

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1992
First Extraordinary Session, 1992

COMPILED AND PUBLISHED
UNDER THE DIRECTION
OF
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Clerk

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FOREWORD

This volume contains the Acts of the Second Regular Session and the First Extraordinary Session of the 70th Legislature, 1992.

Second Regular Session, 1992

The Second Regular Session of the 70th Legislature convened on January 8, 1992. The Constitutional sixty-day limit on the duration of the Session was midnight, March 7. The Session was, however, extended by several Proclamations of the Governor for the sole consideration of the Budget Bill, and the Legislature adjourned *sine die* at 11:30 a.m., Saturday, March 14, 1992.

Bills totaling 1,676 were introduced in the two houses during the session (1,068 House and 608 Senate). Of the 1,068 House Bills introduced there were 304 which were carried over from the First Regular Session of 1991. The Legislature passed 218 bills, 133 House and 85 Senate. The Governor vetoed two bills (S. B. 353, Standards for dog kennels, and S. B. 108, Registry for adoption of children). One bill, S. B. 336, Providing Maximum Search fee for health care records, became law without the signature of the Governor, leaving a net total of 216 bills which became law.

One hundred eight concurrent resolutions were introduced during the session, 61 House and 47 Senate, of which 17 House and 12 Senate were adopted. Thirty Joint Resolutions, proposing amendments to the State Constitution, were introduced in the two houses (24 House and 6 Senate). Two House Joint Resolutions were adopted by the Legislature, H. J. R. 109, Veterans Bonus Amendment, and H. J. R. 113, Redemption and Sale of Delinquent Lands Amendment. The House had 19 House Resolutions and the Senate had 41 Senate Resolutions introduced, of which 12 House and 39 Senate were adopted.

The Senate failed to pass 55 House bills passed by the House and 33 Senate bills failed passage by the House. House Bill 2041, Relating to mud flaps on trucks, was rejected by the Senate and the House adopted the conference report but rejected on final passage S. B. 125, Providing for licensure of midwives. Two House bills and five Senate bills died in conference.

**First Extraordinary Session,
1992**

The First Extraordinary Session convened at 11:30 A.M., Saturday, March 14, 1992, and adjourned *sine die* at 12:44 P.M., the same day.

The first Proclamation received, convening the Legislature in extraordinary session contained four items for consideration. The Governor issued a series of five proclamations, expanding the scope of the Session and increasing the number of items for consideration to five.

The Legislature passed four bills which were introduced, three House and one Senate. All four of the bills were approved by the Governor.

* * * * *

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 with buckram binding from the Division of Purchasing, Department of Administration, State Capitol, Charleston, WV 25305.

DONALD L. KOPP,
*Clerk of the House
of Delegates.*

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4.	(SB1)	Promulgation of Legislative Rules for State Agencies.....	1633
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MEMBERS OF THE SENATE

REGULAR SESSION, 1992

OFFICERS

President—Keith Burdette, Parkersburg
President Pro Tem—William R. Sharpe, Jr., Weston
Clerk—Darrell E. Holmes, Charleston
Sergeant at Arms—Estil L. Bevins, Williamson
Doorkeeper—Porter Cotton, Chesapeake

District	Name	Address	Prior Service in Senate
First.....	Thais Blatnik (D)	Wheeling	(House 63rd; 65th-67th); 69th
	John G. Chernenko (D)	Wellsburg	66th-69th
Second.....	Don Macnaughtan (D)	New Martinsville	
	Larry Wiedebusch (D)	Glen Dale	(House 62nd-67th); 69th
Third.....	Donna J. Boley (R)	St. Marys	Appt. 5/14/85. 67th; 68th-69th
	Keith Burdette (D)	Parkersburg	(House 64th-65th); 66th-69th
Fourth.....	Oshel B. Craig (D)	Hurricane	(House 65th); 66th-69th
	Robert L. Dittmar (D)	Ravenswood	69th
Fifth.....	Homer Heck (D)	Huntington	65th-66th; 69th
	Ned Jones (D)	Huntington	Appt. 12/30/85. 67th; 68th-69th
Sixth.....	H. Truman Chafin (D)	Williamson	66th-69th
	A. Keith Wagner (D)	Jaeger	69th
Seventh.....	Sammy D. Dalton (D)	Harts	(House 62nd-67th; 69th)
	Earl Ray Tomblin (D)	Chapmanville	(House 62nd-64th); 65th-69th
Eighth.....	James F. Humphreys (D)	Charleston	(House 66th-68th); Appt. 9/13/89. 69th
	Mark Anthony Manchin (D)	Charleston	69th
Ninth.....	Billy Wayne Bailey, Jr. (D)	Alpoca	Appt. 1/8/91
	William R. Wooton (D)	Beckley	(House 63rd-67th; 69th)
Tenth.....	Leonard W. Anderson (D)	Summers	
	Tony E. Whitlow (D)	Princeton	(House 60th-61st; 63rd-66th); 67th-69th
Eleventh.....	J. D. Brackenrich (D)	Lewisburg	68th-69th
	Robert Kelvin Holliday (D)	Fayetteville	(House 56th-58th); 59th-60th; 65th-69th
Twelfth.....	Walt Helmick (D)	Martinton	(House 1 yr., 69th); Appt. 9/25/89; 69th
	Jae Spears (D)	Elkins	(House 62nd-64th); 65th-69th
Thirteenth.....	Joseph M. Minard (D)	Clarksburg	(House Appt. 1/10/83; 66th; 67th-69th)
	William R. Sharpe, Jr. (D)	Weston	55th-64th; 67th-69th
Fourteenth.....	Eugene Claypole (D)	Granville	
	Joe Manchin, III (D)	Fairmont	(House 66th); 68th-69th
Fifteenth.....	Charles B. Felton, Jr. (D)	Rowlesburg	Appt. 5/21/87, 68th; 69th
	J. M. Withers (D)	Grafton	
Sixteenth.....	Thomas J. Hawse, III (D)	Moorefield	(House 67th-68th); 69th
	Sondra Moore Lucht (D)	Martinsburg	66th-69th
Seventeenth.....	Charlotte Jean Pritt (D)	Charleston	(House 67th-68th); 69th
	Martha G. Wehrle (D)	Charleston	(House 62nd-66th); Appt. 9/5/89, 69th
	(D) Democrats		33
	(R) Republicans		1
	TOTAL		34

MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1992

OFFICERS

Speaker—Robert C. Chambers, Huntington*Speaker Pro Tem*—W. E. Anderson, Logan*Clerk*—Donald L. Kopp, Clarksburg*Sergeant at Arms*—Oce W. Smith, Jr., Fairmont*Doorkeeper*—E. Don Yoak, Spencer

District	Name	Address	Prior Service in House
First	Sam Love (D)	Weirton	.66th-69th
	Tamara Pettit (D)	New Cumberland	Appt. 11/20/89, 69th
Second	Paul R. Higgins (D)	Follansbee	
	Robert G. Lindsey, Jr. (D)	Wellsburg	
Third	Greg D. Martin (R)	Wheeling	
	David B. McKinley, P.E. (R)	Wheeling	.65th-69th
	L. Gil White (R)	Wheeling	
Fourth	Donald A. Haskins (R)	Glen Dale	
	Joseph D. Parriott (R)	Moundsville	
Fifth	Dave Pethel (D)	Hundred	.69th
Sixth	James E. Willison (R)	Sistersville	.69th
Seventh	Otis A. Leggett (R)	St. Marys	.68th-69th
Eighth	J. D. Beane (D)	Vienna	
	Larry Border, R.Ph. (R)	Davisville	
	Brenda Brum (D)	Parkersburg	
	Robert W. Burk, Jr. (R)	Parkersburg	.58th-59th (Appt. to Senate 2/23/69, 59th); Appt. to House 1/17/86, 67th; 68th-69th
	Barbara W. Sims (R)	Parkersburg	
Ninth	John Campbell (D)	Sutton	
	Randy Schoonover (D)	Clay	.69th
Tenth	Bob Ashley (R)	Spencer	.67th-69th
Eleventh	Bill Carmichael (R)	Ripley	Appt. 7/8/69; 61st; 64th-67th
Twelfth	Charley Damron (D)	Leon	.62nd-63rd; 65th-66th; 69th
	Deborah F. Phillips (D)	Scott Depot	.67th-69th
	Ben Vest (D)	Scott Depot	
	Patricia Holmes White (D)	Poca	.67th-69th
Thirteenth	Robert C. Chambers (D)	Huntington	.64th-69th
	Rick Houvouras (D)	Huntington	.68th-69th
	John C. Huntwork, M.D. (D)	Huntington	
	James Hanly Morgan (D)	Huntington	.69th
	Evelyn E. Richards (R)	Huntington	.64th; 67th; 69th
Stephen T. Williams (D)	Huntington	.68th-69th	
Fourteenth	Kenneth R. Adkins (D)	Huntington	
	*Kenny E. Partlow (D)	Kenova	
Fifteenth	Grant Preece (D)	Ragland	
	Jim Reid (D)	Williamson	.68th-69th
Sixteenth	W. E. Anderson (D)	Logan	.67th-69th
	Tracy Dempsey (D)	Harts	
	Joe C. Ferrell (D)	Logan	.66th-69th
	Larry Hendricks (D)	Chapmanville	
Seventeenth	Delores W. Cook (D)	Ridgeview	.69th
Eighteenth	Ernest C. Moore (D)	Thorpe	.60th-63rd; 65th-69th
	Rick Murensky (D)	Welch	.65th-69th

Nineteenth.....	Richard Browning (D).....	Oceana.....	69th
	W. Richard Staton (D).....	Mullens.....	69th
Twentieth.....	Gilbert E. Bailey (D).....	Camp Creek.....	66th-68th
	William G. Carper, Jr. (D).....	Bluefield.....	
	Richard D. Flanigan (D).....	Princeton.....	66th-69th
	Odell H. Huffman (D).....	Princeton.....	59th-60th; (Senate 61st-66th)
Twenty-First.....	Mary Pearl Compton (D).....	Union.....	69th
Twenty-Second	Robert S. Kiss (D).....	Prosperity.....	69th
	Perry E. Mann (D).....	Hinton.....	
	Pat Reed (D).....	Beckley.....	
	Jack J. Roop (D).....	Beckley.....	66th-69th
	Tom Susman (D).....	Beckley.....	68th-69th
Twenty-Third...	Bonnie L. Brown (D).....	South Charleston	66th-68th
	Ann Calvert (R).....	Charleston.....	
	Ramona Tate Cerra (D).....	Charleston.....	69th
	Joseph H. Farris (D).....	Charleston.....	
	Ruth Goldsmith (R).....	South Charleston	65th
	David Grubb (D).....	Charleston.....	69th
	Nancy Kessel (D).....	Charleston.....	
	Charlotte R. Lane (R).....	Charleston.....	64th
	Margaret Miller (R).....	South Charleston	69th
	Phyllis J. Rutledge (D).....	Charleston.....	59th-61st; 69th
	Sharon Spencer (D).....	Charleston.....	66th; 68th-69th
	Martha Yeager Walker (D).....	Charleston.....	
Twenty-Fourth	*Charles H. Keenan (D).....	Gauley Bridge.....	
	Tom Louisos (D).....	Oak Hill.....	67th-68th
	Lucile S. Meadows (D).....	Fayetteville.....	Appt. 12/11/90
Twenty-Fifth...	James J. Rowe (D).....	Lewisburg.....	69th
	Bill Wallace (R).....	Clintonville.....	69th
Twenty-Sixth...	C. Farrell Johnson (D).....	Summersville.....	68th-69th
	Eugene T. Wilson (D).....	Cowen.....	69th
Twenty-Seventh	Joe Martin (D).....	Elkins.....	Appt. 6/15/78, 63rd; 64th-69th
	Bill Proudfoot (D).....	Elkins.....	
Twenty-Eighth	Dale F. Riggs (R).....	Buckhannon.....	69th
	Donald L. Stemple (R).....	Philippi.....	65th; 67th-69th
Twenty-Ninth...	Robert J. Conley (R).....	Weston.....	65th-69th
Thirtieth.....	Percy C. Ashcraft, II (D).....	Clarksburg.....	66th-69th
	Ron Fragale (D).....	Nutter Fort.....	
	Floyd Fullen (D).....	Bridgeport.....	66th-68th
	Barbara Ann Warner (D).....	Bridgeport.....	69th
Thirty-First.....	Roman W. Prezioso, Jr. (D).....	Fairmont.....	69th
	Paul E. Prunty (R).....	Fairmont.....	61st; 63rd-65th; 67th.
	William Ellsworth Stewart (D).....	Fairmont.....	66th; 68th
	John R. Taylor (D).....	Grafton.....	
Thirty-Second...	Robert C. Beach (D).....	Core.....	Appt. 7/27/90, 69th
	Stephen L. Cook (D).....	Morgantown.....	Appt. 1/21/80, 64th; 65th (Senate 66th-67th); 69th
	Brian Gallagher (D).....	Morgantown.....	Appt. 5/22/89, 69th
	Greg Sayre (D).....	Morgantown.....	
Thirty-Third.....	David Collins (D).....	Davis.....	
	David E. Miller (D).....	Kingwood.....	69th
Thirty-Fourth...	Allen V. Evans (R).....	Dorcas.....	
	Robert A. Schadler (R).....	Keyser.....	69th
Thirty-Fifth.....	Harold K. Michael (D).....	Moorefield.....	69th
Thirty-Sixth...	Jerry L. Mezzatesta (D).....	Romney.....	68th-69th
Thirty-Seventh	Vicki V. Douglas (D).....	Martinsburg.....	
Thirty-Eighth...	Larry V. Faircloth (R).....	Inwood.....	65th-69th
Thirty-Ninth...	John Overington (R).....	Martinsburg.....	67th-69th
Fortieth.....	Dale Manuel (D).....	Charles Town.....	69th

¹Appointed to fill the vacancy created by the death of Kenneth Adkins.

²Appointed to fill the vacancy created by the death of Walter Rollins.

³Appointed to fill the vacancy created by the resignation of Paul M. Blake, Jr.

(D) Democrats.....	74
(R) Republicans.....	26
TOTAL.....	100

COMMITTEES OF THE
HOUSE OF DELEGATES

Regular Session, 1992

STANDING

Agriculture and Natural Resources

D. Miller (*Chairman of Agriculture*), Compton (*Vice Chairman of Agriculture*), Love (*Chairman of Natural Resources*), Johnson (*Vice Chairman of Natural Resources*), Bailey, Browning, Campbell, Fragale, Hendricks, Michael, Pethtel, Preece, Reed, Sayre, Schoonover, Stewart, Vest, Warner, Wilson, Border, Evans, Leggett, Riggs, Stemple and Willison.

Banking and Insurance

Rutledge (*Chairman of Banking*), Williams (*Vice Chairman of Banking*), Susman (*Chairman of Insurance*), Adkins (**Vice Chairman of Insurance*), Beane, Carper, Collins, S. Cook, Damron, Dempsey, Farris, Ferrell, Flanigan, Gallagher, Grubb, Michael, Phillips, Staton, Vest, Ashley, Border, Carmichael, Goldsmith, McKinley, Riggs and L. White.

*Delegate Gallagher was appointed as Vice Chairman of Insurance following the death of Delegate Adkins.

Constitutional Revision

Brown (*Chairman*), Browning (*Vice Chairman*), Beach, Beane, Fullen, Houvouras, Huffman, Keenan, Kessel, Kiss, Lindsey, Louisos, Manuel, Meadows, Moore, Pethtel, Preece, Prezioso, Faircloth, McKinley, Overington, Parriott, Prunty, Stemple and Wallace.

Education

Ashcraft (*Chairman*), Prezioso (*Vice Chairman*), Beach, Compton, D. Cook, Hendricks, Keenan, Kessel, Lindsey, Mezzatesta, Phillips, Proudfoot, Schoonover, Spencer, Susman, Williams, Border, Goldsmith, Haskins, Leggett, G. Martin, Prunty and Richards.

Finance

Murensky (*Chairman*), Kiss (*Vice Chairman*), Adkins, Anderson, Bailey, Browning, Campbell, Collins, S. Cook, Farris, Flanigan, Johnson, Louisos, Mezzatesta, D. Miller, Morgan, Pettit, Rutledge, Warner, P. White, Burk, Conley, Faircloth, McKinley, M. Miller and Stemple.

Government Organization

J. Martin (*Chairman*), Cerra (*Vice Chairman*), Beane, Carper, Dempsey, Fragale, Fullen, Higgins, Love, Meadows, Michael, Preece, Reed, Sayre, Stewart, Taylor, Vest, Walker, Calvert, Evans, Overington, Parriott, Wallace, L. White and Willison.

Health and Human Resources

P. White (*Chairman*), S. Cook (*Vice Chairman*), Brown, Brum, D. Cook, Douglas, Flanigan, Gallagher, Grubb, Huffman, Kessel, Mann, Mezzatesta, Morgan, Pettit, Roop, Susman, Taylor, Walker, Conley, Haskins, Lane, M. Miller, Richards and Sims.

Industry and Labor

Spencer (*Chairman*), Schoonover (*Vice Chairman*), Adkins, Campbell, Compton, Farris, Hendricks, Lindsey, Louisos, D. Miller, Phillips, Proudfoot, Reed, Reid, Stewart, Walker, Wilson, Calvert, Carmichael, Haskins, M. Miller, Overington, Parriott, Prunty and Sims.

Judiciary

Rowe (*Chairman*), Staton (*Vice Chairman*), Brum, Brown, Damron, Douglas, Ferrell, Fullen, Gallagher, Grubb, Huffman, Huntwork, Mann, Manuel, Moore, Pethtel, Reid, Roop, Wilson, Ashley, Carmichael, Lane, Riggs, Schadler and Sims.

Pensions and Retirement

Browning (*Chairman*), Kiss (*Vice Chairman*), Morgan, Prezioso, Rollins, Ashley, Wallace.

Delegate Lindsey was appointed to fill the vacancy created by death of Delegate Walter Rollins.

Political Subdivisions

Roop (*Chairman*), Manuel (*Vice Chairman*), Bailey, Beach, Collins, Damron, Douglas, Higgins, Houvouras, Huntwork, Johnson, Kiss, Mann, Meadows, Pettit, Proudfoot, Sayre, Calvert, Goldsmith, Faircloth, G. Martin, Richards, Schadler and Willison.

Roads and Transportation

Reid (*Chairman*), Warner (*Vice Chairman*), Anderson, Brum, Carper, Cerra, D. Cook, Dempsey, Ferrell, Fragale, Fullen, Higgins, Huntwork, Keenan, Love, Morgan, Staton, Taylor, Conley, Evans, Leggett, G. Martin, Schadler, Wallace and L. White.

Rules

Chambers (*Chairman*), Ashcraft, Houvouras, J. Martin, Mezzatesta, Murenky, Rollins, Rowe, P. White, Burk, Faircloth and Stemple.

Delegate Anderson was appointed to the Committee on Rules to serve in place of Delegate Rollins.

JOINT

Enrolled Bills

Moore (*Chairman*), D. Cook (*Vice Chairman*), Overington and Willison.

Government and Finance

Chambers (*Co-Chairman*), Ashcraft, Murenky, Rollins, Rowe, Ashley and Burk.

Delegate Houvouras was appointed to the Joint Committee on Government and Finance to serve in place of Delegate Rollins.

Government Operations

J. Martin (*Co-Chairman*), Cerra, Love, Wallace and L. White.

Legislative Rule-Making Review

Grubb (*Co-Chairman*), Roop (*Vice Chairman*), Gallagher, Love, Burk and Faircloth.

Rules

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

STATUTORY LEGISLATIVE COMMISSIONS**Interstate Cooperation**

Pethel (*Chairman*), Brown, Ferrell, Fullen, Michael, Lane and Overington.

Juvenile Law

Brown (*Co-Chairman*), Douglas and Schadler.

Special Investigations

Chambers (*Co-Chairman*), J. Martin, Rowe, Faircloth and Lane.

Clerk's Note: Kenneth R. Adkins, 14th Delegate District, died while in office, on January 9, 1992.

Kenneth R. Adkins, Jr. was appointed in his stead.

Committees: Education, Industry and Labor and Political Subdivisions.

Walter Rollins, 14th Delegate District, died while in office, on February 9, 1992.

Kenny E. Partlow was appointed in his stead.

Committee: Education.

COMMITTEES OF THE SENATE

Regular Session, 1992

STANDING

Agriculture

Hawse (*Chairman*), Dalton (*Vice Chairman*), Anderson, Bailey, Dittmar, Helmick, Minard, Spears, Whitlow and Wiedebusch.

Banking and Insurance

Craig (*Chairman*), Minard (*Vice Chairman*), Bailey, Dittmar, Hawse, Heck, Jones, J. Manchin, Pritt, Sharpe, Tomblin, Wagner and Wooton.

Confirmations

Whitlow (*Chairman*), Jones (*Vice Chairman*), Blatnik, Chafin, Claypole, Lucht, Tomblin, Wehrle and Wooton.

Education

Lucht (*Chairman*), Wagner (*Vice Chairman*), Bailey, Blatnik, Brackenrich, Dalton, Felton, Hawse, Humphreys, Jones, M. Manchin, Withers and Boley.

Energy, Industry and Mining

Sharpe (*Chairman*), Macnaughtan (*Vice Chairman*), Brackenrich, Chernenko, Dalton, Felton, Helmick, J. Manchin, M. Manchin, Wagner, Wehrle, Withers and Boley.

Finance

Tomblin (*Chairman*), Craig (*Vice Chairman*), Blatnik, Brackenrich, Chernenko, Hawse, Jones, Lucht, J. Manchin, M. Manchin, Sharpe, Spears, Wagner, Whitlow, Withers, Wooton and Boley.

Government Organization

Spears (*Chairman*), Wiedebusch (*Vice Chairman*), Brackenrich, Chernenko, Claypole, Craig, Felton, Holliday, Jones, Lucht, J. Manchin, Tomblin, Wehrle and Boley.

Health and Human Resources

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

Interstate Cooperation

Wagner (*Chairman*), Claypole (*Vice Chairman*), Dalton, Heck, Holliday, Humphreys and M. Manchin.

Judiciary

Humphreys (*Chairman*), Felton (*Vice Chairman*), Anderson, Bailey, Chafin, Claypole, Dalton, Dittmar, Heck, Helmick, Holliday, Macnaughtan, Minard, Pritt, Wehrle and Wiedebusch.

Labor

Chernenko (*Chairman*), Withers (*Vice Chairman*), Chafin, Claypole, Helmick, Holliday, Humphreys, Macnaughtan, Wagner and Wiedebusch.

Military

Felton (*Chairman*), Helmick (*Vice Chairman*), Bailey, Blatnik, Chernenko, Heck, Minard, Spears and Wooton.

Natural Resources

Brackenrich (*Chairman*), Anderson (*Vice Chairman*), Chafin, Craigo, Dittmar, Hawse, Helmick, Humphreys, Macnaughtan, Minard, Spears, Whitlow, Wiedebusch and Withers.

Pensions

Wehrle (*Chairman*), J. Manchin (*Vice Chairman*), Dittmar, Lucht, Wagner, Withers and Wooton.

Rules

Burdette (*Chairman*), Blatnik, Brackenrich, Chafin, Craigo, Humphreys, Lucht, Pritt, Tomblin and Boley.

Small Business

Blatnik (*Chairman*), M. Manchin (*Vice Chairman*), Anderson, Craigo, Hawse, Jones, Macnaughtan, Minard, Pritt, Sharpe, Tomblin and Whitlow.

Transportation

Dittmar (*Chairman*), Heck (*Vice Chairman*), Anderson, Craigo, Dalton, Sharpe, Tomblin, Wagner and Wiedebusch.

SELECT**Select Committee on Ethical Standards and Practices**

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

JOINT**Commission on Special Investigations**

Burdette (*Co-Chairman*), Blatnik, Craigo, Wooton and Boley.

Enrolled Bills

Heck (*Chairman*), Dittmar (*Vice Chairman*), Anderson, Claypole and M. Manchin.

Government and Finance

Burdette (*Co-Chairman*), Chafin, Craigo, Humphreys, Lucht, Tomblin and Boley.

Government Operations

Spears (*Co-Chairman*), Brackenrich, J. Manchin, Wiede-
busch and Boley.

Legislative Commission on Juvenile Law

Lucht (*Co-Chairman*), Felton and Boley.

Legislative Rule-Making Review

Wooton (*Co-Chairman*), Chafin, J. Manchin, Tomblin,
Wiedebusch and Boley.

Rules

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

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND REGULAR SESSION, 1992

CHAPTER 1

(Com. Sub. for S. B. 362—By Senators Wagner, Chafin, Spears, Wooton, Felton, Withers, Bailey, Sharpe, Pritt and J. Manchin)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article three, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to abandoned mine land reclamation; setting forth a short title; providing legislative findings and intent and purpose of the article; specifying the jurisdiction and authority of the director; defining terms; objectives of abandoned land reclamation fund; specifying lands eligible for reclamation; creating certain special funds; powers and duties of the director regarding program, plans and reclamation projects; allowing the director to acquire and reclaim land adversely affected by past coal surface-mining practices; liens against reclaimed land; landowners petitions and appeals; priority of liens; filling voids and sealing tunnels; cooperative agreements; injunctive relief; water treatment plants; transfer of funds; interagency cooperation; and increasing from fifteen percent to thirty percent the maximum amount of state abandoned mine reclamation funds that may be used for water projects in the state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ABANDONED MINE LANDS AND RECLAMATION ACT.

§22-3-1. Short title.

§22-3-2. Legislative findings; intent and purpose of article; jurisdiction and authority of director.

§22-3-3. Definitions.

§22-3-4. Abandoned land reclamation fund and objectives of fund; lands eligible for reclamation.

§22-3-5. Powers and duties of director; program plans and reclamation projects.

§22-3-6. Acquisition and reclamation of land adversely affected by past coal surface-mining practices.

§22-3-7. Liens against reclaimed land; petition by landowner; appeal; priority of liens.

§22-3-8. Filling voids and sealing tunnels.

§22-3-9. General and miscellaneous powers and duties of director; cooperative agreements; injunctive relief; water treatment plants and facilities; transfer of funds and interagency cooperation.

§22-3-1. Short title.

- 1 This article shall be known and cited as the "Aban-
- 2 doned Mine Lands and Reclamation Act".

§22-3-2. Legislative findings; intent and purpose of article; jurisdiction and authority of director.

1 The Legislature finds that there are a substantial
 2 number of acres of land throughout the state that were
 3 disturbed by surface-mining operations prior to the time
 4 of present day effective control and regulation. There
 5 was little or no reclamation conducted and the impacts
 6 from these unreclaimed lands impose social and eco-
 7 nomic costs on residents in nearby and adjoining areas
 8 as well as continue to impair environmental quality,
 9 prevent or damage the beneficial use of land or water
 10 resources, or endanger the health and safety of the
 11 public.

12 Further, the Legislature finds and declares that, due
 13 to the passage of Public Law 95-87, certain areas within
 14 the boundaries of this state do not meet present day
 15 standards for reclamation.

16 Further, the Legislature finds that Title IV of the
17 Surface Mining Control and Reclamation Act of 1977,
18 Public Law 95-87, provides for the collection of thirty-
19 five cents per ton of coal produced from surface-mine
20 operations and fifteen cents per ton of coal produced
21 from underground mine operations in West Virginia to
22 be collected by the secretary of the United States
23 department of the interior until the thirtieth day of
24 September, one thousand nine hundred ninety-five. At
25 least fifty percent of the funds collected are to be
26 allocated directly to the state of West Virginia to
27 accomplish reclamation of abandoned coal mining
28 operations, as of the date the state of West Virginia
29 obtained an approved abandoned mine reclamation plan
30 in accordance with Sections 405 and 503 of Public Law
31 95-87.

32 Therefore, it is the intent of the Legislature by this
33 article to vest jurisdiction and authority in the director
34 of the division of environmental protection to maintain
35 program approval by, and receipt of funds from, the
36 United States department of the interior to accomplish
37 the desired restoration and reclamation of our land and
38 water resources.

§22-3-3. Definitions.

1 (a) All definitions set forth in article three of chapter
2 twenty-two-a of this code apply to those defined terms
3 which also appear in this article, if applicable.

4 (b) For the purposes of this article the following words
5 have the meanings ascribed to them in this subsection:

6 (1) "Director" means the director of the division of
7 environmental protection;

8 (2) "Division" means the division of environmental
9 protection; and

10 (3) "Secretary" means the secretary of the United
11 States Department of Interior.

§22-3-4. Abandoned land reclamation fund and objectives of fund; lands eligible for reclamation.

1 (a) All abandoned land reclamation funds available

2 under Title IV of Public Law 95-87, private donations
3 received, any state appropriated or transferred funds, or
4 funds received from the sale of land by the director,
5 under this article shall be deposited with the treasurer
6 of the state of West Virginia to the credit of the
7 abandoned land reclamation fund heretofore created,
8 and expended pursuant to the requirements of this
9 article.

10 (b) Moneys in the fund may be used by the director
11 for the following:

12 (1) Reclamation and restoration of land and water
13 resources adversely affected by past coal surface-mining
14 operations, including, but not limited to, reclamation
15 and restoration of abandoned surface mine areas,
16 abandoned coal processing areas and abandoned coal
17 processing waste areas; sealing and filling abandoned
18 deep mine entries and voids; planting of land adversely
19 affected by past coal surface-mining operations to
20 prevent erosion and sedimentation; prevention, abate-
21 ment, treatment and control of water pollution created
22 by coal mine drainage, including restoration of stream
23 beds and construction and operation of water treatment
24 plants; prevention, abatement and control of burning
25 coal processing waste areas and burning coal in situ;
26 prevention, abatement and control of coal mine subsi-
27 dence; and payment of administrative expenses and all
28 other necessary expenses incurred to accomplish the
29 purpose of this article: *Provided*, That all expenditures
30 from this fund shall reflect the following priorities in
31 the order stated:

32 (A) The protection of public health, safety, general
33 welfare and property from extreme danger of adverse
34 effects of past surface-mining practices;

35 (B) The protection of public health, safety and general
36 welfare from adverse effects of past coal surface-mining
37 practices;

38 (C) The restoration of land and water resources and
39 environment previously degraded by adverse effects of
40 past coal surface-mining practices, including measures
41 for the conservation and development of soil, water

42 (excluding channelization), woodland, fish and wildlife,
43 recreation resources and agricultural productivity;

44 (D) Research and demonstration projects relating to
45 the development of surface-mining reclamation and
46 water quality control program methods and techniques;

47 (E) The protection, repair, replacement, construction
48 or enhancement of public facilities such as utilities,
49 roads, recreation and conservation facilities adversely
50 affected by past coal surface-mining practices; and

51 (F) The development of publicly owned land adversely
52 affected by past coal surface-mining practices, including
53 land acquired as provided in this article for recreation
54 and historic purposes, conservation and reclamation
55 purposes and open space benefits.

56 (2) (A) The director may expend up to thirty percent
57 of the funds allocated to the state in any year through
58 the grants made available under paragraphs (1) and (5),
59 subsection (g) of Section 402 of Public Law 95-87 for the
60 purpose of protecting, repairing, replacing, constructing
61 or enhancing facilities relating to water supply, includ-
62 ing water distribution facilities and treatment plants, to
63 replace water supplies adversely affected by coal
64 surface-mining practices.

65 (B) If the adverse effects on water supplies referred
66 to in this subdivision occurred both prior to and after
67 the third day of August, one thousand nine hundred
68 seventy-seven, subdivision (3) of this subsection shall not
69 be construed to prohibit the state from using funds for
70 the purposes of this subdivision if the director deter-
71 mines that the adverse effects occurred predominantly
72 prior to the third day of August, one thousand nine
73 hundred seventy-seven.

74 (3) The director may receive and retain up to ten
75 percent of the total of the grants made annually to the
76 state under paragraphs (1) and (5), subsection (g) of
77 Section 404 of Public Law 95-87 if the amounts are
78 deposited to the credit of either:

79 (A) A special account in the state treasury designated
80 the "Reclamation and Restoration Fund" which is

81 hereby created. Moneys in the fund may be expended
82 by the director for administrative and personnel
83 expenses and to achieve the priorities stated in subdivi-
84 sion (1) of this subsection after the thirtieth day of
85 September, one thousand nine hundred ninety-five; or

86 (B) A special account in the state treasury designated
87 the "Acid Mine Drainage Abatement and Treatment
88 Fund" which is hereby created. Moneys in the fund may
89 be expended by the director for administrative and
90 personnel expenses and to implement, in consultation
91 with the United States soil conservation service, acid
92 mine drainage abatement and treatment plans approved
93 by the secretary of the United States department of
94 interior. The plans shall provide for the comprehensive
95 abatement of the causes and treatment of the effects of
96 acid mine drainage within qualified hydrologic units
97 affected by coal surface-mining practices.

98 (c) Except as provided for in this subsection, lands and
99 water eligible for reclamation or drainage abatement
100 expenditures under this article are those which were
101 mined for coal or which were affected by the mining,
102 wastebanks, coal processing or other coal mining
103 processes, and abandoned or left in an inadequate
104 reclamation status prior to the third day of August, one
105 thousand nine hundred seventy-seven, and for which
106 there is no continuing reclamation responsibility:
107 *Provided,* That moneys from the funds made available
108 by the secretary of the United States department of
109 interior pursuant to paragraphs (1) and (5), subsection
110 (g), Section 402 of Public Law 95-87 may be expended
111 for the reclamation or drainage abatement of a site that:
112 (1) The surface-mining operation occurred during the
113 period beginning on the fourth day of August, one
114 thousand nine hundred seventy-seven, and ending on or
115 before the twenty-first day of January, one thousand
116 nine hundred eighty-one, and that any funds for
117 reclamation or abatement which are available pursuant
118 to a bond or other financial guarantee or from any other
119 source, and not sufficient to provide for adequate
120 reclamation or abatement of the site; or (2) the surface-
121 mining operation occurred during the period beginning

122 on the fourth day of August, one thousand nine hundred
123 seventy-seven, and ending on or before the first day of
124 October, one thousand nine hundred ninety-one, and that
125 the surety of the surface-mining operation became
126 insolvent during that period, and as of the first day of
127 October, one thousand nine hundred ninety-one, funds
128 immediately available from proceeding relating to the
129 insolvency or from any financial guarantees or other
130 sources are not sufficient to provide for adequate
131 reclamation of the site: *Provided, however,* That the
132 director, with the concurrence of the secretary, makes
133 either of the above-stated findings, and that the site is
134 eligible, or more urgent than the reclamation priorities
135 set forth in paragraphs (A) and (B), subdivision (1),
136 subsection (b) of this section.

137 (d) One purpose of this article is to provide additional
138 and cumulative remedies to abate the pollution of the
139 waters of the state and nothing contained in this article
140 abridges or alters rights of action or remedies now or
141 hereafter existing, nor shall any provisions in this
142 article or any act done by virtue of this article be
143 construed as estopping the state, municipalities, public
144 health officers or persons as riparian owners or
145 otherwise in the exercise of their rights to suppress
146 nuisances or to abate any pollution now or hereafter
147 existing or to recover damages.

148 (e) Where the governor certifies that the above
149 objectives of the fund have been achieved and there is
150 a need for construction of specific public facilities in
151 communities impacted by coal development, and other
152 sources of federal funds are inadequate and the secre-
153 tary concurs, then the director may expend money from
154 the fund for the construction.

**§22-3-5. Powers and duties of director; program plans
and reclamation projects.**

1 (a) The director shall submit to the secretary of the
2 interior a state reclamation plan and annual projects to
3 carry out the purposes of this article.

4 (b) That reclamation plan shall generally identify the
5 areas to be reclaimed, the purposes for which the

6 reclamation is proposed, the relationship of the lands to
7 be reclaimed and the proposed reclamation to surround-
8 ing areas, the specific criteria for ranking and identi-
9 fying projects to be funded and the legal authority and
10 programatic capability to perform the work in confor-
11 mance with the provisions of this article.

12 (c) On an annual basis, the director shall submit to the
13 secretary of the interior an application for the support
14 of the state program and implementation of specific
15 reclamation projects. The annual requests shall include
16 information as may be requested by the secretary of the
17 interior including:

18 (1) A general description of each proposed project;

19 (2) A priority evaluation of each proposed project;

20 (3) A statement of the estimated benefits in such terms
21 as number of acres restored, miles of stream improved,
22 acres of surface lands protected from subsidence,
23 population protected from subsidence, air pollution and
24 hazards of mine and coal refuse disposal area fires;

25 (4) An estimate of the cost for each proposed project;

26 (5) In the case of proposed research and demonstration
27 projects, a description of the specific techniques to be
28 evaluated or objective to be attained;

29 (6) An identification of lands or interest therein to be
30 acquired and the estimated cost; and

31 (7) In each year after the first in which a plan is filed
32 under this article, an inventory of each project funded
33 under the previous year's grant, which inventory shall
34 include details of financial expenditures on the project
35 together with a brief description of the project, includ-
36 ing the project's location, the landowner's name, acreage
37 and the type of reclamation performed.

38 (d) The costs for each proposed project under this
39 section shall include actual construction costs, actual
40 operation and maintenance costs of permanent facilities,
41 planning and engineering costs, construction inspection
42 costs and other necessary administrative expenses.

§22-3-6. Acquisition and reclamation of land adversely affected by past coal surface-mining practices.

1 (a) If the director makes a finding of fact that:

2 (1) Land or water resources have been adversely
3 affected by past coal surface-mining practices;

4 (2) The adverse effects are at a stage where, in the
5 public interest, action to restore, reclaim, abate, control
6 or prevent should be taken;

7 (3) The owners of the land or water resources where
8 entry must be made to restore, reclaim, abate, control
9 or prevent the adverse effects of past coal surface-
10 mining practices are not known or readily available; or

11 (4) The owners will not give permission for the
12 director, his or her agents, employees or contractors to
13 enter upon the property to restore, reclaim, abate,
14 control or prevent the adverse effects of past coal
15 surface-mining practices, then, upon giving notice by
16 mail to the owners, if known, or if not known by posting
17 notice upon the premises and advertising once in a
18 newspaper of general circulation in the county in which
19 the land lies, the director, his or her agents, employees
20 or contractors have the right to enter upon the property
21 adversely affected by past coal surface-mining practices
22 and any other property to have access to the property
23 to do all things necessary or expedient to restore,
24 reclaim, abate, control or prevent the adverse effects.
25 The entry shall be construed as an exercise of the police
26 power of the state for the protection of public health,
27 safety and general welfare and shall not be construed
28 as an act of condemnation of property nor of trespass
29 thereon. The moneys expended for the work and the
30 benefits accruing to any premises so entered upon is
31 chargeable against the land and mitigates or offsets any
32 claim in or any action brought by any owner of any
33 interest in the premises for any alleged damages by
34 virtue of the entry: *Provided*, That this provision is not
35 intended to create new rights of action or eliminate
36 existing immunities.

37 (b) The director, his or her agents, employees or
38 contractors have the right to enter upon any property
39 for the purpose of conducting studies or exploratory
40 work to determine the existence of adverse effects of
41 past coal surface-mining practices and to determine the
42 feasibility of restoration, reclamation, abatement,
43 control or prevention of the adverse effects. The entry
44 shall be construed as an exercise of the police power of
45 the state for the protection of public health, safety and
46 general welfare and shall not be construed as an act of
47 condemnation of property nor trespass thereon.

48 (c) The director may acquire any land by purchase,
49 donation or condemnation, which is adversely affected
50 by past coal surface-mining practices, if the director
51 determines that acquisition of the land is necessary to
52 successful reclamation and that:

53 (1) The acquired land, after restoration, reclamation,
54 abatement, control or prevention of the adverse effects
55 of past coal surface-mining practices will serve recrea-
56 tion, historic, conservation or reclamation purposes or
57 provide open space benefits;

58 (2) Permanent facilities such as a treatment plant or
59 a relocated stream channel will be constructed on the
60 land for the restoration, reclamation, abatement, control
61 or prevention of the adverse effects of past coal surface-
62 mining practices; or

63 (3) Acquisition of coal refuse disposal sites and all coal
64 refuse thereon will serve the purposes of this article or
65 that public ownership is desirable to meet emergency
66 situations and prevent recurrences of the adverse effects
67 of past coal surface-mining practices.

68 (d) Title to all lands acquired pursuant to this section
69 shall be in the name of the state of West Virginia, by
70 the West Virginia division of environmental protection.
71 The price paid for land acquired under this section shall
72 reflect the fair market value of the land as adversely
73 affected by past coal surface-mining practices.

74 (e) The director is hereby authorized to transfer land
75 obtained under subsection (c) of this section to the

76 secretary. The director may purchase the land from the
77 secretary after reclamation at the fair market value less
78 the state's original acquisition price.

79 (f) The director may accept and local political
80 subdivisions may transfer to the director land belonging
81 to them to carry out the purposes set out in this article
82 and in that event they shall have a preferential right to
83 purchase the land after reclamation at the fair market
84 value less the political subdivision's cost of acquisition,
85 but at no time shall the director sell the land to a
86 political subdivision at a price less than the cost of the
87 acquisition and reclamation of the land: *Provided*, That
88 if any land sold to a political subdivision under this
89 subsection is not used for a valid public purpose as
90 specified by the director in the terms and conditions of
91 the sales agreement, then all rights, title and interest
92 in the land shall revert to the West Virginia division of
93 environmental protection. Any moneys received from
94 the sale shall be deposited in the abandoned land
95 reclamation fund.

96 (g) Where land acquired pursuant to this section is
97 considered to be suitable for industrial, commercial,
98 residential or recreational development, the director
99 may sell the land by public sale under a system of
100 competitive bidding at not less than fair market value
101 and pursuant to regulations promulgated to ensure that
102 the lands are put to proper use consistent with state and
103 local land use plans.

104 (h) The director, if requested and after appropriate
105 public notice, shall hold a public hearing in the county
106 in which land acquired pursuant to this section is
107 located. The hearing shall be held at a time which shall
108 afford local citizens and government the maximum
109 opportunity to participate in the decision concerning the
110 use and disposition of the land after restoration,
111 reclamation, abatement, control or prevention of the
112 adverse effects of past coal surface-mining practices.

113 (i) In addition to the authority to acquire land under
114 other provisions of this section, the director is authorized
115 to use money in the fund to acquire land from any

116 federal, state or local government or from a political
117 subdivision thereof, or from any person, firm, associa-
118 tion or corporation, if he or she determines that such is
119 an integral and necessary element of an economically
120 feasible plan for the project to construct or rehabilitate
121 housing for persons disabled as the result of employment
122 in the mines or work incidental thereto, persons
123 displaced by acquisition of land pursuant to this section,
124 or persons dislocated as the result of adverse effects of
125 coal surface-mining practices which constitute an
126 emergency as provided in section 410 of Public Law 95-
127 87, or persons dislocated as the result of natural
128 disasters or catastrophic failures from any cause. The
129 activities shall be accomplished under such terms and
130 conditions as the director shall require, which may
131 include transfers of land with or without monetary
132 consideration: *Provided*, That to the extent that the
133 consideration is below the fair market value of the land
134 transferred, no portion of the difference between the fair
135 market value and the consideration shall accrue as a
136 profit to such persons, firm, association or corporation.
137 No part of the funds provided under this article may be
138 used to pay the actual construction costs of housing. The
139 director may carry out the purposes of this subsection
140 directly or he or she may make grants and commitments
141 for grants, and may advance money under such terms
142 and conditions as he or she may require to any depart-
143 ment, agency or political subdivision of this state, or any
144 public body or nonprofit organization designated by the
145 director.

**§22-3-7. Liens against reclaimed land; petition by lan-
downer; appeal; priority of liens.**

1 (a) Within six months after the completion of a project
2 to restore, reclaim, abate, control or prevent adverse
3 effects of past coal surface-mining practices on a
4 privately owned land, the director shall itemize the
5 moneys so expended and may file a statement thereof
6 in the office of the clerk of the county commission in the
7 county in which the land lies, together with a notarized
8 appraisal by an independent appraiser of the value of
9 the land before the restoration, reclamation, abatement,

10 control or prevention of adverse effects of past coal
11 surface-mining practices, if the moneys so expended
12 result in a significant increase in property value. The
13 statement constitutes a lien upon the land. The lien shall
14 not exceed the amount determined by the appraisal to
15 be the increase in the market value of the land as a
16 result of the restoration, reclamation, abatement, control
17 or prevention of the adverse effects of past coal surface-
18 mining practices. No lien may be filed against the
19 property of any person in accordance with this subsection,
20 who owned the surface prior to the second day of
21 May, one thousand nine hundred seventy-seven, and who
22 neither consented to, nor participated in, nor exercised
23 control over the mining operation which necessitated the
24 reclamation performed hereunder.

25 (b) The landowner may petition the director within
26 sixty days of the filing of the lien to determine the
27 increase in the market value of the land as a result of
28 the restoration, reclamation, abatement, control or
29 prevention of the adverse effects of past coal surface-
30 mining practices. The amount reported to be the
31 increase in value of the premises constitutes the amount
32 of lien and shall be recorded with the statement herein
33 provided. Any party aggrieved by the decision may
34 appeal to the circuit court of the county in which the
35 land is located.

36 (c) The statement filed pursuant to subsection (a) of
37 this section constitutes a lien upon the land as of the date
38 of the expenditure of the moneys and has priority as a
39 lien second only to the lien of real estate taxes imposed
40 upon the land.

§22-3-8. Filling voids and sealing tunnels.

1 (a) The Legislature declares that voids, open and
2 abandoned tunnels, shafts and entryways and subsi-
3 dence resulting from any previous coal surface-mining
4 operation constitute a hazard to the public welfare and
5 safety and that surface impacts of any underground or
6 surface-mining operation may degrade the environment.
7 The director is authorized to fill the voids, seal the
8 abandoned tunnels, shafts and entryways, and reclaim

9 surface impacts of underground or surface mines and
10 remove water and other matter from mines which the
11 director determines could endanger life and property,
12 constitute a hazard to the public welfare and safety or
13 degrade the environment.

14 (b) In those instances where coal mine waste piles are
15 being reworked for conservation purposes, the incre-
16 mental costs of disposing of the wastes from such
17 operations by filling voids and sealing tunnels may be
18 eligible for funding, if the disposal of those wastes meets
19 the purposes of this article.

20 (c) The director may acquire by purchase, donation,
21 easement or otherwise such interest in land as he or she
22 determines necessary to carry out the provisions of this
23 section.

**§22-3-9. General and miscellaneous powers and duties of
director; cooperative agreements; injunctive
relief; water treatment plants and facilities;
transfer of funds and interagency cooper-
ation.**

1 (a) The director is authorized to engage in any work
2 and to do all things necessary and proper, including
3 promulgation of rules and regulations, to implement and
4 administer the provisions of this article.

5 (b) The director is authorized to engage in cooperative
6 projects under this article with any other agency of the
7 United States of America, any state, county or munic-
8 ipal agency or subdivision thereof.

9 (c) The director may request the attorney general, who
10 is hereby authorized to initiate, in addition to any other
11 remedies provided for in this article, in any court of
12 competent jurisdiction, an action in equity for an
13 injunction to restrain any interference with the exercise
14 of the right to enter or to conduct any work provided
15 in this article.

16 (d) The director has the authority to construct and
17 operate a plant or any facilities for the control and
18 treatment of water pollution resulting from mine
19 drainage. The extent of this control and treatment may

20 be dependent upon the ultimate use of the water:
21 *Provided*, That this subsection shall not repeal or
22 supersede any portion of the applicable federal or state
23 water pollution control laws and no control or treatment
24 under this section may be less than that required under
25 any applicable federal or state water pollution control
26 law. The construction of any facilities may include
27 major interceptors and other facilities appurtenant to
28 the plant.

29 (e) All departments, boards, commissions and agen-
30 cies of the state shall cooperate with the director by
31 providing technical expertise, personnel, equipment,
32 materials and supplies to implement and administer the
33 provisions of this article.

CHAPTER 2

(H. B. 4755—By Delegates Murensky and Burk)

[Passed March 5, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article eight, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to redesignation of funds in the trust and expense funds.

Be it enacted by the Legislature of West Virginia:

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

§36-8-18. Deposits of funds.

1 (a) All funds received under this article, including the
2 proceeds from the sale of abandoned property under
3 section seventeen of this article, shall forthwith be
4 deposited by the state treasurer in the general fund.

5 (b) All operating expenses and administrative ex-
6 penses incurred by the treasurer in the administration
7 and enforcement of the provisions of this article shall be
8 paid from an appropriation from the general revenue

9 fund. The treasurer is further directed to make prompt
10 payment of claims duly allowed as hereinafter provided
11 from the general revenue fund.

12 (c) Before making any deposit to the general fund, the
13 state treasurer shall record the name and last-known
14 address of each person appearing from the holder's
15 reports to be entitled to the abandoned property, and the
16 name and last-known address of each insured person or
17 annuitant, and with respect to each policy or contract
18 listed in the report of a life insurance corporation, its
19 number, the name of the corporation and the amount
20 due. Such records shall be available for public inspec-
21 tion at all reasonable business hours.

CHAPTER 3

(Com. Sub. for H. B. 4476—By Mr. Speaker, Mr. Chambers, and Delegate Lane)

[Passed March 4, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-two-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five, relating generally to abandoned wells; providing that the article may be cited as "The West Virginia Abandoned Well Act"; setting forth legislative findings and a declaration of policy and purpose; defining certain terms; requiring financial responsibility for all wells; establishing a priority system for plugging abandoned wells; defining the amount of financial responsibility for all wells; authorizing interested persons to plug an abandoned well; providing for arbitration; authorizing civil penalties; authorizing the promulgation of legislative rules; setting forth a hearing procedure; preserving existing rights and remedies; and providing for conflicting provisions.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-two-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 five, to read as follows:

ARTICLE 5. THE WEST VIRGINIA ABANDONED WELL ACT.

- §22B-5-1. Short title.
- §22B-5-2. Legislative findings; legislative statement of policy and purpose.
- §22B-5-3. Definitions.
- §22B-5-4. Financial responsibility—Applicability.
- §22B-5-5. Financial responsibility—Amount.
- §22B-5-6. Establishment of priorities for plugging expenditures.
- §22B-5-7. Right of interested person to plug, replug and reclaim abandoned wells.
- §22B-5-8. Arbitration; fees and costs.
- §22B-5-9. Civil penalties.
- §22B-5-10. Rule making; procedure; judicial review.
- §22B-5-11. Existing rights and remedies preserved.
- §22B-5-12. Conflicting provisions.

§22B-5-1. Short title.

- 1 This article may be cited as “The West Virginia
- 2 Abandoned Well Act.”

§22B-5-2. Legislative findings; legislative statement of policy and purpose.

- 1 (a) The Legislature finds and declares that:
- 2 (1) Oil and gas have been continuously produced in
- 3 West Virginia for over one hundred years, during which
- 4 time operators of wells have been required by the laws
- 5 of this state to plug wells upon cessation of use;
- 6 (2) The plugging requirements for certain older oil
- 7 and gas and other wells may not have been sufficient
- 8 to protect underground water supplies, to prevent the
- 9 movement of fluids between geologic horizons, to allow
- 10 coal operators to mine through such wells safely, nor to
- 11 allow for enhanced recovery of oil, gas or other mineral
- 12 resources of this state;
- 13 (3) Many wells may exist in West Virginia which are
- 14 abandoned and either not plugged or not properly
- 15 plugged in a manner to protect underground water
- 16 supplies, to prevent the movement of fluids between
- 17 geologic horizons, to allow coal operators to mine
- 18 through such wells safely, to allow for enhanced
- 19 recovery of oil, gas and other mineral resources.

20 generally to protect the environment and mineral
21 resources of this state, as aforesaid;

22 (4) Requirements for financial responsibility to assure
23 plugging of abandoned wells have not been required in
24 this state for older wells, and adequate financial
25 responsibility should be established with respect to all
26 wells;

27 (5) Programs and policies should be implemented to
28 foster, encourage and promote through the fullest
29 practical means the proper plugging of abandoned wells
30 to protect the environment and mineral resources of this
31 state;

32 (6) Criteria should be established with respect to
33 priorities for the expenditure of moneys available for
34 plugging abandoned wells and identifying those aban-
35 doned wells which, as a matter of public policy, should
36 be plugged first; and

37 (7) The plugging of many abandoned wells may be
38 accomplished through the establishment of rights and
39 procedures allowing interested persons to apply for a
40 permit to plug an abandoned well.

41 (b) The Legislature hereby declares that it is in the
42 public interest and it is the public policy of this state,
43 to foster, encourage and promote the proper plugging
44 of all wells at the time of their abandonment to protect
45 the environment and mineral resources of this state.

§22B-5-3. Definitions.

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

3 (a) "Abandoned well" means any well which is
4 required to be plugged under the provisions of section
5 nineteen, article one of this chapter and regulations
6 promulgated pursuant thereto.

7 (b) "Director" means for the purpose of this article,
8 the director of the division of environmental protection
9 as established in section two, article one, chapter
10 twenty-two of this code or such other person as the
11 director may delegate his duties pursuant to section

12 seven, article one, chapter twenty-two of this code.

13 (c) "Interested Party" means, for the purpose of this
14 article, any owner, operator or lessee of the surface, oil,
15 gas, water, coal or other mineral resource under, on,
16 adjacent or in close proximity to any lands upon which
17 an abandoned well exists, and whose lands, rights or
18 interests are or might be affected by such abandoned
19 well.

§2B-5-4. Financial responsibility — Applicability.

1 (a) Operators of all wells, not otherwise required to
2 demonstrate financial responsibility through bonding or
3 otherwise in accordance with the provisions of article
4 one of this chapter, shall, no later than the first day of
5 July, one thousand nine hundred ninety-three, demon-
6 strate financial responsibility in accordance with the
7 methods and in the amounts prescribed by this article.

8 (b) If the operator demonstrates to the satisfaction of
9 the director that an unjust hardship to an operator will
10 occur as a result of the financial responsibility require-
11 ments of this article:

12 (1) The director may suspend such financial respon-
13 sibility requirements to a date no later than the first day
14 of July, one thousand nine hundred ninety-five; or

15 (2) The director may authorize an operator to dem-
16 onstrate such financial responsibility by supplying
17 twenty percent of any required amount by no later than
18 the first day of July, one thousand nine hundred ninety-
19 four; forty percent no later than the first day of July,
20 one thousand nine hundred ninety-five; sixty percent no
21 later than the first day of July, one thousand nine
22 hundred ninety-six; eighty percent by the first day of
23 July, one thousand nine hundred ninety-seven; and one
24 hundred percent by the first day of July, one thousand
25 nine hundred ninety-eight.

26 (c) The operator making a demonstration of financial
27 responsibility pursuant to this section shall provide the
28 director with information sufficient to establish the
29 location and identification of the well, any well comple-
30 tion, recompletion and reworking records which may

31 exist and such other information as the director may
32 reasonably require.

§22B-5-5. Financial responsibility — Amount.

1 The financial responsibility requirements applicable
2 to all wells shall be as set forth in section twenty-six,
3 article one of this chapter, except that the amount of
4 financial responsibility through bonding or otherwise, as
5 provided for in said section, for an individual well shall
6 be in the amount of five thousand dollars. In lieu of
7 separate, single well bonds, an operator may either
8 furnish a blanket bond in the sum of fifty thousand
9 dollars in accordance with the provisions of subsection
10 (c), section twenty-six, article one of this chapter, or if
11 the operator has previously provided a blanket bond in
12 the sum of fifty thousand dollars which remains in
13 effect, the operator may cover wells subject to this
14 article by such existing blanket bond.

§22B-5-6. Establishment of priorities for plugging expenditures.

1 (a) Within one year of the effective date of this article,
2 the director shall promulgate legislative rules establish-
3 ing a priority system by which available funds from the
4 oil and gas reclamation fund, established pursuant to
5 section twenty-nine, article one of this chapter, will be
6 expended to plug abandoned wells. The rules shall, at
7 a minimum, establish three primary classifications to be
8 as follows:

9 (1) Wells which are an immediate threat to the
10 environment or which may hinder or impede the
11 development of mineral resources of this state so as to
12 require immediate plugging;

13 (2) Wells which are not an immediate threat to the
14 environment or which do not hinder or impede the
15 development of mineral resources of this state but which
16 should be plugged consistent with available resources;
17 and

18 (3) Wells which are not a threat to the environment
19 and which do not hinder or impede the development of
20 mineral resources of this state and for which plugging

21 may be deferred for an indefinite period.

22 (b) Such classifications shall, among other things, take
23 into consideration the following factors, as appropriate:

24 (1) The age of the well;

25 (2) The length of time the well has been abandoned;

26 (3) The casing remaining in the well;

27 (4) The presence of any leaks either at the surface or
28 underground;

29 (5) The possibility or existence of groundwater
30 contamination;

31 (6) Whether the well is located in an area to be
32 developed for enhanced recovery;

33 (7) Whether the well hinders or impedes mineral
34 development; and

35 (8) Whether the well is located in close proximity to
36 population.

**§22B-5-7. Right of interested person to plug, replug and
reclaim abandoned wells.**

1 (a) Upon twenty days' advance written notice, it shall
2 be lawful for any interested person, the operator or the
3 director to enter upon the premises where any aban-
4 doned well is situated and properly plug or replug such
5 abandoned well, and to reclaim any area disturbed by
6 such plugging or replugging in the manner required by
7 article one of this chapter. Such notice shall be served
8 by certified mail, returned receipt requested, or such
9 other manner as is sufficient for service of process in
10 a civil action, upon any owner of the surface of the land
11 upon which such abandoned well exists, upon any oil
12 and gas lessee of record with the director and upon any
13 owner or operator of such abandoned well of record with
14 the director, or in the event there is no such lessee,
15 owner or operator of record with the director, by posting
16 such notice in a conspicuous place at or near such
17 abandoned well. The notice given the surface owner
18 shall include a statement advising the surface owner of
19 the right to repairs or damages as provided in this

20 section and the potential right to take any casing,
21 equipment or other salvage. Such notice shall be on
22 forms approved by the director.

23 (b) Any interested person who plugs a well pursuant
24 to the provisions of this section shall, to the extent
25 damage or disturbance results from such plugging,
26 either repair the damage or disturbance or compensate
27 the surface owner for (i) the reasonable cost of repairing
28 or replacing any water well, (ii) the reasonable value of
29 any crops destroyed, damaged or prevented from
30 reaching market, (iii) the reasonable cost of repair to
31 personal property up to the value of the replacement
32 value of personal property of like age, wear and quality,
33 (iv) lost income or expense incurred, and (v) reasonable
34 costs to reclaim or repair real property including roads.

35 (c) The interested person who is plugging the well
36 pursuant to the provisions of this section, may elect to
37 take any casing, equipment or other salvage which may
38 result from the plugging of such abandoned well by
39 including notice of such election in the written notice
40 mandated by subsection (a) of this section. Should such
41 interested person who is plugging the well not give such
42 notice of election, the surface owner may elect to take
43 any casing, equipment or other salvage which may
44 result from the plugging of such abandoned well by
45 giving written notice of such election to the interested
46 person who is plugging the well at least ten days in
47 advance of such plugging. In the event such notice is
48 given, such interested person who is plugging the well
49 may leave such casing, equipment or salvage at a
50 location which will not adversely affect any reclamation
51 of a disturbed area. In the event the surface owner does
52 not give notice of an election to take such casing,
53 equipment or salvage as provided herein, such inter-
54 ested person who plugs the well shall properly dispose
55 thereof. Nothing in this subsection shall be construed to
56 require or create a duty upon such interested person
57 who plugs the well to protect or pull casing or otherwise
58 take any action or incur any expense to retrieve or
59 protect any casing, equipment or salvageable material:
60 *Provided*, That nothing contained in this section may be

61 construed to relieve the interested person from the
62 responsibility to perform in accordance with the
63 requirements of this article, article one of this chapter,
64 or any condition of the permit.

65 (d) Prior to releasing any bond which is obtained in
66 connection with plugging or replugging an abandoned
67 well under the provisions of this section, the director
68 shall obtain from the interested person who has obtained
69 the bond a copy of a letter that such interested person
70 has sent to the surface owner advising that reclamation
71 has been completed.

72 (e) Where an interested person who intends to plug
73 an abandoned well pursuant to this section is unable to
74 obtain a bond in the full amount required by section
75 twenty-six, article one of this chapter, the director may
76 authorize a bond in a lesser amount; which lesser
77 amount shall be equal or greater than the estimated cost
78 of reclaiming the surface areas disturbed by the
79 plugging operation: *Provided*, That an owner or opera-
80 tor of a well shall comply with the financial responsi-
81 bility provisions of section five of this section and section
82 twenty-six, article one of this chapter.

83 (f) In the event the owner or operator of a well fails
84 or has failed to plug a well in accordance with laws and
85 regulations in effect at the time the well is or was first
86 subject to plugging requirements, any interested person
87 who plugs or replugs such well pursuant to the provi-
88 sions of this section may recover from the owner or
89 operator of such well all reasonable costs incidental to
90 such plugging or replugging, including any compensa-
91 tion provided for in this section. In the event funds from
92 the oil and gas reclamation fund established pursuant
93 to section twenty-nine, article one of this chapter are
94 used to plug or replug such well, the director shall be
95 entitled to recover from the owner or operator of such
96 well any amounts so expended from the fund. Any
97 amounts so recovered by the director shall be deposited
98 in said fund.

§22B-5-8. Arbitration; fees and costs.

1 (a) If the interested person who plugs a well and the

2 surface owner are unable to agree as to the adequacy
3 of the repairs performed or the amount of compensation
4 to which the surface owner may be entitled, either party
5 upon written notice to the other may elect to have such
6 issue finally determined by binding arbitration pursu-
7 ant to article ten, chapter fifty-five of this code.

8 (b) The adequacy of the repairs or compensation to
9 which the surface owner may be entitled shall, if such
10 election is made, be determined by a panel of three
11 disinterested arbitrators. The first arbitrator shall be
12 chosen by the party electing to arbitrate in his notice
13 of election; the second arbitrator shall be chosen by the
14 other party within ten days after receipt of the notice
15 of election; and the third arbitrator shall be chosen
16 jointly by the first two arbitrators within twenty days
17 thereafter. If they are unable to agree upon the third
18 arbitrator within twenty days, then the two arbitrators
19 are hereby empowered to and shall forthwith submit the
20 matter to the court under the provisions of section one,
21 article ten, chapter fifty-five of this code, so that, among
22 other things, the third arbitrator can be chosen by the
23 judge of the circuit court of the county wherein the
24 surface estate lies.

25 (c) The following persons shall be deemed interested
26 and not be appointed as arbitrators: Any person who is
27 personally interested in the land on which the plugging
28 is being performed or has been performed, or in any
29 interest or right therein, or in the compensation and any
30 damages to be awarded therefor, or who is related by
31 blood or marriage to any person having such personal
32 interest, or who stands in the relation of guardian and
33 ward, master and servant, principal and agent, or
34 partner, real estate broker, or surety to any person
35 having such personal interest, or who has enmity
36 against or bias in favor of any person who has such
37 personal interest or who is the owner of, or interested
38 in, such land or the oil and gas development thereof. No
39 person shall be deemed interested or incompetent to act
40 as arbitrator by reason of his being an inhabitant of the
41 county, district or municipal corporation wherein the
42 land is located, or holding an interest in any other land

43 therein.

44 (d) The panel of arbitrators shall hold hearings and
45 take such testimony and receive such exhibits as shall
46 be necessary to determine the required repairs or the
47 amount of compensation to be paid to the surface owner.
48 However, no award requiring repairs or compensation
49 shall be made to the surface owner unless the panel of
50 arbitrators has first viewed the surface estate in
51 question. A transcript of the evidence may be made but
52 shall not be required.

53 (e) Each party shall pay the compensation of his own
54 arbitrator and one half of the compensation of the third
55 arbitrator, and his own costs.

§22B-5-9. Civil penalties.

1 (a) Any person who fails to plug an abandoned well
2 within thirty days, or upon a showing of good cause,
3 within a longer period as determined by the director not
4 to exceed one hundred eighty days, from the date such
5 plugging is ordered by the director, shall be liable for
6 a civil penalty of twenty-five thousand dollars which
7 penalty shall be recovered in a civil action in the circuit
8 court wherein the abandoned well is located.

9 (b) The net proceeds of all civil penalties collected
10 pursuant to subsection (a) of this section shall be
11 deposited into the oil and gas reclamation fund estab-
12 lished pursuant to section twenty-nine, article one of this
13 chapter.

§22B-5-10. Rule making; procedure; judicial review.

1 (a) The director shall have the power and authority
2 to promulgate legislative rules, procedural rules and
3 interpretive rules in accordance with the provisions of
4 chapter twenty-nine-a of this code in order to carry out
5 and implement the provisions of this article.

6 (b) Any hearings or proceedings before the director
7 on any matter other than rule making shall be con-
8 ducted and heard by the director or a representative
9 designated by him and shall be in accordance with the
10 provisions of article five, chapter twenty-nine-a of this

11 code.

12 (c) Any person having an interest which is or may be
13 adversely affected, who is aggrieved by an order of the
14 director issued pursuant to this article, or by the
15 issuance or denial of a permit pursuant to this article
16 or by the permit's terms or conditions, is entitled to
17 judicial review thereof. All of the pertinent provisions
18 of section four, article five, chapter twenty-nine-a of this
19 code shall apply to and govern such judicial review with
20 like effect as if the provisions of said section four were
21 set forth in extenso in this section.

22 (d) The judgment of the circuit court shall be final
23 unless reversed, vacated or modified on appeal to the
24 supreme court of appeals in accordance with the
25 provisions of section one, article six, chapter twenty-
26 nine-a of this code.

§22B-5-11. Existing rights and remedies preserved.

1 (a) It is the purpose of this article to provide
2 additional and cumulative remedies to address aban-
3 doned wells in this state and nothing herein contained
4 shall abridge or alter rights of action or remedies now
5 or hereafter existing, nor shall any provisions in this
6 article, or any act done by virtue of this article, be
7 construed as estopping the state, municipalities, public
8 health officers or persons in the exercise of their rights
9 to suppress nuisance or to abate any pollution now or
10 hereafter existing, or to recover damages.

11 (b) An order of the director, the effect of which is to
12 find that an abandoned well exists, or in ordering an
13 abandoned well to be plugged, or any other order, or any
14 violation of any of the provisions of this article shall give
15 rise to no presumptions of law or findings of fact inuring
16 to or for the benefit of persons other than the state of
17 West Virginia.

18 (c) Nothing contained in this article shall be
19 construed to place any duty or responsibility on the
20 landowner, well owner or operator or lessee to plug a
21 well in addition to those set forth in article one of this
22 chapter.

§22B-5-12. Conflicting provisions.

1 The provisions of this article shall be in addition to
 2 and supplement all other provisions of article one of this
 3 chapter and rights with respect to plugging or replug-
 4 ging wells. Nothing in this article shall be construed to
 5 eliminate the permit requirement for plugging and
 6 replugging wells. In the event of any inconsistency or
 7 conflict between any provision of this article and any
 8 provision of this code, the provisions of this article shall
 9 control.

CHAPTER 4

(H. B. 4093—By Delegates Love and Wallace)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article one, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to department of agriculture, marketing and development division; duties; and continuation.

Be it enacted by the Legislature of West Virginia:

That section three-a, article one, 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 1. DEPARTMENT OF AGRICULTURE.

§19-1-3a. Marketing and development division; duties; continuation.

1 (a) In recognition that article ten, chapter four of this
 2 code requires a performance audit of the rural resource
 3 division of the department of agriculture and that
 4 performance standards must be stated before such audit
 5 can be performed, the rural resources division is hereby
 6 formally established and renamed the marketing and
 7 development division in the department of agriculture.
 8 The duties of the division are to establish marketing,
 9 promotional and development programs to advance

10 West Virginia agriculture in the domestic and interna-
11 tional markets; to provide grading, inspection and
12 market news services to the various elements of the
13 West Virginia agricultural industry; and to regulate
14 and license individuals involved in the marketing of
15 agricultural products.

16 (b) After having conducted a performance and fiscal
17 audit through its joint committee on government
18 operations, pursuant to section nine, article ten, chapter
19 four of this code, the Legislature hereby finds and
20 declares the marketing and development division should
21 be continued and reestablished. Accordingly, notwith-
22 standing the provisions of section four, article ten,
23 chapter four of this code, the marketing and develop-
24 ment division shall continue to exist until the first day
25 of July, one thousand nine hundred ninety-five.

CHAPTER 5

(H. B. 4758—By Delegate Mezzatesta)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend article one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six, relating to legislative findings; payment of annual fee by owners of farm woodlands, farm woodlots, residential woodlands, timberland and managed timberland to benefit the division of forestry; amount of annual fees; issuance of stamps; forwarding of fees to state treasury; expenditures of fees; transfer and appropriation of excess funds; uses of the funds; reports by county assessors; and promulgation of rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-6. Payment of annual fee by owners of farm woodlands, farm woodlots, residential woodlands, timberland and managed timberland to benefit division of forestry.

1 (a) *Legislative findings.* — The Legislature finds that
2 the division of forestry provides vital services to private,
3 nonindustrial owners of wooded land and hereby
4 declares that it is the policy of this state to assist
5 woodland owners in the protection, conservation and
6 enhancement of their wooded lands by facilitating
7 cooperative efforts to protect all of the wooded lands of
8 the state from insect depredation, tree disease and forest
9 fires and to provide technical forestry assistance to
10 individual private owners in the management and
11 protection of their wooded lands.

12 (b) *Assessment of annual fee to benefit division of*
13 *forestry.* — Any owner of real property assessed as farm
14 woodlands, farm woodlots, residential woodlands,
15 timberland or managed timberland shall pay an annual
16 fee to be included on the property tax bill for the farm
17 woodland, farm woodlot, residential woodland, timber-
18 land or managed timberland. The owner shall pay the
19 fee to the sheriff when the ad valorem property taxes
20 on the property for the first half of the then current year
21 are paid to the sheriff.

22 The fee for each parcel of property assessed in whole
23 or in part as farm woodland, farm woodlot or residential
24 woodland, as those types of property are defined in
25 accordance with regulations promulgated or to be
26 promulgated by the department of tax and revenue, is
27 two dollars per year: *Provided*, That no owner shall pay
28 a fee on more than three parcels of the above-described
29 property situate in the same county. The fee for each
30 parcel of property assessed in whole or in part as
31 timberland or managed timberland, as those types of
32 property are defined in accordance with regulations
33 promulgated by the department of tax and revenue, is
34 ten dollars per year: *Provided, however*, That no owner
35 shall pay a fee on more than twenty parcels of timber-

36 land and managed timberland situate in the same
37 county.

38 No owner shall pay more than one fee for any one
39 parcel in any county. If an owner has property taxes
40 assessed against any individual parcel in more than one
41 of the classifications against which a fee is charged
42 under this section, the owner shall pay the highest
43 applicable fee for that parcel.

44 Upon payment of the fee, the sheriff shall affix a
45 stamp to the appropriate property tax receipt. The
46 stamp shall be designed by the director of the division
47 of forestry and a sufficient number of stamps shall be
48 provided to each county sheriff.

49 The sheriff shall forward the fees collected pursuant
50 to this section to the state tax commissioner at the same
51 time that the sheriff remits the revenues from the board
52 of public works regular levies to the state, and the fees
53 shall be deposited in a separate account in the state
54 treasury. Expenditures for the purposes set forth in this
55 section are not authorized from collections, but are to
56 be made only through appropriation and in accordance
57 with the provisions of article three, chapter twelve of
58 this code and upon fulfillment of the provisions set forth
59 in article two, chapter five-a of this code.

60 Amounts collected which are found from time to time
61 to exceed the funds needed for the purposes set forth in
62 this section may be transferred to other accounts or
63 funds and redesignated for other purposes by appropri-
64 ation of the Legislature.

65 The purposes of the funds in the account created for
66 the deposit of the fees required by this section are to
67 supplement normal funding for the division of forestry
68 and include, but are not limited to, salaries for division
69 of forestry employees, implementation of a fire protec-
70 tion plan, contributions toward costs incurred in
71 fighting forest fires and training firefighters, other in-
72 service training, forest resource surveys, purchases of
73 equipment, insect and tree disease control, reforestation,
74 silvicultural assistance to private landowners, preserva-
75 tion of water quality through fire control, erosion

76 control, reclamation and replanting.

77 In order for the director of the division of forestry to
78 project the number of stamps to be required in each
79 county and the amount of revenue which may be
80 realized by the fee imposed by this section, each county
81 assessor shall forward to the state tax commissioner the
82 number of landowners in the county that own parcels
83 assessed as (1) managed timberland or timberland and
84 (2) residential woodland, farm woodlot or farm wood-
85 lands, and each county assessor shall attempt to estimate
86 how many fees will be paid in each category. The tax
87 commissioner shall review each county's list, make any
88 corrections and additions as may be necessary, notify the
89 appropriate county assessor of any correction or
90 addition, and forward each county's list, as well as
91 statewide totals, to the director of the division of
92 forestry.

93 The tax commissioner, on or before the first day of
94 July, one thousand nine hundred ninety-two, and
95 thereafter as necessary, shall promulgate such regula-
96 tions as may be necessary to effectuate the provisions of
97 this section in accordance with article three, chapter
98 twenty-nine-a of this code.

CHAPTER 6

(Com. Sub. for H. B. 4669—By Mr. Speaker, Mr. Chambers,
and Delegate J. Martin)

[Passed March 6, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-b, relating to sediment control during timber operations generally; providing for a short title and legislative purpose of article; defining certain terms; requiring timber operations license; providing application requirements; imposing an application and annual fee; providing for suspension and revocation of license;

authorizing the imposition of compliance orders; authorizing the imposition of cease and desist orders; requiring notification of timbering operations and the contents and methods thereof; requiring certification for supervisors of timbering operations; providing for a certification program; imposing application and annual certification fees; providing for renewal of certification and requiring triennial completion of certification program; authorizing the creation of a committee on best management practices; creating the timbering operations enforcement fund; providing for a right of entry; permitting the director to issue orders; creating conference panels; providing for the powers and duties of the conference panels; establishing civil penalties; providing an appeal process; authorizing the promulgation of rules; requiring cooperation of state agencies; requiring an annual report; and providing for the effect on other laws.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 1B. SEDIMENT CONTROL DURING COMMERCIAL
TIMBER HARVESTING OPERATIONS.**

- §19-1B-1. Short title.
- §19-1B-2. Legislative findings, intent and purpose of article.
- §19-1B-3. Definitions.
- §19-1B-4. Timbering license required; requirement for license; annual fee; rules and regulations.
- §19-1B-5. Compliance orders, suspension of timbering operating license.
- §19-1B-6. Notification of duration of timbering operations; requirements thereof.
- §19-1B-7. Certification of persons supervising timbering operations, timbering operations to be supervised, promulgation of rules and regulations.
- §19-1B-8. Timbering operations enforcement fund.
- §19-1B-9. Right of entry.
- §19-1B-10. Orders of the director.
- §19-1B-11. Creation of conference panels; authority.
- §19-1B-12. Civil penalties.
- §19-1B-13. Cooperation of other state agencies.
- §19-1B-14. Effect on other laws.

§19-1B-1. Short title.

1 This article shall be known and cited as the "Logging
2 Sediment Control Act."

**§19-1B-2. Legislative findings, intent and purpose of
article.**

1 The Legislature hereby finds that some activities
2 associated with the commercial harvesting of timber
3 results in the exposure of soil and that, if uncontrolled,
4 such exposed soil can erode resulting in gullyng, soil
5 slippages and sediment deposition in streams.

6 It is the policy of this state to strengthen and extend
7 the present sediment control activities of this state by
8 implementing operator licensing, logger certification
9 and logging operations notification programs through
10 the division of forestry.

§19-1B-3. Definitions.

1 (a) "Best management practices" means sediment
2 control measures, structural or nonstructural, used
3 singly or in combination, to reduce soil runoff from land
4 disturbances associated with commercial timber
5 harvesting.

6 (b) "Chief" means the chief of the section of water
7 resources of the division of natural resources, or his or
8 her designee.

9 (c) "Director" means the director of the division of
10 forestry of the department of commerce, labor and
11 environmental resources, or his or her authorized
12 designee.

13 (d) "Operator" means any person who conducts
14 timbering operations.

15 (e) "Timbering operations" means activities directly
16 related to the severing or removal of standing trees from
17 the forest as a raw material for commercial processes
18 or purposes. For the purpose of this article, timbering
19 operations shall not include the severing of evergreens
20 grown for and severed for the traditional Christmas
21 holiday season, nor the severing of trees incidental to
22 ground-disturbing construction activities, including well
23 sites, access roads and gathering lines for oil and

24 natural gas operations, nor the severing of trees for
25 maintaining existing, or during construction of, rights-
26 of-way for public highways or public utilities or any
27 company subject to the jurisdiction of the federal energy
28 regulatory commission unless the trees so severed are
29 being sold or provided as raw material for commercial
30 wood product purposes, nor the severing of trees by an
31 individual on the individual's own property for his or
32 her individual use provided that the individual does not
33 have the severing done by a person whose business is
34 the severing or removal of trees.

35 (f) "Sediment" means solid particulate matter, usually
36 soil or minute rock fragments, moved by wind, rainfall
37 or snowmelt into the streams of the state.

**§19-1B-4. Timbering license required; requirement for
license; annual fee; rules and regulations.**

1 (a) After the first day of September, one thousand
2 nine hundred ninety-two, no person may conduct
3 timbering operations, purchase timber or buy logs for
4 resale until he or she has obtained the license pursuant
5 to this article from the division and met all other
6 requirements pertaining to his or her timbering
7 operation or other wood product business contained in
8 this article.

9 (b) An applicant for a license shall submit an
10 application on a form to be designed and provided by
11 the director. A fee of fifty dollars shall be submitted
12 with each application and with each annual renewal of
13 the license. The application shall, at a minimum, contain
14 the following information:

15 (1) Name, address and telephone number of the
16 applicant, and if the applicant is a business entity other
17 than a sole proprietor, the names and addresses of the
18 principals, officers and resident agent of the business
19 entity;

20 (2) The applicant's West Virginia business registra-
21 tion number or a copy of the current West Virginia
22 business registration certificate. The division of forestry
23 shall submit such information and a list of all applicants

24 to the tax commissioner each quarter of the calendar
25 year to ensure compliance with payment of severance,
26 income withholding and all other applicable state taxes;
27 and

28 (3) Any other information required by the director.

29 (c) The director shall promulgate legislative rules
30 pursuant to the provisions of article three, chapter
31 twenty-nine-a of this code which provide procedures by
32 which a license may be acquired, suspended or revoked
33 under this article. The Legislature expressly finds that
34 such legislative rules are the proper subject of emer-
35 gency legislative rules which may be promulgated in
36 accordance with the provision of section fifteen, article
37 three, section twenty-nine-a of this code.

38 (d) The director shall prescribe a form providing the
39 contents and manner of posting notice at the timbering
40 operation. The notice shall include, at a minimum, the
41 operator's name and license number.

**§19-1B-5. Compliance orders, suspension of timbering
operating license.**

1 (a) Upon a finding by the chief that failure to use a
2 particular best management practice is causing or
3 contributing, or has the potential to cause or contribute,
4 to soil erosion or water pollution, the chief shall notify
5 the director of the location of the site, the problem
6 associated with the site, and any suggested corrective
7 action. Upon the failure of the director to take approp-
8 riate action within three days of providing notice to the
9 director, the chief may seek relief through the confer-
10 ence panel in accordance with section eleven of this
11 article.

12 (b) Upon notification of the chief or upon a finding
13 by the director that failure to use a particular best
14 management practice is causing or contributing, or has
15 the potential to cause or contribute, to soil erosion or
16 water pollution, the director shall issue a written
17 compliance order requiring the person conducting the
18 timber operation to take corrective action. The order
19 shall mandate compliance within a reasonable and

20 practical time, not to exceed ten days. The person
21 subject to the order may appeal the order within forty-
22 eight hours of its issuance to the conference panel in
23 accordance with section eleven of this article.

24 (c) In any circumstance where observed damage or
25 circumstances on a logging operation, in the opinion of
26 the director, are sufficient to endanger life or result in
27 uncorrectable soil erosion or water pollution, or if the
28 operator is not licensed pursuant to this article, or if a
29 certified logger is not supervising the operation, the
30 director shall order the immediate suspension of the
31 timber operation and the operation shall remain
32 suspended until the corrective action mandated in the
33 compliance order suspending the operation is instituted.
34 The director shall not issue an order cancelling the
35 suspension order until compliance is satisfactory or until
36 overruled on appeal. Failure to comply with any
37 compliance order shall be a violation of this article. The
38 person subject to the order may appeal to the conference
39 panel in accordance with the provisions of section eleven
40 of this article.

41 (d) The director may suspend the license of any person
42 conducting a timbering operation or the certification of
43 any certified logger supervising a timbering operation,
44 for no less than thirty nor more than ninety days, if the
45 person is found in violation of this article or article five-
46 a, chapter twenty of this code, for a second time within
47 any two-year period: *Provided*, That one or more
48 violations for the same occurrence may constitute only
49 one violation for purposes of this subsection.

50 (e) The director may revoke the license of any person
51 conducting timbering operations or the certification of
52 any certified logger if the person is found in violation
53 of this article or article five-a, chapter twenty of this
54 code, for a third time within any two-year period:
55 *Provided*, That one or more violations for the same
56 occurrence may constitute only one violation for pur-
57 poses of this subsection. A revoked license shall not be
58 subject to reissue during the licensing period for which
59 it was issued.

60 (f) The director shall notify the chief of any order
61 issued or any suspension or revocation of a license
62 pursuant to this section within three days of the date of
63 the director's action.

§19-1B-6. Notification of duration of timbering operations; requirements thereof.

1 (a) After the first day of September, one thousand
2 nine hundred ninety-two, in addition to any other
3 requirement of this article, no person may conduct
4 timbering operations unless the person notifies the
5 director of the specific location on which the timbering
6 operations are to be conducted. The notification shall be
7 made in a manner designated by the director. The
8 notification shall include, at a minimum, the following:

9 (1) The specific topographic location where the
10 timbering operations are to be conducted;

11 (2) The approximate dates that the timbering opera-
12 tion will begin and end;

13 (3) The approximate acreage over which timbering
14 operations are contemplated;

15 (4) The names and addresses of the owner or owners
16 of the timber to be harvested and, if different, the names
17 and addresses of the owner or owners of the property
18 upon which the timber is located;

19 (5) A sketch map of the proposed logging operation,
20 including haul roads, landings and stream crossings;

21 (6) A description of the sediment control practices to
22 be used by the logger during the timber harvesting
23 operation;

24 (7) An acknowledgement that the operator will
25 conduct the operations in compliance with the provisions
26 of this article and any applicable rules and regulations
27 promulgated pursuant to this article;

28 (8) A certification satisfactory to the director that all
29 permits required under state law have been obtained or
30 applied for and that all pertinent requirements for
31 obtaining any permit applied for, but not yet obtained,

32 have been complied with; and

33 (9) The name or names of the person or persons who
34 will be supervising the timbering operations at the site
35 of the operations and his or her logger certification
36 numbers: *Provided*, That no logger certification number
37 shall be required until after the certification program
38 has been developed.

39 (b) The notification shall be made within at least three
40 days of the beginning of the operation.

41 (c) Further notice shall be given if the operation is to
42 be, for any reason, closed more than seven days before
43 the estimated date for closing provided under subdivi-
44 sion (2), subsection (a) of this section.

§19-1B-7. Certification of persons supervising timbering operations, timbering operations to be supervised, promulgation of rules and regulations.

1 (a) After the first day of July, one thousand nine
2 hundred ninety-three, any individual supervising any
3 timbering operation must be certified pursuant to this
4 article.

5 (b) The director is responsible for the development of
6 standards and criteria for establishment of a regularly
7 scheduled program of education, training and examina-
8 tion that all persons must successfully complete in order
9 to be certified to supervise any timbering operation. The
10 program for certified loggers shall provide, at a
11 minimum, for education and training in the safe conduct
12 of timbering operations, in first aid procedures, and in
13 the use of best management practices to prevent, in-so-
14 far as possible, soil erosion on timbering operations. The
15 goals of this program will be to assure that timbering
16 operations are conducted in accordance with applicable
17 state and federal safety regulations in a manner that is
18 safest for the individuals conducting the operations and
19 that they are performed in an environmentally sound
20 manner.

21 (c) The director shall provide for such programs by
22 using the resources of the division, other appropriate

23 state agencies, educational systems, and other qualified
24 persons. Each inspector under the jurisdiction of the
25 chief shall attend a certification program free of charge
26 and complete the certification requirements of this
27 section.

28 (d) The director shall promulgate legislative rules in
29 accordance with article three, chapter twenty-nine-a, of
30 this code, which provide the procedure by which
31 certification pursuant to this article may be obtained
32 and shall require the payment of an application fee and
33 an annual renewal fee of fifty dollars.

34 (e) Upon a person's successful completion of the
35 certification requirements, the director shall provide
36 that person with proof of the completion by issuing a
37 numbered certificate and a wallet-sized card to that
38 person. The division shall maintain a record of each
39 certificate issued and the person to whom it was issued.

40 (f) A certification granted pursuant to this section
41 shall be renewable only for two succeeding years. For
42 the third renewal and every third renewal thereafter,
43 the licensee shall first attend a program designed by the
44 director to update the training.

45 (g) After the first day of July, one thousand nine
46 hundred ninety-three, every timbering operation must
47 have at least one person certified pursuant to this section
48 supervising the operation at any time the timbering
49 operation is being conducted and all timbering opera-
50 tors shall be guided by the West Virginia forest practice
51 standards and the West Virginia silvicultural best
52 management practices in selecting practices approp-
53 riate and adequate for reducing sediment movement
54 during a timber operation.

55 (h) The director shall, at no more than three year
56 intervals after the effective date of this article, convene
57 a committee to review the best management practices
58 so as to ensure that they reflect and incorporate the most
59 current technologies. The committee shall, at a min-
60 imum, include a person doing research in the field of
61 silvicultural best management practices, a person doing
62 research in the field of silviculture, two loggers certified

63 under this article, a representative of the water
64 resources section of the division of natural resources,
65 and a representative of an environmentally active
66 organization. The director shall chair the committee and
67 may adjust the then current best management practices
68 according to the suggestions of the committee in time
69 for the next certification cycle.

§19-1B-8. Timbering operations enforcement fund.

1 There is created in the state treasury a special
2 revolving fund designated the "Timbering Operations
3 Enforcement Fund." All fees collected pursuant to this
4 article shall be deposited into the fund: *Provided*, That
5 amounts deposited in the fund which are found from
6 time to time to exceed the amounts necessary to
7 effectuate the purposes of this article may be redesi-
8 gnated for other purposes by appropriation by the
9 Legislature.

10 This fund shall be appropriated to the division of
11 forestry to be used for the administration and enforce-
12 ment of the provisions of this article and for no other
13 purpose.

§19-1B-9. Right of entry.

1 The director or the chief has the right to enter upon
2 any property for the purpose of making inspections to
3 ensure that the provisions of this article and any rules
4 promulgated pursuant thereto are being complied with.

§19-1B-10. Orders of the director.

1 Notwithstanding the provisions of section five of this
2 article, whenever the director determines that any
3 person has violated a provision of this article or any
4 rules promulgated pursuant thereto, he or she may enter
5 an order directing the person to cease the violation and,
6 where appropriate, to take such action to remediate
7 damage created or to take action appropriate for the
8 specific site.

9 Any person having an interest which is or may be
10 adversely affected by any order of the director may file
11 an appeal in accordance with the provisions of section

12 eleven of this article.

§19-1B-11. Creation of conference panels; authority.

1 (a) Each forestry district in this state shall contain an
2 informal conference panel composed of three persons
3 which shall act on behalf of the state to decide appeals
4 of orders of the director. One member of the panel shall
5 be selected by the director, one member shall be selected
6 by the chief and one member shall be selected by
7 agreement between the chief and the director. If a
8 vacancy exists on the panel, the vacancy shall be filled
9 by whomever made the initial selection. The members
10 of the panel shall serve without compensation.

11 (b) Upon appeal of a decision under this section or
12 upon petition by the chief, pursuant to the provisions of
13 subsection (a), section five of this article, the panel shall
14 hold an informal conference affirming, modifying or
15 vacating an order of the director, or issuing an order
16 in the name of the director. The panel shall forthwith
17 notify the parties of its decision and as soon as practi-
18 cable send written notice of its decision to the parties.
19 The decision of the panel shall be final unless reversed,
20 vacated or modified on appeal to the circuit court of the
21 county wherein the cause for the decision arose.

22 (c) A party aggrieved by a decision of a panel may
23 appeal to the circuit court of the county wherein the
24 cause for the order arose. Such appeal must be filed
25 with the circuit court within twenty days of the date of
26 decision of the panel and shall be heard de novo by the
27 court. The court may reverse, vacate or modify the
28 decision of the panel. The decision of the circuit court
29 shall be final unless reversed, vacated or modified on
30 appeal to the supreme court of appeals. Any such appeal
31 shall be sought in the manner provided by law for
32 appeals from circuit courts in other civil cases.

§19-1B-12. Civil penalties.

1 The director may seek and recover a civil penalty for
2 a violation of any provision of this article, any rule,
3 regulation or order of the director in the circuit court
4 of the county in which the violation occurred, in an

5 amount not exceeding two thousand five hundred dollars
6 for the first offense and not exceeding five thousand
7 dollars for any subsequent offense.

8 Any penalty recovered pursuant to this section shall
9 be deposited in the state treasury to the credit of the
10 timbering operations enforcement fund.

11 Any person aggrieved by a decision of the circuit
12 court pursuant to this section may appeal the circuit
13 court order to the supreme court of appeals.

§19-1B-13. Cooperation of other state agencies.

1 All state agencies shall cooperate with the director in
2 the director's efforts to ensure that persons conducting
3 timbering operations are doing so in compliance with all
4 applicable provisions of state law, and the director shall
5 cooperate with such other state agencies to enforce their
6 statutory and regulatory responsibilities and duties.
7 Cooperation shall include the sharing of information
8 necessary or helpful to the accomplishment of such
9 responsibilities and duties. The director shall notify the
10 chief of commencement of timbering operations. The
11 chief and the director each shall submit an annual
12 report on the progress and effectiveness of the programs
13 incorporated in this article to the governor, the speaker
14 of the House of Delegates and the president of the
15 Senate.

§19-1B-14. Effect on other laws.

1 Nothing in this article relieves any person conducting
2 timbering operations from complying with any other
3 provision of this code.

CHAPTER 7

(S. B. 65—By Senators Spears, Brackenrich and Boley)

[Passed March 3, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section eight, article seven, chapter sixteen
of the code of West Virginia, one thousand nine hundred

thirty-one, as amended; and to amend and reenact section one, article two-b, chapter nineteen, relating to the artificial coloring of meat and meat products; and continuation of the meat inspection program.

Be it enacted by the Legislature of West Virginia:

That section eight, article seven, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section one, article two-b, chapter nineteen be amended and reenacted to read as follows:

ARTICLE 2B. INSPECTION OF ANIMALS, MEAT AND MEAT PRODUCTS.

§19-2B-1. Purpose and construction; continuation of meat inspection program.

1 Subject to the provisions of subsection (a), section
2 seven of this article, the basic purpose of this article is
3 to provide for the inspection, labeling and disposition of
4 animals, carcasses, meat, meat food products and meat
5 byproducts which are to be sold or offered for sale
6 through commercial outlets for human consumption, the
7 licensing of commercial slaughterers, custom slaughter-
8 ers and processors, and the inspection of slaughter-
9 houses and processing plants located in the state of West
10 Virginia. This article, being intended to protect the
11 health of the citizens of West Virginia, shall be liberally
12 construed.

13 After having conducted a performance and fiscal
14 audit through its joint committee on government
15 operations, pursuant to section nine, article ten, chapter
16 four of this code, the Legislature hereby finds and
17 declares that the meat inspection program should be
18 continued and reestablished. Accordingly, notwithstand-
19 ing the provisions of section four, article ten, chapter
20 four of this code, the meat inspection program shall
21 continue to exist until the first day of July, one thousand
22 nine hundred ninety-eight.

CHAPTER 8

(Com. Sub. for H. B. 2816—By Delegates Mezzatesta and D. Miller)

[Passed March 5, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-nine, relating to the production of nontraditional agriculture products; definitions; promulgation of rules; responsibility for damages; penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29. PRODUCTION OF NONTRADITIONAL AGRICULTURE PRODUCTS.

- §19-29-1. Nontraditional agriculture; authority.
- §19-29-2. Definitions.
- §19-29-3. Health requirements.
- §19-29-4. Inspection of animals, meat and meat products.
- §19-29-5. Owners' responsibilities.

§19-29-1. Nontraditional agriculture; authority.

1 The commissioner of agriculture is hereby empo-
 2 wered and shall devise means of advancing the nontra-
 3 ditional agricultural products in the state, and in the
 4 performance of such duty, he or she shall have the
 5 authority to call upon any department, division, or
 6 officer of the state or county to cooperate with him or
 7 her in promoting nontraditional agricultural products in
 8 the state.

9 These nontraditional products are to be considered as
 10 agricultural activities.

11 Only after consultation with the division of natural
 12 resources and the department of health and human
 13 resources, the commissioner shall promulgate rules, in
 14 accordance with chapter twenty-nine-a of this code, for

15 the promotion, marketing, and regulation of nontradi-
16 tional agriculture.

17 The commissioner shall have the authority under this
18 article to restrict the importation and commercial
19 production of any species of nontraditional agriculture
20 which in his or her opinion is not in the best interest
21 of the industry or of the public.

22 Nothing in this article shall affect the division of
23 natural resources' authority as provided in articles one,
24 two, three, and seven, chapter twenty of this code.

§19-29-2. Definitions.

1 (a) "Aquaculture" means the commercial production
2 of fish and/or other aquatic life.

3 (b) "Commissioner" means the commissioner of
4 agriculture or his or her designee.

5 (c) "Domestic purposes" means for the purposes of
6 food production, for resale as breeding stock or for the
7 sale of immature stock for the purposes of further
8 feeding.

9 (d) "Nontraditional agriculture" means the production
10 of animals domesticated from wild stock, either native
11 or nonnative, and are being confined, bred, and/or fed
12 for domestic purposes, except that white-tailed deer
13 (*Odocoileus virginianus*) and all its subspecies shall not
14 be included; aquaculture; or other agricultural products
15 as defined in this article.

§19-29-3. Health requirements.

1 Only after consultation with the division of natural
2 resources and the department of health and human
3 resources, the commissioner shall promulgate rules, in
4 accordance with chapter twenty-nine-a of this code,
5 dealing with the health standards for nontraditional
6 agriculture.

§19-29-4. Inspection of animals, meat and meat products.

1 The commissioner shall promulgate rules, in accor-
2 dance with chapter twenty-nine-a of this code, to include
3 inspection of the meat from nontraditional agriculture

4 intended for sale in commercial outlets. All nontradi-
5 tional agriculture needing to be slaughtered shall be
6 slaughtered in an inspected slaughterhouse.

§19-29-5. Owners' responsibilities.

1 It is the responsibility of the owner to take all
2 reasonable action to maintain the nontraditional agricul-
3 ture on property owned or leased by the owner,
4 including the construction of fences or other barriers
5 and housing of a suitable design. Owners of nontradi-
6 tional agriculture shall be responsible for damages and
7 subject to fines as set out in article eighteen of this
8 chapter.

CHAPTER 9

(H. B. 4643—By Delegates Gallagher and Pethel)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to repeal section thirteen, article twenty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, four, five, six, seven and eight of said article; to redesignate section eleven-a as section twelve and to amend and reenact section twelve; to redesignate section eleven-b as section thirteen and to amend and reenact section thirteen; to redesignate section eleven-c as section eighteen and to amend and reenact section eighteen; to redesignate section twelve as section twenty; to further amend said article by adding thereto five new sections, designated sections fourteen, fifteen, sixteen, seventeen and nineteen, all relating to air pollution control generally; repealing the effective date of regulations; defining terms; providing for composition of the commission, terms, meetings, compensation; prescribing the powers and duties of the commission; amending the advisory councils' membership; authorizing the commission to promulgate rules; creating the air pollution education and environment fund; modifying the time requirements for filing notice with the

secretary of state; authorizing the commission to establish an operating permit program; authorizing the commission to impose fees; authorizing the director to suspend, modify or revoke and reissue permits for violations; allowing conference and hearing on permit actions; authorizing the issuance of cease and desist orders; authorizing permit suspension, modification and revocation; providing for administrative and judicial appeals of permit actions; providing for appeals of orders generally, procedure; providing for the imposition of a stay upon motion for certain permit actions; providing for appeals to the circuit court of Kanawha County if the parties agree and to remove automatic stay provisions for other orders; authorizing the imposition of civil penalties; defining the crime of knowing misrepresentation and providing penalties therefor; defining the crime for violation of the article, permit or rule and providing penalties therefor; amending the civil and criminal penalties for violations of the article; allowing limited access to confidential records; providing for record and data maintenance generally; allowing inspection of certain records; requiring permits for construction, modification or relocation for stationary sources of air pollution; providing for a maximum time for the issuance or renewal of construction, modification or relocation permits; allowing for permit consolidation; providing for an inspection and maintenance program for motor vehicles; imposing an inspection fee; requiring operating permits for stationary sources of air pollution; and establishing a small business environmental compliance assistance program and advisory panel.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article twenty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections two, four, five, six, seven and eight be amended and reenacted; that section eleven-a be redesignated as section twelve and be amended and reenacted; that section eleven-b be redesignated as section thirteen and be amended and reenacted; that section eleven-c be redesignated as section eighteen and be amended and reenacted; that section twelve be redesignated as section

twenty and be amended and reenacted; and that said article be further amended by adding thereto five new sections, designated sections fourteen, fifteen, sixteen, seventeen and nineteen, all to read as follows:

ARTICLE 20. AIR POLLUTION CONTROL.

- §16-20-2. Definitions.
- §16-20-4. Air pollution control commission—Composition; appointment and terms of members; vacancies; compensation and expenses of members; organization and personnel; appointment of director; records; meetings.
- §16-20-5. Air pollution control commission—Powers and duties; legal services; rules; public hearings.
- §16-20-6. Issuance of cease and desist orders by director; service; permit suspension, modification and revocation; appeals to commission; hearings, subpoenas, etc.; orders and findings of commission.
- §16-20-7. Appeals from orders of commission.
- §16-20-8. Penalties; recovery and disposition; duties of prosecuting attorneys.
- §16-20-12. Records, reports, data or information; confidentiality; proceedings upon request to inspect or copy.
- §16-20-13. Construction modification or relocation permits required for stationary sources of air pollutants.
- §16-20-14. Operating permits required for stationary sources of air pollution.
- §16-20-15. Consolidation of permits.
- §16-20-16. Administrative review of permit actions.
- §16-20-17. Judicial review of permits and denials.
- §16-20-18. Motor vehicle pollution, inspection and maintenance.
- §16-20-19. Small business environmental compliance assistance program, compliance advisory panel.
- §16-20-20. Severability.

§16-20-2. Definitions.

1 The terms used in this article are defined as follows:

2 (a) "Person" means any and all persons, natural or
3 artificial, including the state of West Virginia or any
4 other state, the United States of America, any munic-
5 ipal, statutory, public or private corporation organized
6 or existing under the laws of this or any other state or
7 country, and any firm, partnership or association of
8 whatever nature.

9 (b) "Commission" means the air pollution control
10 commission created pursuant to the provisions of this
11 article.

12 (c) "Commissioner" means a member of the air
13 pollution control commission.

14 (d) "Air pollutants" means solids, liquids or gases
15 which, if discharged into the air, may result in a
16 statutory air pollution.

17 (e) "Discharge" means any release, escape or emission
18 of air pollutants into the air.

19 (f) "Statutory air pollution" means and is limited to
20 the discharge into the air by the act of man of substan-
21 ces (liquid, solid, gaseous, organic or inorganic) in a
22 locality, manner and amount as to be injurious to human
23 health or welfare, animal or plant life, or property, or
24 which would interfere with the enjoyment of life or
25 property.

26 (g) "Director" means the person appointed by the air
27 pollution control commission to act as the director or the
28 director's designated representative.

§16-20-4. Air pollution control commission — Composition; appointment and terms of members; vacancies; compensation and expenses of members; organization and personnel; appointment of director; records; meetings.

1 The "air pollution control commission," heretofore
2 created, shall continue in existence as an agency of the
3 state and shall consist of seven members, including the
4 commissioner of the bureau of public health and the
5 commissioner of agriculture, or their designees, both of
6 whom shall be members ex officio, and five other
7 members to be appointed by the governor with the
8 advice and consent of the Senate, two of whom shall be
9 representative of industries engaged in business in this
10 state, and three of whom shall be representative of the
11 public at large. The three appointed members of the
12 commission in office on the effective date of this article
13 shall, unless sooner removed, continue to serve until
14 their terms expire and until their successors have been
15 appointed and have qualified. On or before June fifteen,
16 one thousand nine hundred sixty-seven, the governor
17 shall appoint one member to serve until June thirty, one

18 thousand nine hundred seventy, and one member to
19 serve until June thirty, one thousand nine hundred
20 seventy-one, or until their successors have been ap-
21 pointed and have qualified. As the terms of the three
22 appointed members of the commission in office on the
23 effective date of this article expire and as the terms of
24 the two members to be appointed by the governor on or
25 before June fifteen, one thousand nine hundred sixty-
26 seven, expire, members shall be appointed for overlap-
27 ping terms of five years, so that one term expires each
28 year, or until their successors have been appointed and
29 have qualified. Any vacancy in the office of an appointed
30 member of the commission shall be filled by appoint-
31 ment by the governor for the unexpired term of the
32 appointed member whose office shall be vacant.

33 The ex officio members of the commission shall
34 receive no salary or remuneration for their services as
35 such but they shall be reimbursed, out of moneys
36 appropriated for such purpose, for all reasonable and
37 necessary expenses actually incurred in the discharge of
38 their duties as such.

39 As compensation for his services on the commission,
40 each appointed member shall receive, out of moneys
41 appropriated for such purpose, the sum of seventy-five
42 dollars for each day or substantial portion thereof that
43 he is actually engaged in the work of the commission.
44 Each member shall also be entitled to be reimbursed,
45 out of moneys appropriated for such purpose, for any
46 reasonable and necessary expenses actually incurred in
47 the discharge of his duties as a member of the
48 commission.

49 At its first meeting the commission shall elect from
50 its membership a chairman, and at the first meeting in
51 each fiscal year thereafter the commission shall elect
52 from its membership a chairman to act during such
53 fiscal year. At similar times the commission shall elect
54 from its membership a vice chairman and appoint a
55 secretary. The secretary need not be a member of the
56 commission. The vice chairman shall preside over the
57 meetings and hearings of the commission in the absence
58 of the chairman. The commission shall appoint and

59 employ a director and such personnel as may be
60 required, whose duties shall be defined by the commis-
61 sion and whose compensation, to be fixed by the
62 commission, shall be paid out of the state treasury, upon
63 the requisition of the commission, from moneys appropri-
64 ated for such purposes.

65 The commission may establish rules for the regulation
66 of its affairs and the conduct of all proceedings before
67 it. All proceedings of the commission shall be entered
68 in a permanently bound record book, properly indexed,
69 and the same shall be carefully preserved. Copies of
70 orders entered by the commission, as well as copies of
71 papers or documents filed with it, or the records of
72 proceedings before the commission, shall be attested by
73 the secretary of the commission. The commission shall
74 meet at such times and places as may be agreed upon
75 by the commissioners, or upon the call of the chairman
76 of the commission or any two commissioners, all of
77 which meetings shall be general meetings for the
78 consideration of any and all matters which may properly
79 come before the commission.

**§16-20-5. Air pollution control commission — Powers and
duties; legal services; rules; public hearings.**

- 1 (a) The commission is hereby authorized and
2 empowered:
 - 3 (1) To develop ways and means for the regulation and
4 control of pollution of the air of the state;
 - 5 (2) To advise, consult and cooperate with other
6 agencies of the state, political subdivisions of the state,
7 other states, agencies of the federal government,
8 industries, and with affected groups in furtherance of
9 the declared purposes of this article;
 - 10 (3) To encourage and conduct such studies and
11 research relating to air pollution and its control and
12 abatement as the commission may deem advisable and
13 necessary;
 - 14 (4) To promulgate legislative rules in accordance with
15 the provisions of chapter twenty-nine-a of this code not
16 inconsistent with the provisions of this article, relating

17 to the control of air pollution: *Provided*, That no rule of
18 the commission shall specify a particular manufacturer
19 of equipment nor a single specific type of construction
20 nor a particular method of compliance except as
21 specifically required by the "Federal Clean Air Act," as
22 amended, nor shall any such rule apply to any aspect
23 of an employer-employee relationship: *Provided, how-*
24 *ever*, That no legislative rule or program of the
25 commission hereafter adopted shall be any more
26 stringent than any federal rule or program except to the
27 limited extent that the commission first makes a specific
28 written finding for any such departure that there exists
29 scientifically supportable evidence for such rule or
30 program reflecting factors unique to West Virginia or
31 some area thereof;

32 (5) To enter orders requiring compliance with the
33 provisions of this article and the rules lawfully promul-
34 gated hereunder;

35 (6) To consider complaints, subpoena witnesses,
36 administer oaths, make investigations and hold hearings
37 relevant to the promulgation of rules and the entry of
38 compliance orders hereunder;

39 (7) To encourage voluntary cooperation by municipal-
40 ities, counties, industries and others in preserving the
41 purity of the air within the state;

42 (8) To employ personnel, including specialists and
43 consultants, purchase materials and supplies, and enter
44 into contracts necessary, incident or convenient to the
45 accomplishment of the purpose of this article;

46 (9) To enter and inspect any property, premise or
47 place on or at which a source of air pollutants is located
48 or is being constructed, installed or established at any
49 reasonable time for the purpose of ascertaining the state
50 of compliance with this article and rules in force
51 pursuant thereto. No person shall refuse entry or access
52 to any authorized representative of the commission who
53 requests entry for purposes of inspection, and who
54 presents appropriate credentials; nor shall any person
55 obstruct, hamper or interfere with any such inspection:
56 *Provided*, That nothing contained in this article shall be

57 construed to allow a search of a private dwelling,
58 including the curtilage thereof, without a proper
59 warrant;

60 (10) Upon reasonable evidence of a violation of this
61 article, which presents an imminent and serious hazard
62 to public health, to give notice to the public or to that
63 portion of the public which is in danger by any and all
64 appropriate means;

65 (11) To cooperate with, receive and expend money
66 from the federal government and other sources; and the
67 commission may cooperate with any public or private
68 agency or person and receive therefrom and on behalf
69 of the state gifts, donations, and contributions, which
70 shall be deposited to the credit of the "Air Pollution
71 Education and Environment Fund" which is hereby
72 created in the state treasury. The moneys collected
73 pursuant to this article which are directed to be
74 deposited in the air pollution education and environment
75 fund must be deposited in a separate account in the state
76 treasury and expenditures for purposes set forth in this
77 article are not authorized from collection but are to be
78 made only in accordance with appropriation and in
79 accordance with the provisions of article three, chapter
80 twelve of this code and upon fulfillment of the provisions
81 set forth in article two, chapter five-a of this code.
82 Amounts collected which are found from time to time
83 to exceed the funds needed for the purposes set forth in
84 this article may be transferred to other accounts or
85 funds and redesignated for other purposes by appropri-
86 ation of the Legislature;

87 (12) To represent the state in any and all matters
88 pertaining to plans, procedures and negotiations for
89 interstate compacts in relation to the control of air
90 pollution;

91 (13) To appoint advisory councils from such areas of
92 the state as it may determine. The members shall
93 possess some knowledge and interest in matters pertain-
94 ing to the regulation, control and abatement of air
95 pollution. The council may advise and consult with the
96 commission about all matters pertaining to the regula-

97 tion, control and abatement of air pollution within such
98 area;

99 (14) To require any and all persons who are directly
100 or indirectly discharging air pollutants into the air to
101 file with the commission such information as the
102 director may require in a form or manner prescribed
103 by him for such purpose, including, but not limited to,
104 location, size and height of discharge outlets, processes
105 employed, fuels used and the nature and time periods
106 of duration of discharges. Such information shall be
107 filed with the director, when and in such reasonable
108 time, and in such manner as the director may prescribe;

109 (15) To require the owner or operator of any station-
110 ary source discharging air pollutants to install such
111 monitoring equipment or devices as the director may
112 prescribe and to submit periodic reports on the nature
113 and amount of such discharges to the commission;

114 (16) To do all things necessary and convenient to
115 prepare and submit a plan or plans for the implemen-
116 tation, maintenance and enforcement of the "Federal
117 Clean Air Act," as amended: *Provided*, That in prepar-
118 ing and submitting each such plan the commission shall
119 establish in such plan that such standard shall be first
120 achieved, maintained and enforced by limiting and
121 controlling emissions of pollutants from commercial and
122 industrial sources and locations and shall only provide
123 in such plans for limiting and controlling emissions of
124 pollutants from private dwellings and the curtilage
125 thereof as a last resort: *Provided, however*, That nothing
126 herein contained shall be construed to affect plans for
127 achievement, maintenance and enforcement of motor
128 vehicle emission standards and of standards for fuels
129 used in dwellings;

130 (17) Whenever the commission achieves informally, by
131 letter, or otherwise, an agreement with any person that
132 said person will cease and desist in any act resulting in
133 the discharge of pollutants or do any act to reduce or
134 eliminate such discharge, such agreement shall be
135 embodied in a consent order and entered as, and shall
136 have the same effect as, an order entered after a hearing

137 as provided in section six of this article; and

138 (18) To promulgate legislative rules, in accordance
139 with the provisions of chapter twenty-nine-a of this code,
140 providing for the following:

141 (A) Procedures and requirements for permit applica-
142 tions and modifications and the review thereof;

143 (B) Imposition of permit application fees;

144 (C) Establishment of criteria for construction, modi-
145 fication, relocation and operating permits;

146 (D) Imposition of permit fees and of certificate fees:
147 *Provided*, That any person subject to operating permit
148 fees pursuant to section fourteen of this article shall be
149 exempt from imposition of the certificate fee; and

150 (E) Imposition of penalties and interest for the
151 nonpayment of fees.

152 The fees, penalties and interest shall be deposited in
153 a special account in the state treasury designated the
154 "Air Pollution Control Commission Fund" which is
155 hereby continued to be appropriated for the sole purpose
156 of paying salaries and expenses of the commission and
157 its employees to carry out the provisions of this article:
158 *Provided*, That the fees, penalties and interest collected
159 for operating permits required by section fourteen of
160 this article shall be expended solely to cover all
161 reasonable direct and indirect costs required to admin-
162 ister the operating permit program. The fees collected
163 pursuant to this subdivision must be deposited in a
164 separate account in the state treasury and expenditures
165 for purposes set forth in this article are not authorized
166 from collections but are to be made only in accordance
167 with appropriation and in accordance with the provi-
168 sions of article three, chapter twelve of this code and
169 upon fulfillment of the provisions set forth in article two,
170 chapter five-a of the code. Amounts collected which are
171 found from time to time to exceed the funds needed for
172 the purposes set forth in this article may be transferred
173 to other accounts or funds and redesignated for other
174 purposes by appropriation of the Legislature: *Provided*,
175 *however*, That for fiscal year one thousand nine hundred

176 ninety-three, expenditures are permitted from collec-
177 tions without appropriation by the Legislature.

178 (19) Receipt of any money by the commission as a
179 result of the entry of any consent order shall be
180 deposited in the state treasury to the credit of the air
181 pollution education and environment fund.

182 (b) The attorney general and his assistants and the
183 prosecuting attorneys of the several counties shall
184 render to the commission without additional compensa-
185 tion such legal services as the commission may require
186 of them to enforce the provisions of this article.

187 (c) No rule of the commission pertaining to the
188 control, reduction or abatement of air pollution shall
189 become effective until after at least one public hearing
190 thereon shall have been held by the commission within
191 the state. Notice to the public of the time and place of
192 any such hearing shall be given by the commission at
193 least thirty days prior to the scheduled date of such
194 hearing by advertisement published as a Class II legal
195 advertisement in compliance with the provisions of
196 article three, chapter fifty-nine of this code, and the
197 publication area for such publication shall be in at least
198 one county in each affected air quality control region
199 defined by the commission. A copy of any proposed rule
200 of the commission shall be filed in the office of the
201 secretary of state at least thirty days and not more than
202 sixty days prior to the scheduled date of any such
203 hearing. Full opportunity to be heard shall be accorded
204 to all persons in attendance and any person, whether or
205 not in attendance at such hearing, may submit in
206 writing his views with respect to any such rule to the
207 commission within thirty days after such hearing. After
208 such thirty-day period, no views or comments shall be
209 received in writing or otherwise, unless formally
210 solicited by the commission. The proceedings at the
211 hearing before the commission shall be recorded by
212 mechanical means or otherwise as may be prescribed by
213 the commission. Such record of proceedings need not be
214 transcribed unless requested by an interested party in
215 which event the prevailing rates for such transcripts
216 will be required from such interested party.

§16-20-6. Issuance of cease and desist orders by director; service; permit suspension, modification and revocation; appeals to commission; hearings, subpoenas, etc.; orders and findings of commission.

1 If, from any investigation made by him or from any
2 complaint filed with him, the director shall be of the
3 opinion that a person is violating the provisions of this
4 article, or any rules and regulations promulgated
5 pursuant thereto, he shall make and enter an order
6 directing such person to cease and desist such activity.
7 The director shall fix a reasonable time in such order
8 by which such activity must stop or be prevented. The
9 order shall contain the findings of fact upon which the
10 director determined to make and enter such order.

11 If, after any investigation made by him, or his
12 designated representative, or from any complaint filed
13 with him, the director shall be of the opinion that a
14 permit holder is violating the provisions of this article,
15 or any rules or regulations promulgated pursuant
16 thereto, or any order of the director, or any provision
17 of a permit, the director may issue notice of intent to
18 suspend, modify or revoke and reissue such permit.
19 Upon notice of the director's intent to suspend, modify
20 or revoke a permit, the permit holder may request a
21 conference with the director to show cause why the
22 permit should not be suspended, modified or revoked.
23 The request for conference must be received by the
24 director within fifteen days following receipt of notice.
25 After conference or fifteen days after issuance of notice
26 of intent, if no conference is requested, the director may
27 enter an order suspending, modifying or revoking the
28 permit and send notice to the permit holder. Such order
29 shall be considered a cease and desist order for purposes
30 of administrative and judicial review and shall contain
31 findings of fact upon which the director determined to
32 make and enter such order. If an appeal of the director's
33 order is filed, the order of the director shall be stayed
34 from the date of issuance pending a final decision of the
35 commission.

36 The director shall cause a copy of any such order to

37 be served upon such person by registered or certified
38 mail or by any proper law-enforcement officer.

39 Any person upon whom a copy of such final order has
40 been served may appeal such order to the air pollution
41 control commission in the following manner except as
42 otherwise provided in this section. The person so
43 appealing shall be known as the appellant and the
44 director shall be known as the appellee. Such appeal
45 shall be perfected by filing a notice of appeal, on the
46 form prescribed by the commission for such purpose,
47 with the commission within fifteen days after the date
48 upon which the appellant received a copy of the order.
49 The notice of appeal shall set forth the order complained
50 of and the grounds upon which the appeal is based.
51 Upon motion of the appellant, the commission may, by
52 informal conference at which the appellant may be
53 present and held no later than five business days after
54 issuance of an order, stay the effect of the order
55 complained of until final determination thereof is made
56 by the commission. A copy of the notice of appeal shall
57 be filed by the commission with the director within
58 eight days after the notice of appeal is filed with the
59 commission.

60 Within seven days after receipt of his copy of the
61 notice of appeal, the director shall prepare and certify
62 to the commission a complete record of the proceedings
63 out of which the appeal arises, including all documents
64 and correspondence in the director's file relating to the
65 matter in question. The commission shall hear the
66 appeal de novo, and evidence may be offered on behalf
67 of the appellant and appellee.

68 All of the pertinent provisions of article five, chapter
69 twenty-nine-a of this code, shall apply to and govern the
70 hearing on appeal authorized by the provisions of this
71 section and the administrative procedures in connection
72 with and following such hearing, with like effect as if
73 the provisions of said article five were set forth in
74 extenso in this section, except that any such appeal
75 hearing shall be held in the county wherein the alleged
76 statutory air pollution complained of originated or as
77 agreed to among the parties.

78 Any such appeal hearing shall be conducted by a
79 quorum of the commission. For the purpose of conduct-
80 ing any such appeal hearing, any member of the
81 commission and the secretary thereof shall have the
82 power and authority to issue subpoenas and subpoenas
83 duces tecum in the name of the commission, in accor-
84 dance with the provisions of section one, article five,
85 chapter twenty-nine-a of this code. All subpoenas and
86 subpoenas duces tecum shall be issued and served
87 within the time and for the fees and shall be enforced,
88 as specified in section one, article five of said chapter
89 twenty-nine-a, and all of the said section one provisions
90 dealing with subpoenas and subpoenas duces tecum
91 shall apply to subpoenas and subpoenas duces tecum
92 issued for the purpose of an appeal hearing hereunder.

93 Any such hearing shall be held within thirty days
94 after the date upon which the commission received the
95 timely notice of appeal, unless there is a postponement
96 or continuance. The commission may postpone or
97 continue any hearing on its own motion, or upon
98 application of the appellant or the appellee for good
99 cause shown. The director shall be represented at any
100 such hearing by the attorney general or his assistants.
101 At any such hearing the appellant may represent
102 himself or be represented by an attorney at law
103 admitted to practice before any circuit court of this
104 state.

105 After such hearing and consideration of all of the
106 testimony, evidence and record in the case, the commis-
107 sion shall make and enter an order affirming, modifying
108 or vacating the order of the director, or shall make and
109 enter such order as the director should have entered.

110 Such order shall be accompanied by findings of fact
111 and conclusions of law as specified in section three,
112 article five, chapter twenty-nine-a of this code, and a
113 copy of such order and accompanying findings and
114 conclusions shall be served upon the appellant, and his
115 attorney of record, if any, and upon the appellee in
116 person or by registered or certified mail. The order of
117 the commission shall be final unless vacated or modified
118 upon judicial review thereof in accordance with the

119 provisions of section seven of this article.

§16-20-7. Appeals from orders of commission.

1 Any person whose interest shall have been substan-
2 tially affected by an order of the commission may appeal
3 from such order or decision by filing with the commis-
4 sion a written notice of appeal. Such notice shall be filed
5 within thirty days from the date notice of the order or
6 decision of the commission was given to such person, and
7 shall be signed by him or his attorney. Within thirty
8 days from the receipt of the notice of appeal, the
9 commission shall prepare and forward to the appellant
10 or his attorney a copy of a full transcript of the
11 proceedings, together with a copy of the order or
12 decision of the commission and a copy of the notice of
13 appeal, and at the same time shall file a transcript of
14 the proceedings before the commission and the other
15 documents mentioned above with the clerk of the circuit
16 court herein designated. All documents shall be duly
17 certified by the secretary of the commission. The court
18 shall thereafter have complete jurisdiction of the matter.

19 The appeal shall be taken to the circuit court of the
20 county wherein the alleged statutory air pollution
21 complained of originated or in Kanawha County upon
22 agreement between the parties. The court shall fix a
23 time for the hearing of the appeal and shall, after such
24 hearing, without a jury, by order entered of record,
25 affirm, modify or set aside in whole or in part the order
26 of the commission. The said court shall make findings
27 of fact and conclusions of law based upon the transcript
28 of the proceedings before the commission and upon any
29 additional evidence adduced before said court, the right
30 to adduce such additional evidence being hereby
31 reserved to the commission or to any person substan-
32 tially affected by the order of the commission. In the
33 event the circuit court shall affirm or modify the
34 commission's order that a statutory air pollution exists
35 under the provisions of this article, the order of the court
36 shall specify that such pollution shall be corrected
37 within a reasonable period of time to be fixed therein.
38 The commission or any person whose interests shall have
39 been substantially affected by the final order of the

40 circuit court may appeal to the supreme court of appeals
41 in the manner prescribed by law.

42 Any order appealed to the commission, the circuit
43 court or to the supreme court shall have full force and
44 effect during the pendency of the appeal except the
45 order may be stayed within the full discretion of the
46 commission or the respective court based upon consid-
47 erations as provided by general law.

**§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 been given written notice thereof by
14 the director: *Provided, however*, That for the first such
15 minor violation, if such person corrects the violation
16 within such time as was specified in the notice of
17 violation issued by the director, no such civil penalty
18 may be recovered: *Provided further*, That if such person
19 fails to correct such minor violation or for any serious
20 or subsequent serious or minor violation, such person
21 shall be subject to civil penalties imposed pursuant to
22 this section from the first day of such violation notwith-
23 standing the date of the issuance or receipt of the notice
24 of violation. The commission shall, by rule and regula-
25 tion subject to the provisions of chapter twenty-nine-a
26 of this code, determine the definitions of serious and
27 minor violations. The amount of any such penalty
28 collected by the commission shall be deposited in the
29 general revenue of the state treasury according to law.

30 (b) (1) Any person who knowingly misrepresents any

31 material fact in an application, record, report, plan or
32 other document filed or required to be maintained under
33 the provisions of this article or any rules promulgated
34 by the commission thereunder is guilty of a misdemea-
35 nor, and, upon conviction thereof, shall be fined not
36 more than twenty-five thousand dollars or imprisoned in
37 the county jail not more than six months or both fined
38 and imprisoned.

39 (2) Any person who knowingly violates any provision
40 of this article, any permit or any rule or order issued
41 pursuant to this article is guilty of a misdemeanor, and,
42 upon conviction thereof, shall be fined not more than
43 twenty-five thousand dollars for each day of such
44 violation or imprisoned in the county jail not more than
45 one year or both fined and imprisoned.

46 (c) Upon a request in writing from the commission,
47 it shall be the duty of the attorney general and the
48 prosecuting attorney of the county in which any such
49 action for penalties accruing under this section or
50 section nine of this article may be brought to institute
51 and prosecute all such actions on behalf of the
52 commission.

53 (d) For the purpose of this section, violations on
54 separate days shall be considered separate offenses.

**§16-20-12. Records, reports, data or information; confi-
dentiality; proceedings upon request to
inspect or copy.**

1 All air quality data, emission data, permits, com-
2 pliance schedules, commission orders and any other
3 information required by a federal implementation
4 program (all for convenience hereinafter referred to in
5 this section as "records, reports, data or information")
6 obtained under this article shall be available to the
7 public, except that upon a showing satisfactory to the
8 director, by any person, that records, reports, data or
9 information or any particular part thereof, to which the
10 director has access under this article if made public,
11 would divulge methods or processes entitled to protec-
12 tion as trade secrets of such person, the director shall
13 consider such records, reports, data or information or

14 such particular portion thereof confidential: *Provided*,
15 That such confidentiality shall not apply to the types and
16 amounts of air pollutants discharged and that such
17 records, reports, data or information may be disclosed
18 to other officers, employees or authorized representa-
19 tives of the state or of the federal environment protec-
20 tion agency concerned with enforcing this article, the
21 federal Clean Air Act, as amended, or the federal
22 Resource Conservation and Recovery Act, as amended,
23 when relevant to any official proceedings thereunder:
24 *Provided, however*, That such officers, employees or
25 authorized representatives of the state or federal
26 environmental protection agency protect such records,
27 reports, data or information to the same degree required
28 of the director by this section. The commission shall
29 promulgate legislative rules regarding the protection of
30 records, reports, data or information, or trade secrets,
31 as required by this section.

32 All requests to inspect or copy documents must state
33 with reasonable specificity the documents or type of
34 documents sought to be inspected or copied. Within five
35 business days of the receipt of such a request, the
36 director or his designate shall: (a) Advise the person
37 making such request of the time and place at which he
38 may inspect and copy the documents; or (b) deny the
39 request, stating in writing the reasons for such denial.
40 For purposes of judicial appeal, a written denial by the
41 director or his designate shall be deemed an exhaustion
42 of administrative remedies. Any person whose request
43 for information is denied in whole or in part may appeal
44 from such denial by filing with the director a notice of
45 appeal. Such notice shall be filed within thirty days
46 from the date the request for information was denied,
47 and shall be signed by the person whose request was
48 denied or his attorney. The appeal shall be taken to the
49 circuit court of Kanawha County, where it shall be
50 heard without a jury. The scope of review shall be
51 limited to the question of whether the records, reports,
52 data or other information, or any particular part thereof
53 (other than emission data), sought to be inspected or
54 copied, would, if made public, divulge methods or
55 processes entitled to protection as trade secrets. The said

56 court shall make findings of fact and conclusions of law
57 based upon the evidence and testimony. The director,
58 the person whose request was denied, or any other
59 person whose interest shall have been substantially
60 affected by the final order of the circuit court may
61 appeal to the supreme court of appeals in the manner
62 prescribed by law.

**§16-20-13. Construction, modification or relocation
permits required for stationary sources of
air pollutants.**

1 No person shall construct, modify or relocate any
2 stationary source of air pollutants without first obtain-
3 ing a construction, modification or relocation permit as
4 hereinafter provided.

5 The commission shall by rule and regulation specify
6 the class or categories of stationary sources to which this
7 section shall apply. Application for permits shall be
8 made upon such form, in such manner, and within such
9 time as the rule and regulation shall prescribe and shall
10 include such information, as in the judgment of the
11 director, will enable him to determine whether such
12 source will be so designed as to operate in conformance
13 with the provisions of this article or any rules and
14 regulations promulgated thereunder.

15 The director shall, within a reasonable time not to
16 exceed twelve months for major sources, as defined by
17 the commission, and six months for all other sources
18 after the receipt of a complete application, issue such
19 permit unless he determines that the proposed construc-
20 tion, modification or relocation will not be in accordance
21 with this article or rules and regulations promulgated
22 thereunder, in which case he shall issue an order for the
23 prevention of such construction, modification or
24 relocation.

25 For the purposes of this section, a modification is
26 deemed to be any physical change in, or change in the
27 method of operation of, a stationary source which
28 increases the amount of any air pollutant discharged by
29 such source above a de minimis level set by the
30 commission.

§16-20-14. Operating permits required for stationary sources of air pollution.

1 No person may operate a stationary source of air
2 pollutants without first obtaining an operating permit
3 as hereinafter provided. The commission shall promul-
4 gate legislative rules, in accordance with chapter
5 twenty-nine-a of this code, which specify classes or
6 categories of stationary sources which shall be required
7 to obtain an operating permit. The legislative rule shall
8 provide for the form and content of the application
9 procedure including time limitations for obtaining the
10 required permits. Any person who has filed a timely and
11 complete application for a permit or renewal thereof
12 required by this section, and who is abiding by the
13 requirements of this article and the rules promulgated
14 pursuant thereto, shall be deemed to be in compliance
15 with the requirements of this article and any regulation
16 promulgated thereunder until a permit is issued or
17 denied. Any legislative rule promulgated pursuant to
18 the authority granted by this section shall be equivalent
19 to and consistent with rules and regulations adopted by
20 the administrator of United States environmental
21 protection agency pursuant to Title IV and Title V of
22 the Clean Air Act Amendments of 1990, 42 U.S.C. §7651
23 et seq. and 42 U.S.C. §7661 et seq., respectively:
24 *Provided*, That such legislative rule may deviate from
25 the federal rules and regulations where a deviation is
26 appropriate to implement the policy and purpose of this
27 article taking into account such factors unique to West
28 Virginia.

§16-20-15. Consolidation of permits.

1 For permits required by sections thirteen and
2 fourteen of this article, the commission may incorporate
3 the required permits with an existing permit or
4 consolidate the required permits into a single permit.

§16-20-16. Administrative review of permit actions.

1 Any person whose interest may be affected, including,
2 but not necessarily limited to the applicant and any
3 person who participated in the public comment process,
4 by a permit issued, modified or denied by the director

5 may appeal such action of the director to the commission
6 pursuant to section six of this article.

§16-20-17. Judicial review of permits and denials.

1 Any person whose interest may be affected, including,
2 but not necessarily limited to, the applicant and any
3 person who participated in the public comment process
4 or the administrative review process, by an order issued
5 by the commission pursuant to section sixteen of this
6 article, may appeal such order to the circuit court of
7 Kanawha County pursuant to section seven of this
8 article.

§16-20-18. Motor vehicle pollution, inspection and maintenance.

1 (a) As the state of knowledge and technology relating
2 to the control of emissions from motor vehicles may
3 permit or make appropriate, and in furtherance of the
4 purposes of this article, the commission may provide by
5 legislative rule for the control of emissions from motor
6 vehicles. Such legislative rule may prescribe require-
7 ments for the installation and use of equipment designed
8 to reduce or eliminate emissions and for the proper
9 maintenance of such equipment and of vehicles. Any
10 legislative rule pursuant to this section shall be
11 consistent with provisions of federal law, if any, relating
12 to control of emissions from the vehicles concerned. The
13 commission shall not require, as a condition precedent
14 to the initial sale of a vehicle or vehicular equipment,
15 the inspection, certification or other approval of any
16 feature or equipment designed for the control of
17 emissions from motor vehicles, if such feature or
18 equipment has been certified, approved, or otherwise
19 authorized pursuant to federal law.

20 (b) Except as permitted or authorized by law or
21 legislative rule, no person shall fail to maintain in good
22 working order or remove, dismantle, or otherwise cause
23 to be inoperative any equipment or feature constituting
24 an operational element of the air pollution control
25 system or mechanism of a motor vehicle required by
26 rules and regulations of the commission to be main-
27 tained in or on the vehicle. Any such failure to maintain

28 in good working order or removal, dismantling, or
29 causing of inoperability shall subject the owner or
30 operator to suspension or cancellation of the registration
31 for the vehicle by the department of transportation,
32 division of motor vehicles. The vehicle shall not thereaf-
33 ter be eligible for registration until all parts and
34 equipment constituting operational elements of the
35 motor vehicle have been restored, replaced or repaired
36 and are in good working order.

37 (c) The department of transportation, division of
38 motor vehicles, department of administration, informa-
39 tion and communication services division, and the
40 department of public safety shall make available
41 technical information and records to the commission to
42 implement the legislative rule regarding motor vehicle
43 pollution, inspection and maintenance. The commission
44 shall promulgate a legislative rule establishing motor
45 vehicle pollution, inspection and maintenance standards
46 and imposing an inspection fee at a rate sufficient to
47 implement the motor vehicle inspection program.

48 (d) The commission shall promulgate a legislative rule
49 requiring maintenance of features of equipment in or on
50 motor vehicles for the purpose of controlling emissions
51 therefrom, and no motor vehicle may be issued a
52 division of motor vehicles registration certificate, or the
53 existing registration certificate shall be revoked, unless
54 the motor vehicle has been found to be in compliance
55 with the commission's legislative rule.

56 (e) The remedies and penalties provided in section
57 eighteen of this article and section one, article three,
58 chapter seventeen-a of this code, shall apply to violations
59 hereof, and no provisions of sections eight or nine of this
60 article shall apply thereto.

61 (f) As used in this section "motor vehicle" shall have
62 the same meaning as in chapter seventeen-c of this code.

**§16-20-19. Small business environmental compliance
assistance program, compliance advisory
panel.**

1 The secretary of the department of commerce, labor,

2 and environmental resources shall establish a small
3 business stationary source technical and environmental
4 compliance assistance program which meets the re-
5 quirements of Title V of the Clean Air Act Amendments
6 of 1990, 42 U.S.C. §7661 et seq. A compliance advisory
7 panel composed of seven members appointed as follows
8 shall be created to periodically review the effectiveness
9 and results of this assistance program:

10 (a) Two members who are not owners, nor represen-
11 tatives of owners, of small business stationary sources,
12 selected by the governor to represent the general public;

13 (b) One member selected by the speaker of the House
14 of Delegates who is an owner or who represents owners
15 of small business stationary sources;

16 (c) One member selected by the minority leader of the
17 House of Delegates who is an owner or who represents
18 owners of small business stationary sources;

19 (d) One member selected by the president of the
20 Senate who is an owner or who represents owners of
21 small business stationary sources;

22 (e) One member selected by the minority leader of the
23 Senate who is an owner or who represents owners of
24 small business stationary sources;

25 (f) One member selected by the commission to
26 represent the commission.

§16-20-20. 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 of the
6 remaining provisions, sections or parts of the article or
7 their application to him or to other persons and
8 circumstances. It is hereby declared to be the legislative
9 intent that this article would have been adopted if such
10 invalid or unconstitutional provision, section or part had
11 not been included therein.

CHAPTER 10

(H. B. 4494—By Delegates Cerra and Walker)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four and nine, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend section twenty-three, article three, chapter seventeen-a of said code; and to amend and reenact sections two and three, article eight, chapter sixty of said code, relating to alcohol beverage control special investigators; registration plates for vehicles operated by inspectors of the office of the alcohol beverage control commissioner; and requiring caterers and party supply stores to obtain licenses for the sale of beer and wine.

Be it enacted by the Legislature of West Virginia:

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

Chapter

11. Taxation.

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

60. Alcohol Beverage Control Act.

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-4. Responsibility of alcohol beverage control commissioner; administrators, employees and agents; administration and enforcement expenses.

§11-16-9. Amount of license tax: Class A and Class B retail dealers; purchase and sale of nonintoxicating beer permitted; distributors; brewers; brewpubs.

§11-16-4. Responsibility of alcohol beverage control commissioner; administrators, employees and agents; administration and enforcement expenses.

1 (a) The alcohol beverage control commissioner de-
2 scribed under the provisions of article two, chapter sixty
3 of this code shall have sole responsibility for the
4 administration of this article, except for those respon-
5 sibilities expressly vested in the tax commissioner under
6 sections thirteen, fourteen and fifteen of this article.

7 All acts heretofore performed by the nonintoxicating
8 beer commissioner under previous proceedings of this
9 article are hereby again ratified and confirmed, and the
10 commissioner shall succeed to the same position pre-
11 viously maintained by the nonintoxicating beer commis-
12 sioner in all proceedings and official acts instituted and
13 perfected under the provisions of this article prior to the
14 effective date of this section.

15 (b) The commissioner shall appoint an adequate
16 number of competent persons to serve as administrators,
17 employees and agents of the commissioner for the
18 purpose of keeping all necessary accounts and records
19 required under the provisions of this article; investigat-
20 ing the books, accounts, records and other papers of
21 retailers, distributors and brewers; investigating
22 applicants for license and the places of business of
23 retailers, distributors and brewers; procuring evidence
24 with respect to violations of the provisions of this article,
25 and particularly for use at hearings held by the
26 commissioner and on proceedings instituted in court for
27 the purpose of revoking or suspending licenses here-
28 under; and such administrators, employees and agents
29 shall perform such other duties as the commissioner
30 may direct. Such administrators, employees and agents
31 shall have the right to enter any licensed premises in
32 the state in the performance of their duties at any hour
33 of the day or night when beer is being sold or consumed
34 on such licensed premises. Refusal by any licensee or by
35 any employee of a licensee to permit such administra-
36 tors, employees or agents to enter the licensed premises
37 shall be an additional cause for revocation or suspension

38 of the license of such licensee by the commissioner. The
39 compensation of such administrators, employees and
40 agents shall be fixed by the commissioner: *Provided*,
41 That the commissioner may employ up to eleven special
42 investigators who shall be nonclassified exempt em-
43 ployees of the division.

44 (c) Services rendered the state by clerks, sheriffs,
45 commissioners in chancery and special commissioners,
46 designated by the court, and court reporters and
47 stenographers performing services for said commis-
48 sioner and fees of witnesses summoned on behalf of the
49 state in proceedings to revoke or suspend retailer's
50 licenses shall be treated as part of the expenses of
51 administration and enforcement, and such officers and
52 said other persons shall be paid the same fees and
53 charges as would be chargeable for like services
54 performed for an individual; and the compensation of
55 such clerks, sheriffs and other persons shall be paid out
56 of the amount allocated for the expense of administra-
57 tion enforcement, after the amount of such fees and
58 other charges shall be certified by the court to the
59 auditor.

**§11-16-9. Amount of license tax; Class A and Class B
retail dealers; purchase and sale of nonin-
toxicating beer permitted; distributors;
brewers; brewpubs.**

1 There is hereby levied and imposed an annual license
2 tax upon all dealers in and of nonintoxicating beer as
3 defined by this article, which license period shall begin
4 on the first day of July of each year and end on the
5 thirtieth day of June of the following year, and, if
6 granted for a less period, the same shall be computed
7 semiannually in proportion to the remainder of the fiscal
8 year as follows:

9 (1) Retail dealers shall be divided into two classes,
10 Class A and Class B. In the case of a Class A retail
11 dealer the license fee shall be one hundred fifty dollars
12 for each place of business; the license fee for social,
13 fraternal or private clubs not operating for profit, and
14 having been in continuous operation for two years or

15 more immediately preceding the date of application,
16 shall be one hundred fifty dollars: *Provided*, That
17 railroads operating in this state may dispense nonintox-
18 icating beer upon payment of an annual license tax of
19 ten dollars for each dining, club or buffet car in which
20 the same is dispensed.

21 Class A licenses issued for railroad dining, club or
22 buffet cars, as herein provided, shall authorize the
23 licensee to sell nonintoxicating beer at retail for
24 consumption only on the licensed premises where sold.
25 All other Class A licenses shall authorize the licensee to
26 sell nonintoxicating beer at retail for consumption on or
27 off the licensed premises.

28 In the case of a Class B retailer, the fee for a Class
29 B license authorizing the sale of both chilled and
30 unchilled beer shall be one hundred fifty dollars for each
31 place of business. A Class B license shall authorize the
32 licensee to sell nonintoxicating beer at retail in bottles,
33 cans or other sealed containers only, and only for
34 consumption off the licensed premises. Sales under this
35 license to any person at any one time must be in less
36 quantities than five gallons: *Provided*, That a Class B
37 retailer may sell to a consumer, for personal use and not
38 for resale, draught beer in quantities of one-eighth, one-
39 fourth and one-half barrels in the original containers.
40 Such license may be issued only to the proprietor or
41 owner of a grocery store. For the purpose of this article
42 the term "grocery store" means and includes any retail
43 establishment commonly known as a grocery store or
44 delicatessen and caterer or party supply store, where
45 food or food products are sold for consumption off the
46 premises, and shall include and mean a separate and
47 segregated portion of any other retail store which is
48 dedicated solely to the sale of food, food products and
49 supplies for the table for consumption off the premises.
50 The commissioner may promulgate legislative rules
51 pursuant to chapter twenty-nine-a of this code necessary
52 to carry this provision into effect. Caterers or party
53 supply stores will be required to purchase the approp-
54 riate licenses from the alcohol beverage control
55 administration.

56 (2) In the case of distributors, the license fee shall be
57 one thousand dollars for each place of business.

58 (3) In the case of a brewer with its principal place
59 of business located in this state, the license fee shall be
60 one thousand five hundred dollars for each place of
61 manufacture.

62 (4) In the case of a brewpub, the license fee shall be
63 one thousand dollars for each place of manufacture.

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

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

§17A-3-23. Registration plates to state, county, municipal and other governmental vehicles.

1 Any motor vehicle designed to carry passengers,
2 owned or leased by the state of West Virginia, or any
3 of its departments, bureaus, commissions or institutions,
4 except vehicles used by the governor, treasurer, vehicles
5 operated by the department of public safety, not to
6 exceed six vehicles operated by conservation officers of
7 the division of natural resources, not to exceed ten
8 vehicles operated by the arson investigators of the office
9 of state fire marshal, and not to exceed sixteen vehicles
10 operated by inspectors of the office of the alcohol
11 beverage control commissioner, shall not be operated or
12 driven by any person unless it shall have displayed and
13 attached to the front thereof, in the same manner as
14 regular motor vehicle registration plates are attached,
15 a plate of the same size as the regular registration plate,
16 with white lettering on a green background bearing the
17 words "West Virginia" in one line and the words "State
18 Car" in another line, and the lettering for the words
19 "State Car" shall be of sufficient size to be plainly
20 readable from a distance of one hundred feet during
21 daylight.

22 Such vehicle shall also have attached to the rear a
23 plate bearing a number and such other words and
24 figures as the commissioner of motor vehicles shall

25 prescribe. The rear plate shall also be green with the
26 number in white.

27 On registration plates issued to vehicles owned by
28 counties, the color shall be white on red with the word
29 "County" on top of the plate and the words "West
30 Virginia" on the bottom. On any registration plates
31 issued to a city or municipality, the color shall be white
32 on blue with the word "City" on top, and the words
33 "West Virginia" on the bottom. The colors may not be
34 reversed and shall be of reflectorized material. The
35 commissioner is hereby authorized to designate the
36 colors and design of any other registration plates that
37 are issued without charge to any other agency in
38 accordance with the motor vehicle laws. The registra-
39 tion plates issued to counties, municipalities and other
40 governmental agencies authorized to receive colored
41 plates hereunder shall be affixed to both the front and
42 rear of such vehicles: *Provided*, That upon application
43 and payment of fees, the commissioner is hereby
44 authorized to issue a maximum of five Class A license
45 plates per applicant to be used by county sheriffs and
46 municipalities on law-enforcement vehicles while
47 engaged in undercover investigations.

48 No other registration plate shall be issued for, or
49 attached to, any such state-owned vehicle.

50 The commissioner of motor vehicles shall have a
51 sufficient number of both front and rear plates produced
52 to attach to all state-owned cars. The numbered
53 registration plates for such vehicles shall start with the
54 number "five hundred" and the commissioner shall issue
55 consecutive numbers for all state-owned cars.

56 It shall be the duty of each office, department, bureau,
57 commission or institution furnished any such vehicle to
58 have such plates affixed thereto prior to the operation
59 of such vehicle by any official or employee.

60 Any person violating the provisions of this section
61 shall be guilty of a misdemeanor, and, upon conviction
62 thereof, shall be fined not less than fifty dollars nor
63 more than one hundred dollars.

64 Magistrates shall have concurrent jurisdiction with
65 circuit and criminal courts for the enforcement of this
66 section.

CHAPTER 60. ALCOHOL BEVERAGE CONTROL ACT.

ARTICLE 8. SALE OF WINES.

§60-8-2. Definitions.

§60-8-3. Licenses; fees; general restrictions.

§60-8-2. Definitions.

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

3 "Commissioner" or "commission" means the West
4 Virginia alcohol beverage control commissioner.

5 "Distributor" means any person whose principal place
6 of business is within the state of West Virginia, and who
7 is engaged in selling or distributing wine to retailers or
8 private wine restaurants and selling or distributing
9 port, sherry and Madeira wines to wine specialty shops
10 under authority of this article and actually maintains a
11 warehouse in this state for the distribution of wine.

12 "Fortified wine" shall mean any wine to which brandy
13 or other alcohol has been added and shall include dessert
14 wines which are not fortified.

15 "Grocery store" means any retail establishment,
16 commonly known as a grocery store, supermarket,
17 delicatessen, caterer or party supply store, where food,
18 food products and supplies for the table are sold for
19 consumption off the premises with average monthly
20 sales (exclusive of sales of wine) of not less than five
21 hundred dollars and an average monthly inventory
22 (exclusive of inventory of wine) of not less than three
23 thousand dollars. The term "grocery store" shall also
24 include and mean a separate and segregated portion of
25 any other retail store which is dedicated solely to the
26 sale of food, food products and supplies for the table for
27 consumption off the premises with average monthly
28 sales with respect to such separate or segregated portion
29 (exclusive of sales of wine) of not less than three
30 thousand dollars and an average monthly inventory

31 (exclusive of inventory of wine) of not less than three
32 thousand dollars.

33 "Licensee" means the holder of a license granted
34 under the provisions of this article.

35 "Private wine restaurant" means a restaurant which:
36 (1) Is a partnership, limited partnership, corporation,
37 unincorporated association or other business entity
38 which has as its principal purpose the business of
39 serving meals on its premises to its members and their
40 guests; (2) is licensed under the provisions of this article
41 as to all of its premises or as to a separate segregated
42 portion of its premises to serve wine to its members and
43 their guests when such sale accompanies the serving of
44 food or meals; and (3) admits only duly elected and
45 approved dues paying members and their guests while
46 in the company of a member, and does not admit the
47 general public.

48 "Retailer" means any person licensed to sell wine at
49 retail to the public at his established place of business
50 for off-premises consumption and who is licensed to do
51 so under authority of this article.

52 "Supplier" means any manufacturer, producer,
53 processor, distributor or supplier of wine who sells or
54 offers to sell or solicits or negotiates the sale of wine to
55 any licensed West Virginia distributor.

56 "Tax" includes within its meaning interest, additions
57 to tax and penalties.

58 "Taxpayer" means any person liable for any tax,
59 interest, additions to tax or penalty under the provisions
60 of this article and any person claiming a refund of tax.

61 "Varietal wine" means any wine labeled according to
62 the grape variety from which such wine is made.

63 "Vintage wine" or "vintage-dated wine" means wines
64 from which the grapes used to produce such wine are
65 harvested during a particular year or wines produced
66 from the grapes of a particular harvest in a particular
67 region of production.

68 "Wine" means any alcoholic beverage obtained by the
69 natural fermentation of the natural content of grapes,

70 other fruits or honey or other agricultural products
71 containing sugar and to which no alcohol has been added
72 and shall include table wine, and shall exclude fortified
73 wine and shall also exclude any product defined as or
74 embraced within the definition of nonintoxicating beer
75 under the provisions of article sixteen, chapter eleven of
76 this code.

77 "Wine specialty shop" means a retailer who shall deal
78 principally in the sale of table wine, certain fortified
79 wines, wine accessories and food or foodstuffs normally
80 associated with wine and (1) who shall maintain a
81 representative number of such wines for sale in his
82 inventory which are designated by label as varietal
83 wine, vintage, generic and/or according to region of
84 production and the inventory shall contain not less than
85 fifteen percent vintage or vintage-dated wine by actual
86 bottle count and (2) who, any other provisions of this
87 code to the contrary notwithstanding, may maintain an
88 inventory of port, sherry and Madiera wines having an
89 alcoholic content of not more than twenty-two percent
90 alcohol by volume and which have been matured in
91 wooden barrels or casks.

§60-8-3. Licenses; fees; general restrictions.

1 (a) Except as to farm wineries as defined by section
2 five-a, article one of this chapter, no person may engage
3 in business in the capacity of a distributor, retailer or
4 private wine restaurant without first obtaining a license
5 from the commissioner, nor shall a person continue to
6 engage in any such activity after his license has expired,
7 been suspended or revoked. No person may be licensed
8 simultaneously as a distributor and a retailer, as a
9 distributor and a private wine restaurant, or as a
10 retailer and a private wine restaurant.

11 (b) The commissioner shall collect an annual fee for
12 licenses issued under this article, as follows:

13 (1) Twenty-five hundred dollars per year for a
14 distributor's license and each separate warehouse or
15 other facility from which a distributor sells, transfers
16 or delivers wine shall be separately licensed and there
17 shall be collected with respect to each such location the

18 annual license fee of twenty-five hundred dollars as
19 herein provided.

20 (2) One hundred fifty dollars per year for a retailer's
21 license.

22 (3) Fifty dollars per year for a wine tasting license.

23 (4) Fifty dollars for each sales representative of or
24 employed by a licensed distributor.

25 (5) Two hundred fifty dollars per year for a private
26 wine restaurant license, and each separate restaurant
27 from which a licensee sells wine shall be separately
28 licensed and there shall be collected with respect to each
29 such location the annual license fee of two hundred fifty
30 dollars as herein provided.

31 (6) Twenty-five dollars per year for a West Virginia
32 wine retailer's license, and each separate retail outlet
33 from which a West Virginia wine retailer sells West
34 Virginia wine shall be separately licensed and there
35 shall be collected with respect to each such location the
36 annual license fee of twenty-five dollars as herein
37 provided. The holder of such a license may sell no wines
38 except those produced by West Virginia farm wineries
39 as defined by section five-a, article one of this chapter.
40 Except for the amount of the license fee and the
41 restriction to sales of West Virginia wines, a West
42 Virginia wine retailer is subject to all other provisions
43 of this article which are applicable to a retailer as
44 defined in section two of this article.

45 (c) The license period shall begin on the first day of
46 July of each year and end on the thirtieth day of June
47 of the following year, and if granted for a less period,
48 the same shall be computed semiannually in proportion
49 to the remainder of the fiscal year.

50 (d) No retailer may be licensed as a private club as
51 provided by article seven of this chapter.

52 (e) No retailer may be licensed as a Class A retail
53 dealer in nonintoxicating beer as provided by article
54 sixteen, chapter eleven of this code: *Provided*, That a
55 delicatessen, a caterer or party supply store which is a

56 grocery store as defined in section two of this article and
57 which is licensed as a Class A retail dealer in nonintox-
58 icating beer may be a retailer under this article:
59 *Provided, however,* That any delicatessen, caterer or
60 party supply store licensed in both such capacities must
61 maintain average monthly sales exclusive of sales of
62 wine and nonintoxicating beer which exceed the average
63 monthly sales of nonintoxicating beer.

64 (f) A retailer under this article may also hold a wine
65 tasting license authorizing such retailer to serve
66 complimentary samples of wine in moderate quantities
67 for tasting. Such retailer shall organize a winetaster's
68 club, which has at least fifty duly elected or approved
69 dues paying members in good standing. Such club shall
70 meet on the retailer's premises not more than one time
71 per week and shall either meet at a time when the
72 premises are closed to the general public, or shall meet
73 in a separate segregated facility on the premises to
74 which the general public is not admitted. Attendance at
75 tastings shall be limited to duly elected or approved
76 dues paying members and their guests.

77 (g) A retailer who has more than one place of retail
78 business shall obtain a license for each separate retail
79 establishment. A retailer's license may be issued only to
80 the proprietor or owner of a bona fide grocery store or
81 wine specialty shop.

82 (h) The commissioner may issue a special license for
83 the retail sale of wine at any festival or fair which is
84 endorsed or sponsored by the governing body of a
85 municipality or a county commission. Such special
86 license shall be issued for a term of no longer than ten
87 consecutive days and the fee therefor shall be two
88 hundred fifty dollars regardless of the term of the
89 license unless the applicant is the manufacturer of said
90 wine on a farm winery as defined in section five-a,
91 article one of this chapter, in which event the fee shall
92 be twenty-five dollars. The application for such license
93 shall contain such information as the commissioner may
94 reasonably require and shall be submitted to the
95 commissioner at least thirty days prior to the first day
96 when wine is to be sold at such festival or fair. A farm

97 winery licensed under this subsection may exhibit,
98 conduct tastings, not to exceed a reasonable serving, and
99 may sell wine only for consumption off the premises of
100 such festival or fair. A special license issued other than
101 to a farm winery may be issued to a "wine club" as
102 defined hereinbelow. The festival or fair committee or
103 the governing body shall designate a person to organize
104 a club under a name which includes the name of the
105 festival or fair and the words "wine club". The license
106 shall be issued in the name of the wine club. A licensee
107 may not commence the sale of wine as provided for in
108 this subsection until the wine club has at least fifty dues
109 paying members who have been enrolled and to whom
110 membership cards have been issued. Thereafter, new
111 members may be enrolled and issued membership cards
112 at any time during the period for which the license is
113 issued. A wine club licensed under the provisions of this
114 subsection may sell wine only to its members, and in
115 portions not to exceed eight ounces per serving. Such
116 sales shall take place on premises or in an area cordoned
117 or segregated so as to be closed to the general public,
118 and the general public shall not be admitted to such
119 premises or area. A wine club licensee under the
120 provisions of this subsection shall be authorized to serve
121 complimentary samples of wine in moderate quantities
122 for tasting.

123 A license issued under the provisions of this subsection
124 and the licensee holding such license shall be
125 subject to all other provisions of this article and the
126 rules, regulations and orders of the commissioner
127 relating to such special license: *Provided*, That the
128 commissioner may by rule, regulation, or order provide
129 for certain waivers or exceptions with respect to such
130 provisions, rules, regulations, or orders as the circum-
131 stances of each such festival or fair may require,
132 including, without limitation, the right to revoke or
133 suspend any license issued pursuant to this section prior
134 to any notice or hearing notwithstanding the provisions
135 of section twelve of this article: *Provided, however*, That
136 under no circumstances shall the provisions of subsection
137 (c) or (d), section twenty of this article be waived
138 nor shall any exception be granted with respect thereto.

139 A license issued under the provisions of this subsection
140 and the licensee holding such license shall not be
141 subject to the provisions of subsection (g) of this section.

142 (i) A license to sell wine granted to a private wine
143 restaurant under the provisions of this article entitles
144 the operator to sell and serve wine, for consumption on
145 the premises of the licensee, when such sale accompanies
146 the serving of food or a meal to its members and their
147 guests in accordance with the provisions of this article.
148 Such licensees are authorized to keep and maintain on
149 their premises a supply of wine in such quantities as
150 may be appropriate for the conduct of operations
151 thereof. Any sale of wine so made shall be subject to all
152 restrictions set forth in section twenty of this article. A
153 private wine restaurant may also be licensed as a Class
154 A retail dealer in nonintoxicating beer as provided by
155 article sixteen, chapter eleven of this code.

156 (j) With respect to subsections (h) and (i) of this
157 section, the commissioner shall promulgate legislative
158 rules in accordance with the provisions of chapter
159 twenty-nine-a of this code with regard to the form of the
160 applications, the suitability of both the applicant and
161 location of the licensed premises and such other
162 legislative rules deemed necessary to carry the provisions
163 of such subsections into effect.

164 (k) The commissioner shall promulgate legislative
165 rules in accordance with the provisions of chapter
166 twenty-nine-a of this code to allow restaurants to serve
167 West Virginia wine with meals, but not to sell the wine
168 by the bottle. Each restaurant so licensed shall be
169 charged a fee less than that charged for a wine license
170 to a retail outlet, such fees to be set forth in the
171 aforementioned rules promulgated pursuant to this
172 subsection.

173 (l) The commissioner shall establish guidelines to
174 permit West Virginia wines to be sold in state stores.

175 (m) Farm wineries as defined in section one-a of this
176 article may advertise off premises as provided in section
177 seven, article twenty-two, chapter seventeen and in any
178 other media, including, but not limited to, newspaper,
179 radio, television, magazines and direct mail solicitation.
180

CHAPTER 11

(H. B. 4558—By Delegates Reid and Lane)

[Passed March 3, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six-a, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing county commissions to contract with or reimburse other counties, private associations or societies, or municipalities to provide care, maintenance, control and destruction of dogs and cats.

Be it enacted by the Legislature of West Virginia:

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

§19-20-6a. Authority of county commission to contract with private society, other county or municipality for the care and control of dogs and cats.

- 1 In addition to the powers granted to county commis-
- 2 sions by section six of this article, the county commission
- 3 of each county may contract with or reimburse any
- 4 private incorporated society or association, county
- 5 commission or municipality for the care, maintenance,
- 6 control or destruction of dogs and cats.

CHAPTER 12

(Com. Sub. for S. B. 20—By Senators Burdette, Mr. President, and Boley)

[Passed March 14, 1992; in effect from passage. Approved by the Governor with deletion.]

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-three.

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 three” shall mean the period from July first, one
11 thousand nine hundred ninety-two, through June
12 thirtieth, one thousand nine hundred ninety-three.

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 appro-
2 priation 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 contributions, 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 transferred by each spending unit from its
30 "personal services" line item or its "unclassified" line
31 item to its employee benefits line item. If there is no
32 appropriation for "employee benefits," such costs shall
33 be transferred by each spending unit from its "personal

34 services" line item or its "unclassified" line item. Each
35 spending unit is hereby authorized and required to
36 make such payments in accordance with the provisions
37 of article two, chapter five-a of the code.

38 Each spending unit shall be responsible for all
39 contributions, payments or other costs related to
40 coverage and claims of its employees for unemployment
41 compensation. Such expenditures shall be considered an
42 employee benefit.

43 "Current expenses" shall mean operating costs other
44 than personal services and shall not include equipment,
45 repairs and alterations, buildings or lands.

46 Each spending unit shall be responsible for and
47 charged monthly for all postage meter service and shall
48 reimburse the appropriate revolving fund monthly for
49 all such amounts. Such expenditures shall be considered
50 a current expense.

51 "Equipment" shall mean equipment items which have
52 an appreciable and calculable period of usefulness in
53 excess of one year.

54 "Repairs and alterations" shall mean routine mainte-
55 nance and repairs to structures and minor improve-
56 ments to property which do not increase the capital
57 assets.

58 "Buildings" shall include new construction and major
59 alteration of existing structures and the improvement of
60 lands and shall include shelter, support, storage,
61 protection or the improvement of a natural condition.

62 "Lands" shall mean the purchase of real property or
63 interest in real property.

64 "Capital outlay" shall mean and include buildings,
65 lands or buildings and lands, with such category or item
66 of appropriation to remain in effect as provided by
67 section twelve, article three, chapter twelve of the code.

68 Appropriations classified in any of the above catego-
69 ries shall be expended only for the purposes as defined
70 above and only for the spending units herein designated:
71 *Provided*, That the secretary of each department shall

72 have the authority to transfer within the department
73 those funds appropriated to the various agencies of the
74 department: *Provided, however,* That no more than ten
75 percent of the funds appropriated to any one agency or
76 board may be transferred to other agencies or boards
77 within the department: *Provided further,* That if the
78 Legislature by subsequent enactment consolidates
79 agencies, boards or functions, the secretary may
80 transfer the funds formerly appropriated to such
81 agency, board or function in order to implement such
82 consolidation. No funds may be transferred from a
83 special revenue account, dedicated account, capital
84 expenditure account or any other account or funds
85 specifically exempted by the Legislature from transfer,
86 except that the use of the appropriations from the state
87 road fund transferred to the office of the secretary of
88 the department of transportation is not a use other than
89 the purpose for which such funds were dedicated and
90 is permitted:

91 Appropriations otherwise classified shall be expended
92 only where the distribution of expenditures for different
93 purposes cannot well be determined in advance or it is
94 necessary or desirable to permit the spending unit the
95 freedom to spend an appropriation for more than one of
96 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.

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- §17. Appropriations for local governments.
- §18. Total appropriations.
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TITLE II—APPROPRIATIONS.

1 **Section 1. Appropriations from general revenue.—**
 2 **From the state fund, general revenue, there are hereby**
 3 **appropriated conditionally upon the fulfillment of the**
 4 **provisions set forth in article two, chapter five-a of the**
 5 **code the following amounts, as itemized, for expenditure**
 6 **during the fiscal year one thousand nine hundred**
 7 **ninety-three.**

1 **Sec. 2. Appropriations of federal funds.—In accor-**
 2 **dance with article eleven, chapter four of the code, from**
 3 **federal funds there are hereby appropriated condition-**
 4 **ally upon the fulfillment of the provisions set forth in**

5 article two, chapter five-a of the code the following
 6 amounts, as itemized, for expenditure during the fiscal
 7 year one thousand nine hundred ninety-three.

LEGISLATIVE

1—Senate
 Acct. No. 1010

	Federal Funds Fiscal Year 1992-93	General Revenue Fund Fiscal Year 1992-93
1 Compensation of Members .. \$	—	\$ 277,000
2 Compensation and Per Diem		
3 of Officers and Employees	—	1,232,000
4 Expenses of Members	—	258,000
5 Repairs and Alterations	—	33,000
6 Current Expenses and		
7 Contingent Fund.....	—	561,000
8 Computer Supplies.....	—	15,000
9 Computer Systems	—	85,000
10 Printing Blue Book.....	—	150,000
11 Employee Benefits	—	254,760
12 Total	\$ —	\$ 2,865,760

13 The appropriations for the senate for the fiscal year
 14 1991-92 are to remain in full force and effect and are
 15 hereby reappropriated to June 30, 1993. Any balances
 16 so reappropriated may be transferred and credited to
 17 the 1992-93 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 or her requisitions
 24 upon the auditor, payable out of the Current Expenses
 25 and Contingent Fund of the senate, for any bills for
 26 supplies and services that may have been incurred by

27 the senate and not included in the appropriation bill, for
28 supplies and services incurred in preparation for the
29 opening, the conduct of the business and after adjourn-
30 ment of any regular or extraordinary session, and for
31 the necessary operation of the senate offices, the
32 requisitions for the same to be accompanied by bills to
33 be filed with the 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 or her requisitions upon the
48 auditor for the payment of all such staff personnel for
49 such services, payable out of the appropriation for
50 Compensation and Per Diem of Officers and Employees
51 or Current Expenses and Contingent Fund of the senate.

52 For duties imposed by law and by the senate, the
53 clerk of the senate shall be paid a monthly salary as
54 provided by the senate resolution, unless increased
55 between sessions under the authority of the president,
56 payable out of the appropriation for Compensation and
57 Per Diem of Officers and Employees or Current
58 Expenses and Contingent Fund of the senate.

59 The distribution of the blue book shall be by the office
60 of the clerk of the senate and shall include seventy-five
61 copies for each member of the Legislature and two
62 copies for each classified and approved high school and
63 junior high school and one copy for each elementary
64 school within the state.

2—House of Delegates

Acct. No. 1020

1	Compensation of Members ..	\$	—	\$	898,478
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.....		—		1,495,427
7	Total	\$	—	\$	3,611,261

8 The appropriations for the house of delegates for the
 9 fiscal year 1991-92 are to remain in full force and effect
 10 and are hereby reappropriated to June 30, 1993. Any
 11 balances so reappropriated may be transferred and
 12 credited to the 1992-93 accounts.

13 Upon the written request of the clerk of the house of
 14 delegates, the auditor shall transfer amounts between
 15 items of that 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 or her
 19 requisitions upon the auditor, payable out of the Current
 20 Expenses and Contingent Fund of the house of dele-
 21 gates, for any bills for supplies and services that may
 22 have been incurred by the house of delegates and not
 23 included in the appropriation bill, for bills for services
 24 and supplies incurred in preparation for the opening of
 25 the session and after adjournment, and for the necessary
 26 operation of the house of delegates' offices, the requisi-
 27 tions for the same to be accompanied by bills to be filed
 28 with the 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	\$	—	\$ 4,258,041
3	Legislative Printing	—		891,000
4	Legislative Rule-Making			
5	Review Committee	—		178,800
6	Legislative Computer			
7	System	—		554,059
8	Joint Standing Committee			
9	on Education	—		44,360
10	Joint Commission on Voca-			
11	tional-Technical-Occupa-			
12	tional Education	—		50,000
13	Total	\$	—	\$ 5,976,260

14 The appropriation for Joint Expenses for the fiscal
 15 year 1991-92 is to remain in full force and effect and
 16 is hereby reappropriated to June 30, 1993. Any balances
 17 so reappropriated may be transferred and credited to
 18 the 1992-93 accounts.

19 Upon the written request of the clerk of the senate,
 20 with the approval of the president of the senate, and the

21 clerk of the house of delegates, with the approval of the
 22 speaker of the house of delegates, and a copy to the
 23 legislative auditor, the auditor shall transfer amounts
 24 between items of the total appropriation in order to
 25 protect or increase the efficiency of the service.

JUDICIAL

4—Supreme Court—General Judicial

Acct. No. 1110

1	Personal Services	\$	—	\$	21,668,989
2	Annual Increment		—		200,000
3	Other Expenses		—		2,980,000
4	Judges' Retirement System		—		1,751,093
5	Other Court Costs		—		2,175,000
6	Judicial Training Program		—		400,000
7	Mental Hygiene Fund		—		700,000
8	Social Security Matching ...		—		1,655,020
9	Public Employees'				
10	Retirement Matching		—		1,864,576
11	Public Employees' In-				
12	surance Matching		—		2,500,000
13	Total	\$	—	\$	35,894,678

14 Any unexpended balances remaining in this appropri-
 15 ation at the close of the fiscal year 1991-92 are hereby
 16 reappropriated for expenditure during the fiscal year
 17 1992-93. Any balances so reappropriated may be
 18 transferred and credited to the 1992-93 accounts.

19 The appropriation shall be administered by the
 20 administrative director of the supreme court of appeals,
 21 who shall draw his or her requisitions for warrants in
 22 payment in the form of payrolls, making deductions
 23 therefrom as 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 requis-
 27 tion of the administrative director of the supreme court
 28 of appeals.

EXECUTIVE*5—Governor's Office*

(WV Code Chapter 5)

Acct. No. 1200

1	Salary of Governor	\$	—	\$	72,000
2	Unclassified		—		1,245,667
3	Total	\$	—	\$	1,317,667

6—Governor's Office—Custodial Fund

(WV Code Chapter 5)

Acct. No. 1230

1	Unclassified—Total	\$	—	\$	361,651
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	Civil Contingent Fund—				
2	Total	\$	—	\$	1,792,952
3	Any unexpended balance remaining in the appropri-				
4	ation (account no. 1240-06) at the close of the fiscal year				
5	1991-92 is hereby reappropriated for expenditure				
6	during the fiscal year 1992-93.				
7	From this appropriation there may be expended, at				
8	the discretion of the governor, an amount not to exceed				
9	one thousand dollars as West Virginia's contribution to				
10	the interstate oil compact commission.				

*8—Governor's Office—
Center for Professional Development*

(WV Code Chapter 18A)

Acct. No. 1245

1	Center for Professional			
2	Development—Total	\$	—	\$ 930,000

3 Any unexpended balance remaining in the appropri-
 4 ation for Center for Professional Development (account
 5 no. 1245-10) at the close of the fiscal year 1991-92 is
 6 hereby reappropriated for expenditure during the fiscal
 7 year 1992-93.

8 Any unexpended balance remaining in the appropri-
 9 ation for Early Childhood Development (account no.
 10 1245-09) at the close of the fiscal year 1991-92 is hereby
 11 reappropriated for expenditure during the fiscal year
 12 1992-93 and redesignated as Governor’s Office—Gover-
 13 nor’s Cabinet on Children and Families (account no.
 14 1255-09).

*9—Governor’s Office—
 Governor’s Cabinet on Children and Families
 (WV Code Chapter 5)*

Acct. No. 1255

1	Governor’s Cabinet on			
2	Children and Families—			
3	Total	\$	—	\$ 430,000

*10—Auditor’s Office—
 General Administration
 (WV Code Chapter 12)*

Acct. No. 1500

1	Salary of Auditor	\$	—	\$ 46,800
2	Personal Services		—	1,494,038
3	Annual Increment		—	29,916
4	Employee Benefits		—	500,042
5	Office Automation		—	500,000
6	Unclassified		—	540,000
7	Total	\$	—	\$ 3,110,796

11—Treasurer's Office

(WV Code Chapter 12)

Acct. No. 1600

1	Salary of Treasurer	\$	—	\$	50,400
2	Personal Services		—		457,610
3	Annual Increment		—		6,048
4	Employee Benefits		—		136,532
5	Abandoned Property				
6	Program		—		200,000
7	Unclassified		—		228,622
8	Total	\$	—	\$	1,079,212

12—Attorney General

(WV Code Chapters 5, 14, 46 and 47)

Acct. No. 2400

1	Salary of Attorney General	\$	—	\$	50,400
2	Personal Services		—		1,787,640
3	Annual Increment		—		12,384
4	Employee Benefits		—		507,342
5	Unclassified		—		648,882
6	Total	\$	—	\$	3,006,648

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 spending unit's
10 specifically appropriated account or from accounts
11 appropriated by general language contained within this
12 bill.

13—Secretary of State

(WV Code Chapters 3, 5 and 59)

Acct. No. 2500

1	Salary of Secretary of State	\$	—	\$	43,200
2	Personal Services		—		456,391
3	Annual Increment		—		5,832
4	Employee Benefits		—		160,556
5	Unclassified		—		216,039
6	Total	\$	—	\$	882,018

14—State Elections Commission

(WV Code Chapter 3)

Acct. No. 2600

1	Unclassified—Total	\$	—	\$	10,616
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15—Department of Agriculture

(WV Code Chapter 19)

Acct. No. 5100

1	Salary of Commissioner	\$	—	\$	46,800
2	Personal Services		—		1,936,382
3	Annual Increment		—		34,992
4	Employee Benefits		—		744,078
5	Gypsy Moth Program		—		750,000
6	Unclassified		1,801,656		552,434
7	Total	\$	1,801,656	\$	4,064,686

*16—Department of Agriculture—
Soil Conservation Committee*

(WV Code Chapter 19)

Acct. No. 5120

1	Personal Services	\$	—	\$	337,700
2	Annual Increment		—		5,364
3	Employee Benefits		—		107,808
4	Soil Conservation Projects ..		—		-0-
5	Unclassified		—		304,758
6	Total	\$	—	\$	755,630

7 Any unexpended balances remaining in the appropri-
8 ations for Unclassified (account no. 5121-18) and Soil
9 Conservation Projects (account no. 5120-20) at the close
10 of the fiscal year 1991-92 are hereby reappropriated for
11 expenditure during the fiscal year 1992-93.

*17—Department of Agriculture—
Marketing and Development Division
(Matching Fund)*

(WV Code Chapter 19)

Acct. No. 5130

1	Personal Services	\$	—		\$	377,477
2	Annual Increment		—			6,192
3	Employee Benefits		—			142,828
4	Unclassified		—			181,162
5	Total	\$	—		\$	707,659

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	\$	—		\$	290,579
2	Annual Increment		—			5,490
3	Employee Benefits		—			108,525
4	Unclassified		476,329			56,370
5	Total	\$	476,329		\$	460,964

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.

*19—Department of Agriculture—
Agricultural Awards*

(WV Code Chapter 19)

Acct. No. 5150

1	Agricultural Awards	\$	—	\$	60,066
2	Fairs and Festivals		—		175,598
3	Total	\$	—	\$	235,664

DEPARTMENT OF ADMINISTRATION

*20—Department of Administration—
Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 2105

1	Unclassified—Total	\$	—	\$	261,297
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21—Division of Finance

(WV Code Chapter 5A)

Acct. No. 2110

1	Personal Services	\$	—	\$	518,526
2	Annual Increment		—		6,290
3	Employee Benefits		—		142,490
4	National Governors' Association		—		63,580
6	Southern States Energy Board		—		28,732
7	GAAP Project		—		1,750,000
8	Unclassified		—		534,886
9	Total	\$	—	\$	3,044,504

11 Any unexpended balances remaining in the appropri-
12 ations for GAAP Project (account no. 2110-41 and
13 account no. 2111-41) at the close of the fiscal year 1991-
14 92 are hereby reappropriated for expenditure during
15 the fiscal year 1992-93.

22—Division of Purchasing

(WV Code Chapter 5A)

Acct. No. 2120

1	Personal Services	\$	—	\$	560,362
2	Annual Increment		—		7,059
3	Employee Benefits		—		155,283
4	Unclassified		—		98,483
5	Total	\$	—	\$	821,187

6 The division of highways shall reimburse account no.
 7 8148-42 within the division of purchasing for all actual
 8 expenses incurred pursuant to the provisions of section
 9 thirteen, article two-a, chapter seventeen of the code.

23—Division of General Services

(WV Code Chapter 5A)

Acct. No. 2130

1	Personal Services	\$	—	\$	489,484
2	Annual Increment		—		11,160
3	Employee Benefits		—		204,401
4	Fire Service Fee		—		13,440
5	Unclassified		—		744,466
6	Total	\$	—	\$	1,462,951

*24—Committee for the Purchase of
Commodities and Services from the Handicapped*

(WV Code Chapter 5A)

Acct. No. 2140

1	Unclassified—Total	\$	—	\$	4,800
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*25—Board of Risk and
Insurance Management*

(WV Code Chapter 29)

Acct. No. 2250

1	Unclassified—Total	\$	—	\$	3,754,116
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2 The above appropriation includes funding for the
 3 purpose of paying premiums, self-insurance losses, loss

4 adjustment expenses and loss prevention engineering
 5 fees for property, casualty and fidelity insurance for the
 6 various state agencies, except those operating from
 7 special revenue funds, with such special revenue fund
 8 agencies to be billed by the board of risk and insurance
 9 management and with such costs to be a proper charge
 10 against such spending units.

11 These funds may be transferred to a special account
 12 for the payment of premiums, self-insurance losses, loss
 13 adjustment expenses and loss prevention engineering
 14 fees and may be transferred to a special account for
 15 disbursement for payment of premiums and insurance
 16 losses.

26—Commission on Uniform State Laws

(WV Code Chapter 29)

Acct. No. 2450

1	Unclassified—Total	\$	—	\$	20,000
2	To pay expenses of members of the commission on				
3	uniform state laws.				

27—Public Defender Services

(WV Code Chapter 29)

Acct. No. 5900

1	Personal Services	\$	—	\$	227,547
2	Annual Increment		—		2,520
3	Employee Benefits		—		69,283
4	Appointed Counsel Fees				
5	and Public Defender				
6	Corporations.....		—		12,015,969
7	Unclassified		—		73,171
8	Total	\$	—	\$	12,388,490

9 Any unexpended balances remaining in the appropri-
 10 ations for Unclassified (account no. 5900-18) and
 11 Appointed Counsel Fees and Public Defender Corpora-

12 tions (account no. 5900-41) at the close of the fiscal year
 13 1991-92 are hereby reappropriated for expenditure
 14 during the fiscal year 1992-93.

*28—Education and State Employees
 Grievance Board*

(WV Code Chapter 18)

Acct. No. 6015

1	Personal Services	\$	—	\$	410,454
2	Annual Increment		—		4,068
3	Employee Benefits		—		112,548
4	Unclassified		—		111,445
5	Total	\$	—	\$	638,515

29—Public Employees Retirement System

(WV Code Chapter 5)

Acct. No. 6140

1	Supplemental Benefits for				
2	Annuitants—Total	\$	—	\$	1,793,175
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	Supplemental for				
2	Retirees' Premiums—				
3	Total	\$	—	\$	1,000,000
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	Personal Services	\$	—	\$	159,215
2	Employee Benefits		—		34,095
3	Unclassified		—		172,332
4	Total	\$	—	\$	365,642

**DEPARTMENT OF COMMERCE, LABOR
AND ENVIRONMENTAL RESOURCES**

*32—Office of Community and
Economic Development*

(WV Code Chapter 5B)

Acct. No. 1210

1	Personal Services	\$	—	\$	2,068,992
2	Annual Increment		—		22,005
3	Employee Benefits		—		595,656
4	Competitive Grants		—		250,000
5	Partnership Grants		—		236,200
6	National Youth				
7	Science Camp		—		200,000
8	Local Economic Develop-				
9	ment Partnerships		—		1,300,000
10	Unclassified		<u>13,626,304</u>		<u>1,838,386</u>
11	Total	\$	<u>13,626,304</u>	\$	<u>6,511,239</u>

12 Any unexpended balances remaining in the appropri-
 13 ations for Partnership Grants (account no. 1210-15) and
 14 Guaranteed Work Force Grant (account no. 1210-21) at

15 the close of the fiscal year 1991-92 are hereby reappropriated for expenditure during the fiscal year 1992-93.

17 The above appropriation for Local Economic Development Partnerships shall be used by the West Virginia development office for the award of funding assistance to county and regional economic development corporations or authorities created under the plan developed by the council for community and economic development under the provisions of section three, article two, chapter five-b of the code. The West Virginia development office shall award the funding assistance through a matching grant program, based upon criteria developed under the provisions of section three, article two, chapter five-b of this code and based upon a formula whereby funding assistance may not exceed twenty-five thousand dollars per county served by a regional economic development corporation or authority.

33—Division of Labor

(WV Code Chapters 21 and 47)

Acct. No. 4500

1	Personal Services	\$	—	\$	849,677
2	Annual Increment		—		11,034
3	Employee Benefits		—		338,925
4	Unclassified		315,916		160,696
5	Total	\$	315,916	\$	1,360,332

34—Division of Tourism and Parks

(WV Code Chapter 5B)

Acct. No. 4625

1	Unclassified—Total	\$	—	\$	-0-
2	Personal Services		—		4,239,031
3	Annual Increment		—		81,108
4	Employee Benefits.....		—		1,629,220
5	Total	\$	—	\$	5,949,359

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 tourism and parks, first for

- 9 bond debt payment purposes and with any remainder
10 to be for park operation and improvement purposes.

35—Division of Forestry

(WV Code Chapter 19)

Acct. No. 4650

1	Personal Services	\$	—	\$	2,014,731
2	Annual Increment		—		40,212
3	Employee Benefits		—		804,697
4	Unclassified		1,727,870		48,478
5	Total	\$	1,727,870	\$	2,908,118

- 6 Out of the above appropriation from general revenue,
7 a sum may be used to match federal funds for cooper-
8 ative studies or other funds for similar purposes.

*36—Board of Coal Mine
Health and Safety*

(WV Code Chapter 22)

Acct. No. 4720

1	Personal Services	\$	—	\$	43,378
2	Annual Increment		—		324
3	Employee Benefits		—		13,695
4	Unclassified		—		847
5	Total	\$	—	\$	58,244

*37—Interstate Commission on
Potomac River Basin*

(WV Code Chapter 29)

Acct. No. 4730

1	West Virginia's				
2	Contribution to the				
3	Interstate Commission on				
4	Potomac River Basin—				
5	Total	\$	—	\$	36,045

*38—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 Water			
4	Sanitation Commission—			
5	Total	\$	—	\$ 98,280

*39—Coal Mine Safety and
Technical Review Committee*

(WV Code Chapter 22)

Acct. No. 4750

1	Personal Services	\$	—	\$ 6,536
2	Employee Benefits		—	3,734
3	Unclassified		—	54,756
4	Total	\$	—	\$ 65,026

*40—Air Pollution
Control Commission*

(WV Code Chapter 16)

Acct. No. 4760

1	Personal Services	\$	—	\$ 428,574
2	Annual Increment		—	6,480
3	Employee Benefits		—	138,125
4	Unclassified		1,375,000	140,040
5	Total	\$	1,375,000	\$ 713,219

41—Division of Environmental Protection

(WV Code Chapter 22)

Acct. No. 4775

1	Personal Services	\$	—	\$ 2,269,012
2	Annual Increment		—	32,384
3	Employee Benefits		—	778,165
4	Unclassified		67,888,504	585,212
5	Total	\$	67,888,504	\$ 3,664,773

*42—Division of Miners' Health,
Safety and Training*

(WV Code Chapter 22)

Acct. No. 4780

1	Personal Services	\$ —	\$ 3,103,691
2	Annual Increment	—	26,100
3	Employee Benefits	—	1,030,471
4	Unclassified	<u>416,840</u>	<u>365,663</u>
5	Total	\$ 416,840	\$ 4,525,925

43—Geological and Economic Survey

(WV Code Chapter 29)

Acct. No. 5200

1	Personal Services	\$ —	\$ 1,144,649
2	Annual Increment	—	20,726
3	Employee Benefits	—	360,259
4	Unclassified	<u>461,937</u>	<u>80,246</u>
5	Total	\$ 461,937	\$ 1,605,880
6	The above Unclassified appropriation from general		
7	revenue includes funding to secure federal and other		
8	contracts and may be transferred to a special revolving		
9	fund (account no. 8590-43) for the purpose of providing		
10	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	ARC Assessment	\$ —	\$ 59,954
2	Unclassified	—	<u>441,157</u>
3	Total	\$ —	\$ 501,111

45—Water Resources Board

(WV Code Chapter 20)

Acct. No. 5640

1	Personal Services	\$	—	\$	60,152
2	Annual Increment		—		900
3	Employee Benefits		—		18,690
4	Unclassified		—		35,487
5	Total	\$	—	\$	115,229

46—Division of Natural Resources

(WV Code Chapter 20)

Acct. No. 5650

1	Personal Services	\$	—	\$	1,962,128
2	Annual Increment		—		31,608
3	Employee Benefits		—		637,108
4	Black Fly Control		—		216,000
5	Unclassified		39,468,846		123,374
6	Total	\$39,468,846		\$	2,970,218
7	Any unexpended balance remaining in the appropri-				
8	ation for Waste Water Treatment Revolving Fund				
9	(account no. 5650-20) at the close of the fiscal year 1991-				
10	92 is hereby reappropriated for expenditure during the				
11	fiscal year 1992-93.				

DEPARTMENT OF EDUCATION*47—State Department of Education*

(WV Code Chapters 18 and 18A)

Acct. No. 2860

1	Personal Services	\$	—	\$	2,508,968
2	Annual Increment		—		36,419
3	Employee Benefits		—		704,970
4	WVA Education				
5	Information System		—		2,443,752
6	34/1000 Waiver		—		500,000
7	Increased Enrollment		—		1,359,780
8	Coordinator-Educational				
9	Medical Services		—		40,000
10	Faculty and Course Devel-				
11	opment Intern Study		—		35,000

12	Incentive for Adminis-		
13	trative Efficiency	—	25,779
14	Library/Media	—	50,000
15	Computer Basic Skills	—	3,500,000
16	Unclassified	<u>4,376,404</u>	<u>6,526,260</u>
17	Total	\$ 4,376,404	\$ 17,730,928

18 The above appropriation includes the state board of
19 education and their executive office.

20 Any unexpended balance remaining in the appropri-
21 ation for Computer Basic Skills (account no. 2860-41) at
22 the close of the fiscal year 1991-92 is hereby reappro-
23 priated for expenditure during the fiscal year 1992-93.

*48—State Department of Education—
School Lunch Program*

(WV Code Chapters 18 and 18A)

Acct. No. 2870

1	Personal Services	\$ —	\$ 147,850
2	Annual Increment	—	1,916
3	Employee Benefits	—	42,112
4	Unclassified	<u>51,660,000</u>	<u>1,685,731</u>
5	Total	\$51,660,000	\$ 1,877,609

*49—State Board of Education—
Vocational Division*

(WV Code Chapters 18 and 18A)

Acct. No. 2890

1	Personal Services	\$ —	\$ 665,000
2	Annual Increment	—	8,658
3	Employee Benefits	—	172,330
4	Wood Products—Forestry		
5	Vocational Program	—	71,000
6	Albert Yanni Voca-		
7	tional Program	—	153,600
8	Vocational Aid	—	10,064,052
9	Adult Basic Education	—	1,427,107
10	Equipment Replacement ...	—	1,039,500
11	Unclassified	<u>11,375,403</u>	<u>695,009</u>
12	Total	\$11,375,403	\$ 14,296,256

13 Any unexpended balances remaining in the appropri-
 14 ations for Wood Products—Forestry Vocational Pro-
 15 gram (account no. 2890-47 and account no. 2891-47) at
 16 the close of the fiscal year 1991-92 are hereby reappro-
 17 priated for expenditure during the fiscal year 1992-93.

*50—State Department of Education—
 State Aid to Schools*

(WV Code Chapters 18 and 18A)

Acct. No. 2950

1	Professional Educators	\$ —	\$621,053,055
2	Service Personnel	—	190,432,754
3	Fixed Charges	—	70,436,969
4	Transportation	—	27,504,625
5	Administration	—	7,000,000
6	Other Current Expenses	—	91,948,731
7	Improve Instructional		
8	Programs	—	56,682,481
9	Basic Foundation		
10	Allowances	—	1,065,058,615
11	Less Local Share	—	(169,932,997)
12	Total Basic State Aid	—	895,125,618
13	Public Employees		
14	Insurance Agency	—	112,027,065
15	Teachers' Retirement		
16	System	—	122,926,602
17	Incentive for Adminis-		
18	trative Efficiency	—	-0-
19	Increased Enrollment	—	-0-
20	Rural Counties	—	-0-
21	School Media Improve-		
22	ment Grant Program	—	-0-
23	Unclassified	2,000,000	-0-
24	Total	\$2,000,000	\$1,130,079,285

25 The amount of one million dollars is included as an
 26 additional appropriation to the school building capital
 27 improvements fund created pursuant to chapter eigh-

28 teen, article nine-d, section six of the code. Such amount
 29 shall be used as debt service for revenue bonds to be
 30 issued by the school building authority pursuant to
 31 chapter eighteen, article nine-d, section eight of the code
 32 to finance needs projects to be selected by the school
 33 building authority which were not previously funded by
 34 the school building authority due to lack of money. Such
 35 amount is in addition to any amounts deposited in such
 36 fund pursuant to chapter eighteen, article nine-a, section
 37 ten of the code. The proceeds of the revenue bonds to
 38 be issued by the school building authority for such
 39 projects shall not be deemed to be available for
 40 distribution by the school building authority within the
 41 meaning of chapter eighteen, article nine-d, section
 42 fifteen and shall be earmarked solely for such needs
 43 projects and necessary costs and reserves of the bond
 44 issue. Such bond proceeds shall be allocated and
 45 expended solely on the basis of need and efficient use
 46 of resources, such basis to be determined by the
 47 authority in accordance with the provisions of chapter
 48 eighteen, article nine-d, section fifteen of the code.

