipt and expenditure of federal funds by state agencies; copies or sufficient summary information to be furnished to secretary and legislative auditor; and consolidated report of federal funds.....	2	39
§5A-2-24. Management accounting.....	2	39
§5A-2-25. System of accounting to be certified to legislative auditor.....	2	40
§5A-2-26. Expenditure of appropriations—Generally.....	2	40
§5A-2-27. Expenditure of appropriations—Other than for purchases of commodities.....	2	40
§5A-2-28. Expenditure of appropriations—Purchases of commodities.....	2	41
§5A-2-29. Expenditure of appropriations—Payment of personal services.....	2	41
§5A-2-30. Expenditure of appropriations—Legislative and judicial expenditures.....	2	42
§5A-2-31. Appropriations for officers, commissions, boards or institutions without office at capitol.....	2	42
§5A-2-32. Submission of requests, amendments, reports, etc., to legislative auditor; penalty for noncompliance.....	2	42
General Services Division		
§5A-4-1. General services division; director.....	2	86
§5A-4-2. Care, control and custody of capitol buildings and grounds.....	2	86
§5A-4-3. Security officers; appointment; oath; carrying weapons; powers and duties generally, etc.....	2	87
§5A-4-4. Unlawful to kill or molest animals, birds or fowls upon grounds of capitol; powers and duties of security officers; penalties.....	2	88
§5A-4-5. Regulation of parking on state-owned property in Charleston; penalties; jurisdiction.....	2	89
Governor's Mansion Advisory Committee		
§5A-5-1. Committee continued; appointment, terms, etc., of mem- bers; meetings and responsibilities; annual report.....	2	91

	Ch.	Page
<b>ADMINISTRATION—(continued):</b>		
Governor's Mansion Advisory Committee—(continued):		
§5A-5-2. Office of governor's mansion director created; duties and responsibilities.....	2	92
§5A-5-3. Official use of state rooms in governor's mansion; vacating private rooms of mansion.....	2	93
Information Services and Communications Division		
§5A-7-1. Definitions.....	2	94
§5A-7-2. Division created; purpose; use of facilities, rules and regulations.....	2	94
§5A-7-3. Director; appointment and qualifications.....	2	95
§5A-7-4. Powers and duties of division generally; review of findings by governor; authority of governor to order transfer of equipment and personnel; professional staff.....	2	95
§5A-7-5. Control over central mailing office.....	2	96
§5A-7-6. Central mailing office employees.....	2	96
§5A-7-7. Central mailing office responsibilities.....	2	96
§5A-7-8. Use of the central mailing office.....	2	96
§5A-7-9. Preparation of mail for special rates.....	2	97
§5A-7-10. Special fund created; payments into fund; charges for services; disbursements from fund.....	2	97
§5A-7-11. Confidential records.....	2	98
Interest on Public Contracts		
§14-3-1. Payment of interest by the State on contracts when final payment is delayed.....	2	107
Public Records Management and Preservation Act		
§5A-8-1. Short title.....	2	98
§5A-8-2. Declaration of policy.....	2	98
§5A-8-3. Definitions.....	2	99
§5A-8-4. Categories of records to be preserved.....	2	100
§5A-8-5. State records administrator.....	2	100
§5A-8-6. Records management and preservation advisory committee.....	2	100
§5A-8-7. Duties of administrator.....	2	101
§5A-8-8. Rules and regulations.....	2	102
§5A-8-9. Duties of agency heads.....	2	102
§5A-8-10. Essential state records—Preservation duplicates.....	2	103
§5A-8-11. Essential state records—Safekeeping.....	2	103
§5A-8-12. Essential state records—Maintenance, inspection and use.....	2	104
§5A-8-13. Essential state records—Confidential records.....	2	105
§5A-8-14. Essential state records—Review of program.....	2	105
§5A-8-15. Records management and preservation of local records.....	2	105
§5A-8-16. Assistance to legislative and judicial branches.....	2	106
§5A-8-17. Disposal of records.....	2	106
§5A-8-18. Destruction of nonrecord materials.....	2	106
§5A-8-19. Annual report.....	2	106
Purchasing Division		
§5A-3-1. Division created; purpose; director; applicability of article.....	2	44
§5A-3-1a. Prescription drug products.....	2	45
§5A-3-2. Books and records of director.....	2	46
§5A-3-3. Powers and duties of director of purchasing.....	2	46
§5A-3-4. Rules and regulations of director.....	2	48
§5A-3-5. Purchasing section standard specifications—Promulgation and adoption by director; applicable to all purchases.....	2	50
§5A-3-6. Purchasing section standard specifications—Advisers from spending units.....	2	50
§5A-3-7. Director to advise with heads of state and other institutions producing commodities, services and printing....	2	50

	Ch.	Page
<b>ADMINISTRATION—(continued):</b>		
Purchasing Division—(continued):		
§5A-3-8. Facilities of division available to local governmental bodies.....	2	51
§5A-3-9. Examination and testing of purchases; report required....	2	51
§5A-3-10. Competitive bids; publication of solicitations for sealed bids; purchase of products of nonprofit workshops; employee to assist in dealings with nonprofit workshops.....	2	51
§5A-3-11. Purchasing in open market on competitive bids; bids to be based on standard specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder; uniform bids; record of bids; and exception.....	2	52
§5A-3-12. Prequalification disclosure and payment of annual fee by vendors required; form and contents; register of vendors; false affidavits, etc.; penalties.....	2	54
§5A-3-13. Contracts to be approved as to form; filing.....	2	56
§5A-3-14. Copies of purchase orders sent to finance division; certificates required before contracts awarded.....	2, 32	56, 370
§5A-3-15. Emergency purchases in open market.....	2	56
§5A-3-16. Special fund; purposes; how composed.....	2	57
§5A-3-17. Purchases or contracts violating article void; personal liability.....	2	57
§5A-3-18. Substituting for commodity bearing particular trade name or brand.....	2	58
§5A-3-19. Purchases from federal government and other sources.....	2	58
§5A-3-20. Spending units to submit lists of expendable commodities.....	2	58
§5A-3-21. Contracts for public printing and paper for spending units; printing plants at institutions.....	2	58
§5A-3-22. Legislative printing.....	2	59
§5A-3-23. Publication of reports of supreme court of appeals.....	2	59
§5A-3-24. Publication of departmental reports; uniform standards; limiting number of publications; requiring division to perform printing and binding.....	2	61
§5A-3-25. Printing, binding and stationery to be paid from current expense appropriations.....	2	62
§5A-3-26. Custodian of reports and acts; delivery to state law librarian for distribution; sale.....	2	62
§5A-3-27. Director to establish central duplicating office; exemption of particular spending units; contracts for duplicating.....	2	63
§5A-3-28. Financial interest of secretary, etc.; receiving reward from interested party; penalty; application of bribery statute.....	2	63
§5A-3-29. Penalty for violation of article.....	2	64
§5A-3-30. Obtaining money and property under false pretenses or by fraud from state; penalties.....	2	64
§5A-3-31. Corrupt combinations, collusions or conspiracies prohibited; penalties.....	2	65
§5A-3-32. Power of director to suspend right to bid; notice of suspension.....	2	65
§5A-3-33. Review of suspension by secretary.....	2	65
§5A-3-34. Authority over inventories and property.....	2	65
§5A-3-35. Submission of annual inventories.....	2	66
§5A-3-36. Inventory of removable property; maintenance and repair of office furniture, machinery and equipment.....	2	66
§5A-3-37. Preference for resident vendors; preference for vendors employing state residents; exceptions.....	2	66
§5A-3-37a. Preference for resident vendors; exceptions; reciprocal preference.....	2	69
§5A-3-38. Leases for space to be made in accordance with article; exception.....	2	70

	Ch.	Page
<b>ADMINISTRATION—(continued):</b>		
Purchasing Division—(continued):		
§5A-3-39. Leasing of space by secretary; delegation of authority.....	2	70
§5A-3-40. Selection of grounds, etc.; acquisition by contract or lease; long-term leases; requiring approval of secretary for permanent changes.....	2	71
§5A-3-41. Leases and other instruments for space signed by secretary or director; approval as to form; filing.....	2	72
§5A-3-42. Leasing for space rules and regulations.....	2	72
§5A-3-43. State agency for surplus property created.....	2	72
§5A-3-44. Authority and duties of state agency for surplus property.....	2	73
§5A-3-45. Disposition of surplus state property; semiannual report; application of proceeds from sale.....	2	74
§5A-3-46. Warehousing, transfer, etc., charges.....	2	77
§5A-3-47. Department of agriculture and other agencies exempted	2	77
§5A-3-48. Travel rules and regulations; exceptions.....	2	78
§5A-3-49. Central motor pool for state-owned vehicles and aircraft	2	78
§5A-3-50. Acquiring and disposing of vehicles and aircraft.....	2	79
§5A-3-51. Maintenance and service to vehicles and aircraft.....	2	79
§5A-3-52. Special fund for travel management created.....	2	79
§5A-3-53. Enforcement of travel management regulations.....	2	79
§5A-3-54. Payment of legitimate uncontested invoices; interest on late payments.....	2	80
State Building Commission		
§5-6-3. Definitions.....	2	11
§5-6-4. Powers of commission.....	2	13
§5-6-7. Contracts with commission to be secured by bond; competitive bids required for certain contracts.....	2	16
Voluntary Gilding the Dome Check-Off Program		
§5A-9-3. Contributions credited to special fund.....	2	106
<b>AGRICULTURE:</b>		
Cooperative Extension Workers		
§19-8-1. County extension service committee; composition; organization; duties and responsibilities; employemnt and compensation of extension workers.....	4	114
Insect Pests, Plant Diseases and Noxious Weeds		
§19-12-2. Definitions.....	5	117
§19-12-16. Penalty for violation of article, rules and regulations; duties of prosecuting attorney.....	5	119
Public Markets		
§19-2A-8. Applicant for permit to furnish surety bond for benefit of consignors; form of surety bond.....	3	112
West Virginia Agricultural Lining Materials Law		
§19-15A-1. Definitions of words and terms.....	6	120
§19-15A-2. Registration of brands; registration fees.....	6	122
§19-15A-3. Required labeling; toxic materials prohibited.....	6	123
§19-15A-4. Inspection fee; report of tonnage; annual report.....	6	124
§19-15A-5. Inspection; sampling; analysis.....	6	125
§19-15A-6. Embargo; suspension or cancellation of registration; seizure of materials.....	6	126
§19-15A-7. Deficiency assessment, tolerances and payment.....	6	127
§19-15A-8. Regulations.....	6	128
§19-15A-9. Lime fund.....	6	128
§19-15A-10. Penalties.....	6	128
West Virginia Pesticide Control Act		
§19-16A-1. Short title.....	7	130
§19-16A-2. Declaration of purpose; legislative finding.....	7	130
§19-16A-3. Definitions.....	7	131
§19-16A-4. Powers and duties of the commissioner.....	7	139

	Ch.	Page
<b>AGRICULTURE—(continued):</b>		
West Virginia Pesticide Control Act—(continued):		
§19-16A-5. Registration of pesticides; fees; confidentiality of trade secrets.....	7	141
§19-16A-6. Refusal or cancellation of registration.....	7	143
§19-16A-7. Annual pesticide business license.....	7	144
§19-16A-8. Financial security requirement for licensed pesticide business.....	7	146
§19-16A-9. Records of pesticide businesses.....	7	147
§19-16A-10. Restricted use pesticides.....	7	147
§19-16A-11. Application of this article to government entities; liability.....	7	147
§19-16A-12. Private and commercial applicator's license and certificate; registered technician certificate.....	7	148
§19-16A-13. Renewals.....	7	149
§19-16A-14. Exemptions.....	7	150
§19-16A-15. Reexamination or special examinations.....	7	151
§19-16A-16. Employee training program.....	7	151
§19-16A-17. Reciprocal agreement.....	7	151
§19-16A-18. Denial, suspension or revocation of license, permit or certification; civil penalty.....	7	152
§19-16A-19. Pesticide accidents; incidents or loss.....	7	152
§19-16A-20. Legal recourse of aggrieved persons.....	7	153
§19-16A-21. Violations.....	7	153
§19-16A-22. Criminal penalties; civil penalties; negotiated agreement.....	7	157
§19-16A-23. Creation of pesticide control fund in state treasury; disposition of certain fees to general revenue fund....	7	158
§19-16A-24. Issuance of subpoenas.....	7	159
§19-16A-25. Right of commissioner to enter and inspect; enforcement of article.....	7	159
§19-16A-26. Issuance of stop-sale; use or renewal orders; judicial review.....	7	160
§19-16A-27. Issuing warnings.....	7	161
<b>AIR POLLUTION CONTROL:</b>		
Air Pollution Control		
§16-20-5. Air pollution control commission—Powers and duties; legal services; rules; public hearings.....	8	162
§16-20-8. Penalties; recovery and disposition; duties of prosecuting attorneys.....	8	166
§16-20-9. Applications for injunctive relief.....	8	167
<b>ALCOHOLIC LIQUOR:</b>		
Licenses to Private Clubs		
§60-7-11. Licensee must purchase alcoholic liquors from or through commissioner or retail licensee; exceptions	9	193
Sales By Retail Liquor Licensees		
§60-3A-1. Short title.....	9	171
§60-3A-2. Legislative findings and declarations; legislative purpose.....	9	171
§60-3A-3. Sale of liquor by retail licensees permitted; cessation of retail sale of liquor by state.....	9	172
§60-3A-4. Definitions.....	9	172
§60-3A-5. Creation of retail liquor licensing board; members, terms, meetings and officers; general provisions.....	9	173
§60-3A-6. General powers and duties of board and commissioner	9	175
§60-3A-7. Market zones; Class A and Class B retail licenses.....	9	176
§60-3A-8. Retail license application requirements; retail licensee qualifications.....	9	177
§60-3A-9. Investigation of applicants for retail license; notification to applicants approving or denying application; general provisions relating to licensing	9	178

	Ch.	Page
<b>ALCOHOLIC LIQUOR—(continued):</b>		
<b>Sales By Retail Liquor Licensees—(continued):</b>		
§60-3A-10. Bidding procedure.....	9	179
§60-3A-10a. Preference for resident bidders.....	9	181
§60-3A-11. Bonding requirements.....	9	181
§60-3A-12. Annual retail license fee; expiration and renewal of retail licenses.....	9	182
§60-3A-13. Annual reports.....	9	183
§60-3A-14. Sale, assignment or transfer of retail license.....	9	183
§60-3A-15. Surrender of retail license.....	9	183
§60-3A-16. Restriction on location of retail outlets.....	9	184
§60-3A-17. Wholesale prices set by commissioner; continuation of price increases on liquor; retail licensees to purchase liquor from state; transportation and storage; method of payment.....	9	184
§60-3A-18. Days and hours retail licensees may sell liquor.....	9	185
§60-3A-19. Limitation on amount to be sold.....	9	185
§60-3A-20. Nonapplication of article to retail sales of nonintoxicating beer.....	9	185
§60-3A-21. Tax on purchases of liquor.....	9	186
§60-3A-22. Requirement for posting informational sign.....	9	186
§60-3A-23. Records required of retail licensees; inspection of records.....	9	186
§60-3A-24. Unlawful acts by persons.....	9	187
§60-3A-25. Certain acts of retail licensees prohibited; criminal penalties.....	9	187
§60-3A-26. Civil penalties.....	9	189
§60-3A-27. Suspension or revocation of retail license.....	9	190
§60-3A-28. Notice of and hearing on revocation.....	9	190
§60-3A-29. Disposition of inventory upon revocation or surrender of retail license.....	9	191
§60-3A-30. Employees.....	9	192
§60-3A-31. Rules of construction; severability.....	9	192
<b>Taxation</b>		
§11-15-9a. Exemptions; exceptions for sales of liquors and wines to private clubs.....	9	170
<b>APPROPRIATIONS:</b>		
<b>Budget Bill</b>		
Index to, by accounts.....	10	198
Making appropriations of public money out of the Treasury for fiscal year 1990.....	10	194
<b>Supplemental</b>		
Commission on Aging.....	14	279
Division of Highways.....	18	283
Division of Motor Vehicles.....	19,3	285,1595
Division of Personnel, Civil Service System and Civil Service Commission.....	17	282
Drunk Driving Prevention Fund, Division of Public Safety.....	22	294
Hospital Services Revenue Account, Division of Health.....	23	295
Information System Services Division Fund.....	21	293
Medical Services Fund.....	11	275
Nonintoxicating Beer Commissioner.....	15	280
State Department of Education, State Aid to Schools.....	1	1551
Supreme Court-General Judicial.....	12	276
Tax Division.....	13	278
Various Accounts.....	20,1,4	287,1589, 1595
Racing Commission.....	16	281
Consolidated Medical Services Fund.....	2	1594
<b>ARCHITECT—ENGINEER SERVICES:</b>		
<b>Procurement of Architect-Engineer Services</b>		
§5G-1-1. Declaration of legislative policy.....	24	297