*51—State Department of Education—
 Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Acct. No. 2960

1	Special Education—			
2	Counties.....	\$	—	\$ 7,410,668
3	Special Education—			
4	Institutions		—	2,269,202
5	Education of Institu-			
6	tionalized Juveniles		—	2,969,021
7	Unclassified		26,295,000	-0-
8	Total	\$	26,295,000	\$ 12,648,891

*52—West Virginia Schools for the
 Deaf and the Blind*

(WV Code Chapters 18 and 18A)

Acct. No. 3330

APPROPRIATIONS

[Ch. 12]

1	Personal Services	\$	—	\$	4,811,419
2	Annual Increment		—		4,717
3	Employee Benefits		—		1,402,855
4	Unclassified		—		991,249
5	Total	\$	—	\$	7,210,285

*53—State FFA-FHA Camp and
Conference Center*

(WV Code Chapters 18 and 18A)

Acct. No. 3360

1	Personal Services	\$	—	\$	127,331
2	Annual Increment		—		3,011
3	Employee Benefits		—		44,970
4	Unclassified		—		163,000
5	Total	\$	—	\$	338,312

*54—State Board of Rehabilitation—
Division of Rehabilitation Services*

(WV Code Chapter 18)

Acct. No. 4405

1	Personal Services	\$	—	\$	3,807,307
2	Annual Increment		—		91,628
3	Employee Benefits		—		1,244,961
4	Workshop Development		—		1,700,000
5	Case Services		—		2,845,117
6	Unclassified		32,082,259		51,321
7	Total	\$	32,082,259	\$	9,740,334

**DEPARTMENT OF EDUCATION
AND THE ARTS**

*55—Board of Directors of the
State College System
Control Account*

(WV Code Chapter 18B)

Acct. No. 2785

1	Unclassified—Total	\$	—	\$	-0-
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2	Personal Services	—	56,875,033
3	Annual Increment	—	418,949
4	Employee Benefits	—	13,961,192
5	Unclassified	—	2,118,291
6	Total	\$ —	\$ 73,373,465

*56—Board of Trustees of the
University System of West Virginia
Control Account*

(WV Code Chapter 18B)

Acct. No. 2795

1	Unclassified—Total	\$ —	\$ -0-
2	Personal Services	—	115,278,146
3	Annual Increment	—	850,000
4	Employee Benefits	—	17,157,955
5	Unclassified	—	2,151,241
6	Total	\$ —	\$ 135,437,342

*57—Board of Trustees of the University System
of West Virginia and Board of Directors of the
State College System*

(WV Code Chapters 18B and 18C)

Acct. No. 2800

1	Personal Services	\$ —	\$ 696,752
2	Annual Increment	—	8,000
3	Employee Benefits	—	162,000
4	Higher Education		
5	Grant Program	—	3,795,000
6	Tuition Contract Program ..	—	606,000
7	Minority Doctoral		
8	Fellowship	—	100,000
9	Underwood-Smith		
10	Scholarship Program—		
11	Student Awards	—	750,000
12	West Virginia		
13	Humanities Council	—	100,000
14	WVNET	—	2,000,000
15	Marshall University—		
16	Southern West Virginia		

17	Community College—		
18	2 + 2 Program	—	160,000
19	Micro Computer Labs for		
20	Teacher Education	—	750,000
21	Unclassified	—	109,850
22	Total	\$ —	\$ 9,237,602

23 Any unexpended balances remaining in the appropri-
 24 ations for Higher Education Grant Program (account
 25 no. 2800-07) and Asbestos Litigation (account no. 2800-
 26 21) at the close of the fiscal year 1991-92 are hereby
 27 reappropriated for expenditures during the fiscal year
 28 1992-93.

*58—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	School of Osteopathic		
2	Medicine	\$ —	\$ 5,263,930
3	Marshall Medical School ...	—	9,403,523
4	WVU—School of Health		
5	Sciences	—	33,167,862
6	WVU—School of Health		
7	Sciences—Charleston		
8	Division	—	3,270,790
9	Health Sciences		
10	Scholarship Fund	—	150,000
11	WVNET	—	-0-
12	Primary Health Education		
13	Program Support	—	4,000,000
14	Rural Health Initiative		
15	Site Support	—	2,000,000
16	Total	\$ —	\$ 57,256,105

17 Any unexpended balances remaining in the appropri-
 18 ations for Primary Health Education Program Support
 19 (account no. 2855-56) and Rural Health Initiative Site
 20 Support (account no. 2855-58) at the close of the fiscal

21 year 1991-92 are hereby reappropriated for expenditure
22 during the fiscal year 1992-93.

23 The Health Sciences Scholarship appropriation above
24 shall be used to establish a revolving loan fund for
25 medical students who are West Virginia residents
26 committed to practicing medicine in an underserved
27 area and in a specialty in which there is a shortage of
28 practitioners.

59—Educational Broadcasting Authority

(WV Code Chapter 10)

Acct. No. 2910

1	Personal Services	\$	—	\$	2,999,090
2	Annual Increment		—		45,144
3	Employee Benefits		—		994,999
4	Unclassified		299,000		1,279,268
5	Total	\$	299,000	\$	5,318,501

6 These funds may be transferred to special revenue
7 accounts for matching college, university, city, county,
8 federal and/or other generated revenues.

9 Any unexpended balance remaining in the appropri-
10 ation for Unclassified (account no. 2910-25) for the
11 WNPB transmitter at the close of the fiscal year 1991-
12 92 is hereby reappropriated for expenditure during the
13 fiscal year 1992-93.

60—Library Commission

(WV Code Chapter 10)

Acct. No. 3500

1	Personal Services	\$	—	\$	966,602
2	Annual Increment		—		22,860
3	Employee Benefits		—		339,707
4	Books and Films		—		150,000
5	Services to State				
6	Institutions		—		156,310
7	Services to Blind				
8	and Handicapped		—		42,729
9	Grants to Public				

10	Libraries	—	5,659,779
11	Unclassified	<u>1,842,889</u>	<u>233,877</u>
12	Total	\$ 1,842,889	\$ 7,571,864

61—Division of Culture and History

(WV Code Chapter 29)

Acct. No. 3510

1	Personal Services	\$ —	\$ 1,342,045
2	Annual Increment	—	20,826
3	Employee Benefits	—	446,492
4	Unclassified	<u>1,554,225</u>	<u>2,471,151</u>
5	Total	\$ 1,554,225	\$ 4,280,514

6 The Unclassified appropriation includes funding for
7 the Arts Funds, Department Programming Funds,
8 Grants, Fairs and Festivals and Camp Washington
9 Carver and shall be expended only upon authorization
10 of the division of culture and history and in accordance
11 with the provisions of chapter five-a and article three,
12 chapter twelve of the code.

13 All federal moneys received as reimbursement to the
14 division of culture and history for moneys expended
15 from the general revenue fund for the Arts Fund and
16 Historical Preservation are hereby reappropriated for
17 the purposes as originally made, including personal
18 services, current expenses and equipment.

*62—Department of Education and the Arts—
Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 5332

1	Unclassified	\$ —	\$ 182,065
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2 Any unexpended balance remaining in the appropri-
3 ation for Unclassified (account no. 5332-23) at the close
4 of the fiscal year 1991-92 is hereby reappropriated for
5 expenditure during the fiscal year 1992-93.

**DEPARTMENT OF HEALTH AND
HUMAN RESOURCES**

*63—Division of Health—
Central Office*

(WV Code Chapter 16)

Acct. No. 4000

1	Personal Services	\$	—		\$ 5,331,820
2	Personal Services				
3	Reclassification		—		57,660
4	Annual Increment		—		85,000
5	Employee Benefits		—		1,793,178
6	Corporate Nonprofit				
7	Community Health				
8	Centers—F.M.H.A.				
9	Mortgage Finance		—		150,269
10	Appalachian States Low				
11	Level Radioactive				
12	Waste Commission		—		55,968
13	Hemophilia Program		—		27,761
14	Safe Drinking Water				
15	Program		—		440,000
16	Unclassified		—		3,890,411
17	Total	\$	—		\$ 11,832,067

18 Notwithstanding the provisions of section two,
19 amounts of the appropriation in the above line item
20 designated personal services reclassification may be
21 transferred to the personal services line item or to other
22 line items to be used solely for the purposes of providing
23 the necessary funding for the personal services reclas-
24 sification.

64—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Acct. No. 4050

1	Personal Services	\$	—		\$ 14,866,432
2	Personal Services				
3	Reclassification		—		275,607
4	Annual Increment		—		358,280

5	Employee Benefits	—	5,772,370
6	OSCAR and FAMIS	15,061,621	3,483,820
7	Medical Services	850,000,000	131,421,871
8	Family Law Masters	320,000	971,488
9	Women's Commission	—	51,365
10	Commission on		
11	Hearing Impaired	—	41,280
12	Public Assistance	85,255,426	24,562,852
13	Emergency Assistance	—	1,410,216
14	Social Services	—	26,300,348
15	Family Preservation		
16	Program	—	1,565,000
17	JOBS Program	8,909,058	4,030,896
18	Education Medical		
19	Services—Personnel	1,200,000	1,200,000
20	Office of Community		
21	JOBS Program	—	125,000
22	Unclassified	51,746,488	11,988,345
23	Total	\$1,012,492,593	\$228,425,170

24 No funds from this account, or any other department
25 of health and human resources account, shall be used to
26 pay family law master salaries or expenses in excess of
27 the Family Law Masters line item appropriation. It is
28 anticipated that the family law master program will
29 generate sufficient revenue from fees and federal child
30 support funds to cover the remainder of its program
31 costs.

32 None of the funds from this account shall be used to
33 perform abortions except where the life of the mother
34 would be endangered if the fetus were carried to term
35 or in the case of incest or rape.

36 Notwithstanding the provisions of section two, the
37 secretary of the department of health and human
38 resources shall have the authority to transfer funds
39 within the above account: *Provided*, That no more than
40 ten percent of the funds appropriated to one line may
41 be transferred to other lines: *Provided, however*, That no
42 funds from other lines shall be transferred to the
43 personal services line item: *Provided further*, That funds
44 in the personal services reclassification line item may be
45 transferred to the personal services line item or other

46 line items to be used solely for the purpose of providing
 47 the necessary funding for the personal services reclass-
 48 ification.

65—*Commission on Aging*

(WV Code Chapter 29)

Acct. No. 4060

1	Personal Services	\$	—	\$	110,795
2	Annual Increment		—		1,533
3	Employee Benefits		—		52,190
4	Local Programs				
5	Service Delivery Costs ...		—		2,544,050
6	Senior Citizens Centers—				
7	Land Acquisition,				
8	Construction and				
9	Repairs and Alterations ..		—		-0-
10	Silver Haired Legislature ..		—		14,400
11	Area Agencies				
12	Administration		—		87,429
13	Ombudsman		—		251,325
14	Unclassified		<u>10,942,000</u>		<u>175,868</u>
15	Total	\$	<u>10,942,000</u>	\$	<u>3,237,590</u>

16 Any unexpended balance remaining in the appropri-
 17 ation for Senior Citizens Centers—Land Acquisition,
 18 Construction and Repairs and Alterations (account no.
 19 4060-10) at the close of the fiscal year 1991-92 is hereby
 20 reappropriated for expenditure during fiscal year 1992-
 21 93.

66—*Consolidated Medical Service Fund*

Acct. No. 4190

1	Foster Grandparents				
2	Stipends/Travel	\$	—	\$	59,520
3	Institutional Facilities				
4	Operations		—		39,645,826
5	Personal Services				
6	Reclassification		—		521,677
7	Employee Benefits		—		15,589,369
8	Poison Control Hotline		—		250,000

9	Special Olympics.....	—	26,880
10	State Aid to Local Agencies	—	7,200,000
11	Women, Infants and		
12	Children	—	400,000
13	Maternal and Child Health		
14	Clinics, Clinicians and		
15	Medical Contracts		
16	and Fees	—	4,823,043
17	Preventive Revaccination ...	—	192,000
18	Primary Care Uncompen-		
19	sated Care Fund	—	3,000,000
20	Primary Care Revolving		
21	Loan Fund	—	500,000
22	Primary Care Support		
23	Program	—	1,000,000
24	Epidemiology Research	—	240,000
25	Grants to Counties and		
26	EMS Entities	—	1,656,000
27	Behavioral Health		
28	Program—Total		
29	Personal Services	—	1,646,928
30	Behavioral Health		
31	Program—Unclassified ..	—	496,128
32	Behavioral Health		
33	Program—Community		
34	Centers.....	—	19,947,185
35	Family Support Act.....	—	523,000
36	Influenza Vaccine	—	-0-
37	Early Intervention	—	977,000
38	In-Home Services For		
39	Senior Citizens	—	960,000
40	Cancer Registry.....	—	70,000
41	Behavioral Health Holding		
42	Account	—	5,500,000
43	Unclassified	<u>34,974,621</u>	<u>—</u>
44	Total	\$34,974,621	\$105,224,556

45 The Behavioral Health Program—Community Pro-
 46 grams line item within account no. 4190 has been
 47 reduced from fiscal year 1992 recognizing that the
 48 medicaid provider tax will provide the state match for
 49 federal funds formerly provided through a certified
 50 match allocation to this line. When allocating funds

51 from this line item through contracts with providers, the
 52 department shall contractually require such providers
 53 to maintain at least the current level of services to non-
 54 medicaid patients. In addition, the department shall
 55 take into account the fact that certain providers will
 56 realize a greater increase in revenue from the provider
 57 tax than other providers and that not all providers and
 58 services are subject to the provider tax.

59 The secretary of the department of health and human
 60 resources, prior to the beginning of the fiscal year, shall
 61 file with the legislative auditor an expenditure schedule
 62 for each formerly separate spending unit which has
 63 been consolidated into the above account and which
 64 receives a portion of the above appropriation. The
 65 secretary shall also, within fifteen days after the close
 66 of the six-month period of said fiscal year, file with the
 67 legislative auditor an itemized report of expenditures
 68 made during the preceding six-month period.

69 The division of health shall not expend or encumber
 70 any funds from the above line "Behavioral Health
 71 Holding Account" until such time as the Legislature
 72 shall transfer said funds to other lines or accounts
 73 within the department of health and human services for
 74 expenditure.

75 Notwithstanding the provisions of section two,
 76 amounts of the appropriation in the above line item
 77 designated personal services reclassification may be
 78 transferred to the personal services line item or to other
 79 line items to be used solely for the purpose of providing
 80 the necessary funding for the personal services
 81 reclassification.

82 Additional funds have been appropriated in account
 83 no. 8500 for the operation of the institutional facilities.

*67—Department of Health and Human Resources—
 Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 5343

1	Unclassified—Total	\$	—	\$	174,354
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68—Human Rights Commission

(WV Code Chapter 5)

Acct. No. 5980

1	Personal Services	\$	—	\$	367,025
2	Annual Increment		—		6,567
3	Employee Benefits		—		132,192
4	Unclassified		111,280		124,493
5	Total	\$	111,280	\$	630,277

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY***69—Office of Emergency Services*

(WV Code Chapter 15)

Acct. No. 1300

1	Personal Services	\$	—	\$	163,974
2	Annual Increment		—		3,096
3	Employee Benefits		—		66,669
4	Unclassified		599,720		9,017
5	Total	\$	599,720	\$	242,756

70—Board of Probation and Parole

(WV Code Chapter 62)

Acct. No. 3650

1	Salaries of Members of				
2	Board of Probation				
3	and Parole.....	\$	—	\$	84,900
4	Personal Services		—		36,000
5	Annual Increment		—		684
6	Employee Benefits		—		35,460
7	Unclassified		—		18,931
8	Total	\$	—	\$	175,975

*71—Division of Corrections—
Central Office*

(WV Code Chapters 25, 28, 29 and 62)

Acct. No. 3680

1	Personal Services	\$	—	\$	331,044
2	Annual Increment		—		6,156
3	Employee Benefits		—		102,677
4	Unclassified		—		121,122
5	Total	\$	—	\$	560,999

*72—Division of Corrections—
Correctional Units*

(WV Code Chapters 25, 28, 29 and 62)

Acct. No. 3770

1	Personal Services	\$	—	\$	13,325,856
2	Annual Increment		—		224,640
3	Employee Benefits		—		4,672,816
4	Payment to Counties and/or				
5	Regional Jails		—		850,000
6	Unclassified		—		8,724,637
7	Total	\$	—	\$	27,797,949

8 The commissioner of corrections, prior to the begin-
 9 ning of the fiscal year, shall file with the legislative
 10 auditor an expenditure schedule for each formerly
 11 separate spending unit which has been consolidated into
 12 the above account and which receives a portion of the
 13 above appropriation. He shall also, within fifteen days
 14 after the close of each six-month period of said fiscal
 15 year, file with the legislative auditor an itemized report
 16 of expenditures made during the preceding six-month
 17 period. Such report shall include the total of expendi-
 18 tures made for personal services, annual increment,
 19 current expenses (inmate medical expenses and other),
 20 repairs and alterations and equipment.

21 Any unexpended balance remaining in the appropri-
 22 ations for Davis Center—Capital Outlay at the close of
 23 the fiscal year 1991-92 shall expire to the state general
 24 revenue fund.*

* Clerk's Note: The last sentence of the paragraph, beginning on line 24, was deleted by the Governor.)

25
26
27

*73—Division of Veterans' Affairs—
Veterans' Home*

(WV Code Chapter 9A)

Acct. No. 4010

1	Personal Services	\$	—	\$	290,904
2	Annual Increment		—		5,508
3	Employee Benefits		—		128,007
4	Unclassified		836,850		-0-
5	Total	\$	836,850	\$	424,419

74—Division of Veterans' Affairs

(WV Code Chapter 9A)

Acct. No. 4040

1	Personal Services	\$	—	\$	691,943
2	Annual Increment		—		14,292
3	Employee Benefits		—		304,514
4	Veteran's Field Offices		—		135,800
5	Unclassified		—		9,034
6	Total	\$	—	\$	1,155,583

*75—Department of Military Affairs and
Public Safety—*

Office of the Secretary

(WV Code Chapter 5F)

Acct. No. 5354

1	Unclassified—Total	\$	—	\$	164,435
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76—Division of Public Safety

(WV Code Chapter 15)

Acct. No. 5700

1	Personal Services	\$	—	\$	14,360,411
2	Annual Increment		—		87,084

3	Employee Benefits	—	4,565,654
4	Court Judgment	—	-0-
5	Trooper Class	—	1,000,000
6	Unclassified	953,067	3,451,297
7	Total	\$ 953,067	\$ 23,464,446

77—Adjutant General—State Militia

(WV Code Chapter 15)

Acct. No. 5800

1	Personal Services	\$ —	\$ 249,021
2	Annual Increment	—	5,976
3	Employee Benefits	—	95,169
4	College Education Fund	—	720,000
5	Unclassified	4,509,522	3,098,884
6	Total	\$ 4,509,522	\$ 4,169,050

7 The College Education Fund line item above shall be
 8 the total annual appropriation for awarding scholar-
 9 ships. The secretary of the department of military
 10 affairs and public safety shall devise a method to
 11 equitably reimburse all eligible participants on a pro-
 12 rata basis should the appropriation be insufficient to
 13 cover total annual eligible expenses.

78—Fire Commission

(WV Code Chapter 29)

Acct. No. 6170

1	Personal Services	\$ —	\$ 451,336
2	Annual Increment	—	7,740
3	Employee Benefits	—	152,207
4	Unclassified	—	115,394
5	Total	\$ —	\$ 726,677

DEPARTMENT OF TAX AND REVENUE*79—Tax Division*

(WV Code Chapter 11)

Acct. No. 1800

1	Personal Services	\$	—	\$	8,975,863
2	Annual Increment		—		150,300
3	Employee Benefits		—		2,945,164
4	Unclassified		—		5,686,065
5	Total	\$	—	\$	17,757,392

*80—Division of Professional and
Occupational Licenses—
State Athletic Commission*

(WV Code Chapter 29)

Acct. No. 4790

1	Unclassified—Total	\$	—	\$	4,865
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81—Racing Commission

(WV Code Chapter 19)

Acct. No. 4950

1	Personal Services	\$	—	\$	-0-
2	Annual Increment		—		-0-
3	Employee Benefits		—		-0-
4	Unclassified		—		-0-
5	Total	\$	—	\$	-0-

*82—Department of Tax and Revenue—
Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 5365

1	Unclassified—Total	\$	—	\$	175,859
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DEPARTMENT OF TRANSPORTATION

*83—Department of Transportation—
Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 5376

1	Public Transportation	\$	—	\$	-0-
2	Civil Air Patrol		—		79,152

3	Unclassified		<u>-0-</u>	<u>156,996</u>
4	Total	\$	-0-	\$ 236,148

5 Any unexpended balance remaining in the appropri-
6 ation for Public Transportation (account no. 5376-41) at
7 the close of the fiscal year 1991-92 is hereby reapprop-
8 riated for expenditure during the fiscal year 1992-93
9 and transferred to the division of public transit.

84—Division of Public Transit

(WV Code Chapter 17)

Acct. No. 5380

1	Unclassified—Total	\$15,931,887	\$	384,206
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85—Railroad Maintenance Authority

(WV Code Chapter 29)

Acct. No. 5690

1	Personal Services	\$	—	\$	403,355
2	Annual Increment		—		6,534
3	Employee Benefits		—		259,816
4	Unclassified		<u>584,000</u>		<u>98,827</u>
5	Total	\$	584,000	\$	768,532

6 Any unexpended balance remaining in the appropri-
7 ation for Capital Outlay (account no. 5690-23) at the
8 close of the fiscal year 1991-92 is hereby reappropriated
9 for expenditure during the fiscal year 1992-93.

**MISCELLANEOUS BOARDS
AND COMMISSIONS**

86—Board of Investments

(WV Code Chapter 12)

Acct. No. 1900

1	Personal Services	\$	—	\$	1,176,013
2	Annual Increment		—		10,924
3	Employee Benefits		—		392,091
4	Unclassified		<u>—</u>		<u>2,176,276</u>
5	Total	\$	—	\$	3,755,304

*87—Board of Investments—
School Building Sinking Fund*

(WV Code Chapter 12)

Acct. No. 1905

1 Debt Service—Total \$ — \$ 12,012,500

2 Any unexpended balance remaining in the appropri-
3 ation for Board of Investments—School Building
4 Sinking Fund (account no. 1905-06) at the close of the
5 fiscal year 1991-92 is hereby reappropriated for expen-
6 diture during the fiscal year 1992-93.

*88—Board of Investments—
Pneumoconiosis Loan*

(WV Code Chapter 23)

Acct. No. 1910

1 Debt Service—Total \$ — \$ 6,480,000

2 Total TITLE II, Section 1—

3 General Revenue — \$2,060,692,264

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-three.

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 expenditures during
7 the fiscal year one thousand nine hundred ninety-three.

LEGISLATIVE

89—Crime Victims Compensation Fund

(WV Code Chapter 14)

Acct. No. 8412

TO BE PAID FROM SPECIAL REVENUE FUND

	Federal Funds Fiscal Year 1992-93	Other Funds Fiscal Year 1992-93
1 Personal Services	\$ —	\$ 110,778
2 Annual Increment	—	900
3 Employee Benefits	—	36,105
4 Unclassified	<u>250,000</u>	<u>25,000</u>
5 Total	\$ 250,000	\$ 172,783

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

90—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 Personal Services	\$ —	\$ 44,087
2 Annual Increment	—	648
3 Employee Benefits	—	14,021
4 Unclassified	<u>—</u>	<u>11,058</u>
5 Total	\$ —	\$ 69,814

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 law.

91—Department of Agriculture

(WV Code Chapter 19)

Acct. No. 8180

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	201,091
2	Annual Increment		—		1,800
3	Employee Benefits		—		65,524
4	Unclassified		—		482,417
5	Total	\$	—	\$	750,832

*92—Department of Agriculture—
West Virginia Rural Rehabilitation Program*

(WV Code Chapter 19)

Acct. No. 8192

TO BE PAID FROM SPECIAL REVENUE FUND

1	Student and Farm				
2	Loans—Total	\$	—	\$	375,000

93—General John McCausland Memorial Farm

(WV Code Chapter 19)

Acct. No. 8194

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	8,793
2	Annual Increment		—		360
3	Employee Benefits		—		10,851
4	Unclassified		—		54,144
5	Total	\$	—	\$	74,148

6 The above appropriation shall be expended in accordance with article twenty-six, chapter nineteen of the
7 code.
8

*94—Attorney General—
Anti-Trust Enforcement*

(WV Code Chapter 47)

Acct. No. 8419

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	207,450
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2	Annual Increment	—	673
3	Employee Benefits	—	57,387
4	Unclassified	—	179,120
5	Total	\$ —	\$ 444,630

*95—West Virginia Health Care
Planning Commission*

(WV Code Chapter 16)

Acct. No. 8429

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified—Total	\$ —	\$ 570,000
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*96—Governor's Office—
Economic Development Authority Insurance Fund*

(WV Code Chapter 17)

Acct. No. 8431

TO BE PAID FROM SPECIAL REVENUE FUND

1	Davis Center—		
2	Capital Outlay	\$ —	\$ 300,000
3	Senior Center—		
4	Land Acquisitions,		
5	Construction and Repairs		
6	and Alterations	—	125,000
7	Capitol Complex—		
8	Maintenance.....	—	500,000
9	Soil Conservation Projects ..	—	500,000
10	WSWP-TV—Capital Outlay	—	199,000
11	Armory Construction—		
12	Capital Outlay	—	750,000
13	Guaranteed Work Force	—	500,000
14	Partnership Grants	—	2,000,000
15	Port Authority for River		
16	Port Feasibility Study....	—	150,000
17	ARC Assessment.....	—	476,000
18	Local School Boards'		
19	Technical Corrections		
20	Refund Account	—	500,000
21	Total	\$ —	\$ 6,000,000

DEPARTMENT OF ADMINISTRATION

*97—Division of Purchasing—
Revolving Fund*

(WV Code Chapter 5A)

Acct. No. 8140

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	707,620
2	Annual Increment		—		19,400
3	Employee Benefits		—		270,814
4	Unclassified		—		571,527
5	Total	\$	—	\$	1,569,361

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 oper-
10 ating 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.

*98—Division of Information Systems
and Communications*

(WV Code Chapter 5A)

Acct. No. 8151

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	3,540,340
2	Annual Increment		—		45,543
3	Employee Benefits		—		972,449
4	Unclassified		—		883,178
5	Total	\$	—	\$	5,441,510

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 information systems and communications
9 as provided 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 the division to
 14 provide information processing services to user agen-
 15 cies. These services include, but are not limited to, data
 16 processing equipment, office automation and
 17 telecommunications.

18 Each spending unit operating from the general
 19 revenue fund, from special revenue funds or receiving
 20 reimbursement for postage from the federal government
 21 shall be charged monthly for all postage meter service
 22 and shall reimburse the revolving fund monthly for all
 23 such amounts.

99—Division of Personnel

(WV Code Chapter 29)

Acct. No. 8402

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	1,955,406
2	Annual Increment		—		35,640
3	Employee Benefits		—		613,000
4	Unclassified		—		527,365
5	Total	\$	—	\$	3,131,411

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**

*100—Office of Community and
 Economic Development*

(WV Code Chapter 5B)

Acct. No. 8045

TO BE PAID FROM SPECIAL REVENUE FUND

1 Any unexpended balance remaining in the appropri-
 2 ation for Energy Assistance (account no. 8045-43) at the

3 close of the fiscal year 1991-92 is hereby reappropriated
4 for expenditure during the fiscal year 1992-93.

101—Oil and Gas Conservation Commission

(WV Code Chapter 22)

Acct. No. 8097

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	166,435
2	Annual Increment		—		576
3	Employee Benefits		—		38,645
4	Unclassified		—		65,274
5	Total	\$	—	\$	270,930

102—Division of Labor—

Contractor Licensing Board Fund

(WV Code Chapter 21)

Acct. No. 8128

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	458,268
2	Annual Increment		—		3,258
3	Employee Benefits		—		176,678
4	Unclassified		—		661,796
5	Total	\$	—	\$	1,300,000

103—Division of Natural Resources

(WV Code Chapter 20)

Acct. No. 8300

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	5,446,093
2	Annual Increment		—		91,980
3	Employee Benefits		—		1,959,651
4	Wonderful West				
5	Virginia Magazine		—		-0-
6	Capital Improvements and				
7	Land Purchase		—		1,000,000
8	Unclassified		—		2,987,788
9	Total	\$	—	\$	11,485,512

10 The total amount of this appropriation shall be paid
 11 from a special revenue fund out of fees collected by the
 12 division of natural resources.

13 Any unexpended balances remaining in the appropri-
 14 ations for Land Purchases and Buildings (account no.
 15 8300-09) and Renovation of Dams (account no. 8300-11)
 16 at the close of the fiscal year 1991-92 are hereby
 17 reappropriated for expenditure during the fiscal year
 18 1992-93.

*104—Division of Natural Resources—
 Underground Storage Tanks
 Administrative Fund*

(WV Code Chapter 20)

Acct. No. 8302

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	300,000
2	Annual Increment		—		2,448
3	Employee Benefits		—		105,248
4	Unclassified		—		134,030
5	Total	\$	—	\$	541,726

*105—Division of Natural Resources—
 Game, Fish and Aquatic Life Fund*

(WV Code Chapter 20)

Acct. No. 8303

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified—Total	\$	—	\$	50,000
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*106—Division of Natural Resources—
 Nongame Fund*

(WV Code Chapter 20)

Acct. No. 8304

TO BE PAID FROM SPECIAL REVENUE FUND

APPROPRIATIONS

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1	Personal Services	\$	—	\$	79,300
2	Annual Increment		—		432
3	Employee Benefits		—		24,392
4	Unclassified		—		114,876
5	Total	\$	—	\$	219,000

*107—Division of Natural Resources—
Use and Development—P.L.C.*

(WV Code Chapter 20)

Acct. No. 8306

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	116,000
2	Annual Increment		—		2,340
3	Employee Benefits		—		42,292
4	Land Purchase		—		-0-
5	Independence Hall—				
6	Renovation		—		50,000
7	Unclassified		—		79,500
8	Total	\$	—	\$	290,132

9 Any unexpended balance remaining in the appropri-
10 ation for land purchase (account no. 8306-41) at the close
11 of fiscal year 1991-92 is hereby reappropriated for
12 expenditure during fiscal year 1992-93.

*108—Division of Natural Resources—
Closure Cost Assistance Fund*

(WV Code Chapter 20)

Acct. No. 8311-30

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified—Total	\$	—	\$	-0-
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*109—Division of Natural Resources—
Groundwater Planning*

(WV Code Chapter 20)

Acct No. 8312

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	55,678
2	Annual Increment		—		252
3	Employee Benefits		—		16,207
4	Unclassified		—		246,842
5	Total	\$	—	\$	318,979

*110—Division of Natural Resources—
Recycling Assistance Fund*

(WV Code Chapter 20)

Acct. No. 8325-52

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	30,000
2	Annual Increment		—		180
3	Employee Benefits		—		13,615
4	Unclassified		—		4,720,467
5	Total	\$	—	\$	4,764,262

*111—Division of Natural Resources—
Hazardous Waste Emergency and Response Fund*

(WV Code Chapter 20)

Acct. No. 8323

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	272,544
2	Annual Increment		—		3,096
3	Employee Benefits		—		112,058
4	Unclassified		—		399,106
5	Total	\$	—	\$	786,804

*112—Division of Natural Resources—
Solid Waste Reclamation and
Environmental Response Fund*

(WV Code Chapter 20)

Acct. No. 8326

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	215,000
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2	Employee Benefits	—	69,818
3	Unclassified	—	1,110,182
4	Total	\$ —	\$ 1,395,000

*113—Division of Natural Resources—
Solid Waste Enforcement Fund*

(WV Code Chapter 20)

Acct. No. 8327

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 2,249,483
2	Annual Increment	—	23,304
3	Employee Benefits	—	760,659
4	Unclassified	—	590,175
5	Total	\$ —	\$ 3,623,621

114—Air Pollution Control Commission

(WV Code Chapter 16)

Acct. No. 8390

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 489,000
2	Employee Benefits	—	178,600
3	Unclassified	—	800,524
4	Total	\$ —	\$ 1,468,124

*115—Division of Banking—
Lending and Credit Rate Board*

(WV Code Chapter 47A)

Acct. No. 8393

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 10,586
2	Employee Benefits	—	4,372
3	Unclassified	—	9,680
4	Total	\$ —	\$ 24,638

116—Division of Banking

(WV Code Chapter 31A)

Acct. No. 8395

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	854,419
2	Annual Increment		—		5,436
3	Employee Benefits		—		264,954
4	Unclassified		—		440,548
5	Total	\$	—	\$	1,565,357

117—Solid Waste Management Board

(WV Code Chapter 20)

Acct. No. 8461

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	263,284
2	Annual Increment		—		2,340
3	Employee Benefits		—		81,082
4	Unclassified		—		2,060,590
5	Total	\$	—	\$	2,407,296

*118—Division of Forestry—
Timberland Enforcement Operations*

(WV Code Chapter 19)

Acct. No. 8475

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified—Total	\$	—	\$	60,000
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*119—Division of Forestry—
Woodlands and Timberlands
Stamp Fund*

(WV Code Chapter 19)

Acct. No. 8476

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	400,000
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2	Unclassified	—		240,000
3	Total	\$ —		\$ 640,000

120—Division of Forestry

(WV Code Chapter 19)

Acct No. 8478

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —		\$ 216,000
2	Annual Increment	—		1,692
3	Employee Benefits	—		54,042
4	Unclassified	—		406,348
5	Total	\$ —		\$ 678,082

*121—Division of Environmental Protection—
Special Reclamation Fund*

(WV Code Chapter 22A)

Acct. No. 8537

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified—Total	\$ —		\$ 8,243,119
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*122—Division of Environmental Protection—
Oil and Gas Reclamation Trust*

(WV Code Chapter 22B)

Acct. No. 8538

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified—Total	\$ —		\$ 450,000
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*123—Division of Environmental Protection—
Oil and Gas Operating Permits*

(WV Code Chapter 22B)

Acct. No. 8539

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —		\$ 180,000
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2	Annual Increment	—	2,088
3	Employee Benefits	—	62,058
4	Unclassified	—	355,854
5	Total	\$ —	\$ 600,000

*124—Division of Environmental Protection—
Mines and Minerals Operations Fund*

(WV Code Chapter 22)

Acct. No. 8540

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 1,860,000
2	Annual Increment	—	14,727
3	Employee Benefits	—	630,000
4	Unclassified	—	495,273
5	Total	\$ —	\$ 3,000,000

125—Geological and Economic Survey

(WV Code Chapter 29)

Acct. No. 8589

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 30,000
2	Employee Benefits	—	2,865
3	Unclassified	—	167,135
4	Total	\$ —	\$ 200,000

5 The above appropriation shall be used in accordance
6 with section four, article two, chapter twenty-nine of the
7 code.

*126—Bureau of Employment Programs—
Workers' Compensation Fund*

(WV Code Chapter 23)

Acct. No. 9000

TO BE PAID FROM WORKERS' COMPENSATION FUND

1	Personal Services	\$ —	\$ 10,992,542
2	Annual Increment	—	155,214

3	Employee Benefits	—	4,177,805
4	Unclassified	—	10,843,576
5	Total	\$ —	\$ 26,169,137

6 There is hereby authorized to be paid out of the above
 7 appropriation the amount necessary for the premiums
 8 on bonds given by the treasurer as bond custodian for
 9 the protection of the workers' compensation fund. This
 10 sum shall be transferred to the state board of insurance.

DEPARTMENT OF EDUCATION

*127—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	Personal Services—Total ...	\$ —	\$ —	-0-
2	Personal Services	—	600,000	
3	Workshop Development	—	200,000	
4	Total	\$ —	\$ 800,000	

*128—State Department of Education—
 FFA-FHA Conference Center*

(WV Code Chapter 18)

Acct. No. 8244

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 489,500
2	Annual Increment	—	6,925
3	Employee Benefits	—	196,627
4	Unclassified	—	312,948
5	Total	\$ —	\$ 1,006,000

*129—State Department of Education—
 School Building Authority*

(WV Code Chapter 18)

Acct. No. 8245

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	340,374
2	Annual Increment		—		2,412
3	Employee Benefits		—		81,259
4	Unclassified		—		196,013
5	Total	\$	—	\$	620,058

6 The above appropriation for the administrative
 7 expenses of the school building authority shall be paid
 8 from the interest earnings on debt service reserve
 9 accounts maintained on behalf of said authority.

DEPARTMENT OF EDUCATION
 AND THE ARTS

*130—State University System—
 State System Registration Fee —
 Special Capital Improvement Fund
 (Capital Improvement and Bond Retirement Fund)*

(WV Code Chapters 18 and 18B)

Acct. No. 8830

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service	\$	—	\$	3,985,000
2	Capital Repairs				
3	and Alterations		—		3,000,000
4	Miscellaneous Projects		—		500,000
5	Total	\$	—	\$	7,485,000

6 Any unexpended balances remaining in the prior
 7 years' and the 1991-92 appropriations are hereby
 8 reappropriated for expenditure during the fiscal year
 9 1992-93.

10 The total amount of this appropriation shall be paid
 11 from the special capital improvement fund created in
 12 section eight, article ten, chapter eighteen-b of the code.
 13 Projects are to be paid on a cash basis and made
 14 available from the date of passage.

*131—State College System—
State System Registration Fee—
Special Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)*

(WV Code Chapters 18 and 18B)

Acct. No. 8835

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service	\$	—	\$	2,150,000
2	Capital Repairs				
3	and Alterations		—		1,800,000
4	Miscellaneous Projects		—		-0-
5	Equipment—All Institutions		—		1,000,000
6	Capital Improvements—				
7	New Greenbrier				
8	Center Replacement		—		250,000
9	Fairmont State College—				
10	Clarksburg Center—				
11	Advanced Technology				
12	Center		—		750,000
13	Southern West Virginia				
14	Community College—				
15	Boone County Campus—				
16	Relocation Planning		—		25,000
17	Southern West Virginia				
18	Community College—				
19	McDowell County Center		—		125,000
20	Total	\$	—	\$	6,100,000

21 Any unexpended balances remaining in the prior
22 years' and 1991-92 appropriations are hereby reappropri-
23 ated for expenditure during the fiscal year 1992-93.

24 The total amount of this appropriation shall be paid
25 from the special capital improvement fund created in
26 section eight, article ten, chapter eighteen-b of the code.
27 Projects are to be paid on a cash basis and made
28 available from the date of passage.

*132—State College and University Systems—
State System Registration Fee—
Revenue Bond Construction Fund*

(WV Code Chapters 18 and 18B)

Acct. No. 8845

TO BE PAID FROM SPECIAL REVENUE FUND

1 Any unexpended balances remaining in the prior
 2 years' and 1991-92 appropriations are hereby reappropriated for expenditure during the fiscal year 1992-93.

4 The total amount of this appropriation shall be paid
 5 from the proceeds of revenue bonds issued pursuant to
 6 section eight, article ten, chapter eighteen-b of the code.
 7 Projects are to be available from the date of passage.

*133—State College System—
 State System Tuition Fee—
 Special Capital Improvement Fund
 (Capital Improvement and Bond Retirement Fund)*

(WV Code Chapters 18 and 18B)

Acct. No. 8855

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service	\$	—	\$	3,375,000
2	Building and Campus				
3	Renewal		—		3,000,000
4	Capital Improvements				
5	(New)		—		1,520,000
6	Facilities Planning				
7	and Administration		—		175,000
8	Total	\$	—	\$	8,070,000

9 Any unexpended balances remaining in the prior
 10 years' and 1991-92 appropriations are hereby reappropriated for expenditure during the fiscal year 1992-93.

12 The total amount of this appropriation shall be paid
 13 from the special capital improvement fund created in
 14 article twelve-b, chapter eighteen of the code. Projects
 15 are to be paid on a cash basis and made available from
 16 the date of passage.

*134—State College and University Systems—
State Systems Tuition Fee—
Revenue Bond Construction Fund
(WV Code Chapters 18 and 18B)*

Acct. No. 8860

TO BE PAID FROM SPECIAL REVENUE FUND

1 Any unexpended balances remaining in the prior
2 years' and 1991-92 appropriations are hereby reapprop-
3 riated for expenditure during the fiscal year 1992-93.

4 The total amount of this appropriation shall be paid
5 from the proceeds of revenue bonds issued pursuant to
6 article twelve-b, chapter eighteen of the code. Projects
7 are to be made available from the date of passage.

*135—State University System—
State System Tuition Fee—
Special Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)*

(WV Code Chapters 18 and 18B)

Acct. No. 8865

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service	\$	—	\$ 7,520,000
2	Building and Campus			
3	Renewal		—	11,550,000
4	Facilities Planning and			
5	Administration		—	745,000
6	Total	\$	—	\$ 19,815,000

7 Any unexpended balances remaining in the prior
8 years' and the 1991-92 appropriations are hereby
9 reappropriated for expenditure during the fiscal year
10 1992-93.

11 The total amount of this appropriation shall be paid
12 from the special capital improvement fund created in
13 article twelve-b, chapter eighteen of the code. Projects
14 are to be paid on a cash basis and made available from

15 the date of passage.

*136—State University System—
West Virginia University Health Sciences Center
Spending Authority*

(WV Code Chapters 18 and 18B)

Acct. No. 9280

TO BE PAID FROM THE MEDICAL SCHOOL FUND

1	Personal Services	\$	—		\$ 3,000,000
2	Annual Increment		—		10,000
3	Employee Benefits		—		5,375,000
4	Unclassified		—		6,615,000
5	Total	\$	—		\$ 15,000,000
6	Any unexpended balances remaining in the fiscal				
7	year 1990-91 and fiscal year 1991-92 appropriations for				
8	the West Virginia university health sciences center at				
9	the close of the fiscal year 1991-92 are hereby reappropri-				
10	ated for expenditure during the fiscal year 1992-93.				

**DEPARTMENT OF HEALTH AND
HUMAN RESOURCES**

137—Board of Barbers and Cosmetologists

(WV Code Chapters 16 and 30)

Acct. No. 8220

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—		\$ 156,120
2	Annual Increment		—		2,456
3	Employee Benefits		—		49,226
4	Unclassified		—		101,050
5	Total	\$	—		\$ 308,852
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 cosmetologists as provided by				
9	law.				

*138—Division of Health—
Vital Statistics*

(WV Code Chapter 16)

Acct. No. 8236

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	195,000
2	Annual Increment		—		4,896
3	Employee Benefits		—		81,900
4	Unclassified		—		82,504
5	Total	\$	—	\$	364,300

139—Hospital Finance Authority

(WV Code Chapter 16)

Acct. No. 8330

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	47,619
2	Employee Benefits		—		14,774
3	Unclassified		—		63,870
4	Total	\$	—	\$	126,263

5 The total amount of this appropriation shall be paid
6 from the special revenue fund out of fees and collections
7 as provided by article twenty-nine-a, chapter sixteen of
8 the code.

*140—Division of Health—
Hospital Services Revenue Account
(Special Fund)*

(Capital Improvement, Renovation and Operations)

(WV Code Chapter 16)

Acct. No. 8500

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service	\$	—	\$	2,740,000
2	Community Based Mental				
3	Health Service		—		3,400,000
4	Institutional Facilities				
5	Operations		—		25,000,000
6	Total	\$	—	\$	31,140,000

7 Any unexpended balance remaining in the appropri-
 8 ation for hospital services revenue account at the close
 9 of the fiscal year 1991-92 is hereby reappropriated for
 10 expenditure during the fiscal year 1992-93, except for
 11 account number 8500-18 (fiscal years 1987-88 and 1988-
 12 89) and account no. 8500-52 (fiscal year 1989-90) which
 13 shall expire on June 30, 1992.

14 The total amount of this appropriation shall be paid
 15 from the hospital services revenue account special fund
 16 created by section fifteen-a, article one, chapter sixteen
 17 of the code, and shall be used only for operating
 18 expenses and for improvements in connection with
 19 existing facilities and bond payments, and community
 20 based mental health services needed for patients at
 21 Weston State Hospital.

22 Necessary funds from the above appropriation may be
 23 used for medical facilities operations, either in connec-
 24 tion with this account or in connection with the item
 25 designated Institutional Facilities Operations in the
 26 consolidated medical services fund (account no. 4190).

27 Funds from the "Community Based Mental Health
 28 Service" line includes revenues from sales of group
 29 homes and shall be used for community based develop-
 30 ment of mental health services needed for patients at
 31 Weston State Hospital's Mountaineer Care Unit and
 32 Substance Abuse Unit with priority given to private
 33 acute care psychiatric providers of such services and the
 34 development of interstate agreements with existing
 35 providers of such services: *Provided*, That no such funds
 36 shall be used for capital expenditures or major reno-
 37 vations.

141—Division of Health—
 Laboratory Services

(WV Code Chapter 16)

Acct. No. 8509

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	402,768
2	Annual Increment		—		4,788
3	Employee Benefits		—		123,000

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4	Unclassified	—		466,378
5	Total	\$ —		\$ 996,934

*142—Division of Health—
Health Facility Licensing*

(WV Code Chapter 16)

Acct. No. 8529

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —		\$ 157,152
2	Annual Increment	—		612
3	Employee Benefits	—		37,000
4	Unclassified	—		85,200
5	Total	\$ —		\$ 279,964

143—Health Care Cost Review Authority

(WV Code Chapter 16)

Acct. No. 8564

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —		\$ 944,477
2	Annual Increment	—		5,472
3	Employee Benefits	—		305,638
4	Health Care Planning			
5	Commission—Transfer ...	—		220,000
6	Unclassified	—		1,053,400
7	Total	\$ —		\$ 2,528,987

8 The appropriation for Health Care Planning Commis-
 9 sion—Transfer shall be transferred to the health care
 10 planning commission (account no. 8429-99) upon the
 11 written request of the chairperson of said commission.

12 The above appropriation is to be expended in accor-
 13 dance with and pursuant to the provisions of article
 14 twenty-nine-b, chapter sixteen of the code and from the
 15 special revolving fund designated health care cost
 16 review fund.

*144—Division of Human Services—
Health Care Provider Medicaid Enhancement Tax
(Special Fund)*

(WV Code Chapters 9 and 11)

Acct. No. 9170

TO BE PAID FROM SPECIAL REVENUE FUND

1	Physician Provider			
2	Medicaid Enhancement ..	\$	—	\$ 32,700,000
3	General Medicaid			
4	Enhancement.....		—	20,100,000
5	Outpatient Medicaid			
6	Enhancement.....		—	41,000,000
7	Dentist Provider Medicaid			
8	Enhancement.....		—	11,800,000
9	Ambulance Service			
10	Provider Medicaid			
11	Enhancement.....		—	2,200,000
12	Total	\$	—	\$107,800,000

13 From the above appropriation, an amount not to
 14 exceed three hundred fifty thousand dollars from the
 15 several medicaid enhancement funds shall be used for
 16 administrative purposes, of which an amount not to
 17 exceed one hundred fifty thousand dollars shall be
 18 transferred to a special revenue account in the treasury
 19 for use by the department of tax and revenue and an
 20 amount not to exceed two hundred thousand dollars
 21 shall be transferred to a special revenue account in the
 22 treasury for use by the department of health and human
 23 resources. The remainder of all moneys deposited in the
 24 several medicaid enhancement funds shall be trans-
 25 ferred to the West Virginia medical services fund.

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

*145—Regional Jail and Correctional
Facility Authority*

(WV Code Chapter 31)

Acct. No. 8051

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	412,113
2	Annual Increment		—		3,132
3	Employee Benefits		—		143,329
4	Debt Service		—		10,000,000
5	Unclassified		—		200,423
6	Total	\$	—	\$	10,758,997

*146—Division of Veterans' Affairs—
Veterans' Home*

(WV Code Chapter 19A)

Acct. No. 8261

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	544,400
2	Annual Increment		—		8,964
3	Employee Benefits		—		207,566
4	Total	\$	—	\$	760,930

*147—Division of Public Safety—
Motor Vehicle Inspection Fund*

(WV Code Chapter 17C)

Acct. No. 8350

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	532,104
2	Annual Increment		—		2,052
3	Employee Benefits		—		146,240
4	Unclassified		—		149,138
5	Total	\$	—	\$	829,534

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.

*148—Division of Public Safety—
Barracks Construction*

(WV Code Chapter 17C)

Acct. No. 8352

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	58,632
2	Annual Increment		—		1,044
3	Employee Benefits		—		23,624
4	Unclassified		—		390,426
5	Total	\$	—	\$	473,726

*149—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	\$	—	\$	584,000
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.				

*150—State Armory Board—
General Armory Fund*

(WV Code Chapter 15)

Acct. No. 8446

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified—Total	\$	—	\$	240,000
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*151—Fire Commission—
Fire Marshal Fees*

(WV Code Chapter 29)

Acct. No. 8465

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	287,660
2	Annual Increment		—		2,556

3	Employee Benefits	—	118,900
4	Unclassified	—	216,900
5	Total	\$ —	\$ 626,016

6 Any unexpended cash balance remaining in account
7 no. 8465-99 at the close of the fiscal year 1991-92 is
8 hereby available for expenditure as part of the fiscal
9 year 1992-93 appropriation.

DEPARTMENT OF TAX AND REVENUE

*152—Insurance Commission—
Examination Revolving Fund*

(WV Code Chapter 33)

Acct. No. 8014

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 251,000
2	Annual Increment	—	1,008
3	Employee Benefits	—	70,565
4	Unclassified	—	177,427
5	Total	\$ —	\$ 500,000

*153—Insurance Commission—
Consumer Advocate*

(WV Code Chapter 33)

Acct. No. 8015

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 72,500
2	Annual Increment	—	180
3	Employee Benefits	—	29,046
4	Unclassified	—	121,029
5	Total	\$ —	\$ 222,755

154—Insurance Commission

(WV Code Chapter 33)

Acct. No. 8016

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	1,256,088
2	Annual Increment		—		13,618
3	Employee Benefits		—		451,746
4	Health Care Planning				
5	Commission—Transfer ...		—		350,000
6	Unclassified		—		522,832
7	Total	\$	—	\$	2,594,284

8 The appropriation for Health Care Planning Commis-
9 sion—Transfer shall be transferred to the health care
10 planning commission (account no. 8429-99) upon the
11 written request of the chairperson of said commission.

12 The total amount of this appropriation shall be paid
13 from a special revenue fund out of collections of fees and
14 charges as provided by law.

155—Racing Commission

(WV Code Chapter 19)

Acct. No. 8080

TO BE PAID FROM SPECIAL REVENUE FUND

1	Medical Expenses—Total ...	\$	—	\$	57,000
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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.

156—Racing Commission

General Administration

(WV Code Chapter 19)

Acct. No. 8081

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	962,700
2	Annual Increment		—		9,252
3	Employee Benefits		—		250,300
4	Unclassified		—		62,798
5	Total	\$	—	\$	1,285,050

*157—Racing Commission—
Administration and Promotion*

(WV Code Chapter 19)

Acct. No. 8082

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 51,200
2	Annual Increment	—	288
3	Employee Benefits	—	12,498
4	Unclassified	—	47,408
5	Total	\$ —	\$ 111,394

*158—Tax Division—
Office of Chief Inspector*

(WV Code Chapter 6)

Acct. No. 8091

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 1,303,310
2	Annual Increment	—	15,012
3	Employee Benefits	—	396,500
4	Unclassified	—	346,950
5	Total	\$ —	\$ 2,061,772

159—Municipal Bond Commission

(WV Code Chapter 13)

Acct. No. 8340

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 102,270
2	Annual Increment	—	1,512
3	Employee Benefits	—	34,200
4	Unclassified	—	36,750
5	Total	\$ —	\$ 174,732

*160—Alcohol Beverage Control Administration—
Wine License Special Fund*

(WV Code Chapter 60)

Acct. No. 8592

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	60,000
2	Annual Increment		—		756
3	Employee Benefits		—		19,470
4	Unclassified		—		326,379
5	Total	\$	—	\$	406,605

161—Alcohol Beverage Control Administration

(WV Code Chapter 60)

Acct. No. 9270

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	2,541,656
2	Annual Increment		—		47,592
3	Employee Benefits		—		1,132,524
4	Unclassified		—		2,699,113
5	Total	\$	—	\$	6,420,885

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 and salaries, expenses and equipment of
10 administrative offices, warehouses and inspectors.

11 There is hereby appropriated from liquor revenues, in
12 addition to the appropriation, the necessary amount for
13 the purchase of liquor as provided by law.

DEPARTMENT OF TRANSPORTATION

162—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	\$ —	\$ 67,980,000
3	Maintenance, State		
4	Local Services	—	96,511,000
5	Maintenance, Contract		
6	Paving and		
7	Secondary Road		
8	Maintenance.....	—	32,402,000
9	Bridge Repair and		
10	Replacement	—	34,000,000
11	Industrial Access Roads	—	2,750,000
12	Inventory Revolving.....	—	1,250,000
13	Equipment Revolving	—	6,575,000
14	General Operations.....	—	29,750,000
15	Debt Service.....	—	57,100,000
16	Interstate Construction	—	72,000,000
17	Other Federal Aid		
18	Programs	—	155,000,000
19	Appalachian Programs	—	120,000,000
20	Nonfederal Aid		
21	Construction.....	—	40,000,000
22	Highway Litter Control	—	1,500,000
23	Total	\$ —	\$716,818,000

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
 39 match 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 be required for the purposes of Appal-
 43 achian 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.

163—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	\$	—	\$	2,597,198
2	Annual Increment		—		41,904
3	Employee Benefits		—		924,194
4	Optic Scan System		—		2,010,000
5	Electronic Photo Operator				
6	and License System		—		350,000
7	Unclassified		—		10,254,901
8	Total	\$	—	\$	16,178,197

*164—Division of Motor Vehicles—
 Driver's License Reinstatement Fund*

(WV Code Chapter 17B)

Acct. No. 8422

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	148,844
2	Annual Increment		—		2,124
3	Employee Benefits		—		48,379
4	Unclassified		—		89,907
5	Total	\$	—	\$	289,254

*165—Division of Motor Vehicles—
 Driver Rehabilitation*

(WV Code Chapter 17C)

Acct. No. 8423

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	54,766
2	Annual Increment		—		648
3	Employee Benefits		—		21,413
4	Unclassified		—		497,810
5	Total	\$	—	\$	574,637

*166—Division of Motor Vehicles—
Insurance Certificate Fees*

(WV Code Chapter 17A)

Acct. No. 8424

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	464,704
2	Annual Increment		—		7,840
3	Employee Benefits		—		194,879
4	Unclassified		—		109,214
5	Total	\$	—	\$	776,637

*167—Division of Motor Vehicles—
Motorboat Licenses*

(WV Code Chapter 20)

Acct. No. 8425

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	62,238
2	Annual Increment		—		1,800
3	Employee Benefits		—		21,882
4	Unclassified		—		44,120
5	Total	\$	—	\$	130,040

*168—Division of Motor Vehicles—
Returned Check Fees*

(WV Code Chapter 17)

Acct. No. 8426

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	13,625
2	Annual Increment		—		144
3	Employee Benefits		—		4,756
4	Unclassified		—		9,485
5	Total	\$	—	\$	28,010

**MISCELLANEOUS BOARDS
AND COMMISSIONS**

169—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		—		1,872
3	Employee Benefits		—		54,711
4	Unclassified		—		121,294
5	Total	\$	—	\$	347,209

6 The total amount of this appropriation shall be paid
7 out of collections of license fees as provided by law.

*170—West Virginia Board of Examiners for
Speech-Language Pathology and Audiology*

(WV Code Chapter 30)

Acct. No. 8113

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified	\$	—	\$	205,250
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2 The total amount of this appropriation shall be paid
3 out of collections of license fees and fines as provided
4 by law.

*171—West Virginia Cable Television—
Advisory Board*

(WV Code Chapter 5)

Acct. No. 8173

TO BE PAID FROM SPECIAL REVENUE FUND

APPROPRIATIONS

[Ch. 12

1	Personal Services	\$	—	\$	167,200
2	Annual Increment		—		2,160
3	Employee Benefits		—		42,810
4	Unclassified		—		61,000
5	Total	\$	—	\$	273,170

172—Public Service Commission

(WV Code Chapter 24)

Acct. No. 8280

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	4,976,338
2	Annual Increment		—		42,523
3	Employee Benefits		—		1,553,241
4	Unclassified		—		1,495,238
5	Total	\$	—	\$	8,067,340

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.

*173—Public Service Commission—
Gas Pipeline Division*

(WV Code Chapter 24B)

Acct. No. 8285

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	124,323
2	Annual Increment		—		1,200
3	Employee Benefits		—		32,613
4	Unclassified		372,817		70,369
5	Total	\$	372,817	\$	228,505

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.

174—*Public Service Commission—
Motor Carrier Division*

(WV Code Chapter 24A)

Acct. No. 8290

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	1,120,110
2	Annual Increment		—		18,000
3	Employee Benefits		—		366,016
4	Unclassified		658,258		320,678
5	Total	\$	658,258	\$	1,824,804

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.

175—*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		—		1,836
3	Employee Benefits		—		99,152
4	Unclassified		—		299,349
5	Total	\$	—	\$	708,532

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. 5. Appropriations from lottery net profits.—**
2 Net profits of the lottery, not to exceed twenty-eight
3 million dollars, are to be deposited by the lottery
4 director to the following accounts in the amounts
5 indicated. The auditor shall prorate each deposit of net
6 profits by the lottery director among account nos. 8243,
7 8525, 8825, 8546 and 9132 in the proportion the

- 8 appropriation for each account bears to the total of the
9 appropriations for the five accounts.

176—State Department of Education

(WV Code Chapters 18 and 18A)

Acct. No. 8243

TO BE PAID FROM LOTTERY NET PROFITS

1	Elementary Computer		
2	Education—Total	\$	3,520,000
3	Any unexpended balance remaining in the appropri-		
4	ation Elementary Computer Education (account no.		
5	8243-06) at the close of the fiscal year 1991-92 is hereby		
6	reappropriated for expenditure during the fiscal year		
7	1992-93.		

177—Commission on Aging

(WV Code Chapter 29)

Acct. No. 8525

TO BE PAID FROM LOTTERY NET PROFITS

1	In-Home Services For		
2	Senior Citizens	\$	-0-
3	Commission on Aging	\$	600,000
4	Total	\$	600,000

178—Division of Tourism and Parks

(WV Code Chapter 5B)

Acct. No. 8546

TO BE PAID FROM LOTTERY NET PROFITS

1	Capital Outlay—Parks	\$	1,340,000
2	Unclassified		11,020,000
3	Total	\$	12,360,000

- 4 Any unexpended balances remaining in the appropri-
5 ations for Unclassified (account no. 8546-06) and Capital
6 Outlay—Parks (account no. 8546-26) at the close of the
7 fiscal year 1991-92 are hereby reappropriated for
8 expenditure during the fiscal year 1992-93.

179—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 \$ 3,520,000

180—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Acct. No. 9132

TO BE PAID FROM LOTTERY NET PROFITS

1 Health Care and
2 Title XIX Waiver for
3 Senior Citizens—Total \$ 8,000,000

4 Funds from this account shall be used to expand the
5 title XIX waiver program statewide but not to increase
6 the rates of reimbursement for services provided by title
7 XIX providers.

1 Sec. 6. Awards for claims against the state.—
2 There are hereby appropriated, for the remainder of the
3 fiscal year 1991-92 and to remain in effect until June
4 30, 1993, from the fund as designated, in the amounts
5 as specified and for the claimants named in enrolled
6 house bill no. 4594, regular session 1992—crime victims
7 compensation funds of \$477,500.00 for payment of
8 claims against the state.

9 There are hereby appropriated for the fiscal year
10 1992-93 from the funds as designated, in the amounts
11 as specified and for the claimants as named in enrolled
12 house bill no. 4595, regular session 1992, and enrolled
13 senate bill no. 594, regular session 1992—general
14 revenue funds of \$1,419,015.46.

15 The total of general revenue funds above does not

16 include payment for claims in the amount of \$10,117.46
 17 from the supreme court—general judicial, account no.
 18 1110, specifically made payable from the appropriation
 19 for the current fiscal year 1991-92.

20 There are hereby appropriated for the fiscal year
 21 1992-93 from the funds as designated, in the amounts
 22 as specified and for claimants as named in enrolled
 23 senate bill no. 594, regular session 1992—special
 24 revenue funds of \$52,737.34, state road funds of
 25 \$2,016,984.93, workers' compensation funds of \$2,001.76
 26 and federal funds of \$713.44.

1 **Sec. 7. Supplemental and deficiency appropriation.**—From the state fund, general revenue, except as
 2 otherwise provided, there are hereby appropriated the
 3 following amounts, as itemized, for expenditure during
 4 the fiscal year 1991-92 to supplement the appropriations
 5 for such fiscal year and to be available for expenditure
 6 upon date of passage.
 7

181—Division of Culture and History

(WV Code Chapter 29)

Acct. No. 3510

1 WV History Film Project—
 2 Total \$ 150,000

1 **Sec. 8. Appropriations and reappropriations—**
 2 **revenue sharing trust fund.**—Any unexpended balan-
 3 ces remaining in the appropriations for Chief Mingo
 4 Recreation Park—Capital Outlay (account no. 9705-30),
 5 Building Repairs and Alterations (account no. 9740-10)
 6 and Unclassified (account no. 9719-06) at the close of the
 7 fiscal year 1991-92 are hereby reappropriated for
 8 expenditure during the fiscal year 1992-93.

1 **Sec. 9. Appropriations from surplus accrued.**—
 2 The following item is hereby appropriated from the
 3 state fund, general revenue, and is to be available for
 4 expenditure during the fiscal year 1992-93 out of
 5 surplus funds only, subject to the terms and conditions
 6 set forth in this section.

7 It is the intent and mandate of the Legislature that
 8 the following appropriation be payable only from
 9 surplus accrued as of the thirty-first day of July, one
 10 thousand nine hundred ninety-two.

11 In the event that surplus revenues available on the
 12 thirty-first day of July, one thousand nine hundred
 13 ninety-two, are not sufficient to meet all of the appro-
 14 priation made pursuant to this section, then the
 15 appropriation shall be made to the extent that surplus
 16 funds are available as of the date mandated.

17 Any surplus balance remaining, after the allocation
 18 to meet the appropriation set forth in this section, shall
 19 be transferred and made available to the state fund,
 20 general revenue, during the fiscal year 1992-93.

*182—Department of Transportation—
 Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 5376

1	Public Transportation—		
2	Total	\$	-0-

183—Division of Public Transit

(WV Code Chapter 17)

Acct. No. 5380

1	Public Transportation—		
2	Total	\$	1,000,000

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 1992-93:

*184—Office of Community and
 Economic Development—
 Community Development*

Acct. No. 8029

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 16,099,000

*185—Office of Community and
Economic Development—
Community Service*

Acct. No. 8031

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 6,996,154

*186—State Department of Education—
Education Grant*

Acct. No. 8242

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 69,722,000

*187—Bureau of Employment Programs—
Job Training Partnership Act*

Acct. No. 8255

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 40,560,764

*188—Division of Health—
Maternal and Child Health*

Acct. No. 8502

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 7,000,000

*189—Division of Health—
Alcohol, Drug Abuse and Mental Health*

Acct. No. 8503

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 6,500,000

190—Division of Health—
Community Youth Activity Program

Acct. No. 8504

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 95,000

191—Division of Health—
Preventive Health

Acct. No. 8506

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 972,117

192—Division of Health—
Mental Health Services for the Homeless

Acct. No. 8508

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 400,000

193—Division of Human Services—
Energy Assistance

Acct. No. 9147

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 10,500,000

194—Division of Human Services—
Child Care and Development

Acct. No. 9149

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 6,500,000

195—Division of Human Services—
Social Services

Acct. No. 9161

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 22,000,000

1 **Sec. 11. Special revenue appropriations.**—There
2 are hereby appropriated for expenditure during the
3 fiscal year one thousand nine hundred ninety-three
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, with due consideration to the digest of
13 legislative intent of the budget bill prepared pursuant
14 to article one, chapter four, unless the spending unit has
15 filed with the director of the budget, the auditor and the
16 legislative auditor prior to the beginning of each fiscal
17 year:

18 (a) An estimate of the amount and sources of all
19 revenues accruing to such fund;

20 (b) A detailed expenditure schedule showing for what
21 purposes the fund is to be expended.

1 **Sec. 12. State improvement fund appropri-**
2 **ations.**—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-three,
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-three to be expended as authorized by the
14 governor, for such studies and recommendations which
15 may encompass any problems of organization, proce-
16 dures, systems, functions, powers or duties of a state
17 spending unit in the executive branch, or the betterment
18 of the 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 or her requisition upon the auditor for
8 the refunding of the proper amount. The auditor shall
9 issue his warrant to the treasurer and the treasurer
10 shall pay the warrant out of the fund into which the
11 amount was 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 obligation or revenue bonds or
11 any local taxing district for general obligation bonds to
12 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.
8 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-

4		<i>79—Tax Division</i>	
5		(WV Code Chapter 11)	
6		Acct. No. 1800	
7			General
8		Federal	Revenue
9		Funds	Fund
10		Fiscal	Fiscal
11		Year	Year
12		1991-92	1991-92
13	1	Total Personal Services \$ —	\$ -0-
14	2	Personal Services	8,875,863
15	3	Annual Increment	146,124
16	4	Employee Benefits	2,780,250
17	5	Unclassified	5,648,010
18	6	Total \$ —	\$ 17,450,247

19 The purpose of this supplementary appropriation bill
 20 is to supplement, amend and transfer certain moneys
 21 between items of the existing appropriation for the
 22 designated spending unit. The amounts as itemized for
 23 expenditure during the fiscal year one thousand nine
 24 hundred ninety-two shall be made available for expend-
 25 iture upon the effective date of this bill.

CHAPTER 14

(S. B. 599—Originating in the Committee on Finance)

[Passed March 2, 1992; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of all federal funds remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-two, to the department of health and human resources, division of human services, Acct. No. 4050, supplementing chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, known as the budget bill.

WHEREAS, The governor has established the receipt and availability of federal funds for the extension of continuing programs, now available for expenditure in the current fiscal year of 1991-1992, 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 Acct. No. 4050, chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, known as the budget bill, be supplemented by adding the following sum to the designated line item:

- 1 TITLE II—APPROPRIATIONS.
- 2 Sec. 2. Appropriations of federal funds.
- 3 DEPARTMENT OF HEALTH
- 4 AND HUMAN RESOURCES
- 5 64—*Division of Human Services*
- 6 (WV Code Chapters 9, 48 and 49)
- 7 Acct. No. 4050
- 8 6 Medical Services \$363,399,410

9 The purpose of this supplementary appropriation bill
10 is to supplement this account in the budget bill for fiscal
11 year 1991-1992 by adding to this existing line item an
12 amount to be used to match revenues from the medicaid
13 enhancement program. Such increased amount shall be
14 available for such use and expenditure upon passage of
15 the bill.

CHAPTER 15

(S. B. 597—Originating in the Committee on Finance)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring between items of the existing appropriations of the department of

health and human resources, consolidated medical service fund, Acct. No. 4190, as appropriated by chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation of Acct. No. 4190, chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, be supplemented, amended and transferred 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 HEALTH
5 AND HUMAN RESOURCES

6 66—Consolidated Medical Service Fund

7 Acct. No. 4190

8	1	Foster Grandparents			
9	2	Stipends/Travel	\$	—	\$ 62,000
10	3	Institutional Facilities			
11	4	Operations		—	42,010,316
12	5	Employee Benefits		—	15,589,369
13	6	Poison Control Hotline . . .		—	250,000
14	7	Special Olympics		—	28,000
15	8	State Aid to Local Agencies .		—	7,200,000
16	9	Women, Infants			
17	10	and Children		—	400,000
18	11	Maternal and Child			
19	12	Health Clinics, Clinicians			
20	13	and Medical Contracts			
21	14	and Fees		—	4,815,670
22	15	Preventive Re-Vaccination ..		—	200,000
23	16	Primary Care Contracts to			
24	17	Community Health			
25	18	Centers		—	2,800,000
26	19	Epidemiology Research ..		—	250,000
27	20	Grants to Counties and			
28	21	EMS Entities		—	1,725,000
29	22	Behavioral Health Program		—	-0-

30	23	Behavioral Health		
31	24	Program—Personal		
32	25	Services	—	1,644,192
33	26	Behavioral Health		
34	27	Program—Unclassified	—	516,800
35	28	Behavioral Health		
36	29	Program—Community		
37	30	Programs	—	33,057,210
38	31	Family Support Act.....	—	200,000
39	32	Unclassified	28,230,761	-0-
40	33	Total.....	\$28,230,761	\$110,748,557

41 The purpose of this supplementary appropriation bill
 42 is to supplement, amend and transfer certain moneys
 43 between items of the existing appropriation for the
 44 designated spending unit. The amounts as itemized for
 45 expenditure during the fiscal year one thousand nine
 46 hundred ninety-two shall be made available for expendi-
 47 ture upon the effective date of this bill.

CHAPTER 16

(Com. Sub. for S. B. 357—By Senators Hawse, Brackenrich, Helmick
 Anderson, Spears and Whitlow)

[Passed March 7, 1992: in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of all federal funds remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-two, to the department of commerce, labor and environmental resources, division of forestry, Acct. No. 4650, supplementing chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, known as the budget bill.

WHEREAS, The governor has established the receipt and

availability of federal funds for the extension of continuing programs, now available for expenditure in the current fiscal year of 1991-1992, 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 Acct. No. 4650, chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, known as the budget bill, be supplemented by adding the following sum to the designated line item:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 2. Appropriations of federal funds.**
- 3 DEPARTMENT OF COMMERCE, LABOR
- 4 AND ENVIRONMENTAL RESOURCES
- 5 *36—Division of Forestry*
- 6 (WV Code Chapter 19)
- 7 Acct. No. 4650
- 8 5 Unclassified \$ 805,271

9 The purpose of this supplementary appropriation bill
10 is to supplement this account in the budget bill for fiscal
11 year 1991-1992 by adding to this existing line item an
12 amount to be used for the southern West Virginia forest
13 fire suppression and mobilization pilot project, for basic
14 background studies under the economic stability through
15 forestry program and for the America the beautiful tree-
16 planting program. Such increased amount shall be
17 available for such use and expenditure upon passage of
18 the bill.

CHAPTER 17

(S. B. 596—Originating in the Committee on Finance)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring between items of the existing appropriations of the department of administration, ethics commission, Acct. No. 6180, as appropriated by chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation of Acct. No. 6180, chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, 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	<i>32—Ethics Commission</i>		
5	(WV Code Chapter 6B)		
6	Acct. No. 6180		
7			General
8		Federal	Revenue
9		Funds	Fund
10		Fiscal	Fiscal
11		Year	Year
12		1991-92	1991-92
13	1	Total Personal Services . \$ —	\$ —0-
14	2	Personal Services —	159,220
15	3	Employee Benefits —	34,057
16	4	Unclassified —	187,600
17	5	Total \$ —	\$ 380,877

18 The purpose of this supplementary appropriation bill

19 is to supplement, amend and transfer certain moneys
20 between items of the existing appropriation for the
21 designated spending unit. The amounts as itemized for
22 expenditure during the fiscal year one thousand nine
23 hundred ninety-two shall be made available for expen-
24 diture upon the effective date of this bill.

CHAPTER 18

(Com. Sub. for S. B. 384—By Senators Burdette, Mr. President, and Boley,
By Request of the Executive)

[Passed February 27, 1992; 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-two, to the West Virginia department of transportation, division of highways, Acct. No. 6700, supplementing chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, known as the budget bill.

WHEREAS, The governor submitted to the Legislature the executive budget document dated January 8, 1992, wherein on page X are set forth the revenues and expenditures of the state road fund, including fiscal year 1991-1992; 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 1991-1992, 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, Acct. No. 6700, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-two, as appropriated by chapter thirteen, acts of the Legislature,

regular session, one thousand nine hundred ninety-one, known as the budget bill, be supplemented, amended and thereafter read as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 3. Appropriations from other funds.		
3	Sec. 4. Appropriations of federal funds.		
4	DEPARTMENT OF TRANSPORTATION		
5	<i>150—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	Fiscal
12		Year	Year
13		1991-92	1991-92
14	1 Maintenance, Expressway,		
15	2 Trunkline and Feeder ... \$	—	\$ 66,000,000
16	3 Maintenance, State		
17	4 Local Services	—	93,700,000
18	5 Maintenance, Contract		
19	6 Paving and Secondary		
20	7 Road Maintenance	—	36,711,000
21	8 Bridge Repair and		
22	9 Replacement	—	32,000,000
23	10 Industrial Access Roads ..	—	2,000,000
24	11 Inventory Revolving	—	1,250,000
25	12 Equipment Revolving	—	11,950,000
26	13 General Operations	—	30,675,000
27	14 Debt Service	—	119,300,000
28	15 Interstate Construction ...	—	72,000,000
29	16 Other Federal Aid		
30	17 Programs	—	155,000,000
31	18 Appalachian Programs ...	—	95,000,000
32	19 Nonfederal Aid		
33	20 Construction	—	33,716,000

35	21 Highway Litter Control . .	—	1,500,000
36	22 Railroad Highway Grade		
37	23 Crossing Improvements	—	200,000
38	24 Total	\$ —	\$751,002,000

39 The purpose of this supplementary appropriation bill
 40 is to supplement and amend the existing items in the
 41 aforesaid account for expenditure in the fiscal year of
 42 1991-1992 and to reflect the new total spending author-
 43 ity of the spending unit for such fiscal year. Such
 44 increased amounts shall be available for expenditure
 45 upon the effective date of this bill.

CHAPTER 19

(H. B. 4735—By Delegates Collins and Kiss)

[Passed February 29, 1992; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire immediately on the effective date of this bill to a special account herein created, and to be expired with any interest accrued thereon on the first day of July, one thousand nine hundred ninety-two, into the state fund, general revenue, specified amounts of the balances in Acct. No. 8004-12, board of investments, loss expenses account, to be available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-three.

WHEREAS, The Legislature finds the amounts collected in Acct. No. 8004-12, board of investments, loss expenses account, exceed the amounts needed to effectuate the purposes of the fund; therefore

Be it enacted by the Legislature of West Virginia:

1 That four million seven hundred thousand dollars of
 2 the balances in Acct. No. 8004-12, board of investments,
 3 loss expenses account, be supplemented, amended,
 4 reduced and caused to expire immediately on the
 5 effective date of this bill to a special account herein

6 created and to be expired with any interest accrued
7 thereon into the state fund, general revenue of this state
8 on the first day of July, one thousand nine hundred
9 ninety-two, and be made available for expenditure
10 during the fiscal year ending the thirtieth day of June,
11 one thousand nine hundred ninety-three.

CHAPTER 20

(S. B. 598—Originating in the Committee on Finance)

[Passed March 5, 1992; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal block grant moneys out of the treasury from the balance of available federal block grant moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-two, to the division of human services, Acct. No. 9149, supplementing chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, known as the budget bill.

WHEREAS, The governor has established the availability of federal block grant moneys, receivable for new programs and available for expenditure in fiscal year 1991-1992, a portion of the same is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the budget bill, chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, be supplemented by adding to title two, section nine thereof, as follows:

- 1 TITLE II—APPROPRIATIONS.
2 **Sec. 9. Appropriations from federal block grants.**
3 *181a—Division of Human Services—*
4 *Child Care and Development*

5

Acct. No. 9149

6

TO BE PAID FROM FEDERAL FUNDS

7

1 Unclassified—Total \$ 6,065,173

8

9 The purpose of this supplementary appropriation bill
 10 is to supplement the budget act for the fiscal year 1991-
 11 1992 by providing for a new account to be established
 12 therein to appropriate federal block grant moneys
 13 received for expenditure in the fiscal year 1991-1992.
 14 Such amount shall be available for expenditure upon
 passage of the bill.

CHAPTER 21

(H. B. 4069—By Delegates Love and Wallace)

[Passed February 24, 1992; in effect July 1, 1992. 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 continuation of the West Virginia 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; continuation.

- 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 Pursuant to the provisions of section four, article ten,
73 chapter four of this code, the West Virginia board of
74 banking and financial institutions shall continue to exist
75 until the first day of July, one thousand nine hundred
76 ninety-three, to allow for the completion of an audit by
77 the joint committee on government operations.

CHAPTER 22

(S. B. 492—By Senator Minard)

[Passed March 3, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the chartering of banking institutions in this state.

Be it enacted by the Legislature of West Virginia:

That section one, article four, 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 4. BANKING INSTITUTIONS AND SERVICES
GENERALLY.**

§31A-4-1. General corporation laws applicable; charter applications to be approved by West Virginia board of banking and financial institutions.

1 (a) The general corporation laws of the state, includ-
2 ing the provisions of chapter thirty-one of the code of
3 West Virginia, shall govern banking institutions and the
4 chartering thereof, except as otherwise provided in or
5 where inconsistent with the provisions of this chapter.

6 (b) No charter shall issue in this state for any banking
7 institution unless the application therefor shall have
8 been submitted to and approved by the West Virginia
9 board of banking and financial institutions: *Provided,*
10 That the board may not approve the application to
11 charter any banking institution unless the proposed
12 banking institution does business within this state and
13 is subject to the supervision of the commissioner of
14 banking.

CHAPTER 23

(Com. Sub. for H. B. 4613—By Delegates Rutledge and Williams)

[Passed March 7; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the issuance of bank stock and organizational expenses.

Be it enacted by the Legislature of West Virginia:

That section four, article four, 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 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-4. Stock to be paid in full before engaging in business; exception as to unissued stock; organizational expense fund; affidavit of incorporators; penalties; stockholders' preemptive rights.

1 (a) All of the capital stock of every banking institu-
2 tion, chartered under the laws of this state, shall be paid
3 in full in cash and issued to the ultimate subscribers,
4 not an agent or broker acting on behalf of the organ-
5 izers, before it shall be authorized to engage in business,
6 except such business as is incidental and necessarily
7 preliminary to its organization: *Provided*, That with the
8 approval of the commissioner of banking, the charter of
9 any state bank, now or hereafter organized, may provide
10 that not to exceed five percent of the bank's authorized
11 capital stock may be unissued stock. Such authorized
12 but unissued stock may be issued from time to time to
13 employees of the bank pursuant to a stock option or
14 stock purchase plan approved by the commissioner or
15 may be issued for such other purposes and consideration
16 as may be approved by the board of directors of said
17 bank.

18 (b) Each subscriber at the time he or she subscribes
19 to the stock of a proposed banking institution shall pay
20 in cash a sum at least equal to five percent of the par
21 value of such stock into a fund to be used to defray the
22 expenses of organization of said institution. No organ-
23 izational expenses shall be paid out of any other funds
24 of the bank. The amount of any organizational expenses
25 which are accumulated and recorded on the newly
26 organized bank's accounting records as an asset to be
27 amortized over a period of time according to generally
28 accepted accounting principles shall be added to the
29 capital requirement for incorporation of the bank as
30 determined by the West Virginia board of banking and
31 financial institutions pursuant to subsection (a), section

32 three, article four of this chapter. Upon the grant of a
33 charter to the institution any unexpended balance in the
34 organizational expense fund shall be transferred to
35 undivided profits of the institution. If the charter
36 application is finally denied, any unexpended balance in
37 said fund shall be distributed among the contributors in
38 proportion to their respective payments.

39 (c) A majority of the incorporators shall file with the
40 West Virginia board of banking and financial institu-
41 tions at the time of filing of the charter application an
42 affidavit: (1) Setting forth all expenses incurred or to be
43 incurred in connection with the organization of the
44 institution, subscriptions for its shares and sale of its
45 shares, and (2) stating that no fee, compensation or
46 commission prohibited by this section has been or will
47 be paid or incurred. The board may disapprove the
48 charter application on account of any violation of this
49 section and order the incorporators to restore any sum
50 expended for other than proper organizational expense.
51 In addition, violations hereof shall constitute a misde-
52 meanor offense punishable as prescribed in section
53 fifteen, article eight of this chapter.

54 (d) Unless otherwise provided in the charter, when-
55 ever additional stock is offered for sale, stockholders of
56 record on the date of the offer shall have the right to
57 subscribe to such proportion of the shares as the stock
58 held by them bears to the total of the outstanding stock.
59 This right shall be transferable but shall terminate if
60 not exercised within sixty days of the offer. If the right
61 be not exercised, the stock shall not be offered for sale
62 to others at a lower price without the stockholders again
63 being accorded a preemptive right to subscribe. No
64 banking institution shall sell its shares of stock at less
65 than par, but may sell its shares at such price above par
66 as may be set by the board of directors. The preemptive
67 rights of the stockholders, as provided in this para-
68 graph, shall not apply to any stock issued by a banking
69 institution, to another bank or financial institution or
70 the stockholders thereof, pursuant to a merger or
71 consolidation with such other bank or financial institu-
72 tion, or to authorized but unissued stock authorized by
73 the charter of the banking institution.

CHAPTER 24

(H. B. 4624—By Delegates Rutledge and Williams)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to fidelity bonds and insurance for state-chartered banking institutions.

Be it enacted by the Legislature of West Virginia:

That section nine, article four, 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 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-9. Fidelity bonds and insurance.

1 (a) The directors of a state bank shall direct and
2 require good and sufficient fidelity bonds on all active
3 officers and employees, whether or not they draw salary
4 or compensation, which bonds shall provide for indem-
5 nity to such bank on account of any losses sustained by
6 it as the result of any dishonest, fraudulent or criminal
7 act or omission committed or omitted by them acting
8 independently or in collusion or combination with any
9 person or persons. Such bonds may be in individual,
10 schedule or blanket form, and the premiums therefor
11 shall be paid by the bank.

12 (b) The directors shall also direct and require
13 suitable insurance protection to the bank against
14 burglary, robbery, theft and other similar insurable
15 hazards to which the bank may be exposed in the
16 operations of its business on the premises or elsewhere.

17 (c) The directors shall be responsible for prescribing
18 at least once in each year the amount or penal sum of
19 such bonds or policies and the sureties or underwriters
20 thereon, after giving due and careful consideration to all

21 known elements and factors constituting such risk or
22 hazard. Such action shall be recorded in the minutes of
23 the board of directors.

24 (d) A state bank which is a subsidiary of a bank
25 holding company as defined in section three, article
26 eight-a of this chapter may fulfill the requirements of
27 subsections (a) and (b) of this section if such fidelity
28 bonds and insurance protection are obtained on its
29 behalf by the bank holding company: *Provided*, That the
30 evidence of the existence of such bonds and insurance
31 protection for the state bank must be maintained at the
32 main office of the state bank and the directors of the
33 state bank shall be responsible for reviewing the
34 adequacy of such bonds and insurance protection
35 annually and for recording such review in the minutes
36 of the board.

CHAPTER 25

(Com. Sub. for H. B. 4023—By Delegates Rutledge and Carper)

[Passed February 25, 1992; in effect from passage. Approved by the Governor.]

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 thirty-three-a, relating to the establishment of bank accounts payable to one or more named beneficiaries upon the death of the account owner; outlining the rights of account owners and beneficiaries; requiring all changes to be in writing; and outlining the obligations of banking institutions.

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 thirty-three-a, to read as follows:

**ARTICLE 4. BANKING INSTITUTIONS AND SERVICES
GENERALLY.**

§31A-4-33a. Establishment of payable on death accounts; rights of account owners; change of beneficiary to be in writing; rights of beneficiaries; limitation on liability of institutions making payments from such accounts.

1 (a) Any person may enter into a written contract with
2 any banking institution located in this state to establish
3 a payable on death bank account, which may be
4 abbreviated as a "p.o.d." account. A payable on death
5 account contract shall provide that upon the death of the
6 account owner the balance of any such account shall be
7 paid to the beneficiary or beneficiaries specifically
8 designated by the owner of the account who are
9 surviving at the time of the owner's death. Two or more
10 persons may own such an account as joint tenants with
11 right of survivorship, in which case the interest of any
12 designated beneficiary shall vest only upon the death of
13 the last surviving joint owner. Upon the death of the
14 owner, or last surviving owner, the balance of the
15 account shall be paid only to the designated surviving
16 beneficiaries. The terms of the payable on death
17 contract take precedence over contrary provisions of any
18 other testamentary document.

19 (b) The owner of a payable on death account shall
20 maintain all right, title and interest in the banking
21 account, including principal and interest, during his or
22 her lifetime; may freely withdraw and use the moneys
23 on deposit in the payable on death account, in whole or
24 in part; and may terminate or close the account at will.

25 (c) The account owner may change the designated
26 beneficiary at any time. Such change must be in writing
27 and executed in the form and manner prescribed by the
28 bank. Any such change of beneficiary must be delivered
29 to the bank prior to the death of the payable on death
30 account owner in order to be valid.

31 (d) Designated beneficiaries have no rights or claims
32 to a payable on death account until the death of the last
33 surviving owner of such account. Unless otherwise
34 provided in the written contract, where two or more

35 beneficiaries are designated, upon the death of the
36 account owner, each surviving beneficiary shall be paid
37 a per capita share of the account balance. If no
38 designated beneficiary survives the last account owner,
39 any account balance shall become a part of the last
40 surviving account owner's estate.

41 (e) If a designated beneficiary is a minor at the time
42 he or she becomes vested with any part of a payable on
43 death account, that portion of the account shall be paid
44 to the minor beneficiary in accordance with the
45 provisions of section thirty-four, article four, chapter
46 thirty-one-a of this code.

47 (f) Upon the death of the last surviving account
48 owner, delivery of moneys in a payable on death account
49 to the designated beneficiary or beneficiaries pursuant
50 to the terms of the written contract shall fully and
51 completely discharge the banking institution of all
52 obligations under said contract.

CHAPTER 26

(Com. Sub. for S. B. 554—By Senators Chernenko and Dittmar)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article fourteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article twenty-seven, chapter thirty of said code, relating to barbers and beauticians; increasing the monthly salaries of beauty and barber shop inspectors; renaming the board of barbers and beauticians as the board of barbers and cosmetologists; and increasing the salary of the director of such board.

Be it enacted by the Legislature of West Virginia:

That section one, article fourteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section one,

article twenty-seven, chapter thirty of said code be amended and reenacted, all to read as follows:

Chapter

16. Public Health.

30. Professions and Occupations.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 14. BARBERS AND COSMETOLOGISTS.

§16-14-1. Jurisdiction over barbers and cosmetologists; powers and duties of director of health.

1 (a) There is hereby vested in the state department of
2 health jurisdiction over barbers and cosmetologists,
3 except as otherwise specifically provided in this code.

4 (b) The director of health or a designee shall be
5 responsible for the enforcement of all laws and rules
6 pertaining to sanitary conditions of barbering and
7 beauty shops.

8 (c) The director or a designee shall provide adminis-
9 trative support to the board of barbers and cosmetolo-
10 gists as may be appropriate and reasonable.

11 (d) The director of health shall appoint not more than
12 six inspectors, who shall be licensed barbers and
13 cosmetologists of this state, as herein provided, and it
14 shall be their duty to make frequent inspections of all
15 barber and beauty shops and all schools of barbering
16 and beauty culture in this state and to report all
17 violations to the director of health. The salary of each
18 inspector shall range from twelve hundred eighty-three
19 dollars per month to fifteen hundred dollars per month,
20 depending upon the qualifications of the inspector.
21 Allowances for expenses of such inspectors shall be that
22 fixed and allowed by the director of health.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 27. BOARD OF BARBERS AND COSMETOLOGISTS.

§30-27-1. Board of barbers and cosmetologists; salary of board director; appointment, qualifications and terms of board members; compensation and expenses of members; powers and duties of board.

1 (a) The board of barbers and beauticians heretofore
2 established is continued and shall be known henceforth
3 as the board of barbers and cosmetologists. The annual
4 salary of the director of such board shall be thirty-one
5 thousand seven hundred ninety-six dollars. All members
6 of the board, serving for a term which has not expired
7 on the effective date of this article, shall continue to
8 serve the terms for which they were appointed. The
9 board shall promulgate rules pertaining to the licensure
10 and qualifications of barbers, cosmetologists and
11 manicurists, and curricula and standards of instruction
12 for schools of barbering and beauty culture. The board
13 shall aid and assist in the enforcement of all rules in
14 accordance with the provisions of article fourteen,
15 chapter sixteen of this code. The board shall consist of
16 four professional members to be appointed by the
17 governor, by and with the advice and consent of the
18 Senate, and one lay member to be appointed in accor-
19 dance with the provisions of section four-a, article one
20 of this chapter. Of the four professional members, one
21 shall be an employing barber, one an employee barber,
22 one an employing cosmetologist and one an employee
23 cosmetologist. Each professional member of the board
24 shall have been engaged within this state in the practice
25 of barbering or beauty culture, as the case may be, for
26 a period of five years prior to his or her appointment
27 and no more than two of the four professional members
28 may belong to the same political party. No member of
29 the board shall own or have a pecuniary interest in a
30 barber or beauty culture school licensed by or doing
31 business within this state or shall be employed by such
32 an institution.

33 (b) On or before the thirtieth day of June of each year,
34 the governor shall appoint one member of the board to
35 serve for a term of four years, to begin on the first day
36 of July. No professional member of the board may serve
37 for more than two complete terms.

38 (c) The board shall designate one of its members as
39 chairperson.

40 (d) Each member of the board shall receive as
41 compensation a per diem of fifty dollars for each day
42 of attendance at board sessions, but such compensation
43 for each member shall not exceed the sum of three
44 thousand dollars in any calendar year. Each member
45 shall be reimbursed for actual and necessary expenses
46 incurred in the performance of his or her duties, upon
47 presentation of an itemized sworn statement thereof.

48 (e) The board shall examine all applicants for
49 licensure and shall issue licenses to those entitled thereto
50 and collect examination and licensure fees, in accor-
51 dance with regulations promulgated by the board of
52 health pursuant to article fourteen, chapter sixteen of
53 this code or the board of barbers and cosmetologists.

54 (f) It is unlawful for any person to practice or offer
55 to practice barbering, beauty culture or manicuring in
56 this state without first obtaining a license for such
57 purposes from the board of barbers and cosmetologists.

58 (g) The board shall have the power to promulgate
59 rules generally regarding the practice and conduct of
60 barbering and beauty culture, including, but not limited
61 to, the procedures, criteria and curricula for examina-
62 tion and qualifications of applicants for licensure, and
63 for the licensing of instructional personnel for schools of
64 barbering and beauty culture.

65 The power of the board to promulgate such rules shall
66 be concurrent with that of the board of health as
67 authorized in article fourteen, chapter sixteen of this
68 code: *Provided*, That in the case of conflicting provisions
69 regarding requirements for health and sanitation, the
70 rule or regulation of the board of health shall be deemed
71 to apply. The board of health and the board of barbers
72 and cosmetologists shall for a reasonable fee make
73 available upon request to any licensee a copy of such
74 rules.

CHAPTER 27

(Com. Sub. for H. B. 4135—By Delegates L. White and Mezzatesta)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections ten and sixteen, article twenty, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section six-a, relating to providing for the issuance of a super bingo license and the fee therefor; limiting super bingo licenses; increasing the limits on bingo prizes; maintenance of records by licensees; and requiring the tax commissioner to perform audits in certain instances.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. CHARITABLE BINGO.

§47-20-6a. Super bingo license.

§47-20-10. Limits on prizes awarded—General provisions.

§47-20-16. Records; commissioner audit.

§47-20-6a. Super bingo license.

1 Any charitable or public service organization may,
2 upon payment of a five thousand dollar license fee, apply
3 to the tax commissioner for issuance of an annual super
4 bingo license. The tax commissioner shall promulgate
5 rules in accordance with article three, chapter twenty-
6 nine-a of this code specifying those organizations which
7 qualify as charitable or public service organizations.

8 A holder of a super bingo license may conduct one
9 super bingo occasion each calendar quarter during the
10 period of the license at which up to thirty-five thousand
11 dollars in prizes may be awarded, notwithstanding the
12 seven thousand five hundred dollar limitation on prizes
13 specified in section ten of this article.

14 A charitable or public service organization that has
15 a regular or limited occasion bingo license may apply
16 for a super bingo license.

§47-20-10. Limits on prizes awarded—General provisions.

1 Except as otherwise provided in section twenty-two of
2 this article, the total value of all prizes awarded by a
3 licensee during the period of a license, may not exceed
4 in value seventy-five percent of the gross proceeds
5 collected during that period or the sum of four hundred
6 thousand dollars, whichever amount is less: *Provided,*
7 That notwithstanding the foregoing limitation, the total
8 prizes awarded by a licensee, or in the aggregate by two
9 or more limited occasion licensees holding a joint bingo
10 occasion, for any bingo occasion held pursuant to an
11 annual or limited occasion license, may not exceed seven
12 thousand five hundred dollars in value.

13 Prizes may be money or merchandise other than beer,
14 nonintoxicating beer, wine, spirits or alcoholic liquor as
15 defined in section five, article one, chapter sixty of this
16 code. If the prizes are merchandise, the value assigned
17 to them is their fair market value at the time of
18 purchase.

§47-20-16. Records; commissioner audit.

1 Any licensee which holds a bingo occasion as provided
2 by this article shall maintain a separate account and
3 separate bookkeeping procedure for its bingo operations.
4 A licensee shall maintain all records required by this
5 article for at least three years and the records shall be
6 open to the commissioner for reasonable inspection.
7 Whenever the tax commissioner has reasonable cause to
8 believe a licensee has violated any of the provisions of
9 this article, he or she may perform or cause to be
10 performed an audit of the licensee's books and records:
11 *Provided,* That the tax commissioner shall perform or
12 cause to be performed an audit of the books and records
13 of any licensee that has awarded total prizes in excess
14 of one hundred seventy-five thousand dollars. The tax
15 commissioner shall file a copy of the completed audit
16 with the county commission of the county wherein the
17 licensee holds bingo occasions.

CHAPTER 28

(S. B. 480—By Senator Burdette, Mr. President)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twelve, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article five, chapter five-a of said code; to amend and reenact section five, article four-c, chapter sixteen of said code; to amend and reenact section five, article two, chapter seventeen of said code; to amend and reenact section three, article eleven-c, chapter eighteen of said code; and to amend and reenact section six, article thirteen, chapter eighteen-b of said code, all relating to membership of certain boards, institutes, councils and commissions; making necessary changes required by congressional redistricting; and adding member to governor's mansion advisory committee.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 4. The Legislature.
- 5A. Department of Administration.
- 16. Public Health.
- 17. Roads and Highways.
- 18. Education.
- 18B. Higher Education.

CHAPTER 4. THE LEGISLATURE.**ARTICLE 12. ESTABLISHMENT OF A WEST VIRGINIA LAW INSTITUTE.****§4-12-3. Governing council and members.**

1 (a) The institute shall have such members and
2 committees as the governing body of the West Virginia
3 law institute may direct. The governing body shall also
4 elect a president, secretary and any other officers as it
5 determines necessary.

6 (b) The governing body of the institute shall be a
7 council composed of ex officio members and elected
8 members as follows:

9 (1) One justice of the West Virginia supreme court of
10 appeals to be selected by the justices thereof;

11 (2) One circuit court judge, selected by the West
12 Virginia judicial association;

13 (3) One federal judge residing in West Virginia,
14 selected by the federal judges residing in West Virginia;

15 (4) The attorney general of the state of West Virginia;

16 (5) One legal counsel to the governor of the state of
17 West Virginia;

18 (6) The chairperson of the judiciary committees of the
19 Senate and the House of Delegates of the West Virginia
20 Legislature or an attorney member of the respective
21 committees appointed by the chairperson of the
22 committee;

23 (7) One member each from the majority and minority
24 parties of the Senate and the House of Delegates of the
25 West Virginia Legislature to be selected by the presi-
26 dent of the Senate and the speaker of the House of
27 Delegates, respectively;

28 (8) The director of West Virginia legislative services;

29 (9) The chairperson of the West Virginia commission
30 on uniform state laws;

31 (10) The president and first vice president of the West
32 Virginia state bar;

33 (11) The chairperson of the young lawyers section of
34 the West Virginia state bar;

35 (12) The dean of the West Virginia university college
36 of law;

37 (13) Two attorneys appointed by the governor of the
38 state of West Virginia for terms to run concurrently
39 with the term of the governor;

40 (14) The director of the continuing legal education
41 program sponsored by the West Virginia state bar and
42 the West Virginia university college of law; and

43 (15) The editor-in-chief of the West Virginia law
44 review.

45 (c) The elected membership shall consist of two
46 faculty members who shall be elected from the members
47 of the faculty of the West Virginia university college of
48 law and four practicing attorneys from each of the
49 congressional districts in the state who shall be selected
50 by the board of governors of the West Virginia state bar.

51 (d) All ex officio members of the council shall hold
52 their positions during their respective terms of office.
53 The term of office of the elected members of the council
54 shall be four years. The terms of office of the first
55 elected practicing attorney members shall be appointed
56 by the board of governors of the West Virginia state bar
57 such that four shall be appointed for two years, four for
58 three years and four for four years. Thereafter, appoint-
59 ments shall be for four years. Elected members of the
60 council shall be eligible for reelection.

61 (e) Vacancies in the elected membership created by
62 death, resignation or otherwise than by the expiration
63 of the terms of office shall be filled by the council under
64 such rules as it may adopt.

CHAPTER 5A.

DEPARTMENT OF ADMINISTRATION.

ARTICLE 5. GOVERNOR'S MANSION ADVISORY COMMITTEE.

**§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 four 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, one
13 to be a building contractor, and one member to
14 represent the interest of the general public. The
15 appointive members of the committee shall serve for a
16 term of four years. The members of the committee shall
17 serve without compensation but shall be reimbursed for
18 reasonable and necessary expenses actually incurred in
19 the performance of their duties; except that in the event
20 the expenses are paid, or are to be paid, by a third party,
21 the member shall not be reimbursed by the state. The
22 governor shall designate from the committee a chair-
23 man to serve for a term of one year. The secretary of
24 administration shall serve as secretary. The committee
25 shall meet upon the call of the chairman annually and
26 may meet at such other times as may be necessary for
27 the performance of its functions.

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

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

38 (2) To make recommendations to the governor as to
39 the decor and arrangements best suited to enhance the
40 historic and artistic values of the mansion in keeping
41 with the architecture thereof and of such articles of

42 furniture, fixtures, decorative objects, linens, silver,
43 china, crystal and objects of art, which recommenda-
44 tions shall be considered by the governor in decorating
45 said mansion; and

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

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

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-5. Emergency medical services advisory council; duties, composition, appointment, meetings, compensation and expenses.

1 The emergency medical service advisory council,
2 heretofore created and established by former section
3 seven of this article, shall be continued for the purpose
4 of developing, with the director, standards for emer-
5 gency medical service personnel and for the purpose of
6 providing advice to the office of emergency medical
7 services and the director thereof, as established by
8 section four of this article with respect to reviewing and
9 making recommendations for and providing assistance
10 to the establishment and maintenance of adequate
11 emergency medical services for all portions of this state.

12 The council shall have the duty to advise the director
13 in all matters pertaining to his duties and functions in
14 relation to carrying out the purposes of this article.

15 The council shall be composed of thirteen members
16 appointed by the governor by and with the advice and
17 consent of the Senate. The mountain state emergency
18 medical services association shall submit to the governor
19 a list of six names of representatives from their

20 association and a list of three names shall be submitted
21 to the governor of representatives of their respective
22 organizations by the West Virginia association of county
23 officials, West Virginia state firemen's association, West
24 Virginia hospital association, West Virginia state
25 medical association, West Virginia chapter of the
26 American college of emergency physicians, West
27 Virginia emergency medical services administrators
28 association and the state department of education. The
29 governor shall appoint from the respective lists submit-
30 ted two persons who represent the mountain state
31 emergency medical services association, one of whom
32 shall be a paramedic and one of whom shall be an
33 emergency medical technician, and one person from the
34 West Virginia association of county officials, West
35 Virginia state firemen's association, West Virginia
36 hospital association, West Virginia state medical
37 association, West Virginia chapter of the American
38 college of emergency physicians, West Virginia emer-
39 gency medical services administrators association and
40 the state department of education. The governor shall
41 in addition appoint one person to represent emergency
42 medical service providers operating within the state, one
43 person to represent small emergency medical service
44 providers operating within this state and two persons to
45 represent the general public. Not more than five of the
46 members shall be appointed from any one congressional
47 district. No member shall serve more than four consec-
48 utive terms.

49 The council shall choose its own chairman and meet
50 at the call of the director at least twice a year.

51 The members of such council may be reimbursed for
52 any and all reasonable and necessary expenses actually
53 incurred in the performance of their duties.

54 After having conducted a performance and fiscal
55 audit through its joint committee on government
56 operations, pursuant to section nine, article ten, chapter
57 four of this code, the Legislature hereby finds and
58 declares that the emergency medical services advisory
59 council should be continued and reestablished. Accord-
60 ingly, notwithstanding the provisions of section four,

61 article ten, chapter four of this code, the emergency
62 medical services advisory council shall continue to exist
63 until the first day of July, one thousand nine hundred
64 ninety-five.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 2. STATE ROAD COMMISSION.

§17-2-5. When first members appointed; qualifications; removal for cause.

1 On or before the first day of July next after the
2 effective date of this article, the governor shall appoint
3 the members of the commission. Not more than four of
4 the members shall be of the same political party. Two
5 members shall be appointed from each of the congress-
6 sional districts and one member shall be appointed from
7 the state at large. Each member shall be a citizen and
8 resident of the state. Each member appointed from a
9 congressional district shall be a citizen and resident of
10 such congressional district. Removal of a member from
11 the state or from the particular congressional district
12 from which he was appointed shall immediately vacate
13 his office. In making appointments to the commission,
14 the governor shall consider each appointee's age, ability,
15 experience and general qualifications. Members of the
16 commission shall be eligible for reappointment to fill an
17 unexpired term or a new term of seven years.

18 Any members of the commission, who have been duly
19 appointed and qualified and approved by the Senate and
20 are in office when this article becomes effective, shall
21 continue in office until their respective terms expire or
22 until their death, resignation or removal from office. In
23 making his initial appointments to the commission
24 pursuant to the provisions hereof, the governor shall
25 ascertain the names, residence addresses and political
26 party affiliation of any such members of the commission
27 then in office and shall select his first appointees with
28 reference thereto and due consideration thereof so as to
29 comply with the residence and political party affiliation
30 qualifications as herein prescribed.

31 As terms expire or positions on the commission
32 otherwise become vacant, the governor shall appoint

33 persons to fill all such vacancies on the commission as
34 provided in this article.

35 No member of the commission may be removed from
36 office by the governor except for official misconduct,
37 incompetence, neglect of duty or gross immorality, and
38 then only in the manner prescribed by law for the
39 removal by the governor of state elective officers.

CHAPTER 18. EDUCATION.

ARTICLE 11C. LEASE AND AGREEMENT OF THE UNIVERSITY OF WEST VIRGINIA BOARD OF TRUSTEES RELATING TO WEST VIRGINIA UNIVERSITY HOSPITAL.

§18-11C-3. Board authorized to contract with corpora- tion; description to be met by corporation.

1 The board is hereby authorized to enter into the
2 agreement and any other contractual relationships
3 authorized by this article with the corporation, but only
4 if the corporation meets the following description:

5 (a) The directors of the corporation, all of whom shall
6 be voting, shall consist of the president of the university,
7 who shall serve ex officio as chairman of the directors,
8 the president of the board or his designee, the vice
9 chancellor for health affairs of the board, the vice
10 president for health sciences of the university, the vice
11 president for administration and finance of the univer-
12 sity, the chief of the medical staff of the hospital, the
13 dean of the school of medicine of the university, the dean
14 of the school of nursing of the university and the chief
15 executive officer of the corporation, as ex officio
16 members of the directors, a representative elected at
17 large by the corporation employees and seven directors
18 to be appointed by the governor, subject to confirmation
19 by the Senate of the state Legislature, which seven
20 appointed directors shall be selected in conformance
21 with the provisions of section six-a, article five-b,
22 chapter sixteen of this code: *Provided*, That said seven
23 directors shall be appointed to six-year terms, but no
24 more than three such members shall be from the same
25 congressional district: *Provided, however*, That of the
26 seven directors so appointed by the governor for terms

27 beginning the year one thousand nine hundred eighty-
28 four, three such appointments shall be for a term of two
29 years, two shall be for a term of four years and two shall
30 be for a term of six years.

31 (b) The audited records of the corporation shall be
32 reported publicly and to the joint committee on govern-
33 ment and finance at least annually.

34 (c) Upon liquidation of the corporation, the assets of
35 the corporation shall be transferred to the board for the
36 benefit of the university.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 13. HIGHER EDUCATION-INDUSTRY PARTNER- SHIPS.

§18B-13-6. High-tech 2000 board; grants; authority.

1 There is hereby created a high-tech 2000 board
2 consisting of the governor or a designee, the president
3 of West Virginia university or a designee, the president
4 of Marshall university or a designee, the president of
5 West Virginia institute of technology or a designee, the
6 president of Shepherd college or a designee, the director
7 of the governor's office of economic and community
8 development or a designee, and four persons from the
9 private sector who are representative of different
10 geographic areas of the state, and which such private
11 sector members shall be appointed to staggered four-
12 year terms by the governor with the advice and consent
13 of the Senate.

14 The high-tech 2000 board shall have the authority to
15 review and approve all applications for grants or funds
16 from the special high-tech 2000 fund established
17 pursuant to section five of this article and to establish
18 rules for the administration of the fund.

19 Board members representing the private sector shall
20 be reimbursed for all necessary expenses incurred in
21 connection with the performance of their duties as
22 members.

CHAPTER 29

(H. B. 4691—By Delegates P. White and Stemple)

[Passed March 2, 1992: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article one, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by deleting the provision requiring the governing body of a political subdivision to offer its bonds to the secretary of state for purchase by any of the governmental agencies of the state.

Be it enacted by the Legislature of West Virginia:

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

§13-1-21. Advertisement and sale of bonds.

1 The governing body of the political division issuing
2 such bonds shall sell the same and collect the proceeds,
3 which proceeds shall be deposited with its treasurer.
4 The governing body of the political division shall
5 advertise such bonds for sale, on sealed bids, which
6 advertisement 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 political division. The first publication shall be made at
11 least fourteen days before the date fixed for the
12 reception of bids. Such advertisement shall also be
13 published in a financial paper published either in the
14 city of New York or the city of Chicago, or in a
15 newspaper published in a city of this state having a
16 population of not less than twenty thousand inhabitants,
17 according to the last federal census. The governing body
18 may reject any and all bids. If the bonds be not sold
19 pursuant to such advertisement, they may within one
20 hundred twenty days after the date advertised for the
21 reception of bids, be sold by the governing body at
22 private sale, but no private sale shall be made at a price

- 23 less than the highest bid which shall have been received.
24 If not sold, such bonds shall be readvertised in the
25 manner herein provided. In no event shall bonds be sold
26 for less than their par value.

CHAPTER 30

(Com. Sub. for H. B. 4447—By Mr. Speaker, Mr. Chambers, and
Delegate Burk, By Request of the Executive)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-g, relating to providing for the issuance of refunding bonds; subjecting determinations to issue refunding bonds to the provisions of the debt management act; providing security for refunding bonds; determining the principal amount of refunding bonds to be issued; prescribing the use of sinking and reserve funds; providing for the terms of refunding bonds; providing for the sale of refunding bonds at, above or below par value; providing for authority of state agencies to enter into swap agreements; providing for the terms of such swap agreements; providing for the application of certain provisions of the code of West Virginia and acts of the Legislature to refunding bonds; providing for the repayment of bonds to be refunded; providing for bonds previously issued by the university of West Virginia board of trustees and the board of directors of the state college system; providing authority for the issuance of refunding bonds; providing for the issuance of refunding bonds without the election or creation of a new debt; and providing for the exemption from taxation of refunding bonds.

Be it enacted by the Legislature of West Virginia:

That chapter thirteen 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-g, to read as follows:

ARTICLE 2G. STATE REFUNDING BOND ACT.

- §13-2G-1. Short title.
- §13-2G-2. Definitions.
- §13-2G-3. Issuance of refunding bonds.
- §13-2G-4. Security for refunding bonds.
- §13-2G-5. Principal amount, use of sinking and reserve funds.
- §13-2G-6. Terms of refunding bonds; time, place and amount of payments.
- §13-2G-7. Sale of refunding bonds at above or below par value.
- §13-2G-8. Swap agreements.
- §13-2G-9. Certain provisions of the code or act of Legislature to apply to refunding bonds.
- §13-2G-10. Provision for payment of the bonds to be refunded.
- §13-2G-11. Bonds previously issued by the board of regents.
- §13-2G-12. Article sufficient authority for issuing refunding bonds.
- §13-2G-13. Issuance without election or creation of a new debt.
- §13-2G-14. Bonds exempt from taxation.

§13-2G-1. Short title.

- 1 This article shall be known and may be cited as the
- 2 "State Refunding Bond Act."

§13-2G-2. Definitions.

- 1 As used in this article, unless the context otherwise
- 2 requires:
 - 3 (a) "Bonds" means general obligation bonds, review
 - 4 bonds, notes or other debt instruments issued by the
 - 5 state, a state agency or a state authority.
 - 6 (b) "Code" means the code of West Virginia, one
 - 7 thousand nine hundred thirty-one, as amended.
 - 8 (c) "Legislature" means the Legislature of this state.
 - 9 (d) "Refunding bonds" means bonds, notes or other
 - 10 debt instruments issued to refund all or any part of
 - 11 general obligation bonds, revenue bonds, notes or other
 - 12 debt instruments heretofore or hereafter issued or
 - 13 lawfully assumed by the state, a state agency or a state
 - 14 authority pursuant to the provisions of this code.
 - 15 (e) "State" means the state of West Virginia, a state
 - 16 agency or a state authority.
 - 17 (f) "State agency" means any office, department,
 - 18 cabinet, board, commission, entity, bureau, division,
 - 19 public corporation, agency, or instrumentality of the
 - 20 state authorized to issue bonds.

21 (g) "State authority" means any authority authorized
22 to issue bonds, including, but without limitations, the
23 university of West Virginia board of trustees and the
24 board of directors of the state college system.

25 (h) "Swap agreement" means an agreement which is
26 a rate swap agreement, basis swap, forward rate
27 agreement, commodity swap, interest rate opinion,
28 forward foreign exchange agreement, rate cap agree-
29 ment, rate floor agreement, rate collar agreement,
30 currency swap agreement, cross-currency rate swap
31 agreement, currency option, any similar agreement or
32 any combination of the foregoing.

§13-2G-3. Issuance of refunding bonds.

1 The state may, in the manner and subject to the
2 limitations and conditions contained in this article, issue
3 its refunding bonds, at a public or private sale, for the
4 purpose of refunding the bonds of the state then
5 outstanding, including the payment of any redemption
6 premium thereon and any interest accrued or to accrue
7 to the date of redemption of such bonds. A determina-
8 tion by the state that any refunding is advantageous or
9 necessary, or that any of the outstanding obligations
10 should be called for redemption on the first or any
11 subsequent available redemption date or permitted to
12 remain outstanding until their respective dates of
13 maturity, shall be conclusive: *Provided*, That a determi-
14 nation by the state to issue its refunding bonds as
15 provided in this article is subject to the provisions of the
16 debt management act set forth in article six-a, chapter
17 twelve of this code.

§13-2G-4. Security for refunding bonds.

1 Refunding bonds may be secured by a pledge of: (a)
2 The same source of security as the bonds to be refunded;
3 or (b) such other security as the state may lawfully
4 pledge, or both.

§13-2G-5. Principal amount, use of sinking and reserve funds.

1 (a) The total amount of refunding bonds to be issued
2 under this chapter shall be an amount sufficient to effect

3 the refunding and may include an amount sufficient to
4 pay (1) the principal amount outstanding of the bonds
5 to be refunded, (2) interest accrued or to accrue to the
6 date of maturity or the date of redemption of the bonds
7 to be refunded (which need not necessarily be on the
8 first available redemption date), (3) any redemption
9 premiums to be paid thereon, (4) any reasonable
10 expenses incurred in connection with such refunding
11 and (5) any other reasonable costs deemed appropriate
12 by the state, including without limitation, the expenses
13 of preparing and delivering the refunding bonds, legal
14 fees, financial advisor fees, consultant fees, and other
15 expenses incurred in connection with the issuance, sale
16 and delivery of the refunding bonds.

17 (b) Any money in a sinking fund or reserve fund or
18 other fund for the bonds to be refunded may be used
19 to pay the principal of, premium, if any, or interest on
20 the outstanding bonds to be refunded or may be
21 deposited in a sinking fund or reserve fund or other fund
22 for the refunding bonds.

§13-2G-6. Terms of refunding bonds; time, place and amount of payments.

1 Upon determining the issue of such refunding bonds,
2 the state shall, by resolution, authorize the issuance of
3 such bonds in an amount not exceeding the amount
4 permitted by this article, fix the date thereof, the rate
5 or rates of interest which such bonds shall bear and
6 when and where they are payable.

§13-2G-7. Sale of refunding bonds at above or below par value.

1 All refunding bonds issued by the state may be sold
2 at a price equal to, above or below par value and
3 accrued interest as the state may direct. Refunding
4 bonds may also be sold at a zero (0) rate of interest or
5 at an original issue discount.

§13-2G-8. Swap agreements.

1 The state may from time to time enter into one or
2 more swap agreements that it determines to be neces-
3 sary or desirable in connection with, or incidental to, or

4 in lieu of the issuance of its refunding bonds. Swap
5 agreements entered into by the state shall contain such
6 provisions, including payment, term, security, default
7 and remedy provisions, and shall be with such parties,
8 as the state shall determine to be necessary or desirable
9 after due consideration to the creditworthiness of such
10 parties.

**§13-2G-9. Certain provisions of the code or act of Legis-
lature to apply to refunding bonds.**

1 All the provisions of this code or any act of the
2 Legislature, relating to bonds issued for original
3 indebtedness and insofar as such provisions may be
4 applicable, shall apply to the same extent and with
5 equal force and effect to refunding bonds issued under
6 the provisions of this article.

**§13-2G-10. Provision for payment of the bonds to be
refunded.**

1 (a) It is the intention of this article to authorize the
2 state to issue bonds for the purpose of refunding
3 outstanding bonds without thereby contracting any
4 additional indebtedness, and it shall be conditional upon
5 the delivery of any refunding bonds that sufficient funds
6 are held in trust to provide for the payment of the
7 principal of, premium, if any, and interest on the bonds
8 to be refunded. It is the further intention of this article
9 that any amounts received by the issuance of any
10 refunding bonds pursuant to this article be used solely
11 for the purposes set forth in subsection (a), section five
12 of this article and not be used for incurrence of
13 additional debt.

14 (b) For all purposes of this section, bonds shall be
15 considered to have been canceled and paid in advance
16 of their due date or date of redemption if there shall
17 have been deposited in trust for the benefit of holders
18 of the bonds to be refunded:

19 (1) Moneys sufficient to pay when and as due all
20 amounts of principal and interest payable on such
21 bonds; or

22 (2) Direct obligations of the United States of America

23 or the state, or obligations fully and irrevocably secured
24 as to the payment of both principal and interest by such
25 direct obligations the payment on which when due will
26 provide moneys, sufficient to pay when and as due all
27 amounts of principal and interest payable on such
28 bonds.

29 (c) All such amounts shall be set aside and held in
30 trust and irrevocably dedicated solely to the payment of
31 such bonds, except that amounts in excess of the
32 amounts required for the payment of the bonds so
33 refunded may be applied to the payment of costs related
34 to the issuance, carrying, insuring or servicing the
35 refunding bonds, including costs of credit or market
36 enhancement services, such as letters of credit, remar-
37 keting arrangements and similar services. Any amount
38 deposited pursuant to this section may include amounts
39 already held on deposit in trust for the payment of the
40 bonds to be refunded.

§13-2G-11. Bonds previously issued by the board of regents.

1 In connection with or incident to the refunding of any
2 bonds previously issued by the board of regents pursu-
3 ant to any prior enactment of chapter eighteen of the
4 code, or the board of regents predecessor in interest, the
5 university of West Virginia board of trustees and the
6 board of directors of the state college system, as the
7 transferees of all powers, duties and authorities of the
8 board of regents pursuant to chapter eighteen-b of the
9 code, are authorized to make one or more written
10 agreements with regard to which entity is obligated to
11 provide for the payment of such bonds previously issued
12 by the board of regents and with regard to the allocation
13 of revenues to be dedicated to the payment of refunding
14 bonds.

**§13-2G-12. Article sufficient authority for issuing re-
funding bonds.**

1 This article shall without reference to any other act
2 of the Legislature, be full authority for the issuance, sale
3 and exchange of bonds in this article authorized. No
4 order, ordinance, resolution or proceeding in respect to

5 the issuance of any bonds hereunder shall be necessary
6 except such as are required by this article. No publi-
7 cation of any notice, order, ordinance or proceeding
8 relating to the issuance of such bonds shall be necessary.

§13-2G-13. Issuance without election or creation of a new debt.

1 The issuance, sale or exchange of bonds authorized in
2 this article may be had without an election and shall not
3 be deemed to create a new debt as long as provision has
4 been made to pay the principal of, premium, if any, and
5 interest on the bonds to be refunded as provided in
6 section seven of this article.

§13-2G-14. Bonds exempt from taxation.

1 All bonds of the state, a state agency or state authority
2 issued hereunder shall be exempt from all state, county,
3 and municipal taxes, and the exception shall include
4 income, inheritance and property taxes.

CHAPTER 31

(Com. Sub. for H. B. 4176—By Mr. Speaker, Mr. Chambers, and Delegate Burk)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article two, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six, article six-a of said chapter; to amend and reenact section five-a, article nine of said chapter; and to further amend said article nine by adding thereto a new section, designated section nine-a, all relating to providing a program of continuing instruction for personnel of the bureau of employment programs; permitting the governor to elect to pay certain unemployment benefits pursuant to the provisions of a certain federal act rather than through certain provisions of the state code; increasing the amount of a certain fund of money which may be expended by the commissioner of said bureau; and extending the period

of time during which money appropriated out of funds made available to the state by a certain federal act may be obligated by said bureau.

Be it enacted by the Legislature of West Virginia:

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

Article.

2. The Commissioner of the Bureau of Employment Programs.
- 6A. Extended Benefits Program.
9. Employment Security Administration Fund.

ARTICLE 2. THE COMMISSIONER OF THE BUREAU OF EMPLOYMENT PROGRAMS.

§21A-2-6. Powers and duties generally.

- 1 The commissioner shall be the executive and adminis-
- 2 trative head of the bureau and shall have the power and
- 3 duty to:
 - 4 (1) Exercise general supervision of and make regula-
 - 5 tions for the government of the bureau;
 - 6 (2) Prescribe uniform rules pertaining to investiga-
 - 7 tions, departmental hearings, and promulgate rules and
 - 8 regulations;
 - 9 (3) Supervise fiscal affairs and responsibilities of the
 - 10 bureau;
 - 11 (4) Prescribe the qualifications of, appoint, remove,
 - 12 and fix the compensation of the officers and employees
 - 13 of the bureau, subject to the provisions of section ten,
 - 14 article four of this chapter, relating to the board of
 - 15 review;
 - 16 (5) Organize and administer the bureau so as to
 - 17 comply with the requirements of this chapter and
 - 18 chapter twenty-three of this code and to satisfy any
 - 19 conditions established in applicable federal legislation;

20 (6) Make reports in such form and containing such
21 information as the United States department of labor
22 may from time to time require, and comply with such
23 provisions as the United States department of labor may
24 from time to time find necessary to assure the correct-
25 ness and verification of such reports;

26 (7) Make available to any agency of the United States
27 charged with the administration of public works or
28 assistance through public employment, upon its request,
29 the name, address, ordinary occupation and employment
30 status of each recipient of unemployment compensation,
31 and a statement of the recipient's rights to further
32 compensation under this chapter;

33 (8) Keep an accurate and complete record of all
34 bureau proceedings; record and file all bonds and
35 contracts and assume responsibility for the custody and
36 preservation of all papers and documents of the bureau;

37 (9) Sign and execute in the name of the state, by "The
38 Bureau of Employment Programs", any contract or
39 agreement with the federal government, its agencies,
40 other states, their subdivisions, or private persons;

41 (10) Prescribe a salary scale to govern compensation
42 of appointees and employees of the bureau;

43 (11) Make the original determination of right in
44 claims for benefits;

45 (12) Make recommendations and an annual report to
46 the governor concerning the condition, operation, and
47 functioning of the bureau;

48 (13) Invoke any legal or special remedy for the
49 enforcement of orders or the provisions of this chapter
50 and chapter twenty-three of this code;

51 (14) Exercise any other power necessary to standard-
52 ize administration, expedite bureau business, assure the
53 establishment of fair rules and regulations and promote
54 the efficiency of the service;

55 (15) Keep an accurate and complete record and
56 prepare a monthly report of the number of persons
57 employed and unemployed in the state, which report

58 shall be made available upon request to members of the
59 public and press; and

60 (16) Provide at bureau expense a program of contin-
61 uing professional, technical and specialized instruction
62 for the personnel of the bureau.

ARTICLE 6A. EXTENDED BENEFITS PROGRAM.

§21A-6A-6. Beginning and termination of extended benefit period.

1 (1) Whenever an extended benefit period is to become
2 effective in this state, or in all states, as a result of a
3 state or a national "on" indicator, or an extended benefit
4 period is to be terminated in this state as a result of a
5 state "off" indicator or state and national "off" indica-
6 tors, the commissioner shall make an appropriate public
7 announcement.

8 (2) Computations required by the provisions of
9 subdivision (6), section one of this article shall be made
10 by the commissioner, in accordance with regulations
11 prescribed by the United States secretary of labor.

12 (3) Whenever, during a period when emergency
13 unemployment compensation benefits are being paid
14 under the provisions of the Emergency Unemployment
15 Compensation Act of 1991, as amended, or under any
16 subsequent extension or reenactment thereof, the state
17 "on" indicator as defined in subsection (3) of section one
18 of this article triggers on a period of extended benefits,
19 the governor of this state may elect to not implement
20 the state statutory provision and continue the payment
21 of benefits under the Emergency Unemployment
22 Compensation Act of 1991, as amended, to those
23 individuals who have exhausted their entitlement to
24 regular unemployment compensation under state law.

ARTICLE 9. EMPLOYMENT SECURITY ADMINISTRATION FUND.

§21A-9-5a. Special administration fund.

§21A-9-9a. Reed Act appropriations—Extension of period within which to obligate money.

§21A-9-5a. Special administration fund.

1 There is hereby created in the state treasury a fund
2 to be known as the employment security special
3 administration fund, which shall consist of interest
4 collected on delinquent payments pursuant to section
5 seventeen, article five of this chapter. The moneys
6 deposited with this fund are hereby appropriated and
7 made available to the order of the commissioner for the
8 purpose of (a) replacements in the employment security
9 administration fund as provided in section eight of this
10 article, (b) to meet special, extraordinary, and conting-
11 ent expenses not provided for in the employment
12 security administration fund, (c) refunds pursuant to
13 section nineteen of article five, of interest erroneously
14 collected, and (d) cover expenditures for which federal
15 funds have been authorized but not yet received, subject
16 to repayment to the fund. This fund shall be adminis-
17 tered and disbursed in the same manner and under the
18 same conditions as other special funds of the state
19 treasury. Balances to the credit of the special adminis-
20 tration fund shall not lapse at any time but shall be
21 continuously available to the commissioner for expendi-
22 tures consistent with this chapter: *Provided*, That (1) not
23 more than seven hundred fifty thousand dollars shall be
24 expended from said fund in any fiscal year; (2) that at
25 the beginning of each calendar quarter the commis-
26 sioner shall estimate the amount that may be required
27 in that quarter for refunds of interest erroneously
28 collected; (3) that thereupon the excess, if any, over the
29 amounts provided to be expended under this section
30 shall be paid into the unemployment compensation trust
31 fund.

**§21A-9-9a. Reed Act appropriations—Extension of pe-
riod within which to obligate money.**

1 Notwithstanding the provision of subsection (2),
2 section nine of this article to the contrary, the period
3 during which money referred to therein may be
4 obligated for the purposes specified in said section shall
5 be extended hereby to three years from the effective
6 date of said section.

CHAPTER 32

(Com. Sub. for S. B. 569—Senator Chafin)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, fifteen, twenty and twenty-five, article eighteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter sixty-one of said code by adding thereto a new article, designated article three-d, all relating to cable television system regulation; concerning the ability of counties to become the cable franchising authorities; waiving certain fees and costs; designating the location of cable company business offices; providing civil penalties for violations of the cable act; requiring prior notice of price increases or retiering of services; defining terms; defining the crime of theft of cable services and providing criminal penalties therefor; defining the crime of selling or transferring products used to acquire unauthorized cable service; and stating the evidentiary requirements of the theft of cable service.

Be it enacted by the Legislature of West Virginia:

That sections four, fifteen, twenty and twenty-five, article eighteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that chapter sixty-one of said code be amended by adding thereto a new article, designated article three-d, 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.
61. Crimes and Their Punishment.

**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 18. WEST VIRGINIA CABLE TELEVISION SYSTEMS ACT.

§5-18-4. Cable franchise required; franchising authority.

§5-18-15. Transfer of cable franchise.

§5-18-20. Office operating requirements; office hours.

§5-18-25. Complaints; violations; penalties.

§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
13 geographic 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
32 appropriate franchise authority or authorities for a
33 franchise in accordance with the provisions of this
34 article.

35 (d) The franchising authority shall be the
36 municipality in which a cable system is to be

37 constructed, operated, acquired or extended, or if there
38 be no such municipality or if the municipality so elects
39 not to act as a franchising authority, then the
40 franchising authority shall be the county commission of
41 the county in which such cable system is to be
42 constructed, operated, acquired or extended: *Provided,*
43 That nothing herein shall prohibit any county
44 commission of a county in which a municipality acting
45 as a franchising authority is located from also acting as
46 a franchising authority for any cable system to be
47 constructed, operated, acquired or extended within the
48 jurisdiction of such county commission, nor prohibit any
49 county commission of a county acquiring the franchise
50 authority from a municipality from electing to transfer
51 such authority to the board.

52 (e) Any municipality or county commission may elect
53 not to act as a franchising authority, in which event the
54 franchising authority for any cable system to be
55 constructed, operated, acquired or extended within the
56 jurisdiction of such municipality or within the
57 jurisdiction of such county commission shall be the
58 board. A county commission acting as a franchise
59 authority for unincorporated areas of the county may
60 elect separately to transfer to the board any franchise
61 authority acquired from a municipality. If any
62 municipality or county commission so elects, the mayor
63 or president of the county commission shall certify such
64 delegation in writing to the presiding officer of the
65 board. Such election shall be promptly made upon
66 written request of the board or the cable operator.

§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 or otherwise transferred,
6 voluntarily or involuntarily, directly or indirectly,
7 including a transfer of control of any cable system,
8 whether by change in ownership or otherwise, except
9 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) Notice provisions may be prescribed by the board
14 for encumbrances creating potential transfers.

15 (c) The procedure for consideration of any transfer
16 under the provisions of this section shall conform, as
17 nearly as possible, to the procedures prescribed in
18 sections nine and ten of this article for the consideration
19 of issuing cable franchises, including the application fee
20 therefor.

§5-18-20. Office operating requirements; office hours.

1 Each cable operator shall operate a business office in
2 or near its area of operation as approved by the
3 franchise authority or 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.

§5-18-25. 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
17 complainant may file a formal request to the board and
18 he or 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.

23 (d) A cable operator may be subject to a fine or civil
24 penalty in accordance with subsection (e) hereof, upon
25 a determination by the board or court that the cable
26 operator has violated any of the following:

27 (1) The material terms of its cable franchise; or

28 (2) Substantial compliance with this article or rules
29 or orders prescribed by the board.

30 (e) The board may fine or obtain civil penalties
31 against a cable operator for each violation of subsection
32 (d) of this section in an amount not less than fifty dollars
33 nor more than five hundred dollars for each violation.
34 Any penalty assessed under this section is in addition
35 to any other costs, expenses or payments for which the
36 cable operator is responsible under other provisions of
37 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 may raise rates or retier and
44 charge subscribers without providing to his or her
45 subscribers sufficient advance written notice and
46 opportunity to discontinue service.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3D. THEFT OF CABLE TELEVISION SERVICES.

§61-3D-1. Definitions.

§61-3D-2. Acquisition of cable television services.

§61-3D-3. Sale or transfer of the device or plan intended for acquisition or
diversion.

§61-3D-4. Evidence.

§61-3D-1. Definitions.

1 As used in this article:

2 (1) "Cable system" means any facility within this state
3 consisting of a set of closed transmission paths and
4 associated signal generation, reception and control

5 equipment that is designed to provide cable television
6 service which includes video programming and which
7 is provided to multiple subscribers within a community,
8 and does not include: (A) A facility that serves only to
9 retransmit the television signals of one or more
10 television broadcast stations; (B) a facility that serves
11 only subscribers in one or more multiple unit dwellings
12 under common ownership, control or management,
13 unless that facility or facilities uses any public right-of-
14 way; or (C) a facility of a public utility subject, in whole
15 or in part, to the provisions of chapter twenty-four of
16 this code, except to the extent that those facilities
17 provide video programming directly to subscribers.

18 (2) "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 (3) "Cable service" means: (A) The one-way
26 transmission to subscribers of video programming or
27 other programming service; and (B) subscriber
28 interaction, if any, which is required for the selection
29 of video programming or other programming service.

30 (4) "Subscriber" means any person who receives cable
31 television services.

32 (5) "Unauthorized" means that payment of full
33 compensation for cable television services has been
34 avoided, or has been sought to be avoided, without the
35 consent of the supplier of the service.

§61-3D-2. Acquisition of cable television services.

1 (a) A person who acquires cable television services for
2 himself or another, whether through his own efforts or
3 with the assistance of another, or both, by:

4 (1) Making or maintaining any unauthorized
5 connection, whether physically, electrically or
6 inductively, to a distribution or transmission line;

7 (2) Attaching or maintaining the attachment of any
8 unauthorized device to any cable, wire or other
9 component of a cable system or to a television receiving
10 set connected to a cable system;

11 (3) Making or maintaining any unauthorized
12 modification or alteration to any device installed by a
13 cable system operator; or

14 (4) Knowingly permits another person to enter upon
15 his or her property for the purpose of securing cable
16 service in an unauthorized manner as described in
17 subdivision (1), (2) or (3) of this subsection shall be guilty
18 of a misdemeanor and, upon conviction, shall be
19 punished in accordance with subsection (c) of this
20 section.

21 (b) A person who subscribes to and receives cable
22 television services through an authorized connection of
23 a television receiving set at his dwelling and, within his
24 dwelling, makes an authorized or an unauthorized
25 connection of an additional television receiving set or
26 sets or audio system which receives cable television
27 service through such authorized connection, shall not be
28 guilty of a misdemeanor under subsection (a) of this
29 section.

30 (c) Any person convicted of a misdemeanor under
31 subsection (a) of this section shall be subject to the
32 following penalties:

33 (1) Upon a first conviction under this section, the
34 defendant shall be fined not less than one hundred
35 dollars, nor more than two hundred fifty dollars.

36 (2) Upon a second conviction under this section, the
37 defendant shall be fined not less than two hundred fifty
38 dollars, nor more than five hundred dollars, or
39 imprisoned in the county jail not more than thirty days,
40 or both fined and imprisoned.

41 (3) Upon any subsequent conviction in excess of a
42 second conviction under this section, the defendant shall
43 be fined not less than five hundred dollars, nor more
44 than one thousand dollars, or imprisoned in the county
45 jail not less than thirty days nor more than sixty days,
46 or both fined and imprisoned.

47 Notwithstanding the provisions of section four, article
48 eleven-a of this chapter or section two-a, article three,
49 chapter fifty of this code, the magistrate or court may
50 order restitution not to exceed the value of unauthorized
51 cable services received.

**§61-3D-3. Sale or transfer of the device or plan intended
for acquisition or diversion.**

1 (a) A person who sells, gives or otherwise transfers to
2 another or offers, advertises or exposes for sale to
3 another any device, mechanism, tool or printed circuit,
4 or any kit, plan or instructional procedure for the
5 making of such device, mechanism, tool or printed
6 circuit, with the knowledge that another will acquire
7 cable television services in violation of this article, shall
8 be guilty of a misdemeanor and shall be punishable in
9 accordance with subsection (b) of this section.

10 (b) A person convicted of a misdemeanor under this
11 section shall be punished as follows:

12 (1) Upon a first conviction under this section, the
13 defendant shall be fined not less than two hundred fifty
14 dollars, nor more than five hundred dollars.

15 (2) Upon a second conviction under this section, the
16 defendant shall be fined not less than five hundred
17 dollars, nor more than one thousand dollars, or
18 imprisoned in the county jail not more than thirty days,
19 or both fined and imprisoned.

20 (3) Upon a third conviction under this section, the
21 defendant shall be fined not less than five hundred
22 dollars, nor more than one thousand dollars, or
23 imprisoned in the county jail not less than sixty days,
24 nor more than one year.

§61-3D-4. Evidence.

1 Evidence that (1) the defendant had possession of or
2 access to the location of distribution or transmission
3 lines or other facilities of a cable system which have
4 been tapped, altered or tampered with or to which any
5 unauthorized connection has been made or to which any
6 unauthorized device has been attached or (2) the

7 defendant had possession of or access to any device
8 installed by a cable system operator to which an
9 unauthorized modification or alteration has been made,
10 may be used, but shall not be required, to establish that
11 a person violated this article.

CHAPTER 33

(Com. Sub. for S. B. 94—By Senators Burdette, Mr. President, and Boley,
By Request of the Executive)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend chapter twelve of said code by adding thereto a new article, designated article seven; to amend and reenact sections six and twenty-a, article eighteen, chapter thirty-one of said code; and to further amend said article by adding thereto a new section, designated section twenty-c, all relating generally to economic development and the creation of new jobs; reducing the amount of credits authorized under the West Virginia capital company act for three fiscal years; providing for the creation and establishment of the jobs investment trust; purposes and objectives; legislative findings; definitions; jobs investment trust board; composition of board appointments; terms of private members; election of chairman; quorum; management and control of jobs investment trust vested in board; officers; liability; payment of reasonable expenses of West Virginia housing development fund; board powers; limitation on investments; funding; applications for investment priority; providing of information to West Virginia housing development fund; acceptance or rejection of investment package; documentary materials concerning trade secrets; commercial, financial or personal information; confidentiality; reports of board; report of housing development fund; earnings; exemptions and audits; severability; conflicts of interest; credit of state not pledged;

eliminating the restriction on the housing development fund's authority to finance nonresidential projects; allowing the housing development fund to form non-profit corporations with the same board of directors; land development fund; and creation of jobs development fund.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 5E. Venture Capital Company.
- 12. Public Moneys and Securities.
- 31. Corporations.

CHAPTER 5E. VENTURE CAPITAL COMPANY.

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-8. Tax credits.

- 1 (a) The total amount of tax credits authorized for a
- 2 single qualified company may not exceed two million
- 3 dollars. Capitalization of the company may be increased
- 4 pursuant to rule of the authority.
- 5 (b) The total credits authorized by the authority for
- 6 all companies may not exceed a total of ten million
- 7 dollars each fiscal year: *Provided*, That for the fiscal
- 8 year beginning the first day of July, one thousand nine
- 9 hundred ninety-two, the fiscal year beginning on the
- 10 first day of July, one thousand nine hundred ninety-
- 11 three, and the fiscal year beginning on the first day of
- 12 July one thousand nine hundred ninety-four, the total
- 13 credits authorized by the authority for all companies
- 14 under this section or this article may not exceed a total
- 15 of eight million dollars each fiscal year. The authority

16 shall allocate these credits to qualified companies in the
17 order that said companies are qualified.

18 (c) Any investor, including an individual, partnership
19 or corporation who makes a capital investment in a
20 qualified West Virginia capital company, is entitled to
21 a tax credit equal to fifty percent of the investment,
22 except as otherwise provided in this section or in this
23 article. The credit allowed by this article shall be taken
24 after all other credits allowed by chapter eleven of this
25 code. It shall be taken against the same taxes and in the
26 same order as set forth in subsections (c) through (i),
27 section five, article thirteen-c, chapter eleven of this
28 code. The credit for investments by a partnership or by
29 a corporation electing to be treated as a Subchapter S
30 corporation may be divided pursuant to election of
31 partners or shareholders.

32 (d) The tax credit allowed under this section is to be
33 credited against the taxpayer's tax liability for the
34 taxable year in which the investment in a qualified West
35 Virginia capital company is made. If the amount of the
36 tax credit exceeds the taxpayer's tax liability for the
37 taxable year, the amount of the credit which exceeds the
38 tax liability for the taxable year may be carried to
39 succeeding taxable years until used in full, or until
40 forfeited: *Provided*, That: (i) Tax credits may not be
41 carried forward beyond fifteen years; and (ii) tax credits
42 may not be carried back to prior taxable years. Any tax
43 credit remaining after the fifteenth taxable year is
44 forfeited.

45 (e) The tax credit provided for in this section is
46 available only to those taxpayers whose investment in a
47 qualified West Virginia capital company occurs after
48 the first day of July, one thousand nine hundred eighty-
49 six.

50 (f) The tax credit allowed under this section may not
51 be used against any liability the taxpayer may have for
52 interest, penalties or additions to tax.

53 (g) Notwithstanding any provision in this code to the
54 contrary, the tax commissioner shall publish in the state
55 register the name and address of every taxpayer, and

56 the amount, by category, of any credit asserted under
 57 this article for any tax year beginning on or after the
 58 first day of January, one thousand nine hundred ninety-
 59 one. The categories by dollar amount of credit received
 60 shall be as follows:

- 61 (1) More than \$1.00, but not more than \$50,000;
- 62 (2) More than \$50,000, but not more than \$100,000;
- 63 (3) More than \$100,000, but not more than \$250,000;
- 64 (4) More than \$250,000, but not more than \$500,000;
- 65 (5) More than \$500,000, but not more than \$1,000,000;
- 66 (6) More than \$1,000,000.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 7. JOBS INVESTMENT TRUST FUND.

- §12-7-1. Purposes and objectives; how article cited.
- §12-7-2. Legislative findings.
- §12-7-3. Definitions.
- §12-7-4. Jobs investment trust board; composition; appointment, term of private members; chairman; quorum.
- §12-7-5. Management and control of jobs investment trust vested in board; officers; liability; relationship to higher education institutions.
- §12-7-6. Corporate powers.
- §12-7-7. Limitation on investments.
- §12-7-8. Funding.
- §12-7-9. Applications for investment priority; investment package.
- §12-7-10. Acceptance or rejection of investment package.
- §12-7-11. Documentary materials concerning trade secrets; commercial, financial, or personal information; confidentiality.
- §12-7-12. Reports of boards; report of housing development fund.
- §12-7-13. Earnings.
- §12-7-14. Exemption from certain requirements; audit.
- §12-7-15. Conflicts of interest.
- §12-7-16. Credit of state not pledged.

§12-7-1. Purposes and objectives; how article cited.

1 This article, which may be cited as the "Jobs Invest-
 2 ment Trust Act", is enacted to create a jobs investment
 3 trust to be used for the development, promotion and
 4 expansion of West Virginia's economy and to provide
 5 opportunities to businesses and college and university
 6 students to develop and implement plans for innovative
 7 projects and investment opportunity.

§12-7-2. Legislative findings.

1 (a) The Legislature finds that the creation of a public
2 body corporate to make investment funds available to
3 eligible businesses would stimulate economic growth
4 and provide or retain jobs within the state. Accordingly,
5 it is declared to be the public policy of the state to create
6 an availability of funds through an investment program
7 to inject needed capital into the business community,
8 sustain or improve business profitability, and provide
9 jobs to the citizens of the state.

10 (b) The Legislature further finds: (1) That the
11 availability of financial assistance through the creation
12 of the jobs investment trust will promote economic
13 development in the state and will serve the public
14 purposes of the state; (2) that a variety of means and
15 measures for the financing of projects, including the
16 insuring of loans or other forms of financing or credit
17 to be made available for working capital, innovative
18 investment plans and options, equity financing or the
19 refinancing of existing debt of an enterprise, will, as a
20 matter of public policy, serve the public purposes of the
21 state; and (3) that it is in the public interest, in order
22 to address the needs of the business community and the
23 citizens of the state, that a public body corporate be
24 created with full power to accept grants, gifts and
25 appropriations, to generate revenues to the end that
26 funds obtained thereby may be used to furnish money
27 and credit to approved businesses or enterprises or to
28 promote the establishment of new and innovative
29 projects or to upgrade, expand and retain existing
30 projects.

31 (c) The Legislature further finds: (1) That due to the
32 creation of the jobs investment trust, moneys will be
33 available for venture capital in this state; (2) that the
34 implementation of this innovative program may sup-
35 plant the need for the state to otherwise assist private
36 venture capital concerns through tax credits; (3) that
37 due to the availability of venture capital funds through
38 this program the granting of venture capital company
39 credits under the capital company act should be reduced
40 for three fiscal years pending the full implementation

41 of the jobs investment trust program; (4) that due to this
42 reduction in the certification of tax credits, additional
43 general revenue may become available for new economic
44 development programs; (5) these economic development
45 programs may be funded from general revenue in an
46 amount appropriate to effectuate the purposes of these
47 programs; and (6) due to the foregoing findings there
48 shall be an annual line item appropriation, in an amount
49 determined by the Legislature, to the West Virginia
50 development office for a matching grant program for
51 regional economic development corporations or author-
52 ities.

§12-7-3. Definitions.

1 As used in this article, the following words have the
2 meanings herein ascribed to them, unless the context in
3 which they are used clearly implies a different meaning:

4 (a) "Board" means the jobs investment trust board
5 established pursuant to section four of this article.

6 (b) "Eligible business" means any business which is
7 qualified to do business in West Virginia and is in good
8 standing with all applicable laws affecting the conduct
9 of such business.

10 (c) "Securities" means all bonds, notes, stocks,
11 debentures or other forms of negotiable and nonnegot-
12 iable evidences of indebtedness or ownership.

§12-7-4. Jobs investment trust board; composition; ap- pointment, term of private members; chair- man; quorum.

1 (a) There is hereby created the jobs investment trust
2 board. The board is created as a public body corporate
3 and established to improve and otherwise promote
4 economic development in this state.

5 (b) The board shall consist of thirteen members, five
6 of whom shall serve by virtue of their respective
7 positions. These five are the president of West Virginia
8 university or his or her designee; the president of
9 Marshall university or his or her designee; the chancel-
10 lor of the board of directors of the state college system

11 or his or her designee; the executive director of the West
12 Virginia housing development fund and the secretary of
13 commerce, labor and environmental resources. Two
14 members shall be appointed by the governor from a list
15 of four names submitted by the board of directors of the
16 housing development fund. The other six members shall
17 be appointed from the general public by the governor.
18 Of the members of the general public appointed by the
19 governor, one shall be an attorney with experience in
20 finance and investment matters, one shall be a certified
21 public accountant, one shall be a representative of labor,
22 one shall be experienced or involved in innovative
23 business development, two shall be present or past
24 executive officers of companies listed on a major stock
25 exchange or large privately held companies.

26 (c) In case of any vacancy on the board, such vacancy
27 shall be filled by appointment by the governor for the
28 unexpired term in the same manner as the original
29 appointment. Any person appointed to fill a vacancy
30 shall serve only for the unexpired term.

31 (d) The governor may remove any appointed member
32 in case of incompetency, neglect of duty, moral turpi-
33 tude or malfeasance in office, and the governor may
34 declare the office vacant and fill the vacancy as provided
35 in other cases of vacancy.

36 (e) The chairman of the board shall be elected by the
37 board from among the members of the board.

38 (f) Seven members of the board shall constitute a
39 quorum. No action may be taken by the board except
40 upon the affirmative vote of at least a majority of those
41 members present, but in no event fewer than six of the
42 members serving on the board.

43 (g) The members of the board, including the chair-
44 man, shall receive no compensation for their services as
45 members of the board but shall be entitled to their
46 reasonable and necessary expenses actually incurred in
47 discharging their duties under this article.

48 (h) The board shall meet on a quarterly basis
49 beginning the first day of July, one thousand nine

50 hundred ninety-two, or more often if necessary.

51 (i) The terms of the board members appointed by the
52 governor first taking office on or after the effective date
53 of this legislation shall expire as designated by the
54 governor at the time of the nomination, two at the end
55 of the first year, two at the end of the second year, two
56 at the end of the third year and two at the end of the
57 fourth year, after the first day of July, one thousand nine
58 hundred ninety-two. As these original appointments
59 expire, each subsequent appointment shall be for a full
60 four-year term. Any member whose term has expired
61 shall serve until his successor has been duly appointed
62 and qualified. Any member shall be eligible for
63 reappointment.

**§12-7-5. Management and control of jobs investment
trust vested in board; officers; liability;
relationship to higher education institutions.**

1 (a) It shall be the duty of the board to manage and
2 control the jobs investment trust. In order to carry out
3 the day-to-day management and control of the trust and
4 effectuate the purposes of this article, the board shall
5 appoint an executive director who is or has been a senior
6 executive of a major financial institution, brokerage
7 firm, investment firm, or similar institution, with
8 extensive experience in capital market development.
9 The board shall fix the executive director's duties. The
10 board shall fix the compensation of the executive
11 director and the compensation shall, at least in part, be
12 incentive based. The executive director shall serve at the
13 will and pleasure of the board.

14 (b) The board shall elect a secretary annually, who
15 need not be a member of the board, to keep a record
16 of the proceedings of the board.

17 (c) The members and officers of the board shall not
18 be liable personally, either jointly or severally, for any
19 debt or obligation created by the board.

20 (d) The acts of the board shall be solely the acts of
21 its corporation and shall not be deemed to be those of
22 an agent of the state, nor shall any debt or obligation

23 of the board be deemed to be a debt or obligation of the
24 state.

25 (e) The West Virginia housing development fund shall
26 provide office space and staff support services for the
27 director and the board, shall act as fiscal agent for the
28 board and, as such, shall provide accounting services for
29 the board, invest all funds as directed by the board,
30 service all investment activities of the board, and shall
31 make the disbursements of all funds as directed by the
32 board, for which the West Virginia housing develop-
33 ment fund shall be reasonably compensated, as deter-
34 mined by the board.

35 (f) The board and the executive director shall involve
36 students and faculty members of state institutions of
37 higher education in the board's activities, in order to
38 enhance the opportunities at such institutions for
39 learning, and for participation in the board's investment
40 activities and in the economic development of the state,
41 whether in research, financial analysis, management
42 participation, or in such other ways as the board and
43 the executive director may, in their discretion, find
44 appropriate.

§12-7-6. Corporate powers.

1 The board shall have the power:

2 (1) To make loans, with or without interest, but with
3 such security for repayment as the jobs investment trust
4 board determines reasonably necessary and practicable,
5 from the board's fund, for investment in eligible
6 businesses that stimulate economic growth and provide
7 or retain jobs in this state; such loans shall be made only
8 upon determination by the board that the loans are
9 prudent and meet the criteria established by the board;

10 (2) To accept appropriations, gifts, grants, bequests
11 and devise and to utilize or dispose of the same to carry
12 out its corporate purposes;

13 (3) To make and execute contracts, releases, com-
14 promises, agreements and other instruments necessary
15 or convenient for the exercise of its powers or to carry
16 out its corporate purposes;

17 (4) To collect reasonable fees and charges in connec-
18 tion with making and servicing loans, notes, bonds,
19 obligations, commitments and other evidences of
20 indebtedness, and in connection with providing techni-
21 cal, consultative and project assistance services;

22 (5) To sue and be sued;

23 (6) To have a seal and alter the same at will;

24 (7) To make, and from time to time, amend and repeal
25 bylaws and rules and regulations not inconsistent with
26 the provisions of this article;

27 (8) To hire its own employees and appoint such
28 officers and consultants as it deems advisable, and to fix
29 their compensation and prescribe their duties;

30 (9) To acquire, hold and dispose of real and personal
31 property for its corporate purposes;

32 (10) To enter into agreements or other transactions
33 with any federal or state agency, college or university,
34 any person and any domestic or foreign partnership,
35 corporation, association or organization;

36 (11) To acquire real property, or an interest therein,
37 in its own name, by purchase or foreclosure, where
38 acquisition is necessary or appropriate to protect any
39 loan in which the board has an interest and to sell,
40 transfer and convey any property to a buyer and, in the
41 event a sale, transfer or conveyance cannot be effected
42 with reasonable promptness or at a reasonable price, to
43 lease property to a tenant;

44 (12) To purchase or sell, at public or private sale, any
45 mortgage or other negotiable instrument or obligation
46 securing a loan;

47 (13) To procure insurance against any loss in connec-
48 tion with its property in such amounts, and from such
49 insurers, as may be necessary or desirable;

50 (14) To consent, whenever it considers it necessary or
51 desirable in the fulfillment of its corporate purpose, to
52 the modification of the rate of interest, time of payment
53 or any installment of principal or interest, or any other

54 terms, of investment, loan, contract or agreement of any
55 kind to which the board is a party;

56 (15) To establish training and educational programs
57 to further the purposes of this article;

58 (16) To file its own travel rules and regulations;

59 (17) To borrow money to carry out its corporate
60 purpose in such principal amounts and upon such terms
61 as shall be necessary to provide sufficient funds for
62 achieving its corporate purpose;

63 (18) To acquire, by purchase or otherwise, and to hold,
64 transfer, sell, assign, pool or syndicate or participate in
65 the syndication of, any loans, notes, mortgages, securi-
66 ties or debt instruments or other instruments evidencing
67 loans or equity interests in or for the fostering of
68 economic growth, jobs preservation and creation in the
69 state of West Virginia, and all other acts which carry
70 out the board's purpose;

71 (19) To contract with either Marshall university or
72 West Virginia university, or both, for the purpose of
73 retaining the services of, and paying the reasonable cost
74 of services performed by the institution for the board in
75 order to effectuate the purposes of this article;

76 (20) To enter into collaborative arrangements or
77 contracts with private venture capital companies when
78 deemed advisable by the board;

79 (21) To provide equity financing for any eligible
80 business that will stimulate economic growth and
81 provide or retain jobs in this state, and to hold, transfer,
82 sell, assign, pool or syndicate, or participate in the
83 syndication of, any loans, notes, mortgages, securities or
84 debt instruments or other instruments evidencing loans
85 or equity interest if in furtherance of the board's
86 corporate purposes;

87 (22) To form partnerships, create subsidiaries or take
88 all other actions necessary to qualify as a small business
89 investment company under the United States Public
90 Law (85-699) Small Business Investment Act, as
91 amended; and

92 (23) To provide for staff payroll and make purchases
93 in the same manner as the housing development fund.

§12-7-7. Limitation on investments.

1 Subject to the provisions of section nine of this article,
2 the board may invest in any eligible business: *Provided,*
3 That at the time of the placement of the investment not
4 more than twenty percent of the board's total investment
5 portfolio is so invested in one eligible business within
6 any two-year period.

§12-7-8. Funding.

1 Effective the first day of July, one thousand nine
2 hundred ninety-two, the West Virginia housing develop-
3 ment fund shall make available for the use of the board
4 ten million dollars as and when requested in accordance
5 with the provisions of section twenty-c, article eighteen,
6 chapter thirty-one of this code. The funds shall be
7 transferred to and held in a separate account at the
8 housing development fund for the trust until a disbur-
9 sement of such funds is directed by the board. No more
10 than eight million dollars may be invested in qualified
11 investments in the fiscal year one thousand nine
12 hundred ninety-three.

§12-7-9. Applications for investment priority; investment package.

1 (a) The board shall accept and review applications
2 from eligible businesses and shall determine the
3 investment worthiness and jobs creation potential of
4 each proposal, and the economic circumstances of the
5 region or regions of the state which would benefit from
6 each proposal. The board shall attempt to balance its
7 investments, as nearly as is practicable, among the
8 geographic regions of the state.

9 (b) Any public or private institution of higher
10 education in the state, or faculty or students of the
11 institution, may present for the board's consideration
12 proposals relating to innovative projects or investment
13 opportunities.

14 (c) There shall also be an annual audit conducted by

15 an independent firm of certified public accountants
16 which shall be made available to the Legislature
17 annually.

18 (d) The board shall forward to the West Virginia
19 housing development fund for its review and informa-
20 tion approved investment packages containing such
21 information as is necessary to permit the West Virginia
22 housing development fund to carry out its duties under
23 this article. The board shall determine whether each
24 applicant is an eligible business.

§12-7-10. Acceptance or rejection of investment package.

1 (a) The board may approve or disapprove an invest-
2 ment package or any portion thereof: *Provided*, That
3 notwithstanding any provision of this article to the
4 contrary, the board may not accept any investment
5 package or any portion thereof unless the same has been
6 reviewed and approved by the board's executive director
7 in his or her sole discretion.

8 (b) The board shall disapprove any investment
9 package if the business requesting such investment is
10 not in good standing with all applicable laws affecting
11 the conduct of such business. Upon request of the board,
12 each affected state agency shall provide the board with
13 such information as to the standing of each applicant,
14 notwithstanding any provision of this code to the
15 contrary.

§12-7-11. Documentary materials concerning trade secrets; commercial, financial, or personal information; confidentiality.

1 Any documentary material or data made or received
2 by the board for the purpose of furnishing assistance,
3 to the extent that such material or data consists of trade
4 secrets, commercial, financial or personal information
5 regarding the financial position or activities of such
6 business or person, shall not be considered public
7 records and shall be exempt from disclosure pursuant
8 to the provisions of chapter twenty-nine-b of this code.
9 Any discussion or consideration of such trade secrets,
10 commercial, financial or personal information may be

11 held by the board in executive session closed to the
12 public, notwithstanding the provisions of article nine-a,
13 chapter six of this code: *Provided*, That the board shall
14 make public the following information regarding
15 executed investments: (1) The names and addresses of
16 the principals of the business and its board of directors;
17 (2) the location or locations of the projects; (3) the
18 amount of the investment or financial assistance
19 provided by the board; (4) the purpose of the investment
20 or financial assistance; (5) the maturity, interest rate
21 and other pertinent terms of the investment; (6) the
22 fixed assets which serve as security for the investment;
23 and (7) names and addresses of all persons holding
24 twenty-five percent or more of the equity of the entity
25 receiving investment assistance.

**§12-7-12. Reports of board; report of housing develop-
ment fund.**

1 (a) The board shall prepare annually, or more
2 frequently if deemed necessary by the board, a report
3 of its operations and the performance of the various
4 investments administered by it. A copy thereof shall be
5 furnished to the governor, the president of the Senate,
6 the speaker of the House of Delegates, the legislative
7 auditor and, upon request, to any legislative committee.
8 Such report shall be kept available for inspection by any
9 citizen of this state.

10 (b) The West Virginia housing development fund shall
11 prepare annually and submit to the president of the
12 Senate, the speaker of the House of Delegates, the
13 legislative auditor and, upon request, any legislative
14 committee, a report on the performance of the board and
15 the quality of its investments for the preceding year.

§12-7-13. Earnings.

1 All earnings, interest and fees collected by the board
2 on or in respect of funds provided by the West Virginia
3 housing development fund shall go back into the jobs
4 development fund created pursuant to section twenty-c,
5 article eighteen, chapter thirty-one of this code, for
6 reinvestment and no such earnings, interest or fees shall
7 be considered part of the general revenue of the state.

§12-7-14. Exemption from certain requirements; audit.

1 In order to provide excellent investment opportuni-
2 ties, the investment activity provided by this article
3 shall be exempt from the bidding and public sale
4 requirements, from the approval of contractual agree-
5 ments by the department of finance and administration
6 or the attorney general and from the requirements of
7 chapter five-a of this code. The transactions provided by
8 this article shall be subject to an annual audit by an
9 independent firm of certified public accountants.

§12-7-15. Conflicts of interest.

1 (a) No member of the board or officer, agent or
2 employee thereof shall, in his or her own name or in the
3 name of a nominee, hold an ownership interest of more
4 than seven and one-half percent in any association, trust,
5 corporation, partnership or other entity which is, in its
6 own name or in the name of a nominee, a party to a
7 contract or agreement upon which the member or
8 officer, agent or employee may be called upon to act or
9 vote.

10 (b) With respect to any direct or any indirect interest,
11 other than an interest prohibited in subsection (a) of this
12 section, in a contract or agreement upon which the
13 member or officer, agent or employee may be called
14 upon to act or vote, the member of the board or officer,
15 agent or employee thereof holding such interest shall
16 disclose the same to the board secretary prior to the
17 taking of final action by the board concerning such
18 contract or agreement and shall disclose the nature and
19 extent of such interest and the date of his or her
20 acquisition thereof, which disclosure shall be publicly
21 acknowledged by the board and entered upon the
22 minutes of the board. If a member of the board or
23 officer, agent or employee thereof holds such an interest,
24 he or she shall refrain from any further involvement on
25 behalf of the board in regard to such contract or
26 agreement, from voting on any matter pertaining to
27 such contract or agreement, and from communicating
28 with other members of the board or its officers, agents
29 and employees concerning said contract or agreement.

30 Notwithstanding any other provision of law, any
31 contract or agreement entered into in conformity with
32 this subsection shall not be void or invalid by reason of
33 the interest described in this subsection, nor shall any
34 person so disclosing the interest and refraining from
35 further official involvement as provided in this subsec-
36 tion be guilty of an offense, be removed from office or
37 be subject to any other penalty or legal disability on
38 account of such interest.

39 (c) Any contract or agreement made in violation of
40 subsection (a) or (b) of this section shall be null and void
41 and shall give rise to no civil or criminal action against
42 the board or any member thereof.

§12-7-16. Credit of state not pledged.

1 No provisions of this article shall be construed to
2 authorize the jobs investment trust board at any time
3 or in any manner to pledge the credit or taxing power
4 of the state, nor shall any of the obligations or debts
5 created by the jobs investment trust board under the
6 authority herein granted be deemed to be obligations of
7 the state.

CHAPTER 31. CORPORATIONS.

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-6. Corporate powers.

§31-18-20a. Land development fund.

§31-18-20c. Jobs development fund.

§31-18-6. Corporate powers.

1 The housing development fund is hereby granted, has
2 and may exercise all powers necessary or appropriate
3 to carry out and effectuate its corporate purpose,
4 including, but not limited to, the following:

5 (1) To make or participate in the making of federally
6 insured construction loans to sponsors of land develop-
7 ment, residential housing or nonresidential projects.
8 Such loans shall be made only upon determination by
9 the housing development fund that construction loans
10 are not otherwise available, wholly or in part, from
11 private lenders upon reasonably equivalent terms and

12 conditions;

13 (2) To make temporary loans, with or without interest,
14 but with such security for repayment as the housing
15 development fund determines reasonably necessary and
16 practicable, from the operating loan fund, if created,
17 established, organized and operated in accordance with
18 the provisions of section nineteen of this article, to
19 defray development costs to sponsors of land develop-
20 ment, residential housing or nonresidential projects
21 which are eligible or potentially eligible for federally
22 insured construction loans, federally insured mortgages,
23 federal mortgages or uninsured construction loans or
24 uninsured mortgage loans;

25 (3) To make or participate in the making of long-term
26 federally insured mortgage loans to sponsors of land
27 development, residential housing or nonresidential
28 projects. Such loans shall be made only upon determi-
29 nation by the housing development fund that long-term
30 mortgage loans are not otherwise available, wholly or in
31 part, from private lenders upon reasonably equivalent
32 terms and conditions;

33 (4) To establish residential housing and nonresidential
34 and land development projects for counties declared to
35 be in a disaster area by the Federal Emergency
36 Management Agency or other agency or instrumentality
37 of the United States or this state;

38 (5) To accept appropriations, gifts, grants, bequests
39 and devises and to utilize or dispose of the same to carry
40 out its corporate purpose;

41 (6) To make and execute contracts, releases, com-
42 promises, compositions and other instruments necessary
43 or convenient for the exercise of its powers, or to carry
44 out its corporate purpose;

45 (7) To collect reasonable fees and charges in connec-
46 tion with making and servicing loans, notes, bonds,
47 obligations, commitments and other evidences of
48 indebtedness, and in connection with providing techni-
49 cal, consultative and project assistance services;

50 (8) To invest any funds not required for immediate

51 disbursement in any of the following securities:

52 (i) Direct obligations of or obligations guaranteed by
53 the United States of America or for the payment of the
54 principal and interest on which the full faith and credit
55 of the United States of America is pledged;

56 (ii) Bonds, debentures, notes or other evidences of
57 indebtedness issued by any of the following agencies:
58 Banks for cooperatives; federal intermediate credit
59 banks; federal home loan bank system; export-import
60 bank of the United States; federal land banks; Tennessee
61 valley authority; United States postal service; inter-
62 American development bank; international bank for
63 reconstruction and development; small business admin-
64 istration; Washington metropolitan area transit author-
65 ity; general services administration; federal financing
66 bank; federal home loan mortgage corporation; student
67 loan marketing association; farmer's home administra-
68 tion; the federal national mortgage association or the
69 government national mortgage association; or any bond,
70 debenture, note, participation certificate or other
71 similar obligation to the extent such obligations are
72 guaranteed by the government national mortgage
73 association or federal national mortgage association or
74 are issued by any other federal agency and backed by
75 the full faith and credit of the United States of America;

76 (iii) Public housing bonds issued by public agencies
77 or municipalities and fully secured as to the payment
78 of both principal and interest by a pledge of annual
79 contributions under an annual contributions contract or
80 contracts with the United States of America; or
81 temporary notes, preliminary loan notes, or project notes
82 issued by public agencies or municipalities, in each case,
83 fully secured as to the payment of both principal and
84 interest by a requisition or payment agreement with the
85 United States of America;

86 (iv) Certificates of deposit, time deposits, investment
87 agreements, repurchase agreements or similar banking
88 arrangements with a member bank or banks of the
89 federal reserve system or a bank the deposits of which
90 are insured by the federal deposit insurance corporation,

91 or its successor, or a savings and loan association or
92 savings bank the deposits of which are insured by the
93 federal savings and loan insurance corporation, or its
94 successor, or government bond dealers reporting to,
95 trading with and recognized as primary dealers by a
96 federal reserve bank: *Provided*, That such investments
97 shall only be made to the extent insured by the federal
98 deposit insurance corporation or the federal savings and
99 loan insurance corporation or to the extent that the
100 principal amount thereof shall be fully collateralized by
101 obligations which are authorized investments for the
102 housing development fund pursuant to this section;

103 (v) Direct obligations of or obligations guaranteed by
104 the state of West Virginia;

105 (vi) Direct and general obligations of any other state,
106 municipality or other political subdivision within the
107 territorial United States: *Provided*, That at the time of
108 their purchase, such obligations are rated in either of
109 the two highest rating categories by a nationally
110 recognized bond-rating agency;

111 (vii) Any bond, note, debenture or annuity issued by
112 any corporation organized and operating within the
113 United States: *Provided*, That such corporation shall
114 have a minimum net worth of fifteen million dollars and
115 its securities or its parent corporation's securities are
116 listed on one or more of the national stock exchanges:
117 *Provided, however*, That: (1) Such corporation has
118 earned a profit in eight of the preceding ten fiscal years
119 as reflected in its statements; and (2) such corporation
120 has not defaulted in the payment of principal or interest
121 on any of its outstanding funded indebtedness during its
122 preceding ten fiscal years; and (3) the bonds, notes or
123 debentures of such corporation to be purchased are
124 rated "AA" or the equivalent thereof or better than
125 "AA" or the equivalent thereof by at least two or more
126 nationally recognized rating services such as Standard
127 and Poor's, Dunn & Bradstreet, Best's or Moody's;

128 (viii) If entered into solely for the purpose of reducing
129 investment, interest rate, liquidity or other market risks
130 in relation to obligations issued or to be issued or owned
131 or to be owned by the housing development fund,

132 options, futures contracts (including index futures but
133 exclusive of commodities futures, options or other
134 contracts), standby purchase agreements or similar
135 hedging arrangements listed by a nationally recognized
136 securities exchange or a corporation described in
137 paragraph (vii) above;

138 (ix) Certificates, shares or other interests in mutual
139 funds, unit trusts or other entities registered under
140 section eight of the United States Investment Company
141 Act of 1940, but only to the extent that the terms on
142 which the underlying investments are to be made
143 prevent any more than a minor portion of the pool which
144 is being invested in to consist of obligations other than
145 investments permitted pursuant to this section; and

146 (x) To the extent not inconsistent with the express
147 provisions of this section, obligations of the West
148 Virginia state board of investments or any other
149 obligation authorized as an investment for the West
150 Virginia state board of investments under article six,
151 chapter twelve of this code or for a public housing
152 authority under article fifteen, chapter sixteen of this
153 code;

154 (9) To sue and be sued;

155 (10) To have a seal and alter the same at will;

156 (11) To make, and from time to time, amend and
157 repeal bylaws and rules and regulations not inconsistent
158 with the provisions of this article;

159 (12) To appoint such officers, employees and consul-
160 tants as it deems advisable and to fix their compensation
161 and prescribe their duties;

162 (13) To acquire, hold and dispose of real and personal
163 property for its corporate purposes;

164 (14) To enter into agreements or other transactions
165 with any federal or state agency, any person and any
166 domestic or foreign partnership, corporation, association
167 or organization;

168 (15) To acquire real property, or an interest therein,
169 in its own name, by purchase or foreclosure, where such
170 acquisition is necessary or appropriate to protect any

171 loan in which the housing development fund has an
172 interest and to sell, transfer and convey any such
173 property to a buyer and, in the event of such sale,
174 transfer or conveyance cannot be effected with reason-
175 able promptness or at a reasonable price, to lease such
176 property to a tenant;

177 (16) To purchase or sell, at public or private sale, any
178 mortgage or other negotiable instrument or obligation
179 securing a construction, rehabilitation, improvement,
180 land development, mortgage or temporary loan;

181 (17) To procure insurance against any loss in connec-
182 tion with its property in such amounts, and from such
183 insurers, as may be necessary or desirable;

184 (18) To consent, whenever it deems it necessary or
185 desirable in the fulfillment of its corporate purpose, to
186 the modification of the rate of interest, time of payment
187 or any installment of principal or interest, or any other
188 terms, of mortgage loan, mortgage loan commitment,
189 construction loan, rehabilitation loan, improvement
190 loan, temporary loan, contract or agreement of any kind
191 to which the housing development fund is a party;

192 (19) To make and publish rules and regulations
193 respecting its federally insured mortgage lending,
194 uninsured mortgage lending, construction lending,
195 rehabilitation lending, improvement lending and lend-
196 ing to defray development costs and any such other rules
197 and regulations as are necessary to effectuate its
198 corporate purpose;

199 (20) To borrow money to carry out and effectuate its
200 corporate purpose and to issue its bonds or notes as
201 evidence of any such borrowing in such principal
202 amounts and upon such terms as shall be necessary to
203 provide sufficient funds for achieving its corporate
204 purpose, except that no notes shall be issued to mature
205 more than ten years from date of issuance and no bonds
206 shall be issued to mature more than fifty years from
207 date of issuance;

208 (21) To issue renewal notes, to issue bonds to pay notes
209 and, whenever it deems refunding expedient, to refund
210 any bonds by the issuance of new bonds, whether the

211 bonds to be refunded have or have not matured except
212 that no such renewal notes shall be issued to mature
213 more than ten years from date of issuance of the notes
214 renewed and no such refunding bonds shall be issued to
215 mature more than fifty years from the date of issuance;

216 (22) To apply the proceeds from the sale of renewal
217 notes or refunding bonds to the purchase, redemption or
218 payment of the notes or bonds to be refunded;

219 (23) To make grants and provide technical services to
220 assist in the purchase or other acquisition, planning,
221 processing, design, construction, or rehabilitation,
222 improvement or operation of residential housing,
223 nonresidential projects or land development: *Provided,*
224 That no such grant or other financial assistance shall be
225 provided except upon a finding by the housing develop-
226 ment fund that such assistance and the manner in which
227 it will be provided will preserve and promote residential
228 housing in this state or the interests of this state in
229 maintaining or increasing employment or the tax base;

230 (24) To provide project assistance services for residen-
231 tial housing, nonresidential projects and land develop-
232 ment, including, but not limited to, management,
233 training and social and other services;

234 (25) To promote research and development in scien-
235 tific methods of constructing low cost land development,
236 residential housing or nonresidential projects of high
237 durability including grants, loans or equity contribu-
238 tions for research and development purposes: *Provided,*
239 That no such grant or other financial assistance shall be
240 provided except upon a finding by the housing develop-
241 ment fund that such assistance and the manner in which
242 it will be provided will preserve and promote residential
243 housing in this state or the interests of this state in
244 maintaining and increasing employment and the tax
245 base;

246 (26) With the proceeds from the issuance of notes or
247 bonds of the housing development fund, including, but
248 not limited to, mortgage finance bonds, or with other
249 funds available to the housing development fund for
250 such purpose, to participate in the making of or to make

251 loans to mortgagees approved by the housing develop-
252 ment fund and take such collateral security therefor as
253 is approved by the housing development fund and to
254 invest in, purchase, acquire, sell or participate in the
255 sale of, or take assignments of, notes and mortgages,
256 evidencing loans for the construction, rehabilitation,
257 improvement, purchase or refinancing of land develop-
258 ment, residential housing or nonresidential projects in
259 this state: *Provided*, That the housing development fund
260 shall obtain such written assurances as shall be
261 satisfactory to it that the proceeds of such loans,
262 investments or purchases will be used, as nearly as
263 practicable, for the making of or investment in long-
264 term federally insured mortgage loans or federally
265 insured construction loans, uninsured mortgage loans or
266 uninsured construction loans, for land development,
267 residential housing or nonresidential projects or that
268 other moneys in an amount approximately equal to such
269 proceeds shall be committed and used for such purpose;

270 (27) To make or participate in the making of unin-
271 sured construction loans for land development, residen-
272 tial housing or nonresidential projects. Such loans shall
273 be made only upon determination by the housing
274 development fund that construction loans are not
275 otherwise available, wholly or in part, from private
276 lenders upon reasonably equivalent terms and
277 conditions;

278 (28) To make or participate in the making of long-
279 term uninsured mortgage loans for land development,
280 residential housing or nonresidential projects. Such
281 loans shall be made only upon determination by the
282 housing development fund that long-term mortgage
283 loans are not otherwise available, wholly or in part, from
284 private lenders upon reasonably equivalent terms and
285 conditions;

286 (29) To obtain options to acquire real property, or any
287 interest therein, in its own name, by purchase, or lease
288 or otherwise, which is found by the housing development
289 fund to be suitable, or potentially suitable, as a site, or
290 as part of a site, for land development or the construc-
291 tion of residential housing or nonresidential projects; to

292 hold such real property or to acquire by purchase or
293 otherwise and to transfer by sale or otherwise any
294 ownership or equity interests in any other legal entity
295 which holds such real property; to finance the perfor-
296 mance of land development, residential housing or
297 nonresidential projects on or in connection with any such
298 real property or to perform land development, residen-
299 tial housing or nonresidential projects on or in connec-
300 tion with any such real property; to own, operate and
301 sponsor or participate in the sponsorship of land
302 development, residential housing or nonresidential
303 projects; or to sell, transfer and convey, lease or
304 otherwise dispose of such real property, or lots, tracts
305 or parcels of such real property, for such prices, upon
306 such terms, conditions and limitations, and at such time
307 or times as the housing development fund shall
308 determine;

309 (30) To make loans, with or without interest, but with
310 such security for repayment as the housing development
311 fund determines reasonably necessary and practicable
312 from the land development fund, if created, established,
313 organized and operated in accordance with the provi-
314 sions of section twenty-a of this article, to sponsors of
315 land development, to defray development costs and other
316 costs of land development;

317 (31) To exercise all of the rights, powers and author-
318 ities of a public housing authority as set forth and
319 provided in article fifteen, chapter sixteen of this code,
320 in any area or areas of the state which the housing
321 development fund shall determine by resolution to be
322 necessary or appropriate;

323 (32) To provide assistance to urban renewal projects
324 in accordance with the provisions of section twenty-
325 eight, article eighteen, chapter sixteen of this code and
326 in so doing to exercise all of the rights, powers and
327 authorities granted in this article or in said article, in
328 and for any communities of the state which the housing
329 development fund shall determine by resolution to be
330 necessary or appropriate;

331 (33) To make or participate in the making of loans for

332 the purpose of rehabilitating or improving existing
333 residential and temporary housing or nonresidential
334 projects, or to owners of existing residential or tempor-
335 ary housing for occupancy by eligible persons and
336 families for the purpose of rehabilitating or improving
337 such residential or temporary housing or nonresidential
338 projects and, in connection therewith, to refinance
339 existing loans involving the same property. Such loans
340 shall be made only upon determination by the housing
341 development fund that rehabilitation or improvement
342 loans are not otherwise available, wholly or in part, from
343 private lenders upon reasonably equivalent terms and
344 conditions;

345 (34) Whenever the housing development fund deems
346 it necessary in order to exercise any of its powers set
347 forth in subdivision (29) of this section, and upon being
348 unable to agree with the owner or owners of real
349 property or interest therein sought to be acquired by the
350 fund upon a price for acquisition of private property not
351 being used or operated by the owner in the production
352 of agricultural products, to exercise the powers of
353 eminent domain in the acquisition of such real property
354 or interest therein in the manner provided under
355 chapter fifty-four of this code, and the purposes set forth
356 in said subdivision are hereby declared to be public
357 purposes for which private property may be taken. For
358 the purposes of this section, the determination of "use
359 or operation by the owner in the production of agricul-
360 tural products" means that the principal use of such real
361 estate is for the production of food and fiber by
362 agricultural production other than forestry, and the
363 fund shall not initiate or exercise any powers of eminent
364 domain without first receiving an opinion in writing
365 from both the governor and the commissioner of
366 agriculture of this state that at the time the fund had
367 first attempted to acquire such real estate or interest
368 therein, such real estate or interest therein was not in
369 fact being used or operated by the owner in the
370 production of agricultural products;

371 (35) To acquire, by purchase or otherwise, and to hold,
372 transfer, sell, assign, pool or syndicate, or participate in

373 the syndication of, any loans, notes, mortgages, securi-
374 ties or debt instruments collateralized by mortgages or
375 interests in mortgages or other instruments evidencing
376 loans or equity interests in or for the construction,
377 rehabilitation, improvement, renovation, purchase or
378 refinancing of land development, residential housing
379 and nonresidential projects in this state; and

380 (36) To form one or more nonprofit corporations,
381 whose board of directors shall be the same as the board
382 of directors of the housing development fund, which
383 shall be authorized and empowered to carry out any or
384 all of the corporate powers or purposes of the housing
385 development fund, including, without limitation, acquir-
386 ing limited or general partnership interests and other
387 forms of equity ownership.

§31-18-20a. Land development fund.

1 (a) The board of directors of the housing development
2 fund may create and establish a special revolving fund
3 of moneys made available by appropriation, grant,
4 contribution or loan, to be known as the land develop-
5 ment fund and to be governed, administered and
6 accounted for by the directors, officers and managerial
7 staff of the housing development fund as a special
8 purpose account separate and distinct from any other
9 moneys, fund or funds owned and managed by the
10 housing development fund.

11 (b) The purpose of the land development fund shall
12 be to provide a source from which the housing develop-
13 ment fund may finance development costs and land
14 development in this state by making loans or grants
15 therefrom, such loans to be with or without interest and
16 with such security for repayment as the housing
17 development fund deems reasonably necessary and
18 practicable, or by expending moneys therefrom, for
19 development costs and land development in this state.

20 (c) The housing development fund may invest and
21 reinvest all moneys in the land development fund in any
22 investments authorized under section six of this article,
23 pending the disbursement thereof in connection with the
24 financing of development costs and land development in

25 this state.

26 (d) No loans shall be made by the housing develop-
27 ment fund from the land development fund except in
28 accordance with a written loan agreement which shall
29 include, but not be limited to, the following terms and
30 conditions:

31 (1) The proceeds of all such loans shall be used only
32 for development costs and land development;

33 (2) All such loans shall be repaid in full, with or
34 without interest, as provided in the agreement;

35 (3) All repayments shall be made concurrent with
36 receipt by the borrower of the proceeds of a construction
37 loan or mortgage, as the case may be, or at such other
38 times as the housing development fund deems reason-
39 ably necessary or practicable; and

40 (4) Specification of such security for repayments upon
41 such terms and conditions as the housing development
42 fund deems reasonably necessary or practicable.

43 (e) No grants shall be made by the housing develop-
44 ment fund from the land development fund except in
45 accordance with a written grant agreement which shall
46 require that the proceeds of all such grants shall be used
47 only for development costs or land development and
48 containing such other terms and provisions as the
49 housing development fund may require to ensure that
50 the public purposes of this article are furthered by such
51 grant.

52 (f) The housing development fund may expend any
53 income from the financing of development costs and
54 land development with moneys in the land development
55 fund, and from investment of such moneys, in payment,
56 or reimbursement, of all expenses of the housing
57 development fund which, as determined in accordance
58 with procedures approved by the board of directors of
59 the housing development fund, are fairly allocable to
60 such financing or its land-development activities:
61 *Provided*, That no funds from the land development
62 fund shall be used to carry on propaganda, or otherwise
63 attempt to influence legislation.

64 (g) The housing development fund shall create and
65 establish a special account within the land development
66 fund to be designated as the "special project account"
67 into which the housing development fund shall, effective
68 the first day of July, one thousand nine hundred ninety-
69 two, deposit the sum of ten million dollars. Such funds
70 shall be governed, administered and accounted for by
71 the housing development fund as a special purpose
72 account separate and distinct from any other moneys,
73 fund or funds owned or managed by the housing
74 development fund. The sole and exclusive purpose of
75 such account shall be to provide a source of funds for
76 the financing of infrastructure projects including
77 distribution from time to time to the West Virginia
78 water pollution control revolving fund created pursuant
79 to section three, article five-i, chapter twenty of this
80 code: *Provided*, That such distribution shall not exceed
81 five million four hundred fifty thousand dollars; and
82 distribution from time to time to fund soil conservation
83 projects: *Provided, however*, That such distribution shall
84 not exceed four million five hundred fifty thousand
85 dollars. Until so disbursed, the moneys initially depos-
86 ited or thereafter from time to time deposited in such
87 special project account, may be invested and reinvested
88 by the housing development fund as permitted under
89 subdivision (8), section six of this article. Any funds
90 remaining in the special project account on the first day
91 of July, one thousand nine hundred ninety-five, shall
92 automatically revert to the general fund of the housing
93 development fund free of any limitations provided in
94 this section. The provisions of subsections (c), (d), (e) and
95 (f) of this section shall not apply to the special project
96 account created in this section.

§31-18-20c. Jobs development fund.

1 There is hereby created and established a special fund
2 to be designated as the "jobs development fund" into
3 which the housing development fund shall, effective the
4 first day of July, one thousand nine hundred ninety-two,
5 deposit the sum of ten million dollars. Thereafter, the
6 housing development fund shall have no further duty or
7 obligation to, but may in its sole discretion, deposit

8 additional funds. Such funds shall be governed, admin-
9 istered and accounted for by the housing development
10 fund as a special purpose account separate and distinct
11 from any other moneys, fund or funds owned or
12 managed by the housing development fund. The sole and
13 exclusive purpose of such fund shall be to provide a
14 source for distribution from time to time to the jobs
15 investment trust as provided for in article seven,
16 chapter twelve of this code. Upon receipt by the housing
17 development fund from time to time of a written
18 requisition from the trust together with a certificate
19 that the funds so requisitioned will be used in accor-
20 dance with the provisions of article seven, chapter
21 twelve of this code and are expected to be expended
22 within thirty days after such disbursement to fund a
23 loan or other investment or to pay the operating
24 expenses of the trust, the housing development fund
25 shall disburse the amount so requisitioned. Until so
26 disbursed, the moneys initially deposited or thereafter
27 from time to time deposited in such fund may be
28 invested and reinvested by the housing development
29 fund as permitted under subdivision (8), section six of
30 this article. Upon the dissolution or the termination of
31 the jobs investment trust board, any funds remaining in
32 the jobs development fund shall automatically revert to
33 the general fund of the housing development fund free
34 of any limitations provided in this section.

CHAPTER 34

(S. B. 17—By Senator Holliday)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, five, six, seven, eight, eleven, twelve and thirteen, article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto two new sections, designated sections fifteen-a and fifteen-b; and to amend chapter forty-six-a of said

code by adding thereto a new article, designated article six-d, all relating to the solicitation by profit business entities and nonprofit charitable organizations generally; revising provisions governing the solicitation of charitable funds; redefining the term charitable organization; changing the membership requirements of the commission; requiring charitable organizations to file final reports to reflect activities not shown in their last report before withdrawing from the state; removing the requirement that the percentage of funds remaining in the state be included in the registration application; changing the financial disclosure requirements in applications; requiring the filing of support documentation provided to the charitable organization by its fund-raising contractor; redefining the exemption for churches; limiting the exemption for youth athletic organizations; revising disclosure requirements; removing and restating the notice on printed solicitations requirement; requiring the filing of final settlement reports on contracts between charitable organizations and fund-raising contractors; removing the percentage of solicitations requirement at the point of solicitation; clarifying the definition of reasonable donor expectation; defining independent governing boards and conflicts of interest for those boards; deleting the reciprocal law provision; defining prohibited solicitations; removing the requirement that solicitors carry authorizations; providing for private and class actions for violations of this article; providing for civil penalties for intentional violations of the article; creating a special revenue fund for the deposit of proceeds of penalties and other funds; creating the "Prizes and Gifts Act"; requiring that prizes, gifts or items of value be delivered to a consumer within ten days of the representation, without obligation; requiring disclosure of the sponsor and eligibility conditions; mandating the disclosure of costs and expenses; prohibiting certain methods of notification; and establishing a penalty for fraudulent acts or practices.

Be it enacted by the Legislature of West Virginia:

That sections two, three, five, six, seven, eight, eleven,

twelve and thirteen, article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections fifteen-a and fifteen-b; and that chapter forty-six-a of said code be amended by adding thereto a new article, designated article six-a, all to read as follows:

Chapter

29. Miscellaneous Boards and Officers.

46A. West Virginia Consumer Credit and Protection Act.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

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§29-19-2. Definitions.

1 As used in this article:

- 2 (1) "Charitable organization" means a person who is
 3 or holds itself out to be a benevolent, educational,
 4 philanthropic, humane, patriotic, religious or eleemosy-
 5 nary organization, or any person who solicits or obtains
 6 contributions solicited from the public for charitable
 7 purposes, or any person who in any manner employs any
 8 appeal for contributions which may be reasonably
 9 interpreted to suggest that any part of such contribu-
 10 tions will be used for charitable purposes. A chapter,
 11 branch, area, office or similar affiliate or any person
 12 soliciting contributions within the state for a charitable
 13 organization which has its principal place of business
 14 outside the state is a charitable organization for the
 15 purposes of this article.

16 (2) "Contribution" means the promise or grant of any
17 money or property of any kind or value.

18 (3) "Solicit" and "solicitation" means the request or
19 appeal, directly or indirectly, for any contribution on the
20 plea or representation that such contribution will be
21 used for a charitable purpose, including, without
22 limitation, the following methods of requesting such
23 contribution:

24 (a) Any oral or written request;

25 (b) Any announcement to the press, over the radio or
26 television, or by telephone or telegraph, concerning an
27 appeal or campaign to which the public is requested to
28 make a contribution for any charitable purpose con-
29 nected therewith;

30 (c) The distribution, circulation, posting or publishing
31 of any handbill, written advertisement or other publi-
32 cation which directly or by implication seeks to obtain
33 public support; or

34 (d) The sale of, offer or attempt to sell, any advertise-
35 ment, advertising space, subscription, ticket or any
36 service or tangible item in connection with which any
37 appeal is made for any charitable purpose or where the
38 name of any charitable or civic organization is used or
39 referred to in any such appeal as an inducement or
40 reason for making any such sale, or when or where in
41 connection with any such sale, any statement is made
42 that the whole or any part of the proceeds from any such
43 sale will be donated to any charitable purpose.

44 "Solicitation", as defined herein, shall be deemed to
45 occur when the request is made, at the place the request
46 is received, whether or not the person making the same
47 actually receives any contribution.

48 (4) "Federated fund-raising organization" means a
49 federation of independent charitable organizations
50 which have voluntarily joined together, including, but
51 not limited to, a united fund or community chest, for
52 purposes of raising and distributing money for and
53 among themselves and where membership does not
54 confer operating authority and control of the individual

55 agencies upon the federated group organization.

56 (5) "Parent organization" is that part of a charitable
57 organization which coordinates, supervises or exercises
58 control over policy, fund raising and expenditures, or
59 assists, receives funds from or advises one or more
60 chapters, branches or affiliates in the state.

61 (6) "Person" means any individual, organization, trust,
62 foundation, group, association, partnership, corporation,
63 society or any combination of them.

64 (7) "Professional fund-raising counsel" means any
65 person who for a flat fixed fee under a written
66 agreement plans, conducts, manages, carries on, advises
67 or acts as a consultant, whether directly or indirectly,
68 in connection with soliciting contributions for, or on
69 behalf of any charitable organization but who actually
70 solicits no contributions as a part of such services. A
71 bona fide salaried officer or employee of a charitable
72 organization maintaining a permanent establishment
73 within the state shall not be deemed to be a professional
74 fund-raising counsel.

75 (8) "Professional solicitor" means any person who, for
76 a financial or other consideration, solicits contributions
77 for, or on behalf of a charitable organization, whether
78 such solicitation is performed personally or through said
79 person's agents, servants or employees specially em-
80 ployed by, or for a charitable organization, who are
81 engaged in the solicitation of contributions under the
82 direction of such person, or a person who plans,
83 conducts, manages, carries on, advises or acts as a
84 consultant to a charitable organization in connection
85 with the solicitation of contributions but does not qualify
86 as "professional fund-raising counsel" within the
87 meaning of this article. A bona fide salaried officer or
88 employee of a charitable organization maintaining a
89 permanent establishment within the state is not a
90 professional solicitor.

91 No attorney, investment counselor or banker, who
92 advises any person to make a contribution to a charit-
93 able organization, shall be considered, as the result of

94 such advice, a professional fund-raising counsel or a
95 professional solicitor.

96 (9) "Commission" means the commission on charitable
97 organizations herein created.

§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, two members from the
6 staff of the department of health and human resources
7 to be designated by the secretary of health and human
8 resources and three members to be appointed by the
9 governor who shall serve at his will and pleasure.

10 (b) The commission shall serve as body advisory to the
11 secretary of state and, as such, shall have the following
12 powers and duties:

13 (1) To hold investigations as provided in section fifteen
14 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;

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 in furtherance of this article in
29 accordance with the provisions of chapter twenty-nine-
30 a of this code.