	Ch.	Page
<b>ARCHITECT—ENGINEER SERVICES—(continued):</b>		
Procurement of Architect-Engineer Services—(continued):		
§5G-1-2. Definitions.....	24	297
§5G-1-3. Contracts for architectural and engineering services; selection process where total project costs are estimated to cost two hundred fifty thousand dollars or more.....	24	298
§5G-1-4. Contracts for architectural and engineering services; selection process where total project costs are estimated to cost less than two hundred fifty thousand dollars.....	24	299
<b>ARCHIVES AND HISTORY:</b>		
Division of Culture and History		
§29-1-5. Archives and history section; director.....	25	301
§29-1-6b. Protection of human skeletal remains; grave artifacts and grave markers; permits for excavation and removal; penalties.....	25	304
§29-1-7. Protection of historic and prehistoric sites; penalties.....	25	312
<b>BANKS AND BANKING:</b>		
Acquisition of Bank Shares		
§31A-8A-1. Legislative findings and purpose.....	28	317
§31A-8A-7. Acquisition of state bank or holding company by foreign bank; reciprocity; authority of the commissioner and of the board.....	28	318
Banking Institutions and Services Generally		
§31A-4-3. Minimum capital stock; one class of stock; par value; capitalization of surplus.....	28	317
§31A-4-44. Employment information.....	29	324
Board of Banking and Financial Institutions		
§31A-3-1. Board created; appointment, qualifications, terms, oath, etc., of members; quorum; meetings; when members disqualified from participation; compensation; records; office space; personnel.....	27	313
Department of Finance and Administration		
§5A-1-9. Reporting of state assets held to secretary and state treasurer.....	26	313
Funds Transfers		
<b>PART I. SUBJECT MATTER AND DEFINITIONS.</b>		
§46-4A-101. Short title.....	30	326
§46-4A-102. Subject matter.....	30	326
§46-4A-103. Payment order—Definitions.....	30	326
§46-4A-104. Funds transfer—Definitions.....	30	327
§46-4A-105. Other definitions.....	30	328
§46-4A-106. Time payment order is received.....	30	330
§46-4A-107. Federal reserve regulations and operating circulars	30	331
§46-4A-108. Exclusion of consumer transactions governed by federal law.....	30	331
<b>PART II. ISSUE AND ACCEPTANCE OF PAYMENT ORDER.</b>		
§46-4A-201. Security procedure.....	30	331
§46-4A-202. Authorized and verified payment orders.....	30	332
§46-4A-203. Unenforceability of certain verified payment orders	30	333
§46-4A-204. Refund of payment and duty of customer to report with respect to unauthorized payment order.....	30	334
§46-4A-205. Erroneous payment orders.....	30	334
§46-4A-206. Transmission of payment order through funds- transfer or other communication system.....	30	336
§46-4A-207. Misdescription of beneficiary.....	30	336
§46-4A-208. Misdescription of intermediary bank or beneficiary's bank.....	30	338
§46-4A-209. Acceptance of payment order.....	30	339
§46-4A-210. Rejection of payment order.....	30	341



	Ch.	Page
<b>BANKS AND BANKING—(continued):</b>		
Funds Transfers—(continued):		
§46-4A-211. Cancellation and amendment of payment order.....	30	342
§46-4A-212. Liability and duty of receiving bank regarding unaccepted payment order.....	30	344
PART III. EXECUTION OF SENDERS PAYMENT ORDER BY RECEIVING BANK.		
§46-4A-301. Execution and execution date.....	30	344
§46-4A-302. Obligations of receiving bank in execution of payment order.....	30	345
§46-4A-303. Erroneous execution of payment order.....	30	346
§46-4A-304. Duty of sender to report erroneously executed payment order.....	30	347
§46-4A-305. Liability for late or improper execution of failure to execute payment order.....	30	348
PART IV. PAYMENT.		
§46-4A-401. Payment date.....	30	349
§46-4A-402. Obligation of sender to pay receiving bank.....	30	349
§46-4A-403. Payment by sender to receiving bank.....	30	351
§46-4A-404. Obligation of beneficiary's bank to pay and give notice to beneficiary.....	30	352
§46-4A-405. Payment by beneficiary's bank to beneficiary.....	30	353
§46-4A-406. Payment by originator to beneficiary; discharge of underlying obligation.....	30	355
PART V. MISCELLANEOUS PROVISIONS.		
§46-4A-501. Variation by agreement and effect of funds-transfer system rule.....	30	356
§46-4A-502. Creditor process served on receiving bank; setoff by beneficiary's bank.....	30	356
§46-4A-503. Injunction or restraining order with respect to funds transfer.....	30	358
§46-4A-504. Order in which items and payment orders may be charged to account; order of withdrawals from accounts.....	30	358
§46-4A-505. Preclusion of objection to debit of customer's account.....	30	358
§46-4A-506. Rate of interest.....	30	358
§46-4A-507. Choice of law.....	30	359
Lending and Credit Rate Board		
§47A-1-2. Board staff, offices, funding.....	28	323
<b>BEER:</b>		
Nonintoxicating Beer		
§11-16-8. Form of application for license; fee and bond; refusal of license.....	31	362
§11-16-22. Powers of the commissioner; rules, or orders.....	31	364
§11-16-23. Revocation or suspension of license; monetary penalty; hearing assessment of costs; establishment of enforcement fund.....	31	366
§11-16-24. Hearing on sanctioning of license; notice; review of action of commissioner; clerk of court to furnish commissioner copy of order or judgment of conviction of licensee assessment of costs.....	31	367
<b>BIDS:</b>		
Purchasing Division		
§5A-3-14. Bids to be based on standard specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder, uniform bids; record of bids; and exception.....	2,32	56,370

	Ch.	Page
<b>BLANNERHASSETT PARK:</b>		
Blennerhassett Historic Park Commission		
§29-8-2. Blennerhassett historical state park commission established; members; terms; meeting; quorum; compensation; expenses.....	33	372
<b>BOARD OF INVESTMENTS:</b>		
West Virginia Board of Investments		
§12-6-5a. Legislative findings and limitation on certain board actions.....	34	374
§12-6-18. West Virginia board of investments continued.....	35	376
<b>BUDGET BILL:</b>		
<i>See</i> APPROPRIATIONS		
<b>CABLE TELEVISION:</b>		
West Virginia Cable Television Systems Act		
§5-18-1. Short title.....	36	379
§5-18-2. Legislative findings.....	36	379
§5-18-3. Definitions.....	36	379
§5-18-4. Cable franchise required; franchising authority.....	36	382
§5-18-5. Existing cable franchises.....	36	383
§5-18-6. West Virginia cable television advisory board created; appointments and terms of members; meetings; vacancies; quorum.....	36	384
§5-18-7. Compensation and expenses of board members.....	36	387
§5-18-8. Duties of West Virginia cable television advisory board...	36	388
§5-18-9. Application or proposal for cable franchise; fee; certain requirements.....	36	390
§5-18-10. Cable franchise application or proposal procedure; public hearing; notice.....	36	391
§5-18-11. Issuance of cable franchise authority; criteria; content.....	36	392
§5-18-12. Cable system installation, construction, operation, removal; general provisions.....	36	393
§5-18-13. Revocation, alteration, or suspension of cable franchise; penalties.....	36	395
§5-18-14. Renewal of cable franchise.....	36	396
§5-18-15. Transfer of cable franchise.....	36	397
§5-18-16. Rates; filing with board; approval.....	36	397
§5-18-17. Requirement for adequate service; terms and conditions of service.....	36	398
§5-18-18. Procedure for restoring interrupted service and improving substandard service.....	36	398
§5-18-19. Credit or refund for interrupted service.....	36	399
§5-18-20. Office operating requirements; office hours.....	36	399
§5-18-21. Notice to subscribers regarding quality of service.....	36	399
§5-18-22. Recording of subscriber complaints.....	36	400
§5-18-23. Franchise document clearinghouse.....	36	400
§5-18-24. Rights of individuals.....	36	401
§5-18-25. Complaints; violations; penalties.....	36	401
§5-18-26. Other duties of board; suit to enforce article.....	36	403
§5-18-27. Reports.....	36	403
§5-18-28. Annual fees; effect of application and filing fees on franchise fees.....	36	403
§5-18-29. Cable television industry not regulated as a utility.....	36	404
§5-18-30. Severability.....	36	404
<b>CAPITAL COMPANY ACT:</b>		
§5E-1-4. Definitions.....	37	405
<b>CAPITOL BUILDING COMMISSION:</b>		
§4-8-1. Creation; composition; qualifications.....	38	407
§4-8-4. Powers and duties generally.....	38	408

	Ch.	Page
<b>CHARITABLE FUNDS:</b>		
Solicitation of Charitable Funds Act		
§29-19-3. Commission on charitable organizations; powers and duties.....	5	1601
§29-19-6. Certain persons and organizations exempt from registration.....	5	1601
§29-19-7. Filing of solicitation contracts.....	5	1603
§29-19-8. Limitations on activities of charitable organizations.....	5	1604
§29-19-9. Registration of professional fund-raising counsel and professional solicitor; bonds; records; books.....	5	1605
§29-19-13. Prohibited acts.....	5	1607
§29-19-15. Enforcement and penalties.....	5	1608
<b>CHILD ADVOCATE:</b>		
West Virginia Child Advocate Office		
§48A-2-1. Reestablishment.....	39	408
<b>CHILD SUPPORT:</b>		
Child Advocate Office		
§48A-2-2. Legislative purpose and intent; responsibility of the child advocate office.....	40	437
§48A-2-7. Powers and duties of the director; advisory council.....	40	438
Children's Advocate		
§48A-3-1. Purposes; how article to be construed.....	40	440
§48A-3-2. Placement of children's advocates throughout the state; supervision; office procedures.....	40	441
§48A-3-3. Duties of the children's advocate.....	40	442
§48A-3-6. Investigations of support orders; notice and hearing upon modifications; petition for change.....	40,6	445,1613
§48A-3-8. Compensation; expenses.....	40	446
Divorce, Annulment and Separate Maintenance		
§48-2-1. Definitions.....	40	421
§48-2-15. Relief upon ordering divorce or annulment or granting decree of separate maintenance.....	40	425
§48-2-15a. Withholding from income prior to November 1, 1990.....	40	431
§48-2-15b. Withholding from income on and after November 1, 1990.....	40	432
§48-2-27. Sealing by clerk of evidence and pleadings.....	40	434
§48-2-33. Disclosure of assets required.....	40	434
§48-2-15b. Withholding from income on and after November 1, 1990.....	6	1611
Establishment of Paternity		
§48A-6-5. Representation of parties.....	40	473
§48A-6-6. Establishing paternity by acknowledgement of natural father.....	40	474
Evidence and Witnesses		
Miscellaneous Provisions		
§57-5-4. Production of writings by person other than party.....	40	475
Proceedings Before a Master		
§48A-4-1. Appointment of family law masters; term of office; vacancy; qualifications; removal; compensation and expenses; budget; location of offices; matters to be heard by master; fees for hearings; notice of master's hearing; content of notice; determination of issues by consent; hearing.....	40	447
§48A-4-2. Hearing procedures.....	40	454
§48A-4-2a. Acts or failures to act in the physical presence of family law masters.....	40	456
§48A-4-3. Default orders; temporary orders.....	40	457
§48A-4-4. Recommended orders.....	40	458

	Ch.	Page
<b>CHILD SUPPORT—(continued):</b>		
Proceedings Before a Master—(continued):		
§48A-4-4a. Form of notice of recommended order.....	40	459
§48A-4-5. Orders to be entered by circuit court exclusively.....	40	459
§48A-4-6. Circuit court review of master's action or recommended order.....	40	460
§48A-4-7. Procedure for review by circuit court.....	40	460
§48A-4-8. Form of petition for review.....	40	461
§48A-4-9. Answer in opposition to a petition for review.....	40	461
§48A-4-10. Circuit court review of master's recommended order.....	40	462
Remedies for the Enforcement of Support Obligations and Visitation		
§48A-5-1. Action to obtain an order for support of minor child.....	40	463
§48A-5-3. Withholding from income of amounts payable as support	40	465
Revised Uniform Reciprocal Enforcement of Support Act		
§48A-7-14. Duty of initiating court.....	40	475
Vital Statistics		
§16-5-12. Birth registration generally.....	40	411
§16-5-14. Delayed registration of births.....	40	413
§16-5-15. Judicial procedure to establish facts of birth.....	40	414
§16-5-16. Court reports of adoption.....	40	416
§16-5-17. Court reports of determination of paternity.....	40	418
§16-5-18b. Limitation on use of social security numbers.....	40	418
§16-5-24. Correction and amendment of vital records.....	40	420
<b>CHILD WELFARE:</b>		
Adoption		
§48-4-16. Prohibition of purchase or sale of child; penalty; definitions; exceptions.....	41	476
Procedure in Cases of Child Neglect or Abuse		
§49-6-3. Petition to court when child believed neglected or abused—Temporary custody.....	42	484
Purposes; Definitions		
§49-1-3. Definitions relating to abuse and neglect.....	41	478
§49-7-7. Contributing to delinquency or neglect of a child.....	41	482
<b>CIVIL SERVICE:</b>		
Civil Service System		
§29-6-4. Classified-exempt service; additions to classified service; exemptions.....	43	487
<b>CLAIMS:</b>		
Claims Against the State		
Adjutant General.....	46	495
Alcohol Beverage Control Commissioner.....	46	495
Attorney General.....	46	496
Board of Education.....	46	495
Board of Directors, State College System.....	46	497
Board of Trustees, WVU.....	46	497
Department of Agriculture.....	46	497
Department of Corrections.....	46	497
Department of Education.....	44,46	490,498
Department of Energy.....	46	498
Department of Finance and Administration.....	44,46	491,498
Department of Health.....	46	499
Department of Health—Chief Medical Examiner.....	46	499
Department of Highways.....	46	499
Department of Human Services.....	46	500
Department of Labor.....	46	503
Department of Motor Vehicles.....	46	503
Department of Natural Resources.....	46	503

CLAIMS—(continued):	Ch.	Page
Department of Public Safety.....	46	503
Division of Forestry.....	46	504
Education and State Employees Grievance Board.....	46	504
Governor's Office.....	44	491
Human Rights Commission.....	46	504
Nonintoxicating Beer Commission.....	46	504
Public Employees Insurance Agency.....	46	505
Public Service Commission.....	46	505
Railroad Maintenance Authority.....	44	491
Secretary of State.....	46	505
State Athletic Commission.....	46	505
State Fire Marshal.....	46	505
State Tax Department.....	46	505
State Treasurer.....	46	506
Supreme Court of Appeals.....	46	506
Workers' Compensation Fund.....	44,46	492,506
West Virginia, State of.....	46	506
Crime Victims		
Claims for compensation.....	45	492

## CODE AMENDED:

Ch.	Art.	Sec.		Page
3	1	17	Election of circuit judges, county and district officers and magistrates.....	670
3	4A	2,9,10,10a;11a*;12,13,15,16,17,19,19a,20,21,22,24,25	Electronic voting systems.....	680
3	4A	12	Ballot label arrangement in vote recording devices.....	671
3	5	4,7	Nominations in primary elections, filing announcements of candidates.....	673
3	10	3	Vacancies in state offices, U. S. senators and judges.....	676
4	1	22*	Defining the phrase "next meeting of the Senate".....	1036
4	3	5*	Charges for use of legislative computer system.....	1037
4	8	1,4	Continuing Capitol Building Commission.....	407
4	10	4	Rescheduling termination of governmental agencies.....	1357
5	1	12	Payment of costs of confinement.....	1200
5	6	3,4,7	Definitions, powers of state building commission, contracts to be secured by bond.....	11
5	10	19,22c;54*	Public employees retirement and permitting persons who are elected or appointed to nonremunerative governmental positions to continue to receive incentive annuities.....	1651
5	18*		Cable Television Systems Act.....	378
5A	1	1,2,3,4,5,6;7*;8*	Department of Administration, delegation of powers and duties by secretary, right of appeal from interference with functioning of agency.....	17

\* Indicates new chapter, article or section.

## CODE AMENDED—(Continued):

Ch.	Art.	Sec.		Page
5A	1	9*	Reporting of state assets held to secretary of administration and state treasurer.....	313
5A	1A		Employee Suggestion Award Board.....	23
5A	2	1 through 9; 10*;11*;12 through 32	Finance Division, powers of secretary in administration of expenditures, estimates of revenue.....	26
5A	3	1;1a*;2 through 5; 6;7*;8 through 22; 23*;24 through 37; 37a*;38 through 47; 48*;49*;50*;51*; 52*;53*;54*	Purchasing Division.....	44
5A	3	14	Bid specifications, bids on school buses, copies of purchase orders sent to finance division.....	56, 370
5A	3A		Central nonprofit coordinating agency and committee for the purchase of commodities and service from the handicapped.....	82
5A	4	1,2,3,4,5	General Services Division.....	86
5A	5	1,2,3	Governor's Mansion Advisory Committee.....	91
5A	7	1,2,3,4,5, 6,7,8;9*;10*;11*	Information Services and Communications Division.....	93
5A	8	1,2,3,4,5,6, 7;8* through 19*	Public Records Management and Preservation Act.....	98
5A	9	3	Special fund for deposit of voluntary contributions for guilding capitol dome.....	106
5B	1	1,2,4,5,6,6a,7, 8,10,12,12b,13, 15,16,17,18	Division of Tourism and Parks.....	608
5B	1	12a*	Prohibiting the transfer of Plum Orchard Lake, Pleasants Creek, Big Ditch Lake and Teeter Creek.....	809
5B	1	13	Moncove Lake State Park.....	810
5B	2	2a*;3	General powers of Office of Community and Industrial Development, divisions created.....	628
5B	2D*		West Virginia Guaranteed Work Force Program.....	633
5B	6*		Small Business Expansion Assistance Program.....	1307
5D	1	4,5;5a*;5b*;9	Public Energy Authority.....	1627
5E	1	4	Definitions, Capital Company Act.....	405
5F	2	1	Transferring administration of crime victims compensation fund from Department of Public Safety to Court of Claims.....	581
5F	2	1	Administration of Department of Veterans' Affairs and Veterans' Council transferred from Department of Health and Human Resources to Department of Public Safety.....	1497

\*Indicates new chapter, article or section.

CODE AMENDED—(Continued):

Ch.	Art.	Sec.		Page
5G*			Procurement of Architect-Engineer Services.....	297
6B	1	4	Remedies and penalties in ethics law in addition to other applicable remedies and penalties.....	709
6B	2	3,4,5,7,8	Immunity from sanctions for persons acting in good faith reliance on Ethics Commission advisory opinions, selection of investigative panel members, public disclosure of certain commission actions, financial disclosure and exceptions thereto, conflicts of interest	709
6B	2A*		Disclosures to be made in manner prescribed by legislative rules.....	733
6B	3	4	Expenditure changes to be reported by lobbyists and deletion of provision requiring lobbyists to report additional information by legislative rule.....	733
7	5	22	County solid waste assessment fees authorized.....	1312
7	14	15a,19a	Prohibiting off-duty employment of law-enforcement officers in labor disputes.....	920
7	14	17b	Sick leave and unlimited unpaid sick leave for deputy sheriffs.....	596
7	20*		Local Powers Act.....	1042
8	11	1,1a	Ordinances to make municipal powers effective, disposition of criminal costs into State Treasury account for regional jail and prison development fund.....	533
8	14	3	Powers, authority and duties of law-enforcement officers and policemen.....	921
8	18	23	Discontinuance of water service for nonpayment of sewer service rates and charges.....	1145
8	19		Municipal and county waterworks and electric power systems.....	1151
8	19	12a	Lien for delinquent service rates and charges.....	1148
8	20	10	Nonliability of owner of real property for delinquent water and sewer service charges of a tenant.....	1149
8	22	13,26a	Actuarial valuation report, policemen's firemen's, etc., pension and relief funds and supplemental cost of living benefit.....	1306
9	5	14	Reimbursement of capital costs for certain health care facilities financed by public bonded indebtedness.....	806
9A	2	1	State homes for veterans.....	1507
10	1	14	Library Commission to offer certain printed material for sale.....	1245

\* Indicates new chapter, article or section.

## CODE AMENDED—(Continued):

Ch.	Art.	Sec.		Page
10	1	22*	Confidential nature of certain library records.....	1246
11	1C*		Fair and equitable property valuation.....	1360
11	3	9	Exempting from taxation property used by nonprofit corporations providing natural gas for public purposes.....	1388
11	6B	2,3,12	Twenty thousand dollar Homestead Property Tax Exemption allowed and specifying requirements, limitations and conditions therefor.....	1646
11	8	6e*;6f*	Levy rates when appraisal results in tax increase.....	1380
11	10	3	Application of article governing tax procedure and administration.....	1391
11	13C	14*	Restrictions and limitations on credits allowed under business investment and jobs expansion credit.....	1417
11	15	2,9,33	Consumers sales tax, definitions, exemptions and effective date.....	1394
11	15	9a	Exception to tax exemption for sales of liquor and wine to private clubs.....	170
11	16	8,22,23,24	Licenses for retail sale of nonintoxicating beer.....	362
11	21	8a through 8f*	Personal income tax credit for investment in rehabilitated buildings.....	1429
11	21	9,55	Personal income tax terms.....	1434
11	21	18;71a*	Taxable income of resident estate or trust, withholding tax on effectively connected income of nonresident partners, shareholders or beneficiaries.....	1412
11	23	3a,5	Business franchise tax terms and apportionment of tax base.....	1439
11	24	3,13,13a	Corporation net income tax terms, returns, time for filing and method of filing for business taxes.....	1446
11	24	23a through 23f*	Corporate net income tax credit of businesses for investment in rehabilitated buildings.....	1432
11A	1	3	Accrual, time for payment and interest on delinquent taxes.....	1391
12	1	10;13*	Treasurer to keep accounts with state depositories, payment of banking services.....	1455
12	3	17	Liabilities incurred which cannot be paid out of current appropriations.....	107
12	4	13*	Requiring state treasurer to reconcile banks in a timely manner.....	1463
12	5	5	Protection and handling of securities.....	1456
12	6	4,5,6,9,9c,15	Board of Investments.....	1456
12	6	5a*	Prohibiting attempts to recover overpayments from consolidated fund to local governments.....	374

\* Indicates new chapter, article or section.



## CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Page
12	6	18*	Continuation of Board of Investments..... 376
14	2A	4,14,26	Imposing costs on persons convicted of driving under the influence and deposit of such costs into the crime victims compensation fund..... 591
14	2A	14	Grounds for denial of claim by crime victims..... 543
14	3	1	Payment of interest by state on contracts when final payment delayed..... 107
15	1B	23*	American flag for burial of deceased members of national guard..... 1173
15	2	4,5	Appointment of commissioned and noncommissioned officers, career progression system, Division of Public Safety..... 1247
15	2	12	Reimbursement by Division of Motor Vehicles of Division of Public Safety for services rendered..... 1252
15	2	25	Carrying of weapons upon retirement or medical discharge from Division of Public Safety..... 1256
15	2	43*	Awarding service revolver upon retirement from Department of Public Safety..... 1258
15	5	2,4;4b*;4c*;20, 23;24*;25*;26*;27*	Abolishment of Emergency Services Advisory Council and creation of Disaster Recovery Board, providing for a Disaster Recovery Trust Fund and the use thereof, tax exemption for such fund and permissible uses of assets thereof, annual report and severability..... 1615
16	1	10	Powers and duties of the Director of Health..... 749
16	1	21*	Administrator of Division of Health authorized to charge for services rendered..... 758
16	2D	2,4	Definitions, restricting certificate of need exemption for private office practice for certain medical technologies..... 760
16	2D	5	Powers and duties, State Health Planning and Development Agency..... 776
16	2G	1	WIC Program and authorizing advance payments from special account..... 1659
16	5	12,14,15,16, 17;18b*;24	Birth registration, procedure, court reports of adoption, paternity, limitation on use of social security numbers, correction of vital records.... 411
16	20	5,8,9	Air Pollution Control..... 161
16	29	1,2	Furnishing of copies of health care records to patients, reasonable expenses to be reimbursed..... 780

\* Indicates new chapter, article or section.

## CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Page
16	29C	4,5	Termination date, Task Force on Uncompensated Health Care and Medicaid Expenditures..... 782
16	30A*		Medical Power of Attorney Act..... 785
17	16A	18:18a*	Continued toll collection at intersection of U. S. Route 19 and the Turnpike, commuter pass system..... 1465
17	16C*		West Virginia Wayport Authority..... 1508
17A	3	4	Certification of title tax..... 1069
17A	3	14	Registration plates..... 1076
17A	4	10	Salvage certificates for certain wrecked or damaged vehicles..... 1082
17A	6	1a*	Unlawful to be an automobile broker..... 1113
17A	6	1,4,5,10,15	Licensing of wreckers, dismantlers and rebuilders..... 1085
17A	6A	8a*	Compensation to dealers for service rendered on warranty and factory recall work..... 1114
17A	6B*		License services..... 1102
17A	8	9	Theft of a rented or leased vehicle..... 1117
17A	8	13*	Theft of a motor vehicle offered for sale which has been obtained for temporary use for demonstration purposes..... 1118
17A	10	3	Registration fees for certain classes of vehicles..... 1073
17A	10	3b*	Motorcycle safety fee..... 1120
17B	1	1	Driver licenses, words and phrases defined..... 1120
17B	1D*		Motorcycle safety education..... 1123
17B	2	1,5,7b*;7c*;8,12;15*	Issuance, expiration and renewal of license..... 1126
17C	12	7	Overtaking and passing school buses..... 1132
17C	13	6	Handicapped parking and violations by nonhandicapped persons..... 1449
17C	15	48	Altered suspension systems..... 1134
17D	2A	5,7	Suspension of driver license..... 1137
18	2	5a	State Board of Education rules to be filed with Legislature..... 645
18	2	5b*	State Board of Education, Medicaid eligible children..... 1556
18	2B	2a*	County withdrawal from multi-county vocational center prohibited..... 1557
18	5	13	General authority, county boards of education..... 1557
18	5	15	Reducing number of days to be used outside school environment..... 640
18	8	1	Commencement and termination of compulsory school attendance..... 1561
18	9A	4,5,5a,7,9,10,13,13b	Foundation allowances..... 1567
18	9A	11	Computation of local share, appraisal and assessment of property..... 1386

\* Indicates new chapter, article or section.

CODE AMENDED—(Continued):

Ch.	Art.	Sec.		Page
18	9B	6a*	Submission of budget.....	1578
18	20	1;1b*	Special programs and teaching services for exceptional children, preschool programs for handicapped children.....	1578
18A	2	4*	Commercial driver's license for school personnel.....	657
18A	2	7	Assignment, transfer, promotion, demotion, suspension and dismissal of school personnel.....	1581
18A	4	1	In-field master's degree.....	658
18A	4	5a,5b;5d*;7	County salary supplements for teachers, school service personnel, 1990 appropriation for salary equity and substitute teachers' pay.....	1583
18A	4	8e*	Competency testing for service personnel.....	663
18A	5	2	Including Martin Luther King Day as a legal school holiday.....	643
18B	1	11*	Colleges and universities to provide appropriate services to meet needs of students with handicapping conditions.....	1588
18B	6	2.4	Advisory councils of faculty and of classified employees.....	666
19	2A	8	Applicant for public market permit to furnish surety bond.....	112
19	8	1	State-funded raise for cooperative extension service employees.....	114
19	12	2,16	Additional definition of "dealer" and increasing penalty for violation of article governing noxious weeds.....	117
19	12A	3,5,6;6a*;8	Farm Management Commission continued, powers, duties and responsibilities, appointment of director, special revenue account, effect of management plan on employees.....	739
19	15A	1 through 10	Agricultural liming materials law.....	120
19	16A		WV Pesticide Control Act.....	129
19	23	6	Powers and authority of Racing Commission.....	800
19	23	12b*	Televised racing days.....	804
20	1	18d	Continuing the U. S Geological Survey....	748
20	1A	4	Sales of public land to federal or state entities for less than fair market value.....	1174
20	2	33	Compensation of county officials and agents for issuance of hunting, trapping and fishing licenses.....	813
20	2	40b	Class A-1 small arms hunting license.....	814
20	2	46j	Minimum legal bore diameter permitted for muzzle-loading hunting of deer.....	816
20	2	57	Negligent shooting, wounding or killing of human beings or livestock while hunting, and shooting across road or near building or crowd.....	1198

\* Indicates new chapter, article or section.

## CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Page
20	2C*		Interstate Wildlife Violator Compact..... 1176
20	4*		Equestrian Activities Responsibility Act..... 1187
20	5A	2	Further defining the term "other wastes" in the Water Pollution Control Act..... 1191
20	5F	1,2,4a;4b*;5,5b,5c	Solid waste management..... 1313
20	5H	6,22	Underground storage tank management..... 1195
20	9	1,2,7;10a through 10j*; 12,12a,12b, 12c;12d*	County and regional solid waste authorities..... 1325
20	11	5	Petition for referendum, county recycling of solid waste..... 1352
21A	4	6	Offices and meetings of the Unemployment Compensation Board of Review..... 1477
21A	5	10,10a	Unemployment Compensation, experience ratings, optional assessments on employers and employees..... 1477
21A	6	3	Disqualification for benefits under Unemployment Compensation..... 1484
21A	8A	8	Unemployment Compensation assessments..... 1490
21A	9	9*	Reed Act appropriations..... 1492
21A	10	7,8,11,19	Unemployment Compensation, false representations, recovery of benefits paid on misrepre- sentation, requiring information and disclosure of information to child support agencies..... 1492
22	1	2,5;7a*	Commissioner of Energy and Division of Energy Advisory Board..... 1639
22	1	5a*	Use of special revenue funds by Commissioner of Energy..... 703
22	4	1	Reclamation Board of Review..... 1643
22A	3	11	Surface coal mining and reclamation bonding requirements, increasing tonnage fee of clean coal mined..... 704
23	1	1	Office of Workers' Compensation Commissioner continued..... 1526
23	2	4,5a,9;14*;15*; 16*;17*;18	Workers' Compensation, classification of industries, collection of premiums, election of employer to provide own system of compensation, mandatory participation, sale or transfer of business, liabilities of successor employer, acceptance or assignment of premium rate, right of employer to hearing and promulgation of legislative rules for implementation..... 1667
23	2A*		Workers' Compensation, subrogation..... 1684

\* Indicates new chapter, article or section.

CODE AMENDED—(Continued):

Ch.	Art.	Sec.		Page
23	3	1	Workers' Compensation Fund.....	1685
23	4	1d,3,3a;3b*; 3c*;6,6d*;7a,7b*; 8,8c,9,14,15b,19	Workers' Compensation, disability and death benefits.....	1688
23	4B	8	Coal Workers' Pneumoconiosis Fund and transfers to Workers' Compensation Fund.....	1723
23	5	1,1a,1b,1c,1d, 1e;1f*;1g*;1h*; 1i*;3,3a,4b	Workers' Compensation, review by Commissioner.....	1725
23	5A	3*	Termination of Workers' Com- pensation benefits of injured employees prohibited under certain circumstances.....	1739
24	2	3c*	Cessation of PSC jurisdiction over rates for certain services of telephone utilities.....	1259
24	2	4b	Rate-making jurisdiction for access charges of telephone cooperatives conferred upon PSC.....	1262
24	6	2,3	Regulation of local emergency telephone systems.....	1266
25	1	2	Division of Corrections continued.....	564
25	1	17*	Monitoring of inmate telephone calls.....	565
25	5*		Private prisons.....	545
27	11	1	Removing requirement that a duly licensed physician treating a person subject to a competency hearing be licensed in the state.....	1064
28	5B	13,14	Appropriation for buildings, equipment, etc., and increasing maximum permissible amount on deposit in prison industries account.....	567
29	1	5,6b*;7	Issuance of permits for excavation, destruction or removal of historic ruins, burial grounds, etc.....	301
29	1A	2a*	Life members of the Commission on Uniform State Laws.....	1496
29	3	5b	Removing requirement that a copy of state fire code and amendments thereto be filed with each county clerk.....	745
29	3	16b*	Use of live trees in public buildings.....	747
29	3B	4	Journeyman electrician's test and granting of license.....	1201
29	6	4	Exemptions to coverage under classified civil service.....	487
29	6	7,23	Director of personnel, division of personnel created.....	110,111
29	8	2	Regulatory authority over water transport of visitors to Blenner- hassett Island.....	372
29	12	5c	Insurance for damages allegedly resulting from obstetric treatment of medicaid patients.....	817

\* Indicates new chapter, article or section.

## CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Page
29	19	3,6,7,8,9,13,15	Solicitation of charitable funds..... 1600
29	20	1	Women's Commission continued and correcting designation of ex officio members..... 1524
29	21	2,5,6,7,8,9,10,11,12,13;13a*;15,16,17,19;21*	Public defender services..... 1224
29	22	9,10,13,18,19,20,21	State Lottery Act..... 1054
29A	1	3	Administrative procedures, definitions, application of chapter..... 645
29A	3A	1,11a	Definitions, additional powers and duties of Legislative Oversight Commission on Education Accountability..... 646
29A	3B*		State Board of Education Rule Making... 648
30	3	4	Designee of Director of Health permitted to be a member of the Board of Medicine..... 799
30	3	9	Voluntary agreement of physicians to seek alcohol or chemical dependency treatment to be confidential..... 1203
30	12		Architects..... 1207
30	26	3,5,7,9,12	License fees for hearing-aid dealers and fitters to be established by rule..... 1217
31	15	6a*	Special power of Economic Development Authority to transfer funds, use of such funds..... 638
31	20	20	Increasing maximum amount of indebtedness of Regional Jail and Correctional Facility Authority..... 535
31A	3	1	Bank assets required to qualify as member of board of banking and financial institutions..... 313
31A	4	3	Minimum capital stock..... 317
31A	4	44*	Revealing certain employment information by banking institutions..... 324
31A	8A	1,7	Acquisition of bank shares by foreign banks..... 318
33	3	5b*;17*	Insurance licensing fees, capital and surplus requirements and taxation of insurers..... 820
33	3	13	Insurance license fees and charges..... 821
33	10	1,2,3,4,5,7,8,10,14,18,19a,21,29,36;37*;38*;39*	Rehabilitation and liquidation..... 828
33	12	2,6;8a*;29*	Qualifications, fees, licensing of nonresident property casualty agents, change of address..... 887
33	12	2a*	Continuing education program for insurance agents..... 823
33	14	7	Dependent coverage, group life insurance..... 891
33	15	4d*	Third party reimbursement for rehabilitation services..... 894
33	16	3h*	Third party reimbursement for rehabilitation services, group accident and sickness insurance..... 895

\* Indicates new chapter, article or section.

## CODE AMENDED—(Continued):

Ch.	Art.	Sec.		Page
33	16A	14	Benefit levels, election to provide group coverage, notification of conversion privilege, policy delivered outside state.....	902
33	17A*		Property insurance declination, termination and disclosure.....	904
33	20	18	Premium reduction for certain drivers fifty-five years of age or older.....	911
33	22	2	Applicability of other code provisions.....	847
33	23	2	Applicability of other code provisions.....	848
33	24	4	Hospital, medical, dental and health service corporations, exemptions and applicability of other laws.....	913
33	24	4:14 through 42*	Hospital, medical, dental and health service corporations.....	848
33	24	7c*	Third party reimbursement for rehabilitation services, hospital, medical, dental and other service corporations.....	897
33	25	8b*	Third party reimbursement for rehabilitation services, health care corporations.....	899
33	25	19*	Administrative supervision, health care corporations.....	876
33	25A	8b*	Third party reimbursement for rehabilitation services, Health Maintenance Organization Act.....	900
33	25A	30*	Administrative supervision, health maintenance organizations.....	876
33	31	6	Corporate organization, captive insurance.....	876
33	32	3	Charter and license requirements for domestic groups, risk retention.....	877
33	34*		Administrative supervision.....	878
33	35*		Criminal sanctions for failure to report impairment.....	884
36	8	8:8a*:8b*; 11,16,18	Disposition of unclaimed property.....	1470
37	14*		Real Estate Appraiser Licensing and Certification.....	1274
38	1	14	Future advances secured by credit line deed of trust.....	1038
46	4A*		Funds transfers.....	325
46A	1	102	Consumer credit definitions.....	507
46A	2	102,103	Assignee subject to claims and defenses, lender subject to same arising from sales.....	520
46A	2	128	Increasing recovery of attorney's fees and collection costs.....	525
46A	2	139*	Unlawful commercial telefacsimile transmission.....	518
46A	3	109	Additional creditor's fees for insurance purposes.....	527

\* Indicates new chapter, article or section.

## CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Page
47	1A	14	Removing annual registration fee for dealers and retailers of articles of bedding..... 1305
47	10	6a*	Posting of alcoholic content of gasoline..... 748
47	21	2,7	Definitions and license fees for charitable raffles..... 1268
47A	1	2	Lending and Credit Rate Board staff..... 323
48	2	1,15,15a; 15b*;27,33	Definitions, divorce, annulment, decree of separate maintenance, withholding from income, sealing of evidence and pleadings, disclosure of assets required..... 421
48	2	15b	Withholding child support payments from income..... 1611
48	2A	1 through 10	Prevention of domestic violence..... 597
48	4	16*	Prohibition of purchase or sale of a child..... 476
48A	2	1	Child Advocate Office Reestablished..... 408
48A	2	2,7	Child Advocate Office responsibilities, powers and duties of director..... 437
48A	3	1,2,3,6,8	Children's advocate, placement, duties, investigations, compensation..... 440
48A	3	6	Investigations of support orders, notice and hearing upon modifications and petition for change..... 1613
48A	4	1,2;2a*;3,4; 4a*;5,6,7,8,9,10	Proceedings before a Family Law Master, acts or failure to act in presence of, recommended orders..... 447
48A	5	1,3	Action to obtain order for support of minor child, withholding income for payment of support..... 463
48A	6	5,6	Establishment of paternity, representation of parties, establishment by acknowledgment of natural father..... 473
48A	7	14	Duty of initiating court, enforcement of support..... 475
49	1	3	Definitions relating to abuse and neglect..... 478
49	6	3	Custody of abused or neglected children during emergency situations..... 484
49	7	7	Contributing to delinquency or neglect of a child..... 482
50	3	1,2,4a	Fee increase, filing civil actions in magistrate court and deposit of fees into Regional Jail and Prison Development Fund..... 535
51	2	1	Numbered divisions within multi-judge circuits for election purposes..... 677
51	2	1a	Extending the January term of court in Ohio County for one month..... 569
51	2	1p	Terms of court, sixteenth judicial circuit in Marion County..... 570

\* Indicates new chapter, article or section.



## CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Page
51	4	3	Preservation of court records..... 570
51	7	4	Court reporter fees and copying fees..... 572
54	3	1	Expanding definition of "acquiring agency"..... 702
55	1	1	When writing required..... 1
56	3	31	Actions by or against nonresident operators of motor vehicles involved in highway accidents..... 1140
57	3	9*	When communications to priests, nuns, clergymen, rabbis or other religious counselors not subject to being compelled as testimony..... 736
57	5	4	Production of writings by person other than party..... 475
57	5	12*	Certain reproductions of documents deemed duplicates..... 737
58	5	4,16,17	Time for appeal or writ of error, time for giving bond, court prescribed method and form of reproducing record..... 574
59	1	11,28a	Fee increase, filing civil actions in circuit court and deposit of fees into Regional Jail and Prison Development Fund..... 537
60	3A*		Sale of alcoholic liquor by retail licensee..... 171
60	7	11	Purchase by retail licensee of alcoholic liquor from commissioner..... 193
61	1	9*	Misdemeanor offense for impersonating a law-enforcement officer..... 576
61	3	49	Proof of ownership upon purchase of metals by junk dealers..... 578
61	5	8,9,10,12	Escape of prisoners..... 559
61	8E*		Display of video ratings or lack thereof..... 580
62	11B*		Home Detention Act..... 914
64			Legislative Rules..... 924

## CODE REPEALED:

Ch.	Art.	Sec.	Page
2	2	1a	Special Memorial Days..... 639
5	8		Public Records Management and Preservation Act..... 10
5A	1	2a,2b,2c	Powers and duties of Commissioner of Finance and Administration, division heads and employees; security officers; unlawful to kill or molest animals, birds or fowls upon capitol grounds..... 10
5A	2	19a,33,35,36	Transfers between items of allocation within general revenue accounts of state institutions of higher education; legislative and judicial expenditures; appropriations for officers, commissions, boards or institutions

\* Indicates new chapter, article or section.

## CODE REPEALED—(Continued):

Ch.	Art.	Sec.	Page
			without office at capitol; submission of requests, amends, reports, etc., to Legislative Auditor..... 10
5A	3	14a	Prequalification disclosure by vendors..... 10
5A	4	1a,6,7	Regulation of parking on state-owned property in Charleston; right of appeal from interference with functioning of agency; preparation of mail for special postal rates..... 10
5A	4A		Governor's Mansion Advisory Committee..... 10
5A	5	4,5	Leases and other instruments signed by commissioner; commissioner's power and authority generally..... 10
5A	8	3a	Disposition by director of surplus state property..... 10
5B	2	5	Division of Research and Strategic Planning..... 608
5B	3		West Virginia Export Development Authority..... 608
8	12	20	Notice of suit against municipalities..... 1144
11	10	10a	Legal services, tax procedure and administration..... 1393
15	2	1a,9	Department of Public Safety rank restructure and establishment of promotion evaluation board..... 1247
17D	4	1,9,10,11,13,20	Proof required upon certain convictions, proof to be furnished for each registered vehicle, certificate of insurance as proof, notice of cancellation or termination of certified policy, duration of proof..... 1136
18	9A	14	Incentive for staffing improvement..... 1555
19	12A	9	Penalty provision, Farm Management Commission..... 738
19	16B		WV Pesticide Use and Application Act..... 129
28	1	9,10,11	Payment by counties of costs of detention of youths by Commissioner of Corrections..... 567
46A	7	116	Consumer Affairs Advisory Council..... 531
48	1	16	Marriages between colored persons..... 597
48A	3	5	Relinquishment of contingent right of dower by spouse not joining in conveyance or contract to convey..... 411
48A	5	7	Visitation enforcement, contempt and penalty..... 411
61	7	12,13	Negligent shooting, wounding or killing of human beings or livestock while hunting, and shooting across road or near building or crowd..... 1198

---

\* Indicates new chapter, article or section.

# INDEX

1769

	Ch.	Page
<b>CONSUMER CREDIT AND PROTECTION:</b>		
Consumer Affairs Advisory Council		
Repeal of section creating.....	51	531
Consumer Credit Protection		
§46A-2-139. Unlawful commercial facsimile transmission; right of action for injunction, damages.....	47	518
§46A-2-102. Assignee subject to claims and defenses.....	48	520
§46A-2-103. Lender subject to claims and defenses arising from sales.....	48	522
§48A-2-128. Unfair or unconscionable means of debt collection.....	49	525
Finance Charges and Related Provisions		
§46A-3-109. Additional charges; insurance; when refund required; civil penalty.....	50	527
Short Title, Definitions and General Provisions		
§46A-1-102. General definitions.....	47	507
<b>CORRECTIONS:</b>		
Commitment of Youthful Male Offenders		
§1. Repeal of sections relating to payment by counties of costs of detention of youths by commissioner of corrections.....	56	567
Compensation Awards to Victims of Crimes		
§14-2A-14. Grounds for denial of claims or reduction of award; maximum awards; awards for emotional distress; mental anguish, etc.....	53,67	543,593
Crimes Against Public Justice		
§61-5-8. Aiding escape and other offenses relating to adults and juveniles in custody, imprisoned or in detention; penalties.....	53	559
§61-5-9. Permitting escape; refusal of custody of prisoner; penalties.....	53	561
§61-5-10. Jail or private prison breaking by convicted or unconvicted prisoner; penalties.....	53	562
§61-5-12. Escapes from, and other offenses relating to, state benevolent and correctional institution, or private prison or mental health facilities; penalties.....	53	562
Fees and Allowances		
§59-1-11. Fees to be charged by clerk of circuit court.....	52	537
§59-1-28a. Disposition of filing fees in civil actions and fees for services in criminal cases.....	52	539
Magistrate Courts		
§50-3-1. Costs in civil actions.....	52	535
§50-3-2. Costs in criminal proceedings.....	52	536
§50-3-4a. Disposition of criminal costs and civil filing fees into state treasury account for regional jail and prison development fund.....	52	537
Municipal Corporations		
§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 against nonresidents	52	533
§8-11-1a. Disposition of criminal costs into state treasury account for regional jail and prison development fund.....	52	534
Organization and Institutions		
§25-1-2. Reestablishment of division; findings.....	54	564
§25-1-17. Monitoring of inmate and patient telephone calls; procedures and restrictions; calls to attorneys excepted.....	55	565

	Ch.	Page
<b>CORRECTIONS—(continued):</b>		
Prison-Made Goods		
§28-5B-13. Appropriation for buildings, equipment, etc.; self-liquidating contracts.....	57	567
§28-5B-14. Prison industries account.....	57	568
Private Prisons		
§25-5-1. Short title.....	53	546
§25-5-2. Legislative findings and purpose.....	53	546
§25-5-3. Definitions.....	53	546
§25-5-4. Authority of the commissioner of the division of corrections; authority of secretary of department of public safety.....	53	548
§25-5-5. Prohibition of constructing or operating a correctional facility; exceptions.....	53	549
§25-5-6. Authority of the state and its political subdivisions to contract for correctional services.....	53	549
§25-5-7. Granting private contractor ability to contract with foreign contracting agencies.....	53	549
§25-5-8. Reporting requirements.....	53	549
§25-5-9. Terms of contract.....	53	550
§25-5-10. Site selection.....	53	551
§25-5-11. Standards of operation; violations.....	53	552
§25-5-12. Access by contracting agency, commissioner; reimbursement of expenses; report by commissioner.....	53	554
§25-5-13. Sovereign immunity.....	53	555
§25-5-14. Powers and duties not delegable to contractor.....	53	555
§25-5-15. Bonding requirements.....	53	556
§25-5-16. Insurance.....	53	556
§25-5-17. Liability; indemnification.....	53	557
§25-5-18. Firearms; capture of escapees; nonresident private correctional officers.....	53	558
§25-5-19. Employee training requirements; preference.....	53	558
§25-5-20. Reimbursement to state and its subdivisions.....	53	558
Regional Jail and Correctional Facility Authority		
§31-20-20. Authorized limit on borrowing.....	52	535
<b>COURTS AND THEIR OFFICERS:</b>		
Appellate Relief in Supreme Court of Appeals		
§58-5-4. Time for appeal or writ of error; notice of intent to file petition in criminal cases to be filed with clerk stating grounds.....	62	574
§58-5-16. Time for giving bond.....	62	575
§58-5-17. Court to prescribe method and form of reproducing record; reproduction of record by clerk; distribution; costs.....	62	575
Circuit Courts; Circuit Judges		
§51-2-1a. First circuit.....	58	569
§51-2-1p. Sixteenth circuit.....	58	570
General Provisions Relating to Clerks of Courts		
§51-4-3. Preservation and destruction of papers; micro-photography and electronic storage.....	60	571
Official Reporters		
§51-7-4. Transcript of notes; fees; authenticity; transcript for judge in criminal cases.....	61	572
<b>CRIMES AND THEIR PUNISHMENT:</b>		
Crimes Against the Government		
§61-1-9. Impersonation of law-enforcement officer or official; penalty.....	63	577
Crimes Against Property		
§61-3-49. Purchase of metals by junk dealers, salvage yard or recycling facilities owners or operators; records of such purchases; penalties.....	64	578

	Ch.	Page
<b>CRIMES AND THEIR PUNISHMENT—(continued):</b>		
Display of Video Ratings or Lack Thereof		
§61-8E-1. Legislative purpose.....	65	580
§61-8E-2. Definitions.....	65	580
§61-8E-3. Labeling of video movies designated for sale or rental; penalties.....	65	581
<b>CRIME VICTIMS:</b>		
Compensation Awards to Victims of Crimes		
§14-2A-4. Creation of crime victims compensation fund.....	67	592
§14-2A-14. Grounds for denial of claim or reduction of awards; maximum awards; awards for emotional distress; mental anguish, etc.....	53,67	543,593
§14-2A-26. Rules and regulations.....	67	595
Transfer of Agencies and Boards		
§5F-2-1. Transfer and incorporation of agencies and boards.....	66,187	581,1497
<b>DEPUTIES:</b>		
<i>See</i> LAW-ENFORCEMENT OFFICERS.		
<b>DOMESTIC RELATIONS:</b>		
Marriage		
§1. Repeal of section relating to marriages between colored persons	69	597
Prevention of Domestic Violence		
§48-2A-1. Purpose.....	70	598
§48-2A-2. Definitions.....	70	598
§48-2A-3. Jurisdiction; effect of complaining party leaving residence; priority of petitions filed under this article.....	70	599
§48-2A-4. Commencement of proceeding; counterclaim.....	70	599
§48-2A-5. Temporary orders of court; hearings.....	70	600
§48-2A-6. Protective orders.....	70	601
§48-2A-7. Contempt.....	70	602
§48-2A-8. Testimony of husband and wife.....	70	603
§48-2A-9. Record keeping and reporting.....	70	603
§48-2A-10. Enforcement procedure for temporary and protective order.....	70	605
<b>ECONOMIC DEVELOPMENT:</b>		
Division of Tourism and Parks		
§5B-1-1. Short title.....	71	609
§5B-1-2. Legislative findings.....	71	609
§5B-1-4. Division created; appointment, compensation and qualifications of commissioner.....	71	610
§5B-1-5. General powers of the division.....	71	610
§5B-1-6. Sections created; continuation of civil service coverage for persons employed in the former department of commerce.....	71	612
§5B-1-6a. Program and policy action statement; submission to joint committee on government and finance.....	71	613
§5B-1-7. Section of tourism; purpose; powers and duties generally	71	613
§5B-1-8. Section of advertising and promotion; purpose; powers and duties generally.....	71	616
§5B-1-10. Section of sales and marketing; purpose; powers and duties generally.....	71	618
§5B-1-12. Section of parks and recreation created; duties, records and equipment previously transferred from the department of natural resources to the department of commerce; funds.....	71	619
§5B-1-12b. Conveyance of Grandview State Park to the National Park Service; governor, director of the division of natural resources and director of the division of		