§29-19-5. Registration of charitable organizations; fee.

1 (a) Every charitable organization, except as provided
2 in section six of this article, which intends to solicit
3 contributions within this state or to have funds solicited
4 on its behalf shall, prior to any solicitation, file a
5 registration statement with the secretary of state upon
6 forms prescribed by him or her, which shall be good for
7 one full year and which shall be refiled in the next and
8 each following year in which such charitable organiza-
9 tion is engaged in solicitation activities. If an organiza-
10 tion discontinues solicitation at any time after its last
11 registration filing, then it must file a registration
12 statement reflecting its activities during its last fiscal
13 year in which solicitation in West Virginia took place.
14 It shall be the duty of the president, chairman or
15 principal officer of such charitable organization to file
16 the statements required under this article. Such
17 statements shall be sworn to and shall contain the
18 following information:

19 (1) The name of the organization and the purpose for
20 which it was organized;

21 (2) The principal address of the organization and the
22 address of any offices in this state. If the organization
23 does not maintain an office, the name and address of the
24 person having custody of its financial records;

25 (3) The names and addresses of any chapters,
26 branches or affiliates in this state;

27 (4) The place where and the date when the organiza-
28 tion was legally established, the form of its organization;

29 (5) The names and addresses of the officers, directors,
30 trustees and the principal salaried executive staff
31 officer;

32 (6) A copy of a balance sheet and a statement or report
33 of income and expenses for the organization's imme-
34 diately preceding fiscal year, or a financial statement
35 reporting information showing the kind and amount of
36 funds raised during the preceding fiscal year, the costs
37 and expenses incidental thereto and showing how the
38 funds were disbursed or allocated for the same fiscal
39 year: *Provided*, That for organizations raising more than

40 fifty thousand dollars per year in contributions, the
41 balance sheet and income and expense statement, or
42 financial statement provided, shall be audited by an
43 independent public accountant. Organizations are
44 required to report the amount of money raised in the
45 state and the amount spent in the state for charitable
46 purposes;

47 (7) A copy of any determination of the organization's
48 tax exempt status under the provisions of 26 U.S.C.
49 §501(c)(3) and a copy of the last filed Internal Revenue
50 Service form 990 and Schedule A for every charitable
51 organization and any parent organization;

52 (8) Whether the organization intends to solicit
53 contributions from the public directly or have such done
54 on its behalf by others;

55 (9) Whether the organization is authorized by any
56 other governmental authority to solicit contributions
57 and whether it is or has ever been enjoined by any court
58 from soliciting contributions;

59 (10) The general purpose or purposes for which the
60 contributions to be solicited shall be used;

61 (11) The name or names under which it intends to
62 solicit contributions;

63 (12) The names of the individuals or officers of the
64 organization who will have final responsibility for the
65 custody of the contributions;

66 (13) The names of the individuals or officers of the
67 organization responsible for the final distribution of the
68 contributions; and

69 (14) Copies of all contract documentation from
70 professional fund-raising counsels and professional
71 solicitors as provided for in subsection (d), section seven
72 of this article.

73 (b) Each chapter, branch or affiliate, except an
74 independent member agency of a federated fund-raising
75 organization, may separately report the information
76 required by this subsection, or report the information to
77 its parent organization which shall then furnish such

78 information as to its West Virginia affiliates, chapters
79 and branches in a consolidated form to the secretary of
80 state. An independent member agency of a federated
81 fund-raising organization, as hereinbefore defined, shall
82 comply with the provisions of this article independently.
83 Each organization shall file a separate registration form
84 for each name under which funds will be solicited.

85 (c) The registration forms and any other documents
86 prescribed by the secretary of state shall be signed by
87 an authorized officer or by an independent public
88 accountant and by the chief fiscal officer of the
89 charitable organization and shall be verified under oath.

90 (d) Every charitable organization collecting less than
91 one million dollars during any year which submits an
92 independent registration to the secretary of state shall
93 pay an annual registration fee of fifteen dollars; every
94 charitable organization collecting more than one million
95 dollars during one year which submits an independent
96 registration to the secretary of state shall pay an annual
97 registration fee of fifty dollars; a parent organization
98 filing on behalf of one or more chapters, branches or
99 affiliates or a single organization filing under different
100 names shall pay a single annual registration fee of fifty
101 dollars for itself and such chapters, branches or
102 affiliates included in the registration statement.

**§29-19-6. Certain persons and organizations exempt
from registration.**

1 (a) The following charitable organizations shall not be
2 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) Churches, synagogues, associations or conventions
32 of churches, religious orders or religious organizations
33 that are an integral part of a church which qualifies as
34 tax exempt under the provisions of 26 U.S.C. §501(c)(3)
35 as the same is in effect on the effective date of this
36 section;

37 (6) Any person, firm, corporation or organization that
38 sponsors a single fund-raising event for the benefit of
39 a named charitable organization where all or part of the
40 funds collected are donated to the named charitable
41 organization: *Provided*, That the named charitable
42 organization receiving the funds is registered pursuant
43 to this article, reports each of these donations individ-
44 ually, and certifies that no funds were withheld by the
45 organization that solicited the funds.

46 (b) The following charitable organizations are exempt
47 from filing an annual registration statement with the
48 secretary of state if they do not employ a professional
49 solicitor or fundraiser or do not intend to solicit and
50 receive and do not actually raise or receive contributions
51 from the public in excess of ten thousand dollars during
52 a calendar year:

- 53 (1) Local youth athletic organizations;
54 (2) Community civic clubs;
55 (3) Community service clubs;
56 (4) Fraternal organizations;
57 (5) Labor unions;
58 (6) Local posts, camps, chapters or similarly desig-
59 nated elements or county units of such elements of bona
60 fide veterans organizations or auxiliaries which issue
61 charters to such local elements throughout the state;
62 (7) Bona fide organizations of volunteer firemen or
63 auxiliaries;
64 (8) Bona fide ambulance associations or auxiliaries;
65 (9) Bona fide rescue squad associations or auxiliaries.
66 Charitable organizations which do not intend to solicit
67 and receive in excess of ten thousand dollars, but do
68 receive in excess of that amount from the public, shall
69 file the annual registration statement within thirty days
70 after contributions are in excess of ten thousand dollars.

§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 by the professional fund-
4 raising counsel with the secretary of state within ten
5 days after said parties have entered into such contract
6 or agreement.
7 (b) Every written contract or agreement between a
8 professional solicitor and a charitable organization shall
9 be filed by the professional solicitor with the secretary
10 of state within ten days after said parties have entered
11 into such agreement or contract. In the absence of a
12 written contract or agreement between a professional
13 solicitor and a charitable organization, a written
14 statement of the nature of the arrangement to prevail
15 in lieu thereof shall be filed.
16 (c) Each statement must clearly provide the amount,
17 percentage or other method of compensation to be

18 received by the professional solicitor or professional
19 fund-raising counsel as a result of the contract or
20 arrangement.

21 (d) Each charitable organization, as part of its
22 registration as required in section five of this article,
23 shall file with the secretary of state copies of all
24 documents reflecting the final settlement amounts for a
25 solicitation contract or, in the case of multiple year
26 contracts, documents reflecting the total amount of
27 money, funds or other property raised and expenses
28 incurred by the professional fund-raising counsel or
29 professional solicitor in a fiscal year.

30 (e) For purposes of this section, the total moneys,
31 funds, pledges or other property raised or received shall
32 not include the actual cost to the charitable organization
33 or professional solicitor of goods sold or service provided
34 to the public in connection with the soliciting of
35 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 not stated in its solicitation materials.

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 Every printed solicitation shall include the following
18 statement: "West Virginia residents may obtain a
19 summary of the registration and financial documents

20 from the Secretary of State, State Capitol, Charleston,
21 West Virginia 25305. Registration does not imply
22 endorsement.”

23 The disclosure statement shall be conspicuously
24 displayed on any written or printed solicitation. Where
25 the solicitation consists of more than one piece, the
26 disclosure statement shall be displayed on a prominent
27 part of the solicitation materials.

28 Organizations applying for registration shall be
29 reviewed according to the following standards:

30 (a) Charitable organizations shall include in each
31 solicitation a clear description of programs for which
32 funds are requested and source from which written
33 information is available pursuant to section thirteen of
34 this article. Expenditures shall be related in a primary
35 degree to stated purpose (programs and activities)
36 described in solicitations and in accordance with
37 reasonable donor expectations. For purposes of this
38 section, reasonable donor expectation requires that a
39 charitable organization shall not expend funds in ways
40 that are not apparent to a donor from the text of the
41 presentation as being obvious or potential uses for his
42 contribution. The reasonable donor expectation standard
43 shall apply to all expenditures made by the charitable
44 organization when compared to the solicitation mate-
45 rials used.

46 (b) Charitable organizations shall establish and
47 exercise controls over fund-raising activities conducted
48 for the organizations' benefit, including written con-
49 tracts and agreements and assurance of fund-raising
50 activities without excessive pressure.

51 (c) Each charitable organization shall establish an
52 independent governing board which shall oversee the
53 expenditures, policies, programs and purposes of the
54 charity's activities. The independent governing board
55 shall not delegate its oversight control or authority to
56 any other person(s) or organization.

57 (d) Members of the independent governing board and

58 officers of the organization shall avoid transactions
59 involving conflict of interest on their part. A charitable
60 organization may enter into transactions involving
61 parties related by blood, marriage or business associa-
62 tion only if: (1) Where a majority of the independent
63 governing board has survived disqualification over
64 conflicts of interest to approve the action; and (2) where
65 the related parties or potential conflict is fully disclosed
66 in the application for registration; and (3) where the
67 transaction is fair and reasonable for the organization.

68 (e) No charitable organization, professional fund
69 raiser or other person soliciting contributions for or on
70 behalf of a charitable organization may use a name,
71 symbol or statement so closely related or similar to that
72 used by another charitable organization or governmen-
73 tal agency that the use thereof would tend to confuse or
74 mislead the public.

**§29-19-11. Records to be kept by charitable organiza-
tions, professional fund-raising counsel and
professional solicitors.**

1 Every charitable organization, professional fund-
2 raising counsel and professional solicitor subject to the
3 provisions of this article shall, in accordance with the
4 rules prescribed by the secretary of state, keep true
5 fiscal records as to its activities in this state as may be
6 covered by this article in such form as will enable it
7 accurately to provide the information required by this
8 article. Upon demand, such records shall be made
9 available to the secretary of state, the commission or the
10 attorney general for inspection. Such records shall be
11 retained for a period of at least three years after the end
12 of the period of registration to which they relate.

§29-19-12. Reciprocal agreements.

1 The secretary of state may enter into reciprocal
2 agreements with the appropriate authority of any other
3 state for the purpose of exchanging information with
4 respect to charitable organizations, professional fund-
5 raising counsel and professional solicitors. Pursuant to
6 such agreements the secretary of state may accept
7 information filed by a charitable organization, profes-

8 sional fund-raising counsel or professional solicitor with
9 the appropriate authority of another state in lieu of the
10 information required to be filed in accordance with the
11 provisions of this article, if such information is substan-
12 tially similar to the information required under this
13 article.

§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 for charitable purposes, misrepresent,
18 mislead, or omit information concerning how the
19 proceeds will be used. Proceeds gathered from any given
20 solicitation must be used for the charitable purposes
21 represented in the materials sent or the presentation
22 given by the solicitor. Violations of this section will be
23 considered to be both a violation of the reasonable donor
24 expectation standard of section eight and may be subject
25 to prosecution for fraud pursuant to section fifteen of
26 this article.

27 (d) No person may in connection with the solicitation
28 of contributions or the sale of goods or services for
29 charitable purposes represent to or lead anyone by any
30 manner, means, practice or device whatsoever, to
31 believe that any other person sponsors or endorses such
32 solicitation of contributions, sale of goods or services for
33 charitable purposes or approves of such charitable

34 purposes of a charitable organization connected there-
35 with when such other person has not given consent to
36 the use of his or her name for these purposes: *Provided,*
37 That any member of the board of directors or trustees
38 of a charitable organization or any other person who has
39 agreed either to serve or to participate in any voluntary
40 capacity in the campaign shall be deemed thereby to
41 have given his or her consent to the use of his or her
42 name in said campaign.

43 (e) No person may make any representation that he
44 or she is soliciting contributions for or on behalf of a
45 charitable organization or shall use or display any
46 emblem, device or printed matter belonging to or
47 associated with a charitable organization for the
48 purpose of soliciting or inducing contributions from the
49 public without first being authorized to do so by the
50 charitable organization.

51 (f) No professional solicitor may solicit in the name
52 of or on behalf of any charitable organization unless
53 such solicitor:

54 Has obtained the written authorization of two officers
55 of such organization, a copy of which shall be filed with
56 the secretary of state. Such written authorization shall
57 bear the signature of the solicitor and shall expressly
58 state on its face the period for which it is valid, which
59 shall not exceed one year from the date issued.

§29-19-15a. Private actions and class actions.

1 (a) Any person who suffers injury or damages as a
2 result of acts or practices in violation of the provisions
3 of this article may bring a civil action against the
4 charitable organization, professional fund raiser, or
5 professional solicitor engaged in such acts or practices.
6 The person may recover such damages sustained as a
7 result of such acts and practices, costs incurred, and
8 reasonable attorneys' fees. Punitive damages may be
9 awarded in cases of intentional violations of this article.

10 (b) The attorney general, or secretary of state, in a
11 representative capacity on behalf of any person entitled
12 to bring an action under this article, or any person

13 entitled to bring an action under this article, may
 14 institute a class action, pursuant to the applicable rules
 15 of civil procedure governing class actions, for the
 16 recovery of damages.

§29-19-15b. Civil penalty for intentional violations.

1 In any action brought pursuant to the provisions of
 2 this article, if the court finds that intentional violations
 3 have occurred, the state, upon petition to the court and
 4 in addition to any damages awarded any party or
 5 parties, may recover attorney fees and a civil penalty not
 6 exceeding three times the amount collected in such civil
 7 action. Any funds recovered as provided for in this
 8 section and any other funds recovered by the state as
 9 the result of an award for damages, penalties or
 10 settlements in enforcing this article, shall be paid into
 11 the state treasury to the credit of a special revenue fund
 12 to be known as the "charitable organization fund" which
 13 is hereby created. The moneys so credited to such fund
 14 may be used solely for the purposes of administering
 15 and enforcing the provisions of this article.

**CHAPTER 46A. WEST VIRGINIA CONSUMER
 CREDIT AND PROTECTION ACT.**

ARTICLE 6D. PRIZES AND GIFTS.

- §46A-6D-1. Short title.
- §46A-6D-2. Definitions.
- §46A-6D-3. Representation of having won a prize, gift or any item of value.
- §46A-6D-4. Representation of eligibility to win or to receive a prize, gift or item of value.
- §46A-6D-5. Representation of being specially selected.
- §46A-6D-6. Simulation of checks and invoices.
- §46A-6D-7. Conditions for handling charges and shipping charges.
- §46A-6D-8. Action to enforce the provisions of article.
- §46A-6D-9. Enforcement; penalties.
- §46A-6D-10. Exemptions.

§46A-6D-1. Short title.

1 This article may be cited as the "Prizes and Gifts Act".

§46A-6D-2. Definitions.

1 As used in this article:

2 (a) "Anything of value", "item of value" or "item"

3 means any item or service with monetary value.

4 (b) "Handling charge" means any charge, fee or sum
5 of money which is paid by a consumer to receive a prize,
6 gift or any item of value, including, but not limited to,
7 promotional fees, redemption fees, registration fees or
8 delivery costs.

9 (c) "Person" means any natural person, corporation,
10 trust, partnership, association and any other legal
entity.

**§46A-6D-3. Representation of having won a prize, gift or
any item of value.**

1 (a) Unless otherwise provided by article six of this
2 chapter, a person may not, in connection with the sale
3 or lease or solicitation for the sale or lease of goods,
4 property or service, represent that another person has
5 won anything of value or is the winner of a contest,
6 unless all of the following conditions are met:

7 (1) The recipient of the prize, gift or item of value is
8 given the prize, gift or item of value without obligation;
9 and

10 (2) The prize, gift or item of value is delivered to the
11 recipient at no expense to him or her, within ten days
12 of the representation.

13 (b) The use of language that may lead a reasonable
14 person to believe he or she has won a contest or anything
15 of value, including, but not limited to, "Congratula-
16 tions", or "You have won", or "You are the winner of",
17 is a representation of the type governed by this section.

**§46A-6D-4. Representation of eligibility to win or to
receive a prize, gift or item of value.**

1 (a) A person may not represent that another person
2 is eligible or has a chance to win or to receive a prize,
3 gift or item of value without clearly and conspicuously
4 disclosing on whose behalf the contest or promotion is
5 conducted, as well as all material conditions which a
6 participant must satisfy. In an oral solicitation all
7 material conditions shall be disclosed prior to requesting
8 the consumer to enter into the sale or lease. Addition-

9 ally, in any written material covered by this section,
10 each of the following shall be clearly and prominently
11 disclosed:

12 (1) Immediately adjacent to the first identification of
13 the prize, gift or item of value to which it relates; or

14 (2) In a separate section entitled "Consumer Disclo-
15 sure" which title shall be printed in no less than ten-
16 point bold-face type and which section shall contain only
17 a description of the prize, gift or item of value and the
18 disclosures outlined in paragraphs (i), (ii) and (iii) of this
19 subdivision:

20 (i) The true retail value of each item or prize;

21 (ii) The actual number of each item, gift or prize to
22 be awarded; and

23 (iii) The odds of receiving each item, gift or prize.

24 (b) All disclosures required by this article to be in
25 writing shall comply with the following:

26 (1) All dollar values shall be stated in arabic numerals
27 and be preceded by a dollar sign (\$); and

28 (2) The number of each item, gift or prize to be
29 awarded and the odds of receiving each item, gift or
30 prize shall be stated in arabic numerals and shall be
31 written in a manner which is clear and understandable.

32 (c) It is unlawful to notify a person that upon
33 acceptance or response he or she will receive a gift, prize
34 or item of value in connection with a promotion or
35 otherwise that has as a condition of receiving the gift,
36 prize or item of value the requirement that he or she
37 pay any money, or purchase, lease or rent any goods or
38 services, unless there has been clearly and conspicuously
39 disclosed the nature of the charges to be incurred,
40 including, but not limited to, any shipping charge and
41 handling charges. Such disclosure shall be given:

42 (1) On the face of any written materials; or

43 (2) Prior to requesting or inviting the person to enter
44 into the sale or lease in any oral notification.

45 (d) The provisions of this section do not apply where
46 to be eligible:

47 (1) Participants are asked only to complete and mail,
48 or deposit at a local retail commercial establishment, an
49 entry blank obtainable locally or by mail, or to call in
50 their entry toll free by telephone or other free or local
51 calling option; or

52 (2) Participants are never required to listen to a sales
53 presentation and never requested or required to pay any
54 sum of money for any merchandise, service or item of
55 value.

56 (e) Nothing in this section creates any liability for acts
57 by the publisher, owner, agent or employee of a
58 newspaper, periodical, radio station, telecommunica-
59 tions company, television station, cable-television system
60 or other advertising medium arising out of the publica-
61 tion or dissemination of any advertisement or promotion
62 governed by this section, when the publisher, owner,
63 agent or employee did not know that the advertisement
64 or promotion violated the requirements of this section.

§46A-6D-5. Representation of being specially selected.

1 (a) A person may not represent that another person
2 has been specially selected in connection with the sale
3 or lease or solicitation for sale or lease of goods, property
4 or service, unless the selection process is designed to
5 reach a particular type or types of persons.

6 (b) The use of any language that may lead a reason-
7 able person to believe he has been specially selected,
8 including, but not limited to, "Carefully Selected", or
9 "You have been selected to receive", or "You have been
10 chosen", is a representation of the type governed by this
11 section.

§46A-6D-6. Simulation of checks and invoices.

1 In connection with a consumer transaction, no person
2 may issue any writing which simulates or resembles:

3 (a) A check unless the writing clearly and conspicu-
4 ously disclosed its true value and purpose, and the
5 writing would not mislead a reasonable person; or

- 6 (b) An invoice unless the intended recipient of the
7 invoice has actually contracted for goods, property or
8 services for which the issuer seeks proper payment.

§46A-6D-7. Conditions for handling charges and shipping charges.

- 1 (a) It is unlawful to notify a person that he or she may
2 or will receive a gift, prize or item of value and that
3 as a condition of receiving the gift, prize or item of value
4 he or she will be required to pay any money, or purchase
5 or lease, including rent, any goods or services, if any one
6 or more of the following conditions exist:

- 7 (1) The shipping charges exceeds:

- 8 (i) The cost of postage or the charge of a shipping
9 service in the business of delivering goods of like size,
10 weight and kind for shipping the gift, prize or item of
11 value from the geographic area in which the gift, prize
12 or item of value is being distributed; or

- 13 (ii) The exact amount for shipping paid to an
14 independent fulfillment house or an independent
15 supplier, either of which is in the business of shipping
16 goods for shippers other than the offeror of the gift,
17 prize or item of value.

- 18 (2) The handling charge exceeds the lesser of five
19 dollars or the actual cost of handling.

- 20 (b) This section applies to all offers of prizes, gifts or
21 items of value covered by this article where such
22 charges are permitted.

§46A-6D-8. Action to enforce the provisions of article.

- 1 Any consumer who suffers loss by reason of a violation
2 of any provision of this article may bring a civil action
3 to enforce such provisions. Any consumer who is
4 successful in an action shall recover reasonable attorney's
5 fees and court costs incurred by bringing the
action.

§46A-6D-9. Enforcement; penalties.

- 1 Any violation of this article constitutes an unlawful
2 act or practice under the provisions of article six of this

3 chapter, regarding fraudulent acts or practices commit-
4 ted by a supplier in connection with a consumer
5 transaction and shall be subject to the enforcement
6 provisions of article seven of this chapter.

§46A-6D-10. Exemptions.

1 The provisions of sections four through seven of this
2 article do not apply to the sale or purchase, or sollicita-
3 tion or representation in connection therewith, of goods
4 from a catalog or of books, recordings, videocassettes,
5 periodicals and similar goods through a membership
6 group or club which is regulated by the federal trade
7 commission trade regulation rule concerning use of
8 negative option plans by sellers in commerce or through
9 a contractual plan or arrangement such as a continuity
10 plan, subscription arrangement or a single sale or
11 purchase series arrangement under which the seller
12 ships goods to a consumer who has consented in advance
13 to receive such goods and the recipient of such goods is
14 given the opportunity, after examination of the goods,
15 to receive a full refund of charges for the goods, or
16 unused portion thereof, upon return of the goods, or
17 unused portion thereof, undamaged.

CHAPTER 35

(H. B. 4593—By Delegates Douglas and Brown)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article five-c, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to clarifying membership of and adding new members to the legislative commission on juvenile law.

Be it enacted by the Legislature of West Virginia:

That section three, article five-c, 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 5C. LEGISLATIVE COMMISSION ON JUVENILE LAW.

§49-5C-3. Appointment of members; terms.

1 The commission shall consist of:

2 (1) Three members of the Senate to be appointed by
3 the president of the Senate and three members of the
4 House of Delegates to be appointed by the speaker of the
5 House of Delegates: *Provided*, That at least one person
6 appointed from each house shall be an attorney licensed
7 to practice law in this state. No more than two of the
8 three members appointed by the president of the Senate
9 and the speaker of the House of Delegates, respectively,
10 shall be members of the same political party.

11 (2) A representative of the department of education
12 designated by the state superintendent of schools.

13 (3) The commissioner of corrections and two admin-
14 istrators of the department of health and human
15 resources designated by the secretary of that depart-
16 ment who shall serve as ex officio members.

17 (4) Two persons trained and employed as school
18 guidance counselors, one to be appointed by the presi-
19 dent of the Senate and one to be appointed by the
20 speaker of the House of Delegates.

21 (5) One citizen member to represent the interests of
22 the general public, to be appointed jointly by the
23 president of the Senate and by the speaker of the House
24 of Delegates.

25 The first appointed members of the commission shall
26 serve for a term expiring on the thirtieth day of June
27 in the year of the next succeeding regular session of the
28 Legislature. At the commencement of such next suc-
29 ceeding regular session and at the commencement of
30 regular sessions every two years thereafter, members of
31 the commission shall be appointed for two-year terms
32 beginning the first day of July in the year of each such
33 regular session. Vacancies on the commission shall be
34 filled for unexpired terms in the same manner as
35 appointments to the commission.

CHAPTER 36

(H. B. 4595—By Delegates Farris and Stemple)

[Passed March 3, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the department of education; department of health and human resources; and division of corrections, 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) Donna Brunetti.....	\$	248.00
30	(2) Gary F. Dent.....	\$	203.00
31	(3) Marlene R. Mehall.....	\$	265.00
32	(4) Patrick Fenimore.....	\$	203.00

33 (b) *Claims against the*
 34 *Department of Health and Human Resources:*

35 (TO BE PAID FROM GENERAL REVENUE FUND)

36	(1) Bartlett Funeral Home	\$	400.00
37	(2) Beard Mortuary, Inc.	\$	400.00
38	(3) Cooke Funeral Home	\$	650.00
39	(4) Domico Funeral Home, Inc.	\$	400.00
40	(5) Fred L. Jenkins Funeral Home, Inc.	\$	400.00
41	(6) Morris Funeral Home, Inc.....	\$	400.00
42	(7) Richard M. Roach Funeral Home.....	\$	300.00
43	(8) Robert Tomblyn & Sons Funeral		
44	Chapel, Inc.	\$	400.00
45	(9) Stephen M. Brady Funeral Home.....	\$	325.00
46	(10) Tomblyn Bros. Funeral Home, Inc.	\$	800.00
47	(11) Wm. McCulla Funeral Home.....	\$	800.00
48	(12) Wrisley Funeral Home.....	\$	400.00

49 (c) *Claims against the Division of Corrections:*

50 (TO BE PAID FROM GENERAL REVENUE FUND)

51	(1) Associated Radiologists, Inc.	\$	28.00
52	(2) American Telephone and		
53	Telegraph Company	\$	318.92
54	(3) Paul A. Blair, M.D.	\$	380.00
55	(4) Camden-Clark Memorial Hospital	\$	9,091.95
56	(5) City of Grafton	\$	1,073.60
57	(6) North Central WV MRI Services, Inc.	\$	694.25
58	(7) Odilon S. Olivas, M.D.	\$	55.00
59	(8) Princeton Community Hospital.....	\$	11,012.56
60	(9) Radiology, Inc.	\$	1,309.00
61	(10) Reynolds Memorial Hospital	\$	39,913.50

62	(11) St. Joseph's Hospital	\$	823.37
63	(12) United Hospital Center	\$	2,853.35
64	(13) Christopher Z. Villaraza, M.D.	\$	70.00
65	(14) West Virginia University		
66	Hospitals, Inc.	\$238,740.86	

CHAPTER 37

(H. B. 4594—By Delegates Kiss and Conley)

[Passed March 3, 1992; 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) Adams, Elizabeth M. and Robert C., as
 15 guardians of Timothy Dean Adams \$ 5,000.00

16	(2)	Adams, Elizabeth M. and Robert C., as guardians of Lorie Ann Miller ..	\$ 5,000.00
17			
18	(3)	Allen, Fred L	\$ 5,000.00
19	(4)	Baldwin, Arminta T.	\$ 15,000.00
20	(5)	Barker, Linda L.	\$ 2,500.00
21	(6)	Barker, Paul E.	\$ 2,500.00
22	(7)	Cornwell, Edward P., Sr.	\$ 10,000.00
23	(8)	Cyfers, Melvin, Jr., as guardian of Cassandra Faith Vance	\$ 5,000.00
24			
25	(9)	Cyfers, Melvin, Jr., as guardian of Gideon Lee Vance, II	\$ 5,000.00
26			
27	(10)	Cyfers, Melvin, Jr., as guardian of Joseph Louis Vance	\$ 5,000.00
28			
29	(11)	Cyfers, Melvin, Jr., and Myrtle Cyfers, as guardians of Joseph L. Vance ...	\$ 15,000.00
30			
31	(12)	Darby, Billie J.	\$ 2,500.00
32	(13)	Edens, Mildred K.	\$ 2,500.00
33	(14)	Fleming, Vernon & Jeannette, guardians of Shayna K. Rinker ...	\$ 5,000.00
34			
35	(15)	Fleming, Vernon & Jeannette, guardians of Timber J. Rinker	\$ 5,000.00
36			
37	(16)	Fraker, Michael A.	\$ 15,000.00
38	(17)	Haddix, Helen, as guardian of Ryan Zirkle	\$ 5,000.00
39			
40	(18)	Hager, Dottie	\$ 5,000.00
41	(19)	Hager, Dottie, as guardian of Lanny Hager	\$ 5,000.00
42			
43	(20)	Hager, Dottie, as guardian of Orla Ray Hager	\$ 5,000.00
44			
45	(21)	Hager, Dottie, as guardian of Walter Lee Hager	\$ 5,000.00
46			
47	(22)	Helms, Darren L.	\$ 15,000.00
48	(23)	Hornsby, Tex A.	\$ 5,000.00
49	(24)	Hornsby, Tex A., as guardian of Aaron James Hornsby	\$ 5,000.00
50			
51	(25)	Hornsby, Tex A., as guardian of Amanda Dawn Hornsby	\$ 5,000.00
52			
53	(26)	Hornsby, Tex A., as guardian of Christopher Allen Hornsby	\$ 5,000.00
54			
55	(27)	Kimble, Tessie A., as guardian of Christine April Day	\$ 5,000.00
56			

57	(28)	Kimble, Tessie A., as guardian of	
58		Paul Michael Day	\$ 5,000.00
59	(29)	King, John B.	\$ 15,000.00
60	(30)	Lewis, Thomas G.	\$ 15,000.00
61	(31)	Lucas, John L.	\$ 10,000.00
62	(32)	McCoy, Yvonne	\$ 15,000.00
63	(33)	McGuire, Ronald C.	\$ 5,000.00
64	(34)	Messenger, Wilson N.	\$ 15,000.00
65	(35)	Mooney, Ann M.	\$ 5,000.00
66	(36)	Mooney, Ann M., as guardian of	
67		Erin Denise Mooney	\$ 5,000.00
68	(37)	Mooney, Ann M., as guardian of	
69		Jeremy Richard Mooney	\$ 5,000.00
70	(38)	Nalley, Amanda I.	\$ 10,000.00
71	(39)	Neace, Melvin	\$ 15,000.00
72	(40)	Patrick, Larry S., Jr.	\$ 10,000.00
73	(41)	Pauley, Cynthia White Sanson, as	
74		guardian of Billy Lee Sanson, III ..	\$ 2,500.00
75	(42)	Pauley, Kevin, guardian of	
76		Victoria K. Pauley	\$ 5,000.00
77	(43)	Perry, Judith A.	\$ 5,000.00
78	(44)	Powell, Harry C.	\$ 5,000.00
79	(45)	Prunty, Kevin W.	\$ 15,000.00
80	(46)	Roberts, Dennis R.	\$ 15,000.00
81	(47)	Rose, Jesse J.	\$ 15,000.00
82	(48)	Sovine, Connie J.	\$ 5,000.00
83	(49)	Sovine, Connie J., as guardian of	
84		Robert S. Sovine	\$ 5,000.00
85	(50)	Steele, Boyd, Jr.	\$ 5,000.00
86	(51)	Steele, Boyd, Jr., as parent for and on	
87		behalf of Angela Pearl Meadows ...	\$ 5,000.00
88	(52)	Stout, Timothy E.	\$ 10,000.00
89	(53)	Swanson, Debra J., as guardian of	
90		Theodore Honaker, Jr.	\$ 5,000.00
91	(54)	Swanson, Debra J., as guardian of	
92		Walter Lee Honaker	\$ 5,000.00
93	(55)	Thompson, Betty A.	\$ 5,000.00
94	(56)	Watkins, Ronald C.	\$ 15,000.00
95	(57)	White, Brenda	\$ 5,000.00
96	(58)	White, Brenda, as guardian of	
97		Frances Renee White	\$ 2,500.00

98	(59)	White, Brenda, as guardian of		
99		Louis White	\$	2,500.00
100	(60)	Wilson, Kimberly R. Beavers	\$	5,000.00
101	(61)	Wilson, William C.	\$	15,000.00
102	(62)	Wiseman, Linda C.	\$	15,000.00
103	(63)	Wolford, Mark L.	\$	10,000.00
104	TOTAL	\$	477,500.00

105 The Legislature finds that the above moral obligations
 106 and the appropriations made in satisfaction thereof shall
 107 be the full compensation for all claimants herein.

CHAPTER 38

(S. B. 594—Originating in the Committee on Finance)

[Passed March 6, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the alcohol beverage control administration; attorney general; board of education; board of directors of the state college system; board of trustees of the university of West Virginia; department of administration; department of education; department of health and human resources; department of public safety; department of tax and revenue; division of banking; division of corrections; division of culture and history; division of environmental protection; division of highways; division of motor vehicles; division of personnel; educational broadcasting authority; governor's office of community and industrial development; regional jail and correctional facility authority; secretary of state; state

auditor's office; state fire marshal; state treasurer; supreme court of appeals; West Virginia education employees grievance board; workers' compensation fund; and railroad maintenance authority, to be moral obligations 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) *Claims against the Alcohol Beverage*
14 *Control Administration:*

15 (TO BE PAID FROM SPECIAL REVENUE FUND)

16	(1) Q.D. Wood	\$	96.80
17	(2) American Telephone and		
18	Telegraph Company	\$	116.80
19	(3) Mark Sellaro	\$	112.98
20	(4) Ferrellgas, Inc	\$	162.52

21 (b) *Claims against the Attorney General:*

22 (TO BE PAID FROM GENERAL REVENUE FUND)

23	(1) American Telephone and		
24	Telegraph Company	\$	16.48
25	(2) The Michie Company	\$	27.15
26	(3) West Publishing Company	\$	446.00
27	(4) Xerox Corporation	\$	1,616.06
28	(5) National Business Institute	\$	196.00

29 (c) *Claim against the Board of Directors of the*
30 *State College System:*

31 (TO BE PAID FROM SPECIAL REVENUE FUND)

32 (1) Casto Technical Services \$ 16,401.00

33 (d) *Claim against the Board of Education:*

34 (TO BE PAID FROM GENERAL REVENUE FUND)

35 (1) The Board of Education of the
36 County of McDowell, et al \$ 461,163.32

37 That \$461,163.32 shall be paid during the time period
38 beginning the first day of July, one thousand nine
39 hundred ninety-two, and ending the last day of June, one
40 thousand nine hundred ninety-three; that \$461,163.32
41 shall be paid during the time period beginning the first
42 day of July, one thousand nine hundred ninety-three,
43 and ending the last day of June, one thousand nine
44 hundred ninety-four; that \$461,163.32 shall be paid
45 during the time period beginning the first day of July,
46 one thousand nine hundred ninety-four: *Provided*, That
47 the Board of Education of the County of McDowell shall
48 be paid the full amount provided for in this bill no later
49 than the last day of June, one thousand nine hundred
50 ninety-five.

51 (e) *Claims against the Board of Trustees of the*
52 *University of West Virginia:*

53 (TO BE PAID FROM SPECIAL REVENUE FUND)

54 (1) Ann Marie Altizer \$ 1,144.00
55 (2) Xerox Corporation \$ 2,489.29
56 (3) Gayle Maurantonio \$ 52.75
57 (4) Miranda Reed \$ 50.00
58 (5) Emily Ann Shelton \$ 65.00
59 (6) Sylvia Torning \$ 35.00

60 (f) *Claims against the Department of Administration:*

61 (TO BE PAID FROM GENERAL REVENUE FUND)

62 (1) Carolyn Sue McCoy \$ 108.00
63 (2) The Michie Company \$ 148.15
64 (3) Hamilton Business Systems . . . \$ 44.33
65 (4) Unijax \$ 151.80

66 (g) *Claim against the Department of Education:*

67 (TO BE PAID FROM GENERAL REVENUE FUND)

68 (1) Terry Ashworth \$ 165.00

69 (h) *Claims against the Department of Health and*
70 *Human Resources:*

71 (TO BE PAID FROM GENERAL REVENUE FUND)

72 (1) Allen Funeral Home \$ 400.00

73 (2) Altmeyer Funeral

74 Homes, Inc. \$ 400.00

75 (3) Braley & Thompson, Inc. \$ 12,475.20

76 (4) Community Council of Kanawha

77 Valley, Inc. \$ 1,282.66

78 (5) Davis-Weaver Funeral

79 Home, Inc. \$ 400.00

80 (6) Hastings Funeral Home, Inc. .. \$ 325.00

81 (7) Kepner Funeral Homes, Inc. ... \$ 325.00

82 (8) Franklin W. Quillin, Jr.,

83 DDS PC \$ 2,004.00

84 (9) Raleigh Speech &

85 Hearing Center, Inc. \$ 723.00

86 (10) Schaeffer Funeral Home \$ 400.00

87 (11) Cheryl S. Vineyard \$ 418.66

88 (12) We Care Ambulance

89 Service, Inc. \$ 21,609.50

90 (13) Xerox Corporation \$ 851.73

91 (14) Viking Way Limited

92 Partnership \$ 99.50

93 (i) *Claims against the Department of Health and*
94 *Human Resources - Office of the Chief*
95 *Medical Examiner:*

96 (TO BE PAID FROM GENERAL REVENUE FUND)

97 (1) Nicolet Instrument Corporation \$ 1,239.00

98 (2) Lifeteam EMS Ambulance, Inc. \$ 27.00

99 (j) *Claims against the Department of Public Safety:*

100 (TO BE PAID FROM GENERAL REVENUE FUND)

101 (1) American Telephone and

102 Telegraph Company \$ 5,046.34

292		CLAIMS		[Ch. 38
103	(2)	Frank R. Lavender, Jr.	\$	1,876.00
104	(k)	<i>Claims against the Department of Tax and</i>		
105		<i>Revenue:</i>		
106		(TO BE PAID FROM GENERAL REVENUE FUND)		
107	(1)	The Chesapeake and Potomac		
108		Telephone Company of		
109		West Virginia	\$	13,037.52
110	(2)	Division of Corrections/		
111		Prison Industries	\$	50,000.00
112	(l)	<i>Claims against the Division of Banking:</i>		
113		(TO BE PAID FROM SPECIAL REVENUE FUND)		
114		(from Account No. 8395)		
115	(1)	Federal Deposit Insurance		
116		Corporation	\$	2,494.28
117	(2)	Department of		
118		Administration	\$	510.00
119	(m)	<i>Claims against the Division of Corrections:</i>		
120		(TO BE PAID FROM GENERAL REVENUE FUND)		
121	(1)	American Telephone and		
122		Telegraph Company	\$	695.55
123	(2)	Cabell County Commission	\$	25,635.00
124	(3)	Calhoun County		
125		Commission	\$	17,050.00
126	(4)	Allen J. Cody	\$	144.00
127	(5)	Harrison County		
128		Commission	\$	24,930.00
129	(6)	Highlawn Pharmacy, Inc.	\$	4,073.79
130	(7)	Jackson County Commission....	\$	7,380.00
131	(8)	John Marshall Medical		
132		Services, d/b/a University		
133		Surgeons	\$	1,400.00
134	(9)	Lewis County Commission	\$	14,250.00
135	(10)	Marion County Commission	\$	20,554.00
136	(11)	Mason County Commission	\$	16,641.00
137	(12)	Mercer County Commission	\$	39,050.00
138	(13)	The Michie Company	\$	36.06

139	(14) Mingo County Commission	\$	2,101.51
140	(15) Monongalia County		
141	Commission	\$	16,512.84
142	(16) Ohio County Commission	\$	37,309.00
143	(17) Pendleton County		
144	Commission	\$	2,200.00
145	(18) Putnam County		
146	Commission	\$	2,775.00
147	(19) Radiology, Inc.	\$	447.00
148	(20) Roane County Commission	\$	2,872.35
149	(21) Valley Comprehensive		
150	Community Mental Health		
151	Center, Inc.	\$	213.75
152	(22) Wayne County Commission	\$	17,225.00
153	(23) West Virginia Regional Jail		
154	and Correctional Facility		
155	Authority	\$	37,000.00
156	(24) Wood County Commission	\$	229,523.00
157	(n) <i>Claims against the Division of Culture and</i>		
158	<i>History:</i>		
159	(TO BE PAID FROM GENERAL REVENUE FUND)		
160	(1) Scott Lumber Company	\$	1,545.00
161	(2) Xerox Corporation	\$	1,021.19
162	(3) E & M Products, Inc.	\$	36.00
163	(o) <i>Claims against the Division of Environmental</i>		
164	<i>Protection:</i>		
165	(TO BE PAID FROM SPECIAL REVENUE FUND)		
166	(from Account No. 8539)		
167	(1) American Office		
168	Systems, Inc.	\$	237.00
169	(from Account No. 8538)		
170	(1) R.L. Wharton, LTD.	\$	13,770.00
171	(2) Gene Stalnaker, Inc.	\$	13,070.00
172	(p) <i>Claims against the Division of Highways:</i>		
173	(TO BE PAID FROM STATE ROAD FUND)		

174	(1) Lora Barker	\$	1,516.12
175	(2) Norman Bonner	\$	5,900.00
176	(3) Calven F. Comer, Sr., and		
177	Josephine Comer	\$	250.00
178	(4) Wade Davis	\$	500.00
179	(5) Wallace D. Dempsey	\$	450.00
180	(6) Avanell R. Hinkle	\$	58,701.00
181	(7) Holloway Construction		
182	Company	\$	1,941,506.38
183	(8) Nicholas Ramirez	\$	500.00
184	(9) Ruby Redman	\$	1,505.00
185	(10) Paul R. Wilson	\$	215.28
186	(11) Carol Lewis Bosley	\$	72.74
187	(12) Elden Gene Davidson	\$	48.76
188	(13) Domonick Delgrande	\$	102.82
189	(14) Robert W. Fisher	\$	97.99
190	(15) Jack Gregory and Shirley		
191	Gregory	\$	50.13
192	(16) Lora G. Porter	\$	123.83
193	(17) Shirley A. Rinker	\$	56.13

194 (q) *Claim against the Division of Motor Vehicles:*

195 (TO BE PAID FROM STATE ROAD FUND)

196 (1) American Decal & Mfg. Co. \$ 5,388.75

197 (r) *Claim against the Division of Personnel:*

198 (TO BE PAID FROM GENERAL REVENUE FUND)

199 (1) Xerox Corporation
 \$ | 288.45 |
200 (s) *Claims against the Educational Broadcasting*
201 *Authority:*

202 (TO BE PAID FROM GENERAL REVENUE FUND)

203 (1) Walter C. Blower
 \$ | 2,633.85 |
204 (2) Karl F. Hill
 \$ | 2,019.15 |
205 (t) *Claim against the Governor's Office of*
206 *Community and Industrial Development:*

207 (TO BE PAID FROM FEDERAL FUNDS)

208	(from Account No. 9290-15)		
209	(1) The Michie Company	\$	713.44
210	(u) <i>Claims against the Regional Jail and Correctional</i>		
211	<i>Facility Authority:</i>		
212	(TO BE PAID FROM SPECIAL REVENUE FUND)		
213	(1) McKinley Engineering		
214	Company	\$	1,675.60
215	(2) John G. Ward	\$	140.95
216	(v) <i>Claim against the Secretary of State:</i>		
217	(TO BE PAID FROM GENERAL REVENUE FUND)		
218	(1) Xerox Corporation	\$	645.00
219	(w) <i>Claim against the State Auditor's Office:</i>		
220	(TO BE PAID FROM GENERAL REVENUE FUND)		
221	(1) American Telephone and		
222	Telegraph Company	\$	29.03
223	(x) <i>Claim against the State Fire Marshal:</i>		
224	(TO BE PAID FROM GENERAL REVENUE FUND)		
225	(1) American Telephone and		
226	Telegraph Company	\$	40.19
227	(y) <i>Claims against the State Treasurer:</i>		
228	(TO BE PAID FROM GENERAL REVENUE FUND)		
229	(1) Moore Business Forms, Inc. ...	\$	379.00
230	(2) Exxon Company, U.S.A.	\$	132.70
231	(z) <i>Claim against the Supreme Court of Appeals:</i>		
232	(TO BE PAID FROM GENERAL REVENUE FUND)		
233	(1) University of West Virginia		
234	College of Graduate Studies ..	\$	10,117.46
235	(aa) <i>Claim against the West Virginia Employees</i>		
236	<i>Grievance Board:</i>		

237

(TO BE PAID FROM GENERAL REVENUE FUND)

238

(1) The Chesapeake and Potomac

239

Telephone Company of

240

West Virginia \$ 246.29

241

(bb) *Claims against the Workers' Compensation*

242

Fund:

243

(TO BE PAID FROM WORKERS' COMPENSATION FUND)

244

(1) American Telephone and

245

Telegraph Company \$ 97.91

246

(2) Phyllis Haynes Edens,

247

CCR, Inc. \$ 399.57

248

(3) Richard Thompson \$ 877.57

249

(4) Xerox Corporation \$ 626.71

250

(cc) *Claim against the Railroad Maintenance*

251

Authority:

252

(TO BE PAID FROM SPECIAL REVENUE FUND)

253

(from Account No. 8344-06)

254

(1) Charles Herriott \$ 113.37

255

The Legislature finds that the above moral obligations

256

and the appropriations made in satisfaction thereof shall

257

be the full compensation for all claimants, and that prior

258

to the payments to any claimant provided for in this bill,

259

the court of claims shall receive a release from said

260

claimant releasing any and all claims for moral

261

obligations arising from the matters considered by the

262

Legislature in the finding of the moral obligations and

263

the making of the appropriations for said claimant. The

264

court of claims shall deliver all releases obtained from

265

claimants to the department against which the claim

266

was allowed.

CHAPTER 39

(H. B. 4751—By Delegate Love)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to powers and duties of conservation officers; authorizing conservation officers to arrest persons illegally cutting or damaging timber or plants; penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-4. Powers and duties of conservation officers.

1 Conservation officers and all other persons authorized
2 to enforce the provisions of this chapter shall be under
3 the supervision and direction of the director in the
4 performance of their duties as herein provided. The
5 authority, powers and duties of the conservation officers
6 shall be statewide and they shall have authority to:

7 (1) Arrest on sight, without warrant or other court
8 process, any person or persons committing a criminal
9 offense in violation of any of the laws of this state, in
10 the presence of such officer, but no such arrest shall be
11 made where any form of administrative procedure is
12 prescribed by this chapter for the enforcement of any
13 of the particular provisions contained herein;

14 (2) Carry such arms and weapons as may be pres-
15 cribed by the director in the course and performance of
16 their duties, upon giving the bond required by the
17 provisions of section five, article seven, chapter sixty-one
18 of this code, but no license or other authorization shall

19 be required of such officers for this privilege;

20 (3) Search and examine, in the manner provided by
21 law, any boat, vehicle, automobile, conveyance, express
22 or railroad car, fish box, fish bucket or creel, game bag
23 or game coat, or any other place in which hunting and
24 fishing paraphernalia, wild animals, wild birds, fish,
25 amphibians or other forms of aquatic life could be
26 concealed, packed or conveyed whenever they have
27 reason to believe that they would thereby secure or
28 discover evidence of the violation of any provisions of
29 this chapter;

30 (4) Execute and serve any search warrant, notice or
31 any process of law issued under the authority of this
32 chapter or any law relating to wildlife, forests, and all
33 other natural resources, by a magistrate or any court
34 having jurisdiction thereof, or copies of orders made and
35 entered by the chief of the division of water resources,
36 or, without fee, any subpoena or subpoena duces tecum
37 issued in accordance with the provisions of article five-
38 a of this chapter, in the same manner, with the same
39 authority, and with the same legal effect, as any
40 constable or sheriff can serve or execute such warrant,
41 notice or process;

42 (5) Require the operator of any motor vehicle or other
43 conveyance on or about the public highways or road-
44 ways, or in or near the fields and streams of this state,
45 to stop for the purpose of allowing such officers to
46 conduct game-kill surveys;

47 (6) Summon aid in making arrests or seizures or in
48 executing any warrants, notices or processes, and they
49 shall have the same rights and powers as sheriffs have
50 in their respective counties in so doing;

51 (7) Enter private lands or waters within the state
52 while engaged in the performance of their official duties
53 hereunder: *Provided*, That in connection with all
54 surveys, examinations, inspections, inquiries, investiga-
55 tions and studies needed in the gathering of facts
56 concerning water resources and their use or the

57 pollution thereof under article five or article five-a of
58 this chapter, such conservation officers and all other
59 persons authorized to enforce the provisions of this
60 chapter, shall act pursuant to and under the direction
61 of the chief of the division of water resources or the state
62 water resources board, and such officers and other
63 persons shall be subject to the provisions of subsection
64 (c), section five, article five, and subsection (d), section
65 three, article five-a of this chapter;

66 (8) Arrest on sight, without warrant or other court
67 process, subject to the limitations set forth in subdivision
68 (1) of this section, any person or persons committing a
69 criminal offense in violation of any law of this state in
70 the presence of any such officer on any state-owned
71 lands and waters and lands and waters under lease by
72 the division of natural resources and all national forest
73 lands, waters and parks, and U.S. Corps of Army
74 Engineers' properties within the boundaries of the state
75 of West Virginia, and, in addition to any authority
76 conferred in the other subdivisions of this section,
77 execute all warrants of arrest on such state and national
78 lands, waters and parks, and U.S. Corps of Army
79 Engineers' properties, consistent with the provisions of
80 article one, chapter sixty-two of this code;

81 (9) Arrest any person who enters upon the land or
82 premises of another without written permission from
83 the owner of the land or premises in order to cut,
84 damage, or carry away, or cause to be cut, damaged, or
85 carried away any timber, trees, logs, posts, fruit, nuts,
86 growing plants, or products of any growing plant. Any
87 person convicted of the foregoing shall be liable to the
88 owner in the amount of three times the value of the
89 timber, trees, logs, posts, fruit, nuts, growing plants, or
90 products of any growing plant, which shall be in
91 addition to and notwithstanding any other penalties by
92 law provided by section thirteen, article three, chapter
93 sixty-one of this code; and

94 (10) Do all things necessary to carry into effect the
95 provisions of this chapter.

CHAPTER 40

(H. B. 4584—By Delegates Gallagher and Susman)

[Passed March 6, 1992; in effect 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 additional charges permitted for consumer credit sales or loans; credit life or health insurance; terms, conditions and premiums for the same; refunds of unearned premiums; notice of cancellation; obligations of insurer; civil penalties; and insurance regulations.

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; credit life or health insurance; notice of cancellation; when refund required; obligations of creditor and insurer; civil penalty; rules relating to insurance.

1 (a) 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 (1) Official fees and taxes;

7 (2) Charges for insurance as described in subsection
8 (b): *Provided*, That nothing contained in this section
9 with respect to insurance shall be construed as in any
10 way limiting the power and jurisdiction of the insurance

11 commissioner of this state in the premises;

12 (3) 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 (4) Charges for other benefits, including insurance,
21 conferred on the consumer, if the benefits are of value
22 to him or her and if the charges are reasonable in
23 relation to the benefits, are of a type which is not for
24 credit, and are excluded as permissible additional
25 charges from the sales finance charge or loan finance
26 charge by rule adopted by the commissioner: *Provided,*
27 That as to insurance, the policy as distinguished from
28 a certificate of coverage thereunder must be issued by
29 an individual licensed under the laws of this state to sell
30 such insurance and the determination of whether the
31 charges therefor are reasonable in relation to the
32 benefits shall be determined by the insurance commis-
33 sioner of this state;

34 (5) Reasonable closing costs with respect to a debt
35 secured by an interest in land; and

36 (6) Documentary charge or any other similar charge
37 for documentary services in relation to securing a title,
38 so long as said charge is applied equally to cash
39 customers and credit customers alike and so long as
40 such documentary charge does not exceed fifty dollars.

41 (b) A creditor may take, obtain or provide reasonable
42 insurance on the life and earning capacity of any
43 consumer obligated on the consumer credit sale or
44 consumer loan, reasonable insurance on any real or
45 personal property offered as security subject to the
46 provisions of this subsection, and vendor's or creditor's
47 single interest insurance with respect to which the
48 insurer has no right of subrogation. Only one policy of

49 life insurance and/or one policy of health and accident
50 insurance and/or one policy of accident insurance and/or
51 one policy of loss of income insurance on any one
52 consumer may be in force with respect to any one
53 contract or agreement at any one time, but one policy
54 may cover both a consumer and his or her spouse:

55 (1) The amount, terms and conditions of property
56 insurance shall have a reasonable relation to the existing
57 hazards or risk of loss, damage or destruction and be
58 reasonable in relation to the character and value of the
59 property insured or to be insured; and the term of such
60 insurance shall be reasonable in relation to the terms of
61 credit: *Provided*, That nothing shall be deemed to
62 prohibit the consumer from obtaining, at his or her
63 option, greater coverages for longer periods of time if
64 he or she so desires;

65 (2) Life insurance shall be in an initial amount not to
66 exceed the total amount repayable under the consumer
67 credit agreement, and where a consumer credit sale or
68 consumer loan is repayable in installments, such
69 insurance shall at no time exceed the scheduled or
70 actual amount of unpaid indebtedness, whichever is
71 greater. Life insurance authorized by this subdivision
72 shall provide that the benefits shall be paid to the
73 creditor to reduce or extinguish the unpaid indebted-
74 ness: *Provided*, That if a separate charge is made for
75 such insurance and the amount of insurance exceeds the
76 unpaid indebtedness, where not prohibited, then such
77 excess shall be payable to the estate of the consumer.
78 The initial term of such life insurance in connection with
79 a consumer credit sale, other than a sale pursuant to a
80 revolving charge account, or in connection with a
81 consumer loan, other than a loan pursuant to a revolving
82 loan account, shall not exceed the scheduled term of the
83 consumer credit agreement by more than fifteen days.
84 The aggregate amount of periodic benefits payable by
85 credit accident and health insurance in the event of
86 disability, as defined in the policy, and loss of income
87 insurance in the event of involuntary loss of employ-
88 ment, as defined in the policy, shall not exceed the

89 unpaid amount of such indebtedness; periodic benefits
90 payable in connection with a consumer credit sale
91 pursuant to a revolving charge account or of a consumer
92 loan pursuant to a revolving loan account may be based
93 upon the authorized credit limit;

94 (3) When the insurance is obtained or provided by or
95 through a creditor, the creditor may collect from the
96 consumer or include as part of the cash price of a
97 consumer credit sale or as part of the principal of a
98 consumer loan, or deduct from the proceeds of any
99 consumer loan the premium, or in the case of group
100 insurance, the identifiable charge. The premium or
101 identifiable charge for such insurance required or
102 obtained by a creditor may equal, but shall not exceed
103 the premium rate filed by the insurer with the insur-
104 ance commissioner. In any case, when the creditor
105 collects the entire premium for such insurance in
106 advance, such premium shall be remitted by such
107 creditor to the insurer or the insurance agent, as
108 specified by the insurer, within ten days from or after
109 the end of the month in which such collection was made;

110 (4) With respect to insurance against loss of or
111 damage to property, or against liability, the creditor
112 shall furnish a clear and specific statement in writing
113 to the debtor, setting forth the cost of the insurance if
114 obtained from or through the creditor, and stating that
115 the debtor may choose the person through whom the
116 insurance is to be obtained;

117 (5) With respect to consumer credit insurance provid-
118 ing life, accident, health or loss of income coverage, no
119 creditor shall require a consumer to purchase such
120 insurance or to purchase such insurance from such
121 creditor or any particular agent, broker or insurance
122 company as a condition precedent to extending credit to
123 or on behalf of such consumer;

124 (6) When a consumer credit sale or consumer loan,
125 refinancing or consolidation is paid in full, the creditor
126 receiving such payment shall inform the debtor of the
127 cancellation of any consumer credit insurance providing
128 life, accident, health or loss of income coverage; advise

129 the debtor of the application of any unearned premiums
130 to the loan balance if such insurance was provided by
131 the creditor; notify the debtor that he or she may have
132 the right to receive a refund of unearned premiums
133 from any other seller or provider of such insurance; and
134 advise the debtor of his or her obligation to notify any
135 other insurer of the payment of the loan balance and the
136 cancellation of the consumer credit insurance, and
137 request a refund or credit of unearned premiums, if
138 applicable. Such notice shall be sent on a form as
139 prescribed by the insurance commissioner as provided
140 in chapter twenty-nine-a of this code and shall contain
141 the name and address of the seller and the insurer. If
142 the creditor was the seller of the consumer credit
143 insurance, the creditor shall notify or shall cause the
144 insurer to be notified of the cancellation of such
145 insurance;

146 (7) Upon receipt by the insurer of notification of the
147 cancellation of consumer credit insurance, the insurer
148 shall cancel such insurance effective no later than thirty
149 days from the date of receipt of such notice. Within
150 forty-five days following the date of notification of
151 cancellation of such insurance, the insurer shall pay any
152 refund of unearned premiums to the debtor-insurer or
153 such other person as directed by the debtor-insurer; and

154 (8) An insurer, seller or creditor who fails to refund
155 any unused insurance premium or provide the proper
156 notification of payoff shall be liable for civil damages
157 up to three times the amount of the unused premium
158 as well as other remedies as provided for by section one
159 hundred nine, article seven of this chapter.

160 (c) The insurance commissioner of this state shall
161 promulgate legislative rules in accordance with the
162 provisions of chapter twenty-nine-a of this code to
163 implement the provisions of this article relating to
164 insurance, and the authority of the insurance commis-
165 sioner to promulgate the same shall be exclusive
166 notwithstanding any other provisions of this code to the
167 contrary.

CHAPTER 41

(Com. Sub. for S. B. 10—By Senator Wooton)

[Passed March 6, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-a, relating to limited liability companies; authorizing and specifying method of formation of limited liability companies; specifying fines for failure to record certificate of organization; regulating internal management of limited liability companies; specifying and limiting member and manager liabilities; providing methods for dissolution and merger of limited liability companies and conversion of partnerships to limited liability companies; providing for registration of foreign limited liability companies; and providing liability of foreign limited liability companies to state for fees, taxes and penalties for failure to obtain certificate of authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. LIMITED LIABILITY COMPANIES.

- §31-1A-1. Short title.
- §31-1A-2. Definitions.
- §31-1A-3. Purpose.
- §31-1A-4. Powers.
- §31-1A-5. Name.
- §31-1A-6. Reservation of name.
- §31-1A-7. Formation.
- §31-1A-8. Articles of organization.
- §31-1A-9. Filing of articles of organization.
- §31-1A-10. Effect of issuance of certificate of organization.
- §31-1A-11. Amendments to articles of organization.
- §31-1A-12. Filing of articles of amendment; recordation; admission in evidence.
- §31-1A-13. Filing requirements.
- §31-1A-14. Registered office and registered agent to be maintained.

- §31-1A-15. Change of registered office or registered agent.
- §31-1A-16. Secretary of state constituted attorney in fact for all limited liability companies; manner of acceptance or service of notices and process upon secretary of state; what constitutes conducting affairs or doing or transacting business in this state for purposes of this section; venue.
- §31-1A-17. Fees and charges to be collected by secretary of state.
- §31-1A-18. Management.
- §31-1A-19. Operating agreement.
- §31-1A-20. Management of a limited liability company by a manager or managers.
- §31-1A-21. Contracting debts.
- §31-1A-22. Business transactions of members or managers with the limited liability company.
- §31-1A-23. Contributions.
- §31-1A-24. Sharing of profits and losses.
- §31-1A-25. Sharing of distributions.
- §31-1A-26. Interim distributions.
- §31-1A-27. Withdrawal or resignation of member.
- §31-1A-28. Distributions in kind.
- §31-1A-29. Restrictions on making distribution.
- §31-1A-30. Liability upon wrongful distribution.
- §31-1A-31. Right to distribution.
- §31-1A-32. Liability of member to company.
- §31-1A-33. Liability of members and managers.
- §31-1A-34. Interest in company; transferability of interest.
- §31-1A-35. Dissolution.
- §31-1A-36. Judicial dissolution.
- §31-1A-37. Winding up.
- §31-1A-38. Distribution of assets upon dissolution.
- §31-1A-39. Certificate of cancellation.
- §31-1A-40. Filing of certificate of cancellation; recordation; issuance of certificate of dissolution.
- §31-1A-41. Procedure for merger.
- §31-1A-42. Merger; approval by members.
- §31-1A-43. Articles of merger; filing; issuance of certificate; recordation; admission in evidence.
- §31-1A-44. Effect of merger; conveyance of title to real estate in state to surviving limited liability company.
- §31-1A-45. Merger of domestic and foreign limited liability companies; effect; abandonment; confirmation of title to real estate required.
- §31-1A-46. Right of members to dissent.
- §31-1A-47. Conversion of partnerships to limited liability companies; effect of conversion.
- §31-1A-48. Law governing foreign limited liability companies.
- §31-1A-49. Admission of foreign limited liability company; acts permitted to be done without certificate of authority.
- §31-1A-50. Powers of foreign limited liability company.
- §31-1A-51. Name of foreign limited liability company; when certificate of authority shall not be issued; change of name by foreign limited liability company.

- §31-1A-52. Application for certificate of authority by foreign limited liability company; contents.
- §31-1A-53. Application for certificate of authority; filing; issuance of certificate; recordation; penalty for failure to record.
- §31-1A-54. Effect of certificate of authority.
- §31-1A-55. Appointment of person to whom notice of process may be sent by the secretary of state; change of principal office or name and address of person to receive notice or process.
- §31-1A-56. Amendment to articles of organization of foreign limited liability company; filing; recordation; penalty for failure to record.
- §31-1A-57. Merger of foreign limited liability company authorized to conduct affairs or do or transact business in this state; filing of articles of merger; recordation; penalty for failure to record.
- §31-1A-58. Amended certificate of authority; requirements; recordation; penalty for failure to record.
- §31-1A-59. Procedure for withdrawal of foreign limited liability company; publication required; application for certificate of withdrawal; contents; filing; issuance of certificate; recordation.
- §31-1A-60. Conditions for revocation of certificate of authority.
- §31-1A-61. Application to limited liability company heretofore authorized to conduct its affairs or do or transact business in this state.
- §31-1A-62. Conducting affairs or doing or transacting business without certificate of authority.
- §31-1A-63. Requirement for registered agent and certain reports.
- §31-1A-64. Parties to actions.
- §31-1A-65. Title to limited liability company property.
- §31-1A-66. Waiver of notice.
- §31-1A-67. Applicability of provisions to foreign and interstate commerce.
- §31-1A-68. Definition of "person" to indicate limited liability company.
- §31-1A-69. Conflicting laws; existing rights and liabilities.

§31-1A-1. Short title.

- 1 This article shall be known and may be cited as the
2 "West Virginia Limited Liability Company Act".

§31-1A-2. Definitions.

- 1 As used in this article, unless the context otherwise
2 requires:
- 3 (1) "Article" means this article of the West Virginia
4 code;
- 5 (2) "Articles of organization" means the articles of
6 organization filed with the secretary of state for the
7 purpose of forming a limited liability company as
8 specified in sections eight and nine of this article and
9 all amendments thereto;

10 (3) "Bankruptcy" means a case under the federal
11 Bankruptcy Code of 1978, Title 11 of the United States
12 Code, as amended;

13 (4) "Contribution" means any cash, property or
14 services rendered, or a promissory note or other binding
15 obligations to contribute cash or property or to perform
16 services that a member contributes to a limited liability
17 company in his capacity as a member;

18 (5) "Court" includes every court and judge having
19 jurisdiction in any case;

20 (6) "Distribution" means a direct or indirect transfer
21 of money or other property, or incurrence of indebted-
22 ness by a limited liability company, to or for the benefit
23 of its members in respect of their interests in such
24 company;

25 (7) "Foreign limited liability company" means a
26 limited liability company organized under laws other
27 than the laws of this state;

28 (8) "Limited liability company" or "domestic limited
29 liability company" means an entity that is an unincor-
30 porated association having two or more members that
31 is organized and existing under this article;

32 (9) "Manager" means a person or persons designated
33 by the members of a limited liability company to
34 manage the company pursuant to this article or a
35 limited liability company's articles of organization or
36 operating agreement;

37 (10) "Member" means a person with an ownership
38 interest in a limited liability company with the rights
39 and obligations specified under this article;

40 (11) "Membership interest" means a member's share
41 of the capital and profits and losses of a limited liability
42 company, the right to receive distributions of such
43 company's assets and any rights of management under
44 this article;

45 (12) "Operating agreement" means any agreement of
46 the members as to the affairs and management of a
47 limited liability company and the conduct of its

48 business;

49 (13) "Person" includes individuals, general partner-
50 ships, limited partnerships, limited liability companies,
51 corporations, trusts, business trusts, real estate invest-
52 ment trusts, estates and other associations;

53 (14) "Principal office" means the office, in or out of
54 this state, where the principal executive offices of a
55 limited liability company are located; and

56 (15) "Real property" or "real estate" includes land, any
57 interest, leasehold or estate in land and other improve-
58 ments on it.

§31-1A-3. Purpose.

1 Limited liability companies may be organized under
2 this article for any lawful purpose.

§31-1A-4. Powers.

1 (a) Each limited liability company organized and
2 existing under this article shall have the power to:

3 (1) Sue and be sued, complain and defend, in its name;

4 (2) Purchase, take, receive, lease, take by gift, devise
5 or bequest, or otherwise acquire, own, hold, improve, use
6 and otherwise deal in and with real or personal property
7 or any legal or equitable interest therein, wherever
8 situated;

9 (3) Sell, convey, mortgage, pledge, create a security
10 interest in, lease, exchange, transfer or otherwise
11 dispose of all or any part of its property and assets;

12 (4) Lend money to or otherwise assist its members;

13 (5) Purchase, take, receive, subscribe for or otherwise
14 acquire, own, hold, vote, use, employ, sell, mortgage,
15 lend, pledge or otherwise dispose of, and otherwise use
16 and deal in and with, shares or other interests in, or
17 obligations of, other limited liability companies, domes-
18 tic or foreign corporations, associations, general part-
19 nerships, limited partnerships, joint ventures or persons,
20 or direct or indirect obligations of the United States or
21 of any government, state, territory, governmental

22 district or municipality or any instrumentality thereof;

23 (6) Make contracts and guarantees, incur liabilities,
24 borrow money at such rates of interest as the limited
25 liability company may determine, issue its notes, bonds
26 and other obligations and secure any of its obligations
27 by mortgage, deed of trust or pledge of all or any part
28 of its property, franchises and income;

29 (7) Lend money for its proper purposes, invest and
30 reinvest its funds and take and hold real and personal
31 property as security for the payment of funds so loaned
32 or invested;

33 (8) Conduct its business and affairs, carry on its
34 operations and have and exercise the powers granted by
35 this article in any state, territory, district or possession
36 of the United States or in any foreign country;

37 (9) Elect or appoint managers, employees and agents
38 of the limited liability company and define their duties
39 and fix their compensation;

40 (10) Pay compensation, or pay additional compensa-
41 tion, to any or all managers, members, employees and
42 agents on account of services previously rendered, or to
43 be rendered, to the limited liability company, whether
44 or not an agreement to pay such compensation was made
45 before such services were rendered;

46 (11) Make and alter operating agreements for the
47 administration and regulation of the business and
48 affairs of the limited liability company;

49 (12) Indemnify a member, manager, employee or
50 agent, or former member, manager, employee or agent,
51 of the limited liability company to the same extent as
52 a corporation organized under the laws of this state may
53 indemnify any of the directors, officers, employees or
54 agents of the corporation against expenses actually and
55 reasonably incurred by him or it in connection with the
56 defense of any action, suit or proceeding, whether civil
57 or criminal, in which he or it is made a party and to
58 make any other indemnification that is authorized by
59 the articles of organization or by the operating agree-
60 ment or resolution adopted by the members after notice;

61 (13) Cease its activities and surrender its certificate
62 of organization;

63 (14) Have and exercise all powers necessary or
64 convenient to effect any or all of the purposes for which
65 the limited liability company is organized;

66 (15) Become a member of a corporation, general
67 partnership, limited partnership, limited liability
68 company, joint venture or similar association; and

69 (16) Transact any lawful business that a corporation,
70 general partnership, limited partnership or other
71 business entity may conduct under the laws of this state.

72 (b) In addition to the provisions of subsection (a) of
73 this section, a limited liability company shall have and
74 exercise all powers granted to corporations under the
75 laws of this state.

§31-1A-5. Name.

1 (a) The words "limited liability company" shall be
2 included in the name of every limited liability company
3 formed under the provisions of this article.

4 (b) Such name shall not contain any word or phrase
5 which indicates or implies that it is organized for any
6 purpose other than those permitted by this article and
7 as may be limited by its articles of organization.

8 (c) Such name shall not contain the words "Corpora-
9 tion", "Incorporated", "Limited Partnership" or the
10 abbreviations "Corp." or "Inc."

11 (d) Such name shall not be the same as, or deceptively
12 similar to, any of the following:

13 (1) The name of any domestic corporation, limited
14 partnership or limited liability company;

15 (2) The name of any foreign corporation, limited
16 partnership, or limited liability company authorized to
17 transact business in this state that has in effect a
18 registration of its name as provided under the laws of
19 this state;

20 (3) Any name for which an exclusive right has been

21 reserved in the office of the secretary of state;

22 (4) Any trade or assumed name registered with the
23 secretary of state or for which application for registra-
24 tion is pending; or

25 (5) Any name registered in the office of the secretary
26 of state.

27 (e) The provisions of subsection (d) of this section shall
28 not apply if the organizer files with the secretary of
29 state either:

30 (1) The written consent of such other limited liability
31 company, corporation or limited partnership or holder
32 of a reserved or registered name to use the same or a
33 deceptively similar name if one or more words are
34 added, altered or deleted to make the name distingui-
35 shable from the reserved or registered name; or

36 (2) A certified copy of a final decree of a court of
37 competent jurisdiction establishing the prior right of the
38 applicant to the use of such name in this state.

39 (f) A limited liability company that acquires, upon a
40 sale, lease or other disposition to or exchange with a
41 domestic limited liability company, all or substantially
42 all the assets of another domestic or foreign limited
43 liability company, including its name, may have a
44 deceptively similar name if one or more words are
45 added, altered or deleted to make such name distingui-
46 shable from such other name as that used in this state
47 by any of such limited liability companies if such other
48 limited liability company was organized under the laws
49 of, or is authorized to transact business in, this state.

§31-1A-6. Reservation of name.

1 (a) The exclusive right to the use of a name may be
2 reserved by:

3 (1) Any person intending to organize a limited
4 liability company under this article and to adopt that
5 name;

6 (2) Any domestic or foreign limited liability company
7 registered in this state that, in either case, intends to

8 adopt that name;

9 (3) Any domestic or foreign limited liability company
10 registered in this state intending to change its name; or

11 (4) Any foreign limited liability company or any
12 person intending to organize a foreign limited liability
13 company and intending to register in this state and
14 adopt that name.

15 (b) To reserve a specified name, a person shall submit
16 an application to the secretary of state in the form and
17 manner the secretary of state shall designate. If the
18 secretary of state finds that the name is available for
19 use by a domestic or foreign limited liability company,
20 he shall reserve the name for the exclusive use of the
21 applicant for a period of one hundred twenty days. Such
22 reservation may be renewed for additional periods not
23 to exceed one hundred twenty days from the date of such
24 renewal. The right to the exclusive use of a reserved
25 name may be transferred to any other person by
26 delivering to the office of the secretary of state a notice
27 of the transfer executed by the applicant for whom the
28 name was reserved and specifying the name and address
29 of the transferee.

§31-1A-7. Formation.

1 Any two or more persons may form a limited liability
2 company by causing to be signed and filed with the
3 secretary of state articles of organization for such
4 limited liability company. Such persons need not be
5 members of the limited liability company after forma-
6 tion has occurred.

§31-1A-8. Articles of organization.

1 (a) The articles of organization of a limited liability
2 company shall set forth:

3 (1) The name of the limited liability company;

4 (2) The period of its duration, which shall not be
5 perpetual;

6 (3) The purpose for which the limited liability
7 company is organized; and

8 (4) The address of its principal place of business in
9 the state and the name and address of its initial
10 registered agent in the state, which may be the same
11 as its initial registered office but need not be located in
12 this state.

13 (b) The articles of organization may set forth any
14 other matter that is permitted under this article to be
15 set forth in its operating agreement.

16 (c) It is not necessary to set out in the articles of
17 organization any of the powers enumerated in this
18 article.

19 (d) Whenever a provision of the articles of organiza-
20 tion is inconsistent with the operating agreement for the
21 limited liability company, the provisions of the articles
22 of organization shall be controlling.

23 (e) The articles of organization shall contain a
24 statement of the name and address of the person who,
25 or the firm that, prepared such articles of organization.

26 (f) The articles of organization shall be acknowledged
27 by one or more of the persons forming the limited
28 liability company before a notary public and transmit-
29 ted with the proper fees to, and shall be filed with, the
30 secretary of state.

§31-1A-9. Filing of articles of organization.

1 (a) Duplicate originals, which as used in this article
2 shall mean two copies, however reproduced, both of
3 which are executed in the original, of the articles of
4 organization shall be delivered to the secretary of state.
5 If the secretary of state finds that the articles of
6 organization conform to law, he shall, when all fees have
7 been paid as prescribed by law:

8 (1) Endorse on each of the duplicate originals the
9 word "Filed" and the month, day and year of the filing
10 thereof;

11 (2) File one of the duplicate originals in his office; and

12 (3) Issue a certificate of organization to which he shall
13 affix the other duplicate original.

14 (b) The certificate of organization, together with a
15 duplicate original of the articles of organization affixed
16 thereto by the secretary of state, shall be returned to the
17 limited liability company or to its representative.

18 (c) If the limited liability company has its principal
19 office in this state, it shall cause such certificate, or a
20 duly certified copy thereof, to be recorded in the office
21 of the clerk of the county commission of the county in
22 which such principal office is located; if its principal
23 office is not within this state but it conducts affairs or
24 does or transacts business therein, then in the county or
25 one of the counties in which it conducts its affairs or
26 does or transacts its principal business. If its principal
27 office is without the state and it does not conduct affairs
28 or do or transact business within the state, such
29 certificate need not be recorded in the county clerk's
30 office. A failure to comply with the foregoing recorda-
31 tion provision within six months from the date of such
32 certificate shall subject the limited liability company to
33 a fine of not more than one thousand dollars.

§31-1A-10. Effect of issuance of certificate of organization.

1 (a) Upon the issuance of the certificate of organiza-
2 tion, or upon any future date stated in the certificate of
3 organization, the limited liability company shall be
4 considered organized and in existence and such certif-
5 icate of organization shall be conclusive evidence that all
6 conditions precedent required to be performed by the
7 members have been complied with and that the limited
8 liability company has been legally organized under this
9 article, except as against this state in a proceeding to
10 cancel or revoke the certificate of organization or for
11 involuntary dissolution of the limited liability company.

12 (b) A limited liability company shall not transact
13 business or incur indebtedness, except that which is
14 incidental to its organization or to obtaining subscrip-
15 tions for or payment of contributions, until the secretary
16 of state has issued a certificate of organization.

§31-1A-11. Amendments to articles of organization.

1 (a) The articles of organization shall be amended
2 within thirty days from the occurrence of any of the
3 following:

4 (1) There is a change in the name of the limited
5 liability company;

6 (2) There is a false or erroneous statement in the
7 articles of organization;

8 (3) There is a change in the duration of the limited
9 liability company as stated in the articles of organiza-
10 tion: *Provided*, That such duration shall not be
11 perpetual;

12 (4) A time is fixed for the dissolution of the limited
13 liability company if no time is specified in the articles
14 of organization; or

15 (5) The members desire to make a change in any other
16 statement in the articles of organization in order for it
17 to accurately represent the agreement between them.

18 (b) The articles of organization as amended shall
19 contain only such provisions as might be lawfully
20 contained in original articles of organization at the time
21 of making such amendment.

22 (c) The articles of amendment shall be adopted upon
23 approval by a majority vote of the members entitled to
24 vote thereon, unless the articles of organization or the
25 operating agreement of the limited liability company
26 require a greater or lesser vote.

27 (d) The articles of amendment shall be executed in
28 duplicate and verified by a member or manager so
29 authorized and shall set forth:

30 (1) The name of the limited liability company;

31 (2) The amendment as adopted;

32 (3) The date of the adoption of the amendment by the
33 members;

34 (4) A statement that the amendment was adopted by
35 a vote of the members in accordance with this article;
36 and

37 (5) The name and address of the person or firm that
38 prepared such amendment.

**§31-1A-12. Filing of articles of amendment; recordation;
admission in evidence.**

1 (a) Upon adoption of the articles of amendment,
2 duplicate originals of such articles of amendment shall
3 be delivered to the secretary of state. If the secretary
4 of state finds that the articles of amendment conform
5 to law, he shall, when all fees have been paid as
6 prescribed by law:

7 (1) Endorse on each of the duplicate originals the
8 word "Filed" and the month, day and year of the filing
9 thereof;

10 (2) File one of the duplicate originals in his office; and

11 (3) Issue a certificate of amendment to which he shall
12 affix the other duplicate original.

13 (b) The certificate of amendment, together with a
14 duplicate original of the articles of amendment affixed
15 thereto by the secretary of state, shall be returned to the
16 persons forming the limited liability company, the
17 principal office of the limited liability company or to its
18 representative.

19 (c) The certificate of amendment issued by the
20 secretary of state pursuant to this section, or a certified
21 copy thereof, shall be recorded in the office of the
22 appropriate county clerk in the same manner as original
23 certificates of organization are required to be recorded
24 in accordance with subsection (c), section nine of this
25 article and received in evidence to the same extent as
26 an original certificate of organization or a certified copy
27 of such original.

§31-1A-13. Filing requirements.

1 (a) A document which satisfies the requirements of
2 this section and of any other section that adds to or
3 varies these requirements shall be entitled to be filed
4 with the secretary of state.

5 (b) The document to be filed shall be one that this

6 article requires or permits to be filed with the secretary
7 of state.

8 (c) The document to be filed shall contain the
9 information required by this article and may contain
10 other information as well.

11 (d) The document to be filed shall be typewritten or
12 printed and shall be executed in the name of the limited
13 liability company:

14 (1) By any member or manager of the limited liability
15 company;

16 (2) If the limited liability company has not been
17 formed, by one or more of the persons forming the
18 limited liability company; or

19 (3) If the limited liability company is in the hands of
20 a receiver, trustee or other court-appointed fiduciary, by
21 that fiduciary.

22 (e) The person executing the document shall sign it
23 and state beneath or opposite his signature his name and
24 the capacity in which he signs.

25 (f) If, pursuant to any provision of this article, the
26 secretary of state has prescribed a mandatory form for
27 the document, the document shall be in or on the
28 prescribed form.

29 (g) The document to be filed shall be delivered to the
30 secretary of state for filing and shall be accompanied by
31 the required filing fee and any registration fee required.

§31-1A-14. Registered office and registered agent to be maintained.

1 Each domestic limited liability company and each
2 foreign limited liability company which has been issued
3 a certificate of authority pursuant to this article shall
4 have and continuously maintain in this state:

5 (1) A registered office which may, but need not, be
6 the same as its place of business; and

7 (2) A registered agent, which agent may be either an
8 individual resident in this state whose business office is

9 identical with such registered office, or a domestic
10 corporation or a foreign corporation authorized to
11 transact business in this state, having a business office
12 identical with such registered office.

§31-1A-15. Change of registered office or registered agent.

1 (a) Within thirty days of any change in registered
2 office or agent, or both, a limited liability company shall
3 file in the office of the secretary of state a statement
4 setting forth:

5 (1) The name of the limited liability company;

6 (2) The address of its then registered office;

7 (3) If the address of its registered office is to be
8 changed, the address to which the registered office is to
9 be changed;

10 (4) The name of its then registered agent; and

11 (5) If its registered agent is to be changed, the name
12 of its successor registered agent.

13 (b) If the secretary of state finds that the statement
14 conforms to the provisions of this article, he shall file
15 the statement in his office, and upon filing the state-
16 ment, the change of address of the registered office or
17 the appointment of a new registered agent, or both as
18 the case may be, will be in effect.

19 (c) Any registered agent of a limited liability company
20 may resign as agent upon filing a written notice thereof,
21 executed in duplicate, with the limited liability company
22 and the secretary of state. The appointment of the agent
23 terminates upon the expiration of thirty days after
24 receipt of notice by the secretary of state.

§31-1A-16. Secretary of state constituted attorney-in-fact for all limited liability companies; manner of acceptance or service of notices and process upon secretary of state; what constitutes conducting affairs or doing or transacting business in this state for purposes of this section; venue.

1 (a) The secretary of state is hereby constituted the
2 attorney-in-fact for and on behalf of every limited
3 liability company created by virtue of the laws of this
4 state and every foreign limited liability company
5 authorized to conduct affairs or do or transact business
6 herein pursuant to the provisions of this article, with
7 authority to accept service of notice and process on
8 behalf of every such limited liability company and upon
9 whom service of notice and process may be made in this
10 state for and upon every such limited liability company.
11 No act of such limited liability company appointing the
12 secretary of state attorney-in-fact shall be necessary.
13 Immediately after being served with or accepting any
14 such process or notice, of which process or notice two
15 copies for each defendant shall be furnished the
16 secretary of state with the original notice or process,
17 together with a fee of five dollars, the secretary of state
18 shall file in his office a copy of such process or notice,
19 with a note thereon endorsed of the time of service or
20 acceptance, as the case may be, and transmit one copy
21 of such process or notice by registered or certified mail,
22 return receipt requested, to the person to whom notice
23 and process shall be sent, whose name and address were
24 last furnished to the state officer at the time authorized
25 by statute to accept service of notice and process and
26 upon whom notice and process may be served; and if no
27 such person has been named, to the principal office of
28 the limited liability company at the address last
29 furnished to the state officer at the time authorized by
30 statute to accept service or process and upon whom
31 process may be served, as required by law. No process
32 or notice shall be served on the secretary of state or
33 accepted by him less than ten days before the return day
34 thereof. Such limited liability company shall pay the
35 annual fee prescribed by article twelve, chapter eleven
36 of this code for the services of the secretary of state as
37 its attorney-in-fact.

38 Any foreign limited liability company which shall
39 conduct affairs or do or transact business in this state
40 without having been authorized so to do pursuant to the
41 provisions of this article shall be conclusively presumed
42 to have appointed the secretary of state as its attorney-

43 in-fact with authority to accept service of notice and
44 process on behalf of such limited liability company and
45 upon whom service of notice and process may be made
46 in this state for and upon every such limited liability
47 company in any action or proceeding described in the
48 next following paragraph of this section. No act of such
49 limited liability company appointing the secretary of
50 state as such attorney-in-fact shall be necessary.
51 Immediately after being served with or accepting any
52 such process or notice, of which process or notice two
53 copies for each defendant shall be furnished the
54 secretary of state with the original notice or process,
55 together with a fee of five dollars, the secretary of state
56 shall file in his office a copy of such process or notice,
57 with a note thereon endorsed of the time of service or
58 acceptance, as the case may be, and transmit one copy
59 of such process or notice by registered or certified mail,
60 return receipt requested, to such limited liability
61 company at the address of its principal office, which
62 address shall be stated in such process or notice. Such
63 service or acceptance of such process or notice shall be
64 sufficient if such return receipt shall be signed by an
65 agent or employee of such limited liability company, or
66 the registered or certified mail so sent by the secretary
67 of state is refused by the addressee and the registered
68 or certified mail is returned to the secretary of state or
69 to his office showing thereon the stamp of the United
70 States postal service that delivery thereof has been
71 refused, and such return receipt of registered or
72 certified mail is appended to the original process or
73 notice and filed therewith in the clerk's office of the
74 court from which such process or notice was issued. No
75 process or notice shall be served on the secretary of state
76 or accepted by him less than ten days before the return
77 date thereof. The court may order such continuances as
78 may be reasonable to afford each defendant opportunity
79 to defend the action or proceedings.

80 For the purpose of this section, a foreign limited
81 liability company not authorized to conduct affairs or do
82 or transact business in this state pursuant to the
83 provisions of this article shall nevertheless be deemed
84 to be conducting affairs or doing or transacting business

85 herein: (1) If such limited liability company makes a
86 contract to be performed, in whole or in part, by any
87 party thereto, in this state; (2) if such limited liability
88 company commits a tort in whole or in part in this state;
89 or (3) if such limited liability company manufactures,
90 sells, offers for sale or supplies any product in a
91 defective condition and such product causes injury to
92 any person or property within this state notwithstanding
93 the fact that such limited liability company had no
94 agents, servants or employees or contracts within this
95 state at the time of said injury. The making of such
96 contract, the committing of such tort or the manufacture
97 or sale, offer of sale or supply of such defective product
98 as hereinabove described shall be deemed to be the
99 agreement of such limited liability company that any
100 notice or process served upon, or accepted by, the
101 secretary of state pursuant to the next preceding
102 paragraph of this section in any action or proceeding
103 against such limited liability company arising from, or
104 growing out of, such contract, tort or manufacture or
105 sale, offer of sale or supply of such defective product
106 shall be of the same legal force and validity as process
107 duly served on such limited liability company in this
108 state.

109 (b) In all cases arising under this article wherein the
110 limited liability companies seeking to exercise the rights
111 conferred by this article, or against which any proceed-
112 ing is instituted thereunder, do not have or maintain any
113 office, own any property or conduct affairs or do or
114 transact business in this state, the circuit court of the
115 county in which the seat of government is located shall
116 have original jurisdiction, except in cases in which
117 jurisdiction is expressly conferred upon some other
118 court by this article.

**§31-1A-17. Fees and charges to be collected by secretary
of state.**

1 Except as otherwise expressly provided in this article,
2 all fees required to be charged and collected by the
3 secretary of state by the provisions of this article shall
4 be charged and collected in accordance with the
5 provisions of section two, article one, chapter fifty-nine

6 of this code as applicable to corporations.

§31-1A-18. Management.

1 (a) Except to the extent that the articles of organiza-
2 tion or an operating agreement provides for manage-
3 ment of a limited liability company by a manager or
4 managers, management of a limited liability company
5 shall be vested in its members.

6 (b) Unless otherwise provided in the articles of
7 organization or an operating agreement, the members
8 of a limited liability company shall vote in proportion
9 to their contributions to the limited liability company,
10 as adjusted from time to time to reflect any additional
11 contributions or withdrawals, and a majority vote of the
12 members of a limited liability company shall consist of
13 the vote or other approval of members having a majority
14 share of the voting power of all members.

15 (c) Unless otherwise provided in this article or in the
16 articles of organization or an operating agreement, any
17 action required or permitted to be taken by the
18 members of a limited liability company may be taken
19 upon a majority vote of the members.

§31-1A-19. Operating agreement.

1 (a) The members of a limited liability company may
2 enter into any operating agreement to regulate or
3 establish the affairs of the limited liability company, the
4 conduct of its business and the relations of its members.
5 An operating agreement may contain any provisions
6 regarding the affairs of a limited liability company and
7 the conduct of its business to the extent that such
8 provisions are not inconsistent with the laws of this state
9 or the articles of organization.

10 (b) (1) An operating agreement must initially be
11 agreed to by all of the members. Unless the articles of
12 organization specifically require otherwise, an operating
13 agreement need not be in writing.

14 (2) If an operating agreement does not provide for the
15 method by which it may be amended, then all of the
16 members must agree to any amendment of an operating

17 agreement.

18 (c) (1) A court of equity may enforce an operating
19 agreement by injunction or by such other relief that the
20 court in its discretion determines to be fair and
21 appropriate in the circumstances.

22 (2) As an alternative to injunctive or other equitable
23 relief, when the provisions of section thirty-six of this
24 article are applicable, the court may order dissolution
25 of the limited liability company.

**§31-1A-20. Management of a limited liability company
by a manager or managers.**

1 (a) The articles of organization or an operating
2 agreement of a limited liability company may delegate
3 full or partial responsibility for managing a limited
4 liability company to or among one or more managers.

5 (b) Managers need not be residents of this state or
6 members of the limited liability company unless the
7 articles of organization or an operating agreement so
8 require. The articles of organization or an operating
9 agreement may prescribe other qualifications for
10 managers.

11 (c) The number of managers shall be fixed by or in
12 the manner provided in the articles of organization or
13 an operating agreement. The number of managers may
14 be increased or decreased by amendment to, or in the
15 manner provided in, the articles of organization or an
16 operating agreement.

17 (d) Managers shall be elected by the members
18 pursuant to the articles of organization or an operating
19 agreement, or, if none, pursuant to section eighteen of
20 this article.

21 (e) Unless otherwise provided in the articles of
22 organization or an operating agreement, any vacancy
23 occurring in the position of manager shall be filled by
24 a majority vote in interests of the members.

25 (f) All managers or any lesser number may be
26 removed in the manner provided in the articles of
27 organization or an operating agreement. Unless the

28 articles of organization or an operating agreement
29 provide otherwise for the removal of managers, then all
30 managers or any lesser number may be removed with
31 or without cause by a majority vote in interests of the
32 members.

33 (g) Unless otherwise provided in the articles of
34 organization or an operating agreement, any action
35 required or permitted to be taken by the managers of
36 a limited liability company may be taken upon a
37 majority vote of the managers.

38 (h) (1) A manager shall discharge his duties as a
39 manager in accordance with his good faith business
40 judgment of the best interests of the limited liability
41 company.

42 (2) Unless he has knowledge or information concern-
43 ing the matter in question that makes reliance unwar-
44 ranted, a manager is entitled to rely on information,
45 opinions, reports or statements, including financial
46 statements and other financial data, if prepared or
47 presented by:

48 (A) One or more managers or employees of the limited
49 liability company whom the manager believes, in good
50 faith, to be reliable and competent in the matters
51 presented;

52 (B) Legal counsel, public accountants or other persons
53 as to matters the manager believes in good faith are
54 within the person's professional or expert competence;
55 or

56 (C) A committee of the managers of which he is not
57 a member if the manager believes in good faith that the
58 committee merits confidence.

59 (3) A person alleging a violation of this subsection has
60 the burden of proving the violation.

§31-1A-21. Contracting debts.

1 Except as otherwise provided in this article, no debt
2 shall be contracted or liability incurred by or on behalf
3 of a limited liability company, except by one or more
4 of its managers if management of the limited liability

5 company has been vested by the members in a manager
6 or managers or, if management of the limited liability
7 company is retained by the members, then by any
member.

§31-1A-22. Business transactions of members or managers with the limited liability company.

1 Except as provided in the articles of organization or
2 an operating agreement, a member or manager may
3 lend money to and transact other business with the
4 limited liability company and, subject to other applica-
5 ble law, has the same rights and obligations with respect
6 thereto as a person who is not a member or manager.

§31-1A-23. Contributions.

1 (a) The contributions of a member to a limited
2 liability company may be in cash, property, services
3 rendered or a promissory note or other binding obliga-
4 tion which has been accepted by the limited liability
5 company to contribute cash or property or to perform
6 services.

7 (b) Except as provided in the articles of organization
8 or an operating agreement, a member is obligated to the
9 limited liability company to perform any enforceable
10 promise to contribute cash or property or to perform
11 services even if he is unable to perform because of death,
12 disability or any other reason. If a member does not
13 make the required contribution of property or services,
14 he is obligated at the option of the limited liability
15 company to contribute cash equal to that portion of the
16 value, as stated in the limited liability company records,
17 of such contribution that has not been made.

18 (c) No promise by a member to contribute to a limited
19 liability company is enforceable unless set out in a
20 writing signed by the member.

§31-1A-24. Sharing of profits and losses.

1 The profits and losses of a limited liability company
2 shall be allocated among the members, and among
3 classes of members, in the manner provided in writing
4 in the articles of organization or an operating agree-

5 ment. If the articles of organization or an operating
6 agreement do not otherwise provide, profits and losses
7 shall be allocated on the basis of the value, as stated in
8 the limited liability company records of the contribu-
9 tions made by each member as adjusted from time to
10 time to reflect any additional contributions or
withdrawals.

§31-1A-25. Sharing of distributions.

1 Distributions of cash or other assets of a limited
2 liability company shall be allocated among the
3 members, and among classes of members, in the manner
4 provided in writing in the articles of organization or an
5 operating agreement. If the articles of organization or
6 an operating agreement do not so provide in writing,
7 distributions shall be made on the basis of the value, as
8 stated in the limited liability company records, of the
9 contributions made by each member as adjusted from
10 time to time to reflect any additional contributions or
11 withdrawals.

§31-1A-26. Interim distributions.

1 Except as provided in this article, a member is
2 entitled to receive distributions from a limited liability
3 company before his or its resignation from the limited
4 liability company and before the dissolution and
5 winding up thereof to the extent and at the times or
6 upon the happening of the events specified in the articles
7 of organization or an operating agreement.

§31-1A-27. Withdrawal or resignation of member.

1 Unless otherwise provided in the articles of organiza-
2 tion or in any operating agreement, a member may
3 withdraw or resign from a limited liability company at
4 the time or upon the happening of events specified in
5 writing in the articles of organization or an operating
6 agreement. If the articles of organization or an operat-
7 ing agreement do not specify the time or the events upon
8 the happening of which a member may withdraw or
9 resign, a member may withdraw or resign upon not less
10 than six months prior written notice to each member at
11 his or its address on the books of the limited liability

12 company.

§31-1A-28. Distributions in kind.

1 Except as provided in writing in the articles of
2 organization or an operating agreement, a member,
3 regardless of the nature of such member's contribution,
4 has no right to demand and receive any distribution
5 from a limited liability company in any form other than
6 cash. Except as provided in writing in the articles of
7 organization or an operating agreement, a member may
8 not be compelled to accept a distribution of any asset
9 in kind from a limited liability company to the extent
10 that the percentage of the asset distributed to such
11 member exceeds a percentage of that asset which such
12 member's membership interest constitutes of all mem-
13 bership interests in the limited liability company.

§31-1A-29. Restrictions on making distribution.

1 (a) No distribution may be made by a limited liability
2 company, if, after giving effect to the distribution:

3 (1) The limited liability company would not be able
4 to pay its debts as they became due to the usual course
5 of business; or

6 (2) The reasonable value of the limited liability
7 company's total assets would be less than the sum of its
8 total liabilities plus, unless the articles of organization
9 or an operating agreement permit otherwise, the
10 amount that would be needed if the limited liability
11 company were to be dissolved at the time of the
12 distribution to satisfy the preferential rights upon
13 dissolution of members whose preferential rights are
14 superior to the rights of members receiving the
15 distribution.

16 (b) The limited liability company may base a deter-
17 mination that a distribution is not prohibited under this
18 section either on:

19 (1) Financial statements prepared on the basis of
20 accounting practices and principles that are reasonable
21 in the circumstances; or

22 (2) A fair valuation or other method that is reasonable

23 in the circumstances.

24 (c) The effect of a distribution under subsection (a) of
25 this section is measured as of: (i) The date the distribu-
26 tion is authorized if the payment occurs within one
27 hundred twenty days after the date of authorization; or
28 (ii) the date the payment is made if it occurs more than
29 one hundred twenty days after the date of authorization.

30 (d) A limited liability company's indebtedness to a
31 member incurred by reason of the declaration of a
32 distribution made in accordance with this section is at
33 parity with the limited liability company's indebtedness
34 to its general unsecured creditors, except to the extent
35 subordinated by agreement.

§31-1A-30. Liability upon wrongful distribution.

1 If a member has received a distribution in violation
2 of the articles of organization or an operating agreement
3 or in violation of section twenty-nine of this article, then
4 such member is liable to the limited liability company
5 for a period of four years thereafter for the amount of
6 the distribution wrongfully made.

§31-1A-31. Right to distribution.

1 At the time a member becomes entitled to receive a
2 distribution, such member has the status of, and is
3 entitled to all remedies available to, a creditor of the
4 limited liability company with respect to the
5 distribution.

§31-1A-32. Liability of member to company.

1 (a) A member is liable to the limited liability company
2 for any unpaid contribution to capital which such
3 member agreed in the articles of organization or an
4 operating agreement to make at the time and on the
5 conditions stated in the articles of organization or an
6 operating agreement.

7 (b) A member holds as trustee for the limited liability
8 company:

9 (1) Specific property which is stated in the articles of
10 organization as having been contributed by such

11 member, but which was not contributed or which has
12 been wrongfully or erroneously returned; and

13 (2) Money or other property wrongfully paid or
14 conveyed to such member on account of his or its
15 contribution.

16 (c) The liabilities of a member as set out in this section
17 can be waived or compromised only by the consent of
18 all members, but a waiver or compromise shall not
19 affect the right of a creditor of the limited liability
20 company who extended credit or whose claim arose after
21 the filing and before a cancellation or amendment of the
22 articles of organization to enforce the liabilities.

23 (d) When a contributor has rightfully received the
24 return, in whole or in part, of his or its capital
25 contribution, such contributor is nevertheless liable to
26 the limited liability company for any sum, not in excess
27 of the returned capital, necessary to discharge its
28 liability to all creditors of the limited liability company
29 who expended credit or whose claims arose before the
30 return.

§31-1A-33. Liability of members and managers.

1 The members of a limited liability company shall
2 have the same rights and liabilities as shareholders of
3 corporations organized or registered under article one
4 of this chapter, and such managers shall have the same
5 rights and liabilities as directors of corporations so
6 organized or registered.

§31-1A-34. Interest in company; transferability of interest.

1 (a) The interest of a member in a limited liability
2 company constitutes personal property.

3 (b) Unless otherwise provided in the articles of
4 organization or an operating agreement, a membership
5 interest in a limited liability company is assignable, in
6 whole or in part. An assignment of an interest in a
7 limited liability company does not of itself dissolve the
8 limited liability company. An assignment does not
9 entitle the assignee to participate in the management

10 and affairs of the limited liability company or to become
11 or to exercise any rights of a member. Such an
12 assignment entitles the assignee to receive, to the extent
13 assigned, only any share of profits and losses and
14 distributions to which the assignor would be entitled.
15 Except as provided in the articles of organization or an
16 operating agreement, a member ceases to be a member
17 upon assignment of his or its entire membership
18 interest.

19 (c) (1) An assignee of an interest in a limited liability
20 company may become a member only if the other
21 members unanimously consent.

22 (2) An assignee who has become a member has, to the
23 extent assigned, the rights and powers, and is subject
24 to the restrictions and liabilities, of a member under the
25 articles of organization or any operating agreement and
26 this article. An assignee who becomes a member also is
27 liable for any obligations of his or its assignor to make
28 and return contributions as provided in this article.
29 However, an assignee who becomes a member is not
30 obligated for liabilities of the assignor unknown to him
31 at the time he or it became a member.

32 (3) If an assignee of an interest in a limited liability
33 company becomes a member, the assignor is not
34 released from any liability to the limited liability
35 company under sections twenty-three and thirty of this
36 article.

§31-1A-35. Dissolution.

1 A limited liability company organized under this
2 article shall be dissolved upon the occurrence of any of
3 the following events:

4 (1) When the period fixed for the duration of the
5 limited liability company shall expire;

6 (2) By the unanimous written agreement of all
7 members;

8 (3) Upon the death, retirement, resignation, expulsion,
9 bankruptcy or dissolution of a member or occurrence of
10 any other event which terminates the continued mem-

11 bership of a member in the limited liability company,
12 unless the business of the limited liability company is
13 continued by the consent of all the remaining members
14 under a right to do so stated in the articles of organ-
15 ization of the limited liability company; or

16 (4) The entry of a decree of judicial dissolution
17 pursuant to section thirty-six of this article.

§31-1A-36. Judicial dissolution.

1 On application by or for a member, the circuit court
2 of the county in which the registered office of the limited
3 liability company is located may decree dissolution of a
4 limited liability company if it is not reasonably practi-
5 cable to carry on the business in conformity with the
6 articles of organization and any operating agreement.

§31-1A-37. Winding up.

1 Unless otherwise provided in the articles of organiza-
2 tion or an operating agreement, the members who have
3 not wrongfully dissolved a limited liability company
4 may wind up the limited liability company's affairs:
5 *Provided*, That the circuit court of the county in which
6 the registered office of the limited liability company is
7 located, on cause shown, may wind up the limited
8 liability company's affairs on application of any
9 member, his legal representative or assignee.

§31-1A-38. Distribution of assets upon dissolution.

1 Upon the winding up of a limited liability company,
2 the assets of the limited liability company shall be
3 distributed as follows:

4 (1) To secured creditors to the extent of their security,
5 including members who are secured creditors for
6 reasons other than unpaid distributions;

7 (2) To general unsecured creditors, including
8 members who are creditors for reasons other than
9 unpaid distributions, to the extent permitted by law, in
10 satisfaction of liabilities of the limited liability company;

11 (3) To members who are creditors as a result of an
12 unpaid distribution: *Provided*, That if such distribution

13 was made within one year of the dissolution then the
14 member will be at parity with other general unsecured
15 creditors; and

16 (4) Unless otherwise provided in the articles of
17 organization or an operating agreement, to members
18 first for the return of their contributions and second
19 with respect to their interests in the limited liability
20 company, in the proportions in which the members
21 share in distributions.

§31-1A-39. Certificate of cancellation.

1 (a) Upon the completion of winding up of the limited
2 liability company, a certificate of cancellation shall be
3 filed with the secretary of state. The winding up of a
4 limited liability company shall be completed when all
5 debts, liabilities, and obligations of the limited liability
6 company have been paid and discharged or reasonably
7 adequate provision therefor has been made and all of the
8 remaining property and assets of the limited liability
9 company have been distributed to the members. A
10 certificate of cancellation shall set forth:

11 (1) The name of the limited liability company;

12 (2) The date of filing of the articles of organization
13 and each amendment thereto;

14 (3) The reason for filing the certificate of cancellation;

15 (4) The effective date (which shall be a date certain)
16 of cancellation, provided that any effective date other
17 than the date of filing the certificate of cancellation
18 must be a date subsequent to the filing; and

19 (5) Any other information the members determine to
20 include therein.

21 (b) Unless otherwise provided in this article or in the
22 certificate, a certificate of cancellation (or judicial
23 dissolution) is effective when accepted for filing by the
24 secretary of state.

**§31-1A-40. Filing of certificate of cancellation; recorda-
tion; issuance of certificate of dissolution.**

1 (a) Duplicate originals of such certificate of cancella-

2 tion shall be delivered to the secretary of state. If the
3 secretary of state finds that such certificate of cancel-
4 lation conforms to law, he shall, when all fees and
5 license taxes have been paid as prescribed by law:

6 (1) Endorse on each of such duplicate originals the
7 word "Filed" and the month, day and year of the filing
8 thereof;

9 (2) File one of the duplicate originals in his office; and

10 (3) Issue a certificate of dissolution to which he shall
11 affix the other duplicate original.

12 (b) The certificate of dissolution, together with the
13 duplicate original of the certificate of cancellation
14 affixed thereto by the secretary of state, shall be
15 returned to the representative of the dissolved limited
16 liability company. Upon the issuance of such certificate
17 of dissolution the existence of the company shall cease,
18 except for the purpose of suits, other proceedings and
19 appropriate action as provided in this article. The
20 manager or managers in office at the time of dissolution,
21 or the survivors of them or, if none, the members, shall
22 thereafter be trustees for the members and creditors of
23 the dissolved limited liability company and as such shall
24 have authority to distribute any company property
25 discovered after dissolution, convey real estate and take
26 such other action as may be necessary on behalf of and
27 in the name of such dissolved limited liability company.

28 (c) If the certificate of organization for the dissolved
29 limited liability company shall have been recorded in
30 the office of the clerk of the county commission of any
31 county in this state, the representative of the dissolved
32 limited liability company shall record the certificate of
33 dissolution in the office of the clerk of the county
34 commission in which the certificate of organization is
35 recorded, and upon such recordation the existence of the
36 corporation shall cease, except for the purpose of
37 actions, other proceedings and appropriate action as
38 provided in this article.

39 (d) The certificate of organization shall be cancelled
40 by the secretary of state upon issuance of the certificate

41 of dissolution.

§31-1A-41. Procedure for merger.

1 Any two or more domestic limited liability companies
2 may merge into one limited liability company pursuant
3 to a plan of merger approved in the manner provided
4 in this article. The plan of merger shall set forth:

5 (a) The names of the limited liability companies
6 proposing to merge and the name of the limited liability
7 company into which they propose to merge;

8 (b) The terms and conditions of the proposed merger;

9 (c) The manner and basis of converting the member-
10 ship interests of each limited liability company or of any
11 membership interests, obligations or other securities of
12 the surviving limited liability company or of any other
13 limited liability company or, in whole or in part, into
14 cash or other property;

15 (d) A statement of any changes in the articles of
16 organization of the surviving limited liability company
17 to be effected by such merger; and

18 (e) Such other provisions with respect to the proposed
19 merger as are deemed necessary or desirable.

§31-1A-42. Merger; approval by members.

1 Except to the extent otherwise provided in the articles
2 of organization or an operating agreement, the plan of
3 merger shall be approved upon receiving the affirma-
4 tive vote of the holders of a majority of the membership
5 interests entitled to vote thereon of each such limited
6 liability company, unless any class of membership
7 interests of any such limited liability company is
8 entitled to vote thereon as a class, in which event, as to
9 such limited liability company, the plan of merger shall
10 be approved upon receiving the affirmative vote of the
11 holders of a majority of the membership interests of
12 each class of membership interests entitled to vote
13 thereon as a class and the total membership interests
14 entitled to vote thereon. Any class of membership
15 interests of any such limited liability company shall be
16 entitled to vote as a class if the plan of merger contains

17 any provisions which, if contained in a proposed
18 amendment to articles of organization, would entitle
19 such a class of membership interests to vote as a class.
20 After such approval by a vote of the members of each
21 limited liability company, and at any time prior to the
22 filing of the articles of merger, the merger may be
23 abandoned pursuant to provisions therefor, if any, set
24 forth in the plan of merger.

§31-1A-43. Articles of merger; filing; issuance of certificate; recordation; admission in evidence.

1 (a) Upon approval by the members in accordance with
2 the provisions of section forty-two of this article, articles
3 of merger shall be executed in duplicate by each limited
4 liability company by a member or manager, and
5 verified by such person signing such articles.

6 (b) Articles of merger shall, in addition to any other
7 matters deemed appropriate, set forth:

8 (1) The plan of merger;

9 (2) As to each limited liability company, the number
10 of membership interests outstanding and, if the mem-
11 bership interests of any class are entitled to vote as a
12 class, the designation and number of outstanding
13 membership interests of each such class; and

14 (3) As to each limited liability company, the number
15 of membership interests voted for and against such plan,
16 respectively, and, if the membership interests of any
17 class are entitled to vote as a class, the number of
18 membership interests of each class voted for and against
19 such plan, respectively.

20 (c) Duplicate originals of the articles of merger shall
21 be delivered to the secretary of state. If the secretary
22 of state finds that such articles conform to law, he shall,
23 when all fees have been paid as prescribed by law: (i)
24 Endorse on each of such duplicate originals the word
25 "Filed" and the month, day and year of the filing
26 thereof; (ii) file one of such duplicate originals in his
27 office; and (iii) issue a certificate of merger to which he
28 shall affix the other duplicate original.

29 The certificate of merger, together with the duplicate
30 original of the articles of merger affixed thereto by the
31 secretary of state, shall be returned to the surviving
32 limited liability company, as the case may be, or its
33 representative.

34 (d) The certificate of merger or certified copy thereof
35 shall be recorded in the office of the appropriate county
36 clerk in the same manner as original certificates of
37 organization are required to be recorded.

**§31-1A-44. Effect of merger; conveyance of title to real
estate in state to surviving limited liability
company.**

1 (a) Upon the issuance of the certificate of merger by
2 the secretary of state, the merger shall be effected.
3 When such a merger has been effected:

4 (1) The limited liability companies that are parties to
5 the plan of merger shall be a single limited liability
6 company, which shall be that limited liability company
7 designated in the plan of merger as the surviving
8 limited liability company;

9 (2) The separate existence of all limited liability
10 companies that are parties to the plan of merger, except
11 the surviving limited liability company, shall cease;

12 (3) Such surviving limited liability company shall
13 have all the rights, privileges, immunities and powers
14 and shall be subject to all the duties and liabilities of
15 a limited liability company under this article;

16 (4) Such surviving limited liability company shall
17 thereupon and thereafter possess all the rights, privi-
18 leges, immunities and franchises of a public as well as
19 a private nature of each of the merging limited liability
20 companies; and all property, real, personal and mixed,
21 and all debts due on whatever account, including
22 subscriptions for membership interests, if any, and all
23 other choses in action, and all and every other interest
24 of or belonging to or due to each of the limited liability
25 companies so merged, shall be taken and deemed to be
26 transferred to and vested in such single limited liability
27 company without further act or deed; and the title to any

28 real estate, or any interest therein, vested in any of such
29 limited liability company by operation of law shall not
30 revert or be in any way impaired by reason of such
31 merger;

32 (5) The surviving limited liability company shall
33 henceforth be responsible and liable for all the liabilities
34 and obligations of each of the limited liability companies
35 so merged; and any claim existing or action or proceed-
36 ing pending by or against any such limited liability
37 companies may be prosecuted as if such merger had not
38 taken place, or such surviving limited liability company
39 may be substituted in its place. Neither the rights of
40 creditors nor any liens upon the property of any such
41 limited liability company shall be impaired by such
42 merger; and

43 (6) The articles of organization of the surviving
44 limited liability company shall be deemed to be
45 amended to the extent, if any, that changes in its articles
46 of organization are stated in the plan of merger.

47 (b) In any merger of limited liability companies, any
48 constituent limited liability company thereof owning or
49 holding real estate in this state shall further evidence
50 title thereto in the surviving limited liability company
51 by executing and acknowledging for record a confirma-
52 tory deed or deeds to the respective parcels of real
53 estate, which deed or deeds shall be recorded in the
54 office of the clerk of the county commission of the
55 respective counties in which such real estate is situate;
56 and such deed or deeds shall recite as the consideration
57 therefor the said merger and shall be deemed confirma-
58 tory of the title of such real estate in the surviving
59 limited liability company.

§31-1A-45. Merger of domestic and foreign limited liability companies; effect; abandonment; confirmation of title to real estate required.

1 (a) One or more domestic limited liability companies
2 and one or more foreign limited liability companies may
3 merge into one limited liability company if such merger
4 is permitted by the laws of the state under which each

5 such foreign limited liability company is organized. Any
6 such merger shall be completed in the following
7 manner:

8 (1) Each domestic limited liability company shall
9 comply with the provisions of this article with respect
10 to the merger of domestic limited liability companies
11 and each foreign limited liability company shall comply
12 with the applicable provisions of the laws of the state
13 under which it is organized; and

14 (2) If the surviving limited liability company is to be
15 governed by the laws of any state other than this state,
16 it shall comply with the provisions of this article with
17 respect to foreign limited liability companies if it is to
18 conduct its affairs or do or transact business in this
19 state, and in every case it shall file with the secretary
20 of state of this state: (i) An agreement that it may be
21 served with process in this state in any proceeding for
22 the enforcement of any obligation of any domestic
23 limited liability company which is a party to such
24 merger and in any proceeding for the enforcement of the
25 rights of a dissenting member of any such domestic
26 limited liability company against the surviving limited
27 liability company; (ii) an irrevocable appointment of the
28 secretary of state of this state as its agent to accept
29 service of process in any such proceeding; and (iii) an
30 agreement that it will promptly pay to the dissenting
31 members of any such domestic limited liability company
32 the amount, if any, to which they shall be entitled under
33 the provisions of this article with respect to the rights
34 of dissenting members.

35 (b) The effect of such merger shall be the same as in
36 the case of the merger of domestic limited liability
37 companies if the surviving limited liability company is
38 to be governed by the laws of this state. If the surviving
39 limited liability company is to be governed by the laws
40 of any state other than this state, the effect of such
41 merger on any domestic limited liability company shall
42 be the same as in the case of the merger of domestic
43 limited liability companies, except insofar as the laws
44 of such other state provide otherwise.

340 (c) At any time prior to the filing of the articles of
341 merger, the merger may be abandoned pursuant to the
342 provisions therefor, if any, set forth in the plan of
343 merger.

344 (d) Irrespective of whether such surviving limited
345 liability company is to be governed by the laws of this
346 state or by the laws of any other state, any constituent
347 limited liability company thereof owning or holding real
348 estate in West Virginia shall further evidence title
349 thereto in the surviving limited liability company by
350 executing and acknowledging for record a confirmatory
351 deed or deeds to the respective parcels of real estate,
352 which deed or deeds shall be recorded in the office of
353 the clerk of the county commission of the respective
354 counties in which such real estate is situate; and such
355 deed or deeds shall recite as the consideration therefor
356 the said merger and shall be deemed confirmatory of the
357 title of such real estate in the surviving limited liability
358 company.

§31-1A-46. Right of members to dissent.

1 Any member of a limited liability company shall have
2 the right to dissent from any of the following actions:

3 (1) Any plan of merger to which the limited liability
4 company is a party; or

5 (2) Any sale or exchange of all or substantially all of
6 the property and assets of the limited liability company
7 not made in the usual and regular course of its business,
8 including a sale in dissolution. The rights of members
9 of limited liability companies shall be similar to, and
10 shall be governed by, the procedures set forth in sections
11 one hundred twenty-two and one hundred twenty-three,
12 article one of this chapter, except to the extent otherwise
13 inconsistent with this article.

**§31-1A-47. Conversion of partnerships to limited liability
companies; effect of conversion.**

1 (a) Any domestic or foreign general partnership or
2 limited partnership may convert to a limited liability
3 company by filing articles of organization as provided
4 in this article, which include, in addition to any other

5 information required by this article, the name of the
6 former general partnership or limited partnership.

7 (b) The conversion of a general partnership or limited
8 partnership to a limited liability company shall cause all
9 assets of such partnership to transfer to the limited
10 liability company by operation of law without further
11 act or deed and without reversion or impairment:
12 *Provided*, That if such partnership owned or held title
13 to real estate in West Virginia, it shall further evidence
14 title thereto in the limited liability company by execut-
15 ing, acknowledging and recording a confirmatory deed
16 or deeds pursuant to the provisions of subsection (b),
17 section forty-four of this article.

18 (c) Nothing in this section shall be construed to
19 require, cause or be deemed to constitute a dissolution
20 of the general partnership or limited partnership prior
21 to or upon its conversion to a limited liability company
22 pursuant to this section.

**§31-1A-48. Law governing foreign limited liability
companies.**

1 Subject to the constitution of this state: (1) The laws
2 of the jurisdiction under which a foreign limited
3 liability company is organized govern its organization
4 and internal affairs and the liability of its members; and
5 (2) a foreign limited liability company may not be
6 denied a certificate of authority to transact business in
7 this state by reason of any difference between those laws
8 and the laws of this state.

**§31-1A-49. Admission of foreign limited liability com-
pany; acts permitted to be done without
certificate of authority.**

1 (a) No foreign limited liability company shall have the
2 right to conduct affairs or do or transact business in this
3 state until it shall have procured a certificate of
4 authority so to do from the secretary of state. No foreign
5 limited liability company shall be entitled to procure a
6 certificate of authority under this article to conduct
7 affairs or do or transact any business in this state which
8 would not be permitted to be conducted, done or

9 transacted by a limited liability company organized
10 under this article.

11 (b) Without excluding other activities which may not
12 constitute conducting affairs or doing or transacting
13 business in this state, a foreign limited liability company
14 shall not be considered to be conducting affairs or doing
15 or transacting business in this state, for the purposes of
16 this article, by reason of carrying on in this state any
17 one or more of the following activities:

18 (1) Maintaining or defending any legal action or
19 proceeding or any administrative or arbitration pro-
20 ceeding, or affecting the settlement thereof or the
21 settlement of claims or disputes;

22 (2) Holding meetings of its members or managers or
23 carrying on other activities concerning its internal
24 affairs;

25 (3) Maintaining bank accounts;

26 (4) Creating evidences of debt, mortgages or liens on
27 real or personal property;

28 (5) Securing or collecting debts or enforcing any
29 rights in property securing the same;

30 (6) Conducting its affairs or doing or transacting
31 business in interstate commerce;

32 (7) Granting funds or other gifts;

33 (8) Distributing information to its members;

34 (9) Conducting an isolated transaction completed
35 within a period of thirty days and not in the course of
36 a number of repeated transactions of like nature;

37 (10) Maintaining offices or agencies for the transfer,
38 exchange or registration of its securities, or appointing
39 and maintaining trustees or depositories with relation to
40 its securities;

41 (11) Affecting sales through independent contractors;

42 (12) Soliciting or procuring orders, whether by mail
43 or through employees or agents or otherwise, where
44 such orders required acceptance without this state

45 before becoming binding contracts;

46 (13) The acquisition by purchase of loans secured by
47 mortgages or deeds of trust, drawn and executed in
48 compliance with section two, article one, chapter thirty-
49 eight of this code on real or personal property situated
50 in West Virginia pursuant to commitment agreements
51 or arrangements made prior to or following the origi-
52 nation or creation of said loans;

53 (14) The ownership, modification, renewal, extension,
54 transfer or foreclosure of such loans or the acceptance
55 of substitute or additional obligors thereon;

56 (15) The maintaining or defending of any actions or
57 suits relative to such loans, mortgages or deeds of trust;

58 (16) The maintenance of bank accounts in West
59 Virginia banks in connection with the collection or
60 servicing of such loans;

61 (17) The making, collection and servicing of such
62 loans through a resident person, firm, limited liability
63 company or corporation, or a foreign person, firm,
64 limited liability company or corporation qualified to do
65 business in West Virginia engaged in the business of
66 servicing loans for investors;

67 (18) The taking of deeds to the mortgaged property
68 either in lieu of foreclosure or for the purpose of
69 transferring title either to the federal housing admin-
70 istration or to the veterans administration as the insurer
71 or guarantor;

72 (19) The acquisition of title to property under
73 foreclosure sale or from the owner in lieu of foreclosure;

74 (20) The management, rental, maintenance and sale,
75 or the operating, maintaining, renting or otherwise
76 dealing with, selling or disposing of property acquired
77 under foreclosure sale or by agreement in lieu thereof;

78 (21) Physical inspection and appraisal of property in
79 West Virginia as security for deeds of trust or mort-
80 gages and negotiations for the purchase of such loans;
81 or

82 (22) Any other transaction directly related to the
83 activities above described: *Provided*, That if property
84 acquired in or by reason of any of the activities defined
85 in the provisions of subdivisions (18), (19) and (20) of this
86 subsection shall be held longer than a period of five
87 years, the provisions of this section shall thereafter be
88 inapplicable.

§31-1A-50. Powers of foreign limited liability company.

1 A foreign limited liability company which shall have
2 received a certificate of authority under this article shall
3 enjoy the same, but no greater, rights and privileges as
4 a domestic limited liability company organized for the
5 purposes set forth in the application pursuant to which
6 such certificate of authority is issued, until a certificate
7 of revocation or of withdrawal shall have been issued as
8 provided in this article; and except as in this article
9 otherwise provided, shall be subject to the same duties,
10 restrictions, penalties and liabilities now or hereafter
11 imposed upon a domestic limited liability company of
12 like character.

**§31-1A-51. Name of foreign limited liability company;
when certificate of authority shall not be
issued; change of name by foreign limited
liability company.**

1 (a) No certificate of authority shall be issued to a
2 foreign limited liability company unless the name of
3 such limited liability company:

4 (1) Satisfied the requirements of section five of this
5 article as applicable to domestic limited liability
6 companies;

7 (2) Does not contain any word or phrase which
8 indicates or implies that it is organized for any purpose
9 other than one or more of the purposes in its articles of
10 organization; or

11 (3) Is not the same as, or deceptively similar to, the
12 name of any limited liability company existing under
13 the laws of this state or any foreign limited liability
14 company authorized to conduct affairs or do or transact
15 business in this state or a name reserved or registered

16 as permitted by the laws of this state.

17 (b) The provisions of subdivision (3), subsection (a) of
18 this section shall not apply if the foreign limited liability
19 company applying for a certificate of authority files
20 with the secretary of state any one of the following:

21 (1) A resolution of its members or managers adopting
22 a fictitious name for use in conducting affairs or doing
23 or transacting business in this state, which fictitious
24 name is not deceptively similar to the name of any
25 domestic limited liability company or of any foreign
26 limited liability company authorized to conduct affairs
27 or do or transact business in this state or to any name
28 reserved or registered as provided in this article; or

29 (2) The written consent of such other limited liability
30 company or holder of a reserved or registered name to
31 use the same or deceptively similar name and one or
32 more words are added to make such name distinguisha-
33 ble from such other name; or

34 (3) A certified copy of a final order of a court of
35 competent jurisdiction establishing the prior right of
36 such foreign limited liability company to the use of such
37 name in this state.

38 (c) Whenever a foreign limited liability company that
39 is authorized to conduct affairs or do or transact
40 business in this state shall change its name to one under
41 which a certificate of authority would not be granted to
42 it on application therefor, the certificate of authority of
43 such limited liability company shall be suspended and
44 it shall not thereafter conduct any affairs or do or
45 transact any business in this state until it has changed
46 its name to a name that is available to it under the laws
47 of this state or has otherwise complied with the
48 provisions of this article.

**§31-1A-52. Application for certificate of authority by
foreign limited liability company;
contents.**

1 (a) A foreign limited liability company, in order to
2 procure a certificate of authority to conduct affairs or
3 do or transact business in this state, shall make

4 application therefor to the secretary of state, which
5 application shall set forth:

6 (1) The name of the limited liability company and the
7 state or country under the laws of which it is organized;

8 (2) If the name of the limited liability company does
9 not contain the words "limited liability company", then
10 a name for the limited liability company which it adopts
11 and complies with the requirements of this article;

12 (3) The date of formation and the period of duration
13 of the limited liability company;

14 (4) The address of the principal office of the limited
15 liability company;

16 (5) The name and address of the person to whom shall
17 be sent notice or process served upon, or service of which
18 is accepted by, the secretary of state, if one has been
19 designated;

20 (6) The purpose or purposes of the limited liability
21 company which it proposes to pursue in conducting its
22 affairs or doing or transacting business in this state; and

23 (7) Such additional information as may be necessary
24 or appropriate in order to enable the secretary of state
25 to determine whether such limited liability company is
26 entitled to a certificate of authority to conduct its affairs
27 or do or transact business in this state and to determine
28 and assess the fees payable as prescribed by law.

29 (b) Such application shall be made on forms pres-
30 cribed and furnished by the secretary of state and shall
31 be executed in duplicate by the limited liability
32 company by a member or manager, and verified by one
33 of the persons signing such application.

**§31-1A-53. Application for certificate of authority; filing;
issuance of certificate; recordation; pen-
alty for failure to record.**

1 (a) Duplicate originals of the application of a foreign
2 limited liability company for a certificate of authority
3 shall be delivered to the secretary of state, together with
4 a copy of its articles of organization and all amendments

5 thereto, or a proper restatement thereof, duly certified
6 by the proper officer of the state or country under the
7 laws of which it is formed, and a statement or certificate
8 from such officer that the limited liability company is
9 in good standing with the state or country under the
10 laws of which it is formed. If the secretary of state finds
11 that such application conforms to law, he shall, when all
12 fees have been paid as prescribed by law: (i) Endorse
13 on each of such originals the word "Filed" and the
14 month, day and year of the filing thereof; (ii) file one
15 of such duplicate originals of the application and the
16 copy of the articles of organization and amendments
17 thereto; and (iii) issue a certificate of authority to
18 conduct affairs or to do or transact business in this state,
19 to which he shall affix the other duplicate original
20 application.

21 (b) The certificate of authority, together with the
22 duplicate original of the application affixed thereto by
23 the secretary of state, shall be returned to the limited
24 liability company or its representative.

25 (c) The certificate of authority, together with a copy
26 of the articles of organization and all amendments
27 thereto, or a proper restatement thereof, shall be
28 recorded in the office of the clerk of the county
29 commission of the county in which the principal office
30 of the limited liability company in this state is located.
31 If such limited liability company does not maintain a
32 principal office in this state, such recordation may be
33 completed in any county in which it is conducting its
34 affairs or doing or transacting business. A failure to
35 comply with the provisions of this subsection within six
36 months from the date of issuance of a certificate of
37 authority shall subject such limited liability company to
38 a fine of not more than one thousand dollars.

§31-1A-54. Effect of certificate of authority.

1 Upon the issuance of a certificate of authority by the
2 secretary of state, the limited liability company shall be
3 authorized to conduct its affairs or do or transact
4 business in this state for those purposes set forth in its
5 application, subject, however, to the right of this state

6 to suspend or to revoke such authority as provided in
7 this article.

**§31-1A-55. Appointment of person to whom notice or
process may be sent by the secretary of
state; change of principal office or name
and address of person to receive notice or
process.**

1 (a) A foreign limited liability company may at any
2 time appoint a person other than the limited liability
3 company to whom notice or process served upon the
4 secretary of state or service of which is accepted by the
5 secretary of state may be sent, as required by section
6 sixteen of this article, by filing with the secretary of
7 state a statement setting forth:

8 (1) The name of the limited liability company and the
9 state or country of its organization;

10 (2) The present address of its principal office;

11 (3) Express appointment of and the name and address
12 of the person to whom notice or process shall be sent by
13 the secretary of state under section sixteen of this
14 article;

15 (4) Express authority to the secretary of state to send
16 to such person at the address given, all notices and
17 process served upon the secretary of state or service of
18 which is accepted by the secretary of state; and

19 (5) That such appointment was duly authorized by the
20 members or managers.

21 Such statement shall be signed by a member or
22 manager, verified by the signer and delivered to the
23 secretary of state, and upon receipt thereof shall be filed
24 by the secretary of state in his office.

25 (b) A limited liability company may at any time
26 change the address of its principal office or the name
27 and address or the address of the person to whom shall
28 be sent notice or process served upon, or service of which
29 is accepted by, the secretary of state. Such change shall
30 become effective as the name and address or address
31 last furnished to the secretary of state for the purposes

32 of section sixteen of this article only when such limited
33 liability company has filed in the office of the secretary
34 of state a statement setting forth:

35 (1) The name of the limited liability company;

36 (2) The state or country under whose laws it was
37 organized;

38 (3) If the address of the principal office is changed,
39 then the address of the former or present principal
40 office and the address to which it is changed or to be
41 changed;

42 (4) If the name and address only of the person to
43 whom notice or process is to be sent is to be changed,
44 then the name and address of such person to be used
45 from and after the filing of the statement required by
46 this section; and

47 (5) That such change was duly authorized by the
48 members.

49 Such statement shall be signed by a member or
50 manager and verified by him.

**§31-1A-56. Amendment to articles of organization of
foreign limited liability company; filing;
recordation; penalty for failure to record.**

1 (a) Whenever the articles of organization of a foreign
2 limited liability company authorized to conduct affairs
3 or do or transact business in this state are amended,
4 such foreign limited liability company shall, within
5 thirty days after such amendment becomes effective, file
6 in the office of the secretary of state a copy of such
7 amendment duly authenticated by the proper officer of
8 the state or country under the laws of which it is
9 organized; but the filing thereof shall not of itself
10 enlarge or alter the purpose or purposes which such
11 limited liability company is authorized to pursue in
12 conducting its affairs or in doing or transacting business
13 in this state, nor authorize such limited liability
14 company to conduct affairs or do or transact business
15 in this state under any other name than the name set
16 forth in its certificate of authority.

17 (b) The secretary of state shall issue to such limited
18 liability company a certificate showing the filing of such
19 amendment and collect a fee of five dollars for such
20 certificate. The certificate so issued by the secretary of
21 state, together with a true copy of the amendment, shall
22 be recorded in the office of the clerk of the county
23 commission of the county in which its original certificate
24 of authority was recorded, pursuant to the provisions of
25 subsection (c), section fifty-three of this article. A failure
26 to comply with the provisions of this subsection within
27 six months from the date of such amendment shall
28 subject such limited liability company to a fine of not
29 more than one thousand dollars.

**§31-1A-57. Merger of foreign limited liability company
authorized to conduct affairs or do or
transact business in this state; filing of
articles of merger; recordation; penalty
for failure to record.**

1 (a) Whenever a foreign limited liability company
2 authorized to conduct affairs or do or transact business
3 in this state shall be a party to a merger permitted by
4 the laws of the state or country under the laws of which
5 it is organized, and such limited liability company shall
6 be the surviving limited liability company, it shall,
7 within thirty days after such merger becomes effective,
8 file with the secretary of state a copy of the articles of
9 merger duly authenticated by the proper officer of the
10 state or country under the laws of which such merger
11 was effected; and it shall not be necessary for such
12 limited liability company to procure either a new or
13 amended certificate of authority to conduct affairs or do
14 or transact business in this state unless the name of such
15 limited liability company be changed thereby or unless
16 the limited liability company desires to pursue in this
17 state other or additional purposes than those which it
18 is then authorized to pursue in this state.

19 (b) The secretary of state shall issue to such surviving
20 limited liability company a certificate showing the filing
21 of a copy of the articles of merger and collect a fee of
22 five dollars for such certificate. The certificate so issued
23 by the secretary of state, together with a true copy of

24 the articles of merger, shall be recorded in the office of
25 the clerk of the county commission of the county in
26 which its original certificate of authority was recorded,
27 pursuant to the provisions of subsection (c), section fifty-
28 three of this article. A failure to comply with the
29 provisions of this subsection within six months from the
30 date of such merger shall subject such limited liability
31 company to a fine of not more than one thousand dollars.

**§31-1A-58. Amended certificate of authority; require-
ments; recordation; penalty for failure to
record.**

1 A foreign limited liability company authorized to
2 conduct its affairs or do or transact business in this state
3 shall procure an amended certificate of authority in the
4 event it changes its limited liability company name, or
5 desires to pursue in this state purposes other than or in
6 addition to those purposes set forth in its prior appli-
7 cation for a certificate of authority, by making applica-
8 tion therefor to the secretary of state.

9 The requirements in respect to the form and contents
10 of such application, the manner of its execution, the
11 filing of duplicate originals thereof with the secretary
12 of state, the issuance of an amended certificate of
13 authority and the effect thereof, and the recordation
14 requirements for such amended certificate of authority
15 shall be the same as in the case of an original application
16 for a certificate of authority. A failure to comply with
17 the provisions of this section within six months from the
18 date of such change of limited liability company name
19 or purposes shall subject such limited liability company
20 to a fine of not more than one thousand dollars.

**§31-1A-59. Procedure for withdrawal of foreign limited
liability company; publication required;
application for certificate of withdrawal;
contents; filing; issuance of certificate;
recordation.**

1 (a) A foreign limited liability company authorized to
2 conduct its affairs or do or transact business in this state
3 may withdraw from this state upon procuring from the
4 secretary of state a certificate of withdrawal. In order

5 to procure such certificate of withdrawal, such foreign
6 limited liability company shall publish a notice of its
7 intention to withdraw from the state, such notice to be
8 published as a Class II legal advertisement in com-
9 pliance with the provisions of article three, chapter fifty-
10 nine of this code, and the publication area for such
11 publication shall be the county in which its principal
12 office in this state is situated, or if there be no such
13 office in this state, then any county in this state where
14 it conducts its affairs or does or transacts business.

15 (b) After publication of the notice required by the
16 provisions of subsection (a) of this section, such foreign
17 limited liability company shall make application to the
18 secretary of state for a certificate of withdrawal, which
19 application shall set forth:

20 (1) The name of the limited liability company and the
21 state or country under the laws of which it is organized;

22 (2) That the limited liability company has ceased
23 conducting its affairs or has ceased doing or transacting
24 business in this state;

25 (3) That the limited liability company surrenders its
26 authority to conduct its affairs to do or transact business
27 in this state;

28 (4) A post office address to which the secretary of
29 state may mail a copy of any process against the
30 corporation that may be served on him; and

31 (5) Such additional information as may be necessary
32 or appropriate in order to enable the secretary of state
33 and tax commissioner to determine and assess any
34 unpaid fees and taxes payable by such foreign limited
35 liability company as may be prescribed by law.

36 (c) The application for a certificate of withdrawal
37 shall be made on forms prescribed and furnished by the
38 secretary of state and shall be executed by the limited
39 liability company by a member or manager, and
40 verified by one of such persons signing the application,
41 or, if the limited liability company is in the hands of a
42 receiver or trustee, shall be executed on behalf of the
43 limited liability company by such receiver or trustee

44 and verified by him. Such application shall be accom-
45 panied by a copy of the notice required to be published
46 under the provisions of subsection (a) of this section and
47 the publisher's certificate of such publication.

48 (d) Duplicate originals of such application for a
49 certificate of withdrawal shall be delivered to the
50 secretary of state. If the secretary of state finds that
51 such application conforms to law, he shall, when all fees
52 have been paid, as prescribed by law: (i) Endorse on
53 each of such duplicate originals the word "Filed" and
54 the month, day and year of the filing thereof; (ii) file one
55 of such duplicate originals in his office; and (iii) issue
56 a certificate of withdrawal to which he shall affix the
57 other duplicate original.

58 (e) The certificate of withdrawal, together with the
59 duplicate original of the application for withdrawal
60 affixed thereto by the secretary of state, shall be
61 returned to the limited liability company or its repre-
62 sentative. The limited liability company or its represen-
63 tative shall record the certificate of withdrawal in the
64 office of the clerk of the county commission in which the
65 limited liability company's certificate of authority is
66 recorded and the clerk shall note on the margin of the
67 record book in which such certificate of authority is
68 engrossed the fact of the withdrawal of the limited
69 liability company.

**§31-1A-60. Conditions for revocation of certificate of
authority.**

1 (a) The certificate of authority of a foreign limited
2 liability company to conduct its affairs or do or transact
3 business in this state may be revoked by the secretary
4 of state upon the conditions prescribed in this section
5 when:

6 (1) The limited liability company has failed to file in
7 the office of the secretary of state any amendment to its
8 articles of organization as required by the provisions of
9 section fifty-six of this article; or

10 (2) The limited liability company has failed to file in
11 the office of the secretary of state any articles of merger

12 as required by the provisions of section fifty-seven of this
13 article; or

14 (3) A misrepresentation has been made of any
15 material matter in any application, report, affidavit or
16 other document submitted by such limited liability
17 company pursuant to the provisions of this article.

18 (b) No certificate of authority of a foreign limited
19 liability company shall be revoked by the secretary of
20 state unless:

21 (1) He shall have given the limited liability company
22 not less than sixty days' notice thereof by registered or
23 certified mail, return receipt requested, addressed to its
24 principal office; and

25 (2) The limited liability company shall fail, prior to
26 revocation, to file any amendment to its articles of
27 organization or shall fail to file any articles of merger
28 or shall fail to correct any such misrepresentation.

**§31-1A-61. Application to limited liability company
heretofore authorized to conduct its af-
fairs or do or transact business in this
state.**

1 Subject to the limitations set forth in their respective
2 certificates of authority, foreign limited liability
3 companies that are duly authorized to conduct their
4 affairs or do or transact business in this state at the time
5 this article takes effect for a purpose or purposes for
6 which a limited liability company might secure such
7 authority under this article, shall be entitled to all the
8 rights and privileges applicable to foreign limited
9 liability companies procuring certificates of authority to
10 conduct their affairs or do or transact business in this
11 state under this article, and shall not be required to
12 make reapplication for authority to conduct their affairs
13 or do or transact business in this state by reason of the
14 adoption of this article. From the time this article takes
15 effect each such limited liability company shall be
16 subject to all the limitations, restrictions, liabilities and
17 duties prescribed herein for foreign limited liability
18 companies procuring certificates of authority to conduct

19 their affairs or do or transact business in this state.

**§31-1A-62. Conducting affairs or doing or transacting
business without certificate of authority.**

1 No foreign limited liability company which is con-
2 ducting its affairs or doing or transacting business in
3 this state without a certificate of authority shall be
4 permitted to maintain any action or proceeding in any
5 court of this state until such limited liability company
6 shall have obtained a certificate of authority. Nor shall
7 any action or proceeding be maintained in any court of
8 this state by any successor or assignee of such limited
9 liability company on any right, claim or demand arising
10 out of the conducting of affairs or the doing or transact-
11 ing of business by such limited liability company in this
12 state until a certificate of authority shall have been
13 obtained by such limited liability company or by a
14 limited liability company which has acquired all or
15 substantially all of its assets.

16 The failure of a foreign limited liability company to
17 obtain a certificate of authority to conduct its affairs or
18 do or transact business in this state shall not impair the
19 validity of any contract or act of such limited liability
20 company, and shall not prevent such limited liability
21 company from defending any action or proceeding in
22 any court of this state.

23 A foreign limited liability company that conducts its
24 affairs or does or transacts business in this state without
25 a certificate of authority shall be liable to this state, for
26 the years or parts thereof during which it conducted
27 affairs or did or transacted business in this state without
28 a certificate of authority, in an amount equal to all fees
29 and taxes that would have been imposed by this article,
30 or by any other provisions of this code, upon such limited
31 liability company had it duly applied for and received
32 a certificate of authority to conduct its affairs or do or
33 transact business in this state as required by this article
34 and thereafter filed all reports, statements or returns
35 required by this article or by any other provisions of this
36 code, plus all penalties imposed for failure to pay any
37 such fees and taxes.

§31-1A-63. Requirement for registered agent and certain reports.

1 A foreign limited liability company authorized to
2 transact business in this state shall:

3 (1) Appoint and continuously maintain a registered
4 agent in the same manner as provided in this article for
5 domestic limited liability companies;

6 (2) File a report upon any change in the name or
7 business address of its registered agent in the same
8 manner as provided in this article for domestic limited
9 liability companies; and

10 (3) File limited liability company reports as provided
11 in this article for domestic limited liability companies.

§31-1A-64. Parties to actions.

1 A member or manager of a limited liability company
2 is not a proper party to proceedings by or against a
3 limited liability company, except where the object is to
4 enforce a member's or manager's right against, or
5 liability to, the limited liability company.

§31-1A-65. Title to limited liability company property.

1 Any estate or interest in property may be acquired
2 in the name of the limited liability company and title
3 to any estate or interest so acquired shall vest in the
4 limited liability company.

§31-1A-66. Waiver of notice.

1 When, under the provisions of this article or under the
2 provisions of the articles of organization or operating
3 agreement of a limited liability company, notice is
4 required to be given to a member or to a manager of
5 a limited liability company having a manager or
6 managers, a waiver in writing signed by the person or
7 persons entitled to the notice, whether made before or
8 after the time for notice to be given, is equivalent to the
9 giving of notice.

§31-1A-67. Applicability of provisions to foreign and interstate commerce.

- 1 The provisions of this article shall apply to commerce
- 2 with foreign nations and among the several states only
- 3 as permitted by law.

§31-1A-68. Definition of "person" to indicate limited liability company.

- 1 For purposes of this code, whenever the term "person"
- 2 is defined to include both corporations and general or
- 3 limited partnerships, it shall include limited liability companies.

§31-1A-69. Conflicting laws; existing rights and liabilities.

- 1 This article takes precedence in the event of a conflict
- 2 with the provisions of article one of this chapter or other
- 3 laws. This article does not affect a right accrued or
- 4 established or any liability or penalty incurred, prior to
- 5 its effective date.

CHAPTER 42

(S. B. 431—By Senator Wooton)

[Passed March 5, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section ninety, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section four, article eight, chapter forty-seven of said code, relating to corporations; removing the provision concerning shareholders' preemptive rights in conflict with other provisions; and limiting the use of certain terms in corporation trade names.

Be it enacted by the Legislature of West Virginia:

That section ninety, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section four, article eight,

chapter forty-seven of said code be amended and reenacted to read as follows:

ARTICLE 8. TRADE NAMES.

§47-8-4. Corporations, associations and limited partnerships not to conduct business under assumed name without filing certificate of true name; filing, recordation and indexing of certificates filed; issuance of certificate of true name.

1 (a) No corporation, limited partnership or association
2 required to register with the secretary of state in order
3 to conduct business within the state may conduct or
4 transact any business in this state under any assumed
5 name, or under any designation, name or style, corpo-
6 rate or otherwise, other than the name established by
7 the certificate of incorporation, authority, association or
8 limited partnership, unless the corporation, limited
9 partnership or association files in the office of the
10 secretary of state a certificate of registration of true
11 name setting forth the name or names under which such
12 business is, or is to be, conducted or transacted, with the
13 address of the principal office within the state or, if no
14 office is maintained within the state, the address of the
15 principal office in the state in which the corporation,
16 association or limited partnership is established. A new
17 certificate of registration is to be filed if the corporation,
18 limited partnership or association desires to conduct or
19 transact any business in this state under any other
20 assumed name not on file in the office of the secretary
21 of state.

22 (b) Two executed originals of the application for true
23 name registration shall be delivered to the secretary of
24 state. If the filing officer finds that the application for
25 true name registration conforms to law, he or she shall,
26 when all fees have been paid as prescribed by law: (i)
27 Endorse on each of the originals the word "filed" and
28 the month, day and year of the filing; (ii) file one of the

29 originals; and (iii) issue to the applicant the certificate
30 of registration of true name with the other original
31 attached.

32 (c) Upon discontinuing the use of a name other than
33 the name established by the certificate of incorporation,
34 authority, association or limited partnership, the
35 certificate of registration of true name shall be with-
36 drawn by filing a certificate of withdrawal with the
37 office of the secretary of state setting forth the name to
38 be discontinued, the real name, the address of the party
39 transacting business and the date upon which the
40 original certificate of registration of true name was
41 filed.

42 (d) Any corporation authorized to transact business in
43 this state shall procure an amended certificate of
44 incorporation in the event it changes its corporate name
45 by filing articles of amendment with the office of the
46 secretary of state as provided in article one, chapter
47 thirty-one of this code.

48 (e) A domestic corporation, limited partnership or
49 association having its principal office within the state
50 shall file a certified copy of any certificate of true name
51 with the clerk of the county commission of the county
52 in which the principal office is located. A foreign
53 corporation, limited partnership or association having
54 its principal office outside the state shall file a certified
55 copy of any such certificate with the clerk of the county
56 commission of a county in which its principal business
57 is transacted.

58 (f) The secretary of state shall keep an alphabetical
59 index of all persons filing certificates provided for in
60 this section.

61 (g) Any corporation registering a true name pursuant
62 to the provisions of this section is subject to the
63 limitations set forth in subsection (c), section eleven,
64 article one, chapter thirty-one of this code regarding use
65 of the words "engineer", "engineers", "engineering", or
66 any combination thereof.

CHAPTER 43

(Com. Sub. for S. B. 290—By Senators Wiedebusch, Macnaughtan, Blatnik, Chernenko and Bailey)

[Passed March 7, 1992; 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 twenty-one; and to amend article twenty, chapter thirty-one of said code by adding thereto a new section, designated section twenty-seven, relating to displaced correctional employees and other facilities; county and state correctional officers; priority for employment upon closure of facilities; requirements for eligibility for transfer; specifying employment conditions, promulgation of rules; and establishment of hiring list for certain facilities.

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 twenty-one; and that article twenty, chapter thirty-one of said code be amended by adding thereto a new section, designated section twenty-seven, to read as follows:

Chapter

25. Division of Corrections.

31. Corporations.

CHAPTER 25. DIVISION OF CORRECTIONS.

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-21. Employment of displaced correctional employees at other facilities.

1 (a) Notwithstanding any provisions of this code to the
 2 contrary, any person not a temporary or probationary
 3 employee employed at the West Virginia penitentiary at
 4 Moundsville at the time of its closing shall be afforded
 5 the opportunity to transfer duty stations to the West

6 Virginia penitentiary at Mount Olive, the West Virginia
7 medium security prison at Huttonsville or the northern
8 regional jail and correctional complex at Moundsville if
9 he or she is an employee in good standing at the time
10 the facility is closed. Any person so transferred shall
11 retain his or her rank or classified service classification,
12 salary and benefits. The commissioner shall promulgate
13 rules pursuant to chapter twenty-nine-a of this code, to
14 effectuate notice and procedures for said transfers:
15 *Provided*, That the commissioner shall have the author-
16 ity to, upon consideration of an employee's age and
17 length of service, direct an employee's transfer to one
18 of the three facilities based on staff requirements.

19 (b) The commissioner shall, within thirty days of the
20 closing of the West Virginia penitentiary at Mounds-
21 ville, establish and maintain, for a period of two years,
22 a list of all correctional officers who are eligible for
23 transfer pursuant to subsection (a) of this section and
24 who wish to remain eligible for a two-year period for
25 transfer to the Mount Olive correctional complex, or the
26 Huttonsville correctional center or the northern jail and
27 correctional complex at Moundsville. The commissioner
28 shall give priority to any person on the list for employ-
29 ment in an available position equivalent to the position
30 that person held at the penitentiary unless the commis-
31 sioner determines that that person is physically or
32 mentally unfit for the employment: *Provided*, That the
33 commissioner has the authority to transfer a correc-
34 tional officer to any of the three facilities based upon his
35 or her determination of staff requirements.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORREC- TIONAL FACILITY AUTHORITY.

§31-20-27. Correctional officers; regional jails; priority of hiring.

1 (a) Notwithstanding any provision of this code to the
2 contrary, the authority, when employing correctional
3 officers to complete the approved staffing plan of a
4 regional jail completed after the effective date of this
5 section, shall employ any correctional officer applying

6 for a position as a correctional officer at a regional jail
7 who was employed in good standing at a county jail
8 facility in the region at the time of its closing or at a
9 prison facility operated by the division of corrections:
10 *Provided*, That the regional jail is located within the
11 same region as the prison facility that was closed due
12 to relocation of the prison facility to a site outside the
13 region. Only those correctional officers, who are
14 employees in good standing at the time the prison
15 facility is closed, are eligible for transfer under the
16 provisions of this subsection. Correctional officers,
17 employed under the provisions of this subsection, shall
18 be employed at a salary and with benefits consistent
19 with the approved plan of compensation of the division
20 of personnel, created under section five, article six,
21 chapter twenty-nine of this code. All correctional
22 officers employed under this subsection shall also be
23 covered by the policies and procedures of the education
24 and state employees grievance board, created under
25 section five, article six-a, chapter twenty-nine of this
26 code and the classified-exempt service protection
27 policies of the division of personnel.

28 (b) The authority shall, when employing correctional
29 officers to fill positions within the approved staffing
30 plan of any regional jail, employ any correctional officer
31 applying for a position as a correctional officer at a
32 regional jail who was previously employed as a correc-
33 tional officer in good standing at any local jail facility:
34 *Provided*, That the local jail facility is located within the
35 same region as the regional jail at the time of the local
36 jail facility's closing or reduction in size and was
37 reduced in size or closed prior to or due to the
38 completion of the regional jail within the region.
39 Correctional officers, employed under the provisions of
40 this subsection, shall be employed at a salary and with
41 benefits consistent with the approved plan of compen-
42 sation of the division of personnel, created under section
43 five, article six, chapter twenty-nine of this code. Only
44 those county correctional officers who are employees in
45 good standing at the time the local jail facility is closed
46 are eligible for transfer under the provisions of this
47 subsection. All correctional officers employed under this

48 subsection shall also be covered by the policies and
49 procedures of the education and state employees
50 grievance board created under section five, article six-
51 a, chapter twenty-nine of this code and the classified-
52 exempt service protection of the division of personnel.

CHAPTER 44

(Com. Sub. for H. B. 4188—By Delegates Vest and Manuel)

[Passed March 7, 1992: in effect ninety days from passage. Approved by the Governor.]

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 twelve-a, relating to authorizing the formation of maintenance associations outside of incorporated areas; authorizing maintenance associations outside of incorporated areas to assess and collect fees.

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 twelve-a, to read as follows:

ARTICLE 12A. MAINTENANCE ASSOCIATIONS.

§7-12A-1. Definitions.

§7-12A-2. Purpose of the maintenance association.

§7-12A-3. Petition to establish maintenance association.

§7-12A-4. Contents of maintenance association document; approval of recording of maintenance association documents.

§7-12A-5. Powers of maintenance associations.

§7-12A-6. Assessment and collection of fees; notice.

§7-12A-1. Definitions.

1 In this article, unless a different meaning plainly is
2 required:

3 (1) "Maintenance association" means an association
4 established pursuant to the requirements of this article.

5 (2) "Maintenance association member" means any

6 person, owning residential property that fronts on either
7 side of a road which is designated by a maintenance
8 association document.

9 (3) "Maintenance association documents" means
10 documents approved by the county commission as
11 meeting the requirements of this article and filed with
12 the clerk of the county commission.

§7-12A-2. Purpose of the maintenance association.

1 Maintenance associations may be established in any
2 county outside an incorporated area to protect the
3 health, safety and welfare of persons and the general
4 public located within the designated maintenance
5 association area. The maintenance association shall be
6 created with the objective of establishing and maintain-
7 ing improvements for the area designated in the
8 petition, which may include constructing and maintain-
9 ing shared streets, drainage facilities, sidewalks, water
10 and sewer systems, signs and other improvements
11 necessary for the protection of health, safety and welfare
12 of the general public.

§7-12A-3. Petition to establish maintenance association.

1 (a) A petition in writing may be made to the county
2 commission, that duly verifies that persons owning sixty
3 percent of the frontage of the lots on both sides of any
4 orphan road or subdivision road in any unincorporated
5 area request the approval of the formation of a main-
6 tenance association. The petition shall be accompanied
7 by the proposed maintenance association's recordable
8 documents that establish the association.

9 (b) Upon the filing of such petition and the proposed
10 maintenance association documents, the county commis-
11 sion shall fix a time and place for hearing protests and
12 shall require the petitioners to post notice of such
13 hearing in at least two conspicuous places on the public
14 road, orphan road or subdivision road of the area
15 affected, and to give notice thereof by publication of
16 such notice as a Class I legal advertisement in com-
17 pliance with the provisions of article three, chapter fifty-
18 nine of this code. The publication area for such

19 publication shall be the county in which the mainte-
20 nance association shall be located. The hearing shall be
21 held not less than ten nor more than thirty days after
22 the filing of such petition.

23 (c) At the time and place set for hearing protests, the
24 county commission may examine witnesses and consider
25 other evidence to show that:

26 (1) Said petition was filed in good faith;

27 (2) The signatures on the petition are genuine;

28 (3) The maintenance association document addresses
29 the maintenance association purpose; and

30 (4) The proposed maintenance association will result
31 in special benefits to all owners of residential property
32 abutting on said orphan road or subdivision road.

33 The commission shall within ten days thereafter enter
34 a formal order stating its decision.

35 (d) Any owner of residential property abutting upon
36 said orphan road or subdivision road aggrieved by such
37 order shall have the right to review the order on the
38 record made before the county commission by filing a
39 petition with the clerk of the circuit court within ten
40 days after the entry of such order. The owner shall give
41 bond in an amount to be fixed by the circuit court
42 sufficient to pay costs or expenses incurred by the court
43 and the maintenance association upon appeal if the
44 order of the county commission is affirmed. The circuit
45 court shall proceed to review the matter as in other
46 appeals from the county commission.

**§7-12A-4. Contents of maintenance association document;
approval of recording of maintenance asso-
ciation documents.**

1 (a) The maintenance association document shall
2 include language for:

3 (1) Conduct of business;

4 (2) Fee structure;

5 (3) Enforcement; and

6 (4) Voting requirements: *Provided*, That each af-
7 fected property owner shall be accorded one vote per
8 property.

9 (b) After a maintenance association has been ap-
10 proved by the county commission, a certified copy of the
11 approved maintenance association documents shall be
12 filed with the clerk of the county commission.

§7-12A-5. Powers of maintenance associations.

1 A maintenance association formed pursuant to this
2 article may have power and authority to:

3 (a) Assess fees for essential services, and

4 (b) Institute suits for the collection of such fees,
5 attorneys fees and court costs.

§7-12A-6. Assessment and collection of fees; notice.

1 (a) A maintenance association which furnishes essen-
2 tial services, including, but not limited to, construction
3 and maintenance of shared streets, drainage facilities,
4 sidewalks, water and sewer systems, signs and other
5 improvements necessary for the health, safety and
6 welfare of the general public, may have authority to
7 impose reasonable fees and charges on persons owning
8 lots abutting the frontage of both sides of roads listed
9 in the maintenance association document.

10 (b) Any new fee or fee increase assessed under this
11 section shall not be collectable unless notice of the
12 proposed fee or increase is sent by certified mail to each
13 person owning property listed in the maintenance
14 association document. If thirty percent of the members,
15 by signed petition, protest the assessment to the
16 association within fifteen days of the mailing, the fee
17 shall not become effective until it is ratified by sixty
18 percent of the members.

19 (c) All fees assessed under this section are declared
20 to be debts owing to the maintenance association for
21 which the debtor shall be personally liable. The
22 maintenance association, or an individual designated to
23 act for it, may enforce this liability by appropriate civil
24 action in a court of competent jurisdiction. After being

25 reduced to judgment and filed with the clerk of the
26 county commission, such liability shall be a lien on
27 property owned by the maintenance association member
28 and designated in the maintenance association docu-
29 ment.

CHAPTER 45

(Com. Sub. for H. B. 2911—By Delegates Huffman and Rowe)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections nine, ten, eleven and twelve, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six, article three, chapter fifty-six of said code; and to amend and reenact section thirty-one, article one, chapter fifty-nine of said code, relating to the administration of courts generally; removing obsolete statutory language relating to the appointment of special judges; eliminating circuit court bookkeeping requirements regarding service of process documentation, and eliminating certain required reports.

Be it enacted by the Legislature of West Virginia:

That sections nine, ten, eleven and twelve, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section six, article three, chapter fifty-six of said code be amended and reenacted; and that section thirty-one, article one, chapter fifty-nine of said code be amended and reenacted, all to read as follows:

Chapter

56. Pleading and Practice.

59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

§56-3-6. Delivery of process.

1 The clerk of every court from whose office may be
2 issued any process, original, mesne or final, or any order
3 or decree to be served on any person, shall, unless the
4 party interested, or his attorney, direct otherwise,
5 deliver the same to the sheriff or other proper officer
6 of the county for which the court is held, if it is to be
7 executed therein, and if it is to be executed in any other
8 county, shall enclose the same in an envelope properly
9 addressed to the sheriff or other proper officer thereof,
10 pay the postage thereon and mail it in the post office.
11 Documentation of service of process will be according
12 to rules promulgated by the supreme court of appeals.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWSPAPERS; LEGAL ADVERTISEMENTS.****ARTICLE 1. FEES AND ALLOWANCES.****§59-1-31. Monthly payments; how credited; report
required.**

1 Except for the funds designated in section twenty-
2 eight-a of this article, each of the officers named in
3 section twenty-nine of this article shall at the end of each
4 month pay into the county treasury all fees, costs,
5 percentages, penalties, commissions, compensation,
6 income and all other perquisites of whatever kind
7 collected by his office during such month, which money
8 shall be credited to the general county fund.

CHAPTER 46**(H. B. 4651—By Delegates Rutledge and Williams)**

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article ten,
chapter thirty-one of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to the payment of dividends by credit unions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. CREDIT UNIONS.

§31-10-21. When and how dividends paid.

1 At such intervals and for such periods not to exceed
2 one year as the board of directors may authorize, and
3 after provision for the required reserves, the board of
4 directors of a credit union may declare dividends to be
5 paid from the net earnings on all fully paid shares
6 outstanding at the close of the period for which the
7 dividend is declared. The board of directors of the credit
8 union, upon written request to and approval of the
9 commissioner, may declare dividends to be paid from
10 the retained earnings of prior years. The commissioner,
11 upon receipt of a request, shall review the condition of
12 the credit union and if, in the opinion of the commis-
13 sioner, the condition of the credit union warrants, he or
14 she shall approve the request within twenty-one days
15 from the receipt of such request and provide written
16 notification of his or her decision to the directors of the
17 credit union requesting to declare the dividend. Shares
18 which become fully paid during such period shall be
19 entitled to a proportional part of such dividends
20 calculated from the first day of the month following
21 such payment in full.

CHAPTER 47

(H. B. 4711—By Delegates Roop and Ashley)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, four and fourteen, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twenty-nine, all relating to the crime victims compensation fund;

defining terms; increasing fees which are added to court costs; creation of crime victims compensation fund; payment of moneys into and out of the fund; services to be provided by the office of the attorney general; grounds for denial of claims and reductions of awards; eliminating awards for noneconomic loss; and providing a retroactive effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-3. Definitions.

§14-2A-4. Creation of crime victims compensation fund.

§14-2A-14. Grounds for denial of claim or reduction of awards; maximum awards.

§14-2A-29. Retroactive effect of amendments.

§14-2A-3. Definitions.

1 As used in this article, the term:

2 (a) "Claimant" means any of the following persons,
3 whether residents or nonresidents of this state, who
4 claim an award of compensation under this article:

5 (1) A victim: *Provided*, That the term victim does not
6 include a nonresident of this state where the criminally
7 injurious act did not occur in this state;

8 (2) A dependent, spouse or minor child of a deceased
9 victim; or in the event that the deceased victim is a
10 minor, the parents, legal guardians and siblings of the
11 victim;

12 (3) A third person other than a collateral source who
13 legally assumes or voluntarily pays the obligations of a
14 victim, or of a dependent of a victim, which obligations
15 are incurred as a result of the criminally injurious
16 conduct that is the subject of the claim; and

17 (4) A person who is authorized to act on behalf of a
18 victim, dependent or a third person who is not a
19 collateral source; and, in the event that the victim,
20 dependent or third person who is not a collateral source
21 is a minor or other legally incompetent person, the duly
22 qualified fiduciary of the minor.

23 (b) "Collateral source" means a source of benefits or
24 advantages for economic loss otherwise compensable
25 that the victim or claimant has received, or that is
26 readily available to him, from any of the following
27 sources:

28 (1) The offender, except any restitution received from
29 the offender pursuant to an order by a court of law
30 sentencing the offender or placing him on probation
31 following a conviction in a criminal case arising from
32 the criminally injurious act for which a claim for
33 compensation is made;

34 (2) The government of the United States or any of its
35 agencies, a state or any of its political subdivisions, or
36 an instrumentality of two or more states;

37 (3) Social security, medicare and medicaid;

38 (4) State-required, temporary, nonoccupational dis-
39 ability insurance; other disability insurance;

40 (5) Workers' compensation;

41 (6) Wage continuation programs of any employer;

42 (7) Proceeds of a contract of insurance payable to the
43 victim or claimant for loss that was sustained because
44 of the criminally injurious conduct;

45 (8) A contract providing prepaid hospital and other
46 health care services or benefits for disability; and

47 (9) That portion of the proceeds of all contracts of
48 insurance payable to the claimant on account of the
49 death of the victim which exceeds twenty-five thousand
50 dollars.

51 (c) "Criminally injurious conduct" means conduct that
52 occurs or is attempted in this state or in any state not
53 having a victim compensation program which by its

54 nature poses a substantial threat of personal injury or
55 death, and is punishable by fine or imprisonment or
56 death, or would be so punishable but for the fact that
57 the person engaging in the conduct lacked capacity to
58 commit the crime under the laws of this state. Crimi-
59 nally injurious conduct does not include conduct arising
60 out of the ownership, maintenance or use of a motor
61 vehicle, except when the person engaging in the conduct
62 intended to cause personal injury or death, or except
63 when the person engaging in the conduct committed
64 negligent homicide, driving under the influence of
65 alcohol, controlled substances or drugs, or reckless
66 driving.

67 (d) "Dependent" means an individual who received
68 over half of his or her support from the victim. For the
69 purpose of determining whether an individual received
70 over half of his or her support from the victim, there
71 shall be taken into account the amount of support
72 received from the victim as compared to the entire
73 amount of support which the individual received from
74 all sources, including support which the individual
75 himself or herself supplied. The term "support" in-
76 cludes, but is not limited to, food, shelter, clothing,
77 medical and dental care and education. The term
78 "dependent" includes a child of the victim born after his
79 or her death.

80 (e) "Economic loss" means economic detriment
81 consisting only of allowable expense, work loss and
82 replacement services loss. If criminally injurious
83 conduct causes death, economic loss includes a depend-
84 ent's economic loss and a dependent's replacement
85 services loss. Noneconomic detriment is not economic
86 loss; however, economic loss may be caused by pain and
87 suffering or physical impairment.

88 (f) "Allowable expense" means reasonable charges
89 incurred or to be incurred for reasonably needed
90 products, services and accommodations, including those
91 for medical care, prosthetic devices, eye glasses,
92 dentures, rehabilitation and other remedial treatment
93 and care.

94 Allowable expense includes a total charge not in
95 excess of three thousand dollars for expenses in any way
96 related to funeral, cremation and burial. It does not
97 include that portion of a charge for a room in a hospital,
98 clinic, convalescent home, nursing home or any other
99 institution engaged in providing nursing care and
100 related services in excess of a reasonable and customary
101 charge for semiprivate accommodations, unless accom-
102 modations other than semiprivate accommodations are
103 medically required.

104 (g) "Work loss" means loss of income from work that
105 the injured person would have performed if he or she
106 had not been injured and expenses reasonably incurred
107 or to be incurred by him or her to obtain services in lieu
108 of those he or she would have performed for income,
109 reduced by any income from substitute work actually
110 performed or to be performed by him or her, or by
111 income he or she would have earned in available
112 appropriate substitute work that he or she was capable
113 of performing but unreasonably failed to undertake.

114 (h) "Replacement services loss" means expenses
115 reasonably incurred or to be incurred in obtaining
116 ordinary and necessary services in lieu of those the
117 injured person would have performed, not for income
118 but for the benefit of himself or herself or his or her
119 family, if he or she had not been injured.

120 (i) "Dependent's economic loss" means loss after a
121 victim's death of contributions or things of economic
122 value to his or her dependents, not including services
123 they would have received from the victim if he or she
124 had not suffered the fatal injury, less expenses of the
125 dependents avoided by reason of the victim's death.

126 (j) "Dependent's replacement service loss" means loss
127 reasonably incurred or to be incurred by dependents
128 after a victim's death in obtaining ordinary and
129 necessary services in lieu of those the victim would have
130 performed for their benefit if he or she had not suffered
131 the fatal injury, less expenses of the dependents avoided
132 by reason of the victim's death and not subtracted in
133 calculating dependent's economic loss.

134 (k) "Victim" means a person who suffers personal
135 injury or death as a result of any one of the following:
136 (1) Criminally injurious conduct; (2) the good faith effort
137 of the person to prevent criminally injurious conduct; or
138 (3) the good faith effort of the person to apprehend a
139 person that the injured person has observed engaging
140 in criminally injurious conduct, or who the injured
141 person has reasonable cause to believe has engaged in
142 criminally injurious conduct immediately prior to the
143 attempted apprehension.

144 (l) "Contributory misconduct" means any conduct of
145 the claimant, or of the victim through whom the
146 claimant claims an award, that is unlawful or intention-
147 ally tortious and that, without regard to the conduct's
148 proximity in time or space to the criminally injurious
149 conduct has causal relationship to the criminally
150 injurious conduct that is the basis of the claim and shall
151 also include the voluntary intoxication of the claimant,
152 either by the consumption of alcohol or the use of any
153 controlled substance when the intoxication has a causal
154 connection or relationship to the injury sustained. The
155 voluntary intoxication of a victim is not a defense
156 against the estate of a deceased victim.

§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, in any magistrate court or circuit court, shall
5 pay the sum of ten dollars as costs in the case, in
6 addition to any other court costs that the court is
7 required by law to impose upon the convicted person.
8 Every person within the state who is convicted of or
9 pleads guilty to a misdemeanor or felony offense, other
10 than a traffic offense that is not a moving violation, in
11 any municipal court, shall pay the sum of eight dollars
12 as costs in the case, in addition to any other court costs
13 that the court is required by law to impose upon the
14 convicted person. In addition to any other costs pre-
15 viously specified, every person within the state who is
16 convicted of or pleads guilty to a violation of section two,
17 article five, chapter seventeen-c, shall pay a fee in the

18 amount of twenty percent of any fine imposed under
19 said section two. This shall be in addition to any other
20 court cost required by this section or which may be
21 required by law.

22 (b) The clerk of the circuit court, magistrate court or
23 municipal court wherein the additional costs are
24 imposed under the provisions of subsection (a) of this
25 section shall, on or before the last day of each month,
26 transmit all costs received under this article to the state
27 treasurer for deposit in the state treasury to the credit
28 of a special revenue fund to be known as the "Crime
29 Victims Compensation Fund," which is hereby created.
30 All moneys heretofore collected and received under the
31 prior enactment or reenactments of this article and
32 deposited or to be deposited in the "Crime Victims
33 Reparation Fund" are hereby transferred to the crime
34 victims compensation fund, and the treasurer shall
35 deposit the moneys in the state treasury. All moneys
36 collected and received under this article and paid into
37 the state treasury and credited to the crime victims
38 compensation fund in the manner prescribed in section
39 two, article two, chapter twelve of this code, shall be
40 kept and maintained for the specific purposes of this
41 article, and shall not be treated by the auditor and
42 treasurer as part of the general revenue of the state.

43 (c) Moneys in the crime victims compensation fund
44 shall be available for the payment of the costs of
45 administration of this article in accordance with the
46 budget of the court approved therefor: *Provided*, That
47 the services of the office of the attorney general, as may
48 be required or authorized by any of the provisions of this
49 article, shall be rendered without charge to the fund.

**§14-2A-14. Grounds for denial of claim or reduction of
awards; maximum awards.**

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 or she is seeking an award of
8 compensation.

9 (b) The judge or commissioner shall not approve an
10 award of compensation if the criminally injurious
11 conduct upon which the claim is based was not reported
12 to a law-enforcement officer or agency within seventy-
13 two hours after the occurrence of the conduct, unless it
14 is determined that good cause existed for the failure to
15 report the conduct within the seventy-two hour period.

16 (c) The judge or commissioner shall not approve an
17 award of compensation to a claimant who is the offender
18 or an accomplice of the offender who committed the
19 criminally injurious conduct, nor to any claimant if the
20 award would unjustly benefit the offender or his or her
21 accomplice.

22 (d) A judge or commissioner, upon a finding that the
23 claimant or victim has not fully cooperated with
24 appropriate law-enforcement agencies, or the claim
25 investigator, may deny a claim, reduce an award of
26 compensation, or reconsider a claim already approved.

27 (e) A judge or commissioner shall not approve an
28 award of compensation if the injury occurred while the
29 victim was confined in any state, county or city jail,
30 prison, private prison or correctional facility.

31 (f) After reaching a decision to approve an award of
32 compensation, but prior to announcing the approval, the
33 judge or commissioner shall require the claimant to
34 submit current information as to collateral sources on
35 forms prescribed by the clerk of the court of claims. The
36 judge or commissioner shall reduce an award of
37 compensation or deny a claim for an award of compen-
38 sation that is otherwise payable to a claimant to the
39 extent that the economic loss upon which the claim is
40 based is or will be recouped from other persons,
41 including collateral sources, or if the reduction or denial
42 is determined to be reasonable because of the contrib-
43 utory misconduct of the claimant or of a victim through
44 whom he or she claims. If an award is reduced or a
45 claim is denied because of the expected recoupment of
46 all or part of the economic loss of the claimant from a

47 collateral source, the amount of the award or the denial
48 of the claim shall be conditioned upon the claimant's
49 economic loss being recouped by the collateral source:
50 *Provided*, That if it is thereafter determined that the
51 claimant will not receive all or part of the expected
52 recoupment, the claim shall be reopened and an award
53 shall be approved in an amount equal to the amount of
54 expected recoupment that it is determined the claimant
55 will not receive from the collateral source, subject to the
56 limitation set forth in subsection (g) of this section.

57 (g) Except in the case of death, compensation payable
58 to a victim and to all other claimants sustaining
59 economic loss because of injury to that victim shall not
60 exceed twenty thousand dollars in the aggregate.
61 Compensation payable to all claimants because of the
62 death of the victim shall not exceed thirty thousand
63 dollars in the aggregate.

64 (h) If an award of compensation of five thousand
65 dollars or more is made to a minor, a guardian shall be
66 appointed pursuant to the provisions of article ten,
67 chapter forty-four of this code to manage the minor's
68 estate.

§14-2A-29. Retroactive effect of amendments.

1 Amendments made to the provisions of this article
2 during the regular session of the Legislature in the year
3 one thousand nine hundred ninety-two are retroactive in
4 effect to the extent that the amended provisions apply
5 to all cases wherein the criminally injurious conduct
6 occurred after the thirty-first day of December, one
7 thousand nine hundred ninety-one.

CHAPTER 48

(H. B. 4011—By Delegate Pettit)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter sixty-one of the code
of West Virginia, one thousand nine hundred thirty-one,

7 death for which he or she is seeking an award of
8 compensation.

9 (b) The judge or commissioner shall not approve an
10 award of compensation if the criminally injurious
11 conduct upon which the claim is based was not reported
12 to a law-enforcement officer or agency within seventy-
13 two hours after the occurrence of the conduct, unless it
14 is determined that good cause existed for the failure to
15 report the conduct within the seventy-two hour period.

16 (c) The judge or commissioner shall not approve an
17 award of compensation to a claimant who is the offender
18 or an accomplice of the offender who committed the
19 criminally injurious conduct, nor to any claimant if the
20 award would unjustly benefit the offender or his or her
21 accomplice.

22 (d) A judge or commissioner, upon a finding that the
23 claimant or victim has not fully cooperated with
24 appropriate law-enforcement agencies, or the claim
25 investigator, may deny a claim, reduce an award of
26 compensation, or reconsider a claim already approved.

27 (e) A judge or commissioner shall not approve an
28 award of compensation if the injury occurred while the
29 victim was confined in any state, county or city jail,
30 prison, private prison or correctional facility.

31 (f) After reaching a decision to approve an award of
32 compensation, but prior to announcing the approval, the
33 judge or commissioner shall require the claimant to
34 submit current information as to collateral sources on
35 forms prescribed by the clerk of the court of claims. The
36 judge or commissioner shall reduce an award of
37 compensation or deny a claim for an award of compen-
38 sation that is otherwise payable to a claimant to the
39 extent that the economic loss upon which the claim is
40 based is or will be recouped from other persons,
41 including collateral sources, or if the reduction or denial
42 is determined to be reasonable because of the contrib-
43 utory misconduct of the claimant or of a victim through
44 whom he or she claims. If an award is reduced or a
45 claim is denied because of the expected recoupment of
46 all or part of the economic loss of the claimant from a

47 collateral source, the amount of the award or the denial
48 of the claim shall be conditioned upon the claimant's
49 economic loss being recouped by the collateral source:
50 *Provided*, That if it is thereafter determined that the
51 claimant will not receive all or part of the expected
52 recoupment, the claim shall be reopened and an award
53 shall be approved in an amount equal to the amount of
54 expected recoupment that it is determined the claimant
55 will not receive from the collateral source, subject to the
56 limitation set forth in subsection (g) of this section.

57 (g) Except in the case of death, compensation payable
58 to a victim and to all other claimants sustaining
59 economic loss because of injury to that victim shall not
60 exceed twenty thousand dollars in the aggregate.
61 Compensation payable to all claimants because of the
62 death of the victim shall not exceed thirty thousand
63 dollars in the aggregate.

64 (h) If an award of compensation of five thousand
65 dollars or more is made to a minor, a guardian shall be
66 appointed pursuant to the provisions of article ten,
67 chapter forty-four of this code to manage the minor's
68 estate.

§14-2A-29. Retroactive effect of amendments.

1 Amendments made to the provisions of this article
2 during the regular session of the Legislature in the year
3 one thousand nine hundred ninety-two are retroactive in
4 effect to the extent that the amended provisions apply
5 to all cases wherein the criminally injurious conduct
6 occurred after the thirty-first day of December, one
7 thousand nine hundred ninety-one.

CHAPTER 48

(H. B. 4011—By Delegate Pettit)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, 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 twenty-seven, relating to crimes against the person; and requiring reporting of gunshot and other wounds by medical providers; and immunity solely for reporting.

Be it enacted by the Legislature of West Virginia:

That article two, 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 twenty-seven, to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-27. Required reporting of gunshot and other wounds.

1 (a) Any medical provider who provides medical
2 treatment to a person suffering from a wound caused
3 by a gunshot or a knife or other sharp or pointed
4 instrument, under circumstances which would lead a
5 reasonable person to believe resulted from a violation of
6 the criminal laws of this state, shall report the same to
7 a law-enforcement agency located within the county
8 within which such wound is treated. The report shall be
9 made initially by telephone and shall be followed by a
10 written report delivered to such agency within forty-
11 eight hours following the initial report: *Provided*, That
12 where two or more persons participate in the medical
13 treatment of such wound, the obligation to report
14 imposed by this section shall apply only to the attending
15 physician or, if none, to the person primarily responsible
16 for providing the medical treatment.

17 (b) Any medical provider person who in good faith
18 reports a wound described in subsection (a) of this
19 section shall be immune from any civil liability which
20 may otherwise result solely from reporting the same.

CHAPTER 49

(Com. Sub. for H. B. 4162—By Delegates Campbell and Hendricks)

[Passed March 5, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-nine-e, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to worthless checks; and increasing the allowable service charge for a dishonored check.

Be it enacted by the Legislature of West Virginia:

That section thirty-nine-e, 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.

§61-3-39e. Notice of dishonor by payee; service charge.

1 The payee or holder of a check, draft or order which
2 has been dishonored because of insufficient funds or
3 credit may send notice thereof to the drawer of the
4 check, draft or order. The payee or holder of any such
5 dishonored check may impose a service charge not to
6 exceed fifteen dollars. No service charge shall be
7 imposed or collected after a complaint for warrant has
8 been delivered to magistrate court. No payee or holder
9 of a check, draft or order which has been dishonored
10 because of insufficient funds or credit shall incur any
11 civil or criminal liability for the sending of a notice
12 substantially in the form provided herein, other provi-
13 sions of law notwithstanding. The form of such notice
14 shall be substantially as follows:

15 "You are hereby notified that a check, number
16 _____, issued by you on (date of check),
17 drawn upon (name of bank), and payable to
18 _____, has been dishonored. Pursuant to
19 West Virginia law, you have ten days from the date of
20 this notice to tender payment of the full amount of such
21 check plus a fifteen dollar service charge to the
22 undersigned at _____. You are further

23 notified that in the event the above amount is timely
 24 paid in full you will not be subject to legal proceedings,
 25 civil or criminal.

26 Dated _____, 19____

27 _____

28

(Signed).”

29 The provisions of this section shall not authorize the
 30 making of any other written or oral threats of prosecu-
 31 tion to enforce or enhance the collection or honoring of
 32 said dishonored check, draft or order.

33 The holder or payee of any such check, draft or note
 34 shall relinquish the check, draft or order to the maker
 35 upon tender of the full amount due at any time before
 36 a complaint for warrant has been presented to magis-
 37 trate court. In the event complaint for warrant has been
 38 presented to magistrate court, payment may be made
 39 only through such court and any holder or payee
 40 unlawfully accepting payment after such time shall be
 41 liable for all costs which may be imposed by magistrate
 42 court in the matter, including all costs which may have
 43 accrued by the time the magistrate court is notified of
 44 such payment.

CHAPTER 50

(H. B. 4036—By Delegates Roop and Gallagher)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section ten, article eight-b, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article eight, chapter sixty-one of said code by adding thereto a new section, designated section nine, relating to indecent exposure; and penalty.

Be it enacted by the Legislature of West Virginia:

That section ten, article eight-b, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one,

as amended, be repealed; and that article eight, chapter sixty-one of said code be amended by adding thereto a new section, designated section nine, to read as follows:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-9. Indecent exposure.

1 (a) A person is guilty of indecent exposure when such
2 person intentionally exposes his or her sex organs or
3 anus or the sex organs or anus of another person, or
4 intentionally causes such exposure by another or
5 engages in any overt act of sexual gratification, and does
6 so under circumstances in which the person knows that
7 the conduct is likely to cause affront or alarm.

8 (b) Any person who violates the provisions of this
9 section shall be guilty of a misdemeanor and, upon
10 conviction thereof, shall be confined in the county jail
11 not more than ninety days, or fined not more than two
12 hundred fifty dollars and confined in the county jail not
13 more than ninety days.

CHAPTER 51

(Com. Sub. for H. B. 2538—By Delegate Gallagher)

[Passed March 5, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and four, article eight-d, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to criminal penalties for child abuse and child neglect causing injury.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8D. CHILD ABUSE.

§61-8D-3. Child abuse resulting in injury; criminal penalties.

§61-8D-4. Child neglect resulting in injuries; criminal penalties.

§61-8D-3. Child abuse resulting in injury; criminal penalties.

1 (a) If any parent, guardian or custodian shall abuse
2 a child and by such abuse cause such child bodily injury
3 as such term is defined in section one, article eight-b of
4 this chapter, then such parent, guardian or custodian
5 shall be guilty of a felony, and, upon conviction thereof,
6 shall be fined not less than one hundred nor more than
7 one thousand dollars or imprisoned in the penitentiary
8 not less than one nor more than five years, or in the
9 discretion of the court, be confined in the county jail for
10 not more than one year, or both such fine and im-
11 prisonment or confinement.

12 (b) If any parent, guardian or custodian shall abuse
13 a child and by such abuse cause said child serious bodily
14 injury as such term is defined in section one, article
15 eight-b of this chapter, then such parent, guardian or
16 custodian shall be guilty of a felony, and, upon convic-
17 tion thereof, shall be fined not less than one thousand
18 nor more than five thousand dollars or imprisoned in the
19 penitentiary not less than two nor more than ten years,
20 or both such fine and imprisonment.

§61-8D-4. Child neglect resulting in injuries; criminal penalties.

1 (a) If any parent, guardian or custodian shall neglect
2 a child and by such neglect cause said child bodily
3 injury, as such term is defined in section one, article
4 eight-b of this chapter, then such parent, guardian or
5 custodian shall be guilty of a felony, and, upon convic-
6 tion thereof, shall be fined not less than one hundred nor
7 more than one thousand dollars or imprisoned in the
8 penitentiary not less than one nor more than three years,
9 or in the discretion of the court, be confined in the
10 county jail for not more than one year, or both such fine
11 and confinement or imprisonment.

12 (b) If any parent, guardian or custodian shall neglect
13 a child and by such neglect cause said child serious
14 bodily injury, as such term is defined in section one,

15 article eight-b of this chapter, then such parent,
16 guardian or custodian shall be guilty of a felony, and
17 upon conviction thereof, shall be fined not less than
18 three hundred nor more than three thousand dollars or
19 imprisoned in the penitentiary not less than one nor
20 more than ten years, or both such fine and
21 imprisonment.

22 (c) The provisions of this section shall not apply if the
23 neglect by the parent, guardian or custodian is due
24 primarily to a lack of financial means on the part of
25 such parent, guardian or custodian.

26 (d) The provisions of this section shall not apply to any
27 parent, guardian or custodian who fails or refuses, or
28 allows another person to fail or refuse, to supply a child
29 under the care, custody or control of such parent,
30 guardian or custodian with necessary medical care,
31 when such medical care conflicts with the tenets and
32 practices of a recognized religious denomination or
33 order of which such parent, guardian or custodian is an
34 adherent or member.

CHAPTER 52

(Com. Sub. for H. B. 4389—By Delegates Brown and Rowe)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article eight, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections thirteen and fifteen, article two, chapter forty-eight of said code; to amend and reenact sections one, two, three, three-a, four, five, six, seven, nine, ten and eleven, article two-a of said chapter forty-eight; to further amend said article two-a by adding thereto two new sections, designated sections twelve and thirteen; to amend article two-c of said chapter by adding thereto a new section, designated section fifteen; to amend and reenact section one, article four, chapter forty-eight-a of said code; to amend and

reenact section three, article one, chapter forty-nine of said code; to amend and reenact section sixteen, article two, chapter forty-nine of said code; to amend and reenact sections one, two, three, five and eight, article six of said chapter; to further amend said article by adding thereto a new section, designated section eleven; to amend and reenact sections two, five and nine, article six-a of said chapter forty-nine; to amend article seven of said chapter by adding thereto a new section, designated section twenty-nine; to amend article ten, chapter fifty-six of said code by adding thereto a new section, designated section eight; to amend article two, chapter sixty-one of said code by adding thereto a new section, designated section nine-a; to amend and reenact section thirteen, article eight of said chapter; to amend article eight-b of said chapter by adding thereto a new section, designated section eleven-a; to amend article eight-d of said chapter by adding thereto a new section, designated section nine; to amend article eleven-a of said chapter sixty-one by adding thereto a new section, designated section eight; to amend and reenact sections seventeen-a and seventeen-c, article one-c, chapter sixty-two of said code; to amend and reenact section one, article eleven-a of said chapter; and to amend and reenact sections nine and seventeen, article twelve of said chapter, relating to the Family Protection Act of 1992; family violence training of peace officers approved by the West Virginia sheriffs' bureau; temporary relief during pendency of action for divorce, annulment or separate maintenance; relief upon ordering divorce or annulment or granting decree of separate maintenance; generally relating to the prevention of family violence, findings and purposes; definitions; jurisdiction, venue, effect of complaining party leaving residence, priority of petitions filed, who may file, and full faith and credit; divorce actions; commencement of proceedings, forms, counterclaims, accompanying persons, counties in which action may be brought, filing pleadings from other counties; temporary orders of court, hearings, persons present; protective orders; contempt; law-enforcement response to family violence; enforcement procedure for temporary and final protective orders; criminal penal-

ties; arrest powers of law-enforcement officers responding to family violence; appeals; registration of order; confidentiality; judicial education on family violence; proceedings before a master; definitions relating to abuse and neglect; right to counsel, continuing legal education for attorneys, hearings, temporary custody; disposition of neglected or abused children; notice for placement changes, repeated placement reports to the courts; conviction for offenses against children; persons mandated to report suspected abuse and neglect; reporting procedures; directing child protective services to investigate allegations of child abuse arising in child custody cases; priority of cases involving placement of children; expanding crimes against the person to include stalking; directing courts to make findings regarding abuse when the custodial parent is convicted of incest; conviction for offenses against children; victim notification of defendant's release; bail in situations of alleged child abuse; and prohibiting persons convicted of sexual abuse from residing with the child.

Be it enacted by the Legislature of West Virginia:

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

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

Chapter

- 15. Public Safety.**
- 48. Domestic Relations.**
- 48A. Enforcement of Family Obligations.**
- 49. Child Welfare.**
- 56. Pleading and Practice.**
- 61. Crimes and Their Punishment.**
- 62. Criminal Procedure.**

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 8. WEST VIRGINIA SHERIFFS' BUREAU.

§15-8-4. Training of peace officers approved by the bureau.

1 The bureau may contract or agree with any state
2 university or college in West Virginia or any other
3 organization for such university, college or other
4 organization to provide training for peace officers,
5 which training shall embrace police techniques in
6 detecting crime, apprehending criminals, securing and
7 preserving evidence and responding to calls involving
8 family violence. All law-enforcement officers selected by
9 the various law-enforcement agencies, if their selection
10 is approved by the bureau, shall receive such training

11 free with the exception of actual cost of housing and
12 meals.

13 The county commissions are authorized to pay the
14 necessary travel and living expenses of sheriffs and
15 deputies of their respective counties while receiving
16 training.

CHAPTER 48. DOMESTIC RELATIONS.

Article

- 2. Divorce, Annulment and Separate Maintenance.
- 2A. Prevention of Family Violence.
- 2C. Family Protection Shelter Support Act.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-13. Temporary relief during pendency of action for divorce, annulment or separate maintenance.

§48-2-15. Relief upon ordering divorce or annulment or granting decree of separate maintenance.

§48-2-13. Temporary relief during pendency of action for divorce, annulment or separate maintenance.

1 (a) At the time of the filing of the complaint or at any
2 time after the commencement of an action for divorce,
3 annulment or separate maintenance under the provi-
4 sions of this article, and upon motion for temporary
5 relief, notice of hearing and hearing, the court may
6 order all or any portion of the following temporary
7 relief, which order shall govern the marital rights and
8 obligations of the parties during the pendency of the
9 action:

10 (1) The court may require either party to pay
11 temporary alimony in the form of periodic installments,
12 or a lump sum, or both, for the maintenance of the other
13 party.

14 (2) The court may provide for the custody of minor
15 children of the parties subject to such rights of
16 visitation, both in and out of the residence of the
17 custodial parent or other person or persons having
18 custody, as may be appropriate under the
19 circumstances.

20 (3) The court may require either party to pay
21 temporary child support in the form of periodic
22 installments for the maintenance of the minor children
23 of the parties.

24 (4) The court may compel either party to pay attorney's
25 fees and court costs reasonably necessary to enable
26 the other party to prosecute or defend the action in the
27 trial court. The question of whether or not a party is
28 entitled to temporary alimony shall not be decisive of
29 that party's right to a reasonable allowance of attorney's
30 fees and court costs. An order for temporary relief
31 awarding attorney fees and court costs may be modified
32 at any time during the pendency of the action, as the
33 exigencies of the case or equity and justice may require,
34 including, but not limited to, a modification which
35 would require full or partial repayment of fees and costs
36 by a party to the action to whom or on whose behalf
37 payment of such fees and costs was previously ordered.
38 If an appeal be taken or an intention to appeal be stated,
39 the court may further order either party to pay attorney
40 fees and costs on appeal.

41 (5) As an incident to requiring the payment of
42 temporary alimony or temporary child support, the
43 court may order either party to continue in effect
44 existing policies of insurance covering the costs of health
45 care and hospitalization of the other party and the minor
46 children of the parties. If there is no such existing policy
47 or policies, the court shall order that such health care
48 insurance coverage be paid for by the noncustodial
49 parent, if the court determines that such health care
50 coverage is available to the noncustodial parent at a
51 reasonable cost. Payments made to an insurer pursuant
52 to this subdivision, either directly or by a deduction
53 from wages, shall be deemed to be temporary alimony
54 or temporary child support, in such proportion as the
55 court shall direct: *Provided*, That if the court does not
56 set forth in the order that a portion of such payments
57 is to be deemed temporary child support, then all such
58 payments made pursuant to this subdivision shall be
59 deemed to be temporary alimony.