	Ch.	Page
<b>ECONOMIC DEVELOPMENT—(continued):</b>		
Division of Tourism and Parks—(continued):		
§5B-1-13. Section of parks and recreation; purpose; powers and duties generally.....	71,103	621,810
§5B-1-15. Contracts for operation of commissaries, restaurants, recreational facilities and other establishments limited to ten years' duration; renewal at option of commissioner; termination of contract by the commissioner; contracts for development of revenue producing facilities within the state parks and recreational facilities; level of investment of contracts; term of investment contract; reservation of option to renew; and purchase of investment in event of default and price determination upon such event.....	71	623
§5B-1-16. Acquisition of former railroad subdivision for establishment of Greenbrier River Trail; development, protection, operation and maintenance of trail.....	71	627
§5B-1-17. Correlation of projects and services.....	71	627
§5B-1-18. Sunset provision.....	71	627
Office of Community and Industrial Development		
§5B-2-2a. General powers of the office.....	71	628
§5B-2-3. Divisions created.....	71	632
West Virginia Economic Development Authority		
§31-15-6a. Special power of authority to transfer funds; limitations; fund created; use of funds to provide customized job training program by governor's office of economic and community development.....	72	638
West Virginia Guaranteed Work Force Program		
§5B-2D-1. Short title.....	71	633
§5B-2D-2. Definitions.....	71	633
§5B-2D-3. Training program.....	71	633
§5B-2D-4. Funds.....	71	634
§5B-2D-5. Program activities.....	71	635
§5B-2D-6. Reporting.....	71	636
§5B-2D-7. Marketing.....	71	637
<b>EDUCATION:</b>		
Area Vocational Program		
§18-2B-2a. Withdrawal from multi-county vocational center prohibited.....	2	1557
Authority; Rights; Responsibility		
§18A-5-2. Holidays, closing of schools; time lost because of such; special Saturday classes.....	73	643
Compulsory School Attendance		
§18-8-1. Commencement and termination of compulsory school attendance; exemptions.....	2	1561
County Board of Education		
§18-5-13. Authority of boards generally.....	2	1557
§18-5-15. School term; exception; levies; ages of persons to whom schools are open.....	73	640
Definitions and Application of Chapter		
§29A-1-3. Application of chapter; limitations.....	74	645
Education of Exceptional Children		
§18-20-1. Establishment of special programs and teaching services for exceptional children.....	2	1578
§18-20-1b. Preschool programs for handicapped children; rules and regulations.....	2	1580
Governance		
§18B-1-11. Colleges and universities to provide appropriate services to meet needs of students with handicapping conditions.....	2	1588

	Ch.	Page
<b>EDUCATION—(continued):</b>		
Higher Education Rule Making		
§29A-3A-1. Definitions.....	74	646
§29A-3A-11a. Additional powers and duties; subpoena powers.....	74	647
Other Boards and Advisory Councils		
§18B-6-2. Advisory councils of faculty.....	78	666
§18B-6-4. Advisory councils of classified employees.....	78	667
Public School Support		
§18-9A-4. Foundation allowance for professional educators.....	2	1567
§18-9A-5. Foundation allowance for service personnel.....	2	1569
§18-9A-5a. Ratio of foundation allowances for professional educators and service personnel to net enrollment.....	2	1570
§18-9A-7. Foundation allowance for transportation cost.....	2	1572
§18-9A-9. Foundation allowance for other current expense and substitute employees.....	2	1573
§18-9A-10. Foundation allowance to improve instructional programs.....	2	1574
§18-9A-13. Allowance for counties in severe financial crisis.....	2	1576
§18-9A-13b. Allowances for remedial and accelerated education programs and salary equity.....	2	1577
State Board of Education		
§18-2-5a. Board rules to be filed with Legislature.....	74	645
§18-2-5b. Medicaid eligible children.....	2	1556
Salaries, Wages, and Other Benefits		
§18A-4-1. Definitions.....	76	658
§18A-4-5a. County salary supplements for teachers.....	2	1583
§18A-4-5b. County salary supplements for school service personnel	2	1585
§18A-4-5d. 1990 appropriation for salary equity.....	2	1587
§18A-4-7. Substitute teachers pay.....	2	1587
§18A-4-8e. Competency testing for service personnel.....	77	663
School Personnel		
§18A-2-4. Commercial driver's license for school personnel.....	75	657
§18A-2-7. Assignment, transfer, promotion, demotion, suspension and recommendation of dismissal of school personnel by superintendent; preliminary notice of transfer; hearing on the transfer; proof required.....	2	1581
State Board of Education Rule Making		
§29A-3B-1. Definitions.....	74	649
§29A-3B-2. Rules to be promulgated in accordance with this article	74	649
§29A-3B-3. Rules of procedure required.....	74	649
§29A-3B-4. Filing of proposed rules.....	74	650
§29A-3B-5. Notice of proposed rule making.....	74	650
§29A-3B-6. Filing findings and determinations for rules in state register; evidence deemed public record.....	74	651
§29A-3B-7. Notice of hearings.....	74	652
§29A-3B-8. Adoption of rules.....	74	652
§29A-3B-9. Submission of legislative rules to the legislative oversight commission on education accountability.....	74	652
§29A-3B-10. Emergency legislative rules; procedure for promulgation; definition.....	74	654
§29A-3B-11. Legislative review of procedural rules, interpretive rules and existing legislative rules.....	74	655
§29A-3B-12. Prior rules.....	74	656
State Board of School Finance		
§18-9B-6a. Delaying submission of budget.....	2	1578
<b>ELECTIONS:</b>		
Circuit Courts: Circuit Judges		
§51-2-1. Judicial circuits; terms of office; legislative findings and declarations; elections; terms of court.....	79	677

	Ch.	Page
<b>ELECTIONS—(continued):</b>		
Electronic Voting Systems		
§3-4A-2. Definitions.....	80	680
§3-4A-9. Minimum requirements of electronic voting systems.....	80	682
§3-4A-10. County clerk to be custodian of vote re-recording devices and tabulating equipment; duties.....	80	684
§3-4A-10a. Proportional distribution of vote recording devices.....	80	684
§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.....	80	685
§3-4A-12. Ballot label arrangement in vote recording devices; when uniform numbering required; drawing by lot to determine position of candidates on ballots or ballot labels; sealing of devices; record of identifying numbers.....	79,80	671,686
§3-4A-13. Inspection of ballots and vote recording devices; duties of county commission, ballot commissioners and election commissioners; records relating to ballots and vote recording devices; receipt of election materials by ballot commissioners.....	80	689
§3-4A-15. Instructions and help to voters; vote recording device models; facsimile diagrams; sample ballots; legal ballot advertisements.....	80	690
§3-4A-16. Delivery of vote recording devices; time, arrangement for voting.....	80	691
§3-4A-17. Check of vote recording devices before use; corrections; reserve vote recording devices.....	80	692
§3-4A-19. Conducting electronic voting system elections generally; duties of election officers.....	80	693
§3-4A-19a. Form of ballots; requiring the signatures of poll clerks; prohibiting the counting of votes cast on ballots without such signatures.....	80	696
§3-4A-20. "Independent" voting in primary elections.....	80	696
§3-4A-21. Absent voter ballots; issuance, processing and tabulation	80	697
§3-4A-22. Assistance to illiterate and disabled voters.....	80	699
§3-4A-24. Voting by challenged voter.....	80	700
§3-4A-25. Closing polls.....	80	701
Filling Vacancies		
§3-10-3. Vacancies in offices of state officials, United States senators and judges.....	79	676
General Provisions and Definitions		
§3-1-17. Election of circuit judges; county and district officers; magistrates.....	79	670
Primary Elections and Nominating Procedures		
§3-5-4. Nomination of candidates in primary elections.....	79	673
§3-5-7. Filing announcements of candidates; re-requirements; when section applicable.....	79	674
<b>EMERGENCY SERVICES:</b>		
Emergency Services		
§15-5-2. Definitions.....	7	1615
§15-5-4. West Virginia disaster recovery board created; organization of board; appointment of board members; term of office and expenses of board members; meetings.....	7	1618
§15-5-4b. West Virginia disaster recovery board to disburse funds from recovery fund.....	7	1620
§15-5-4c. Powers and duties of the West Virginia disaster recovery board.....	7	1620
§15-5-20. Disaster prevention.....	7	1622
§15-5-23. Severability; conflicts.....	7	1623
§15-5-24. Disaster recovery trust fund; use of funds of authority.....	7	1624
§15-5-25. Prohibition on funds inuring to the benefit of or being distributable to members, officers or private persons	7	1625



INDEX

1775

	Ch.	Page
<b>EMERGENCY SERVICES—(continued):</b>		
Emergency Services—(continued):		
§15-5-26. Tax exemption.....	7	1625
§15-5-27. Annual report.....	7	1625
<b>ENERGY:</b>		
Commissioner of Energy		
§22-1-2. Declaration of legislative findings and policy.....	8	1639
§22-1-5. Commissioner of energy; appointment; duties; qualifications; removal; salary; expenses; oath and bond.....	8	1641
§22-1-7a. Advisory board.....	8	1643
Implementation of Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the 1987 Amendments thereto known as Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987.		
§54-3-1. Definitions.....	81	702
Public Energy Authority		
§5D-1-4. West Virginia public energy authority continued; West Virginia public energy board continued; organization of authority and board; appointment of board members; term, compensation and expenses; director of authority; appointment.....	8	1627
§5D-1-5. Powers, duties and responsibilities of authority generally.....	8	1629
§5D-1-5a. Publication of notice of certain meetings.....	8	1637
§5D-1-5b. Public hearing before final consideration of bond issue or exercise of right of eminent domain.....	8	1637
§5D-1-9. Expenses of authority.....	8	1639
Reclamation Board of Review		
§22-4-1. Appointment and organization of reclamation board of review; authority, compensation, expenses and removal of board members.....	8	1643
Title: Purposes; Division of Energy		
§22-1-5a. Special revenue.....	82	703
West Virginia Surface Coal Mining and Reclamation Act		
§22A-3-11. Performance bonds; amount and method of bonding; bonding requirements, special reclamation tax and fund; prohibited acts; period of bond liability.....	82	704
<b>ETHICS:</b>		
Lobbyists		
§6B-3-4. Reporting by lobbyists.....	83	733
Rules		
§6B-2A-1. Legislative rules; revocation of existing commission emergency rules; manner of reporting.....	83	733
Short Title; Legislative Findings; Purposes and Intent; Construction and Application of Chapter; Severability.		
§6B-1-4. Remedies and penalties in addition to other applicable remedies and penalties.....	83	709
West Virginia Ethics Commission; Powers and Duties; Disclosure of Financial Interest by Public Officials and Employees; Appearances Before Public Agencies.		
§6B-2-3. Advisory opinions.....	83	709
§6B-2-4. Complaints; dismissals; hearings; disposition; judicial review.....	83	710
§6B-2-5. Ethical standards for elected and appointed officials and public employees.....	83	719
§6B-2-7. Financial disclosure statement; contents.....	83	727
§6B-2-8. Exceptions to financial disclosure requirements and conflicts of interest provisions.....	83	730

	Ch.	Page
<b>EVIDENCE AND WITNESSES:</b>		
Competency of Witnesses		
§57-3-9. Communications to priests, nuns, clergymen, rabbis or other religious counselors not subject to being compelled as testimony.....	84	736
Miscellaneous Provisions		
§57-5-12. Certain documents deemed duplicates.....	85	737
<b>FARM MANAGEMENT COMMISSION:</b>		
Farm Management Commission		
§19-12A-3. Farm management commission continued; composition; chairman; quorum; meetings; vacancies.....	86	739
§19-12A-5. Powers, duties and responsibilities of commission.....	86	740
§19-12A-6. Appointment of farm management director; qualifications; powers and duties.....	86	742
§19-12A-6a. Special revenue account.....	86	744
§19-12A-8. Effect of management plan on employees.....	86	744
<b>FAYETTE COUNTY:</b>		
New River Gorge Bridge Day Commission		
Bridge day commission created; terms of members; vacancies.....	192	1528
Office space and staff support; officers; meeting; reimbursement for expenses.....	192	1529
Commission powers; rules and regulations promulgated by the county commission.....	192	1530
Restriction on use of public highways.....	192	1531
Limitation of liability.....	192	1531
<b>FIRE PREVENTION:</b>		
Fire Prevention and Control Act		
§29-3-5b. Promulgation of rules, regulations and statewide building code.....	87	745
§29-3-16b. Use of live trees in public buildings, exceptions.....	88	747
Liquid Fuels and Lubricating Oils		
§47-10-6a. Posting of the alcoholic content of gasoline.....	89	748
<b>GEOLOGICAL SURVEY:</b>		
Organization and Administration		
§20-1-18d. United States geological survey continued and reestablished.....	90	748
<b>HANCOCK COUNTY:</b>		
Repeal of act requiring the county of Hancock to provide funds for certain monuments; marking certain graves; providing for a caretaker, bequests and endowments; providing a levy not to exceed two cents; and appointing a committee.....	193	1532
<b>HEALTH:</b>		
Certificate of Need		
§16-2D-2. Definitions.....	93	760
§16-2D-4. Exemptions from certificate of need program.....	93	768
§16-2D-5. Powers and duties of state health planning and development agency.....	94	776
Health Care Records		
§16-29-1. Copies of health care records to be furnished to patients	95	780
§16-29-2. Reasonable expenses to be reimbursed.....	95	782
Indigent Care		
§16-29C-4. Legislative study; appointment of members; expenses; reports; termination.....	96	782
§16-29C-5. Effective date and termination date.....	96	785

	Ch.	Page
<b>HEALTH—(continued):</b>		
Medical Power of Attorney		
§16-30A-1. Short title.....	97	786
§16-30A-2. Statement of purpose and legislative findings.....	97	786
§16-30A-3. Medical power of attorney.....	97	787
§16-30A-4. Powers of representative.....	97	788
§16-30A-5. Successor representative.....	97	789
§16-30A-6. Executing a medical power of attorney.....	97	790
§16-30A-7. Nomination of committee or guardian.....	97	791
§16-30A-8. Presumption of validity.....	97	791
§16-30A-9. Proof of continuance of medical power of attorney by affidavit.....	97	791
§16-30A-10. Protection of health care providers.....	97	792
§16-30A-11. Medical power of attorney to be made part of the medical records.....	97	792
§16-30A-12. Right to receive information regarding proposed health care; medical records.....	97	792
§16-30A-13. Revocation.....	97	792
§16-30A-14. Insurance; other laws.....	97	793
§16-30A-15. Preservation of existing rights.....	97	794
§16-30A-16. Prohibition.....	97	794
§16-30A-17. Reciprocity.....	97	794
§16-30A-18. Standard form.....	97	795
§16-30A-19. Public education; guidelines for execution in health care facilities.....	97	797
§16-30A-20. Severability.....	97	798
State Division of Health		
§16-1-10. Powers and duties of the director of health.....	91	749
§16-1-21. Fees for services; health services fund.....	92	758
West Virginia Medical Practice Act		
§30-3-4. Definitions.....	98	799
<b>HOMESTEAD PROPERTY TAX EXEMPTION:</b>		
Homestead Property Tax Exemption		
§11-6B-2. Definitions.....	9	1646
§11-6B-3. Twenty thousand dollar homestead exemption allowed	9	1648
§11-6B-12. Effective date.....	9	1650
<b>HORSE AND DOG RACING:</b>		
Horse and Dog Racing		
§19-23-6. Powers and authority of racing commission.....	99	800
§19-23-12b. Televised racing days; merging of pari-mutuel wagering pools.....	100	804
<b>HUMAN SERVICES:</b>		
Miscellaneous Provisions		
§9-5-14. Medicaid program; health care facilities financed by bonds; rules regarding reimbursement of capital costs.....	101	806
<b>HUNTING AND FISHING:</b>		
Division of Commerce		
§5B-1-12a. Certain hunting and fishing areas prohibited from transfer.....	102	809
§5B-1-13. Division of parks and recreation; purpose; powers and duties generally.....	71,103	621,810
Wildlife Resources		
§20-2-33. Authority of director to designate agents to issue licenses; bonds; fees.....	104	813
§20-2-40b. Class A-1 small arms hunting license.....	105	814
§20-2-46j. Class V resident and Class VV nonresident muzzle- loading deer hunting licenses.....	106	816