60 (6) As an incident to requiring the payment of

61 temporary alimony or temporary child support, the
62 court may grant the exclusive use and occupancy of the
63 marital home to one of the parties during the pendency
64 of the action, together with all or a portion of the
65 household goods, furniture and furnishings, reasonably
66 necessary for such use and occupancy. The court may
67 require payments to third parties in the form of home
68 loan installments, land contract payments, rent, pay-
69 ments for utility services, property taxes, insurance
70 coverage or other expenses or charges reasonably
71 necessary for the use and occupancy of the marital
72 domicile. Payments made to a third party pursuant to
73 this subdivision shall be deemed to be temporary
74 alimony or temporary child support, in such proportion
75 as the court shall direct: *Provided*, That if the court does
76 not set forth in the order that a portion of such payments
77 is to be deemed temporary child support, then all such
78 payments made pursuant to this subdivision shall be
79 deemed to be temporary alimony: *Provided, however*,
80 That the court may order such payments to be made
81 without denominating them either as temporary alim-
82 ony or temporary child support, reserving such decision
83 until such time as the court determines the interests of
84 the parties in marital property and equitably divides the
85 same: *Provided further*, That at the time the court
86 determines the interests of the parties in marital
87 property and equitably divides the same, the court may
88 consider the extent to which payments made to third
89 parties under the provisions of this subdivision have
90 affected the rights of the parties in marital property,
91 and may treat such payments as a partial distribution
92 of marital property notwithstanding the fact that such
93 payments have been denominated temporary alimony or
94 temporary child support or not so denominated under
95 the provisions of this subdivision. Nothing contained in
96 this subdivision shall abrogate an existing contract
97 between either of the parties and a third party, or affect
98 the rights and liabilities of either party or a third party
99 under the terms of such contract.

100 (7) As an incident to requiring the payments of
101 temporary alimony, the court may grant the exclusive
102 use and possession of one or more motor vehicles to

103 either of the parties during the pendency of the action.
104 The court may require payments to third parties in the
105 form of automobile loan installments or insurance
106 coverage, and any such payments made pursuant to this
107 subdivision shall be deemed to be temporary alimony:
108 *Provided*, That the court may order such payments to
109 be made without denominating them as temporary
110 alimony, reserving such decision until such time as the
111 court determines the interests of the parties in marital
112 property and equitably divides the same: *Provided*,
113 *however*, That at the time the court determines the
114 interests of the parties in marital property and equit-
115 ably divides the same, the court may consider the extent
116 to which payments made to third parties under the
117 provisions of this subdivision have affected the rights of
118 the parties in marital property, and may treat such
119 payments as a partial distribution of marital property
120 notwithstanding the fact that such payments have been
121 denominated temporary alimony or not so denominated
122 under the provisions of this subdivision. Nothing
123 contained in this subdivision shall abrogate an existing
124 contract between either of the parties and a third party,
125 or affect the rights and liabilities of either party or a
126 third party under the terms of such contract.

127 (8) Where the pleadings include a specific request for
128 specific property or raise issues concerning the equita-
129 ble division of marital property, the court may enter
130 such order as is reasonably necessary to preserve the
131 estate of either or both of the parties, including the
132 imposition of a constructive trust, so that such property
133 be forthcoming to meet any order which may be made
134 in the action, and may compel either party to give
135 security to abide such order, or may require the
136 property in question to be delivered into the temporary
137 custody of a third party. The court may further order
138 either or both of the parties to pay the costs and
139 expenses of maintaining and preserving the property of
140 the parties during the pendency of the action: *Provided*,
141 That at the time the court determines the interests of
142 the parties in marital property and equitably divides the
143 same, the court may consider the extent to which
144 payments made for the maintenance and preservation of

145 property under the provisions of this subdivision have
146 affected the rights of the parties in marital property,
147 and may treat such payments as a partial distribution
148 of marital property. When appropriate, the court may
149 release all or any part of such protected property for
150 sale and substitute all or a portion of the proceeds of the
151 sale for such property.

152 (9) Unless a contrary disposition be found appropriate
153 and ordered pursuant to other provisions of this section,
154 then upon the motion of either party, the court may
155 compel the other party to deliver to the movant party
156 any of his or her separate estate which may be in the
157 possession or control of the respondent party, and may
158 make such further order as is necessary to prevent
159 either party from interfering with the separate estate
160 of the other.

161 (10) The court may enjoin either party from molesting
162 or interfering with the other, or otherwise imposing any
163 restraint on the personal liberty of the other, or
164 interfering with the custodial or visitation rights of the
165 other. Any order entered by the court to protect a party
166 from abuse may grant the relief provided in article two-
167 a of this chapter.

168 (b) In ordering temporary relief under the provisions
169 of this section, the court shall consider the financial
170 needs of the parties, the present employment income and
171 other recurring earnings of each party from any source,
172 their income-earning abilities, and the respective legal
173 obligations of each party to support himself or herself
174 and to support any other persons. Except in extraordi-
175 nary cases supported by specific findings set forth in the
176 order granting relief, payments of temporary alimony
177 and temporary child support are to be made from a
178 party's employment income and other recurring earn-
179 ings, and not from the corpus of a party's separate
180 estate, and an award of such relief shall not be
181 disproportionate to a party's ability to pay as disclosed
182 by the evidence before the court.

183 (c) At any time after a party is abandoned or deserted
184 or after the parties to a marriage have lived separate

185 and apart in separate places of abode without any
186 cohabitation, the party abandoned or either party living
187 separate and apart may apply for relief pursuant to this
188 section by instituting an action for divorce as provided
189 in section ten of this article, alleging that the plaintiff
190 reasonably believes that the period of abandonment or
191 of living separate and apart will continue for the period
192 prescribed by the applicable provisions of section four
193 of this article. If the period of abandonment or living
194 separate and apart continues for the period prescribed
195 by the applicable provisions of section four of this
196 article, the divorce action may proceed to a hearing as
197 provided in sections twenty-four and twenty-five of this
198 article without a new complaint being filed: *Provided,*
199 That the party desiring to proceed to a hearing shall
200 give the opposing party at least twenty days' notice of
201 the time, place and purpose of the hearing, unless the
202 opposing party shall have filed with the court a waiver
203 of notice of further proceedings, signed by such opposing
204 party. If such notice is required to be served, it shall
205 be served in the same manner as a complaint, regardless
206 of whether the opposing party has appeared or
207 answered.

208 (d) To facilitate the resolution of issues arising at a
209 hearing for temporary relief, the court may, or upon the
210 motion of either party shall, order each of the parties
211 to file with the court, and serve on the other party, a
212 sworn statement of each party's assets, liabilities and
213 employment income and other earnings from any
214 source. The statement shall be in such form and contain
215 such detailed information as the court may prescribe by
216 general order. In addition, the court may, or upon the
217 motion of either party shall, order the parties to comply
218 with the disclosure requirements set forth in section
219 thirty-three of this article, and, if necessary, continue
220 the hearing for temporary relief from time to time to
221 afford the parties an opportunity to obtain and provide
222 such information.

223 (e) An ex parte order granting all or part of the relief
224 provided for in this section may be granted without
225 written or oral notice to the adverse party if:

226 (1) It appears from specific facts shown by affidavit
227 or by the verified complaint that immediate and
228 irreparable injury, loss or damage will result to the
229 applicant before the adverse party or such party's
230 attorney can be heard in opposition. Such potential
231 injury, loss or damage may be anticipated when the
232 following conditions exist: *Provided*, That the following
233 list of conditions shall not be exclusive:

234 (A) There is a real and present threat of physical
235 injury to the applicant at the hands or direction of the
236 adverse party;

237 (B) The adverse party is preparing to quit the state
238 with a minor child or children of the parties, thus
239 depriving the court of jurisdiction in the matter of child
240 custody;

241 (C) The adverse party is preparing to remove property
242 from the state, or is preparing to transfer, convey,
243 alienate, encumber or otherwise deal with property
244 which could otherwise be subject to the jurisdiction of
245 the court and subject to judicial order under the
246 provisions of this section or section fifteen of this article;

247 And,

248 (2) The movant party or his or her attorney certifies
249 in writing the efforts, if any, which have been made to
250 give the notice, and the reasons supporting his claim
251 that notice should not be required.

252 (f) Every ex parte order granted without notice shall
253 be endorsed with the date and hour of issuance; shall
254 be filed forthwith in the circuit clerk's office and
255 entered of record; and shall set forth the finding of the
256 court that unless the order is granted without notice
257 there is probable cause to believe that existing condi-
258 tions will result in immediate and irreparable injury,
259 loss or damage to the movant party before the adverse
260 party or his or her attorney can be heard in opposition.
261 The order granting ex parte relief shall fix a time for
262 a hearing for temporary relief to be held within a
263 reasonable time, not to exceed twenty days, unless
264 before the time so fixed for hearing, such hearing is

265 continued for good cause shown or with the consent of
266 the party against whom the ex parte order is directed.
267 The reasons for the continuance shall be entered of
268 record. Within the time limits described herein, when
269 an ex parte order is made, a motion for temporary relief
270 shall be set down for hearing at the earliest possible
271 time and shall take precedence of all matters except
272 older matters of the same character. If the party who
273 obtained the ex parte order fails to proceed with a
274 motion for temporary relief, the court shall set aside the
275 ex parte order. At any time after ex parte relief is
276 granted, and on two days' notice to the party who
277 obtained such relief or on such shorter notice as the
278 court may direct, the adverse party may appear and
279 move the court to set aside or modify the ex parte order
280 on the grounds that the effects of such order are onerous
281 or otherwise improper. In such event, the court shall
282 proceed to hear and determine such motion as expedi-
283 tiously as the ends of justice require.

***§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

* Clerk's Note: This section was also amended by S. B. 36 (Chapter 53) and H. B. 4759 (Chapter 54), which passed prior to this act.

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.

26 (2) The court may require either party to pay child
27 support in the form of periodic installments for the
28 maintenance of the minor children of the parties.

29 (3) As an incident to requiring the payment of
30 alimony or child support, the court may order either
31 party to continue in effect existing policies of insurance
32 covering the costs of health care and hospitalization of
33 the other party and the minor children of the parties:
34 *Provided*, That if the other party is no longer eligible
35 to be covered by such insurance because of the granting
36 of an annulment or divorce, the court may require a
37 party to substitute such insurance with a new policy to
38 cover the other party, or may consider the prospective
39 cost of such insurance in awarding alimony to be paid
40 in periodic installments. If there is no such existing
41 policy or policies, the court shall order such health care
42 insurance coverage to be paid for by the noncustodial
43 parent, if the court determines that such health care
44 insurance coverage is available to the noncustodial
45 parent at a reasonable cost. Payments made to an
46 insurer pursuant to this subdivision, either directly or
47 by a deduction from wages, shall be deemed to be
48 alimony, child support or installment payments for the
49 distribution of marital property, in such proportion as
50 the court shall direct: *Provided, however*, That if the
51 court does not set forth in the order that a portion of
52 such payments is to be deemed child support or
53 installment payments for the distribution of marital
54 property, then all such payments made pursuant to this
55 subdivision shall be deemed to be alimony: *Provided*
56 *further*, That the designation of insurance coverage as
57 alimony under the provisions of this subdivision shall

58 not, in and of itself, give rise to a subsequent modifi-
59 cation of the order to provide for alimony other than
60 insurance for covering the costs of health care and
61 hospitalization.

62 (4) As an incident to requiring the payment of
63 alimony or child support, the court may grant the
64 exclusive use and occupancy of the marital home to one
65 of the parties, together with all or a portion of the
66 household goods, furniture and furnishings reasonably
67 necessary for such use and occupancy. Such use and
68 occupancy shall be for a definite period, ending at a
69 specific time set forth in the order, subject to modifi-
70 cation upon the petition of either party. Except in
71 extraordinary cases supported by specific findings set
72 forth in the order granting relief, a grant of the
73 exclusive use and occupancy of the marital home shall
74 be limited to those situations where such use and
75 occupancy is reasonably necessary to accommodate the
76 rearing of minor children of the parties. The court may
77 require payments to third parties in the form of home
78 loan installments, land contract payments, rent, pay-
79 ments for utility services, property taxes, insurance
80 coverage, or other expenses or charges reasonably
81 necessary for the use and occupancy of the marital
82 domicile. Payments made to a third party pursuant to
83 this subdivision for the benefit of the other party shall
84 be deemed to be alimony, child support or installment
85 payments for the distribution of marital property, in
86 such proportion as the court shall direct: *Provided*, That
87 if the court does not set forth in the order that a portion
88 of such payments is to be deemed child support or
89 installment payments for the distribution of marital
90 property, then all such payments made pursuant to this
91 subdivision shall be deemed to be alimony. Nothing
92 contained in this subdivision shall abrogate an existing
93 contract between either of the parties and a third party,
94 or affect the rights and liabilities of either party or a
95 third party under the terms of such contract.

96 (5) As an incident to requiring the payment of
97 alimony, the court may grant the exclusive use and
98 possession of one or more motor vehicles to either of the

99 parties. The court may require payments to third
100 parties in the form of automobile loan installments or
101 insurance coverage if available at reasonable rates, and
102 any such payments made pursuant to this subdivision
103 for the benefit of the other party shall be deemed to be
104 alimony or installment payments for the distribution of
105 marital property, as the court may direct. Nothing
106 contained in this subdivision shall abrogate an existing
107 contract between either of the parties and a third party,
108 or affect the rights and liabilities of either party or a
109 third party under the terms of such contract.

110 (6) Where the pleadings include a specific request for
111 specific property or raise issues concerning the equita-
112 ble division of marital property as defined in section one
113 of this article, the court shall order such relief as may
114 be required to effect a just and equitable distribution
115 of the property and to protect the equitable interests of
116 the parties therein.

117 (7) Unless a contrary disposition be found appropriate
118 and ordered pursuant to other provisions of this section,
119 then upon the motion of either party, the court may
120 compel the other party to deliver to the movant party
121 any of his or her separate estate which may be in the
122 possession or control of the respondent party, and may
123 make such further order as is necessary to prevent
124 either party from interfering with the separate estate
125 of the other.

126 (8) The court shall, when allegations of abuse have
127 been proven, enjoin the offending party from molesting
128 or interfering with the other, or otherwise imposing any
129 restraint on the personal liberty of the other, or
130 interfering with the custodial or visitation rights of the
131 other. Such order may permanently enjoin the offending
132 party from entering the school, business or place of
133 employment of the other for the purpose of molesting or
134 harassing the other; or from contacting the other, in
135 person or by telephone, for the purpose of harassment
136 or threats; or from harassing or verbally abusing the
137 other in a public place.

138 (9) The court may order either party to take necessary

139 steps to transfer utility accounts and other accounts for
140 recurring expenses from the name of one party into the
141 name of the other party or from the joint names of the
142 parties into the name of one party. Nothing contained
143 in this subdivision shall affect the liability of the parties
144 for indebtedness on any such account incurred before
145 the transfer of such account.

146 (c) In any case where an annulment or divorce is
147 denied, the court shall retain jurisdiction of the case and
148 may order all or any portion of the relief provided for
149 in subsections (a) and (b) of this section which has been
150 demanded or prayed for in the pleadings.

151 (d) In any case where a divorce or annulment is
152 granted in this state upon constructive service of
153 process, and personal jurisdiction is thereafter obtained
154 of the defendant in such case, the court may order all
155 or any portion of the relief provided for in subsections
156 (a) and (b) of this section which has been demanded or
157 prayed for in the pleadings.

158 (e) At any time after the entry of an order pursuant
159 to the provisions of this section, the court may, upon the
160 verified petition of either of the parties, revise or alter
161 such order concerning the maintenance of the parties,
162 or either of them, and make a new order concerning the
163 same, issuing it forthwith, as the altered circumstances
164 or needs of the parties may render necessary to meet the
165 ends of justice. The court may also from time to time
166 afterward, on the verified petition of either of the
167 parties, revise or alter such order to grant relief
168 pursuant to subdivision (8), subsection (b) of this section,
169 and make a new order concerning the same, issuing it
170 forthwith, as the circumstances of the parties and the
171 benefit of children may require. The court may also
172 from time to time afterward, on the verified petition of
173 either of the parties or other proper person having
174 actual or legal custody of the minor child or children
175 of the parties, revise or alter such order concerning the
176 custody and support of the children, and make a new
177 order concerning the same, issuing it forthwith, as the
178 circumstances of the parents or other proper person or
179 persons and the benefit of the children may require:

180 *Provided*, That an order providing for child support
181 payments may be revised or altered for the reason, inter
182 alia, that the existing order provides for child support
183 payments in an amount that is less than eighty-five
184 percent or more than one hundred fifteen percent of the
185 amount that would be required to be paid under the
186 child support guidelines promulgated pursuant to the
187 provisions of section eight, article two, chapter forty-
188 eight-a of this code. In granting relief under this
189 subsection, the court may, where other means are not
190 conveniently available, alter any prior order of the court
191 with respect to the distribution of marital property, if
192 such property is still held by the parties, and if
193 necessary to give effect to a modification of alimony,
194 child support or child custody or necessary to avoid an
195 inequitable or unjust result which would be caused by
196 the manner in which the modification will affect the
197 prior distribution of marital property.

198 (f) In every case where a separation agreement is the
199 basis for an award of alimony, the court, in approving
200 the agreement, shall examine the agreement to ascer-
201 tain whether it clearly provides for alimony to continue
202 beyond the death of the payor party or to cease in such
203 event. Where alimony is to be paid pursuant to the terms
204 of a separation agreement which does not state whether
205 the payment of alimony is to continue beyond the death
206 of the payor party or is to cease, or where the parties
207 have not entered into a separation agreement and
208 alimony is to be awarded, the court shall specifically
209 state as a part of its order whether such payments of
210 alimony are to be continued beyond the death of the
211 payor party or cease.

212 (g) In every case where a separation agreement is the
213 basis for an award of alimony, the court, in approving
214 the agreement, shall examine the agreement to ascer-
215 tain whether it clearly provides for alimony to continue
216 beyond the remarriage of the payee party or to cease in
217 such event. Where alimony is to be paid pursuant to the
218 terms of a separation agreement which does not state
219 whether the payment of alimony is to continue beyond
220 the remarriage of the payee party or is to cease, or

221 where the parties have not entered into a separation
222 agreement and alimony is to be awarded, the court shall
223 specifically state as a part of its order whether such
224 payments of alimony are to be continued beyond the
225 remarriage of the payee party or cease.

226 (h) In addition to the statement provided for in
227 subsection (d), section thirteen of this article and in
228 addition or in lieu of the disclosure requirements set
229 forth in section thirty-three of this article, the court may
230 order accounts to be taken as to all or any part of
231 marital property or the separate estates of the parties,
232 and may direct that the accounts be taken as of the date
233 of the marriage, the date upon which the parties
234 separated, or any other time deemed to be appropriate
235 in assisting the court in the determination and equitable
236 division of property.

237 (i) In determining whether alimony is to be awarded,
238 or in determining the amount of alimony, if any, to be
239 awarded under the provisions of this section, the court
240 shall consider and compare the fault or misconduct of
241 either or both of the parties and the effect of such fault
242 or misconduct as a contributing factor to the deteriora-
243 tion of the marital relationship. However, alimony shall
244 not be awarded in any case where both parties prove
245 grounds for divorce and are denied a divorce, nor shall
246 an award of alimony under the provisions of this section
247 be ordered which directs the payment of alimony to a
248 party determined to be at fault, when, as a ground
249 granting the divorce, such party is determined by the
250 court:

251 (1) To have committed adultery; or

252 (2) To have been convicted for the commission of a
253 crime which is a felony, subsequent to the marriage if
254 such conviction has become final; or

255 (3) To have actually abandoned or deserted his or her
256 spouse for six months.

257 (j) Whenever under the terms of this section or section
258 thirteen of this article a court enters an order requiring
259 the payment of alimony or child support, if the court

260 anticipates the payment of such alimony or child
261 support or any portion thereof to be paid out of
262 "disposable retired or retainer pay" as that term is
263 defined in 10 U.S.C. §1408, relating to members or
264 former members of the uniformed services of the United
265 States, the court shall specifically provide for the
266 payment of an amount, expressed in dollars or as a
267 percentage of disposable retired or retainer pay, from
268 the disposable retired or retainer pay of the payor party
269 to the payee party.

ARTICLE 2A. PREVENTION OF FAMILY VIOLENCE.

- §48-2A-1. Findings and purposes.
- §48-2A-2. Definitions.
- §48-2A-3. Jurisdiction; venue; effect of petitioner's leaving residence; priority of petitions filed under this article; who may file; full faith and credit; process.
- §48-2A-3a. Divorce actions.
- §48-2A-4. Commencement of proceeding; forms; counterclaims; accompanying persons; counties in which action may be brought; filing pleadings from other counties.
- §48-2A-5. Temporary orders of court; hearings; persons present.
- §48-2A-6. Protective orders.
- §48-2A-7. Contempt.
- §48-2A-9. Law-enforcement response to family violence.
- §48-2A-10. Enforcement procedure for temporary and final protective orders.
- §48-2A-11. Appeals.
- §48-2A-12. Registration of order.
- §48-2A-13. Judicial education on family violence.

§48-2A-1. Findings and purposes.

- 1 (a) The Legislature of this state finds that:
 - 2 (1) Battered persons and other victims of family
3 violence have a right to be safe in their homes;
 - 4 (2) Children are often physically assaulted or witness
5 violence against one of their parents and may suffer
6 deep and lasting emotional harm from victimization and
7 from exposure to family violence;
 - 8 (3) Family violence is a major health and law-
9 enforcement problem in this state and one that affects
10 people of all racial and ethnic backgrounds and all
11 socioeconomic classes; and

12 (4) Family violence can be deterred, prevented or
13 reduced by legal intervention.

14 (b) This article shall be liberally construed and
15 applied to promote the following purposes:

16 (1) To assure victims of family violence the maximum
17 protection from abuse that the law can provide;

18 (2) To create a speedy remedy to discourage violence
19 against family members with whom the abuser has
20 continuing contact;

21 (3) To expand the ability of law-enforcement officers
22 to assist victims, to enforce the family violence law
23 effectively, and to prevent further abuse;

24 (4) To facilitate equal enforcement of criminal law by
25 deterring and punishing violence against family
26 members; and

27 (5) To recognize that battering is a crime that will no
28 longer be excused or tolerated.

§48-2A-2. Definitions.

1 As used in this article, unless the context clearly
2 requires otherwise:

3 (a) "Family violence" or "abuse" means the occurrence
4 of one or more of the following acts between family or
5 household members who reside together or who for-
6 merly resided together:

7 (1) Attempting to cause or intentionally, knowingly or
8 recklessly causing physical harm to another with or
9 without dangerous or deadly weapons;

10 (2) Placing another in reasonable apprehension of
11 physical harm;

12 (3) Creating fear of physical harm by harassment,
13 psychological abuse or threatening acts;

14 (4) Causing or attempting to cause another to engage
15 involuntarily in any sexual act by force, threat of force,
16 or duress; and

17 (5) Holding, confining, detaining or abducting another

18 person against that person's will.

19 (b) "Family or household member" means current or
20 former spouses, persons living as spouses, persons who
21 formerly resided as spouses, parents, children and
22 stepchildren, current or former sexual or intimate
23 partners, other persons related by blood or marriage,
24 persons who are presently or in the past have resided
25 or cohabited together, or a person with whom the victim
26 has a child in common.

**§48-2A-3. Jurisdiction; venue; effect of petitioner's
leaving residence; priority of petitions filed
under this article; who may file; full faith
and credit; process.**

1 (a) *Jurisdiction.* — Circuit courts and magistrate
2 courts, as constituted under chapter fifty of this code,
3 shall have concurrent jurisdiction over proceedings
4 under this article.

5 (b) *Venue.* — The action may be heard in the county
6 in which the abuse occurred or in the county in which
7 the respondent is living. If the parties are married, the
8 action may also be brought in the county in which an
9 action for divorce between the parties may be brought
10 as provided by section eight, article two of this chapter.

11 (c) *Petitioner's rights.* — The petitioner's right to relief
12 under this article shall not be affected by his or her
13 leaving a residence or household to avoid further abuse.

14 (d) *Priority of petitions.* — Any petition filed under
15 the provisions of this article shall be given priority over
16 any other civil action before the court except actions in
17 which trial is in progress, and shall be docketed
18 immediately upon filing. Any appeal to the circuit court
19 of a magistrate's judgment on a petition for the relief
20 under this article shall be heard within ten working
21 days of the filing of the appeal.

22 (e) *Full faith and credit.* — Any temporary or final
23 protective order issued pursuant to this article shall be
24 effective throughout the state in every county. Any
25 protective order issued by the court of another state
26 shall be accorded full faith and credit and enforced as

27 if it were an order of this state if its terms and
28 conditions are substantially similar to those which may
29 be imposed by a court of this state.

30 (f) The final protective order may be served on the
31 respondent by means of a Class I legal advertisement
32 published notice, with the publication area being the
33 county in which the respondent resides, published in
34 accordance with the provisions of section two, article
35 three, chapter fifty-nine of this code if: (i) The petitioner
36 files an affidavit with the court stating that an attempt
37 at personal service pursuant to rule four of the West
38 Virginia rules of civil procedure has been unsuccessful
39 or evidence is adduced at the hearing for the final
40 protective order that the respondent has left the state
41 of West Virginia; and (ii) a copy of the order is mailed
42 by certified or registered mail to the respondent at the
43 respondent's last known residence and returned un-
44 delivered.

§48-2A-3a. Divorce actions.

1 (a) During the pendency of a divorce action, a person
2 may file for and be granted relief provided by this
3 article, until an order is entered in the divorce action
4 pursuant to section thirteen, article two of this chapter.

5 (b) If a person who has been granted relief under this
6 article should subsequently become a party to an action
7 for divorce, separate maintenance or annulment, such
8 person shall remain entitled to the relief provided under
9 this article including the right to file for and obtain any
10 further relief, so long as no temporary or permanent
11 order has been entered in the action for divorce,
12 annulment and separate maintenance, pursuant to
13 section thirteen, article two of this chapter.

14 (c) No person who is a party to a pending action for
15 divorce, separate maintenance or annulment in which
16 an order has been entered pursuant to section thirteen,
17 article two of this chapter, shall be entitled to file for
18 or obtain relief under this article until after the entry
19 of a final order which grants or dismisses the action for
20 divorce, annulment or separate maintenance.

21 (d) Notwithstanding the provisions set forth in
22 subsection (b), section six of this article, any order issued
23 pursuant to this section where a subsequent action is
24 filed seeking a divorce, annulment or separate mainte-
25 nance, shall remain in full force and effect by operation
26 of this statute until a temporary or final order is issued
27 pursuant to section thirteen, article two of this chapter
28 or a final order granting or dismissing the action for
29 divorce, annulment or separate maintenance.

**§48-2A-4. Commencement of proceeding; forms; counter-
claim; accompanying persons; counties in
which action may be brought; filing plead-
ings from other counties.**

1 (a) No person shall be refused the right to file a
2 petition under the provisions of this article. No person
3 shall be denied relief under the provisions of this article
4 if she or he presents facts sufficient under the provisions
5 of this article for the relief sought.

6 A petition for a protective order may be filed by:

7 (1) A person seeking relief under this article for
8 herself or himself; or

9 (2) An adult family or household member for the
10 protection of the petitioner or for any family or
11 household member who is a minor child or physically
12 or mentally incapacitated to the extent that he or she
13 cannot file on their own behalf.

14 (b) The West Virginia supreme court of appeals shall
15 prescribe forms which are necessary and convenient for
16 proceedings pursuant to this article, and the court shall
17 distribute such forms to the clerk of the circuit court
18 and magistrate court of each county within the state.

19 (c) The respondent named in any petition alleging
20 abuse may file a counterclaim or raise any affirmative
21 defenses.

22 (d) No person accompanying a person who is seeking
23 to file a petition under the provisions of this article shall
24 be precluded from being present if his or her presence
25 is desired by the person seeking a petition unless the

26 person's behavior is disruptive to the proceeding.

27 (e) In the event a person who resides, temporarily or
28 permanently, in a county not described in subsection (b),
29 section three of this article desires to file a petition
30 described in subsection (a) of this section, such person
31 may obtain assistance in filing such a petition at a
32 magistrate court within the county of such place of
33 temporary or permanent residence. In such event, a
34 magistrate or the clerk of such magistrate court shall:

35 (1) Provide to such person such forms and such
36 assistance as may be necessary for the filing of a petition
37 described in subsection (a) of this section;

38 (2) To the extent possible, contact and obtain from any
39 magistrate court described in subsection (b), section
40 three of this article chosen by the person seeking to file
41 the petition a hearing date for such petition; and

42 (3) Forward such petition to the magistrate court
43 described in subdivision (2) of this subsection for filing
44 together with any such other papers and documents
45 necessary to file the same.

46 (f) No fees shall be charged for filing of petitions or
47 other papers, service of petitions or orders, copies of
48 orders, or other costs for services provided by, or
49 associated with, any proceedings under this article until
50 the matter is brought before the court for final
51 resolution.

§48-2A-5. Temporary orders of court; hearings; persons present.

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 petitioner 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 petitioner. Clear and convincing evidence of
7 immediate and present danger of abuse to the petitioner
8 or minor children shall constitute good cause for
9 purposes of this section. If the respondent is not present
10 at the proceeding, the petitioner or the petitioner's legal
11 representative shall certify to the court, in writing, the

12 efforts which have been made to give notice to the
13 respondent or just cause why notice should not be
14 required. Copies of medical reports or records may be
15 admitted into evidence to the same extent as though the
16 original thereof. The custodian of such records shall not
17 be required to be present to authenticate such records
18 for any proceeding held pursuant to subsection (a).
19 Following such proceeding, the court shall order a copy
20 of the petition to be served immediately upon the
21 respondent, together with a copy of any temporary order
22 issued pursuant to the proceedings, notice setting forth
23 the time and place of the full hearing and a statement
24 of the right of the respondent to be present and to be
25 represented by counsel. Copies of any order made under
26 the provisions of this section shall also be issued to the
27 petitioner, and any law-enforcement agency having
28 jurisdiction to enforce the order, including the city
29 police, the county sheriff's office and local office of the
30 state police within twenty-four hours of the entry of the
31 order. Such initial protective order shall remain
32 effective until such time as a hearing is held. The order
33 shall be in full force and effect in every county in this
34 state.

35 (b) Within five days following the issuance of the
36 court's temporary order, a full hearing shall be held at
37 which the petitioner must prove the allegation of abuse
38 by a preponderance of the evidence, or such petition
39 shall be dismissed. Copies of medical reports may be
40 admitted into evidence to the same extent as though the
41 original thereof, upon proper authentication, by the
42 custodian of such records.

43 (c) No person requested by a party to be present
44 during a hearing held under the provisions of this
45 article shall be precluded from being present unless
46 such person is to be a witness in the proceeding and a
47 motion for sequestration has been made and such has
48 been granted or is found by the court to be disruptive.

49 (d) If a hearing is continued, the court may make or
50 extend such temporary orders as it deems necessary.

§48-2A-6. Protective orders.

1 (a) At the conclusion of the hearing and if the
2 petitioner has proven the allegations of abuse by a
3 preponderance of the evidence, then the court shall issue
4 a protective order which shall direct the respondent to
5 refrain from abusing the petitioner and/or the minor
6 children. The terms of a protective order may include:

7 (1) Granting possession to the petitioner of the
8 residence or household jointly resided in at the time the
9 abuse occurred;

10 (2) Awarding temporary custody of or establishing
11 temporary visitation rights with regard to minor
12 children;

13 (3) Establishing temporary visitation rights with
14 regard to the minor children and requiring third party
15 supervision of visitations if necessary to protect the
16 petitioner and/or the minor children;

17 (4) Ordering the noncustodial parent to pay to the
18 custodial parent a sum for temporary support and
19 maintenance of the petitioner and children, if any;

20 (5) Ordering the respondent to pay to the petitioner
21 a sum for temporary support and maintenance of the
22 petitioner, where appropriate;

23 (6) Ordering the respondent to refrain from entering
24 the school, business or place of employment of the
25 petitioner or household members or family members for
26 the purpose of violating the protective order;

27 (7) Directing the respondent to participate in counsel-
28 ing; or

29 (8) Ordering the respondent to refrain from contact-
30 ing, telephoning, communicating, harassing or verbally
31 abusing the petitioner in any public place.

32 (b) Any final protective order shall be for a fixed
33 period of time not to exceed sixty days: *Provided*, That
34 if a party has filed for divorce, separate maintenance or
35 annulment and no temporary or final divorce order is
36 entered prior to expiration of the protective order, upon
37 petitioner's motion, the protective order shall remain in
38 effect until such temporary or final divorce order is

39 entered. The court may amend its order at any time
40 upon subsequent petition filed by either party. If the
41 court enters an initial order for a period of less than
42 sixty days, it shall, after notice and hearing, extend its
43 initial order for the full sixty-day period if it finds the
44 petitioner or the minor child or children continue to
45 need protection from abuse. The order shall be in full
46 force and effect in every county in this state. The order
47 shall state that it is in full force and effect in every
48 county in this state.

49 (c) No order under this article shall in any manner
50 affect title to any real property.

51 (d) Certified copies of any order made under the
52 provisions of this section shall be issued to the petitioner,
53 the respondent and any law-enforcement agency having
54 jurisdiction to enforce the order, including the city
55 police, the county sheriff's office or local office of the
56 division of public safety within twenty-four hours of the
57 entry of the order.

58 (e) No mutual protective orders shall be granted
59 unless both parties have filed a petition under section
60 four of this article and have proven the allegations of
61 abuse by a preponderance of the evidence.

§48-2A-7. Contempt.

1 (a) Upon violation of any order issued pursuant to this
2 article, the court shall, upon the filing of a petition for
3 contempt by the petitioner, issue an order to show cause
4 why the respondent should not be held in contempt of
5 court and set a time for a hearing thereon within five
6 days of the filing of said motion.

7 (b) Notwithstanding any other provision of law to the
8 contrary, any sentence for contempt hereunder may
9 include imprisonment up to thirty days and a fine not
10 to exceed one thousand dollars or both. In lieu of
11 confinement, the court may allow the contemnor to post
12 bond as surety for the faithful compliance with the
13 orders of the court.

§48-2A-9. Law-enforcement response to family violence.

1 (a) Notwithstanding any other provision of this code
2 to the contrary, all law-enforcement officers are hereby
3 authorized to serve all pleadings and orders filed or
4 entered pursuant to this article on Sundays and legal
5 holidays. No law-enforcement officer shall refuse to
6 serve any pleadings or orders entered pursuant to this
7 article.

8 (b) Any law-enforcement officer responding to an
9 alleged incident of family violence shall inform the
10 parties thereto of the availability of the possible
11 remedies provided by this article and the possible
12 applicability of the criminal laws of this state. Any law-
13 enforcement officer investigating an alleged incident of
14 family violence shall advise the person subject to abuse
15 of the availability of the family protection shelter to
16 which such person may be admitted.

17 (c) Any law-enforcement officer responding to an
18 alleged incident of abuse shall, in addition to providing
19 the information required in subsection (a) of this section,
20 provide transportation for or facilitate transportation of
21 the victim or victims, upon the request of such victim
22 or victims, to a shelter or the appropriate court where
23 there is reasonable cause to believe that such victim or
24 victims have suffered or are likely to suffer physical
25 injury.

26 (d) Each law-enforcement agency shall maintain
27 records on all incidents of family or household abuse
28 reported to it, and shall monthly make and deliver to
29 the department of public safety a report on a form
30 prescribed by the department, listing all such incidents
31 of family or household abuse. Such reports shall include:

- 32 (1) The age and sex of the abused and abusing parties;
- 33 (2) The relationship between the parties;
- 34 (3) The type and extent of abuse;
- 35 (4) The number and type of weapons involved;
- 36 (5) Whether the law-enforcement agency responded to
37 the complaint and if so, the time involved, the action
38 taken and the time lapse between the agency's action

39 and the abused's request for assistance;

40 (6) Whether the petitioner reported having filed
41 complaints with regard to family or household abuse on
42 any prior occasion and if so, the number of such prior
43 complaints; and

44 (7) The effective dates and terms of any protective
45 order issued prior to or following the incident to protect
46 the abused party: *Provided*, That no information which
47 will permit the identification of the parties involved in
48 any incident of abuse shall be included in such report.

49 (e) The department of public safety shall tabulate and
50 analyze any statistical data derived from the reports
51 made by law-enforcement agencies pursuant to this
52 section, and publish a statistical compilation in the
53 department's annual uniform crime report, as provided
54 for in section twenty-four, article two, chapter fifteen of
55 this code. The statistical compilation shall include, but
56 is not limited to, the following:

57 (1) The number of family violence complaints
58 received;

59 (2) The number of complaints investigated;

60 (3) The number of complaints received from alleged
61 victims of each sex;

62 (4) The average time lapse in responding to such
63 complaints;

64 (5) The number of complaints received from alleged
65 victims who have filed such complaints on prior
66 occasions;

67 (6) The number of aggravated assaults and homicides
68 resulting from such repeat incidents;

69 (7) The type of police action taken in disposition of the
70 cases; and

71 (8) The number of alleged violations of protective
72 orders.

73 (f) As used in this section, the terms "abuse," "family
74 violence" and "family or household members" shall have

75 the meanings given them in section two of this article;
76 and the term "law-enforcement agency" shall include
77 the West Virginia department of health and human
78 resources in those instances of child abuse reported to
79 the department which are not otherwise reported to any
80 other law-enforcement agency.

81 (g) The governor's committee on crime, delinquency
82 and correction shall develop and promulgate rules for
83 state, county and municipal law-enforcement officers
84 and law-enforcement agencies regarding the duties of
85 law-enforcement officers and law-enforcement agencies
86 with respect to domestic violence. The notice of the
87 public hearing on the rules shall be published before the
88 first day of July, one thousand nine hundred ninety-one.
89 Prior to the publication of the proposed rules, the
90 governor's committee on crime, delinquency and correc-
91 tion shall convene a meeting or meetings of an advisory
92 committee to assist in the development of the rules. The
93 advisory committee shall be composed of persons invited
94 by the committee to represent state, county and local
95 law-enforcement agencies and officers, to represent
96 magistrates and court officials, to represent victims of
97 domestic violence, to represent shelters receiving
98 funding pursuant to article two-c of this chapter, and
99 to represent other persons or organizations who, in the
100 discretion of the committee, have an interest in the
101 rules. The rules and the revisions thereof as provided in
102 this section shall be promulgated as legislative rules in
103 accordance with chapter twenty-nine-a of this code.
104 Following the promulgation of said rules, the committee
105 shall meet at least annually to review the rules and to
106 propose revisions as a result of changes in law or policy.

107 (h) Nothing in this section shall be construed to
108 authorize the inclusion of information contained in a
109 report of an incident of abuse in any local, state,
110 interstate, national or international systems of criminal
111 identification pursuant to section twenty-four, article
112 two, chapter fifteen of this code: *Provided*, That nothing
113 in this section shall prohibit the department of public
114 safety from processing information through its criminal
115 identification bureau with respect to any actual charge

116 or conviction of a crime.

117 (i) All law-enforcement officers shall receive training
118 relating to response to calls involving family violence by
119 the first day of October, one thousand nine hundred
120 ninety-three.

**§48-2A-10. Enforcement procedure for temporary and
final protective orders.**

1 (a) Upon issuance of a temporary order as provided
2 in section five of this article, and service thereof upon
3 the respondent, 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 respondent has notice, a copy
6 of such order shall, no later than the close of the next
7 business day, be delivered by the court or the clerk to
8 a local office of the city police, the county sheriff and
9 the West Virginia department of public safety, where
10 it shall be placed in a confidential file, with access
11 provided only to the law-enforcement agency and the
12 respondent named on said order: *Provided*, That upon
13 the expiration of any order issued pursuant to section
14 five or six of this article, any such law-enforcement
15 agency which has any such order on file shall imme-
16 diately expunge its confidential file of any reference
17 thereto and destroy all copies of such order in its
18 possession, custody or control. A sworn affidavit may be
19 executed by the party awarded exclusive possession of
20 the residence or household, pursuant to an order entered
21 under subsection (b), section six of this article, and
22 delivered to such law-enforcement agency simultane-
23 ously with any such order, giving his or her consent for
24 a law-enforcement officer to enter such residence or
25 household, without a warrant, to enforce such protective
26 order or temporary order. Orders shall be promptly
27 served upon the respondent. Failure to serve shall not
28 stay the effect of a valid order if the respondent has
29 actual notice of the existence and contents of the order.

30 (b) Any person who observes a violation of such order
31 or the violated party may call a local law-enforcement
32 agency, which shall verify the existence of a current
33 order, and shall direct a law-enforcement officer to

34 promptly investigate the alleged violation.

35 (c) Where a law-enforcement officer observes a
36 violation of a valid order, he or she may immediately
37 arrest the subject of the order. In cases of violation of
38 such orders occurring outside the presence of the
39 investigating officer, the petitioner may apply to a court
40 in session in the county in which the violation occurred
41 or the county in which the order was issued for a
42 warrant of arrest. If the court finds probable cause to
43 believe that a valid order has been violated, the court
44 shall issue such warrant for the arrest of the subject of
45 the order wherever he or she may be found.

46 (d) Where there is an arrest, the officer shall take the
47 arrested person before a court or a magistrate and upon
48 a finding of probable cause to believe a violation of an
49 order has taken place, the court or magistrate shall set
50 a time and place for a hearing, to take place within five
51 days, and serve forthwith upon the alleged violator an
52 order to show cause why he or she should not be held
53 in contempt for violation of the prior order, which unless
54 waived by the defendant shall be by trial by a jury of
55 six persons. The remedies provided by this section shall
56 be limited to violations of a temporary order or
57 protective order entered pursuant to subsection (a) or
58 (b), section six of this article. A respondent who shall
59 abuse the petitioner and/or minor children in knowing
60 and willful violation of the terms of a temporary or final
61 protective order issued under the provisions of this
62 article shall be guilty of a misdemeanor, and, upon
63 conviction thereof, shall be confined in the county jail
64 for a period of not less than one day nor more than one
65 year, which jail term shall include actual confinement
66 of not less than twenty-four hours, and shall be fined not
67 less than two hundred fifty dollars nor more than two
68 thousand dollars.

§48-2A-11. Appeals.

1 Any party to a temporary or final protective order
2 may as a matter of right present a petition for appeal,
3 within five days of entry of the order in magistrate
4 court, to the circuit court. The order shall remain in

5 effect pending an appeal unless stayed by the circuit
6 court. No bond shall be required for any appeal under
7 this section. In any case where a petition for appeal is
8 filed under this section, the petition shall be heard de
9 novo by the circuit court within ten days from the filing
10 of the petition for appeal.

§48-2A-12. Registration of order.

1 (a) The department of public safety shall maintain a
2 registry in which it shall enter certified copies of orders
3 entered by courts from other counties in this state
4 pursuant to the provisions of this article, or from other
5 states pursuant to their laws: *Provided*, That provisions
6 of this section shall not become effective until such time
7 as a central automated record system is developed.

8 (b) A petitioner who obtains a protective order under
9 this article, or from another state pursuant to its law,
10 may register that order in any county within this state
11 where the petitioner believes enforcement may be
12 necessary.

13 (c) A protective order may be registered by the
14 petitioner in a county other than the issuing county by
15 obtaining a certified copy of the order of the issuing
16 court certified by the clerk of that court and presenting
17 that certified order to the local office of the state police
18 where the order is to be registered.

19 (d) Upon receipt of a certified order for registration,
20 the local office of the state police shall provide certified
21 copies to any law-enforcement agency within its juris-
22 diction, including the city police, and the county sheriff's
23 office.

24 (e) Nothing in this section shall preclude the enforce-
25 ment of an order in a county other than the county in
26 which the order was issued if the petitioner has not
27 registered the order in the county in which the alleged
28 violation of the order occurred.

§48-2A-13. Judicial education on family violence.

1 All judges may and magistrates and family law
2 masters shall receive a minimum of three hours of

3 training by the first day of October, one thousand nine
4 hundred ninety-three, and three hours per year each
5 year thereafter on family violence which shall include
6 training on the psychology of family violence, the
7 battered wife and child syndromes, sexual abuse,
8 courtroom treatment of victims, offenders and wit-
9 nesses, available sanctions and treatment standards for
10 offenders, and available shelter and support services for
11 victims. The supreme court of appeals may provide such
12 training in conjunction with other judicial education
13 programs offered by the supreme court.

ARTICLE 2C. DOMESTIC VIOLENCE ACT.

§48-2C-15. Confidentiality.

1 (a) No program or shelter receiving funds pursuant
2 to this article shall disclose or be compelled to disclose,
3 release or be compelled to release any written records
4 created or maintained in providing services pursuant to
5 this article except:

6 (1) Upon written consent of the person seeking or who
7 has sought services from the program or the shelter;

8 (2) In any proceeding brought under sections four and
9 five, article six, chapter nine of this code or section one,
10 article six, chapter forty-nine of this code, et seq.;

11 (3) Pursuant to an order of any court based upon a
12 finding that said information is sufficiently relevant to
13 a proceeding before the court to outweigh the impor-
14 tance of maintaining the confidentiality established by
15 this section;

16 (4) To protect against a clear and substantial danger
17 of imminent injury by a client to him or herself or
18 another;

19 (5) For treatment or internal review purposes to the
20 staff of any mental health facility if the client is also
21 being cared for by other health professionals in the
22 treatment of the client.

23 (b) No consent or authorization for the transmission
24 or disclosure of confidential information shall be
25 effective unless it is in writing and signed by the client.

26 Every person signing an authorization shall be given a
27 copy.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

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.

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
34 he 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 sixteen
75 thousand five hundred dollars and shall be appointed by
76 the family law master and serve at his or her will and
77 pleasure. Disbursement of salaries shall be made by or
78 pursuant to the order of the director of the administra-
79 tive office of the 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 refer
128 to the master the following matters for hearing to be
129 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, spousal support or
147 family violence, wherein either party has requested such
148 referral or the court on its own motion in individual
149 cases or by general order has referred such motions to
150 the master: *Provided*, That if the circuit court deter-
151 mines, in its discretion, that the pleadings raise
152 substantial issues concerning the identification of
153 separate property or the division of marital property
154 which may have a bearing on an award of support, the
155 court may decline to refer a motion for support pendente
156 lite to the family law 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 of 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; and

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 payment of initial fees for a hearing before a
181 master shall be paid before the commencement of the
182 hearing. Any additional hourly fees beyond the initial
183 fee shall be paid at the conclusion of the hearing, unless
184 a party is excused from payment thereof under the
185 provisions of section one, article two, chapter fifty-nine
186 of this code. Such initial fees may be paid at any time
187 prior to such hearing, but shall not be required at the
188 time the action is filed, and no advance payment shall
189 be required for additional fees beyond the initial fees
190 required by this section. Any payment of fees for a
191 hearing shall be refunded by the clerk of the circuit
192 court if the master verifies that such hearing was not
193 held, upon the request of the person paying such fees.

194 (k) Fees for hearings before a master shall be taxed
195 as court costs, which costs may be assessed against
196 either party or apportioned between the parties, in the
197 discretion of the master. The assessment of court costs
198 shall be made at the conclusion of the hearing and
199 included as findings in each case of a master's recom-
200 mended order. The fees for hearings before a master
201 shall be as follows:

202 (1) For an action to establish an order of support, fifty
203 dollars;

204 (2) For an action to establish paternity, one hundred
205 dollars;

206 (3) For a motion for pendente lite relief affecting
207 custody, visitation, child support or spousal support,
208 fifty dollars;

209 (4) For a petition for modification of an order
210 involving child custody, child visitation, child support or
211 spousal support, fifty dollars: *Provided*, That if the
212 matter is contested, the fee shall be fifty dollars for the
213 first hour or any portion thereof, and thirty dollars per
214 hour for each subsequent hour or any portion thereof;

215 (5) For an uncontested divorce action, fifty dollars;

216 (6) For a proceeding for the enforcement of an order,

217 fifty dollars: *Provided*, That if the matter is contested,
218 the fee shall be fifty dollars for the first hour or any
219 portion thereof, and thirty dollars per hour for each
220 subsequent hour or any portion thereof; and

221 (7) For a contested divorce action matured for final
222 hearing, fifty dollars for the first hour or any portion
223 thereof, and thirty dollars per hour for each subsequent
224 hour or any portion thereof.

225 (l) Persons entitled to notice of a master's hearing
226 shall be timely informed of:

227 (1) The time, place and nature of the hearing;

228 (2) The legal authority and jurisdiction under which
229 the hearing is to be held; and

230 (3) The matters of fact and law asserted.

231 (m) The master shall give all interested parties
232 opportunity for the submission and consideration of
233 facts, arguments, offers of settlement or proposals of
234 adjustment when time, the nature of the proceedings
235 and the public interest permit. To the extent that the
236 parties are unable to settle or compromise a controversy
237 by consent, the master shall provide the parties a
238 hearing and make a recommended order in accordance
239 with the provisions of sections two and four of this
240 article.

241 (n) The master who presides at the reception of
242 evidence pursuant to section two of this article shall
243 prepare the default order or make and enter the
244 pendente lite order provided for in section three of this
245 article, or make the recommended order required by
246 section four of this article, as the case may be. Except
247 to the extent required for disposition of ex parte matters
248 as authorized by this chapter, a master may not consult
249 a person or party on a fact in issue, unless on notice and
250 opportunity for all parties to participate; nor shall the
251 master attempt to supervise or direct an employee or
252 agent engaged in the performance of investigative or
253 prosecuting functions for a prosecuting attorney, the
254 division of human services or any other agency or
255 political subdivision of this state.

CHAPTER 49. CHILD WELFARE.**Article**

1. Purposes; Definitions.
2. State Responsibilities for the Protection and Care of Children.
6. Procedure in Cases of Child Neglect or Abuse.
- 6A. Reports of Children Suspected to be Abused or Neglected.
7. General Provisions.

ARTICLE 1. PURPOSES; DEFINITIONS.**§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 mental or emotional injury, upon the child or another
7 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, mental or emotional
22 injury, sexual abuse, sexual exploitation, sale or
23 attempted sale, or negligent treatment or maltreatment
24 of a child by a parent, guardian, or custodian who is
25 responsible for the child's welfare, under circumstances
26 which harm or threaten the health and welfare of the
27 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
72 professionals and paraprofessionals representing a
73 variety of disciplines who interact and coordinate their
74 efforts to identify, diagnose and treat specific cases of
75 child abuse and neglect. Multidisciplinary teams may
76 include, but are not limited to, medical, child care, and
77 law-enforcement personnel, social workers, psycholo-
78 gists and psychiatrists. Their goal is to pool their
79 respective skills in order to formulate accurate diag-
80 noses and to provide comprehensive coordinated treat-
81 ment with continuity and follow-up for both parents and
82 children. "Community team" means a multidisciplinary
83 group which addresses the general problem of child
84 abuse and neglect in a given community, and may
85 consist of several multidisciplinary teams with different
86 functions.

87 (g) (1) "Neglected child" means a child:

88 (A) Whose physical or mental health is harmed or
89 threatened by a present refusal, failure or inability of
90 the child's parent, guardian or custodian to supply the
91 child with necessary food, clothing, shelter, supervision,
92 medical care or education, when such refusal, failure or
93 inability is not due primarily to a lack of financial
94 means on the part of the parent, guardian or custodian;
95 or

96 (B) Who is presently without necessary food, clothing,
97 shelter, medical care, education or supervision because
98 of the disappearance or absence of the child's parent or
99 custodian;

100 (2) "Neglected child" does not mean a child whose
101 education is conducted within the provisions of section
102 one, article eight, chapter eighteen of this code.

103 (h) "Parenting skills" means a parent's competencies
104 in providing physical care, protection, supervision and
105 psychological support appropriate to a child's age and

106 state of development.

107 (i) "Sexual abuse" means:

108 (A) As to a child who is less than sixteen years of age,
109 any of the following acts which a parent, guardian or
110 custodian shall engage in, attempt to engage in, or
111 knowingly procure another person to engage in, with
112 such child, notwithstanding the fact that the child may
113 have willingly participated in such conduct or the fact
114 that the child may have suffered no apparent physical
115 injury or mental or emotional injury as a result of such
116 conduct:

117 (i) Sexual intercourse; or

118 (ii) Sexual intrusion; or

119 (iii) Sexual contact; or

120 (B) As to a child who is sixteen years of age or older,
121 any of the following acts which a parent, guardian or
122 custodian shall engage in, attempt to engage in, or
123 knowingly procure another person to engage in, with
124 such child, notwithstanding the fact that the child may
125 have consented to such conduct or the fact that the child
126 may have suffered no apparent physical injury or
127 mental or emotional injury as a result of such conduct:

128 (i) Sexual intercourse; or

129 (ii) Sexual intrusion; or

130 (iii) Sexual contact; or

131 (C) Any conduct whereby a parent, guardian or
132 custodian displays his or her sex organs to a child, or
133 procures another person to display his or her sex organs
134 to a child, for the purpose of gratifying the sexual desire
135 of the parent, guardian or custodian, of the person
136 making such display, or of the child, or for the purpose
137 of affronting or alarming the child.

138 (j) "Sexual contact" means sexual contact as that term
139 is defined in section one, article eight-b, chapter sixty-
140 one of this code.

141 (k) "Sexual exploitation" means an act whereby:

142 (1) A parent, custodian or guardian, whether for
143 financial gain or not, persuades, induces, entices or
144 coerces a child to engage in sexually explicit conduct as
145 that term is defined in section one, article eight-c,
146 chapter sixty-one of this code;

147 (2) A parent, guardian or custodian persuades,
148 induces, entices or coerces a child to display his or her
149 sex organs for the sexual gratification of the parent,
150 guardian, custodian or a third person, or to display his
151 or her sex organs under circumstances in which the
152 parent, guardian or custodian knows such display is
153 likely to be observed by others who would be affronted
154 or alarmed.

155 (l) "Sexual intercourse" means sexual intercourse as
156 that term is defined in section one, article eight-b,
157 chapter sixty-one of this code.

158 (m) "Sexual intrusion" means sexual intrusion as that
159 term is defined in section one, article eight-b, chapter
160 sixty-one of this code.

161 (n) "Parental rights" means any and all rights and
162 duties regarding a parent to a minor child, including,
163 but not limited to, custodial rights and visitational
164 rights and rights to participate in the decisions affecting
165 a minor child.

166 (o) "Placement" means any temporary or permanent
167 placement of a child who is in the custody of the state
168 in any foster home, group home, or other facility or
169 residence.

ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION AND CARE OF CHILDREN.

§49-2-16. State responsibility for child care.

1 The state department is hereby authorized and
2 empowered to provide care, support and protective
3 services for children who are handicapped by depen-
4 dency, neglect, single parent status, mental or physical
5 disability, or who for other reasons are in need of public
6 service. Such department is also hereby authorized and
7 empowered in its discretion to accept children for care
8 from their parent or parents, guardian, custodian or

9 relatives and to accept the custody of children committed to its care by courts exercising juvenile jurisdiction.
10 The department of human services or any county office
11 of such department is also hereby authorized and
12 empowered in its discretion to accept temporary custody
13 of children for care from any law-enforcement officer in
14 an emergency situation.
15

16 The department of human services shall provide care
17 in special boarding homes for children needing detention pending disposition by a court having juvenile jurisdiction or temporary care following such court
18 action.
19
20

21 Within ninety days of the date of the signatures to a
22 voluntary placement agreement, after receipt of physical custody, the state department shall file with the
23 court a petition for review of the placement, stating the
24 child's situation and the circumstance that gives rise to
25 the voluntary placement. If the department intends to
26 extend the voluntary placement agreement, the department shall file with the court a copy of the child's case
27 plan. The court shall appoint an attorney for the child,
28 who shall also receive a copy of the case plan. The court
29 shall schedule a hearing and shall give notice of the time
30 and place and right to be present at such hearing to:
31 The child's attorney; the child, if twelve years of age or
32 older; the child's parents or guardians; the child's foster
33 parents; and any other such persons as the court may
34 in its discretion direct. The child's presence at such
35 hearing may be waived by the child's attorney at the
36 request of the child or if the child would suffer
37 emotional harm. At the conclusion of the proceedings,
38 but no later than ninety days after the date of the
39 signatures to the voluntary placement agreement, the
40 court shall enter an order determining whether or not
41 continuation of the voluntary placement is in the best
42 interests of the child; specifying under what conditions
43 the child's placement shall continue; and specifying
44 whether or not the department has made reasonable
45 efforts to reunify the family and/or provide a plan for
46 the permanent placement of the child.
47
48

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.

- §49-6-1. Petition to court when child believed neglected or abused; notice.
- §49-6-2. Petition to court when child believed neglected or abused—Right to counsel; improvement period; hearing; priority of proceeding; transcript.
- §49-6-3. Petition to court when child believed neglected or abused—Temporary custody.
- §49-6-5. Disposition of neglected or abused children.
- §49-6-8. Foster care review; annual reports to the court.
- §49-6-11. Conviction for offenses against children.

§49-6-1. Petition to court when child believed neglected or abused; notice.

1 (a) If the state department or a reputable person
2 believes that a child is neglected or abused, the
3 department or the person may present a petition setting
4 forth the facts to the circuit court in the county in which
5 the child resides, or to the judge of such court in
6 vacation. The petition shall be verified by the oath of
7 some credible person having knowledge of the facts. The
8 petition shall allege specific conduct including time and
9 place, how such conduct comes within the statutory
10 definition of neglect or abuse with references thereto,
11 any supportive services provided by the state depart-
12 ment to remedy the alleged circumstances and the relief
13 sought. Upon filing of the petition, the court shall set
14 a time and place for a hearing and shall appoint counsel
15 for the child. When there is an order for temporary
16 custody pursuant to section three of this article, such
17 hearing shall be held within thirty days of such order,
18 unless a continuance for a reasonable time is granted to
19 a date certain, for good cause shown.

20 (b) The petition and notice of the hearing shall be
21 served upon both parents and any other custodian,
22 giving to such parents or custodian at least ten days'
23 notice, and notice shall be given to the state department.
24 In cases wherein personal service within West Virginia
25 cannot be obtained after due diligence upon any parent
26 or other custodian, a copy of the petition and notice of
27 the hearing shall be mailed to such person by certified
28 mail, addressee only, return receipt requested, to the
29 last known address of such person. If said person signs
30 the certificate, service shall be complete and said

31 certificate shall be filed as proof of said service with the
32 clerk of the circuit court. If service cannot be obtained
33 by personal service or by certified mail, notice shall be
34 by publication as a Class II legal advertisement in
35 compliance with the provisions of article three, chapter
36 fifty-nine of this code. A notice of hearing shall specify
37 the time and place of the hearing, the right to counsel
38 of the child and parents or other custodians at every
39 stage of the proceedings and the fact that such proceed-
40 ings can result in the permanent termination of the
41 parental rights. Failure to object to defects in the
42 petition and notice shall not be construed as a waiver.

43 (c) At the time of the institution of any proceeding
44 under this article, the state department shall provide
45 supportive services in an effort to remedy circumstances
46 detrimental to a child.

**§49-6-2. Petition to court when child believed neglected
or abused—Right to counsel; improvement
period; hearing; priority of proceeding;
transcript.**

1 (a) In any proceeding under the provisions of this
2 article, the child, his parents, his custodian or other
3 persons standing in loco parentis to him, such persons
4 other than the child being hereinafter referred to as
5 other party or parties, shall have the right to be
6 represented by counsel at every stage of the proceedings
7 and shall be informed by the court of their right to be
8 so represented and that if they cannot pay for the
9 services of counsel, that counsel will be appointed. If the
10 other parties have not retained counsel and the other
11 parties cannot pay for the services of counsel, the court
12 shall, by order entered of record, at least ten days prior
13 to the date set for hearing, appoint an attorney or
14 attorneys to represent the other party or parties and so
15 inform the parties. Under no circumstances may the
16 same attorney represent both the child and the other
17 party or parties, nor shall the same attorney represent
18 both parents or custodians. However, one attorney may
19 represent both parents or custodians where both parents
20 or guardians consent to this representation after the
21 attorney fully discloses to the client the possible conflict,

22 and where the attorney assures the court that she or he
23 is able to represent each client without impairing her
24 or his professional judgment; however, if more than one
25 child from a family is involved in the proceeding, one
26 attorney may represent all the children. The court may
27 allow to each attorney so appointed a fee in the same
28 amount which appointed counsel can receive in felony
29 cases. Any attorney appointed pursuant to this section
30 shall by the first day of July, one thousand nine hundred
31 ninety-three, and three hours per year each year
32 thereafter, receive a minimum of three hours of
33 continuing legal education training on representation of
34 children, child abuse and neglect: *Provided*, That where
35 no attorney who has completed this training is available
36 for such appointment, the court shall appoint a compe-
37 tent attorney with demonstrated knowledge of child
38 welfare law to represent the child. Any attorney
39 appointed pursuant to this section shall perform all
40 duties required as an attorney licensed to practice law
41 in the state of West Virginia.

42 (b) In any proceeding under this article, any parent
43 or custodian may, prior to final hearing, move to be
44 allowed an improvement period of three to twelve
45 months in order to remedy the circumstances or alleged
46 circumstances upon which the proceeding is based. The
47 court shall allow one such improvement period unless it
48 finds compelling circumstances to justify a denial
49 thereof, but may require temporary custody with a
50 responsible relative, which may include any parent,
51 guardian, or other custodian, or the state department or
52 other agency during the improvement period. An order
53 granting such improvement period shall require the
54 department to prepare and submit to the court a family
55 case plan in accordance with the provisions of section
56 three, article six-d of this chapter.

57 (c) In any proceeding under this article, the party or
58 parties having custodial or other parental rights or
59 responsibilities to the child shall be afforded a meaning-
60 ful opportunity to be heard, including the opportunity
61 to testify and to present and cross-examine witnesses.
62 The petition shall not be taken as confessed. A transcript

63 or recording shall be made of all proceedings unless
64 waived by all parties to the proceeding. The rules of
65 evidence shall apply. Where relevant, the court shall
66 consider the efforts of the state department to remedy
67 the alleged circumstances. At the conclusion of the
68 hearing the court shall make a determination based
69 upon the evidence and shall make findings of fact and
70 conclusions of law as to whether such child is abused or
71 neglected, which shall be incorporated into the order of
72 the court. The findings must be based upon conditions
73 existing at the time of the filing of the petition and
74 proven by clear and convincing proof.

75 (d) Any petition filed and any proceeding held under
76 the provisions of this article shall, to the extent
77 practicable, be given priority over any other civil action
78 before the court, except proceedings under article two-
79 a, chapter forty-eight of this code and actions in which
80 trial is in progress. Any petition filed under the
81 provisions of this article shall be docketed immediately
82 upon filing. Any hearing to be held at the end of an
83 improvement period and any other hearing to be held
84 during any proceedings under the provisions of this
85 article shall be held as nearly as practicable on
86 successive days and, with respect to said hearing to be
87 held at the end of an improvement period, shall be held
88 as close in time as possible after the end of said
89 improvement period.

90 (e) Following the court's determination, it shall be
91 inquired of the parents or custodians whether or not
92 appeal is desired and the response transcribed. A
93 negative response shall not be construed as a waiver.
94 The evidence shall be transcribed and made available
95 to the parties or their counsel as soon as practicable, if
96 the same is required for purposes of further proceed-
97 ings. If an indigent person intends to pursue further
98 proceedings, the court reporter shall furnish a trans-
99 cript of the hearing without cost to the indigent person
100 if an affidavit is filed stating that he cannot pay
101 therefor.

**§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, which
5 may include any parent, guardian, or other custodian
6 pending a preliminary hearing, if it finds that: (1) There
7 exists imminent danger to the physical well-being of the
8 child, and (2) there are no reasonably available alterna-
9 tives to removal of the child, including, but not limited to,
10 the provision of medical, psychiatric, psychological or
11 homemaking services in the child's present custody:
12 *Provided*, That where the alleged abusing person, if
13 known, is a member of a household, the court shall not
14 allow placement pursuant to this section of the child or
15 children in said home unless the alleged abusing person
16 is or has been precluded from visiting or residing in said
17 home by judicial order. In a case where there is more
18 than one child in the home, or in the temporary care,
19 custody, or control of the alleged offending parent, the
20 petition shall so state, and notwithstanding the fact that
21 the allegations of abuse or neglect may pertain to less
22 than all of such children, each child in the home for
23 whom relief is sought shall be made a party to the
24 proceeding. Even though the acts of abuse or neglect
25 alleged in the petition were not directed against a
26 specific child who is named in the petition, the court
27 shall order the removal of such child, pending final
28 disposition, if it finds that there exists imminent danger
29 to the physical well-being of the child and a lack of
30 reasonable available alternatives to removal. The initial
31 order directing such custody shall contain an order
32 appointing counsel and scheduling the preliminary
33 hearing, and upon its service shall require the imme-
34 diate transfer of custody of such child or children to the
35 state department or a responsible relative which may
36 include any parent, guardian, or other custodian. The
37 court order shall state: (1) That continuation in the home
38 is contrary to the best interests of the child and why;
39 (2) whether or not the state department made a
40 reasonable effort to prevent the placement or that the
41 emergency situation made such efforts unreasonable or
42 impossible. The order may also direct any party or the

43 department to initiate or become involved in services to
44 facilitate reunification of the family.

45 (b) Whether or not the court orders immediate
46 transfer of custody as provided in subsection (a) of this
47 section, if the facts alleged in the petition demonstrate
48 to the court that there exists imminent danger to the
49 child, the court may schedule a preliminary hearing
50 giving the respondents at least five days' actual notice.
51 If the court finds at the preliminary hearing that there
52 are no alternatives less drastic than removal of the child
53 and that a hearing on the petition cannot be scheduled
54 in the interim period, the court may order that the child
55 be delivered into the temporary custody of the state
56 department or a responsible relative, which may include
57 any parent, guardian, or other custodian, or another
58 appropriate person or agency for a period not exceeding
59 sixty days: *Provided*, That the court order shall state (1)
60 that continuation in the home is contrary to the best
61 interests of the child and state the reasons therefor; (2)
62 whether or not the department made reasonable efforts
63 to prevent the child's removal from his or her home; (3)
64 whether or not the state department made a reasonable
65 effort to prevent the placement or that the emergency
66 situation made such efforts unreasonable or impossible;
67 and (4) what efforts should be made by the department
68 to facilitate the child's return home: *Provided, however*,
69 That if the court grants an improvement period as
70 provided in subsection (b), section two of this article, the
71 sixty-day limit upon temporary custody may be waived.

72 (c) If a child or children shall, in the presence of a
73 child protective service worker of the division of human
74 services, be in an emergency situation which constitutes
75 an imminent danger to the physical well-being of the
76 child or children, as that phrase is defined in section
77 three, article one of this chapter, and if such worker has
78 probable cause to believe that the child or children will
79 suffer additional child abuse or neglect or will be
80 removed from the county before a petition can be filed
81 and temporary custody can be ordered, the worker may,
82 prior to the filing of a petition, take the child or children
83 into his or her custody without a court order: *Provided*,

84 That after taking custody of such child or children prior
85 to the filing of a petition, the worker shall forthwith
86 appear before a circuit judge or a juvenile referee of the
87 county wherein custody was taken, or if no such judge
88 or referee be available, before a circuit judge or a
89 juvenile referee of an adjoining county, and shall
90 immediately apply for an order ratifying the emergency
91 custody of the child pending the filing of a petition. The
92 circuit court of every county in the state shall appoint
93 at least one of the magistrates of the county to act as
94 a juvenile referee, who shall serve at the will and
95 pleasure of the appointing court, and who shall perform
96 the functions prescribed for such position by the
97 provisions of this subsection. The parents, guardians or
98 custodians of the child or children may be present at the
99 time and place of application for an order ratifying
100 custody, and if at the time the child or children are
101 taken into custody by the worker, the worker knows
102 which judge or referee is to receive the application, the
103 worker shall so inform the parents, guardians or
104 custodians. The application for emergency custody may
105 be on forms prescribed by the supreme court of appeals
106 or prepared by the prosecuting attorney or the appli-
107 cant, and shall set forth facts from which it may be
108 determined that the probable cause described above in
109 this subsection exists. Upon such sworn testimony or
110 other evidence as the judge or referee deems sufficient,
111 the judge or referee may order the emergency taking
112 by the worker to be ratified. If appropriate under the
113 circumstances, the order may include authorization for
114 an examination as provided for in subsection (b), section
115 four of this article. If a referee issues such an order, the
116 referee shall by telephonic communication have such
117 order orally confirmed by a circuit judge of the circuit
118 or an adjoining circuit who shall on the next judicial day
119 enter an order of confirmation. If the emergency taking
120 is ratified by the judge or referee, emergency custody
121 of the child or children shall be vested in the state
122 department until the expiration of the next two judicial
123 days, at which time any such child taken into emergency
124 custody shall be returned to the custody of his or her
125 parent, guardian or custodian unless a petition has been

126 filed and custody of the child has been transferred under
127 the provisions of section three of this article.

§49-6-5. Disposition of neglected or abused children.

1 (a) Following a determination pursuant to section two
2 of this article wherein the court finds a child to be
3 abused or neglected, the department shall file with the
4 court a copy of the child's case plan, including the
5 permanency plan for the child. The term case plan
6 means a written document that includes, where appli-
7 cable, the requirements of the family case plan as
8 provided for in section three, article six-d of this chapter
9 and that also includes at least the following: A descrip-
10 tion of the type of home or institution in which the child
11 is to be placed, including a discussion of the appropri-
12 ateness of the placement and how the agency which is
13 responsible for the child plans to assure that the child
14 receives proper care and that services are provided to
15 the parents, child and foster parents in order to improve
16 the conditions in the parent(s) home, facilitate return of
17 the child to his or her own home or the permanent
18 placement of the child, and address the needs of the
19 child while in foster care, including a discussion of the
20 appropriateness of the services that have been provided
21 to the child. The term permanency plan refers to that
22 part of the case plan which is designed to achieve a
23 permanent home for the child in the least restrictive
24 setting available. The plan must document efforts to
25 ensure that the child is returned home within approx-
26 imate time lines for reunification as set out in the plan.
27 If reunification is not the permanency plan for the child,
28 the plan must state why reunification is not appropriate
29 and detail the alternative placement for the child to
30 include approximate time lines for when such placement
31 is expected to become a permanent placement. This case
32 plan shall serve as the family case plan for parents of
33 abused or neglected children. Copies of the child's case
34 plan shall be sent to the child's attorney and parent,
35 guardian or custodian at least five days prior to the
36 dispositional hearing. The court shall forthwith proceed
37 to disposition giving both the petitioner and respondents
38 an opportunity to be heard. The court shall give

39 precedence to dispositions in the following sequence:

40 (1) Dismiss the petition;

41 (2) Refer the child, the abusing parent, or other family
42 members to a community agency for needed assistance
43 and dismiss the petition;

44 (3) Return the child to his or her own home under
45 supervision of the state department;

46 (4) Order terms of supervision calculated to assist the
47 child and any abusing parent or parents or custodian
48 which prescribe the manner of supervision and care of
49 the child and which are within the ability of any parent
50 or parents or custodian to perform;

51 (5) Upon a finding that the abusing parent or parents
52 are presently unwilling or unable to provide adequately
53 for the child's needs, commit the child temporarily to the
54 custody of the state department, a licensed private child
55 welfare agency or a suitable person who may be
56 appointed guardian by the court. The court order shall
57 state: (1) That continuation in the home is contrary to
58 the best interests of the child and why; (2) whether or
59 not the state department made a reasonable effort to
60 prevent the placement to include a statement of what
61 efforts were made or that the emergency situation made
62 such efforts unreasonable or impossible; and (3) the
63 specific circumstances of the situation which makes
64 such efforts unreasonable if services were not offered by
65 the department. The court order shall also determine
66 under what circumstances the child's commitment to the
67 department shall continue. Considerations pertinent to
68 the determination include whether the child should (1)
69 be continued in foster care for a specified period, (2)
70 should be considered for adoption, (3) because of a
71 child's special needs or circumstances, be continued in
72 foster care on a permanent or long-term basis, or (4) be
73 continued in foster care until reunification is achieved.
74 The court may order services to meet the special needs
75 of the child. Whenever the court transfers custody of a
76 youth to the department of human services, an approp-
77 riate order of financial support by the parents or
78 guardians shall be entered in accordance with section

79 five, article seven of this chapter; or

80 (6) Upon a finding that there is no reasonable
81 likelihood that the conditions of neglect or abuse can be
82 substantially corrected in the near future, and when
83 necessary for the welfare of the child, terminate the
84 parental or custodial rights and/or responsibilities of the
85 abusing parent and commit the child to the permanent
86 sole custody of the nonabusing parent, if there be one,
87 or, if not, to either the permanent guardianship of the
88 state department or a licensed child welfare agency. If
89 the court shall so find, then in fixing its dispositional
90 order, the court shall consider the following factors: (1)
91 The child's need for continuity of care and caretakers;
92 (2) the amount of time required for the child to be
93 integrated into a stable and permanent home environ-
94 ment; and (3) other factors as the court considers
95 necessary and proper. Notwithstanding any other
96 provision of this article, the permanent parental rights
97 shall not be terminated if a child fourteen years of age
98 or older or otherwise of an age of discretion as deter-
99 mined by the court, objects to such termination. No
100 adoption of a child shall take place until all proceedings
101 for termination of parental rights under this article and
102 appeals thereof are final. In determining whether or not
103 parental rights should be terminated, the court shall
104 consider the efforts made by the department to provide
105 remedial and reunification services to the parent. The
106 court order shall state: (1) That continuation in the home
107 is not in the best interest of the child and why; (2) why
108 reunification is not in the best interests of the child; (3)
109 whether or not the state department made a reasonable
110 effort to prevent the placement or that the emergency
111 situation made such efforts unreasonable or impossible;
112 and (4) whether or not the state department made a
113 reasonable effort to reunify the family including a
114 description of what efforts were made or that such
115 efforts were unreasonable due to specific circumstances.

116 (b) As used in this section, "no reasonable likelihood
117 that conditions of neglect or abuse can be substantially
118 corrected" shall mean that, based upon the evidence
119 before the court, the abusing adult or adults have

120 demonstrated an inadequate capacity to solve the
121 problems of abuse or neglect, on their own or with help.
122 Such conditions shall be deemed to exist in the following
123 circumstances, which shall not be exclusive:

124 (1) The abusing parent or parents have habitually
125 abused or are addicted to alcohol, controlled substances
126 or drugs, to the extent that proper parenting skills have
127 been seriously impaired and such abusing parent or
128 parents have not responded to or followed through the
129 recommended and appropriate treatment which could
130 have improved the capacity for adequate parental
131 functioning;

132 (2) The abusing parent or parents have willfully
133 refused or are presently unwilling to cooperate in the
134 development of a reasonable family case plan designed
135 to lead to the child's return to their care, custody and
136 control;

137 (3) The abusing parent or parents have not responded
138 to or followed through with a reasonable family case
139 plan or other rehabilitative efforts of social, medical,
140 mental health or other rehabilitative agencies designed
141 to reduce or prevent the abuse or neglect of the child,
142 as evidenced by the continuation or insubstantial
143 diminution of conditions which threatened the health,
144 welfare or life of the child;

145 (4) The abusing parent or parents have abandoned the
146 child;

147 (5) The abusing parent or parents have repeatedly or
148 seriously injured the child physically or emotionally, or
149 have sexually abused or sexually exploited the child, and
150 the degree of family stress and the potential for further
151 abuse and neglect are so great as to preclude the use
152 of resources to mitigate or resolve family problems or
153 assist the abusing parent or parents in fulfilling their
154 responsibilities to the child; or

155 (6) The abusing parent or parents have incurred
156 emotional illness, mental illness or mental deficiency of
157 such duration or nature as to render such parent or
158 parents incapable of exercising proper parenting skills

159 or sufficiently improving the adequacy of such skills.

160 (c) The court may as an alternative disposition allow
161 to the parents or custodians an improvement period not
162 to exceed twelve months. During this period the
163 parental rights shall not be permanently terminated and
164 the court shall require the parent to rectify the
165 conditions upon which the determination was based. No
166 more than one such post-dispositional improvement
167 period may be granted. The court may order the child
168 to be placed with the parents, a relative, the state
169 department or other appropriate placement during the
170 period. At the end of the period the court shall hold a
171 hearing to determine whether the conditions have been
172 adequately improved, and at the conclusion of such
173 hearing, shall make a further dispositional order in
174 accordance with this section.

§49-6-8. Foster care review; annual reports to the court.

1 (a) If, twelve months after receipt (by the state
2 department or its authorized agent) of physical custody
3 of a child either by a court ordered placement or by a
4 voluntary agreement, the state department has not
5 placed a child in permanent foster care or an adoptive
6 home or placed the child with a natural parent, the state
7 department shall file with the court a petition for review
8 of the case. The department shall also file with the court
9 a report detailing the efforts that have been made to
10 place the child in a permanent home and copies of the
11 child's case plan including the permanency plan as
12 defined in section five, article six of this chapter. Copies
13 of the report shall be sent to the child's attorney and be
14 made available to the child's parent(s) or guardian.
15 "Permanent foster care" shall mean a written arrange-
16 ment with an adult or adults following a six-month trial
17 period whereby the state department places the care,
18 custody and control of a child until the child's emanci-
19 pation with such adult or adults. The court shall
20 schedule a hearing in chambers, giving notice and the
21 right to be present to: The child's attorney; the child, if
22 twelve years of age or older; the child's parents; the
23 child's guardians; the child's foster parents; and such
24 other persons as the court may in its discretion direct.

25 The child's presence may be waived by the child's
26 attorney at the request of the child or if the child would
27 suffer emotional harm. The purpose of the hearing is to
28 review the child's case, to determine whether and under
29 what conditions the child's commitment to the depart-
30 ment shall continue, and to determine what efforts are
31 necessary to provide the child with a permanent home.
32 At the conclusion of the hearing the court shall in
33 accordance with the best interests of the child enter an
34 appropriate order of disposition. The court order shall
35 state (1) whether or not the department made reasonable
36 effort to prevent out-of-home placement or that the
37 specific situation made such effort unreasonable, (2) the
38 permanency plan for the child, and (3) services required
39 to meet the child's needs. The court shall possess
40 continuing jurisdiction over cases reviewed under this
41 section for so long as a child remains in temporary foster
42 care, or, when a child is returned to his or her natural
43 parents subject to conditions imposed by the court, for
44 so long as the conditions are effective.

45 (b) The state department shall file a supplementary
46 petition for review with the court within eighteen
47 months and every eighteen months thereafter for every
48 child that remains in the physical or legal custody of the
49 state department until the child is placed in an adoptive
50 home or permanent foster care or returned to his or her
51 parents.

52 (c) The state department shall annually report to the
53 court the current status of the placements of children
54 in permanent care and custody of the state department
55 who have not been adopted.

56 (d) The state department shall file a report with the
57 court in any case where any child in the temporary or
58 permanent custody of the state receives more than three
59 placements in one year no later than thirty days after
60 the third placement. This report shall be provided to all
61 parties and their counsel. Upon motion by any party, the
62 court shall review these placements and determine what
63 efforts are necessary to provide the child with a stable
64 foster or temporary home: *Provided*, That no report
65 shall be provided to any parent or parent's attorney

66 whose parental rights have been terminated pursuant to
67 this article.

68 (e) The state department shall notify, in writing, the
69 court, the child, if over the age of twelve, the child's
70 attorney, the parents and the parents' attorney forty-
71 eight hours prior to the move if this is a planned move,
72 or within forty-eight hours of the next business day after
73 the move if this is an emergency move, except where
74 such notification would endanger the child or the foster
75 family. This notice shall not be required in any case
76 where the child is in imminent danger in the child's
77 current placement. The location of the child need not be
78 disclosed, but the purpose of the move should be. This
79 requirement is not waived by placement of the child in
80 a home or other residence maintained by a private
81 provider. No notice shall be provided pursuant to this
82 provision to any parent or parent's attorney whose
83 parental rights have been terminated pursuant to this
84 article.

85 (f) Nothing in this article precludes any party from
86 petitioning the court for review of the child's case at any
87 time. The court shall grant such petition upon a showing
88 that there is a change in circumstance or needs of the
89 child that warrants court review.

§49-6-11. Conviction for offenses against children.

1 In any case where a person is convicted of an offense
2 described in sections twelve and twenty-six, article
3 eight, chapter sixty-one; section one, article eight-b,
4 chapter sixty-one, et seq.; and section one, article eight-
5 d, chapter sixty-one of this code against any child and
6 further has custodial, visitation, or other parental rights
7 to the child, at the time of sentencing, the court shall
8 make a finding that the person is an abusing parent
9 within the meaning of section one, article six, chapter
10 forty-nine, et seq., and the court shall take such further
11 steps as are required by this article.

ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR NEGLECTED.

§49-6A-2. Persons mandated to report suspected abuse and neglect.

§49-6A-5. Reporting procedures.

§49-6A-9. Establishment of child protective services; general duties and powers; cooperation of other state agencies.

§49-6A-2. Persons mandated to report suspected abuse and neglect.

1 When any medical, dental or mental health profes-
2 sional, Christian Science practitioner, religious healer,
3 school teacher or other school personnel, social service
4 worker, child care or foster care worker, emergency
5 medical services personnel, peace officer or law-
6 enforcement official, member of the clergy, circuit court
7 judge, family law master or magistrate has reasonable
8 cause to suspect that a child is neglected or abused or
9 observes the child being subjected to conditions that are
10 likely to result in abuse or neglect, such person shall
11 immediately, and not more than forty-eight hours after
12 suspecting this abuse, report the circumstances or cause
13 a report to be made to the state department of human
14 services: *Provided*, That in any case where the reporter
15 believes that the child has been seriously physically
16 injured or sexually abused or sexually assaulted, the
17 reporter shall also immediately report, or cause a report
18 to be made to the department of public safety, and any
19 law-enforcement agency having jurisdiction to investi-
20 gate the complaint: *Provided, however*, That any person
21 required to report under this article who is a member
22 of the staff of a public or private institution, school,
23 facility or agency shall immediately notify the person in
24 charge of such institution, school, facility or agency or
25 a designated agent thereof, who shall report or cause a
26 report to be made. However, nothing in this article is
27 intended to prevent individuals from reporting on their
28 own behalf.

29 In addition to those persons and officials specifically
30 required to report situations involving suspected abuse
31 or neglect of children, any other person may make a
32 report if such person has reasonable cause to suspect
33 that a child has been abused or neglected in a home or
34 institution or observes the child being subjected to
35 conditions or circumstances that would reasonably
36 result in abuse or neglect.

§49-6A-5. Reporting procedures.

1 Reports of child abuse and neglect pursuant to this
2 article shall be made immediately by telephone to the
3 local state department child protective service agency
4 and shall be followed by a written report within forty-
5 eight hours if so requested by the receiving agency. The
6 state department shall establish and maintain a twenty-
7 four hour, seven-day-a-week telephone number to
8 receive such calls reporting suspected or known child
9 abuse or neglect.

10 A copy of any report of serious physical injury, or
11 sexual abuse or assault, shall be forwarded by the
12 department to the appropriate law-enforcement agency,
13 the prosecuting attorney or the coroner or medical
14 examiner's office. All reports under this article shall be
15 confidential, and unless there are pending proceedings
16 with regard thereto, shall be destroyed six years
17 following their preparation. Reports of known or
18 suspected institutional child abuse or neglect shall be
19 made and received as all other reports made pursuant
20 to this article. Such documentation shall be provided
21 within three business days of receipt by the child
22 protective services.

**§49-6A-9. Establishment of child protective services;
general duties and powers; cooperation of
other state agencies.**

1 (a) The state department shall establish or designate
2 in every county a local child protective service to
3 perform the duties and functions set forth in this article.

4 (b) Except in cases involving institutional abuse or
5 cases in which police investigation also appears approp-
6 priate, the child protective service shall be the sole public
7 agency responsible for investigating or arranging for
8 investigation and coordinating the investigation of all
9 reports of child abuse or neglect: *Provided*, That under
10 no circumstances shall investigating personnel be
11 relatives of the accused, the child or the families
12 involved. In accordance with the local plan for child
13 protective services, it shall provide protective services to
14 prevent further abuse or neglect of children and provide
15 for or arrange for and coordinate and monitor the

16 provision of those services necessary to ensure the safety
17 of children. The local child protective service shall be
18 organized to maximize the continuity of responsibility,
19 care and service of individual workers for individual
20 children and families.

21 Each local child protective service shall:

22 (1) Receive or arrange for the receipt of all reports
23 of children known or suspected to be abused or neg-
24 lected on a twenty-four hour, seven-day-a-week basis
25 and cross-file all such reports under the names of the
26 children, the family, any person substantiated as being
27 an abuser or neglecter by investigation of the depart-
28 ment of human services, with use of such cross-filing of
29 such person's name limited to the internal use of the
30 department;

31 (2) Provide or arrange for emergency children's
32 services to be available at all times;

33 (3) Within twenty-four hours of notification of
34 suspected child abuse or neglect, commence or cause to
35 be commenced a thorough investigation of the report
36 and the child's environment.

37 (c) In those cases in which the local child protective
38 service determines that the best interests of the child
39 require court action, the local child protective service
40 shall initiate the appropriate legal proceeding.

41 (d) The local child protective service shall be respon-
42 sible for providing, directing or coordinating the
43 appropriate and timely delivery of services to any child
44 suspected or known to be abused or neglected, including
45 services to the child's family and those responsible for
46 the child's care.

47 (e) To carry out the purposes of this article, all
48 departments, boards, bureaus and other agencies of the
49 state or any of its political subdivisions and all agencies
50 providing services under the local child protective
51 service plan shall, upon request, provide to the local
52 child protective service such assistance and information
53 as will enable it to fulfill its responsibilities.

ARTICLE 7. GENERAL PROVISIONS.**§49-7-29. General provisions to read uniform court orders regarding custody; promulgation of rules.**

1 The supreme court shall, in consultation with the
2 department of health and human resources, develop and
3 cause to be implemented, as soon as practicable but no
4 later than the first day of September, one thousand nine
5 hundred ninety-two, forms for court orders which are
6 consistent with the provision of chapter forty-nine of this
7 code as well as the provisions of Title 142 U.S.C. Section
8 620, et seq., and Title 42 U.S.C. Section 670, et seq.,
9 relating to the promulgation of uniform court orders for
10 placement of minor children and the regulations
11 promulgated thereunder, for the use in the magistrate
12 and circuit courts of the state.

CHAPTER 56. PLEADING AND PRACTICE.**ARTICLE 10. MISCELLANEOUS PROVISIONS RELATING TO PROCEDURE.****§56-10-8. Priority of cases involving placement of children.**

1 Any action or motion which involves a contested issue
2 regarding the permanent or temporary placement of a
3 minor child shall be given priority over any civil action
4 before the court except actions in which trial is in
5 progress and actions brought under section one, article
6 two-a, chapter forty-eight, et seq., of this code and shall
7 be docketed immediately upon filing.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**Article.**

- 2. Crimes Against the Person.
- 8. Crimes Against Chastity, Morality and Decency.
- 8B. Sexual Offenses.
- 8D. Child Abuse.
- 11A. Victim Protection Act of 1984.

ARTICLE 2. CRIMES AGAINST THE PERSON.**§61-2-9a. Stalking; penalties; definitions.**

1 (a) Any person who shall intentionally and closely

2 follow, lie in wait, or make repeated threats to cause
3 bodily injury to any person with whom that person
4 formerly resided or cohabited or with whom that person
5 formerly engaged in a sexual or intimate relationship,
6 with the intent to cause or causing said person emotional
7 distress or placing said person in fear of his or her
8 personal safety shall be guilty of a misdemeanor and,
9 upon conviction thereof, shall be imprisoned in the
10 county jail for not more than six months, or be fined not
11 more than one thousand dollars, or both fined and
12 imprisoned.

13 (b) Any person who violates subsection (a) when there
14 is a temporary restraining order or a restraining order,
15 or both, in effect, granted pursuant to the provisions of
16 section nine-b of this article which prohibits the conduct
17 referred to in said section, is guilty of a misdemeanor
18 and, upon conviction thereof, shall be imprisoned in the
19 county jail for not more than one year, or be fined not
20 more than three thousand dollars, or both fined and
21 imprisoned.

**ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND
DECENCY.**

**§61-8-13. Incest; limits on interviews of children eleven
years old or less; evidence.**

1 (a) In any prosecution under the provisions of section
2 twelve of this article, the court may provide by rule for
3 reasonable limits on the number of interviews to which
4 a victim who is eleven years old or less must submit for
5 law-enforcement or discovery purposes. To the extent
6 possible the rule shall protect the mental and emotional
7 health of the child from the psychological damage of
8 repeated interrogation and at the same time preserve
9 the rights of the public and the defendant.

10 (b) At any stage of the proceedings, in any prosecution
11 under this article, the court may permit a child who is
12 eleven years old or less to use anatomically correct dolls,
13 mannequins or drawings to assist such child in
14 testifying.

15 (c) In any prosecution under this article in which the
16 victim's lack of consent is based solely on the incapacity

17 to consent because such victim was below a critical age,
18 evidence of specific instances of the victim's sexual
19 conduct, opinion evidence of the victim's sexual conduct
20 and reputation evidence of the victim's sexual conduct
21 shall not be admissible. In any other prosecution under
22 this article, evidence of specific instances of the victim's
23 prior sexual conduct with the defendant shall be
24 admissible on the issue of consent: *Provided*, That such
25 evidence heard first out of the presence of the jury is
26 found by the judge to be relevant.

27 (d) In any prosecution under this article evidence of
28 specific instances of the victim's sexual conduct with
29 persons other than the defendant, opinion evidence of
30 the victim's sexual conduct and reputation evidence of
31 the victim's sexual conduct shall not be admissible:
32 *Provided*, That such evidence shall be admissible solely
33 for the purpose of impeaching credibility, if the victim
34 first makes his or her previous sexual conduct an issue
35 in the trial by introducing evidence with respect thereto.

36 (e) In any prosecution under this article, neither age
37 nor mental capacity of the victim shall preclude the
38 victim from testifying.

39 (f) In any case where a person is convicted of an
40 offense described herein against a child and further has
41 or may have custodial, visitation or other parental rights
42 to the child, the court shall find that the person is an
43 abusing parent within the meaning of section one,
44 article six, chapter forty-nine of this code, and shall take
45 such further action in accord with the provisions of
46 section one, article six, chapter forty-nine of this code.

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-11a. Convictions for offenses against children.

1 In any case where a person is convicted of an offense
2 described in this article against a child and further has
3 or may have custodial, visitation or other parental rights
4 to the child, the court shall find that the person is an
5 abusing parent within the meaning of section one,
6 article six, chapter forty-nine of this code, and shall take
7 such further action in accord with the provisions of

8 section one, article six, chapter forty-nine of this code.

ARTICLE 8D. CHILD ABUSE.

§61-8D-9. Convictions for offenses against children.

1 In any case where a person is convicted of an offense
2 described in this article against a child and further has
3 or may have custodial, visitation or other parental rights
4 to the child, the court shall find that such person is an
5 abusing parent within the meaning of section one,
6 article six, chapter forty-nine of this code and shall take
7 such further action in accord with the provisions of
8 section one, article six, chapter forty-nine of this code.

ARTICLE 11A. VICTIM PROTECTION ACT OF 1984.

§61-11A-8. Victim notification of defendant's release.

1 (a) At the time a complaint is sworn out for a charge
2 of murder, aggravated robbery, sexual assault in the
3 first degree, kidnaping, arson, sexual offenses against
4 minors, or any violent crime against a spouse, former
5 spouse, child or stepchild, the prosecuting attorney shall
6 provide written notice to the victim or victim's family
7 member that he or she may be notified prior to and upon
8 the release to or escape of the defendant from work
9 release, home confinement, parole, furlough or upon the
10 escape from any correctional facility.

11 (b) The commissioner of corrections, regional jail
12 supervisors, city or sheriff operating a jail which
13 releases any person shall, from which they have received
14 a written request for notification, provide written notice
15 to the last known address or addresses provided by the
16 victim, or in the case of a minor child, to the custodial
17 parent of the child, upon release of the defendant.
18 Additionally, notice provided in the case of escape shall
19 be by telephone.

CHAPTER 62. CRIMINAL PROCEDURE.

Article

- 1C. Bail.
- 11A. Release for Work and Other Purposes.
- 12. Probation and Parole.

ARTICLE 1C. BAIL.

§62-1C-17a. Bail in situations of alleged child abuse.

§62-1C-17c. Bail in cases of crimes between family or household members.

§62-1C-17a. Bail in situations of alleged child abuse.

1 (a) When the offense charged is an assault or other
2 offense against a child who is defined in chapter forty-
3 nine of this code, it shall be a condition of bond that the
4 defendant shall not live in the same residence as and
5 shall have no contact with the victim of the alleged
6 offense, and the court may make such other conditions
7 of bond with respect to contact with the victim as it
8 deems necessary under the circumstances to protect the
9 child: *Provided*, That the requirement of no contact with
10 the victim of the alleged offense and all other conditions
11 of bond may be reviewed by summary petition from the
12 magistrate court to the circuit court or from the circuit
13 court to the supreme court of appeals or any justice
14 thereof.

15 (b) In cases where the charge is a sexual offense, as
16 defined in chapter sixty-one of this code, against any
17 person, the court, upon a showing of cause, may make
18 such conditions of bond on the defendant or on any
19 witness bond issued under section fifteen of this article
20 as it deems necessary with respect to contact with the
21 victim.

§62-1C-17c. Bail in cases of crimes between family or household members.

1 (a) When the offense charged is a crime against a
2 family or household member, it may be a condition of
3 bond that the defendant shall not have any contact
4 whatsoever, direct or indirect, verbal or physical, with
5 the victim or complainant.

6 (b) In determining conditions of release, the issuing
7 authority shall consider whether the defendant poses a
8 threat or danger to the victim or other family or
9 household member. If the issuing authority makes such
10 a determination, it shall require as a condition of bail
11 that the defendant refrain from entering the residence
12 or household of the victim, the victim's school, and the
13 victim's place of employment or otherwise contacting
14 the victim and/or minor child or household member in

15 any manner whatsoever, and shall refrain from having
16 any further contact with the victim. A violation of this
17 condition may be punishable by the forfeiture of bail
18 and the issuance of a bench warrant for the defendant's
19 arrest or remanding the defendant to custody or a
20 modification of the terms of bail.

21 (c) The clerk of the court issuing an order pursuant
22 to this section shall issue certified copies of the
23 conditions of bail to the victim upon request without
24 cost.

25 (d) Where a law-enforcement officer observes any
26 violation of bail condition, including the presence of the
27 defendant or at the home of the victim, the officer shall
28 immediately arrest the defendant, and detain the
29 defendant pending a hearing for revocation of bail.

ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.

§62-11A-1. Release for work and other purposes by courts of record with criminal jurisdic- tion.

1 (1) When a defendant is sentenced or committed for
2 a term of one year or less by a court of record having
3 criminal jurisdiction, such court may in its order grant
4 to such defendant the privilege of leaving the jail during
5 necessary and reasonable hours for any of the following
6 purposes:

7 (a) To work at his employment;

8 (b) To seek employment;

9 (c) To conduct his own business or to engage in other
10 self-employment, including, in the case of a woman,
11 housekeeping and attending to the needs of her family;

12 (d) To attend an educational institution;

13 (e) To obtain medical treatment;

14 (f) To devote time to any other purpose approved of
15 or ordered by the court, including participation in the
16 litter control program of the county unless the court
17 specifically finds that this alternative service would be
18 inappropriate.

19 (2) Whenever an inmate who has been granted the
20 privilege of leaving the jail under this section is not
21 engaged in the activity for which such leave is granted,
22 he shall be confined in jail.

23 (3) An inmate sentenced to ordinary confinement may
24 petition the court at any time after sentence for the
25 privilege of leaving jail under this section and may
26 renew his petition in the discretion of the court. The
27 court may withdraw the privilege at any time by order
28 entered with or without notice.

29 (4) If the inmate has been granted permission to leave
30 the jail to seek or take employment, the court's probation
31 officers, or if none, the state's division of corrections
32 shall assist him in obtaining suitable employment and
33 in making certain that employment already obtained is
34 suitable. Employment shall not be deemed suitable if
35 the wages or working conditions or other circumstances
36 present a danger of exploitation or of interference in a
37 labor dispute in the establishment in which the inmate
38 would be employed.

39 (5) If an inmate is employed for wages or salary, the
40 clerk of the court shall collect the same, or shall require
41 the inmate to turn over his wages or salary in full when
42 received, and shall deposit the same in a trust account
43 and shall keep a ledger showing the status of the account
44 of each inmate. Earnings levied upon pursuant to writ
45 of attachment or execution or in other lawful manner
46 shall be collected from the employer and shall not be
47 collected hereunder, but when the clerk has requested
48 transmittal of earnings prior to levy, such request shall
49 have priority. When an employer transmits such
50 earnings to the clerk pursuant to this subsection he shall
51 have no liability to the inmate for such earnings. From
52 such earnings the clerk shall pay the inmate's board and
53 personal expenses both inside and outside the jail and
54 shall deduct installments on fines, if any, and, to the
55 extent directed by the court, shall pay the support of the
56 inmate's dependents: *Provided*, That at least twenty-five
57 percent of the earnings collected by the clerk on behalf
58 of an inmate shall be paid for the support of such
59 inmate's dependents, if any. If sufficient funds are

60 available after making the foregoing payments, the
61 clerk may, with the consent of the inmate, pay, in whole
62 or in part, any unpaid debts of the inmate. Any balance
63 shall be retained, and shall be paid to the inmate at the
64 time of his discharge.

65 (6) An inmate who is serving his sentence pursuant
66 to this section shall be eligible for a reduction of his
67 term for good behavior and faithful performance of
68 duties in the same manner as if he had served his term
69 in ordinary confinement.

70 (7) The court shall not make an order granting the
71 privilege of leaving the institution under this section
72 unless it is satisfied that there are adequate facilities for
73 the administration of such privilege in the jail or other
74 institution in which the defendant will be confined.

75 (8) In every case wherein the defendant has been
76 convicted of an offense defined in section thirteen,
77 article eight, chapter sixty-one, articles eight-b and
78 eight-d, chapter sixty-one of this code, against a child,
79 the defendant shall not live in the same residence as any
80 minor child, nor exercise visitation with any minor child
81 and shall have no contact with the victim of the offense:
82 *Provided*, That the defendant may petition the court of
83 the circuit wherein he was so convicted for a modifica-
84 tion of this term and condition of this probation and the
85 burden shall rest upon the defendant to demonstrate
86 that a modification is in the best interest of the child.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-9. Conditions of release on probation.

§62-12-17. Conditions of release on parole.

§62-12-9. Conditions of release on probation.

1 Release on probation shall be upon the following
2 conditions:

3 (1) That the probationer shall not, during the term of
4 his probation, violate any criminal law of this or any
5 other state or of the United States.

6 (2) That he shall not, during the term of his probation,
7 leave the state without the consent of the court which

8 placed him on probation.

9 (3) That he shall comply with the rules and regula-
10 tions prescribed by the court or by the board of
11 probation and parole, as the case may be, for his
12 supervision by the probation officer.

13 (4) That in every case wherein the probationer has
14 been convicted of an offense defined in section thirteen,
15 article eight, chapter sixty-one, articles eight-b and
16 eight-d, chapter sixty-one of this code, against a child,
17 the probationer shall not live in the same residence as
18 any minor child, nor exercise visitation with any minor
19 child, and shall have no contact with the victim of the
20 offense: *Provided*, That the probationer may petition the
21 court of the circuit wherein he was so convicted for a
22 modification of this term and condition of his probation
23 and the burden shall rest upon the probationer to
24 demonstrate that a modification is in the best interest
25 of the child.

26 In addition, the court may impose, subject to modi-
27 fication at any time, any other conditions which it may
28 deem advisable, including, but not limited to, any of the
29 following:

30 (1) That he shall make restitution or reparation, in
31 whole or in part, immediately or within the period of
32 probation, to any party injured by the crime for which
33 he has been convicted.

34 (2) That he shall pay any fine assessed and the costs
35 of the proceeding in such installments as the court may
36 direct.

37 (3) That he shall make contribution from his earnings,
38 in such sums as the court may direct, for the support
39 of his dependents.

40 (4) That he shall, in the discretion of the court, be
41 required to serve a period of confinement in the county
42 jail of the county in which he was convicted for a period
43 not to exceed one third of the minimum sentence
44 established by law or one third of the least possible
45 period of confinement in an indeterminate sentence, but
46 in no case shall such period of confinement exceed six

47 consecutive months. The court shall have authority to
48 sentence the defendant within such six-month period to
49 intermittent periods of confinement including, but not
50 limited to, weekends or holidays and may grant unto the
51 defendant intermittent periods of release in order that
52 he may work at his employment or for such other
53 reasons or purposes as the court may deem appropriate:
54 *Provided*, That the provisions of article eleven-a of this
55 chapter shall not apply to such intermittent periods of
56 confinement and release except to the extent that the
57 court may direct. If a period of confinement is required
58 as a condition of probation, the court shall make special
59 findings that other conditions of probation are inade-
60 quate and that a period of confinement is necessary.

§62-12-17. Conditions of release on parole.

1 Release on parole shall be upon the following
2 conditions:

3 (1) That the parolee shall not, during the period of his
4 parole, violate any criminal law of this or any other
5 state, or of the United States.

6 (2) That he shall not, during the period of his parole,
7 leave the state without the consent of the board.

8 (3) That he shall comply with the rules and regula-
9 tions prescribed by the board for his supervision by the
10 probation and parole officer.

11 (4) That in every case wherein the parolee has been
12 convicted of an offense defined in section thirteen,
13 article eight, chapter sixty-one; or articles eight-b and
14 eight-d, chapter sixty-one of this code, against a child,
15 the parolee shall not live in the same residence as any
16 minor child, nor exercise visitation with any minor
17 child, and shall have no contact with the victim of the
18 offense: *Provided*, That the parolee may petition the
19 court of the circuit wherein he was so convicted for a
20 modification of this term and condition of his probation
21 and the burden shall rest upon the parolee to demon-
22 strate that a modification is in the best interest of the
23 child.

24 In addition, the board may impose, subject to modi-
25 fication at any time, any other conditions which the
26 board may deem advisable.

CHAPTER 53

(Com. Sub. for S. B. 36—By Senators Wiedebusch, Humphreys, Chafin, Anderson, Claypole, Minard, Felton, Helmick, Dittmar, Dalton, Wehrle, Holliday, Heck, Bailey, Chernenko, J. Manchin and Whillow)

[Passed February 20, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article two-b of said chapter; and to further amend said article by adding thereto eight new sections, designated sections two, three, four, five, six, seven, eight and nine, relating to grandparent visitation; relief upon ordering divorce or annulment or granting decree of separate maintenance; legislative findings; intent; grandparent visitation where divorce or separate maintenance is ordered; grandparent visitation upon abandonment or abrogation of visitation rights by parent or judicial preclusion of visitation; grandparent visitation when parent deceased; grandparent visitation when minor child has resided with grandparent; grandparent visitation where parents unwed; termination of grandparent visitation; attorney's fees, reasonable costs; and defining a misdemeanor offense of allowing contact between a minor and a person precluded visitation rights, and establishing the penalty therefor.

Be it enacted by the Legislature of West Virginia:

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

Article

2. Divorce, Annulment and Separate Maintenance.
- 2B. Grandparent Visitation.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.***§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
4 installments, or a lump sum, or both, for the
5 maintenance of the other party. Payments of alimony
6 and child support are to be ordinarily made from a
7 party's employment income and other recurring
8 earnings, but in cases where the employment income
9 and other recurring earnings are not sufficient to
10 adequately provide for payments of alimony and child
11 support, the court may, upon specific findings set forth
12 in the order, order the party required to make such
13 payments to make the same from the corpus of his or
14 her separate estate. An award of such relief shall not
15 be disproportionate to a party's ability to pay as
16 disclosed by the evidence before the court.

17 (b) Upon ordering the annulment of a marriage or a
18 divorce or granting of a decree of separate maintenance,
19 the court may further order all or any part of the
20 following relief:

21 (1) The court may provide for the custody of minor
22 children of the parties, subject to such rights of
23 visitation, both in and out of the residence of the
24 custodial parent or other person or persons having
25 custody, as may be appropriate under the
26 circumstances.

27 (2) The court may require either party to pay child
28 support in the form of periodic installments for the
29 maintenance of the minor children of the parties.

30 (3) As an incident to requiring the payment of
31 alimony or child support, the court may order either
32 party to continue in effect existing policies of insurance
33 covering the costs of health care and hospitalization of
34 the other party and the minor children of the parties:

*Clerk's Note: This section was also amended by H. B. 4389 (Chapter 52) and H. B. 4759 (Chapter 54), which passed subsequent to this act.

35 *Provided*, That if the other party is no longer eligible
36 to be covered by such insurance because of the granting
37 of an annulment or divorce, the court may require a
38 party to substitute such insurance with a new policy to
39 cover the other party, or may consider the prospective
40 cost of such insurance in awarding alimony to be paid
41 in periodic installments. If there is no such existing
42 policy or policies, the court shall order such health care
43 insurance coverage to be paid for by the noncustodial
44 parent, if the court determines that such health care
45 insurance coverage is available to the noncustodial
46 parent at a reasonable cost. Payments made to an
47 insurer pursuant to this subdivision, either directly or
48 by a deduction from wages, shall be deemed to be
49 alimony, child support or installment payments for the
50 distribution of marital property, in such proportion as
51 the court shall direct: *Provided, however*, That if the
52 court does not set forth in the order that a portion of
53 such payments is to be deemed child support or
54 installment payments for the distribution of marital
55 property, then all such payments made pursuant to this
56 subdivision shall be deemed to be alimony: *Provided*
57 *further*, That the designation of insurance coverage as
58 alimony under the provisions of this subdivision shall
59 not, in and of itself, give rise to a subsequent
60 modification of the order to provide for alimony other
61 than insurance for covering the costs of health care and
62 hospitalization.

63 (4) As an incident to requiring the payment of
64 alimony or child support, the court may grant the
65 exclusive use and occupancy of the marital home to one
66 of the parties, together with all or a portion of the
67 household goods, furniture and furnishings reasonably
68 necessary for such use and occupancy. Such use and
69 occupancy shall be for a definite period, ending at a
70 specific time set forth in the order, subject to
71 modification upon the petition of either party. Except
72 in extraordinary cases supported by specific findings set
73 forth in the order granting relief, a grant of the
74 exclusive use and occupancy of the marital home shall
75 be limited to those situations where such use and
76 occupancy is reasonably necessary to accommodate the

77 rearing of minor children of the parties. The court may
78 require payments to third parties in the form of home
79 loan installments, land contract payments, rent,
80 payments for utility services, property taxes, insurance
81 coverage, or other expenses or charges reasonably
82 necessary for the use and occupancy of the marital
83 domicile. Payments made to a third party pursuant to
84 this subdivision for the benefit of the other party shall
85 be deemed to be alimony, child support or installment
86 payments for the distribution of marital property, in
87 such proportion as the court shall direct: *Provided*, That
88 if the court does not set forth in the order that a portion
89 of such payments is to be deemed child support or
90 installment payments for the distribution of marital
91 property, then all such payments made pursuant to this
92 subdivision shall be deemed to be alimony. Nothing
93 contained in this subdivision shall abrogate an existing
94 contract between either of the parties and a third party,
95 or affect the rights and liabilities of either party or a
96 third party under the terms of such contract.

97 (5) As an incident to requiring the payment of
98 alimony, the court may grant the exclusive use and
99 possession of one or more motor vehicles to either of the
100 parties. The court may require payments to third
101 parties in the form of automobile loan installments or
102 insurance coverage if available at reasonable rates, and
103 any such payments made pursuant to this subdivision
104 for the benefit of the other party shall be deemed to be
105 alimony or installment payments for the distribution of
106 marital property, as the court may direct. Nothing
107 contained in this subdivision shall abrogate an existing
108 contract between either of the parties and a third party,
109 or affect the rights and liabilities of either party or a
110 third party under the terms of such contract.

111 (6) Where the pleadings include a specific request for
112 specific property or raise issues concerning the
113 equitable division of marital property as defined in
114 section one of this article, the court shall order such
115 relief as may be required to effect a just and equitable
116 distribution of the property and to protect the equitable
117 interests of the parties therein.

118 (7) Unless a contrary disposition be found appropriate
119 and ordered pursuant to other provisions of this section,
120 then upon the motion of either party, the court may
121 compel the other party to deliver to the movant party
122 any of his or her separate estate which may be in the
123 possession or control of the respondent party, and may
124 make such further order as is necessary to prevent
125 either party from interfering with the separate estate
126 of the other.

127 (8) The court may enjoin either party from the
128 molesting or interfering with the other, or otherwise
129 imposing any restraint on the personal liberty of the
130 other, or interfering with the custodial or visitation
131 rights of the other.

132 (9) The court may order either party to take necessary
133 steps to transfer utility accounts and other accounts for
134 recurring expenses from the name of one party into the
135 name of the other party or from the joint names of the
136 parties into the name of one party. Nothing contained
137 in this subdivision shall affect the liability of the parties
138 for indebtedness on any such account incurred before
139 the transfer of such account.

140 (10) The court may, pursuant to the provisions of
141 article two-b of this chapter, grant visitation rights to
142 any grandparent of the minor children.

143 (c) In any case where an annulment or divorce is
144 denied, the court shall retain jurisdiction of the case and
145 may order all or any portion of the relief provided for
146 in subsections (a) and (b) of this section which has been
147 demanded or prayed for in the pleadings.

148 (d) In any case where a divorce or annulment is
149 granted in this state upon constructive service of
150 process, and personal jurisdiction is thereafter obtained
151 of the defendant in such case, the court may order all
152 or any portion of the relief provided for in subsections
153 (a) and (b) of this section which has been demanded or
154 prayed for in the pleadings.

155 (e) At any time after the entry of an order pursuant
156 to the provisions of this section, the court may, upon the

157 verified petition of either of the parties, revise or alter
158 such order concerning the maintenance of the parties,
159 or either of them, and make a new order concerning the
160 same, issuing it forthwith, as the altered circumstances
161 or needs of the parties may render necessary to meet the
162 ends of justice. The court may also from time to time
163 afterward, on the verified petition of either of the
164 parties, revise or alter such order to grant relief
165 pursuant to subdivision (8), subsection (b) of this section,
166 and make a new order concerning the same, issuing it
167 forthwith, as the circumstances of the parties and the
168 benefit of the children may require. The court may also
169 from time to time afterward, on the verified petition of
170 either of the parties or other proper person having
171 actual or legal custody of the minor child or children
172 of the parties, revise or alter such order concerning the
173 custody and support of the children, and make a new
174 order concerning the same, issuing it forthwith, as the
175 circumstances of the parents or other proper person or
176 persons and the benefit of the children may require:
177 *Provided*, That an order providing for child support
178 payments may be revised or altered for the reason, inter
179 alia, that the existing order provides for child support
180 payments in an amount that is less than eighty-five
181 percent or more than one hundred fifteen percent of the
182 amount that would be required to be paid under the
183 child support guidelines promulgated pursuant to the
184 provisions of section eight, article two, chapter forty-
185 eight-a of this code. In granting relief under this
186 subsection, the court may, where other means are not
187 conveniently available, alter any prior order of the court
188 with respect to the distribution of marital property, if
189 such property is still held by the parties, and if
190 necessary to give effect to a modification of alimony,
191 child support or child custody or necessary to avoid an
192 inequitable or unjust result which would be caused by
193 the manner in which the modification will affect the
194 prior distribution of marital property.

195 (f) In every case where a separation agreement is the
196 basis for an award of alimony, the court, in approving
197 the agreement, shall examine the agreement to
198 ascertain whether it clearly provides for alimony to

199 continue beyond the death of the payor party or to cease
200 in such event. Where alimony is to be paid pursuant to
201 the terms of a separation agreement which does not
202 state whether the payment of alimony is to continue
203 beyond the death of the payor party or is to cease, or
204 where the parties have not entered into a separation
205 agreement and alimony is to be awarded, the court shall
206 specifically state as a part of its order whether such
207 payments of alimony are to be continued beyond the
208 death of the payor party or cease.

209 (g) In every case where a separation agreement is the
210 basis for an award of alimony, the court, in approving
211 the agreement, shall examine the agreement to
212 ascertain whether it clearly provides for alimony to
213 continue beyond the remarriage of the payee party or
214 to cease in such event. Where alimony is to be paid
215 pursuant to the terms of a separation agreement which
216 does not state whether the payment of alimony is to
217 continue beyond the remarriage of the payee party or
218 is to cease, or where the parties have not entered into
219 a separation agreement and alimony is to be awarded,
220 the court shall specifically state as a part of its order
221 whether such payments of alimony are to be continued
222 beyond the remarriage of the payee party or cease.

223 (h) In addition to the statement provided for in
224 subsection (d), section thirteen of this article and in
225 addition or in lieu of the disclosure requirements set
226 forth in section thirty-three of this article, the court may
227 order accounts to be taken as to all or any part of
228 marital property or the separate estates of the parties,
229 and may direct that the accounts be taken as of the date
230 of the marriage, the date upon which the parties
231 separated, or any other time deemed to be appropriate
232 in assisting the court in the determination and equitable
233 division of property.

234 (i) In determining whether alimony is to be awarded,
235 or in determining the amount of alimony, if any, to be
236 awarded under the provisions of this section, the court
237 shall consider and compare the fault or misconduct of
238 either or both of the parties and the effect of such fault
239 or misconduct as a contributing factor to the

240 deterioration of the marital relationship. However,
 241 alimony shall not be awarded in any case where both
 242 parties prove grounds for divorce and are denied a
 243 divorce, nor shall an award of alimony under the
 244 provisions of this section be ordered which directs the
 245 payment of alimony to a party determined to be at fault,
 246 when, as a grounds granting the divorce, such party is
 247 determined by the court:

248 (1) To have committed adultery; or

249 (2) To have been convicted for the commission of a
 250 crime which is a felony, subsequent to the marriage if
 251 such conviction has become final; or

252 (3) To have actually abandoned or deserted his or her
 253 spouse for six months.

254 (j) Whenever under the terms of this section or section
 255 thirteen of this article a court enters an order requiring
 256 the payment of alimony or child support, if the court
 257 anticipates the payment of such alimony or child
 258 support or any portion thereof to be paid out of
 259 "disposable retired or retainer pay" as that term is
 260 defined in 10 U.S.C. §1408, relating to members or
 261 former members of the uniformed services of the United
 262 States, the court shall specifically provide for the
 263 payment of an amount, expressed in dollars or as a
 264 percentage of disposable retired or retainer pay, from
 265 the disposable retired or retainer pay of the payor party
 266 to the payee party.

ARTICLE 2B. GRANDPARENT VISITATION.

§48-2B-1. Legislative findings; intent.

§48-2B-2. Grandparent visitation where divorce or separate maintenance is ordered.

§48-2B-3. Grandparent visitation upon abandonment or abrogation of visitation rights by parent or judicial preclusion of visitation.

§48-2B-4. Grandparent visitation where parent deceased.

§48-2B-5. Grandparent visitation when minor child has resided with grandparent.

§48-2B-6. Grandparent visitation where parents unwed.

§48-2B-7. Termination of grandparent visitation.

§48-2B-8. Attorney's fees; reasonable costs.

§48-2B-9. Penalties for violation of order of visitation.

§48-2B-1. Legislative findings; intent.

1 The Legislature finds that circumstances may arise
2 where it is appropriate for circuit courts of this state
3 to have jurisdiction to grant to the grandparents of
4 minor children a right of visitation to enhance the best
5 interests of the minor child or children as well as the
6 grandparent. The Legislature further finds that in such
7 situations, as in all situations involving children, the
8 best interests of children must be the paramount
9 consideration. It is the express intent of the Legislature
10 that the provisions for grandparent visitation set forth
11 in this article shall be exclusive and under all
12 circumstances the interests of the child or children
13 involved shall be the court's first and paramount
14 consideration.

**§48-2B-2. Grandparent visitation where divorce or
separate maintenance is ordered.**

1 (a) A circuit court of this state, upon ordering a
2 divorce or an annulment or upon the granting of
3 separate maintenance pursuant to article two of this
4 chapter, may grant reasonable visitation rights to a
5 grandparent of a minor child of the parties to the
6 divorce petitioning for visitation rights if the
7 grandparent is related to such minor child through a
8 party, and:

9 (1) The party to the divorce through which the
10 grandparent is related to the minor child fails to answer
11 or otherwise appear and defend the cause of action; or

12 (2) The whereabouts of the party through which the
13 grandparent is related to the minor child are unknown
14 to the party bringing the action and to the grandparent
15 petitioning for visitation rights.

16 (b) Notwithstanding any provision of this code to the
17 contrary, where service of process in a divorce action is
18 made by means other than personal service and the
19 whereabouts of the party-defendant are unknown or the
20 party-defendant fails to answer the complaint, notice of
21 the action shall be made upon the grandparents of any
22 minor child of the party whose whereabouts are
23 unknown or who fails to answer the complaint to afford
24 said grandparent or grandparents the opportunity to

25 petition the court for visitation. Such notice shall be
26 given at the time of the entry of a final order of divorce
27 and shall be consistent with the provisions of rule four
28 of the West Virginia rules of civil procedure. Any
29 petition for grandparent visitation filed pursuant to this
30 section shall be so filed within thirty days of the notice
31 having been received.

32 (c) In determining the appropriateness of granting
33 visitation rights to the grandparent, the court shall
34 consider the amount of personal contact between the
35 grandparent and minor child prior to the filing of the
36 petition, whether or not the granting of visitation would
37 interfere with the parent-child relationship and the
38 overall effect on the minor child's best interests that the
39 granting or denial of visitation would have.

**§48-2B-3. Grandparent visitation upon abandonment or
abrogation of visitation rights by parent or
judicial preclusion of visitation.**

1 (a) A grandparent may petition a circuit court, which
2 has entered a final order of divorce or annulment or has
3 granted a decree of separate maintenance, for an order
4 granting visitation rights with a minor grandchild
5 where:

6 (1) The parent through whom the grandparent is
7 related to the minor grandchild is deemed the
8 noncustodial parent of the minor child by virtue of the
9 court's order regarding custody of the minor child;

10 (2) The parent through whom the grandparent is
11 related to the minor child having been granted visitation
12 rights with the minor child refuses, fails or is unable
13 to avail himself or herself of the right of visitation for
14 a period of six months or more or has been precluded
15 visitation rights by court order or is an active duty
16 member of the armed forces of the United States whose
17 permanent duty station is located more than one
18 hundred miles from the border of this state; and

19 (3) The petitioning grandparent has been refused
20 visitation with a minor grandchild by the custodial
21 parent for a period of six months or more.

22 (b) In determining the appropriateness of granting
23 visitation rights to a grandparent pursuant to this
24 section, the court shall consider the amount of personal
25 contact between the grandparent and minor child prior
26 to the filing of the petition, whether or not the granting
27 of visitation would interfere with the parent-child
28 relationship and the overall effect of such visitation on
29 the minor child's best interest.

§48-2B-4. Grandparent visitation when parent deceased.

1 (a) Notwithstanding any provisions of this code to the
2 contrary, a grandparent may petition the circuit court
3 of the county of residence of any minor grandchild for
4 an order granting said grandparent reasonable
5 visitation rights with the minor grandchild where the
6 parent through whom the grandparent is related is
7 deceased.

8 (b) In determining the appropriateness of granting
9 visitation rights to a grandparent pursuant to this
10 section, the court shall consider the amount of personal
11 contact between the grandparent and minor child prior
12 to the filing of the petition, whether or not the granting
13 of visitation would interfere with the parent-child
14 relationship and the overall effect of such visitation on
15 the minor child's best interest.

§48-2B-5. Grandparent visitation when minor child has resided with grandparent.

1 (a) Notwithstanding any provision of this code to the
2 contrary, a grandparent may petition the circuit court
3 of the county in which he or she resides for an order
4 granting said grandparent reasonable visitation rights
5 where:

6 (1) Said minor grandchild has resided without
7 significant interruption with the grandparent with the
8 parents residing elsewhere for a period of six
9 consecutive months or more within the past two years;

10 (2) The minor grandchild is subsequently removed
11 from the home by a parent or parents; and

12 (3) The removing parent or parents have refused to

13 allow the petitioning grandparent visitation with the
14 minor child who formerly resided in the grandparent's
15 home.

16 (b) If the circuit court determines that the
17 requirements set forth in subsection (a) of this section
18 have been shown, it shall grant such reasonable
19 visitation rights to the petitioning grandparent as may
20 be consistent with the minor child's best interests.

§48-2B-6. Grandparent visitation where parents unwed.

1 (a) Notwithstanding any provision of this code to the
2 contrary, a grandparent may petition the circuit court
3 of the county of residence of the minor child with whom
4 visitation is sought for an order granting said
5 grandparent reasonable visitation rights where:

6 (1) The child of said grandparent has been legally
7 determined to be the parent of the minor child or the
8 child of the grandparent has acknowledged paternity of
9 the minor child through a sworn, notarized statement;

10 (2) The parent of the minor child through whom the
11 grandparent is related is precluded by court order from
12 visitation with the minor child or has failed to exercise
13 the right of visitation for a period of six months or more
14 or is an active duty member of the armed forces of the
15 United States whose permanent duty station is located
16 more than one hundred miles from the border of this
17 state; and

18 (3) The parent of the minor child who has custody of
19 said child refuses to allow the petitioning grandparent
20 reasonable visitation with the minor child.

21 (b) In determining the appropriateness of granting
22 visitation rights to a grandparent pursuant to this
23 section, the court shall consider, where applicable, the
24 amount of personal contact between the grandparent
25 and minor child prior to the filing of the petition,
26 whether or not the granting of visitation would interfere
27 with the parent-child relationship and the overall effect
28 of such visitation on the minor child's best interest.

§48-2B-7. Termination of grandparent visitation.

1 (a) Any circuit court which grants visitation rights to
2 a grandparent shall retain jurisdiction throughout the
3 minority of the minor child with whom visitation is
4 granted to modify or terminate such rights as dictated
5 by the best interests of the minor child.

6 (b) A circuit court shall, based upon a petition
7 brought by an interested person, terminate any grant of
8 the right of grandparent visitation upon presentation of
9 clear and convincing evidence that a grandparent
10 granted visitation has materially violated the terms and
11 conditions of said order of visitation.

§48-2B-8. Attorney's fees; reasonable costs.

1 In an action brought under the provisions of this
2 article, a circuit court may order payment of reasonable
3 attorney's fees and costs based upon the equities of the
4 positions asserted by the parties to pay such fees and
5 costs.

§48-2B-9. Penalties for violation of order of visitation.

1 Any grandparent who knowingly allows contact
2 between the minor grandchild and a parent or other
3 person who has been precluded visitation rights with the
4 child by court order shall, in addition to any other
5 remedy under section seven of this article, be guilty of
6 a misdemeanor, and, upon conviction thereof, shall be
7 confined in the county jail not more than thirty days or
8 fined not less than one hundred dollars nor more than
9 one thousand dollars.

CHAPTER 54

(H. B. 4759—By Delegates Brown and Douglas)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to repeal section eighteen, article two, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section thirty-one, article seven of said chapter; to amend and reenact

section eighteen, article four, chapter twenty-three of said code; to amend article twenty-two, chapter twenty-nine by adding thereto a new section, designated section twenty-seven-a; to amend and reenact section three, article two, chapter thirty-three of said code; to amend and reenact sections one, fifteen, seventeen and thirty-three, article two, chapter forty-eight of said code; to amend and reenact section three, article one and sections one, four, six and seven, article two, chapter forty-eight-a of said code; to further amend said article two by adding thereto two new sections, designated sections twenty-four and twenty-five; to amend and reenact section three, article three of said chapter forty-eight-a; to further amend said article three by adding thereto two new sections, designated sections nine and ten; to amend and reenact section one, article five and sections one and three, article six of said chapter forty-eight-a; and to amend article five, chapter sixty-one of said code by adding thereto a new section, designated section twenty-nine, all relating to the enforcement of family obligations generally; authorizing the attachment of workers' compensation benefits for enforcing support orders; rearranging and clarifying certain current language; compelling the director of the lottery to forward certain prize moneys to the child advocate office and to enter into written agreements to establish such collection procedure; mandating the commissioner of insurance to enforce certain provisions; redefining certain terms; injunctive relief upon ordering divorce or annulment or granting decree of separate maintenance; revising the process in which the recording of abstracts of support judgments become liens; establishing an accounting procedure; making a crime of false swearing for the deliberate failure to disclose assets; changing certain terminology consistent with government reorganization; exempting certain positions from civil service requirements; changing certain powers and duties of the director; directing employers to furnish certain information to the child advocate office; creating a crime for the failure to report such information and setting forth criminal penalties therefor; mandating all public and private entities to cooperate in locating

missing parents; exceptions; prescribing duties of the children's advocate, subject to the supervision and control of the director of the child advocate office; revising duties of children's advocate with respect to investigation of support orders; providing that public agencies shall bill the child advocate office for fees and costs incurred; empowering the child advocate to subpoena certain information; authorizing the child advocate office to institute support and paternity proceedings; when child advocate may act on behalf of the department; revising conditions under which married women may file paternity actions; changing certain medical testing standards regarding paternity determination; when defendant may challenge tests; limiting period of time for additional testing; creating certain legal presumptions; providing for the admissibility of and weight to be given certain evidence; creating the crime of failing to meet an obligation to provide support; setting forth when such crime is a misdemeanor and when such crime is a felony; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article two, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section thirty-one, article seven of said chapter forty-eight-a be repealed; that section eighteen, article four, chapter twenty-three of said code be amended and reenacted; that article twenty-two, chapter twenty-nine be amended by adding thereto a new section, designated section twenty-seven-a; that section three, article two, chapter thirty-three of said code be amended and reenacted; that sections one, fifteen, seventeen and thirty-three, article two, chapter forty-eight of said code be amended and reenacted; that section three, article one, chapter forty-eight-a of said code be amended and reenacted; that sections one, four, six and seven, article two of said chapter forty-eight-a be amended and reenacted; that said article two be further amended by adding thereto two new sections, designated sections twenty-four and twenty-five; that section three, article three of said chapter forty-eight-a be amended and reenacted; that said article three be further amended by adding thereto

two new sections, designated sections nine and ten; that section one, article five, chapter forty-eight-a be amended and reenacted; that sections one and three, article six of said chapter be amended and reenacted; and that article five, chapter sixty-one of said code be amended by adding thereto a new section, designated section twenty-nine, all to read as follows:

Chapter

- 23. Workers' Compensation.**
- 29. Miscellaneous Boards and Officers.**
- 33. Insurance.**
- 48. Domestic Relations.**
- 48A. Enforcement of Family Obligations.**
- 61. Crimes and Their Punishment.**

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-18. Mode of paying benefits generally; exemptions of compensation from legal process.

1 Except as provided by this section, compensation shall
 2 be paid only to such employees or their dependents, and
 3 shall be exempt from all claims of creditors and from
 4 any attachment, execution or assignment other than
 5 compensation to counsel for legal services, under the
 6 provisions of, and subject to the limitations contained in
 7 section five, article five of this chapter, and other than
 8 for the enforcement of orders for child or spousal
 9 support entered pursuant to the provisions of chapters
 10 forty-eight and forty-eight-a of this code. Payments may
 11 be made in such periodic installments as determined by
 12 the commissioner in each case, but in no event less
 13 frequently than semimonthly for any temporary award
 14 and monthly for any permanent award. Payments for
 15 permanent disability shall be paid on or before the third
 16 day of the month in which they are due. In all cases
 17 where compensation is awarded or increased, the
 18 amount thereof shall be calculated and paid from the
 19 date of disability.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.**§29-22-27a. Payment of prizes to the child advocate office.**

1 (a) Upon notification by the child advocate office that
2 a person entitled to a prize or any winning ticket is
3 delinquent in the payment of child support or spousal
4 support, the director shall forward to the child advocate
5 office such portion of any prize distributed directly from
6 the state lottery office and that is available to pay all
7 or any portion of the delinquent support payment.

8 (b) The director shall enter into a written agreement
9 with the child advocate office for the purpose of
10 establishing a procedure for the collection of prizes as
11 set forth in subsection (a) of this section which shall
12 include a method by which the child advocate office may
13 receive the names of lottery winners as expeditiously as
14 possible.

CHAPTER 33. INSURANCE.**ARTICLE 2. INSURANCE COMMISSIONER.*****§33-2-3. Duties of the commissioner; employment of legal counsel.**

1 (a) The commissioner shall enforce the provisions of
2 this chapter and perform the duties required there-
3 under; shall affix the commissioner's official seal to all
4 documents and papers required to be filed in other
5 states by domestic insurers and to other papers when an
6 official seal is required; and shall, on or before the tenth
7 day of each month, pay into the state treasury all fees
8 and moneys which he or she has received during the
9 preceding calendar month.

10 (b) Notwithstanding any provisions of this code to the
11 contrary, the commissioner may acquire such legal
12 services as are deemed necessary, including
13 representation of the commissioner before any court or
14 administrative body. Such counsel may be employed
15 either on a salaried basis or on a reasonable fee basis.

*Clerk's Note: This section was also amended by H. B. 4666 (Chapter 108), which passed prior to this act.

16 In addition, the commissioner may call upon the
17 attorney general for legal assistance and representation
18 as provided by law.

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.

§48-2-17. Recordation of an abstract of an order for alimony, child support or separate maintenance.

§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
6 agreement. Alimony may be paid in a lump sum or paid
7 in 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
13 agreement" means an agreement between a man and
14 woman before marriage, but in contemplation and
15 generally in consideration of marriage, whereby the
16 property rights and interests of the prospective husband
17 and wife, or both of them, are determined, or where
18 property is secured to either or both of them, to their
19 separate 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
34 deduction from those earnings of any amounts required
35 by law to be withheld.

36 (d) "Income" includes, but is not limited to, the
37 following:

38 (1) Commissions, earnings, salaries, wages, and other
39 income due or to be due in the future to an individual
40 from his employer and successor employers;

41 (2) Any payment due or to be due in the future to an
42 individual from a profit-sharing plan, a pension plan, an
43 insurance contract, an annuity, social security, unem-
44 ployment compensation, supplemental employment
45 benefits, workers' compensation benefits, state lottery
46 winnings and prizes, and overtime pay;

47 (3) Any amount of money which is owing to an
48 individual as a debt from an individual, partnership,
49 association, public or private corporation, the United
50 States or any federal agency, this state or any political
51 subdivision of this state, any other state or a political
52 subdivision of another state, or any other legal entity
53 which is indebted to the obligor.

54 (e) "Marital property" means:

55 (1) All property and earnings acquired by either
56 spouse during a marriage, including every valuable
57 right and interest, corporeal or incorporeal, tangible or
58 intangible, real or personal, regardless of the form of
59 ownership, whether legal or beneficial, whether
60 individually held, held in trust by a third party, or
61 whether held by the parties to the marriage in some
62 form of co-ownership such as joint tenancy or tenancy
63 in common, joint tenancy with the right of survivorship,
64 or any other form of shared ownership recognized in
65 other jurisdictions without this state, except that
66 marital property shall not include separate property as

67 defined in subsection (f) of this section; and

68 (2) The amount of any increase in value in the
69 separate property of either of the parties to a marriage,
70 which increase results from (A) an expenditure of funds
71 which are marital property, including an expenditure of
72 such funds which reduces indebtedness against separate
73 property, extinguishes liens, or otherwise increases the
74 net value of separate property, or (B) work performed
75 by either or both of the parties during the marriage.

76 The definitions of "marital property" contained in this
77 subsection and "separate property" contained in
78 subsection (f) of this section shall have no application
79 outside of the provisions of this article, and the common
80 law as to the ownership of the respective property and
81 earnings of a husband and wife, as altered by the
82 provisions of article three of this chapter and other
83 provisions of this code, are not abrogated by implication
84 or otherwise, except as expressly provided for by the
85 provisions of this article as such provisions are applied
86 in actions brought under this article or for the
87 enforcement of rights under this article.

88 (f) "Separate property" means:

89 (1) Property acquired by a person before marriage; or

90 (2) Property acquired by a person during marriage in
91 exchange for separate property which was acquired
92 before the marriage; or

93 (3) Property acquired by a person during marriage,
94 but excluded from treatment as marital property by a
95 valid agreement of the parties entered into before or
96 during the marriage; or

97 (4) Property acquired by a party during marriage by
98 gift, bequest, devise, descent or distribution; or

99 (5) Property acquired by a party during a marriage
100 but after the separation of the parties and before the
101 granting of a divorce, annulment or decree of separate
102 maintenance; or

103 (6) Any increase in the value of separate property as
104 defined in subdivision (1), (2), (3), (4) or (5) of this

105 subsection which is due to inflation or to a change in
106 market value resulting from conditions outside the
107 control of the parties.

108 (g) "Separation" or "separation of the parties" means
109 the separation of the parties next preceding the filing
110 of an action under the provisions of this article, which
111 separation continues, without the parties cohabiting or
112 otherwise living together as husband and wife, and
113 without interruption.

114 (h) "Separation agreement" means a written
115 agreement entered into by a husband and wife whereby
116 they agree to live separate and apart from each other
117 and, in connection therewith, agree to settle their
118 property rights; or to provide for the custody and
119 support of their minor child or children, if any; or to
120 provide for the payment or waiver of alimony by either
121 party to the other; or to otherwise settle and compromise
122 issues arising out of their marital rights and obligations.
123 Insofar as an antenuptial agreement as defined in
124 subsection (b) of this section affects the property rights
125 of the parties or the disposition of property upon an
126 annulment of the marriage, or a divorce or separation
127 of the parties, such antenuptial agreement shall be
128 regarded as a separation agreement under the
129 provisions 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

*Clerk's Note: This section was also amended by S. B. 36 (Chapter 53) which passed prior to this act, and by H. B. 4389 (Chapter 52), which passed subsequent to this act.

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
25 circumstances.

26 (2) The court may require either party to pay child
27 support in the form of periodic installments for the
28 maintenance of the minor children of the parties.

29 (3) As an incident to requiring the payment of
30 alimony or child support, the court may order either
31 party to continue in effect existing policies of insurance
32 covering the costs of health care and hospitalization of
33 the other party and the minor children of the parties:
34 *Provided*, That if the other party is no longer eligible
35 to be covered by such insurance because of the granting
36 of an annulment or divorce, the court may require a
37 party to substitute such insurance with a new policy to
38 cover the other party, or may consider the prospective
39 cost of such insurance in awarding alimony to be paid
40 in periodic installments. If there is no such existing
41 policy or policies, the court shall order such health care
42 insurance coverage to be paid for by the noncustodial
43 parent, if the court determines that such health care
44 insurance coverage is available to the noncustodial
45 parent at a reasonable cost. Payments made to an
46 insurer pursuant to this subdivision, either directly or
47 by a deduction from wages, shall be deemed to be
48 alimony, child support or installment payments for the
49 distribution of marital property, in such proportion as
50 the court shall direct: *Provided, however*, That if the
51 court does not set forth in the order that a portion of

52 such payments is to be deemed child support or
53 installment payments for the distribution of marital
54 property, then all such payments made pursuant to this
55 subdivision shall be deemed to be alimony: *Provided*
56 *further*, That the designation of insurance coverage as
57 alimony under the provisions of this subdivision shall
58 not, in and of itself, give rise to a subsequent
59 modification of the order to provide for alimony other
60 than insurance for covering the costs of health care and
61 hospitalization.

62 (4) As an incident to requiring the payment of
63 alimony or child support, the court may grant the
64 exclusive use and occupancy of the marital home to one
65 of the parties, together with all or a portion of the
66 household goods, furniture and furnishings reasonably
67 necessary for such use and occupancy. Such use and
68 occupancy shall be for a definite period, ending at a
69 specific time set forth in the order, subject to
70 modification upon the petition of either party. Except
71 in extraordinary cases supported by specific findings set
72 forth in the order granting relief, a grant of the
73 exclusive use and occupancy of the marital home shall
74 be limited to those situations where such use and
75 occupancy is reasonably necessary to accommodate the
76 rearing of minor children of the parties. The court may
77 require payments to third parties in the form of home
78 loan installments, land contract payments, rent,
79 payments for utility services, property taxes, insurance
80 coverage, or other expenses or charges reasonably
81 necessary for the use and occupancy of the marital
82 domicile. Payments made to a third party pursuant to
83 this subdivision for the benefit of the other party shall
84 be deemed to be alimony, child support or installment
85 payments for the distribution of marital property, in
86 such proportion as the court shall direct: *Provided*, That
87 if the court does not set forth in the order that a portion
88 of such payments is to be deemed child support or
89 installment payments for the distribution of marital
90 property, then all such payments made pursuant to this
91 subdivision shall be deemed to be alimony. Nothing
92 contained in this subdivision shall abrogate an existing
93 contract between either of the parties and a third party,

94 or affect the rights and liabilities of either party or a
95 third party under the terms of such contract.

96 (5) As an incident to requiring the payment of
97 alimony, the court may grant the exclusive use and
98 possession of one or more motor vehicles to either of the
99 parties. The court may require payments to third
100 parties in the form of automobile loan installments or
101 insurance coverage if available at reasonable rates, and
102 any such payments made pursuant to this subdivision
103 for the benefit of the other party shall be deemed to be
104 alimony or installment payments for the distribution of
105 marital property, as the court may direct. Nothing
106 contained in this subdivision shall abrogate an existing
107 contract between either of the parties and a third party,
108 or affect the rights and liabilities of either party or a
109 third party under the terms of such contract.

110 (6) Where the pleadings include a specific request for
111 specific property or raise issues concerning the
112 equitable division of marital property as defined in
113 section one of this article, the court shall order such
114 relief as may be required to effect a just and equitable
115 distribution of the property and to protect the equitable
116 interests of the parties therein.

117 (7) Unless a contrary disposition be found appropriate
118 and ordered pursuant to other provisions of this section,
119 then upon the motion of either party, the court may
120 compel the other party to deliver to the movant party
121 any of his or her separate estate which may be in the
122 possession or control of the respondent party, and may
123 make such further order as is necessary to prevent
124 either party from interfering with the separate estate
125 of the other.

126 (8) The court shall, when allegations of abuse have
127 been proven, enjoin the offending party from molesting
128 or interfering with the other, or otherwise imposing any
129 restraint on the personal liberty of the other, or
130 interfering with the custodial or visitation rights of the
131 other. Such order may permanently enjoin the offending
132 party from entering the school, business or place of
133 employment of the other for the purpose of molesting or

134 harassing the other; or from contacting the other, in
135 person or by telephone, for the purpose of harassment
136 or threats; or from harassing or verbally abusing the
137 other in a public place.

138 (9) The court may order either party to take necessary
139 steps to transfer utility accounts and other accounts for
140 recurring expenses from the name of one party into the
141 name of the other party or from the joint names of the
142 parties into the name of one party. Nothing contained
143 in this subdivision shall affect the liability of the parties
144 for indebtedness on any such account incurred before
145 the transfer of such account.

146 (c) In any case where an annulment or divorce is
147 denied, the court shall retain jurisdiction of the case and
148 may order all or any portion of the relief provided for
149 in subsections (a) and (b) of this section which has been
150 demanded or prayed for in the pleadings.

151 (d) In any case where a divorce or annulment is
152 granted in this state upon constructive service of
153 process, and personal jurisdiction is thereafter obtained
154 of the defendant in such case, the court may order all
155 or any portion of the relief provided for in subsections
156 (a) and (b) of this section which has been demanded or
157 prayed for in the pleadings.

158 (e) At any time after the entry of an order pursuant
159 to the provisions of this section, the court may, upon the
160 verified petition of either of the parties, revise or alter
161 such order concerning the maintenance of the parties,
162 or either of them, and make a new order concerning the
163 same, issuing it forthwith, as the altered circumstances
164 or needs of the parties may render necessary to meet the
165 ends of justice. The court may also from time to time
166 afterward, on the verified petition of either of the
167 parties, revise or alter such order to grant relief
168 pursuant to subdivision (8), subsection (b) of this section,
169 and make a new order concerning the same, issuing it
170 forthwith, as the circumstances of the parties and the
171 benefit of children may require. The court may also
172 from time to time afterward, on the verified petition of
173 either of the parties or other proper person having

174 actual or legal custody of the minor child or children
175 of the parties, revise or alter such order concerning the
176 custody and support of the children, and make a new
177 order concerning the same, issuing it forthwith, as the
178 circumstances of the parents or other proper person or
179 persons and the benefit of the children may require:
180 *Provided*, That an order providing for child support
181 payments may be revised or altered for the reason, inter
182 alia, that the existing order provides for child support
183 payments in an amount that is less than eighty-five
184 percent or more than one hundred fifteen percent of the
185 amount that would be required to be paid under the
186 child support guidelines promulgated pursuant to the
187 provisions of section eight, article two, chapter forty-
188 eight-a of this code. In granting relief under this
189 subsection, the court may, where other means are not
190 conveniently available, alter any prior order of the court
191 with respect to the distribution of marital property, if
192 such property is still held by the parties, and if
193 necessary to give effect to a modification of alimony,
194 child support or child custody or necessary to avoid an
195 inequitable or unjust result which would be caused by
196 the manner in which the modification will affect the
197 prior distribution of marital property.

198 (f) In every case where a separation agreement is the
199 basis for an award of alimony, the court, in approving
200 the agreement, shall examine the agreement to
201 ascertain whether it clearly provides for alimony to
202 continue beyond the death of the payor party or to cease
203 in such event. Where alimony is to be paid pursuant to
204 the terms of a separation agreement which does not
205 state whether the payment of alimony is to continue
206 beyond the death of the payor party or is to cease, or
207 where the parties have not entered into a separation
208 agreement and alimony is to be awarded, the court shall
209 specifically state as a part of its order whether such
210 payments of alimony are to be continued beyond the
211 death of the payor party or cease.

212 (g) In every case where a separation agreement is the
213 basis for an award of alimony, the court, in approving
214 the agreement, shall examine the agreement to

215 ascertain whether it clearly provides for alimony to
216 continue beyond the remarriage of the payee party or
217 to cease in such event. Where alimony is to be paid
218 pursuant to the terms of a separation agreement which
219 does not state whether the payment of alimony is to
220 continue beyond the remarriage of the payee party or
221 is to cease, or where the parties have not entered into
222 a separation agreement and alimony is to be awarded,
223 the court shall specifically state as a part of its order
224 whether such payments of alimony are to be continued
225 beyond the remarriage of the payee party or cease.

226 (h) In addition to the statement provided for in
227 subsection (d), section thirteen of this article and in
228 addition or in lieu of the disclosure requirements set
229 forth in section thirty-three of this article, the court may
230 order accounts to be taken as to all or any part of
231 marital property or the separate estates of the parties,
232 and may direct that the accounts be taken as of the date
233 of the marriage, the date upon which the parties
234 separated, or any other time deemed to be appropriate
235 in assisting the court in the determination and equitable
236 division of property.

237 (i) In determining whether alimony is to be awarded,
238 or in determining the amount of alimony, if any, to be
239 awarded under the provisions of this section, the court
240 shall consider and compare the fault or misconduct of
241 either or both of the parties and the effect of such fault
242 or misconduct as a contributing factor to the
243 deterioration of the marital relationship. However,
244 alimony shall not be awarded in any case where both
245 parties prove grounds for divorce and are denied a
246 divorce, nor shall an award of alimony under the
247 provisions of this section be ordered which directs the
248 payment of alimony to a party determined to be at fault,
249 when, as a grounds granting the divorce, such party is
250 determined by the court:

251 (1) To have committed adultery; or

252 (2) To have been convicted for the commission of a
253 crime which is a felony, subsequent to the marriage if
254 such conviction has become final; or

255 (3) To have actually abandoned or deserted his or her
256 spouse for six months.

257 (j) Whenever under the terms of this section or section
258 thirteen of this article a court enters an order requiring
259 the payment of alimony or child support, if the court
260 anticipates the payment of such alimony or child
261 support or any portion thereof to be paid out of
262 "disposable retired or retainer pay" as that term is
263 defined in 10 U.S.C. §1408, relating to members or
264 former members of the uniformed services of the United
265 States, the court shall specifically provide for the
266 payment of an amount, expressed in dollars or as a
267 percentage of disposable retired or retainer pay, from
268 the disposable retired or retainer pay of the payor party
269 to the payee party.

**§48-2-17. Recordation of an abstract of an order for
alimony, child support or separate
maintenance.**

1 (a) An order for alimony, child support, or separate
2 maintenance shall not give rise to a lien on any real
3 estate of the person against whom the order is entered
4 until the procedures set forth in this section are
5 complied with. An abstract of the order may be
6 recorded in the office of the clerk of the county
7 commission in the county wherein such real property is
8 situate without constituting a lien against such real
9 property, until the person entitled to receive such
10 alimony, child support or separate maintenance presents
11 for recordation with the clerk an affidavit which sets
12 forth allegations that the person required to pay such
13 alimony, child support or separate maintenance is in
14 arrears in such payment for a period of not less than
15 thirty days.

16 (b) Notice of the recordation of the abstract and
17 affidavit shall be given to the person against whom the
18 order is entered by first class mail to his or her last
19 known address. The notice shall inform the person
20 against whom the order is entered of his or her right
21 to require the filing of an accounting and the right to
22 contest the accounting, as provided for in subsection (d)

23 of this section.

24 (c) The abstract of the order and the affidavit shall
25 be recorded in the same manner as other abstracts of
26 judgments are recorded, but shall not constitute a lien
27 unless both the abstract and affidavit are recorded. The
28 abstract of judgment shall contain the name of the
29 parties to the action in which the order of alimony, child
30 support or separate maintenance was entered, the name
31 of the party in whose favor such award was made, the
32 date of the judgment and the court which rendered such
33 judgment. In no event shall the judgment order, in its
34 entirety, be recorded.

35 (d) The person against whom the order is entered
36 may, at any time, by notice in writing, require the other
37 party to file an accounting, in the office of the clerk of
38 the circuit court, of the matured, unpaid installments of
39 alimony, child support or separate maintenance alleged
40 to be due and owing as of the date of recordation of the
41 abstract of the order. Such accounting shall also be
42 mailed, by first class mail, to the other party. If the
43 party from whom the accounting is requested fails to file
44 the accounting, within ten days after receipt of the
45 written notice to do so, the lien created by such affidavit
46 shall be discharged and extinguished. If the person
47 against whom the order is entered desires to contest the
48 accounting, then he or she shall, within fourteen days
49 of the filing of the accounting, inform the other party
50 in writing of the reasons that the accounting is contested
51 and obtain a date for a hearing before the family law
52 master. Forms for accounting and for the notices
53 required by the provisions of this subsection shall be
54 prescribed by the administrative office of the supreme
55 court of appeals and made available through the office
56 of the clerk of the circuit court. The lien created by such
57 recording shall be effective as to the amount of any
58 judgment rendered in such proceeding regardless of
59 whether such judgment be for less or more than the sum
60 contained in the accounting.

61 (e) The provisions of this section restricting the right
62 of recordation of judgment orders shall not be deemed
63 to limit the right of any person to record a judgment

64 for a sum certain for past-due alimony, child support or
65 separate maintenance.

§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
3 procedure, the court may, or upon pleadings or motion
4 of 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, health insurance coverage, interest
13 in a partnership or corporation, tangible personal
14 property, income from employment, future interests
15 whether vested or nonvested, and any other financial
16 interest or source. The court may also require each
17 party to furnish, on the same standard form,
18 information pertaining to all debts and liabilities of the
19 parties. The form used shall contain a statement in
20 conspicuous print that complete disclosure of assets and
21 debts is required by law and deliberate failure to
22 provide complete disclosure as ordered by the court
23 constitutes false swearing. The court may on its own
24 initiative and shall at the request of either party require
25 the parties to furnish copies of all state and federal
26 income tax returns filed by them for the past two years,
27 and may require copies of such returns for prior years.

28 (b) Disclosure forms required under this section shall
29 be filed within forty 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 hundred
62 dollars or more which would be considered part of the
63 estate of either or both of the parties if owned by either
64 or both of them at the time of the action, but which was
65 transferred for inadequate consideration, wasted, given
66 away or otherwise unaccounted for by one of the parties,
67 within five years prior to the filing of the petition or
68 length of the marriage, whichever is shorter, shall be
69 presumed to be part of the estate and shall be subject
70 to the disclosure requirement contained in this section.
71 With respect to such transfers the spouse shall have the
72 same right and remedies as a creditor whose debt was
73 contracted at the time the transfer was made under
74 article one-a, chapter forty of this code. Transfers which
75 resulted in an exchange of assets of substantially
76 equivalent value need not be specifically disclosed where
77 such assets are otherwise identified in the statement of
78 net worth.

79 (g) A person who knowingly provides incorrect
80 information or who deliberately fails to disclose
81 information pursuant to the provisions of this section is
82 guilty of false swearing.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

Article

1. General Provisions.
2. West Virginia Child Advocate Office.
3. Children's Advocate.
5. Remedies for the Enforcement of Support Obligations and Visitation.
6. Establishment of Paternity.

ARTICLE 1. GENERAL PROVISIONS.

§48A-1-3. Definitions.

1 As used in this chapter:

2 (1) "Automatic data processing and retrieval system"
3 means a computerized data processing system designed
4 to do the following:

5 (A) To control, account for and monitor all of the
6 factors in the support enforcement collection and
7 paternity determination process, including, but not
8 limited to:

9 (i) Identifiable correlation factors (such as social
10 security numbers, names, dates of birth, home addresses
11 and mailing addresses of any individual with respect to
12 whom support obligations are sought to be established
13 or enforced and with respect to any person to whom such
14 support obligations are owing) to assure sufficient
15 compatibility among the systems of different
16 jurisdictions to permit periodic screenings to determine
17 whether such individual is paying or is obligated to pay
18 support in more than one jurisdiction;

19 (ii) Checking of records of such individuals on a
20 periodic basis with federal, interstate, intrastate and
21 local agencies;

22 (iii) Maintaining the data necessary to meet
23 applicable federal reporting requirements on a timely

24 basis; and

25 (iv) Delinquency and enforcement activities;

26 (B) To control, account for and monitor the collection
27 and distribution of support payments (both interstate
28 and intrastate), the determination, collection and
29 distribution of incentive payments (both interstate and
30 intrastate), and the maintenance of accounts receivable
31 on all amounts owed, collected and distributed;

32 (C) To control, account for and monitor the costs of
33 all services rendered, either directly or by exchanging
34 information with state agencies responsible for
35 maintaining financial management and expenditure
36 information;

37 (D) To provide access to the records of the department
38 of health and human resources or aid to families with
39 dependent children in order to determine if a collection
40 of a support payment causes a change affecting
41 eligibility for or the amount of aid under such program;

42 (E) To provide for security against unauthorized
43 access to, or use of, the data in such system;

44 (F) To facilitate the development and improvement of
45 the income withholding and other procedures designed
46 to improve the effectiveness of support enforcement
47 through the monitoring of support payments, the
48 maintenance of accurate records regarding the payment
49 of support, and the prompt provision of notice to
50 appropriate officials with respect to any arrearages in
51 support payments which may occur; and

52 (G) To provide management information on all cases
53 from initial referral or application through collection
54 and enforcement.

55 (2) "Chief judge" means the following:

56 (A) The circuit judge in a judicial circuit having only
57 one circuit judge, except for the twenty-third and thirty-
58 first judicial circuits;

59 (B) In the twenty-third and thirty-first judicial
60 circuits, a chief judge designated by the judges thereof

61 from among themselves by general order, to act as chief
62 judge for both circuits for the purposes of this chapter:
63 *Provided*, That if the judges cannot agree as to who shall
64 act as chief judge, then a chief judge shall be designated
65 for the purposes of this chapter by the supreme court
66 of appeals; or

67 (C) The chief judge of the circuit court in a judicial
68 circuit having two or more circuit judges.

69 (3) "Child advocate office" means the office within the
70 department of health and human resources created
71 under the provisions of article two of this chapter,
72 intended by the Legislature to be the single and separate
73 organizational unit of state government administering
74 programs of child and spousal support enforcement and
75 meeting the staffing and organizational requirements of
76 the secretary of the federal department of health and
77 human services.

78 (4) "Children's advocate" or "advocate" means a
79 person appointed to such position under the provisions
80 of section two, article three of this chapter.

81 (5) "Court" means a circuit court of this state, unless
82 the context in which such term is used clearly indicates
83 that reference to some other court is intended. For the
84 purposes of this chapter, the circuit courts of the twenty-
85 third and thirty-first judicial circuits shall be
86 considered as being in a single judicial circuit.

87 (6) "Court of competent jurisdiction" means a circuit
88 court within this state, or a court or administrative
89 agency of another state having jurisdiction and due legal
90 authority to deal with the subject matter of the
91 establishment and enforcement of support obligations.
92 Whenever in this chapter reference is made to an order
93 of a court of competent jurisdiction, or similar wording,
94 such language shall be interpreted so as to include
95 orders of an administrative agency entered in a state
96 where enforceable orders may by law be properly made
97 and entered by such administrative agency.

98 (7) "Custodial parent" or "custodial parent of a child"
99 means a parent who has been granted custody of a child

100 by a court of competent jurisdiction. "Noncustodial
101 parent" means a parent of a child with respect to whom
102 custody has been adjudicated with the result that such
103 parent has not been granted custody of the child.

104 (8) "Domestic relations matter" means any circuit
105 court proceeding involving child custody, child
106 visitation, child support or alimony.

107 (9) "Earnings" means compensation paid or payable
108 for personal services, whether denominated as wages,
109 salary, commission, bonus, or otherwise, and includes
110 periodic payments pursuant to a pension or retirement
111 program. "Disposable earnings" means that part of the
112 earnings of any individual remaining after the
113 deduction from those earnings of any amounts required
114 by law to be withheld.

115 (10) "Employer" means any individual, sole
116 proprietorship, partnership, association, public or
117 private corporation, the United States or any federal
118 agency, this state or any political subdivision of this
119 state, any other state or a political subdivision of another
120 state, and any other legal entity which hires and pays
121 an individual for his services.

122 (11) "Guardian of the property of a child" means a
123 person lawfully invested with the power, and charged
124 with the duty, of managing and controlling the estate
125 of a child.

126 (12) "Income" includes, but is not limited to, the
127 following:

128 (A) Commissions, earnings, salaries, wages and other
129 income due or to be due in the future to an obligor from
130 his employer and successor employers;

131 (B) Any payment due or to be due in the future to an
132 obligor from a profit-sharing plan, a pension plan, an
133 insurance contract, an annuity, social security, unem-
134 ployment compensation, supplemental employment
135 benefits, workers' compensation benefits, state lottery
136 winnings and prizes, and overtime pay;

137 (C) Any amount of money which is owing to the

138 obligor as a debt from an individual, partnership,
139 association, public or private corporation, the United
140 States or any federal agency, this state or any political
141 subdivision of this state, any other state or a political
142 subdivision of another state, or any other legal entity
143 which is indebted to the obligor.

144 (13) "Individual entitled to support enforcement
145 services under the provisions of this chapter" means:

146 (A) An individual who has applied for or is receiving
147 services from the child advocate office and who is the
148 custodial parent of a child, or the primary caretaker of
149 a child, or the guardian of the property of a child when:

150 (i) Such child has a parent and child relationship with
151 an obligor who is not such custodial parent, primary
152 caretaker or guardian; and

153 (ii) The obligor with whom the child has a parent and
154 child relationship is not meeting an obligation to support
155 the child, or has not met such obligation in the past; or

156 (B) An individual who has applied for or is receiving
157 services from the child advocate office and who is an
158 adult or an emancipated minor whose spouse or former
159 spouse has been ordered by a court of competent
160 jurisdiction to pay spousal support to the individual,
161 whether such support is denominated alimony or
162 separate maintenance, or is identified by some other
163 terminology, thus establishing a support obligation with
164 respect to such spouse, when the obligor required to pay
165 such spousal support is not meeting the obligation, or
166 has not met such obligation in the past.

167 (14) "Master" or "family law master" means a person
168 appointed to such position under the provisions of
169 section one, article four of this chapter.

170 (15) "Obligee" means an individual to whom a duty
171 of support is owed, or the state of West Virginia or the
172 department of health and human resources, if support
173 has been assigned to the state or department.

174 (16) "Obligor" means a person who owes a legal duty
175 to support another person.

176 (17) "Office of the children's advocate" means the
177 office created in section two, article three of this
178 chapter.

179 (18) "Primary caretaker of a child" means a parent
180 or other person having actual physical custody of a child
181 without a court order granting such custody, and who
182 has been primarily responsible for exercising parental
183 rights and responsibilities with regard to such child.

184 (19) "Source of income" means an employer or
185 successor employer or any other person who owes or will
186 owe income to an obligor.

187 (20) "Support" means the payment of money including
188 interest:

189 (A) For a child or spouse, ordered by a court of
190 competent jurisdiction, whether the payment is ordered
191 in an emergency, temporary, permanent or modified
192 order, decree or judgment of such court, and the amount
193 of unpaid support shall bear interest from the date it
194 accrued, at a rate of ten dollars upon one hundred
195 dollars per annum, and proportionately for a greater or
196 lesser sum, or for a longer or shorter time;

197 (B) To third parties on behalf of a child or spouse,
198 including, but not limited to, payments to medical,
199 dental or educational providers, payments to insurers
200 for health and hospitalization insurance, payments of
201 residential rent or mortgage payments, payments on an
202 automobile, or payments for day care; and/or

203 (C) For a mother, ordered by a court of competent
204 jurisdiction, for the necessary expenses incurred by or
205 for the mother in connection with her confinement or of
206 other expenses in connection with the pregnancy of the
207 mother.

208 (21) "Support order" means any order of a court of
209 competent jurisdiction for the payment of support,
210 whether or not for a sum certain.

ARTICLE 2. WEST VIRGINIA CHILD ADVOCATE OFFICE.

§48A-2-1. Reestablishment of the West Virginia child advocate office.

§48A-2-4. Director; appointment; qualifications; oath of office; director not to hold other office or engage in political activity.

- §48A-2-6. Organization of the child advocate office.
§48A-2-7. Powers and duties of the director; advisory council.
§48A-2-24. Employment and income reporting.
§48A-2-25. Access to information.

***§48A-2-1. Reestablishment of the West Virginia child advocate office.**

1 (a) There is hereby established within the department
2 of health and human resources the child advocate office.

3 (b) After having conducted a performance and fiscal
4 audit through its joint committee on government
5 operations, pursuant to section nine, article ten, chapter
6 four of this code, the Legislature hereby finds and
7 declares the child advocate office should be continued
8 and reestablished. Accordingly, notwithstanding the
9 provisions of section four, article ten, chapter four of this
10 code, the child advocate office shall continue to exist
11 until the first day of July, one thousand nine hundred
12 ninety-three, so that the joint committee on government
13 operations may monitor compliance by the child
14 advocate office with the recommendations of the
15 performance audit.

§48A-2-4. Director; appointment; qualifications; oath of office; director not to hold other office or engage in political activity.

1 (a) There shall be a director of the child advocate
2 office who shall be appointed by the secretary of the
3 department of health and human resources. The salary
4 of the director shall be set by the commissioner and be
5 paid with funds of the office. The director shall be
6 allowed and paid necessary expenses incident to the
7 performance of his or her official duties.

8 (b) The director shall be selected with special
9 reference and consideration given to his or her training,
10 experience, capacity and interest in or relating to the
11 child and spousal support enforcement programs
12 administered by the child advocate office.

13 (c) Before entering upon the duties of his or her office,

*Clerk's Note: This section was also amended by S. B. 139 (Chapter 200), which passed prior to this act.

14 the director shall take and subscribe to the oath of office
15 prescribed by section five, article IV of the West
16 Virginia constitution, and shall execute a corporate
17 surety bond in the sum of fifteen thousand dollars for
18 the faithful performance of his or her duties. The bond
19 shall be in the form prescribed by the attorney general
20 and approved by the governor, and both the certificate
21 of the oath and the bond shall be filed with the secretary
22 of state. Premiums upon the bond shall be paid out of
23 the funds of the child advocate office.

24 (d) The director shall not be a candidate for, or hold,
25 any other public office or public employment under the
26 federal government, or the government of this state or
27 any of its political subdivisions, or be a member or
28 officer of any political party committee, or serve as an
29 election official, or engage in any political activity, other
30 than to vote, in behalf of, or in opposition to, any
31 candidate, or political party in an election. Any violation
32 by the director of the provisions of this paragraph shall
33 be cause for removal from office.

§48A-2-6. Organization of the child advocate office.

1 (a) Within limits of state appropriations and federal
2 grants and subject to provisions of state and federal
3 laws, rules and regulations, the director shall organize
4 the office into appropriate administrative units which
5 shall be operationally and functionally distinct and
6 separate from any other units or programs of the
7 department of health and human resources so that
8 employees of the office shall not be required to perform
9 functions or duties of the department which are outside
10 the scope of activities of the child advocate office as
11 defined in this chapter. Consistent with the
12 requirements of article six, chapter twenty-nine of this
13 code, the director shall appoint and employ for the office
14 such assistants and employees, as may in his or her
15 judgment be necessary or desirable to carry out fully
16 and in an orderly, efficient and economical manner the
17 powers, duties and responsibilities of the office.

18 (b) Notwithstanding the provisions of sections three
19 and four, article six, chapter twenty-nine of this code

20 relating to the manner in which additions are made to
21 the list of positions in the classified service, and any
22 other provision of this code to the contrary, the positions
23 held by employees of the office shall be positions in the
24 classified service except for children's advocate,
25 assistant children's advocate, the director's secretary
26 and those positions named in subdivisions (2), (3), (4), (9)
27 and (12), subsection (a) of said section four.

§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. Such budget shall
7 include all sums necessary to support the activities of
8 the child advocate office.

9 (c) In addition to any other duties required by this
10 chapter, the director shall:

11 (1) Develop and recommend guidelines for the
12 conduct, operations and procedures of the office and his
13 or her employees, including, but not limited to, the
14 following:

15 (A) Caseload and staffing standards for employees
16 who perform investigation and recommendation
17 functions, enforcement functions and clerical functions.

18 (B) Orientation programs for recipients of services of
19 the office.

20 (C) Public educational programs regarding domestic
21 relations law and community resources, including
22 financial and other counseling, and employment
23 opportunities.

24 (D) Model pamphlets and procedural forms, which
25 shall be distributed to each local office serving
26 recipients of services.

27 (2) Provide training programs for the children's

28 advocates and other employees of the office, to better
29 enable them to carry out the duties described in this
30 chapter.

31 (3) Gather and monitor relevant statistics.

32 (4) Develop standards and procedures for the transfer
33 of part or all of the responsibilities for a case from one
34 office to another in situations considered appropriate.

35 (5) Subject to appropriation of funds by the
36 Legislature, install in the office of each children's
37 advocate, adequate computer hardware and software to
38 enable the advocate to utilize word processing and other
39 data processing functions in the preparation of
40 pleadings and other documents required for the proper
41 discharge of the duties of the office.

42 (6) Enter into contracts and agreements with public
43 and private institutions.

44 (d) The director shall appoint a nine-person advisory
45 committee, serving without compensation except as
46 provided in subsection (e) of this section, composed of the
47 following:

48 (1) Three public members who are eligible for
49 services with an office of the children's advocate;

50 (2) Three attorneys who are members of the West
51 Virginia state bar with experience in domestic relations
52 law, not more than two of whom may be employees of
53 the department of health and human resources:
54 *Provided*, That one of the attorneys appointed shall be
55 a children's advocate selected by the children's
56 advocates throughout the state; and

57 (3) Three human service professionals who provide
58 family counseling, not more than two of whom may be
59 employees of the department of health and human
60 resources.

61 Of the nine members initially appointed, one public
62 member, one attorney and one professional shall be
63 appointed for a term of one year; one public member,
64 one attorney and one professional shall be appointed for
65 a term of two years; and one public member, one

66 attorney and one professional shall be appointed for a
67 term of three years. After the expiration of the initial
68 terms, appointments thereafter shall be made for terms
69 of three years. The director shall fill any vacancies
70 resulting from death or resignation by appointment for
71 the unexpired term. Members of the advisory council
72 may be reappointed.

73 (e) The advisory committee established under
74 subsection (d) of this section shall advise the director in
75 the performance of his or her duties under this section.
76 Advisory committee members shall be reimbursed for
77 their actual expenses for mileage, meals, and, if
78 necessary, lodging.

79 (f) The director shall appoint general counsel for the
80 child advocate office to supervise and assist the
81 children's advocates in the performance of their
82 professional, nonadministrative duties and to promote
83 uniformity in, and increase the quality of, legal services
84 provided by children's advocates throughout the state.
85 Such general counsel shall also serve as counsel to the
86 director. A person appointed as general counsel shall be
87 a member in good standing of the West Virginia state
88 bar. Compensation and expenses of the general counsel
89 shall be fixed by the director and paid by the child
90 advocate office. The position of general counsel shall be
91 a position in the classified service.

§48A-2-24. Employment and income reporting.

1 (a) Upon notice by the director of the child advocate
2 office, and except as provided in subsections (b) and (c)
3 of this section, all employers doing business in the state
4 of West Virginia shall report to the child advocate office:

5 (1) The hiring of any person who resides or works in
6 this state to whom the employer anticipates paying
7 earnings; and

8 (2) The rehiring or return to work of any employee
9 who resides or works in this state.

10 (b) Employers are not required to report the hiring,
11 rehiring or return to work of any person who:

12 (1) Is employed for less than one month's duration; or

13 (2) Is employed sporadically so that the employee will
14 be paid for less than three hundred fifty hours during
15 a continuous six-month period; or

16 (3) Has gross earnings of less than three hundred
17 dollars per month.

18 (c) The director of the child advocate office may
19 establish additional exemptions to reduce unnecessary
20 or burdensome reporting.

21 (d) Employers may report by mailing to the child
22 advocate office a copy of the employee's W-4 form, by
23 transmitting magnetic tape in a compatible format, or
24 by any other means mutually agreed to by the employer
25 and by the child advocate office to achieve timely and
26 complete reporting.

27 (e) Employers shall submit a report within thirty-five
28 days of the date of the hiring, rehiring or return to work
29 of the employee. The report shall include the employee's
30 name, address, social security number, and date of birth
31 and the employer's name and address, any different
32 address of the payroll office and the employer's federal
33 tax identification number.

34 (f) An employer of an obligor shall provide to the child
35 advocate office, upon its written request, information
36 regarding the obligor's employment, wages or salary,
37 medical insurance, and location of employment. The
38 information required under this subsection is in addition
39 to the information required by subsection (e).

40 (g) An employer who fails to report in accordance
41 with the provisions of this section shall be guilty of a
42 misdemeanor, and, upon conviction thereof, shall be
43 fined not less than five hundred dollars nor more than
44 one thousand dollars.

45 (h) Employers required to report under this section
46 may assess each employee so reported one dollar for the
47 administrative costs of reporting.

§48A-2-25. Access to information.

1 (a) All state, county and municipal agencies, offices
2 and employers receiving a request for information and
3 assistance from the child advocate office shall cooperate
4 with the office in the location of parents who have
5 abandoned and deserted children and shall provide the
6 office with all available pertinent information
7 concerning the location, income and property of those
8 parents.

9 (b) Notwithstanding any other provision of law to the
10 contrary, any entity conducting business in this state or
11 incorporated under the laws of this state shall, upon
12 certification by the office that the information is needed
13 to locate a parent for the purpose of collecting child
14 support, provide the office with the following
15 information about the parent: Full name, social security
16 number, date of birth, home address, wages and number
17 of dependents listed for income tax purposes: *Provided,*
18 That no entity may provide any information obtained in
19 the course of providing legal services, medical treatment
20 or medical services.

ARTICLE 3. CHILDREN'S ADVOCATE.

§48A-3-3. Duties of the children's advocate.

§48A-3-9. Billing for fees and costs.

§48A-3-10. Subpoenas.

§48A-3-3. Duties of the children's advocate.

1 Subject to the control and supervision of the director:

2 (a) The children's advocate shall supervise and direct
3 the secretarial, clerical and other employees in his or
4 her office in the performance of their duties as such
5 performance affects the delivery of legal services. The
6 children's advocate will provide appropriate instruction
7 and supervision to employees of his or her office who are
8 nonlawyers, concerning matters of legal ethics and
9 matters of law, in accordance with applicable state and
10 federal statutes, rules and regulations.

11 (b) In accordance with the requirements of rule 5.4(c)
12 of the rules of professional conduct as promulgated and
13 adopted by the supreme court of appeals, the children's
14 advocate shall not permit a nonlawyer who is employed

15 by the department of health and human resources in a
16 supervisory position over the children's advocate to
17 direct or regulate the advocate's professional judgment
18 in rendering legal services to recipients of services in
19 accordance with the provisions of this chapter; nor shall
20 any nonlawyer employee of the department attempt to
21 direct or regulate the advocate's professional judgment.

22 (c) The children's advocate shall make available to the
23 public an informational pamphlet, designed in
24 consultation with the director. The informational
25 pamphlet shall explain the procedures of the court and
26 the children's advocate; the duties of the children's
27 advocate; the rights and responsibilities of the parties;
28 and the availability of human services in the
29 community. The informational pamphlet shall be
30 provided as soon as possible after the filing of a
31 complaint or other initiating pleading. Upon request, a
32 party to a domestic relations proceeding shall receive an
33 oral explanation of the informational pamphlet from the
34 office of the children's advocate.

35 (d) The children's advocate shall act to establish the
36 paternity of every child born out of wedlock for whom
37 paternity has not been established, when such child's
38 primary caretaker is an applicant for or recipient of aid
39 to families with dependent children, and when such
40 primary caretaker has assigned to the division of human
41 services any rights to support for the child which might
42 be forthcoming from the putative father: *Provided*, That
43 if the children's advocate is informed by the secretary
44 of the department of health and human resources or his
45 or her authorized employee that it has been determined
46 that it is against the best interest of the child to establish
47 paternity, the children's advocate shall decline to so act.
48 The children's advocate, upon the request of any
49 primary caretaker of a child born out of wedlock,
50 regardless of whether such primary caretaker is an
51 applicant or recipient of aid to families with dependent
52 children, shall undertake to establish the paternity of
53 such child.

54 (e) The children's advocate shall undertake to secure
55 support for any individual who is receiving aid to

56 families with dependent children when such individual
57 has assigned to the division of human services any rights
58 to support from any other person such individual may
59 have: *Provided*, That if the children's advocate is
60 informed by the secretary of the department of health
61 and human resources or his or her authorized employee
62 that it has been determined that it is against the best
63 interests of a child to secure support on the child's
64 behalf, the children's advocate shall decline to so act.
65 The children's advocate, upon the request of any
66 individual, regardless of whether such individual is an
67 applicant or recipient of aid to families with dependent
68 children, shall undertake to secure support for the
69 individual. If circumstances require, the children's
70 advocate shall utilize the provisions of article seven of
71 this chapter and any other reciprocal arrangements
72 which may be adopted with other states for the
73 establishment and enforcement of support obligations,
74 and if such arrangements and other means have proven
75 ineffective, the children's advocate may utilize the
76 federal courts to obtain and enforce court orders for
77 support.

78 (f) The children's advocate shall pursue the
79 enforcement of support orders through the withholding
80 from income of amounts payable as support:

81 (1) Without the necessity of an application from the
82 obligee in the case of a support obligation owed to an
83 obligee to whom services are already being provided
84 under the provisions of this chapter; and

85 (2) On the basis of an application for services in the
86 case of any other support obligation arising from a
87 support order entered by a court of competent
88 jurisdiction.

89 (g) The children's advocate may decline to commence
90 an action to obtain an order of support under the
91 provisions of section one, article five of this chapter if
92 an action for divorce, annulment or separate
93 maintenance is pending, or the filing of such action is
94 imminent, and such action will determine the issue of
95 support for the child: *Provided*, That such action shall

96 be deemed to be imminent if it is proposed by the
97 obligee to be commenced within the twenty-eight days
98 next following a decision by the children's advocate that
99 an action should properly be brought to obtain an order
100 for support.

101 (h) If the child advocate office, through the children's
102 advocate, shall undertake paternity determination
103 services, child support collection or support collection
104 services for a spouse or former spouse upon the written
105 request of an individual who is not an applicant or
106 recipient of assistance from the division of human
107 services, the office may impose an application fee for
108 furnishing such services. Such application fee shall be
109 in a reasonable amount, not to exceed twenty-five
110 dollars, as determined by the director: *Provided*, That
111 the director may fix such amount at a higher or lower
112 rate which is uniform for this state and all other states
113 if the secretary of the federal department of health and
114 human services determines that a uniform rate is
115 appropriate for any fiscal year to reflect increases or
116 decreases in administrative costs. Any cost in excess of
117 the application fee so imposed may be collected from the
118 obligor who owes the child or spousal support obligation
119 involved.

§48A-3-9. Billing for fees and costs.

1 A state or county official and the clerk of any court
2 who charges a deposit, library fee, filing fee or a fee for
3 filing or copying documents or other service, if the
4 filing, copying or service is for the child advocate office
5 shall bill the child advocate office monthly.

§48A-3-10. Subpoenas.

1 In order to obtain financial and medical insurance
2 information pursuant to the establishment, enforcement
3 and modification provisions set forth in chapter forty-
4 eight or forty-eight-a of this code, the children's
5 advocate may serve, by certified mail or personal
6 service, an administrative subpoena on any person,
7 corporation, partnership, financial institution, labor
8 union or state agency, for an appearance or for
9 production of financial or medical insurance

10 information. In case of disobedience to the subpoena, the
11 children's advocate may invoke the aid of any circuit
12 court in requiring the appearance or production of
13 records and financial documents.

**ARTICLE 5. REMEDIES FOR THE ENFORCEMENT OF SUPPORT
OBLIGATIONS AND VISITATION.**

**§48A-5-1. Action to obtain an order for support of minor
child.**

1 (a) An action may be brought in circuit court to obtain
2 an order for the support of a minor child when:

3 (1) Such child has a parent and child relationship with
4 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 or the child advocate office on its behalf, when the
26 department is providing assistance on behalf of the child
27 in the form of aid to families with dependent children,
28 and an assignment of any right to support has been

29 assigned to the department.

30 (c) An action under the provisions of this section may
31 be brought in the county where the obligee, the obligor
32 or the child resides.

33 (d) If an action for child support is brought under the
34 provisions of this section by an obligee against his or her
35 spouse, such obligee may also seek spousal support from
36 the obligor, unless such support has been previously
37 waived by agreement or otherwise.

38 (e) Every order of support heretofore or hereafter
39 entered or modified under the provisions of this section
40 shall include a provision for the income withholding in
41 accordance with the provisions of section fifteen-a or
42 fifteen-b, article two, chapter forty-eight of this code.

43 (f) At any time after the entry of an order for support,
44 the court may, upon the verified petition of an obligee
45 or the obligor, revise or alter such order, and make a
46 new order, as the altered circumstances or needs of a
47 child, an obligee, or the obligor may render necessary
48 to meet the ends of justice.

ARTICLE 6. ESTABLISHMENT OF PATERNITY.

§48A-6-1. Action for establishment of paternity.

§48A-6-3. Medical testing procedures to aid in the determination of paternity.

§48A-6-1. Action for establishment of paternity.

1 (a) A civil action to establish the paternity of a child
2 and to obtain an order of support for the child may be
3 instituted, by verified complaint, in the circuit court of
4 the county where the plaintiff, the defendant or the child
5 resides. Such action may be brought by any of the
6 following persons:

7 (1) An unmarried woman with physical or legal
8 custody of a child to whom she gave birth;

9 (2) A married woman with physical or legal custody
10 of a child to whom she gave birth, if the complaint
11 alleges that:

12 (A) Such married woman lived separate and apart

13 from her husband preceding the birth of the child;

14 (B) Such married woman did not cohabit with her
15 husband at any time during such separation and that
16 such separation has continued without interruption; and

17 (C) The defendant, rather than her husband, is the
18 father of the child.

19 (3) Any person, including the state of West Virginia
20 or the department of health and human resources, or the
21 child advocate office on its behalf, who is not the mother
22 of the child, but who has physical or legal custody of
23 such child;

24 (4) The guardian or committee of such child;

25 (5) The next friend of such child when the child is a
26 minor;

27 (6) By such child in his own right at any time after
28 the child's eighteenth birthday but prior to the child's
29 twenty-first birthday; or

30 (7) A man purporting to be the father of a child born
31 out of wedlock, when there has been no prior judicial
32 determination of paternity.

33 (b) A person who has sexual intercourse in this state
34 submits to the jurisdiction of the courts of this state for
35 an action brought under this article with respect to a
36 child who was conceived by that act of intercourse.
37 Service of process may be perfected according to the
38 rules of civil procedure.

39 (c) If the person against whom the action is brought
40 has failed to plead or otherwise defend the action after
41 proper service has been obtained, judgment by default
42 may be issued by the court as provided by the rules of
43 civil procedure.

**§48A-6-3. Medical testing procedures to aid in the
determination of paternity.**

1 (a) The court may, on its own motion, or shall upon
2 the motion of any party, order the mother, her child and
3 the man to submit to blood tests or tissue tests to aid
4 the court in proving or disproving paternity. Such

5 motion may be made, upon ten days' written notice to
6 the mother and alleged father, without the necessity of
7 filing a complaint. If such tests are ordered, the court
8 shall direct that the inherited characteristics, including,
9 but not limited to, blood types, be determined by
10 appropriate testing procedures at a hospital,
11 independent medical institution or independent medical
12 laboratory, duly licensed under the laws of this state, or
13 any other state, and shall appoint an expert qualified as
14 an examiner of genetic markers to analyze and interpret
15 the results and to report to the court. The court shall
16 consider the results as follows:

17 (1) Blood or tissue test results which exclude the man
18 as the father of the child are admissible and shall be
19 clear and convincing evidence of nonpaternity and the
20 court shall, upon considering such evidence, dismiss the
21 action.

22 (2) Blood or tissue test results which show a statistical
23 probability of paternity of less than ninety-eight percent
24 are admissible and shall be weighed along with other
25 evidence of the defendant's paternity.

26 (3) Undisputed blood or tissue test results which show
27 a statistical probability of paternity of more than ninety-
28 eight percent shall, when filed with the court, legally
29 establish the man as the father of the child for all
30 purposes and child support may be established pursuant
31 to the provisions of this chapter.

32 (4) If the defendant desires to challenge the results of
33 the blood or tissue tests or the expert's analysis of
34 inherited characteristics, he shall file a written protest
35 within thirty days of the filing of such test results, and
36 serve a copy of such protest upon the other party. The
37 court, upon reasonable request of a party, shall order
38 that additional tests be made by the same laboratory or
39 another laboratory within thirty days of the entry of
40 such order, at the expense of the party requesting
41 additional testing. If the results of the blood or tissue
42 tests or the expert's analysis which show a statistical
43 probability of paternity of more than ninety-eight
44 percent are confirmed by the additional testing, then

45 such results are admissible evidence which is clear and
46 convincing evidence of paternity. The admission of such
47 evidence creates a presumption that the defendant is the
48 father.

49 (b) Documentation of the chain of custody of the blood
50 or tissue specimens is competent evidence to establish
51 such chain of custody. A verified expert's report shall
52 be admitted at trial unless a challenge to the testing
53 procedures or a challenge to the results of test analysis
54 has been made before trial. The costs and expenses of
55 making such tests shall be paid by the parties in
56 proportions and at times determined by the court.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-29. Failure to meet an obligation to provide support to a minor; penalties.

1 (1) A person who (a) persistently fails to provide
2 support which he or she can reasonably provide and
3 which he or she knows he or she has a duty to provide
4 to a minor; or (b) is subject to court order to pay any
5 amount for the support of a minor child and is
6 delinquent in meeting the full obligation established by
7 such order and has been so delinquent for a period of
8 at least six months' duration, 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 or imprisoned in the county jail for not more than one
12 year, or both fined and imprisoned.

13 (2) A person who persistently fails to provide support
14 which he or she can reasonably provide and which he
15 or she knows he or she has a duty to provide to a minor
16 by virtue of a court or administrative order and the
17 failure results in (a) an arrearage of not less than ten
18 thousand dollars; or (b) twelve consecutive months
19 without payment of support, is guilty of a felony, and,
20 upon conviction thereof, shall be fined not less than one
21 hundred dollars nor more than one thousand dollars, or
22 imprisoned for not less than one year nor more than
23 three years, or both fined and imprisoned.

CHAPTER 55

(Com. Sub. for H. B. 4164—By Mr. Speaker, Mr. Chambers, and Delegate Burk,
By Request of the Executive)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the reorganization of the governor's office of community and industrial development; redesignating said office the West Virginia development office; creating a council for community and economic development; members, appointment and expenses; providing that the council employ an executive director to serve at its will and pleasure; powers and duties of the council; council required to develop plan for internal reorganization of office and authorized to terminate inactive or ineffective programs; economic development initiatives; mandating plan for creating regional economic development corporations funded through matching grant program; requiring council to make certain reports to the Legislature; authorizing said office to contract with nonprofit private corporation funded from private sources; permitting payment of performance-based incentives by the nonprofit private corporation to the director and economic development representatives; authorizing public-private joint ventures; authorizing employment of economic development representatives exempted from civil service protections; transition and savings provision; and staff reorganization.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

- §5B-2-1. Governor's office of community and industrial development redesignated West Virginia development office.
- §5B-2-2. Council for community and economic development created; members, appointment and expenses; appointment and compensation of director.
- §5B-2-3. Powers and duties of council for community economic development.
- §5B-2-3a. Advertising and promotion reports; reporting same to Legislature.
- §5B-2-4. Public-private partnerships.
- §5B-2-5. Economic development representatives.
- §5B-2-6. Transition; savings provision.
- §5B-2-7. Staff reorganization.

§5B-2-1. Governor's office of community and industrial development redesignated West Virginia development office.

1 The governor's office of community and industrial
2 development is hereby continued but is hereafter
3 designated and shall be known as the West Virginia
4 development office. All references in this code to the
5 office of community and industrial development or the
6 governor's office of community and industrial
7 development shall be construed as references to the
8 West Virginia development office.

§5B-2-2. Council for community and economic development created; members, appointment and expenses; appointment and compensation of director.

1 (a) There is hereby created within the West Virginia
2 development office a council for community and
3 economic development, which is a body corporate and
4 politic, constituting a public corporation and
5 government instrumentality. Membership on the council
6 shall consist of:

7 (1) Nine members to be appointed by the governor,
8 with the advice and consent of the Senate, representing
9 community or regional interests, including economic
10 development, commerce, banking, manufacturing, the
11 utility industry, the mining industry, the
12 telecommunications/data processing industry, small
13 business, labor, tourism, or agriculture: *Provided*, That
14 one member appointed pursuant to this subsection shall
15 be a member of a regional planning and development

16 council. Of the nine members representing community
17 or regional interests, three members shall be from each
18 congressional district of the state, and shall be appointed
19 in such a manner as to provide a broad geographical
20 distribution of members of the council;

21 (2) Two at-large members to be appointed by the
22 governor with the advice and consent of the Senate;

23 (3) One member to be appointed by the governor from
24 a list of two persons recommended by the speaker of the
25 House of Delegates;

26 (4) One member to be appointed by the governor from
27 a list of two persons recommended by the president of
28 the Senate;

29 (5) The president of the West Virginia economic
30 development council; and

31 (6) The secretary of the department of commerce,
32 labor and environmental resources.

33 (b) Not later than the first day of July, one thousand
34 nine hundred ninety-two, the governor shall appoint the
35 thirteen appointed members of the council for staggered
36 terms. The terms of the board members first taking
37 office on or after the effective date of this legislation
38 shall expire as designated by the governor at the time
39 of the nomination, three at the end of the first year,
40 three at the end of the second year, three at the end of
41 the third year, and four at the end of the fourth year,
42 after the first day of July, one thousand nine hundred
43 ninety-two. As these original appointments expire, each
44 subsequent appointment shall be for a full four-year
45 term. Any member whose term has expired shall serve
46 until his successor has been duly appointed and
47 qualified. Any person appointed to fill a vacancy shall
48 serve only for the unexpired term. Any member shall
49 be eligible for reappointment. In cases of any vacancy
50 in the office of a member, such vacancy shall be filled
51 by the governor in the same manner as the original
52 appointment.

53 (c) Members of the council shall not be entitled to
54 compensation for services performed as members, but

55 shall be entitled to reimbursement for all reasonable
56 and necessary expenses actually incurred in the
57 performance of their duties. A majority of the members
58 shall constitute a quorum for the purpose of conducting
59 business. The council shall elect its chair for a term to
60 run concurrent with the term of office of the member
61 elected as chair. The chair is eligible for successive
62 terms in that position.

63 (d) The council shall employ an executive director of
64 the West Virginia development office qualified by
65 reason of extensive education and experience in the field
66 of professional economic development, to serve at the
67 will and pleasure of the council. The salary of the
68 director shall be fixed by the council. The director shall
69 have overall management responsibility and
70 administrative control and supervision within the West
71 Virginia development office. It is the intention of the
72 Legislature that the director shall provide professional
73 and technical expertise in the field of professional
74 economic development in order to support the
75 policymaking functions of the council, but that the
76 director is not a public officer, agent, servant or
77 contractor within the meaning of section thirty-eight,
78 article six of the Constitution of the state. Subject to the
79 provisions of the contract provided for in section four of
80 this article, the director is authorized to hire and fire
81 economic development representatives employed
82 pursuant to the provisions of section five of this article.

§5B-2-3. Powers and duties of council for community and economic development.