	Ch.	Page
<b>INSURANCE:</b>		
Accident and Sickness Insurance		
§33-15-4d. Third party reimbursement for rehabilitation services....	113	894
Administrative Supervision		
§33-34-1. Definitions.....	110	878
§33-34-2. Applicability.....	110	880
§33-34-3. Notice to comply with written requirements of commissioner, noncompliance and administrative supervision.....	110	880
§33-34-4. Confidentiality of certain proceedings and records.....	110	881
§33-34-5. Prohibited acts during periods of supervision.....	110	881
§33-34-6. Administrative election of proceedings.....	110	882
§33-34-7. Rules.....	110	882
§33-34-8. Meetings between the commissioner and the special deputy supervisor.....	110	882
§33-34-9. Special deputy supervisor appointed and expenses.....	110	883
§33-34-10. Immunity.....	110	884
§33-34-11. Severability.....	110	884
Agents, Brokers, Solicitors and Excess Line		
§33-12-2. Qualifications.....	111	887
§33-12-2a. Duty to receive continuing education; educational requirements, compliance; penalties.....	109	823
§33-12-6. Fees.....	111	889
§33-12-8a. Licensing of nonresident property casualty agents.....	111	890
§33-12-29. Change of address.....	111	890
Captive Insurance		
§33-31-6. Corporate organization.....	110	876
Criminal Sanctions for Failure to Report Impairment		
§33-35-1. Definitions.....	110	884
§33-35-2. Duty to notify.....	110	885
§33-35-3. Penalty.....	110	886
Farmers' Mutual Fire Insurance Companies		
§33-22-2. Applicability of other provisions.....	110	847
Fraternal Benefit Societies		
§33-23-2. Applicability of other provisions.....	110	848
Group Accident and Sickness Insurance		
§33-16-3h. Third party reimbursement for rehabilitation services....	113	895
Group Health Insurance Commission		
§33-16A-14. Benefit levels; election to provide group coverage; notification of conversion privilege; policy delivered outside state.....	114	902
Group Life Insurance		
§33-14-7. Dependent coverage.....	112	891
Health Care Corporations		
§33-25-8b. Third party reimbursement for rehabilitation services....	113	899
§33-25-19. Administrative supervision.....	110	876
Health Maintenance Organization Act		
§33-25A-8b. Third party reimbursement for rehabilitation services	113	900
§33-25A-30. Administrative supervision.....	110	876
Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations		
§33-24-4. Exemptions; applicability of insurance laws.....	110,117	849,913
§33-24-7c. Third party reimbursement for rehabilitation services....	113	897
§33-24-14. Definitions.....	110	850
§33-24-15. Jurisdiction, venue and appeal of delinquency proceedings; exclusive remedy.....	110	852
§33-24-16. Commencement of delinquency proceedings.....	110	852
§33-24-17. Ex parte orders, injunctions and other orders.....	110	853

	Ch.	Page
<b>INSURANCE—(continued):</b>		
<b>Hospital Service Corporations, Medical Service Corporations—(continued):</b>		
§33-24-18. Grounds for rehabilitation of a corporation.....	110	856
§33-24-19. Grounds for liquidation.....	110	857
§33-24-20. Grounds for administrative supervision.....	110	857
§33-24-21. Order of rehabilitation.....	110	860
§33-24-22. Order of liquidation of corporation.....	110	861
§33-24-23. Conduct of delinquency proceedings against a corporation.....	110	861
§33-24-24. Claims of nonresidents against a corporation.....	110	863
§33-24-25. Proof of claims.....	110	863
§33-24-26. Priority of certain claims.....	110	865
§33-24-27. Order of distribution.....	110	865
§33-24-28. Attachment, garnishment or execution.....	110	867
§33-24-29. Deposit of moneys collected.....	110	867
§33-24-30. Exemption of commissioner from fees.....	110	867
§33-24-31. Borrowing on pledge of assets.....	110	868
§33-24-32. Date rights fixed on liquidation.....	110	868
§33-24-33. Voidable transfers.....	110	868
§33-24-34. Priority of claims for compensation.....	110	869
§33-24-35. Offsets.....	110	869
§33-24-36. Allowance of claims.....	110	870
§33-24-37. Time within which claims to be filed.....	110	873
§33-24-38. Assessment.....	110	874
§33-24-39. Creating preference among creditors; disbursement of assets.....	110	874
§33-24-40. Distribution of assets.....	110	875
§33-24-41. Unclaimed and withheld funds.....	110	875
§33-24-42. Immunity in receivership proceedings.....	110	875
<b>Licensing, Fees and Taxation of Insurers</b>		
§33-3-5b. Capital and surplus requirements.....	108	820
§33-3-13. Fees and charges.....	109	821
§33-3-17. Minimum tax payable.....	108	821
<b>Property Insurance Declination, Termination and Disclosure</b>		
§33-17A-1. Purpose of article.....	115	904
§33-17A-2. Scope of article.....	115	904
§33-17A-3. Definitions.....	115	905
§33-17A-4. Notification and reasons for a transfer, declination or termination.....	115	906
§33-17A-5. Permissible cancellations.....	115	907
§33-17A-6. Discriminatory terminations and declinations prohibited.....	115	908
§33-17A-7. Hearings and administrative procedure.....	115	909
§33-17A-8. Sanctions.....	115	909
§33-17A-9. Civil liability and actions.....	115	909
§33-17A-10. Immunity.....	115	910
§33-17A-11. Severability.....	115	910
<b>Rates and Rating Organizations</b>		
§33-20-18. Reduction of premium charges for persons fifty-five years of age or older.....	116	911
<b>Rehabilitation and Liquidation</b>		
§33-10-1. Definitions.....	110	828
§33-10-2. Jurisdiction, venue and appeal of delinquency proceedings; exclusive remedy.....	110	830
§33-10-3. Commencement of delinquency proceedings.....	110	831
§33-10-4. Injunctions or other orders.....	110	833
§33-10-5. Grounds for rehabilitation of domestic insurers.....	110	834
§33-10-7. Grounds for conserving assets of foreign insurers.....	110	835
§33-10-8. Grounds for conserving assets of alien insurers.....	110	836
§33-10-10. Order of rehabilitation.....	110	836
§33-10-14. Conduct of delinquency proceedings against domestic or alien insurers.....	110	837

	Ch.	Page
<b>INSURANCE—(continued):</b>		
<b>Rehabilitation and Liquidation—(continued):</b>		
§33-10-18. Proof of claims.....	110	838
§33-10-19a. Priority of distribution.....	110	839
§33-10-21. Uniform Insurers Liquidation Act.....	110	841
§33-10-29. Allowance of certain claims.....	110	841
§33-10-36. Creating preference among creditors; disbursement of assets.....	110	844
§33-10-37. Distribution of assets.....	110	846
§33-10-38. Unclaimed and withheld funds.....	110	846
§33-10-39. Immunity in receivership proceedings and representation of the special deputy supervisor.....	110	847
<b>Risk Retention Act</b>		
§33-32-3. Chapter and license requirements for domestic groups....	110	877
<b>State Insurance</b>		
§29-12-5c. Insurance for damages allegedly resulting from obstetric treatment of medicaid patients.....	107	817
<b>JUVENILE OFFENDERS:</b>		
<b>Home Detention Act</b>		
§62-11B-1. Short title.....	118	914
§62-11B-2. Applicability.....	118	915
§62-11B-3. Definitions.....	118	915
§62-11B-4. Home detention; period of home detention; applicability	118	915
§62-11B-5. Requirements for order for home detention.....	118	916
§62-11B-6. Circumstances under which home detention may not be ordered.....	118	917
§62-11B-7. Home detention fees; special fund.....	118	917
§62-11B-8. Offender responsible for certain expenses.....	118	918
§62-11B-9. Violation of order of home confinement; procedures; penalties.....	118	918
§62-11B-10. Information to be provided law-enforcement agencies....	118	919
§62-11B-11. Provisions of article not exclusive.....	118	919
<b>LAW-ENFORCEMENT OFFICERS:</b>		
<b>Civil Service for Deputy Sheriffs</b>		
§7-14-15a. Additional part-time police work permitted.....	119	920
§7-14-17b. Sick leave for deputy sheriffs.....	68	596
§7-14-19a. Additional police work for deputy sheriffs in noncivil service counties.....	119	921
<b>Law and Order; Police Force or Departments; Powers, Authority and Duties of Law-Enforcement Officials and Policemen; Police Matrons; Special School Zone and Parking Lot or Parking Building Police Officers; Civil Service for Certain Police Departments</b>		
§8-14-3. Powers, authority and duties of law-enforcement officials and policemen.....	119	921
<b>LEGISLATIVE RULES:</b>		
<b>Authorization to Promulgate</b>		
Agriculture.....	120	1016
Air Pollution Control Commission.....	120	930
Alcohol Beverage Control Commission.....	120	985
Archives and History.....	120	959
Athletic Commission.....	120	1019
Attorney General.....	120	1020
Auditor.....	120	1023
Banking.....	120	933
Barbers and Beauticians.....	120	1024
Beef Industry Self-Improvement Assessment Board.....	120	1026
Board of Investments.....	120	989
Board of Risk and Insurance.....	120	928

<b>LEGISLATIVE RULES—(continued):</b>	<b>Ch.</b>	<b>Page</b>
Authorization to Promulgate—(continued):		
Chiropractic Examiners.....	120	1027
Commerce.....	120	934
Commercial Whitewater Advisory Board.....	120	1035
Corrections.....	120	981
Counseling.....	120	1027
Crime, Delinquency and Corrections.....	120	1027
Dental Examiners.....	120	1028
Economic Development Authority.....	120	958
Embalmers and Funeral Directors.....	120	1028
Employee Suggestion Award Board.....	120	925
Energy.....	120	937
Engineers, Professional.....	120	1028
Enterprise Zone Authority.....	120	943
Finance and Administration.....	120	937
Fire Commission.....	120	981
Health and Human Resources.....	120	964
Health Care Cost Review Authority.....	120	974
Health, Division and State Board of.....	120	965
Hearing-Aid Dealers.....	120	1029
Highways.....	120	1008
Hospital Finance Authority.....	120	976
Housing Development Fund.....	120	1029
Human Services, Director of Child Advocate Office.....	120	976
Industrial and Trade Jobs Development Corporation.....	120	944
Insurance Commissioner.....	120	988
Jail and Prison Standards Commission.....	120	983
Labor.....	120	944
Land Surveyors.....	120	1029
Library Commission.....	120	964
Lottery Commission.....	120	990
Medicine, Board of.....	120	1030
Motor Vehicles.....	120	1013
Natural Resources.....	120	946
Nurses, Licensed Practical.....	120	1032
Nurses, Registered Professional.....	120	1032
Nursing Home Administrators.....	120	1032
Personnel, Division of.....	120	926
Pharmacy, Board of.....	120	1033
Psychologists.....	120	1033
Public Employees Insurance Agency.....	120	926
Public Safety.....	120	985
Racing Commission.....	120	990
Radiologic Technology Board.....	120	1033
Real Estate Commission.....	120	1034
Secretary of State.....	120	1034
Structural Barriers Compliance Board.....	120	1035
Tax Department.....	120	994
Teachers Retirement Board.....	120	929
Treasurer.....	120	1035
Water Development Authority.....	120	955
Water Resources Board.....	120	956
Workers' Compensation.....	120	978
Effective date of rules.....	120	924
Technical deficiencies waived.....	120	925
 <b>LEGISLATURE:</b>		
Joint Committee on Government and Finance		
§4-3-5. Charges for use of the Legislature's computer subscriber	122	1037
system.....		

	Ch.	Page
<b>LEGISLATURE—(continued):</b>		
Next Meeting of the Senate		
§4-1-22. "Next meeting of the Senate" defined.....	121	1036
<b>LIENS:</b>		
Vendor's and Trust Deed Liens		
§38-1-14. Future advances secured by credit line deed of trust; definitions; notice requirements and form; priority over other liens; release.....	123	1038
<b>LOCAL POWERS ACT:</b>		
Fees and Expenditures for County Development		
§7-20-1. Short title.....	124	1042
§7-20-2. Purpose and findings.....	124	1042
§7-20-3. Definitions.....	124	1043
§7-20-4. Counties authorized to collect fees.....	124	1045
§7-20-5. Credits or offsets to be adjusted; incidental benefit by one development not construed as denying reasonable benefit to new development.....	124	1046
§7-20-6. Criteria and requirements necessary to implement collection of fees.....	124	1046
§7-20-7. Establishment of impact fees; levies may be used to fund existing capital improvements.....	124	1048
§7-20-8. Use and administration of impact fees.....	124	1051
§7-20-9. Refund of unexpended impact fees.....	124	1052
§7-20-10. Impact fees required to be consistent with other development regulations.....	124	1053
<b>LOTTERY:</b>		
State Lottery Act		
§29-22-9. Initiation and operation of lottery; restrictions; prohibited themes, games, machines or devices; distinguishing numbers; winner selection; public drawings; witnessing of results; testing and inspection of equipment; price of tickets; claim for and payment of prizes; invalid, counterfeit tickets; estimated prizes and odds of winning; participant bound by lottery rules and validation procedures; security procedures; additional games; electronic and computer systems.....	125	1054
§29-22-10. Licensed lottery sales agents; restrictions; annual license and fee; factors; application; bond; age; nonassignable license; organizations qualified; commissions; display of license; geographic distribution; monopoly prohibited; lottery retailers; preprinted instant type lottery tickets; fee; certificate of authority; security; bond.....	125	1057
§29-22-13. Prohibited acts; conflict of interest; prohibited gifts and gratuities.....	125	1059
§29-22-18. State lottery fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus; state lottery education fund; state lottery senior citizens fund; allocation and appropriation of net profits.....	125	1060
§29-22-19. Post audit of accounts and transactions of office.....	125	1063
§29-22-20. Monthly and annual reports.....	125	1063
§29-22-21. Officials who may appear at lottery drawing.....	125	1064



	Ch.	Page
<b>MENTALLY ILL PERSONS:</b>		
Committee; Disposition of Property		
§27-11-1. Appointment of committees; hearing; appointment of guardian ad litem; certification of incompetency; appeal; habeas corpus.....	126	1064
<b>MERCER COUNTY:</b>		
Tourist Train Authority		
Tourist train authority; powers and pilot project.....	194	1532
<b>MORGAN COUNTY:</b>		
War Memorial Hospital to the Veterans of the World Wars from Morgan County		
Board of Directors.....	195	1535
<b>MOTOR VEHICLES:</b>		
Equipment		
§17C-15-48. Alteration of suspension system.....	136	1134
Fees for Registration, Licensing, Etc.		
§17A-10-3. Registration fees for vehicles equipped with pneumatic tires.....	127	1073
§17A-10-3b. Motorcycle safety fee.....	134	1120
Issuance of License, Expiration and Renewal		
§17B-2-1. Drivers must be licensed; chauffeur licensee need not procure driver license; licensees need not obtain local government license; motorcycle driver license.....	134	1126
§17B-2-5. Qualifications, issuance and fee for instruction permits	134	1127
§17B-2-7b. Separate examination and endorsement for a license valid for operation of motorcycle.....	134	1128
§17B-2-7c. Motorcycle license examination fund.....	134	1129
§17B-2-8. Issuance and contents of licenses; fees.....	134	1130
§17B-2-12. Expiration of licenses; renewal; renewal fees.....	134	1131
§17B-2-15. Authority for regulations.....	134	1131
License Services		
§17A-6B-1. License certificate required; application.....	129	1102
§17A-6B-2. Applicant must be bonded.....	129	1103
§17A-6B-3. Fee required for license certificate; special fund created.....	129	1103
§17A-6B-4. Investigation prior to issuance of license certificate; information confidential.....	129	1103
§17A-6B-5. Refusal of license certificate.....	129	1104
§17A-6B-6. When application to be made; expiration of license certificate; renewal.....	129	1105
§17A-6B-7. Form and display of license certificate; certified copies of license.....	129	1105
§17A-6B-8. Changes in business; action required.....	129	1106
§17A-6B-9. Investigation; grounds for suspending or revoking license certificate; notice of refusal, suspension or revocation of license certificate; relinquishing license certificate and temporary plates or markers.....	129	1107
§17A-6B-10. Temporary registration plates or markers.....	129	1109
§17A-6B-11. Inspections; violations and penalties.....	129	1112
§17A-6B-12. Injunctive relief.....	129	1112
§17A-6B-13. Promulgation of rules.....	129	1113
Licensing of Dealers and Wreckers or Dismantlers; Special Plates; Temporary Plates or Markers, Etc.		
§17A-6-1. Definitions.....	129	1085
§17A-6-1a. Unlawful to be an automobile broker; definition; criminal penalties.....	130	1113
§17A-6-4. Application for license certificate; insurance; bonds; investigation; information confidential.....	129	1092