1 (a) The council for community and economic
2 development shall enhance economic growth and
3 development through the development of a
4 comprehensive economic development strategy for West
5 Virginia. "Comprehensive economic development
6 strategy" means a plan that outlines strategies and
7 activities designed to continue, diversify, or expand the
8 economic base of the state as a whole; create jobs;
9 develop a highly skilled work force; facilitate business
10 access to capital, including venture capital; advertise
11 and market the resources offered by the state with

12 respect to the needs of business and industry; facilitate
13 cooperation among local, regional and private economic
14 development enterprises; improve infrastructure on a
15 state, regional, and community level; improve the
16 business climate generally; and leverage funding from
17 sources other than the state, including federal and
18 private sources.

19 (b) The council shall develop a plan for the internal
20 reorganization of the West Virginia development office.
21 The plan shall evaluate programs and policies in place
22 within the governor's office of community and industrial
23 development on the first day of February, one thousand
24 nine hundred ninety-two, with respect to their efficacy
25 in yielding results with respect to economic development
26 and is authorized to terminate, by resolution of the
27 council, programs and policies which are either inactive,
28 or ineffective in design or in application, in enhancing
29 economic development. In developing its reorganization
30 plan, the council shall consider the following initiatives:

31 (1) Creation of a competitiveness council composed of
32 public and private members having as its primary goal
33 the generation of new ideas for economic development
34 and meeting on a periodic basis to develop broad
35 ranging recommendations for the governor and the
36 Legislature;

37 (2) Creation of a private nonprofit corporation for
38 rural innovation to attract federal and foundation
39 funding to develop and implement rural economic
40 development initiatives;

41 (3) Creation of a consortium for work force readiness
42 composed of members from vocational-technical-
43 occupational education and higher education to develop
44 initiatives for work force development, which may
45 include mobile technology training centers;

46 (4) Creation of a one-stop capital access program to
47 attract capital from sources inside and outside the state;
48 to work with the private sector, including lending
49 institutions; to assist entrepreneurs and businesses to
50 access capital; and to coordinate all state economic
51 development loan programs;

52 (5) Creation of a seed capital fund to be used for small
53 business start-ups. Loans from the interest on the fund
54 would match loans from private sources on a one-to-one
55 basis to assist new small businesses in need of operating
56 capital;

57 (6) Promotion of cooperation among municipalities
58 and counties in funding physical infrastructure,
59 including regional business parks; and

60 (7) The council shall develop a plan for the creation
61 of regional economic development corporations or
62 authorities and funding assistance to such corporations
63 or authorities through a matching grant program. The
64 council shall establish criteria for awarding funding
65 assistance to such corporations or authorities within the
66 limits of funds appropriated by the Legislature for the
67 program. The West Virginia development office shall
68 recognize existing county, regional or multi-county
69 corporations or authorities where appropriate.

70 In developing its plan, the West Virginia development
71 office shall consider resources and technical support
72 available through other agencies, both public and
73 private, including, but not limited to, the state college
74 and university systems; the West Virginia housing
75 development fund; the West Virginia economic
76 development authority; the West Virginia parkways,
77 economic development and tourism authority; the West
78 Virginia roundtable; the West Virginia chamber of
79 commerce; regional planning and development councils;
80 regional partnership for progress councils; and state
81 appropriations.

82 (c) On or before the first day of December, one
83 thousand nine hundred ninety-two, the council shall
84 report to the governor and the Legislature on its plan
85 for the internal reorganization of the West Virginia
86 development office, including its recommendations with
87 respect to necessary legislation.

88 (d) The council shall conduct a comprehensive survey
89 of value-added products and report the results of the
90 survey to the Legislature on or before the thirty-first
91 day of December, one thousand nine hundred ninety-

92 two. The survey shall determine the following:

93 (1) What products are produced in West Virginia to
94 which value is added at some location outside the state,
95 and what value is added to the product;

96 (2) Current West Virginia businesses which add value
97 to products produced in or outside the state, and what
98 value is added;

99 (3) Opportunities which exist in the state to create
100 jobs by establishing businesses to add value to products
101 produced in or outside the state; and

102 (4) Products that are utilized by businesses in the
103 state that are received from sources outside the state.

104 (e) The council shall promulgate rules and regulations
105 to carry out the purposes and programs of the West
106 Virginia development office to include generally the
107 programs available, and the procedure and eligibility of
108 applications relating to assistance under such programs;
109 these rules and regulations shall not be subject to the
110 provisions of chapter twenty-nine-a of this code, but
111 shall be filed with the secretary of state.

**§5B-2-3a. Advertising and promotion reports; reporting
same to Legislature.**

1 By the thirty-first day of December, one thousand
2 nine hundred ninety-two, all state governmental entities
3 having an advertising and promotion allocation within
4 their budget shall make a report to the council
5 containing the dollar amounts spent for advertising and
6 promotion, to whom and for what such moneys are
7 expended and any other information pertinent to the
8 entity's advertising and promotion activities which may
9 be of interest and use to the council. The council shall
10 compile such information received pursuant to this
11 section and shall report to the Legislature during the
12 one thousand nine hundred ninety-three legislative
13 session.

§5B-2-4. Public-private partnerships.

1 The West Virginia development office is authorized to
2 enter into contractual or joint venture agreements with

3 a nonprofit corporation organized pursuant to the
4 corporate laws of the state, organized to permit
5 qualification pursuant to section 501(c) of the Internal
6 Revenue Code and for purposes of the economic
7 development of West Virginia, and funded from sources
8 other than the state. Members of the council are
9 authorized to sit on the board of directors of the private
10 nonprofit corporation. The contract shall include
11 provisions relating to the employment of economic
12 development representatives assigned to the West
13 Virginia development office to be paid a base salary by
14 the state and performance-based economic incentives
15 from private funds of the nonprofit corporation.
16 Provisions relating to hiring practices with respect to
17 economic development representatives, job descriptions,
18 accountability, public-private liaison, and performance
19 standards may be the subject of contract negotiations.
20 The contract shall include provision for continuing
21 education and certification in the field of economic or
22 industrial development for persons employed as
23 economic development representatives. Agreements
24 providing for the payment of performance-based
25 incentives to the director of the West Virginia
26 development office are authorized. Agreements
27 providing for the payment of travel and expenses to the
28 director of the West Virginia development office or to
29 economic development representatives from private
30 funds by the nonprofit corporation are authorized. The
31 prohibitions of subdivisions (b) and (d), section five,
32 article two, chapter six-b of this code are not applicable
33 to the receipt by economic development representatives
34 or by the director of performance-based incentives and
35 other payments made by the nonprofit corporation and
36 specifically authorized pursuant to this section.

37 From time to time the council may enter into joint
38 ventures wherein the West Virginia development office
39 and the nonprofit corporation share in the development
40 and funding of economic development programs.

41 All contracts and joint venture agreements must be
42 approved by vote of the council. Contracts entered into
43 pursuant to this section for longer than one fiscal year

44 shall contain, in substance, a provision that the contract
45 shall be considered cancelled without further obligation
46 on the part of the state if the state Legislature or, where
47 appropriate, the federal government, shall fail to
48 appropriate sufficient funds therefor or shall act to
49 impair the contract or cause it to be cancelled.

§5B-2-5. Economic development representatives.

1 The director is expressly authorized to employ
2 economic development representatives to be paid a base
3 salary within legislative appropriations to the West
4 Virginia development office, subject to provisions set
5 forth by the council in its reorganization plan and
6 applicable contract provisions pursuant to section four
7 of this article. Economic development representatives
8 may receive performance-based incentives and expenses
9 paid from private funds from a nonprofit corporation
10 contracting with the West Virginia development office
11 pursuant to the provisions of section four of this article.
12 The director shall establish job descriptions and
13 responsibilities of economic development representa-
14 tives, subject to the provisions of any contract with a
15 nonprofit corporation entered into pursuant to section
16 four of this article.

17 Notwithstanding any provision of this code to the
18 contrary, economic development representatives
19 employed within the West Virginia development office
20 are not subject to the procedures and protections
21 provided by articles six and six-a, chapter twenty-nine
22 of this code. Any employee of the West Virginia
23 development office on the effective date of this article
24 who applies for employment as an economic
25 development representative is not entitled to the
26 protections of article six, chapter twenty-nine with
27 respect to hiring procedures and qualifications; and
28 upon accepting employment as an economic
29 development representative, the employee relinquishes
30 the protections provided for in articles six and six-a,
31 chapter twenty-nine.

§5B-2-6. Transition; savings provision.

1 All programs, orders, determinations, rules, permits,

2 grants, contracts, certificates, bonds, authorizations and
3 privileges which have been issued, made, granted, or
4 allowed to become effective pursuant to any prior
5 enactments of this article or by the governor, the
6 governor's office of community and industrial
7 development or its director, or by a court of competent
8 jurisdiction, and which are in effect on the first day of
9 February, one thousand nine hundred ninety-two, shall
10 continue in effect according to their terms until
11 modified, terminated, superseded, set aside, or revoked
12 by the governor, the council for community and
13 economic development or the director of the West
14 Virginia development office pursuant to this article, by
15 a court of competent jurisdiction, or by operation of law.

§5B-2-7. Staff reorganization.

1 It is the intention of the Legislature that research and
2 support staff for the council and for professional
3 economic development staff, including the director of
4 the West Virginia development office and economic
5 development representatives, be drawn, where possible,
6 in the reorganization developed by the council, from
7 qualified employees employed within the governor's
8 office of community and industrial development on the
9 first day of February, one thousand nine hundred
10 ninety-two.

11 The director, pursuant to the reorganization plan as
12 approved by the council, may eliminate or consolidate
13 positions, and name a person to fill more than one
14 position; delegate, assign, transfer or combine
15 responsibilities or duties to or among employees; and
16 reorganize internal functions or operations.

17 Except as provided in section five of this article,
18 nothing contained in this article shall be construed to
19 abridge the rights of employees within the classified
20 service of the state as provided in sections ten and ten-
21 a, article six, chapter twenty-nine of this code. The lay-
22 off and recall rights of employees within the classified
23 service of the state as provided in subsections (5) and
24 (6), section ten, article six, chapter twenty-nine of this
25 code shall be applicable within the agency as a whole:

26 *Provided*, That the employee shall possess the qualifica-
27 tions established for the job class. The duration of recall
28 rights provided in this section shall be limited to two
29 years or the length of tenure, whichever is less.

30 The department of commerce, labor and environmen-
31 tal resources, the public employees retirement system
32 and the public employees insurance agency shall work
33 with all employees whose jobs are terminated as a result
34 of the reorganization of the West Virginia development
35 office as provided for in this article in order to
36 recommend benefits, services, training, an interagency
37 employment transfer or other employment. The director
38 of the West Virginia development office and directors
39 of all other state agencies shall use best efforts to employ
40 qualified employees who were employed in positions
41 directly affected by the reorganization: *Provided*, That
42 notwithstanding any other provision of the code to the
43 contrary, in filling vacancies at other state agencies, the
44 directors of such agencies shall, for a period of twenty-
45 four months or the length of tenure, whichever is less,
46 after the effective date of this article, give preference
47 over all but existing employees to those qualified
48 employees whose jobs were terminated as a result of the
49 reorganization: *Provided, however*, That such preference
50 shall not supersede those employees with recall rights
51 in other state agencies. The director of the West
52 Virginia development office shall provide to the division
53 of personnel a list of those employees directly affected
54 by the reorganization.

CHAPTER 56

(H. B. 4731—By Delegates Mezzatesta and Faircloth)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article two, and section

nine-d, article six, chapter twelve of said code, all relating to extending for twelve months the governor's authority to borrow money from the consolidated pension fund to finance needed public improvements in education; providing for the redesignation of certain funds; and providing for repayment of such borrowing from consumers sales tax collections.

Be it enacted by the Legislature of West Virginia:

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

Chapter

11. Taxation.

12. Public Moneys and Securities.

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-30. Proceeds of tax; dedication of certain revenues.

1 The proceeds of the tax imposed by this article shall
2 be deposited in the general revenue fund of the state:
3 *Provided*, That beginning the first day of July, one
4 thousand nine hundred eighty-nine, and continuing each
5 month thereafter through the last day of July, one
6 thousand nine hundred ninety-two, the first five million
7 dollars of proceeds of this tax for each month shall be
8 paid into the "Fiscal Responsibility Fund" created by
9 section nineteen, article one, chapter five of this code
10 and used for the purposes specified therein, and that on
11 and after the first day of August, one thousand nine
12 hundred ninety-two, and continuing each month
13 thereafter until any money borrowed under section nine-
14 d, article six, chapter twelve of this code is repaid, the
15 first five million dollars of proceeds of this tax for each
16 month shall be paid into the "Education Enhancement
17 Fund" created by section nine-d, article six, chapter
18 twelve of this code: *Provided, however*, That if no money
19 is borrowed under section nine-d, article six of said

20 chapter twelve, before the first day of August, one
 21 thousand nine hundred ninety-two, then no tax collected
 22 under this article shall be deposited into the "Education
 23 Enhancement Fund", and if money is borrowed after the
 24 thirtieth day of June, one thousand nine hundred ninety-
 25 two, then payment into the "Education Enhancement
 26 Fund" shall begin the first day of the calendar month
 27 succeeding the month in which funds are borrowed
 28 under section nine-d, article six of said chapter twelve:
 29 *Provided further*, That if less than sixty million dollars
 30 is borrowed under said section nine-d, then the amount
 31 to be paid into the "Education Enhancement Fund" each
 32 month, as provided in this section, shall be that
 33 proportion of five million dollars that the amount of
 34 money borrowed bears to sixty million dollars.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

Article

2. Payment and Deposit of Taxes and Other Amounts Due the State or any Political Subdivision.
6. West Virginia Board of Investments.

ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER AMOUNTS DUE THE STATE OR ANY POLITICAL SUBDIVISION.

§12-2-2. Itemized record of moneys received for deposit; regulations governing deposits; credit to state fund; exceptions.

1 (a) All officials and employees of the state authorized
 2 by statute to accept moneys due the state of West
 3 Virginia shall keep a daily itemized record of such
 4 moneys so received for deposit in the state treasury and
 5 shall deposit within twenty-four hours with the state
 6 board of investments all moneys received or collected by
 7 them for or on behalf of the state for any purpose
 8 whatsoever. The treasurer and the board of investments
 9 shall promulgate rules and regulations, in accordance
 10 with the provisions of chapter twenty-nine-a of this code
 11 governing the procedure for such deposits.

12 The official or employee making such deposits with
 13 the state board of investments shall prepare such deposit
 14 lists in such manner and upon such report forms as may

15 be prescribed by the board of investments. Once the
16 board has satisfied itself that all deposits have been
17 promptly prepared and deposited, it shall transfer all
18 such funds to a special bank account of the state
19 treasurer and provide him with such deposit report. The
20 original of this report shall accompany the deposit to the
21 treasurer. Certified or receipted copies shall be
22 immediately forwarded by the state treasurer to the
23 state auditor and to the secretary of administration, and
24 a copy shall be provided to the board of investments. The
25 original of the deposit report shall become a part of the
26 treasurer's permanent record.

27 (b) When so paid, such moneys shall be credited to the
28 state fund and treated by the auditor and treasurer as
29 part of the general revenue of the state: *Provided*, That
30 all moneys received out of appropriations made by the
31 Congress of the United States shall be recorded in
32 special fund accounts, apart from the general revenues
33 of the state, in the state treasury and all such moneys
34 shall not be used for any purpose whatsoever unless and
35 until authorized and directed by the Legislature,
36 excepting the following funds which shall be recorded
37 in separate accounts:

38 (1) All funds excluded by the provisions of section six,
39 article eleven, chapter four of this code;

40 (2) All funds derived from the sale of farm and dairy
41 products from farms operated by any agency of the state
42 government other than the farm management
43 commission;

44 (3) All endowment funds, bequests, donations,
45 executive emergency funds, and death and disability
46 funds;

47 (4) All fees and funds collected at state educational
48 institutions for student activities;

49 (5) All funds derived from collections from
50 dormitories, boardinghouses, cafeterias and road camps;

51 (6) All moneys received from counties by institutions
52 for the deaf and blind on account of clothing for indigent
53 pupils;

54 (7) All insurance collected on account of losses by fire
55 and refunds;

56 (8) All funds derived from bookstores and sales of
57 blank paper and stationery, and collections by the chief
58 inspector of public offices;

59 (9) All moneys collected and belonging to the capitol
60 building fund, state road fund, state road sinking funds,
61 general school fund, school fund, state fund (moneys
62 belonging to counties, districts and municipalities), state
63 interest and sinking funds, state compensation funds,
64 the fund maintained by the public service commission
65 for the investigation and supervision of applications, all
66 funds and moneys payable to or received by the natural
67 resources commission of West Virginia and moneys
68 collected and received by the division of natural
69 resources pursuant to article two, article two-a and
70 article two-b, chapter twenty of this code;

71 (10) All moneys collected or received under any act
72 of the Legislature providing that funds collected or
73 received thereunder shall be used for specific purposes.

74 (c) All moneys, excepted as provided in subdivisions
75 one through nine, inclusive, of subsection (b) of this
76 section, shall be paid into the state treasury in the same
77 manner as collections not so excepted, and shall be
78 recorded in separate accounts to be used and expended
79 only for the purposes for which the same are authorized
80 to be collected by law: *Provided*, That amounts collected
81 pursuant to subdivision ten, subsection (b) of this
82 section, which are found from time to time to exceed
83 funds needed for the purposes set forth in general law
84 may be transferred to other accounts or funds and
85 redesignated for other purposes by appropriation of the
86 Legislature. The gross amount collected in all cases shall
87 be paid into the state treasury, and commissions, costs
88 and expenses of collection authorized by general law to
89 be paid out of the gross collection are hereby authorized
90 to be paid out of the moneys collected and paid into the
91 state treasury in the same manner as other payments
92 are made from the state treasury.

93 (d) The state board of investments shall have

94 authority to establish an imprest fund or funds in the
95 office of any state agency or institution making proper
96 application to the board. To implement this authority
97 the board shall promulgate rules and regulations, in
98 accordance with the provisions of chapter twenty-nine-
99 a of this code. The board or its designee shall annually
100 audit all such funds and prepare a list of all such funds
101 showing the location and amount as of fiscal year end,
102 retaining such list as a permanent record of the board
103 until such time as the legislative auditor shall have
104 completed an audit of the imprest funds of all agencies
105 and institutions involved.

ARTICLE 6. WEST VIRGINIA BOARD OF INVESTMENTS.

§12-6-9d. Legislative findings; loans to the state; purpose for which moneys transferred may be disbursed and expended; terms and conditions for repayment; creation of special account in state treasury.

1 (a) The Legislature hereby finds and declares that the
2 West Virginia supreme court of appeals has determined
3 that public education has a constitutionally preferred
4 status; that there is a large amount of investable funds
5 in the consolidated pension fund; that loans made under
6 commercially reasonable terms to finance needed public
7 education improvements are necessary investments in
8 the future of West Virginia; and that loans from the
9 consolidated pension fund will assist in financing the
10 needs of primary and secondary education, without in
11 any way impairing the solvency or financial soundness
12 of the consolidated pension fund. This section is enacted
13 in view of these findings.

14 (b) Whenever the governor determines that there are
15 insufficient general revenue funds available for the
16 timely payment for necessary improvements in public
17 education as appropriated by the Legislature in the
18 budget bills for the fiscal years one thousand nine
19 hundred ninety-one, one thousand nine hundred ninety-
20 two, or one thousand nine hundred ninety-three, the
21 governor may request the state board of investments to
22 lend those moneys necessary to meet such payment and

23 the state board of investments shall transfer moneys
24 from the consolidated pension fund to the special sinking
25 fund account created in the state treasury by subsection
26 (d) of this section, in the amount determined by the
27 governor to be sufficient and necessary to meet such
28 payments, within the amount determined by the board
29 of investments to be prudently available. The manner
30 and timing of such transfers shall be in the discretion
31 of the board of investments. The total of the amounts
32 transferred may not exceed a total of fifty million
33 dollars during fiscal year one thousand nine hundred
34 ninety-two and ten million dollars during fiscal year one
35 thousand nine hundred ninety-three, respectively. On
36 the date the loan is transferred to the special sinking
37 fund created in subsection (d) of this section, interest
38 shall accrue at the current interest rate of the fund from
39 which the loan originated, plus one fourth of one
40 percent, and the current interest rate shall be
41 recalculated every six months.

42 (c) Full repayment of all moneys transferred, with
43 interest, shall be made to the board of investments by
44 payment into such pension fund from amounts appro-
45 priated by the Legislature or in the absence of
46 appropriations from the amounts specified in section
47 thirty, article fifteen, chapter eleven of this code, by
48 budget action as first priority from the moneys available
49 for each fiscal year. Repayment of the loans shall begin
50 six months from the date the funds were transferred
51 and payments shall be made every six months
52 thereafter, or sooner if agreed to in writing by the board
53 of investments and the governor: *Provided*, That all
54 loans shall be repaid in full by the last day of August,
55 one thousand nine hundred ninety-six.

56 (d) There is hereby created in the state treasury a
57 special account, designated the "Education
58 Enhancement Fund", which is a sinking fund for the
59 deposit, withdrawal and repayment of moneys
60 transferred pursuant to this section and section thirty,
61 article fifteen, chapter eleven of this code, in accordance
62 with the special fund doctrine for budgetary transfer
63 activities involving more than one fiscal year.

64 Management of such fund shall be a responsibility of the
65 board of investments. If any moneys remain in said fund
66 after repayment in full to the appropriate pension fund
67 or funds, such moneys shall be transferred to the
68 general revenue fund within thirty days of the last
69 repayment.

70 (e) Upon the written request of the governor, the
71 board of investments shall transfer to the general
72 revenue fund, from the funds available in the education
73 enhancement fund, those funds necessary for the timely
74 payment for necessary improvements in public educa-
75 tion as appropriated by the Legislature.

CHAPTER 57

(H. B. 4753—By Delegates P. White and Browning)

[Passed March 7, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend and reenact sections five-b and five-c, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article nine-a of said chapter by adding thereto a new section, designated section three-a; to amend and reenact sections four, ten and twelve of said article; and to amend and reenact sections one and two, article four, chapter eighteen-a, all relating to county boards of education; requiring the state board to appoint a school health services advisory committee to address the needs of medicaid eligible children; providing for the composition of the advisory committee and authorizing reimbursement of certain expenses; requiring first time public school enrollees to present a copy of the pupil's original birth record certified by vital statistics registrar; relating to setting the total state basic foundation program and foundation allowance for regional educational service agencies for the next fiscal year; prohibiting a county from being penalized if its enrollment increases in certain instances; reallocating certain step seven funds; providing adjustment to the

allocated state aid share for counties under court order to refund prior year taxes, unable to collect property tax while court proceedings are pending or where values levied upon are less than those calculated under a certain code section; relating to eliminating in-field masters program; and setting state minimum salaries for teachers with masters or above degrees effective on a date certain.

Be it enacted by the Legislature of West Virginia:

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

Chapter

18. Education.

18A. School Personnel.

CHAPTER 18. EDUCATION.

Article

2. State Board of Education.

9A. Public School Support.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-5b. Medicaid eligible children; school health services advisory committee.

§18-2-5c. Birth certificate required upon admission to public school; required notice to local law-enforcement agency of missing children.

§18-2-5b. Medicaid eligible children; school health services advisory committee.

- 1 (a) The state board shall become a medicaid provider
- 2 and seek out medicaid eligible students for the purpose
- 3 of providing medicaid and related services to students
- 4 eligible under the medicaid program and to maximize
- 5 federal reimbursement for all services available under
- 6 the Omnibus Budget Reconciliation Act of one thousand
- 7 nine hundred eighty-nine, as it relates to medicaid
- 8 expansion and any future expansions in the medicaid

9 program for medicaid and related services for which
10 state dollars are or will be expended: *Provided*, That the
11 state board may delegate this provider status and
12 subsequent reimbursement to regional educational
13 service agencies (RESA) and/or county boards:
14 *Provided, however*, That annually the state board shall
15 report to the Legislature the number and age of children
16 eligible for medicaid, the number and age of children
17 with medicaid coverage, the types of medicaid eligible
18 services provided, the frequency of services provided,
19 the medicaid dollars reimbursed; and the problems
20 encountered in the implementation of this system and
21 that this report shall be on a county by county basis and
22 made available no later than the first day of January,
23 one thousand nine hundred ninety-two, and annually
24 thereafter.

25 (b) The state board shall appoint and convene a school
26 health services advisory committee to advise the
27 secretary of health and human resources and the state
28 superintendent on ways to improve the ability of
29 regional education service agencies, local school boards,
30 and department of health and human resources
31 employees to provide medicaid eligible children with all
32 the school-based medicaid services for which they are
33 eligible and to ensure that the school-based medicaid
34 service providers bill for and receive all the medicaid
35 reimbursement to which they are entitled. The
36 committee shall consist of at least the following
37 individuals: The person within the department of
38 education responsible for coordinating the provision of
39 and billing for school-based medicaid services in schools
40 throughout the state, who shall provide secretarial,
41 administrative and technical support to the advisory
42 committee; the person within the department of health
43 and human resources responsible for coordinating the
44 enrollment of medicaid eligible school children
45 throughout the state; two representatives of regional
46 education services agencies who are experienced with
47 the process of billing medicaid for school-based health
48 services; two department of health and human resources
49 employees responsible for supervising employees, two
50 persons jointly appointed by the secretary of health and

51 human resources and the state superintendent; and one
52 representative of the governor's task force on school
53 health.

54 The school health services advisory committee shall
55 meet in the first instance at the direction of the state
56 superintendent, select a chairperson from among its
57 members, and meet thereafter at the direction of the
58 chairperson. The committee shall report its findings and
59 recommendations to the state board and department of
60 health and human resources, which findings shall then
61 be included in the report to the Legislature by the state
62 board and department of health and human resources
63 provided for in subsection (a) of this section.

64 All actual and necessary travel expenses of the
65 members of the committee shall be reimbursed by the
66 member's employing agency, for those members not
67 employed by a state agency, the member's actual and
68 necessary travel expenses shall be paid by the state
69 board. All such expenses shall be reimbursed in the
70 same manner as the expenses of state employees are
71 reimbursed.

**§18-2-5c. Birth certificate required upon admission to
public school; required notice to local law-
enforcement agency of missing children.**

1 (a) No pupil shall be admitted for the first time to any
2 public school in this state unless the person enrolling the
3 pupil presents a copy of the pupil's original birth record
4 certified by the state registrar of vital statistics
5 confirming the pupil's identity, age, and state file
6 number of the original birth record. If a certified copy
7 of the pupil's birth record cannot be obtained, the person
8 so enrolling the pupil shall submit an affidavit explain-
9 ing the inability to produce a certified copy of the birth
10 record: *Provided*, That if any person submitting such
11 affidavit is in U.S. military service and is in transit due
12 to military orders, a three-week extension shall be
13 granted to such person for providing the birth records.

14 (b) Upon the failure of any person enrolling a pupil
15 to furnish a certified copy of the pupil's birth record in

16 conformance with subsection (a) above, the principal of
 17 the school in which the pupil is being enrolled or his
 18 designee shall immediately notify the local law-
 19 enforcement agency. The notice to the local law-
 20 enforcement agency shall include copies of the
 21 submitted proof of the pupil's identity and age and the
 22 affidavit explaining the inability to produce a certified
 23 copy of the birth record.

24 (c) Within fourteen days after enrolling a transferred
 25 pupil, the principal of the school in which the pupil has
 26 been enrolled or his designee shall request that the
 27 principal or his designee of the school in which the pupil
 28 was previously enrolled transfer a certified copy of the
 29 pupil's birth record.

30 (d) Principals and their designees shall be immune
 31 from any civil or criminal liability in connection with
 32 any notice to a local law-enforcement agency of a pupil
 33 lacking a birth certificate or failure to give such notice
 34 as required by this section.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-3a. Total state basic foundation program and foundation allowance
 for regional educational service agencies for fiscal year one
 thousand nine hundred ninety-two—ninety-three only.

§18-9A-4. Foundation allowance for professional educators.

§18-9A-10. Foundation allowance to improve instructional programs.

§18-9A-12. County basic foundation; total basic state aid allowance.

**§18-9A-3a. Total state basic foundation program and
 foundation allowance for regional educa-
 tional service agencies for fiscal year one
 thousand nine hundred ninety-two—
 ninety-three only.**

1 (a) Notwithstanding any other provisions of this
 2 article to the contrary, the total basic foundation
 3 program for the state for the fiscal year one thousand
 4 nine hundred ninety-two—ninety-three shall be the sum
 5 of the amounts computed in accordance with this
 6 section, less the county's local share:

7 (1) Allowance for professional educators as
 8 determined in accordance with sections four and five-
 9 a of this article;

10 (2) Allowance for service personnel as determined in
11 accordance with sections five and five-a of this article;

12 (3) Allowance for fixed charges as determined in
13 accordance with the provisions of sections six and six-
14 a of this article;

15 (4) Allowance for transportation cost in an amount at
16 least equal to the appropriation for such allowance in
17 the fiscal year one thousand nine hundred ninety-one—
18 ninety-two;

19 (5) Allowance for administrative cost in accordance
20 with the provisions of section eight of this article;

21 (6) Allowance for other current expense and
22 substitute employees in an amount at least equal to the
23 appropriation for such allowance in the fiscal year one
24 thousand nine hundred ninety-one—ninety-two; and

25 (7) Allowance to improve instructional programs in an
26 amount at least equal to the appropriation for such
27 allowance in the fiscal year one thousand nine hundred
28 ninety-one—ninety-two.

29 (b) Notwithstanding the provisions of section eight-a
30 of this article, the foundation allowance for regional
31 educational service agencies for the fiscal year one
32 thousand nine hundred ninety-two—ninety-three shall
33 be in an amount equal to the appropriation for such
34 allowance in the fiscal year one thousand nine hundred
35 ninety-one—ninety-two, unless a greater amount is
36 appropriated by the Legislature.

§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
4 accordance with provisions of article four, chapter
5 eighteen-a of the code, to such personnel employed:
6 *Provided*, That in making this computation no county
7 shall receive an allowance for such personnel which
8 number is in excess of fifty-four and thirty-three one-
9 hundredths professional educators to each one thousand

10 students in adjusted enrollment: *Provided, however,* That
11 for the school year commencing on the first day of July,
12 one thousand nine hundred ninety-one, and thereafter,
13 no county shall receive an allowance for such personnel
14 which number is in excess of fifty-three and one-half
15 professional educators to each one thousand students in
16 adjusted enrollment: *Provided further,* That any county
17 not qualifying under the provision of section fourteen of
18 this article shall be eligible for a growth rate in
19 professional personnel in any one year not to exceed
20 twenty percent of its total potential increase under this
21 provision, except that in no case shall such limit be
22 fewer than five professionals: *And provided further,*
23 That the number of and the allowance for personnel
24 paid in part by state and county funds shall be prorated:
25 *And provided further,* That where two or more counties
26 join together in support of a vocational or comprehensive
27 high school or any other program or service, the
28 professional educators for such school or program may
29 be prorated among the participating counties on the
30 basis of each one's enrollment therein and that such
31 personnel shall be considered within the above-stated
32 limit: *And provided further,* That in the school year
33 beginning the first day of July, one thousand nine
34 hundred eighty-eight, and in each school year
35 thereafter, each county board shall establish and
36 maintain a minimum ratio of fifty professional
37 instructional personnel per one thousand students in
38 adjusted enrollment: *And provided further,* That no
39 county shall have less than a total of five principals and
40 central office administrators. Any county board which
41 does not establish and maintain this minimum ratio
42 shall suffer a pro rata reduction in the allowance for
43 professional educators under this section: *And provided*
44 *further,* That no county shall be penalized if it has
45 increases in enrollment during that school year: *And*
46 *provided further,* That any county board which does not
47 establish and maintain this minimum ratio shall utilize
48 any and all allocations to it by provision of section
49 fourteen of this article solely to employ professional
50 instructional personnel until the minimum ratio is
51 attained. Every county shall utilize methods other than

52 reductions in force, such as attrition and early
53 retirement, before implementing their reductions in
54 force policy to comply with the limitations of this
55 section. It is the intent of the Legislature that in
56 planning reductions in force to comply with reduced
57 ratios of professional educators to students in adjusted
58 enrollment, county boards shall consider positions for
59 elimination in the following order: (1) Central office
60 administrators, (2) assistant principals, and (3)
61 principals.

62 No county shall increase the number of
63 administrative personnel employed as either
64 professional educators or pay grade "H" service
65 personnel above the number which were employed, or
66 for which positions were posted, on the thirtieth day of
67 June, one thousand nine hundred ninety, and, therefore,
68 county boards shall whenever possible utilize classroom
69 teachers for curriculum administrative positions
70 through the use of modified or extended contracts:
71 *Provided*, That the governor shall submit a
72 recommendation to the Legislature at the beginning of
73 the regular session thereof in the year one thousand nine
74 hundred ninety-one, which proposes a method for
75 establishing a responsible level of administrative
76 support for each county school system and a pay scale
77 differentiation on a daily rate between classroom
78 positions and administrative positions when all other
79 factors are equal.

80 Every county board of education shall annually
81 determine the number of professional educators
82 employed that exceeds the number allowed by the public
83 school support plan and determine the amount of salary
84 supplement that would be available per state authorized
85 employee if all expenditures for such excess employees
86 were converted to annual salaries for state authorized
87 professional educators within their county. Such
88 information shall be published annually in each school
89 report card of each such county.

§18-9A-10. Foundation allowance to improve instructional programs.

1 (a) For the school year beginning on the first day of
2 July, one thousand nine hundred ninety-two only, thirty-
3 one million, two hundred sixteen thousand, eight
4 hundred three dollars, in addition to funds which accrue
5 from allocations due to increase in total local share
6 above that computed for the school year beginning on
7 the first day of July, one thousand nine hundred ninety-
8 two, from balances in the general school fund, or from
9 appropriations for such purpose shall be allocated to
10 increase 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 no county shall lose or gain more than
30 fifteen percent over the previous year's allocation:

31 (c) Any county whose allocation under subsections (a)
32 and (b) of this section is less than two hundred seventy-
33 five thousand dollars shall receive an additional
34 appropriation which equals the difference between such
35 allocation and two hundred seventy-five thousand
36 dollars.

37 (d) To be eligible for its allocation under this section,
38 a county board shall lay the maximum regular tax rates
39 set out in section six-c, article eight, chapter eleven of

40 this code: *Provided*, That moneys allocated by provision
41 of this section shall be used to improve instructional
42 programs according to a plan for instructional
43 improvement which the affected county board shall file
44 with the state board by the first day of August of each
45 year, to be approved by the state board by the first day
46 of September of that year if such plan substantially
47 complies with standards to be adopted by the state
48 board: *Provided, however*, That for the school year
49 beginning on the first day of July, one thousand nine
50 hundred ninety-two, up to fifteen percent of this
51 allocation may be used to employ professional educators
52 and/or service personnel in counties after all applicable
53 provisions of sections four and five of this article have
54 been fully utilized.

55 Prior to the use of any funds from this section for
56 personnel costs, the county board must receive
57 authorization from the state superintendent of schools.
58 The state superintendent shall require the district board
59 to demonstrate: (1) The need for the allocation, (2)
60 efficiency and fiscal responsibility in staffing, and (3)
61 sharing of services with adjoining counties and the
62 regional educational service agency for that county in
63 the use of the total local district board budget. District
64 boards shall make application for available funds by the
65 first day of May, one thousand nine hundred ninety-two.
66 On or before the first day of June, the state
67 superintendent shall review all applications and notify
68 applying district boards of the distribution of the
69 allocation. Such funds shall be distributed during the
70 fiscal year as appropriate. The state superintendent
71 shall require the county board to demonstrate the need
72 for an allocation for personnel based upon the county's
73 inability to meet the requirements of state law or state
74 board policy: *Provided*, That the funds available for
75 personnel under this section may not be used to increase
76 the total number of professional noninstructional
77 personnel in the central office beyond four. Such
78 instructional improvement plan shall be made available
79 for distribution to the public at the office of each
80 affected county board.

81 (e) Commencing with the school year beginning on the
82 first day of July, one thousand nine hundred ninety-two,
83 twenty-one million, four hundred forty thousand, four
84 hundred ninety-three dollars shall be paid into the
85 school building capital improvements fund created by
86 section six, article nine-d of this chapter, and shall be
87 used solely for the purposes of said article nine-d. In
88 each fiscal year thereafter, fifty percent of the funds
89 which accrue due to an increase in local share above that
90 computed for the school year beginning on the first day
91 of July, one thousand nine hundred eighty-seven, shall
92 be paid into the school building capital improvements
93 fund created by section six, article nine-d of this
94 chapter, and shall be used solely for the purposes of said
95 article nine-d: *Provided*, That if funds are available and
96 appropriated in each such subsequent fiscal year, not
97 less than seven million seven hundred thousand dollars
98 shall be added to the amount of the prior year's
99 appropriation for such fund.

§18-9A-12. County basic foundation; total basic state aid allowance.

1 (a) The basic foundation program for each county for
2 the fiscal year shall be the sum of the amounts computed
3 in accordance with the provisions of sections four, five,
4 six, seven, eight, nine and ten of this article. On the first
5 working day of July in each year, the state board shall
6 determine the basic foundation program for each county
7 for that fiscal year. Data used in the computations
8 relating to net and adjusted enrollment, and the number
9 of professional educators, shall be for the second month
10 of the prior school term. Transportation expenditures
11 used in these computations shall be for the most recent
12 year in which data are available. The allocated state aid
13 share of the county's basic foundation program shall be
14 the difference between the cost of its basic foundation
15 program and the county's local share as determined in
16 section eleven of this article, except as provided in
17 subsection (b) of this section.

18 (b) The allocated state aid share shall be adjusted in
19 the following circumstances in the following manner:
20 *Provided*, That prior to such adjustment, the state tax

21 commissioner shall provide the state board, by the
22 fifteenth day of January of each year, a certified listing
23 of those counties in which such adjustment shall be
24 made pursuant to this subsection, together with the
25 amount of revenue which will not be available to each
26 county board in the ensuing fiscal year as a result of the
27 circumstance.

28 (1) In those instances where the local share as
29 computed under section eleven of this article is not
30 reflective of local funds available because the county is
31 under a final court order to refund or credit property
32 taxes paid in prior years, the allocated state aid share
33 shall be the county's basic foundation program, minus
34 the local share as computed under section eleven of this
35 article, plus the amount of property tax the county is
36 unable to collect or must refund due to the final court
37 order.

38 (2) In those instances where the local share as
39 computed under section eleven of this article is not
40 reflective of local funds available because the county is
41 collecting tax based upon an assessed value which is less
42 than that determined by the tax commissioner in the
43 most recent published survey of property valuations in
44 the state due to an error in the published survey, which
45 error is certified to by the tax commissioner, the
46 allocated state aid share shall be the county's basic
47 foundation program, minus the local share as computed
48 under section eleven of this article, plus the amount of
49 property tax the county is unable to collect based on
50 differences in the assessed valuation between those in
51 the most recent published survey of valuation and the
52 corrected assessed value actually levied upon by the
53 county.

54 (3) In instances where a county is unable to collect
55 property taxes from a taxpayer during the pendency of
56 any court proceedings, the allocated state aid share shall
57 be the county's basic foundation program minus the
58 local share as computed under section eleven of this
59 article, plus the amount the county is unable to collect
60 as a result of the pending court proceedings as certified
61 by the tax commissioner: *Provided*, That the county is

62 required to reimburse the amount of allocated state aid
63 share attributable to the amount of property tax it later
64 receives upon completion of court proceedings, which
65 shall be paid into the general revenue fund of the state.

66 (c) The allocated state aid share shall be adjusted in
67 any county receiving payments or contributions in lieu
68 of property taxes. In instances where a county receives
69 payments or contributions in lieu of property taxes, the
70 allocated state aid share shall be the county's basic
71 foundation program minus the local share as computed
72 under section eleven of this article, plus any amounts
73 added pursuant to subsection (b) of this section minus
74 the payments or contributions in lieu of property taxes
75 which are distributed by the sheriff to the county board
76 of education. In determining the amount of such
77 contribution or payment in lieu of taxes, each county
78 commission shall provide to the state tax commissioner,
79 by the first day of January of each year, the total
80 amount of such payments or contributions paid to the
81 county and the proportion of the total amount that has
82 been or will be distributed to the county board of
83 education. The state tax commissioner then shall
84 provide the state board, by the fifteenth day of January
85 of each year, a certified listing of those counties in which
86 an adjustment pursuant to this section shall be made,
87 together with the amount of revenue which will be
88 available to each county board in the ensuing fiscal year
89 as a result of contribution or payment in lieu of taxes.

90 (d) Total basic state aid to the county shall be the
91 computed state share of basic foundation support. After
92 such computation is completed, the state board shall
93 immediately certify to each county board the amount of
94 state aid allocated to the county for that fiscal year,
95 subject to any qualifying provisions of this article.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-1. Definitions.

§18A-4-2. State minimum salaries for teachers.

§18A-4-1. Definitions.

1 For the purpose of this article, 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 under
14 the statutory provisions of this chapter. "Classification
15 of training" means the number of collegiate or graduate
16 hours necessary to meet the requirements stipulated in
17 the definitions set forth in the next paragraph in items
18 (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
24 profession, including active work in educational
25 positions other than the public schools, and service in the
26 armed forces of the United States if the teacher was
27 under contract to teach at the time of induction. For a
28 registered professional nurse employed by a county
29 board, "years of experience" means the number of years
30 the nurse has been employed as a public school health
31 nurse, including active work in a nursing position
32 related to education, and service in the armed forces if
33 the nurse was under contract with the county board at
34 the time of induction. For the purpose of section two of
35 this article, the experience of a teacher or a nurse shall
36 be limited to that allowed under their training
37 classification as found in the minimum salary schedule.

38 (2) "Fourth class" means all certificates previously
39 identified as: (a) "Certificates secured by examination";
40 and (b) "other first grade certificates".

41 (3) "Third class" means all certificates previously
42 identified as: (a) "Standard normal certificates"; and (b)
43 "third class temporary (sixty-four semester hours)
44 certificates".

45 (4) "Second class" means all certificates previously
46 identified as "second class temporary certificates based
47 upon the required ninety-six hours of college work".

48 (5) "A.B." means a bachelor's degree, from an
49 accredited institution of higher education, which has
50 been issued to, or for which the requirements for such
51 have been met by, a person who qualifies for or holds
52 a professional certificate or its equivalent. A registered
53 professional nurse with a bachelor's degree, who is
54 licensed by the West Virginia board of examiners for
55 registered professional nurses and employed by a county
56 board, shall be within this classification for payment in
57 accordance with sections two and two-a of this article.

58 (6) "A.B. plus 15" means a bachelor's degree as
59 defined above plus fifteen hours of graduate work, from
60 an accredited institution of higher education certified to
61 do graduate work, in an approved planned program at
62 the graduate level which requirements have been met
63 by a person who qualifies for or holds a professional
64 certificate or its equivalent.

65 (7) "M.A." means a master's degree, earned in an
66 institution of higher education approved to do graduate
67 work, which has been issued to, or the requirements for
68 such have been met by, a person who qualifies for or
69 holds a professional certificate or its equivalent.

70 (8) "M.A. plus 15" means the above-defined master's
71 degree plus fifteen hours of graduate work, earned in
72 an institution of higher education approved to do
73 graduate work, if the person is qualified for or holds a
74 professional certificate or its equivalent.

75 (9) "M.A. plus 30" means the above-defined master's
76 degree plus thirty graduate hours, earned in an
77 institution approved to do graduate work, if the person
78 is qualified for or holds a professional certificate or its
79 equivalent.

80 (10) "Doctorate" means a doctor's degree, earned from
81 a university qualified and approved to confer such a
82 degree, which has been issued to or the requirements for
83 such have been met by a person who qualifies for or
84 holds a professional certificate or its equivalent.

85 For purposes of advanced salary classification,
86 graduate work completed after the first day of July, one
87 thousand nine hundred ninety-four, shall be related to
88 the public school program, as prescribed by the state
89 board.

90 Notwithstanding the requirements set forth in
91 subdivisions (6), (8) and (9) of this section relating to
92 hours of graduate work at an institution certified to do
93 such work, fifteen undergraduate credit hours from a
94 regionally accredited institution of higher education,
95 earned after the effective date of this section, may be
96 utilized for advanced salary classification if such hours
97 are in accordance with: (a) The teacher's current
98 classification of certification and of training; (b) a
99 designated instructional shortage area documented by
100 the employing county superintendent; or (c) an
101 identified teaching deficiency documented through the
102 state approved county personnel evaluation system.

103 Effective the first day of July, one thousand nine
104 hundred ninety-four, the following definition shall be
105 applicable.

106 (11) "M.A. plus 45" means the above-defined master's
107 degree plus forty-five graduate hours, earned in an
108 institution approved to do graduate work, if the person
109 is qualified for or holds a professional certificate or its
110 equivalent.

§18A-4-2. State minimum salaries for teachers.

1 Effective the first day of July, one thousand nine
2 hundred ninety-two and thereafter, each teacher shall
3 receive the amount prescribed in the "state minimum
4 salary schedule" as set forth in this section, specific
5 additional amounts prescribed in this section or article,
6 and any county supplement in effect in a county
7 pursuant to section five-a of this article during the

8 contract year.

9 STATE MINIMUM SALARY SCHEDULE

10	(1)	(2)	(3)	(4)	(5)	(6)	(7)
11	Years	4th	3rd	2nd		A.B.	
12	Exp.	Class	Class	Class	A.B.	+15	M.A.
13	0	16,816	17,453	17,708	18,918	19,653	21,361
14	1	17,032	17,669	17,924	19,318	20,053	21,761
15	2	17,248	17,886	18,141	19,718	20,453	22,161
16	3	17,465	18,102	18,357	20,118	20,853	22,561
17	4	17,917	18,554	18,810	20,754	21,489	23,197
18	5	18,133	18,771	19,026	21,154	21,889	23,597
19	6	18,350	18,987	19,242	21,554	22,289	23,997
20	7		19,203	19,459	21,954	22,689	24,397
21	8		19,420	19,675	22,354	23,089	24,797
22	9			19,891	22,754	23,489	25,197
23	10			20,107	23,155	23,890	25,598
24	11				23,555	24,290	25,998
25	12				23,955	24,690	26,398
26	13				24,355	25,090	26,798
27	14						27,198
28	15						27,598
29	16						27,998
30	17						
31	18						
32	19						
33		(8)	(9)	(10)			
34	Years	M.A.	M.A.	Doc-			
	Exp.	+15	+30	torate			
35	0	22,096	22,831	23,831			
36	1	22,496	23,231	24,231			
37	2	22,896	23,631	24,631			
38	3	23,296	24,031	25,031			
39	4	23,932	24,667	25,667			
40	5	24,332	25,067	26,067			
41	6	24,732	25,467	26,467			
42	7	25,132	25,867	26,867			
43	8	25,532	26,267	27,267			
44	9	25,932	26,667	27,667			
45	10	26,333	27,068	28,068			

46	11	26,733	27,468	28,468
47	12	27,133	27,868	28,868
48	13	27,533	28,268	29,268
49	14	27,933	28,668	29,668
50	15	28,333	29,068	30,068
51	16	28,733	29,468	30,468
52	17		29,868	30,868
53	18		30,268	31,268
54	19		30,668	31,668

55 Six hundred dollars shall be paid annually to each
 56 classroom teacher who has at least twenty years of
 57 teaching experience. Such payments shall be in addition
 58 to any amounts prescribed in the "state minimum salary
 59 schedule", shall be paid in equal monthly installments,
 60 and shall be deemed a part of the state minimum
 61 salaries for teachers.

CHAPTER 58

(Com. Sub. for H. B. 4139—By Mr. Speaker, Mr. Chambers, and Delegate Burk,
 By Request of the Executive)

[Passed February 28, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, five, seven, eight and nine, article two-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the adoption of textbooks, instructional materials, or learning technologies; permitting the state board of education to determine adoption periods; changing references from "publishers" to "vendors"; permitting magazines, newspapers and periodicals to be purchased for classroom use in certain instances; authorizing distribution of certain sample items; limiting the number of requested sample items; allowing the state board to designate contract time periods; increasing the bond requirement maximum; requiring contracts to also be filed with the board of public works; permitting the state board to determine certain specifications in bids

and contracts; authorizing the state board to establish one or more depositories; and allowing school curriculum teams to provide input in the selection process.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, seven, eight and nine, article two-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2A. ADOPTION OF TEXTBOOKS, INSTRUCTIONAL MATERIALS AND LEARNING TECHNOLOGIES.

- §18-2A-1. Definition; adoption groups; adoption schedule.
- §18-2A-2. Request for samples and bids; deposit by bidder; selection, approval and publication of multiple list.
- §18-2A-3. Disposition of and requests for samples.
- §18-2A-4. Execution of contracts; bond.
- §18-2A-5. Selection by county boards; school curriculum teams.
- §18-2A-7. Exchange privilege; use of supplementary items; state-approved depositories authorized.
- §18-2A-8. Textbooks, instructional materials, or learning technologies must be approved and listed; when changes may be effected; rules.
- §18-2A-9. Gifts and bribes to influence adoption of books, instructional materials or learning technologies a felony; penalty.

§18-2A-1. Definition; adoption groups; adoption schedule.

1 The definition of "textbooks" includes books;
 2 instructional materials, as used therein, means systems
 3 of instructional materials, or combinations of books and
 4 supplementary materials which convey information to
 5 the pupil; learning technologies, including, but not
 6 limited to, applications using computer software,
 7 computer assisted instruction, interactive videodisc;
 8 other computer courseware and magnetic media.
 9 Textbooks, instructional materials, learning
 10 technologies or any combination thereof adopted on the
 11 state multiple list must substantially cover the required
 12 content and skills for the subject as approved by the
 13 state board of education. Adopted materials must be
 14 current and information presented accurately.

15 On or before the first day of July, one thousand nine
 16 hundred ninety-two, the state board of education shall

17 classify the elementary and secondary school subjects
18 required to be taught in the schools of our state into
19 adoption groups by related subject fields as nearly as
20 possible. A schedule for the periods of adoption shall be
21 determined by the state board of education: *Provided,*
22 That magazines, newspapers and other periodicals may
23 be purchased by a county board of education for
24 classroom use to supplement those items adopted on the
25 state multiple list without having to comply with the
26 adoption procedures provided in this article: *Provided,*
27 *however,* That magazines, newspapers and periodicals
28 shall be deemed to be textbooks for purposes of special
29 excess levies subject to the provisions of section sixteen,
30 article eight, chapter eleven of this code when the
31 described purpose under said section is for textbooks.
32 The state adoption cycle shall not exceed six years:
33 *Provided further,* That the county textbook adoption
34 committees may request a waiver of the six year
35 maximum adoption cycle from the state board of
36 education.

§18-2A-2. Request for samples and bids; deposit by bidder; selection, approval and publication of multiple list.

1 Prior to each adoption year, and not later than the
2 first day of August, the state board by written request
3 or otherwise shall ask the various vendors of textbooks,
4 instructional materials, learning technologies or any
5 combination thereof to submit samples and prices on
6 items deemed appropriate by the state board of
7 education to teach the curriculum in the public
8 elementary and secondary schools of the state for the
9 current adoption period.

10 All bids or proposals shall be under seal, and each
11 bidder shall deposit in the state treasury such sum of
12 money as the state board may designate, such deposit
13 to be not less than one thousand dollars, and not more
14 than three thousand dollars; and such deposit shall be
15 forfeited to the general school fund if such bidder shall
16 fail or refuse to make and execute such contract and
17 bond as are herein required in case of acceptance of all
18 or part of the vendor's bid, and otherwise shall be

19 returned to such bidder after the contract has been
20 made. The state board of education reserves the right
21 to set the sum of money a vendor is required to deposit
22 in the state treasury upon submitting a bid: *Provided,*
23 That the vendor has a previous history of failure or
24 refusal to execute contracts or bonds with the state of
25 West Virginia.

26 All bids shall be opened by the state board in public
27 session. After considering the subject matter, product
28 quality, general suitability, and prices of items
29 submitted, the board shall, prior to the first day of
30 March of each year in which adoptions are made by the
31 state board of education, establish a committee of
32 teachers and other educational specialists and with the
33 aid of said committee, shall on or before the first day
34 of December, prior to county adoptions, select, approve
35 and publish a list of items in each subject and grade in
36 the elementary and secondary subjects required to be
37 taught by said board. The committee of teachers and
38 other educational specialists shall report their
39 recommendations to the state board on or before the
40 fifteenth day of November of the year preceding the
41 adoption by the county board.

§18-2A-3. Disposition of and requests for samples.

1 Sample items in excess of the official sample
2 submitted to the state board for examination shall
3 remain the property of the vendor submitting them if
4 claimed within thirty days after adoption of the multiple
5 list. If not claimed within that period, the items may be
6 sold by the state board and the money credited to the
7 general school fund or items may be distributed to state
8 operated educational agencies. Sample items submitted
9 to county boards of education remain the property of the
10 vendor submitting them if claimed within thirty days
11 after the county board of education has formally adopted
12 its items. Unclaimed items may be distributed free of
13 charge by the respective board of education to any
14 school, library or individual who may have need for the
15 sample items.

16 Vendors claiming samples within the thirty-day

17 period shall notify the respective board of education at
18 the time samples are submitted for study of their intent
19 to recall the samples. All costs shall be borne by the
20 vendors.

21 No county adoption committee is entitled to request
22 or receive more than eight free samples of any
23 multigrade program being considered for adoption. Any
24 single grade level subject area items used above grade
25 six shall be limited to five free samples per county
26 selection committee. Any individual requesting samples
27 in excess of these limits shall be billed by the vendor
28 at the lowest wholesale price plus shipping.

§18-2A-4. Execution of contracts; bond.

1 When the selection and approval of the multiple list
2 have been properly made, it shall be the duty of the state
3 board to furnish contracts for the selected items with the
4 vendors within thirty days of the approval and adoption
5 of the multiple list, prepare a list of the adopted items
6 on the multiple list and publish same, and send a copy
7 to each county superintendent and vendors who
8 submitted bids for the particular adoption group not
9 later than January fifteenth of the year of the county
10 adoption. Such contracts for adoption shall run for a
11 period of time as designated by the state board of
12 education.

13 Each vendor awarded a contract by the state shall
14 enter into a bond payable to the state of West Virginia
15 in the penal sum of not less than two thousand dollars
16 and not more than ten thousand dollars to be approved
17 by the state board of public works, such bond to be
18 executed as surety by some responsible surety company
19 authorized to carry on its business in West Virginia.
20 Such contract shall be prepared by the attorney general
21 in accordance with the terms and provisions of this
22 article. Such contract shall be executed in triplicate, one
23 copy to be held by the vendor, one by the state board
24 of education and one attached to the bond filed with the
25 board of public works.

26 Bonds required of successful vendors shall provide
27 that:

28 (a) The vendor will furnish any of the items on the
29 multiple list under vendors contract for the period of the
30 adoption, from the date of the bond, to any county school
31 unit, a dealer appointed by the county, or any state
32 board approved depository or depositories as defined in
33 section seven of this article, at the lowest wholesale price
34 contained in the bids or contracts made to any other
35 county school unit, dealer, county, school or depository
36 in any other state, like conditions prevailing. The state
37 board shall determine, from time to time, the terms of
38 the bids and contracts and may require the vendor to
39 bear the costs of shipping, mail or transportation or
40 offer any other financial benefit available in the highest
41 amount paid by a vendor to any other county school unit,
42 dealer, county or depository in any other state: *Provided,*
43 That the state board of education shall decide whether
44 from time to time bids and contracts for textbooks,
45 instructional materials and learning technologies or any
46 combination thereof are to be for the delivery directly
47 to each county school unit, dealer appointed by the
48 county, county or to each depository or depositories, or
49 any combination thereof, under this section.

50 (b) The vendor will automatically reduce such prices
51 in West Virginia when prices are reduced anywhere in
52 the United States, so that no such item or items shall
53 at any time be sold in West Virginia at a higher
54 wholesale price than received for items elsewhere in the
55 United States, like conditions prevailing.

56 (c) All items sold in West Virginia will be identical
57 with the official samples filed with the state board of
58 education as regards quality standards, specifications,
59 subject matter, and other particulars which may affect
60 the value of the items. The state board of education may,
61 however, during the period of the contract approve
62 revised editions of adopted items, which will authorize
63 a vendor to furnish such revisions. All contracts and
64 bonds shall be filed with the board of public works prior
65 to the first day of July.

§18-2A-5. Selection by county boards; school curriculum teams.

1 Vendors, upon requests of county superintendents,
2 shall furnish to county boards of education the requested
3 sample copies of items that were selected and placed on
4 the state multiple list by the state board of education
5 in accordance with the provisions of section three of this
6 article.

7 School curriculum teams shall make their curriculum
8 and instructional needs known to the county
9 superintendent and selection committees prior to the
10 consideration of any adopted grouping in accordance
11 with the provisions of section three of this article. The
12 county board of education shall, upon recommendation
13 of the county superintendent with the aid of a committee
14 of teachers and not later than the first day of May of
15 the year following that in which the multiple list for the
16 group was made and approved, select from the state
17 multiple list one or more items to deliver instruction for
18 a period as provided for elsewhere in this article.
19 Counties are authorized to include nonvoting advisors
20 from the general public in the adoption process, but
21 shall require advisors to provide their assessment of the
22 items appropriate for the subject before the voting
23 committee commences the selection process.

**§18-2A-7. Exchange privilege; use of supplementary
items; state-approved depositories autho-
rized.**

1 Contractors shall arrange for the exchange of items,
2 allowing pupils or boards of education an exchange
3 price as liberal as granted on the same items to any city,
4 county, or state in the United States, like conditions
5 prevailing. The exchange privilege shall extend through
6 one entire school year. Nothing in this article is to be
7 construed as preventing the use of supplementary books,
8 instructional materials, or learning technologies
9 provided they do not displace the adopted items, nor the
10 use of more advanced items in such schools as may be
11 ready for the same. On or before the first day of July,
12 one thousand nine hundred ninety-four and thereafter,
13 the state board of education is authorized to approve any
14 depository or depositories, either public or private, to
15 serve any county or several counties, whose purpose

16 includes, but is not limited to, offering the savings and
17 services generally associated with local distribution of
18 textbooks, instructional materials, or learning
19 technologies or any combination thereof, to counties and
20 schools.

§18-2A-8. Textbooks, instructional materials, or learning technologies must be approved and listed; when changes may be effected; rules.

1 No textbook, instructional materials, or learning
2 technologies shall be used in any public elementary or
3 secondary school in West Virginia as the primary source
4 to deliver the instructional goals and objectives for state
5 required courses unless it has been approved and listed
6 on the state multiple list by the state board of education,
7 except as otherwise provided for in this section. Any
8 changes of items made by the state board of education
9 shall become effective upon approval. The state board
10 of education may upon request by a county board of
11 education and upon justification of that request, and
12 subsequent to the adoption by a county board of
13 education, approve the adoption of additional items to
14 meet the needs of specific children which were not
15 provided for in the original adoption, or waive the
16 requirement to adopt and utilize items in a particular
17 school as provided for in section six, article five-a of this
18 chapter. Nothing in this section shall apply to the
19 supplementary items that are needed from time to time.

20 The state board of education is authorized to grant
21 permission to county boards of education for the
22 continued use of previously adopted items that are listed
23 on the most recently expired multiple list appropriate
24 for the subject category under consideration. The
25 continued use shall not exceed a period as designated by
26 the state board of education. The state board may make
27 such rules and regulations as it may deem necessary and
28 expedient to carry out the provisions of this article.

§18-2A-9. Gifts and bribes to influence adoption of books, instructional materials or learning technologies a felony; penalty.

1 Any member of the state board of education, any

2 county superintendent, any member of a county board
3 of education or any other person who shall receive,
4 solicit, or accept any gift, present, or thing of value to
5 influence that individual in the vote for the adoption of
6 books, instructional materials or learning technologies,
7 or any combination thereof, or any person who shall
8 either directly or indirectly give or offer to give any
9 such gift, present, or thing of value to any person to
10 influence that individual in voting for the adoption of
11 books, instructional materials or learning technologies,
12 or any combination thereof, shall be guilty of a felony,
13 and, upon conviction thereof, shall be punished by
14 confinement in the penitentiary for not less than one
15 year nor more than three years.

CHAPTER 59

(Com. Sub. for H. B. 4118—By Delegates Prezioso and Ashcraft)

[Passed March 5, 1992: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-a, relating to county boards of education; defining terms; authorizing such boards to enter into energy-savings contracts; setting forth certain procedures and requirements for the use of such contracts; authorizing the “lease with option to purchase” method of contracting; and providing that the county board may annually renew the energy-savings contract up to ten years.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-9a. Energy-savings contracts.

1 (a) For the purposes of this section:

2 (1) "Energy-conservation measures" means goods or
3 services, or both, to reduce energy consumption
4 operating costs of school facilities. They include, but are
5 not limited to, installation of two or more of the
6 following:

7 (A) Insulation of a building structure and systems
8 within a building;

9 (B) Storm windows or doors, caulking or weather
10 stripping, multiglazed windows or doors, heat-absorbing
11 or heat-reflective glazed and coated window or door
12 systems, or other window or door modifications that
13 reduce energy consumption;

14 (C) Automatic energy control systems;

15 (D) Heating, ventilating or air conditioning systems,
16 including modifications or replacements;

17 (E) Replacement or modification of lighting fixtures
18 to increase energy efficiency;

19 (F) Energy recovery systems;

20 (G) Cogeneration systems that produce steam or
21 another form of energy for use by the county board of
22 education in a building or complex of buildings owned
23 by the board of education; or

24 (H) Energy-conservation maintenance measures that
25 provide long-term operating cost reductions of the
26 building's present cost of operation.

27 (2) "Energy-savings contract" means a contract for
28 the evaluation and recommendation of energy operations
29 conservation measures, and for implementation of one or
30 more such measures. The contract shall provide that
31 payments, except obligations upon termination of the
32 contract before its expiration, are to be made over time.
33 A county board of education may supplement these
34 payments with federal, state or local funds to reduce the
35 annual cost or to lower the initial amount to be financed.

36 (3) "Qualified provider" means a person, firm or
37 corporation experienced in the design, implementation

38 and installation of energy-conservation measures.

39 (b) County boards of education are hereby authorized
40 to enter into performance-based contracts with qualified
41 providers of energy-conservation measures for the
42 purpose of reducing energy operating costs of school
43 buildings.

44 (c) A board of education may enter into an energy-
45 savings contract with a qualified provider to reduce
46 energy operating costs significantly. Before entering
47 into such a contract or before the installation of
48 equipment, modifications or remodeling to be furnished
49 under such a contract, the qualified provider shall first
50 issue a proposal summarizing the scope of work to be
51 performed. Such a proposal shall contain estimates of all
52 costs of installation, modifications or remodeling,
53 including the costs of design, engineering, installation,
54 maintenance, repairs or debt service, as well as
55 estimates of the amounts by which energy operating
56 costs will be reduced. If the board finds, after receiving
57 the proposal, that the proposal includes more than one
58 energy-conservation measure designed to save energy
59 operating costs, the board may enter into a contract with
60 the provider pursuant to this section.

61 (d) An energy-savings contract must include the
62 following:

63 (1) A guarantee of a specific minimum amount of
64 money that the board will save in energy operating costs
65 each year during the term of the contract;

66 (2) A statement of all costs of energy-conservation
67 measures, including the costs of design, engineering,
68 installation, maintenance, repairs and operations.

69 (e) An energy-savings contract which is performance-
70 based and includes a guarantee of savings and a
71 comprehensive approach of energy-conservation
72 measures for improving comfort is subject to
73 competitive bidding requirements: *Provided*, That the
74 requirements of article five-a, chapter twenty-one of this
75 code as to prevailing wage rates shall apply to the
76 construction and installation work performed under

77 such a contract.

78 (f) A board may enter into a "lease with an option to
79 purchase" contract for the purchase and installation of
80 energy-conservation measures if the term of the lease
81 does not exceed ten years, and the lease contract
82 includes the provisions hereinafter contained in subsec-
83 tion (g), and meets federal tax requirements for tax-
84 exempt municipal leasing or long-term financing.

85 (g) An energy-savings contract may extend beyond
86 the fiscal year in which it first becomes effective:
87 *Provided*, That such a contract may not exceed a ten-
88 year term: *Provided, however*, That such long term
89 contract shall be void unless such agreement shall
90 provide that the board shall have the option thereunder
91 during each fiscal year of the contract to terminate the
92 agreement. The board may include in its annual budget
93 for each fiscal year any amounts payable under long-
94 term energy-savings contracts during that fiscal year:
95 *Provided further*, That nothing contained herein shall be
96 deemed to require or permit the replacement of jobs
97 performed by service personnel employed by the local
98 school board pursuant to sections eight and eight-a,
99 article four, chapter eighteen-a of the code, as amended.

CHAPTER 60

(Com. Sub. for S. B. 22—By Senator Holliday)

[Passed March 6, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article five-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said chapter by adding thereto a new article, designated article eight-a; and to amend and reenact section one, article three, chapter eighteen-a of said code, all relating to allowing faculty senate funds to be used in accordance with the teacher's opinion; removing obsolete language; providing for the education of homeless children; directing the state board to

ascertain certain information and submit a report by a date certain; requiring state board standards to include certain additional provisions by a date certain.

Be it enacted by the Legislature of West Virginia:

That section five, article five-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said chapter be further amended by adding thereto a new article, designated article eight-a; and that section one, article three, 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.

5A. Local School Involvement.

8A. Attendance of Homeless Children.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-5. Public school faculty senates established; election of officers; powers and duties.

1 (a) There is established at every public school in this
 2 state a faculty senate which shall be comprised of all
 3 permanent, full-time professional educators employed at
 4 the school who shall all be voting members. Professional
 5 educators as used in this section means professional
 6 educators as defined in chapter eighteen-a of this code.
 7 A quorum of more than one half of the voting members
 8 of the faculty shall be present at any meeting of the
 9 faculty senate at which official business is conducted.
 10 Prior to the beginning of the instructional term each
 11 year, but within the employment term, the principal
 12 shall convene a meeting of the faculty senate to elect a
 13 chair, vice chair and secretary and discuss matters
 14 relevant to the beginning of the school year. The vice
 15 chair shall preside at meetings when the chair is absent.
 16 Meetings of the faculty senate shall be held on a regular
 17 basis as determined by a schedule approved by the
 18 faculty senate and amended from time to time if needed.

19 Emergency meetings may be held at the call of the chair
20 or a majority of the voting members by petition
21 submitted to the chair and vice chair. An agenda of
22 matters to be considered at a scheduled meeting of the
23 faculty senate shall be available to the members at least
24 two employment days prior to the meeting, and in the
25 case of emergency meetings, as soon as possible prior to
26 the meeting. The chair of the faculty senate may appoint
27 such committees as may be desirable to study and
28 submit recommendations to the full faculty senate, but
29 the acts of the faculty senate shall be voted upon by the
30 full body.

31 (b) In addition to any other powers and duties
32 conferred by law, or authorized by policies adopted by
33 the state or county board of education or bylaws which
34 may be adopted by the faculty senate not inconsistent
35 with law, the powers and duties listed in this subsection
36 are specifically reserved for the faculty senate. The
37 intent of these provisions is neither to restrict nor to
38 require the activities of every faculty senate to the
39 enumerated items except as otherwise stated. Each
40 faculty senate shall organize its activities as it deems
41 most effective and efficient based on school size,
42 departmental structure and other relevant factors.

43 (1) Each faculty senate shall control funds allocated
44 to the school from legislative appropriations pursuant to
45 section nine, article nine-a of this chapter. From such
46 funds, each classroom teacher and librarian shall be
47 allotted fifty dollars for expenditure during the
48 instructional year for academic materials, supplies or
49 equipment which in the judgment of the teacher or
50 librarian will assist him or her in providing instruction
51 in his or her assigned academic subjects, or shall be
52 returned to the faculty senate: *Provided*, That nothing
53 contained herein shall prohibit such funds from being
54 used for programs and materials that, in the opinion of
55 the teacher, enhance student behavior, increase
56 academic achievement, improve self-esteem and address
57 the problems of students at-risk. The remainder of funds
58 shall be expended for academic materials, supplies or
59 equipment in accordance with a budget approved by the

60 faculty senate. Notwithstanding any other provisions of
61 the law to the contrary, funds not expended in one school
62 year shall be available for expenditure in the next school
63 year: *Provided, however,* That the amount of county
64 funds budgeted in a fiscal year, shall not be reduced
65 throughout the year as a result of the faculty
66 appropriations in the same fiscal year for such
67 materials, supplies and equipment. Accounts shall be
68 maintained of the allocations and expenditures of such
69 funds for the purpose of financial audit. Academic
70 materials, supplies or equipment shall be interpreted
71 broadly, but shall not include materials, supplies or
72 equipment which will be used in or connected with
73 interscholastic athletic events.

74 (2) A faculty senate may establish a process for
75 faculty members to interview new prospective
76 professional educators and paraprofessional employees
77 at the school and submit recommendations regarding
78 employment to the principal, who may also make
79 independent recommendations, for submission to the
80 county superintendent: *Provided,* That such process
81 must permit the timely employment of persons to
82 perform necessary duties.

83 (3) A faculty senate may nominate teachers for
84 recognition as outstanding teachers under state and
85 local teacher recognition programs and other personnel
86 at the school, including parents, for recognition under
87 other appropriate recognition programs and may
88 establish such programs for operation at the school.

89 (4) A faculty senate may submit recommendations to
90 the principal regarding the assignment scheduling of
91 secretaries, clerks, aides and paraprofessionals at the
92 school.

93 (5) A faculty senate may submit recommendations to
94 the principal regarding establishment of the master
95 curriculum schedule for the next ensuing school year.

96 (6) A faculty senate may establish a process for the
97 review and comment on sabbatical leave requests
98 submitted by employees at the school pursuant to section
99 eleven, article two of this chapter.

100 (7) Each faculty senate shall elect three faculty
101 representatives to the local school improvement council
102 established pursuant to section two of this article.

103 (8) Each faculty senate may nominate a member for
104 election to the county staff development council
105 pursuant to section eight, article three, chapter
106 eighteen-a of this code.

107 (9) Each faculty senate shall have an opportunity to
108 make recommendations on the selection of faculty to
109 serve as mentors for beginning teachers under
110 beginning teacher internship programs at the school.

111 (10) A faculty senate may solicit, accept and expend
112 any grants, gifts, bequests, donations and any other
113 funds made available to the faculty senate: *Provided*,
114 That the faculty senate shall select a member who shall
115 have the duty of maintaining a record of all funds
116 received and expended by the faculty senate, which
117 record shall be kept in the school office and shall be
118 subject to normal auditing procedures.

119 (11) On or after the first day of January, one thousand
120 nine hundred ninety-two, any faculty senate may review
121 the evaluation procedure as conducted in their school to
122 ascertain whether such evaluations were conducted in
123 accordance with the written system required pursuant
124 to section twelve, article two, chapter eighteen-a of this
125 code and the general intent of this Legislature
126 regarding meaningful performance evaluations of school
127 personnel. If a majority of members of the faculty senate
128 determine that such evaluations were not so conducted,
129 they shall submit a report in writing to the state board
130 of education: *Provided*, That nothing herein shall create
131 any new right of access to or review of any individual's
132 evaluations.

133 (12) Each faculty senate shall be provided by its local
134 board of education at least a two-hour per month block
135 of noninstructional time within the school day: *Provided*,
136 That any such designated day shall constitute a full
137 instructional day. This time may be utilized and
138 determined at the local school level and shall include,
139 but not be limited to, faculty senate meetings.

ARTICLE 8A. ATTENDANCE OF HOMELESS CHILDREN.

§18-8A-1. Legislative findings; definition of homeless child.

§18-8A-2. Residence of child.

§18-8A-3. Attendance of homeless children.

§18-8A-4. Report on at-risk children.

§18-8A-1. Legislative findings; definition of homeless child.

1 (a) The Legislature hereby finds and declares that
2 because of the growing number of children and families
3 who are homeless in West Virginia there is a need to
4 ensure that all homeless children receive a proper
5 education. It is the intent of the Legislature that no child
6 shall be denied the benefits of a free education in the
7 public schools because the child is homeless.

8 The Legislature further finds that programs and
9 materials must be made available to homeless and at-
10 risk children to assure opportunities for an equal
11 education. Programs shall include, but not be limited to,
12 incorporating the ideas of academic achievement, career
13 exploration, self-esteem enhancement, behavior
14 modification and other programs relating to student
15 development.

16 (b) As used in this article, unless the context otherwise
17 requires, "homeless child" means:

18 (1) A child who lacks a fixed, regular and adequate
19 nighttime residence; or

20 (2) A child who has a primary nighttime residence
21 which is:

22 (i) A supervised, publicly or privately operated shelter
23 designed to provide temporary living accommodations,
24 including welfare hotels, congregate shelters and
25 transitional housing for the mentally ill;

26 (ii) An institution that provides a temporary residence
27 for individuals intended to be institutionalized; or

28 (iii) A public or private place not designed for, nor
29 ordinarily used as, a regular sleeping accommodation
30 for human beings.

31 (c) "Homeless child" does not include any individual
32 imprisoned or otherwise detained pursuant to an act of
33 Congress or a state law.

§18-8A-2. Residence of child.

1 A child considered to be homeless pursuant to the
2 provisions of section one of this article who presently
3 seeks shelter or is located in a school district shall be
4 considered to reside in that school district and may
5 attend public school in that district.

§18-8A-3. Attendance of homeless children.

1 Nothing in this article may be construed to prohibit
2 a child from attending a public school without the
3 payment of tuition solely because the child is homeless
4 as defined in section one of this article.

§18-8A-4. Report on at-risk children.

1 The state board of education shall present to the
2 Legislature no later than the first day of January, one
3 thousand nine hundred ninety-three, a report which
4 shall include the identification of existing programs
5 which exemplify academic achievement, career
6 exploration, self-esteem enhancement, behavior
7 modification and other programs relating to student
8 development. The report shall also include findings and
9 recommendations for funding such programs so as to
10 provide delivery to all children at-risk of not succeeding
11 in school. The report shall also include teaching
12 techniques and learning strategies and the state board
13 definition of "children at-risk".

CHAPTER 18A. SCHOOL PERSONNEL.

**ARTICLE 3. TRAINING, CERTIFICATION, LICENSING,
PROFESSIONAL DEVELOPMENT.**

**§18A-3-1. Teacher preparation programs; program
approval and standards; authority to issue
teaching certificates.**

1 (a) The education of professional educators in the state
2 shall be under the general direction and control of the
3 state board of education after consultation with the
4 secretary of education and the arts, who shall represent

5 the board of directors of the state college system and the
6 board of trustees of the university of West Virginia
7 system. The education of professional educators in the
8 state includes all programs leading to certification to
9 teach or serve in the public schools including: (1) Those
10 programs in all institutions of higher education,
11 including student teaching in the public schools; (2)
12 beginning teacher internship programs; (3) the granting
13 of West Virginia certification to persons who received
14 their preparation to teach outside the boundaries of this
15 state; (4) any alternative preparation programs in this
16 state leading to certification, including programs
17 established pursuant to the provisions of section one-a
18 of this article and programs which are in effect on the
19 effective date of this section; and (5) any continuing
20 professional education, professional development and in-
21 service training programs for professional educators
22 employed in the public schools in the state.

23 The state board of education, after consultation with
24 the secretary of education and the arts, who shall
25 represent the board of directors of the state college
26 system and the board of trustees of the university of
27 West Virginia system, shall adopt standards for the
28 education of professional educators in the state and for
29 the awarding of certificates valid in the public schools
30 of this state.

31 The standards approved by the board for teacher
32 preparation shall include a provision for the study of
33 multicultural education. As used in this section,
34 multicultural education means the study of the
35 pluralistic nature of American society including its
36 values, institutions, organizations, groups, status
37 positions and social roles.

38 Effective the first day of January, one thousand nine
39 hundred ninety-three, the standards approved by the
40 board shall also include a provision for the study of
41 classroom management techniques and shall include
42 methods of effective management of disruptive behavior
43 which shall include societal factors and their impact on
44 student behavior.

45 (b) To give prospective teachers the teaching
46 experience needed to demonstrate competence as a
47 prerequisite to certification, the state board of education
48 may enter into an agreement with county boards of
49 education for the use of the public schools. Such
50 agreement shall recognize student teaching as a joint
51 responsibility of the teacher preparation institution and
52 the cooperating public schools and shall include: (1) The
53 minimum qualifications for the employment of public
54 school teachers selected as supervising teachers; (2) the
55 remuneration to be paid public school teachers by the
56 state board, in addition to their contractual salaries, for
57 supervising student teachers; and (3) minimum
58 standards to guarantee the adequacy of the facilities and
59 program of the public school selected for student
60 teaching. The student teacher, under the direction and
61 supervision of the supervising teacher, shall exercise the
62 authority of a substitute teacher.

63 (c) The state superintendent of schools may issue
64 certificates to graduates of teacher education programs
65 and alternative teacher education programs approved
66 by the state board of education and in accordance with
67 rules adopted by the state board after consultation with
68 the secretary of education and the arts, who shall
69 represent the board of directors of the state college
70 system and the board of trustees of the university of
71 West Virginia system. A certificate to teach shall not be
72 granted to any person who is not a citizen of the United
73 States, is not of good moral character and physically,
74 mentally and emotionally qualified to perform the duties
75 of a teacher and who has not attained the age of eighteen
76 years on or before the first day of October of the year
77 in which his certificate is issued; except that an
78 exchange teacher from a foreign country, or an alien
79 person who meets the requirements to teach, may be
80 granted a permit to teach within the public schools of
81 the state.

82 (d) In consultation with the secretary of education and
83 the arts, who shall represent the board of directors of
84 the state college system and the board of trustees of the
85 university of West Virginia system, institutions of

86 higher education approved for teacher preparation may
87 cooperate with each other, with the center for profes-
88 sional development and with one or more county boards
89 of education in the organization and operation of centers
90 to provide selected phases of the teacher preparation
91 program such as student teaching, beginning teacher
92 internship programs, instruction in methodology and
93 seminar programs for college students, teachers with
94 provisional certification, professional support team
95 members and supervising teachers.

96 Such institutions of higher education, the center and
97 county boards of education may by mutual agreement
98 budget and expend funds for the operation of such
99 centers through payments to the appropriate fiscal
100 office of the participating institutions, the center and the
101 county boards.

102 The provisions of this section shall not be construed
103 to require the discontinuation of an existing student
104 teacher training center or school which meets the
105 standards of the state board of education.

106 All institutions of higher education approved for
107 teacher preparation in the school year of one thousand
108 nine hundred sixty-two—sixty-three shall continue to
109 hold that distinction so long as they meet the minimum
110 standards for teacher preparation. Nothing contained
111 herein shall infringe upon the rights granted to any
112 institution by charter given according to law previous
113 to the adoption of this code.

CHAPTER 61

(H. B. 4596—By Delegate Spencer)

[Passed March 7, 1992: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nineteen, twenty and twenty-one, article twenty-three, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section

two, article one, chapter eighteen-b; to amend and reenact section four, article two of said chapter; to further amend said article two by adding thereto a new section, designated section seven; and to amend and reenact section one, article eight of said chapter, all relating to the University of West Virginia College of Graduate Studies; changing the name to West Virginia Graduate College; relating to powers and duties of governing boards of state institutions of higher education; authorizing rents, fees and charges collected in connection with the occupancy of dormitories at such institutions to be pledged for the payment of bonds issued for dormitory construction or improvement, establishing procedures for the issue and sale of such bonds; relating to Potomac State College of West Virginia University; authorizing the board of trustees to sell certain properties; and providing for the use of the proceeds therefrom.

Be it enacted by the Legislature of West Virginia:

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

Chapter

18. Education.

18B. Higher Education.

CHAPTER 18. EDUCATION.

ARTICLE 23. ADDITIONAL POWERS, DUTIES AND RESPONSIBILITIES OF GOVERNING BOARDS OF STATE INSTITUTIONS OF HIGHER EDUCATION.

§18-23-19. Payment of principal and interest of construction bonds from revenues of dormitories, homes and refectories; redemption of bonds.

§18-23-20. When dormitories, homes or refectories become property of state.

§18-23-21. State debt not to be incurred for dormitories, homes, or refectories; federal and private assistance; provisions separable.

§18-23-19. Payment of principal and interest of construction bonds from revenues of dormitories, homes and refectories; redemption of bonds.

1 Whenever bonds are issued for the construction,
2 erection or equipment of dormitories, homes or
3 refectories, or for the improvement or equipment of
4 existing dormitories, homes or refectories, or for any or
5 all of such purposes, as joint or several projects, for
6 which a single or several issues of bonds may be issued
7 within the discretion of the governing boards, rents, fees
8 and charges shall be fixed, charged and collected in
9 connection with the use or occupancy of, or service to
10 be thereby rendered and furnished by, dormitories,
11 homes or refectories of the particular state educational
12 institution as the governing board thereof shall
13 determine, and shall be so fixed or adjusted, as to
14 provide a fund sufficient to pay the principal and
15 interest of each such issue of bonds and to provide an
16 additional fund to pay the cost of maintaining,
17 repairing, operating and insuring such dormitories,
18 homes or refectories. Whenever bonds are issued to
19 finance the construction and erection of dormitories,
20 homes or refectories, together with additions or
21 extensions to an existing dormitory, home or refectory
22 for students or teachers at state educational institutions,
23 the revenues derivable from all such dormitories, homes
24 or refectories of the particular state educational
25 institution as the governing board thereof shall
26 determine, may be pledged to provide a fund sufficient
27 to pay the principal and interest of such issue of bonds
28 and of any other bonds thereafter issued for the same
29 purpose, and to provide an additional fund to pay the
30 cost of maintaining, repairing, operating and insuring
31 such dormitories, homes or refectories. Except as may
32 otherwise be provided in the trust agreement authorized
33 in section seventeen of this article, the rents, fees and
34 charges from the dormitories, homes or refectories for

35 which a single issue of bonds is issued, except such part
36 thereof as may be necessary to pay such cost of
37 maintaining, repairing, operating and insuring during
38 any period in which such cost is not otherwise provided
39 for (during which period the rents, fees and charges
40 may be reduced accordingly), shall be transmitted each
41 month to the municipal bond commission and by it
42 placed in a special fund which is hereby pledged to and
43 charged with the payment of the principal of such bonds
44 and the interest thereon, and to the redemption or
45 repurchase of such bonds, such special fund to be a fund
46 for all such bonds without distinction or priority of one
47 over another. The moneys in such special fund, less a
48 reserve for payment of interest, if not used by the
49 municipal bond commission, within a reasonable time
50 for the purchase of bonds for cancellation at a price not
51 exceeding the market price and not exceeding the
52 redemption price, shall be applied to the redemption by
53 lot of any bonds which by their terms are then
54 redeemable, at the redemption price then applicable:
55 *Provided*, That if said revenue bonds are sold to and
56 purchased by the United States of America or any
57 federal or public agency or department created under
58 and by virtue of the laws of the United States of
59 America, then at the option of the United States of
60 America or such federal or public agency or department
61 in lieu of such moneys being transmitted to the
62 municipal bond commission and by it placed in a special
63 fund, the rents, fees and charges from such dormitories,
64 homes or refectories, except such part thereof as may
65 be necessary to pay such cost of maintaining, repairing,
66 operating and insuring as provided aforesaid, may be
67 transmitted and paid to a trustee designated and named
68 by the United States of America or such federal or
69 public agency or department in its agreement and
70 contract with the appropriate governing board, for the
71 payment of the principal of such bonds and the interest
72 thereon, under such terms and conditions as may be
73 agreed upon.

§18-23-20. When dormitories, homes or refectories become property of state.

1 When the particular bonds for any dormitory or
2 dormitories, home or homes, refectory or refectories,
3 and the interest on such bonds, shall have been paid, or
4 a sufficient amount has been provided for their payment
5 and shall continue to be held for that purpose, the said
6 dormitories, homes or refectories shall thereafter be
7 exclusively the property of the state of West Virginia,
8 and thereafter the rents, fees and charges collected for
9 the use or occupancy of, or service rendered and
10 furnished by, such dormitories, homes or refectories
11 shall be paid into the state board of investments as
12 provided by the provisions of section two, article two,
13 chapter twelve of this code, as amended, and used and
14 expended for the benefit of the institution where
15 collected: *Provided*, That nothing in this section
16 precludes any governing board from pledging such
17 rents, fees and charges to pay the principal and interest
18 on any bonds thereafter issued to construct new, or to
19 improve existing dormitories, homes or refectories
20 pursuant to section nineteen of this article. Such rents,
21 fees and charges shall be paid as may be provided in
22 a trust agreement authorized pursuant to section
23 seventeen of this article, and in the absence of such trust
24 agreement, as provided in section nineteen of this
25 article.

**§18-23-21. State debt not to be incurred for dormitories,
homes, or refectories; federal and private
assistance; provisions separable.**

1 Nothing in these sections dealing with dormitories,
2 homes or refectories shall be so construed or interpreted
3 as to authorize or permit the incurring of state debt of
4 any kind or nature as contemplated by the constitution
5 of this state in relation to the state debt. The
6 dormitories, homes or refectories herein are of the
7 character described as self-liquidating projects under
8 the laws of the United States.

9 Any governing board authorized to issue bonds under
10 the provisions of this article is authorized and empow-
11 ered to accept loans or grants or temporary advances for
12 the purpose of paying part or all of the cost of
13 construction of the dormitories, homes or refectories and

14 the other purposes herein authorized, from the United
 15 States of America or such federal or public agency or
 16 department of the United States or any private agency,
 17 corporation or individual, which temporary advances
 18 may be repaid out of the proceeds of the bonds
 19 authorized to be issued under the provisions of this
 20 article and to enter into the necessary contracts and
 21 agreements to carry out the purposes hereof with the
 22 United States of America or such federal or public
 23 agency or department of the United States, or with any
 24 private agency, corporation or individual. The
 25 provisions and parts of this section are separable and
 26 are not matters of mutual essential inducement, and it
 27 is the intention to confer the whole or any part of the
 28 powers herein provided for, and if any of the sections
 29 or provisions, or parts thereof, are for any reason illegal
 30 or invalid, it is the intention that the remaining sections
 31 and provisions or parts thereof shall remain in full force
 32 and effect.

CHAPTER 18B. HIGHER EDUCATION.

Article

- 1. **Governance.**
- 2. **University of West Virginia Board of Trustees.**
- 8. **Higher Education Full-Time Faculty Salaries.**

ARTICLE 1. GOVERNANCE.

§18B-1-2. Definitions.

1 The following words when used in this chapter and
 2 chapter eighteen-c of this code shall have the meaning
 3 hereafter ascribed to them unless the context clearly
 4 indicates a different meaning:

5 (a) "Governing board" or "board" means the
 6 university of West Virginia board of trustees or the
 7 board of directors of the state college system, whichever
 8 is applicable within the context of the institution or
 9 institutions referred to in this chapter or in other
 10 provisions of law;

11 (b) "Governing boards" or "boards" means both the
 12 board of trustees and the board of directors;

13 (c) "Community colleges" means Southern West
 14 Virginia Community College, West Virginia Northern

15 Community College, and any institution of higher
16 education which has been designated as a community
17 college by the board of directors under the provisions
18 of section four, article three of this chapter;

19 (d) "Directors" or "board of directors" means the
20 board of directors of the state college system created
21 pursuant to article three of this chapter or the members
22 thereof;

23 (e) "Higher educational institution" means any
24 institution as defined by sections 401(f), (g), (h) of the
25 federal higher education facilities act of 1963, as
26 amended;

27 (f) "Post-secondary vocational education programs"
28 means any college-level course or program beyond the
29 high school level provided through an institution of
30 higher education which results in or may result in the
31 awarding of a two-year associate degree, under the
32 jurisdiction of the board of directors;

33 (g) "Rule" or "rules" means a regulation, standard,
34 policy or interpretation of general application and
35 future effect;

36 (h) "Senior administrator" means the person hired by
37 the governing boards in accordance with section one,
38 article four of this chapter, with such powers and duties
39 as may be provided for in section two of said article four;

40 (i) "State college" means Bluefield State College,
41 Concord College, Fairmont State College, Glenville
42 State College, Shepherd College, West Liberty State
43 College, West Virginia Institute of Technology, or West
44 Virginia State College;

45 (j) "State college system" means the state colleges and
46 community colleges, and also shall include post-
47 secondary vocational education programs in the state, as
48 those terms are defined in this section;

49 (k) "State institution of higher education" means any
50 university, college or community college in the state
51 university system or the state college system as those
52 terms are defined in this section;

53 (l) "Trustees" and "board of trustees" means the
54 university of West Virginia board of trustees created
55 pursuant to article two of this chapter or the members
56 thereof;

57 (m) "University of West Virginia" and "state
58 university system" means the multi-campus, integrated
59 university of the state, consisting of West Virginia
60 University including West Virginia University at
61 Parkersburg, Potomac State College of West Virginia
62 University and the West Virginia University School of
63 Medicine; Marshall University including the Marshall
64 University School of Medicine; the West Virginia
65 Graduate College; and the West Virginia School of
66 Osteopathic Medicine; and

67 (n) "University" means the multi-campus, integrated
68 university of the state, consisting of West Virginia
69 University including West Virginia University at
70 Parkersburg, Potomac State College of West Virginia
71 University and the West Virginia University School of
72 Medicine; Marshall University including the Marshall
73 University School of Medicine; the West Virginia
74 Graduate College; or the West Virginia School of
75 Osteopathic Medicine.

ARTICLE 2. UNIVERSITY OF WEST VIRGINIA BOARD OF TRUSTEES.

§18B-2-4. Establishment and operation of graduate college; transfer of programs, etc., of Kanawha Valley Graduate Center of West Virginia University.

§18B-2-7. Authorization to sell all or part of Potomac State College of West Virginia University parcels of land located in New Creek and Keyser commonly known as the Potomac State College farm listed on the public lands inventory as 1PSC6. PSC Parcel No. 6, 1PSC14. PSC Parcel No. 14 and 1PSC16. PSC Parcel No. 16.

§18B-2-4. Establishment and operation of graduate college; transfer of programs, etc., of Kanawha Valley Graduate Center of West Virginia University.

1 The power of the board of regents, effective July one,
2 one thousand nine hundred seventy-two, to establish,
3 name, maintain and operate a graduate college whose
4 major administrative offices are located in Kanawha

5 county shall be transferred to the board of trustees
6 effective July one, one thousand nine hundred eighty-
7 nine, and shall be known as the "University of West
8 Virginia College of Graduate Studies".

9 Effective the first day of July, one thousand nine
10 hundred ninety-two, the graduate college herein
11 established shall henceforth be known as the "West
12 Virginia Graduate College". Any references in this code
13 to the University of West Virginia College of Graduate
14 Studies, the West Virginia College of Graduate Studies
15 or the College of Graduate Studies shall, upon said
16 effective date, mean the West Virginia Graduate
17 College.

18 The board of trustees shall employ a president and
19 such staff and faculty as determined appropriate for the
20 school, appoint an advisory board consistent with section
21 one, article six of this chapter and shall exercise general
22 determination, control, supervision and management of
23 the financial, business and educational policies and
24 affairs of the graduate college. The college shall be
25 authorized to offer, in their entirety or in cooperation
26 with other institutions, such curricula, programs,
27 courses and services and confer such graduate degrees
28 as may be approved by the board of trustees. The
29 trustees shall fix tuition and establish and set other fees
30 to be charged students as it deems appropriate,
31 including the establishment of special fees for specific
32 purposes. Special fees shall be paid into special funds
33 and used only for the purposes for which collected. The
34 board of trustees may allocate from the appropriations
35 for the state university system for the operation and
36 capital improvement of the graduate college.

37 All programs, activities, operations, accounts, and
38 resources of the Kanawha Valley Graduate Center of
39 West Virginia University which were transferred to the
40 graduate college, and the title to all property of the
41 Kanawha Valley Graduate Center of West Virginia
42 University which was transferred to or later vested in
43 the graduate college, shall be transferred to and remain
44 vested in the trustees. The trustees are authorized to
45 enter into contracts on behalf of the graduate college

46 with public and private educational institutions,
47 agencies and boards; with governmental agencies; and
48 with corporations, partnerships and individuals for the
49 use of physical facilities, equipment and for the
50 performance of instructional or other services.

§18B-2-7. Authorization to sell all or part of Potomac State College of West Virginia University parcels of land located in New Creek and Keyser commonly known as the Potomac State College farm listed on the public lands inventory as 1PSC6. PSC Parcel No. 6, 1PSC14. PSC Parcel No. 14 and 1PSC16. PSC Parcel No. 16.

1 (a) The board of trustees is hereby authorized and
2 empowered to sell those parcels of land located on New
3 Creek and Keyser Districts, Mineral County, West
4 Virginia, commonly known as the Potomac State College
5 Farm and listed on the Potomac State College index
6 description of parcel use and list of parcels of lands and
7 on the public lands inventory as: (1) 1PSC6. PSC Parcel
8 No. 6, containing approximately 223.17 acres, (2)
9 1PSC14. PSC Parcel No. 14, containing approximately
10 8.25 acres and (3) 1PSC16. PSC Parcel No. 16,
11 containing approximately 180.6 acres.

12 (b) Each parcel may be subdivided and sold in parts;
13 however, all sales shall be accomplished through public
14 auction, the terms of which shall be to achieve the
15 highest price for such parcels whether in whole or in
16 part: *Provided*, That prior to such action the board of
17 trustees shall have the properties appraised separately
18 by two licensed appraisers and shall not sell the
19 property for less than the average of the appraisals:
20 *Provided, however*, That in the event of sale of all or part
21 to the government of the United States of America,
22 public auction shall not be required and sale price may
23 be negotiated at or above the average of two separate
24 valuations by licensed appraisers.

25 (c) Prior to public auction, the board of trustees shall
26 schedule a public hearing to be held at a reasonable time
27 and place within the county to allow interested members

28 of the public to attend the hearing without undue
29 hardship. Members of the public may be present, submit
30 statements and testimony and question the college's
31 representative appointed pursuant to this subsection.
32 The board of trustees shall cause to be published a notice
33 of the required public hearing. The notice shall be
34 published as a Class II legal advertisement in
35 compliance with the provisions of article three, chapter
36 fifty-nine of this code and the publication area shall be
37 the county in which the affected land is located. The
38 public hearing shall be held no earlier than the
39 fourteenth successive day following the first publication
40 of the notice. The notice shall contain the time and place
41 of the public hearing along with a brief description of
42 the affected land. In addition thereto, the board of
43 trustees shall cause a copy of the required notice to be
44 posted in a conspicuous place at the affected land for
45 members of the public to observe. Such notice shall
46 remain posted for two successive weeks prior to the date
47 of the public hearing. The board of trustees shall
48 appoint a representative of the college who shall conduct
49 the required public hearing. The college's representative
50 shall have full knowledge of all the facts and
51 circumstances surrounding the proposed sale.

52 (d) The proceeds from the sale of the property
53 referred to shall be deposited in a special revenue
54 account from which the board of trustees is hereby
55 authorized to expend the fund for horticulture,
56 agriculture and forestry facilities and programs at
57 Potomac State College of West Virginia University:
58 *Provided*, That the prioritized recommendations of the
59 agriculture department advisory committee shall be
60 considered by the agriculture department faculty and
61 president of the college in the expenditure of the
62 proceeds: *Provided, however*, That the advisory
63 committee shall include one member each representing
64 agricultural education, animal or dairy science, forestry,
65 horticulture, and veterinary medicine, of which three
66 shall be alumni of the agriculture department at the
67 college.

ARTICLE 8. HIGHER EDUCATION FULL-TIME FACULTY SALARIES.

§18B-8-1. Definitions.

1 As used in this article:

2 (a) "Schedule" or "salary schedule" means the grid of
3 minimum salary figures listed in section two of this
4 article;

5 (b) "Academic rank" means the position held by a
6 faculty member as determined by the president,
7 consistent with policy established by the governing
8 board, and includes the positions of professor, associate
9 professor, assistant professor and instructor; all other
10 ranks are excluded from the provisions of this article;

11 (c) "Years of experience" means the actual number of
12 years a person has been a full-time faculty member at
13 an institution of higher education within this state.
14 Employment for nine months shall equal one year of
15 experience, but no faculty member may accrue more
16 than one year of experience during any given academic
17 year. Employment for less than full time, or less than
18 nine months during any fiscal year, shall be prorated.
19 In accordance with rules established by the governing
20 boards, a faculty member may be granted additional
21 years of experience for actual years of work or teaching
22 experience at institutions other than institutions of
23 higher education within this state;

24 (d) "Doctoral institutions" means West Virginia
25 University and Marshall University at Huntington.
26 Doctoral programs at Marshall University shall be
27 selective and nonduplicative of West Virginia
28 University unless an exception is recommended by both
29 institutions and approved by the board of trustees.
30 "Master's II institutions" means West Virginia School of
31 Osteopathic Medicine and the West Virginia Graduate
32 College; "baccalaureate and two-year institutions"
33 means Bluefield State College, Concord College,
34 Fairmont State College, Glenville State College,
35 Shepherd College, West Liberty State College, West
36 Virginia Institute of Technology, West Virginia State
37 College, West Virginia University at Parkersburg,
38 Southern West Virginia Community College, West
39 Virginia Northern Community College and Potomac

40 State College of West Virginia University and such
41 other institutions as are designated community colleges
42 by the board of directors;

43 (e) "Salary" means the total nine-month or ten-month
44 salary paid from state funds to a full-time faculty
45 member, or if other than nine or ten months, adjusted
46 to a nine-month base salary;

47 (f) "Full-time faculty" means any faculty member
48 designated as such by the president, consistent with
49 approved policy of the appropriate governing board, and
50 those persons with faculty rank who have research or
51 administrative responsibilities;

52 (g) "Fiscal year" means twelve calendar months and
53 begins on the first day of July and ends on the thirtieth
54 day of June; and

55 (h) "Merit increases and salary adjustments" means
56 the amount of additional salary increase allowed on a
57 merit basis or to rectify salary inequities or accommo-
58 date competitive market conditions, in accordance with
59 policy established by the appropriate governing board.

CHAPTER 62

(Com. Sub. for H. B. 4602—By Delegates S. Cook and Staton)

[Passed March 5, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, six and eight, article twenty-nine, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article twenty-nine by adding thereto two new sections, designated sections ten and eleven, relating to grievance procedures for education employees; authorizing filing of grievance on behalf of others similarly situated; redefining employee and chief administrator; requiring assertion of untimeliness be made prior to level two; allowing grievant to prevail by default upon untimely response; authorizing appeal of remedy received by

default; allowing grievance to be brought at higher level if evaluator at that level consents thereto; allowing presence of employee and others at certain meetings; affording protections to such employee; prohibiting certain communications between grievance evaluator and management representative; providing for appeal by adversely affected nongrievant; limiting application of doctrine of laches; amending certain deadlines; authorizing subpoena of witnesses and documents at levels two and three; allowing grievant to waive appeal to level three; requiring governing board to set forth reasons upon its waiver of level three hearing; making information and decisions of level four proceedings available at reasonable cost; requiring institution to pay for transcripts; setting forth provisions regarding self-incrimination, burden of proof and burden of going forward; authorizing court to set costs and reasonable attorneys fees to employees prevailing upon appeal to circuit or supreme court; requiring mediation attempts and report of same; requiring compilation and dissemination of level four data to governing boards; and updating references to higher education governing boards.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29. GRIEVANCE PROCEDURE.

- §18-29-1. Legislative purpose and intent.
- §18-29-2. Definitions.
- §18-29-3. Grievance procedure generally.
- §18-29-4. Procedural levels and procedure at each level.
- §18-29-6. Hearings generally.
- §18-29-8. Allocation of costs.
- §18-29-10. Mediation.
- §18-29-11. Compilation and dissemination of data.

§18-29-1. Legislative purpose and intent.

- 1 The purpose of this article is to provide a procedure

2 for employees of the governing boards of higher
3 education, state board of education, county boards of
4 education, regional educational service agencies and
5 multi-county vocational centers and their employer or
6 agents of the employer to reach solutions to problems
7 which arise between them within the scope of their
8 respective employment relationships to the end that
9 good morale may be maintained, effective job
10 performance may be enhanced and the citizens of the
11 community may be better served. This procedure is
12 intended to provide a simple, expeditious and fair
13 process for resolving problems at the lowest possible
14 administrative level and shall be construed to effectuate
15 this purpose. Nothing herein shall prohibit the informal
16 disposition of grievances by stipulation or settlement
17 agreed to in writing by the parties, nor the exercise of
18 any hearing right provided in article two, chapter
19 eighteen-a of this code or any other section of chapter
20 eighteen or eighteen-a of this code: *Provided*, That
21 employees of the governing boards of higher education
22 or of state institutions of higher education shall have the
23 option of filing grievances in accordance with the
24 provisions of this article or in accordance with the
25 provisions of policies and rules of the governing boards
26 of higher education regarding such employees. Any
27 board decision pursuant to such sections may be
28 appealed in accordance with the provisions of this
29 article unless otherwise provided in such section.

§18-29-2. Definitions.

1 For the purpose of this article:

2 (a) "Grievance" means any claim by one or more
3 affected employees of the governing boards of higher
4 education, state board of education, county boards of
5 education, regional educational service agencies and
6 multi-county vocational centers alleging a violation, a
7 misapplication or a misinterpretation of the statutes,
8 policies, rules, regulations or written agreements under
9 which such employees work, including any violation,
10 misapplication or misinterpretation regarding
11 compensation, hours, terms and conditions of
12 employment, employment status or discrimination; any

13 discriminatory or otherwise aggrieved application of
14 unwritten policies or practices of the board; any
15 specifically identified incident of harassment or
16 favoritism; or any action, policy or practice constituting
17 a substantial detriment to or interference with effective
18 classroom instruction, job performance or the health and
19 safety of students or employees.

20 A grievance may be filed by one or more employees
21 on behalf of a class of similarly situated employees:
22 *Provided*, That any similarly situated employee shall
23 indicate in writing of his or her intent to join the class
24 of similarly situated employees. Only one employee
25 filing a grievance on behalf of similarly situated
26 employees shall be required to participate in the level
27 one hearing required in section four of this article.

28 Any pension matter or other issue relating to the state
29 teachers retirement system in accordance with article
30 seven-a of this chapter or other retirement system
31 administered outside the jurisdiction of the applicable
32 governing board, any matter relating to public
33 employees insurance in accordance with article sixteen,
34 chapter five of this code, or any other matter in which
35 authority to act is not vested with the employer shall not
36 be the subject of any grievance filed in accordance with
37 the provisions of this article.

38 (b) "Days" means days of the employee's employment
39 term or prior to or subsequent to such employment term
40 exclusive of Saturday, Sunday, official holidays or school
41 closings in accordance with section two, article five,
42 chapter eighteen-a of this code.

43 (c) "Employee" means any person hired as a
44 temporary, probationary or permanent employee by an
45 institution either full or part time. A substitute is
46 considered an employee only on matters related to days
47 worked for an institution or when there is a violation,
48 misapplication or misinterpretation of a statute, policy,
49 rule, regulation or written agreement relating to such
50 substitute.

51 (d) "Grievant" means any named employee or group
52 of named employees filing a grievance as defined in

53 subsection (a) of this section.

54 (e) "Institution" means any state institution of higher
55 education, the governing boards of higher education,
56 any institution whose employees are hired by the state
57 board of education including the department of
58 education, and any public school, regional educational
59 service agency or multi-county vocational center.

60 (f) "Employer" means that institution contracting the
61 services of the employee.

62 (g) "Immediate supervisor" means that person next in
63 rank above the grievant possessing a degree of
64 administrative authority and designated as such in the
65 employee's contract, if any.

66 (h) "Chief administrator" means, as may be
67 applicable, the president of a state institution of higher
68 education, the chancellor of a governing board of higher
69 education only as to those employees employed solely by
70 the chancellor and governing board and not assigned to
71 a state institution of higher education, the senior
72 administrator as to those employees hired pursuant to
73 section two, article four, chapter eighteen-b of this code,
74 the state superintendent of schools as to employees hired
75 by the state board of education, the county
76 superintendent, the executive director of a regional
77 educational service agency or the director of a multi-
78 county vocational center.

79 (i) "Governing board" means the administrative board
80 of any state or county educational institution, including
81 institutions whose employees are hired by the state
82 board of education, and refers, as is applicable, to the
83 governing boards of higher education, state board of
84 education, county boards of education, the school board
85 members of any board of directors of a regional
86 educational service agency or the school board members
87 of any administrative council of a multi-county
88 vocational center.

89 (j) "Grievance evaluator" means that individual or
90 governing board authorized to render a decision on a
91 grievance.

92 (k) "Board" means the education employees grievance
93 board.

94 (l) "Hearing examiner" means the individual or
95 individuals employed by the board in accordance with
96 section five of this article.

97 (m) "Discrimination" means any differences in the
98 treatment of employees unless such differences are
99 related to the actual job responsibilities of the employees
100 or agreed to in writing by the employees.

101 (n) "Harassment" means repeated or continual
102 disturbance, irritation or annoyance of an employee
103 which would be contrary to the demeanor expected by
104 law, policy and profession.

105 (o) "Favoritism" means unfair treatment of an
106 employee as demonstrated by preferential, exceptional
107 or advantageous treatment of another or other
108 employees.

109 (p) "Reprisal" means the retaliation of an employer or
110 agent toward a grievant or any other participant in the
111 grievance procedure either for an alleged injury itself
112 or any lawful attempt to redress it.

113 (q) "Employee organization" means any employee
114 advocacy organization whose membership includes
115 employees as defined in this section which has filed with
116 the board the name, address, chief officer and
117 membership criteria of the organization.

118 (r) "Representative" means any employee
119 organization, fellow employee, legal counsel or other
120 person or persons designated by the grievant as the
121 grievant's representative.

§18-29-3. Grievance procedure generally.

1 (a) A grievance must be filed within the times
2 specified in section four of this article and shall be
3 processed as rapidly as possible. The number of days
4 indicated at each level specified in section four of this
5 article shall be considered as the maximum number of
6 days allowed and, if a decision is not rendered at any
7 level within the prescribed time limits, the grievant may

8 appeal to the next level: *Provided*, That the specified
9 time limits may be extended by mutual written
10 agreement and shall be extended whenever a grievant
11 is not working because of such circumstances as
12 provided for in section ten, article four, chapter
13 eighteen-a of this code. Any assertion by the employer
14 that the filing of the grievance at level one was untimely
15 must be asserted by the employer on behalf of the
16 employer at or before the level two hearing. If a
17 grievance evaluator required to respond to a grievance
18 at any level fails to make a required response in the time
19 limits required in this article, unless prevented from
20 doing so directly as a result of sickness or illness, the
21 grievant shall prevail by default. Within five days of
22 such default, the employer may request a hearing before
23 a level four hearing examiner for the purpose of
24 showing that the remedy received by the prevailing
25 grievant is contrary to law or clearly wrong. In making
26 a determination regarding the remedy, the hearing
27 examiner shall presume the employee prevailed on the
28 merits of the grievance and shall determine whether the
29 remedy is contrary to law or clearly wrong in light of
30 that presumption. If the examiner finds that the remedy
31 is contrary to law, or clearly wrong, the examiner may
32 modify the remedy to be granted so as to comply with
33 the law and to make the grievant whole.

34 (b) If the employer or agent intends to assert the
35 applicability of any statute, policy, rule, regulation or
36 written agreement or submits any written response to
37 the filed grievance at any level, a copy thereof shall be
38 forwarded to the grievant and any representative of the
39 grievant so named in the filed grievance. Anything so
40 submitted and the grievant's response thereto, if any,
41 shall become part of the record. Failure to assert such
42 statute, policy, rule, regulation or written agreement at
43 any level shall not prevent the subsequent submission
44 thereof in accordance with the provisions of this
45 subsection.

46 (c) The grievant may file the grievance at the level
47 vested with the authority to grant the requested relief
48 if the grievance evaluator at that level agrees in writing

49 thereto. In the event a grievance is filed at a higher
50 level, the employer shall provide copies to each lower
51 administrative level.

52 (d) An employee may withdraw a grievance at any
53 time by notice, in writing, to the level wherein the
54 grievance is then current. Such grievance may not be
55 reinstated by the grievant unless such reinstatement is
56 granted by the grievance evaluator at the level where
57 the grievance was withdrawn. If more than one
58 employee is named as grievant in a particular
59 grievance, the withdrawal of one employee shall not
60 prejudice the rights of any other employee named in the
61 grievance. In the event a grievance is withdrawn or an
62 employee withdraws from a grievance, such employer
63 shall notify in writing each lower administrative level.

64 (e) Grievances may be consolidated at any level by
65 agreement of all parties.

66 (f) An employee may have the assistance of one or
67 more fellow employees, an employee organization
68 representative or representatives, legal counsel or any
69 other person in the preparation and presentation of the
70 grievance. At the request of the grievant, such person
71 or persons may be present at any step of the procedure,
72 as well as at any investigative meeting or other meeting
73 which is held with the employee for the purpose of
74 discussing the possibility of disciplinary action. When a
75 fellow employee is assisting a grievant, the employee
76 shall do so without loss of pay and shall have protection
77 from reprisal as that term is defined in section two of
78 this article.

79 (g) If a grievance is filed which cannot be resolved
80 within the time limits set forth in section four of this
81 article prior to the end of the employment term, the time
82 limit set forth in said section shall be reduced as agreed
83 to in writing by both parties so that the grievance
84 procedure may be concluded within ten days following
85 the end of the employment term or an otherwise
86 reasonable time.

87 (h) No reprisals of any kind shall be taken by any
88 employer or agent of the employer against any

89 interested party, or any other participant in the
90 grievance procedure by reason of such participation. A
91 reprisal constitutes a grievance, and any person held to
92 be responsible for reprisal action shall be subject to
93 disciplinary action for insubordination.

94 (i) Except for the informal attempt to resolve the
95 grievance as provided for in subsection (a), section four
96 of this article, decisions rendered at all levels of the
97 grievance procedure shall be dated, shall be in writing
98 setting forth the decision or decisions and the reasons
99 therefor, and shall be transmitted within the time
100 prescribed to the grievant and any representative
101 named in the grievance. If the grievant is denied the
102 relief sought, the decision shall include the name of the
103 individual at the next level to whom appeal may be
104 made.

105 (j) Once a grievance has been filed, supportive or
106 corroborative evidence may be presented at any
107 conference or hearing conducted pursuant to the
108 provisions of this article. Whether evidence substantially
109 alters the original grievance and renders it a different
110 grievance is within the discretion of the grievance
111 evaluator at the level wherein the new evidence is
112 presented. If the grievance evaluator rules that the
113 evidence renders it a different grievance, the party
114 offering the evidence may withdraw same; the parties
115 may consent to such evidence, or the grievance evaluator
116 may decide to hear the evidence or rule that the grievant
117 must file a new grievance. The time limitations for
118 filing the new grievance shall be measured from the
119 date of such ruling.

120 (k) Any change in the relief sought by the grievant
121 shall be consented to by all parties or may be granted
122 at level four within the discretion of the hearing
123 examiner.

124 (l) Forms for filing grievances, giving notice, taking
125 appeals, making reports and recommendations, and all
126 other necessary documents shall be made available by
127 the immediate supervisor to any employee upon request.
128 Such forms shall include information as prescribed by

129 the board. The grievant shall have access to the
130 institution's equipment for purposes of preparing
131 grievance documents subject to the reasonable rules of
132 the employer governing the use of such equipment.

133 (m) Notwithstanding the provisions of section three,
134 article nine-a, chapter six of this code, or any other
135 provision relating to open proceedings, all conferences
136 and hearings pursuant to this article shall be conducted
137 in private except that, upon the grievant's request,
138 conferences and hearings at levels two and three shall
139 be public. Within the discretion of the hearing
140 examiner, conferences and hearings may be public at
141 level four.

142 (n) No person or governing board to which appeal has
143 been made shall confer or correspond with a grievance
144 evaluator at a previous level or a management
145 representative who recommended or approved the
146 grieved action regarding the merits of the grievance
147 unless all parties to the grievance are present.

148 (o) Grievances may be processed at any reasonable
149 time, but attempts shall be made to process the
150 grievance on work time in a manner which does not
151 interfere with the normal operation of the institution.
152 Grievances processed on work time shall not result in
153 any reduction in salary, wages, rate of pay or other
154 benefits of the employee and shall be counted as time
155 worked.

156 Should any employer or the employer's agent cause a
157 conference or hearing to be postponed without adequate
158 notice to employees who are scheduled to appear during
159 their normal work day, such employees will not suffer
160 any loss in pay for work time lost.

161 (p) Any grievance evaluator may be excused from
162 participation in the grievance process for reasonable
163 cause, including, but not limited to, conflict of interest
164 or incapacitation, and in such case the grievance
165 evaluator at the next higher level shall designate an
166 alternate grievance evaluator if such is deemed
167 reasonable and necessary.

168 (q) No less than one year following resolution of a
169 grievance at any level, the grievant may by request in
170 writing have removed any record of the grievance from
171 any file kept by the employer.

172 (r) All grievance forms and reports shall be kept in
173 a file separate from the personnel file of the employee
174 and shall not become a part of such personnel file, but
175 shall remain confidential except by mutual written
176 agreement of the parties.

177 (s) The number of grievances filed against an
178 employer or agent or by an employee shall not, per se,
179 be an indication of such employer's or agent's or such
180 employee's job performance.

181 (t) Any chief administrator or governing board of an
182 institution in which a grievance was filed may appeal
183 such decision on the grounds that the decision (1) was
184 contrary to law or lawfully adopted rule, regulation or
185 written policy of the chief administrator or governing
186 board, (2) exceeded the hearing examiner's statutory
187 authority, (3) was the result of fraud or deceit, (4) was
188 clearly wrong in view of the reliable, probative and
189 substantial evidence on the whole record, or (5) was
190 arbitrary or capricious or characterized by abuse of
191 discretion. Such appeal shall follow the procedure
192 regarding appeal provided the grievant in section four
193 of this article and provided both parties in section seven
194 of this article.

195 (u) Upon a timely request, any employee shall be
196 allowed to intervene and become a party to a grievance
197 at any level when that employee claims that the
198 disposition of the action may substantially and adversely
199 affect his or her rights or property and that his or her
200 interest is not adequately represented by the existing
201 parties.

202 (v) The doctrine of laches shall not be applied to
203 prevent a grievant or grievants from recovering back
204 pay or other appropriate relief for a period of one year
205 prior to the filing of a grievance based upon a
206 continuing practice.

§18-29-4. Procedural levels and procedure at each level.

1 (a) Level one.

2 (1) Before a grievance is filed and within fifteen days
3 following the occurrence of the event upon which the
4 grievance is based, or within fifteen days of the date on
5 which the event became known to the grievant or within
6 fifteen days of the most recent occurrence of a
7 continuing practice giving rise to a grievance, the
8 grievant or the designated representative shall schedule
9 a conference with the immediate supervisor to discuss
10 the nature of the grievance and the action, redress or
11 other remedy sought.

12 The conference with the immediate supervisor
13 concerning the grievance shall be conducted within ten
14 days of the request therefor, and any discussion shall be
15 by the grievant in the grievant's own behalf or by both
16 the grievant and the designated representative.

17 (2) The immediate supervisor shall respond to the
18 grievance within ten days of the conference.

19 (3) Within ten days of receipt of the response from the
20 immediate supervisor following the informal conference,
21 a written grievance may be filed with said supervisor
22 by the grievant or the designated representative on a
23 form furnished by the employer or agent.

24 (4) The immediate supervisor shall state the decision
25 to such filed grievance within five days after the
26 grievance is filed.

27 (b) Level two.

28 Within five days of receiving the decision of the
29 immediate supervisor, the grievant may appeal the
30 decision to the chief administrator, and such
31 administrator or his or her designee shall conduct a
32 hearing in accordance with section six of this article
33 within five days of receiving the appeal and shall issue
34 a written decision within five days of such hearing. Such
35 decision may affirm, modify or reverse the decision
36 appealed from. Level four hearing examiners or the
37 chief administrator shall have the authority to subpoena

38 witnesses and documents for level two and level three
39 hearings in accordance with the provision of section one,
40 article five, chapter twenty-nine-a of this code, and may
41 issue a subpoena upon the written request of any party
42 to the grievance.

43 (c) Level three.

44 Within five days of receiving the decision of the chief
45 administrator, the grievant may appeal the decision to
46 the governing board of the institution or may proceed
47 directly to level four. An appeal to the governing board
48 shall set forth the reasons why the grievant is seeking
49 a level three review of the decision of the chief
50 administrator. Within five days of receiving the appeal,
51 such governing board may conduct a hearing in
52 accordance with section six of this article, may review
53 the record submitted by the chief administrator and
54 render a decision based on such record, or may waive
55 the right granted herein and shall notify the grievant
56 of such waiver. Any decision by the governing board,
57 including a decision to waive participation in the
58 grievance, shall be in writing and shall set forth the
59 reasons for such decision, including the decision to waive
60 participation in the grievance. If a hearing is held under
61 the provisions of this subsection, the governing board
62 shall issue a decision affirming, modifying or reversing
63 the decision of the chief administrator within five days
64 of such hearing.

65 (d) Level four.

66 (1) If the grievant is not satisfied with the action taken
67 by the chief administrator, or, if appealed to level three,
68 the action taken by the governing board, within five
69 days of the written decision the grievant may request,
70 in writing, on a form furnished by the employer, that
71 the grievance be submitted to a hearing examiner as
72 provided for in section five of this article, such hearing
73 to be conducted in accordance with section six of this
74 article within ten days following the request therefor:
75 *Provided*, That such hearing may be held within thirty
76 days following the request, or within such time as is
77 mutually agreed upon by the parties, if the hearing

78 examiner gives reasonable cause, in writing, as to the
79 necessity for such delay.

80 (2) Within thirty days following the hearing, the
81 hearing examiner shall render a decision in writing to
82 all parties setting forth findings and conclusions on the
83 issues submitted. Subject to the provisions of section
84 seven of this article, the decision of the hearing
85 examiner shall be final upon the parties and shall be
86 enforceable in circuit court.

87 All information and data generated by the board and
88 in its custody relative to level four decisions and copies
89 of such decisions shall be provided at reasonable cost to
90 any individual requesting it.

§18-29-6. Hearings generally.

1 The chief administrator or his or her designee, the
2 governing board or the hearing examiner shall conduct
3 all hearings in an impartial manner and shall ensure
4 that all parties are accorded procedural and substantive
5 due process. All parties shall have an opportunity to
6 present evidence and argument with respect to the
7 matters and issues involved, to cross examine and to
8 rebut evidence. Notice of a hearing shall be sent to all
9 parties and their named representative and shall
10 include the date, time and place of the hearing.

11 The institution that is party to the grievance shall
12 produce prior to such hearing any documents, not
13 privileged, and which are relevant to the subject matter
14 involved in the pending grievance, that has been
15 requested by the grievant, in writing.

16 The superintendent, the president of the state or
17 county board of education or the state or county board
18 member designated by such president, the executive
19 director of the regional educational service agency, the
20 director of the multi-county vocational center, the
21 chancellor of the higher education governing boards, the
22 president of any state institution of higher education, the
23 senior administrator, the chief administrator or his or
24 her designee, each member of the governing board or
25 the hearing examiner shall have the power to (1)

26 administer oaths and affirmations, (2) regulate the
27 course of the hearing, (3) hold conferences for the
28 settlement or simplification of the issues by consent of
29 the parties, (4) exclude immaterial, irrelevant or
30 repetitious evidence, (5) sequester witnesses, (6) restrict
31 the number of advocates, and take any other action not
32 inconsistent with the rules and regulations of the board
33 or the provisions of this article.

34 All the testimony and evidence at any hearing shall
35 be recorded by mechanical means, and all recorded
36 testimony and evidence at such hearing shall be
37 transcribed and certified at the request of any party to
38 the institution or board. The institution shall be
39 responsible for promptly transcribing the testimony and
40 evidence and for providing a copy of the certified
41 transcription to the party requesting same. The
42 institution shall be responsible for all costs relating to
43 preparation and duplication of the transcript. The
44 hearing examiner may also request and be provided a
45 transcript upon appeal to level four and allocate the
46 costs therefor as prescribed in section eight of this
47 article.

48 Formal rules of evidence shall not be applied, but
49 parties shall be bound by the rules of privilege
50 recognized by law. In any grievance involving
51 disciplinary or discharge actions, no employee may be
52 compelled to testify against himself or herself, the
53 burden of proof is on the employer, and the employer
54 shall present its case first.

55 All materials submitted in accordance with section
56 three of this article; the mechanical recording of all
57 testimony and evidence or the transcription thereof, if
58 any; the decision; and any other materials considered in
59 reaching the decision shall be made a part and shall
60 constitute the record of a grievance. Such record shall
61 be submitted to any level at which appeal has been
62 made, and such record shall be considered, but the
63 development of such record shall not be limited thereby.

64 Every decision pursuant to a hearing shall be in
65 writing and shall be accompanied by findings of fact

66 and conclusions of law. Prior to such decision any party
67 may propose findings of fact and conclusions of law.

§18-29-8. Allocation of costs.

1 Any expenses incurred relative to the grievance
2 procedure at levels one through three shall be borne by
3 the party incurring such expenses except as to the costs
4 of transcriptions as provided for in section six of this
5 article.

6 In the event an employee or employer appeals an
7 adverse level four decision to the circuit court or an
8 adverse circuit court decision to the supreme court, and
9 the employee substantially prevails upon such appeal,
10 the employee or the organization representing the
11 employee is entitled to recover court costs and
12 reasonable attorney fees, to be set by the court, from the
13 employer.

§18-29-10. Mediation.

1 To such extent as may be feasible with existing
2 personnel and resources, the education employees
3 grievance board shall attempt mediation and other
4 alternative dispute resolution techniques to actively
5 assist the parties in identifying, clarifying and resolving
6 issues regarding the grievance at any time prior to the
7 level four hearing.

8 All of the information that is provided by the parties
9 during mediation shall remain confidential. Mediators
10 shall not be called as witnesses to provide testimony in
11 unresolved grievances that proceed to a grievance
12 hearing, and any hearing examiner involved in a
13 mediation process shall not hear the grievance nor be
14 consulted regarding the merits of the grievance.

15 The education employees grievance board shall
16 monitor the results of all mediation attempts and report
17 to the Legislature prior to the first day of January, one
18 thousand nine hundred ninety-three, regarding the
19 feasibility of the process, the cost effectiveness of the
20 process, the success of the process in resolving
21 grievances, the resources which would be required to
22 expand the process, and such other information or

23 recommendations as the grievance board may deem
24 appropriate and helpful.

§18-29-11. Compilation and dissemination of data.

1 In addition to such other data as may be required
2 under the provisions of this article, beginning with the
3 quarter ending the first day of October, one thousand
4 nine hundred ninety-two, the education employees
5 grievance board shall provide each governing board and
6 employee organization, within thirty days of the end of
7 each quarter, a statewide quarterly report summarizing
8 matters decided by the hearing examiners during the
9 preceding quarter. Each report shall set forth any
10 information deemed to be helpful in providing an
11 overview of grievance-related issues: *Provided*, That
12 nothing contained in the report shall breach the
13 confidentiality of a grievant or other person, nor shall
14 any matter be disclosed if the disclosure may violate any
15 provision of law. The grievance board shall make an
16 effort to provide information applicable to particular
17 counties, institutions or governing boards, as may be
18 appropriate.

19 Each report shall then be distributed to each member
20 of the governing board so that the governing board may
21 monitor the significant personnel-related matters which
22 came before the grievance board and thereby ascertain
23 whether any personnel policies need to be reviewed,
24 revised or enforced.

25 Each quarterly report shall be incorporated into the
26 annual report required by section five of this article,
27 which shall also be distributed to each governing board
28 and employee organization.

CHAPTER 63

(Com. Sub. for S. B. 550—By Senator Wagner)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article three,
chapter eighteen-a of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, relating to establishing requirements for certification in educational administration.

Be it enacted by the Legislature of West Virginia:

That section two-a, article three, 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 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-2a. Authority of state superintendent to issue certificates; kinds of certificates.

1 In accordance with state board of education rules for
 2 the education of professional educators adopted after
 3 consultation with the secretary of education and the
 4 arts, the state superintendent of schools may issue
 5 certificates valid in the public schools of the state:
 6 *Provided*, That a certificate shall not be issued to any
 7 person who is not a citizen of the United States, is not
 8 of good moral character and physically, mentally and
 9 emotionally qualified to perform the duties for which
 10 the certification would be granted and who has not
 11 attained the age of eighteen years on or before the first
 12 day of October of the year in which the certificate is
 13 issued: *Provided, however*, That an exchange teacher
 14 from a foreign country or an alien person who meets the
 15 requirements to teach may be granted a permit to teach
 16 within the public schools of the state.

17 Certificates authorized to be issued include:

18 (1) *Professional teaching certificates*. — A professional
 19 teaching certificate for teaching in the public schools
 20 may be issued to a person who:

21 (A) Has at least a bachelor's degree from an
 22 accredited institution of higher education in this state,
 23 has completed a program for the education of teachers
 24 which meets the requirements approved by the state
 25 board of education or has met equivalent standards at
 26 institutions in other states and has passed appropriate
 27 state board approved basic skills and subject matter
 28 tests or has completed three years of successful

29 experience within the last seven years in the area for
30 which licensure is being sought; or

31 (B) Has at least a bachelor's degree in a discipline
32 taught in the public schools from an accredited
33 institution of higher education, has passed appropriate
34 state board approved basic skills and subject matter
35 tests or has completed three years of successful
36 experience within the last seven years in the area for
37 which licensure is being sought, has completed an
38 alternative program for teacher education approved by
39 the state board and is recommended for a certificate by
40 the chairperson of the professional support team of the
41 person's alternative program or the state superintendent
42 based on documentation submitted.

43 The certificate shall be endorsed to indicate the grade
44 level or levels or areas of specialization in which the
45 person is certified to teach or to serve in the public
46 schools. The initial professional certificate shall be
47 issued provisionally for a period of three years from the
48 date of issuance and may be converted to a professional
49 certificate valid for five years subject to successful
50 completion of a beginning teacher internship, if
51 applicable, or renewed subject to rules adopted by the
52 state board.

53 (2) *Professional administrative certificate.* — A
54 professional administrative certificate, endorsed for
55 serving in the public schools, with specific endorsement
56 as a principal, vocational administrator, supervisor of
57 instructions or superintendent, may be issued to a
58 person who has completed requirements all to be
59 approved by the state board as follows: For a master's
60 degree from an institution of higher education
61 accredited to offer a master's degree, has successfully
62 completed an approved program for administrative
63 certification, developed by the state board of education
64 in cooperation with the governing boards of the
65 university of West Virginia system and the state college
66 system, has successfully completed education and
67 training in evaluation skills through the center for
68 professional development, or equivalent education and
69 training in evaluation skills, and three years of

70 management level experience: *Provided*, That anyone
71 having received a certificate during the period from the
72 thirtieth day of August, one thousand nine hundred
73 ninety, until the effective date of this bill without having
74 met the above requirements shall complete those
75 requirements within five years after the effective date
76 of this bill: *Provided, however*, That any person serving
77 in the position of dean of students on the effective date
78 of this section shall not be required to hold a professional
79 administrative certificate. Beginning the first day of
80 September, one thousand nine hundred ninety-two, the
81 initial professional administrative certificate shall be
82 issued provisionally for a period of five years. This
83 certificate may be converted to a professional
84 administrative certificate valid for five years or
85 renewed, subject to the regulations of the state board.

86 (3) *Paraprofessional certificate*. — A paraprofessional
87 certificate may be issued to a person who has completed
88 thirty-six semester hours of post-secondary education or
89 its equivalent in subjects directly related to performance
90 of the job, all approved by the state board, and can
91 demonstrate the proficiencies to perform duties as
92 required of a paraprofessional as defined in section
93 eight, article four of this chapter.

94 (4) *Other certificates; permits*. — Other certificates
95 and permits may be issued, subject to the approval of
96 the state board, to persons who do not qualify for the
97 professional or paraprofessional certificate. Such
98 certificates or permits shall not be given permanent
99 status and persons holding such shall meet renewal
100 requirements provided by law and by regulation, unless
101 the state board declares certain of these certificates to
102 be the equivalent of the professional certificate.

103 Within the category of other certificates and permits,
104 the state superintendent may issue certificates for
105 persons to serve in the public schools as athletic coaches
106 or other extracurricular activities coaches whose duties
107 may include the supervision of students, subject to the
108 following limitations: (A) Such person shall be employed
109 under a contract with the county board of education
110 which specifies the duties to be performed, which

111 specifies a rate of pay equivalent to the rate of pay for
112 professional educators in the district who accept similar
113 duties as extra duty assignments and which provides for
114 liability insurance associated with the activity: *Pro-*
115 *vided*, That such persons shall not be considered
116 employees of the board for salary and benefit purposes
117 other than as specified in the contract; (B) a currently
118 employed certified professional educator has not applied
119 for the position; and (C) such person completes an
120 orientation program designed and approved in accor-
121 dance with state board rules which shall be adopted no
122 later than the first day of January, one thousand nine
123 hundred ninety-one.

CHAPTER 64

(Com. Sub. for H. B. 4552—By Delegates Spencer and Williams)

[Passed March 7, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend article three, 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 nine; and to amend and reenact sections eight, eight-a and eight-e, article four of said chapter, all relating to creating county service personnel staff development councils; establishing a class title “autism mentor” and providing a pay scale grade for those personnel; providing minimum pay for service personnel engaged in the removal of asbestos material or related duties; and redefining certain instances when an employee is deemed qualified for a classification title.

Be it enacted by the Legislature of West Virginia:

That article three, 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 nine; and that sections eight, eight-a and eight-e, article four of said chapter be amended and reenacted, all to read as follows:

Article

3. Training, Certification, Licensing, Professional Development.
4. Salaries, Wages and Other Benefits.

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.**§18A-3-9. County service personnel staff development councils.**

1 The Legislature finds the professional expertise and
2 insight of service personnel to be an invaluable
3 ingredient in the development and delivery of staff
4 development programs which meet the needs of service
5 personnel.

6 Therefore, a service personnel staff development
7 council comprised of representation from the various
8 categories of service personnel employment shall be
9 established in each school district in the state in
10 accordance with rules adopted by the state board of
11 education. Nominations of service personnel to serve on
12 the county service personnel staff development council
13 may be submitted by the six groups as defined in
14 subsection (e), section one, article one of the district to
15 the county superintendent who shall prepare and
16 distribute ballots and tabulate the votes of the counties
17 service personnel voting on the persons nominated. Each
18 county staff service personnel development council shall
19 consist of two employees from each category of
20 employment. Such councils shall have final authority to
21 propose staff development programs for their peers
22 based upon rules established by statute and the council
23 on service personnel education. The county
24 superintendent or a designee shall enjoy an advisory,
25 nonvoting role on said council. The county board shall
26 make available an amount equal to one tenth of one
27 percent of the amounts provided in accordance with
28 section five, article nine-a, chapter eighteen of this code
29 and credit such funds to an account to be used by the
30 council to fulfill its objectives. The local board will have
31 the final approval of all proposed disbursements.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8. Employment term and class titles of service personnel; definitions.

§18A-4-8a. Service personnel minimum monthly salaries.

§18A-4-8e. Competency testing for service personnel.

§18A-4-8. Employment term and class titles of service personnel; definitions.

1 The purpose of this section is to establish an
2 employment term and class titles for service personnel.
3 The employment term for service personnel shall be no
4 less than ten months, a month being defined as twenty
5 employment days: *Provided*, That the county board of
6 education may contract with all or part of these
7 personnel for a longer term. The beginning and closing
8 dates of the ten-month employment term shall not
9 exceed forty-three weeks.

10 Service personnel employed on a yearly or twelve-
11 month basis may be employed by calendar months.
12 Whenever there is a change in job assignment during
13 the school year, the minimum pay scale and any county
14 supplement shall be applicable.

15 Service personnel employed in the same classification
16 for more than the two hundred day minimum
17 employment term shall be paid for additional
18 employment at a daily rate of not less than the daily rate
19 paid for the two hundred day minimum employment
20 term.

21 No service employee, without his agreement, shall be
22 required to report for work more than five days per
23 week and no part of any working day may be
24 accumulated by the employer for future work
25 assignments, unless the employee agrees thereto.

26 Should an employee whose regular work week is
27 scheduled from Monday through Friday agree to
28 perform any work assignments on a Saturday or
29 Sunday, the employee shall be paid for at least one-half
30 day of work for each such day he reports for work, and
31 if the employee works more than three and one-half
32 hours on any Saturday or Sunday, he shall be paid for
33 a least a full day of work for each such day.

34 Custodians required to work a daily work schedule
35 that is interrupted, that is, who do not work a continuous

36 period in one day, shall be paid additional compensation
37 which shall be equal to at least one eighth of their total
38 salary as provided by their state minimum salary and
39 any county pay supplement, and payable entirely from
40 county funds.

41 Upon the change in classification or upon meeting the
42 requirements of an advanced classification of or by any
43 employee, his salary shall be made to comply with the
44 requirements of this article, and to any county salary
45 schedule in excess of the minimum requirements of this
46 article, based upon his advanced classification and
47 allowable years of employment.

48 An employee's contract as provided in section five,
49 article two of this chapter shall state the appropriate
50 monthly salary the employee is to be paid, based on the
51 class title as provided in this article and any county
52 salary schedule in excess of the minimum requirements
53 of this article.

54 The column heads of the state minimum pay scale and
55 class titles, set forth in section eight-a of this article, are
56 defined as follows:

57 "Pay grade" means the monthly salary applicable to
58 class titles of service personnel.

59 "Years of employment" means the number of years
60 which an employee classified as service personnel has
61 been employed by a board of education in any position
62 prior to or subsequent to the effective date of this section
63 and including service in the armed forces of the United
64 States if the employee were employed at the time of his
65 induction. For the purpose of section eight-a of this
66 article, years of employment shall be limited to the
67 number of years shown and allowed under the state
68 minimum pay scale as set forth in section eight-a of this
69 article.

70 "Class title" means the name of the position or job held
71 by service personnel.

72 "Accountant I" means personnel employed to
73 maintain payroll records and reports and perform one
74 or more operations relating to a phase of the total

75 payroll.

76 "Accountant II" means personnel employed to
77 maintain accounting records and to be responsible for
78 the accounting process associated with billing, budgets,
79 purchasing and related operations.

80 "Accountant III" means personnel who are employed
81 in the county board of education office to manage and
82 supervise accounts payable and/or payroll procedures.

83 "Aide I" means those personnel selected and trained
84 for teacher-aide classifications such as monitor aide,
85 clerical aide, classroom aide or general aide.

86 "Aide II" means those personnel referred to in the
87 "Aide I" classification who have completed a training
88 program approved by the state board of education, or
89 who hold a high school diploma or have received a
90 general educational development certificate. Only
91 personnel classified in an Aide II class title shall be
92 employed as an aide in any special education program.

93 "Aide III" means those personnel referred to in the
94 "Aide I" classification who hold a high school diploma
95 or a general educational development certificate, and
96 have completed six semester hours of college credit at
97 an institution of higher education or are employed as an
98 aide in a special education program and have one year's
99 experience as an aide in special education.

100 "Aide IV" means personnel referred to in the "Aide
101 I" classification who hold a high school diploma or a
102 general educational development certificate and who
103 have completed eighteen hours of state board-approved
104 college credit at a regionally accredited institution of
105 higher education, or who have completed fifteen hours
106 of state board-approved college credit at a regionally
107 accredited institution of higher education and
108 successfully completed an in-service training program
109 determined by the state board to be the equivalent of
110 three hours of college credit.

111 "Audiovisual technician" means personnel employed
112 to perform minor maintenance on audiovisual
113 equipment, films, supplies and the filling of requests for

114 equipment.

115 "Auditor" means personnel employed to examine and
116 verify accounts of individual schools and to assist schools
117 and school personnel in maintaining complete and
118 accurate records of their accounts.

119 "Autism mentor" means personnel who work with
120 autistic students and who meet standards and
121 experience to be determined by the state board:
122 *Provided*, That the state board shall determine these
123 standards and experience on or before the first day of
124 July, one thousand nine hundred ninety-two.

125 "Braille or sign language specialist" means personnel
126 employed to provide braille and/or sign language
127 assistance to students.

128 "Bus operator" means personnel employed to operate
129 school buses and other school transportation vehicles as
130 provided by the state board of education.

131 "Buyer" means personnel employed to review and
132 write specifications, negotiate purchase bids and
133 recommend purchase agreements for materials and
134 services that meet predetermined specifications at the
135 lowest available costs.

136 "Cabinetmaker" means personnel employed to
137 construct cabinets, tables, bookcases and other
138 furniture.

139 "Cafeteria manager" means personnel employed to
140 direct the operation of a food services program in a
141 school, including assigning duties to employees,
142 approving requisitions for supplies and repairs, keeping
143 inventories, inspecting areas to maintain high standards
144 of sanitation, preparing financial reports and keeping
145 records pertinent to food services of a school.

146 "Carpenter I" means personnel classified as a
147 carpenter's helper.

148 "Carpenter II" means personnel classified as a
149 journeyman carpenter.

150 "Chief mechanic" means personnel employed to be

151 responsible for directing activities which ensure that
152 student transportation or other board-owned vehicles
153 are properly and safely maintained.

154 "Clerk I" means personnel employed to perform
155 clerical tasks.

156 "Clerk II" means personnel employed to perform
157 general clerical tasks, prepare reports and tabulations
158 and operate office machines.

159 "Computer operator" means qualified personnel
160 employed to operate computers.

161 "Cook I" means personnel employed as a cook's helper.

162 "Cook II" means personnel employed to interpret
163 menus, to prepare and serve meals in a food service
164 program of a school and shall include personnel who
165 have been employed as a "Cook I" for a period of four
166 years, if such personnel have not been elevated to this
167 classification within that period of time.

168 "Cook III" means personnel employed to prepare and
169 serve meals, make reports, prepare requisitions for
170 supplies, order equipment and repairs for a food service
171 program of a school system.

172 "Crew leader" means personnel employed to organize
173 the work for a crew of maintenance employees to carry
174 out assigned projects.

175 "Custodian I" means personnel employed to keep
176 buildings clean and free of refuse.

177 "Custodian II" means personnel employed as a
178 watchman or groundsman.

179 "Custodian III" means personnel employed to keep
180 buildings clean and free of refuse, to operate the heating
181 or cooling systems and to make minor repairs.

182 "Custodian IV" means personnel employed as head
183 custodians. In addition to providing services as defined
184 in "Custodian III," their duties may include supervising
185 other custodian personnel.

186 "Director or coordinator of services" means personnel

187 not defined as professional personnel or professional
188 educators in section one, article one of this chapter, who
189 are assigned to direct a department or division.

190 "Draftsman" means personnel employed to plan,
191 design and produce detailed architectural/engineering
192 drawings.

193 "Electrician I" means personnel employed as an
194 apprentice electrician helper or who holds an electrician
195 helper license issued by the state fire marshal.

196 "Electrician II" means personnel employed as an
197 electrician journeyman or who holds a journeyman
198 electrician license issued by the state fire marshal.

199 "Electronic technician I" means personnel employed
200 at the apprentice level to repair and maintain electronic
201 equipment.

202 "Electronic technician II" means personnel employed
203 at the journeyman level to repair and maintain
204 electronic equipment.

205 "Executive secretary" means personnel employed as
206 the county school superintendent's secretary or as a
207 secretary who is assigned to a position characterized by
208 significant administrative duties.

209 "Food services supervisor" means qualified personnel
210 not defined as professional personnel or professional
211 educators in section one, article one of this chapter,
212 employed to manage and supervise a county school
213 system's food service program. The duties would include
214 preparing in-service training programs for cooks and
215 food service employees, instructing personnel in the
216 areas of quantity cooking with economy and efficiency,
217 and keeping aggregate records and reports.

218 "Foremen" means skilled persons employed for
219 supervision of personnel who work in the areas of repair
220 and maintenance of school property and equipment.

221 "General maintenance" means personnel employed as
222 helpers to skilled maintenance employees and to
223 perform minor repairs to equipment and buildings of a
224 county school system.

225 "Glazier" means personnel employed to replace glass
226 or other materials in windows and doors and to do minor
227 carpentry tasks.

228 "Graphic artist" means personnel employed to
229 prepare graphic illustrations.

230 "Groundsmen" means personnel employed to perform
231 duties that relate to the appearance, repair and general
232 care of school grounds in a county school system.
233 Additional assignments may include the operation of a
234 small heating plant and routine cleaning duties in
235 buildings.

236 "Handyman" means personnel employed to perform
237 routine manual tasks in any operation of the county
238 school system.

239 "Heating and air conditioning mechanic I" means
240 personnel employed at the apprentice level to install,
241 repair and maintain heating and air conditioning plants
242 and related electrical equipment.

243 "Heating and air conditioning mechanic II" means
244 personnel employed at the journeyman level to install,
245 repair and maintain heating and air conditioning plants
246 and related electrical equipment.

247 "Heavy equipment operator" means personnel
248 employed to operate heavy equipment.

249 "Inventory supervisor" means personnel who are
250 employed to supervise or maintain operations in the
251 receipt, storage, inventory and issuance of materials and
252 supplies.

253 "Key punch operator" means qualified personnel
254 employed to operate key punch machines or verifying
255 machines.

256 "Locksmith" means personnel employed to repair and
257 maintain locks and safes.

258 "Lubrication man" means personnel employed to
259 lubricate and service gasoline or diesel-powered
260 equipment of a county school system.

261 "Machinist" means personnel employed to perform

262 machinist tasks which include the ability to operate a
263 lathe, planer, shaper, threading machine and wheel
264 press. Such personnel should also have ability to work
265 from blueprints and drawings.

266 "Mail clerk" means personnel employed to receive,
267 sort, dispatch, deliver or otherwise handle letters,
268 parcels and other mail.

269 "Maintenance clerk" means personnel employed to
270 maintain and control a stocking facility to keep
271 adequate tools and supplies on hand for daily
272 withdrawal for all school maintenance crafts.

273 "Mason" means personnel employed to perform tasks
274 connected with brick and block laying and carpentry
275 tasks related to such laying.

276 "Mechanic" means personnel employed who can
277 independently perform skilled duties in the maintenance
278 and repair of automobiles, school buses and other
279 mechanical and mobile equipment to use in a county
280 school system.

281 "Mechanic assistant" means personnel employed as a
282 mechanic apprentice and helper.

283 "Multi-classification" means personnel employed to
284 perform tasks that involve the combination of two or
285 more class titles in this section or as created by the West
286 Virginia board of education. In such instances the
287 minimum salary scale shall be the higher pay grade of
288 the class titles involved.

289 "Office equipment repairman I" means personnel
290 employed as an office equipment repairman apprentice
291 or helper.

292 "Office equipment repairman II" means personnel
293 responsible for servicing and repairing all office
294 machines and equipment. Personnel shall be responsible
295 for parts being purchased necessary for the proper
296 operation of a program of continuous maintenance and
297 repair.

298 "Painter" means personnel employed to perform
299 duties of painting, finishing and decorating of wood,

300 metal and concrete surfaces of buildings, other
301 structures, equipment, machinery and furnishings of a
302 county school system.

303 "Paraprofessional" means a person certified pursuant
304 to section two-a, article three of this chapter to perform
305 duties in a support capacity including, but not limited
306 to, facilitating in the instruction and direct or indirect
307 supervision of pupils under the direction of a principal,
308 a teacher, or another designated professional educator:
309 *Provided*, That no person employed on the effective date
310 of this section in the position of an aide may be reduced
311 in force or transferred to create a vacancy for the
312 employment of a paraprofessional.

313 "Plumber I" means personnel employed as an appren-
314 tice plumber and helper.

315 "Plumber II" means personnel employed as a
316 journeyman plumber.

317 "Printing operator" means personnel employed to
318 operate duplication equipment, and as required, to cut,
319 collate, staple, bind and shelve materials.

320 "Printing supervisor" means personnel employed to
321 supervise the operation of a print shop.

322 "Programmer" means personnel employed to design
323 and prepare programs for computer operation.

324 "Roofing/sheet metal mechanic" means personnel
325 employed to install, repair, fabricate and maintain roofs,
326 gutters, flashing and duct work for heating and
327 ventilation.

328 "Sanitation plant operator" means personnel
329 employed to operate and maintain a water or sewage
330 treatment plant to ensure the safety of the plant's
331 effluent for human consumption or environmental
332 protection.

333 "School bus supervisor" means qualified personnel
334 employed to assist in selecting school bus operators and
335 routing and scheduling of school buses, operate a bus
336 when needed, relay instructions to bus operators, plan
337 emergency routing of buses and promoting good

338 relationships with parents, pupils, bus operators and
339 other employees.

340 "Secretary I" means personnel employed to transcribe
341 from notes or mechanical equipment, receive callers,
342 perform clerical tasks, prepare reports and operate
343 office machines.

344 "Secretary II" means personnel employed in any
345 elementary, secondary, kindergarten, nursery, special
346 education, vocational or any other school as a secretary.
347 The duties may include performing general clerical
348 tasks, transcribing from notes or stenotype or
349 mechanical equipment or a sound-producing machine,
350 preparing reports, receiving callers and referring them
351 to proper persons, operating office machines, keeping
352 records and handling routine correspondence. There is
353 nothing implied herein that would prevent such
354 employees from holding or being elevated to a higher
355 classification.

356 "Secretary III" means personnel assigned to the
357 county board of education office administrators in
358 charge of various instructional, maintenance,
359 transportation, food services, operations and health
360 departments, federal programs or departments with
361 particular responsibilities of purchasing and financial
362 control or any personnel who have served in a position
363 which meets the definition of "Secretary II" or
364 "Secretary III" herein for eight years.

365 "Supervisor of maintenance" means skilled personnel
366 not defined as professional personnel or professional
367 educators as in section one, article one of this chapter.
368 The responsibilities would include directing the upkeep
369 of buildings and shops, issuing instructions to
370 subordinates relating to cleaning, repairs and
371 maintenance of all structures and mechanical and
372 electrical equipment of a board of education.

373 "Supervisor of transportation" means qualified
374 personnel employed to direct school transportation
375 activities, properly and safely, and to supervise the
376 maintenance and repair of vehicles, buses, and other
377 mechanical and mobile equipment used by the county

378 school system.

379 "Switchboard operator-receptionist" means personnel
380 employed to refer incoming calls, to assume contact with
381 the public, to direct and to give instructions as
382 necessary, to operate switchboard equipment and to
383 provide clerical assistance.

384 "Truck driver" means personnel employed to operate
385 light or heavy duty gasoline and diesel-powered vehicles.

386 "Warehouse clerk" means personnel employed to be
387 responsible for receiving, storing, packing and shipping
388 goods.

389 "Watchman" means personnel employed to protect
390 school property against damage or theft. Additional
391 assignments may include operation of a small heating
392 plant and routine cleaning duties.

393 "Welder" means personnel employed to provide
394 acetylene or electric welding services for a school
395 system.

396 In addition to the compensation provided for in
397 section eight-a of this article, for service personnel, each
398 service employee shall, notwithstanding any provisions
399 in this code to the contrary, be entitled to all service
400 personnel employee rights, privileges and benefits
401 provided under this or any other chapter of this code
402 without regard to such employee's hours of employment
403 or the methods or sources of compensation.

404 Service personnel whose years of employment exceed
405 the number of years shown and provided for under the
406 state minimum pay scale set forth in section eight-a of
407 this article may not be paid less than the amount shown
408 for the maximum years of employment shown and
409 provided for in the classification in which he is
410 employed.

411 The county boards shall review each service personnel
412 employee job classification annually and shall reclassify
413 all service employees as required by such job
414 classifications. The state superintendent of schools is
415 hereby authorized to withhold state funds appropriated

416 pursuant to this article for salaries for service personnel
417 who are improperly classified by such county boards.
418 Further, he shall order county boards to correct
419 immediately any improper classification matter and
420 with the assistance of the attorney general shall take any
421 legal action necessary against any county board to
422 enforce such order.

423 The state board of education is authorized to establish
424 other class titles of service personnel positions and jobs
425 not listed in this section. The state board of education
426 is further authorized to provide appropriate pay grades
427 for such positions and jobs but pay shall be established
428 within the minimum salary scale in section eight-a of
429 this article.

430 No service employee, without his written consent, may
431 be reclassified by class title, nor may a service employee,
432 without his written consent, be relegated to any
433 condition of employment which would result in a
434 reduction of his salary, rate of pay, compensation or
435 benefits earned during the current fiscal year or which
436 would result in a reduction of his salary, rate of pay,
437 compensation or benefits for which he would qualify by
438 continuing in the same job position and classification
439 held during said fiscal year and subsequent years.

440 Any board failing to comply with the provisions of
441 this article may be compelled to do so by mandamus,
442 and shall be liable to any party prevailing against the
443 board for court costs and his reasonable attorney fee, as
444 determined and established by the court.

445 Notwithstanding any provisions in this code to the
446 contrary, service personnel who hold a continuing
447 contract in a specific job classification and are
448 physically unable to perform the job's duties as
449 confirmed by a physician chosen by the employee shall
450 be given priority status over any employee not holding
451 a continuing contract in filling other service personnel
452 job vacancies if qualified as provided in section eight-
453 e of this article.

§18A-4-8a. Service personnel minimum monthly salaries.

1 STATE MINIMUM PAY SCALE PAY GRADE									
2	Years of								
3	Employ-								
4	ment	A	B	C	D	E	F	G	H
5	0	950	970	1,010	1,060	1,110	1,170	1,200	1,270
6	1	972	992	1,032	1,082	1,132	1,192	1,222	1,292
7	2	994	1,014	1,054	1,104	1,154	1,214	1,244	1,314
8	3	1,016	1,036	1,076	1,126	1,176	1,236	1,266	1,336
9	4	1,038	1,058	1,098	1,148	1,198	1,258	1,288	1,358
10	5	1,060	1,080	1,120	1,170	1,220	1,280	1,310	1,380
11	6	1,082	1,102	1,142	1,192	1,242	1,302	1,332	1,402
12	7	1,104	1,124	1,164	1,214	1,264	1,324	1,354	1,424
13	8	1,126	1,146	1,186	1,236	1,286	1,346	1,376	1,446
14	9	1,148	1,168	1,208	1,258	1,308	1,368	1,398	1,468
15	10	1,170	1,190	1,230	1,280	1,330	1,390	1,420	1,490
16	11	1,192	1,212	1,252	1,302	1,352	1,412	1,442	1,512
17	12	1,214	1,234	1,274	1,324	1,374	1,434	1,464	1,534
18	13	1,236	1,256	1,296	1,346	1,396	1,456	1,486	1,556
19	14	1,258	1,278	1,318	1,368	1,418	1,478	1,508	1,578
20	15	1,280	1,300	1,340	1,390	1,440	1,500	1,530	1,600
21	16	1,302	1,322	1,362	1,412	1,462	1,522	1,552	1,622
22	17	1,324	1,344	1,384	1,434	1,484	1,544	1,574	1,644
23	18	1,346	1,366	1,406	1,456	1,506	1,566	1,596	1,666
24	19	1,368	1,388	1,428	1,478	1,528	1,588	1,618	1,688
25	20	1,390	1,410	1,450	1,500	1,550	1,610	1,640	1,710
26	21	1,412	1,432	1,472	1,522	1,572	1,632	1,662	1,732
27	22	1,434	1,454	1,494	1,544	1,594	1,654	1,684	1,754
28	23	1,456	1,476	1,516	1,566	1,616	1,676	1,706	1,776
29	24	1,478	1,498	1,538	1,588	1,638	1,698	1,728	1,798
30	25	1,500	1,520	1,560	1,610	1,660	1,720	1,750	1,820
31	26	1,522	1,542	1,582	1,632	1,682	1,742	1,772	1,842
32	27	1,544	1,564	1,604	1,654	1,704	1,764	1,794	1,864
33	28	1,566	1,586	1,626	1,676	1,726	1,786	1,816	1,886
34	29	1,588	1,608	1,648	1,698	1,748	1,808	1,838	1,908
35	30	1,610	1,630	1,670	1,720	1,770	1,830	1,860	1,930
36	CLASS TITLE		PAY GRADE						
37	Accountant I	D							
38	Accountant II	E							
39	Accountant III	F							
40	Aide I	A							
41	Aide II	B							

42	Aide III	C
43	Aide IV	D
44	Audiovisual Technician.....	C
45	Auditor	G
46	Autism Mentor	E
47	Braille or Sign Language Specialist.....	E
48	Bus Operator	D
49	Buyer	F
50	Cabinetmaker	G
51	Cafeteria Manager	D
52	Carpenter I.....	E
53	Carpenter II.....	F
54	Chief Mechanic	G
55	Clerk I	B
56	Clerk II	C
57	Computer Operator	E
58	Cook I.....	A
59	Cook II	B
60	Cook III	C
61	Crew Leader.....	F
62	Custodian I.....	A
63	Custodian II	B
64	Custodian III	C
65	Custodian IV	D
66	Director or Coordinator of Services	H
67	Draftsman	D
68	Electrician I.....	F
69	Electrician II.....	G
70	Electronic Technician I	F
71	Electronic Technician II.....	G
72	Executive Secretary	G
73	Food Services Supervisor.....	G
74	Foreman	G
75	General Maintenance.....	C
76	Glazier	D
77	Graphic Artist.....	D
78	Groundsman.....	B
79	Handyman	B
80	Heating and Air Conditioning Mechanic I	E
81	Heating and Air Conditioning Mechanic II	G
82	Heavy Equipment Operator	E
83	Inventory Supervisor.....	D

84	Key Punch Operator	B
85	Locksmith	G
86	Lubrication Man	C
87	Machinist	F
88	Mail Clerk.....	D
89	Maintenance Clerk	C
90	Mason	G
91	Mechanic	F
92	Mechanic Assistant	E
93	Office Equipment Repairman I	F
94	Office Equipment Repairman II	G
95	Painter.....	E
96	Paraprofessional	F
97	Plumber I	E
98	Plumber II	G
99	Printing Operator.....	B
100	Printing Supervisor.....	D
101	Programmer	H
102	Roofing/Sheet Metal Mechanic.....	F
103	Sanitation Plant Operator	F
104	School Bus Supervisor	E
105	Secretary I	D
106	Secretary II	E
107	Secretary III	F
108	Supervisor of Maintenance	H
109	Supervisor of Transportation	H
110	Switchboard Operator-Receptionist	D
111	Truck Driver	D
112	Warehouse Clerk	C
113	Watchman.....	B
114	Welder	F

115 On and after the first day of July, one thousand nine
 116 hundred ninety-two, the minimum monthly pay for each
 117 service employee whose employment is for a period of
 118 more than three and one-half hours a day shall be at
 119 least the amounts indicated in the "state minimum pay
 120 scale pay grade" as set forth in this section, and the
 121 minimum monthly pay for each service employee whose
 122 employment is for a period of three and one-half hours
 123 or less a day shall be at least one half the amount
 124 indicated in the "state minimum pay scale pay grade"
 125 set forth in this section: *Provided*, That upon the

126 effective date of this section through the remainder of
127 the school year one thousand nine hundred ninety-one —
128 ninety-two, in lieu of the minimum monthly pay scale
129 pay grade for service employees in effect as set forth in
130 this section, each service employee shall be paid such
131 amount as he or she would be due under the provisions
132 of this section over his or her full employment term on
133 the basis of the "state minimum pay scale pay grade".
134 The difference between such amount and any amount
135 already paid to such employee in such school year shall
136 be prorated over such portion of the employees
137 employment term as remains: *Provided, however,* That
138 the state department of education shall notify each
139 service employee that the amounts paid to them for the
140 remainder of their employment term in the school year
141 one thousand nine hundred ninety-one — ninety-two will
142 be greater than they would normally be due under the
143 minimum monthly pay scale, because of the pro rata
144 distribution, and that their minimum monthly salaries
145 will decrease slightly during the next school year when
146 the salary increase is paid over the full employment
147 term: *Provided further,* That on and after the first day
148 of July, one thousand nine hundred ninety-two, the
149 minimum monthly pay for each service employee whose
150 employment is for a period of more than three and one-
151 half hours a day shall be at least the amounts indicated
152 in the "state minimum pay scale pay grade" as set forth
153 in this section, and the minimum monthly pay for each
154 service employee whose employment is for a period of
155 three and one-half hours or less a day shall be at least
156 one half the amount indicated in the "state minimum
157 pay scale pay grade" set forth in this section. An
158 additional ten dollars per month shall be added to the
159 minimum monthly pay of each service employee who
160 holds a high school diploma or its equivalent.

161 Any service employee required to work on any legal
162 school holiday shall be paid at a rate one and one-half
163 times such employee's usual hourly rate.

164 Any full-time service personnel required to work in
165 excess of their normal working day during any week
166 which contains a school holiday for which they are paid

167 shall be paid for such additional hours or fraction
168 thereof at a rate of one and one-half times their usual
169 hourly rate and paid entirely from county board of
170 education funds.

171 No service employee shall have his or her daily work
172 schedule changed during the school year without such
173 employee's written consent, and such employee's
174 required daily work hours shall not be changed to
175 prevent the payment of time and one-half wages or the
176 employment of another employee.

177 The minimum hourly rate of pay for extra-duty
178 assignments as defined in section eight-b of this article
179 shall be no less than one seventh of the employee's daily
180 total salary for each hour the employee is involved in
181 performing the assignment and paid entirely from local
182 funds: *Provided*, That an alternative minimum hourly
183 rate of pay for performing extra-duty assignments
184 within a particular category of employment may be
185 utilized if the alternate hourly rate of pay is approved
186 both by the county board of education and by the
187 affirmative vote of a two-thirds majority of the regular
188 full-time employees within that classification category of
189 employment within that county: *Provided, however*, That
190 the vote shall be by secret ballot if so requested by a
191 service personnel employee within that classification
192 category within that county. The salary for any fraction
193 of an hour the employee is involved in performing the
194 assignment shall be prorated accordingly. When
195 performing extra-duty assignments, employees who are
196 regularly employed on a one-half day salary basis shall
197 receive the same hourly extra-duty assignment pay
198 computed as though such an employee were employed
199 on a full-day salary basis.

200 The minimum pay for any service personnel
201 employees engaged in the removal of asbestos material
202 or related duties required for asbestos removal shall be
203 their regular total daily rate of pay and no less than an
204 additional three dollars per hour or no less than five
205 dollars per hour for service personnel supervising
206 asbestos removal responsibilities for each hour these
207 employees are involved in asbestos related duties.

208 Related duties required for asbestos removal shall
209 include, but not be limited to, travel, preparation of the
210 work site, removal of asbestos, decontamination of the
211 work site, placing and removal of equipment and
212 removal of structures from the site. If any member of
213 an asbestos crew is engaged in asbestos related duties
214 outside of the employee's regular employment county,
215 the daily rate of pay shall be no less than the minimum
216 amount as established in the employee's regular
217 employment county for asbestos removal and an
218 additional thirty dollars per each day the employee is
219 engaged in asbestos removal and related duties. The
220 additional pay for asbestos removal and related duties
221 shall be payable entirely from county funds. Before
222 service personnel employees may be utilized in the
223 removal of asbestos material or related duties, they shall
224 have completed a federal Environmental Protection Act
225 approved training program and be licensed. The
226 employer shall provide all necessary protective
227 equipment and maintain all records required by the
228 Environmental Protection Act.

§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
10 classification of employment and shall have a single
11 competency test. The cafeteria manager class title shall
12 be included in the same classification category as cooks
13 and 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
31 applicants shall have the opportunity of taking the
32 written test orally if requested. Oral tests shall be
33 recorded mechanically and kept on file. Persons
34 administering the oral test shall not know the applicant
35 personally. The performance test for all classifications
36 and categories other than Bus Operator shall be
37 administered by a vocational school which serves the
38 county board of education. A standard passing score
39 shall be established by the state department of education
40 for each test and shall be used by county boards of
41 education. The subject matter of each competency test
42 shall be commensurate with the requirements of the
43 definitions of the classification titles as provided in
44 section eight of this article. The subject matter of each
45 competency test shall be designed in such a manner that
46 achieving a passing grade will not require knowledge
47 and skill in excess of the requirements of the definitions
48 of the classification titles. Achieving a passing score
49 shall conclusively demonstrate the qualification of an
50 applicant for a classification title. Once an employee
51 passes the competency test of a classification title, said
52 applicant shall be fully qualified to fill vacancies in that
53 classification category of employment as provided in
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.

77 Notwithstanding any provisions in this code to the
78 contrary, once an employee holds or has held a classi-
79 fication title in a category of employment, that employee
80 shall be deemed as qualified for said classification title
81 even though that employee no longer holds that
82 classification.

83 The requirements of this section shall not be
84 construed to alter the definitions of class titles as
85 provided in section eight of this article nor the proce-
86 dure and requirements of section eight-b of this article.

87 The testing procedures of this section shall be
88 implemented effective the first day of July, one thousand
89 nine hundred ninety-one.

CHAPTER 65

(H. B. 4035—By Delegates Browning and Compton)

[Passed March 3, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven-a, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating

to requiring county boards of education to fill vacant positions in certain instances within thirty working days of the end of the posting period; dispensing with posting positions held by persons with permits working toward certification; providing that when principals acquire identical seniority reductions in force will be made on the basis of qualifications; granting retroactive relief and providing that court costs and attorneys fees be paid from county funds to prevailing parties when the county school board violates this section.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-7a. Employment, promotion and transfer of professional personnel; seniority.

1 A county board of education shall make decisions
2 affecting the hiring of professional personnel other than
3 classroom teachers on the basis of the applicant with the
4 highest qualifications. Further, the county board shall
5 make decisions affecting the hiring of new classroom
6 teachers on the basis of the applicant with the highest
7 qualifications. In judging qualifications, consideration
8 shall be given to each of the following: Appropriate
9 certification and/or licensure; amount of experience
10 relevant to the position or, in the case of a classroom
11 teaching position, the amount of teaching experience in
12 the subject area; the amount of course work and/or
13 degree level in the relevant field and degree level
14 generally; academic achievement; relevant specialized
15 training; past performance evaluations conducted
16 pursuant to section twelve, article two of this chapter;
17 and other measures or indicators upon which the
18 relative qualifications of the applicant may fairly be
19 judged. If one or more permanently employed
20 instructional personnel apply for a classroom teaching
21 position and meet the standards set forth in the job
22 posting, the county board of education shall make
23 decisions affecting the filling of such positions on the

24 basis of the following criteria: Appropriate certification
25 and/or licensure; total amount of teaching experience;
26 the existence of teaching experience in the required
27 certification area; degree level in the required
28 certification area; specialized training directly related
29 to the performance of the job as stated in the job
30 description; receiving an overall rating of satisfactory in
31 evaluations over the previous two years; and seniority.
32 Consideration shall be given to each criterion with each
33 criterion being given equal weight. If the applicant with
34 the most seniority is not selected for the position, upon
35 the request of the applicant a written statement of
36 reasons shall be given to the applicant with suggestions
37 for improving the applicant's qualifications.

38 The seniority of classroom teachers as defined in
39 section one, article one of this chapter with the exception
40 of guidance counselors shall be determined on the basis
41 of the length of time the employee has been employed
42 as a regular full-time certified and/or licensed
43 professional educator by the county board of education
44 and shall be granted in all areas that the employee is
45 certified and/or licensed.

46 Upon completion of one hundred thirty-three days of
47 employment in any one school year, substitute teachers
48 shall accrue seniority exclusively for the purpose of
49 applying for employment as a permanent, full-time
50 professional employee. One hundred thirty-three days or
51 more of said employment shall be prorated and shall
52 vest as a fraction of the school year worked by the
53 permanent, full-time teacher.

54 Guidance counselors and all other professional
55 employees, as defined in section one, article one of this
56 chapter, except classroom teachers, shall gain seniority
57 in their nonteaching area of professional employment on
58 the basis of the length of time the employee has been
59 employed by the county board of education in that area:
60 *Provided*, That if an employee is certified as a classroom
61 teacher, the employee accrues classroom teaching
62 seniority for the time that that employee is employed in
63 another professional area. For the purposes of accruing
64 seniority under this paragraph, employment as

65 principal, supervisor or central office administrator, as
66 defined in section one, article one of this chapter, shall
67 be considered one area of employment.

68 Employment for a full employment term shall equal
69 one year of seniority, but no employee may accrue more
70 than one year of seniority during any given fiscal year.
71 Employment for less than the full employment term
72 shall be prorated. A random selection system
73 established by the employees and approved by the board
74 shall be used to determine the priority if two or more
75 employees accumulate identical seniority: *Provided,*
76 That when two or more principals have accumulated
77 identical seniority, decisions on reductions in force shall
78 be based on qualifications.

79 Whenever a county board is required to reduce the
80 number of professional personnel in its employment, the
81 employee with the least amount of seniority shall be
82 properly notified and released from employment
83 pursuant to the provisions of section two, article two of
84 this chapter: *Provided,* That all persons employed in a
85 certification area to be reduced who are employed under
86 a temporary permit shall be properly notified and
87 released before a fully certified employee in such a
88 position is subject to release: *Provided, however,* That an
89 employee subject to release shall be employed in any
90 other professional position where such employee is
91 certified and was previously employed or to any lateral
92 area for which such employee is certified and/or
93 licensed, if such employee's seniority is greater than the
94 seniority of any other employee in that area of
95 certification and/or licensure.

96 After the fifth day prior to the beginning of the
97 instructional term, or after the first day of the second
98 half of the instructional term, no person employed and
99 assigned to a professional position may transfer to
100 another professional position in the county during that
101 half of the instructional term: *Provided,* That such
102 person may apply for any posted, vacant positions with
103 the successful applicant assuming the position at the
104 beginning of the next half of the instructional term:
105 *Provided, however,* That professional personnel who have

106 been on an approved leave of absence may fill these
107 vacancies prior to the next semester. The superintendent
108 may fill a position before the next instructional term
109 when it is determined to be in the best interest of the
110 students.

111 All professional personnel whose seniority with the
112 county board is insufficient to allow their retention by
113 the county board during a reduction in work force shall
114 be placed upon a preferred recall list. As to any
115 professional position opening within the area where they
116 had previously been employed or to any lateral area for
117 which they have certification and/or licensure, such
118 employee shall be recalled on the basis of seniority if no
119 regular, full-time professional personnel, or those
120 returning from leaves of absence with greater seniority,
121 are qualified, apply for and accept such position. Before
122 position openings that are known or expected to extend
123 for twenty consecutive employment days or longer for
124 professional personnel may be filled by the board, the
125 board shall be required to notify all qualified
126 professional personnel on the preferred list and give
127 them an opportunity to apply, but failure to apply shall
128 not cause such employee to forfeit any right to recall.
129 The notice shall be sent by certified mail to the last
130 known address of the employee, and it shall be the duty
131 of each professional personnel to notify the board of
132 continued availability annually of any change in address
133 or of any change in certification and/or licensure.

134 Boards shall be required to post and date notices of
135 all openings in established, existing or newly created
136 positions in conspicuous working places for all
137 professional personnel to observe for at least five
138 working days. The notice shall be posted within twenty
139 working days of such position openings and shall include
140 the job description. Any special criteria or skills that are
141 required by the position shall be specifically stated in
142 the job description and directly related to the
143 performance of the job. No vacancy shall be filled until
144 after the five-day minimum posting period. If one or
145 more applicants meets the qualifications listed in the job
146 posting, the successful applicant to fill the vacancy shall

147 be selected by the board within thirty working days of
148 the end of the posting period: *Provided*, That a position
149 held by a certified/or licensed teacher who has been
150 issued a permit for full-time employment and is working
151 toward certification in the permit area shall not be
152 subject to posting if the certificate is awarded within
153 five years. Nothing provided herein shall prevent the
154 county board of education from eliminating a position
155 due to lack of need.

156 Notwithstanding any other provision of the code to the
157 contrary, where the total number of classroom teaching
158 positions in an elementary school does not increase from
159 one school year to the next, but there exists in that
160 school a need to realign the number of teachers in one
161 or more grade levels, kindergarten through six, teachers
162 at the school may be reassigned to grade levels for which
163 they are certified without that position being posted:
164 *Provided*, That the employee and the county board of
165 education mutually agree to the reassignment.

166 When the total number of classroom teaching
167 positions in an elementary school needs to be reduced,
168 such reduction shall be made on the basis of seniority
169 with the least senior classroom teacher being
170 recommended for transfer: *Provided*, That a specified
171 grade level needs to be reduced and the least senior
172 employee in the school is not in that grade level, the least
173 senior classroom teacher in the grade level that needs
174 to be reduced shall be reassigned to the position made
175 vacant by the transfer of the least senior classroom
176 teacher in the school without that position being posted:
177 *Provided, however*, That the employee is certified and/or
178 licensed and agrees to the reassignment.

179 Any board failing to comply with the provisions of
180 this article may be compelled to do so by mandamus and
181 shall be liable to any party prevailing against the board
182 for court costs and reasonable attorney fees as
183 determined and established by the court. Further,
184 employees denied promotion or employment in violation
185 of this section shall be awarded the job, pay and any
186 applicable benefits retroactive to the date of the
187 violation and payable entirely from local funds. Further,

188 the board shall be liable to any party prevailing against
 189 the board for any court reporter costs including copies
 190 of transcripts.

CHAPTER 66

(Com. Sub. for S. B. 299—By Senators Lucht, Wagner, Humphreys, Felton,
 Brackenrich, Holliday, M. Manchin, Burdette, Mr. President, Dalton and Tomblin)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

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-f, relating to the seniority rights of classroom teachers in consolidated schools.

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 amended by adding thereto a new section, designated section eight-f, to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8f. Seniority rights, school consolidation.

1 Notwithstanding any provision of this article to the
 2 contrary, when a majority of the classroom teachers, as
 3 defined in section one, article one of this chapter, who
 4 vote to do so, in accordance with procedures established
 5 herein, and who are employed by a county board of
 6 education, the board shall give priority to classroom
 7 teachers in any school or schools to be closed as a result
 8 of a consolidation or merger when filling positions in the
 9 new school created by consolidation or newly created
 10 positions in existing schools as a result of the merger.
 11 Each year a consolidation or merger is proposed, prior
 12 to the implementation of that plan, the superintendent
 13 shall cause to be prepared and distributed to all faculty
 14 senates a ballot on which teachers may indicate whether
 15 or not they desire those affected by school closings to be

16 given priority status in filling new positions. A secret
17 ballot election shall be conducted in each faculty senate
18 and the faculty senate chair shall convey the results of
19 such election to the superintendent. The superintendent
20 shall tabulate and post all results prior to the notice
21 requirements for reduction in force and transfer as
22 outlined in sections two and seven, article two of this
23 chapter. The total number of votes shall be tabulated
24 and the provisions of this section shall be implemented
25 only if a majority of the total number of teachers who
26 cast a ballot vote to do so. The teachers in the school or
27 schools to be closed shall have priority in filling new
28 positions in the new or merged schools for which the
29 teachers are certified and meet the standards set forth
30 in the job posting on the basis of seniority within the
31 county: *Provided*, That a teacher shall only receive
32 priority for filling a position at a school impacted by a
33 merger, or consolidation with the position being created
34 by the influx of students from a consolidated or merged
35 school into the school receiving students from their
36 closed school or grade level. The most senior teacher in
37 the closed school or schools shall be placed first, the
38 second most senior shall be placed next and so on until
39 all the newly created positions are filled, or until all the
40 teachers in the closed school or schools who wish to
41 transfer into the newly created positions are placed:
42 *Provided, however*, That if there are fewer new positions
43 in the newly created school or merged school than there
44 are classroom teachers in the school or schools to be
45 closed, the teachers who were not placed in the new
46 positions shall retain the same rights as all other
47 teachers with regard to seniority, transfer and reduction
48 in force: *Provided further*, That nothing herein shall be
49 construed to grant any employee additional rights or
50 protections with regard to reduction in force.

51 For the purposes of this section only, a consolidation
52 shall mean when one or more schools are closed, or one
53 or more grade levels are removed from one or more
54 schools and the students who previously attended the
55 closed schools or grade levels are assigned to a new
56 school. For purposes of this section only, a merger shall
57 mean when one or more schools are closed or one or

58 more grade levels are removed from one or more schools
59 and the students who previously attended the closed
60 schools or grade levels are assigned to another existing
61 school.

62 The provisions of this section shall not apply to
63 positions which are filled by a county board prior to the
64 effective date of this section.

CHAPTER 67

(Com. Sub. for S. B. 284—By Senators Burdette, Mr. President, and Boley,
By Request of the Executive)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three-a, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section five, relating to creation of an applied technology education competitive grant program to meet the needs of business and industry within the state for a competitive, technically skilled work force; providing greater flexibility in appointments to the joint commission for vocational-technical-occupational education; creating an applied technology education fund to be administered by said joint commission; setting forth program goals, application criteria and funding priorities; specifying certain obligations of grant recipients including open records; and providing for termination of grants for failure to comply with terms and conditions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3A. WEST VIRGINIA JOINT COMMISSION FOR VOCATIONAL-TECHNICAL-OCCUPATIONAL EDUCATION.

§18B-3A-2. Composition of commission; terms of members; qualifications of members.

§18B-3A-5. Applied technology education fund.

§18B-3A-2. Composition of commission; terms of members; qualifications of members.

1 The members appointed by the governor shall include
2 all of the following:

3 (a) Seven individuals who shall be representatives
4 from business, industry and agriculture, including one
5 member representing small business concerns, one
6 member of whom shall represent the governor's office
7 of community and industrial development, one member
8 of whom shall represent proprietary schools and one
9 member of whom shall represent labor organizations. In
10 selecting private sector individuals under this subdivi-
11 sion, the governor shall give due consideration to the
12 appointment of individuals who serve on a private
13 industry council or other appropriate state agencies.

14 (b) Six individuals, three of whom shall be represen-
15 tatives of secondary vocational-technical-occupational
16 education appointed by the governor with advice from
17 the state superintendent of schools, and three of whom
18 shall be representatives of post-secondary vocational-
19 technical-occupational education appointed by the
20 governor, with advice from the chancellor of the board
21 of directors.

22 In addition to the members appointed by the gover-
23 nor, the state superintendent of schools and the vice
24 chancellor of the board of directors shall serve as ex
25 officio members.

26 Members of the commission shall serve for overlap-
27 ping terms of four years, except that the original
28 appointments to the commission shall be for staggered
29 terms allocated in the following manner: One member
30 recommended for appointment by the chancellor, one
31 member recommended for appointment by the state
32 superintendent of schools and two members appointed

33 by the governor for terms of two years; one member
34 recommended for appointment by the chancellor, one
35 member recommended for appointment by the state
36 superintendent of schools and two members appointed
37 by the governor for terms of three years; and one
38 member recommended for appointment by the state
39 superintendent of schools, one member recommended
40 for appointment by the chancellor and three members
41 appointed by the governor for terms of four years.

§18B-3A-5. Applied technology education fund.

1 (a) There is hereby created in the state treasury, an
2 applied technology education fund to be administered by
3 the joint commission for vocational-technical-occupa-
4 tional education, in conjunction with its other duties as
5 set forth in this article, to promote the development of
6 applied technology education and training programs
7 which meet the needs of new and existing business and
8 industry within West Virginia for a competitive,
9 technically skilled work force. The major goals of the
10 applied technology education fund are: (1) To encourage
11 the state college and university system to develop a
12 delivery system for instruction in applied technology
13 leading to a degree in which specialty skill instruction
14 is built around a common core of basic skills so that the
15 specialty areas may be readily modified to meet the
16 changing demands of the workplace; (2) to provide
17 partial funding for the start-up or expansion of pro-
18 grams of instruction leading to a degree in applied
19 technology skills for which there is a demonstrated and
20 recurring need for skilled employees; and (3) to respond
21 to unique needs for instruction in applied technology
22 which are of limited duration and for which adequate
23 funding is not available from other sources.

24 (b) The joint commission shall award grants to state
25 institutions of higher education from the applied
26 technology education fund based upon a competitive
27 application process which includes the following
28 criteria:

29 (1) The degree to which the course or program will
30 advance the economy of the state, region and/or local

31 area, including, but not limited to, the immediate and
32 potential economic impact, the effect on labor markets
33 and the linkages with other economic development plans
34 for the area;

35 (2) The program structure, including, but not limited
36 to, cost effectiveness in terms of maximum use of
37 existing resources of the institution, other public and
38 private educational institutions and the community, and
39 flexibility in terms of minimum changes necessary to
40 accommodate the addition, deletion and modification of
41 degree specialties in response to changing demands;

42 (3) The degree of direct and ongoing involvement in
43 the education and training program by other public and
44 private sector agencies, organizations and enterprises,
45 including, but not limited to, direct matching contribu-
46 tions, in-kind contributions, cost sharing, ad hoc faculty,
47 endowed chairs, mentorships, internships for students
48 and faculty, program scholarships and other student
49 aid;

50 (4) The amounts and sources of funding for the entire
51 project, including, but not limited to, all grant moneys
52 applied for and received for the program, including
53 notification to the joint commission of moneys received
54 after submission of the application, all institutional costs
55 associated directly or indirectly with the education and
56 training program, and all costs for capital moderniza-
57 tion and retooling to increase competitiveness attendant
58 with employment of the program's graduates incurred
59 by other public and private agencies, organizations and
60 enterprises with direct and ongoing involvement in the
61 program;

62 (5) The history of identified prospective employers of
63 program graduates, including, but not limited to, job
64 opportunities, stability of employment, past and present
65 condition and structure, present and future market
66 prospects and any other information deemed necessary
67 by the joint commission to judge the present and future
68 viability of such employers;

69 (6) The anticipated duration of the education and
70 training program, including, but not limited to, whether

71 and how such program is expected to become self-
72 supporting following completion of the grant and the
73 time period for which the grant is requested;

74 (7) The importance of state funding for the viability
75 of the program; and

76 (8) Any other information deemed necessary by the
77 joint commission for judging the relative merits of the
78 course or program.

79 (c) Priority for funding shall be given to courses or
80 programs which serve new areas of technical skills,
81 which serve underemployed and/or displaced workers
82 not served by other training programs, and/or which
83 leverage other public or private funds. Grants may be
84 awarded on a multiyear basis, generally not exceeding
85 three years, with funding in the second and succeeding
86 years contingent upon successfully fulfilling prior year's
87 objectives. Grant funds shall not be used to supplant
88 other applicable state, federal or local funds for such
89 purposes. Grant awards received by a state institution
90 of higher education shall not be used to reduce the
91 institution's base budget allocation.

92 (d) The joint commission shall establish a grant
93 application and review process, including any necessary
94 forms. The review process shall prioritize programs for
95 funding on a competitive basis as, in the judgment of
96 the joint commission, they best serve the purposes of this
97 article and the needs of the state for increasing the
98 competitiveness of its work force. The joint commission
99 shall award funds to programs with the highest priority
100 rankings subject to the availability of funds. Priority
101 rankings may be periodically realigned based upon the
102 review of new or modified grant applications.

103 (e) Receipt of a grant shall obligate the recipient to
104 such terms and conditions as may be established by the
105 joint commission in connection with the grant award.
106 Such terms and conditions shall, at a minimum, require
107 the recipient to keep proper books of record and account
108 in accordance with generally accepted accounting
109 principles. Such books of record and account shall be
110 open to inspection and audit by the joint commission at

111 its request and to inspection and copying by the public
112 in accordance with the provisions of the state freedom
113 of information act set forth in chapter twenty-nine-b of
114 this code. The joint commission may require an inde-
115 pendent audit of such books of record and account at the
116 expense of the grant recipient. Failure to comply with
117 the terms and conditions of a grant award may result
118 in its termination.

CHAPTER 68

(Com. Sub. for S. B. 409—By Senators Lucht, Jones, Felton, J. Manchin,
Heck, Holliday, Blatnik and Wehrle)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article four, chapter eighteen-b 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 five-a; and to amend and reenact section one, article twenty-nine, chapter thirty of said code, relating to campus security officers; defining such officers as law-enforcement officers; allowing supervisor to exempt officers from required training; requiring reports of crimes alleged to have occurred at institutions of higher education in this state be referred to law-enforcement agencies and reported to public by rule with exceptions.

Be it enacted by the Legislature of West Virginia:

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

Chapter

18B. Higher Education.

30. Professions and Occupations.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-5. Security officers; appointment; qualifications; authority; compensation and removal.

§18B-4-5a. Crimes committed on campus of institutions of higher education.

§18B-4-5. Security officers; appointment; qualifications; authority; compensation and removal.

1 The governing boards are hereby authorized to
2 appoint bona fide residents of this state to act as security
3 officers upon any premises owned or leased by the state
4 of West Virginia and under the jurisdiction of the
5 governing boards, subject to the conditions and restric-
6 tions hereinafter imposed. Before performing duties as
7 a security officer in any county, each person so ap-
8 pointed shall qualify therefor in the same manner as is
9 required of county officers by the taking and filing an
10 oath of office as required by article one, chapter six of
11 this code and by posting an official bond as required by
12 article two, chapter six of this code. No security officer
13 shall have authority to carry a gun or any other
14 dangerous weapon until a license therefor has been
15 obtained in the manner prescribed by section two,
16 article seven, chapter sixty-one of this code.

17 It shall be the duty of any person so appointed and
18 qualified to preserve law and order on any premises
19 under the jurisdiction of the governing boards and on
20 any other street, road or thoroughfare, except controlled
21 access and open country highways, adjacent to or
22 passing through such premises, to which the person may
23 be assigned by the president or other administrative
24 head of the state institution of higher education. For this
25 purpose the security officer shall be deemed to be a law-
26 enforcement officer in accordance with the provisions of
27 section one, article twenty-nine, chapter thirty of this
28 code and, as to offenses committed within any area so
29 assigned, have and may exercise all the powers and
30 authority and shall be subject to all the requirements
31 and responsibilities of a law-enforcement officer:
32 *Provided*, That the supervisor of any security officer
33 employed on the effective date of this section may
34 exempt such officer from any law-enforcement training
35 required in said article. The assignment of security
36 officers to the duties authorized by this section shall not

37 be deemed to supersede in any way the authority or duty
38 of other peace officers to preserve law and order on such
39 premises. In addition, the security officers appointed
40 under provisions of this section shall have authority to
41 assist local peace officers on public highways in the
42 control of traffic in and around premises owned by the
43 state of West Virginia whenever such traffic is gener-
44 ated as a result of athletic or other activities conducted
45 or sponsored by a state institution of higher education
46 and when such assistance has been requested by the
47 local peace officers.

48 The salary of all such security officers shall be paid
49 by the appropriate governing board. Each state institu-
50 tion may furnish each such security officer with an
51 official uniform to be worn while on duty and shall
52 furnish and require each such officer while on duty to
53 wear a shield with an appropriate inscription and to
54 carry credentials certifying to the person's identity and
55 authority as a security officer.

56 The governing boards may at their pleasure revoke
57 the authority of any security officer. The president or
58 other administrative head of the state institution of
59 higher education shall report the termination of
60 employment of a security officer by filing a notice to
61 that effect in the office of the clerk of each county in
62 which the security officer's oath of office was filed, and
63 in the case of a security officer licensed to carry a gun
64 or other dangerous weapon, by notifying the clerk of the
65 circuit court of the county in which the license therefor
66 was granted.

**§18B-4-5a. Crimes committed on campus of institutions of
higher education.**

1 The president or a designee of each institution of
2 higher education in this state shall on a regular and
3 timely basis provide information to the public concern-
4 ing alleged crimes occurring on the institution's
5 property which have been reported to a security officer
6 or any other officer of the institution. A crime shall be
7 deemed reported whenever a security officer or other
8 officer of the institution determines that the report is

9 credible, when the report is submitted in writing and
10 attested to by the victim on such forms as shall be made
11 available by the institution for such purpose, or when
12 the institution is notified by a law-enforcement agency
13 of the reporting of a crime alleged to have occurred on
14 the institution's property.

15 Such reports shall be referred within twenty-four
16 hours to the appropriate law-enforcement agencies, as
17 defined in section one, article twenty-nine, chapter
18 thirty of this code, for further investigation. The
19 information required to be made available to the public
20 regarding the crime report shall be so available within
21 ten days of the report and shall include the nature of
22 the criminal offense, the date of the offense, the general
23 location of the offense (such as a designation of a specific
24 building or area of the campus) and the time of day
25 when the offense occurred: *Provided*, That this require-
26 ment shall not be construed to require the release of any
27 information which may disclose the identity of the
28 victim: *Provided, however*, That the institution shall
29 withhold the information required to be made available
30 to the public for a longer period upon certification of
31 investigative need that the information be withheld
32 from the public, such certification to be filed by an
33 officer of one of the investigating law-enforcement
34 agencies with the president of the institution or the
35 designee to whom the duties required by this section
36 have been delegated: *Provided further*, That the re-
37 quired information shall in no event be withheld after
38 an arrest has been made in connection with the crime
39 report.

40 For purposes of this section, "crime" shall be defined
41 as those offenses required to be reported under the
42 federal Crime Awareness and Campus Security Act of
43 1990, as amended, and under section eight-a, article one
44 of this chapter, and shall include murder, rape, robbery,
45 aggravated assault, burglary, motor vehicle theft and
46 arrests for liquor, drug or weapons laws violations.

47 The governing boards shall provide crime reporting
48 forms and promulgate such legislative rules pursuant to
49 the provisions of article three-a, chapter twenty-nine-a

50 of this code as are necessary for the implementation of
51 this section. Such forms and rules shall be provided by
52 the central office to other institutions of higher educa-
53 tion in this state to assist them with the implementation
54 of this section.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFI- CATION.

§30-29-1. Definitions.

1 For the purposes of this article, unless a different
2 meaning clearly appears in the context:

3 "Approved law-enforcement training academy"
4 means any training facility which is approved and
5 authorized to conduct law-enforcement training as
6 provided in this article;

7 "Chief executive" means the superintendent of the
8 department of public safety; the chief conservation
9 officer, department of natural resources; the sheriff of
10 any West Virginia county; or the chief of any West
11 Virginia municipal law-enforcement agency;

12 "County" means the fifty-five major political subdivi-
13 sions of the state;

14 "Exempt rank" means any noncommissioned or
15 commissioned rank of sergeant or above;

16 "Governor's committee on crime, delinquency and
17 correction" or "governor's committee" means the
18 governor's committee on crime, delinquency and correc-
19 tion established as a state planning agency pursuant to
20 section one, article nine, chapter fifteen of this code;

21 "Law-enforcement officer" means any duly authorized
22 member of a law-enforcement agency who is authorized
23 to maintain public peace and order, prevent and detect
24 crime, make arrests, and enforce the laws of the state
25 or any county or municipality thereof, other than
26 parking ordinances, and shall include those persons
27 employed as security officers at state institutions of
28 higher education in accordance with the provisions of
29 section five, article four, chapter eighteen-b of this code,

30 although no such institution shall be deemed a law-
31 enforcement agency. As used in this article, the term
32 "law-enforcement officer" does not apply to the chief
33 executive of any West Virginia law-enforcement agency
34 or any watchman or special conservation officer;

35 "Law-enforcement official" means the duly appointed
36 chief administrator of a designated law-enforcement
37 agency or a duly authorized designee;

38 "Municipality" means any incorporated town or city
39 whose boundaries lie within the geographic boundaries
40 of the state;

41 "Subcommittee" or "law-enforcement training sub-
42 committee" means the subcommittee of the governor's
43 committee on crime, delinquency and correction created
44 by section two of this article; and

45 "West Virginia law-enforcement agency" means any
46 duly authorized state, county or municipal organization
47 employing one or more persons whose responsibility is
48 the enforcement of laws of the state or any county or
49 municipality thereof: *Provided*, That no state institution
50 of higher education shall be deemed a law-enforcement
51 agency.

CHAPTER 69

(S. B. 27—By Senators Lucht, Felton and Humphreys)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

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; and to amend and reenact section ten, article nine of said chapter, relating to higher education personnel; extending leave transfer provisions to nonclassified employees; providing generally for leave banks; and providing for election of faculty and classified employee advisory council members in April of each even-numbered year.

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; and that section ten, article nine of said chapter be amended and reenacted, all to read as follows:

Article

6. Other Boards and Advisory Councils.

9. Classified Employee Salary Schedule and Classification System.

ARTICLE 6. OTHER BOARDS AND ADVISORY COUNCILS.

§18B-6-2. Advisory councils of faculty.

§18B-6-4. Advisory councils of classified employees.

§18B-6-2. 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 even-numbered
5 year, each president or other administrative head of a
6 state institution of higher education, including Potomac
7 State College of West Virginia University and West
8 Virginia University at Parkersburg, at the direction of
9 the councils and in accordance with procedures estab-
10 lished by the councils, shall convene a meeting or
11 otherwise institute a balloting process to elect one
12 faculty to serve on the appropriate governing board's
13 advisory council of faculty, which shall consist of one
14 faculty, so elected, from each such institution under the
15 appropriate governing board. Terms of the members of
16 each council shall be for two years and shall begin on
17 the first day of July of each even-numbered year, and
18 members of each advisory council shall be eligible to
19 succeed 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 chair-
38 man and in any other appropriate manner, shall consult
39 and advise its governing board in matters of higher
40 education in which the faculty members may have an
41 interest.

42 Members of each advisory council shall serve without
43 compensation, but shall be entitled to reimbursement
44 for actual and necessary expenses incurred in the
45 performance of their official duties from funds allocated
46 to the state institution of higher education served.

47 Each governing board shall furnish secretarial
48 services to its advisory council of faculty, and each
49 advisory council shall cause to be prepared minutes of
50 its meetings, which minutes shall be available, upon
51 request, to any faculty member of a state institution of
52 higher education represented on the council. Such
53 minutes shall be forwarded to the advisory council of
54 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 even-numbered
5 year, each president or other administrative head of a
6 state institution of higher education, including Potomac
7 State College of West Virginia University and West
8 Virginia University at Parkersburg, at the direction of
9 the councils and in accordance with procedures estab-
10 lished by the councils, shall convene a meeting or

11 otherwise institute a balloting process to elect one
12 classified employee to serve on the appropriate govern-
13 ing board's advisory council of classified employees,
14 which shall consist of one classified employee, so elected,
15 from each such institution under the appropriate
16 governing board. Terms of the members of such councils
17 shall be for two years and shall begin on the first day
18 of July of each even-numbered year, and members of the
19 advisory councils shall be eligible to succeed themselves.
20 For the purpose of this section the term "institution of
21 higher education" includes the facilities and staff
22 supervised by the senior administrator employed by the
23 governing boards, who shall be deemed a part of the
24 state college system, and the West Virginia network for
25 telecomputing, who shall be deemed a part of the state
26 university system.

27 Each advisory council of classified employees shall
28 meet at least once each quarter. One of the quarterly
29 meetings shall be during the month of July, at which
30 meeting each council shall elect a chairman, who shall
31 be by virtue of the office a voting member of the
32 appropriate governing board: *Provided*, That the board
33 of directors' advisory council for classified employees'
34 chairman shall not be a member of the staff supervised
35 by the central administrative official. No member may
36 vote by proxy at such election. In the event of a tie in
37 the last vote taken for such election, a member autho-
38 rized by the council shall select the chairman by lot
39 from the names of those persons tied. Immediately
40 following the election of a chairman, each council shall
41 elect, in the manner prescribed by this section for the
42 election of a chairman, a member of the council to
43 preside over meetings of the council in the chairman's
44 absence. Should the chairman vacate the position, the
45 council shall meet and elect a new chairman to fill the
46 unexpired term within thirty days following such
47 vacancy.

48 Each advisory council of classified employees,
49 through its chairman and in any other appropriate
50 manner, shall consult and advise its governing board in
51 matters of higher education in which the classified

52 employees may have an interest.

53 Members of each advisory council shall serve without
54 compensation, but shall be entitled to reimbursement
55 for actual and necessary expenses incurred in the
56 performance of their official duties from funds allocated
57 to the state institution of higher education served.

58 Each governing board shall furnish secretarial
59 services to its advisory council of classified employees,
60 and each advisory council shall cause to be prepared
61 minutes of its meetings, which minutes shall be
62 available, upon request, to any classified employee of a
63 state institution of higher education represented on the
64 council. Such minutes shall be forwarded to the advisory
65 council of classified employees serving the other
66 governing board.

**ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND
CLASSIFICATION SYSTEM.**

**§18B-9-10. Higher education employees' catastrophic
leave bank and leave transfer.**

1 (a) A classified or nonclassified employee employed by
2 the higher education governing board or by the central
3 office may donate sick and annual leave to a leave bank
4 established and operated in accordance with the
5 provisions of subsection (c) of this section or directly to
6 another employee in accordance with the provisions of
7 subsection (d) of this section. No employee shall be
8 compelled to donate sick or annual leave. Any leave
9 donated by an employee pursuant to this section shall
10 be used only for the purpose of catastrophic illness or
11 injury as defined in subsection (b) of this section and
12 shall reduce, to the extent of such donation, the number
13 of days of annual or sick leave to which the employee
14 is entitled.

15 (b) For the purpose of this section, a catastrophic
16 illness or injury means an illness or injury which is
17 expected to incapacitate the employee and which creates
18 a financial hardship because the employee has ex-
19 hausted all sick and annual leave and other paid time
20 off. Catastrophic illness or injury shall also include an
21 incapacitated immediate family member as defined by

22 the appropriate governing board if this results in the
23 employee being required to take time off from work for
24 an extended period of time to care for the family
25 member and the employee has exhausted all sick and
26 annual leave and other paid time off.

27 (c) A leave bank or banks may be established at each
28 state institution of higher education and the central
29 office to which employees may donate either sick or
30 annual leave. The bank or banks may be established
31 jointly by the central office and both governing boards,
32 may be established for the central office and each of the
33 governing boards, or may be established for the central
34 office and each institution of higher education under
35 either governing board. Sick or annual leave may be
36 deposited in the leave bank, and such deposit shall be
37 reflected as a day-for-day deduction from the sick or
38 annual leave balance of the depositing employee.

39 Such deposited leave may be withdrawn by any
40 employee experiencing a catastrophic illness or injury
41 as those terms are defined in subsection (b) of this
42 section upon appropriate verification that the employee
43 is unable to work due to the catastrophic illness or
44 injury as determined by the president of the institution
45 or senior administrator, approval of the withdrawal by
46 the president of the institution or senior administrator,
47 and written notice to the personnel office. The withdra-
48 wal shall be reflected as a day-for-day addition to the
49 leave balance of the withdrawing employee.

50 (d) Sick or annual leave may be donated to any
51 employee experiencing a catastrophic illness or injury
52 as those terms are defined in subsection (b) of this
53 section. Such leave shall be donated at the request of the
54 employee upon appropriate verification that the em-
55 ployee is unable to work due to the catastrophic illness
56 or injury as determined by the president of the institu-
57 tion or senior administrator. Upon approval of the
58 transfer of sick or annual leave by the president of the
59 institution or senior administrator, any employee may,
60 upon written notice to the personnel office, donate sick
61 or annual leave in one-day increments. Donations shall
62 be reflected as a day-for-day deduction from the sick or

63 annual leave balance of the donating employee. An
64 employee receiving the transfer of sick or annual leave
65 shall have any time which is donated credited to such
66 employee's account in one-day increments and reflected
67 as a day-for-day addition to the leave balance of the
68 receiving employee.

69 (e) Use of donated credits may not exceed a maximum
70 of twelve continuous calendar months for any one
71 catastrophic illness or injury. The total amount of sick
72 or annual leave withdrawn or received may not exceed
73 an amount sufficient to ensure the continuance of
74 regular compensation and shall not be used to extend
75 insurance coverage pursuant to section thirteen, article
76 sixteen, chapter five of this code. An employee with-
77 drawing or receiving donations of sick or annual leave
78 pursuant to this section shall use any leave personally
79 accrued on a monthly basis prior to receiving additional
80 donated sick or annual leave.

81 (f) Transfer of sick or annual leave deposited in an
82 institutional leave bank or transferred under subsection
83 (c) may be inter-institutional in accordance with the
84 policies of the appropriate governing board. Each
85 institution and the central office shall be responsible for
86 the administration of the sick or annual leave deposits.
87 withdrawals and transfers of its employees. Rules
88 implementing the provisions of this section may be
89 adopted jointly or separately by the governing boards in
90 accordance with article three-a, chapter twenty-nine-a
91 of this code.

CHAPTER 70

(S. B. 352—By Senators Lucht and Felton)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article seventeen, relating to authorization of higher

education governing boards to promulgate legislative rules; providing generally for authorization, effective date and waiver of technical deficiencies; and authorizing specific regulations relating to higher education report cards, equal opportunity and affirmative action and holidays.

Be it enacted by the Legislature of West Virginia:

That chapter eighteen-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 seventeen, to read as follows:

ARTICLE 17. LEGISLATIVE RULES.

§18B-17-1. Legislative authorization; effective date of rules; technical deficiencies waived.

§18B-17-2. Board of trustees.

§18B-17-3. Board of directors.

§18B-17-1. Legislative authorization; effective date of rules; technical deficiencies waived.

1 Under the provisions of article three-a, chapter
2 twenty-nine-a of the code of West Virginia, the Legis-
3 lature expressly authorizes the promulgation of the
4 rules described in sections two and three of this article,
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 sections two and three of this article are within
10 the legislative intent of the statute which the rule is
11 intended to implement, extend, apply or interpret.

12 The effective date of the legislative rules authorized
13 in sections two and three of this article shall be governed
14 by the provisions of section fourteen, article three-a,
15 chapter twenty-nine-a of this code unless the governing
16 board promulgating the rules establishes an effective
17 date which is earlier than that provided by said section,
18 in which case the effective date established by the
19 governing board shall control, unless the Legislature in
20 the bill authorizing the rules establishes an effective
21 date for such rules, in which case the effective date
22 established by the Legislature shall control.

23 The Legislature further declares each legislative rule
24 now or hereafter authorized under this article to have
25 been validly promulgated notwithstanding any failure to
26 comply with any requirement of article three-a, chapter
27 twenty-nine-a of this code relating to the promulgation
28 of rules at any stage of the promulgation process prior
29 to authorization by the Legislature in sections two and
30 three of this article.

§18B-17-2. Board of trustees.

1 (a) The legislative rules filed in the state register on
2 the third day of December, one thousand nine hundred
3 ninety-one, modified by the board of trustees to meet the
4 objections of the legislative oversight commission on
5 education accountability and refiled in the state register
6 on the twenty-first day of January, one thousand nine
7 hundred ninety-two, relating to the board of trustees
8 (report card), are authorized.

9 (b) The legislative rules filed in the state register on
10 the thirteenth day of July, one thousand nine hundred
11 ninety-one, relating to the board of trustees (equal
12 opportunity and affirmative action), are authorized.

§18B-17-3. Board of directors.

1 (a) The legislative rules filed in the state register on
2 the sixteenth day of December, one thousand nine
3 hundred ninety-one, modified by the board of directors
4 to meet the objections of the legislative oversight
5 commission on education accountability and refiled in
6 the state register on the twenty-first day of January, one
7 thousand nine hundred ninety-two, relating to the board
8 of directors (report card), are authorized.

9 (b) The legislative rules filed in the state register on
10 the twenty-seventh day of September, one thousand nine
11 hundred ninety-one, relating to the board of directors
12 (equal opportunity and affirmative action), are
13 authorized.

14 (c) The legislative rules filed in the state register on
15 the fourth day of December, one thousand nine hundred
16 ninety-one, relating to the board of directors (holiday
17 policy), are authorized.

CHAPTER 71

(H. B. 4632—By Delegates Carper and Michael)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article eight, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article one, chapter twenty-two-b, all relating to excluding gas vented or released from mine areas and adjacent coal seams from the definition of waste.

Be it enacted by the Legislature of West Virginia:

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

Chapter

22. Environmental Resources.

22B. Oil and Gas.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 8. OIL AND GAS CONSERVATION.

§22-8-2. Definitions.

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

3 (1) "Commission" means the oil and gas conservation
4 commission and "commissioner" means the oil and gas
5 conservation commissioner as provided for in section
6 four of this article;

7 (2) "Director" means the director for the division of
8 oil and gas provided for in section eleven, article one,
9 chapter twenty-two of this code;

10 (3) "Person" means any natural person, corporation,
11 partnership, receiver, trustee, executor, administrator,
12 guardian, fiduciary or other representative of any kind.

13 and includes any government or any political subdivi-
14 sion or any agency thereof;

15 (4) "Operator" means any owner of the right to
16 develop, operate and produce oil and gas from a pool and
17 to appropriate the oil and gas produced therefrom,
18 either for himself or for himself and others; in the event
19 that there is no oil and gas lease in existence with
20 respect to the tract in question, the owner of the oil and
21 gas rights therein shall be considered as "operator" to
22 the extent of seven eighths of the oil and gas in that
23 portion of the pool underlying the tract owned by such
24 owner, and as "royalty owner" as to one-eighth interest
25 in such oil and gas; and in the event the oil is owned
26 separately from the gas, the owner of the substance
27 being produced or sought to be produced from the pool
28 shall be considered as "operator" as to such pool;

29 (5) "Royalty owner" means any owner of oil and gas
30 in place, or oil and gas rights, to the extent that such
31 owner is not an operator as defined in subdivision (4)
32 of this section;

33 (6) "Independent producer" means a person who is
34 actively engaged in the production of oil and gas in West
35 Virginia, but whose gross revenue from such production
36 in West Virginia does not exceed five hundred thousand
37 dollars per year;

38 (7) "Oil" means natural crude oil or petroleum and
39 other hydrocarbons, regardless of gravity, which are
40 produced at the well in liquid form by ordinary
41 production methods and which are not the result of
42 condensation of gas after it leaves the underground
43 reservoir;

44 (8) "Gas" means all natural gas and all other fluid
45 hydrocarbons not defined as oil in subdivision (7) of this
46 section;

47 (9) "Pool" means an underground accumulation of
48 petroleum in a single and separate natural reservoir
49 (ordinarily a porous sandstone or limestone). It is
50 characterized by a single natural-pressure system so
51 that production of petroleum from one part of the pool

52 affects the reservoir pressure throughout its extent. A
53 pool is bounded by geologic barriers in all directions,
54 such as geologic structural conditions, impermeable
55 strata, and water in the formations, so that it is
56 effectively separated from any other pools that may be
57 presented in the same district or on the same geologic
58 structure;

59 (10) "Well" means any shaft or hole sunk, drilled,
60 bored or dug into the earth or underground strata for
61 the extraction of oil or gas;

62 (11) "Shallow well" means any well drilled and
63 completed in a formation above the top of the uppermost
64 member of the "Onondaga Group": *Provided*, That in
65 drilling a shallow well the operator may penetrate into
66 the "Onondaga Group" to a reasonable depth, not in
67 excess of twenty feet, in order to allow for logging and
68 completion operations, but in no event may the "Onon-
69 daga Group" formation be otherwise produced, perfo-
70 rated or stimulated in any manner;

71 (12) "Deep well" means any well, other than a shallow
72 well, drilled and completed in a formation at or below
73 the top of the uppermost member of the "Onondaga
74 Group";

75 (13) "Drilling unit" means the acreage on which one
76 well may be drilled;

77 (14) "Waste" means and includes: (A) Physical waste,
78 as that term is generally understood in the oil and gas
79 industry; (B) the locating, drilling, equipping, operating
80 or producing of any oil or gas well in a manner that
81 causes, or tends to cause, a reduction in the quantity of
82 oil or gas ultimately recoverable from a pool under
83 prudent and proper operations, or that causes or tends
84 to cause unnecessary or excessive surface loss of oil or
85 gas; or (C) the drilling of more deep wells than are
86 reasonably required to recover efficiently and econom-
87 ically the maximum amount of oil and gas from a pool.
88 Waste does not include gas vented or released from any
89 mine areas as defined in section one, article one-a,
90 chapter twenty-two-a of this code or from adjacent coal
91 seams which are the subject of a current permit issued

92 under article two of chapter twenty-two-a of this code;
93 *Provided*, That nothing in this exclusion is intended to
94 address ownership of the gas;

95 (15) "Correlative rights" means the reasonable
96 opportunity of each person entitled thereto to recover
97 and receive without waste the oil and gas in and under
98 his tract or tracts, or the equivalent thereof; and

99 (16) "Just and equitable share of production" means,
100 as to each person, an amount of oil or gas or both
101 substantially equal to the amount of recoverable oil and
102 gas in that part of a pool underlying his tract or tracts.

103 (b) Unless the context clearly indicates otherwise, the
104 use of the word "and" and the word "or" shall be
105 interchangeable, as, for example, "oil and gas" shall
106 mean oil or gas or both.

CHAPTER 22B. OIL AND GAS.

ARTICLE 1. DIVISION OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION; ENFORCEMENT.

§22B-1-1. Definitions.

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

3 (a) "Casing" means a string or strings of pipe
4 commonly placed in wells drilled for natural gas or
5 petroleum or both;

6 (b) "Cement" means hydraulic cement properly mixed
7 with water;

8 (c) "Chairman" means the chairman of the West
9 Virginia shallow gas well review board as provided for
10 in section four, article seven, chapter twenty-two of this
11 code;

12 (d) "Chief" means chief of the division of water
13 resources of the department of natural resources;

14 (e) "Coal operator" means any person or persons, firm,
15 partnership, partnership association or corporation that
16 proposes to or does operate a coal mine;

17 (f) "Coal seam" and "workable coal bed" are inter-

18 changeable terms and mean any seam of coal twenty
19 inches or more in thickness, unless a seam of less
20 thickness is being commercially worked, or can in the
21 judgment of the department foreseeably be commer-
22 cially worked and will require protection if wells are
23 drilled through it;

24 (g) "Commissioner" means commissioner of the
25 department of energy;

26 (h) "Deep well" means any well other than a shallow
27 well, drilled and completed in a formation at or below
28 the top of the uppermost member of the "Onondaga
29 Group";

30 (i) "Division" means, for purposes of this article and
31 articles three and four of this chapter, the division of
32 oil and gas of the department of energy;

33 (j) "Director" means, for the purposes of this article
34 and articles two, three and four of this chapter, the
35 director of the division of oil and gas of the department
36 of energy;

37 (k) "Expanding cement" means any cement approved
38 by the division of oil and gas which expands during the
39 hardening process, including, but not limited to, regular
40 oil field cements with the proper additives;

41 (l) "Facility" means any facility utilized in the oil and
42 gas industry in this state and specifically named or
43 referred to in this article or in article three or four of
44 this chapter, other than a well or well site;

45 (m) "Gas" means all natural gas and all other fluid
46 hydrocarbons not defined as oil in subdivision (n) of this
47 section;

48 (n) "Oil" means natural crude oil or petroleum and
49 other hydrocarbons, regardless of gravity, which are
50 produced at the well in liquid form by ordinary
51 production methods and which are not the result of
52 condensation of gas after it leaves the underground
53 reservoirs;

54 (o) "Owner" when used with reference to any well,
55 shall include any person or persons, firm, partnership,

56 partnership association or corporation that owns,
57 manages, operates, controls or possesses such well as
58 principal, or as lessee or contractor, employee or agent
59 of such principal;

60 (p) "Owner" when used with reference to any coal
61 seam, shall include any person or persons who own, lease
62 or operate such coal seam;

63 (q) "Person" means any natural person, corporation,
64 firm, partnership, partnership association, venture,
65 receiver, trustee, executor, administrator, guardian,
66 fiduciary or other representative of any kind, and
67 includes any government or any political subdivision or
68 any agency thereof;

69 (r) "Plat" means a map, drawing or print showing the
70 location of a well or wells as herein defined;

71 (s) "Review board" means the West Virginia shallow
72 gas well review board as provided for in section four,
73 article seven, chapter twenty-two of this code;

74 (t) "Safe mining through of a well" means the mining
75 of coal in a workable coal bed up to a well which
76 penetrates such workable coal bed and through such
77 well so that the casing or plug in the well bore where
78 the well penetrates the workable coal bed is severed;

79 (u) "Shallow well" means any gas well drilled and
80 completed in a formation above the top of the uppermost
81 member of the "Onondaga Group": *Provided*, That in
82 drilling a shallow well the operator may penetrate into
83 the "Onondaga Group" to a reasonable depth, not in
84 excess of twenty feet, in order to allow for logging and
85 completion operations, but in no event may the "Onon-
86 daga Group" formation be otherwise produced, perfo-
87 rated or stimulated in any manner;

88 (v) "Stimulate" means any action taken by a well
89 operator to increase the inherent productivity of an oil
90 or gas well, including, but not limited to, fracturing,
91 shooting or acidizing, but excluding cleaning out,
92 bailing or workover operations;

93 (w) "Waste" means (i) physical waste, as the term is

94 generally understood in the oil and gas industry; (ii) the
95 locating, drilling, equipping, operating or producing of
96 any oil or gas well in a manner that causes, or tends
97 to cause a substantial reduction in the quantity of oil or
98 gas ultimately recoverable from a pool under prudent
99 and proper operations, or that causes or tends to cause
100 a substantial or unnecessary or excessive surface loss of
101 oil or gas; or (iii) the drilling of more deep wells than
102 are reasonably required to recover efficiently and
103 economically the maximum amount of oil and gas from
104 a pool; (iv) substantially inefficient, excessive or
105 improper use, or the substantially unnecessary dissipa-
106 tion of, reservoir energy, it being understood that
107 nothing in this chapter shall be construed to authorize
108 any agency of the state to impose mandatory spacing of
109 shallow wells except for the provisions of section eight,
110 article eight, chapter twenty-two of this code and the
111 provisions of article seven, chapter twenty-two of this
112 code; (v) inefficient storing of oil or gas: *Provided*, That
113 storage in accordance with a certificate of public
114 convenience issued by the federal energy regulatory
115 commission shall be conclusively presumed to be
116 efficient and (vi) other underground or surface waste in
117 the production or storage of oil, gas or condensate,
118 however caused. Waste does not include gas vented or
119 released from any mine areas as defined in section one,
120 article one-a, chapter twenty-two-a of this code or from
121 adjacent coal seams which are the subject of a current
122 permit issued under article two of chapter twenty-two-
123 a of this code: *Provided, however*, That nothing in this
124 exclusion is intended to address ownership of the gas;

125 (x) "Well" means any shaft or hole sunk, drilled, bored
126 or dug into the earth or into underground strata for the
127 extraction or injection or placement of any liquid or gas,
128 or any shaft or hole sunk or used in conjunction with
129 such extraction or injection or placement. The term
130 "well" does not include any shaft or hole sunk, drilled,
131 bored or dug into the earth for the sole purpose of core
132 drilling or pumping or extracting therefrom potable,
133 fresh or usable water for household, domestic, indus-
134 trial, agricultural or public use;

135 (y) "Well work" means the drilling, redrilling,
136 deepening, stimulating, pressuring by injection of any
137 fluid, converting from one type of well to another,
138 combining or physically changing to allow the migration
139 of fluid from one formation to another or plugging or
140 replugging of any well;

141 (z) "Well operator" or "operator" means any person or
142 persons, firm, partnership, partnership association or
143 corporation that proposes to or does locate, drill, operate
144 or abandon any well as herein defined;

145 (aa) "Pollutant" shall have the same meaning as
146 provided in subsection (x), section two, article five-a,
147 chapter twenty of this code; and

148 (bb) "Waters of this state" shall have the same
149 meaning as the term "waters" as provided in subsection
150 (e), section two, article five-a, chapter twenty of this
151 code.

CHAPTER 72

(H. B. 4192—By Delegates Roop and Ashley)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article three, chapter fifty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to competency of witnesses; and prohibiting priests, nuns, rabbis, Christian Science practitioners and members of the clergy from being compelled to testify in criminal or domestic relations proceedings as to communications made to them in their professional capacities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. COMPETENCY OF WITNESSES.

§57-3-9. Communications to priests, nuns, clergy, rabbis, Christian Science practitioners or other religious counselors not subject to being compelled as testimony.

1 No priest, nun, rabbi, duly accredited Christian
2 Science practitioner or member of the clergy authorized
3 to celebrate the rites of marriage in this state pursuant
4 to the provisions of article one, chapter forty-eight of
5 this code shall be compelled to testify in any criminal
6 or grand jury proceedings or in any domestic relations
7 action in any court of this state:

8 (1) With respect to any confession or communication,
9 made to such person, in his or her professional capacity
10 in the course of discipline enjoined by the church or
11 other religious body to which he or she belongs, without
12 the consent of the person making such confession or
13 communication; or

14 (2) With respect to any communication made to such
15 person, in his or her professional capacity, by either
16 spouse, in connection with any effort to reconcile
17 estranged spouses, without the consent of the spouse
18 making the communication. This subsection is in
19 addition to the protection and privilege afforded
20 pursuant to section ten-a, article two, chapter forty-eight
21 of this code.

CHAPTER 73

(Com. Sub. for H. B. 4579—By Delegates J. Martin and Houvouras)

[Passed March 7, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-b, relating to establishing an on-site consultation program within the division of labor to assist employers in complying with federal, state, county and city environmental and hazardous waste require-

ments; legislative purpose; duties of division of labor and commissioner of labor; creating an environmental assistance resource board; and establishing procedures.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3B. EMPLOYER ASSISTANCE FOR ENVIRONMENTAL PROTECTION.

§21-3B-1. Title and purpose.

§21-3B-2. Duties and responsibilities of division of labor and the commissioner of labor.

§21-3B-3. Environmental assistance resource board.

§21-3B-4. Procedures.

§21-3B-1. Title and purpose.

1 This article shall be known and may be cited as the
2 "Employer Assistance For Environmental Protection
3 Act."

4 It is the purpose of this article to make available to
5 employers in this state assistance in identifying envir-
6 onmental and hazardous waste hazards common to the
7 workplace and to further assist such employers in
8 developing plans for compliance with all such concerns.
9 Such assistance will be provided using the available
10 personnel and resources of the various state agencies
11 involved in the regulation and control of environmental
12 and hazardous waste disciplines.

§21-3B-2. Duties and responsibilities of division of labor and the commissioner of labor.

1 (a) The division of labor shall:

2 (1) Encourage employers and employees to reduce
3 existing environmental and hazardous waste hazards
4 and to implement new or improved existing safety and
5 health programs;

6 (2) Provide technical advice and information relating
7 to environmental hazards and waste hazards;

8 (3) Develop and implement training programs to
9 increase the employer and employee competence in
10 managing and correcting environmental hazards and
11 waste hazards;

12 (4) Develop and coordinate an information network
13 relating to applicable environmental and hazardous
14 waste law affecting the business community in West
15 Virginia;

16 (5) Offer a program of on-site consultation to assist
17 businesses in identifying environmental hazards and
18 waste hazards; and

19 (6) Offer to businesses an off-site program by tele-
20 phone or correspondence for information and assistance
21 in complying with environmental regulation.

22 (b) The commissioner of labor shall develop and
23 implement rules, regulations and administrative guide-
24 lines required to effectuate the purposes of this article.

25 (c) In carrying out the duties and responsibilities
26 imposed by the provisions of subsection (a) of this
27 section, or in developing and implementing rules,
28 regulations and administrative guidelines in accordance
29 with the provisions of subsection (b) of this section, the
30 division of labor and the commissioner shall not expend
31 any state funds or utilize any personnel of the division
32 for the training of any permanent replacement em-
33 ployee, unless and until such permanent replacement
34 employee has been determined by the commissioner to
35 have been legally employed.

§21-3B-3. Environmental assistance resource board.

1 There is hereby created within the division of labor
2 an environmental assistance resource board to advise
3 and assist the commissioner of labor in developing the
4 technical resources necessary to administer the provi-
5 sions of this article. The board is composed of the
6 commissioner of labor, who shall serve as chair; the
7 director of the air pollution control commission; the
8 chief of the division of water resources of the division
9 of natural resources; the chief of the division of waste
10 management of the division of natural resources; the

11 commissioner of the division of environmental protec-
12 tion; one member of the House of Delegates appointed
13 by the speaker of the House; and one member of the
14 Senate appointed by the president of the Senate. Terms
15 of legislative members of the board shall run concurrent
16 with the member's legislative term of office.

17 The board shall meet within thirty days of the
18 effective date of this article and thereafter at the call
19 of the chair. The board shall establish an information
20 network wherein the commissioner of labor and any
21 consultant advising employers, in order to provide
22 accurate information regarding compliance with environ-
23 mental and hazardous waste regulations, may access
24 written materials or staff having technical expertise
25 within the agencies represented on the board. At the
26 request of the board, the secretary of the department of
27 commerce, labor and environmental resources is auth-
28 orized to direct the assignment of staff, on a temporary
29 or permanent basis, from any agency represented on the
30 board to the division of labor to assist in the implemen-
31 tation of the employer assistance program set forth in
32 this article.

§21-3B-4. Procedures.

1 (a) Any employer within the state may request the
2 commissioner of labor in writing to provide advice and
3 assistance in identifying and eliminating environmental
4 hazards in compliance with applicable state, federal and
5 local law. The employer may specify a limited scope for
6 consultation by indicating hazards or situations on
7 which consultation will be focused. No consultation
8 services may be provided when an agency charged with
9 enforcing federal, state or local environmental or
10 hazardous waste regulations has issued a citation or
11 ordered that a condition be abated or corrected.

12 (b) The commissioner shall provide on-site consulta-
13 tion services in identifying and eliminating environmen-
14 tal hazards. However, since employee contact by a
15 consultant is needed for proper identification of environ-
16 mental hazards in the workplace, employers must
17 agree to such contact before a consultation may proceed.

18 Employers must agree to correct all hazards noted by
19 the consultant as a condition of the providing of
20 consultation services. Employers are encouraged to
21 permit employees to participate in the walk-around
22 portion of a consultation visit.

23 (c) Prior to visiting a worksite, the consultant may
24 request specific information concerning the worksite.
25 Requested information must be provided before a
26 consultation may proceed.

27 (d) If, in the course of an inspection, the consultant
28 observes environmental hazards violating federal, state
29 or local law which are outside the scope of a consultation
30 request, the consultant shall treat such hazards as if
31 they were within the scope of the consultation request.

32 (e) During the on-site consultation, the consultant
33 shall point out hazards and violations observed, suggest
34 approaches or options for corrective action, and provide
35 additional information related to complying with
36 applicable laws. The consultant shall prepare a written
37 report, which shall be furnished to the employer, of all
38 hazards observed and methods of abatement and may
39 suggest where additional assistance may be secured.
40 The consultant may follow through after the on-site
41 consultation to assist in implementing recommendations
42 and to assure that required corrective action is taken.

43 (f) Information obtained by a consultant related to
44 environmental hazards and violations may not be
45 disclosed to enforcement officials, except when an
46 employer fails or refuses to take corrective action to
47 eliminate imminent danger or serious hazards.

48 (g) No fees, penalties or costs may be assessed against
49 the employer.

50 (h) The use of the consultation services contemplated
51 by this article by any employer shall raise no presump-
52 tion, inference, or defense to any action, order, citation,
53 charge, rule to show cause, or any other enforcement
54 effort brought against such employer by any agency of
55 the state of West Virginia.

CHAPTER 74

(Com. Sub. for H. B. 2261—By Delegates Love and Wilson)

[Passed February 10, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-a, relating to a statutory rule against perpetuities; the creation of nonvested property interest or power of appointment; reformation of a disposition; exclusions from rule; prospective application of article and exception; short title; uniformity of application and construction; and supersession.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-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 one-a, to read as follows:

ARTICLE 1A. UNIFORM STATUTORY RULE AGAINST PERPETUITIES.

- §36-1A-1. Statutory rule against perpetuities.
- §36-1A-2. When nonvested property interest or power of appointment created.
- §36-1A-3. Reformation.
- §36-1A-4. Exclusions from statutory rule against perpetuities.
- §36-1A-5. Prospective application.
- §36-1A-6. Short title.
- §36-1A-7. Uniformity of application and construction.
- §36-1A-8. Supersession repeal.

§36-1A-1. Statutory rule against perpetuities.

- 1 (a) A nonvested property interest is invalid unless:
 - 2 (1) When the interest is created, it is certain to vest
 - 3 or terminate no later than twenty-one years after the
 - 4 death of an individual then alive; or
 - 5 (2) The interest either vests or terminates within
 - 6 ninety years after its creation.
- 7 (b) A general power of appointment not presently

8 exercisable because of a condition precedent is invalid
9 unless:

10 (1) When the power is created, the condition prece-
11 dent is certain to be satisfied or become impossible to
12 satisfy no later than twenty-one years after the death of
13 an individual then alive; or

14 (2) The condition precedent either is satisfied or
15 becomes impossible to satisfy within ninety years after
16 its creation.

17 (c) A nongeneral power of appointment or a general
18 testamentary power of appointment is invalid unless:

19 (1) When the power is created, it is certain to be
20 irrevocably exercised or otherwise to terminate no later
21 than twenty-one years after the death of an individual
22 then alive; or

23 (2) The power is irrevocably exercised or otherwise
24 terminates within ninety years after its creation.

25 (d) In determining whether a nonvested property
26 interest or a power of appointment is valid under the
27 provisions of subdivision (1), subsection (a), or subdivi-
28 sion (1), subsection (b), or subdivision (1), subsection (c)
29 of this section, the possibility that a child will be born
30 to an individual after the individual's death is disre-
31 garded.

**§36-1A-2. When nonvested property interest or power of
appointment created.**

1 (a) Except as provided in subsections (b) and (c) of
2 this section and in subsection (a), section five of this
3 article, the time of creation of a nonvested property
4 interest or a power of appointment is determined under
5 general principles of property law.

6 (b) For purposes of this article, if there is a person
7 who alone can exercise a power created by a governing
8 instrument to become the unqualified beneficial owner
9 of (1) a nonvested property interest or (2) a property
10 interest subject to a power of appointment described in
11 subsections (b) or (c), section one of this article, the
12 nonvested property interest or power of appointment is

13 created when the power to become the unqualified
14 beneficial owner terminates.

15 (c) For purposes of this article, a nonvested property
16 interest or a power of appointment arising from a
17 transfer of property to a previously funded trust or other
18 existing property arrangement is created when the
19 nonvested property interest or power of appointment in
20 the original contribution was created.

§36-1A-3. Reformation.

1 Upon the petition of an interested person, a court shall
2 reform a disposition in the manner that most closely
3 approximates the transferor's manifested plan of
4 distribution and is within the ninety years allowed by
5 the provisions of subdivision (2), subsection (a), or
6 subdivision (2), subsection (b), or subdivision (2),
7 subsection (c), section one of this article and if:

8 (1) A nonvested property interest or a power of
9 appointment becomes invalid pursuant to the provisions
10 of section one of this article;

11 (2) A class gift is not but might become invalid
12 pursuant to the provisions of section one of this article
13 and the time has arrived when the share of any class
14 member is to take effect in possession or enjoyment; or

15 (3) A nonvested property interest that is not validated
16 by the provisions of subdivision (1), subsection (a),
17 section one of this article can vest but not within ninety
18 years after its creation.

§36-1A-4. Exclusions from statutory rule against per- petuities.

1 The provisions of section one of this article do not
2 apply to:

3 (1) A nonvested property interest or a power of
4 appointment arising out of a nondonative transfer,
5 except a nonvested property interest or a power of
6 appointment arising out of: (A) A premarital or post-
7 marital agreement; (B) a separation or divorce settle-
8 ment; (C) a spouse's election; (D) a similar arrangement
9 arising out of a prospective, existing, or previous

10 marital relationship between the parties; (E) a contract
11 to make or not to revoke a will or trust; (F) a contract
12 to exercise or not to exercise a power of appointment;
13 (G) a transfer in satisfaction of a duty of support; or (H)
14 a reciprocal transfer;

15 (2) A fiduciary's power relating to the administration
16 or management of assets, including the power of a
17 fiduciary to sell, lease or mortgage property, and the
18 power of a fiduciary to determine principal and income;

19 (3) A power to appoint a fiduciary;

20 (4) A discretionary power of a trustee to distribute
21 principal before termination of a trust to a beneficiary
22 having an indefeasibly vested interest in the income and
23 principal;

24 (5) A nonvested property interest held by a charity,
25 government, or governmental agency or subdivision, if
26 the nonvested property interest is preceded by an
27 interest held by another charity, government, or
28 governmental agency or subdivision;

29 (6) A nonvested property interest in or a power of
30 appointment with respect to a trust or other property
31 arrangement forming part of a pension, profit-sharing,
32 stock bonus, health, disability, death benefit, income
33 deferral, or other current or deferred benefit plan for
34 one or more employees, independent contractors, or
35 their beneficiaries or spouses, to which contributions are
36 made for the purpose of distributing to or for the benefit
37 of the participants or their beneficiaries or spouses the
38 property, income, or principal in the trust or other
39 property arrangement, except a nonvested property
40 interest or a power of appointment that is created by
41 an election of a participant or a beneficiary or spouse;
42 or

43 (7) A property interest, power of appointment, or
44 arrangement that was not subject to the common-law
45 rule against perpetuities or is excluded by another
46 provision of this code.

§36-1A-5. Prospective application.

1 (a) Except as extended by subsection (b) of this
2 section, this article applies to a nonvested property
3 interest or a power of appointment that is created on or
4 after the effective date of this article. For purposes of
5 this section, a nonvested property interest or a power of
6 appointment created by the exercise of a power of
7 appointment is created when the power is irrevocably
8 exercised or when a revocable exercise becomes
9 irrevocable.

10 (b) If a nonvested property interest or a power of
11 appointment was created before the effective date of this
12 article and is determined in a judicial proceeding,
13 commenced on or after the effective date of this article,
14 to violate this state's rule against perpetuities as that
15 rule existed before the effective date of this article, a
16 court upon the petition of an interested person may
17 reform the disposition in the manner that most closely
18 approximates the transferor's manifested plan of
19 distribution and is within the limits of the rule against
20 perpetuities applicable when the nonvested property
21 interest or power of appointment was created.

§36-1A-6. Short title.

1 This article may be cited as the "Uniform Statutory
2 Rule Against Perpetuities."

§36-1A-7. Uniformity of application and construction.

1 The provisions of this article shall be applied and
2 construed to effectuate its general purpose to make
3 uniform the law with respect to the subject of this
4 article among states enacting it.

§36-1A-8. Supersession repeal.

1 The provisions of this article supersede the rule of the
2 common law known as the rule against perpetuities.

CHAPTER 75

(Com. Sub. for H. B. 4112—By Mr. Speaker, Mr. Chambers, and Delegate Burk,
By Request of the Executive)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section one, article two, chapter thirty-seven; article two, chapter forty-two; section one, article four of said chapter; and sections three through twenty, inclusive, article one, chapter forty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six, article one, chapter forty-one of said code; to amend and reenact sections one, two, three and four, article one, chapter forty-two; to further amend article one of said chapter by adding thereto eight new sections, designated sections three-a, three-b, three-c, three-d, three-e, three-f, three-g and ten; to amend and reenact sections one, two and three, article three, chapter forty-two; to further amend article three of said chapter by adding thereto five new sections, designated sections three-a, four, five, six and seven; to amend and reenact sections one and two, article one, chapter forty-three; and to amend and reenact section six, article seven, chapter fifty-five of said code, all relating to intestate succession and distribution of damages in wrongful death actions; spousal and surviving heirs shares; representation; the abolition of dower and curtesy; effects of premarital will on spouse's share; and requiring spousal notice if certain property is conveyed.

Be it enacted by the Legislature of West Virginia:

That section one, article two, chapter thirty-seven; article two, chapter forty-two; section one, article four, chapter forty-two; and sections three through twenty, inclusive, article one, chapter forty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section six, article one, chapter forty-one of said code be amended and reenacted; that sections one, two, three and four, article one of chapter forty-two be amended and reenacted; that article one of said chapter forty-two be further amended by adding

thereto eight new sections, designated sections three-a, three-b, three-c, three-d, three-e, three-f, three-g and ten; that sections one, two and three, article three, chapter forty-two be amended and reenacted; that article three of said chapter forty-two be further amended by adding thereto five new sections, designated sections three-a, four, five, six and seven; that sections one and two, article one, chapter forty-three be amended and reenacted; and that section six, article seven, chapter fifty-five of said code be amended and reenacted, all to read as follows:

Chapter

- 41. Wills.
- 42. Descent and Distribution.
- 43. Dower and Valuation of Life Estates.
- 55. Actions, Suits and Arbitration; Judicial Sale.

CHAPTER 41. WILLS.

ARTICLE 1. CAPACITY TO MAKE; REQUISITES; VALIDITY.

§41-1-6. Revocation by divorce; no revocation by other changes of circumstances.

1 If after executing a will the testator is divorced or his
 2 marriage annulled, the divorce or annulment revokes
 3 any disposition or appointment of property made by the
 4 will to the former spouse, any provision conferring a
 5 general or special power of appointment on the former
 6 spouse, and any nomination of the former spouse as
 7 executor, trustee, conservator, or guardian, unless the
 8 will expressly provides otherwise. Property prevented
 9 from passing to a former spouse because of revocation
 10 by divorce or annulment passes as if the former spouse
 11 failed to survive the decedent, and other provisions
 12 conferring some power or office on the former spouse
 13 are interpreted as if the spouse failed to survive the
 14 decedent. Notwithstanding the provisions of section
 15 three, article three, chapter forty-one of this code, the
 16 share of such spouse shall be distributed according to
 17 the residuary clause of the decedent's will or according
 18 to the statute of intestate succession for the decedent's
 19 property. If provisions are revoked solely by this section,
 20 they are revived by testator's remarriage to the former
 21 spouse. For purposes of this section, divorce or annul-

22 ment means any divorce or annulment which would
 23 exclude the spouse as a surviving spouse. A decree of
 24 separation which does not terminate the status of
 25 husband and wife is not a divorce for purposes of this
 26 section. No change of circumstances other than as
 27 described in this section revokes a will.

CHAPTER 42. DESCENT AND DISTRIBUTION.

Article

1. Descent.
3. Provisions Relating to Husband or Wife of Decedent.

ARTICLE 1. DESCENT.

- §42-1-1. General definitions.
 §42-1-2. Intestate estate.
 §42-1-3. Share of spouse.
 §42-1-3a. Share of heirs other than surviving spouse.
 §42-1-3b. Requirement that heir survive decedent for one hundred twenty
 hours.
 §42-1-3c. No taker.
 §42-1-3d. Representation.
 §42-1-3e. Kindred of half blood.
 §42-1-3f. Afterborn heirs.
 §42-1-3g. Advancements.
 §42-1-4. Alienage.
 §42-1-10. Individuals related to decedent through two lines.

§42-1-1. General definitions.

1 Subject to additional definitions contained in the
 2 subsequent articles that are applicable to specific
 3 articles, parts, or sections, and unless the context
 4 otherwise requires in this code:

5 (1) "Agent" includes an attorney-in-fact under a
 6 durable or nondurable power of attorney, an individual
 7 authorized to make decisions concerning another's
 8 health care, and an individual authorized to make
 9 decisions for another under a natural death act.

10 (2) "Beneficiary" as it relates to a trust beneficiary,
 11 includes a person who has any present or future interest,
 12 vested or contingent, and also includes the owner of an
 13 interest by assignment or other transfer; as it relates to
 14 a charitable trust, includes any person entitled to
 15 enforce the trust; as it relates to a "beneficiary of a

16 beneficiary designation,” refers to a beneficiary of an
17 insurance or annuity policy, of an account with POD
18 designation, of a security registered in beneficiary form
19 (TOD), or of a pension, profit-sharing, retirement, or
20 similar benefit plan, or other nonprobate transfer at
21 death; and, as it relates to a “beneficiary designated in
22 a governing instrument,” includes a grantee of a deed,
23 a devisee, a trust beneficiary, a beneficiary of a
24 beneficiary designation, a donee, appointee, or taker in
25 default of a power of appointment, or a person in whose
26 favor a power of attorney or a power held in any
27 individual, fiduciary, or representative capacity is
28 exercised.

29 (3) “Court” means the county commission or branch
30 in this state having jurisdiction in matters relating to
31 the affairs of decedents.

32 (4) “Conservator” means a person who is appointed by
33 a court to manage the estate of a protected person.

34 (5) “Descendant” of an individual means all of his or
35 her descendants of all generations, with the relationship
36 of parent and child at each generation being determined
37 by the definition of child and parent contained in this
38 code.

39 (6) “Devise” when used as a noun, means a testamen-
40 tary disposition of real or personal property and, when
41 used as a verb, means to dispose of real or personal
42 property by will.

43 (7) “Devisee” means a person designated in a will to
44 receive a devise. In the case of a devise to an existing
45 trust or trustee, or to a trustee on trust described by
46 will, the trust or trustee is the devisee and the benefi-
47 ciaries are not devisees.

48 (8) “Distributee” means any person who has received
49 property of a decedent from his or her personal
50 representative other than as a creditor or purchaser. A
51 testamentary trustee is a distributee only to the extent
52 of distributed assets or increment thereto remaining in
53 his or her hands. A beneficiary of a testamentary trust
54 to whom the trustee has distributed property received

55 from a personal representative is a distributee of the
56 personal representative. For the purposes of this
57 provision, "testamentary trustee" includes a trustee to
58 whom assets are transferred by will, to the extent of the
59 devised assets.

60 (9) "Estate" includes the property of the decedent,
61 trust, or other person whose affairs are subject to this
62 code as originally constituted and as it exists from time
63 to time during administration.

64 (10) "Exempt property" means that property of a
65 decedent's estate which is provided for in Section 48,
66 Article VI of the constitution.

67 (11) "Fiduciary" includes a personal representative,
68 guardian, conservator and trustee.

69 (12) "Foreign personal representative" means a
70 personal representative appointed by another
71 jurisdiction.

72 (13) "Formal proceedings" means proceedings con-
73 ducted before a judge with notice to interested persons.

74 (14) "Governing instrument" means a deed, will,
75 trust, insurance or annuity policy, account with POD
76 designation, security registered in beneficiary form
77 (TOD), pension, profit-sharing, retirement or similar
78 benefit plan, instrument creating or exercising a power
79 of appointment or a power of attorney, or a donative,
80 appointive, or nominative instrument of any other type.

81 (15) "Guardian" means a person who has qualified as
82 a guardian of a minor or incapacitated person pursuant
83 to testamentary or court appointment, but excludes one
84 who is merely a guardian ad litem.

85 (16) "Heirs" means persons, including the surviving
86 spouse and the state, who are entitled under the statutes
87 of intestate succession to the property of a decedent.

88 (17) "Informal proceedings" mean those conducted
89 without notice to interested persons by an officer of the
90 court acting as a registrar for probate of a will or
91 appointment of a personal representative.

92 (18) "Interested person" includes heirs, devisees,
93 children, spouses, creditors, beneficiaries, and any
94 others having a property right in or claim against a
95 trust estate or the estate of a decedent, ward or
96 protected person. It also includes persons having
97 priority for appointment as personal representative, and
98 other fiduciaries representing interested persons. The
99 meaning as it relates to particular persons may vary
100 from time to time and must be determined according
101 to the particular purposes of, and matter involved in,
102 any proceeding.

103 (19) "Issue" of a person means descendant as defined
104 in subsection (5).

105 (20) "Joint tenants with the right of survivorship" and
106 "community property with the right of survivorship"
107 includes co-owners of property held under circumstan-
108 ces that entitle one or more to the whole of the property
109 on the death of the other or others, but excludes forms
110 of co-ownership registration in which the underlying
111 ownership of each party is in proportion to that party's
112 contribution.

113 (21) "Lease" includes an oil, gas, or other mineral
114 lease.

115 (22) "Letters" includes letters testamentary, letters of
116 guardianship, letters of administration, and letters of
117 conservatorship.

118 (23) "Minor" means a person who is under eighteen
119 years of age.

120 (24) "Mortgage" means any deed of trust, conveyance,
121 agreement, or arrangement in which property is
122 encumbered or used as security.

123 (25) "Nonresident decedent" means a decedent who
124 was domiciled in another jurisdiction at the time of his
125 or her death.

126 (26) "Parent" includes any person entitled to take, or
127 who would be entitled to take if the child died without
128 a will, as a parent under this code by intestate succes-
129 sion from the child whose relationship is in question and

130 excludes any person who is only a stepparent, foster
131 parent, or grandparent.

132 (27) "Payor" means a trustee, insurer, business entity,
133 employer, government, governmental agency or subdivi-
134 sion, or any other person authorized or obligated by
135 law or a governing instrument to make payments.

136 (28) "Person" means an individual or an organization.

137 (29) "Personal representative" includes executor,
138 administrator, successor personal representative, special
139 administrator, and persons who perform substantially
140 the same function under the law governing their status.
141 "General personal representative" excludes special
142 administrator.

143 (30) "Petition" means a written request to the court
144 for an order after notice.

145 (31) "Proceeding" includes action at law and suit in
146 equity.

147 (32) "Property" includes both real and personal
148 property or any interest therein and means anything
149 that may be the subject of ownership.

150 (33) "Security" includes any note, stock, treasury
151 stock, bond, debenture, evidence of indebtedness,
152 certificate of interest or participation in an oil, gas, or
153 mining title or lease or in payments out of production
154 under such a title or lease, collateral trust certificate,
155 transferable share, voting trust certificate or, in
156 general, any interest or instrument commonly known as
157 a security, or any certificate of interest or participation,
158 any temporary or interim certificate, receipt, or
159 certificate of deposit for, or any warrant or right to
160 subscribe to or purchase, any of the foregoing.

161 (34) "Settlement" in reference to a decedent's estate,
162 includes the full process of administration, distribution
163 and closing.

164 (35) "State" means a state of the United States, the
165 District of Columbia, the Commonwealth of Puerto Rico,
166 or any territory or insular possession subject to the
167 jurisdiction of the United States.

168 (36) "Successor personal representative" means a
169 personal representative, other than a special administra-
170 tor, who is appointed to succeed a previously appointed
171 personal representative.

172 (37) "Successors" means persons, other than creditors,
173 who are entitled to property of a decedent under his or
174 her will or this code.

175 (38) "Survive" means that an individual has neither
176 predeceased an event, including the death of another
177 individual, nor is deemed to have predeceased an event.
178 The term includes its derivatives, such as "survives,"
179 "survived," "survivor," "surviving."

180 (39) "Surviving spouse" means the person to whom
181 the decedent was married at the time of the decedent's
182 death.

183 (40) "Testacy proceeding" means a proceeding to
184 establish a will or determine intestacy.

185 (41) "Testator" includes an individual of either sex.

186 (42) "Trust" includes an express trust, private or
187 charitable, with additions thereto, wherever and
188 however created. The term also includes a trust created
189 or determined by judgment or decree under which the
190 trust is to be administered in the manner of an express
191 trust. The term excludes other constructive trusts and
192 excludes resulting trusts, conservatorships, personal
193 representatives and custodial arrangements, including
194 that relating to gifts or transfers to minors, dealing with
195 special custodial situations, business trusts providing for
196 certificates to be issued to beneficiaries.

197 (43) "Trustee" includes an original, additional, or
198 successor trustee, whether or not appointed or con-
199 firmed by court.

200 (44) "Will" includes codicil and any testamentary
201 instrument that merely appoints an executor, revokes or
202 revises another will, nominates a guardian, or expressly
203 excludes or limits the right of an individual or class to
204 succeed to property of the decedent passing by intestate
205 succession.

§42-1-2. Intestate estate.

1 (a) Any part of a decedent's estate not effectively
2 disposed of by will passes by intestate succession to the
3 decedent's heirs as prescribed in this code, except as
4 modified by the decedent's will.

5 (b) A decedent by will may expressly exclude or limit
6 the right of an individual or class to succeed to property
7 of the decedent passing by intestate succession. If that
8 individual or a member of that class survives the
9 decedent, the share of the decedent's intestate estate to
10 which that individual or class would have succeeded
11 passes as if that individual or each member of that class
12 had disclaimed his or her intestate share.

§42-1-3. Share of spouse.

1 The intestate share of a decedent's surviving spouse
2 is:

3 (a) The entire intestate estate if:

4 (1) No descendant or parent of the decedent survives
5 the decedent; or

6 (2) All of the decedent's surviving descendants are
7 also descendants of the surviving spouse and there is no
8 other descendant of the surviving spouse who survives
9 the decedent;

10 (b) Three fourths of the intestate estate, if no descend-
11 ant of the decedent survives the decedent, but a parent
12 of the decedent survives the decedent;

13 (c) Three fifths of the intestate estate, if all of the
14 decedent's surviving descendants are also descendants of
15 the surviving spouse and the surviving spouse has one
16 or more surviving descendants who are not descendants
17 of the decedent;

18 (d) One half of the intestate estate, if one or more of
19 the decedent's surviving descendants are not descend-
20 ants of the surviving spouse.

§42-1-3a. Share of heirs other than surviving spouse.

1 Any part of the intestate estate not passing to the

2 decedent's surviving spouse under section three of this
3 article, or the entire intestate estate if there is no
4 surviving spouse, passes in the following order to the
5 individuals designated below who survive the decedent:

6 (a) To the decedent's descendants by representation;

7 (b) If there is no surviving descendant, to the
8 decedent's parents equally if both survive, or to the
9 surviving parent;

10 (c) If there is no surviving descendant or parent, to
11 the descendants of the decedent's parents or either of
12 them by representation;

13 (d) If there is no surviving descendant, parent, or
14 descendant of a parent, but the decedent is survived by
15 one or more grandparents or descendants of grandpar-
16 ents, half of the estate passes to the decedent's paternal
17 grandparents equally if both survive, or to the surviving
18 paternal grandparent, or to the descendants of the
19 decedent's paternal grandparents or either of them if
20 both are deceased, the descendants taking by represen-
21 tation; and the other half passes to the decedent's
22 maternal relatives in the same manner; but, if there is
23 no surviving grandparent or descendant of a grandpar-
24 ent on either the paternal or the maternal side, the
25 entire estate passes to the decedent's relatives on the
26 other side in the same manner as the half.

**§42-1-3b. Requirement that heir survive decedent for one
hundred twenty hours.**

1 An individual who fails to survive the decedent by one
2 hundred twenty hours is deemed to have predeceased
3 the decedent for purposes of homestead allowance,
4 exempt property, and intestate succession, and the
5 decedent's heirs are determined accordingly. If the time
6 of death of a decedent or of an individual who would
7 otherwise be an heir, or the times of death of both,
8 cannot be determined, and it is not established that the
9 individual who would otherwise be an heir survived the
10 decedent by one hundred twenty hours, it is deemed that
11 the individual failed to survive for the required period.
12 This section is not to be applied if its application would

13 result in a taking of intestate estate by the state under
14 section three-c of this article.

§42-1-3c. No taker.

1 If there is no taker under the provisions of this article,
2 the intestate estate passes to the state.

§42-1-3d. Representation.

1 (a) In this section:

2 (1) "Deceased descendant," "deceased parent," or
3 "deceased grandparent" means a descendant, parent, or
4 grandparent who either predeceased the decedent or is
5 deemed to have predeceased the decedent under section
6 three-b of this article.

7 (2) "Surviving descendant" means a descendant who
8 neither predeceased the decedent nor is deemed to have
9 predeceased the decedent under section three-b of this
10 article.

11 (b) If, under section three-a of this article, a de-
12 cent's intestate estate or a part thereof passes "by
13 representation" to the decedent's descendants, the estate
14 or part thereof is divided into as many equal shares as
15 there are: (i) Surviving descendants in the generation
16 nearest to the decedent which contains one or more
17 surviving descendants; and (ii) deceased descendants in
18 the same generation who left surviving descendants, if
19 any. Each surviving descendant in the nearest genera-
20 tion is allocated one share. The remaining shares, if any,
21 are combined and then divided in the same manner
22 among the surviving descendants of the deceased
23 descendants as if the surviving descendants who were
24 allocated a share and their surviving descendants had
25 predeceased the decedent.

26 (c) If, under section three-a of this article, a de-
27 cent's intestate estate or a part thereof passes "by
28 representation" to the descendants of the decedent's
29 deceased parents or either of them or to the descendants
30 of the decedent's deceased paternal or maternal grand-
31 parents or either of them, the estate or part thereof is
32 divided into as many equal shares as there are: (i)

33 Surviving descendants in the generation nearest the
34 deceased parents or either of them, or the deceased
35 grandparents or either of them, that contains one or
36 more surviving descendants; and (ii) deceased descend-
37 ants in the same generation who left surviving descend-
38 ants, if any. Each surviving descendant in the nearest
39 generation is allocated one share. The remaining shares,
40 if any, are combined and then divided in the same
41 manner among the surviving descendants of the de-
42 ceased descendants as if the surviving descendants who
43 were allotted a share and their surviving descendants
44 had predeceased the decedent.

§42-1-3e. Kindred of half blood.

- 1 Relatives of the half blood inherit the same share they
- 2 would inherit if they were of the whole blood.

§42-1-3f. Afterborn heirs.

- 1 An individual in gestation at a particular time is
- 2 treated as living at that time if the individual lives one
- 3 hundred twenty hours or more after birth.

§42-1-3g. Advancements.

- 1 (a) If an individual dies intestate as to all or a portion
- 2 of his or her estate, property the decedent gave during
- 3 the decedent's lifetime to an individual who, at the
- 4 decedent's death, is an heir is treated as an advancement
- 5 against the heir's intestate share only if (i) the decedent
- 6 declared in a contemporaneous writing or the heir
- 7 acknowledged in writing that the gift is an advancement
- 8 or (ii) the decedent's contemporaneous writing or the
- 9 heir's written acknowledgement otherwise indicates that
- 10 the gift is to be taken into account in computing the
- 11 division and distribution of the decedent's intestate
- 12 estate.
- 13 (b) For purposes of subsection (a), property advanced
- 14 is valued as of the time the heir came into possession
- 15 or enjoyment of the property or as of the time of the
- 16 decedent's death, whichever first occurs.
- 17 (c) If the recipient of the property fails to survive the
- 18 decedent, the property is not taken into account in

- 19 computing the division and distribution of the decedent's
- 20 intestate estate, unless the decedent's contemporaneous
- 21 writing provides otherwise.

§42-1-4. Alienage.

- 1 No individual is disqualified to take as an heir
- 2 because the individual or an individual through whom
- 3 he or she claims is or has been an alien.

§42-1-10. Individuals related to decedent through two lines.

- 1 An individual who is related to the decedent through
- 2 two lines of relationship is entitled to only a single share
- 3 based on the relationship that would entitle the individ-
- 4 ual to the larger share.

ARTICLE 3. PROVISIONS RELATING TO HUSBAND OR WIFE OF DECEDENT.

- §42-3-1. Right to elective share.
- §42-3-2. Augmented estate.
- §42-3-3. Right of election personal to surviving spouse.
- §42-3-3a. Waiver of right to elect; other rights.
- §42-3-4. Proceeding for elective share; time limit.
- §42-3-5. Effect of election on statutory benefits.
- §42-3-6. Charging spouse with owned assets and gifts received; liability of others for balance of elective share.
- §42-3-7. Entitlement of spouse; premarital will.

§42-3-1. Right to elective share.

- 1 (a) The surviving spouse of a decedent who dies
- 2 domiciled in this state has a right of election, under the
- 3 limitations and conditions stated in this part, to take an
- 4 elective-share amount equal to the value of the elective-
- 5 share percentage of the augmented estate, determined
- 6 by the length of time the spouse and the decedent were
- 7 married to each other, in accordance with the following
- 8 schedule:

9	If the decedent and the spouse		The elective-share
10	were married to each other		percentage is:
11	Less than 1 year		Supplemental Amount Only
12	1 year but less than 2 years.....		3% of the augmented estate.
13	2 years but less than 3 years.....		6% of the augmented estate.
14	3 years but less than 4 years.....		9% of the augmented estate.

15	4 years but less than 5 years.....	12% of the augmented estate.
16	5 years but less than 6 years.....	15% of the augmented estate.
17	6 years but less than 7 years.....	18% of the augmented estate.
18	7 years but less than 8 years.....	21% of the augmented estate.
19	8 years but less than 9 years.....	24% of the augmented estate.
20	9 years but less than 10 years.....	27% of the augmented estate.
21	10 years but less than 11 years.....	30% of the augmented estate.
22	11 years but less than 12 years.....	34% of the augmented estate.
23	12 years but less than 13 years.....	38% of the augmented estate.
24	13 years but less than 14 years.....	42% of the augmented estate.
25	14 years but less than 15 years.....	46% of the augmented estate.
26	15 years or more.....	50% of the augmented estate.

27 (b) If the sum of the amounts described in subdivi-
 28 sions (3) and (4), subsection (b) of section two, and
 29 subdivisions (1) and (3), subsection (a), section six of this
 30 article, and that part of the elective-share amount
 31 payable from the decedent's probate and reclaimable
 32 estates under subsections (b) and (c), section six of this
 33 article, is less than twenty-five thousand dollars, the
 34 surviving spouse is entitled to a supplemental elective-
 35 share amount equal to fifty thousand dollars, minus the
 36 sum of the amounts described in those sections. The
 37 supplemental elective share amount is payable from the
 38 decedent's probate estate and from recipients of the
 39 decedent's probate estate and from recipients of the
 40 decedent's reclaimable estate in the order of priority set
 41 forth in subsections (b) and (c), section six of this article.

42 (c) The right, if any, of the surviving spouse of a
 43 decedent who dies domiciled outside this state to take
 44 an elective share in property in this state is governed
 45 by the law of the decedent's domicile at death.

§42-3-2. Augmented estate.

1 (a) Definitions.

2 (1) In this section:

3 (i) "Bona fide purchaser" means a purchaser for value
 4 in good faith and without notice of an adverse claim. The
 5 notation of a state documentary fee on a recorded
 6 instrument is prima facie evidence that the transfer
 7 described therein was made to a bona fide purchaser.

8 (ii) "Nonadverse party" means a person who does not
9 have a substantial beneficial interest in the trust or
10 other property arrangement that would be adversely
11 affected by the exercise or nonexercise of the power that
12 he or she possesses respecting the trust or other property
13 arrangement. A person having a general power of
14 appointment over property is deemed to have a benefi-
15 cial interest in the property.

16 (iii) "Presently exercisable general power of appoint-
17 ment" means a power of appointment under which, at
18 the time in question, the decedent by an exercise of the
19 power could have created an interest, present or future,
20 in himself or herself or his or her creditors.

21 (iv) "Probate estate" means property, whether real or
22 personal, movable or immovable, wherever situated,
23 that would pass by intestate succession if the decedent
24 died without a valid will.

25 (v) "Right to income" includes a right to payments
26 under an annuity or similar contractual arrangement.

27 (vi) "Value of property owned by the surviving spouse
28 at the decedent's death" and "value of property to which
29 the surviving spouse succeeds by reason of the decedent's
30 death" include the commuted value of any present
31 or future interest then held by the surviving spouse and
32 the commuted value of amounts payable to the surviving
33 spouse after the decedent's death under any trust, life
34 insurance settlement option, annuity contract, public or
35 private pension, disability compensation, death benefit
36 or retirement plan, or any similar arrangement,
37 exclusive of the federal social security system.

38 (2) In subsections (b) (2) (iii) and (iv), "transfer"
39 includes an exercise or release of a power of appoint-
40 ment, but does not include a lapse of a power of
41 appointment.

42 (b) The augmented estate consists of the sum of:

43 (1) The value of the decedent's probate estate,
44 reduced by funeral and administration expenses,
45 homestead exemption, property exemption, and enforce-
46 able claims;

47 (2) The value of the decedent's reclaimable estate.
48 The decedent's reclaimable estate is composed of all
49 property, whether real or personal, movable or immov-
50 able, wherever situated, not included in the decedent's
51 probate estate, of any of the following types:

52 (i) Property to the extent the passing of the principal
53 thereof to or for the benefit of any person, other than
54 the decedent's surviving spouse, was subject to a
55 presently exercisable general power of appointment
56 held by the decedent alone, if the decedent held that
57 power immediately before his or her death, or if and to
58 the extent the decedent, while married to his or her
59 surviving spouse and during the two-year period next
60 preceding the decedent's death, released that power or
61 exercised that power in favor of any person other than
62 the decedent or the decedent's estate, spouse or surviv-
63 ing spouse;

64 (ii) Property, to the extent of the decedent's unilater-
65 ally severable interest therein, held by the decedent and
66 any other person, except the decedent's surviving
67 spouse, with right of survivorship, acquired during the
68 marriage of the decedent and the surviving spouse, if
69 the decedent held that interest immediately before his
70 or her death or if and to the extent the decedent, while
71 married to his or her surviving spouse and during the
72 two-year period preceding the decedent's death, trans-
73 ferred that interest to any person other than the
74 decedent's surviving spouse;

75 (iii) Proceeds of insurance, including accidental death
76 benefits, on the life of the decedent payable to any
77 person other than the decedent's surviving spouse, if the
78 decedent owned the insurance policy, had the power to
79 change the beneficiary of the insurance policy, or the
80 insurance policy was subject to a presently exercisable
81 general power of appointment held by the decedent
82 alone immediately before his or her death or if and to
83 the extent the decedent, while married to his or her
84 surviving spouse and during the two-year period next
85 preceding the decedent's death, transferred that policy
86 to any person other than the decedent's surviving spouse;
87 and

88 (iv) Property transferred by the decedent to any
89 person other than a bona fide purchaser at any time
90 during the decedent's marriage to the surviving spouse,
91 to or for the benefit of any person, other than the
92 decedent's surviving spouse, if the transfer is of any of
93 the following types:

94 (A) Any transfer to the extent that the decedent
95 retained at the time of or during the two-year period
96 next preceding his or her death the possession or
97 enjoyment of, or right to income from the property;

98 (B) Any transfer to the extent that, at the time of or
99 during the two-year period next preceding the de-
100 cedent's death, the income or principal was subject to a
101 power, exercisable by the decedent alone or in conjunc-
102 tion with any other person or exercisable by a nonad-
103 verse party, for the benefit of the decedent or the
104 decedent's estate;

105 (C) Any transfer of property, to the extent the
106 decedent's contribution to it, as a percentage of the
107 whole, was made within two years before the decedent's
108 death, by which the property is held, at the time of or
109 during the two-year period next preceding the de-
110 cedent's death, by the decedent and another, other than the
111 decedent's surviving spouse, with right of survivorship;
112 or

113 (D) Any transfer made to a donee within two years
114 before the decedent's death to the extent that the
115 aggregate transfers to any one donee in either of the
116 years exceed ten thousand dollars.

117 (3) The value of property to which the surviving
118 spouse succeeds by reason of the decedent's death, other
119 than by homestead exemption, exempt property, testate
120 succession, or intestate succession, including the pro-
121 ceeds of insurance, including accidental death benefits,
122 on the life of the decedent and benefits payable under
123 a retirement plan in which the decedent was a partic-
124 ipant, exclusive of the federal social security system; and

125 (4) The value of property owned by the surviving
126 spouse at the decedent's death, reduced by enforceable

127 claims against that property or that spouse, plus the
128 value of amounts that would have been includible in the
129 surviving spouse's reclaimable estate had the spouse
130 predeceased the decedent. But amounts that would have
131 been includible in the surviving spouse's reclaimable
132 estate under subsection (b) (2) (iii) are not valued as if
133 he or she were deceased.

134 (c) Any transfer or exercise or release of a power of
135 appointment is excluded from the decedent's reclaima-
136 ble estate (i) to the extent the decedent received
137 adequate and full consideration in money or money's
138 worth for the transfer, exercise or release, or (ii) if
139 irrevocably made with the written consent or joinder of
140 the surviving spouse.

141 (d) Property is valued as of the decedent's death, but
142 property irrevocably transferred during the two-year
143 period next preceding the decedent's death which is
144 included in the decedent's reclaimable estate under
145 subsection (b) (2) (i), (ii) and (iv) is valued as of the time
146 of the transfer. If the terms of more than one of the
147 subparagraphs or sub-subparagraphs of subsection (b)
148 (2) apply, the property is included in the augmented
149 estate under the subparagraph or sub-subparagraph
150 that yields the highest value. For the purposes of this
151 subsection, an "irrevocable transfer of property"
152 includes an irrevocable exercise or release of a power
153 of appointment.

154 (e) (1) Although under this section a payment, item
155 of property, or other benefit is included in the decedent's
156 reclaimable estate, a payor or other third party is not
157 liable for having made a payment or transferred an item
158 of property or other benefit to a beneficiary designated
159 in a governing instrument, or for having taken any other
160 action in good faith reliance on the validity of a
161 governing instrument, upon request and satisfactory
162 proof of the decedent's death, before the payor or other
163 third party received written notice from the surviving
164 spouse or spouse's representative of an intention to file
165 a petition for the elective share or that a petition for the
166 elective share has been filed. A payor or other third
167 party is liable for payments made or other actions taken

168 after the payor or other third party received written
169 notice of an intention to file a petition for the elective
170 share or that a petition for the elective share has been
171 filed.

172 (2) The written notice of intention to file a petition for
173 the elective share or that a petition for the elective share
174 has been filed must be mailed to the payor's or other
175 third party's main office or home by registered or
176 certified mail, return receipt requested, or served upon
177 the payor or other third party in the same manner as
178 a summons in a civil action. Upon receipt of written
179 notice of intention to file a petition for the elective share
180 or that a petition for the elective share has been filed,
181 a payor or other third party may pay any amount owed
182 or transfer or deposit any item of property held by it
183 to or with the court having jurisdiction of the probate
184 proceedings relating to the decedent's estate, or if no
185 proceedings have been commenced, to or with the court
186 having jurisdiction of probate proceedings relating to
187 decedents' estates located in the county of the decedent's
188 residence. The court shall hold the funds or item of
189 property and, upon its determination under subsection
190 (d) of section four of this article, shall order disburse-
191 ment in accordance with the determination. If no
192 petition is filed in the court within the specified time
193 under subsection (a) of section four of this article or, if
194 filed, the demand for an elective share is withdrawn
195 under subsection (c) of section four of this article, the
196 court shall order disbursement to the designated
197 beneficiary. Payments, transfers, or deposits made to or
198 with the court discharge the payor or other third party
199 from all claims for the value of amounts paid to or items
200 of property transferred to or deposited with the court.

201 (3) Upon petition to the probate court by the benefi-
202 ciary designated in a governing instrument, the court
203 may order that all or part of the property be paid to
204 the beneficiary in an amount and subject to conditions
205 consistent with this section.

206 (f) (1) A person who purchases property from a
207 recipient for value and without notice, or who receives
208 a payment or other item of property in partial or full

209 satisfaction of a legally enforceable obligation, is neither
210 obligated under this part to return the payment, item
211 of property, or benefit nor is liable under this part for
212 the amount of the payment or the value of the item of
213 property or benefit. But a person who, not for value,
214 receives a payment, item of property, or any other
215 benefit included in the decedent's reclaimable estate is
216 obligated to return the payment, item of property, or
217 benefit, or is personally liable for the amount of the
218 payment or the value of the item of property or benefit,
219 as provided in section six of this article.

220 (2) If any section or part of any section of this part
221 is preempted by federal law with respect to a payment,
222 an item of property, or any other benefit included in the
223 decedent's reclaimable estate, a person who, not for
224 value, receives the payment, item of property, or any
225 other benefit is obligated to return that payment, item
226 of property, or benefit, or is personally liable for the
227 amount of that payment or the value of that item of
228 property or benefit, as provided in section six of this
229 article to the person who would have been entitled to it
230 were that section or part of that section not preempted.

§42-3-3. Right of election personal to surviving spouse.

1 (a) The right of election may be exercised only by a
2 surviving spouse who is living when the petition for the
3 elective share is filed in the court under subsection (a)
4 of this section. If the election is not exercised by the
5 surviving spouse personally, it may be exercised on the
6 surviving spouse's behalf by his or her conservator,
7 guardian, or agent under the authority of a power of
8 attorney.

9 (b) If the election is exercised on behalf of a surviving
10 spouse who is an incapacitated person, the court must
11 set aside that portion of the elective-share and supple-
12 mental elective-share amounts due from the decedent's
13 probate estate and recipients of the decedent's reclaim-
14 able estate under subsections (b) and (c) of section six
15 of this article and must appoint a trustee to administer
16 that property for the support of the surviving spouse.
17 For the purposes of this subsection, an election on behalf

18 of a surviving spouse by an agent under a durable power
19 of attorney is presumed to be on behalf of a surviving
20 spouse who is an incapacitated person. The trustee must
21 administer the trust in accordance with the following
22 terms and such additional terms as the court determines
23 appropriate:

24 (1) Expenditures of income and principal may be
25 made in the manner, when, and to the extent that the
26 trustee determines suitable and proper for the surviving
27 spouse's support, without court order but with regard
28 to other support, income, and property of the surviving
29 spouse and benefits of medical or other forms of
30 assistance from any state or federal government or
31 governmental agency for which the surviving spouse
32 must qualify on the basis of need;

33 (2) During the surviving spouse's incapacity, neither
34 the surviving spouse nor anyone acting on behalf of the
35 surviving spouse has a power to terminate the trust; but
36 if the surviving spouse regains capacity, the surviving
37 spouse then acquires the power to terminate the trust
38 and acquire full ownership of the trust property free of
39 trust, by delivering to the trustee a writing signed by
40 the surviving spouse declaring the termination;

41 (3) Upon the surviving spouse's death, the trustee
42 shall transfer the unexpended trust property under the
43 residuary clause, if any, of the will of the predeceased
44 spouse against whom the elective share was taken, as if
45 that predeceased spouse died immediately after the
46 surviving spouse.

§42-3-3a. Waiver of right to elect; other rights.

1 (a) The right of election of a surviving spouse and the
2 rights of the surviving spouse to homestead exemption,
3 exempt property, or any of them, may be waived, wholly
4 or partially, before or after marriage, by a written
5 contract, agreement, or waiver signed by the surviving
6 spouse.

7 (b) A surviving spouse's waiver is not enforceable if
8 the surviving spouse proves that:

9 (1) He or she did not execute the waiver voluntarily;

10 or

11 (2) The waiver was unconscionable when it was
12 executed and, before execution of the waiver, he or she:

13 (i) Was not provided a fair and reasonable disclosure
14 of the property or financial obligations of the decedent;

15 (ii) Did not voluntarily and expressly waive, in
16 writing, any right to disclosure of the property or
17 financial obligations of the decedent beyond the disclo-
18 sure provided; and

19 (iii) Did not have, or reasonably could not have had,
20 an adequate knowledge of the property or financial
21 obligations of the decedent.

22 (c) An issue of unconscionability of a waiver is for
23 decision by the court as a matter of law.

24 (d) Unless it provides to the contrary, a waiver of "all
25 rights," or equivalent language, in the property or estate
26 of a present or prospective spouse or a complete
27 property settlement entered into after or in anticipation
28 of separation or divorce is a waiver of all rights of
29 elective share, homestead allowance, and exempt
30 property by each spouse in the property of the other and
31 renunciation by each of all benefits that would otherwise
32 pass to him or her from the other by intestate succession
33 or by virtue of any will executed before the waiver or
34 property settlement.

§42-3-4. Proceeding for elective share; time limit.

1 (a) Except as provided in subsection (b), the election
2 must be made by filing in the court and mailing or
3 delivering to the personal representative, if any, a
4 petition for the elective share within nine months after
5 the date of the decedent's death, or within six months
6 after the probate of the decedent's will, whichever
7 limitation later expires. The surviving spouse must give
8 notice of the time and place set for hearing to persons
9 interested in the estate and to the distributees and
10 recipients of portions of the augmented estate whose
11 interests will be adversely affected by the taking of the
12 elective share. Except as provided in subsection (b), the

13 decedent's reclaimable estate, described in subdivision
14 (2), subsection (b) of section two of this article, is not
15 included within the augmented estate for the purpose of
16 computing the elective share, if the petition is filed more
17 than nine months after the decedent's death.

18 (b) Within nine months after the decedent's death, the
19 surviving spouse may petition the court for an extension
20 of time for making an election. If, within nine months
21 after the decedent's death, the spouse gives notice of the
22 petition to all persons interested in the decedent's
23 reclaimable estate, the court for cause shown by the
24 surviving spouse may extend the time for election. If the
25 court grants the spouse's petition for an extension, the
26 decedent's reclaimable estate, described in subdivision
27 (2), subsection (b) of section two of this article, is not
28 excluded from the augmented estate for the purpose of
29 computing the elective-share and supplemental elective-
30 share amounts, if the spouse makes an election by filing
31 in the court and mailing or delivering to the personal
32 representative, if any, a petition for the elective share
33 within the time allowed by the extension.

34 (c) The surviving spouse may withdraw his or her
35 demand for an elective share at any time before entry
36 of a final determination by the court.

37 (d) After notice and hearing, the court shall deter-
38 mine the elective share and supplemental elective-share
39 amounts, and shall order its payment from the assets of
40 the augmented estate or by contribution as appears
41 appropriate under section six of this article. If it
42 appears that a fund or property included in the
43 augmented estate has not come into the possession of the
44 personal representative, or has been distributed by the
45 personal representative, the court nevertheless shall fix
46 the liability of any person who has any interest in the
47 fund or property or who has possession thereof, whether
48 as trustee or otherwise. The proceeding may be main-
49 tained against fewer than all persons against whom
50 relief could be sought, but no person is subject to
51 contribution in any greater amount than he or she would
52 have been under section two had relief been secured
53 against all persons subject to contribution.

54 (e) An order or judgment of the court may be
55 enforced as necessary in suit for contribution or
56 payment in other courts of this state or other jurisdic-
57 tions.

§42-3-5. Effect of election on statutory benefits.

1 If the right of election is exercised by or on behalf of
2 the surviving spouse, the surviving spouse's homestead
3 exemption and exempt property, if any, are not charged
4 against but are in addition to the elective share and
5 supplemental elective-share amounts.

§42-3-6. Charging spouse with owned assets and gifts received; liability of others for balance of elective share.

1 (a) In a proceeding for an elective share, the following
2 are applied first to satisfy the elective-share amount and
3 to reduce or eliminate any contributions due from the
4 decedent's probate estate and recipients of the dece-
5 dent's reclaimable estate:

6 (1) Amounts included in the augmented estate which
7 pass or have passed to the surviving spouse by testate
8 or intestate succession;

9 (2) Amounts included in the augmented estate under
10 subdivision (3), subsection (b), section two of this article;

11 (3) Amounts included in the augmented estate which
12 would have passed to the spouse but were disclaimed;
13 and

14 (4) Amounts included in the augmented estate under
15 subdivision (4), subsection (b), section two of this article
16 up to the applicable percentage thereof. For the
17 purposes of this subsection, the "applicable percentage"
18 is twice the elective-share percentage set forth in the
19 schedule in section one of this article appropriate to the
20 length of time the spouse and the decedent were married
21 to each other.

22 (b) If, after the application of subsection (a), the
23 elective-share amount is not fully satisfied or the
24 surviving spouse is entitled to a supplemental elective-
25 share amount, amounts included in the decedent's

26 probate estate and that portion of the decedent's
27 reclaimable estate other than amounts irrevocably
28 transferred within two years before the decedent's death
29 are applied first to satisfy the unsatisfied balance of the
30 elective-share amount or the supplemental elective-
31 share amount. The decedent's probate estate and that
32 portion of the decedent's reclaimable estate are so
33 applied that liability for the unsatisfied balance of the
34 elective-share amount or for the supplemental elective-
35 share amount is equitably apportioned among the
36 recipients of the decedent's probate estate and that
37 portion of the decedent's reclaimable estate in propor-
38 tion to the value of their interests therein.

39 (c) If, after the application of subsections (a) and (b),
40 the elective share or supplemental elective-share amount
41 is not fully satisfied, the remaining portion of the
42 decedent's reclaimable estate is so applied that liability
43 for the unsatisfied balance of the elective share or
44 supplemental elective-share amount is equitably appor-
45 tioned among the recipients of that portion of the
46 decedent's reclaimable estate in proportion to the value
47 of their interests therein.

48 (d) Only original recipients of the reclaimable estate
49 described in subdivision (2) of subsection (b) of section
50 two of this article, and the donees of the recipients of
51 the reclaimable estate to the extent the donees have the
52 property or its proceeds, are liable to make a propor-
53 tional contribution toward satisfaction of the surviving
54 spouse's elective share or supplemental elective-share
55 amount. A person liable to make contribution may
56 choose to give up the proportional part of the reclaim-
57 able estate or to pay the value of the amount for which
58 he or she is liable.

§42-3-7. Entitlement of spouse; premarital will.

1 (a) If a testator's surviving spouse married the
2 testator after the testator executed his or her will, the
3 surviving spouse is entitled to receive, as an intestate
4 share no less than the value of the share of the estate
5 he or she would have received if the testator had died
6 intestate as to that portion of the testator's estate, if any.

7 that neither is devised to a child of the testator who was
8 born before the testator married the surviving spouse
9 and who is not a child of the surviving spouse nor is
10 devised or passes to a descendant of such a child, unless:

11 (1) It appears from the will or other evidence that the
12 will was made in contemplation of the testator's
13 marriage to the surviving spouse;

14 (2) The will expresses the intention that it is to be
15 effective notwithstanding any subsequent marriage; or

16 (3) The testator provided for the spouse by transfer
17 outside the will and the intent that the transfer be in
18 lieu of a testamentary provision is shown by the
19 testator's statements or is reasonably inferred from the
20 amount of the transfer or other evidence.

21 (b) In satisfying the share provided by this section,
22 devises made by the will to the testator's surviving
23 spouse, if any, are applied first, and other devises, other
24 than a devise to a child of the testator who was born
25 before the testator married the surviving spouse and
26 who is not a child of the surviving spouse or a devise
27 or substitute gift to a descendant of such a child, abate.

CHAPTER 43. DOWER AND VALUATION OF LIFE ESTATES.

ARTICLE 1. DOWER.

§43-1-1. Dower and curtesy abolished.

§43-1-2. Notice of conveyance.

§43-1-1. Dower and curtesy abolished.

1 The estates of dower and curtesy are abolished.

§43-1-2. Notice of conveyance.

1 (a) For purposes of this section, "conveyance" means
2 a dispositive act intended to create a property interest
3 in land and includes the creation of a security interest
4 in real estate.

5 (b) Any married person who conveys an interest in
6 real estate shall notify his or her spouse prior to or
7 within thirty days of the time of the conveyance if the
8 conveyance involves an interest in real estate to which

9 dower would have attached if the conveyance had been
10 made prior to the date of enactment of this statute.

11 (c) A person making a conveyance described in the
12 previous sections shall have the burden of proof to show
13 compliance with this section. Such burden shall be met
14 either by:

15 (1) The signature of the spouse of the conveying party
16 on the conveyance instrument; or

17 (2) Such other forms of competent evidence as are
18 admissible in a court of general jurisdiction in this state
19 under the rules of evidence.

20 (d) When a married person fails to comply with the
21 notification requirements of this section, then in the
22 event of a subsequent divorce within five years of said
23 conveyance, the value of the real estate conveyed, as
24 determined at the time of the conveyance, shall be
25 deemed a part of the conveyancer's marital property for
26 purposes of determining equitable distribution or
27 awards of support, notwithstanding that any consider-
28 ation for said interest in the real estate may already be
29 included in the marital property.

30 (e) Nothing in this section shall be construed to create
31 a lien or claim against the interest in real estate
32 conveyed in violations of this provision.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-6. By whom action for wrongful death to be brought; amount and distribution of damages; period of limitation.

1 (a) Every such action shall be brought by and in the
2 name of the personal representative of such deceased
3 person who has been duly appointed in this state, or in
4 any other state, territory or district of the United States,
5 or in any foreign country, and the amount recovered in
6 every such action shall be recovered by said personal
7 representative and be distributed in accordance here-
8 with. If the personal representative was duly appointed

9 in another state, territory or district of the United
10 States, or in any foreign country, such personal repre-
11 sentative shall, at the time of filing of the complaint,
12 post bond with a corporate surety thereon authorized to
13 do business in this state, in the sum of one hundred
14 dollars, conditioned that such personal representative
15 shall pay all costs adjudged against him or her and that
16 he or she shall comply with the provisions of this section.
17 The circuit court may increase or decrease the amount
18 of said bond for good cause.

19 (b) In every such action for wrongful death, the jury,
20 or in a case tried without a jury, the court, may award
21 such damages as to it may seem fair and just, and may
22 direct in what proportions the damages shall be
23 distributed to the surviving spouse and children,
24 including adopted children and stepchildren, brothers,
25 sisters, parents and any persons who were financially
26 dependent upon the decedent at the time of his or her
27 death or would otherwise be equitably entitled to share
28 in such distribution after making provision for those
29 expenditures, if any, specified in subdivision (2),
30 subsection (c) of this section. If there are no such
31 survivors, then the damages shall be distributed in
32 accordance with the decedent's will or, if there is no will,
33 in accordance with the laws of descent and distribution
34 as set forth in chapter forty-two of this code. If the jury
35 renders only a general verdict on damages and does not
36 provide for the distribution thereof, the court shall
37 distribute the damages in accordance with the provi-
38 sions of this subsection.

39 (c) (1) The verdict of the jury shall include, but may
40 not be limited to, damages for the following: (A) Sorrow,
41 mental anguish, and solace which may include society,
42 companionship, comfort, guidance, kindly offices and
43 advice of the decedent; (B) compensation for reasonably
44 expected loss of (i) income of the decedent, and (ii)
45 services, protection, care and assistance provided by the
46 decedent; (C) expenses for the care, treatment and
47 hospitalization of the decedent incident to the injury
48 resulting in death; and (D) reasonable funeral expenses.

49 (2) In its verdict the jury shall set forth separately the

50 amount of damages, if any, awarded by it for reasonable
51 funeral, hospital, medical and said other expenses
52 incurred as a result of the wrongful act, neglect or
53 default of the defendant or defendants which resulted
54 in death, and any such amount recovered for such
55 expenses shall be so expended by the personal
56 representative.

57 (d) Every such action shall be commenced within two
58 years after the death of such deceased person, subject
59 to the provisions of section eighteen, article two, chapter
60 fifty-five. The provisions of this section shall not apply
61 to actions brought for the death of any person occurring
62 prior to the first day of July, one thousand nine hundred
63 eighty-eight.

CHAPTER 76

(Com. Sub. for S. B. 310—By Senator Humphreys)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-two, article three-a, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to fees to be charged by a fiduciary supervisor; and basis for fee charged.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS; COUNTY OPTION.

§44-3A-42. Fees to be charged by fiduciary supervisor or fiduciary commissioner; disposition of fees.

1 (a) When necessary solely for the purpose of financing
2 the cost of settling estates, the county commission may

3 authorize the fiduciary supervisor to charge and collect
4 at the time of qualification of the fiduciary of a
5 decedent's estate a fee not to exceed: (1) Twenty-five
6 dollars for all estates in which the gross assets do not
7 exceed ten thousand dollars; (2) one hundred dollars for
8 all estates in which the gross assets are more than ten
9 thousand dollars and do not exceed fifty thousand
10 dollars; and (3) one hundred seventy-five dollars for all
11 estates in which the gross assets exceed fifty thousand
12 dollars. Of the sums collected by the fiduciary supervi-
13 sor, five dollars shall be forwarded to the state tax
14 commissioner. The moneys so forwarded to the state tax
15 commissioner shall be deposited in the office of the
16 treasurer of the state in the special fund, designated
17 "The Inheritance Tax Administration Fund", to be used
18 to defray, in whole or in part, the costs of administration
19 of taxes imposed by article eleven, chapter eleven of this
20 code in order to facilitate the prompt administration of
21 the provisions imposed by said article. The remaining
22 amounts shall be deposited in the county fiduciary fund
23 as provided in section forty-three of this article. Such
24 fee shall be paid to include all services of the fiduciary
25 supervisor for the settlement of every such decedent's
26 estate which is settled pursuant to the provisions of
27 section nineteen of this article. All such fees shall also
28 include the cost of publication of the notice required by
29 section four of this article, and the notice required by
30 section nineteen of this article, but shall not include the
31 cost of any mailings or of the cost of recording any
32 documents required to be recorded in the office of the
33 clerk of the county commission by the provisions of this
34 chapter.

35 In the event the fiduciary supervisor is required to
36 examine and prepare a statement of deficiencies,
37 including reasons for disapproving any of the documents
38 required to be filed by the personal representative of
39 any decedent's estate, he shall charge and collect from
40 such personal representative a fee of ten dollars.

41 (b) In addition to the fees set forth in subsection (a)
42 of this section, the fiduciary supervisor shall charge a
43 fee to be fixed by the county commission in the manner

44 provided in subsection (c) of this section for conducting
45 hearings, granting continuances of hearings, consider-
46 ing evidence, for drafting recommendations with
47 respect to such hearings and for appearing before the
48 county commission with respect thereto and any other
49 matters of an extraordinary nature not normally
50 included within a summary settlement as contemplated
51 by section nineteen of this article. Such fee shall be used
52 to defray the costs imposed by or incidental to any
53 extraordinary demands by or conditions imposed by a
54 fiduciary or imposed by the circumstances of the estate.

55 (c) The fiduciary supervisor or fiduciary commis-
56 sioner shall prepare a voucher for the county commis-
57 sion, which voucher shall be itemized and shall set forth
58 in detail all of the services performed and the amount
59 charged for such service or services. Such voucher shall
60 also indicate in each instance if the service was actually
61 performed by the fiduciary supervisor or fiduciary
62 commissioner or whether such service was performed by
63 an employee or deputy of such supervisor or commis-
64 sioner. All vouchers shall reflect the services rendered
65 pursuant to the initial fee charged and collected as
66 provided in subsection (a) of this section and, in addition
67 thereto, shall indicate those services for which charges
68 are to be made over and above that amount. In the case
69 of any service for which a fee is not fixed by this section,
70 or the fee fixed is based on time expended, the voucher
71 shall show the actual time personally expended by the
72 supervisor or commissioner, to the nearest tenth of an
73 hour. All such vouchers shall be verified prior to
74 submission to the county commission for approval. Upon
75 approval of any such voucher, the same shall be charged
76 against the estate to which the same applies. In
77 reviewing any fee charged by either the fiduciary
78 supervisor or a fiduciary commissioner, the county
79 commission shall consider the following:

- 80 (1) The time and effort expended;
- 81 (2) The difficulty of the questions raised;
- 82 (3) The skill required to perform properly the services
83 rendered;

84 (4) The reasonableness of the fee;

85 (5) Any time limitations imposed by the personal
86 representative, any beneficiary or claimant, or by the
87 attendant circumstances; and

88 (6) Any unusual or extraordinary circumstances or
89 demands or conditions imposed by the personal repre-
90 sentative, any beneficiary or claimant or by the
91 attendant circumstances. The county commission may
92 approve any such voucher or may reduce the same, as
93 it deems proper, after considering those matters set
94 forth in this subsection. Any such approval shall be by
95 order of the commission and be entered of record by the
96 clerk of the county commission in the fiduciary record
97 book and the general order books of the commission. In
98 no event shall any fee for any service, whether per-
99 formed by the fiduciary supervisor or the fiduciary
100 commissioner, be fixed, charged or approved which is
101 based upon or with reference to the monetary value of
102 the estate or of the amount in controversy upon any
103 disputed issue or fact of law.

104 (d) For every estate other than a decedent's estate,
105 there shall be charged by the fiduciary supervisor at the
106 time of qualification a fee of twenty-five dollars, which
107 fee shall include all services performed by the fiduciary
108 supervisor with respect to such estate from the time of
109 qualification of the personal representative thereof until
110 and including the filing of the first annual settlement.
111 For each additional or subsequent annual or triennial
112 settlement, the fiduciary supervisor shall charge and
113 collect a fee of ten dollars.

114 (e) The county commission or other tribunal in lieu
115 thereof shall, by order, establish or fix a schedule of
116 suggested fees or rates of compensation for the guidance
117 of the fiduciary supervisor and any fiduciary commis-
118 sioner in preparing their respective vouchers for fees
119 other than those fees fixed by any provision of this
120 section or of this chapter. A copy of these fees or rates
121 shall be posted in a conspicuous place in the county
122 courthouse.

CHAPTER 77

(Com. Sub. for H. B. 4050—By Delegates Rutledge and Carper)

[Passed February 26, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine, relating to investment of fiduciary assets by a bank or trust company in mutual funds; permitting investments in mutual fund companies which receive other services by the bank or trust company; and investments of fiduciary assets in time deposits of the bank or trust company.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. INVESTMENTS BY FIDUCIARIES.

§44-6-9. Investment of trust assets in mutual funds; investments in mutual fund companies otherwise served by the bank; investment of trust assets in time deposits.

1 (a) A bank or trust company qualified and acting in
2 a fiduciary capacity in this state may, in the exercise
3 of its investment discretion or at the direction of another
4 person authorized to direct investment of funds held by
5 the bank or trust company as fiduciary, invest and
6 reinvest trust assets in mutual funds which are the
7 securities of an open-end or closed-end management
8 investment company or investment trust registered
9 under the Investment Company Act of 1940 (15 U.S.C.
10 Section 80a-1, et seq.), as amended: *Provided*, That the
11 portfolio of such investment company or investment
12 trust does not consist of investments prohibited by the
13 governing fiduciary instrument.

14 (b) The fact that a bank or trust company or an

15 affiliate of the same provides services to an investment
16 company or investment trust, including, but not limited
17 to, services as an investment advisor, custodian, transfer
18 agent, registrar, sponsor, distributor, manager or
19 otherwise, and is receiving reasonable compensation for
20 those services, does not preclude such bank or trust
21 company from investing or reinvesting in mutual funds
22 which are the securities of the open-end or closed-end
23 management investment trust registered under the
24 Investment Company Act of 1940 (15 U.S.C. Section 80a-
25 1, et seq.), as amended. Such bank or trust company or
26 affiliate thereof is entitled to receive fiduciary fees with
27 respect to such assets. For such services the bank or
28 trust company or affiliate thereof shall also be entitled
29 to the normal fiduciary fee.

30 (c) A bank or trust company qualified and acting in
31 a fiduciary capacity in this state may, in the exercise
32 of its investment discretion or at the direction of another
33 person authorized to direct investment of funds held by
34 the bank or trust company as fiduciary, invest and
35 reinvest trust assets in time deposits, including certifi-
36 cates of deposit, of the bank or trust company in
37 accordance with the provisions of subdivision (f), section
38 two of this article: *Provided*, That such investments are
39 authorized by the governing fiduciary instrument.

CHAPTER 78

(Com. Sub. for H. B. 2872—By Delegates Staton and Damron)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three and four, article fourteen, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article fourteen by adding thereto a new section, designated section five, relating to the substitution of trustees generally; providing for the appointment of a substitute trustee for a trust deed securing a debt or obligation by the party

secured by the trust deed, any surety indemnified by such deed, or the assignee or personal representative of such secured party or surety, independent of court action; providing for notice of such substitution by first class mail; recordation of notice; and validation of good faith acts by substitute trustees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. SUBSTITUTION OF TRUSTEES; POWERS OF SURVIVING OR REMAINING TRUSTEES.

- §44-14-1. By circuit court or judge, for trustee in deed, will or other writing; appointment of ancillary trustee under certain circumstances; substitution of trustee by party secured by trust deed.
- §44-14-2. Procedure for appointment by court or judge; appointment by secured party under trust deed.
- §44-14-3. Remaining trustees, or personal representative of sole or surviving trustee, may execute trust.
- §44-14-4. Powers and responsibilities of substituted or remaining trustee.
- §44-14-5. Validation of good faith acts by substitute trustees.

§44-14-1. By circuit court or judge, for trustee in deed, will or other writing; appointment of ancillary trustee under certain circumstances; substitution of trustee by party secured by trust deed.

- 1 (a) When the trustee, or, if there is more than one
 2 trustee, one or more of the trustees, in any will, deed
 3 or other writing, die or remove beyond the limits of this
 4 state, or decline to accept the trust, or having accepted,
 5 resign the same, or refuse to act as trustee, or be unable
 6 due to physical or mental disability to perform his, her,
 7 or their duties under the trust, the circuit court of the
 8 county in which such will was admitted to probate, or
 9 such deed or other writing is or may be recorded, may,
 10 on motion of any party interested, and upon satisfactory
 11 evidence of such death, removal, declination, resigna-
 12 tion, refusal or inability, appoint a trustee or trustees

13 in the place of the trustee or trustees named in such
14 instrument and so dying, removing, declining, resigning
15 or refusing, or being unable to perform his, her, or their
16 duties under the trust.

17 (b) As an alternative to the method of substitution
18 provided for in subsection (a) of this section, in the case
19 of a trust deed to secure a debt or obligation if the trust
20 deed does not by its terms prescribe a method for
21 substitution, the party secured by the trust deed, or any
22 surety indemnified by the deed, or the assignee or
23 personal representative of any such secured party or
24 surety has the authority, in the event of such death,
25 removal, declination, resignation, refusal or inability as
26 is described in subsection (a), to substitute a trustee or
27 trustees in the place of the trustee or trustees named in
28 such instrument, independent of any court action
29 otherwise required by the provisions of subsection (a).

30 (c) If any such trust, other than a security trust,
31 include real property situate in this state, and the
32 trustee, or, if there be more than one trustee, one or
33 more of the trustees, appointed by or under the will,
34 deed or other writing creating such trust and required
35 under the provisions thereof to act in respect of such real
36 property, be a corporation or association chartered
37 under the laws of any other state or jurisdiction which
38 is not qualified under the laws of this state to hold
39 property or transact business in this state, and refuses
40 or is unable to so qualify, such court may in like manner
41 appoint an ancillary trustee of such trust to act with
42 respect to such real property situate in this state
43 pursuant to, and with all the powers and authorities
44 granted to the trustee or trustees of such trust by, the
45 provision of the will, deed or other writing creating such
46 trust.

**§44-14-2. Procedure for appointment by court or judge;
appointment by secured party under trust
deed.**

1 (a) A motion under the provisions of subsection (a) of
2 the preceding section shall be after ten days' notice to
3 all persons interested in the execution of the trust other

4 than the plaintiff in such motion. If any of the parties
5 on whom such notice is required to be served be under
6 disability and have no guardian or committee, the court,
7 judge or clerk shall appoint some discreet and compe-
8 tent attorney-at-law as guardian ad litem to such person,
9 on whom notice may be served. If there be such
10 guardian or committee, the notice shall be served on
11 him.

12 (b) In the case of a substitution made under subsection
13 (b) of the preceding section, substituting a trustee or
14 trustees of a trust deed securing a debt or obligation,
15 the substitution is effected when the party secured, or
16 a surety indemnified by the deed, or the assignee or
17 personal representative of any such secured party or
18 surety has deposited true copies of the notice of such
19 substitution in the United States mail, first class postage
20 prepaid, addressed to the last known addresses of the
21 grantor or grantors or any other person owing the debt
22 or obligation, and to the trustee or trustees, and has
23 presented the original of such notice to the clerk of the
24 county commission in whose office the trust deed is
25 recorded, causing such notice to be recorded and
26 indexed in a general lien book or other such appropriate
27 book wherein trust deeds or assignments of trust deeds
28 are recorded. There shall be appended to the notice
29 presented for recordation a certificate by the party
30 making the substitution, certifying that copies of the
31 notice were mailed as required by this subsection, and
32 showing the date of such mailing.

33 (c) It shall not be necessary to give notice under this
34 section to a trustee who has removed from the state,
35 declined to accept the trust, refused to act as trustee,
36 or has resigned, nor to the personal representative of one
37 who has died.

**§44-14-3. Remaining trustees, or personal representative
of sole or surviving trustee, may execute
trust.**

1 The personal representative of a sole or surviving
2 trustee, or if there be more than one trustee, and one
3 or more of them die, resign, or remove from the state,

4 or decline to accept the trust, or refuse to act as such
5 trustee or trustees, the remaining trustee or trustees,
6 may execute the trust, or so much thereof as remained
7 unexecuted at the death, removal, declination, resigna-
8 tion, or refusal aforesaid (whether the trust subject be
9 real or personal property), unless the instrument
10 creating the trust directs otherwise, or some other
11 trustee be appointed for the purpose pursuant to the
12 provisions of this article.

§44-14-4. Powers and responsibilities of substituted or remaining trustee.

1 Any trustee or trustees appointed under authority of
2 this article, if he, she, or they accept, or the personal
3 representative of a sole or surviving trustee, or the
4 surviving or remaining trustee, who has power to
5 execute any trust or the remainder of any trust under
6 authority of this article, shall be vested with all the
7 estates, rights and powers, and charged with all the
8 duties and responsibilities, of the trustee or trustees
9 named in the trust instrument.

§44-14-5. Validation of good faith acts by substitute trustees.

1 This section is enacted to prevent or redress problems
2 which might be caused by the improper appointment of
3 substitute trustees under a trust deed to secure a debt
4 or obligation who in good faith performed their acts as
5 trustees in substantial compliance with the provisions of
6 article one, chapter thirty-eight of this code. With
7 respect to acts performed by such trustees in good faith
8 and in substantial compliance with the statutory law of
9 this state and the terms of their trust deed the otherwise
10 lawful acts of a substitute trustee performed prior to the
11 effective date of this section shall be conclusively
12 presumed to be valid, notwithstanding that the method
13 of appointment of such trustee did not comply with the
14 provisions of a prior enactment of this article.

CHAPTER 79

(S. B. 58—Originating in the Committee on the Judiciary)

[Passed January 15, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and five, article two, chapter six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to advisory opinions subject to legislative rule making and review; and the exclusion of legislators and legislative staff from the prohibition against current or subsequent representation of clients in matters in which he or she participated in the legislative process.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 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; enforcement; applicability; legislative review; rule making.

§6B-2-5. Ethical standards for elected and appointed officials and public employees.

§6B-2-3. Advisory opinions; enforcement; applicability; legislative review; rule making.

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-2-5. 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 and
6 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,
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

* **Clerk's Note:** This section was also amended by H. B. 4361 (Chapter 80), which passed subsequent to this act.

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
127 the provisions of section fifteen, article ten, chapter
128 sixty-one of this code, no elected or appointed public
129 official or public employee or member of his or her
130 immediate family or business with which he or she is
131 associated may be a party to or have an interest in the
132 profits or benefits of a contract which such official or
133 employee may have direct authority to enter into, or
134 over which he or she may have control: *Provided*, That
135 nothing herein shall be construed to prevent or make
136 unlawful the employment of any person with any
137 governmental body: *Provided, however*, That nothing
138 herein shall be construed to prohibit a member of the
139 Legislature from entering into a contract with any

140 governmental body, or prohibit a part-time appointed
141 public official from entering into a contract which such
142 part-time appointed public official may have direct
143 authority to enter into or over which he or she may have
144 control when such official has been recused from
145 deciding or evaluating and excused from voting on such
146 contract and has fully disclosed the extent of such
147 interest in the contract.

148 (2) In the absence of bribery or a purpose to defraud,
149 an elected or appointed public official or public
150 employee or a member of his or her immediate family
151 or a business with which he or she is associated shall
152 not be considered as having an interest in a public
153 contract when such a person has a limited interest as
154 an owner, shareholder or creditor of the business which
155 is the contractor on the public contract involved. A
156 limited interest for the purposes of this subsection is:

157 (A) An interest:

158 (i) Not exceeding ten percent of the partnership or the
159 outstanding shares of a corporation; or

160 (ii) Not exceeding thirty thousand dollars interest in
161 the profits or benefits of the contract; or

162 (B) An interest as a creditor:

163 (i) Not exceeding ten percent of the total indebtedness
164 of a business; or

165 (ii) Not exceeding thirty thousand dollars interest in
166 the profits or benefits of the contract.

167 (3) Where the provisions of subdivisions (1) and (2) of
168 this subsection would result in the loss of a quorum in
169 a public body or agency, in excessive cost, undue
170 hardship, or other substantial interference with the
171 operation of a state, county, municipality, county school
172 board or other governmental agency, the affected
173 governmental body or agency may make written
174 application to the ethics commission for an exemption
175 from subdivisions (1) and (2) of this subsection.

176 (e) *Confidential information.* — No present or former
177 public official or employee may knowingly and improp-

178 erly disclose any confidential information acquired by
179 him or her in the course of his or her official duties nor
180 use such information to further his or her personal
181 interests or the interests of another person.

182 (f) *Prohibited representation.* — With the exception of
183 legislators and legislative staff, no present or former
184 elected or appointed public official or public employee
185 shall during or after his or her public employment or
186 service represent a client or act in a representative
187 capacity with or without compensation on behalf of any
188 person in a contested case, rate-making proceeding,
189 license or permit application, regulation filing or other
190 specific matter which arose during his or her period of
191 public service or employment and in which he or she
192 personally participated in a decision-making, advisory
193 or staff support capacity. The provisions of this subsec-
194 tion shall apply to legislators who were in office and
195 legislative staff who were employed at the time it
196 originally became effective on the first day of July, one
197 thousand nine hundred eighty-nine, and those who have
198 since become legislators or legislative staff and those
199 who shall serve hereafter as legislators or legislative
200 staff.

201 (g) *Limitation on practice before a board, agency,*
202 *commission or department.* — (1) No elected or ap-
203 pointed public official and no full-time staff attorney or
204 accountant shall, during his or her public service or
205 public employment or for a period of six months after
206 the termination of his or her public service or public
207 employment with a governmental entity authorized to
208 hear contested cases or promulgate regulations, appear
209 in a representative capacity before the governmental
210 entity in which he or she serves or served or is or was
211 employed in the following matters:

212 (A) A contested case involving an administrative
213 sanction, action or refusal to act;

214 (B) To support or oppose a proposed regulation;

215 (C) To support or contest the issuance or denial of a
216 license or permit;

217 (D) A rate-making proceeding; and

218 (E) To influence the expenditure of public funds.

219 (2) As used in this subsection, "represent" includes
220 any formal or informal appearance before, or any
221 written or oral communication with, any public agency
222 on behalf of any person: *Provided*, That nothing
223 contained in this subsection shall prohibit, during any
224 period, a former public official or employee from being
225 retained by or employed to represent, assist, or act in
226 a representative capacity on behalf of the public agency
227 by which he or she was employed or in which he or she
228 served. Nothing in this subsection shall be construed to
229 prevent a former public official or employee from
230 representing another state, county, municipal or other
231 governmental entity before the governmental entity in
232 which he or she served or was employed within six
233 months after the termination of his or her employment
234 or service in the entity.

235 (3) A present or former public official or employee
236 may appear at any time in a representative capacity
237 before the Legislature, a county commission, city or
238 town council or county school board in relation to the
239 consideration of a statute, budget, ordinance, rule,
240 resolution or enactment.

241 (4) Members and former members of the Legislature
242 and professional employees and former professional
243 employees of the Legislature shall be permitted to
244 appear in a representative capacity on behalf of clients
245 before any governmental agency of the state, or of
246 county or municipal governments including county
247 school boards.

248 (5) An elected or appointed public official, full-time
249 staff attorney or accountant who would be adversely
250 affected by the provisions of this subsection may apply
251 to the ethics commission for an exemption from the six
252 months prohibition against appearing in a representa-
253 tive capacity, when the person's education and expe-
254 rience is such that the prohibition would, for all
255 practical purposes, deprive the person of the ability to
256 earn a livelihood in this state outside of the governmen-

257 tal agency. The ethics commission shall by legislative
258 rule establish general guidelines or standards for
259 granting an exemption or reducing the time period, but
260 shall decide each application on a case-by-case basis.

261 (h) *Seeking employment with regulated person prohi-*
262 *bited.* — (1) No full-time public official or full-time
263 public employee who exercises policymaking, nonminis-
264 terial or regulatory authority may seek employment
265 with, or allow himself or herself to be employed by, any
266 person who is or may be regulated by the governmental
267 body which he or she serves while he or she is employed
268 or serves in the governmental agency. The term
269 “employment” within the meaning of this section
270 includes professional services and other services ren-
271 dered by the public official or public employee whether
272 rendered as an employee or as an independent
273 contractor.

274 (2) No person regulated by a governmental agency
275 shall offer employment to a full-time public official or
276 full-time public employee of the regulating governmen-
277 tal agency during the period of time the public official
278 or employee works or serves in such agency.

279 (3) A full-time public official or full-time public
280 employee who would be adversely affected by the
281 provisions of this subsection may apply to the ethics
282 commission for an exemption from the prohibition
283 against seeking employment with a person who is or
284 may be regulated, when the person’s education and
285 experience is such that the prohibition would, for all
286 practical purposes, deprive the person of the ability to
287 earn a livelihood in this state outside of the governmen-
288 tal agency. The ethics commission shall by legislative
289 rule establish general guidelines or standards for
290 granting an exemption, but shall decide upon each
291 application on a case-by-case basis.

292 (i) *Members of the Legislature required to vote.* —
293 Members of the Legislature who have asked to be
294 excused from voting or who have made inquiry as to
295 whether they should be excused from voting on a
296 particular matter and who are required by the presid-

297 ing officer of the House of Delegates or Senate of West
298 Virginia to vote under the rules of the particular house
299 shall not be guilty of any violation of ethics under the
300 provisions of this section for a vote so cast.

301 (j) *Limitations on participation in licensing and rate-*
302 *making proceedings.* — No public official or employee
303 may participate within the scope of his or her duties as
304 a public official or employee, except through ministerial
305 functions as defined in section three, article one of this
306 chapter, in any license or rate-making proceeding that
307 directly affects the license or rates of any person,
308 partnership, trust, business trust, corporation or
309 association in which the public official or employee or
310 his or her immediate family owns or controls more than
311 ten percent. No public official or public employee may
312 participate within the scope of his or her duties as a
313 public official or public employee, except through
314 ministerial functions as defined in section three, article
315 one of this chapter, in any license or rate-making
316 proceeding that directly affects the license or rates of
317 any person to whom the public official or public
318 employee or his or her immediate family, or a partner-
319 ship, trust, business trust, corporation or association of
320 which the public official or employee, or his or her
321 immediate family, owns or controls more than ten
322 percent, has sold goods or services totaling more than
323 one thousand dollars during the preceding year, unless
324 the public official or public employee has filed a written
325 statement acknowledging such sale with the public
326 agency and the statement is entered in any public record
327 of the agency's proceedings. This subsection shall not be
328 construed to require the disclosure of clients of attorneys
329 or of patients or clients of persons licensed pursuant to
330 articles three, eight, fourteen, fourteen-a, fifteen,
331 sixteen, twenty, twenty-one or thirty-one, chapter thirty
332 of this code.

333 (k) *Certain expenses prohibited.* — No public official
334 or public employee shall knowingly request or accept
335 from any governmental entity compensation or reim-
336 bursement for any expenses actually paid by a lobbyist
337 and required by the provisions of this chapter to be

338 reported, or actually paid by any other person.

339 (l) Any person who is employed as a member of the
 340 faculty or staff of a public institution of higher
 341 education and who is engaged in teaching, research,
 342 consulting or publication activities in his or her field of
 343 expertise with public or private entities and thereby
 344 derives private benefits from such activities shall be
 345 exempt from the prohibitions contained in subsections
 346 (b), (c) and (d) of this section when the activity is
 347 approved as a part of an employment contract with the
 348 governing board of such institution or has been ap-
 349 proved by the employee's department supervisor or the
 350 president of the institution by which the faculty or staff
 351 member is employed.

352 (m) The commission by legislative rule promulgated
 353 in accordance with chapter twenty-nine-a of this code
 354 may define further exemptions from this section as
 355 necessary or appropriate.

CHAPTER 80

(H. B. 4361—By Delegates Brown and Grubb)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibiting elected or appointed public official or public employee from representing clients in certain matters in which he or she participated while in government.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES.

***§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 and
6 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-

* Clerk's Note: This section was also amended by S. B. 58 (Chapter 79), which passed prior to this act.

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
127 the provisions of section fifteen, article ten, chapter
128 sixty-one of this code, no elected or appointed public
129 official or public employee or member of his or her
130 immediate family or business with which he or she is
131 associated may be a party to or have an interest in the
132 profits or benefits of a contract which such official or
133 employee may have direct authority to enter into, or
134 over which he or she may have control: *Provided*, That
135 nothing herein shall be construed to prevent or make
136 unlawful the employment of any person with any
137 governmental body: *Provided, however*, That nothing
138 herein shall be construed to prohibit a member of the
139 Legislature from entering into a contract with any
140 governmental body, or prohibit a part-time appointed
141 public official from entering into a contract which such
142 part-time appointed public official may have direct
143 authority to enter into or over which he or she may have
144 control when such official has been recused from
145 deciding or evaluating and excused from voting on such
146 contract and has fully disclosed the extent of such
147 interest in the contract.

148 (2) In the absence of bribery or a purpose to defraud,
149 an elected or appointed public official or public
150 employee or a member of his or her immediate family
151 or a business with which he or she is associated shall
152 not be considered as having an interest in a public
153 contract when such a person has a limited interest as
154 an owner, shareholder or creditor of the business which
155 is the contractor on the public contract involved. A

156 limited interest for the purposes of this subsection is:

157 (A) An interest:

158 (i) Not exceeding ten percent of the partnership or the
159 outstanding shares of a corporation; or

160 (ii) Not exceeding thirty thousand dollars interest in
161 the profits or benefits of the contract; or

162 (B) An interest as a creditor:

163 (i) Not exceeding ten percent of the total indebtedness
164 of a business; or

165 (ii) Not exceeding thirty thousand dollars interest in
166 the profits or benefits of the contract.

167 (3) Where the provisions of subdivisions (1) and (2) of
168 this subsection would result in the loss of a quorum in
169 a public body or agency, in excessive cost, undue
170 hardship, or other substantial interference with the
171 operation of a state, county, municipality, county school
172 board or other governmental agency, the affected
173 governmental body or agency may make written
174 application to the ethics commission for an exemption
175 from subdivisions (1) and (2) of this subsection.

176 (e) *Confidential information.* — No present or former
177 public official or employee may knowingly and improp-
178 erly disclose any confidential information acquired by
179 him or her in the course of his or her official duties nor
180 use such information to further his or her personal
181 interests or the interests of another person.

182 (f) *Prohibited representation.* — No present or former
183 elected or appointed public official or public employee
184 shall, during or after his or her public employment or
185 service, represent a client or act in a representative
186 capacity with or without compensation on behalf of any
187 person in a contested case, rate-making proceeding,
188 license or permit application, regulation filing or other
189 particular matter involving a specific party or parties
190 which arose during his or her period of public service
191 or employment and in which he or she personally and
192 substantially participated in a decision-making, advi-
193 sory or staff support capacity, unless the appropriate

194 government agency, after consultation, consents to such
195 representation. A staff attorney, accountant, or other
196 professional employee who has represented a govern-
197 ment agency in a particular matter shall not thereafter
198 represent another client in the same or substantially
199 related matter in which that client's interests are
200 materially adverse to the interests of the government
201 agency, without the consent of the government agency:
202 *Provided*, That this prohibition on representation shall
203 not apply when the client was not directly involved in
204 the particular matter in which such professional
205 employee represented the government agency, but was
206 involved only as a member of a class. The provisions of
207 this subsection shall not apply to legislators who were
208 in office and legislative staff who were employed at the
209 time it originally became effective on the first day of
210 July, one thousand nine hundred eighty-nine, and those
211 who have since become legislators or legislative staff
212 and those who shall serve hereafter as legislators or
213 legislative staff.

214 (g) *Limitation on practice before a board, agency,*
215 *commission or department.* — (1) No elected or ap-
216 pointed public official and no full-time staff attorney or
217 accountant shall, during his or her public service or
218 public employment or for a period of six months after
219 the termination of his or her public service or public
220 employment with a governmental entity authorized to
221 hear contested cases or promulgate regulations, appear
222 in a representative capacity before the governmental
223 entity in which he or she serves or served or is or was
224 employed in the following matters:

225 (A) A contested case involving an administrative
226 sanction, action or refusal to act;

227 (B) To support or oppose a proposed regulation;

228 (C) To support or contest the issuance or denial of a
229 license or permit;

230 (D) A rate-making proceeding; and

231 (E) To influence the expenditure of public funds.

232 (2) As used in this subsection, "represent" includes

233 any formal or informal appearance before, or any
234 written or oral communication with, any public agency
235 on behalf of any person: *Provided*, That nothing
236 contained in this subsection shall prohibit, during any
237 period, a former public official or employee from being
238 retained by or employed to represent, assist, or act in
239 a representative capacity on behalf of the public agency
240 by which he or she was employed or in which he or she
241 served. Nothing in this subsection shall be construed to
242 prevent a former public official or employee from
243 representing another state, county, municipal or other
244 governmental entity before the governmental entity in
245 which he or she served or was employed within six
246 months after the termination of his or her employment
247 or service in the entity.

248 (3) A present or former public official or employee
249 may appear at any time in a representative capacity
250 before the Legislature, a county commission, city or
251 town council or county school board in relation to the
252 consideration of a statute, budget, ordinance, rule,
253 resolution or enactment.

254 (4) Members and former members of the Legislature
255 and professional employees and former professional
256 employees of the Legislature shall be permitted to
257 appear in a representative capacity on behalf of clients
258 before any governmental agency of the state, or of
259 county or municipal governments including county
260 school boards.

261 (5) An elected or appointed public official, full-time
262 staff attorney or accountant who would be adversely
263 affected by the provisions of this subsection may apply
264 to the ethics commission for an exemption from the six
265 months prohibition against appearing in a representa-
266 tive capacity, when the person's education and exper-
267 ience is such that the prohibition would, for all practical
268 purposes, deprive the person of the ability to earn a
269 livelihood in this state outside of the governmental
270 agency. The ethics commission shall by legislative rule
271 establish general guidelines or standards for granting
272 an exemption or reducing the time period, but shall
273 decide each application on a case-by-case basis.

274 (h) *Seeking employment with regulated person prohib-*
275 *ited.* — (1) No full-time public official or full-time public
276 employee who exercises policymaking, nonministerial or
277 regulatory authority may seek employment with, or
278 allow himself or herself to be employed by, any person
279 who is or may be regulated by the governmental body
280 which he or she serves while he or she is employed or
281 serves in the governmental agency. The term “employ-
282 ment” within the meaning of this section includes
283 professional services and other services rendered by the
284 public official or public employee whether rendered as
285 an employee or as an independent contractor.

286 (2) No person regulated by a governmental agency
287 shall offer employment to a full-time public official or
288 full-time public employee of the regulating governmen-
289 tal agency during the period of time the public official
290 or employee works or serves in such agency.

291 (3) A full-time public official or full-time public
292 employee who would be adversely affected by the
293 provisions of this subsection may apply to the ethics
294 commission for an exemption from the prohibition
295 against seeking employment with a person who is or
296 may be regulated, when the person's education and
297 experience is such that the prohibition would, for all
298 practical purposes, deprive the person of the ability to
299 earn a livelihood in this state outside of the governmen-
300 tal agency. The ethics commission shall by legislative
301 rule establish general guidelines or standards for
302 granting an exemption, but shall decide upon each
303 application on a case-by-case basis.

304 (i) *Members of the Legislature required to vote.* —
305 Members of the Legislature who have asked to be
306 excused from voting or who have made inquiry as to
307 whether they should be excused from voting on a
308 particular matter and who are required by the presid-
309 ing officer of the House of Delegates or Senate of West
310 Virginia to vote under the rules of the particular house
311 shall not be guilty of any violation of ethics under the
312 provisions of this section for a vote so cast.

313 (j) *Limitations on participation in licensing and rate-*

314 *making proceedings.* — No public official or employee
315 may participate within the scope of his or her duties as
316 a public official or employee, except through ministerial
317 functions as defined in section three, article one of this
318 chapter, in any license or rate-making proceeding that
319 directly affects the license or rates of any person,
320 partnership, trust, business trust, corporation or
321 association in which the public official or employee or
322 his or her immediate family owns or controls more than
323 ten percent. No public official or public employee may
324 participate within the scope of his or her duties as a
325 public official or public employee, except through
326 ministerial functions as defined in section three, article
327 one of this chapter, in any license or rate-making
328 proceeding that directly affects the license or rates of
329 any person to whom the public official or public
330 employee or his or her immediate family, or a partner-
331 ship, trust, business trust, corporation or association of
332 which the public official or employee, or his or her
333 immediate family, owns or controls more than ten
334 percent, has sold goods or services totaling more than
335 one thousand dollars during the preceding year, unless
336 the public official or public employee has filed a written
337 statement acknowledging such sale with the public
338 agency and the statement is entered in any public record
339 of the agency's proceedings. This subsection shall not be
340 construed to require the disclosure of clients of attorneys
341 or of patients or clients of persons licensed pursuant to
342 articles three, eight, fourteen, fourteen-a, fifteen,
343 sixteen, twenty, twenty-one or thirty-one, chapter thirty
344 of this code.

345 (k) *Certain expenses prohibited.* — No public official
346 or public employee shall knowingly request or accept
347 from any governmental entity compensation or reimbur-
348 sement for any expenses actually paid by a lobbyist and
349 required by the provisions of this chapter to be reported,
350 or actually paid by any other person.

351 (l) Any person who is employed as a member of the
352 faculty or staff of a public institution of higher
353 education and who is engaged in teaching, research,
354 consulting or publication activities in his or her field of

355 expertise with public or private entities and thereby
356 derives private benefits from such activities shall be
357 exempt from the prohibitions contained in subsections
358 (b), (c) and (d) of this section when the activity is
359 approved as a part of an employment contract with the
360 governing board of such institution or has been ap-
361 proved by the employees' department supervisor or the
362 president of the institution by which the faculty or staff
363 member is employed.

364 (m) The commission by legislative rule promulgated
365 in accordance with chapter twenty-nine-a of this code
366 may define further exemptions from this section as
367 necessary or appropriate.

CHAPTER 81

(Com. Sub. for S. B. 162—By Senators Burdette, Mr. President, and Boley,
By Request of the Executive)

[Passed March 5, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and nine, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article eleven-a, all relating to enactment of a state analog to the federal fair housing act to ensure continued funding from the federal government and primary enforcement authority at the state rather than federal level; definitions; unlawful discriminatory practices; prohibiting discrimination in housing based on race, color, religion, sex, blindness, handicap, familial status, ancestry or national origin; prohibiting discrimination in residential real estate transactions; prohibiting discrimination in brokerage services; exempting certain religious organizations and private clubs; providing for the administration of the West Virginia fair housing act by the human rights commission; providing for administrative and civil enforcement of the anti-discrimination provisions;

providing for subpoena and investigative authority to the human rights commission; enforcement of subpoenas; election of remedies; administrative hearings; enforcement by private persons through civil actions; protection of bona fide purchasers; intervention and enforcement by attorney general in civil cases; enforcement by civil action against interference, coercion or intimidation; cooperation with local agencies; effect on state laws; and rules to implement the West Virginia fair housing act.

Be it enacted by the Legislature of West Virginia:

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

Article

11. Human Rights Commission.

11A. West Virginia Fair Housing Act.

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§5-11-3. Definitions.

§5-11-9. Unlawful discriminatory practices.

§5-11-3. Definitions.

1 When used in this article:

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

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

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

11 (d) The term "employer" means the state, or any
12 political subdivision thereof, and any person employing
13 twelve or more persons within the state: *Provided*, That
14 such terms shall not be taken, understood or construed

15 to include a private club;

16 (e) The term "employee" shall not include any
17 individual employed by his parents, spouse or child, or
18 in the domestic service of any person;

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

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

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

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

40 (j) The term "place of public accommodations" means
41 any establishment or person, as defined herein, includ-
42 ing the state, or any political or civil subdivision thereof,
43 which offers its services, goods, facilities or accommo-
44 dations to the general public, but shall not include any
45 accommodations which are in their nature private;

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

47 (l) For the purpose of this article, a person shall be
48 considered to be blind only if his central visual acuity
49 does not exceed twenty/two hundred in the better eye
50 with correcting lenses, or if his visual acuity is greater
51 than twenty/two hundred but is occasioned by a
52 limitation in the fields of vision such that the widest

53 diameter of the visual field subtends an angle no greater
54 than twenty degrees; and

55 (m) The term "handicap" means a person who:

56 (1) Has a mental or physical impairment which
57 substantially limits one or more of such person's major
58 life activities; the term "major life activities" includes
59 functions such as caring for one's self, performing
60 manual tasks, walking, seeing, hearing, speaking,
61 breathing, learning and working;

62 (2) Has a record of such impairment; or

63 (3) Is regarded as having such an impairment.

64 For the purposes of this article, this term does not
65 include persons whose current use of or addiction to
66 alcohol or drugs prevents such individual from perform-
67 ing the duties of the job in question or whose employ-
68 ment, by reason of such current alcohol or drug abuse,
69 would constitute a direct threat to property or the safety
70 of others.

§5-11-9. Unlawful discriminatory practices.

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

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

17 (2) For any employer, employment agency or labor
18 organization, prior to the employment or admission to
19 membership, to: (A) Elicit any information or make or

20 keep a record of or use any form of application or
21 application blank containing questions or entries
22 concerning the race, religion, color, national origin,
23 ancestry, sex or age of any applicant for employment or
24 membership; (B) print or publish or cause to be printed
25 or published any notice or advertisement relating to
26 employment or membership indicating any preference,
27 limitation, specifications or discrimination based upon
28 race, religion, color, national origin, ancestry, sex or
29 age; or (C) deny or limit, through a quota system,
30 employment or membership because of race, religion,
31 color, national origin, ancestry, sex, age, blindness or
32 handicap;

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

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

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

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

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

57 (D) Print or circulate or cause to be printed or
58 circulated any statement, advertisement or publication,

59 or to use any form of application for such programs or
60 to make any inquiry in connection with such program
61 which expresses, directly or indirectly, discrimination
62 or any intent to discriminate unless based upon a bona
63 fide occupational qualification;

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

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

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

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

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

94 (A) Engage in any form of threats or reprisal, or to
95 engage in, or hire, or conspire with others to commit
96 acts or activities of any nature, the purpose of which is
97 to harass, degrade, embarrass or cause physical harm

98 or economic loss or to aid, abet, incite, compel or coerce
99 any person to engage in any of the unlawful discrimi-
100 natory practices defined in this section;

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

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

ARTICLE 11A. WEST VIRGINIA FAIR HOUSING ACT.

- §5-11A-1. Short title.
- §5-11A-2. Declaration of policy.
- §5-11A-3. Definitions.
- §5-11A-4. Application of article.
- §5-11A-5. Discrimination in sale or rental of housing and other prohibited practices.
- §5-11A-6. Discrimination in residential real estate-related transactions.
- §5-11A-7. Discrimination in provision of brokerage services.
- §5-11A-8. Religious organization or private club exemption.
- §5-11A-9. Administration; authority and responsibility; delegation of authority; appointment of administrative law judges; location of conciliation meetings; administrative review; cooperation of the commission and executive departments and agencies to further fair housing purposes; functions of the commission.
- §5-11A-10. Education and conciliation; conferences and consultations; reports.
- §5-11A-11. Administrative enforcement; preliminary matters; complaints and answers; service; conciliation; injunctions; reasonable cause determinations; issuance of charge.
- §5-11A-12. Subpoenas; giving of evidence; witness fees; enforcement of subpoenas.
- §5-11A-13. Election of remedies; administrative hearings and discovery; exclusivity of remedies; final orders; review by commission; judicial review; remedies; attorney fees.
- §5-11A-14. Enforcement by private persons; civil actions; appointed attorneys; remedies; bona fide purchasers; intervention by attorney general.
- §5-11A-15. Enforcement by attorney general; pattern or practice cases; subpoena enforcement; remedies; intervention.
- §5-11A-16. Interference, coercion or intimidation; enforcement by civil action.

§5-11A-17. Cooperation with local agencies administering fair housing laws; utilization of services and personnel; reimbursement; written agreements; publication in state register.

§5-11A-18. Effect on other laws.

§5-11A-19. Severability of provisions.

§5-11A-20. Rules to implement article.

§5-11A-1. Short title.

1 This article may be cited as the "West Virginia Fair
2 Housing Act".

§5-11A-2. Declaration of policy.

1 It is the policy of the state of West Virginia to provide,
2 within constitutional limitations, for fair housing
3 throughout the state.

§5-11A-3. Definitions.

1 As used in this article:

2 (a) "Commission" means the West Virginia human
3 rights commission;

4 (b) "Dwelling" means any building, structure or
5 portion thereof which is occupied as, or designed or
6 intended for occupancy as, a residence or sleeping place
7 by one or more persons or families, and any vacant land
8 which is offered for sale or lease for the construction or
9 location thereon of any such building, structure or
10 portion thereof;

11 (c) "Family" includes a single individual;

12 (d) "Person" includes one or more individuals,
13 corporations, partnerships, associations, labor organiza-
14 tions, legal representatives, mutual companies, joint-
15 stock companies, trusts, unincorporated organizations,
16 trustees, trustees in cases under Title 11 of the United
17 States Code, receivers and fiduciaries;

18 (e) "To rent" includes to lease, to sublease, to let and
19 otherwise to grant for a consideration the right to
20 occupy premises not owned by the occupant;

21 (f) "Discriminatory housing practice" means an act
22 that is unlawful under section five, six, seven or nineteen
23 of this article;

- 24 (g) "Handicap" means, with respect to a person:
- 25 (1) A physical or mental impairment which substan-
26 tially limits one or more of such person's major life
27 activities;
- 28 (2) A record of having such an impairment; or
- 29 (3) Being regarded as having such an impairment, but
30 such term does not include current, illegal use of or
31 addiction to a controlled substance, as defined in Section
32 102 of the Controlled Substances Act, Title 21, United
33 States Code, Section 802;
- 34 (h) "Aggrieved person" includes any person who:
- 35 (1) Claims to have been injured by a discriminatory
36 housing practice; or
- 37 (2) Believes that such person will be injured by a
38 discriminatory housing practice that is about to occur;
- 39 (i) "Complainant" means the person, including the
40 commission, who files a complaint under section eleven
41 of this article;
- 42 (j) "Familial status" means:
- 43 (1) One or more individuals who have not attained the
44 age of eighteen years being domiciled with:
- 45 (A) A parent or another person having legal custody
46 of such individual or individuals; or
- 47 (B) The designee of such parent or other person
48 having such custody with the written permission of such
49 parent or other person; or
- 50 (2) Any person who is pregnant or is in the process
51 of securing legal custody of any individual who has not
52 attained the age of eighteen years;
- 53 (k) "Conciliation" means the attempted resolution of
54 issues raised by a complaint or by the investigation of
55 such complaint through informal negotiations involving
56 the aggrieved person, the respondent and the
57 commission;
- 58 (l) "Conciliation agreement" means a written agree-

59 ment setting forth the resolution of the issues in
60 conciliation;

61 (m) "Respondent" means:

62 (1) The person or other entity accused in a complaint
63 of an unfair housing practice; and

64 (2) Any other person or entity identified in the course
65 of investigation and notified as required with respect to
66 respondents so identified under subsection (a), section
67 eleven of this article; and

68 (n) The term "rooming house" means a house or
69 building where there are one or more bedrooms which
70 the proprietor can spare for the purpose of giving
71 lodgings to such persons as he chooses to receive.

§5-11A-4. Application of article.

1 (a) The prohibitions against discrimination in the sale
2 or rental of housing set forth in section five of this
3 article shall apply to all dwellings except as hereinafter
4 exempted. Nothing in section five of this article, other
5 than subsection (b) of this section, shall apply to the
6 rental of a room or rooms in a rooming house occupied
7 by the owner as a place of residence and containing no
8 more than four rented rooms or rooms to be rented.
9 Solely for the purposes of familial status, nothing in
10 section five shall apply to:

11 (1) Any single-family house sold or rented by an
12 owner: *Provided*, That such private individual owner
13 does not own more than three such single-family houses
14 at any one time: *Provided, however*, That in the case of
15 the sale of any such single-family house by a private
16 individual owner not residing in such house at the time
17 of such sale or who was not the most recent resident of
18 such house prior to such sale, the exemption granted by
19 this subsection shall apply only with respect to one such
20 sale within any twenty-four month period: *Provided*
21 *further*, That such bona fide private individual owner
22 does not own any interest in, nor is there owned or
23 reserved on his behalf under any express or voluntary
24 agreement, title to or any right to all or a portion of the
25 proceeds from the sale or rental of more than three such

26 single-family houses at any one time: *And provided*
27 *further*, That the sale or rental of any such single-family
28 house shall be excepted from the application of this
29 article only if such house is sold or rented:

30 (A) Without the use in any manner of the sales or
31 rental facilities or the sales or rental services of any real
32 estate broker, agent or salesman, or of such facilities or
33 services of any person in the business of selling or
34 renting dwellings, or of any employee or agent of any
35 such broker, agent, salesman or person; and

36 (B) Without the publication, posting or mailing, after
37 notice, of any advertisement or written notice in
38 violation of subsection (c), section five of this article; but
39 nothing in this proviso shall prohibit the use of
40 attorneys, escrow agents, abstractors, title companies
41 and other such professional assistance as necessary to
42 perfect or transfer the title; or

43 (2) Rooms or units in dwellings containing living
44 quarters occupied or intended to be occupied by no more
45 than four families living independently of each other, if
46 the owner actually maintains and occupies one of such
47 living quarters as his residence.

48 (b) For the purposes of subsection (a) of this section,
49 a person shall be deemed to be in the business of selling
50 or renting dwellings if:

51 (1) He has within the preceding twelve months
52 participated as principal in three or more transactions
53 involving the sale or rental of any dwelling or any
54 interest therein;

55 (2) He has within the preceding twelve months
56 participated as agent, other than in the sale of his own
57 personal residence, in providing sales or rental facilities
58 or sales or rental services in two or more transactions
59 involving the sale or rental of any dwelling or any
60 interest therein; or

61 (3) He is the owner of any dwelling designed or
62 intended for occupancy by or occupied by five or more
63 families.

§5-11A-5. Discrimination in sale or rental of housing and other prohibited practices.

1 As made applicable by section four of this article and
2 except as exempted by sections four and eight of this
3 article, it shall be unlawful:

4 (a) To refuse to sell or rent after the making of a bona
5 fide offer, or to refuse to negotiate for the sale or rental
6 of, or otherwise make unavailable or deny, a dwelling
7 to any person because of race, color, religion, ancestry,
8 sex, familial status, blindness, handicap or national
9 origin;

10 (b) To discriminate against any person in the terms,
11 conditions or privileges of sale or rental of a dwelling,
12 or in the provision of services or facilities in connection
13 therewith, because of race, color, religion, ancestry, sex,
14 familial status, blindness, handicap or national origin;

15 (c) To make, print or publish, or cause to be made,
16 printed or published any notice, statement or advertise-
17 ment, with respect to the sale or rental of a dwelling
18 that indicates any preference, limitation or discrimina-
19 tion based on race, color, religion, sex, blindness,
20 handicap, familial status, ancestry or national origin, or
21 an intention to make any such preference, limitation or
22 discrimination;

23 (d) To represent to any person because of race, color,
24 religion, sex, blindness, handicap, familial status,
25 ancestry or national origin that any dwelling is not
26 available for inspection, sale or rental when such
27 dwelling is in fact so available;

28 (e) For profit, to induce or attempt to induce any
29 person to sell or rent any dwelling by representations
30 regarding the entry or prospective entry into the
31 neighborhood of a person or persons of a particular race,
32 color, religion, sex, blindness, handicap, familial status,
33 ancestry or national origin; or

34 (f) (1) To discriminate in the sale or rental, or to
35 otherwise make unavailable or deny, a dwelling to any
36 buyer or renter because of a handicap of: (A) That buyer
37 or renter; (B) a person residing in or intending to reside

38 in that dwelling after it is so sold, rented or made
39 available; or (C) any person associated with that buyer
40 or renter.

41 (2) To discriminate against any person in the terms,
42 conditions or privileges of sale or rental of a dwelling,
43 or in the provision of services or facilities in connection
44 with such dwelling, because of a handicap of: (A) That
45 person; (B) a person residing in or intending to reside
46 in that dwelling after it is so sold, rented or made
47 available; or (C) any person associated with that person.

48 (3) For purposes of this subdivision, discrimination
49 includes:

50 (A) A refusal to permit, at the expense of the
51 handicapped person, reasonable modifications of exist-
52 ing premises occupied or to be occupied by such person
53 if such modifications may be necessary to afford such
54 person full enjoyment of the premises, except that, in the
55 case of a rental, the landlord may where it is reasonable
56 to do so condition permission for a modification on the
57 renter agreeing to restore the interior of the premises
58 to the condition that existed before the modification,
59 reasonable wear and tear excepted;

60 (B) A refusal to make reasonable accommodations in
61 rules, policies, practices or services when such accom-
62 modations may be necessary to afford such person equal
63 opportunity to use and enjoy a dwelling; or

64 (C) In connection with the design and construction of
65 covered multifamily dwellings for first occupancy after
66 the date that is thirty months after the date of enact-
67 ment of the West Virginia fair housing act, a failure to
68 design and construct those dwellings in such a manner
69 that:

70 (i) The public use and common use portions of such
71 dwellings are readily accessible to and usable by
72 handicapped persons;

73 (ii) All the doors designed to allow passage into and
74 within all premises within such dwellings are suffi-
75 ciently wide to allow passage by handicapped persons
76 in wheelchairs; and

77 (iii) All premises within such dwellings contain the
78 following features of adaptive design: (I) An accessible
79 route into and through the dwelling; (II) light switches,
80 electrical outlets, thermostats and other environmental
81 controls in accessible locations; (III) reinforcements in
82 bathroom walls to allow later installation of grab bars;
83 and (IV) usable kitchens and bathrooms such that an
84 individual in a wheelchair can maneuver about the
85 space.

86 (4) Compliance with the appropriate requirements of
87 the American national standard for buildings and
88 facilities providing accessibility and usability for
89 physically handicapped people, commonly cited as ANSI
90 A117.1, suffices to satisfy the requirements of subpara-
91 graph (3) (C) (iii) of this subdivision.

92 (5) (A) If a unit of general local government has
93 incorporated into its laws the requirements set forth in
94 subparagraph (3) (C) of this subdivision, compliance
95 with such laws shall be deemed to satisfy the require-
96 ments of that subparagraph.

97 (B) The commission or unit of general local govern-
98 ment may review and approve newly constructed
99 covered multifamily dwellings for the purpose of
100 making determinations as to whether the design and
101 construction requirements of subparagraph (3) (C) of
102 this subdivision are met.

103 (C) The commission shall encourage, but may not
104 require, units of local government to include in their
105 existing procedures for the review and approval of
106 newly constructed covered multifamily dwellings,
107 determinations as to whether the design and construc-
108 tion of such dwellings are consistent with subparagraph
109 (3) (C) of this subdivision, and may provide technical
110 assistance to units of local government and other persons
111 to implement the requirements of such subparagraph.

112 (D) Nothing in this article shall be construed to
113 require the commission to review or approve the plans,
114 designs or construction of all covered multifamily
115 dwellings to determine whether the design and con-
116 struction of such dwellings are consistent with the

117 requirements of subparagraph (3) (C) of this subdivision.

118 (6) (A) Nothing in paragraph (5) of this subdivision
119 shall be construed to affect the authority and responsi-
120 bility of the commission or a local public agency to
121 receive and process complaints or otherwise engage in
122 enforcement activities under this article.

123 (B) Determinations by a unit of general local govern-
124 ment under subparagraphs (5) (A) and (B) of this
125 subdivision shall not be conclusive in enforcement
126 proceedings under this article.

127 (7) As used in this section, the term “covered multi-
128 family dwellings” means: (A) Buildings consisting of
129 four or more units if such buildings have one or more
130 elevators; and (B) ground floor units in other buildings
131 consisting of four or more units.

132 (8) Nothing in this article shall be construed to
133 invalidate or limit any law of this state or any political
134 subdivision hereof that requires dwellings to be de-
135 signed and constructed in a manner that affords
136 handicapped persons greater access than is required by
137 this article.

138 (9) Nothing in this section requires that a dwelling be
139 made available to an individual whose tenancy would
140 constitute a direct threat to the health or safety of other
141 individuals or whose tenancy would result in substantial
142 physical damage to the property of others. The burden
143 of proving such threat to health or safety or the
144 likelihood of such damage shall be upon the respondent.

**§5-11A-6. Discrimination in residential real estate-
related transactions.**

1 (a) It shall be unlawful for any person or other entity
2 whose business includes engaging in residential real
3 estate-related transactions to discriminate against any
4 person in making available such a transaction or in the
5 terms or conditions of such a transaction because of
6 race, color, religion, sex, blindness, handicap, familial
7 status, ancestry or national origin.

8 (b) As used in this section, the term “residential real

9 estate-related transaction" means any of the following:

10 (1) The making or purchasing of loans or providing
11 other financial assistance: (A) For purchasing, con-
12 structing, improving, repairing or maintaining a
13 dwelling; or (B) secured by residential real estate; or

14 (2) The selling, brokering or appraising of residential
15 real property.

16 (c) Nothing in this article prohibits a person engaged
17 in the business of furnishing appraisals of real property
18 to take into consideration factors other than race, color,
19 religion, national origin, ancestry, sex, blindness,
20 handicap or familial status.

§5-11A-7. Discrimination in provision of brokerage services.

1 It shall be unlawful to deny any person access to or
2 membership or participation in any multiple listing
3 service, real estate broker's organization or other
4 service, organization or facility relating to the business
5 of selling or renting dwellings, or to discriminate
6 against him or her in the terms or conditions of such
7 access, membership or participation on account of race,
8 color, religion, sex, blindness, handicap, familial status,
9 ancestry or national origin.

§5-11A-8. Religious organization or private club exemption.

1 (a) Nothing in this article shall prohibit a religious
2 organization, association or society, or any nonprofit
3 institution or organization operated, supervised or
4 controlled by or in conjunction with a religious organ-
5 ization, association or society, from limiting the sale,
6 rental or occupancy of dwellings which it owns or
7 operates for other than a commercial purpose to persons
8 of the same religion, or from giving preference to such
9 persons, unless membership in such religion is res-
10 tricted on account of race, color or national origin. Nor
11 shall anything in this article prohibit a private club not
12 in fact open to the public, which as an incident to its
13 primary purpose or purposes provides lodgings which it
14 owns or operates for other than a commercial purpose,

15 from limiting the rental or occupancy of such lodgings
16 to its members or from giving preference to its
17 members.

18 (b) (1) Nothing in this article limits the applicability
19 of any reasonable local, state or federal restrictions
20 regarding the maximum number of occupants permit-
21 ted to occupy a dwelling. Nor does any provision in this
22 article regarding familial status apply with respect to
23 housing for older persons.

24 (2) As used in this section, "housing for older persons"
25 means housing:

26 (A) Provided under any state or federal program that
27 the secretary of the United States department of
28 housing and urban development determines is specifi-
29 cally designed and operated to assist elderly persons, as
30 defined in the state or federal program; or

31 (B) Intended for, and solely occupied by, persons
32 sixty-two years of age or older; or

33 (C) Intended and operated for occupancy by at least
34 one person fifty-five years of age or older per unit. In
35 determining whether housing qualifies as housing for
36 older persons under this subsection, the commission
37 shall develop regulations which require at least the
38 following factors: (i) The existence of significant
39 facilities and services specifically designed to meet the
40 physical or social needs of older persons, or if the
41 provision of such facilities and services is not practica-
42 ble, that such housing is necessary to provide important
43 housing opportunities for older persons; (ii) that at least
44 eighty percent of the units are occupied by at least one
45 person fifty-five years of age or older per unit; and (iii)
46 the publication of, and adherence to, policies and
47 procedures which demonstrate an intent by the owner
48 or manager to provide housing for persons fifty-five
49 years of age or older.

50 (3) Housing shall not fail to meet the requirements for
51 housing for older persons by reason of: (A) Persons
52 residing in such housing as of the date of enactment of
53 this article who do not meet the age requirements of

54 subdivision (2) (B) or (C) of this subsection: *Provided,*
55 That new occupants of such housing meet the age
56 requirements of such subdivisions; or (B) unoccupied
57 units: *Provided, however,* That such units are reserved
58 for occupancy by persons who meet the age require-
59 ments of subdivision (2) (B) or (C) of this subsection.

60 (4) Nothing in this article prohibits conduct against
61 a person because such person has been convicted by any
62 court of competent jurisdiction of the illegal manufac-
63 ture or distribution of a controlled substance as defined
64 in Section 102 of the Controlled Substances Act, Title
65 21, United States Code, Section 802.

**§5-11A-9. Administration; authority and responsibility;
delegation of authority; appointment of
administrative law judges; location of con-
ciliation meetings; administrative review;
cooperation of the commission and execu-
tive departments and agencies to further
fair housing purposes; functions of the
commission.**

1 The authority and responsibility for administering
2 this article shall be in the West Virginia human rights
3 commission.

4 The commission may delegate any of its functions,
5 duties and powers to employees of the human rights
6 commission, including functions, duties and powers with
7 respect to investigating, conciliating, hearing, determin-
8 ing, ordering, certifying, reporting or otherwise acting
9 as to any work, business or matter under this article.
10 The person to whom such delegations are made with
11 respect to hearing functions, duties and powers shall be
12 a licensed attorney. Insofar as possible, conciliation
13 meetings shall be held in the county where the discrim-
14 inatory housing practices allegedly occurred. The
15 commission shall by rule prescribe such rights of appeal
16 from the decisions of its administrative law judges to
17 other administrative law judges or to other officers in
18 the commission, to boards of officers or to itself, as shall
19 be appropriate and in accordance with law.

20 All executive departments and agencies shall admin-

21 ister their programs and activities relating to housing,
22 including any agency having regulatory or supervisory
23 authority over financial institutions, in a manner
24 affirmatively to further the purposes of this article and
25 shall cooperate with the commission to further such
26 purposes.

27 The commission may:

28 (1) Make studies with respect to the nature and extent
29 of discriminatory housing practices in representative
30 communities, urban, suburban and rural, throughout
31 the state;

32 (2) Publish and disseminate reports, recommendations
33 and information derived from such studies, including
34 reports to the Legislature specifying the nature and
35 extent of progress made statewide in eliminating
36 discriminatory housing practices and furthering the
37 purposes of this article, obstacles remaining to achieving
38 equal housing opportunity and recommendations for
39 further legislative or executive action;

40 (3) Cooperate with and execute such cooperative
41 agreements with federal agencies as are necessary to
42 carry out the provisions of this article; and

43 (4) Administer the programs and activities relating to
44 fair housing in a manner affirmatively to further the
45 policies of this article.

§5-11A-10. Education and conciliation; conferences and consultations; reports.

1 Immediately upon the effective date of this article, the
2 commission shall commence such educational and
3 conciliatory activities as in its judgment will further the
4 purposes of this article. It may call conferences of
5 persons in the housing industry and other interested
6 parties to acquaint them with the provisions of this
7 article and its suggested means of implementing it, and
8 may endeavor with their advice to work out programs
9 of voluntary compliance and of enforcement. It may pay
10 per diem, travel and transportation expenses for persons
11 attending such conferences as permitted by law. It may
12 consult with local officials and other interested parties

13 to learn the extent, if any, to which housing discrimi-
14 nation exists in their locality, and whether and how local
15 enforcement programs might be utilized to combat such
16 discrimination in connection with the commission's
17 enforcement of this article. The commission shall issue
18 reports on such conferences and consultations as it
19 deems appropriate.

§5-11A-11. Administrative enforcement; preliminary matters; complaints and answers; service; conciliation; injunctions; reasonable cause determinations; issuance of charge.

1 (a) (1) (A) An aggrieved person may, not later than
2 one year after an alleged discriminatory housing
3 practice has occurred or terminated, file a complaint
4 with the commission alleging a discriminatory housing
5 practice. The commission, on the commission's own
6 initiative, may also file such a complaint. Such com-
7 plaint shall be in writing and shall contain such
8 information and be in such form as the commission
9 requires. The commission may also investigate housing
10 practices to determine whether a complaint should be
11 brought under this section.

12 (B) Upon the filing of such complaint: (i) The
13 commission shall serve notice upon the aggrieved person
14 acknowledging such filing and advising the aggrieved
15 person of the time limits and choice of forums provided
16 under this article; (ii) the commission shall, not later
17 than ten days after such filing or the identification of
18 an additional respondent under paragraph (2) of this
19 subsection, serve on the respondent a notice identifying
20 the alleged discriminatory housing practice and advis-
21 ing such respondent of the procedural rights and
22 obligations of respondents under this article, together
23 with a copy of the original complaint; (iii) each
24 respondent may file, not later than ten days after receipt
25 of notice from the commission, an answer to such
26 complaint; and (iv) unless it is impracticable to do so,
27 the commission shall make an investigation of the
28 alleged discriminatory housing practice and complete
29 such investigation within one hundred days after the
30 filing of the complaint.

31 (C) If the commission is unable to complete the
32 investigation within one hundred days after the filing
33 of the complaint, the commission shall notify the
34 complainant and respondent in writing of the reasons
35 for not doing so.

36 (D) Complaints and answers shall be under oath or
37 affirmation and may be reasonably and fairly amended
38 at any time.

39 (2) (A) A person who is not named as a respondent
40 in a complaint, but who is identified as a respondent in
41 the course of investigation, may be joined as an
42 additional or substitute respondent upon written notice,
43 under paragraph (1) of this subsection, to such person,
44 from the commission.

45 (B) Such notice, in addition to meeting the require-
46 ments of paragraph (1) of this subsection, shall explain
47 the basis for the commission's belief that the person to
48 whom the notice is addressed is properly joined as a
49 respondent.

50 (b) (1) During the period beginning with the filing of
51 such complaint and ending with the filing of a charge
52 or a dismissal by the commission, the commission shall,
53 to the extent feasible, engage in conciliation with respect
54 to such complaint.

55 (2) A conciliation agreement arising out of such
56 conciliation shall be an agreement between the respond-
57 ent and the complainant and shall be subject to approval
58 by the commission.

59 (3) A conciliation agreement may provide for binding
60 arbitration of the dispute arising from the complaint.
61 Any such arbitration that results from a conciliation
62 agreement may award appropriate relief, including
63 monetary relief.

64 (4) Each conciliation agreement shall be made public
65 unless the complainant and respondent otherwise agree
66 and the commission determines that disclosure is not
67 required to further the purposes of this article.

68 (5) (A) At the end of each investigation under this

69 section, the commission shall prepare a final investi-
70 gative report containing: (i) The names and dates of
71 contacts with witnesses; (ii) a summary and the dates
72 of correspondence and other contacts with the aggrieved
73 person and the respondent; (iii) a summary description
74 of other pertinent records; (iv) a summary of witness
75 statements; and (v) answers to interrogatories.

76 (B) A final report under this paragraph may be
77 amended if additional evidence is later discovered.

78 (c) Whenever the commission has reasonable cause to
79 believe that a respondent has breached a conciliation
80 agreement, the commission shall refer the matter to the
81 attorney general with a recommendation that a civil
82 action be filed under section fifteen of this article for
83 the enforcement of such agreement.

84 (d) Nothing said or done in the course of conciliation
85 under this article may be made public or used as
86 evidence in a subsequent proceeding under this article
87 without the written consent of the persons concerned,
88 except the commission shall make available to the
89 aggrieved person and the respondent, at any time, upon
90 request following completion of the commission's
91 investigation, information derived from an investigation
92 and any final investigative report relating to that
93 investigation.

94 (e) (1) If the commission concludes at any time
95 following the filing of a complaint that prompt judicial
96 action is necessary to carry out the purposes of this
97 article, the commission may authorize a civil action for
98 appropriate temporary or preliminary relief pending
99 final disposition of the complaint under this section.
100 Upon receipt of such authorization, the attorney general
101 shall promptly commence and maintain such an action.
102 Any temporary injunction or other order granting
103 preliminary or temporary relief shall be issued in
104 accordance with the West Virginia rules of civil
105 procedure. The commencement of a civil action under
106 this subsection does not affect the initiation or continua-
107 tion of administrative proceedings under this section
108 and section thirteen of this article.

109 (2) Whenever the commission has reason to believe
110 that a basis may exist for the commencement of
111 proceedings against any respondent under subsections
112 (a) and (b), section fifteen of this article or for proceed-
113 ings by any governmental licensing or supervisory
114 authorities, the commission shall transmit the informa-
115 tion upon which such belief is based to the attorney
116 general, or to such authorities, as the case may be.

117 (f) (1) The commission shall within one hundred days
118 after the filing of the complaint determine, based on the
119 facts, whether reasonable cause exists to believe that a
120 discriminatory housing practice has occurred or is about
121 to occur, unless it is impracticable to do so, or unless
122 the commission has approved a conciliation agreement
123 with respect to the complaint. If the commission is
124 unable to make the determination within one hundred
125 days after the filing of the complaint, the commission
126 shall notify the complainant and respondent in writing
127 of the reasons for not doing so.

128 (2) (A) If the commission determines that reasonable
129 cause exists to believe that a discriminatory housing
130 practice has occurred or is about to occur, the commis-
131 sion shall, except as provided in subparagraph (C),
132 immediately issue a charge on behalf of the aggrieved
133 person, for further proceedings under section thirteen of
134 this article.

135 (B) Such charge: (i) Shall consist of a short and plain
136 statement of the facts upon which the commission has
137 found reasonable cause to believe that a discriminatory
138 housing practice has occurred or is about to occur; (ii)
139 shall be based on the final investigative report; and (iii)
140 need not be limited to the facts or grounds alleged in
141 the complaint filed under subsection (a) of this section.

142 (C) If the commission determines that the matter
143 involves the legality of any state or local zoning or other
144 land use law or ordinance, the commission shall
145 immediately refer the matter to the attorney general for
146 appropriate action under section fifteen of this article,
147 instead of issuing such charge.

148 (3) If the commission determines that no reasonable

149 cause exists to believe that a discriminatory housing
150 practice has occurred or is about to occur, the commis-
151 sion shall promptly dismiss the complaint. The commis-
152 sion shall make public disclosure of each such dismissal.

153 (4) The commission may not issue a charge under this
154 section regarding an alleged discriminatory housing
155 practice after the beginning of the trial of a civil action
156 commenced by the aggrieved party under an act of
157 Congress or a state law seeking relief with respect to
158 that discriminatory housing practice.

159 (g) After the commission issues a charge under this
160 section, the commission shall cause a copy thereof,
161 together with information as to how to make an election
162 under subsection (a), section thirteen of this article and
163 the effect of such an election, to be served: (1) On each
164 respondent named in such charge, together with a notice
165 of opportunity for a hearing at a time and place
166 specified in the notice, unless that election is made; and
167 (2) on each aggrieved person on whose behalf the
168 complaint was filed.

**§5-11A-12. Subpoenas; giving of evidence; witness fees;
enforcement of subpoenas.**

1 The commission may, in accordance with this subsec-
2 tion, issue subpoenas and order discovery in aid of
3 investigations and hearings under this article. Such
4 subpoenas and discovery may be ordered to the same
5 extent and subject to the same limitations as would
6 apply if the subpoenas or discovery were ordered or
7 served in aid of a civil action in the circuit courts of this
8 state.

9 Witnesses summoned by a subpoena under this article
10 shall be entitled to the same witness and mileage fees
11 as witnesses in proceedings in the circuit courts of this
12 state. Fees payable to a witness summoned by a
13 subpoena shall be paid by the commission, the complain-
14 ant or the respondent in accordance with section one,
15 article five, chapter twenty-nine-a of this code.

16 Enforcement of subpoenas may be had in the circuit
17 courts of this state as set out in section one, article five,
18 chapter twenty-nine-a of this code.

§5-11A-13. Election of remedies; administrative hearings and discovery; exclusivity of remedies; final orders; review by commission; judicial review; remedies; attorney fees.

1 (a) When a charge is filed under section eleven of this
2 article, a complainant, a respondent or an aggrieved
3 person on whose behalf the complaint was filed, may
4 elect to have the claims asserted in that charge decided
5 in a civil action under subsection (o) of this section in
6 lieu of a hearing under subsection (b) of this section. The
7 election must be made not later than twenty days after
8 the receipt by the electing person of service under
9 section eleven of this article or, in the case of the
10 commission, not later than twenty days after such
11 service. The person making such election shall give
12 notice of doing so to the commission and to all other
13 complainants and respondents to whom the charge
14 relates.

15 (b) If an election is not made under subsection (a) of
16 this section with respect to a charge filed under section
17 eleven of this article, the commission shall provide an
18 opportunity for a hearing on the record with respect to
19 a charge issued under said section. The commission shall
20 delegate the conduct of a hearing under this section to
21 an administrative law judge who shall be a licensed
22 attorney. The administrative law judge shall conduct the
23 hearing at a place in the county in which the discrim-
24 inatory housing practice is alleged to have occurred or
25 is about to occur.

26 (c) At a hearing under this section, each party may
27 appear in person, be represented by counsel, present
28 evidence, cross-examine witnesses and obtain the
29 issuance of subpoenas under section twelve of this
30 article. Any aggrieved person may intervene as a party
31 in the proceeding. The rules of evidence apply to the
32 presentation of evidence in such hearing as they would
33 in a civil action in the circuit courts of this state. The
34 case in support of the complaint shall be presented
35 before the administrative law judge by the attorney
36 general.

37 (d) (1) Discovery in administrative proceedings under
38 this section shall be conducted as expeditiously and
39 inexpensively as possible, consistent with the need of all
40 parties to obtain relevant evidence.

41 (2) A hearing under this section shall be conducted as
42 expeditiously and inexpensively as possible, consistent
43 with the needs and rights of the parties to obtain a fair
44 hearing and a complete record.

45 (3) The commission shall, not later than one hundred
46 eighty days after the date of enactment of this subsec-
47 tion, issue rules to implement this subsection.

48 (e) Any resolution of a charge before a final order
49 under this section shall require the consent of the
50 aggrieved person on whose behalf the charge is issued.

51 (f) An administrative law judge may not continue
52 administrative proceedings under this section regarding
53 any alleged discriminatory housing practice after the
54 beginning of the trial of a civil action commenced by the
55 aggrieved party under an act of Congress or a state law
56 seeking relief with respect to that discriminatory
57 housing practice.

58 (g) (1) The administrative law judge shall commence
59 the hearing under this section no later than one hundred
60 twenty days following the issuance of the charge, unless
61 it is impracticable to do so. If the administrative law
62 judge is unable to commence the hearing within one
63 hundred twenty days after the issuance of the charge,
64 the administrative law judge shall notify the commis-
65 sion, the aggrieved person on whose behalf the charge
66 was filed and the respondent in writing of the reasons
67 for not doing so.

68 (2) The administrative law judge shall make findings
69 of fact and conclusions of law within sixty days after the
70 end of the hearing under this section, unless it is
71 impracticable to do so. If the administrative law judge
72 is unable to make findings of fact and conclusions of law
73 within such period, or any succeeding sixty-day period
74 thereafter, the administrative law judge shall notify the
75 commission, the aggrieved person on whose behalf the

76 charge was filed and the respondent in writing of the
77 reasons for not doing so.

78 (3) If the administrative law judge finds that a
79 respondent has engaged or is about to engage in a
80 discriminatory housing practice, such administrative
81 law judge shall promptly issue an order for such relief
82 as may be appropriate, which may include actual
83 damages suffered by the aggrieved person and injunc-
84 tive or other equitable relief. Such order may, to
85 vindicate the public interest, assess a civil penalty
86 against the respondent: (A) In an amount not exceeding
87 ten thousand dollars if the respondent has not been
88 adjudged to have committed any prior discriminatory
89 housing practice; (B) in an amount not exceeding
90 twenty-five thousand dollars if the respondent has been
91 adjudged to have committed one other discriminatory
92 housing practice during the five-year period ending on
93 the date of the filing of this charge; and (C) in an amount
94 not exceeding fifty thousand dollars if the respondent
95 has been adjudged to have committed two or more
96 discriminatory housing practices during the seven-year
97 period ending on the date of the filing of this charge;
98 except that if the acts constituting the discriminatory
99 housing practice that are the object of the charge are
100 committed by the same natural person who has been
101 previously adjudged to have committed acts constituting
102 a discriminatory housing practice, then the civil
103 penalties set forth in subparagraphs (B) and (C) may be
104 imposed without regard to the period of time within
105 which any subsequent discriminatory housing practice
106 occurred.

107 (4) No such order shall affect any contract, sale,
108 encumbrance or lease consummated before the issuance
109 of such order and involving a bona fide purchaser,
110 encumbrancer or tenant without actual notice of the
111 charge filed under this article.

112 (5) In the case of an order with respect to a discrim-
113 inatory housing practice that occurred in the course of
114 a business subject to licensing or regulation by a
115 governmental agency, the commission shall, not later
116 than thirty days after the date of the issuance of such

117 order or, if such order is judicially reviewed, thirty days
118 after such order is in substance affirmed upon such
119 review: (A) Send copies of the findings of fact, conclu-
120 sions of law and the order to that governmental agency;
121 and (B) recommend to that governmental agency
122 appropriate disciplinary action, including, where
123 appropriate, the suspension or revocation of the license
124 of the respondent.

125 (6) In the case of an order against a respondent
126 against whom another order was issued within the
127 preceding five years under this section, the commission
128 shall send a copy of each such order to the attorney
129 general.

130 (7) If the administrative law judge finds that the
131 respondent has not engaged or is not about to engage
132 in a discriminatory housing practice, as the case may
133 be, such administrative law judge shall enter an order
134 dismissing the charge. The commission shall make
135 public disclosure of each such dismissal.

136 (h) (1) The commission may review any finding,
137 conclusion or order issued under subsection (g) of this
138 section. Such review shall be completed not later than
139 thirty days after the finding, conclusion or order is so
140 issued; otherwise the finding, conclusion or order
141 becomes final.

142 (2) The commission shall cause the findings of fact
143 and conclusions of law made with respect to any final
144 order for relief under this section, together with a copy
145 of such order, to be served on each aggrieved person and
146 each respondent in the proceeding.

147 (i) (1) Any party aggrieved by a final order for relief
148 under this section granting or denying, in whole or in
149 part, the relief sought may obtain a review of such order
150 under section four, article five, chapter twenty-nine-a of
151 this code.

152 (2) Notwithstanding chapter twenty-nine-a of this
153 code, venue of the proceeding shall be in the judicial
154 circuit in which the discriminatory housing practice is
155 alleged to have occurred and filing of the petition for

156 review shall be not later than thirty days after the order
157 is entered.

158 (j) (1) The commission may petition the circuit court
159 in the circuit in which the discriminatory housing
160 practice is alleged to have occurred or in which any
161 respondent resides or transacts business for the enforce-
162 ment of the order of the administrative law judge and
163 for appropriate temporary relief or injunctive relief by
164 filing in such court a written petition praying that such
165 order be enforced and for appropriate temporary relief
166 or injunctive relief.

167 (2) The commission shall file in court with the petition
168 the record in the proceeding. A copy of such petition
169 shall be forthwith transmitted by the clerk of the court
170 to the parties to the proceeding before the administra-
171 tive law judge.

172 (k) (1) Upon the filing of a petition under subsection
173 (i) or (j) of this section, the court may:

174 (A) Grant to the petitioner, or any other party, such
175 temporary relief, injunction or other order as the court
176 deems just and proper;

177 (B) Affirm the order or decision of the administrative
178 law judge or remand the case for further proceedings.
179 It shall reverse, vacate or modify the order or decision
180 of the administrative law judge if the substantial rights
181 of the parties have been prejudiced because the admini-
182 strative findings, inferences, conclusions, decision or
183 order are: (i) In violation of constitutional or statutory
184 provisions; or (ii) in excess of the statutory authority or
185 jurisdiction of the commission; or (iii) made upon
186 unlawful procedures; or (iv) affected by other error of
187 law; or (v) clearly wrong in view of the reliable,
188 probative and substantial evidence on the whole record;
189 or (vi) arbitrary or capricious or characterized by abuse
190 of discretion or clearly unwarranted exercise of discre-
191 tion; and

192 (C) Enforce such order to the extent that such order
193 is affirmed or modified.

194 (2) Any party to the proceeding before the adminis-

195 trative law judge may intervene in the circuit court.

196 (3) No objection not made before the administrative
197 law judge shall be considered by the court, unless the
198 failure or neglect to urge such objection is excused
199 because of extraordinary circumstances.

200 (4) The judgment of the circuit court shall be final
201 unless reversed, vacated or modified on appeal to the
202 supreme court of appeals of this state in accordance with
203 the provisions of section one, article six, chapter twenty-
204 nine-a of this code.

205 (l) If no petition for review is filed under subsection
206 (i) of this section before the expiration of forty-five days
207 after the date the administrative law judge's order is
208 entered, the administrative law judge's findings of fact
209 and order shall be conclusive in connection with any
210 petition for enforcement: (1) Which is filed by the
211 commission under subsection (j) of this section after the
212 end of such day; or (2) under subsection (m) of this
213 section.

214 (m) If before the expiration of sixty days after the
215 date the administrative law judge's order is entered, no
216 petition for review has been filed under subsection (i)
217 of this section, and the commission has not sought
218 enforcement of the order under subsection (j) of this
219 section, any person entitled to relief under the order
220 may petition for a decree enforcing the order in the
221 circuit court for the circuit in which the discriminatory
222 housing practice is alleged to have occurred.

223 (n) The judge of the circuit court in which a petition
224 for enforcement is filed under subsection (l) or (m) of
225 this section shall forthwith enter a decree enforcing the
226 order and shall transmit a copy of such decree to the
227 commission, the respondent named in the petition and
228 to any other parties to the proceeding before the
229 administrative law judge. The judgment of the circuit
230 court shall be final unless reversed, vacated or modified
231 on appeal to the supreme court of appeals pursuant to
232 section one, article six, chapter twenty-nine-a of this
233 code.

234 (o) (1) If an election is made under subsection (a) of
235 this section, the commission shall authorize, and not
236 later than thirty days after the election is made the
237 attorney general shall commence and maintain, a civil
238 action on behalf of the aggrieved person in the approp-
239 riate circuit court seeking relief under this subsection.
240 Venue for such civil action shall be in the circuit court
241 in the county in which the alleged discriminatory
242 housing practice occurred.

243 (2) Any aggrieved person with respect to the issues
244 to be determined in a civil action under this subsection
245 may intervene as of right in that civil action.

246 (3) In a civil action under this subsection, if the court
247 finds that a discriminatory housing practice has
248 occurred or is about to occur, the court may grant as
249 relief any relief which a court could grant with respect
250 to such discriminatory housing practice in a civil action
251 under section fourteen of this article. Any relief so
252 granted that would accrue to an aggrieved person in a
253 civil action commenced by that aggrieved person under
254 said section shall also accrue to that aggrieved person
255 in a civil action under this subsection. If monetary relief
256 is sought for the benefit of an aggrieved person who does
257 not intervene in the civil action, the court shall not
258 award such relief if that aggrieved person has not
259 complied with discovery orders entered by the court.

260 (p) In any administrative proceeding brought under
261 this section, or any court proceeding arising therefrom,
262 or any civil action under section fourteen of this article,
263 the administrative law judge or the court, as the case
264 may be, in its discretion, may allow a prevailing
265 complainant a reasonable attorney's fee and costs.

**§5-11A-14. Enforcement by private persons; civil actions;
appointed attorneys; remedies; bona fide
purchasers; intervention by attorney
general.**

1 (a) (1) (A) An aggrieved person may commence a civil
2 action in an appropriate circuit court not later than two
3 years after the occurrence or the termination of an
4 alleged discriminatory housing practice, or the breach

5 of a conciliation agreement entered into under this
6 article, whichever occurs last, to obtain appropriate
7 relief with respect to such discriminatory housing
8 practice or breach.

9 (B) The computation of such two-year period shall not
10 include any time during which an administrative
11 proceeding under this article was pending with respect
12 to a complaint or charge under this article based upon
13 such discriminatory housing practice. This subpara-
14 graph does not apply to actions arising from a breach
15 of a conciliation agreement.

16 (2) An aggrieved person may commence a civil action
17 under this subsection whether or not a complaint has
18 been filed under subsection (a), section eleven of this
19 article and without regard to the status of any such
20 complaint, but if the commission has obtained a
21 conciliation agreement with the consent of an aggrieved
22 person, no action may be filed under this subsection by
23 such aggrieved person with respect to the alleged
24 discriminatory housing practice which forms the basis
25 for such complaint except for the purpose of enforcing
26 the terms of such an agreement.

27 (3) An aggrieved person may not commence a civil
28 action under this subsection with respect to an alleged
29 discriminatory housing practice which forms the basis
30 of a charge issued by the commission if an administra-
31 tive law judge has commenced a hearing on the record
32 under this article with respect to such charge.

33 (b) Upon application by a person alleging a discrim-
34 inatory housing practice, the court may: (1) Appoint an
35 attorney for such person; or (2) authorize the commence-
36 ment or continuation of a civil action under subsection
37 (a) of this section without the payment of fees, costs or
38 security, if in the opinion of the court such person is
39 financially unable to bear the costs of such action.

40 (c) (1) In a civil action under subsection (a) of this
41 section, if the court finds that a discriminatory housing
42 practice has occurred or is about to occur, the court may
43 award to the complainant actual and punitive damages,
44 and subject to subsection (d) of this section, may grant

45 as relief, as the court deems appropriate, any permanent
46 or temporary injunction or other order, including an
47 order enjoining the respondent from engaging in such
48 practice or ordering such affirmative action as may be
49 appropriate.

50 (2) In a civil action under subsection (a) of this section,
51 the court, in its discretion, may allow a prevailing
52 complainant a reasonable attorney's fee and costs.

53 (d) Relief granted under this section shall not affect
54 any contract, sale, encumbrance or lease consummated
55 before the granting of such relief and involving a bona
56 fide purchaser, encumbrancer or tenant without actual
57 notice of the filing of a complaint with the commission
58 or civil action under this section.

59 (e) Upon timely application, the attorney general may
60 intervene in such civil action, if the attorney general
61 certifies that the case is of general public importance.
62 Upon such intervention the attorney general may obtain
63 such relief as would be available to the attorney general
64 under subsection (d), section fifteen of this article in a
65 civil action to which such section applies.

**§5-11A-15. Enforcement by attorney general; pattern or
practice cases; subpoena enforcement;
remedies; intervention.**

1 (a) Whenever the attorney general has reasonable
2 cause to believe that any person or group of persons is
3 engaged in a pattern or practice of resistance to the full
4 enjoyment of any of the rights granted by this article,
5 or that any group of persons has been denied any of the
6 rights granted by this article and such denial raises an
7 issue of general public importance, the attorney general
8 may commence a civil action in any appropriate circuit
9 court.

10 (b) (1) The attorney general may commence a civil
11 action in any appropriate circuit court for appropriate
12 relief with respect to a discriminatory housing practice
13 referred to the attorney general by the commission
14 under subsection (f), section eleven of this article. A civil
15 action under this paragraph may be commenced not

16 later than the expiration of eighteen months after the
17 date of the occurrence or the termination of the alleged
18 discriminatory housing practice.

19 (2) The attorney general may commence a civil action
20 in any appropriate circuit court for appropriate relief
21 with respect to breach of a conciliation agreement
22 referred to the attorney general by the commission
23 under subsection (c), section eleven of this article. A civil
24 action may be commenced under this paragraph not
25 later than the expiration of ninety days after the
26 referral of the alleged breach under subsection (c),
27 section eleven of this article.

28 (c) The attorney general, on behalf of the commission
29 or other party at whose request a subpoena is issued
30 under this article, may enforce such subpoena in
31 appropriate proceedings in the circuit court for the
32 circuit in which the person to whom the subpoena was
33 addressed resides, was served or transacts business.

34 (d) (1) In a civil action under subsection (a) or (b) of
35 this section, the court:

36 (A) May award such preventive relief, including a
37 permanent or temporary injunction or other order
38 against the person responsible for a violation of this
39 article as is necessary to assure the full enjoyment of the
40 rights granted by this article;

41 (B) May award such other relief as the court deems
42 appropriate, including monetary damages to persons
43 aggrieved; and

44 (C) May, to vindicate the public interest, assess a civil
45 penalty against the respondent: (i) In an amount not
46 exceeding fifty thousand dollars for a first violation; and
47 (ii) in an amount not exceeding one hundred thousand
48 dollars for any subsequent violation.

49 (2) In a civil action under this section, the court, in
50 its discretion, may allow a prevailing complainant a
51 reasonable attorney's fee and costs.

52 (e) Upon timely application, any person may intervene
53 in a civil action commenced by the attorney general

54 under subsection (a) or (b) of this section which involves
55 an alleged discriminatory housing practice with respect
56 to which such person is an aggrieved person or a
57 conciliation agreement to which such person is a party.
58 The court may grant such appropriate relief to any such
59 intervening party as is authorized to be granted to a
60 complainant in a civil action under section fourteen of
61 this article.

§5-11A-16. Interference, coercion or intimidation; enforcement by civil action.

1 It shall be unlawful to coerce, intimidate, threaten or
2 interfere with any person in the exercise or enjoyment
3 of, or on account of his having exercised or enjoyed, or
4 on account of his having aided or encouraged any other
5 person in the exercise or enjoyment of, any right
6 granted or protected by section four, five, six or seven
7 of this article.

§5-11A-17. Cooperation with local agencies administering fair housing laws; utilization of services and personnel; reimbursement; written agreements; publication in state register.

1 The commission may cooperate with local agencies
2 charged with the administration of local fair housing
3 laws and, with the consent of such agencies, utilize the
4 services of such agencies and their employees and, to the
5 extent permitted by law, may reimburse such agencies
6 and their employees for services rendered to assist it in
7 carrying out this article. In furtherance of such
8 cooperative efforts, the commission may enter into
9 written agreements with such local agencies. All
10 agreements and terminations thereof shall be published
11 in the state register.

§5-11A-18. Effect on other laws.

1 Nothing in this article shall be construed to invalidate
2 or limit any law of this state or of any political
3 subdivision of this state, that grants, guarantees or
4 protects the same rights as are granted by this article;
5 but any law of this state or any political subdivision
6 hereof that purports to require or permit any action that

7 would be a discriminatory housing practice under this
8 article shall to that extent be invalid.

§5-11A-19. Severability of provisions.

1 If any provision of this article or the application
2 thereof to any person or circumstances is held invalid,
3 the remainder of the article and the application of the
4 provision to other persons not similarly situated or to
5 other circumstances shall not be affected thereby.

§5-11A-20. Rules to implement article.

1 In consultation with other appropriate agencies, the
2 commission shall, not later than the one hundred
3 eightieth day after the date of the enactment of this
4 article, issue rules to implement it. Such rules may
5 include provision for the collection, maintenance and
6 analysis of appropriate data to carry out this article. The
7 commission shall comply with article three, chapter
8 twenty-nine-a of this code when promulgating rules.

CHAPTER 82

(Com. Sub. for H. B. 4169—By Delegates J. Martin and Mezzatesta)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article one, chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to accounting procedures involving service of process fees by sheriffs.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-14. Fees to be charged by sheriffs.

1 The county commission shall determine the amount

2 which the sheriff may charge, which charges shall not
3 exceed the following:

4 For serving on any person an order, notice, summons
5 or other process where the body is not taken, except a
6 subpoena served on a witness, and making return
7 thereof \$20.00

8 For summoning a witness 20.00

9 For serving on any person an attachment or other
10 process under which the body is taken 20.00

11 For levying an attachment on real estate and making
12 the return 20.00

13 For making any other levy 20.00

14 For conveying a prisoner to or from jail, for each mile
15 of necessary travel either in going or returning.. .25

16 For taking any bond 1.00

17 When a jury is sworn in court, for summoning and
18 impaneling such jury 1.00

19 For serving a writ of possession 20.00

20 For issuing receipt to purchaser at delinquent tax
21 sale..... 1.00

22 The county commission, giving due regard to the cost
23 thereof, may from time to time prescribe the amount
24 which the sheriff may charge for keeping any property
25 or in removing any property. When, after distraining or
26 levying, he neither sells nor receives payment, and
27 either takes no bond or takes one which is not forfeited,
28 he shall, if guilty of no default, have (in addition to the
29 one dollar for a bond, if one was taken) a fee of three
30 dollars, unless this be more than half of what his
31 commission would have amounted to if he had received
32 payment; in which case he shall (whether a bond was
33 taken or not) have a fee of one dollar at the least, and
34 so much more as is necessary to make the said half of
35 his commission. The commission to be included in a
36 forthcoming bond (when one is taken) shall be five
37 percent on the first three hundred dollars of the money
38 for which the distress or levy is made, and two percent

39 on the residue of such money; but such commission shall
40 not be received, in whole or in part, except as herein-
41 before provided, unless the bond be forfeited, or the
42 amount (including the commission) be paid to the
43 plaintiff. An officer receiving payment in money, or
44 selling property, shall have the like commission of five
45 percent on the first three hundred dollars of the money
46 paid or proceeds from such sale, and two percent on the
47 residue, except that when such payment or sale is on an
48 execution on a forthcoming bond, his commission shall
49 be only half what it would be if the execution were not
50 on such bond. Any amounts collected by the sheriff
51 pursuant to this section shall be deposited in a separate
52 account of the county general fund and used by the
53 sheriff for the expenses of providing the services herein
54 described. Any surplus funds that remain in this
55 separate account on the last day of the fiscal year, and
56 have not been expended for the purposes herein
57 described, shall revert to the county general fund.

CHAPTER 83

(H. B. 4598—By Delegates Murensky and M. Miller)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-seven, relating to the discretionary deposit in interest bearing accounts of moneys held by county officers; payment of interest to county general fund; annual report of deposits and interest payments.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-37. Deposits by county officers in interest bearing accounts; payment to county general fund; annual report.

1 Except as to any tax receipts, which shall be depos-
2 ited in accordance with section four, article six, chapter
3 seven of this code, when any fee, cost, percentage,
4 penalty, commission, allowance, bond, deposit, surety or
5 other cash payment or sum is to be held by the sheriff,
6 prosecuting attorney, county commission, clerk of the
7 county commission, clerk of the circuit court, or assessor
8 of any county under any provision of law or proper order
9 of the circuit court, said officer may, at his or her sole
10 discretion, deposit same in an interest bearing account
11 or accounts in secure and properly insured banks. Any
12 interest earned on such accounts, and not otherwise
13 included in any refund, return or reimbursement of said
14 fees, costs, penalties, commissions, allowances, bonds,
15 deposits, sureties or other cash payments or sums, as
16 directed by law or proper order of the circuit court,
17 shall be paid into the county's general fund on a regular
18 basis, but in no event less often than yearly.

19 All county officers shall report to the county commis-
20 sion by the first day of July each year concerning his
21 or her election to use interest bearing accounts, amounts
22 currently on deposit and interest actually earned on
23 such accounts.

CHAPTER 84

(Com. Sub. for S. B. 128—By Senator Helmick)

[Passed March 7, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend and reenact sections eight-a and eight-b, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article seven-a, chapter eighteen of said code by adding thereto three new sections, designated sections twenty-six-j, twenty-six-k and twenty-six-l; and to amend article three, chapter thirty-three of said

code by adding thereto a new section, designated section thirty-three, relating to fire and casualty insurance; volunteer fire department fees; imposing a fire protection surcharge on fire insurance and casualty insurance policies to provide additional revenue to volunteer and part volunteer fire departments, certain retired teachers and the teachers retirement reserve fund.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 8. Municipal Corporations.
- 18. Education.
- 33. Insurance.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-8a. Eligibility for allocation from municipal pensions and protection fund and the fire protection fund.

§8-15-8b. Authorized expenditures of revenues from the municipal pensions and protection fund and the fire protection fund.

§8-15-8a. Eligibility for allocation from municipal pensions and protection fund and the fire protection fund.

1 In order to be eligible to receive revenues allocated
 2 from the municipal pensions and protection fund or the
 3 fire protection fund, each volunteer or part volunteer
 4 fire company or department must meet the require-
 5 ments listed in subdivisions (a) through (c) of this
 6 section.

7 Each volunteer or part volunteer fire company or

8 department must:

9 (a) Submit and maintain current submission of fire
10 loss data to the state fire marshal, including verification,
11 by notarized statement, if no fire loss has occurred;

12 (b) Complete or be in the process of receiving
13 firefighters training, including section one of the West
14 Virginia university fire service extension or its equival-
15 ent. Such fire company or department must have at
16 least ten members certified as having completed such
17 training or if a volunteer fire company or department
18 has twenty or fewer members, fifty percent of the active
19 volunteer members must have completed such training;
20 and

21 (c) Comply with all applicable federal and state laws.

**§8-15-8b. Authorized expenditures of revenues from the
municipal pensions and protection fund and
the fire protection fund.**

1 Revenues allocated to volunteer and part volunteer
2 fire companies and departments may be expended only
3 for the items listed in subdivisions (a) through (g) of this
4 section. Such expenditures may be made for the
5 following:

6 (a) Personal protective equipment, including protec-
7 tive head gear, bunker coats, pants, boots, combination
8 of bunker pants and boots, coats and gloves;

9 (b) Equipment for compliance with the national fire
10 protection standard or automotive fire apparatus,
11 NFPA-1901;

12 (c) Compliance with insurance service office recom-
13 mendations relating to fire departments;

14 (d) Rescue equipment, communications equipment
15 and ambulance equipment: *Provided*, That no moneys
16 received from the municipal pensions and protection
17 fund or the fire protection fund may be used for
18 equipment for personal vehicles owned or operated by
19 volunteer fire company or department members;

20 (e) Capital improvements reasonably required for

- 21 effective and efficient fire protection service and
22 maintenance thereof;
- 23 (f) Retirement of debts; and
- 24 (g) Payment of utility bills.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

- §18-7A-26j. Supplemental benefits for certain teachers who retired prior to July 1, 1981.
- §18-7A-26k. Supplemental benefits for certain teachers who retired between July 1, 1981, and July 1, 1982.
- §18-7A-26l. Supplemental benefits for certain teachers who retired prior to July 1, 1982.

§18-7A-26j. Supplemental benefits for certain teachers who retired prior to July 1, 1981.

1 As an additional supplement to other retirement
2 allowances provided, each annuitant whose annuity was
3 approved by the retirement board prior to the first day
4 of July, one thousand nine hundred eighty-one, and such
5 annuitant is not receiving supplemental benefits pursu-
6 ant to section twenty-six-i of this article, shall receive
7 a monthly amount equal to one dollar and twenty-five
8 cents multiplied by his or her total service credit.

§18-7A-26k. Supplemental benefits for certain teachers who retired between July 1, 1981, and July 1, 1982.

1 As an additional supplement to other retirement
2 allowances provided, each annuitant who retired
3 between the first day of July, one thousand nine hundred
4 eighty-one, and the first day of July, one thousand nine
5 hundred eighty-two, shall receive a monthly amount
6 equal to two dollars multiplied by his or her total service
7 credit.

§18-7A-26l. Supplemental benefits for certain teachers who retired prior to July 1, 1982.

1 As an additional supplement to other retirement
2 allowances provided, each annuitant whose annuity was
3 approved by the retirement board prior to the first day

4 of July, one thousand nine hundred eighty-two, and
5 whose benefits were increased in the year one thousand
6 nine hundred ninety, pursuant to the provisions of
7 section twenty-six-i of this article, shall receive a
8 monthly amount equal to fifty cents multiplied by his
9 or her total service credit.

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-33. Surcharge on fire and casualty insurance policies to benefit volunteer and part volunteer fire departments; special fund created; allocation of proceeds; effective date.