	Ch.	Page
<b>MOTOR VEHICLES—(continued):</b>		
Licensing of Dealers and Wreckers or Dismantlers; Special Plates;		
Temporary Plates or Markers, Etc.—(continued):		
§17A-6-5. License certificate exemption.....	129	1096
§17A-6-10. Fee required for license certificate; dealer special plates.....	129	1096
§17A-6-15. Temporary registration plates or markers.....	129	1099
Motorcycle Safety Education		
§17B-1D-1. Legislative findings.....	134	1123
§17B-1D-2. Program established.....	134	1123
§17B-1D-3. Rider training.....	134	1124
§17B-1D-4. Instructor training and qualification.....	134	1124
§17B-1D-5. Program implementation.....	134	1124
§17B-1D-6. Exemption from motorcycle license examination.....	134	1125
§17B-1D-7. Motorcycle safety account.....	134	1125
§17B-1D-8. Authority for regulations.....	134	1125
§17B-1D-9. Effective date.....	134	1125
Motor Vehicle Dealers, Distributors, Wholesalers and Manufacturers		
§17A-6A-8a. Compensation to dealers for service rendered.....	131	1114
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.....	127	1069
§17A-3-14. Registration plates generally.....	128	1076
Security Upon Motor Vehicles		
§17D-2A-5. Cancellation of insurance policy; suspension of registration; minimum policy term.....	137	1137
§17D-2A-7. Suspension or revocation of license, registration; reinstatement.....	137	1137
Special Antitheft Laws		
§17A-8-9. Theft of a rental vehicle; penalty.....	132	1117
§17A-8-13. Theft of a motor vehicle offered for sale which had been obtained for temporary use for demonstration purposes; penalty.....	133	1118
Special Stops Required		
§17C-12-7. Overtaking and passing school bus; penalties; signs and warning lights upon buses; removal of warning lights, lettering, etc., upon sale of buses; highways with separate roadways.....	135	1132
Transfers of Title or Interest		
§17A-4-10. Salvage certificates for certain wrecked or damaged vehicles; fee; penalty.....	129	1082
Words and Phrases Defined		
§17B-1-1. Definitions.....	134	1120
Writs, Process and Order of Publication		
§56-3-31. Actions by or against nonresident operators of motor vehicles involved in highway accidents; appointment of secretary of state, insurance company, as agents; service of process.....	138	1140
<b>MUNICIPALITIES:</b>		
Assessments to Improve Streets, Sidewalks and Sewers; Sewer Connections and Board of Health; Enforcement of Duty to Pay for Service		
§8-18-23. Authority to require discontinuance of water service by provider utility for nonpayment of sewer service rates and charges; lien for delinquent service rates and charges; failure to cure delinquency; civil actions; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.....	140	1145

	Ch.	Page
<b>MUNICIPALITIES—(continued):</b>		
Combined Waterworks and Sewerage Systems		
§8-20-10. Power and authority of municipality to enact ordinances and make rules and regulations and fix rates or charges; change in rates or charges; failure to cure delinquency; delinquent rates or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.....	140	1149
General and Specific Powers, Duties and Allied Relations of Municipalities, Governing Bodies and Municipal Officers and Employees; Suits Against Municipalities		
§1. Repeal of article relating to notice of suit against municipalities	139	1144
Municipal and County Waterworks and Electric Power Systems		
§8-19-1. Acquisition and operation of municipal and county waterworks and electric power systems; construction of improvements to municipal and county electric power systems; extension beyond corporate limits; definitions.....	141	1153
§8-19-3. Right of eminent domain; limitations.....	141	1155
§8-19-4. Estimate of cost; ordinance or order for issuance of revenue bonds; interest on bonds; rates for services; exemption from taxation.....	141	1156
§8-19-5. Publication of abstract of ordinance or order and notice; hearing.....	141	1158
§8-19-6. Amount, negotiability and execution of bonds.....	141	1159
§8-19-7. Bonds payable solely from revenues; not to constitute municipal or county indebtedness.....	141	1159
§8-19-8. Lien on bondholders; deeds of trust; security agreements; priority of liens.....	141	1160
§8-19-9. Covenants with bondholders.....	141	1161
§8-19-10. Operating contract.....	141	1163
§8-19-11. Rates or charges for water and electric power must be sufficient to pay bonds, etc.; disposition of surplus.....	141	1164
§8-19-12. Service charges; sinking fund; amount of bonds; additional bonds; surplus.....	141	1164
§8-19-12a. Lien for delinquent service rates and charges; notice of delinquency; failure to cure delinquency; civil actions; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.....	140,141	1148,1166
§8-19-13. Discontinuance of water or electric power service for nonpayment of rates or charges.....	141	1167
§8-19-14. Bonds for additions, betterments and improvements.....	141	1167
§8-19-15. System of accounts; audit.....	141	1168
§8-19-16. Protection and enforcement of rights of bondholders, etc.; receivership.....	141	1168
§8-19-17. Grants, loans, advances and agreements.....	141	1169
§8-19-18. Additional and alternative method for constructing or improving and for financing waterworks or electric power system; cumulative authority.....	141	1170
§8-19-19. Alternative procedure for acquisition, construction or improvement of waterworks or electric power system	141	1171
§8-19-20. Article to be liberally construed.....	141	1172
Municipal Waterworks and Electric Power Systems		
§8-19-12a. Lien for delinquent service rates and charges; failure to cure delinquency; civil actions; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.....	140,141	1148,1166
<b>NATIONAL GUARD:</b>		
National Guard		
§15-1B-23. American flag for burial of deceased members of the national guard; presentation of flag to parent or spouse.....	142	1173

	Ch.	Page
<b>NATURAL RESOURCES:</b>		
<b>Equestrian Activities Responsibility Act</b>		
§20-4-1. Legislative purpose.....	145	1187
§20-4-2. Definitions.....	145	1187
§20-4-3. Duties of horsemen.....	145	1188
§20-4-4. Duties of participants.....	145	1189
§20-4-5. Liability of horsemen.....	145	1190
§20-4-6. Liability of participants.....	145	1191
§20-4-7. Applicability of article.....	145	1191
<b>Interstate Wildlife Violator Compact</b>		
§20-2C-1. Governor's authority to execute.....	144	1176
§20-2C-2. When and how compact becomes operative.....	144	1186
§20-2C-3. Compensation and expenses of compact administrator....	144	1186
<b>Real Estate Management and Procedures</b>		
§20-1A-4. Public land corporation to conduct sales of public lands by competitive bidding, modified competitive bidding or direct sale.....	143	1174
<b>Water Pollution Control Act</b>		
§20-5A-2. Definitions.....	146	1191
<b>West Virginia Underground Storage Tank Act</b>		
§20-5H-6. Promulgation of rules, regulations and standards by director.....	147	1195
§20-5H-22. Underground storage tank insurance fund.....	147	1197
<b>Wildlife Resources</b>		
§20-2-57. Negligent shooting, wounding or killing of human being or livestock while hunting; penalty.....	148	1198
<b>PRISONERS:</b>		
<b>The Governor</b>		
§5-1-12. How costs paid; complainant responsible for.....	149	1200
<b>PROFESSIONS AND OCCUPATIONS:</b>		
<b>Architects</b>		
§30-12-1. Board of architects.....	152	1207
§30-12-2. Definitions.....	152	1208
§30-12-3. Fees.....	152	1209
§30-12-4. Registration qualifications.....	152	1209
§30-12-5. Registration renewal.....	152	1210
§30-12-6. Certificate of registration.....	152	1210
§30-12-7. Seal.....	152	1211
§30-12-8. Disciplinary powers.....	152	1211
§30-12-9. Disciplinary proceedings.....	152	1212
§30-12-10. Registration; prima facie evidence.....	152	1212
§30-12-11. Prohibition.....	152	1213
§30-12-11a. Construction administration services required.....	152	1213
§30-12-12. Exceptions.....	152	1215
§30-12-13. Enforcement.....	152	1216
§30-12-14. Penalties.....	152	1217
<b>Hearing-Aid Dealers and Fitters</b>		
§30-26-3. West Virginia board of hearing-aid dealers created; members; qualifications; term; oath; salary and expenses; powers and duties.....	153	1218
§30-26-5. Application for licenses; qualifications of applicants; fees; duties of the board with respect thereto.....	153	1220
§30-26-7. Results of examination disclosed to applicant; issuance of license; fees.....	153	1221
§30-26-9. Renewal of license.....	153	1222
§30-26-12. Temporary trainee permits.....	153	1222

	Ch.	Page
<b>PROFESSIONS AND OCCUPATIONS—(continued):</b>		
Supervision of Electricians		
§29-3B-4. Licenses; classes of licenses; issuance of licenses by commissioner; qualifications required for license; nontransferability and nonassignability of licenses; expiration of license; renewal.....	150	1201
West Virginia Medical Practice Act		
§30-3-9. Records of board; expungement; examination; notice; public information; voluntary agreements relating to alcohol or chemical dependency; confidentiality of same; physician-patient privileges.....	151	1203
<b>PUBLIC DEFENDER:</b>		
Public Defender Services		
§29-21-2. Definitions.....	154	1224
§29-21-5. Executive director.....	154	1226
§29-21-6. Powers, duties and limitations.....	154	1226
§29-21-7. Criminal law research center established; functions.....	154	1228
§29-21-8. Public defender corporations.....	154	1229
§29-21-9. Panel attorneys.....	154	1229
§29-21-10. Public defender corporations—Intent to apply for funding.....	154	1230
§29-21-11. Public defender corporations—Funding applications; legal representation plans; review.....	154	1231
§29-21-12. Public defender corporation funding applications.....	154	1232
§29-21-13. Approval of public defender corporation funding applications; funding; record keeping by public defender corporations.....	154	1233
§29-21-13a. Compensation and expenses for panel attorneys.....	154	1233
§29-21-15. Public defender corporations—Board of directors.....	154	1236
§29-21-16. Determination of maximum income levels; eligibility guidelines; use of form affidavit; inquiry by court; denial of services; repayment; limitation on remedies against affiant.....	154	1237
§29-21-17. Private practice of law by public defenders.....	154	1242
§29-21-19. Audits.....	154	1243
§29-21-21. Forgiveness of loans; reversion of public defender corporation assets.....	154	1244
<b>PUBLIC LIBRARIES:</b>		
Public Libraries		
§10-1-14. Powers and duties.....	155	1245
§10-1-22. Confidential nature of certain library records.....	156	1246
<b>PUBLIC SAFETY:</b>		
Division of Public Safety		
§15-2-4. Appointment of commissioned officers, noncommissioned officers, other members; temporary and permanent positions.....	157	1247
§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.....	157	1248
§15-2-12. Mission of the division; powers of superintendent, officers and members; patrol of turnpike.....	158	1252
§15-2-25. Rules and regulations generally; carrying of weapons upon retirement or medical discharge.....	159	1256
§15-2-43. Awarding service revolver upon retirement.....	160	1258
<b>PUBLIC SERVICE COMMISSION:</b>		
Local Emergency Telephone System		
§24-6-2. Definitions.....	163	1266
§24-6-3. Adoption of emergency telephone system plan.....	163	1267

	Ch.	Page
<b>PUBLIC SERVICE COMMISSION—(continued):</b>		
Powers and Duties of Public Service Commission		
§24-2-3c. Cessation of jurisdiction over rates for certain services subject to competition.....	161	1259
§24-2-4b. Procedures for changing rates of electric and natural gas cooperatives, local exchange services of telephone cooperatives and municipally operated public utilities.....	162	1262
<b>PUTNAM COUNTY:</b>		
Extending time for Putnam County Commission to meet as levying body for election to continue additional levy for parks, recreation and library services.....		
	196	1536
<b>RAFFLES:</b>		
Charitable Raffles		
§47-21-2. Definitions.....	164	1268
§47-21-7. License fee and exemption from taxes.....	164	1271
<b>REAL PROPERTY:</b>		
Real Estate Appraiser Licensing and Certification Act		
§37-14-1. Short title.....	165	1274
§37-14-2. Definitions.....	165	1274
§37-14-3. Real estate appraiser license required.....	165	1276
§37-14-4. Exceptions to license requirement.....	165	1276
§37-14-5. Board created; appointment, qualifications, terms, oath, etc., of members; quorum; meetings; when members are disqualified from participation; compensation; records; office space; personnel.....	165	1277
§37-14-6. General powers and duties.....	165	1278
§37-14-7. Hearings and orders; entry of order without notice and hearing.....	165	1280
§37-14-8. Judicial review; appeals to supreme court of appeals.....	165	1281
§37-14-9. Applications for license.....	165	1281
§37-14-10. Scope of real estate appraiser license.....	165	1281
§37-14-11. Qualifications for license.....	165	1281
§37-14-12. Courses of study.....	165	1282
§37-14-13. Term of license.....	165	1283
§37-14-14. Continuing education.....	165	1283
§37-14-15. Renewal of license.....	165	1283
§37-14-16. Complaints and investigations relating to real estate appraiser licenses.....	165	1284
§37-14-17. Professional corporations.....	165	1284
§37-14-18. Collection of appraisal fees.....	165	1285
§37-14-19. Penalties.....	165	1285
§37-14-20. Waiver of license qualification requirements.....	165	1286
§37-14-21. Special waiver of license qualification requirements.....	165	1286
§37-14-22. Standards of professional appraisal practice.....	165	1287
§37-14-23. Prohibited acts and omissions—Licensees.....	165	1287
§37-14-24. Classification of service.....	165	1288
§37-14-25. Contingent fees.....	165	1289
§37-14-26. State certified real estate appraiser; use of term.....	165	1290
§37-14-27. Certification application.....	165	1290
§37-14-28. Classes of certification.....	165	1291
§37-14-29. Experience requirement.....	165	1291
§37-14-30. Education requirement.....	165	1292
§37-14-31. Examination required.....	165	1293
§37-14-32. Term of certification.....	165	1294
§37-14-33. Renewal of certification.....	165	1294
§37-14-34. Basis for denial.....	165	1295
§37-14-35. Use of term "state certified real estate appraiser".....	165	1295
§37-14-36. Continuing education requirement.....	165	1296

	Ch.	Page
<b>REAL PROPERTY—(continued):</b>		
Real Estate Appraiser Licensing and Certification Act—(continued):		
§37-14-37. Prohibited acts and omissions—State certified real estate appraiser.....	165	1298
§37-14-38. Disciplinary proceedings.....	165	1298
§37-14-39. Hearing and judicial review.....	165	1299
§37-14-40. Licensing and certification fees.....	165	1300
§37-14-41. Licenses, certificates and related records.....	165	1301
§37-14-42. Roster of licensed appraisers and certified appraisers.....	165	1302
§37-14-43. Certificate of good standing.....	165	1302
§37-14-44. Licensure and certification of nonresidents.....	165	1302
§37-14-45. Attorney general opinions and duties.....	165	1304
<b>REGULATION OF TRADE:</b>		
Bedding and Upholstery Business		
§47-1A-14. Annual registration fees.....	166	1305
<b>RESOLUTIONS:</b>		
Concurrent		
HCR 1, Raising a Joint Assembly to hear an address by His Excellency, the Governor.....		1539
HCR 21, Urging the West Virginia Congressional Delegation to continue its efforts to have the Federal Bureau of Investigation relocate its Identification Division to West Virginia and urging the Governor of West Virginia to assist the delegation in its efforts.....		1539
HCR 40, Requesting the Joint Committee on Government and Finance to establish an interim committee to review, examine and study matters related to solid and toxic waste management.....		1540
SCR 19, Establishing a West Virginia health care delivery and accessibility task force and directing said task force to report to the Legislature.....		1541
SCR 30, Relating to approving the purpose and amount of certain projects of the West Virginia Regional Jail and Correctional Facilities Authority.....		1543
House		
HR 19, Amending the Rules of the House of Delegates relating to prohibiting smoking and the use of all other tobacco products in the House of Delegates Chamber, galleries and in House committee rooms during meetings.....		1547
Senate		
SR 3, Amending Senate Rule No. 27, relating to the appointment of standing committees.....		1547
SR 13, Amending the rules of the Senate, relating to defining "next meeting of the Senate" for the purpose of confirmations.....		1548
<b>RETIREMENT:</b>		
Public Employees Retirement Act		
§5-10-19. Employers to file information as to employees' service.....	10	1651
§5-10-22c. Temporary early retirement incentives program; legislative declaration and finding of compelling state interest and public purpose; specifying eligible and ineligible members for incentives program; options, conditions, and exceptions; certain positions abolished; special rule of eighty; effective, termination, and notice dates.....	10	1652
§5-10-54. Termination of benefits; procedure.....	10	1658
Retirement Benefits Generally; Policemen's Pension and Relief Fund; Firemen's Pension and Relief Fund; Pension Plans for Employees of Waterworks System, Sewerage System or Combined Waterworks and Sewerage System		
§8-22-13. Reports by board of trustees.....	167	1306