1 (a) For the purpose of providing additional revenue
2 for volunteer and part volunteer fire departments,
3 certain retired teachers and the teachers retirement
4 reserve fund, there is hereby authorized and imposed on
5 and after the first day of July, one thousand nine
6 hundred ninety-two, on the policyholder of any fire and
7 casualty insurance policy, a policy surcharge equal to
8 one percent of gross direct premium paid by the
9 policyholder for each such policy. For purposes of this
10 section, casualty insurance shall not include insurance
11 on the life of a debtor pursuant to or in connection with
12 a specific loan or other credit transaction or insurance
13 on a debtor to provide indemnity for payments becoming
14 due on a specific loan or other credit transaction while
15 the debtor is disabled as defined in the policy. The policy
16 surcharge shall not be subject to premium taxes, agent
17 commissions or any other assessment against premiums.

18 The policy surcharge shall be collected and remitted
19 by the insurer to the commissioner on forms prescribed
20 by the commissioner on a quarterly basis and are due
21 on the twenty-fifth day of the month succeeding the end
22 of the quarter in which they are collected except for the
23 fourth quarter for which the surcharge shall be due and
24 payable on or before the first day of March of the
25 succeeding year. All forms required by the commis-
26 sioner shall be submitted under the oath of the president
27 and secretary of the insurer.

28 Any insurer failing or refusing to collect and remit
29 to the commissioner any policy surcharge and whose
30 surcharge payments are not postmarked by the due
31 dates for quarterly filing is liable for a civil penalty of
32 up to one hundred dollars for each day of delinquency,
33 to be assessed by the commissioner. The commissioner
34 may suspend the insurer until all surcharge payments
35 and penalties, should any penalty be imposed, are
36 remitted in full to the commissioner.

37 All money from the policy surcharge shall be collected
38 by the commissioner and he or she shall disburse the
39 money received from the surcharge as follows:

40 (1) Fifty percent of the moneys collected shall be paid
41 into a special account in the state treasury, designated
42 the fire protection fund. The net proceeds of this portion
43 of the tax after appropriation by the Legislature shall
44 be distributed in accordance with the provisions of
45 subsection (c) of this section.

46 (2) The remaining fifty percent of the moneys
47 collected shall be transferred to the teachers retirement
48 system to be disbursed according to the provisions of
49 sections twenty-six-j, twenty-six-k and twenty-six-l,
50 article seven-a, chapter eighteen of this code. Any
51 balance remaining after the disbursements authorized
52 by this subdivision have been paid shall be paid by the
53 teachers retirement system into the teachers retirement
54 system reserve fund.

55 (b) Before the first day of September, one thousand
56 nine hundred ninety-three, and before the first day of
57 September of each calendar year thereafter, the state
58 treasurer shall allocate and authorize for distribution
59 the revenues in the fire protection fund that were
60 collected during the preceding calendar year, and the
61 interest earned thereon.

62 (c) Each volunteer fire company or department shall
63 receive on an equal share basis the revenues allocated
64 for volunteer and part volunteer fire companies and
65 departments under subdivision (1), subsection (a) of this
66 section.

67 (d) The allocation, distribution and use of revenues
68 provided in the fire protection fund are subject to the
69 provisions of sections eight-a and eight-b, article fifteen,
70 chapter eight of this code.

CHAPTER 85

(H. B. 4433—By Delegates Damron and P. White)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty-nine-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section seven, relating to the freedom of information act; establishing requirements for fulfilling requests for records existing in magnetic, electronic or computer form; and authorizing recovery of attorney fees and costs by any person who prevails in a suit brought under the act for denial of access to public records.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PUBLIC RECORDS.

§29B-1-3. Inspection and copying.

§29B-1-7. Attorney fees and costs.

§29B-1-3. Inspection and copying.

- 1 (1) Every person has a right to inspect or copy any
2 public record of a public body in this state, except as
3 otherwise expressly provided by section four of this
4 article.
- 5 (2) A request to inspect or copy any public record of

6 a public body shall be made directly to the custodian of
7 such public record.

8 (3) The custodian of any public records, unless
9 otherwise expressly provided by statute, shall furnish
10 proper and reasonable opportunities for inspection and
11 examination of the records in his or her office and
12 reasonable facilities for making memoranda or ab-
13 stracts therefrom, during the usual business hours, to all
14 persons having occasion to make examination of them.
15 The custodian of the records may make reasonable rules
16 and regulations necessary for the protection of the
17 records and to prevent interference with the regular
18 discharge of his or her duties. If the records requested
19 exist in magnetic, electronic or computer form, the
20 custodian of the records shall make such copies available
21 on magnetic or electronic media, if so requested.

22 (4) All requests for information must state with
23 reasonable specificity the information sought. The
24 custodian, upon demand for records made under this
25 statute, shall as soon as is practicable but within a
26 maximum of five days not including Saturdays, Sundays
27 or legal holidays:

28 (a) Furnish copies of the requested information;

29 (b) Advise the person making the request of the time
30 and place at which he or she may inspect and copy the
31 materials; or

32 (c) Deny the request stating in writing the reasons for
33 such denial.

34 Such a denial shall indicate that the responsibility of
35 the custodian of any public records or public body to
36 produce the requested records or documents is at an
37 end, and shall afford the person requesting them the
38 opportunity to institute proceedings for injunctive or
39 declaratory relief in the circuit court in the county
40 where the public record is kept.

41 (5) The public body may establish fees reasonably
42 calculated to reimburse it for its actual cost in making
43 reproductions of such records.

§29B-1-7. Attorney fees and costs.

1 Any person who is denied access to public records
2 requested pursuant to this article and who successfully
3 brings a suit filed pursuant to section five of this article
4 shall be entitled to recover his or her attorney fees and
5 court costs from the public body that denied him or her
6 access to the records.

CHAPTER 86

(Com. Sub. for H. B. 4224—By Delegates Grubb and Manuel)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

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 ten-a, relating to referendum prior to the siting of any commercial hazardous waste management facility or of any hazardous waste management facility which disposes of greater than ten thousand tons of hazardous waste per annum on site within this state.

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 ten-a, to read as follows:

ARTICLE 10A. HAZARDOUS WASTE FACILITY SITING APPROVAL.

§20-10A-1. Legislative purpose.

§20-10A-2. Definitions.

§20-10A-3. Procedure for public participation.

§20-10A-1. Legislative purpose.

1 The purpose of this article is to provide the opportu-
2 nity for public participation in the decision to locate
3 commercial hazardous waste management facilities and
4 to locate any hazardous waste management facility
5 which disposes of greater than ten thousand tons of

6 hazardous waste per annum in West Virginia.

§20-10A-2. Definitions.

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

3 (a) "Board" means the commercial hazardous waste
4 management facility siting board established pursuant
5 to section three, article ten of this chapter;

6 (b) "Commercial hazardous waste management facil-
7 ity" means any hazardous waste treatment, storage or
8 disposal facility which accepts hazardous waste, as
9 identified or listed by the director of the division of
10 natural resources under article five-e of this chapter,
11 generated by sources other than the owner or operator
12 of the facility and shall not include an approved
13 hazardous waste facility owned and operated by a
14 person for the sole purpose of disposing of hazardous
15 wastes created by that person or such person and other
16 persons on a cost-sharing or nonprofit basis;

17 (c) "Hazardous waste management facility" means
18 any facility including land and structures, appurtenan-
19 ces, improvements and equipment used for the treat-
20 ment, storage or disposal of hazardous wastes, which
21 accepts hazardous waste for storage, treatment or
22 disposal. For the purposes of this article, it does not
23 include: (i) Facilities for the treatment, storage or
24 disposal of hazardous wastes used principally as fuels in
25 an on-site production process; or (ii) facilities used
26 exclusively for the pretreatment of wastes discharged
27 directly to a publicly owned sewage treatment works. A
28 facility may consist of one or more treatment, storage
29 or disposal operational units.

30 (d) "On site" means the location for disposal of
31 hazardous waste including the hazardous waste gener-
32 ated at the location of disposal or generated at some
33 location other than the location of disposal.

§20-10A-3. Procedure for public participation.

1 (a) From and after the effective date of this article,
2 in order to obtain approval to locate either a commercial

3 hazardous waste management facility or a hazardous
4 waste management facility which disposes of greater
5 than ten thousand tons per annum on site in this state,
6 an applicant shall:

7 (1) File a pre-siting notice with the county or counties
8 in which the facility is to be located or proposed. Such
9 notice shall be submitted on forms prescribed by the
10 commercial hazardous waste management facility siting
11 board;

12 (2) File a pre-siting notice with the commercial
13 hazardous waste management facility siting board; and

14 (3) File a pre-siting notice with the division of natural
15 resources.

16 (b) If a pre-siting notice is filed in accordance with
17 subsection (a) of this section, the county commission
18 shall publish a Class II legal advertisement in com-
19 pliance with the provisions of article three, chapter fifty-
20 nine of this code, in a newspaper of general circulation
21 in the counties wherein the hazardous waste manage-
22 ment facility is to be located. Upon an affirmative vote
23 of the majority of the county commissioners or upon the
24 written petition of registered voters residing in the
25 county equal to not less than fifteen percent of the
26 number of votes cast within the county for governor at
27 the preceding gubernatorial election, which petition
28 shall be filed with the county commission within sixty
29 days after the last date of publication of the notice
30 provided in this section, the county commission shall,
31 upon verification of the required number of signatures
32 on the petition, and not less than fifty-six days before
33 the election, order a referendum be placed upon the
34 ballot: *Provided*, That such a referendum shall not be
35 required for a hazardous waste management facility for
36 which at least ninety percent of the capacity is desig-
37 nated for hazardous waste generated at the site of
38 disposal. Any referendum conducted pursuant to this
39 section shall be held at the next primary, general or
40 other countywide election.

41 (1) Such referendum will be to determine whether it
42 is the will of the voters of the county that a commercial

43 hazardous waste management facility be located in the
44 county or that a hazardous waste management facility
45 disposing of greater than ten thousand tons of hazardous
46 waste per annum on site be located in the county. Any
47 election at which such question of locating a hazardous
48 waste management facility is voted upon shall be held
49 at the voting precincts established for holding primary
50 or general elections. All of the provisions of the general
51 election laws, when not in conflict with the provisions
52 of this article, shall apply to voting and elections
53 hereunder, insofar as practicable. The secretary of state
54 shall prescribe the form of the petition which shall
55 include the printed name, address and date of birth of
56 each person whose signature appears on the petition.

57 (2) The ballot, or the ballot labels where voting
58 machines are used, shall have printed thereon substan-
59 tially the following depending upon the type of facility
60 to be located with the county:

61 "Shall a commercial hazardous waste management
62 facility be located within _____ County,
63 West Virginia?

64 For the facility

65 Against the facility

66 (Place a cross mark in the square opposite your
67 choice.)" or,

68 "Shall a hazardous waste management facility
69 disposing of greater than ten thousand tons per annum
70 on site be located within _____ County, West
71 Virginia?

72 For the facility

73 Against the facility

74 (Place a cross mark in the square opposite your
75 choice.)"

76 (3) If a majority of the legal votes cast upon the
77 question be against the facility, then the county
78 commission shall notify the division of natural resources
79 and the commercial hazardous waste management

80 facility siting board, in the case of a commercial facility,
81 of the result and the commercial hazardous waste
82 management facility siting board or division of natural
83 resources, as the case may be, shall not proceed any
84 further with the application. If a majority of the legal
85 votes cast upon the question be for the facility, then the
86 application process as set forth in article five-e of this
87 chapter and article ten of this chapter, in the case of a
88 commercial hazardous waste management facility, may
89 proceed: *Provided*, That such vote shall not be binding
90 on nor require the commercial hazardous waste man-
91 agement facility siting board to grant a certificate of
92 site approval or the division of natural resources to issue
93 the permit, as the case may be. If the majority of the
94 legal votes cast be against the question, the question
95 may be submitted to a vote at any subsequent election
96 in the manner herein specified: *Provided, however*, That
97 the question may not be resubmitted to a vote until two
98 years after the date of the previous referendum.

CHAPTER 87

(Com. Sub. for H. B. 4123—By Delegates Roop and Reed)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authority of the secretary of the department of health and human resources to promulgate rules regulating the health and sanitary conditions of bed and breakfast inns and exempting certain bed and breakfast inns from certain food service requirements.

Be it enacted by the Legislature of West Virginia:

That section seven, 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 BUREAU OF PUBLIC HEALTH.

§16-1-7. Promulgation of rules and regulations; references to board to mean secretary of department of health and human resources.

1 The secretary of the department of health and human
2 resources shall have the power to promulgate such rules
3 and regulations, in accordance with the provisions of
4 chapter twenty-nine-a of the code, as are necessary and
5 proper to effectuate the purposes of this chapter and
6 prevent the circumvention and evasion thereof: *Pro-*
7 *vided*, That no rules or regulations shall be promulgated
8 or enforced restricting the subdivision or development
9 of any parcel of land within which the individual tracts,
10 lots or parcels exceed two acres each in total surface
11 area and which individual tracts, lots or parcels have
12 an average frontage of not less than one hundred fifty
13 feet even though the total surface area of said tract, lot
14 or parcel equals or exceeds two acres in total surface
15 area, and which tracts are sold, leased or utilized only
16 as single family dwelling units. The provisions next
17 above notwithstanding, nothing in this section shall be
18 construed to abate the authority of the department of
19 health and human resources to: (1) Restrict the subdivi-
20 sion or development of such tract for any more intense
21 or higher density occupancy than such single family
22 dwelling unit; (2) promulgate and enforce rules and
23 regulations applicable to single family dwelling units
24 for single family dwelling unit sanitary sewerage
25 disposal systems; or (3) restrict any subdivision or
26 development which might endanger the public health,
27 the sanitary condition of streams, or sources of water
28 supply. The secretary shall have the power to appoint
29 or designate advisory councils of professionals in the
30 areas of hospitals, nursing homes, barbers and beauti-
31 cians, postmortem examinations, mental health and
32 mental retardation centers and such other areas as it
33 deems necessary to advise the secretary on rules and
34 regulations. Such rules and regulations shall include,
35 but not be limited to, the regulation of:

36 (1) The sanitary condition of all institutions and
37 schools, whether public or private, public conveyances,
38 dairies, slaughterhouses, workshops, factories, labor

39 camps, all other places open to the general public and
40 inviting public patronage or public assembly, or
41 tendering to the public any item for human consump-
42 tion, and places where trades or industries are
43 conducted;

44 (2) Occupational and industrial health hazards, the
45 sanitary conditions of streams, sources of water supply,
46 sewerage facilities and plumbing systems, and the
47 qualifications of personnel connected with any of such
48 facilities, without regard to whether such supplies or
49 systems are publicly or privately owned; and the design
50 of all water systems, plumbing systems, sewerage
51 systems, sewage treatment plants, excreta disposal
52 methods, swimming pools in this state, whether publicly
53 or privately owned;

54 (3) Food and drug standards, including cleanliness,
55 proscription of additives, proscription of sale, and other
56 requirements in accordance with article seven of this
57 chapter, as are necessary to protect the health of the
58 citizens of this state;

59 (4) The training and examination requirements for
60 emergency medical service attendants and mobile
61 intensive care paramedics; the designation of the health
62 care facilities, health care services, and the industries
63 and occupations in the state which must have emergency
64 medical service attendants and mobile intensive care
65 paramedics employed, and the availability, communica-
66 tions, and equipment requirements with respect thereto;

67 (5) The collection of data on health status, the health
68 system and the costs of health care;

69 (6) Other health-related matters which the depart-
70 ment of health is authorized to supervise, and for which
71 the rule-making authority has not been otherwise
72 assigned;

73 (7) The health and sanitary conditions of establish-
74 ments commonly referred to as bed and breakfast inns.
75 For purposes of this section, "bed and breakfast inn"
76 means an establishment providing sleeping accommoda-
77 tions and, at a minimum, a breakfast for a fee: *Provided*,

78 That the secretary may not require an owner of a bed
79 and breakfast providing sleeping accommodations of six
80 or fewer rooms to install a restaurant style or commer-
81 cial food service facility: *Provided, however,* That the
82 secretary may not require an owner of a bed and
83 breakfast providing sleeping accommodations of more
84 than six rooms to install a restaurant-type or commer-
85 cial food service facility if the entire bed and breakfast
86 inn or those rooms numbering above six are used on an
87 aggregate of two weeks or less per year.

88 Notwithstanding any other provision of this code to
89 the contrary, whenever in this code there is a reference
90 to the state board of health, it shall be construed to mean
91 and shall be a reference to the secretary of the state
92 department of health and human resources.

CHAPTER 88

(Com. Sub. for H. B. 4048—By Delegates Mezzatesta and D. Miller)

[Passed March 3, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing the requirement for the securing of performance bonds for the installation, operation and maintenance of certain septic systems, sewage treatment plants, or other sewage disposal systems.

Be it enacted by the Legislature of West Virginia:

That section nine, 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 BUREAU OF PUBLIC HEALTH.

§16-1-9. Supervision over local sanitation.

1 No person, firm, company, corporation, institution or
2 association, whether public or private, county or
3 municipal, shall install or establish any system or

4 method of drainage, water supply, or sewage or excreta
5 disposal without first obtaining a written permit to
6 install or establish such system or method from the
7 commissioner of the bureau of public health or his or
8 her authorized representative. All such systems or
9 methods shall be installed or established in accordance
10 with plans, specifications and instructions issued by the
11 commissioner or which have been approved in writing
12 by the commissioner or his or her authorized
13 representative.

14 Whenever the commissioner of the bureau of public
15 health or his or her authorized representative finds upon
16 investigation that any system or method of drainage,
17 water supply, or sewage or excreta disposal, whether
18 publicly or privately owned, has not been installed in
19 accordance with plans, specifications and instructions
20 issued by the commissioner approved in writing by the
21 commissioner or his or her duly authorized representa-
22 tive, the commissioner or his or her duly authorized
23 representative may issue an order requiring the owner
24 of such system or method to make alterations as may
25 be necessary to correct the improper condition. Such
26 alterations shall be made within a reasonable time
27 which shall not exceed thirty days, unless a time
28 extension is authorized by the commissioner or his or
29 her duly authorized representative.

30 The presence of sewage or excreta being disposed of
31 in a manner not approved by the commissioner of the
32 bureau of public health or his or her authorized
33 representative shall constitute prima facie evidence of
34 the existence of a condition endangering public health.

35 The personnel of the bureau of public health shall be
36 available to consult and advise with any person, firm,
37 company, corporation, institution or association,
38 whether publicly or privately owned, county or munic-
39 ipal, or public service authority, as to the most approp-
40 riate design, method of operation or alteration of any
41 such system or method.

42 Any person, firm, company, corporation, institution or
43 association, whether public or private, county or

44 municipal, who shall violate any provisions of this
45 section shall be deemed guilty of a misdemeanor, and,
46 upon conviction thereof, shall be punished by a fine of
47 not less than twenty-five dollars nor more than five
48 hundred dollars. The continued failure or refusal of such
49 convicted person, firm, company, corporation, institu-
50 tion or association, whether public or private, county or
51 municipal, to make the alterations necessary to protect
52 the public health required by the commissioner of the
53 bureau of public health or his or her duly authorized
54 representative shall constitute a separate, distinct and
55 additional offense for each twenty-four hour period of
56 such failure or refusal, and, upon conviction thereof, the
57 violator shall be fined not less than twenty-five dollars
58 nor more than five hundred dollars for each such
59 conviction: *Provided*, That none of the provisions
60 contained in this section shall apply to those commercial
61 or industrial wastes which are subject to the regulatory
62 control of the West Virginia division of natural resour-
63 ces or the West Virginia air pollution control
64 commission.

65 Magistrates shall have concurrent jurisdiction with
66 the circuit courts of this state for violations of any
67 provisions of this section.

CHAPTER 89

(S. B. 88—By Senators Burdette, Mr. President, and Boley,
By Request of the Executive)

[Passed February 29, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article five-f of said chapter, relating to encouraging the creation of primary care services by exempting certain primary care services and low-risk birthing centers from certificate of need review; allowing hospitals designated as rural primary care hospitals to be exempted from certificate

of need review for license restoration upon rejection of such designation within two years; and defining financial disclosure requirements for primary care centers.

Be it enacted by the Legislature of West Virginia:

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

Article

2D. Certificate of Need.

5F. Health Care Financial Disclosure.

ARTICLE 2D. CERTIFICATE OF NEED.

§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 the
6 following:

7 (1) Private office practice of any one or more health
8 professionals licensed to practice in this state pursuant
9 to the provisions of chapter thirty of this code: *Provided,*
10 That such exemption from review of private office
11 practice shall not be construed to include such practices
12 where major medical equipment otherwise subject to
13 review under the provisions of this article is acquired,
14 offered or developed: *Provided, however,* That such
15 exemption from review of private office practice shall
16 not be construed to include the acquisition, offering or
17 development of one or more health services, including
18 ambulatory surgical facilities or centers, lithotripsy,
19 magnetic resonance imaging and radiation therapy by
20 one or more health professionals. The state agency shall
21 adopt rules pursuant to section eight of this article
22 which specify the health services acquired, offered or
23 developed by health professionals which are subject to
24 certificate of need review;

25 (2) Dispensaries and first-aid stations located within

26 business or industrial establishments maintained solely
27 for the use of employees: *Provided*, That such facility
28 does not contain inpatient or resident beds for patients
29 or employees who generally remain in the facility for
30 more than twenty-four hours;

31 (3) Establishments, such as motels, hotels and board-
32 inghouses, which provide medical, nursing personnel
33 and health related services;

34 (4) The remedial care or treatment of residents or
35 patients in any home or institution conducted only for
36 those who rely solely upon treatment by prayer or
37 spiritual means in accordance with the creed or tenets
38 of any recognized church or religious denomination;

39 (5) The creation of new primary care services located
40 in communities that are underserved with respect to
41 primary care services: *Provided*, That to qualify for this
42 exemption, an applicant must be a community-based
43 nonprofit organization with a community board that
44 provides or will provide primary care services to people
45 without regard to ability to pay: *Provided, however*, That
46 the exemption from certificate of need review of new
47 primary care services provided by this subdivision shall
48 not include the acquisition, offering or development of
49 major medical equipment otherwise subject to review
50 under the provisions of this article or to include the
51 acquisition, offering or development of CT scanners,
52 ambulatory surgical facilities, lithotripsy, magnetic
53 resonance imaging or radiation therapy. The office of
54 community and rural health services shall define which
55 services constitute primary care services for purposes of
56 this subdivision, and shall, to prevent duplication of
57 primary care services, determine whether a community
58 is underserved with respect to certain primary care
59 services within the meaning of this subdivision. Any
60 organization planning to qualify for an exemption
61 pursuant to this subdivision shall submit to the state
62 agency a letter of intent describing the proposed new
63 services and area of service; and

64 (6) The creation of birthing centers by nonprofit
65 primary care centers that have a community board and

66 provide primary care services to people in their
67 community without regard to ability to pay, or by
68 nonprofit hospitals with less than one hundred licensed
69 acute care beds: *Provided*, That to qualify for this
70 exemption, an applicant must be located in an area that
71 is underserved with respect to low-risk obstetrical
72 services: *Provided, however*, That if a primary care
73 center attempting to qualify for this exemption is
74 located in the same county as a hospital that is also
75 eligible for this exemption, or if a hospital attempting
76 to qualify for this exemption is located in the same
77 county as a primary care center that is also eligible for
78 this exemption, then at least one primary care center
79 and at least one hospital from said county shall be
80 required to collaborate for the provision of services at
81 a birthing center in order to qualify for this exemption:
82 *Provided further*, That for purposes of this subsection,
83 a "birthing center" is a short-stay ambulatory health
84 care facility designed for low-risk births following
85 normal uncomplicated pregnancy. Any primary care
86 center or hospital planning to qualify for an exemption
87 pursuant to this subdivision shall submit to the state
88 agency a letter of intent describing the proposed
89 birthing center and area of service.

90 (b) (1) A certificate of need is not required for the
91 offering of an inpatient institutional health service or
92 the acquisition of major medical equipment for the
93 provision of an inpatient institutional health service or
94 the obligation of a capital expenditure for the provisions
95 of an inpatient institutional health service, if with
96 respect to such offering, acquisition or obligation, the
97 state agency has, upon application under subdivision (2)
98 of this subsection, granted an exemption to:

99 (A) A health maintenance organization or a combina-
100 tion of health maintenance organizations if: (i) The
101 organization or combination of organizations has, in the
102 service area of the organization or the service areas of
103 the organizations in the combination, an enrollment of
104 at least fifty thousand individuals; (ii) the facility in
105 which the service will be provided is or will be
106 geographically located so that the service will be

107 reasonably accessible to such enrolled individuals; and
108 (iii) at least seventy-five percent of the patients who can
109 reasonably be expected to receive the institutional
110 health service will be individuals enrolled with such
111 organization or organizations in the combination;

112 (B) A health care facility if: (i) The facility primarily
113 provides or will provide inpatient health services; (ii) the
114 facility is or will be controlled, directly or indirectly, by
115 a health maintenance organization or a combination of
116 health maintenance organizations which has, in the
117 service area of the organization or service areas of the
118 organizations in the combination, an enrollment of at
119 least fifty thousand individuals; (iii) the facility is or will
120 be geographically located so that the service will be
121 reasonably accessible to such enrolled individuals; and
122 (iv) at least seventy-five percent of the patients who can
123 reasonably be expected to receive the institutional
124 health service will be individuals enrolled with such
125 organization or organizations in the combination; or

126 (C) A health care facility, or portion thereof, if: (i) The
127 facility is or will be leased by a health maintenance
128 organization or combination of health maintenance
129 organizations which has, in the service area of the
130 organization or the service areas of the organizations in
131 the combination, an enrollment of at least fifty thousand
132 individuals and on the date the application is submitted
133 under subdivision (2) of this subsection, at least fifteen
134 years remain in the term of the lease; (ii) the facility is
135 or will be geographically located so that the service will
136 be reasonably accessible to such enrolled individuals;
137 and (iii) at least seventy-five percent of the patients who
138 can reasonably be expected to receive the new institu-
139 tional health service will be individuals enrolled with
140 such organization.

141 (2) (A) A health maintenance organization, combina-
142 tion of health maintenance organizations or other health
143 care facility is not exempt under subdivision (1) of this
144 subsection from obtaining a certificate of need unless:

145 (i) It has submitted, at such time and in such form
146 and manner as the state agency shall prescribe, an

147 application for such exemption to the state agency;

148 (ii) The application contains such information respect-
149 ing the organization, combination or facility and the
150 proposed offering, acquisition or obligation as the state
151 agency may require to determine if the organization or
152 combination meets the requirements of subdivision (1)
153 of this subsection or the facility meets or will meet such
154 requirements; and

155 (iii) The state agency approves such application.

156 (B) The state agency shall approve an application
157 submitted under paragraph (A) of this subdivision, if it
158 determines that the applicable requirements of subdivi-
159 sion (1) of this subsection are met or will be met on the
160 date the proposed activity for which an exemption was
161 requested will be undertaken.

162 (3) A health care facility, or any part thereof, or
163 medical equipment with respect to which an exemption
164 was granted under subdivision (1) of this subsection,
165 may not be sold or leased and a controlling interest in
166 such facility or equipment or in a lease of such facility
167 or equipment may not be acquired and a health care
168 facility described in paragraph (C) of said subdivision,
169 which was granted an exemption under said subdivi-
170 sion, may not be used by any person other than the lessee
171 described in paragraph (C) of said subdivision, unless:

172 (A) The state agency issues a certificate of need
173 approving the sale, lease, acquisition or use; or

174 (B) The state agency determines, upon application,
175 that the entity to which the facility or equipment is
176 proposed to be sold or leased, which intends to acquire
177 the controlling interest in or to use the facility is:

178 (i) A health maintenance organization or a combina-
179 tion of health maintenance organizations which meets
180 the enrollment requirements of subparagraph (i),
181 paragraph (A), subdivision (1) of this subsection, and
182 with respect to such facility or equipment, the entity
183 meets the accessibility and patient enrollment require-
184 ments of subparagraphs (ii) and (iii) of said paragraph;
185 or

186 (ii) A health care facility which meets the inpatient,
187 enrollment and accessibility requirements of subpara-
188 graphs (i), (ii) and (iii), paragraph (B), subdivision (1)
189 of this subsection and with respect to its patients meets
190 the enrollment requirements of subparagraph (iv) of
191 said paragraph (B).

192 (4) In the case of a health maintenance organization
193 or an ambulatory care facility or health care facility
194 which ambulatory or health care facility is controlled,
195 directly or indirectly, by a health maintenance organ-
196 ization or a combination of health maintenance organ-
197 izations, the certificate of need requirements apply only
198 to the offering of inpatient institutional health services,
199 the acquisition of major medical equipment, and the
200 obligation of capital expenditures for the offering of
201 inpatient institutional health services and then only to
202 the extent that such offering, acquisition or obligation
203 is not exempt under subdivision (1) of this subsection.

204 (5) The state agency shall establish the period within
205 which approval or disapproval by the state agency of
206 applications for exemptions under subdivision (1) of this
207 subsection shall be made.

208 (c) (1) A health care facility is not required to obtain
209 a certificate of need for the acquisition of major medical
210 equipment to be used solely for research, the addition
211 of health services to be offered solely for research, or the
212 obligation of a capital expenditure to be made solely for
213 research if the health care facility provides the notice
214 required in subdivision (2) of this subsection, and the
215 state agency does not find, within sixty days after it
216 receives such notice, that the acquisition, offering or
217 obligation will, or will have the effect to:

218 (A) Affect the charges of the facility for the provision
219 of medical or other patient care services other than the
220 services which are included in the research;

221 (B) Result in a substantial change to the bed capacity
222 of the facility; or

223 (C) Result in a substantial change to the health
224 services of the facility.

225 (2) Before a health care facility acquires major
226 medical equipment to be used solely for research, offers
227 a health service solely for research or obligates a capital
228 expenditure solely for research, such health care facility
229 shall notify in writing the state agency of such facility's
230 intent and the use to be made of such medical equip-
231 ment, health service or capital expenditure.

232 (3) If major medical equipment is acquired, a health
233 service is offered or a capital expenditure is obligated
234 and a certificate of need is not required for such
235 acquisition, offering or obligation as provided in
236 subdivision (1) of this subsection, such equipment or
237 service or equipment or facilities acquired through the
238 obligation of such capital expenditure may not be used
239 in such a manner as to have the effect or to make a
240 change described in paragraphs (A), (B) and (C) of said
241 subdivision unless the state agency issues a certificate
242 of need approving such use.

243 (4) For purposes of this subsection, the term "solely
244 for research" includes patient care provided on an
245 occasional and irregular basis and not as part of a
246 research program.

247 (d) (1) The state agency may adopt regulations
248 pursuant to section eight of this article to specify the
249 circumstances under which a certificate of need may not
250 be required for the obligation of a capital expenditure
251 to acquire, either by purchase or under lease or
252 comparable arrangement, an existing health care
253 facility: *Provided*, That a certificate of need shall be
254 required for the obligation of a capital expenditure to
255 acquire, either by purchase or under lease or compar-
256 able arrangement, an existing health care facility if:

257 (A) The notice required by subdivision (2) of this
258 subsection is not filed in accordance with that subdivi-
259 sion with respect to such acquisition; or

260 (B) The state agency finds, within thirty days after
261 the date it receives a notice in accordance with subdivi-
262 sion (2) of this subsection, with respect to such
263 acquisition, that the services or bed capacity of the
264 facility will be changed by reason of said acquisition.

265 (2) Before any person enters into a contractual
266 arrangement to acquire an existing health care facility,
267 such person shall notify the state agency of his or her
268 intent to acquire the facility and of the services to be
269 offered in the facility and its bed capacity. Such notice
270 shall be made in writing and shall be made at least
271 thirty days before contractual arrangements are entered
272 into to acquire the facility with respect to which the
273 notice is given. The notice shall contain all information
274 the state agency requires in accordance with subsections
275 (e) and (s), section seven of this article.

276 (e) The state agency shall adopt regulations, pursuant
277 to section eight of this article, wherein criteria are
278 established to exempt from review the addition of
279 certain health services, not associated with a capital
280 expenditure, that are projected to entail annual operat-
281 ing costs of less than the expenditure minimum for
282 annual operating costs. For purposes of this subsection,
283 "expenditure minimum for annual operating costs"
284 means three hundred thousand dollars for the first
285 twelve months following the effective date of this section
286 and for each twelve-month period thereafter, the state
287 agency may, by regulations adopted pursuant to section
288 eight of this article, adjust the expenditure minimum
289 for annual operating costs to reflect the impact of
290 inflation.

291 (f) The state agency shall adopt rules within ninety
292 days of the effective date of the amendment of this
293 section in the year one thousand nine hundred ninety
294 pursuant to section eight of this article to specify the
295 circumstances under which and the procedures by
296 which a certificate of need may not be required for
297 shared services between two or more acute care
298 facilities providing services made available through
299 existing technology that can reasonably be mobile. The
300 state agency shall specify the types of items in the
301 regulations and under what circumstances mobile MRI
302 and mobile lithotripsy may be so exempted from review.
303 In no case, however, will mobile cardiac catheterization
304 be exempted from certificate of need review. In
305 addition, if the shared services mobile unit proves less

306 cost effective than a fixed unit, the acute care facility
307 will not be exempted from certificate of need review.

308 On a yearly basis, the state agency shall review
309 existing technologies to determine if other shared
310 services should be included under this exemption.

311 (g) This subsection applies only to hospitals desig-
312 nated as rural primary care hospitals by West Virginia
313 office of rural health policy in conformance with
314 requirements of the health care financing administra-
315 tion of the federal department of health and human
316 services under Section 1920 of Public Law 101-239,
317 Section 6000(g) of the federal Omnibus Budget Recon-
318 ciliation Act of 1989.

319 A hospital, designated as a rural primary care
320 hospital, in accordance with final rules issued by the
321 health care financing administration, shall undergo a
322 reduction in its number of licensed acute care beds as
323 determined by the office of rural health policy.

324 The office of rural health policy shall notify the health
325 care cost review authority of such designation including
326 the number of staffed and operated beds immediately
327 prior to designation and the number of acute care beds
328 certified by the health care financing administration.

329 A rural primary care hospital may reject this
330 designation any time within twenty-four calendar
331 months, beginning from the date of designation by the
332 office of rural health policy. If a hospital chooses to
333 reject this designation, it may do so upon written
334 notification to the office of rural health policy and the
335 health care cost review authority. If such designation is
336 rejected by a rural primary care hospital, license
337 restoration, not to exceed the number of acute care beds
338 staffed and operated by the hospital immediately prior
339 to receiving designation as a rural primary care
340 hospital, shall be exempt from the certificate of need
341 program review.

342 Within twenty-five months from designating rural
343 primary care hospitals, the office of rural health policy
344 shall notify the health care cost review authority of the

345 status of the designated hospitals including the number
346 of licensed beds.

347 The state agency shall promulgate rules within ninety
348 days of the effective date of this amendment in order
349 to carry out the purpose of this subsection.

ARTICLE 5F. HEALTH CARE FINANCIAL DISCLOSURE.

§16-5F-2. Definitions.

1 As used in this article:

2 (1) "Annual report" means an annual financial report
3 for the covered facility's or related organization's fiscal
4 year prepared by an accountant or the covered facility's
5 or related organization's auditor.

6 (2) "Board" means the West Virginia health care cost
7 review authority.

8 (3) "Covered facility" means any hospital, skilled
9 nursing facility, kidney disease treatment center,
10 including a free-standing hemodialysis unit; interme-
11 diate care facility; ambulatory health care facility;
12 ambulatory surgical facility; home health agency;
13 rehabilitation facility; health maintenance organization;
14 or community mental health or mental retardation
15 facility, whether under public or private ownership or
16 as a profit or nonprofit organization and whether or not
17 licensed or required to be licensed in whole or in part
18 by the state: *Provided*, That nonprofit, community-based
19 primary care centers providing primary care services
20 without regard to ability to pay who provide the board
21 with a year-end audited financial statement prepared in
22 accordance with generally accepted auditing standards
23 and with governmental auditing standards issued by the
24 comptroller general of the United States shall be
25 deemed to have complied with the disclosure require-
26 ments of this section.

27 (4) "Related organization" means an organization,
28 whether publicly owned, nonprofit, tax-exempt or for
29 profit, related to a covered facility through common
30 membership, governing bodies, trustees, officers, stock
31 ownership, family members, partners or limited

32 partners, including, but not limited to, subsidiaries,
33 foundations, related corporations and joint ventures. For
34 the purposes of this subdivision "family members" shall
35 mean brothers and sisters whether by the whole or half
36 blood, spouse, ancestors and lineal descendents.

37 (5) "Rates" means all rates, fees or charges imposed
38 by any covered facility for health care services.

39 (6) "Records" includes accounts, books, charts,
40 contracts, documents, files, maps, papers, profiles,
41 reports, annual and otherwise, schedules and any other
42 fiscal data, however recorded or stored.

CHAPTER 90

(H. B. 4736—By Delegates J. Martin and Taylor)

[Passed March 6, 1992; in effect from passage. Approved by the Governor.]

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 rural primary care hospitals and conversion of acute care beds to skilled nursing and intermediate care beds; requirements of a previously constructed unit and affiliation with college or university to provide clinical training; correcting reference; moratorium exemption for certain ICF/MR beds.

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:

ARTICLE 2D. CERTIFICATE OF NEED.

§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 commission in developing rules and
6 regulations for the certificate of need program to the
7 extent appropriate for the achievement of efficiency in
8 their reviews and consistency in criteria for such
9 reviews.

10 (c) The state agency may seek advice and assistance
11 of other persons, organizations, and other state agencies
12 in the performance of the state agency's responsibilities
13 under this article.

14 (d) For health services for which competition appro-
15 priately allocates supply consistent with the state health
16 plan, the state agency shall, in the performance of its
17 functions under this article, give priority, where
18 appropriate to advance the purposes of quality assu-
19 rance, cost effectiveness and access, to actions which
20 would strengthen the effect of competition on the supply
21 of such services.

22 (e) For health services for which competition does not
23 or will not appropriately allocate supply consistent with
24 the state health plan, the state agency shall, in the
25 exercise of its functions under this article, take actions,
26 where appropriate to advance the purposes of quality
27 assurance, cost effectiveness and access and the other
28 purposes of this article, to allocate the supply of such
29 services.

30 (f) Notwithstanding the provisions of section seven of
31 this article, the state agency may charge a fee for the
32 filing of any application, the filing of any notice in lieu
33 of an application, the filing of any exemption determi-
34 nation request, or the filing of any request for a
35 declaratory ruling. The fees charged may vary accord-
36 ing to the type of matter involved, the type of health
37 service or facility involved, or the amount of capital
38 expenditure involved. The state agency shall implement
39 this subsection by filing procedural rules pursuant to
40 chapter twenty-nine-a of this code. The fees charged
41 shall be deposited into a special fund known as the
42 certificate of need program fund to be expended for the
43 purposes of this article.

44 (g) No hospital, nursing home or other health care
45 facility shall add any intermediate care or skilled
46 nursing beds to its current licensed bed complement.
47 This prohibition also applies to the conversion of acute
48 care or other types of beds to intermediate care or
49 skilled nursing beds: *Provided*, That hospitals eligible
50 under the provisions of section four-a and subsection (i),
51 section five of this article may convert acute care beds
52 to skilled nursing beds in accordance with the provisions
53 of these sections, upon approval by the state agency.
54 Furthermore, no certificate of need shall be granted for
55 the construction or addition of any intermediate care or
56 skilled nursing beds except in the case of facilities
57 designed to replace existing beds in unsafe existing
58 facilities. A health care facility in receipt of a certificate
59 of need for the construction or addition of intermediate
60 care or skilled nursing beds which was approved prior
61 to the effective date of this section must incur an
62 obligation for a capital expenditure within twelve
63 months of the date of issuance of the certificate of need.
64 No extensions shall be granted beyond the twelve-month
65 period: *Provided, however*, That a hospital designated or
66 provisionally designated as a rural primary care
67 hospital may convert not to exceed sixty acute care beds,
68 licensed immediately prior to designation as a rural
69 primary care hospital, to a distinct part nursing facility
70 including skilled nursing beds and intermediate care
71 beds, on a one-for-one basis, if said rural primary care
72 hospital also meets the following criteria: (1) The
73 hospital has previously constructed a unit that can be
74 used as a distinct part nursing facility; and (2) the
75 hospital has an affiliation agreement with a college or
76 university to provide clinical training to mid-level
77 practitioners: *Provided further*, That said rural primary
78 care hospital applies for conversion on or before the
79 thirtieth day of September, one thousand nine hundred
80 ninety-two.

81 (h) No additional intermediate care facility for the
82 mentally retarded (ICF/MR) beds shall be granted a
83 certificate of need, except that prohibition does not
84 apply to ICF/MR beds approved under the Kanawha
85 County circuit court order of the third day of August,

86 one thousand nine hundred eighty-nine, civil action
87 number MISC-81-585 issued in the case of *E. H. v.*
88 *Matin*, 168 W.V. 248, 284 S.E.2d 232 (1981).

89 (i) Notwithstanding the provisions of subsection (g),
90 section five of this article and, further notwithstanding
91 the provisions of subsection (d), section three of this
92 article, an existing acute care hospital may apply to the
93 health care cost review authority for a certificate of need
94 to convert acute care beds to skilled nursing beds:
95 *Provided*, That the proposed skilled nursing beds are
96 medicare certified only: *Provided, however*, That any
97 hospital which converts acute care beds to medicare
98 certified only skilled nursing beds is prohibited from
99 billing for any medicaid reimbursement for any beds so
100 converted. In converting beds, the hospital must convert
101 a minimum of one acute care bed into one medicare
102 certified only skilled nursing bed. The health care cost
103 review authority may require a hospital to convert up
104 to and including three acute care beds for each medicare
105 certified only skilled nursing bed. The health care cost
106 review authority shall adopt rules to implement this
107 subsection which require that:

108 (1) All acute care beds converted shall be permanently
109 deleted from the hospital's acute care bed complement
110 and the hospital may not thereafter add, by conversion
111 or otherwise, acute care beds to its bed complement
112 without satisfying the requirements of subsection (d),
113 section three of this article for which purposes such an
114 addition, whether by conversion or otherwise, shall be
115 considered a substantial change to the bed capacity of
116 the hospital notwithstanding the definition of that term
117 found in subsection (ee), section two of this article.

118 (2) The hospital shall meet all federal and state
119 licensing certification and operational requirements
120 applicable to nursing homes including a requirement
121 that all skilled care beds created under this subsection
122 shall be located in distinct-part, long-term care units.

123 (3) The hospital must demonstrate a need for the
124 project.

125 (4) The hospital must use existing space for the

126 medicare certified only skilled nursing beds. Under no
127 circumstances shall the hospital construct, lease or
128 acquire additional space for purposes of this section.

129 (5) The hospital must notify the acute care patient,
130 prior to discharge, of facilities with skilled nursing beds
131 which are located in or near the patient's county of
132 residence.

133 Nothing in this subsection shall negatively affect the
134 rights of inspection and certification which are other-
135 wise required by federal law or regulations or by this
136 code of duly adopted regulations of an authorized state
137 entity.

138 (j) Notwithstanding the provisions of subsection (g),
139 section five of this article, a retirement life care center
140 with no skilled nursing beds may apply to the health
141 care cost review authority for a certificate of need for
142 up to sixty skilled nursing beds provided the proposed
143 skilled beds are medicare certified only. On a statewide
144 basis, a maximum of one hundred eighty skilled beds
145 which are medicare certified only may be developed
146 pursuant to this subsection. The state health plan shall
147 not be applicable to projects submitted under this
148 subsection. The health care cost review authority shall
149 adopt rules to implement this subsection which shall
150 include:

151 (1) A requirement that the one hundred eighty beds
152 are to be distributed on a statewide basis;

153 (2) There shall be a minimum of twenty beds and a
154 maximum of sixty beds in each approved unit;

155 (3) The unit developed by the retirement life care
156 center shall meet all federal and state licensing
157 certification and operational requirements applicable to
158 nursing homes;

159 (4) The retirement center must demonstrate a need
160 for the project;

161 (5) The retirement center must offer personal care,
162 home health services and other lower levels of care to
163 its residents; and

164 (6) The retirement center must demonstrate both
165 short and long-term financial feasibility.

166 Nothing in this subsection shall negatively affect the
167 rights of inspection and certification which are other-
168 wise required by federal law or regulations or by this
169 code of duly adopted regulations of an authorized state
170 entity.

171 (k) The provisions of this article are severable and if
172 any provision, section or part thereby shall be held
173 invalid, unconstitutional or inapplicable to any person or
174 circumstance, such invalidity, unconstitutionality or
175 inapplicability shall not affect or impair any other
176 remaining provisions contained herein.

CHAPTER 91

(H. B. 4576—By Delegates P. White and Pettit)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-a; and to amend article twenty-nine-b of said chapter by adding thereto a new section, designated section twenty-one-a, all relating to requiring health care facilities and providers filing applications for certificate of need or change in rate schedules to submit a copy of said applications to the office of consumer advocacy.

Be it enacted by the Legislature of West Virginia:

That article two-d, 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 seven-a; and that article twenty-nine-b of said chapter be amended by adding thereto a new section, designated section twenty-one-a, all to read as follows:

Article

2D. Certificate of Need.

29B. Health Care Cost Review Authority.

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-7a. Coordination and filing with consumer advocate.

1 Each health care facility or health care provider
2 filing a certificate of need application with the state
3 agency pursuant to section seven of this article shall
4 notify the director of the office of consumer advocacy
5 established pursuant to section sixteen, article two,
6 chapter thirty-three of this code of said application by
7 submitting a copy of the same to the office of the
8 consumer advocate on or before the date of such filing.

ARTICLE 29B. HEALTH CARE COST REVIEW AUTHORITY.

§16-29B-21a. Coordination and filing with consumer advocate.

1 Each hospital filing an application or request for a
2 change in rate schedules or other changes with the
3 board pursuant to section twenty-one of this article shall
4 notify the director of the office of consumer advocacy
5 established pursuant to section sixteen, article two,
6 chapter thirty-three of this code of said application by
7 submitting a copy of the same to the office of consumer
8 advocacy. Each request shall include any proposed
9 increase or decrease of the rates and shall be filed on
10 or before the date the rate request or application is filed
11 with the board.

CHAPTER 92

(Com. Sub. for S. B. 332—By Senators Holliday, Tomblin and Felton)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

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

article two-h, relating to the creation of the primary care support program; providing for various funds; setting forth qualifications for receiving funds; defining preventive care services; and creating an advisory board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2H. PRIMARY CARE SUPPORT PROGRAM.

§16-2H-1. Short title.

§16-2H-2. Primary care support program; primary care revolving loan fund; primary care uncompensated care fund; seed money and technical assistance.

§16-2H-3. Preventive services and health education.

§16-2H-4. Advisory board.

§16-2H-1. Short title.

- 1 This article shall be known and may be cited as the
- 2 "Primary Care Support Program Act".

§16-2H-2. Primary care support program; primary care revolving loan fund; primary care uncompensated care fund; seed money and technical assistance.

- 1 (a) There is hereby created the "Primary Care
- 2 Support Program" within the division of health within
- 3 the department of health and human resources. The
- 4 program shall provide technical and organizational
- 5 assistance to community-based primary care services
- 6 throughout the state.

- 7 (b) The primary care support program shall create
- 8 and administer a primary care revolving loan fund to
- 9 lend money to primary care centers in need of imme-
- 10 diate financial assistance. In order to qualify for the
- 11 loans, a primary care center must be a nonprofit
- 12 corporation, have a community board, provide services
- 13 to the public regardless of ability to pay (such as on a

14 sliding fee scale basis) and present proof of designation
15 as a federally qualified health center or rural health
16 center, of steps taken to qualify as a federally qualified
17 health center or rural health center or of why status as
18 a federally qualified or rural health center would not
19 result in improved revenues to the center.

20 There is hereby created a special revenue fund in the
21 state treasury to be known as the primary care loan
22 fund into which all appropriations, payments and
23 interest to the revolving loan fund created herein shall
24 be deposited, to be held and disbursed according to law.

25 (c) The primary care support program shall create
26 and administer a "Primary Care Uncompensated Care
27 Fund". All revenues contained in the fund shall be
28 distributed to primary care centers in the form of grants
29 designed to offset the primary care centers' costs of
30 providing uncompensated health care services. In order
31 to qualify for the grants, a primary care center must
32 be a nonprofit corporation, have a community board,
33 provide services to the public regardless of ability to pay
34 (such as on a sliding fee scale basis) and present proof
35 of designation as a federally qualified health center or
36 rural health center, of steps taken to qualify as a
37 federally qualified health center or rural health center,
38 or of why status as a federally qualified or rural health
39 center would not result in improved revenues to the
40 center.

41 (d) The primary care support program shall provide
42 seed money grants and technical assistance to help
43 nonprofit, community-based organizations create new
44 primary care services for people in their community.
45 Under no circumstances will a specific project be
46 entitled to receive the grants for more than three years.
47 In order to qualify for the grants, applicants must
48 provide the following:

49 (1) A description of an unmet need for certain
50 primary care services in their community;

51 (2) A detailed account, including a budget, of how the
52 applicant's project will use technical and financial

53 assistance from the program and other sources to
54 develop the primary care services within one year that
55 will be available to the public regardless of ability to
56 pay;

57 (3) A detailed account, including a budget, showing
58 how the services will continue to be funded once
59 established and showing how potential federal and
60 charitable funds will be maximized;

61 (4) An account of the extent of community involve-
62 ment and support for the project;

63 (5) A description of how the project will be coordi-
64 nated with local activities of the division of health,
65 regional health advisory councils, the health care
66 planning commission, medical schools, local health
67 departments, primary care clinics or other public health
68 agencies.

69 (e) The director of health shall promulgate rules in
70 accordance with article three, chapter twenty-nine-a of
71 this code to implement the provisions of this article, and
72 shall approve all loans, grants and disbursements of
73 money authorized by this article.

§16-2H-3. Preventive services and health education.

1 As used in subsection (d), section two of this article,
2 the term "primary care services" includes preventive
3 services and health education. Ten percent of the seed
4 money grants awarded by the program to local projects
5 under said subsection shall support the development of
6 community-based preventive services and health educa-
7 tion, which shall not be required to be self-supporting
8 at the conclusion of the grant period.

§16-2H-4. Advisory board.

1 The division of health shall convene a fifteen-person
2 advisory board consisting of persons familiar with
3 community-based primary care services and public
4 health planning efforts to assist in the implementation
5 of this program.

CHAPTER 93

(Com. Sub. for S. B. 272—By Senator Holliday)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-a; and to further amend said chapter by adding thereto a new article, designated article thirty-three, relating to establishment of a cancer registry; requiring all physicians, hospitals, laboratories and clinics to report newly diagnosed or treated cancers; providing for confidentiality of records; appointing an advisory committee panel; providing administrative implementation through rule making; authorizing and maintaining a program to provide and promote screening and detection of breast and cervical cancer among unserved and underserved populations; educating the public on benefits of early detection; providing counseling and referral services; establishing a breast and cervical cancer coalition to collaborate on program development; education and early detection projects; authorizing the director of the division of health to make grants for programs that provide early detection of breast and cervical cancer through clinical examinations, mammography and pap testing for cervical cancer and breast self-examinations; and requiring grant recipients to provide referral services for cancer treatment and counseling and public and professional education on early detection for breast and cervical cancer prevention and control.

Be it enacted by the Legislature of West Virginia:

That article five-a, 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 two-a; and that said chapter be further amended by adding thereto a new article, designated article thirty-three, all to read as follows:

Article

5A. Cancer Control.

33. Breast and Cervical Cancer Prevention and Control Act.

ARTICLE 5A. CANCER CONTROL.

§16-5A-2a. Cancer registry.

1 (a) *Purpose.* — To the extent funds are available, the
2 director of the division of health shall establish a cancer
3 registry for the purpose of collecting information
4 concerning the incidence of cancer, which shall be
5 analyzed to prepare reports and perform studies as
6 necessary when such data identifies hazards to public
7 health. Pending appropriate funding, a statewide
8 system shall be phased in and be fully operational by
9 the first day of July, one thousand nine hundred ninety-
10 five.

11 (b) *Reporting.* — All reporting sources, i.e., hospitals,
12 physicians, laboratories, clinics or other similar units
13 diagnosing or providing treatment for cancer, shall
14 provide a report of each cancer case to the cancer
15 registry in a format specified by the director. The
16 reporting sources shall grant the director or an autho-
17 rized representative of the cancer registry access to all
18 records which would identify cases of cancer or would
19 establish characteristics of the cancer.

20 (c) *Confidentiality; disclosure.* — All information
21 reported pursuant to this section is confidential and
22 shall be used for the purpose of determining the sources
23 of malignant neoplasms and evaluating measures
24 designed to eliminate, alleviate or ameliorate their
25 effect. A report provided to the cancer registry disclos-
26 ing the identity of an individual who was reported as
27 having cancer shall only be released to reporting sources
28 and persons demonstrating a need which is essential to
29 health related research, except that the release shall be
30 conditioned upon the reporting source and personal
31 identities remaining confidential. No liability of any
32 kind or character for damages or other relief shall arise
33 or be enforced against any reporting source by reason
34 of having provided the information or material to the
35 cancer registry.

36 (d) *Advisory committee.* — The director of the division
37 of health shall appoint an advisory committee on cancer
38 with membership consisting of representatives of
39 appropriate agencies, including the West Virginia
40 hospital association; the American cancer society, West
41 Virginia division; the American lung association of West
42 Virginia; the West Virginia medical association; the
43 association of osteopathic medicine; the West Virginia
44 nurses association; the Mary Babb Randolph cancer
45 center; and, at the discretion of the director, any other
46 individuals directly involved. The advisory committee
47 shall provide technical guidance regarding the opera-
48 tion of the cancer registry and shall provide such advice
49 and assistance as needed to carry out effective cancer
50 prevention and control activities. The members of the
51 advisory committee shall serve four-year terms. Vacan-
52 cies shall be filled in a like manner for the unexpired
53 term.

54 (e) *Rule making.* — The director shall promulgate
55 rules related to: (1) The content and design of all forms
56 and reports required by this section; (2) the procedures
57 for disclosure of information gathered by the cancer
58 registry by monitoring and evaluating health data and
59 from completed risk assessments; and (3) any other
60 matter necessary to the administration of this section.

ARTICLE 33. BREAST AND CERVICAL CANCER PREVENTION AND CONTROL ACT.

§16-33-1. Short title.

§16-33-2. Definitions.

§16-33-3. Establishment of breast and cervical cancer detection and educa-
tion program.

§16-33-4. Grants to approved organizations.

§16-33-5. Breast and cervical cancer detection and education program
coalition.

§16-33-6. Annual report.

§16-33-1. Short title.

1 This article may be cited as the “Breast and Cervical
2 Cancer Prevention and Control Act”.

§16-33-2. Definitions.

1 As used in this article:

2 (a) "Approved organization" means an organization
3 approved by the director to provide medical services
4 under section four of this article.

5 (b) "Department" means the department of health and
6 human resources.

7 (c) "Director" means the director of the division of
8 health.

9 (d) "Unserved or underserved populations" means
10 persons having inadequate access and financial resour-
11 ces to obtain breast and cervical cancer screening and
12 detection services, including persons who lack health
13 insurance or whose health insurance coverage is
14 inadequate.

**§16-33-3. Establishment of breast and cervical cancer
detection and education program.**

1 (a) There is hereby created within the department the
2 breast and cervical cancer detection and education
3 program. This program is established to promote
4 screening and detection of breast and cervical cancer
5 among unserved or underserved populations, to educate
6 the public regarding breast and cervical cancer and the
7 benefits of early detection, and to provide counseling
8 and referral services.

9 (b) The program shall include:

10 (1) Establishment of a public education and outreach
11 campaign to publicize breast and cervical cancer
12 detection and education services, including the extent of
13 coverage for such services by health insurance, the
14 medical assistance program and other public and
15 private programs;

16 (2) Provision of grants to approved organizations
17 under section four of this article;

18 (3) Compilation of data concerning the breast and
19 cervical cancer detection and education program and
20 dissemination of the data to the public; and

21 (4) Development of professional education programs
22 including the benefits of early detection of breast and

23 cervical cancer and the recommended frequency of
24 screening examinations for prevention and control.

§16-33-4. Grants to approved organizations.

1 (a) The director shall make grants, within the
2 amounts appropriated, to approved organizations for the
3 provision of services relating to the screening and
4 detection of breast and cervical cancer as part of this
5 program. Such services shall include, but not be limited
6 to:

7 (1) Promotion and provision of early detection of
8 breast and cervical cancer, clinical examinations,
9 including pap testing and mammography and breast
10 self-examination;

11 (2) Provision of counseling and information on
12 treatment alternatives and referral for appropriate
13 medical treatment;

14 (3) Dissemination of information to unserved and
15 underserved populations, to the general public and to
16 health care professionals concerning breast and cervical
17 cancer, the benefits of early detection and treatment and
18 the availability of breast and cervical cancer screening
19 services;

20 (4) Identification of local breast and cervical cancer
21 screening services within the approved organization's
22 region; and

23 (5) Provision of information, counseling and referral
24 services to individuals diagnosed with breast or cervical
25 cancer.

26 (b) (1) The director shall give notice and provide
27 opportunity for organizations to submit applications to
28 provide breast and cervical cancer detection and
29 education programs. In order to be considered for a
30 grant to provide breast and cervical cancer detection
31 and education programs, applicants must show evidence
32 of the following:

33 (A) Ability to provide and to ensure consistent and
34 quality breast and cervical cancer detection services;

35 (B) Expertise in breast and cervical cancer detection
36 and treatment;

37 (C) Capacity to collaborate and coordinate services
38 with physicians, hospitals and other appropriate local
39 institutions or agencies;

40 (D) Ability to provide breast and cervical cancer
41 detection and education services to unserved or under-
42 served populations; and

43 (E) Ability to implement a breast and cervical cancer
44 detection and education program in accordance with
45 national organization standards of high quality, as
46 described in subsection (c) of this section.

47 (2) Applications shall be made on forms provided by
48 the director for approval of grants to provide breast and
49 cervical cancer detection and education programs by
50 organizations, including, but not limited to:

51 (A) Local boards of health organized under articles
52 two and two-a of this chapter;

53 (B) Licensed health care facilities, including the
54 public and private sector;

55 (C) Any combination of the above; and

56 (D) Organizations with program expertise in cancer
57 related issues.

58 (c) In evaluating applications the director shall
59 consult the most recent medical practice and procedures
60 in breast and cervical cancer detection and education
61 standards for breast and cervical cancer detection and
62 education programs of organizations with national
63 recognition for expertise in breast and cervical cancer
64 detection and treatment with the objective to ensure the
65 following:

66 (1) Integration linkage and consultation with ap-
67 proved organizations, health care facilities and
68 providers;

69 (2) Maximization of third-party reimbursement; and

70 (3) Provision of services to unserved or underserved
71 populations.

§16-33-5. Breast and cervical cancer detection and education program coalition.

1 (a) There is hereby established the breast and cervical
2 cancer detection and education program coalition. The
3 members of the coalition shall be appointed by the
4 director and shall be representative of consumers
5 including persons with breast or cervical cancer, local
6 health departments, health care providers and recog-
7 nized experts in the provision of health services to
8 women, cancer research or environmental health.

9 (b) The breast and cervical cancer coalition shall be
10 responsible for advising the director with respect to the
11 implementation of this article and shall make recom-
12 mendations as to the selection of approved organizations
13 and the standards to be established by the director
14 pursuant to subsection (c), section four of this article.
15 The director shall consult with the coalition on stand-
16 ards for approved organizations, selecting approved
17 organizations, making grants to such organizations and
18 implementing the breast and cervical cancer detection
19 and education program.

20 (c) The director shall perform an evaluation of the
21 state's system for early detection and treatment of
22 breast and cervical cancer and shall submit to the
23 Legislature and the governor a report detailing his
24 findings and recommendations concerning the state's
25 response to the high incidence of breast and cervical
26 cancer. Such report shall be submitted no later than the
27 first day of December, one thousand nine hundred
28 ninety-three, and shall reflect the evaluation of the at-
29 risk population screened for breast and cervical cancer
30 detection for the previous twelve months.

31 (d) The breast and cervical cancer coalition shall meet
32 at least three times a year to receive information and
33 provide interaction, consultation and advice.

34 (e) The members of the coalition shall receive no
35 compensation for their services, but shall be allowed
36 their actual and necessary expenses incurred in perfor-
37 mance of their duties.

§16-33-6. Annual report.

1 The director shall submit an annual report to the
 2 governor and the Legislature concerning the operation
 3 of the breast and cervical cancer detection and educa-
 4 tion program including available data and assessment.
 5 Such report shall also include any recommendations for
 6 additional action to respond to the high incidence of
 7 breast and cervical cancer in this state.

CHAPTER 94

(Com. Sub. for S. B. 559—By Senator Holliday)

[Passed March 4, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five-b, chapter sixteen 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 substituted consent for health care services provided by extended care facilities operated in connection with hospitals.

Be it enacted by the Legislature of West Virginia:

That article five-b, 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 eight-a, to read as follows:

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-8a. Substituted consent for health care services in extended care facilities operated in connection with hospitals.

1 (a) For purposes of this section, "physical or mental
 2 incapacity", or like words, means the inability, because
 3 of physical or mental impairment, of a patient or
 4 prospective patient of an extended care facility operated
 5 in connection with a hospital to appreciate the nature
 6 and implications of a health care decision, to make an

7 informed choice regarding the alternatives presented
8 and to communicate that choice in an unambiguous
9 manner.

10 (b) Where there has been no adjudication of incom-
11 petence of a patient or prospective patient, or appoint-
12 ment of a guardian for such patient or prospective
13 patient, and where there is no applicable durable power
14 of attorney for such patient or prospective patient, but
15 where such patient or prospective patient is unable to
16 grant informed consent for health care services of an
17 extended care facility operated in connection with a
18 hospital or to acknowledge notification by such a facility
19 of his or her rights, responsibilities and any applicable
20 rules of such a facility due to physical or mental
21 incapacity, as documented in such patient's or prospec-
22 tive patient's health care records by two physicians
23 licensed to practice medicine in this state under the
24 provisions of article three or fourteen, chapter thirty of
25 this code or one such physician and one licensed
26 psychologist, the following persons are deemed the
27 patient's or prospective patient's representative autho-
28 rized to consent to health care services by such a facility
29 for such patient or prospective patient to acknowledge
30 notification by such a facility of such patient's or
31 prospective patient's rights, responsibilities and any
32 applicable rules of such a facility in the order of class
33 priority set forth below:

34 (1) The patient's or prospective patient's spouse;

35 (2) An adult child of the patient or prospective
36 patient;

37 (3) A parent of the patient or prospective patient;

38 (4) An adult sibling of the patient or prospective
39 patient;

40 (5) The nearest living relative of the patient or
41 prospective patient; or

42 (6) Such other persons or classes of persons, including,

43 but not limited to, such public agencies, public
44 guardians, other public officials, public and private
45 corporations, protective service agencies and other
46 representatives as the department of health and human
47 resources may from time to time designate in its rules
48 promulgated pursuant to chapter twenty-nine-a of this
49 code: *Provided*, That there is no reason to believe that
50 such health care services are contrary to the patient's
51 or prospective patient's religious beliefs and there is no
52 actual notice of opposition by a member of the same or
53 a prior class.

54 (c) An extended care facility operated in connection
55 with a hospital, as applicable, shall document its good
56 faith efforts to contact permitted representatives in the
57 order of class priority and its efforts to contact all
58 members of a class before the next class is contacted but
59 shall suffer no liability or deficiency for any failure to
60 apprise the proper persons of the requirements of this
61 section, so long as it has acted reasonably and in good
62 faith. An extended care facility operated in connection
63 with hospitals, as applicable, may rely on the apparent
64 authority of one member of a class to speak for that
65 class.

66 (d) The determination of incapacity hereunder expires
67 after six months or upon the patient's earlier discharge
68 from the extended care facility operated in connection
69 with a hospital. At the end of every such six-month
70 period, if the patient remains admitted to such a facility,
71 the patient shall be reexamined by two physicians
72 licensed to practice medicine in this state as set forth
73 in subsection (b) or by one such physician and one
74 licensed psychologist who shall render a determination
75 whether or not the patient remains physically or
76 mentally incapacitated, and such determination shall be
77 documented in the patient's health care records. The
78 authority of the representatives provided in said
79 subsection shall terminate unless upon such reevaluation
80 the examining physicians, or the physician and the
81 psychologist as the case may be, certifies that the patient

82 remains physically or mentally incapacitated.

83 (e) In addition to the reevaluations required by
84 subsection (d) above, an extended care facility operated
85 in connection with a hospital, as applicable, upon
86 request of any interested person, or upon its own
87 initiative if it has reason to believe that the patient has
88 regained his or her capacity, shall permit or obtain a
89 reevaluation at any time by one or more physicians
90 licensed to practice medicine in this state as set forth
91 in subsection (b), of a prior determination of capacity or
92 incapacity: *Provided*, That no patient shall be required
93 to be reevaluated within three months of a prior
94 evaluation except for good cause shown. A physician's
95 determination of capacity upon such reevaluation shall
96 terminate any authority of a patient's representative
97 under this section.

98 (f) The department of health and human resources
99 shall adopt rules pursuant to the provisions of chapter
100 twenty-nine-a of this code setting forth a procedure by
101 which any interested person may obtain an administra-
102 tive review of any determination of capacity or incapac-
103 ity made pursuant to this section. Nothing contained in
104 this section shall preclude an interested person from
105 seeking a determination of competency or incompetency
106 under the provisions of article eleven, chapter twenty-
107 seven of this code in an appropriate case or from seeking
108 any form of judicial review.

109 (g) At least one of the physicians, or the psychologist,
110 who certifies the incapacity under subsections (b) and
111 (d) of this section shall not be employed by the hospital-
112 connected extended care facility. The two persons
113 performing the certification shall not be associated in
114 the same medical practice.

115 Nothing in this section shall be construed to preclude
116 common membership on a facility medical staff.

117 Nothing in this section shall be interpreted to mean
118 that the consent of a patient's representative is required
119 in an emergency to save life or prevent serious injury.

CHAPTER 95

(H. B. 4129—By Delegates Roop and Kiss)

[Passed February 18, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article thirteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to sewage works of municipal corporations and sanitary districts; providing that the governing body of a sanitary board shall establish the organization of such a board; and authorizing the governing body to appoint up to four persons to serve on such a board, in addition to the mayor or city manager of the municipality served by the board, in the event of an acquisition or merger of an existing system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND SANITARY DISTRICTS.

§16-13-18. Supervision of works by sanitary board; organization of board; qualifications, terms and compensation of members.

1 The governing body shall provide by ordinance the
2 organization of the board, and that the custody,
3 administration, operation and maintenance of such
4 works shall be under the supervision and control of a
5 sanitary board, created as herein provided. Such
6 sanitary board shall be composed of either the mayor of
7 the municipality, or the city manager thereof, if said
8 municipality shall have a city manager form of govern-
9 ment, and two persons appointed by the governing body:
10 *Provided, That, in the event of an acquisition or merger*
11 *of an existing sewage works, the governing body may*
12 *increase the membership to a maximum of four*
13 *members in addition to the mayor or city manager of*

14 the municipality served by the board. During the
15 construction period one of the members must be a
16 registered professional engineer. The engineer member
17 of the board need not be a resident of said municipality.
18 After the construction of the plant has been completed,
19 the engineer member may be succeeded by a person not
20 an engineer. No officer or employee of the municipality,
21 whether holding a paid or unpaid office, shall be eligible
22 to appointment on said sanitary board until at least one
23 year after the expiration of the term of his public office.
24 Said appointees shall originally be appointed for terms
25 of two and three years respectively, and upon the
26 expiration of each such term and each succeeding term,
27 an appointment of a successor shall be made in like
28 manner for a term of three years. Vacancies shall be
29 filled for an unexpired term in the same manner as the
30 original appointment. Each member shall give such
31 bond, if any, as may be required by ordinance. Such
32 mayor or city manager shall act as chairman of the
33 sanitary board, which shall elect a vice chairman from
34 its members and shall designate a secretary and
35 treasurer (but the secretary and the treasurer may be
36 one and the same), who need not be a member or
37 members of the sanitary board. The vice chairman,
38 secretary and treasurer shall hold office as such at the
39 will of the sanitary board. The members of the sanitary
40 board shall receive such compensation for their services,
41 either as a salary or as payments for meetings attended,
42 as the governing body may determine, and shall be
43 entitled to payment for their reasonable expenses
44 incurred in the performance of their duties. The
45 governing body shall fix the reasonable compensation of
46 the secretary and treasurer in its discretion, and shall
47 fix the amounts of bond to be given by the treasurer.
48 All compensation, together with the expenses in this
49 section referred to, shall be paid solely from funds
50 provided under the authority of this article. The
51 sanitary board shall have power to establish bylaws,
52 rules and regulations for its own government.

CHAPTER 96

(S. B. 336—By Senator Humphreys)

[Passed March 7, 1992; in effect ninety days from passage.
Became law without signature of 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 health care records; and establishing a maximum ten dollar search fee for such records.

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 this 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: *Provided*, That
31 original radiological study film from a radiological
32 exam conducted pursuant to a request from a patient
33 or patient's representative shall be provided to the
34 patient or patient's representative upon written request
35 and payment for the exam. The health care provider
36 shall not be required to interpret or retain copies of the
37 film and shall be immune from liability resulting from
38 any action relating to the absence of the original
39 radiological film from the patient's record.

40 (d) This article shall not apply to records subpoenaed
41 or otherwise requested through court process.

42 (e) The provisions of this article may be enforced by
43 a patient, authorized agent or authorized representative,
44 and any health care provider found to be in violation of
45 this article shall pay any attorney fees and costs,
46 including court costs incurred in the course of such
47 enforcement.

48 (f) Nothing in this article shall be construed to apply
49 to health care records maintained by health care
50 providers governed by the AIDS-related medical testing
51 and records confidentiality act under the provisions of
52 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 and a search fee not to exceed ten
 8 dollars.

CHAPTER 97

(Com. Sub. for H. B. 4480—By Delegates Conley and Faircloth)

[Passed March 7, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-four, relating to public health; legislative findings; definitions; licensure of radon mitigators, radon testers, radon contractors, radon laboratories and exemptions from licensure; special licensure requirements; powers and duties of the director of the division of health, including licensing, setting and collecting fees, accrediting and approving training courses, conducting investigations and collecting information; rule-making authority; complaints of consumers; the confidentiality of records; a special revenue account; reciprocity; access to radon industry records by director; suspension or revocation of licenses and reprimands; orders and hearings; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 34. LICENSURE OF RADON MITIGATORS, TESTERS, CONTRACTORS AND LABORATORIES.

- §16-34-1. Legislative finding.
- §16-34-2. Definitions.
- §16-34-3. License required and exemptions.
- §16-34-4. Special licensure requirements.
- §16-34-5. Powers and duties of the director of the division of health.

- §16-34-6. Rules.
- §16-34-7. Complaints.
- §16-34-8. Licensed tester, mitigator and contractor list.
- §16-34-9. Record keeping and confidentiality.
- §16-34-10. Special revenue account.
- §16-34-11. Reciprocity.
- §16-34-12. Records review.
- §16-34-13. Reprimands; suspension or revocation of license; orders; hearings.
- §16-34-14. Penalties.

§16-34-1. Legislative finding.

1 The Legislature hereby finds and declares that radon
2 is a dangerous toxic substance and harmful to the
3 citizens of this state. Therefore, to help ensure the
4 protection of the citizens of this state, persons who come
5 into contact with radon through remediation or testing
6 should be trained and licensed professionals who know
7 how to deal with radon.

8 It is the intent of the Legislature that this article shall
9 be in addition to all other statutes and rules relating to
10 radon.

§16-34-2. Definitions.

1 (a) "Building" means a publicly or privately owned
2 structure consisting of any combination of foundations,
3 walls, columns, girders, beams, floors and roofs, with or
4 without other elements of appurtenances.

5 (b) "Business entity" means a corporation, partner-
6 ship, association, firm, sole proprietorship or other
7 entity engaged in business.

8 (c) "Director" means the director of the division of
9 health.

10 (d) "Mitigate" means to repair or alter an existing
11 building or design for the purpose, in whole or in part,
12 of reducing the concentration of radon in the indoor
13 atmosphere.

14 (e) "Radon" means the radioactive noble gas radon-
15 222 and the short-lived radionuclides which are pro-
16 ducts of radon-222 decay, including polonium-218, lead-
17 214, bismuth-214 and polonium-214.

18 (f) "Radon laboratory" means a business entity that

19 offers its laboratory services for the purpose of studying
20 air, soil samples or passive radon detection devices to
21 determine the concentration of radon.

22 (g) "Radon mitigation contractor" means a business
23 entity having at least one person licensed as a radon
24 mitigation specialist.

25 (h) "Radon mitigation specialist" means a person
26 holding a license to install or apply methods or materials
27 to reduce airborne radon concentrations in a building or
28 to prevent the entry of radon into the indoor atmosphere.

29 (i) "Radon testers" means a business entity or person
30 licensed to examine a building, air, soil or water for the
31 presence of radon, including taking air, soil or water
32 samples, or the act of diagnosing the cause of radon
33 contamination in a building.

34 (j) "Secretary" means the secretary of the department
35 of health and human resources.

36 (k) "Test" means the act of examining a building, soil
37 or air for the presence of radon, including taking air or
38 soil samples, or the act of diagnosing the cause of radon
39 contamination in a building.

§16-34-3. License required and exemptions.

1 (a) Except as otherwise provided in subsection (b) of
2 this section:

3 (1) No individual may perform radon testing or hold
4 himself or herself out as performing radon testing
5 without a valid radon tester or mitigation specialist
6 license;

7 (2) No individual may provide professional or expert
8 advice on radon testing, radon exposure or the health
9 risks related to radon exposure or hold himself or
10 herself out as providing such advice without a valid
11 radon tester or mitigation specialist license;

12 (3) No individual may provide on-site supervision of
13 radon mitigation or hold himself or herself out as
14 providing such supervision without a valid radon
15 mitigation specialist license;

16 (4) No individual may provide professional or expert
17 advice on radon mitigation or radon entry routes or hold
18 himself or herself out as providing such advice without
19 a valid radon mitigation specialist license;

20 (5) No business or government entity may perform or
21 authorize any individual employed by it to perform
22 radon mitigation or hold itself out as performing radon
23 mitigation without a valid radon mitigation contractor
24 license; and

25 (6) No laboratory shall perform analyses of radon air
26 and soil samples or radon detection devices for the
27 purpose of assessing radon content without a valid radon
28 laboratory license.

29 (b) Subsection (a) of this section does not apply to any
30 of the following:

31 (1) An individual, business entity or government
32 entity performing its own radon tests or mitigation on
33 a building or real property that the individual, business
34 entity or government entity owns or leases;

35 (2) An individual, business entity or government
36 entity conducting research regarding radon testing or
37 mitigation in accordance with section four of this article;
38 or

39 (3) Employees of the department of health and
40 human resources' radiological health program.

§16-34-4. Special licensure requirements.

1 (a) No licensed radon mitigation contractor may do
2 any of the following:

3 (1) Perform radon mitigation without the direct on-
4 site supervision of a licensed radon mitigation specialist;

5 (2) Provide radon testing other than through the
6 employment of a licensed radon tester or mitigation
7 specialist;

8 (3) Provide advice regarding radon testing, radon
9 exposure or the health risks associated with radon
10 exposure other than through the employment of a
11 licensed radon tester or mitigation specialist; or

12 (4) Provide advice regarding radon mitigation or
13 radon entry routes other than through the employment
14 of a licensed radon mitigation specialist.

15 (b) (1) No licensed radon tester, licensed radon
16 mitigation specialist or licensed radon mitigation
17 contractor involved in the testing of a particular
18 building, or in the provision of advice with respect to
19 a particular building, may be involved in the perfor-
20 mance of mitigation on that building unless the contract
21 for mitigation is in writing and clearly and conspicu-
22 ously states both of the following in language approved
23 by the director:

24 (A) That the radon tester, mitigation specialist or
25 mitigation contractor was involved in the testing or
26 provision of advice that led to the mitigation contract;
27 and

28 (B) The advantage of long-term testing and the value
29 of a second opinion as ways to verify testing results and
30 to assure that the proposed mitigation is appropriate,
31 especially when the mitigation is to be performed by the
32 tester, mitigation specialist or mitigation contractor that
33 was involved in the testing or provision of advice that
34 led to the mitigation contract.

35 (2) For purposes of this subsection, a radon tester,
36 mitigation specialist or mitigation contractor involved in
37 testing or providing advice with respect to a particular
38 building will be considered to be "involved in the
39 performance of mitigation on that building" if he or she
40 has any ownership interest in, or has any contractual or
41 employment relationship with, the individual or entity
42 providing the mitigation.

43 (c) No licensed radon tester, licensed radon mitiga-
44 tion specialist or licensed radon mitigation contractor
45 may perform radon testing or mitigation or provide any
46 advice related to radon, radon testing or radon mitiga-
47 tion unless it is performed in accordance with the
48 requirements of this article and the rules adopted under
49 this article.

50 (d) No licensed radon tester, licensed radon mitiga-

51 tion specialist, licensed radon mitigation contractor or
52 licensed radon laboratory may violate any requirement
53 of this article or any rule adopted under it.

**§16-34-5. Powers and duties of the director of the division
of health.**

1 (a) The director shall license radon testers, mitigation
2 specialists, mitigation contractors and radon laborato-
3 ries located within the state. Each applicant for a license
4 shall submit a completed application to the director on
5 a form prescribed and furnished by the director.

6 (b) The director shall issue the appropriate license to
7 each applicant who pays the license fee, meets the
8 licensing criteria and complies with any other licensing
9 and training requirements established by the director.
10 An individual business entity or government entity may
11 hold more than one license issued under this section, but
12 a separate application is required for each license.

13 (c) Notwithstanding subdivision (1), subsection (a),
14 section three of this article, the director shall issue a
15 radon mitigation contractor license on request to the
16 holder of a radon mitigation specialist license if the
17 license holder is the owner or chief stockholder of a
18 business entity for which he or she is the only individual
19 who will work as a radon mitigation specialist. The
20 licensing criteria and any other licensing and training
21 requirements that the individual was required to meet
22 to qualify for the radon mitigation specialist license are
23 hereby considered to satisfy any and all criteria and
24 requirements for a radon mitigation contractor license.
25 A license issued under this section expires at the same
26 time as the individual's radon mitigation specialist
27 license.

28 (d) A license issued under this section expires
29 annually and may be renewed by the director in
30 accordance with criteria and procedures established by
31 the director under section six of this article and upon
32 payment of the prescribed license renewal fee.

33 (e) The director may:

34 (1) Refuse to issue a license to an individual, business

35 entity or government entity that does not meet the
36 requirements of this article or the rules adopted under
37 this article or that has violated the provisions of this
38 article or of any rules promulgated under this article;
39 or

40 (2) Suspend, revoke or refuse to renew the license of
41 an individual, business entity or government entity that
42 is or has been in violation of the requirements of this
43 article or the rules adopted under this article.

44 (f) The director shall approve and assess fees for all
45 of the following:

46 (1) Licenses for radon testers, mitigation specialists,
47 mitigation contractors and radon laboratories;

48 (2) Accredited training courses for radon testers and
49 mitigation specialists; and

50 (3) Training courses for employees of mitigation
51 contractors.

52 (g) Each applicant for approval shall submit a
53 completed application to the director on a form the
54 director shall prescribe and furnish.

55 (h) In accordance with rules adopted under section
56 six of this article, the director shall issue the approp-
57 riate approval to each applicant that pays the approval
58 fee and meets the criteria for approval.

59 (i) The director may refuse to issue an approval and
60 may revoke or suspend an approval issued under this
61 section if the operator of the course or laboratory fails
62 to meet the established criteria.

63 (j) The director shall do all of the following:

64 (1) Administer the radon licensing program estab-
65 lished by this article and enforce the requirements of
66 this article and the rules adopted under this article;

67 (2) Examine the records of radon testers, mitigation
68 specialists, mitigation contractors and radon laborato-
69 ries and training courses approved under section seven
70 of this article as he or she considers necessary to
71 determine whether they are in compliance with the

72 requirements of this article and the rules adopted under
73 this article;

74 (3) Coordinate the radon licensing program with any
75 radon programs in schools;

76 (4) Collect and disseminate information relating to
77 radon in this state; and

78 (5) Conduct research on indoor radon contamination,
79 which may include a statewide survey on radon
80 contamination.

81 (k) The director may do any of the following:

82 (1) Conduct inspections as he considers necessary to
83 determine whether the requirements of this article and
84 the rules adopted under this article have been met;

85 (2) Conduct training programs and establish and
86 collect fees to cover the cost of conducting them;

87 (3) Advise, consult, cooperate with and, with the
88 consent of the secretary, enter into contracts or grant
89 agreements with any individual business entity, govern-
90 ment entity, interstate agency or the federal government
91 as he or she considers appropriate to fulfill the require-
92 ments of this article and the rules adopted under this
93 article; and

94 (4) Collect the information required to be reported to
95 him or her under any rules adopted under section six
96 of this article.

97 (l) Nothing in this article shall be construed to allow
98 the director to:

99 (1) Require the performance of a test for radon;

100 (2) Regulate construction practices; or

101 (3) Regulate the retail sales of radon test kits for use
102 by individuals to do their own radon testing in buildings
103 owned by them.

§16-34-6. Rules.

1 (a) To protect the health of individuals inhabiting,
2 occupying or frequenting buildings, the department of

3 health and human resources shall adopt rules to
4 implement the requirements of this article. All rules
5 adopted under this section shall be adopted in accor-
6 dance with article three, chapter twenty-nine-a of this
7 code.

8 (b) The secretary shall adopt rules:

9 (1) Establishing criteria and procedures to be fol-
10 lowed in issuing and renewing licenses to radon testers,
11 mitigation specialists or mitigation contractors, as well
12 as the fees for the licenses. The rules may require that
13 all applicants for licensure as a radon tester or
14 mitigation specialist pass an examination. If an exam-
15 ination is required, the rules may require applicants to
16 pass an examination conducted by the division of health
17 or by a training center accredited by the director;

18 (2) Establishing criteria and procedures to be fol-
19 lowed in approving and accrediting training courses
20 under section five of this article. The rules shall require
21 the participants in training courses to pass an exami-
22 nation conducted by the operator of the course;

23 (3) Establishing criteria and procedures in approving
24 and licensing radon laboratories;

25 (4) Establishing standards to be followed by licensed
26 radon testers, mitigation specialists, mitigation contrac-
27 tors and radon laboratories for the prevention of hazards
28 to the public health, including standards for worker
29 protection, record keeping and the training of employees
30 or radon testers and mitigation contractors;

31 (5) Establishing procedures to be followed by an
32 individual business entity or government entity licensed
33 by another state to practice as a radon tester, mitigation
34 specialist, mitigation contractor or radon laboratory in
35 providing notice to the director prior to commencing
36 practice in this state pursuant to section three of this
37 article; and

38 (6) That require licensed radon testers and mitigation
39 specialists to report to the director, by street address,
40 radon test results. The rules shall require the reporting
41 of the identity of the radon laboratory involved,

42 screening measurements, follow-up measurements,
43 postmitigation measurements and, if it is known that
44 mitigation was performed, the methods of mitigation
45 that were used. Any information required to be reported
46 to the director under the rules is not a public record and
47 shall not be released except in aggregate statistical
48 form.

§16-34-7. Complaints.

1 (a) Any individual, business entity or government
2 entity may file a complaint with the director concerning
3 any radon tester, mitigation specialist, mitigation
4 contractor or a radon laboratory or a training course
5 approved under section six of this article. The complain-
6 ant's name shall be confidential and shall not be released
7 without his or her written consent. The director shall
8 investigate complaints and take action under this
9 article.

10 (b) If a radon tester, mitigation specialist, mitigation
11 contractor or radon laboratory violates any rules
12 promulgated pursuant to this article and as a result of
13 the violation harms or injures in any manner an
14 individual or business entity, that radon tester, mitiga-
15 tion specialist, mitigation contractor or radon laboratory
16 shall be considered to have committed an unfair act or
17 practice within the meaning of section one hundred four,
18 article six, chapter forty-six-a of this code.

§16-34-8. Licensed tester, mitigator and contractor list.

1 The director shall maintain a list of all licensed radon
2 testers, mitigation specialists, mitigation contractors
3 and radon laboratories located in the state. On request,
4 the director shall provide a copy of all or part of the list
5 to any individual, business entity or government entity.
6 The director shall not impose a charge for providing the
7 copy that exceeds the actual and necessary expense of
8 copying it.

§16-34-9. Record keeping and confidentiality.

1 (a) The director, any employee of the department of
2 health and human resources, or any individual, business
3 entity or government entity with which the director

4 enters into an agreement under subdivision (3), subsection
5 tion (k), section five of this article, shall not release
6 information collected pursuant to this article concerning
7 a specific building used as a private residence or the
8 real property upon which it is located to anyone other
9 than the owner or occupant of the building or real
10 property without his or her consent: *Provided*, That the
11 director may release information if he or she determines
12 that the release is necessary for use in conducting
13 legitimate scientific studies or the information is
14 released in summary statistical or other form that does
15 not reasonably tend to disclose the address of the
16 building or real property or the identity of the owner
17 or occupant.

18 (b) The division of health shall maintain information
19 pursuant to this article and the rules adopted under this
20 article for at least three years. The division may destroy
21 any information that it has maintained for three years.

§16-34-10. Special revenue account.

1 The funds collected from the fees applicable in this
2 article shall be deposited in a special revenue account
3 in the state treasury to be used by the secretary and
4 dedicated to the purposes of this article which include,
5 but are not limited to, licensing, training, enforcement
6 and program development for radon.

§16-34-11. Reciprocity.

1 The director may set standards for accepting licenses
2 issued by other states. The director may grant licenses
3 to individuals from other states if that other state has
4 licensing requirements which are as stringent as the
5 licensing requirements in this state.

§16-34-12. Records review.

1 If the director requests to examine records, no
2 licensed radon tester, mitigation specialist, mitigation
3 contractor or operator of a radon laboratory or a
4 training course approved under section six of this article
5 shall fail to make available to the director any records
6 pertinent to the activities regulated by this article and
7 rules adopted under it.

§16-34-13. Reprimands; suspension or revocation of license; orders; hearings.

1 (a) The director shall suspend or revoke the license
2 of or reprimand a radon tester, mitigator, contractor or
3 laboratory if the licensee:

4 (1) Fraudulently or deceptively obtains or attempts to
5 obtain a license;

6 (2) Fails at any time to meet the qualifications for a
7 license or to comply with the requirements of this article
8 or any applicable rules adopted by the secretary;

9 (3) Fails to meet applicable federal or state standards
10 for radon testing or radon mitigation; or

11 (4) Employs or permits an individual without a radon
12 tester's license or a radon mitigator's license to supervise
13 work on a radon project.

14 (b) The director shall investigate all alleged violations
15 reported to the division of health. Upon the finding of
16 a violation in connection with any project involving
17 radon testing or mitigation, the director shall issue a
18 cease and desist order directing that all work be halted
19 immediately. Where practicable, the director shall
20 deliver a copy of the order by certified mail, return
21 receipt requested, to the radon tester and radon
22 mitigator.

23 (c) Hearings regarding violations of this article shall
24 be conducted in accordance with the administrative
25 procedures act of chapter twenty-nine-a of this code.

§16-34-14. Penalties.

1 Any person violating any of the provisions of this
2 article, or any of the rules or orders issued pursuant to
3 this article, is guilty of a misdemeanor, and, upon
4 conviction thereof, shall be fined not more than two
5 hundred fifty dollars for each violation.

CHAPTER 98

(Com. Sub. for S. B. 389—By Senator Lucht)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, six, nine, eleven, twelve-b, thirteen and thirteen-b, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to horse and dog racing; defining the term pari-mutuel clerk; powers and authority of racing commission; requiring the racing commission to mediate certain disputes involving pari-mutuel clerks; relating to commissions from pari-mutuel pools; removing certain provisions relating to commissions to be paid for certain breeder's awards and other expenses; deleting obsolete revenue language; reorganizing special fund and transferring excess to general revenue; requiring audits; relating to the thoroughbred development fund; limiting the distribution of awards and purses; prioritizing the distribution of funds; limiting certain bonuses for certain breeders and raisers; specifying the time in which revenues must be remitted; relating to televised racing days for horse and dog racing; defining new terms; removing restrictions on telecasts at certain tracks; increasing the threshold for pari-mutuel pools for which a tax may be imposed; restructuring the disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; requiring publication of notice; relating to funding stake races; restricting the use of the money for certain purposes; requiring quarterly reports and separate accounting; and requiring and authorizing the promulgation of separate rules on pari-mutuel racing.

Be it enacted by the Legislature of West Virginia:

That sections three, six, nine, eleven, twelve-b, thirteen and thirteen-b, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 23. HORSE AND DOG RACING.

PART II. DEFINITIONS: WEST VIRGINIA RACING
COMMISSION—ORGANIZATION AND OPERATION.

- §19-23-3. Definitions.
- §19-23-6. Powers and authority of racing commission.
- §19-23-9. Pari-mutuel system of wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.
- §19-23-11. Revenues from horse racing and dog racing to be paid into a special account to fund commission expenses and salaries for professional educators.
- §19-23-12b. Televised racing days; merging of pari-mutuel wagering pools.
- §19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; stake races for dog tracks.
- §19-23-13b. West Virginia thoroughbred development fund; distribution; restricted races; nonrestricted purse supplements.

§19-23-3. Definitions.

- 1 Unless the context in which used clearly requires a
2 different meaning, as used in this article:
- 3 (1) "Horse racing" means any type of horse racing,
4 including, but not limited to, thoroughbred racing and
5 harness racing;
- 6 (2) "Thoroughbred racing" means flat or running type
7 horse racing in which each horse participating therein
8 is a thoroughbred and is mounted by a jockey;
- 9 (3) "Harness racing" means horse racing in which the
10 horses participating therein are harnessed to a sulky,
11 carriage or other vehicle and shall not include any form
12 of horse racing in which the horses are mounted by
13 jockeys;
- 14 (4) "Horse race meeting" means the whole period of
15 time for which a license is required by the provisions
16 of section one of this article;
- 17 (5) "Dog racing" means any type of dog racing,
18 including, but not limited to, greyhound racing;
- 19 (6) "Purse" means any purse, stake or award for
20 which a horse or dog race is run;
- 21 (7) "Racing association" or "person" means any

22 individual, partnership, firm, association, corporation or
23 other entity or organization of whatever character or
24 description;

25 (8) "Applicant" means any racing association making
26 application for a license under the provisions of this
27 article or any person making application for a permit
28 under the provisions of this article, or any person
29 making application for a construction permit under the
30 provisions of this article, as the case may be;

31 (9) "License" means the license required by the
32 provisions of section one of this article;

33 (10) "Permit" means the permit required by the
34 provisions of section two of this article;

35 (11) "Construction permit" means the construction
36 permit required by the provisions of section eighteen of
37 this article;

38 (12) "Licensee" means any racing association holding
39 a license required by the provisions of section one of this
40 article and issued under the provisions of this article;

41 (13) "Permit holder" means any person holding a
42 permit required by the provisions of section two of this
43 article and issued under the provisions of this article;

44 (14) "Construction permit holder" means any person
45 holding a construction permit required by the provisions
46 of section eighteen of this article and issued under the
47 provisions of this article;

48 (15) "Hold or conduct" includes "assist, aid or abet in
49 holding or conducting";

50 (16) "Racing commission" means the West Virginia
51 racing commission;

52 (17) "Stewards" means the steward or stewards
53 representing the racing commission, the steward or
54 stewards representing a licensee and any other steward
55 or stewards, whose duty it is to supervise any horse or
56 dog race meeting, all as may be provided by reasonable
57 rules and regulations of the racing commission, and the
58 reasonable rules and regulations shall specify the

59 number of stewards to be appointed, the method and
60 manner of their appointment and their powers, author-
61 ity and duties;

62 (18) "Pari-mutuel" means a mutuel or collective pool
63 that can be divided among those who have contributed
64 their wagers to one central agency, the odds to be
65 reckoned in accordance to the collective amounts
66 wagered upon each contestant running in a horse or dog
67 race upon which the pool is made, but the total to be
68 divided among the first three contestants on the basis
69 of the number of wagers on these;

70 (19) "Pari-mutuel clerk" means any employee of a
71 licensed racing association who is responsible for the
72 collection of wagers, the distribution of moneys for
73 winning pari-mutuel tickets, verification of the validity
74 of pari-mutuel tickets and accounting for pari-mutuel
75 funds;

76 (20) "Pool" means a combination of interests in a joint
77 wagering enterprise or a stake in such enterprise;

78 (21) "Legitimate breakage" is the percentage left over
79 in the division of a pool;

80 (22) "To the dime" means that wagers shall be figured
81 and paid to the dime;

82 (23) "Code" means the code of West Virginia, one
83 thousand nine hundred thirty-one, as heretofore and
84 hereinafter amended;

85 (24) "Accredited thoroughbred horse" means a
86 thoroughbred horse that is either: (a) Foaled in West
87 Virginia; or (b) sired by an accredited West Virginia
88 sire; or (c) as a yearling, finished twelve consecutive
89 months of verifiable residence in the state, except for
90 thirty days grace for the horse to be shipped to and from
91 horse sales where the horse is officially entered in the
92 sales catalogue of a recognized thoroughbred sales
93 company. No thoroughbred horse qualifies under
94 paragraph (c) of this subdivision after the first day of
95 July, one thousand nine hundred ninety;

96 (25) "Accredited West Virginia sire" is a sire that is

97 permanently domiciled in West Virginia, stands a full
 98 season in West Virginia and is registered with West
 99 Virginia thoroughbred breeders association;

100 (26) "Breeder of an accredited West Virginia horse"
 101 is the owner of the foal at the time it was born in West
 102 Virginia;

103 (27) "Raiser of an accredited West Virginia horse" is
 104 the owner of the yearling at the time it finished twelve
 105 consecutive months of verifiable residence in the state.
 106 During the period, the raiser will be granted one month
 107 of grace for his or her horse to be shipped to and from
 108 thoroughbred sales where the horse is officially entered
 109 in the sales catalogue of a recognized thoroughbred sales
 110 company. Prior to the horse being shipped out of the
 111 state for sales, the raiser must notify the racing
 112 commission of his or her intentions;

113 (28) The "owner of an accredited West Virginia sire"
 114 is the owner of record at the time the offspring is
 115 conceived;

116 (29) The "owner of an accredited West Virginia horse"
 117 means the owner at the time the horse earned desig-
 118 nated purses to qualify for restricted purse supplements
 119 provided for in section thirteen-b of this article; and

120 (30) "Fund" means the West Virginia thoroughbred
 121 development fund established in section thirteen-b of
 122 this article.

PART IV. POWERS AND AUTHORITY OF RACING COMMISSION.

§19-23-6. Powers and authority of racing commission.

1 The racing commission has full jurisdiction over and
 2 shall supervise all horse race meetings, all dog race
 3 meetings and all persons involved in the holding or
 4 conducting of horse or dog race meetings and, in this
 5 regard, it has plenary power and authority:

6 (1) To investigate applicants and determine the
 7 eligibility of the 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: *Provided*, That in
23 accordance with article three, chapter twenty-nine-a,
24 the racing commission shall promulgate separate rules
25 pertaining to the kinds of legal combination wagers
26 which may be placed in connection with the pari-mutuel
27 system of wagering authorized by this article;

28 (4) To register colors and assumed names and to fix,
29 from time to time, the annual fee to be paid to the racing
30 commission for any such registration;

31 (5) To fix and regulate the minimum purse to be
32 offered during any horse or dog race meeting;

33 (6) To fix a minimum and a maximum number of
34 horse races or dog races to be held on any respective
35 racing day;

36 (7) To enter the office, horse racetrack, dog racetrack,
37 kennel, facilities and other places of business of any
38 licensee to determine whether the provisions of this
39 article and its reasonable rules and regulations are
40 being complied with, and for this purpose, the racing
41 commission, its racing secretary, representatives and
42 employees may visit, investigate and have free access to
43 any such office, horse racetrack, dog racetrack, kennel,
44 facilities and other places of business;

45 (8) To investigate alleged violations of the provisions
46 of this article, its reasonable rules and regulations,
47 orders and final decisions and to take appropriate

48 disciplinary action against any licensee or permit holder
49 or construction permit holder for the violation thereof
50 or institute appropriate legal action for the enforcement
51 thereof or take such disciplinary action and institute
52 such legal action;

53 (9) By reasonable rules and regulations, to authorize
54 stewards, starters and other racing officials to impose
55 reasonable fines or other sanctions upon any person
56 connected with or involved in any horse or dog racing
57 or any horse or dog race meeting; and to authorize
58 stewards to rule off the grounds of any horse or dog
59 racetrack any tout, bookmaker or other undesirable
60 individual determined inimical to the best interests of
61 horse and dog racing or the pari-mutuel system of
62 wagering in connection therewith;

63 (10) To require at any time the removal of any racing
64 official or racing employee of any licensee, for the
65 violation of any provision of this article, any reasonable
66 rule and regulation of the racing commission or for any
67 fraudulent practice;

68 (11) To acquire, establish, maintain and operate, or to
69 provide by contract for the maintenance and operation
70 of, a testing laboratory and related facilities, for the
71 purpose of conducting saliva, urine and other tests on
72 the horse or dog or horses or dogs run or to be run in
73 any horse or dog race meeting, and to purchase all
74 equipment and supplies considered necessary or desir-
75 able in connection with the acquisition, establishment,
76 maintenance and operation of any testing laboratory and
77 related facilities and all such tests;

78 (12) To hold up, in any disputed horse or dog race,
79 the payment of any purse, pending a final determination
80 of the results thereof;

81 (13) To require each licensee to file an annual balance
82 sheet and profit and loss statement pertaining to the
83 licensee's horse or dog racing activities in this state,
84 together with a list of each licensee's stockholders or
85 other persons having any beneficial interest in the horse
86 or dog racing activities of the licensee;

87 (14) To issue subpoenas for the attendance of wit-
88 nesses and subpoenas duces tecum for the production of
89 any books, records and other pertinent documents, and
90 to administer oaths and affirmations to such witnesses,
91 whenever, in the judgment of the racing commission, it
92 is necessary to do so for the effective discharge of its
93 duties under the provisions of this article;

94 (15) To keep accurate and complete records of its
95 proceedings and to certify the same as may be
96 appropriate;

97 (16) To take any other action that may be reasonable
98 or appropriate to effectuate the provisions of this article
99 and its reasonable rules and regulations;

100 (17) To provide breeders' awards, purse supplements
101 and moneys for capital improvements at racetracks in
102 compliance with section thirteen-b of this article; and

103 (18) To mediate on site, upon request of a party, all
104 disputes existing between the racetrack licensees
105 located in this state and representatives of a majority
106 of the horse owners and trainers licensed at the track
107 which threaten to disrupt any scheduled racing event or
108 events. The racing commission shall, upon the request
109 of a party, mediate on site, all disputes existing between
110 racetrack licensees and representatives of pari-mutuel
111 clerks which threaten to disrupt any scheduled racing
112 event or events. When a request for mediation is made,
113 the commission shall designate from among its members
114 one person to act as mediator in each dispute that arises.
115 Each opposing party involved in any dispute shall
116 negotiate in good faith with the goal of reaching a fair
117 and mutual resolution. The mediator may issue recom-
118 mendations designed to assist each side toward reaching
119 a fair compromise: *Provided*, That no owner or operator
120 or any horse owner or trainer or any pari-mutuel clerk
121 licensed at the track may be required to abide by any
122 recommendation made by any mediator acting pursuant
123 to this subsection.

124 The racing commission shall not interfere in the
125 internal business or internal affairs of any licensee.

PART VI. PARI-MUTUEL SYSTEM OF
WAGERING AUTHORIZED;
COMMISSIONS DEDUCTED FROM
PARI-MUTUEL POOLS.

**§19-23-9. Pari-mutuel system of wagering authorized;
licensee authorized to deduct commissions
from pari-mutuel pools; retention of break-
age; auditing; minors.**

1 (a) The pari-mutuel system of wagering upon the
2 results of any horse or dog race at any horse or dog race
3 meeting conducted or held by any licensee is hereby
4 authorized, if and only if such pari-mutuel wagering is
5 conducted by the licensee within the confines of the
6 licensee's horse racetrack or dog racetrack, and the
7 provisions of section one, article ten, chapter sixty-one
8 of this code, relating to gaming, shall not apply to the
9 pari-mutuel system of wagering in manner and form as
10 provided for in this article at any horse or dog race
11 meeting within this state where horse or dog racing
12 shall be permitted for any purse by any licensee. A
13 licensee shall permit or conduct only the pari-mutuel
14 system of wagering within the confines of the licensee's
15 racetrack at which any horse or dog race meeting is
16 conducted or held.

17 (b) A licensee is hereby expressly authorized to deduct
18 a commission from the pari-mutuel pools, as follows:

19 (1) The commission deducted by any licensee from the
20 pari-mutuel pools on thoroughbred horse racing, except
21 from thoroughbred horse racing pari-mutuel pools
22 involving what is known as multiple betting in which
23 the winning pari-mutuel ticket or tickets are deter-
24 mined by a combination of two or more winning horses,
25 shall not exceed seventeen and one-fourth percent of the
26 total of the pari-mutuel pools for the day. Out of the
27 commission, as is mentioned in this subdivision, the
28 licensee: (i) Shall pay the pari-mutuel pools tax provided
29 for in subsection (b), section ten of this article; (ii) shall
30 make a deposit into a special fund to be established by
31 the licensee and to be used for the payment of regular
32 purses offered for thoroughbred racing by the licensee,

33 which deposits out of pari-mutuel pools for each day
34 during the months of January, February, March,
35 October, November and December shall be seven and
36 three hundred seventy-five one-thousandths percent of
37 the pari-mutuel pools and which, out of pari-mutuel
38 pools for each day during all other months, shall be six
39 and eight hundred seventy-five one-thousandths percent
40 of the pari-mutuel pools, which shall take effect
41 beginning fiscal year one thousand nine hundred ninety;
42 (iii) shall, after allowance for the exclusion given by
43 subsection (b), section ten of this article, make a deposit
44 into a special fund to be established by the racing
45 commission and to be used for the payment of breeders,
46 awards and capital improvements as authorized by
47 section thirteen-b of this article, which deposits out of
48 pari-mutuel pools shall from the effective date of this
49 section and for fiscal year one thousand nine hundred
50 eighty-five, be four-tenths percent; for fiscal year one
51 thousand nine hundred eighty-six, be seven-tenths
52 percent; for fiscal year one thousand nine hundred
53 eighty-seven, be one percent; for fiscal year one
54 thousand nine hundred eighty-eight, be one and one-half
55 percent; and for fiscal year one thousand nine hundred
56 eighty-nine, and each year thereafter, be two percent of
57 the pools; and (iv) shall pay one tenth of one percent of
58 the pari-mutuel pools into the general fund of the county
59 commission of the county in which the racetrack is
60 located, except if within a municipality, then to the
61 municipal general fund. The remainder of the commis-
62 sion shall be retained by the licensee.

63 The commission deducted by any licensee from the
64 pari-mutuel pools on thoroughbred horse racing involv-
65 ing what is known as multiple betting in which the
66 winning pari-mutuel ticket or tickets are determined by
67 a combination of two winning horses shall not exceed
68 nineteen percent and by a combination of three or more
69 winning horses shall not exceed twenty-five percent of
70 the total of such pari-mutuel pools for the day. Out of
71 the commission, as is mentioned in this paragraph, the
72 licensee: (i) Shall pay the pari-mutuel pools tax provided
73 for in subsection (b), section ten of this article; (ii) shall
74 make a deposit into a special fund to be established by

75 the licensee and to be used for the payment of regular
76 purses offered for thoroughbred racing by the licensee,
77 which deposits out of pari-mutuel pools for each day
78 during the months of January, February, March,
79 October, November and December for pools involving a
80 combination of two winning horses shall be eight and
81 twenty-five one-hundredths percent and out of pari-
82 mutuel pools for each day during all other months shall
83 be seven and seventy-five one-hundredths percent of the
84 pari-mutuel pools; and involving a combination of three
85 or more winning horses for the months of January,
86 February, March, October, November and December
87 the deposits out of the fund shall be eleven and twenty-
88 five one-hundredths percent of the pari-mutuel pools;
89 and which, out of pari-mutuel pools for each day during
90 all other months, shall be ten and seventy-five one-
91 hundredths percent of the pari-mutuel pools; (iii) shall,
92 after allowance for the exclusion given by subsection (b),
93 section ten of this article, make a deposit into a special
94 fund to be established by the racing commission and to
95 be used for the payment of breeders' awards and capital
96 improvements as authorized by section thirteen-b of this
97 article, which deposits out of pari-mutuel pools shall
98 from the effective date of this section and for fiscal year
99 one thousand nine hundred eighty-five, be four-tenths
100 percent; for fiscal year one thousand nine hundred
101 eighty-six, be seven-tenths percent; for fiscal year one
102 thousand nine hundred eighty-seven, be one percent; for
103 fiscal year one thousand nine hundred eighty-eight, be
104 one and one-half percent; and for fiscal year one
105 thousand nine hundred eighty-nine, and each year
106 thereafter, be two percent of the pools; and (iv) shall pay
107 one tenth of one percent of the pari-mutuel pools into
108 the general fund of the county commission of the county
109 in which the racetrack is located, except if within a
110 municipality, then to the municipal general fund. The
111 remainder of the commission shall be retained by the
112 licensee.

113 The commission deducted by the licensee under this
114 subdivision may be reduced only by mutual agreement
115 between the licensee and a majority of the trainers and
116 horse owners licensed by subsection (a), section two of

117 this article or their designated representative. The
118 reduction in licensee commissions may be for a partic-
119 ular race, racing day or days or for a horse race
120 meeting. Fifty percent of the reduction shall be retained
121 by the licensee from the amounts required to be paid
122 into the special fund established by the licensee under
123 the provisions of this subdivision. The racing commis-
124 sion shall promulgate any reasonable rules and regula-
125 tions that are necessary to implement the foregoing
126 provisions.

127 (2) The commission deducted by any licensee from the
128 pari-mutuel pools on harness racing shall not exceed
129 seventeen and one-half percent of the total of the pari-
130 mutuel pools for the day. Out of the commission the
131 licensee shall pay the pari-mutuel pools tax provided for
132 in subsection (c), section ten of this article, and shall pay
133 one tenth of one percent into the general fund of the
134 county commission of the county in which the racetrack
135 is located, except if within a municipality, then to the
136 municipal general fund. The remainder of the commis-
137 sion shall be retained by the licensee.

138 (3) The commission deducted by any licensee from the
139 pari-mutuel pools on dog racing, except from dog racing
140 pari-mutuel pools involving what is known as multiple
141 betting in which the winning pari-mutuel ticket or
142 tickets are determined by a combination of two or more
143 winning dogs, shall not exceed sixteen and thirty one-
144 hundredths percent of the total of all pari-mutuel pools
145 for the day. The commission deducted by any licensee
146 from the pari-mutuel pools on dog racing involving what
147 is known as multiple betting in which the winning pari-
148 mutuel ticket or tickets are determined by a combina-
149 tion of two winning dogs shall not exceed nineteen
150 percent, by a combination of three winning dogs shall
151 not exceed twenty percent, and by a combination of four
152 or more winning dogs shall not exceed twenty-one
153 percent of the total of such pari-mutuel pools for the day.
154 The foregoing commissions are in effect for the fiscal
155 years one thousand nine hundred ninety and one
156 thousand nine hundred ninety-one. Thereafter, the
157 commission shall be at the percentages in effect prior

158 to the effective date of this article unless the Legislature,
159 after review, determines otherwise. Out of the commis-
160 sions, the licensee shall pay the pari-mutuel pools tax
161 provided for in subsection (d), section ten of this article,
162 and one tenth of one percent of such pari-mutuel pools
163 into the general fund of the county commission of the
164 county in which the racetrack is located. In addition, out
165 of the commissions, if the racetrack is located within a
166 municipality, then the licensee shall also pay three
167 tenths of one percent of the pari-mutuel pools into the
168 general fund of the municipality; or, if the racetrack is
169 located outside of a municipality, then the licensee shall
170 also pay three tenths of one percent of the pari-mutuel
171 pools into the state road fund for use by the division of
172 highways in accordance with the provisions of this
173 subdivision. The remainder of the commission shall be
174 retained by the licensee.

175 For the purposes of this section, "municipality" means
176 and includes any Class I, Class II and Class III city and
177 any Class IV town or village incorporated as a munic-
178 ipal corporation under the laws of this state prior to the
179 first day of January, one thousand nine hundred eighty-
180 seven.

181 Each dog racing licensee, when required by the
182 provisions of this subdivision to pay a percentage of its
183 commissions to the state road fund for use by the
184 division of highways, shall transmit the required funds,
185 in such manner and at such times as the racing
186 commission shall by procedural rule direct, to the state
187 treasurer for deposit in the state treasury to the credit
188 of the division of highways state road fund. All funds
189 collected and received in the state road fund pursuant
190 to the provisions of this subdivision shall be used by the
191 division of highways in accordance with the provisions
192 of article seventeen-a, chapter seventeen of this code for
193 the acquisition of right-of-way for, the construction of,
194 the reconstruction of and the improvement or repair of
195 any interstate or other highway, secondary road, bridge
196 and toll road in the state. If on the first day of July, one
197 thousand nine hundred eighty-nine, any area encom-
198 passing a dog racetrack has incorporated as a Class I,

199 Class II or Class III city or as a Class IV town or village,
200 whereas such city, town or village was not incorporated
201 as such on the first day of January, one thousand nine
202 hundred eighty-seven, then on and after the first day of
203 July, one thousand nine hundred eighty-nine, any
204 balances in the state road fund existing as a result of
205 payments made under the provisions of this subdivision
206 may be used by the state road fund for any purpose for
207 which other moneys in the fund may lawfully be used,
208 and in lieu of further payments to the state road fund,
209 the licensee of a racetrack which is located in the
210 municipality shall thereafter pay three tenths of one
211 percent of the pari-mutuel pools into the general fund
212 of the municipality. If no incorporation occurs before the
213 first day of July, one thousand nine hundred eighty-nine,
214 then payments to the state road fund shall thereafter
215 continue as provided for under the provisions of this
216 subdivision.

217 A dog racing licensee, before deducting the commis-
218 sions authorized by this subdivision, shall give written
219 notification to the racing commission not less than thirty
220 days prior to any change in the percentage rates for the
221 commissions. The racing commission shall prescribe
222 blank forms for filing the notification. The notification
223 shall disclose the following: (A) The revised commissions
224 to be deducted from the pari-mutuel pools each day on
225 win, place and show betting and on different forms of
226 multiple bettings; (B) the dates to be included in the
227 revised betting; (C) such other information as may be
228 required by the racing commission.

229 The licensee shall establish a special fund to be used
230 only for capital improvements or long-term debt
231 amortization or both: *Provided*, That any licensee,
232 heretofore licensed for a period of eight years prior to
233 the effective date of the amendment made to this section
234 during the regular session of the Legislature held in the
235 year one thousand nine hundred eighty-seven, shall
236 establish the special fund to be used only for capital
237 improvements or physical plant maintenance, or both,
238 at the licensee's licensed facility or at the licensee's
239 commonly owned racing facility located within this

240 state. Deposits made into the funds shall be in an
241 amount equal to twenty-five percent of the increased
242 rate total over and above the applicable rate in effect
243 as of the first day of January, one thousand nine
244 hundred eighty-seven, of the pari-mutuel pools for the
245 day. Any amount deposited into the funds must be
246 expended or liability therefor incurred within a period
247 of two years from the date of deposit. Any funds not
248 expended shall be transferred immediately into the state
249 general fund after expiration of the two-year period.

250 The licensee shall make a deposit into a special fund
251 established by the licensee and used for payment of
252 regular purses offered for dog racing, which deposits
253 out of the licensee's commissions for each day shall be
254 three and seventy-five one-hundredths percent of the
255 pari-mutuel pools.

256 The licensee shall further establish a special fund to
257 be used exclusively for marketing and promotion
258 programs; the funds shall be in an amount equal to five
259 percent over and above the applicable rates in effect as
260 of the first day of January, one thousand nine hundred
261 eighty-seven, of the total pari-mutuel pools for the day.

262 The racing commission shall prepare and transmit
263 annually to the governor and the Legislature a report
264 of the activities of the racing commission under this
265 subdivision. The report shall include a statement of: The
266 amount of commissions retained by licensees; the
267 amount of taxes paid to the state; the amounts paid to
268 municipalities, counties and the division of highways
269 dog racing fund; the amounts deposited by licensees into
270 special funds for capital improvements or long-term
271 debt amortization, and a certified statement of the
272 financial condition of any licensee depositing into the
273 fund; the amounts paid by licensees into special funds
274 and used for regular purses offered for dog racing; the
275 amounts paid by licensees into special funds and used
276 for marketing and promotion programs; and such other
277 information as the racing commission may consider
278 appropriate for review.

279 The racing commission shall report to the governor,

280 president of the Senate, speaker of the House and the
281 Legislature on or before the thirty-first day of De-
282 cember, one thousand nine hundred ninety-three, on the
283 effects of the amendments to this article by the acts of
284 the Legislature, regular session, one thousand nine
285 hundred eighty-seven, on dog racing licensees and pari-
286 mutuel taxation for use by the Legislature in review of
287 the amendments.

288 (c) In addition to any commission, a licensee of horse
289 race or dog race meetings shall also be entitled to retain
290 the legitimate breakage, which shall be made and
291 calculated to the dime, and from the breakage, the
292 licensee of a horse race meeting (excluding dog race
293 meetings), shall deposit daily fifty percent of the total
294 of the breakage retained by the licensee into the special
295 fund created pursuant to the provisions of subdivision
296 (1), subsection (b) of this section for the payment of
297 regular purses.

298 (d) The director of audit, and any other auditors
299 employed by the racing commission who are also
300 certified public accountants or experienced public
301 accountants, shall have free access to the space or
302 enclosure where the pari-mutuel system of wagering is
303 conducted or calculated at any horse or dog race
304 meeting for the purpose of ascertaining whether or not
305 the licensee is deducting and retaining only a commis-
306 sion as provided in this section and is otherwise
307 complying with the provisions of this section. They shall
308 also, for the same purposes only, have full and free
309 access to all records and papers pertaining to the pari-
310 mutuel system of wagering, and shall report to the
311 racing commission in writing, under oath, whether or
312 not the licensee has deducted and retained any commis-
313 sion in excess of that permitted under the provisions of
314 this section or has otherwise failed to comply with the
315 provisions of this section.

316 (e) No licensee shall permit or allow any individual
317 under the age of eighteen years to wager at any horse
318 or dog racetrack, knowing or having reason to believe
319 that the individual is under the age of eighteen years.

320 (f) Notwithstanding the foregoing provisions of
321 subdivision (1), subsection (b) of this section, to the
322 contrary, a thoroughbred licensee qualifying for and
323 paying the alternate reduced tax on pari-mutuel pools
324 provided in section ten of this article shall distribute the
325 commission authorized to be deducted by subdivision (1),
326 subsection (b) of this section as follows: (i) The licensee
327 shall pay the alternate reduced tax provided in section
328 ten of this article; (ii) the licensee shall pay one tenth
329 of one percent of the pari-mutuel pools into the general
330 fund of the county commission of the county in which
331 the racetrack is located, except if within a municipality,
332 then to the municipal general fund; (iii) the licensee
333 shall pay one half of the remainder of the commission
334 into the special fund established by the licensee and to
335 be used for the payment of regular purses offered for
336 thoroughbred racing by the licensee; and (iv) the
337 licensee shall retain the amount remaining after making
338 the payments required in this subsection.

339 (g) Each kennel which provides or races dogs owned
340 or leased by others shall furnish to the commission a
341 surety bond in an amount to be determined by the
342 commission to secure the payment to the owners or
343 lessees of the dogs the portion of any purse owed to the
344 owner or lessee.

PART VII. TAXATION OF HORSE AND DOG RACING AND
PARI-MUTUEL WAGERING; DISPOSITION OF REVENUES.

**§19-23-11. Revenues from horse racing and dog racing
to be paid into a special account to fund
commission expenses.**

1 All revenues collected pursuant to the provisions of
2 this article as license taxes or pari-mutuel pools taxes
3 on horse racing and dog racing shall be paid by the
4 racing commission to the state treasurer who shall
5 deposit the revenues in a special account to be denom-
6 inated by him or her. The revenues in the special
7 account shall first be available to the commission to pay
8 salaries and other budgeted expenses for the commis-
9 sion, not to exceed the amounts appropriated for such

10 purposes in the budget bill for each fiscal year.
11 Revenues in excess of the budgeted expenses of the
12 commission shall be accumulated and transferred to the
13 general revenue fund. The racing commission shall
14 remit all collected revenues to the state treasurer at
15 least one time during each thirty-day period of each
16 racing season, and a final remittance as to any partic-
17 ular horse race or dog race meeting shall be made
18 within thirty days from and after the close of each horse
19 race or dog race meeting.

**§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 calendar day,
3 assigned by the commission, at a licensed racetrack on
4 which pari-mutuel betting is conducted on horse or dog
5 races run at racetracks outside of the state which are
6 broadcast by television at a licensed racetrack and
7 which day or days have had the prior written approval
8 of the representative of the majority of the owners and
9 trainers who hold permits required by section two of
10 this article; 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 the legal wagering entity. The
21 telecasts may be received and wagers accepted at any
22 location authorized by the provisions of section twelve-
23 a of this article. The contract must receive the approval
24 of the representative of the majority of the owners and
25 trainers who hold permits required by section two of
26 this article at the receiving racetrack.

27 (c) The commission may allow the licensee to commin-

28 gle its wagering pools with the wagering pools of the
29 host racing association. If the pools are commingled, the
30 wagering at the licensee's racetrack must be on
31 tabulating equipment capable of issuing pari-mutuel
32 tickets and be electronically linked with the equipment
33 at the sending racetrack. Subject to the approval of the
34 commission, the types of betting, licensee commissions
35 and distribution of winnings on pari-mutuel pools of the
36 sending licensee racetrack are those in effect at the
37 licensee racetrack. Breakage for pari-mutuel pools on a
38 televised racing day must be calculated in accordance
39 with the law or rules governing the sending racetrack
40 and must be distributed in a manner agreed to between
41 the licensee and the sending racetrack.

42 (d) The commission may assign televised racing days
43 at any time. When a televised racing day is assigned,
44 the commission shall assign either a steward or an
45 auditor to preside over the televised races at the licensee
46 racetrack.

47 (e) From the licensee commissions authorized by
48 subsection (c) of this section, there is imposed and the
49 licensee shall pay, for each televised racing day on
50 which the total pari-mutuel pool exceeds one hundred
51 thousand dollars, the greater of either: (i) The total of
52 the daily license tax and the pari-mutuel pools tax
53 required by section ten of this article; or (ii) a daily
54 license tax of one thousand two hundred fifty dollars.
55 For each televised racing day on which the total pari-
56 mutuel pool is one hundred thousand dollars or less, the
57 licensee shall pay a daily license tax of five hundred
58 dollars plus an additional license tax of one hundred
59 dollars for each ten thousand dollars, or part thereof,
60 that the pari-mutuel pool exceeds fifty thousand dollars,
61 but does not exceed one hundred thousand dollars.
62 Payments of the tax imposed by this section are subject
63 to the requirements of subsection (e), section ten of this
64 article.

65 (f) After deducting the tax required by subsection (e)
66 of this section, the amount required to be paid under the
67 terms of the contract with the legal wagering entity of
68 another state and the cost of transmission, the horse

69 racing association shall make a deposit equal to fifty
70 percent of the remainder into the purse fund established
71 under the provisions of subdivision (b) (1), section nine
72 of this article.

73 (g) The provisions of the "Federal Interstate Horse-
74 racing Act of 1978", also known as Public Law 95-515,
75 Section 3001-3007 of Title 15, U.S. Code, as amended,
76 controls in determining the intent of this section.

77 (h) The handle from televised simulcast racing shall
78 not be included in the calculation of "average daily
79 handle" as it is calculated in section ten of this article
80 to determine the alternative daily pari-mutuel pool tax.

PART VIII. DISPOSITION OF FUNDS FOR PAYMENT OF
OUTSTANDING AND UNREDEEMED PARI-MUTUEL TICKETS;
IRREDEEMABLE TICKETS; AWARDS.

**§19-23-13. Disposition of funds for payment of outstand-
ing and unredeemed pari-mutuel tickets;
publication of notice; irredeemable tickets;
stake races for dog tracks.**

1 (a) All moneys held by any licensee for the payment
2 of outstanding and unredeemed pari-mutuel tickets, if
3 not claimed within ninety days after the close of a horse
4 or dog race meeting or the televised racing day, as the
5 case may be, in connection with which the tickets were
6 issued, shall be turned over by the licensee to the racing
7 commission within fifteen days after the expiration of
8 such ninety-day period, and the licensee shall give such
9 information as the racing commission may require
10 concerning such outstanding and unredeemed tickets.
11 All such money shall be deposited by the racing
12 commission in a banking institution of its choice in a
13 special account to be known as "West Virginia Racing
14 Commission Special Account—Unredeemed Pari-Mu-
15 tuel Tickets". Notice of the amount, date and place of
16 such deposit shall be given by the racing commission,
17 in writing, to the state treasurer. The racing commission
18 shall then cause to be published a notice to the holders
19 of such outstanding and unredeemed pari-mutuel
20 tickets, notifying them to present such tickets for
21 payment at the principal office of the racing commission

22 within ninety days from the date of the publication of
23 such notice. Such notice shall be published within fifteen
24 days following the receipt of said moneys by the
25 commission from the licensee as a Class I legal adver-
26 tisement in compliance with the provisions of article
27 three, chapter fifty-nine of this code, and the publication
28 area for such publication shall be the county in which
29 such horse or dog race meeting was held and the county
30 in which the televised racing day wagering conducted
31 in this state.

32 (b) Any such pari-mutuel tickets that shall not be
33 presented for payment within ninety days from the date
34 of the publication of the notice shall thereafter be
35 irredeemable, and the moneys theretofore held for the
36 redemption of such pari-mutuel tickets shall become the
37 property of the racing commission and shall be ex-
38 pended as provided in this subsection. The racing
39 commission shall maintain separate accounts for each
40 licensee and shall record therein the moneys turned over
41 by such licensee and the amount expended at such
42 licensee's track for the purposes set forth in this
43 subsection. The moneys in the "West Virginia Racing
44 Commission Special Account--Unredeemed Pari-Mu-
45 tuel Tickets" shall be expended as follows:

46 (1) To the owner of the winning horse in any horse
47 race at a horse race meeting held or conducted by any
48 licensee: *Provided*, That the owner of such horse is at
49 the time of such horse race a bona fide resident of this
50 state, a sum equal to ten percent of the purse won by
51 such horse. The commission may require proof that the
52 owner was, at the time of the race, a bona fide resident
53 of this state. Upon proof by the owner that he filed a
54 personal income tax return in this state for the previous
55 two years and that he owned real or personal property
56 in this state and paid taxes in this state on said property
57 for the previous two years, he shall be presumed to be
58 a bona fide resident of this state; and

59 (2) To the breeder (that is, the owner of the mare) of
60 the winning horse in any horse race at a horse race
61 meeting held or conducted by any licensee: *Provided*,
62 That the mare foaled in this state, a sum equal to ten

63 percent of the purse won by such horse; and

64 (3) To the owner of the stallion which sired the
65 winning horse in any horse race at a horse race meeting
66 held or conducted by any licensee: *Provided*, That the
67 mare which foaled such winning horse was served by
68 a stallion standing and registered in this state, a sum
69 equal to ten percent of the purse won by such horse; and

70 (4) To those horse racing licensees not participating
71 in the thoroughbred development fund authorized in
72 section thirteen-b of this article the unexpended balance
73 of such licensee's account not expended as provided in
74 subdivisions (1), (2) and (3) of this subsection: *Provided*,
75 That all moneys distributed under this subdivision shall
76 be expended solely for capital improvements at the
77 licensee's track: *Provided, however*, That such capital
78 improvements must be approved, in writing, by the
79 West Virginia racing commission before funds are
80 expended by the licensee for that capital improvement;
81 and

82 (5) When the moneys in the special account, known as
83 the "West Virginia Racing Commission Special Ac-
84 count—Unredeemed Pari-Mutuel Tickets" will more
85 than satisfy the requirements of subdivisions (1), (2), (3)
86 and (4) of this subsection, the West Virginia racing
87 commission shall have the authority to expend the
88 excess moneys from unredeemed horse racing pari-
89 mutuel tickets as purse money in any race conditioned
90 exclusively for West Virginia bred or sired horses, and
91 to expend the excess moneys from unredeemed dog
92 racing pari-mutuel tickets in supplementing purses and
93 establishing stake races and dog racing handicaps at the
94 dog tracks: *Provided*, That beginning with the fiscal
95 year one thousand nine hundred ninety, and subject to
96 the availability of funds, the commission shall, after the
97 requirements of subdivisions (1), (2), (3) and (4) of this
98 subsection have been satisfied, transfer annually three
99 hundred thousand dollars of such excess moneys into a
100 separate account to be used for promotional activities
101 and purses for stake races for the West Virginia
102 thoroughbred breeders classic, which shall give equal
103 consideration to all horses qualifying under the West

104 Virginia breeders program for each stake race, based
105 solely on the horses' sex, age and earnings.

106 The commission shall submit to the legislative auditor
107 a quarterly report and accounting of the income,
108 expenditures and unobligated balance in the special
109 account created by this section known as the "West
110 Virginia Racing Commission Special Account—Unre-
111 deemed Pari-Mutuel Tickets".

112 (c) Nothing contained in this article shall prohibit one
113 person from qualifying for all or more than one of the
114 aforesaid awards or for awards under section thirteen-
115 b of this article.

116 (d) The cost of publication of the notice provided for
117 in this section shall be paid from the funds in the hands
118 of the state treasurer collected from the pari-mutuel
119 pools' tax provided for in section ten of this article, when
120 not otherwise provided in the budget; but no such costs
121 shall be paid unless an itemized account thereof, under
122 oath, be first filed with the state auditor.

PART IX. DISPOSITION OF PERMIT FEES, REGISTRATION
AND FINES.

**§19-23-13b. West Virginia thoroughbred development
fund; distribution; restricted races; non-
restricted purse supplements.**

1 The racing commission shall deposit moneys required
2 to be withheld by an association or licensee in subsection
3 (b), section nine of this article in a banking institution
4 of its choice in a special account to be known as "West
5 Virginia Racing Commission Special Account — West
6 Virginia Thoroughbred Development Fund". Notice of
7 the amount, date and place of the deposit shall be given
8 by the racing commission, in writing, to the state
9 treasurer. The purpose of the fund is to promote better
10 breeding and racing of thoroughbred horses in the state
11 through awards and purses for accredited breed-
12 ers/raisers, sire owners and thoroughbred race horse
13 owners. A further objective of the fund is to aid in the
14 rejuvenation and development of the present horse
15 tracks now operating in West Virginia for capital

16 improvements, operations or increased purses between
17 the first day of July, one thousand nine hundred eighty-
18 four, and the thirty-first day of October, one thousand
19 nine hundred ninety-two: *Provided*, That five percent of
20 the deposits required to be withheld by an association
21 or licensee in subsection (b), section nine of this article
22 shall be placed in a special revenue account hereby
23 created in the state treasury called the "administration
24 and promotion account". The racing commission is
25 authorized to expend the moneys deposited in the
26 administration and promotion account at such times and
27 in such amounts as the commission determines to be
28 necessary for purposes of administering and promoting
29 the thoroughbred development program: *Provided*,
30 *however*, That during any fiscal year in which the
31 commission anticipates spending any money from the
32 account, the commission shall submit to the executive
33 department during the budget preparation period prior
34 to the Legislature convening before that fiscal year for
35 inclusion in the executive budget document and budget
36 bill the recommended expenditures, as well as requests
37 of appropriations for the purpose of administration and
38 promotion of the program. The commission shall make
39 an annual report to the Legislature on the status of the
40 administration and promotion account, including the
41 previous year's expenditures and projected expenditures
42 for the next year.

43 The funds shall be established immediately and
44 operate on an annual basis.

45 (a) Funds will be expended for awards and purses in
46 the following manner:

47 (i) Fifteen percent of the fund shall be available for
48 distribution for events taking place between the first
49 day of July, one thousand nine hundred eighty-four, and
50 the thirty-first day of December, one thousand nine
51 hundred eighty-five;

52 (ii) Fifty percent of the fund shall be available for
53 distribution for events taking place between the first
54 day of January, one thousand nine hundred eighty-six,
55 and the thirty-first day of December, one thousand nine

56 hundred eighty-six;

57 (iii) Seventy-five percent of the fund shall be available
58 for distribution for events taking place between the first
59 day of January, one thousand nine hundred eighty-
60 seven, and the thirty-first day of December, one
61 thousand nine hundred eighty-seven;

62 (iv) One hundred percent of the fund shall be
63 available thereafter; and

64 (v) After the first day of July, one thousand nine
65 hundred ninety-one, and after the thirty-first day of
66 December, one thousand nine hundred ninety-one, and
67 annually thereafter, the first one hundred thousand
68 dollars of the fund shall be available for distribution for
69 a maximum of four stakes races. One of these races shall
70 be the West Virginia futurity and the second shall be
71 the Frank Gall memorial stakes. The remaining races
72 may be chosen by the committee set forth in subsection
73 (b) of this section.

74 (b) Awards and purses will be distributed as follows:

75 (i) The breeders/raisers of accredited thoroughbred
76 horses that earn a purse at any West Virginia meet will
77 receive a bonus award calculated at the end of the year
78 as a percentage of the fund dedicated to the breed-
79 ers/raisers, which shall be sixty percent of the fund
80 available for distribution in any one year. The total
81 amount available for the breeders'/raisers' awards shall
82 be distributed according to the ratio of purses earned
83 by an accredited race horse to the total amount earned
84 in the races by all accredited race horses for that year
85 as a percentage of the fund dedicated to the breed-
86 ers/raisers. However, no breeder/raiser may receive
87 from the fund dedicated to breeders'/raisers' awards an
88 amount in excess of the earnings of the accredited horse
89 at West Virginia meets. In addition, should a horse's
90 breeder and raiser qualify for the same award on the
91 same horse, they will each be awarded one half of the
92 proceeds. Of the funds available for distribution in any
93 one year to breeders/raisers, neither the breeders as a
94 group nor the raisers as a group shall, until the first day
95 of January, one thousand nine hundred ninety-four,

96 qualify for more than sixty and one-tenth percent of
97 such funds. The bonus referred to in this subdivision
98 shall only be paid on the first one hundred thousand
99 dollars of any purse, and not on any amounts in excess
100 thereof.

101 (ii) The owner of a West Virginia sire of an accredited
102 thoroughbred horse that earns a purse in any race at
103 a West Virginia meet will receive a bonus award
104 calculated at the end of the year as a percentage of the
105 fund dedicated to sire owners, which shall be fifteen
106 percent of the fund available for distribution in any one
107 year. The total amount available for the sire owners'
108 awards shall be distributed according to the ratio purses
109 earned by the progeny of accredited West Virginia
110 stallions in the races for a particular stallion to the total
111 purses earned by the progeny of all accredited West
112 Virginia stallions in the races. However, no sire owner
113 may receive from the fund dedicated to sire owners an
114 amount in excess of thirty-five percent of the accredited
115 earnings for each sire. The bonus referred to in this
116 subsection shall only be paid on the first one hundred
117 thousand dollars of any purse, and not on any amounts
118 in excess thereof.

119 (iii) The owner of an accredited thoroughbred horse
120 that earns a purse in any race at a West Virginia meet
121 will receive a restricted purse supplement award
122 calculated at the end of the year, which shall be twenty-
123 five percent of the fund available for distribution in any
124 one year, based on the ratio of the earnings in such races
125 of a particular race horse to the total amount earned by
126 all accredited race horses in the races during that year
127 as a percentage of the fund dedicated to purse supple-
128 ments. However, the owners may not receive from the
129 fund dedicated to purse supplements an amount in
130 excess of thirty-five percent of the total accredited
131 earnings for each accredited race horse. The bonus
132 referred to in this subsection shall only be paid on the
133 first one hundred thousand dollars of any purse, and not
134 on any amounts in excess thereof.

135 (iv) In no event shall purses earned at a meet held at
136 a track which did not make a contribution to the

137 thoroughbred development fund out of the daily pool on
138 the day the meet was held qualify or count toward
139 eligibility for an award under this section.

140 (v) Any balance in the breeders/raisers, sire owners
141 and purse supplement funds after yearly distributions
142 shall: (1) Be utilized to fund the races established in
143 subsection (d) of this section; and (2) revert back into the
144 general account of the fund for distribution in the next
145 year.

146 Distribution shall be made on the fifteenth of each
147 February for the preceding year's achievements.

148 (c) The remainder, if any, of the fund that is not
149 available for distribution in the above program in any
150 one year is reserved for regular purses, marketing
151 expenses and for capital improvements in the amounts
152 and under the conditions provided in this subsection.
153 Fifty percent of the remainder shall be reserved for
154 payments into the regular purse fund established in
155 subsection (b), section nine of this article. Up to five
156 hundred thousand dollars per year shall be available for:
157 (1) Capital improvements at the eligible licensed horse
158 racing tracks in the state; and (2) marketing and
159 advertising programs above and beyond two hundred
160 fifty thousand dollars for the eligible licensed horse
161 racing tracks in the state: *Provided*, That moneys shall
162 be expended for capital improvements or marketing and
163 advertising purposes as described above only in accor-
164 dance with a plan filed with and receiving the prior
165 approval of the racing commission, and on a basis of
166 fifty percent participation by the licensee and fifty
167 percent participation by moneys from the fund, in the
168 total cost of approved projects: *Provided, however*, That
169 funds approved for one track may not be used at another
170 track unless the first track ceases to operate or is viewed
171 by the commission as unworthy of additional investment
172 due to financial or ethical reasons.

173 (d) Each pari-mutuel thoroughbred horse track shall
174 provide at least the following restricted races in
175 accordance with the following time schedules:

176 (i) From the first day of July, one thousand nine

177 hundred eighty-four, to the thirty-first day of December,
178 one thousand nine hundred eighty-four — one restricted
179 race per eight racing days;

180 (ii) From the first day of January, one thousand nine
181 hundred eighty-five, to the thirty-first day of December,
182 one thousand nine hundred eighty-five — one restricted
183 race per seven racing days;

184 (iii) From the first day of January, one thousand nine
185 hundred eighty-six, to the thirty-first day of December,
186 one thousand nine hundred eighty-six — one restricted
187 race per six racing days;

188 (iv) From the first day of January, one thousand nine
189 hundred eighty-seven, to the thirty-first day of De-
190 cember, one thousand nine hundred eighty-seven — one
191 restricted race per five racing days;

192 (v) From the first day of January, one thousand nine
193 hundred eighty-eight, to the thirty-first day of De-
194 cember, one thousand nine hundred eighty-eight — one
195 restricted race per four racing days;

196 (vi) From the first day of January, one thousand nine
197 hundred eighty-nine, to the thirty-first day of December,
198 one thousand nine hundred eighty-nine — one restricted
199 race per three racing days; and thereafter.

200 The restricted races established in this subsection
201 shall be administered by a three-member committee
202 consisting of: (A) The racing secretary; (B) a member
203 appointed by the authorized representative of a majority
204 of the owners and trainers at the thoroughbred track;
205 and (C) a member appointed by a majority of the
206 thoroughbred breeders. The purses shall be twenty
207 percent larger than the purses for similar type races at
208 each track. Restricted races shall be funded by each
209 racing association from:

210 (1) Moneys placed in the general purse fund up to a
211 maximum of one hundred fifty thousand dollars per
212 year.

213 (2) Moneys as provided in subdivision (v), subsection
214 (b) of this section shall be placed in a special fund called

215 the "West Virginia accredited race fund". The racing
216 schedules, purse amounts and types of races are subject
217 to the approval of the West Virginia racing commission.

218 (e) No association or licensee qualifying for the
219 alternate tax provision of subsection (b), section ten of
220 this article is eligible for participation in any of the
221 provisions of this section.

CHAPTER 99

(Com. Sub. for H. B. 4459—By Delegates Johnson and Rowe)

[Passed March 7, 1992; 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 seven-a, relating to horse and dog racing; and requiring fingerprinting of all new applicants for licenses; allowing the racing commission to require applicants for the issuance or renewal of licenses or permits to furnish fingerprints; providing for review of fingerprints by division of public safety and federal bureau of investigation.

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 seven-a, to read as follows:

ARTICLE 23. HORSE AND DOG RACING.

§19-23-7a. Applicants for licenses and permits to provide fingerprints.

1 (a) All new applicants for licenses issued by the
2 racing commission, pursuant to section one of this
3 article, shall be required to furnish fingerprints for
4 examination by the criminal identification bureau of the
5 division of public safety and the federal bureau of
6 investigation. The fingerprints shall be furnished by all

7 persons required to be named in the application
8 pursuant to subsection (a), section seven of this article
9 and shall be accompanied by a signed authorization for
10 the release of information by the criminal investigation
11 bureau and the federal bureau of investigation.

12 (b) The racing commission may require any applicant
13 seeking the renewal of a license or the issuance or
14 renewal of a permit to furnish fingerprints for exam-
15 ination by the criminal identification bureau of the
16 division of public safety and the federal bureau of
17 investigation. The racing commission may require all or
18 any part of the persons required to be named in an
19 application pursuant to section seven of this article to
20 provide fingerprints and the fingerprints shall be
21 accompanied by a signed authorization for the release
22 of information by the criminal investigation bureau and
23 the federal bureau of investigation.

CHAPTER 100

(Com. Sub. for H. B. 4228—By Delegates Prunty and Stewart, By Request)

[Passed March 3, 1992; in effect ninety days 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 twelve-a, relating to economic development and permitting the economic development authority to negotiate with the Marion County commission to establish a national horseshoe pitcher's hall of fame.

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 twelve-a, to read as follows:

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-12a. Horseshoe pitcher's hall of fame.

1 Not later than the first day of July, one thousand nine
2 hundred ninety-two, the West Virginia economic
3 development authority may enter into negotiations with
4 the county commission of Marion County to develop,
5 organize, construct and manage a national horseshoe
6 pitcher's hall of fame shrine and multipurpose building
7 project.

8 The authority may provide funds through a loan, staff
9 support and technical assistance to the Marion County
10 commission to target the project for completion within
11 five years: *Provided*, That the Marion County commis-
12 sion has the commitment, support and assistance of the
13 National Horseshoe Pitcher's Association to locate the
14 hall of fame in Marion County.

CHAPTER 101

(S. B. 606—Originating in the Committee on Labor)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three and nine, article nine, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to manufactured housing construction and safety standards; dealer defined; reducing per diem compensation for West Virginia manufactured housing construction and safety board members; and license fee for contractors.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS.

§21-9-2. Definitions.

§21-9-3. Board created; appointment, qualifications, terms, oath, etc., of members; quorum; meetings; when members disqualified from participation; compensation; records; office space; personnel.

§21-9-9. License required; fees; form of license; display of license; denial; suspension or revocation.

§21-9-2. Definitions.

1 (a) "Board" means the West Virginia manufactured
2 housing construction and safety board created in this
3 article.

4 (b) "Commissioner" means the commissioner of the
5 West Virginia state department of labor.

6 (c) "Contractor" means any person who performs
7 operations in this state at the occupancy site which
8 render a manufactured home fit for habitation. This
9 definition does not include persons who do work on a
10 manufactured home which is owned or leased by such
11 person doing the work. Such operations include, without
12 limitation, installation or construction of the foundation,
13 positioning, blocking, leveling, supporting, tying down,
14 connecting utility systems, making minor adjustments
15 or assembling multiple or expandable units. Such
16 operations also include transporting the unit to the
17 occupancy site by other than a motor carrier regulated
18 by the West Virginia public service commission.

19 (d) "Dealer" means any person engaged in this state
20 in the sale, leasing or distribution of new or used
21 manufactured homes, primarily to persons who in good
22 faith purchase or lease a manufactured home for
23 purposes other than resale.

24 (e) "Defect" includes any defect in the performance,
25 construction, components or material of a manufactured
26 home that renders the home or any part thereof not fit
27 for the ordinary use for which it was intended.

28 (f) "Distributor" means any person engaged in this
29 state in the sale and distribution of manufactured homes
30 for resale.

31 (g) "Federal standards" means the National Manufactured
32 Housing Construction and Safety Standards Act
33 of 1974 (42 U.S.C. §5401, et seq.), and federal manufac-

34 tured home construction and safety standards and
35 regulations promulgated by the secretary of HUD to
36 implement such act.

37 (h) "HUD" means the United States department of
38 housing and urban development.

39 (i) "Manufacturer" means any person engaged in
40 manufacturing or assembling manufactured homes,
41 including any person engaged in importing manufac-
42 tured homes for resale.

43 (j) "Manufactured home" means a structure, transpor-
44 table in one or more sections, which in the traveling
45 mode is eight body feet or more in width or forty body
46 feet or more in length or, when erected on site, is three
47 hundred twenty or more square feet, and which is built
48 on a permanent chassis and designed to be used as a
49 dwelling with or without a permanent foundation when
50 connected to the required utilities, and includes the
51 plumbing, heating, air-conditioning and electrical
52 systems contained therein; except that such term shall
53 include any structure which meets all the requirements
54 of this definition except the size requirements and with
55 respect to which the manufacturer voluntarily files a
56 certificate which complies with the applicable federal
57 standards. Calculations used to determine the number
58 of square feet in a structure will be based on the
59 structure's exterior dimensions measured at the largest
60 horizontal projections when erected on site.

61 (k) "Purchaser" means the first person purchasing a
62 manufactured home in good faith for purposes other
63 than resale.

**§21-9-3. Board created; appointment, qualifications,
terms, oath, etc., of members; quorum; meet-
ings; when members disqualified from par-
ticipation; compensation; records; office
space; personnel.**

1 (a) There is hereby created the West Virginia board
2 of manufactured housing construction and safety, which
3 shall consist of six members and the commissioner, who
4 shall be chairman. At least two of the six members of

5 the said board shall represent and be consumers who are
6 not related or employed in the manufactured housing
7 and construction industry. The six members shall be
8 appointed by the governor by and with the advice and
9 consent of the Senate. No more than three of the
10 members so appointed may be of the same political
11 party.

12 (b) The members of the board shall be appointed for
13 overlapping terms of six years, except that of the
14 original appointments, two members shall be appointed
15 for a term of two years, two members shall be appointed
16 for a term of four years and two members shall be
17 appointed for a term of six years, and in every instance
18 until their respective successors have been appointed
19 and qualified. Before entering upon the performance of
20 his duties, each member shall take and subscribe to the
21 oath required by section 5, article IV of the Constitution
22 of the state of West Virginia, and shall certify that he
23 is and during the term of his appointment shall remain
24 free of any conflict of interest. The governor shall,
25 within sixty days following the occurrence of a vacancy
26 on the board, fill the same by appointing a person for
27 the unexpired term of the person vacating said office.
28 Any member may be removed by the governor in case
29 of incompetency, neglect of duty, gross immorality or
30 malfeasance in office.

31 (c) A majority of the members of the board shall
32 constitute a quorum. The board shall meet at least once
33 in each calendar quarter on a date fixed by the board.
34 The commissioner may, upon his own motion, or shall
35 upon the written request of three members of the board,
36 call additional meetings of the board upon at least
37 twenty-four hours' notice. No member shall participate
38 in a proceeding before the board to which a corporation,
39 partnership or unincorporated association is a party,
40 and of which he is or was at any time in the preceding
41 twelve months a director, officer, owner, partner,
42 employee, member or stockholder. A member may
43 disqualify himself from participation in a proceeding for
44 any other cause deemed by him to be sufficient. Each
45 member shall receive fifty dollars for each day or

46 portion thereof spent in attending meetings of the board
47 and shall be reimbursed for all reasonable and neces-
48 sary expenses incurred incident to his duties as a
49 member of the board.

50 (d) The board shall keep an accurate record of all its
51 proceedings and make certificates thereupon as may be
52 required by law. The commissioner shall make available
53 necessary office space and secretarial and other assist-
54 ance as the board may reasonably require.

**§21-9-9. License required; fees; form of license; display of
license; denial, suspension or revocation.**

1 (a) No manufacturer, dealer, distributor or contractor
2 shall engage in business in this state without first
3 having applied for and received a license pursuant to
4 this section. The license shall authorize the holder to
5 engage in the business permitted by the license. All
6 license applications shall be accompanied by the
7 required fee and surety bond or other form of assurance
8 as required by rule or regulation promulgated by the
9 board.

10 (b) All licenses shall be granted or refused within
11 thirty days after proper and complete application. All
12 licenses shall expire on the thirtieth day of June of each
13 year, unless sooner revoked or suspended. Applications
14 shall be deemed valid for a period of thirty days.

15 (c) The annual license fees shall be in the amounts
16 prescribed from time to time by rules and regulations
17 promulgated by the board but in no event less than the
18 following amounts:

19 (1) For manufacturers, three hundred dollars;

20 (2) For dealers, one hundred dollars;

21 (3) For distributors, one hundred dollars; and

22 (4) For contractors, fifty dollars: *Provided*, That if a
23 contractor has met the licensing requirements of this
24 article and the West Virginia contractor licensing act in
25 article eleven of this chapter, has paid the annual license
26 fee under section eight, article eleven of this chapter and
27 has furnished bond or other assurance under section ten

28 of this article, he or she shall not be required to pay the
29 annual license fee set forth in this section.

30 (d) The board shall prescribe the form of license and
31 each license shall have affixed thereon the seal of the
32 state department of labor.

33 (e) Each licensee shall conspicuously display the
34 license in its established place of business.

35 (f) Pursuant to such rules and regulations as may be
36 promulgated by the board, the board may deny the
37 issuance of a license or revoke or suspend any license.

38 (g) The proceeds of such fees shall be deposited in a
39 special account in the state treasury to be used by the
40 department of labor for the administration of the
41 provisions of this article.

CHAPTER 102

(Com. Sub. for H. B. 4007—By Delegate Gallagher)

[Passed March 6, 1992: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article ten, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to county humane officers and providing for the designation of the county dog warden as an alternative or additional humane officer.

Be it enacted by the Legislature of West Virginia:

That section one, article ten, 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 10. HUMANE OFFICERS.

§7-10-1. Deputy sheriffs as humane officers.

1 The sheriff of each county of this state shall annually
2 designate, by a record made in the office of the clerk
3 of the county commission, one of his or her deputies to

4 act as humane officer of the county; or, if the county
5 commission and sheriff agree, the county dog warden
6 may be designated to act as the humane officer or as
7 an additional humane officer; any person designated to
8 act as a humane officer and all peace officers designated
9 by law as a humane officer or an additional humane
10 officer shall investigate all complaints made to him or
11 her of cruel or inhumane treatment of animals within
12 the county and he or she shall personally see that the
13 law relating to the prevention of cruelty to animals is
14 enforced. The wilful failure of such designee to inves-
15 tigate any complaint made to him or her and to take
16 proper measures in such case or to perform his or her
17 duty in any other respect may constitute good cause for
18 removal from employment.

CHAPTER 103

(Com. Sub. for H. B. 2121—By Delegates Love and Pethtel)

[Passed February 13, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article two by adding thereto a new section, designated section nineteen-a, relating to authorizing trappers checking traps on Sundays to carry only a twenty-two caliber firearm for the purpose of humanely dispatching trapped animals.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing.
§20-2-19a. Trappers authorized to possess only twenty-two caliber firearm on Sundays.

§20-2-5. Unlawful methods of hunting and fishing.

1 Except as authorized by the director, it is unlawful
2 at any time for any person to:

3 (1) Shoot at or to shoot any wild bird or animal unless
4 it is plainly visible to him;

5 (2) Dig out, cut out or smoke out, or in any manner
6 take or attempt to take, any live wild animal or wild
7 bird out of its den or place of refuge, except as may be
8 authorized by regulations promulgated by the director
9 or by law;

10 (3) Make use of, or take advantage of, any artificial
11 light in hunting, locating, attracting, taking, trapping,
12 or killing any wild bird or wild animal, or to attempt
13 to do so, while having in his possession or subject to his
14 control, or for any person accompanying him to have in
15 his possession or subject to his control, any firearm,
16 whether cased or uncased, bow, arrow, or both, or other
17 implement or device suitable for taking, killing or
18 trapping a wild bird or animal: *Provided*, That it shall
19 not be unlawful to hunt or take raccoon, opossum or
20 skunk by the use of artificial lights. No person shall be
21 guilty of a violation of this subdivision merely because
22 he looks for, looks at, attracts or makes motionless a wild
23 bird or wild animal with or by the use of an artificial
24 light, unless at such time he has in his possession a
25 firearm, whether cased or uncased, bow, arrow, or both,
26 or other implement or device suitable for taking, killing
27 or trapping a wild bird or wild animal, or unless such
28 artificial light (other than the head lamps of an
29 automobile or other land conveyance) is attached to, a
30 part of, or used from within or upon an automobile or
31 other land conveyance.

32 Any person violating the provisions of this subdivision
33 shall be guilty of a misdemeanor, and, upon conviction
34 thereof, shall for each offense be fined not less than one
35 hundred dollars nor more than five hundred dollars and
36 shall be imprisoned in the county jail for not less than
37 ten days nor more than one hundred days;

38 (4) Hunt for, take, kill, wound or shoot at wild

39 animals or wild birds from an airplane, or other
40 airborne conveyance, an automobile, or other land
41 conveyance, or from a motor-driven water conveyance,
42 except as may be authorized by regulations promul-
43 gated by the director;

44 (5) Take any beaver or muskrat by any means other
45 than by trap;

46 (6) Catch, capture, take or kill by seine, net, bait, trap
47 or snare or like device of any kind, any wild turkey,
48 ruffed grouse, pheasant or quail;

49 (7) Destroy or attempt to destroy needlessly or
50 willfully the nest or eggs of any wild bird or have in
51 his possession such nest or eggs unless authorized to do
52 so under regulations or under a permit by the director;

53 (8) Except as provided in section six of this article,
54 carry an uncased or loaded gun in any of the woods of
55 this state except during the open firearms hunting
56 season for wild animals and nonmigratory wild birds
57 within any county of the state, unless he has in his
58 possession a permit in writing issued to him by the
59 director: *Provided*, That this section shall not prohibit
60 hunting or taking of unprotected species of wild animals
61 and wild birds and migratory wild birds, during the
62 open season, in the open fields, open water and open
63 marshes of the state;

64 (9) Except as provided in section six of this article,
65 carry an uncased or loaded gun after the hour of five
66 o'clock antemeridian on Sunday in any woods or on any
67 highway, railroad right-of-way, public road, field or
68 stream of this state, except at a regularly used rifle,
69 pistol, skeet, target or trapshooting ground or range;

70 (10) Have in his possession a loaded firearm or a
71 firearm from the magazine of which all shells and
72 cartridges have not been removed, in or on any vehicle
73 or conveyance, or its attachments, within the state,
74 except as may otherwise be provided by law or regu-
75 lation. Except as hereinafter provided, between five
76 o'clock postmeridian of one day and seven o'clock
77 antemeridian, eastern standard time of the day follow-

78 ing, any unloaded firearm, being lawfully carried in
79 accordance with the foregoing provisions, shall be so
80 carried only when in a case or taken apart and securely
81 wrapped. During the period from July first to Sep-
82 tember thirtieth, inclusive, of each year, the foregoing
83 requirements relative to carrying certain unloaded
84 firearms shall be permissible only from eight-thirty
85 o'clock postmeridian to five o'clock antemeridian,
86 eastern standard time;

87 (11) Hunt, catch, take, kill, trap, injure or pursue
88 with firearms or other implement by which wildlife may
89 be taken after the hour of five o'clock antemeridian on
90 Sunday any wild animals or wild birds: *Provided*, That
91 traps previously and legally set may be tended after the
92 hour of five o'clock antemeridian on Sunday, and the
93 person so doing may carry only a twenty-two caliber
94 firearm for the purpose of humanely dispatching
95 trapped animals.

96 (12) Hunt with firearms or long bow while under the
97 influence of intoxicating liquor;

98 (13) Hunt, catch, take, kill, injure or pursue a wild
99 animal or bird with the use of a ferret;

100 (14) Buy raw furs, pelts or skins of fur-bearing
101 animals unless licensed to do so;

102 (15) Have in his possession or about his premises,
103 without the written permission of the director, any
104 hunting or fishing paraphernalia which cannot be used
105 lawfully in this state for hunting or fishing, and any
106 conservation officer shall remove and destroy such
107 hunting and fishing paraphernalia, whenever found in
108 this state, and the person or persons claiming ownership
109 shall have no recourse at law against such confiscation
110 and destruction;

111 (16) Catch, take, kill, or attempt to catch, take or kill
112 any fish at any time by any means other than by rod,
113 line and hooks with natural or artificial lures unless
114 otherwise authorized by law or regulation issued by the
115 director: *Provided*, That snaring of any species of
116 suckers, carp, fallfish and creek chubs shall at all times
117 be lawful;

118 (17) Employ or hire, or induce or persuade, by the use
119 of money or other things of value, or by any means, any
120 person to hunt, take, catch or kill, any wild animal or
121 wild bird except those species on which there is no
122 closed season, or to fish for, catch, take or kill any fish,
123 amphibian or aquatic life which is protected by the
124 provisions of this chapter or regulations of the director,
125 or the sale of which is prohibited;

126 (18) Hunt, catch, take, kill, capture, pursue, trans-
127 port, possess or use any migratory game or nongame
128 birds included in the terms of conventions between the
129 United States and Great Britain and between the
130 United States and United Mexican States for the
131 protection of migratory birds and wild mammals
132 concluded, respectively, August sixteen, one thousand
133 nine hundred sixteen, and February seven, one thousand
134 nine hundred thirty-six, except during the time and in
135 the manner and numbers prescribed by the Federal
136 Migratory Bird Treaty Act and regulations made
137 thereunder;

138 (19) Kill, take, catch or have in his possession, living
139 or dead, any wild bird, other than a game bird; or
140 expose for sale, or transport within or without the state
141 any such bird, except as aforesaid. No part of the
142 plumage, skin or body of any protected bird shall be sold
143 or had in possession for sale, except mounted or stuffed
144 plumage, skin, bodies or heads of such birds legally
145 taken and stuffed or mounted, irrespective of whether
146 such bird was captured within or without this state,
147 except the English or European sparrow (*Passer*
148 *domesticus*), starling (*Sturnus vulgaris*), crow (*Corvus*
149 *brachyrhynchos*) and cowbird (*Molothrus ater*), which
150 shall not be protected and the killing thereof at any time
151 is lawful;

152 (20) Use dynamite or any like explosive or poisonous
153 mixture placed in any waters of the state for the purpose
154 of killing or taking fish. Any person violating the
155 provisions of this subdivision shall be guilty of a felony,
156 and, upon conviction thereof, shall be fined not more
157 than five hundred dollars or imprisoned for not less than
158 six months nor more than three years, or both fined and
159 imprisoned;

160 (21) Have a bow and gun, or have a gun and any
161 arrow or arrows, in the fields or woods at the same time;

162 (22) Have a crossbow in the woods or fields or use a
163 crossbow to hunt for, take or attempt to take any
164 wildlife;

165 (23) Take or attempt to take turkey, bear, elk or deer
166 with any arrow unless the same is equipped with a point
167 having at least two sharp cutting edges measuring in
168 excess of three fourths of an inch wide;

169 (24) Take or attempt to take any wildlife with an
170 arrow having an explosive head or shaft, a poisoned
171 arrow, or an arrow which would affect wildlife by any
172 chemical action;

173 (25) Shoot an arrow across any public highway or
174 from aircraft, motor-driven watercraft, motor vehicle or
175 other land conveyance;

176 (26) Permit any dog owned by him or under his
177 control to chase, pursue or follow upon the track of any
178 wild animal or wild bird, either day or night, between
179 the first day of May and the fifteenth day of August next
180 following: *Provided*, That dogs may be trained on wild
181 animals and wild birds, except deer and wild turkeys,
182 and field trials may be held or conducted on the grounds
183 or lands of the owner or by his bona fide tenant or
184 tenants or upon the grounds or lands of another person
185 with his written permission or on public lands, at any
186 time: *Provided, however*, That notwithstanding any of
187 the above provisions, no person may train a dog in any
188 county, or portion thereof, in which a legal bear hunting
189 season has been established prior to the first day of July,
190 one thousand nine hundred eighty-eight, except that
191 residents may train dogs in such counties after the
192 twenty-fourth day of August through the end of the legal
193 small game hunting season: *Provided further*, That
194 nonresidents shall not train dogs in this state at any time
195 except during the legal small game hunting season: *And*
196 *provided further*, That the person training said dogs does
197 not have firearms or other implements in his possession
198 during the closed season on such wild animals and wild

199 birds, whereby wild animals or wild birds could be
200 taken or killed;

201 (27) Conduct or participate in a field trial, shoot-to-
202 retrieve field trial, water race or wild hunt hereafter
203 referred to as trial: *Provided*, That any person, group
204 of persons, club or organization may hold such trial at
205 any time of the year upon obtaining such permit as is
206 provided for in section fifty-six of this article. The
207 person responsible for obtaining said permit shall
208 prepare and keep an accurate record of the names and
209 addresses of all persons participating in said trial, and
210 make same readily available for inspection by any
211 conservation officer upon request; and

212 (28) Except as provided in section four of this article,
213 hunt, catch, take, kill or attempt to hunt, catch, take or
214 kill any wild animal, wild bird or wild fowl except
215 during the open season established by regulation of the
216 director as authorized by subdivision six, section seven,
217 article one of this chapter.

**§20-2-19a. Trappers authorized to possess only twenty-
two caliber firearm on Sundays.**

1 Any person authorized by the provisions of this article
2 to trap any game or fur-bearing animal is also autho-
3 rized, if that person is checking his or her traps on
4 Sunday, to carry only a twenty-two caliber firearm for
5 the purpose of humanely dispatching trapped animals.

CHAPTER 104

(S. B. 515—By Senator Minard)

[Passed March 4, 1992; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections five, six, seven, eight, ten, twelve, fifteen, seventeen, twenty, twenty-five and twenty-eight, article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three, four, eleven, thirteen, fourteen, sixteen, eighteen,

nineteen, twenty-four, twenty-six and twenty-seven of said article, all relating to industrial banks and industrial loan companies; redefining terms; eliminating industrial banks; organizational requirements of industrial loan companies; powers of industrial loan companies; eliminating the ability of industrial loan companies to issue certificates of indebtedness to the public or buy and sell bonds; restricting the practices of industrial loan companies; permitting industrial loan companies to hold real estate for ten years; requiring supervision of the banking commissioner; annual assessments by the commissioner; branch offices permitted; penalties for violations; annual meetings and reports; bonds for directors; personal liability of directors for manager's acts; rights of stockholders; advertising requirements and restrictions; and powers of the banking commissioner.

Be it enacted by the Legislature of West Virginia:

That sections five, six, seven, eight, ten, twelve, fifteen, seventeen, twenty, twenty-five and twenty-eight, article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two, three, four, eleven, thirteen, fourteen, sixteen, eighteen, nineteen, twenty-four, twenty-six and twenty-seven of said article be amended and reenacted, all to read as follows:

ARTICLE 7. INDUSTRIAL LOAN COMPANIES.

- §31-7-1. Short title.
- §31-7-2. Construction of article; general corporation laws applicable.
- §31-7-3. Definitions.
- §31-7-4. Incorporators; name; minimum capital stock; voting rights of classes of stock; common stock to be paid in before business commenced; use of certain words in corporate name prohibited.
- §31-7-11. Powers of industrial loan companies; limitation of powers.
- §31-7-13. Supervision and control.
- §31-7-14. Branch industrial loan company permitted; penalties.
- §31-7-16. Annual and special meetings of stockholders; quorum; annual report; voting; proxies.
- §31-7-18. Chief executive and other officers to be bonded; personal liability of directors for manager's defalcation.
- §31-7-19. List of stockholders; right of inspection.
- §31-7-24. Advertising requirements and prohibitions.
- §31-7-26. Rules and regulations.

§31-7-27. Additional powers and duties of the commissioner; fees; powers of the board; appeals and judicial review.

§31-7-1. Short title.

1 This article shall be known and may be cited as the
2 "West Virginia Industrial Loan Company Act".

§31-7-2. Construction of article; general corporation laws applicable.

1 (a) Except as otherwise specified herein, the provi-
2 sions of chapter thirty-one-a of this code, insofar as the
3 same relates to the inspection, examination, supervision,
4 regulation and control of banking institutions, includ-
5 ing, but not limited to, all of the penalty provisions
6 contained in said chapter, shall apply to industrial loan
7 companies organized pursuant to this article to the
8 extent that the provisions of this article and the
9 provisions of said chapter are not inconsistent. To the
10 extent of any inconsistencies between the provisions of
11 this article and provisions of said chapter, the provisions
12 of this article shall prevail to the extent of such
13 inconsistencies.

14 (b) The general corporation laws of the state, includ-
15 ing the provisions of article one of this chapter, shall
16 govern industrial loan companies.

§31-7-3. Definitions.

1 As used in this article, unless the context otherwise
2 requires a different meaning, the term:

3 (a) "Commissioner" or "commissioner of banking"
4 means the commissioner of banking of West Virginia
5 and includes the division of banking of West Virginia;

6 (b) "Deposit" or "deposits" means the unpaid balance
7 of money or its equivalent received or held in the usual
8 course of business and for which there is given or there
9 is obligated to give credit, either conditionally or
10 unconditionally, to a checking, savings, time or thrift
11 account, or which is evidenced by a certificate of deposit;
12 and

13 (c) "Industrial loan company" means any corporation
14 formed under the provisions of this article with the

15 approval of the commissioner of banking of this state.

§31-7-4. Incorporators; name; minimum capital stock; voting rights of classes of stock; common stock to be paid in before business commenced; use of certain words in corporate name prohibited.

1 Any number of persons may become an industrial
2 loan company on the terms and conditions and subject
3 to the liabilities prescribed in this article. The name of
4 any industrial loan company formed under this article
5 shall not contain the words "savings" or "savings and
6 loan" and shall not be that of any other existing
7 corporation of this state: *Provided*, That any such
8 corporation heretofore organized which uses the words
9 "savings and loan" as a part of its corporate name shall
10 be authorized to continue to use such words. The capital
11 stock of any such corporation shall not be less than
12 twenty-five thousand dollars, and shall consist of shares
13 of common stock. The voting power and control of the
14 corporation during its life shall be vested in the common
15 stock only if more than one class of stock is to be issued.
16 Such common stock, with which it will commence
17 business, shall be paid in before such corporation shall
18 be authorized to engage in business, except such
19 business as is incidental and necessarily preliminary to
20 its organization.

§31-7-11. Powers of industrial loan companies; limitation of powers.

1 (a) In addition to the general powers conferred upon
2 corporations by the laws of this state, each industrial
3 loan company shall have power to exercise by its board
4 of directors or duly authorized officers or agents, subject
5 to law, all such powers as shall be necessary to:

6 (1) Lend money to any person, firm or corporation,
7 secured by the obligation of such person, firm or
8 corporation, or otherwise;

9 (2) Demand and receive for loans or for notes, bills
10 or evidences of debt discounted or purchased, such rate
11 of interest as may be agreed upon by the parties, not

12 exceeding the lawful rate of interest, and it shall be
13 lawful to receive such interest in advance. This section
14 does not limit or restrict the manner of calculating the
15 loan finance charge, whether by way of add-on, discount
16 or otherwise, so long as the rate of loan finance charge
17 does not exceed that permitted by this section;

18 (3) Charge for a loan made pursuant to this section,
19 one dollar for each fifty dollars, or fraction thereof,
20 loaned, for expenses including any examination or
21 investigation of the character and circumstances of the
22 borrower, comaker or surety, and the drawing and
23 taking the acknowledgment of necessary papers, or
24 other expenses, incurred in making the loan. No
25 additional charge shall be made except to reimburse the
26 corporation for money actually expended for additional
27 service actually rendered the borrower. No charge shall
28 be collected unless a loan shall have been made as the
29 result of such examination or investigation;

30 (4) Purchase, hold and convey real estate as follows:

31 (A) Such as shall be necessary for the convenient
32 transaction of its business;

33 (B) Such as is mortgaged to it in good faith by way
34 of security for loans made by or money due to such
35 industrial loan company;

36 (C) Such as is conveyed to it in satisfaction of debts
37 previously contracted in the course of its dealings;

38 (D) Such as is acquired by sale on execution or
39 judgment or decree of any court in its favor.

40 (b) Industrial loan companies shall not purchase, hold
41 or convey any real estate in any other case or for any
42 other purpose whatever. Real estate shall be conveyed
43 only by authority of the board of directors of any such
44 industrial loan company. No real estate acquired in the
45 cases contemplated in paragraphs (B), (C) and (D),
46 subdivision (4), subsection (a) of this section shall be held
47 for a longer time than ten years, unless such period shall
48 be extended by the commissioner of banking.

49 (c) An industrial loan company shall not:

50 (1) Accept or receive deposits or sell or offer for sale
51 its secured or unsecured evidences or certificates of
52 indebtedness;

53 (2) Pay any fees, bonuses, commissions, rewards or
54 other consideration to any person, firm or corporation
55 for the privilege of using any plan of operation, scheme
56 or device for the organization or carrying on of business
57 under this article, or the use of any name, trademark
58 or copyright to be so used.

§31-7-13. Supervision and control.

1 (a) Every industrial loan company shall be subject to
2 the inspection, examination, supervision, jurisdiction
3 and control of the commissioner. Where forty percent or
4 more of the common stock of any industrial loan
5 company is owned or is held in trust for the benefit of
6 or by any other single firm, corporation, partnership or
7 association, such other firm, corporation, partnership or
8 association shall also be subject to the same jurisdiction
9 and powers of inspection, examination, supervision and
10 control of the commissioner, as if such other firm,
11 corporation, partnership or association were an indus-
12 trial loan company.

13 (b) The commissioner of banking shall charge and
14 collect from each industrial loan company and pay into
15 a special revenue account for the department of banking
16 an annual assessment payable on the first day of July,
17 computed upon the total assets of the industrial loan
18 company shown on the report of condition of the
19 industrial loan company as of the last business day in
20 December of the previous year as is set out in section
21 eight, article two, chapter thirty-one-a of this code.

**§31-7-14. Branch industrial loan company permitted;
penalties.**

1 (a) No industrial loan company shall install or
2 maintain any branch industrial loan company, unless it
3 has applied for and received a branch office certificate
4 from the commissioner. Application for a branch office
5 certificate shall be filed in duplicate with the commis-
6 sioner, on forms prescribed by the commissioner,

7 accompanied by an examination and investigation fee of
8 one thousand dollars payable to the commissioner. The
9 provision of section five, article two, chapter thirty-one-
10 a of this code, insofar as the same relates to financial
11 institutions, other than banking institutions, shall apply
12 to the application and issuance of a branch office
13 certificate or license by the commissioner to an indus-
14 trial loan company.

15 (b) Any violation of any provision of this section shall
16 constitute a misdemeanor offense punishable by appli-
17 cable penalties as provided in section fifteen, article
18 eight, chapter thirty-one-a of this code.

**§31-7-16. Annual and special meetings of stockholders;
quorum; annual report; voting; proxies.**

1 (a) The stockholders of each industrial loan company
2 shall meet annually, a majority of the outstanding voting
3 stock to constitute a quorum; and it shall be the duty
4 of the secretary to prepare and submit to the stock-
5 holders a clear and concise statement of the financial
6 condition of the corporation as of the close of business
7 on the last day of the year next preceding. At such
8 meeting the stockholders shall elect a board of directors
9 of not less than five nor more than twenty-five. Special
10 meetings may be called by order of the board of
11 directors or by request in writing of ten percent of the
12 stockholders.

13 (b) In all elections of directors of the corporation, each
14 stockholder shall have the right to cast one vote for each
15 share of stock owned by him and entitled to vote, and
16 he may cast the same in person or by proxy, for as many
17 persons as there are directors to be elected, or he may
18 cumulate such votes and give one candidate as many
19 votes as the number of directors to be elected multiplied
20 by the number of his shares of stock shall equal; or he
21 may distribute them on the same principle among as
22 many candidates and in such manner as he may desire,
23 and the directors shall not be elected in any other
24 manner, and on any other question to be determined by
25 a vote of shares at any meeting of stockholders each
26 stockholder shall be entitled to one vote for each share

27 of stock owned by him and entitled to vote, and he may
28 exercise this right in person or by proxy, but if by
29 proxy, in no instance can it be voted in any meeting
30 other than which it was first intended.

**§31-7-18. Chief executive and other officers to be bonded;
personal liability of directors for manager's
defalcation.**

1 The directors of every industrial loan company shall
2 require the manager or other chief executive officer
3 appointed by them in lieu of a manager, before he
4 performs or enters upon any duties as such manager or
5 chief executive officer, to give a bond or bonds, with a
6 surety company authorized to transact business in this
7 state as surety thereon, the amount to be fixed by them,
8 but in no case shall the penalty be less than five
9 thousand dollars. Other officers and personnel are to be
10 bonded in amounts commensurate with their duties and
11 responsibilities, to be fixed by the board of directors,
12 and all bonds are to be approved by the commissioner
13 of banking and a copy filed with his department; and
14 it shall be the duty of the directors, as often as once in
15 every year, to pass upon the sufficiency of such bond or
16 bonds, and if insufficient, to require without delay new
17 and additional bonds and securities to be given. If the
18 directors shall fail to perform any or all of the require-
19 ments of this section, they shall be jointly and severally
20 liable to the industrial loan company, as the case may
21 be, to the extent of any defalcation of or deficiency in
22 the funds of such company created or caused by such
23 manager, not in excess of the penalty of his bond, the
24 same to be recovered by such industrial loan company
25 in any court of competent jurisdiction of this state.

§31-7-19. List of stockholders; right of inspection.

1 The president, manager or treasurer of every indus-
2 trial loan company shall at all times cause to be kept
3 a true and accurate list of the names of stockholders of
4 record, with the amount of stock held by each, which
5 list shall at all times during business hours be open to
6 the inspection of any stockholder or to the inspection of
7 the commissioner or his duly authorized representative

8 or to the authorized personnel or representatives of the
9 federal deposit insurance corporation.

§31-7-24. Advertising requirements and prohibitions.

1 (a) An industrial loan company shall not advertise
2 itself as a bank nor shall any of its advertisements,
3 irrespective of the media used, contain the word or term
4 "bank", "banker", "banking company", "banking associ-
5 ation", "bankers association", "savings bank" or "trust
6 company".

7 (b) An industrial loan company shall not use in any
8 of its advertisements, signs, displays, stationery or
9 documents nor in any other manner use any symbol,
10 device, trademark or seal which is alike or deceptively
11 similar to any device, symbol, trademark, or seal of the
12 federal deposit insurance corporation or of any other
13 federal agency or of any other corporation authorized to
14 transact business in this state. Any such symbol, device,
15 trademark or seal proposed to be adopted or used by any
16 industrial loan company shall, prior to its adoption or
17 use, be approved in writing by the commissioner.

§31-7-26. Rules and regulations.

1 The commissioner may, from time to time, adopt and
2 promulgate such rules as are deemed necessary and
3 appropriate to carry into effect the provisions of this
4 article in accordance with the provisions of chapter
5 thirty-one-a of this code. All such rules shall be adopted
6 and promulgated pursuant to the provisions of chapter
7 twenty-nine-a of this code.

**§31-7-27. Additional powers and duties of the commis-
sioner; fees; powers of the board; appeals
and judicial review.**

1 Except as may be inconsistent with the provisions of
2 this article, all of the duties, powers and authority
3 vested in the commissioner of banking pursuant to the
4 provisions of chapter thirty-one-a of this code shall apply
5 to industrial loan companies. Appeals from any orders
6 or actions of the commissioner or judicial review thereof
7 shall be in the same manner as may be prescribed in
8 chapter twenty-nine-a of this code.

CHAPTER 105

(Com. Sub. for S. B. 536—By Senator Burdette, Mr. President, By Request)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five, ten, thirteen, fifteen, seventeen, eighteen, twenty-two and twenty-four, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article nine-a, chapter eighteen of said code by adding thereto a new section, designated section twenty-four, all relating to public employees insurance; costs to retired employees; transfer of certain funds to the medicaid program; providing that the finance board establish certain premium costs; removing pregnancy as a preexisting condition and providing for continuity of coverage for previously insured new employees with preexisting conditions; requiring county boards of education and other employers to fund premium costs in excess of general revenue appropriations, requiring notification of maximum amount of such costs, setting a maximum amount of such costs of five million dollars, and limiting use of school aid appropriations to employer premiums for employees whose positions are funded by state funds; requiring employers to pay contributions as determined by the finance board; providing for payment of premium contributions of retired employees; and authorizing use of school aid funds for employer premiums.

Be it enacted by the Legislature of West Virginia:

That sections five, ten, thirteen, fifteen, seventeen, eighteen, twenty-two and twenty-four, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article nine-a, chapter eighteen of said code be amended by adding thereto a new section, designated section twenty-four, 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.**
18. **Education.**

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 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

- §5-16-5. Purpose, powers and duties of the finance board; initial financial plan; financial plan for following year; and annual financial plans.
- §5-16-10. Contract provisions for group hospital and surgical, group major medical, group prescription drug and group life and accidental death insurance for retired employees, their spouses and dependents.
- §5-16-13. Payment of costs by employer and employee; coverage for employee's spouse and dependents generally; short term continuance of coverage for involuntary employee termination; extended insurance coverage for retired employees with accrued annual leave and sick leave; increased retirement benefits for retired employees with accrued annual and sick leave; additional eligible retired employees; option for health insurance coverage without life insurance coverage made available to retirees; health insurance for surviving dependents of deceased employees.
- §5-16-15. Optional dental, optical, disability and prepaid retirement plan, and audiology and hearing-aid service plan.
- §5-16-17. Preexisting conditions not covered; defined.
- §5-16-18. Payment of costs by employer; schedule of insurance; special funds created; duties of treasurer with respect thereto.
- §5-16-22. Permissive participation; exemptions.
- §5-16-24. Rules and regulations for administration of article; eligibility of certain retired employees and dependents of deceased members for coverage; employees on medical leave of absence entitled to coverage; life insurance.

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

- 1 (a) The purpose of the finance board created by this

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

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

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

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

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

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

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

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

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

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

82 Notwithstanding any provision of this article to the

83 contrary, during any meeting authorized by subsection
84 (h) of this section to review implementation of the initial
85 financial plan in light of actual experience, the finance
86 board, in its discretion, may elect to redesign the initial
87 financial plan so that revenues generated will meet all
88 incurred and projected program and administrative
89 costs of the public employees insurance agency by the
90 end of the fiscal year ending on the thirtieth day of June,
91 one thousand nine hundred ninety-two, rather than by
92 the thirtieth day of June, one thousand nine hundred
93 ninety-one. Before implementing any such modifica-
94 tions, the finance board shall obtain a written profes-
95 sional opinion from its actuary stating that the modified
96 plan may be reasonably expected to generate sufficient
97 revenues to meet all estimated program and administra-
98 tive costs of the public employees insurance agency for
99 the remainder of fiscal year one thousand nine hundred
100 ninety-one and for fiscal year one thousand nine
101 hundred ninety-two, allowing for between thirty and
102 forty-five days of accounts payable to be carried over
103 into fiscal year one thousand nine hundred ninety-three.
104 The finance board shall also afford interested and
105 affected persons an opportunity to offer comment on the
106 modified plan at a public meeting of the finance board.
107 Regardless of whether or not the finance board modifies
108 the initial financial plan as authorized by this subsec-
109 tion, the finance board shall prepare a financial plan for
110 fiscal year one thousand nine hundred ninety-two in
111 accordance with subsection (e) of this section.

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

125 The finance board shall request its actuary to review
126 the proposed financial plan and to render a written
127 professional opinion stating whether the plan may be
128 reasonably expected to generate sufficient revenues to
129 meet all estimated program and administrative costs of
130 the public employees insurance agency for the fiscal
131 year. The actuary's report shall explain the basis of his
132 or her opinion. If the actuary concludes that the
133 proposed financial plan will not generate sufficient
134 revenues to meet all anticipated costs, then the finance
135 board shall make necessary modifications to the pro-
136 posed plan to ensure that all actuarially-determined
137 financial requirements of the agency will be met.

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

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

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

166 requirements of the public employees insurance agency
167 for the fiscal year.

168 The finance board shall prepare a proposed financial
169 plan designed to generate revenues sufficient to meet all
170 estimated program and administrative costs of the
171 public employees insurance agency for the fiscal year.
172 The proposed financial plan shall allow for between
173 thirty and forty-five days of accounts payable to be
174 carried over into the next fiscal year. Before final
175 adoption of the proposed financial plan, the finance
176 board shall request its actuary to review the plan and
177 to render a written professional opinion stating whether
178 the plan will generate sufficient revenues to meet all
179 estimated program and administrative costs of the
180 public employees insurance agency for the fiscal year.
181 The actuary's report shall explain the basis of its
182 opinion. If the actuary concludes that the proposed
183 financial plan will not generate sufficient revenues to
184 meet all anticipated costs, then the finance board shall
185 make necessary modifications to the proposed plan to
186 ensure that all actuarially-determined financial require-
187 ments of the agency will be met.

188 Upon obtaining the actuary's opinion, the finance
189 board shall conduct one or more public hearings in each
190 congressional district to receive public comment on the
191 proposed financial plan, shall review such comments,
192 and shall finalize and approve the financial plan.

193 The finance board shall submit to the governor and
194 to the Legislature its final, approved financial plan for
195 fiscal year one thousand nine hundred ninety-two,
196 together with the actuary's final written opinion, no
197 later than the first day of May, one thousand nine
198 hundred ninety-one. The financial plan shall become
199 effective and shall be implemented by the director on
200 the first day of July, one thousand nine hundred ninety-
201 one.

202 (f) *Annual plans.* — The finance board shall prepare,
203 in the manner provided in subsection (e) of this section,
204 an annual financial plan for fiscal year one thousand
205 nine hundred ninety-three and each fiscal year thereaf-

206 ter during which the finance board remains in exist-
207 ence. Any such financial plan shall be designed to allow
208 thirty days or less of accounts payable to be carried over
209 into the next fiscal year. For each such fiscal year, the
210 governor shall provide his or her estimate of total
211 revenues to the finance board no later than the first day
212 of July of the preceding fiscal year. The finance board
213 shall submit its final, approved financial plan, after
214 obtaining the necessary actuary's opinion and conduct-
215 ing one or more public hearings in each congressional
216 district, to the governor and to the Legislature no later
217 than the first day of January preceding the fiscal year.
218 The financial plan for a fiscal year shall become
219 effective and shall be implemented by the director on
220 the first day of July of such fiscal year.

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

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

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

245 (j) The types and levels of costs to employers,

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

§5-16-10. Contract provisions for group hospital and surgical, group major medical, group prescription drug and group life and accidental death insurance for retired employees, their spouses and dependents.

1 Any contract or contracts entered into hereunder may
2 provide for group hospital and surgical, group major
3 medical, group prescription drug and group life and
4 accidental death insurance for retired employees and
5 their spouses and dependents as defined by rules and
6 regulations of the public employees insurance agency,
7 and on such terms as the director may deem
8 appropriate.

9 In the event the public employees insurance agency
10 provides the above benefits for retired employees, their
11 spouses and dependents, the public employees insurance
12 agency shall adopt rules and regulations prescribing the
13 conditions under which retired employees may elect to
14 participate in or withdraw from the plan or plans. Any
15 contract or contracts herein provided for shall be
16 secondary to any hospital, surgical, major medical,
17 prescription drug or other health insurance plan
18 administered by the United States department of health
19 and human services to which the retired employee,
20 spouse or dependent may be eligible under any law or
21 regulation of the United States. If an employee, eligible
22 to participate in the public employees insurance agency
23 plans, is also eligible to participate in the state medicaid
24 program, and chooses to do so, then the public employees
25 insurance agency may transfer to the medicaid program

26 funds to pay the required state share of such employee's
27 participation in medicaid except that the amount
28 transferred may not exceed the amount that would be
29 allocated by the agency to subsidize the cost of coverage
30 for the retired employee if he or she were enrolled in
31 the public employee insurance agency's plans.

§5-16-13. Payment of costs by employer and employee; coverage for employee's spouse and dependents generally; short term continuance of coverage for involuntary employee termination; extended insurance coverage for retired employees with accrued annual leave and sick leave; increased retirement benefits for retired employees with accrued annual and sick leave; additional eligible retired employees; option for health insurance coverage without life insurance coverage made available to retirees; health insurance for surviving dependents of deceased employees.

1 (a) The director is hereby authorized to provide under
2 any contract or contracts entered into under the
3 provisions of this article that the costs of any such group
4 hospital and surgical insurance, group major medical
5 insurance, group prescription drug insurance, group life
6 and accidental death insurance benefit plan or plans
7 may be paid by the employer and employee. In addition,
8 each employee shall be entitled to have his or her spouse
9 and dependents, as defined by the rules and regulations
10 of the public employees insurance agency, included in
11 any group hospital and surgical insurance, group major
12 medical insurance or group prescription drug insurance
13 coverage: *Provided*, That such spouse and dependent
14 coverage shall be limited to excess or secondary
15 coverage for each spouse and dependent who has
16 primary coverage from any other source. For purposes
17 of this section, the term "primary coverage" means
18 individual or group hospital and surgical insurance
19 coverage or individual or group major medical insu-
20 rance coverage or group prescription drug coverage in
21 which the spouse or dependent is the named insured or

22 certificate holder. The director may require proof
23 regarding spouse and dependent primary coverage and
24 shall adopt rules and regulations governing the nature,
25 discontinuance and resumption of any employee's
26 coverage for his or her spouse and dependents.

27 (b) Should a participating employee be terminated
28 from employment involuntarily or in reduction of work
29 force, the employee's insurance coverage provided under
30 this article shall continue for a period of three months
31 at no additional cost to the employee: *Provided*, That an
32 employee discharged for misconduct shall not be eligible
33 for extended benefits under this section: *Provided*,
34 *however*, That coverage may be extended up to the
35 maximum period of three months, while administrative
36 remedies contesting the charge of misconduct are
37 pursued: *Provided further*, That should the discharge for
38 misconduct be upheld, the full cost of the extended
39 coverage shall be reimbursed by the employee. If the
40 employee is again employed or recalled to active
41 employment within twelve months of his or her prior
42 termination, he or she shall not be considered a new
43 enrollee and shall not be required to again contribute
44 his or her share of the premium cost, if he or she had
45 already fully contributed such share during the prior
46 period of employment.

47 (c) Except as otherwise provided in subsection (f) for
48 higher education full-time faculty employed on an
49 annual contract basis other than for twelve months,
50 when a participating employee, who has elected to
51 participate in the plan before the first day of July, one
52 thousand nine hundred eighty-eight, is compelled or
53 required by law to retire before reaching the age of
54 sixty-five, or when a participating employee voluntarily
55 retires as provided by law, that employee's accrued
56 annual leave and sick leave, if any, shall be credited
57 toward an extension of the insurance coverage provided
58 by this article, according to the following formulae:
59 Such insurance coverage for a retired employee shall
60 continue one additional month for every two days of
61 annual leave or sick leave, or both, which the employee
62 had accrued as of the effective date of his or her

63 retirement. For a retired employee, his or her spouse
64 and dependents, such insurance coverage shall continue
65 one additional month for every three days of annual
66 leave or sick leave, or both, which the employee had
67 accrued as of the effective date of his or her retirement.

68 (d) Notwithstanding the preceding subsection, except
69 as otherwise provided in subsection (f) for higher
70 education full-time faculty employed on an annual
71 contract basis other than for twelve months, when a
72 participating employee who elects to participate in the
73 plan on and after the first day of July, one thousand nine
74 hundred eighty-eight, is compelled or required by law
75 to retire before reaching the age of sixty-five, or when
76 such a participating employee voluntarily retires as
77 provided by law, that employee's annual leave or sick
78 leave, if any, shall be credited toward one half of the
79 premium cost of the insurance provided by this article,
80 for periods and scope of coverage determined according
81 to the following formulae: (1) One additional month of
82 single retiree coverage for every two days of annual
83 leave or sick leave, or both, which the employee had
84 accrued as of the effective date of his or her retirement;
85 or (2) one additional month of coverage for a retiree, his
86 or her spouse and dependents for every three days of
87 annual leave or sick leave, or both, which the employee
88 had accrued as of the effective date of his or her
89 retirement. The remaining premium cost shall be borne
90 by such retired employee if he or she elects such
91 coverage. For purposes of this subsection, an employee
92 who has been a participant under spouse or dependent
93 coverage and who reenters the plan within twelve
94 months after termination of his or her prior coverage
95 shall be considered to have elected to participate in the
96 plan as of the date of commencement of the prior
97 coverage. For purposes of this subsection, an employee
98 shall not be considered a new employee after returning
99 from extended authorized leave on or after the first day
100 of July, one thousand nine hundred eighty-eight.

101 (e) In the alternative to the extension of insurance
102 coverage through premium payment provided in the two
103 preceding subsections, on and after the first day of July,

104 one thousand nine hundred eighty-eight, the participat-
105 ing employee's accrued annual leave and sick leave may
106 be applied, on the basis of two days retirement service
107 credit for each one day of accrued annual and sick leave,
108 toward an increase in the employee's retirement benefits
109 with such days constituting additional credited service
110 in computation of such benefits under any state retire-
111 ment system. However, such credited service shall not
112 be used in meeting initial eligibility for retirement
113 criteria, but only as additional service credited in excess
114 thereof.