	Ch.	Page
<b>RETIREMENT—(continued):</b>		
Retirement Benefits Generally; Policemen's Pension and Relief Fund; Firemen's Pension and Relief Fund; Pension Plans for Employees of Waterworks System, Sewerage System or Combined Waterworks and Sewerage System—(continued):		
§8-22-26a. Supplemental pension benefits entitlement; benefit payable; application of section; construction.....	167	1306
<b>SMALL BUSINESS ASSISTANCE:</b>		
Small Business Expansion Assistance Program		
§5B-6-1. Legislative purpose.....	168	1308
§5B-6-2. Definitions.....	168	1308
§5B-6-3. Small business expansion assistance program.....	168	1309
§5B-6-4. Application.....	168	1309
§5B-6-5. Certification; reimbursement.....	168	1310
<b>SOLID WASTE:</b>		
County and Regional Solid Waste Authorities		
§20-9-1. Legislative findings and purposes.....	169	1325
§20-9-2. Definitions.....	169	1328
§20-9-7. Authority to develop litter and solid waste control plan; approval by solid waste management board; development of plan by director; advisory rules.....	169	1330
§20-9-10a. Bonds and notes.....	169	1333
§20-9-10b. Items included in cost of properties.....	169	1334
§20-9-10c. Bonds or notes may be secured by trust indenture.....	169	1335
§20-9-10d. Sinking fund for bonds or notes.....	169	1335
§20-9-10e. Collection, etc., of revenues and funds and enforcement of covenants; default; suit, etc., by bondholder or noteholder or trustee to compel performance of duties; appointment and powers of receiver.....	169	1336
§20-9-10f. Operating contracts.....	169	1337
§20-9-10g. Statutory mortgage lien created unless otherwise provided; foreclosure thereof.....	169	1337
§20-9-10h. Refunding bonds or notes.....	169	1338
§20-9-10i. Indebtedness of authority.....	169	1338
§20-9-10j. Property, bonds or notes and obligations of authority exempt from taxation.....	169	1339
§20-9-12. Powers, duties and responsibilities of authority generally	169	1339
§20-9-12a. Commercial solid waste facility siting plan; facilities subject to plan; criteria; approval by West Virginia state solid waste management board; effect on facility siting; public hearings; rules and regulations	169	1341
§20-9-12b. Interim siting approval for commercial solid waste facilities.....	169	1344
§20-9-12c. Approval of establishment or continuation of Class A facility by county commission and/or referendum.....	169	1346
§20-9-12d. Solid waste assessment interim fee; regulated motor carriers; dedication of proceeds; criminal penalties.....	169	1349
Fiscal Affairs		
§7-5-22. County solid waste assessment fees authorized.....	169	1312
Solid Waste Management Act		
§20-5F-1. Purpose and legislative findings.....	169	1313
§20-5F-2. Definitions.....	169	1314
§20-5F-4a. Certificate for site approval required for certain solid waste disposal facilities; fee required.....	169	1317
§20-5F-4b. Special provision for residential solid waste disposal.....	169	1318
§20-5F-5. Prohibitions; permits required; priority of disposal.....	169	1319
§20-5F-5b. Performance bonds; amount and method of bonding; bonding requirements; period of bond liability.....	169	1321
§20-5F-5c. Pre-siting notice.....	169	1324
West Virginia Recycling Program		
§20-11-5. Establishment of county recycling programs for solid waste; petition for referendum; ballot contents; election procedure; effect of such election.....	170	1352



	Ch.	Page
<b>SPENCER:</b>		
Spencer State Hospital		
Farm management commission and the division of health directed to convey Spencer State Hospital institutional farm and Spencer State Hospital to the city of Spencer.....	197	1537
<b>SUNSET:</b>		
The West Virginia Sunset Law		
§4-10-4. Termination of governmental entities or programs.....	171	1356
<b>TAXATION:</b>		
Accrual and Collection of Taxes		
§11A-1-3. Accrual; time for payment; interest on delinquent taxes	174	1391
Assessments Generally		
§11-3-9. Property exempt from taxation.....	173	1388
Business Franchise Tax		
§11-23-3a. Meaning of terms; general rule.....	179	1439
§11-23-5. Apportionment of tax base.....	179	1439
Business Investment and Jobs Expansion Credit		
§11-13C-14. Restrictions and limitations on credits allowed by this article.....	176	1417
Consumers Sales Tax		
§11-15-2. Definitions.....	175	1394
§11-15-9. Exemptions.....	175	1400
§11-15-33. Effective date.....	175	1411
Corporation Net Income Tax		
§11-24-3. Meaning of terms; general rule.....	179	1446
§11-24-13. Returns; time for filing.....	179	1447
§11-24-13a. Method of filing for business taxes.....	179	1447
§11-24-23a. Credit for qualified rehabilitated buildings investment	177	1432
§11-24-23b. Definitions.....	177	1432
§11-24-23c. Procedures.....	177	1433
§11-24-23d. Standards.....	177	1433
§11-24-23e. Fees.....	177	1433
§11-24-23f. Termination of credit by law.....	177	1434
Fair and Equitable Property Valuation		
§11-1C-1. Legislative findings.....	172	1360
§11-1C-2. Definitions.....	172	1361
§11-1C-3. Property valuation training and procedures commission generally; appointment; term of office; meetings; compensation.....	172	1362
§11-1C-4. Commission powers and duties; rule making.....	172	1364
§11-1C-5. Tax commissioner powers and duties.....	172	1366
§11-1C-6. Required training for assessors, their staffs and county commissioners.....	172	1369
§11-1C-7. Duties of county assessors; property to be appraised at fair market value; exceptions; initial equalization; valuation plan.....	172	1370
§11-1C-8. Additional funding for assessors' offices; maintenance funding.....	172	1372
§11-1C-9. Periodic valuations.....	172	1374
§11-1C-10. Valuation of industrial property and natural resources property by tax commissioner; penalties; methods; values sent to assessors.....	172	1374
§11-1C-11. Managed timberland.....	172	1378
§11-1C-12. Board of equalization and review; assessments; board of public works.....	172	1379
§11-1C-13. Severability.....	172	1380

	Ch.	Page
<b>TAXATION—(continued):</b>		
Levies		
§11-8-6e. Effect on levy rate when appraisal results in tax increase: public hearings.....	172	1380
§11-8-6f. Effect on school board levy rate when appraisal results in tax increase.....	172	1384
Personal Income Tax		
§11-21-8a. Credit for qualified rehabilitated buildings investment	177	1429
§11-21-8b. Definitions.....	177	1430
§11-21-8c. Procedures.....	177	1431
§11-21-8d. Standards.....	177	1431
§11-21-8e. Fees.....	177	1431
§11-21-8f. Termination of credit by law.....	177	1431
§11-21-9. Meaning of terms.....	178	1435
§11-21-18. West Virginia taxable income of resident estate or trust	175	1412
§11-21-55. Declaration of estimated tax.....	178	1435
§11-21-71a. Withholding tax on effectively connected income of nonresident partners, shareholders or beneficiaries....	175	1413
Procedure and Administration		
§11-10-3. Application of this article.....	174	1391
Public School Support		
§18-9A-11. Computation of local share; appraisal and assessment of property.....	172	1386
<b>TRAFFIC REGULATIONS:</b>		
Stopping, Standing and Parking		
§17C-13-6. Stopping, standing or parking privileges for disabled; qualification; application; violation.....	180	1449
<b>TREASURER:</b>		
Accounts, Reports and General Provisions		
§12-4-13. Bank reconciliations; balancing state accounts.....	182	1463
Public Securities		
§12-5-5. Protection and handling of securities.....	181	1456
State Depositories		
§12-1-10. Treasurer to keep accounts with depositories; settlements with depositories; statements of depository balances; reconciliation of statements and records.....	181	1455
§12-1-13. Payment of banking services.....	181	1455
West Virginia Board of Investments		
§12-6-4. Officers; executive secretary; term; organization; board staff; surety bonds for members and employees.....	181	1456
§12-6-5. Powers of the board.....	181	1457
§12-6-6. Costs and expenses; fees for services; special revenue account; costs of determining third parties' liability; recoupment of investment losses.....	181	1459
§12-6-9. Permissible investments.....	181	1460
§12-6-9c. Authorization of additional investments.....	181	1462
§12-6-15. Audits.....	181	1462
<b>TURNPIKE:</b>		
West Virginia Parkways, Economic Development and Tourism Authority		
§17-16A-18. Cessation of tolls; commuter pass system.....	183	1465
§17-16A-18a. Corridor "L" toll fees authorized; commuter pass; annual report.....	183	1466
<b>UNCLAIMED PROPERTY:</b>		
Uniform Disposition of Unclaimed Property Act		
§36-8-8. Property held by courts and public officers and agencies	184	1470
§36-8-8a. Providing for recovery of abandoned property.....	184	1471

	Ch.	Page
<b>UNCLAIMED PROPERTY—(continued):</b>		
Uniform Disposition of Unclaimed Property Act—(continued):		
§36-8-8b. Presumption of abandonment of personal property held by federal government.....	184	1471
§36-8-11. Report of abandoned property.....	184	1472
§36-8-16. Periods of limitation not a bar.....	184	1474
§36-8-18. Deposits of funds; trust and expense fund; records of deposits.....	184	1475
<b>UNEMPLOYMENT COMPENSATION:</b>		
Board of Review		
§21A-4-6. Offices; meetings.....	185	1477
Employee Eligibility; Benefits		
§21A-6-3. Disqualification for benefits.....	185	1484
Employer Coverage and Responsibility		
§21A-5-10. Experience ratings; decreased rates; adjustment of accounts and rates; debit balance account rates.....	185	1477
§21A-5-10a. Optional assessments on employers and employees.....	185	1483
Employment Security Administration Fund		
§21A-9-9. Reed Act appropriations.....	185	1492
Employment Security Debt Funds		
§21A-8A-8. Assessments; dedication of assessments; commissioner's authority to adjust assessments.....	185	1490
General Provisions		
§21A-10-7. False representations; penalties.....	185	1492
§21A-10-8. Recovery of benefits paid on misrepresentation; limitations.....	185	1493
§21A-10-11. Requiring information; use of information; libel and slander actions prohibited.....	185	1493
§21A-10-19. Disclosure of information to child support agencies.....	185	1495
<b>UNIFORM STATE LAWS:</b>		
Commission on Uniform State Laws		
§29-1A-2a. Life members.....	186	1496
<b>VETERANS:</b>		
State Homes for Veterans		
§9A-2-1. State homes for veterans.....	188	1507
Transfer of Agencies and Boards		
§5F-2-1. Transfer and incorporation of agencies and boards.....	66,187	581,1497
<b>WAYPORT AUTHORITY:</b>		
Wayport Authority		
§17-16C-1. Creation of authority.....	189	1509
§17-16C-2. Board of directors; members; officers; qualifications; terms; oath; compensation; quorum and delegation of power.....	189	1509
§17-16C-3. Executive director.....	189	1511
§17-16C-4. Purposes of authority; transportation development.....	189	1511
§17-16C-5. Definitions.....	189	1513
§17-16C-6. Powers and duties of authority.....	189	1513
§17-16C-7. Wayport revenue bonds—Generally.....	189	1515
§17-16C-8. Wayport revenue bonds—Trust agreements.....	189	1518
§17-16C-9. Tolls, rents, fees, charges and revenues.....	189	1519
§17-16C-10. Trust funds.....	189	1520
§17-16C-11. Remedies.....	189	1520
§17-16C-12. Exemption from taxes.....	189	1522
§17-16C-13. Preliminary expenses.....	189	1522
§17-16C-14. Wayport revenue refunding bonds—Generally.....	189	1522
§17-16C-15. Special West Virginia Wayport Authority operations fund.....	189	1523
§17-16C-16. Severability.....	189	1523

	Ch.	Page
<b>WIC PROGRAM:</b>		
Special Supplementary Food Program for Women, Infants and Children (WIC)		
§16-2G-1. Voucher or coupon redemption and payment.....	11	1659
<b>WOMEN'S COMMISSION:</b>		
Women's Commission		
§29-20-1. Creation; membership; appointment and terms of members; organization; reimbursement for expenses	190	1524
<b>WORKERS' COMPENSATION:</b>		
Coal-Workers Pneumoconiosis Fund		
§23-4B-8. Separable from workers' compensation fund.....	12	1723
Disability and Death Benefits		
§23-4-1d. Method and time of payments for permanent disability....	12	1688
§23-4-3. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; legislative approval; guidelines; preferred provider agreements; charges in excess of scheduled amounts not to be made; required disclosure of financial interest in sale or rental of medically related mechanical appliances or devices; promulgation of rules to enforce requirement; consequences of failure to disclose; contract by employer with hospital, physician, etc., prohibited; criminal penalties for violation; payments to certain providers prohibited.....	12	1689
§23-4-3a. Wrongfully seeking payment for services or supplies; criminal penalties.....	12	1695
§23-4-3b. Creation of health care advisory panel.....	12	1696
§23-4-3c. Suspension or termination of providers of health care....	12	1697
§23-4-6. Classification of disability benefits.....	12	1700
§23-4-6d. Benefits payable to part-time employees.....	12	1706
§23-4-7a. Monitoring of injury claims; legislative findings; review of medical evidence; recommendation of authorized treating physician; independent medical evaluations; temporary total disability benefits and the termination thereof; mandatory action; additional authority.....	12	1708
§23-4-7b. Trial return to work.....	12	1712
§23-4-8. Physical examination of claimant.....	12	1713
§23-4-8c. Occupational pneumoconiosis board—Reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon.....	12	1714
§23-4-9. Physical and vocational rehabilitation.....	12	1716
§23-4-14. Computation of benefits.....	12	1719
§23-4-15b. Determination of nonmedical questions by commissioner; claims for occupational pneumoconiosis; hearing.....	12	1721
§23-4-19. Wrongfully seeking compensation; criminal penalties; restitution.....	12	1723
Discriminatory Practices		
§23-5A-3. Termination of injured employee prohibited; re-employment of injured employees.....	12	1739
Employers and Employees Subject to Chapter;		
Extraterritorial Coverage		
§23-2-4. Classification of industries; accounts, rate of premiums....	12	1667
§23-2-5a. Collection of premiums from defaulting employers; interest and penalties; civil remedies; creation and enforcement of lien against employer and purchaser; distraint powers; insolvency proceedings; secretary of state to withhold certificates of dissolution; injunctive relief; bond.....	12	1669

	Ch.	Page
<b>WORKERS' COMPENSATION—(continued):</b>		
Employers and Employees Subject to Chapter; Extraterritorial Coverage—(continued):		
§23-2-9. Election of employer to provide own system of compensation; mandatory participation in second injury reserve of surplus fund and exceptions; election to provide catastrophe coverage.....	12	1672
§23-2-14. Sale or transfer of business; attachment of lien for premium, etc., payments due; criminal penalties for failure to pay; creation and avoidance or elimination of lien; enforcement of lien.....	12	1679
§23-2-15. Liabilities of successor employer; waiver of payment by commissioner; assignment of predecessor employer's premium rate to successor.....	12	1680
§23-2-16. Acceptance or assignment of premium rate.....	12	1682
§23-2-17. Employer right to hearing; content of petition; appeal.....	12	1683
§23-2-18. Rules.....	12	1684
<b>General Administrative Provisions</b>		
§23-1-1. Workers' compensation commissioner; appointment; term; oath; bond; conflict of interest; compensation; official seal; legal services; references to director deemed to mean commissioner; references to workmen's compensation deemed to mean workers' compensation.....	191	1526
<b>Review</b>		
§23-5-1. Notice by commissioner of decision; objections and hearing; appeal.....	12	1725
§23-5-1a. Application by employee for further adjustment of claim—Objection to modification; hearing.....	12	1728
§23-5-1b. Refusal to reopen claim; notice; objection.....	12	1728
§23-5-1c. Application by employer for modification of award— Objection to modification; hearing.....	12	1729
§23-5-1d. Refusal of modification; notice; objection.....	12	1729
§23-5-1e. Time periods for objections and appeals; extensions.....	12	1730
§23-5-1f. Compromise and settlement of permanent partial disability awards.....	12	1730
§23-5-1g. Creation of office of administrative law judges; powers of chief administrative law judge and said office.....	12	1732
§23-5-1h. Hearings on objections to commissioner's decisions by office of administrative law judges.....	12	1734
§23-5-1i. Appeal from administrative law judge decision to appeal board.....	12	1736
§23-5-3. Appeal to board; procedure; remand and supplemental hearing.....	12	1736
§23-5-3a. Continuances and supplemental hearings; claims not to be denied on technicalities.....	12	1738
§23-5-4b. Jurisdictional findings and decisions appealable.....	12	1739
<b>Subrogation</b>		
§23-2A-1. Subrogation limitations; effective date.....	12	1684
§23-2A-2. Study of subrogation.....	12	1685
<b>Workers' Compensation Fund</b>		
§23-3-1. Compensation fund; surplus fund; catastrophe and catastrophe payment defined; second injury and second injury reserve; compensation by employers.....	12	1685