115 (f) When a participating employee, who is a higher
116 education full-time faculty member employed on an
117 annual contract basis other than for twelve months, is
118 compelled or required by law to retire, on or after the
119 first day of August, one thousand nine hundred eighty-
120 eight, before reaching the age of sixty-five, or when such
121 a participating employee voluntarily retires as provided
122 by law, on or after the first day of August, one thousand
123 nine hundred eighty-eight, that employee's insurance
124 coverage, as provided by this article, shall be extended
125 according to the following formulae: Such insurance
126 coverage for a retired higher education full-time faculty
127 member, formerly employed on an annual contract basis
128 other than for twelve months, shall continue beyond the
129 effective date of his or her retirement one additional
130 year for each three and one-third years of teaching
131 service, as determined by uniform guidelines estab-
132 lished by the university of West Virginia board of
133 trustees and the board of directors of the state college
134 system, for individual coverage, or one additional year
135 for each five years of teaching service for "family"
136 coverage.

137 (g) Any employee who retired prior to the twenty-first
138 day of April, one thousand nine hundred seventy-two,
139 and who also otherwise meets the conditions of the
140 "retired employee" definition in section two of this
141 article, shall be eligible for insurance coverage under
142 the same terms and provisions of this article. The
143 retired employee's premium contribution for any such
144 coverage shall be established by the finance board.

145 (h) All retirees under the provisions of this article,
146 including those defined in section two of this article;
147 those retiring prior to the twenty-first day of April, one
148 thousand nine hundred seventy-two; and those hereafter
149 retiring shall be eligible for and permitted to obtain
150 health insurance coverage. The retired employee's
151 premium contribution for any such coverage shall be
152 established by the finance board.

153 (i) A surviving spouse and dependents of a deceased
154 employee, who was either an active or retired employee
155 just prior to such decease, shall be entitled to be
156 included in any group insurance coverage provided
157 under this article, and such spouse and dependents shall
158 bear the premium cost of such insurance coverage. The
159 finance board shall establish the premium cost of any
160 such coverage.

161 (j) In construing the provisions of this section or any
162 other provisions of this code, the Legislature declares
163 that it is not now nor has it ever been the Legislature's
164 intent that elected public officials be provided any sick
165 leave, annual leave or personal leave, and the enactment
166 of this section is based upon the fact and assumption
167 that no statutory or inherent authority exists extending
168 sick leave, annual leave or personal leave to elected
169 public officials and the very nature of such positions
170 preclude the arising or accumulation of such, so as to
171 be thereafter usable as premium paying credits for
172 which such officials may claim extended insurance
173 benefits.

**§5-16-15. Optional dental, optical, disability and prepaid
retirement plan, and audiology and hearing-
aid service plan.**

1 On and after the first day of July, one thousand nine
2 hundred eighty-nine, the director shall make available
3 to participants in the public employees insurance
4 system: (1) A dental insurance plan; (2) an optical
5 insurance plan; (3) a disability insurance plan; (4) a
6 prepaid retirement insurance plan; and (5) an audiology
7 and hearing-aid services insurance plan. Public em-
8 ployees insurance participants may elect to participate

9 in any one of these plans separately or in combination.
10 Notwithstanding anything in this article to the contrary,
11 all actuarial and administrative costs of each plan shall
12 be totally borne by the premium payments of the
13 participants or local governing bodies electing to
14 participate in that plan. The director is authorized to
15 employ such administrative practices and procedures
16 with respect to these optional plans as are authorized for
17 the administration of other plans under this article. The
18 director shall establish separate funds: (1) For deposit
19 of dental insurance premiums and payment of dental
20 insurance claims; (2) for deposit of optical insurance
21 premium payments and payment of optical insurance
22 claims; (3) for deposit of disability insurance premium
23 payments and payment of disability insurance claims;
24 and (4) for deposit of audiology and hearing-aid service
25 insurance premiums and payment of audiology and
26 hearing-aid insurance claims. Such funds shall not be
27 supplemented by nor be used to supplement any other
28 funds.

§5-16-17. Preexisting conditions not covered; defined.

1 A preexisting condition is an injury, or sickness, or
2 any condition relating to that injury, or sickness, for
3 which a participant is diagnosed, receives treatment, or
4 incurs expenses within three months prior to the
5 effective date of coverage: *Provided*, That a preexisting
6 condition shall not include a condition which meets the
7 definition of handicap as provided in section three,
8 article eleven, chapter five of this code. In determining
9 whether the preexisting condition limitation provision
10 applies to an eligible employee or dependent, the public
11 employees insurance agency shall credit the time such
12 person was covered under any previous employer-based
13 health benefit plan, any comparable individual health
14 benefit plan, or any self-insured plan if the previous
15 coverage was continuous to a date not more than thirty
16 days prior to the effective date of the new coverage,
17 exclusive of an applicable waiting period under such
18 plan.

19 For all participants enrolling in the plan after the
20 effective date of this section, no payment shall be made

21 for expenses incurred for or in connection with a
22 preexisting condition unless the expenses are incurred
23 after the expiration of a one-year period during which
24 the participant is continuously participating in the plan.

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

1 All employers operating from state general revenue
2 or special revenue funds or federal funds or any
3 combination thereof shall budget the cost of insurance
4 coverage provided by the public employees insurance
5 agency to current and retired employees of the employer
6 as a separate line item, titled "PEI", in its respective
7 annual budget and shall be responsible for the transfer
8 of funds to the director for the cost of insurance for
9 employees covered by the plan. Each spending unit shall
10 pay to the director its proportionate share from each
11 source of funds. Any agency wishing to charge general
12 revenue funds for insurance benefits for retirees under
13 section thirteen of this article must provide documenta-
14 tion to the director that such benefits cannot be paid for
15 by any special revenue account or that the retiring
16 employee has been paid solely with general revenue
17 funds for twelve months prior to retirement.

18 Should the general revenue appropriation for any
19 employer, including a county board of education, be
20 insufficient to cover the cost of insurance coverage for
21 such employer's participating employees, retired em-
22 ployees and surviving dependents, the employer shall
23 pay the remainder of such cost from its "personal
24 services" or "unclassified" line items or, in the case of
25 a county board of education, from other funds: *Provided,*
26 That local excess levy funds shall be used only for the
27 purposes for which they were raised: *Provided, however,*
28 That after approval of its annual financial plan but in
29 no event later than the thirty-first day of December of
30 each year, the finance board shall notify the Legislature
31 and county boards of education of the maximum amount
32 of employer premiums that the county boards of
33 education will be required to pay for covered employees
34 during the following fiscal year: *Provided further,* That

35 said amount shall not exceed five million dollars during
36 fiscal year one thousand nine hundred ninety-three: *And*
37 *provided further*, That the finance board and depart-
38 ment of education shall determine the extent to which
39 state school aid appropriations are being used by the
40 county school boards to pay employer premiums for
41 employees whose positions are not funded by state
42 revenues and shall develop and implement a plan to
43 minimize such expenditures.

44 All other employers not operating from the state
45 general revenue fund shall pay to the director their
46 share of premium costs from their respective budgets.
47 The finance board shall establish such employers' share
48 of premium costs to reflect and pay the actual costs of
49 such coverage including incurred but not reported
50 claims.

51 The contribution of such other employers (namely: A
52 county, city or town in the state; any separate corpora-
53 tion or instrumentality established by one or more
54 counties, cities or towns, as permitted by law; any
55 corporation or instrumentality supported in most part
56 by counties, cities or towns; any public corporation
57 charged by law with the performance of a governmental
58 function and whose jurisdiction is coextensive with one
59 or more counties, cities or towns; any comprehensive
60 community mental health center or comprehensive
61 mental retardation facility established, operated or
62 licensed by the secretary of health and human resources
63 pursuant to section one, article two-a, chapter twenty-
64 seven of this code, and which is supported in part by
65 state, county or municipal funds; and a combined city-
66 county health department created pursuant to article
67 two, chapter sixteen of the code) for their employees
68 shall be such percentage of the cost of the employees'
69 insurance package as the employers deem reasonable
70 and proper under their own particular circumstances.

71 The employee's proportionate share of the premium or
72 cost shall be withheld or deducted by the employer from
73 such employee's salary or wages as and when paid and
74 such sums shall be forwarded to the director with such
75 supporting data as the director may require.

76 All moneys received by the public employees insu-
77 rance agency shall be deposited in a special fund or
78 funds as are necessary in the state treasury and the
79 treasurer of the state shall be custodian of such fund or
80 funds and shall administer such fund or funds in
81 accordance with the provisions of this article or as the
82 director may from time to time direct. The treasurer
83 shall pay all warrants issued by the state auditor against
84 such fund or funds as the director may direct in
85 accordance with the provisions of this article. On and
86 after the first day of July, one thousand nine hundred
87 eighty-eight, all payments previously required to be
88 made to the public employees insurance board shall be
89 made to the public employees insurance agency.

§5-16-22. Permissive participation; exemptions.

1 The provisions of this article shall not be mandatory
2 upon any employee or employer who is not an employee
3 of or is not the state of West Virginia, its boards,
4 agencies, commissions, departments, institutions or
5 spending units or a county board of education, and
6 nothing contained in this article shall be construed so
7 as to compel any employee or employer to enroll in or
8 subscribe to any insurance plan authorized by the
9 provisions of this article.

10 Those employees enrolled in the insurance program
11 authorized under the provisions of article two-b, chapter
12 twenty-one-a of this code shall not be required to enroll
13 in or subscribe to an insurance plan or plans authorized
14 by the provisions of this article, and the employees of
15 any department which has an existing insurance
16 program for its employees to which the government of
17 the United States contributes any part or all of the
18 premium or cost thereof may be exempted from the
19 provisions of this article. Any employee or employer
20 exempted under the provisions of this paragraph may
21 enroll in any insurance program authorized by the
22 provisions of this article at any time, to the same extent
23 as any other qualified employee or employer, but any
24 such employee or employer shall not remain enrolled in
25 both such programs. The provisions of articles fourteen,
26 fifteen and sixteen, chapter thirty-three of this code,

27 relating to group life insurance, accident and sickness
28 insurance, and group accident and sickness insurance,
29 shall not be applicable to the provisions of this article
30 whenever the provisions of said articles and chapter are
31 in conflict with or contrary to any provision set forth
32 herein or to any plan or plans established by the public
33 employees insurance agency.

34 Employers, other than the state of West Virginia, its
35 boards, agencies, commissions, departments, institu-
36 tions, spending units, or a county board of education
37 shall be exempt from participating in the insurance
38 program provided for by the provisions of this article
39 unless participation by the employer has been approved
40 by a majority vote of the employer's governing body. It
41 shall be the duty of the clerk or secretary of the
42 governing body of an employer who by such majority
43 vote becomes a participant in the insurance program to
44 notify the director not later than ten days after such
45 vote.

46 Any employer, whether such employer participates in
47 the public employees insurance agency insurance
48 program as a group or not, which has retired employees,
49 their dependents, or surviving dependents of deceased
50 retired employees who participate in the public em-
51 ployees insurance agency insurance program as autho-
52 rized by this article, shall pay to the agency the same
53 contribution toward the cost of coverage for its retired
54 employees, their dependents, or surviving dependents of
55 deceased retired employees as the state of West Virgi-
56 nia, its boards, agencies, commissions, departments,
57 institutions, spending units, or a county board of
58 education pay for their retired employees, their depend-
59 ents, and surviving dependents of deceased retired
60 employees, as determined by the finance board. Each
61 employer is hereby authorized and required to budget
62 for and make such payments.

**§5-16-24. Rules and regulations for administration of
article; eligibility of certain retired em-
ployees and dependents of deceased mem-
bers for coverage; employees on medical
leave of absence entitled to coverage; life
insurance.**

1 The director shall promulgate such rules and regula-
2 tions as may be required for the effective administration
3 of the provisions of this article. Except as specifically
4 provided in subsection (e), section four of this article, all
5 rules and regulations of the public employees insurance
6 agency and all hearings held by the public employees
7 insurance agency shall be exempt from the provisions
8 of chapter twenty-nine-a of this code. Any rules and
9 regulations now in existence promulgated by the public
10 employees insurance board or director shall remain in
11 full force and effect until they are amended or replaced
12 by the director.

13 Such regulations shall provide that any employee of
14 the state who has been compelled or required by law to
15 retire before reaching the age of sixty-five years shall
16 be eligible to participate in the public employees' health
17 insurance program at the premium contribution estab-
18 lished by the finance board after any extended coverage
19 to which he or she, his or her spouse and dependents
20 may be entitled by virtue of his or her accrued annual
21 leave or sick leave, pursuant to the provisions of section
22 thirteen of this article, has expired. Any employee who
23 voluntarily retires, as provided by law, shall be eligible
24 to participate in the public employees' health insurance
25 program at the premium contribution established by the
26 finance board after any extended coverage to which he
27 or she, his or her spouse and dependents may be entitled
28 by virtue of his or her accrued annual leave or sick
29 leave, pursuant to the provisions of section thirteen of
30 this article, has expired. The dependents of any deceased
31 retired employee shall be entitled to continue their
32 participation and coverage upon payment of the pre-
33 mium contribution established by the finance board. In
34 establishing the cost of health insurance coverage for
35 retired employees and their spouses and dependents, the
36 finance board, in its discretion, may cause the claims
37 experience of such retired employees and their spouses
38 and dependents to be rated separately from that of
39 active employees and their spouses and dependents, or
40 may cause the claims experience of retired and active
41 employees, and their spouses and dependents, to be
42 rated together.

43 Any employee who is on a medical leave of absence,
44 approved by his or her employer, shall, subject to the
45 following provisions of this paragraph, be entitled to
46 continue his or her coverage until he or she returns to
47 his or her employment, and such employee and employer
48 shall continue to pay their proportionate share of
49 premium costs as provided by this article: *Provided,*
50 That the employer shall be obligated to pay its propor-
51 tionate share of the premium cost only for a period of
52 one year: *Provided, however,* That during the period of
53 such leave of absence, the employee shall, at least once
54 each month, submit to the employer the statement of a
55 qualified physician certifying that the employee is
56 unable to return to work.

57 Any retiree, retiring heretofore or hereafter, shall be
58 eligible to participate in the public employees' life
59 insurance program, including the optional life insurance
60 coverage as already available to active employees under
61 this article, at his or her own expense for the cost of
62 coverage, based upon actuarial experience; and the
63 director shall prepare, by rule and regulation, for such
64 participation and coverages under declining term
65 insurance and optional additional coverage for such
66 retirees.

CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-24. Payments to public employee insurance agency.

1 Nothing in this article shall be construed to limit the
2 ability of county boards of education to use funds
3 appropriated to county boards of education pursuant to
4 this article to pay employer premiums to the public
5 employees insurance agency for employees whose
6 positions are funded pursuant to this article. Funds
7 appropriated to county boards of education pursuant to
8 this article shall not be used to pay employer premiums
9 for employees of such boards whose positions are not, or
10 will not be within twenty months, funded by funds
11 appropriated pursuant to this article.

CHAPTER 106

(H. B. 4752—By Delegates L. White and Farris)

[Passed March 6, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend and reenact sections seven and nine, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section fifteen, article fifteen, chapter thirty-three of said code; and to amend and reenact sections two, three and four, article sixteen-c of said chapter, all relating to accident and sickness insurance policies; requiring that coverage for mammograms, pap smears and prostate cancer checkups be included in the benefits for public employees; requiring basic policy benefits to be approved by the insurance commissioner; adding prostate checkups to the list of benefits which may be included in basic individual and group insurance policies; and requiring a twelve-month period without insurance as a prerequisite for qualifying for a basic individual or group accident and sickness insurance policy plan.

Be it enacted by the Legislature of West Virginia:

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

Chapter

5. **General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.**
33. **Insurance.**

**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 16. WEST VIRGINIA PUBLIC EMPLOYEES IN-
SURANCE ACT.**

§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan and group life and accidental death insurance plan; rules and regulations for administration of plans; mandated benefits; what plans may provide; optional plans; separate rating for claims experience purposes.

§5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance and other accidental death insurance; mandated benefits; limitations; awarding of contracts, reinsurance; certificates for covered employees; discontinuance of contracts.

§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan and group life and accidental death insurance plan; rules and regulations for administration of plans; mandated benefits; what plans may provide; optional plans; separate rating for claims experience purposes.

1 (a) The agency shall establish a group hospital and
2 surgical insurance plan or plans, a group prescription
3 drug insurance plan or plans, a group major medical
4 insurance plan or plans, and a group life and accidental
5 death insurance plan or plans for those employees herein
6 made eligible, and to establish and promulgate rules
7 and regulations for the administration of such plans,
8 subject to the limitations contained in this article. Such
9 plans shall include coverages and benefits for X-ray and
10 laboratory services in connection with mammograms
11 and pap smears when performed for cancer screening
12 or diagnostic services and annual checkups for prostate
13 cancer in men age fifty and over. Such plans may also
14 include, among other things, medicines, medical equip-

15 ment, prosthetic appliances, and such other inpatient
16 and outpatient services and expenses deemed appropri-
17 ate and desirable by the agency.

18 (b) The agency shall make available to each employee
19 herein made eligible, at full cost to the employee, the
20 opportunity to purchase optional group life and accid-
21 ental death insurance in an amount not to exceed fifty
22 thousand dollars for life insurance and fifty thousand
23 dollars for accidental death insurance as established
24 under the rules and regulations of the agency. In
25 addition, each employee shall be entitled to have his
26 spouse and dependents, as defined by the rules and
27 regulations of the agency, included in such optional
28 coverage, at full cost to the employee, in an amount not
29 to exceed five thousand dollars for life insurance and
30 five thousand dollars for accidental death insurance for
31 the spouse and not to exceed two thousand dollars in life
32 insurance and two thousand dollars in accidental death
33 insurance for each eligible dependent; and with full
34 authorization hereby to the agency to make the same
35 available and provide such opportunity of purchase to
36 each employee.

37 (c) The finance board may cause to be separately
38 rated for claims experience purposes (1) all employees
39 of the state of West Virginia, (2) all teaching and
40 professional employees of the university of West
41 Virginia board of trustees or the board of directors of
42 the state college system and county boards of education,
43 (3) all nonteaching employees of the university of West
44 Virginia board of trustees or the board of directors of
45 the state college system and county boards of education,
46 or (4) any other categorization which would ensure the
47 stability of the overall program.

§5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance and other accidental death insurance; mandated benefits; limitations; awarding of contracts; reinsurance; certificates for covered employees; discontinuance of contracts.

1 (a) The director is hereby given exclusive authoriza-
2 tion to execute such contract or contracts as are
3 necessary to carry out the provisions of this article and
4 to provide the plan or plans of group hospital and
5 surgical insurance coverage, group major medical
6 insurance coverage, group prescription drug insurance
7 coverage and group life and accidental death insurance
8 coverage selected in accordance with the provisions of
9 this article, such contract or contracts to be executed
10 with one or more agencies, corporations, insurance
11 companies or service organizations licensed to sell group
12 hospital and surgical insurance, group major medical
13 insurance, group prescription drug insurance and group
14 life and accidental death insurance in this state.

15 (b) The group hospital or surgical insurance coverage
16 and group major medical insurance coverage herein
17 provided for shall include coverages and benefits for X-
18 ray and laboratory services in connection with mammo-
19 grams and pap smears when performed for cancer
20 screening or diagnostic services and annual checkups
21 for prostate cancer in men age fifty and over. Such
22 benefits shall include, but not be limited to, the
23 following:

24 (1) Baseline or other recommended mammograms for
25 women ages thirty-five to thirty-nine, inclusive;

26 (2) Mammograms recommended or required for
27 women age forty to forty-nine, inclusive, every two years
28 or as needed;

29 (3) A mammogram every year for women age fifty
30 and over;

31 (4) A pap smear annually or more frequently based
32 on the woman's physician's recommendation for women
33 age eighteen and over; and

34 (5) A checkup for prostate cancer annually for men
35 age fifty or over.

36 (c) The group life and accidental death insurance
37 herein provided for shall be in the amount of ten
38 thousand dollars for every employee. The amount of the
39 group life and accidental death insurance to which an

40 employee would otherwise be entitled shall be reduced
41 to five thousand dollars upon such employee attaining
42 age sixty-five.

43 (d) All of the insurance coverage to be provided for
44 under this article may be included in one or more
45 similar contracts issued by the same or different
46 carriers.

47 (e) The provisions of article three, chapter five-a of
48 this code, relating to the division of purchases of the
49 department of finance and administration, shall not
50 apply to any contracts for any insurance coverage or
51 professional services authorized to be executed under
52 the provisions of this article. Before entering into any
53 contract for any insurance coverage, as herein autho-
54 rized, said director shall invite competent bids from all
55 qualified and licensed insurance companies or carriers,
56 who may wish to offer plans for the insurance coverage
57 desired. The director shall deal directly with insurers
58 in presenting specifications and receiving quotations for
59 bid purposes. No commission or finder's fee, or any
60 combination thereof, shall be paid to any individual or
61 agent; but this shall not preclude an underwriting
62 insurance company or companies, at their own expense,
63 from appointing a licensed resident agent, within this
64 state, to service the companies' contracts awarded under
65 the provisions of this article. Commissions reasonably
66 related to actual service rendered for such agent or
67 agents may be paid by the underwriting company or
68 companies: *Provided*, That in no event shall payment be
69 made to any agent or agents when no actual services are
70 rendered or performed. The director shall award such
71 contract or contracts on a competitive basis. In award-
72 ing the contract or contracts the director shall take into
73 account the experience of the offering agency, corpora-
74 tion, insurance company or service organization in the
75 group hospital and surgical insurance field, group major
76 medical insurance field, group prescription drug field
77 and group life and accidental death insurance field, and
78 its facilities for the handling of claims. In evaluating
79 these factors, the director may employ the services of
80 impartial, professional insurance analysts or actuaries

81 or both. Any contract executed by the director with a
82 selected carrier shall be a contract to govern all eligible
83 employees subject to the provisions of this article.
84 Nothing contained in this article shall prohibit any
85 insurance carrier from soliciting employees covered
86 hereunder to purchase additional hospital and surgical,
87 major medical or life and accidental death insurance
88 coverage.

89 (f) The director may authorize the carrier with whom
90 a primary contract is executed to reinsure portions of
91 such contract with other carriers which elect to be a
92 reinsurer and who are legally qualified to enter into a
93 reinsurance agreement under the laws of this state.

94 (g) Each employee who is covered under any such
95 contract or contracts shall receive a statement of
96 benefits to which such employee, his or her spouse and
97 his or her dependents are entitled thereunder, setting
98 forth such information as to whom such benefits shall
99 be payable, to whom claims shall be submitted, and a
100 summary of the provisions of any such contract or
101 contracts as they affect the employee, his or her spouse
102 and his or her dependents.

103 (h) The director may at the end of any contract period
104 discontinue any contract or contracts it has executed
105 with any carrier and replace the same with a contract
106 or contracts with any other carrier or carriers meeting
107 the requirements of this article.

CHAPTER 33. INSURANCE

Article

15. Accident and Sickness Insurance.

16C. Employer Group Accident and Sickness Insurance Policies.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-15. Insurance commissioner to establish minimum benefits and coverages for an individual policy design; basic policy benefits; exemptions; legislative rules; premiums; applicability.

1 (a) The insurance commissioner shall establish
2 minimum benefits which may be included in any

3 individual accident and sickness insurance policy issued
4 pursuant to this article. The commissioner may accept
5 bids on designs for such minimum plans and shall
6 compile a final basic benefit plan for use by insurers
7 within six months after the effective date of this article.

8 (b) The basic policy plan established by the insurance
9 commissioner may include coverage for the services of
10 medical physicians or surgeons, podiatrists, physician
11 assistants, osteopathic physicians or surgeons, chiro-
12 practors, midwives, advanced nurse practitioners or any
13 other professional health care provider as deemed
14 appropriate by the insurance commissioner.

15 (c) The following shall serve as a guide to the
16 commissioner in the design of a basic policy issued
17 pursuant to this article:

18 (1) Inpatient hospital care up to twenty days per year;

19 (2) Outpatient hospital care including, but not limited
20 to, surgery and anesthesia, pre-admission testing,
21 radiation therapy and chemotherapy;

22 (3) Accident or emergency care through emergency
23 room care and emergency admissions to a hospital;

24 (4) Physician office visits for primary, preventive,
25 well, acute or sick care, up to four visits per year, and
26 laboratory fees, surgery and anesthesia, diagnostic X
27 rays, physician care in a hospital inpatient or outpatient
28 setting;

29 (5) Prenatal care, including a minimum of one
30 prenatal office visit per month during the first two
31 trimesters of pregnancy, two office visits per month
32 during the seventh and eighth months of pregnancy, and
33 one office visit per week during the ninth month and
34 until term. Coverage for each such visit shall include
35 necessary appropriate screening, including history,
36 physical examination, and such laboratory and diagnos-
37 tic procedures as may be deemed appropriate by the
38 physician based upon recognized medical criteria for the
39 risk group of which the patient is a member. Coverage
40 for each office visit shall also include such prenatal
41 counseling as the physician deems appropriate;

42 (6) Obstetrical care, including physician's services,
43 delivery room and other medically necessary hospital
44 services; and

45 (7) X-ray and laboratory services in connection with
46 mammograms or pap smears when performed for
47 cancer screening or diagnostic purposes, at the direction
48 of a physician, including, but not limited to, the
49 following:

50 (A) Baseline or other recommended mammograms for
51 women age thirty-five to thirty-nine, inclusive;

52 (B) Mammograms recommended or required for
53 women age forty to forty-nine, inclusive, every two years
54 or as needed;

55 (C) A mammogram every year for women age fifty
56 and over; or

57 (D) A pap smear annually or more frequently based
58 on the woman's physician's recommendation for women
59 age eighteen or over. A basic policy issued pursuant to
60 this article may apply to mammograms or pap smears
61 the same deductibles or copayments as apply to other
62 covered services.

63 (8) Medical and laboratory services in connection with
64 annual checkups for prostate cancer in men age fifty
65 and over.

66 (d) Notwithstanding any other provision of this code
67 to the contrary, any basic policy issued pursuant to this
68 section shall be exempt from all statutorily and
69 regulatorily mandated benefits and coverages except for
70 the minimum benefits and coverages as established by
71 the commissioner pursuant to subsection (a) of this
72 section.

73 (e) Nothing in this section shall preclude an insurer
74 from offering any other benefit or coverage under a
75 basic policy issued pursuant to this article, for an
76 appropriate additional premium: *Provided*, That any
77 additional benefit or coverage must first be approved by
78 the insurance commissioner.

79 (f) A basic policy issued pursuant to this section may

80 include deductibles, copayments and maximum benefits:
81 *Provided*, That any additional benefit must first be
82 approved by the insurance commissioner.

83 (g) The insurance commissioner shall promulgate
84 legislative rules pursuant to chapter twenty-nine-a of
85 this code to implement the provisions of this section,
86 including, but not limited to, rules regarding bids,
87 forms and rates.

88 (h) The premiums paid for insurance provided
89 pursuant to this article shall be exempt from the
90 premium tax required to be paid pursuant to sections
91 fourteen and fourteen-a, article three of this chapter.

92 (i) A basic policy provided by this section shall be
93 issued only to individuals who have been without health
94 insurance coverage for at least one year prior to
95 application for the same.

ARTICLE 16C. EMPLOYER GROUP ACCIDENT AND SICKNESS INSURANCE POLICIES.

§33-16C-2. Definitions.

§33-16C-3. Exemption from mandatory benefits and coverages; optional
benefits and coverages; deductibles and copayments.

§33-16C-4. Insurance commissioner to establish minimum benefits and
coverages; basic policy benefits.

§33-16C-2. Definitions.

1 As used in this article:

2 (a) "Basic policy" means a group accident and sickness
3 insurance contract for medical, surgical or hospital care
4 that is required to contain only those minimum benefits
5 and coverages mandated by this article, but which may
6 contain other benefits and coverages which have been
7 approved by the insurance commissioner.

8 (b) "Commissioner" means the insurance commis-
9 sioner of West Virginia.

10 (c) "Department" means the department of insurance.

11 (d) "Eligible employee" means an employee who is
12 employed by the employer for an average of at least
13 twenty hours per week; includes individuals who are
14 sole proprietors, general partners and limited partners;

15 and includes individuals who either work or reside in
16 this state.

17 (e) "Eligible employer" means a corporation, partner-
18 ship or proprietorship which has done business in this
19 state for at least one year and has not offered health
20 insurance to all of its employees within the twelve
21 months preceding its application for a basic policy as
22 defined by this section.

23 (f) "Family member" means an eligible employee's
24 spouse and any dependent child or stepchild under the
25 age of eighteen or under age twenty-three if a full-time
26 student at an accredited school: *Provided*, That the
27 spouse, child or stepchild is not eligible for medicare,
28 medicaid or state medical assistance.

29 (g) "Insurer" means any of the following entities that
30 holds a valid certificate of authority from the commis-
31 sioner: An insurance company authorized to transact
32 accident and sickness insurance; a hospital service
33 corporation, medical service corporation or health
34 service corporation organized pursuant to article
35 twenty-four of this chapter; a health care corporation
36 organized pursuant to article twenty-five of this chapter;
37 or a health maintenance organization organized pursu-
38 ant to article twenty-five-a of this chapter.

39 (h) "Premium" means the consideration for insurance,
40 by whatever name called.

§33-16C-3. Exemption from mandatory benefits and coverages; optional benefits and coverages; deductibles and copayments.

1 (a) Notwithstanding any other provision of this code
2 to the contrary, any basic policy issued pursuant to this
3 article shall be exempt from all statutorily and regula-
4 torily mandated benefits and coverages except for the
5 minimum benefits and coverages provided for in section
6 four of this article.

7 (b) Nothing in this article shall preclude an insurer
8 from offering any other benefit or coverage under a
9 basic policy issued pursuant to this article, for an
10 appropriate additional premium: *Provided*, That any

11 additional benefit or coverage must first be approved by
12 the insurance commissioner.

13 (c) A basic policy issued pursuant to this article may
14 include deductibles, copayments and maximum benefits:
15 *Provided*, That any additional benefit must first be
16 approved by the insurance commissioner.

§33-16C-4. Insurance commissioner to establish minimum benefits and coverages; basic policy benefits.

1 (a) The insurance commissioner shall establish
2 minimum benefits which shall be included in every
3 insurance policy issued pursuant to this article. The
4 commissioner may accept bids on designs for such
5 minimum plans and shall compile a final basic benefit
6 plan for use by insurers within six months after the
7 effective date of this article.

8 (b) The basic policy plan established by the insurance
9 commissioner may include coverage for the services of
10 medical physicians or surgeons, podiatrists, physician
11 assistants, osteopathic physicians or surgeons, chiro-
12 practors, midwives, advanced nurse practitioners, or
13 any other professional health care provider as deemed
14 appropriate by the insurance commissioner.

15 (c) The following shall serve as a guide to the
16 commissioner in the design of a basic policy issued
17 pursuant to this article:

18 (1) Inpatient hospital care up to twenty days per year;

19 (2) Outpatient hospital care including, but not limited
20 to, surgery and anesthesia, pre-admission testing,
21 radiation therapy and chemotherapy;

22 (3) Accident or emergency care through emergency
23 room care and emergency admissions to a hospital;

24 (4) Physician office visits for primary, preventive,
25 well, acute or sick care, up to four visits per year, and
26 laboratory fees, surgery and anesthesia, diagnostic X
27 rays, physician care in a hospital inpatient or outpatient
28 setting;

29 (5) Prenatal care, including a minimum of one
30 prenatal office visit per month during the first two
31 trimesters of pregnancy, two office visits per month
32 during the seventh and eighth months of pregnancy, and
33 one office visit per week during the ninth month and
34 until term. Coverage for each such visit shall include
35 necessary appropriate screening, including history,
36 physical examination, and such laboratory and diagnos-
37 tic procedures as may be deemed appropriate by the
38 physician based upon recognized medical criteria for the
39 risk group of which the patient is a member. Coverage
40 for each office visit shall also include such prenatal
41 counseling as the physician deems appropriate;

42 (6) Obstetrical care, including physician's services,
43 delivery room and other medically necessary hospital
44 services; and

45 (7) X-ray and laboratory services in connection with
46 mammograms or pap smears when performed for
47 cancer screening or diagnostic purposes, at the direction
48 of a physician, including, but not limited to, the
49 following:

50 (A) Baseline or other recommended mammograms for
51 women age thirty-five to thirty-nine, inclusive;

52 (B) Mammograms recommended or required for
53 women age forty to forty-nine, inclusive, every two years
54 or as needed;

55 (C) A mammogram every year for women age fifty
56 and over; or

57 (D) A pap smear annually or more frequently based
58 on the woman's physician's recommendation for women
59 age eighteen or over. A basic policy issued pursuant to
60 this article may apply to mammograms or pap smears
61 the same deductibles or copayments as apply to other
62 covered services.

63 (8) Medical and laboratory services in connection with
64 annual checkups for prostate cancer in men age fifty
65 and over.

CHAPTER 107

(H. B. 4704—By Mr. Speaker, Mr. Chambers, and Delegate Burk,
By Request)

[Passed March 7, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend article one, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty; to amend and reenact sections one and two, article three of said chapter; to further amend said article by adding thereto fifteen new sections, designated sections eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one and thirty-two; and to amend and reenact section thirteen, article four of said chapter, all relating to insurance; defining "authorized insurer" and "unauthorized insurer"; requiring licenses; providing a criminal penalty for noncompliance with licensing requirements; designating certain provisions as the unauthorized insurers act; requiring insurer to be authorized in state or country of domicile; prohibiting transaction of kinds of insurance not defined in section ten, article one of said chapter; designating other unlawful insurance transactions; providing for injunctive relief; creating means of service of process on an unauthorized insurer; providing for enforcement of foreign decrees; establishing a penalty for transacting unauthorized acts of insurance; making persons providing specified coverage subject to regulation by the insurance commissioner; requiring proof of regulation by the federal government; insurers required to submit to examination by the insurance commissioner; setting forth information to be provided to agents, brokers and others; establishing requirements for the statement of charges; providing for notice of hearing and orders after hearings; administrative fines and modification and review of orders; authorizing administrative fines for violations; and providing for substitute service of

process on unlicensed insurers in proceedings before the insurance commissioner.

Be it enacted by the Legislature of West Virginia:

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

Article

1. Definitions.
3. Licensing, Fees and Taxation of Insurers.
4. General Provisions.

ARTICLE 1. DEFINITIONS.

§33-1-20. Authorized and unauthorized insurers.

- 1 (a) An "authorized insurer" is one authorized to
- 2 transact insurance or reinsurance in this state under a
- 3 subsisting license issued by the commissioner;
- 4 (b) An "unauthorized insurer" is one not so authorized.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

- §33-3-1. License required.
- §33-3-2. Qualifications for license.
- §33-3-18. Purpose of enactment of provisions regarding unauthorized insurers.
- §33-3-19. Short title.
- §33-3-20. Unlawful transaction of business; exceptions.
- §33-3-21. Injunctive relief.
- §33-3-22. Service of process on unauthorized insurer.
- §33-3-23. Enforcement of foreign decrees.
- §33-3-24. Penalty.
- §33-3-25. Person providing specified coverage.
- §33-3-26. Proof of regulation by a federal government agency.
- §33-3-27. Submission to examination by commissioner.
- §33-3-28. Information to be provided to agents, brokers and others.
- §33-3-29. Statement of charges; notice of hearing.
- §33-3-30. Order after hearing; administrative fines; modification of order.

§33-3-31. Review of order.

§33-3-32. Administrative fine for violation.

§33-3-1. License required.

1 (a) No person may act as an insurer and no insurer
2 may transact insurance in West Virginia except as
3 authorized by a valid license issued by the commis-
4 sioner, except as to such transactions as are expressly
5 otherwise provided for in this chapter.

6 (b) No such license may be required for an insurer,
7 formerly holding a valid license, to enable it to inves-
8 tigate and settle losses under its policies lawfully
9 written in West Virginia while such license was in
10 effect, or to liquidate such assets and liabilities of the
11 insurer (other than the collection of new premiums) as
12 may have resulted from its former authorized operations
13 in West Virginia.

14 (c) An insurer not transacting new insurance business
15 in West Virginia but continuing collection of premiums
16 on and servicing of policies remaining in force as to
17 residents of or risks located in West Virginia, is
18 transacting insurance in West Virginia for the purpose
19 of premium and annuity tax requirements but is not
20 required to have a license therefor.

21 (d) A domestic insurer or a foreign insurer from
22 offices or by personnel or facilities located in this state
23 shall not solicit insurance applications or otherwise
24 transact insurance in another state or country unless it
25 holds a subsisting license granted to it by the commis-
26 sioner authorizing it to transact the same kind or kinds
27 of insurance in this state.

28 (e) Any officer, director, agent, representative or
29 employee of any insurer who willfully authorizes,
30 negotiates, makes or issues any insurance contract in
31 violation of this section is guilty of a misdemeanor, and,
32 upon conviction thereof, shall be fined not more than ten
33 thousand dollars, or imprisoned in the county jail not
34 more than one year, or both fined and imprisoned.

§33-3-2. Qualifications for license.

1 (a) To qualify for a license to transact insurance in

2 West Virginia an insurer must be otherwise in com-
3 pliance with the provisions of this chapter and with its
4 charter, and must be an incorporated stock insurer, or
5 an incorporated mutual insurer or a reciprocal insurer.

6 (b) No license to transact insurance in this state may
7 be issued, renewed or continued in effect to any
8 domestic, foreign or alien insurer which is owned, or
9 financially controlled, in whole or in part, by any state,
10 or by a foreign government, or any political subdivision,
11 instrumentality or agency of either, or which is an
12 agency of any such state, government or subdivision,
13 unless such insurer was so owned, controlled or consti-
14 tuted prior to the first day of January, one thousand nine
15 hundred fifty-five, and licensed to transact insurance in
16 this state prior to the first day of January, one thousand
17 nine hundred fifty-five.

18 (c) No foreign insurer may be authorized to transact
19 insurance in this state if it is domiciled in a state that
20 does not have reserve requirements that are equal to or
21 greater than those required by article seven of this
22 chapter, as applicable to the kind or kinds of insurance
23 transacted by such insurer, wherever transacted in the
24 United States of America, or which transacts business
25 anywhere in the United States of America on the
26 assessment plan, the stipulated premium plan or any
27 similar plan.

28 (d) No insurer may be authorized to transact a kind
29 of insurance in this state unless duly authorized or
30 qualified to transact such insurance in the state or
31 country of its domicile.

32 (e) No insurer may be authorized to transact in this
33 state any kind of insurance which is not defined in
34 section ten, article one of this chapter.

35 (f) No authority to transact such insurance may be
36 granted or continued to any insurer that is in arrears
37 to the state for fees, licenses, taxes, assessments, fines
38 or penalties accrued on insurance previously transacted
39 in this state.

**§33-3-18. Purpose of enactment of provisions regarding
unauthorized insurers.**

1 The purpose of the enactment of this section and
2 sections nineteen through thirty-two, inclusive, of this
3 article in the regular session of the Legislature during
4 the year one thousand nine hundred ninety-two, is to
5 subject certain persons and insurers to the jurisdiction
6 of the commissioner and the courts of this state in suits
7 by or on behalf of the state. The Legislature declares
8 that it is concerned with the protection of residents of
9 this state against acts by insurers not authorized to
10 transact an insurance business in this state, by the
11 maintenance of fair and honest insurance markets, by
12 protecting authorized insurers which are subject to
13 regulation from unfair competition by unauthorized
14 insurers, and by protecting against the evasion of the
15 insurance regulatory laws of this state. In furtherance
16 of such state interest, the Legislature provides methods
17 in this article for substituted service of process upon
18 such insurers in any proceeding, suit or action in any
19 court and substituted service of any notice, order,
20 pleading or process upon such insurers in any proceed-
21 ing by the commissioner to enforce or effect full
22 compliance with the insurance laws of this state.

§33-3-19. Short title.

1 Sections eighteen through thirty-two, inclusive, of this
2 article constitute and may be cited as the "Unauthorized
3 Insurers Act."

§33-3-20. Unlawful transaction of business; exceptions.

1 (a) As used in this section unless otherwise indicated,
2 "insurer" includes:

3 (1) All corporations, associations, trusts, partnerships,
4 natural persons and other legal entities engaged as
5 principals in the business of insurance, including a
6 fraternal benefit society, a nonprofit corporation
7 offering dental, hospital and medical services, a health
8 maintenance organization and an organization for
9 dental care; and

10 (2) Interinsurance exchanges and mutual benefit
11 societies.

12 (b) It is unlawful for any insurer to transact an

13 insurance business in this state as set forth in subsection
14 (c) of this section, without a license from the commis-
15 sioner. This section does not apply to:

16 (1) Any transaction for which a license is not required
17 pursuant to section one of this article including, but not
18 limited to, the lawful transaction of surplus lines
19 insurance and reinsurance by insurers;

20 (2) Attorneys at law acting in the ordinary relation
21 of attorney and client in the adjustment of claims or
22 losses; and

23 (3) Transactions in this state relative to a policy issued
24 or to be issued outside this state involving insurance on
25 cargo vessels, their craft or hulls, their cargoes, marine
26 builder's risk, commercial marine protection and
27 indemnity or other risk, including strikes and war risks
28 commonly insured under ocean marine forms of policy.
29 Transactions in this state involving group life insurance,
30 group accident and sickness insurance or group annui-
31 ties providing coverage under policies that are recog-
32 nized under articles fourteen and sixteen, respectively,
33 of this chapter where (1) the master policy of such
34 groups was lawfully issued and delivered in and
35 pursuant to the laws of a state in which the insurer was
36 authorized to do an insurance business, to a group
37 organized for purposes other than the procurement of
38 insurance, and where the policyholder is domiciled or
39 otherwise has a bona fide situs, and (2) except for group
40 annuities, the insurer complies with section thirty-five,
41 article six of this chapter. The commissioner may
42 require the insurer which has issued such master policy
43 to submit such information as the commissioner re-
44 quires in order to determine if probable cause exists to
45 convene a hearing to determine whether the total
46 charges for the insurance to the persons insured are
47 reasonable in relation to the benefits provided under
48 such policy.

49 (c) Any of the following acts in this state effected by
50 mail or otherwise by or on behalf of an unauthorized
51 insurer constitutes the transaction of an insurance
52 business in this state:

53 (1) The making of or proposing to make, as an insurer,
54 an insurance contract;

55 (2) The making of or proposing to make, as guarantor
56 or surety, any contract of guaranty or suretyship as a
57 vocation and not merely incidental to any other legiti-
58 mate business or activity of the guarantor or surety;

59 (3) The taking or receiving of any application for
60 insurance;

61 (4) The receiving or collection of any premium,
62 commission, membership fees, assessments, dues or
63 other consideration for any insurance or any part
64 thereof;

65 (5) The issuance or delivery of contracts of insurance
66 to residents of this state or to persons authorized to do
67 business in this state;

68 (6) The acting, directly or indirectly, as an agent for
69 or otherwise representing or aiding on behalf of another
70 any person or insurer in the solicitation, negotiation,
71 procurement or effectuation of insurance or renewals
72 thereof or in the dissemination of information as to
73 coverage or rates, forwarding of applications, delivery
74 of policies or contracts, inspection of risks, fixing of
75 rates, investigating or adjusting of claims or losses,
76 transacting of matters after effectuation of the contract
77 and arising out of it, or in any other manner represent-
78 ing or assisting a person or insurer in the transaction
79 of insurance with respect to subjects of insurance that
80 are resident, located or to be performed in this state.
81 The provisions of this paragraph do not prohibit full-
82 time salaried employees of a corporate insured from
83 acting in the capacity of an insurance manager or buyer
84 in placing insurance on behalf of such an insured;

85 (7) The transacting of any kind of insurance business
86 specifically recognized as transacting an insurance
87 business or transacting insurance within the meaning of
88 provisions of this chapter;

89 (8) The transacting of or proposing to transact any
90 insurance business in substance equivalent to any of the
91 activities described in this subsection, in a manner
92 designed to evade the provisions of this chapter.

93 (d) The venue of an act committed by mail is at the
94 point where the matter transmitted by mail is delivered
95 and takes effect, or in any action filed on behalf of the
96 commissioner is at such point as above described or, at
97 the election of the commissioner, in the circuit court of
98 Kanawha County.

99 (e) The failure of an insurer transacting insurance
100 business in this state to obtain a license does not impair
101 the validity of any act or contract of the insurer and does
102 not prevent the insurer from defending any action and
103 law or suit in equity in any court of this state: *Provided,*
104 That no insurer transacting insurance business in this
105 state without a license may maintain an action in any
106 court of this state to enforce any right, claim or demand
107 arising out of the transaction of such business until the
108 insurer has obtained a license. In the event of a failure
109 by an unauthorized insurer to pay any claim or loss
110 within the provisions of an insurance contract, any
111 person who assisted or in any manner aided directly or
112 indirectly in the procurement of the insurance contract
113 is liable to the insured for the full amount of the claim
114 or loss in the manner provided by the provisions of the
115 insurance contract.

§33-3-21. Injunctive relief.

1 (a) Whenever the commissioner believes, from evi-
2 dence satisfactory to him or her, that any insurer is
3 violating or is about to violate the provisions of sections
4 eighteen through thirty-two, inclusive, of this article, the
5 commissioner may cause a complaint to be filed in any
6 appropriate circuit court of this state seeking to enjoin
7 and restrain such insurer from continuing such violation
8 or engaging therein or doing any act in furtherance
9 thereof.

10 (b) The circuit court shall have jurisdiction of the
11 proceeding and have the power to make and enter an
12 order or judgment awarding such preliminary or final
13 injunctive relief as in its judgment is proper. The
14 commissioner may elect to file such complaint in any
15 circuit where transactions have occurred or in the
16 circuit court of Kanawha County.

§33-3-22. Service of process on unauthorized insurer.

1 (a) Any act of transacting an insurance business as set
2 forth in section twenty of this article by any unautho-
3 rized insurer is equivalent to and constitutes an
4 irrevocable appointment by such an insurer, binding
5 upon him or her, his or her executor or administrator,
6 or successor in interest, of the secretary of state or his
7 or her successor in office, to be the true and lawful
8 attorney of such an insurer upon whom may be served
9 all lawful process in any action, suit or proceeding in
10 any court by the commissioner or by the state and upon
11 whom may be served any notice, order, pleading or
12 process in any proceeding before the commissioner and
13 which arises out of transacting an insurance business in
14 this state by such an insurer. Any act of transacting an
15 insurance business in this state by any unauthorized
16 insurer is signification of its agreement that any such
17 lawful process in such a court action, suit or proceeding
18 any such notice, order, pleading or process in such an
19 administrative proceeding before the commissioner so
20 served is of the same legal force and validity as personal
21 service or process in this state upon such an insurer.

22 (b) Service of process in such an action must be made
23 by delivering to and leaving with the secretary of state,
24 or some person in apparent charge of his or her office,
25 two copies thereof and by payment to the secretary of
26 state the fees prescribed by law. Service upon the
27 secretary of state as attorney is service upon the
28 principal.

29 (c) Upon receipt by the secretary of state of two copies
30 of the process to be served, as set forth in subsection (b)
31 of this section and the payment of all relevant fees, the
32 secretary of state shall cause such process to be served
33 in the manner dictated by section thirteen, article four
34 of this chapter, for service of process on unauthorized
35 or unlicensed insurers.

36 (d) For the purposes of this section, "process" in an
37 action in a court includes only a summons or the initial
38 documents served in such an action. The secretary of
39 state is not required to serve any documents in such an
40 action after the initial service of process.

41 (e) Nothing in this section limits or affects the right
42 to serve any process, notice, order or demand upon any
43 person or insurer in any other manner permitted by law.

§33-3-23. Enforcement of foreign decrees.

1 (a) As used in this section:

2 (1) "Foreign decree" means any decree or order of a
3 court located in a reciprocal state or other state
4 including a court of the United States located therein,
5 against any insurer incorporated or authorized to do
6 business in this state.

7 (2) "Qualified party" means a state regulatory agency
8 acting in its capacity to enforce the insurance laws of
9 its state.

10 (3) "Reciprocal state" means any state or territory of
11 the United States the laws of which contain procedures
12 substantially similar to those specified in this section for
13 the enforcement of decrees or orders issued by courts
14 located in other states or territories of the United States,
15 against any insurer incorporated or authorized to do
16 business in such state or territory.

17 (b) The commissioner may proceed in the courts of
18 this state, any reciprocal state, or any other state to
19 enforce an order or decision in any court proceeding or
20 in any administrative proceeding before the
21 commissioner.

22 (c) The commissioner shall determine which states
23 and territories qualify as reciprocal states and shall
24 maintain at all times an up-to-date list of such states.

25 (d) A copy of any foreign decree authenticated in
26 accordance with federal statutes may be filed in the
27 office of the clerk of any circuit court of this state. The
28 clerk of the circuit court, upon verifying with the
29 commissioner that the decree or order qualified as a
30 foreign decree, shall treat the foreign decree in the same
31 manner as a decree of a circuit court of this state. A
32 foreign decree, so filed, has the same effect and shall be
33 deemed as a decree of a circuit court of this state, and
34 is subject to the same procedures, defenses and proceed-

35 ings for reopening, vacating or staying as a decree of
36 a circuit court of this state and may be enforced or
37 satisfied in like manner.

38 (e) At the time of the filing of the foreign decree,
39 counsel for the commissioner shall make and file with
40 the clerk of the circuit court an affidavit setting forth
41 the name and last known post office address of the
42 defendant. Promptly upon the filing of the foreign
43 decree and the affidavit, the clerk of the circuit court
44 shall mail notice of the filing of the foreign decree to
45 the defendant at the address given and to the commis-
46 sioner and shall make a note of the mailing in the
47 docket. In addition, counsel for the commissioner may
48 mail a notice of the filing of the foreign decree to the
49 defendant and to the commissioner and may file proof
50 of mailing with the clerk of the circuit court. Lack of
51 mailing notice of filing by the clerk of the circuit court
52 shall not affect the enforcement proceedings if proof of
53 mailing by the counsel for the commissioner has been
54 filed. No execution or other process for enforcement of
55 a foreign decree filing under this section may issue until
56 thirty days after the date the decree is filed.

57 (f) If the defendant shows the circuit court:

58 (1) That an appeal from the foreign decree is pending
59 or will be taken, or that a stay of execution has been
60 granted, the court shall stay enforcement of the foreign
61 decree until the appeal is concluded, the time for appeal
62 expires or the stay of execution expires or is vacated
63 upon proof that the defendant has furnished the security
64 for the satisfaction of the decree required by the state
65 in which it was rendered.

66 (2) Any ground upon which enforcement of a decree
67 of any circuit court of this state would be stayed, the
68 court may stay enforcement of the foreign decree which
69 is required in this state.

70 (g) Any person filing a foreign decree shall pay to the
71 clerk of the circuit court such fees as are otherwise
72 authorized by this code.

§33-3-24. Penalty.

1 Any unauthorized insurer who transacts any unauth-
2 orized act of an insurance business as set forth in
3 sections eighteen through thirty-two of this article,
4 inclusive, may be fined by the commissioner, after notice
5 and hearing, pursuant to section thirteen, article two of
6 this chapter, such fine not to exceed twenty thousand
7 dollars.

§33-3-25. Person providing specified coverage.

1 Any person who transacts insurance, transacts an
2 insurance business or provides insurance coverage in
3 this state for the cost of:

4 (a) Medical care;

5 (b) Surgery;

6 (c) Chiropractic;

7 (d) Physical therapy;

8 (e) Speech pathology;

9 (f) Audiology;

10 (g) Professional care of mental health;

11 (h) Dental care;

12 (i) Hospital care; or

13 (j) Ophthalmic care, whether the coverage provides
14 for direct payment, reimbursement or any other method
15 of payment, is subject to regulation by the commissioner
16 and to the provisions of this code unless he or she shows
17 that while transacting insurance, or transacting an
18 insurance business or providing such coverage he or she
19 is subject to regulation by an agency of federal govern-
20 ment.

§33-3-26. Proof of regulation by a federal government agency.

1 A person may show that he or she is subject to
2 regulation by an agency of the federal government by
3 providing the commissioner with the appropriate
4 certificate or other document which permits the person
5 to provide those services.

§33-3-27. Submission to examination by commissioner.

1 Any such person who is unable to show, upon request
2 by the commissioner, that he or she is subject to
3 regulation by an agency of the federal government shall
4 submit to an examination by the commissioner to
5 determine the organization and solvency of the person
6 and to determine whether he or she is in compliance
7 with the applicable provisions of this code.

§33-3-28. Information to be provided to agents, brokers and others.

1 An administrator who advertises or administers
2 coverage in this state which is:

3 (a) Of a kind described in section twenty-five of this
4 article; and

5 (b) Provided by a person described in section twenty-
6 seven of this article shall inform each agent, broker or
7 other person who advertises, procures, renews, con-
8 tinues, sells or negotiates or solicits the sale of such
9 coverage, of the elements of the coverage, including the
10 amount of excess insurance or reinsurance in effect.

§33-3-29. Statement of charges; notice of hearing.

1 (a) If the commissioner has reason to believe that a
2 person described in section twenty-seven of this article
3 is providing any type of coverage described in section
4 twenty-five of this article, the commissioner may:

5 (1) Issue a statement of charges and a notice of a
6 hearing to be held on those charges; and

7 (2) Serve the statement and notice upon the person so
8 charged.

9 (b) The statement and notice must be:

10 (1) Issued pursuant to section thirteen, article two of
11 this chapter; and

12 (2) Served personally, or by certified or registered
13 mail at the last known address of such person, or in
14 compliance with section twenty-two of this article.

§33-3-30. Order after hearing; administrative fines; modification of order.

1 (a) After the commissioner conducts a hearing
2 pursuant to section twenty-nine of this article, he or she
3 shall issue an order pursuant to section thirteen, article
4 two of this chapter. If the commissioner determines that
5 the person being charged has engaged in a practice
6 prohibited by this chapter, the commissioner shall order
7 him or her to cease and desist from that practice.

8 (b) If the person knew or reasonably should have
9 known that he or she was in violation of this chapter,
10 the commissioner may order him or her to pay an
11 administrative fine of not more than one thousand
12 dollars for each act or violation up to an aggregate
13 penalty of twenty thousand dollars.

14 (c) The commissioner may modify or set aside, in
15 whole or in part, any order issued by him or her
16 pursuant to this section, but any such action must be
17 made before the expiration of the period for appeal or
18 before the official record in the proceeding has been
19 filed with the court pursuant to section fourteen, article
20 two of this chapter.

§33-3-31. Review of order.

1 An order issued pursuant to section thirty of this
2 article may be reviewed pursuant to section fourteen,
3 article two of this chapter.

§33-3-32. Administrative fine for violation.

1 If a person violates an order issued pursuant to section
2 thirty of this article, the commissioner may impose an
3 administrative fine after giving notice and a hearing
4 pursuant to section thirteen, article two of this chapter.
5 Such fine may not exceed five thousand dollars for each
6 violation.

ARTICLE 4. GENERAL PROVISIONS.

§33-4-13. Service of process on unlicensed insurers.

1 (a) The purpose of this section is to subject certain
2 insurers to the jurisdiction of the courts of this state in
3 suits by or on behalf of insureds or beneficiaries under
4 certain insurance contracts and to subject said insurers
5 to the jurisdiction of the courts of this state in suits by

6 or on behalf of the insurance commissioner of West
7 Virginia. The Legislature declares that it is a subject
8 of concern that certain insurers, while not licensed to
9 transact insurance in this state, are soliciting the sale
10 of insurance and selling insurance to residents of this
11 state, thus presenting the insurance commissioner with
12 the problem of resorting to courts of foreign jurisdic-
13 tions for the purpose of enforcing the insurance laws of
14 this state for the protection of our citizens. The
15 Legislature declares that it is also a subject of concern
16 that many residents of this state hold policies of
17 insurance issued or delivered in this state by insurers
18 not licensed to transact insurance in this state, thus
19 presenting to such residents the often insuperable
20 obstacle of resorting to distant fora for the purpose of
21 asserting legal rights under such policies. In further-
22 ance of such state interest, the Legislature herein
23 provides a method of substituted service of process upon
24 such insurers and declares that in so doing it exercises
25 its powers to protect its residents and to define, for the
26 purpose of this section, what constitutes transacting
27 insurance in this state, and also exercises powers and
28 privileges available to the state by virtue of public law
29 number fifteen, seventy-ninth Congress of the United
30 States, chapter twenty, first session, Senate number
31 three hundred forty, as amended, which declares that
32 the business of insurance and every person engaged
33 therein shall be subject to the laws of the several states.

34 (b) (1) Any of the following acts in this state, effected
35 by mail or otherwise, by an unlicensed foreign or alien
36 insurer: (i) The issuance or delivery of contracts of
37 insurance to residents of this state or to corporations
38 authorized to do business therein, (ii) the solicitation of
39 applications for such contracts, (iii) the collection of
40 premiums, membership fees, assessments or other
41 considerations for such contracts, or (iv) any other
42 transaction of business, is equivalent to and shall
43 constitute an appointment by such insurer of the
44 secretary of state and his or her successor in office, to
45 be its true and lawful attorney, upon whom may be
46 served all lawful process in any action, suit or proceed-
47 ing instituted by or on behalf of an insured or benefi-

48 ciary arising out of any such contract of insurance, and
49 in any action, suit or proceeding which may be insti-
50 tuted by the insurance commissioner in the name of any
51 such insured or beneficiary or in the name of the state
52 of West Virginia, and in any administrative proceeding
53 before the commissioner, and any such act shall be
54 signification of its agreement that such service of
55 process is of the same legal force and validity as
56 personal service of process in this state upon such
57 insurer.

58 (2) Such service of process upon any such insurer or
59 upon an insurer pursuant to section twenty-two, article
60 three of this chapter in any such action or proceeding
61 in any court of competent jurisdiction of this state, or
62 in any administrative proceeding before the commis-
63 sioner, may be made by serving the secretary of state
64 or his or her chief clerk with two copies and an original
65 thereof and the payment to him or her of a fee of five
66 dollars. The secretary of state shall forward a copy of
67 such process by registered or certified mail to the
68 defendant at its last-known principal place of business
69 and shall keep a record of all process so served upon him
70 or her. Such service of process is sufficient, provided
71 notice of such service and a copy of the process are sent
72 within ten days thereafter by or on behalf of the plaintiff
73 or moving party to the defendant, or responding party,
74 at its last-known principal place of business by regis-
75 tered or certified mail with return receipt requested.
76 The plaintiff or moving party shall file with the clerk
77 of the court in which the action is pending, or with the
78 judge or magistrate of such court in case there be no
79 clerk, or in the official records of the commissioner if
80 an administrative proceeding before the commissioner,
81 an affidavit of compliance herewith, a copy of the
82 process and either a return receipt purporting to be
83 signed by the defendant or responding party or a person
84 qualified to receive its registered or certified mail in
85 accordance with the rules and customs of the post-office
86 department; or, if acceptance was refused by the
87 defendant or responding party or an agent thereof, the
88 original envelope bearing a notation by the postal
89 authorities that receipt was refused. Service of process

90 so made shall be deemed to have been made within the
91 territorial jurisdiction of any court in this state.

92 (3) Service of process in any such action, suit or
93 proceeding shall in addition to the manner provided in
94 subdivision (2) of this subsection (b) be valid if served
95 upon any person within this state who, in this state on
96 behalf of such insurer, is

97 (A) Soliciting insurance, or

98 (B) Making, issuing or delivering any contract of
99 insurance, or

100 (C) Collecting or receiving any premium, member-
101 ship fee, assessment or other consideration for insu-
102 rance: *Provided*, That notice of such service and a copy
103 of such process are sent within ten days thereafter, by
104 or on behalf of the plaintiff or moving party to the
105 defendant or responding party at the last-known
106 principal place of business of the defendant or respond-
107 ing party, by registered or certified mail with return
108 receipt requested. The plaintiff or moving party shall
109 file with the clerk of the court in which the action is
110 pending, or with the judge or magistrate of such court
111 in case there be no clerk, or in the official records of
112 the commissioner if an administrative proceeding before
113 the commissioner, an affidavit of compliance herewith,
114 a copy of the process and either a return receipt
115 purporting to be signed by the defendant or responding
116 party, or a person qualified to receive its registered or
117 certified mail in accordance with the rules and customs
118 of the post-office department; or, if acceptance was
119 refused by the defendant or responding party, or an
120 agent thereof, the original envelope bearing a notation
121 by the postal authorities that receipt was refused.

122 (4) The papers referred to in subdivisions (2) and (3)
123 of this subsection (b) shall be filed within thirty days
124 after the return receipt or other official proof of delivery
125 or the original envelope bearing a notation of refusal,
126 as the case may be, is received by the plaintiff or moving
127 party. Service of process shall be complete ten days after
128 such process and the accompanying papers are filed in
129 accordance with this section.

130 (5) Nothing in this section contained shall limit or
131 abridge the right to serve any process, notice or demand
132 upon any insurer in any other manner now or hereafter
133 permitted by law.

134 (c) (1) Before any unauthorized or unlicensed foreign
135 or alien insurer shall file or cause to be filed any
136 pleading in any action, suit or proceeding instituted
137 against it, or any notice, order, pleading or process in
138 an administrative proceeding before the commissioner
139 instituted against such insurer, such unauthorized or
140 unlicensed insurer shall either (i) deposit with the clerk
141 of the court in which such action, suit or proceeding is
142 pending, or with the commissioner in an administrative
143 proceeding before the commissioner, cash or securities
144 or file with such clerk or the commissioner a bond with
145 good and sufficient sureties, to be approved by the court
146 or the commissioner, in an amount to be fixed by the court
147 or commissioner sufficient to secure the payment
148 of any final judgment which may be rendered in such
149 action or administrative proceeding: *Provided*, That the
150 court or the commissioner may in its, his or her
151 respective discretion make an order dispensing with
152 such deposit or bond where the auditor of the state shall
153 have certified to such court or commissioner that such
154 insurer maintains within this state funds or securities
155 in trust or otherwise sufficient and available to satisfy
156 any final judgment which may be entered in such action,
157 suit or proceeding; or (ii) procure a license to transact
158 insurance in this state.

159 (2) The court or the commissioner in any action, suit
160 or proceeding in which service is made in the manner
161 provided in subdivision (2) or (3), subsection (b) of this
162 section may, in its, his or her respective discretion, order
163 such postponement as may be necessary to afford the
164 defendant or responding party reasonable opportunity to
165 comply with the provisions of subdivision (1) of this
166 subsection (c) and to defend such action or proceeding.

167 (3) Nothing in subdivision (1) of this subsection (c) is
168 to be construed to prevent an unauthorized or unlicensed
169 foreign or alien insurer from filing a motion to set aside
170 service thereof made in the manner provided in

171 subdivision (2) or (3), subsection (b) of this section on the
172 grounds that such insurer has not done any of the acts
173 enumerated in subdivision (1), subsection (b) of this
174 section, or in section twenty-two, article three of this
175 chapter.

176 (d) In any action against an unauthorized or unli-
177 censed foreign or alien insurer upon a contract of
178 insurance issued or delivered in this state to a resident
179 thereof or to a corporation authorized to do business
180 therein, if the insurer has failed for thirty days after
181 demand prior to the commencement of the action to
182 make payment in accordance with the terms of the
183 contract, and it appears to the court that such refusal
184 was vexatious and without reasonable cause, the court
185 may allow to the plaintiff a reasonable attorney's fee and
186 include such fee in any judgment that may be rendered
187 in such action. Such fee shall not exceed twelve and one-
188 half percent of the amount which the court finds the
189 plaintiff is entitled to recover against the insurer, but
190 in no event shall such fee be less than twenty-five
191 dollars. Failure of an insurer to defend any such action
192 shall be deemed prima facie evidence that its failure to
193 make payment was vexatious and without reasonable
194 cause.

CHAPTER 108

(Com. Sub. for H. B. 4666—By Mr. Speaker, Mr. Chambers, and Delegate Burk,
By Request)

[Passed March 7, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to repeal section twenty-seven, article five, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three, article two of said chapter; to amend and reenact sections fourteen and fifteen, article four of said chapter; to further amend said article by adding thereto two new sections, designated sections fifteen-a and fifteen-b; to amend and reenact section

twenty-six, article five of said chapter; to amend and reenact section five, article ten of said chapter; to amend and reenact section three-d, article sixteen of said chapter; to amend and reenact sections two, thirteen and eighteen, article twenty-two of said chapter; to amend and reenact section two, article twenty-three of said chapter; to amend and reenact sections four and eighteen, article twenty-four of said chapter; to amend and reenact sections six, article twenty-five of said chapter; to amend and reenact section twenty-four, article twenty-five-a of said chapter; to amend and reenact sections two, three, four, five and nine, article twenty-seven of said chapter; to further amend said article by adding thereto two new sections, designated sections two-a and thirteen; to amend and reenact section five-b, article twenty-eight of said chapter; to amend and reenact section six, article thirty-one of said chapter; to amend and reenact sections one, two, three, four, five, eight, nine, fourteen, sixteen, seventeen, eighteen, nineteen and twenty-one, article thirty-two of said chapter; to further amend said article by adding thereto a new section, designated section twenty-four; and to further amend said chapter by adding thereto two new articles, designated articles thirty-six and thirty-seven, all relating to insurance; making technical and other changes in order to comply with federal insurance oversight requirements; insurance commissioner; duties of commissioner; general provisions; financial statement filings; reinsurance; credits allowed for reinsurance; life reinsurance agreements; reduction of liability; establishment of asset; organization and procedures of domestic stock and mutual insurance companies; reinsurance by domestic stock insurers and domestic mutual insurers; bulk reinsurance; rehabilitation and liquidation; grounds for rehabilitation of domestic insurers; medicare supplement insurance; removing references to eligibility for medicare by reason or reasons of age; farmers' mutual fire insurance companies; applicability of other provisions; reinsurance; joint policies; mergers and consolidations; fraternal benefit societies; applicability of other provisions; hospital service corporations, medical service

corporations, dental service corporations and health service corporations; exemptions; applicability of insurance laws; grounds for rehabilitation of a corporation; health care corporations, exemption from insurance laws; health maintenance organization act, statutory construction and relationship to other laws; insurance holding company systems; definitions; kinds of subsidiaries; investment authority and limitations in subsidiaries; acquisition of control of or merger with domestic insurer; registration, member of insurance holding company system; standards for transactions; criminal proceedings; recovery of funds by receiver; captive insurers; corporate organization; risk retention act; purpose; definitions; charter and license requirements of domestic risk retention group; registration required of foreign risk retention group prior to conducting business in state; risk retention groups required to file financial condition report annually; registration and filing fees for risk retention groups; premium tax rate for risk retention groups; examinations regarding financial condition; notification to purchaser; compulsory associations, no coverage by state guaranty funds; registration of risk purchasing groups; restrictions on insurance purchased by risk purchasing groups; notification to purchaser; administrative and procedural authority regarding risk retention groups and risk purchasing groups; agents to obtain licenses; duties of groups operating prior to enactment; business transacted with producer-controlled property/casualty insurer; definitions; limitations on business placed with controlled insurer; liabilities of controlling producer in the event of insolvency, managing general agents; definitions; licensure requirements; required contract provisions; duties of insurers; examination authority; penalties and liabilities; fines; revocation or suspension of license; commissioner authorized to promulgate rules.

Be it enacted by the Legislature of West Virginia:

That section twenty-seven, article five, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section three, article two of said chapter be amended and reenacted; that sections

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

Article

- 2. Insurance Commissioner.**
- 4. General Provisions.**
- 5. Organization and Procedures of Domestic Stock and Mutual Insurers.**
- 10. Rehabilitation and Liquidation.**
- 16. Group Accident and Sickness Insurance.**
- 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.**
- 27. Insurance Holding Company Systems.**
- 28. Individual Accident and Sickness Insurance Minimum Standards.**

- 31. Captive Insurance.
- 32. Risk Retention Act.
- 36. Business Transacted With Producer-Controlled Property/Casualty Insurer Act.
- 37. Managing General Agents.

ARTICLE 2. INSURANCE COMMISSIONER.

*§33-2-3. Duties of the commissioner; employment of legal counsel.

1 (a) The commissioner shall enforce the provisions of
 2 this chapter and perform the duties required there-
 3 under; shall affix the commissioner's official seal to all
 4 documents and papers required to be filed in other
 5 states by domestic insurers and to other papers when an
 6 official seal is required; and shall, on or before the tenth
 7 day of each month, pay into the state treasury all fees
 8 and moneys which he or she has received during the
 9 preceding calendar month.

10 (b) Notwithstanding any provisions of this code to the
 11 contrary, the commissioner may acquire such legal
 12 services as are deemed necessary, including representa-
 13 tion of the commissioner before any court or adminis-
 14 trative body. Such counsel may be employed either on
 15 a salaried basis or on a reasonable fee basis. In addition,
 16 the commissioner may call upon the attorney general for
 17 legal assistance and representation as provided by law.

ARTICLE 4. GENERAL PROVISIONS.

§33-4-14. Financial statement filings; annual and quarterly statements; required format; foreign insurers; agents of the commissioner.

§33-4-15. Reinsurance.

§33-4-15a. Credit for reinsurance; definitions; requirements; trust accounts; reductions from liability; security; effective date.

§33-4-15b. Life reinsurance agreements; reduction of liability; requirements.

§33-4-14. Financial statement filings; annual and quarterly statements; required format; foreign insurers; agents of the commissioner.

1 (a) Each licensed insurer shall annually on or before
 2 the first day of March, unless the time is extended by

*Clerk's Note: This section was also amended by H. B. 4759 (Chapter 54), which passed subsequent to this act.

3 the commissioner for good cause shown, file with the
4 commissioner a true statement of its financial condition,
5 transactions and affairs as of the preceding thirty-first
6 day of December. Such statement shall be on the appro-
7 priate national association of insurance commissioners
8 annual statement blank; shall be prepared in accordance
9 with the national association of insurance commissioners
10 annual statement instructions handbook; and shall follow
11 the accounting practices and procedures prescribed by
12 the national association of insurance commissioners
13 accounting practices and procedures manual as
14 amended: *Provided*, That each licensed insurer shall also
15 file true statements of financial condition on a more fre-
16 quent basis if the commissioner so orders. The commis-
17 sioner shall establish the frequency, due date and form
18 acceptable to him or her for such filings: *Provided*,
19 *however*, That the statement of an alien insurer shall
20 relate only to its transactions and affairs in the United
21 States unless the commissioner requires otherwise.

22 (b) Each domestic insurer shall also file with the
23 commissioner a true quarterly statement of its financial
24 condition, transactions and affairs as of the thirty-first
25 day of March, the thirtieth day of June, and the thirtieth
26 day of September of each year. Quarterly statements
27 shall be due forty-five days after the end of each quarter.
28 All quarterly statements shall be submitted on the
29 appropriate national association of insurance commis-
30 sioners quarterly statement blank; shall be prepared in
31 accordance with the national association of insurance
32 commissioners quarterly statement instructions; and
33 shall follow the accounting practices and procedures
34 prescribed by the national association of insurance
35 commissioners accounting practices and procedures
36 manual, as amended. The commissioner may subject any
37 licensed insurer to the requirements of this section
38 whenever the commissioner deems it necessary.

39 (c) The commissioner may require that all or part of
40 the information contained in the annual statement blank
41 and the quarterly statement blanks be submitted to the
42 department in a computer-readable form compatible
43 with the electronic data processing system of the
44 department.

45 (d) Each domestic, foreign and alien insurer, organ-

46 ization or corporation who is subject to the requirements
47 of this section shall annually, on or before the first day
48 of March each year, and forty-five days after the end of
49 the first, second and third calendar quarters, file with
50 the national association of insurance commissioners a
51 copy of its annual statement convention blank and the
52 quarterly statement blanks, along with such additional
53 filings as prescribed by the commissioner and shall pay
54 the fee established by the national association of
55 insurance commissioners for filing, review or processing
56 of the information. The information filed with the
57 national association of insurance commissioners shall be
58 in the same format and scope as that required by the
59 commissioner and shall include the signed jurat page
60 and any other required information. Any amendments
61 and addenda to the annual statement filing and quar-
62 terly statement filings subsequently filed with the
63 commissioner shall also be filed with the national
64 association of insurance commissioners.

65 (e) Foreign insurers that are domiciled in a state
66 which has a law substantially similar to subsection (a)
67 of this section shall be deemed in compliance with this
68 section.

69 (f) In the absence of actual malice, members of the
70 national association of insurance commissioners, their
71 duly authorized committees, subcommittees and task
72 forces, their delegates, national association of insurance
73 commissioners employees and all others charged with
74 the responsibility of collecting, reviewing, analyzing and
75 disseminating the information developed from the filing
76 of the annual statement convention blanks and the
77 quarterly statement blanks shall be acting as agents of
78 the commissioner under the authority of this article and
79 shall not be subject to civil liability for libel, slander or
80 any other cause of action by virtue of their collection,
81 review, and analysis or dissemination of the data and
82 information collected from the filings required
83 hereunder.

84 (g) All financial analysis ratios and examination
85 synopses concerning insurance companies that are
86 submitted to the department by the national association
87 of insurance commissioners insurance regulatory infor-
88 mation system are confidential and may not be disclosed

89 by the department.

90 (h) The commissioner may suspend, revoke or refuse
91 to renew the certificate of authority of any insurer failing
92 to file its annual statement or the quarterly statement
93 blanks, or any other statement of financial condition
94 required by this section, when due or within any
95 extension of time which the commissioner, for good
96 cause, may have granted.

97 (i) Any variance to the requirements of this section
98 shall require the express authorization of the
99 commissioner.

100 (j) The commissioner shall promulgate legislative rules
101 in accordance with the provisions of chapter twenty-nine-
102 a of this code to effectuate the requirements of this
103 article.

§33-4-15. Reinsurance.

1 (a) An insurer shall reinsure its risks, or any part
2 thereof, only in solvent insurers having surplus to
3 policyholders not less in amount than the paid-in capital
4 required under this chapter of a stock insurer licensed
5 to transact like kinds of insurance.

6 (b) Credit for reinsurance shall be governed by the
7 provisions of sections fifteen-a and fifteen-b of this
8 article.

9 (c) Any licensed insurer may accept reinsurance for
10 the same kinds of insurance and within the same limits
11 as it is authorized to transact direct insurance.

12 (d) An insurer may not reinsure all or substantially
13 all of its risks on property or lives located in West
14 Virginia, or substantially all of a major class thereof,
15 unless the reinsurance agreement be filed with and
16 approved by the commissioner.

§33-4-15a. Credit for reinsurance; definitions; requirements; trust accounts; reductions from liability; security; effective date.

1 (a) For purposes of this section, an "accredited
2 reinsurer" is one which:

3 (1) Has filed an application for accreditation and
4 received a letter of accreditation from the commissioner;

5 (2) Is licensed to transact insurance or reinsurance in
6 at least one of the fifty states of the United States or
7 the District of Columbia or, in the case of a United
8 States branch of an alien assuming insurer, is entered
9 through and licensed to transact insurance or reinsu-
10 rance in at least one of the fifty states of the United
11 States or the District of Columbia;

12 (3) Has filed with the application a certified statement
13 that the company submits to this state's jurisdiction and
14 that the company will comply with the laws, rules and
15 regulations of the state of West Virginia;

16 (4) Has filed with the application a certified statement
17 that the company submits to the examination authority
18 granted the commissioner by section nine, article two of
19 this chapter and will pay all examination costs and fees
20 as required by that section;

21 (5) Has filed with the application a copy of its most
22 recent annual statement in a form consistent with the
23 requirements of subdivision (8) of this subsection and a
24 copy of its last audited financial statement;

25 (6) Has filed any other information the commissioner
26 requests to determine that the company qualifies for
27 accreditation under this section;

28 (7) Has remitted the applicable processing fee with its
29 application for accreditation;

30 (8) Files with the commissioner after initial accred-
31 itation on or before the first day of March of each year
32 a true statement of its financial condition, transactions
33 and affairs as of the preceding thirty-first day of
34 December. Such statement shall be on the appropriate
35 national association of insurance commissioners annual
36 statement blank; shall be prepared in accordance with
37 the national association of insurance commissioners
38 annual statement instructions; and shall follow the
39 accounting practices and procedures prescribed by the
40 national association of insurance commissioners account-
41 ing practices and procedures manual as amended. Such
42 statement shall be accompanied by the applicable
43 annual statement filing fee. The commissioner may
44 grant extensions of time for filing of this annual
45 statement upon application by the accredited reinsurer;
46 and

47 (9) Files with the commissioner after initial accred-
48 itation by the first day of June of each year a copy of
49 its audited financial statement for the period ending the
50 preceding thirty-first day of December.

51 (b) If the commissioner determines that the assuming
52 insurer has failed to continue to meet any of these
53 qualifications, he or she may upon written notice and
54 hearing, as prescribed by section thirteen, article two of
55 this chapter, revoke an assuming insurer's accreditation.
56 Credit shall not be allowed to a ceding insurer if the
57 assuming insurers' accreditation has been revoked by
58 the commissioner after notice and hearing.

59 (c) Credit for reinsurance shall be allowed a domestic
60 ceding insurer or any foreign or alien insurer transact-
61 ing insurance in West Virginia that is domiciled in a
62 jurisdiction that employs standards regarding credit for
63 reinsurance that are not substantially similar to those
64 applicable under this article as either an asset or a
65 deduction from liability on account of reinsurance ceded
66 only when the reinsurer meets one of the following
67 requirements:

68 (1) Credit shall be allowed when the reinsurance is
69 ceded to an assuming insurer which is licensed to
70 transact insurance or reinsurance in this state.

71 (2) Credit shall be allowed when the reinsurance is
72 ceded to an assuming insurer which is accredited as a
73 reinsurer in this state prior to the thirty-first day of
74 December of the year for which the ceding insurer is
75 claiming a credit for reinsurance.

76 (3) Credit shall be allowed when the reinsurance is
77 ceded to an assuming insurer which is domiciled and
78 licensed in, or in the case of a United States branch of
79 an alien assuming insurer, is entered through one of the
80 fifty states of the United States or the District of
81 Columbia and which employs standards regarding
82 credit for reinsurance substantially similar to those
83 applicable under this statute, and the ceding insurer
84 provides evidence suitable to the commissioner that the
85 assuming insurer:

86 (A) Maintains a surplus as regards policyholders in
87 an amount not less than twenty million dollars: *Pro-*

88 *vided*, That the requirements of this paragraph do not
89 apply to reinsurance ceded and assumed pursuant to
90 pooling arrangements among insurers in the same
91 holding company system; and

92 (B) The ceding insurer provides the commissioner
93 with a certified statement from the assuming insurer
94 that the assuming insurer submits to the authority of
95 this state to examine its books and records granted the
96 commissioner by section nine, article two of this chapter
97 and will pay all examination costs and fees as required
98 by that section; and

99 (C) The reinsurer complies with the provisions of
100 subdivision (6), subsection (c) herein.

101 (4) Credit shall be allowed when the reinsurance is
102 ceded to an assuming insurer which maintains a trust
103 fund as required by subsection (d) herein in a qualified
104 United States financial institution, as defined by this
105 section, for the payment of the valid claims of its United
106 States policyholders and ceding insurers, their assigns
107 and successors in interest, and complies with the
108 provisions of subdivision (6) herein.

109 (5) Credit shall be allowed when the reinsurance is
110 ceded to an assuming insurer not meeting the require-
111 ments of subdivisions (1) through (4), subsection (c) of
112 this section, but only with respect to the insurance of
113 risks located in jurisdictions where such reinsurance is
114 required by applicable law or regulation of that
115 jurisdiction.

116 (6) If the assuming insurer is not licensed or accred-
117 ited to transact insurance or reinsurance in this state,
118 the credit permitted by subdivisions (3) and (4) of this
119 subsection shall not be allowed unless the assuming
120 insurer agrees in the reinsurance agreements:

121 (A) That in the event of the failure of the assuming
122 insurer to perform its obligations under the terms of the
123 reinsurance agreement, the assuming insurer, at the
124 request of the ceding insurer, shall submit to the
125 jurisdiction of any court of competent jurisdiction in any
126 state of the United States, shall comply with all

127 requirements necessary to give such court jurisdiction,
128 and shall abide by the final decision of such court or of
129 any appellate court in the event of an appeal; and

130 (B) To designate the secretary of state as its true and
131 lawful attorney upon whom may be served any lawful
132 process in any action, suit or proceeding instituted by
133 or on behalf of the ceding company. Such process shall
134 be served upon the secretary of state, or accepted by him
135 or her, in the same manner as provided for service of
136 process upon unlicensed insurers under section thirteen
137 of this article: *Provided*, That this provision is not
138 intended to conflict with or override the obligation of the
139 parties to a reinsurance agreement to arbitrate their
140 disputes, if such an obligation is created in the
141 agreement.

142 (d) Whenever an assuming insurer establishes a trust
143 fund for the payment of claims pursuant to the provi-
144 sions of this section, the following requirements shall
145 apply:

146 (1) The assuming insurer shall report annually to the
147 commissioner information substantially the same as that
148 required to be reported on the national association of
149 insurance commissioners annual statement form by
150 licensed insurers to enable the commissioner to deter-
151 mine the sufficiency of the trust fund. In the case of a
152 single assuming insurer, the trust shall consist of a
153 trustee account representing the assuming insurer's
154 liabilities attributable to business written in the United
155 States and, in addition, the assuming insurer shall
156 maintain a trustee surplus of not less than twenty
157 million dollars. In the case of a group of individual
158 unincorporated underwriters, the trust shall consist of
159 a trustee account representing the group's liabilities
160 attributable to business written in the United States
161 and, in addition, the group shall maintain a trustee
162 surplus of which one hundred million dollars shall be
163 held jointly for the benefit of United States ceding
164 insurers of any member of the group. Such group shall
165 make available to the commissioner an annual certifi-
166 cation of the solvency of each underwriter by the group's

167 domiciliary regulator and its independent public
168 accountants.

169 (2) In the case of a group of incorporated insurers
170 under common administration which complies with the
171 filing requirements contained in the previous para-
172 graph; which has continuously transacted an insurance
173 business outside the United States for at least three
174 years immediately prior to making application for
175 accreditation; which submits to this state's authority to
176 examine its books and records and bears the expense of
177 the examination; and which has aggregate policy-
178 holders' surplus of ten billion dollars, the trust shall be
179 in an amount equal to the group's several liabilities
180 attributable to business ceded by United States ceding
181 insurers to any member of the group pursuant to
182 reinsurance contracts issued in the name of such group.
183 The group shall also maintain a joint trusted surplus
184 of which one hundred million dollars shall be held
185 jointly for the benefit of United States ceding insurers
186 of any member of the group as additional security for
187 any such liabilities. Each member of such group shall
188 make available to the commissioner an annual certifi-
189 cation of the member's solvency by the member's
190 domiciliary regulator and its independent public
191 accountant.

192 (3) Any trust that is subject to the provisions of this
193 section shall be established in a form approved by the
194 commissioner. The trust instrument shall provide that
195 contested claims shall be valid and enforceable upon the
196 final order of any court of competent jurisdiction in the
197 United States. The trust shall vest legal title to its assets
198 in the trustees of the trust for its United States
199 policyholders and ceding insurers, their assigns and
200 successors in interest. The trust and the assuming
201 insurer shall be subject to examination as determined
202 by the commissioner. The trust described herein shall
203 remain in effect for as long as the assuming insurer
204 shall have outstanding obligations due under the
205 reinsurance agreements subject to the trust.

206 (4) No later than the twenty-eighth day of February
207 of each year the trustees of the trust shall report to the

208 commissioner in writing setting forth the balance of the
209 trust and listing the trust's investments at the preceding
210 year's end. The trustees shall certify the date of
211 termination of the trust, if so planned, or certify that
212 the trust shall not expire prior to the next following
213 December thirty-first.

214 (e) A reduction from liability for the reinsurance
215 ceded by a ceding insurer subject to the requirements
216 of this article to an assuming insurer not meeting the
217 requirements of subsection (c) of this section shall be
218 allowed in an amount not exceeding the liabilities
219 carried by the ceding insurer. Such reduction shall be
220 in the amount of funds held by or on behalf of the ceding
221 insurer, including funds held in trust for the ceding
222 insurer, under a reinsurance contract with such assum-
223 ing insurer as security for the payment of obligations
224 thereunder: *Provided*, That such security is held in the
225 United States subject to withdrawal solely by, and
226 under the exclusive control of, the ceding insurer; or, in
227 the case of a trust, held in a qualified United States
228 financial institution, as defined by this section. Such
229 security may be in the form of:

230 (1) Cash;

231 (2) Securities listed by the securities valuation office
232 of the national association of insurance commissioners
233 and qualifying as admitted assets; or

234 (3) Clean, irrevocable, unconditional letters of credit,
235 issued or confirmed by a qualified United States
236 financial institution, as defined by this section, no later
237 than the thirty-first day of December of the year for
238 which filing is being made, and in the possession of the
239 ceding company on or before the filing date of its annual
240 statement: *Provided*, That letters of credit meeting
241 applicable standards of issuer acceptability as of the
242 dates of their issuance or confirmation shall, notwith-
243 standing the issuing or confirming institution's subse-
244 quent failure to meet applicable standards of issuer
245 acceptability, continue to be acceptable as security until
246 their expiration, extension, renewal, modification or
247 amendment, whichever first occurs.

248 (f) For purposes of this section, a "qualified United
249 States financial institution" means an institution that:

250 (1) Is organized or licensed under the laws of the
251 United States or any state thereof;

252 (2) Is regulated, supervised and examined by United
253 States federal or state authorities having regulatory
254 authority over banks and trust companies; and

255 (3) Has been determined by either the commissioner,
256 or the securities valuation office of the national associ-
257 ation of insurance commissioners, to meet such stand-
258 ards of financial condition and standing as are consi-
259 dered necessary and appropriate to regulate the quality
260 of financial institutions whose letters of credit will be
261 acceptable to the commissioner.

262 (g) A "qualified United States financial institution"
263 means, for purposes of those provisions of this law
264 specifying those institutions that are eligible to act as
265 a fiduciary of a trust, an institution that:

266 (1) Is organized or, in the case of a United States
267 branch or agency office of a foreign banking organiza-
268 tion, licensed under the laws of the United States or any
269 state thereof and has been granted authority to operate
270 with fiduciary powers; and

271 (2) Is regulated, supervised and examined by federal
272 or state authorities having regulatory authority over
273 banks and trust companies.

274 (h) The provisions of this section shall apply to all
275 cessions on or after the first day of January, one
276 thousand nine hundred ninety-three.

**§33-4-15b. Life reinsurance agreements; reduction of
liability; requirements.**

1 (a) This section applies to all domestic life insurers
2 and to all other licensed life insurers who are not subject
3 to a substantially similar law or regulation in their
4 domiciliary state.

5 (b) A life insurer subject to this article shall not, for
6 reinsurance ceded, reduce any liability or establish any

7 asset in any financial statement filed with the depart-
8 ment if, by the terms of the reinsurance agreement, in
9 substance or effect, any of the following conditions exist:

10 (1) The primary effect of the reinsurance agreement
11 is to transfer deficiency reserves or excess interest
12 reserves to the books of the reinsurer for a "risk charge"
13 and the agreement does not provide for significant
14 participation by the reinsurer in one or more of the
15 following risks: Mortality, morbidity, investment or
16 surrender benefit;

17 (2) The reserve credit taken by the ceding insurer is
18 not in compliance with this chapter, including actuarial
19 interpretations or standards adopted by the department;

20 (3) The reserve credit taken by the ceding insurer is
21 greater than the underlying reserve of the ceding
22 company supporting the policy obligations transferred
23 under the reinsurance agreement;

24 (4) The ceding insurer is required to reimburse the
25 reinsurer for negative experience under the reinsurance
26 agreement: *Provided*, That neither offsetting experience
27 refunds against prior years' losses nor payment by the
28 ceding insurer of an amount equal to prior years' losses
29 upon voluntary termination of in-force reinsurance by
30 that ceding insurer shall be considered such a reimbur-
31 sement to the reinsurer for negative experience;

32 (5) The ceding insurer can be deprived of surplus at
33 the reinsurer's option or automatically upon the occur-
34 rence of some event, such as the insolvency of the ceding
35 insurer: *Provided*, That termination of the reinsurance
36 agreement by the reinsurer for nonpayment of reinsur-
37 ance premiums shall not be considered to be such a
38 deprivation of surplus;

39 (6) The ceding insurer shall, at specific points in time
40 scheduled in the agreement, terminate or automatically
41 recapture all or part of the reinsurance ceded;

42 (7) No cash payment is due from the reinsurer,
43 throughout the lifetime of the reinsurance agreement,
44 with all settlements prior to the termination date of the
45 agreement made only in a "reinsurance account," and no

46 funds in such account are available for the payment of
47 benefits; or

48 (8) The reinsurance agreement involves the possible
49 payment by the ceding insurer to the reinsurer of
50 amounts other than from income reasonably expected
51 from the reinsured policies.

52 (c) Notwithstanding the provisions of subsection (b) of
53 this section, a life insurer subject to this article may,
54 with the prior approval of the commissioner, take such
55 reserve credit as the commissioner may deem consistent
56 with this chapter, including actuarial interpretations or
57 standards adopted by the commissioner.

58 (d) A reinsurance agreement or amendment to any
59 agreement shall not be used to reduce any liability or
60 to establish any asset in any financial statement filed
61 with the commissioner, unless the agreement, amend-
62 ment or a letter of intent has been duly executed by both
63 parties no later than the "as of date" of the financial
64 statement.

65 (e) In the case of a letter of intent, a reinsurance
66 agreement or an amendment to a reinsurance agree-
67 ment shall be executed within a reasonable period of
68 time, not exceeding ninety days from the execution date
69 of the letter of intent, in order for credit to be granted
70 for the reinsurance ceded.

71 (f) Life insurers subject to this article may continue
72 to reduce liabilities or establish assets in financial
73 statements filed with the commissioner for reinsurance
74 ceded under types of reinsurance agreements described
75 in subsection (b) of this section: *Provided, That:*

76 (1) The agreements were executed and in force prior
77 to the effective date of this article;

78 (2) No new business is ceded under the agreements
79 after the effective date of this article;

80 (3) The reduction of the liability or the asset estab-
81 lished for the reinsurance ceded is reduced to zero by
82 the thirty-first day of December, one thousand nine
83 hundred ninety-four, or such later date approved by the

84 commissioner as a result of an application made by the
85 ceding insurer prior to the thirty-first day of December,
86 one thousand nine hundred ninety-two;

87 (4) The reduction of the liability or the establishment
88 of the asset is otherwise permissible under all other
89 applicable provisions of this chapter, including actuarial
90 interpretations or standards adopted by the commis-
91 sioner; and

92 (5) The department is notified, within ninety days
93 after the effective date of this section, of the existence
94 of such reinsurance agreements and all corresponding
95 credits taken in the ceding insurer's annual statement
96 for the year one thousand nine hundred ninety-one.

**ARTICLE 5. ORGANIZATION AND PROCEDURES OF DOMESTIC
STOCK AND MUTUAL INSURERS.**

§33-5-26. Reinsurance.

1 (a) A domestic stock or mutual insurer may accept
2 reinsurance for the same kinds of insurance and within
3 the same limits as it is authorized to transact direct
4 insurance, unless such reinsurance is prohibited by its
5 articles of incorporation.

6 (b) A domestic stock or mutual insurer may reinsure
7 all or substantially all its business in force, or substan-
8 tially all of a major class thereof, with another insurer
9 by an agreement of bulk reinsurance; but such agree-
10 ments shall not become effective unless filed in advance
11 with and approved in writing by the commissioner.

12 (c) The commissioner shall approve such agreement
13 within a reasonable time after such filing unless he or
14 she finds that it is inequitable to the domestic insurer,
15 its stockholders or members, or would substantially
16 reduce the protection or service to its policyholders or
17 members. If the commissioner does not approve the
18 agreement, he or she shall so notify the insurer in
19 writing specifying his or her reasons therefor.

20 (d) For the purposes of this section, "bulk reinsu-
21 rance" means any quota share, surplus aid or portfolio
22 reinsurance agreement which, of itself or in combination
23 with other similar agreements, assumes fifty-one

24 percent or more of the liability of the reinsured
25 company.

26 (e) Any contract of reinsurance whereby a domestic
27 stock or mutual insurer cedes more than seventy-five
28 percent of the total of its outstanding insurance
29 liabilities shall be subject to the approval, in writing, by
30 the commissioner.

31 (f) A filing shall not be made pursuant to this section
32 unless the reinsurance agreement be certified under
33 oath by responsible officers of the reinsurer and the
34 reinsured to contain the entire agreement between the
35 parties to the reinsurance agreement.

36 (g) Credit for reinsurance shall be subject to the
37 provisions of section fifteen, article four of this chapter.

ARTICLE 10. REHABILITATION AND LIQUIDATION.

§33-10-5. Grounds for rehabilitation of domestic insurers.

1 The commissioner may apply to the court for an order
2 appointing him or her as receiver of and directing him
3 or her to rehabilitate a domestic insurer or of the United
4 States branch of an alien insurer having trustee assets
5 in this state, upon one or more of the following grounds.
6 That 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, or bylaws, or 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 seques-
38 trator of the insurer or its property otherwise than
39 pursuant to the provisions of this chapter, but only if
40 such appointment has been made or is imminent and its
41 effect is or would be to oust the courts of this state of
42 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
46 against it in this state upon any insurance contract
47 issued or assumed by it, within thirty days after the
48 judgment became final or within thirty days after the
49 time for taking an appeal has expired or within thirty
50 days after dismissal of an appeal before final determi-
51 nation, whichever date is the later.

52 (j) Has been deemed in hazardous financial condition
53 pursuant to the provisions of article thirty-four-a of this
54 chapter.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3d. Medicare supplement insurance.

1 (a) *Definitions:*

2 (1) "Applicant" means, in the case of a group medicare

3 supplement policy or subscriber contract, the proposed
4 certificate holder.

5 (2) "Certificate" means, for the purposes of this
6 section, any certificate issued under a group medicare
7 supplement policy, which policy has been delivered or
8 issued for delivery in this state.

9 (3) "Medicare supplement policy" means a group
10 policy of accident and sickness insurance or a subscriber
11 contract (of hospital and medical service associations)
12 which is advertised, marketed or designed primarily as
13 a supplement to reimbursements under medicare for the
14 hospital, medical or surgical expenses of persons eligible
15 for medicare. Such term does not include:

16 (A) A policy or contract of one or more employers or
17 labor organizations, or of the trustees of a fund
18 established by one or more employers or labor organ-
19 izations, or a combination thereof, for employees or
20 former employees, or combination thereof, or for
21 members or former members, or combination thereof,
22 of the labor organizations, or

23 (B) A policy or contract of any professional, trade or
24 occupational association for its members or former or
25 retired members, or combination thereof, if such
26 association is composed of individuals all of whom are
27 actively engaged in the same profession, trade or
28 occupation; has been maintained in good faith for
29 purposes other than obtaining insurance; and has been
30 in existence for at least two years prior to the date of
31 its initial offering of such policy or plan to its members.

32 (C) Individual policies or contracts issued pursuant to
33 a conversion privilege under a policy or contract of
34 group or individual insurance when such group or
35 individual policy or contract includes provisions which
36 are inconsistent with the requirements of this section.

37 (4) "Medicare" means the Health Insurance for the
38 Aged Act, Title XVIII of the Social Security Amend-
39 ments of 1965, as then constituted or later amended.

40 (b) *Standards for policy provisions:*

41 (1) The commissioner shall issue reasonable rules to
42 establish specific standards for policy provisions of
43 medicare supplement policies. Such standards shall be
44 in addition to and in accordance with the applicable
45 laws of this state and may cover, but shall not be limited
46 to:

47 (A) Terms of renewability;

48 (B) Initial and subsequent conditions of eligibility;

49 (C) Nonduplication of coverage;

50 (D) Probationary period;

51 (E) Benefit limitations, exceptions and reductions;

52 (F) Elimination period;

53 (G) Requirements for replacement;

54 (H) Recurrent conditions; and

55 (I) Definitions of terms.

56 (2) The commissioner may issue reasonable rules that
57 specify prohibited policy provisions not otherwise
58 specifically authorized by statute which, in the opinion
59 of the commissioner, are unjust, unfair or unfairly
60 discriminatory to any person insured or proposed for
61 coverage under a medicare supplement policy.

62 (3) Notwithstanding any other provisions of the law,
63 a medicare supplement policy may not deny a claim for
64 losses incurred more than six months from the effective
65 date of coverage for a preexisting condition. The policy
66 may not define a preexisting condition more restric-
67 tively than a condition for which medical advice was
68 given or treatment was recommended by or received
69 from a physician within six months before the effective
70 date of coverage.

71 (c) *Minimum standards for benefits.*

72 The commissioner shall issue reasonable rules to
73 establish minimum standards for benefits under med-
74 icare supplement policies.

75 (d) *Loss ratio standards.*

76 Medicare supplement policies shall be expected to
77 return to policyholders benefits which are reasonable in
78 relation to the premium charge. The commissioner shall
79 issue reasonable rules to establish minimum standards
80 for loss ratios and medicare supplement policies on the
81 basis of incurred claims experience and earned premi-
82 ums for the entire period for which rates are computed
83 to provide coverage and in accordance with accepted
84 actuarial principles and practices. For purposes of rules
85 issued pursuant to this paragraph, medicare supplement
86 policies issued as a result of solicitations of individuals
87 through the mail or mass media advertising, including
88 both print and broadcast advertising, shall be treated
89 as individual policies.

90 (e) *Disclosure standards:*

91 (1) In order to provide for full and fair disclosure in
92 the sale of accident and sickness policies, to persons
93 eligible for medicare, the commissioner may require by
94 rule that no policy of accident and sickness insurance
95 may be issued for delivery in this state and no certificate
96 may be delivered pursuant to such a policy unless an
97 outline of coverage is delivered to the applicant at the
98 time application is made.

99 (2) The commissioner shall prescribe the format and
100 content of the outline of coverage required by paragraph
101 (1) of this section. For purposes of this paragraph,
102 "format" means style, arrangements and overall appear-
103 ance, including such items as size, color and prominence
104 of type and the arrangement of text and captions. Such
105 outline of coverage shall include:

106 (A) A description of the principal benefits and
107 coverage provided in the policy;

108 (B) A statement of the exceptions, reductions and
109 limitations contained in the policy;

110 (C) A statement of the renewal provisions including
111 any reservation by the insurer of the right to change
112 premiums;

113 (D) A statement that the outline of coverage is a
114 summary of the policy issued or applied for and that the

115 policy should be consulted to determine governing
116 contractual provisions.

117 (3) The commissioner may prescribe by rule a
118 standard form and the contents of an informational
119 brochure for persons eligible for medicare, which is
120 intended to improve the buyer's ability to select the most
121 appropriate coverage and improve the buyer's under-
122 standing of medicare. Except in the case of direct
123 response insurance policies, the commissioner may
124 require by rule that the information brochure be
125 provided to any prospective insureds eligible for
126 medicare concurrently with delivery of the outline of
127 coverage. With respect to direct response insurance
128 policies, the commissioner may require by rule that the
129 prescribed brochure be provided upon request to any
130 prospective insureds eligible for medicare, but in no
131 event later than the time of policy delivery.

132 (4) The commissioner may further promulgate rea-
133 sonable rules to govern the full and fair disclosure of the
134 information in connection with the replacement of
135 accident and sickness policies, subscriber contracts or
136 certificates by persons eligible for medicare.

137 (f) *Notice of free examination.*

138 Medicare supplement policies or certificates, other
139 than those issued pursuant to direct response solicita-
140 tion, shall have a notice prominently printed on the first
141 page of the policy or attached thereto stating in
142 substance that the applicant shall have the right to
143 return the policy or certificate within ten days from its
144 delivery and have the premium refunded if, after
145 examination of the policy or certificate, the applicant is
146 not satisfied for any reason. Medicare supplement
147 policies or certificates issued pursuant to a direct
148 response solicitation to persons eligible for medicare
149 shall have a notice prominently printed on the first page
150 or attached thereto stating in substance that the
151 applicant shall have the right to return the policy or
152 certificate within thirty days of its delivery and to have
153 the premium refunded if, after examination, the
154 applicant is not satisfied for any reason.

155 (g) *Administrative procedures.*

156 Rules promulgated pursuant to this section shall be
 157 subject to the provisions of chapter twenty-nine-a (West
 158 Virginia Administrative Procedures Act).

159 (h) *Separability.*

160 If any provision of this section or the application
 161 thereof to any person or circumstance is for any reason
 162 held to be invalid, the remainder of the section and the
 163 application of such provision to other persons or
 164 circumstances shall not be affected thereby.

ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.

§33-22-2. Applicability of other provisions.

§33-22-13. Reinsurance; joint policies.

§33-22-18. Mergers and consolidations.

§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 seven (assets and liabilities), article ten
 8 (rehabilitation and liquidation) except that under the
 9 provisions of section thirty-two of said article ten
 10 assessments shall not be levied against any former
 11 member of a farmers' mutual fire insurance company
 12 who is no longer a member of the company at the time
 13 the order to show cause was issued, article eleven (unfair
 14 trade practices), article twelve (agents, brokers and
 15 solicitors) except that the agent's license fee shall be five
 16 dollars, article twenty-six (West Virginia Insurance
 17 Guaranty Association Act), article twenty-seven (insu-
 18 rance holding company systems), article thirty (mine
 19 subsidence insurance) except that under the provisions
 20 of section six, article thirty, a farmers' mutual insurance
 21 company shall have the option of offering mine subsi-
 22 dence coverage to all of its policyholders but shall not
 23 be required to do so, article thirty-three (annual audited

24 financial report), article thirty-four (administrative
25 supervision), article thirty-four-a, (standards and
26 commissioner's authority for companies deemed to be in
27 hazardous financial condition), article thirty-five,
28 (criminal sanctions for failure to report impairment),
29 article thirty-six (business transacted with producer-
30 controlled property/casualty insurer) and article thirty-
31 seven (managing general agents); but only to the extent
32 these provisions are not inconsistent with the provisions
33 of this article.

§33-22-13. Reinsurance; joint policies.

1 (a) Such company may procure reinsurance or issue
2 policies of reinsurance to other licensed insurers
3 transacting like kinds of insurance, subject to the
4 provisions of section fifteen, article four of this chapter.

5 (b) Two or more such companies may issue policies
6 jointly.

§33-22-18. Mergers and consolidations.

1 (a) A farmers' mutual fire insurance company shall
2 not merge or consolidate with any stock insurer.

3 (b) A farmers' mutual fire insurance company may
4 merge or consolidate with another farmers' mutual fire
5 insurance company or merge into a domestic mutual
6 insurer in the manner provided in section twenty-eight,
7 article five of this chapter for the merger or consolida-
8 tion of other types of domestic mutual insurers. In the
9 event of a merger between a farmers' mutual fire
10 insurance company and a domestic mutual insurer, the
11 domestic mutual insurer shall be the surviving entity.

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 seven (assets and liabilities), article

8 ten (rehabilitation and liquidation), article eleven
9 (unfair trade practices), article twelve (agents, brokers,
10 solicitors and excess lines), article thirteen (life insu-
11 rance), article fifteen-a (long-term care insurance),
12 article twenty-seven (insurance holding company sys-
13 tems), article thirty-three (annual audited financial
14 report), article thirty-four (administrative supervision),
15 article thirty-four-a (standards and commissioner's
16 authority for companies deemed to be in hazardous
17 financial condition), article thirty-five (criminal sanc-
18 tions for failure to report impairment), and article
19 thirty-seven (managing general agents).

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL
SERVICE CORPORATIONS, DENTAL SERVICE
CORPORATIONS AND HEALTH SERVICE
CORPORATIONS.**

§33-24-4. Exemptions; applicability of insurance laws.

§33-24-18. Grounds for rehabilitation of a corporation.

***§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 six-c (guaranteed loss ratio), article
16 seven (assets and liabilities), article eleven (unfair trade
17 practices), article twelve (agents, brokers and solicitors)
18 except that the agent's license fee shall be five dollars,
19 section fourteen, article fifteen (individual accident and
20 sickness insurance), article fifteen-a (long-term care

*Clerk's Note: This section was also amended by H. B. 4184 (Chapter 113), which passed prior to this act.

21 insurance), section three-a, article sixteen (mental
22 illness), section three-c, article sixteen (group accident
23 and sickness insurance), section three-d, article sixteen
24 (medicare supplement insurance), section three-f, article
25 sixteen (treatment of temporomandibular joint disorder
26 and craniomandibular disorder), article sixteen-c (small
27 employer group policies), article sixteen-d (marketing
28 and rate practices for small employers), article twenty-
29 six-a (West Virginia life and health insurance guaranty
30 association act), after the first day of October, one
31 thousand nine hundred ninety-one, article twenty-seven
32 (insurance holding company systems), article twenty-
33 eight (individual accident and sickness insurance
34 minimum standards), article thirty-three (annual
35 audited financial report), article thirty-four (administra-
36 tive supervision), article thirty-four-a, (standards and
37 commissioner's authority for companies deemed to be in
38 hazardous financial condition), article thirty-five,
39 (criminal sanctions for failure to report impairment)
40 and article thirty seven (managing general agents); and
41 no other provision of this chapter may apply to such
42 corporations unless specifically made applicable by the
43 provisions of this article. If, however, any such corpo-
44 ration is converted into a corporation organized for a
45 pecuniary profit, or if it transacts business without
46 having obtained a license as required by section five of
47 this article, it shall thereupon forfeit its right to these
48 exemptions.

§33-24-18. Grounds for rehabilitation of a corporation.

1 The commissioner may apply to the court for an order
2 appointing him or her as receiver of and directing him
3 or her to rehabilitate a corporation upon one or more
4 of the 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 corporation, or those
10 of any person having executive authority in the corpo-
11 ration 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, or 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 seques-
35 trator of the corporation or its property otherwise than
36 pursuant to the provisions of this chapter, but only if
37 such appointment has been made or is imminent and its
38 effect is or would be to oust the courts of this state of
39 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
43 against it in this state upon any insurance contract
44 issued or assumed by it, within thirty days after the
45 judgment became final or within thirty days after the
46 time for taking an appeal has expired or within thirty
47 days after dismissal of an appeal before final determi-
48 nation, whichever date is the later.

49 (j) Has been deemed in hazardous financial condition
50 pursuant to the provisions of article thirty-four-a of this
51 chapter.

ARTICLE 25. HEALTH CARE CORPORATIONS.***§33-25-6. Supervision and regulation by insurance commissioner; exemption from insurance laws.**

1 Corporations organized under this article shall be
2 subject to supervision and regulation of the insurance
3 commissioner. Such corporations organized under this
4 article, to the same extent such provisions are applicable
5 to insurers transacting similar kinds of insurance and
6 not inconsistent with the provisions of this article, shall
7 be governed by and be subject to the provisions as
8 hereinbelow indicated, of the following articles of this
9 chapter: Article four (general provisions) except that
10 section sixteen of article four shall not be applicable
11 thereto, article six-c (guaranteed loss ratio), article
12 seven, (assets and liabilities), article eight (investments),
13 article ten (rehabilitation and liquidation), section
14 fourteen, article fifteen (individual accident and sick-
15 ness insurance), article sixteen-c (small employer group
16 policies), article sixteen-d (marketing and rate practices
17 for small employers), article twenty-six-a (West Virginia
18 life and health insurance guaranty association act),
19 article twenty-seven (insurance holding company sys-
20 tems), article thirty-three (annual audited financial
21 report), article thirty-four-a (standards and commission-
22 er's authority for companies deemed to be in hazardous
23 financial condition), article thirty-five (criminal sanc-
24 tions for failure to report impairment) and article
25 thirty-seven (managing general agents); and no other
26 provision of this chapter may apply to such corporations
27 unless specifically made applicable by the provisions of
28 this article.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.***§33-25A-24. Statutory construction and relationship to other laws.**

1 (a) Except as otherwise provided in this article,
2 provisions of the insurance law and provisions of
3 hospital or medical service corporation laws shall not be

* Clerk's Note: These sections were also amended by H. B. 4184 (Chapter 113), which passed prior to this act.

4 applicable to any health maintenance organization
5 granted a certificate of authority under this article. This
6 provision shall not apply to an insurer or hospital or
7 medical service corporation licensed and regulated
8 pursuant to the insurance laws or the hospital or
9 medical service corporation laws of this state except
10 with respect to its health maintenance corporation
11 activities authorized and regulated pursuant to this
12 article.

13 (b) Factually accurate advertising or solicitation
14 regarding the range of services provided, the premiums
15 and copayments charged, the sites of services and hours
16 of operation, and any other quantifiable, nonprofessional
17 aspects of its operation by a health maintenance
18 organization granted a certificate of authority, or its
19 representative shall not be construed to violate any
20 provision of law relating to solicitation or advertising by
21 health professions: *Provided*, That nothing contained
22 herein shall be construed as authorizing any solicitation
23 or advertising which identifies or refers to any individ-
24 ual provider, or makes any qualitative judgment
25 concerning any provider.

26 (c) Any health maintenance organization authorized
27 under this article shall not be deemed to be practicing
28 medicine and shall be exempt from the provision of
29 chapter thirty of this code, relating to the practice of
30 medicine.

31 (d) The provisions of section fifteen, article four
32 (general provisions), article six-c (guaranteed loss ratio),
33 article seven (assets and liabilities), article eight
34 (investments), section fourteen, article fifteen (individ-
35 ual accident and sickness insurance), section three-f,
36 article sixteen (treatment of temporomandibular dis-
37 order and craniomandibular disorder), article sixteen-c
38 (small employer group policies), article sixteen-d
39 (marketing and rate practices for small employers),
40 article twenty-seven (insurance holding company sys-
41 tems), article thirty-four-a (standards and commission-
42 er's authority for companies deemed to be in hazardous
43 financial condition), article thirty-five (criminal sanc-
44 tions for failure to report impairment) and article

45 thirty-seven (managing general agents) shall be appli-
46 cable to any health maintenance organization granted a
47 certificate of authority under this article.

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

ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.

§33-27-2. Definitions.

§33-27-2a. Subsidiaries of insurers; authorization; investment authority;
exemptions; qualifications; cessation of controls.

§33-27-3. Acquisition of control of or merger with domestic insurer; filing
requirements; statements; alternative filing material; approval
by the commissioner; hearings; notice; mailings to share-
holders; expenses; exemptions; violations and jurisdiction.

§33-27-4. Registration of insurers; forms required; materiality; amend-
ments reporting of dividends; information of insurers; termi-
nation of registration; consolidated filing; violations.

§33-27-5. Standards; transactions with affiliates; adequacy of surplus;
dividends; domestic insurers.

§33-27-9. Criminal proceedings; penalties.

§33-27-13. Recovery.

§33-27-2. Definitions.

1 As used in this article:

2 (a) An "affiliate" of, or person "affiliated" with, a
3 specific person, is a person that, directly or indirectly
4 through one or more intermediaries, controls, or is
5 controlled by, or is under common control with, the
6 person specified.

7 (b) "Commissioner" means the insurance commis-
8 sioner, his or her deputies, or the insurance department,
9 as appropriate.

10 (c) "Control" (including the terms "controlling,"
11 "controlled by" and "under common control with")
12 means the possession, direct or indirect, of the power to
13 direct or cause the direction of the management and
14 policies of a person, whether through the ownership of
15 voting securities, by contract other than a commercial
16 contract for goods or nonmanagement services, or
17 otherwise, unless the power is the result of an official
18 position with or corporate office held by the person.

19 Control shall be presumed to exist if any person, directly
20 or indirectly, owns, controls, holds with the power to
21 vote, or holds proxies representing ten percent or more
22 of the voting securities of any other person or controls
23 or appoints a majority of the board of directors, voting
24 members or similar governing body of any other person.
25 This presumption may be rebutted by a showing made
26 in the manner provided by subsection (b)(i), section four
27 of this article that control does not exist in fact. The
28 commissioner may determine, after furnishing all
29 persons in interest notice and opportunity to be heard
30 and making specific findings of fact to support such
31 determination, that control exists in fact, notwithstand-
32 ing the absence of a presumption to that effect.

33 (d) "Insurance holding company system" consists of
34 two or more affiliated persons, one or more of which is
35 an insurer.

36 (e) "Insurer" means any person or persons or corpo-
37 ration, partnership or company authorized by the laws
38 of this state to transact the business of insurance in this
39 state, except that it shall not include agencies, author-
40 ities or instrumentalities of the United States, its
41 possessions and territories, the commonwealth of Puerto
42 Rico, the District of Columbia, or a state or political
43 subdivision of a state.

44 (f) A "person" is an individual, a corporation, a
45 partnership, an association, a joint-stock company, a
46 trust, an unincorporated organization, any other legal
47 entity or any combination of the foregoing acting in
48 concert, but does not include any securities broker
49 performing no more than the usual and customary
50 broker's function and holding less than twenty percent
51 of the voting securities of an insurance company or of
52 any person which controls an insurance company.

53 (g) A "security holder" of a specified person is one who
54 owns any security of such person, including common
55 stock, preferred stock, debt obligations and any other
56 security convertible into or evidencing the right to
57 acquire any of the foregoing.

58 (h) A "subsidiary" of a specified person is an affiliate

59 controlled by such person directly or indirectly through
60 one or more intermediaries.

61 (i) "Voting security" includes any security convertible
62 into or evidencing a right to acquire a voting security.

**§33-27-2a. Subsidiaries of insurers; authorization; invest-
ment authority; exemptions; qualifications;
cessation of controls.**

1 (a) Any domestic insurer, either by itself or in
2 cooperation with one or more persons, may organize or
3 acquire one or more subsidiaries engaged in the
4 following kinds of business with the commissioner's
5 prior approval:

6 (1) Any kind of insurance business authorized by the
7 jurisdiction in which it is incorporated;

8 (2) Acting as an insurance agent for its parent or for
9 any of its parent's insurer subsidiaries;

10 (3) Investing, reinvesting or trading in securities for
11 its own account, that of its parent, any subsidiary of its
12 parent, or any affiliate or subsidiary;

13 (4) Management of any investment company subject
14 to or registered pursuant to the Investment Company
15 Act of 1940, as amended, including related sales and
16 services;

17 (5) Acting as a broker-dealer subject to or registered
18 pursuant to the Securities Exchange Act of 1934, as
19 amended;

20 (6) Rendering investment advice to governments,
21 government agencies, corporations or other organiza-
22 tions or groups;

23 (7) Rendering other services related to the operations
24 of an insurance business, including, but not limited to,
25 actuarial, loss prevention, safety engineering, data
26 processing, accounting, claims, appraisal and collection
27 services;

28 (8) Ownership and management of assets which the
29 parent corporation could itself own or manage;

30 (9) Acting as administrative agent for a governmental
31 instrumentality which is performing an insurance
32 function;

33 (10) Financing of insurance premiums, agents and
34 other forms of consumer financing;

35 (11) Any other business activity determined by the
36 commissioner to be reasonably ancillary to an insurance
37 business; and

38 (12) Owning a corporation or corporations engaged or
39 organized to engage exclusively in one or more of the
40 businesses specified in this section.

41 (b) In addition to investments in common stock,
42 preferred stock, debt obligations and other securities
43 permitted under any other provision of this chapter, a
44 domestic insurer may also with the commissioner's prior
45 approval:

46 (1) Invest in common stock, preferred stock, debt
47 obligations and other securities of one or more subsidiar-
48 ies, amounts which do not exceed the lesser of ten
49 percent of such insurer's assets or fifty percent of such
50 insurer's surplus as regards policyholders: *Provided,*
51 That after such investments, the insurer's surplus as
52 regards policyholders will be reasonable in relation to
53 the insurer's outstanding liabilities and adequate to its
54 financial needs. In calculating the amount of such
55 investments, investments in domestic or foreign insu-
56 rance subsidiaries shall be excluded, and there shall be
57 included:

58 (A) Total net moneys or other consideration expended
59 and obligations assumed in the acquisition or formation
60 of a subsidiary, including all organizational expenses
61 and contributions to capital and surplus of such
62 subsidiary whether or not represented by the purchase
63 of capital stock or issuance of other securities, and

64 (B) All amounts expended in acquiring additional
65 common stock, preferred stock, debt obligations and
66 other securities, and all contributions to the capital or
67 surplus, of a subsidiary subsequent to its acquisition or
68 formation;

69 (2) Invest any amount in common stock, preferred
70 stock, debt obligations and other securities of one or
71 more subsidiaries engaged or organized to engage
72 exclusively in the ownership and management of assets
73 authorized as investments for the insurer: *Provided,*
74 That each such subsidiary agrees to limit its invest-
75 ments in any asset so that such investments will not
76 cause the amount of the total investment of the insurer
77 to exceed any of the investment limitations specified in
78 subsection (b)(1) of this section or in article eight of this
79 chapter applicable to the insurer. For the purpose of this
80 subdivision, "the total investment of the insurer"
81 includes:

82 (A) Any direct investment by the insurer in an asset;
83 and

84 (B) The insurer's proportionate share of any invest-
85 ment in an asset by any subsidiary of the insurer, which
86 shall be calculated by multiplying the amount of the
87 subsidiary's investment by the percentage of the
88 ownership of such subsidiary.

89 (3) With the approval of the commissioner, invest any
90 greater amount in common stock, preferred stock, debt
91 obligations or other securities of one or more subsidiar-
92 ies: *Provided,* That after such investment the insurer's
93 surplus as regards policyholders will be reasonable in
94 relation to the insurer's outstanding liabilities and
95 adequate to its financial needs.

96 (c) Investments in common stock, preferred stock,
97 debt obligations or other securities of subsidiaries made
98 pursuant to subsection (b) of this section shall not be
99 subject to any of the otherwise applicable restrictions or
100 prohibitions contained in this chapter applicable to such
101 investments of insurers except section twenty-one,
102 article eight of this chapter.

103 (d) Whether any investment pursuant to subsection (a)
104 or (b) of this section meets the applicable requirements
105 thereof is to be determined before such investment is
106 made, by calculating the applicable investment limita-
107 tions as though the investment had already been made,
108 taking into account the then outstanding principal

109 balance on all previous investments in debt obligations,
110 and the value of all previous investments in equity
111 securities as of the day they were made, net of any
112 return of capital invested, not including dividends.

113 (e) If an insurer ceases to control a subsidiary, it shall
114 dispose of any investment therein made pursuant to this
115 section within three years from the time of the cessation
116 of control or within such further time as the commis-
117 sioner may prescribe, unless at any time after such
118 investment shall have been made, such investment shall
119 have met the requirements for investment under any
120 other provision of this chapter, and the insurer has
121 notified the commissioner thereof.

**§33-27-3. Acquisition of control of or merger with
domestic insurer; filing requirements; state-
ments; alternative filing material; approval
by the commissioner; hearings; notice;
mailings to shareholders; expenses; exemp-
tions; violations and jurisdiction.**

1 (a) Any person other than the issuer shall not make
2 a tender offer for or a request or invitation for tenders
3 of, or enter into any agreement to exchange securities
4 for, seek to acquire or acquire, in the open market or
5 otherwise, any voting security of a domestic insurer if,
6 after the consummation thereof, such person would,
7 directly or indirectly (or by conversion or by exercise of
8 any right to acquire) be in control of such insurer, and
9 a person shall not enter into an agreement to merge with
10 or otherwise to acquire control of a domestic insurer or
11 any person controlling a domestic insurer unless, at the
12 time any such offer, request or invitation is made or any
13 such agreement is entered into, or prior to the acqui-
14 sition of such securities if no offer or agreement is
15 involved, such person has filed with the commissioner
16 and has sent to such insurer, and, to the extent
17 permitted by applicable federal laws, rules and regula-
18 tions, such insurer has sent to its shareholders a
19 statement containing the information required by this
20 section and such offer, request, invitation, agreement or
21 acquisition has been approved by the commissioner in
22 the manner hereinafter prescribed.

23 (b) For purposes of this section, a “domestic insurer”
24 includes any other person controlling a domestic insurer
25 unless such other person as determined by the commis-
26 sioner is either directly or through its affiliates
27 primarily engaged in business other than the business
28 of insurance.

29 (c) The statement to be filed with the commissioner
30 hereunder shall be made under oath or affirmation and
31 shall contain the following information:

32 (1) The name and address of each person by whom or
33 on whose behalf the merger or other acquisition of
34 control referred to in subsection (a) is to be effected
35 (hereinafter called “acquiring party”).

36 (2) If such person is an individual, his or her principal
37 occupation and all offices and positions held during the
38 past five years, and any conviction of crimes other than
39 minor traffic violations during the past ten years.

40 (3) If such person is not an individual, a report of the
41 nature of its business operations during the past five
42 years or for such lesser period as such person and any
43 predecessors thereof shall have been in existence; an
44 informative description of the business intended to be
45 done by such person and such person’s subsidiaries; and
46 a list of all individuals who are or who have been
47 selected to become directors or executive officers of such
48 person, or who perform or will perform functions
49 appropriate to such positions. Such list shall include for
50 each such individual the information required by
51 subdivision (2) of this subsection.

52 (4) The source, nature and amount of the considera-
53 tion used or to be used in effecting the merger or other
54 acquisition of control, a description of any transaction
55 wherein funds were or are to be obtained for any such
56 purpose, including any pledge of the insurer’s stock, or
57 the stock of any of its subsidiaries or controlling
58 affiliates, and the identity of persons furnishing such
59 consideration: *Provided*, That where a source of such
60 consideration is a loan made in the lender’s ordinary
61 course of business, the identity of the lender shall
62 remain confidential, if the person filing such statement
63 so requests.

64 (5) Fully audited financial information as to the
65 earnings and financial condition of each acquiring party
66 for the preceding five fiscal years of each such acquiring
67 party (or for such lesser period as such acquiring party
68 and any predecessors thereof shall have been in
69 existence), and similar unaudited information as of a
70 date not earlier than ninety days prior to the filing of
71 the statement.

72 (6) Any plans or proposals which each acquiring party
73 may have to liquidate such insurer, to sell its assets or
74 merge or consolidate it with any person, or to make any
75 other material change in its business or corporate
76 structure or management.

77 (7) The number of shares of any security referred to
78 in subsection (a) which each acquiring party proposes
79 to acquire, and the terms of the offer, request, invitation,
80 agreement or acquisition referred to in subsection (a),
81 and a statement as to the method by which the fairness
82 of the proposal was arrived at.

83 (8) The amount of each class of any security referred
84 to in subsection (a) which is beneficially owned or
85 concerning which there is a right to acquire beneficial
86 ownership by each acquiring party.

87 (9) A full description of any contracts, arrangements
88 or understanding with respect to any security referred
89 to in subsection (a) in which any acquiring party is
90 involved, including, but not limited to, transfer of any
91 of the securities, joint ventures, loan or option arrange-
92 ments, puts or calls, guarantees of loans, guarantees
93 against loss or guarantees of profits, division of losses
94 or profits, or the giving or withholding of proxies. Such
95 description shall identify the persons with whom such
96 contracts, arrangements or understandings have been
97 entered into.

98 (10) A description of the purchase of any security
99 referred to in subsection (a) during the twelve calendar
100 months preceding the filing of the statement, by any
101 acquiring party, including the dates of purchase, names
102 of the purchasers, and consideration paid or agreed to
103 be paid therefor.

104 (11) A description of any recommendations to pur-
105 chase any security referred to in subsection (a) made
106 during the twelve calendar months preceding the filing
107 of the statement, by an acquiring party, or by anyone
108 based upon interviews or at the suggestion of such
109 acquiring party.

110 (12) Copies of all tender offers for, requests or
111 invitations for tenders of, exchange offers for, and
112 agreements to acquire or exchange any securities
113 referred to in subsection (a), and (if distributed) of
114 additional soliciting material relating thereto.

115 (13) The terms of any agreement, contract or under-
116 standing made with any broker-dealer as to solicitation
117 of securities referred to in subsection (a) for tender, and
118 the amount of any fees, commissions or other compen-
119 sation to be paid to broker-dealers with regard thereto.

120 (14) Such additional information as the commissioner
121 may by rule prescribe as necessary or appropriate for
122 the protection of policyholders and security holders of
123 the insurer or in the public interest.

124 (d) If the person required to file the statement
125 referred to in subsection (a) is a partnership, limited
126 partnership, syndicate or other group, the commissioner
127 may require that the information called for by subdi-
128 visions (1) through (14) of this subsection shall be given
129 with respect to each partner of such partnership or
130 limited partnership, each member of such syndicate or
131 group, and each person who controls such partner or
132 member. If any partner, member or person is a
133 corporation or the person required to file the statement
134 referred to in subsection (a) is a corporation, the
135 commissioner may require that the information called
136 for by subdivisions (1) through (14) shall be given with
137 respect to such corporation, and each person who is
138 directly or indirectly the beneficial owner of more than
139 ten percent of the outstanding voting securities of such
140 corporation.

141 (e) If any material change occurs in the facts set forth
142 in the statement filed with the commissioner and sent
143 to such insurer pursuant to this section, an amendment

144 setting forth such change, together with copies of all
145 documents and other material relevant to such change,
146 shall be filed with the commissioner and sent to such
147 insurer within two business days after the person learns
148 of such change. Such insurer shall send such amend-
149 ment to its shareholders.

150 (f) If any offer, request, invitation, agreement or
151 acquisition referred to in subsection (a) is proposed to
152 be made by means of a registration statement under the
153 Securities Act of 1933 or in circumstances requiring the
154 disclosure of similar information under the Securities
155 Exchange Act of 1934, or under a state law requiring
156 similar registration or disclosure, the person required to
157 file the statement referred to in subsection (a) may
158 utilize such documents in furnishing the information
159 called for by that statement.

160 (g) The commissioner shall approve any merger or
161 other acquisition of control referred to in subsection (a)
162 unless, after a public hearing thereon, he or she finds
163 that any of the following conditions exists:

164 (1) After the change of control the domestic insurer
165 referred to in subsection (a) would not be able to satisfy
166 the requirements for the issuance of a license to write
167 the line or lines of insurance for which it is presently
168 authorized;

169 (2) The effect of the merger or other acquisition of
170 control would be substantially to lessen competition in
171 insurance in this state or tend to create a monopoly
172 therein;

173 (3) The financial condition of any acquiring party is
174 such as might jeopardize the financial stability of the
175 insurer, or prejudice the interest of its policyholders or
176 the interests of any remaining security holders who are
177 unaffiliated with such acquiring party;

178 (4) The terms of the offer, request, invitation,
179 agreement or acquisition referred to in subsection (a)
180 are unfair and unreasonable to the security holders of
181 the insurer;

182 (5) The plans or proposals which the acquiring party

183 has to liquidate the insurer, sell its assets or consolidate
184 or merge it with any person, or to make any other
185 material change in its business or corporate structure
186 or management, are unfair and unreasonable to policy-
187 holders of the insurer and not in the public interest;

188 (6) The competence, experience and integrity of those
189 persons who would control the operation of the insurer
190 are such that it would not be in the interest of
191 policyholders of the insurer and of the public to permit
192 the merger or other acquisition of control; or

193 (7) The acquisition is likely to be hazardous or
194 prejudicial to the insurance-buying public.

195 (h) The public hearing required by this section shall
196 be held within sixty days after the statement required
197 by subsection (a) is filed, and at least fifteen days' notice
198 thereof shall be given by the commissioner to the person
199 filing the statement. Not less than seven days' notice of
200 such public hearing shall be given by the person filing
201 the statement to the insurer and to such other persons
202 as may be designated by the commissioner. The insurer
203 shall give such notice to its security holders. The
204 commissioner shall make a determination within forty-
205 five days after the conclusion of such hearing.

206 (i) The commissioner may retain at the acquiring
207 person's expense any attorneys, actuaries, accountants
208 and other experts not otherwise a part of the commis-
209 sioner's staff as may be reasonably necessary to assist
210 the commissioner in reviewing the proposed acquisition
211 of control.

212 (j) To the extent permitted by applicable federal laws,
213 rules and regulations, all statements, amendments or
214 other material filed pursuant to the provisions of this
215 section, and all notices of public hearings held pursuant
216 to the provisions of this section, shall be mailed by the
217 insurer to its shareholders within five business days
218 after the insurer has received such statements, amend-
219 ments, other material or notices. The expenses of
220 mailing shall be borne by the person making the filing.
221 As security for the payment of such expenses, such
222 person shall file with the commissioner an acceptable

223 bond or other deposit in an amount to be determined by
224 the commissioner.

225 (k) The provisions of this section shall not apply to any
226 offer, request, invitation, agreement or acquisition
227 which the commissioner by order shall exempt there-
228 from as (1) not having been made or entered into for the
229 purpose of, and not having the effect of, changing or
230 influencing the control of a domestic insurer; or (2) as
231 otherwise not comprehended within the purposes of this
232 section.

233 (l) The following are violations of this section:

234 (1) The failure to file any statement, amendment or
235 other material required to be filed pursuant to subsec-
236 tion (a) or (b) of this section; or

237 (2) The effectuation or any attempt to effectuate an
238 acquisition of control of, or merger with, a domestic
239 insurer unless the commissioner has given his or her
240 approval thereto.

241 (m) The courts of this state are hereby vested with
242 jurisdiction over every person not resident, domiciled or
243 authorized to do business in this state who files a
244 statement with the commissioner under this section, and
245 over all actions involving such person arising out of
246 violations of this section, and each such person shall be
247 deemed to have performed acts equivalent to and
248 constituting an appointment by such a person of the
249 secretary of state to be his or her true and lawful
250 attorney upon whom may be served all lawful process
251 in any action, suit or proceeding arising out of violations
252 of this section. Copies of all such lawful process shall be
253 served on the secretary of state and transmitted by
254 registered or certified mail by the secretary of state to
255 such person at his or her last known address.

§33-27-4. Registration of insurers; forms required; materiality; amendments reporting of dividends; information of insurers; termination of registration; consolidated filing; violations.

1 (a) Every insurer which is authorized to do business

2 in this state and which is a member of an insurance
3 holding company system shall register with the commis-
4 sioner, except a foreign insurer subject to disclosure
5 requirements and standards adopted by statute or
6 regulation in the jurisdiction of its domicile which are
7 substantially similar to those contained in this section.
8 Any insurer which is subject to registration under this
9 section shall register within sixty days after the
10 effective date of this article or fifteen days after it
11 becomes subject to registration, whichever is later, and
12 annually thereafter by June first of each year for the
13 previous calendar year, unless the commissioner for
14 good cause shown extends the time for registration, and
15 then within such extended time. The commissioner may
16 require any authorized insurer which is a member of a
17 holding company system which is not subject to regis-
18 tration under this section to furnish a copy of the
19 registration statement, the summary described in
20 subsection (c) of this section, or other information filed
21 by such insurance company with the insurance regula-
22 tory authority of domiciliary jurisdiction.

23 (b) Every insurer subject to registration shall file a
24 registration statement on a form prescribed by the
25 national association of insurance commissioners, which
26 shall contain current information about:

27 (1) The capital structure, general financial condition,
28 ownership and management of the insurer and any
29 person controlling the insurer.

30 (2) The identity and relationship of every member of
31 the insurance holding company system.

32 (3) The following agreements in force, relationships
33 subsisting, and transactions currently outstanding or
34 which have occurred during the last calendar year
35 between such insurer and its affiliates:

36 (A) Loans, other investments, or purchases, sales or
37 exchanges of securities of the affiliates by the insurer
38 or of the insurer by its affiliates;

39 (B) Purchases, sales or exchanges of assets;

40 (C) Transactions not in the ordinary course of
41 business;

42 (D) Guarantees or undertakings for the benefit of an
43 affiliate which result in an actual contingent exposure
44 of the insurer's assets to liability, other than insurance
45 contracts entered into in the ordinary course of the
46 insurer's business;

47 (E) All management and service contracts and all
48 cost-sharing arrangements, other than cost allocation
49 arrangements based upon generally accepted account-
50 ing principles;

51 (F) Reinsurance agreements covering all or substan-
52 tially all of one or more lines of insurance of the ceding
53 company;

54 (G) Dividends and other distributions to shareholders;
55 and

56 (H) Any pledge of the insurer's stock, including stock
57 of any subsidiary or controlling affiliate, for a loan made
58 to any member of the insurance holding company
59 system.

60 (4) Other matters concerning transactions between
61 registered insurers and any affiliates as may be
62 included from time to time in any registration forms
63 adopted or approved by the commissioner.

64 (c) All registration statements shall contain a sum-
65 mary outlining all items in the current registration
66 statement representing changes from the prior registra-
67 tion statement.

68 (d) Information need not be disclosed on the registra-
69 tion statement filed pursuant to subsection (b) of this
70 section if such information is not material for the
71 purpose of this section. Unless the commissioner by rule
72 or order provides otherwise, sales, purchases, ex-
73 changes, loans or extensions of credit, or investments,
74 involving one half of one percent or less of an insurer's
75 admitted assets as of the thirty-first day of December
76 next preceding shall not be deemed material for
77 purposes of this section.

78 (e) Each registered insurer shall keep current the
79 information required to be disclosed in its registration
80 statement by reporting all material changes or additions
81 on amendment forms provided by the commissioner
82 within fifteen days after the end of the month in which
83 it learns of each such change or addition.

84 (f) Subject to subsection (c) of section five of this
85 article, each registered insurer shall report to the
86 commissioner all dividends and other distributions to
87 shareholders within fifteen business days following the
88 declaration thereof.

89 (g) Any person within an insurance holding company
90 system subject to registration shall be required to
91 provide complete and accurate information to an
92 insurer, when such information is reasonably necessary
93 to enable the insurer to comply with the provisions of
94 this article.

95 (h) The commissioner shall terminate the registration
96 of any insurer which demonstrates that it no longer is
97 a member of an insurance holding company system.

98 (i) The commissioner may require or allow two or
99 more affiliated insurers subject to registration he-
100 reunder to file a consolidated registration statement or
101 consolidated reports amending their consolidated
102 registration statement or their individual registration
103 statements.

104 (j) The commissioner may allow an insurer which is
105 authorized to do business in this state and which is a
106 part of an insurance holding company system to register
107 on behalf of any affiliated insurer which is required to
108 register under subsection (a) of this section and to file
109 all information and material required to be filed under
110 this section.

111 (k) The provisions of this section shall not apply to any
112 insurer, information or transaction if and to the extent
113 that the commissioner by rule or order shall exempt the
114 same from the provisions of this section.

115 (l) Any person may file with the commissioner a
116 disclaimer of affiliation with any authorized insurer or

117 such a disclaimer may be filed by such insurer or any
118 member of an insurance holding company system. The
119 disclaimer shall fully disclose all material relationships
120 and bases for affiliation between such person and such
121 insurer as well as the basis for disclaiming such
122 affiliation. After a disclaimer has been filed, the insurer
123 shall be relieved of any duty to register or report under
124 this section which may arise out of the insurer's
125 relationship with such person unless and until the
126 commissioner disallows such a disclaimer. The commis-
127 sioner shall disallow such a disclaimer only after
128 furnishing all parties in interest with notice and
129 opportunity to be heard and after making specific
130 findings of fact to support such disallowance.

131 (m) The failure to file a registration statement or any
132 amendment thereto required by this section within the
133 time specified for such filing shall be a violation of this
134 section.

§33-27-5. Standards; transactions with affiliates; adequacy of surplus; dividends; domestic insurers.

1 (a) Material transactions by registered insurers with
2 their affiliates shall be subject to the following
3 standards:

4 (1) The terms shall be fair and reasonable;

5 (2) Charges or fees for services performed shall be
6 reasonable;

7 (3) Expenses incurred and payment received shall be
8 allocated to the insurer in conformity with customary
9 insurance accounting practices consistently applied;

10 (4) The books, accounts and records of each party shall
11 be so maintained as to clearly and accurately disclose
12 the precise nature and details of the transactions,
13 including such accounting information as is necessary to
14 support the reasonableness of the charges or fees to the
15 respective parties; and

16 (5) The insurer's surplus as regards policyholders
17 following any dividends or distributions to shareholder

18 affiliates shall be reasonable in relation to the insurer's
19 outstanding liabilities and adequate to its financial
20 needs.

21 (b) For purposes of this article, in determining
22 whether an insurer's surplus as regards policyholders is
23 reasonable in relation to the insurer's outstanding
24 liabilities and adequate to its financial needs, the
25 following factors, among others, shall be considered:

26 (1) The size of the insurer as measured by its assets,
27 capital and surplus, reserves, premium writings,
28 insurance in force and other appropriate criteria;

29 (2) The extent to which the insurer's business is
30 diversified among the several lines of insurance;

31 (3) The number and size of risks insured in each line
32 of business;

33 (4) The extent of the geographical dispersion of the
34 insurer's insured risks;

35 (5) The nature and extent of the insurer's reinsurance
36 program;

37 (6) The quality, diversification and liquidity of the
38 insurer's investment portfolio;

39 (7) The recent past and projected future trend in the
40 size of the insurer's surplus as regards policyholders;

41 (8) The surplus as regards policyholders maintained
42 by other comparable insurers;

43 (9) The adequacy of the insurer's reserves; and

44 (10) The quality and liquidity of investments in
45 affiliates. The commissioner may treat any such
46 investment as a disallowed asset for purposes of
47 determining the adequacy of surplus as regards policy-
48 holders whenever in his or her judgment such invest-
49 ment so warrants.

50 (c) An insurer subject to registration under section
51 four of this article shall not pay any extraordinary
52 dividend or make any other extraordinary distribution
53 to its shareholders until (1) thirty days after the

54 commissioner has received notice of the declaration
55 thereof and has not within such period disapproved such
56 payment, or (2) the commissioner shall have approved
57 such payment within such thirty-day period.

58 (d) For purposes of this section, an extraordinary
59 dividend or distribution includes any dividend or
60 distribution of cash or other property, whose fair market
61 value together with that of other dividends or distribu-
62 tions made within the preceding twelve months exceeds
63 the lesser of (1) ten percent of such insurer's surplus as
64 regards policyholders as of the thirty-first day of
65 December next preceding, or (2) the net gain from
66 operations of such insurer, if such insurer is a life
67 insurer, or the net income, if such insurer is not a life
68 insurer, not including realized capital gains, for the
69 twelve-month period ending the thirty-first day of
70 December next preceding, but shall not include pro rata
71 distributions of any class of the insurer's own securities.
72 In determining whether a dividend or distribution is
73 extraordinary, an insurer other than a life insurer may
74 carry forward net income from the previous two
75 calendar years that has not already been paid out as
76 dividends. This carry-forward shall be computed by
77 taking the net income from the second and third
78 preceding calendar years, not including realized capital
79 gains, less dividends paid in the second and immediate
80 preceding calendar years.

81 (e) Notwithstanding any other provision of law, an
82 insurer may declare an extraordinary dividend or
83 distribution which is conditional upon the commission-
84 er's approval thereof, and such a declaration shall confer
85 no rights upon shareholders until (1) the commissioner
86 has approved the payment of such dividend or distribu-
87 tion, or (2) the commissioner has not disapproved such
88 payment within the thirty-day period referred to above.

89 (f) The following transactions involving a domestic
90 insurer and any person in its holding company system
91 may not be entered into unless the insurer has notified
92 the commissioner in writing of its intention to enter into
93 such transaction at least thirty days prior thereto, or
94 such shorter period as the commissioner may permit,

95 and the commissioner has not disapproved it within such
96 period:

97 (1) Sales, purchases, exchanges, loans or extensions of
98 credit, guarantees or investments provided such tran-
99 sactions are equal to or exceed: The lesser of one percent
100 of the insurer's admitted assets or ten percent of surplus
101 as regards policyholders; each as of the thirty-first day
102 of December next preceding;

103 (2) Loans or extensions of credit to any person who
104 is not an affiliate, where the insurer makes such loans
105 or extensions of credit with the agreement or under-
106 standing that the proceeds of such transactions, in whole
107 or in substantial part, are to be used to make loans or
108 extensions of credit to, purchase assets of, or to make
109 investments in, any affiliate of the insurer making such
110 loans or extensions of credit provided such transactions
111 are equal to or exceed: The lesser of one percent of the
112 insurer's admitted assets or ten percent of surplus as
113 regards policyholders; each as of the thirty-first day of
114 December next preceding;

115 (3) Reinsurance agreements or modifications thereto
116 in which the reinsurance premium or a change in the
117 insurer's liabilities equals or exceeds five percent of the
118 insurer's surplus as regards policyholders, as of the
119 thirty-first day of December next preceding, including
120 those agreements which may require as consideration
121 the transfer of assets from an insurer to a nonaffiliate,
122 if an agreement or understanding exists between the
123 insurer and nonaffiliate that any portion of such assets
124 will be transferred to one or more affiliates of the
125 insurer;

126 (4) All management agreements, service contracts
127 and all cost-sharing arrangements not within the
128 ordinary course of business; and

129 (5) Any material transactions, specified by rule, which
130 the commissioner determines may adversely affect the
131 interests of the insurer's policyholders.

132 (g) Nothing contained in subsection (h) herein shall be
133 deemed to authorize or permit any transactions which,

134 in the case of an insurer not a member of the same
135 holding company system, would be otherwise contrary
136 to law.

137 (h) A domestic insurer shall not enter into transac-
138 tions which are part of a plan or series of like transac-
139 tions with persons within the holding company system
140 if the purpose of those separate transactions is to avoid
141 the statutory threshold amount and thus avoid the
142 review that would occur otherwise. If the commissioner
143 determines that such separate transactions were entered
144 into over any twelve month period for such purpose, he
145 or she may exercise his or her authority under section
146 nine.

147 (i) The commissioner, in reviewing transactions
148 pursuant to subsection (f) of this section, shall consider
149 whether the transactions comply with the standards set
150 forth in subsection (a) and whether they may adversely
151 affect the interests of policyholders.

152 (j) The commissioner shall be notified within thirty
153 days of any investment of the domestic insurer in any
154 one corporation if the total investment in such corpora-
155 tion by the insurance holding company system exceeds
156 ten percent of such corporation's voting securities.

157 (k) With regard to domestic insurers, the following
158 requirements apply:

159 (1) Notwithstanding the control of a domestic insurer
160 by any person, the officers and directors of the insurer
161 shall not thereby be relieved of any obligation or
162 liability to which they would otherwise be subject by
163 law, and the insurer shall be managed so as to assure
164 its separate operating identity consistent with the
165 provisions of this chapter.

166 (2) Nothing herein shall preclude a domestic insurer
167 from having or sharing a common management or
168 cooperatively, or jointly using personnel, property or
169 services with one or more other persons under arrange-
170 ments meeting the standards of subsection (a) of this
171 section.

§33-27-9. Criminal proceedings; penalties.

1 (a) Any insurer failing, without just cause, to file any
2 registration statement as required by this article shall
3 be required, after notice and hearing, to pay a penalty
4 of up to one thousand dollars for each day's delay, to be
5 recovered by the commissioner. Any penalty so reco-
6 vered shall be paid into the general revenue fund of this
7 state. The commissioner may reduce the penalty if the
8 insurer demonstrates to the commissioner that the
9 imposition of the penalty would constitute a financial
10 hardship to the insurer.

11 (b) Every director or officer of an insurance holding
12 company system who knowingly violates, participates in,
13 or assents to, or who knowingly permits any of the
14 officers or agents of the insurer to engage in transac-
15 tions or make investments which have not been properly
16 reported or submitted pursuant to subsection (a), section
17 four, and subsections (c) and (d) of section five of this
18 article, or which violate any other provision of this
19 article, shall pay, in his or her individual capacity, a
20 civil forfeiture of not more than five thousand dollars
21 per violation, after notice and hearing before the
22 commissioner. In determining the amount of the civil
23 forfeiture, the commissioner shall take into account the
24 appropriateness of the forfeiture with respect to the
25 gravity of the violation, the history of previous viola-
26 tions, and such other matters as justice may require.

27 (c) Whenever it appears to the commissioner that any
28 insurer subject to this article or any director, officer,
29 employee or agent thereof has engaged in any transac-
30 tion or entered into a contract which is subject to section
31 five of this article and which would not have been
32 approved had such approval been requested, the
33 commissioner may order the insurer to cease and desist
34 immediately any further activity under that transaction
35 or contract. After notice and hearing the commissioner
36 may also order the insurer to void any such contracts
37 and restore the status quo if such action is in the best
38 interest of the policyholders, creditors or the public.

39 (d) Whenever it appears to the commissioner that any
40 person or any director, officer, employee or agent
41 thereof has committed a willful violation of this article,

42 the commissioner may cause criminal proceedings to be
43 instituted against such person or the responsible
44 director, officer, employee or agent thereof. Any insurer
45 who willfully violates this article is guilty of a misde-
46 meanor, and, upon conviction thereof, shall be fined not
47 more than ten thousand dollars. Any individual who
48 willfully violates this article is guilty of a misdemeanor,
49 and, upon conviction thereof, shall be fined in his or her
50 individual capacity not more than ten thousand dollars
51 or, if such willful violation involves the deliberate
52 perpetration of a fraud upon the commissioner, is guilty
53 of a felony, and, upon conviction thereof, shall be
54 imprisoned not less than one year nor more than three
55 years, or both fined and imprisoned.

56 (e) Any officer, director or employee of an insurance
57 holding company system who willfully and knowingly
58 subscribes to or makes or causes to be made any false
59 statements or false reports or false filings with the
60 intent to deceive the commissioner in the performance
61 of his or her duties under this article, is guilty of a
62 felony, and, upon conviction thereof, shall be fined not
63 more than ten thousand dollars, or imprisoned not less
64 than one year nor more than three years, or both fined
65 and imprisoned. Any fines imposed pursuant to this
66 subsection shall be paid by the officer, director or
67 employee in his or her individual capacity.

§33-27-13. Recovery.

1 (a) If an order for liquidation or rehabilitation of a
2 domestic insurer has been entered, the receiver ap-
3 pointed under such order shall have a right to recover
4 on behalf of the insurer, (1) from any parent corporation
5 or holding company or person or affiliate who otherwise
6 controlled the insurer, the amount of distributions (other
7 than distributions of shares of the same class of stock)
8 paid by the insurer on its capital stock, or (2) any
9 payment in the form of a bonus, termination settlement
10 or extraordinary lump sum salary adjustment made by
11 the insurer or its subsidiary or subsidiaries to a director,
12 officer or employee, when the distribution or payment
13 pursuant to (1) or (2) is made at any time during the
14 one year preceding the petition for liquidation, conser-

15 vation or rehabilitation, as the case may be, subject to
16 the limitations of subsections (b), (c) and (d) of this
17 section.

18 (b) No such distribution may be recoverable if the
19 parent corporation or affiliate shows that when paid
20 such distribution was lawful and reasonable, and that
21 the insurer did not know and could not reasonably have
22 known that such distribution might adversely affect the
23 ability of the insurer to fulfill its contractual obligations.

24 (c) Any person who was a parent corporation or
25 holding company or a person who otherwise controlled
26 the insurer or affiliate at the time such distributions
27 were paid shall be liable up to the amount of distribu-
28 tions or payments under subsection (a) of this section
29 that such person received. Any person who otherwise
30 controlled the insurer at the time such distributions
31 were declared is liable up to the amount of distributions
32 he or she would have received if they had been paid
33 immediately. If two or more persons are liable with
34 respect to the same distributions, they shall be jointly
35 and severally liable.

36 (d) The maximum amount recoverable under this
37 subsection shall be the amount needed in excess of all
38 other available assets of the impaired or insolvent
39 insurer to pay the contractual obligations of the
40 impaired or insolvent insurer and to reimburse any
41 guaranty funds.

42 (e) To the extent that any person liable under
43 subsection (c) of this section is insolvent or otherwise
44 fails to pay claims due from it pursuant to subsection
45 (c), its parent corporation or holding company or person
46 who otherwise controlled it at the time the distribution
47 was paid, shall be jointly and severally liable for any
48 resulting deficiency in the amount recovered from such
49 parent corporation or holding company or person who
50 otherwise controlled it.

ARTICLE 28. INDIVIDUAL ACCIDENT AND SICKNESS INSURANCE MINIMUM STANDARDS.

§33-28-5b. Medicare supplement insurance.

74 relation to the premium charge. The commissioner shall
75 issue reasonable rules to establish minimum standards
76 for loss ratios and medicare supplement policies on the
77 basis of incurred claims experience and earned premi-
78 ums for the entire period for which rates are computed
79 to provide coverage and in accordance with accepted
80 actuarial principles and practices. For purposes of rules
81 issued pursuant to this paragraph, medicare supplement
82 policies issued as a result of solicitations of individuals
83 through the mail or mass media advertising, including
84 both print and broadcast advertising, shall be treated
85 as individual policies.

86 (e) *Disclosure standards:*

87 (1) In order to provide for full and fair disclosure in
88 the sale of accident and sickness policies, to persons
89 eligible for medicare, the commissioner may require by
90 rule that no policy of accident and sickness insurance
91 may be issued for delivery in this state and no certificate
92 may be delivered pursuant to such a policy unless an
93 outline of coverage is delivered to the applicant at the
94 time application is made.

95 (2) The commissioner shall prescribe the format and
96 content of the outline of coverage required by paragraph
97 (1). For purposes of this paragraph, "format" means
98 style, arrangements and overall appearance, including
99 such items as size, color and prominence of type and the
100 arrangement of text and captions. Such outline of
101 coverage shall include:

102 (A) A description of the principal benefits and
103 coverage provided in the policy;

104 (B) A statement of the exceptions, reductions and
105 limitations contained in the policy;

106 (C) A statement of the renewal provisions including
107 any reservation by the insurer of the right to change
108 premiums;

109 (D) A statement that the outline of coverage is a
110 summary of the policy issued or applied for and that the
111 policy should be consulted to determine governing
112 contractual provisions.

113 (3) The commissioner may prescribe by rule a
114 standard form and the contents of an informational
115 brochure for persons eligible for medicare, which is
116 intended to improve the buyer's ability to select the most
117 appropriate coverage and improve the buyer's under-
118 standing of medicare. Except in the case of direct
119 response insurance policies, the commissioner may
120 require by rule that the information brochure be
121 provided to any prospective insureds eligible for
122 medicare concurrently with delivery of the outline of
123 coverage. With respect to direct response insurance
124 policies, the commissioner may require by rule that the
125 prescribed brochure be provided upon request to any
126 prospective insureds eligible for medicare, but in no
127 event later than the time of policy delivery.

128 (4) The commissioner may further promulgate rea-
129 sonable rules to govern the full and fair disclosure of the
130 information in connection with the replacement of
131 accident and sickness policies, subscriber contracts or
132 certificates by persons eligible for medicare.

133 (f) *Notice of free examination.*

134 Medicare supplement policies or certificates, other
135 than those issued pursuant to direct response solici-
136 tation, shall have a notice prominently printed on the first
137 page of the policy or attached thereto stating in
138 substance that the applicant shall have the right to
139 return the policy or certificate within ten days from its
140 delivery and have the premium refunded if, after
141 examination of the policy or certificate, the applicant is
142 not satisfied for any reason. Medicare supplement
143 policies or certificates issued pursuant to a direct
144 response solicitation to persons eligible for medicare
145 shall have a notice prominently printed on the first page
146 or attached thereto stating in substance that the
147 applicant shall have the right to return the policy or
148 certificate within thirty days of its delivery and to have
149 the premium refunded if, after examination, the
150 applicant is not satisfied for any reason.

151 (g) *Administrative procedures.*

152 Rules promulgated pursuant to this section shall be

153 subject to the provisions of chapter twenty-nine-a (West
154 Virginia Administrative Procedures Act).

155 (h) *Separability.*

156 If any provision of this section or the application
157 thereof to any person or circumstance is for any reason
158 held to be invalid, the remainder of the section and the
159 application of such provision to other persons or
160 circumstances shall not be affected thereby.

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 or her finding that the establishment and maintenance
18 of the proposed corporation will promote the general
19 good of the state. In arriving at such finding the
20 commissioner 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 deems

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, article thirty-four and
44 article thirty-seven of this chapter. In the event of
45 conflict between the provisions of said general corpora-
46 tion law and the provisions of this chapter, the latter
47 shall control.

ARTICLE 32. RISK RETENTION ACT.

§33-32-1. Purpose and short title.

§33-32-2. Definitions.

§33-32-3. Charter and license requirements for domestic groups.

§33-32-4. Risk retention groups not chartered in this state.

§33-32-5. Tax on premiums collected.

§33-32-8. Examination regarding financial condition.

§33-32-9. Notice to purchasers.

§33-32-14. Compulsory associations.

§33-32-16. Purchasing groups; exemption from certain laws relating to the
group purchase of insurance.

§33-32-17. Notice and registration requirements of purchasing groups.

§33-32-18. Restrictions on insurance purchased by purchasing groups.

§33-32-19. Administrative and procedural authority regarding risk retention
groups and purchasing groups.

§33-32-21. Duty on agents or brokers to obtain license.

§33-32-24. Operation prior to enactment.

§33-32-1. Purpose and short title.

1 The purpose of this act is to regulate the formation
2 and operation of risk retention groups and purchasing

3 groups in this state formed pursuant to the provisions
4 of the federal liability risk retention act of 1986,
5 hereinafter referred to as "RRA 1986." This article may
6 be referred to as the "Risk Retention Act of West
7 Virginia."

§33-32-2. Definitions.

1 As used in this article, the term:

2 (a) "Commissioner" means the insurance commis-
3 sioner of the state of West Virginia or the commissioner,
4 director or superintendent of insurance in any other
5 state.

6 (b) "Completed operations liability" means liability
7 arising out of the installation, maintenance or repair of
8 any product at a site which is now owned or controlled
9 by:

10 (1) Any person who performs that work; or

11 (2) Any person who hires an independent contractor
12 to perform that work; but shall include liability for
13 activities which are completed or abandoned before the
14 date of the occurrence giving rise to the liability.

15 (c) "Domicile" for purposes of determining the state
16 in which a purchasing group is domiciled, means:

17 (1) For a corporation, the state in which the purchas-
18 ing group is incorporated; and

19 (2) For an unincorporated entity, the state of its
20 principal place of business.

21 (d) "Hazardous financial condition" means that, based
22 on its present or reasonably anticipated financial
23 condition, a risk retention group, although not yet
24 financially impaired or insolvent, is unlikely to be able:

25 (1) To meet obligations to policyholders with respect
26 to known claims and reasonably anticipated claims; or

27 (2) To pay other obligations in the normal course of
28 business.

29 (e) "Insurance" means primary insurance, excess
30 insurance, reinsurance, surplus lines insurance and any

31 other arrangement for shifting and distributing risk
32 which is determined to be insurance under the laws of
33 this state.

34 (f) "Liability" means legal liability for damages
35 (including costs of defense, legal costs and fees, and
36 other claims expenses) because of injuries to other
37 persons, damage to their property or other damage or
38 loss to such other persons resulting from or arising out
39 of:

40 (1) Any business (whether profit or nonprofit), trade,
41 product, services (including professional services),
42 premises or operations;

43 (2) Any activity of any state or local government, or
44 any agency or political subdivision thereof; or

45 (3) Does not include personal risk liability and an
46 employer's liability with respect to its employees other
47 than legal liability under the Federal Employers'
48 Liability Act.

49 (g) "Personal risk liability" means liability for
50 damages because of injury to any person, damage to
51 property, or other loss or damage resulting from any
52 personal, familial, or household responsibilities or
53 activities, rather than from responsibilities or activities
54 referred to in subsection (f);

55 (h) "Plan of operation" or a "feasibility study" means
56 an analysis which presents the expected activities and
57 results of a risk retention group including at a
58 minimum:

59 (1) Information sufficient to verify that its members
60 are engaged in businesses or activities similar or related
61 with respect to the liability to which such members are
62 exposed by virtue of any related, similar or common
63 business, trade, product services, premises or
64 operations;

65 (2) For each state in which the risk retention group
66 intends to operate, the coverages, deductibles, coverage
67 limits, rates and rating classification systems for each
68 line of insurance the group intends to offer;

69 (3) Historical and expected loss experience of the
70 proposed members and national experience of similar
71 exposures to the extent that this experience is reason-
72 ably available;

73 (4) Pro forma financial statements and projections;

74 (5) Appropriate opinions by a qualified, independent
75 casualty actuary, including a determination of min-
76 imum premium or participation levels required to
77 commence operations and to prevent a hazardous
78 financial condition;

79 (6) Identification of management, underwriting
80 procedures, managerial oversight methods, investment
81 policies and reinsurance agreements;

82 (7) Identification of each state in which the risk
83 retention group has obtained, or sought to obtain, a
84 charter and license, and a description of the risk
85 retention group's status in each such state; and

86 (8) Such other matters as may be prescribed by the
87 commissioner for liability insurance companies autho-
88 rized by the insurance laws of the state in which the risk
89 retention group is chartered.

90 (i) "Product liability" means liability for damages
91 because of any personal injury, death, emotional harm,
92 consequential economic damage, or property damage
93 (including damages resulting from the loss of use of
94 property) arising out of the manufacture, design,
95 importation, distribution, packaging, labeling, lease or
96 sale of a product, but does not include the liability of
97 any person for those damages if the product involved
98 was in the possession of such a person when the incident
99 giving rise to the claim occurred.

100 (j) "Purchasing group" means any group which:

101 (1) Has as one of its purposes the purchase of liability
102 insurance on a group basis;

103 (2) Purchases such insurance only for its group
104 members and only to cover their similar or related
105 liability exposure, as described in subsection (j)(3) of this
106 section;

107 (3) Is composed of members whose businesses or
108 activities are similar or related with respect to the
109 liability to which members are exposed by virtue of any
110 related, similar, or common business, trade, product,
111 services, premises or operations; and

112 (4) Is domiciled in any state.

113 (k) "Risk retention group" means any corporation or
114 other limited liability association formed under the laws
115 of any state:

116 (1) Whose primary activity consists of assuming and
117 spreading all, or any portion, of the liability exposure
118 of its group members;

119 (2) Which is organized for the primary purpose of
120 conducting the activity described under subdivision (1),
121 subsection (k) of this section;

122 (3) Which: (A) Is chartered and licensed as a liability
123 insurance company and authorized to engage in the
124 business of insurance under the laws of any state; or

125 (B) Before the first day of January, one thousand nine
126 hundred eighty-five, was chartered or licensed and
127 authorized to engage in the business of insurance under
128 the laws of Bermuda or the Cayman Islands, and, before
129 such date, had certified to the insurance commissioner
130 of at least one state that it satisfied the capitalization
131 requirements of such state, except that any such group
132 shall be considered to be a risk retention group only if
133 it has been engaged in business continuously since such
134 date and only for the purpose of continuing to provide
135 insurance to cover product liability or completed
136 operations liability as such terms were defined in the
137 product liability risk retention act of 1981 before the
138 date of the enactment of the risk retention act of 1986;

139 (4) Which does not exclude any person from member-
140 ship in the group solely to provide for members of such
141 a group a competitive advantage over such a person;

142 (5) Which: (A) Has as its owners only persons who
143 comprise the membership of the risk retention group
144 and who are provided insurance by such group; or

145 (B) Has as its sole owner an organization which has
146 as: (i) Its members only persons who comprise the
147 membership of the risk retention group; and

148 (ii) Its owners only persons who comprise the mem-
149 bership of the risk retention group and who are
150 provided insurance by such group;

151 (6) Whose members are engaged in businesses or
152 activities similar or related with respect to the liability
153 of which such members are exposed by virtue of any
154 related, similar, or common business trade, product,
155 services, premises or operations;

156 (7) Whose activities do not include the provision of
157 insurance other than:

158 (A) Liability insurance for assuming and spreading
159 all or any portion of the liability of its group members;
160 and

161 (B) Reinsurance with respect to the liability of any
162 other risk retention group or any members of such other
163 group which is engaged in businesses or activities so
164 that such group or member meets the reinsurance
165 requirement set forth herein, from membership in the
166 risk retention group which provides such reinsurance;
167 and

168 (8) The name of which includes the phrase "Risk
169 Retention Group."

170 (l) "State" means any state of the United States or the
171 District of Columbia.

§33-32-3. Charter and license requirements for domestic groups.

1 (a) A risk retention group shall, pursuant to the
2 provisions of article five of this chapter, be chartered
3 and licensed to write only liability insurance pursuant
4 to this article and, except as provided elsewhere in this
5 article, shall comply with all of the laws, rules and
6 requirements applicable to insurers chartered and
7 licensed in this state and with section four of this article,
8 to the extent such requirements are not a limitation on
9 laws, rules or requirements of this state.

10 (b) Notwithstanding any other provision of this
11 chapter to the contrary, all risk retention groups
12 chartered in this state shall file with the commissioner
13 and the national association of insurance commissioners,
14 an annual statement on a form prescribed by the
15 national association of insurance commissioners and in
16 diskette form, if required by the commissioner and
17 completed in accordance with the national association of
18 insurance commissioners' instructions and the national
19 association of insurance commissioners accounting
20 practices and procedures manual.

21 (c) Before it may offer insurance in any state, each
22 risk retention group shall also submit for approval by
23 the insurance commissioner of this state a plan of
24 operation or feasibility study. The risk retention group
25 shall submit an appropriate revision of such plan or
26 study, in the event of any subsequent material change
27 in any item of the plan of operation or feasibility study,
28 within ten days of any such change. The risk retention
29 group shall not offer any additional kinds of liability
30 insurance, in this state or in any other state, until a
31 revision of the plan or study is approved by the
32 commissioner.

33 (d) At the time of filing its application for a charter,
34 the risk retention group shall provide to the commis-
35 sioner in summary form the following information: The
36 identity of the initial members of the group, the identity
37 of those individuals who organized the group or who will
38 provide administrative services or otherwise influence
39 or control the activities of the group, the amount and
40 nature of initial capitalization, the coverages to be
41 afforded, and the states in which the group intends to
42 operate. Upon receipt of this information, the commis-
43 sioner shall forward the information to the national
44 association of insurance commissioners. Providing
45 notification to the national association of insurance
46 commissioners is in addition to and shall not be
47 sufficient to satisfy the requirements of section four or
48 any other sections of this article.

49 (e) Risk retention groups are subject to the provisions
50 of article thirty-three, article thirty-four and article

51 thirty-seven of this chapter.

§33-32-4. Risk retention groups not chartered in this state.

1 (a) Risk retention groups chartered in states other
2 than this state and seeking to do business as a risk
3 retention group in this state must observe and abide by
4 the laws of this state.

5 (b) Before offering insurance in this state, a risk
6 retention group shall submit the following information
7 to the commissioner on a form prescribed by the
8 national association of insurance commissioners:

9 (1) A statement identifying the state or states in which
10 the risk retention group is chartered and licensed as a
11 liability insurance company, date of chartering, its
12 principal place of business, and such other information
13 including information on its membership, as the
14 commissioner of this state may require to verify that the
15 risk retention group is qualified under this article;

16 (2) A copy of its plan of operations or a feasibility
17 study and revisions of such plan or study submitted to
18 its state of domicile: *Provided*, That the provision
19 relating to the submission of a plan of operation or a
20 feasibility study shall not apply with respect to any line
21 or classification of liability insurance which (i) was
22 defined in the federal product liability risk retention act
23 of 1981 before the twenty-seventh day of October, one
24 thousand nine hundred eighty-six, and (ii) was offered
25 before such date by any risk retention group which had
26 been chartered and operating for not less than three
27 years before such date;

28 (3) A statement of registration which designates the
29 commissioner as its agent for the purpose of receiving
30 service of legal documents or process; and

31 (4) A risk retention group that has been chartered and
32 operating in any state and has previously filed an annual
33 financial statement as required by this section with its
34 state of domicile, must submit a copy of the most recent
35 annual statement with the registration form required by
36 this subsection.

37 (c) The risk retention group shall submit a copy of any
38 revision to its plan of operation or feasibility study
39 required by section three of this article at the same time
40 that the revision is submitted to the commissioner of its
41 chartering state.

42 (d) A risk retention group shall not commence
43 offering insurance in this state prior to receiving a
44 certificate of registration from the commissioner.

45 (e) Any risk retention group doing business in this
46 state shall submit to the commissioner:

47 (1) Annually a copy of the group's financial statement
48 submitted to its state of domicile, which shall be
49 certified by an independent public accountant and
50 contain a statement of opinion on loss and loss adjust-
51 ment expense reserves made by a member of the
52 American academy of actuaries or a qualified loss
53 reserve specialist (under criteria established by the
54 national association of insurance commissioners);

55 (2) A copy of each examination of the risk retention
56 group as certified by the commissioner or public official
57 conducting the examination;

58 (3) Upon request by the commissioner, a copy of any
59 audit performed with respect to the risk retention
60 group; and

61 (4) Such information as may be required to verify its
62 continuing qualification as a risk retention group under
63 this article.

64 (f) The commissioner shall promulgate rules pursuant
65 to the provisions of chapter twenty-nine-a of this code
66 regarding all fees to be submitted with the filings
67 required by this section.

§33-32-5. Tax on premiums collected.

1 (a) Each risk retention group shall be subject to the
2 same interests, fines and penalties for nonpayment as
3 that generally applicable to insurers under article three,
4 chapter thirty-three of this code: *Provided*, That the
5 premium tax or other taxes on each risk retention group
6 shall be in accordance with the provisions of this section.

7 Each risk retention group insurance company shall pay
8 to the commissioner, in the month of February of each
9 year, a tax at the rate of three quarters of one percent
10 on the gross amount of all premiums collected or
11 contracted for on policies or contracts of insurance
12 covering property or risks in this state and on risk and
13 property situated elsewhere upon which no premium tax
14 is otherwise paid during the year ending December 31
15 next preceding, after deducting from the gross amount
16 of premiums subject to the tax amount received as
17 reinsurance premiums on business in the state and the
18 amount paid to policyholders as return premiums which
19 shall include dividends on unabsorbed premiums or
20 premium deposits returned or credited to policyholders:
21 *Provided, however,* That the three quarters of one
22 percent premium tax provided for herein shall be
23 waived for a period of five years and thereafter be
24 applicable at a reduced rate of one half of one percent
25 of the gross amount of premiums provided for herein-
26 above, if the said risk retention groups make a min-
27 imum qualified investment of two million dollars in the
28 state of West Virginia during the five-year waiver
29 period, as a direct result thereof and the tax commis-
30 sioner so certifies.

31 (b) The tax provided for in this section shall constitute
32 all taxes collectible under the laws of this state from any
33 risk retention group, and no other premium tax or other
34 taxes shall be levied or collected from any risk retention
35 group by the state or any county, city or municipality
36 within this state, except ad valorem taxes.

37 (c) To the extent that a risk retention group utilizes
38 insurance agents, each such agent shall keep a complete
39 and separate record of all policies procured from each
40 risk retention group, which record shall be open to
41 examination by the commissioner, as provided in section
42 nine, article two of this chapter. These records shall, for
43 each policy and each kind of insurance provided
44 thereunder, include the following:

- 45 (1) The limit of liability;
- 46 (2) The time period covered;

- 47 (3) The effective date;
- 48 (4) The name of the risk retention group which issued
49 the policy;
- 50 (5) The gross premium charged; and
- 51 (6) The amount of return premiums, if any.

§33-32-8. Examination regarding financial condition.

1 Any risk retention group must submit to an exami-
2 nation by the commissioner to determine its financial
3 condition if the commissioner of the jurisdiction in
4 which the group is chartered has not initiated an
5 examination or does not initiate an examination within
6 sixty days after a request by the commissioner of this
7 state. Any such examination shall be coordinated to
8 avoid unjustified repetition and conducted in an
9 expeditious manner. The risk retention group shall be
10 subject to the provisions of section nine, article two of
11 this chapter in regard to the expense and conduct of the
12 examination. Any such examination shall be conducted
13 in accordance with the national association of insurance
14 commissioners examiners handbook.

§33-32-9. Notice to purchasers.

1 Every application form for insurance from a risk
2 retention group and any policy issued by a risk retention
3 group shall contain in ten-point type on the front page
4 and the declaration page, the following notice:

5 **NOTICE**

6 This policy is issued by your risk retention group.
7 Your risk retention group may not be subject to all of
8 the insurance laws and rules of your state. State
9 insurance insolvency guaranty funds are not available
10 for your risk retention group.

§33-32-14. Compulsory associations.

1 (a) A risk retention group shall not be permitted to
2 join or contribute financially to any insurance insolvency
3 guaranty fund, or similar mechanism, in this state, nor
4 shall any risk retention group, or its insureds, or
5 claimants against its insureds, receive any benefit from

6 any such fund for claims arising out of the operations
7 of such risk retention group.

8 (b) When a purchasing group obtains insurance
9 covering its members' risks from an insurer not
10 authorized in this state or a risk retention group, such
11 risks, wherever resident or located, shall not be covered
12 by any insurance guaranty fund or similar mechanism
13 in this state.

14 (c) When a purchasing group obtains insurance
15 covering its members' risks from an authorized insurer,
16 only risks resident or located in this state shall be
17 covered by the state guaranty fund subject to article
18 twenty-six of this chapter.

**§33-32-16. Purchasing groups; exemption from certain
laws relating to the group purchase of
insurance.**

1 A purchasing group and its insurer or insurers shall
2 be subject to all applicable laws of this state, except that
3 a purchasing group and its insurer or insurers shall be
4 exempt, in regard to liability insurance for the purchas-
5 ing group, from any law that would:

6 (1) Prohibit the establishment of a purchasing group;

7 (2) Make it unlawful for an insurer to provide or offer
8 to provide insurance on a basis providing, to a purchas-
9 ing group or its members, advantages based on their
10 loss and expense experience not afforded to other
11 persons with respect to rates, policy forms, coverages or
12 other matters;

13 (3) Prohibit a purchasing group or its members from
14 purchasing insurance on a group basis described in
15 subsection (b) of this section;

16 (4) Prohibit a purchasing group from obtaining
17 insurance on a group basis because the group has not
18 been in existence for a minimum period of time or
19 because any member has not belonged to the group for
20 a minimum period of time;

21 (5) Require that a purchasing group have a minimum
22 number of members, common ownership or affiliation,

23 or a certain legal form;

24 (6) Require that a certain percentage of a purchasing
25 group obtain insurance on a group basis;

26 (7) Otherwise discriminate against a purchasing
27 group or any of its members; or

28 (8) Require that any insurance policy issued to a
29 purchasing group or any of its members be counter-
30 signed by an insurance agent or broker residing in this
31 state.

**§33-32-17. Notice and registration requirements of
purchasing groups.**

1 (a) A purchasing group which intends to do business
2 in this state shall, prior to doing business, furnish notice
3 to the commissioner which shall, on forms prescribed by
4 the national association of insurance commissioners:

5 (1) Identify the state in which the group is domiciled;

6 (2) Identify all other states in which the group intends
7 to do business;

8 (3) Specify the lines and classifications of liability
9 insurance which the purchasing group intends to
10 purchase;

11 (4) Identify the insurance company or companies from
12 which the group intends to purchase its insurance and
13 the domicile of such company;

14 (5) Specify the method by which, and the person or
15 persons, if any, through whom insurance will be offered
16 to its members whose risks are resident or located in
17 this state;

18 (6) Identify the principal place of business of the
19 groups; and

20 (7) Provide such other information as may be required
21 by the commissioner to verify that the purchasing group
22 is qualified under this article.

23 (b) A purchasing group shall, within ten days, notify
24 the commissioner of any changes in any of the items set
25 forth in this section.

26 (c) The purchasing group shall register with and
27 designate the commissioner (or other appropriate
28 authority) as its agent solely for the purpose of receiving
29 service of legal documents or process: *Provided*, That
30 such requirements shall not apply in the case of a
31 purchasing group which:

32 (1) Was domiciled before the first day of April, one
33 thousand nine hundred eighty-six, in any state of the
34 United States; and

35 (2) Is domiciled on and after the second day of
36 October, one thousand nine hundred eighty-six, in any
37 state of the United States and which:

38 (A) Before the twenty-seventh day of October, one
39 thousand nine hundred eighty-six, purchased insurance
40 from an insurance carrier licensed in any state; and

41 (B) Since the twenty-seventh day of October, one
42 thousand nine hundred eighty-six, purchased its insu-
43 rance from an insurance carrier licensed in any state;

44 (3) Which was a purchasing group under the require-
45 ments of the product liability risk retention act of 1981,
46 before the twenty-seventh day of October, one thousand
47 nine hundred eighty-six; and

48 (4) Which does not purchase insurance that was not
49 authorized for purposes of an exemption under that act,
50 as in effect before the twenty-seventh day of October,
51 one thousand nine hundred eighty-six.

52 (d) Each purchasing group that is required to give
53 notice pursuant to subsection (a) of this section shall also
54 furnish such information as may be required by the
55 commissioner to:

56 (1) Verify that the entity qualifies as a purchasing
57 group;

58 (2) Determine where the purchasing group is located;
59 and

60 (3) Determine appropriate tax treatment.

61 (e) The insurance commissioner shall promulgate
62 rules pursuant to the provisions of chapter twenty-nine-

63 a of this code regarding the amount of all registration
64 or filing fees required by this section.

§33-32-18. Restrictions on insurance purchased by purchasing groups.

1 (a) A purchasing group may not purchase insurance
2 from a risk retention group that is not chartered in a
3 state or from an insurer not admitted in the state in
4 which the purchasing group is located, unless the
5 purchase is effected through a licensed agent or broker
6 acting pursuant to the surplus lines laws and regula-
7 tions of such state.

8 (b) A purchasing group which obtains liability
9 insurance from an insurer not admitted in this state or
10 a risk retention group shall inform each of the members
11 of the group which has a risk resident or located in this
12 state that the risk is not protected by an insurance
13 insolvency guaranty fund in this state, and that the risk
14 retention group or insurer may not be subject to all
15 insurance laws and regulations of this state. To give
16 notice as required by this section, the purchasing group
17 shall ensure that each group certificate or evidence of
18 insurance has printed or stamped in contrasting color
19 on the front page the following statement:

20 THIS INSURER IS NOT LICENSED TO DO BUSI-
21 NESS IN WEST VIRGINIA, AND IS NOT SUBJECT
22 TO THE WEST VIRGINIA INSURANCE GUAR-
23 ANTY ACT OR TO ALL OF THE PROTECTIONS OF
24 THE INSURANCE LAWS AND RULES OF THIS
25 STATE.

26 (c) A purchasing group shall not purchase insurance
27 providing for a deductible or self-insured retention
28 applicable to the group as a whole: *Provided*, That
29 coverage may provide for a deductible or self-insured
30 retention applicable to individual members.

31 (d) Purchases of insurance by purchasing groups are
32 subject to the same standards regarding aggregate
33 limits which are applicable to all purchases of group
34 insurance.

§33-32-19. Administrative and procedural authority

regarding risk retention groups and purchasing groups.

1 The commissioner is authorized to make use of any
2 of the powers established under this chapter of this code
3 to enforce the laws of this state so long as those powers
4 are not specifically preempted by the national product
5 liability risk retention act of 1981, as amended by the
6 risk retention amendments of 1986. This includes, but
7 is not limited to, the commissioner's administrative
8 authority to investigate, issue subpoenas, conduct
9 depositions and hearings, issue orders, and impose
10 penalties and seek injunctive relief. With regard to any
11 investigation, administrative proceedings, or litigation,
12 the commissioner can rely on the law and rules of the
13 state. The injunctive authority of the commissioner in
14 regard to risk retention groups is restricted by the
15 requirement that any injunction be issued by a court of
16 competent jurisdiction.

§33-32-21. Duty on agents or brokers to obtain license.

1 (a) A person, or a person working for a firm,
2 association or corporation, shall not act or aid in any
3 manner in soliciting, negotiating or procuring liability
4 insurance in this state from a risk retention group
5 unless such person, or person working for a firm,
6 association or corporation, is licensed as an insurance
7 agent in accordance with article twelve of this chapter.

8 (b) A person, or a person working for a firm,
9 association or corporation, shall not act or aid in any
10 manner in soliciting, negotiating or procuring liability
11 insurance in this state for a purchasing group from an
12 authorized insurer or a risk retention group chartered
13 in a state unless such person, or person working for a
14 firm, association or corporation, is licensed as an
15 insurance agent in accordance with article twelve of this
16 chapter.

17 (c) A person, or a person working for a firm,
18 association or corporation, shall not act or aid in any
19 manner in soliciting, negotiating or procuring liability
20 insurance coverage in this state for any member of a
21 purchasing group under a purchasing group's policy

22 unless such person, or person working for a firm,
23 association or corporation, is licensed as an insurance
24 agent in accordance with article twelve of this chapter.

25 (d) A person, or a person working for a firm,
26 association or corporation, shall not act or aid in any
27 manner in soliciting, negotiating or procuring liability
28 insurance from an insurer not authorized to do business
29 in this state on behalf of a purchasing group located in
30 this state unless such person, or person working for a
31 firm, association or corporation, is licensed as an excess
32 line broker in accordance with section thirteen, article
33 twelve of this chapter.

34 (e) For purposes of acting as an agent for a risk
35 retention group or purchasing group pursuant to the
36 provisions of this section, the requirement of residence
37 in this state shall not apply.

38 (f) Every person, or person working for a firm,
39 association or corporation, licensed pursuant to the
40 provisions of this chapter, on business placed with risk
41 retention groups or written through a purchasing group,
42 shall inform each prospective insured of the provisions
43 of the notice required by section nine of this article in
44 the case of a risk retention group and in the case of a
45 purchasing group, the notice required by subsection (b),
46 section eighteen of this article.

§33-32-24. Operation prior to enactment.

1 (a) In addition to complying with the requirements of
2 this article, any risk retention group operating in this
3 state prior to enactment of the amendments made to this
4 article in the regular session of the Legislature during
5 the year one thousand nine hundred ninety-two shall
6 comply with the provisions of subsection (a), section four
7 of this article before the thirty-first day of December,
8 one thousand nine hundred ninety-two.

9 (b) Any purchasing group which was doing business
10 in this state prior to enactment of the amendments made
11 to this article in the regular session of the Legislature
12 during the year one thousand nine hundred ninety-two
13 shall furnish notice to the commissioner pursuant to the

14 provisions of section seventeen of this article before the
15 thirty-first day of December, one thousand nine hundred
16 ninety-two.

ARTICLE 36. BUSINESS TRANSACTED WITH PRODUCER-CONTROLLED PROPERTY/CASUALTY INSURER ACT.

§33-36-1. Short title.

§33-36-2. Definitions.

§33-36-3. Limitation on business placed with controlled insurer.

§33-36-4. Liability of controlling producer in the event of insolvency of controlled insurer.

§33-36-1. Short title.

1 This article may be cited as the “Business Transacted
2 with Producer-Controlled Property/Casualty Insurer
3 Act”.

§33-36-2. Definitions.

1 As used in this article:

2 (a) “Producer” means an insurance broker or brokers
3 or any other person, firm, association or corporation,
4 when, for any compensation, commission or other thing
5 of value, such person, firm, association or corporation
6 acts or aids in any manner in soliciting, negotiating or
7 procuring the making of any insurance contract on
8 behalf of an insured other than himself, herself or itself:
9 *Provided*, That the term “producer” is not intended to
10 expand upon or provide for activities beyond those
11 permitted by article twelve of this chapter.

12 (b) “Reinsurance intermediary” means any person,
13 firm, association or corporation that acts as a producer
14 in soliciting, negotiating or procuring the making of any
15 reinsurance contract or binder on behalf of a ceding
16 insurer or acts as a producer in accepting any reinsu-
17 rance contract or binder on behalf of an assuming
18 insurer.

19 (c) “Control” or “controlled” means the possession,
20 direct or indirect, of the power to direct or cause the
21 direction of the management and policies of a person,
22 whether through the ownership of voting securities, by
23 contract other than a contract for goods or nonmanage-

24 ment services, or otherwise. Control shall be presumed
25 to exist if any person, directly or indirectly, owns,
26 controls, holds with the powers to vote, or holds proxies
27 representing a majority of the outstanding voting
28 securities of any other person. A person may not be
29 deemed to control another person solely by reason of
30 being an officer or director of such other person.

31 (d) "Licensed property/casualty insurer" or "insurer"
32 means any person, firm, association or corporation duly
33 licensed to transact a property/casualty insurance
34 business in this state and which issues policies covered
35 by the provisions of the West Virginia Insurance
36 Guaranty Association Act contained in article twenty-
37 six of this chapter: *Provided*, That entities which are not
38 licensed property/casualty insurers for the purposes of
39 this article include, but are not limited to, the following:

40 (1) All nonadmitted insurers;

41 (2) All risk retention groups as defined in the
42 Superfund Amendments Reauthorization Act of 1986,
43 Pub. L. No. 99-499, 100 Stat. 1613 (1986) and the Risk
44 Retention Act, 15 U.S.C. Section 3901 et seq. (1982 &
45 Supp. 1986) and article thirty-two of this chapter;

46 (3) All residual market pools and joint underwriting
47 authorities or associations; and

48 (4) All captive insurers as defined in article thirty-one
49 of this chapter.

50 (e) "Independent casualty actuary" means a casualty
51 actuary who is a member of the American academy of
52 actuaries and who is not affiliated with, nor an
53 employee, principal, nor the direct or indirect owner of,
54 or in any way controlled by the insurer or producer.

55 (f) "Violation" means, for purposes of this article, a
56 finding by the commissioner that:

57 (1) The controlling producer did not materially
58 comply with section three of this article; or

59 (2) The controlled insurer, with respect to business
60 placed by the controlling producer, engaged in a pattern
61 of charging premiums that were lower than those being

62 charged by such insurer or other insurers for similar
63 risks written during the same period and placed by
64 noncontrolling producers. When determining whether
65 premiums were lower than those prevailing in the
66 market, the commissioner shall take into consideration
67 applicable industry or actuarial standards at the time
68 the business was written; or

69 (3) The controlling producer failed to maintain
70 records sufficient to:

71 (A) Demonstrate that such producer's dealings with
72 its controlled insurer were fair and equitable and in
73 compliance with article twenty-seven of this chapter;
74 and

75 (B) Accurately disclose the nature and details of its
76 transactions with the controlled insurer, including such
77 information as is necessary to support the charges or
78 fees to the respective parties; or

79 (4) The controlled insurer, with respect to business
80 placed by the controlling producer, either failed to
81 establish or deviated from its underwriting procedures;
82 or

83 (5) The controlled insurer's capitalization at the time
84 the business was placed by the controlling producer and
85 with respect to such business was not in compliance with
86 criteria established by the commissioner or this chapter;
87 or

88 (6) The controlling producer or the controlled insurer
89 failed to substantially comply with article twenty-seven
90 of this chapter and any rules relative thereto.

§33-36-3. Limitation on business placed with controlled insurer.

1 (a) A producer that has control of a licensed prop-
2 erty/casualty insurer shall not directly or indirectly
3 place business with such insurer in any transaction in
4 which such producer, at the time the business is placed,
5 is acting as such on behalf of the insured for any
6 compensation, commission or other thing of value,
7 unless:

8 (1) There is a written contract between the controlling
9 producer and the insurer, which contract has been
10 approved by the board of directors of the insurer;

11 (2) Such producer, prior to the effective date of the
12 policy, delivers written notice to the prospective insured
13 disclosing the relationship between such producer and
14 the controlled insurer. Such disclosure, signed by the
15 insured, shall be retained in the underwriting file until
16 the filing of the report on examination covering the
17 period in which the coverage is in effect: *Provided*, That
18 if the business is placed through a subproducer who is
19 not a controlling producer, the controlling producer
20 shall retain in his or her records a signed commitment
21 from the subproducer that the subproducer is aware of
22 the relationship between the insurer and the producer
23 and that the subproducer has notified or will notify the
24 insured;

25 (3) All funds collected for the account of the insurer
26 by the controlling producer shall be paid, net of
27 commissions, cancellations and other adjustments, to the
28 insurer no less often than quarterly;

29 (4) In addition to any other required loss reserve
30 certification, the controlled insurer shall annually, on
31 the first day of April of each year, file with the
32 commissioner an opinion of an independent casualty
33 actuary, or such other independent loss reserve special-
34 ist acceptable to the commissioner, reporting loss ratios
35 for each line of business written and attesting to the
36 adequacy of loss reserves established for losses incurred
37 and outstanding as of year-end, including incurred but
38 not reported on business placed by such producer;

39 (5) The controlled insurer shall report annually to the
40 commissioner the amount of commissions paid to such
41 producer, the percentage such amount represents of the
42 net premiums written and comparable amounts and
43 percentage paid to noncontrolling producers for place-
44 ments of the same kinds of insurance; and

45 (6) Every controlled insurer shall have an audit
46 committee of its board of directors composed of inde-
47 pendent directors. Prior to approval of the annual

48 financial statement, the audit committee shall meet with
49 management, the insurer's independent certified public
50 accountants, and an independent casualty actuary or
51 such other independent loss reserve specialist acceptable
52 to the commissioner to review the adequacy of the
53 insurer's loss reserves.

54 (b) Any reinsurance intermediary that has control of
55 an assuming insurer shall not directly or indirectly
56 place business with such insurer in any transaction in
57 which such reinsurance intermediary is acting as a
58 broker on behalf of the ceding insurer. Any reinsurance
59 intermediary that has control of a ceding insurer shall
60 not directly or indirectly accept business from such
61 insurer in any transaction in which such reinsurance
62 intermediary is acting as a producer on behalf of the
63 assuming insurer. The prohibitions in this subsection
64 shall not apply to a reinsurance intermediary which
65 makes a full and complete written disclosure to the
66 parties of its relationship with the assuming or ceding
67 insurer prior to completion of the transaction.

**§33-36-4. Liability of controlling producer in the event of
insolvency of controlled insurer.**

1 (a) If the commissioner has reason to believe that a
2 controlling producer has committed or is committing an
3 act which could be determined to be a violation, as
4 defined in subsection (f), section two of this article, he
5 or she shall serve upon the controlling producer in the
6 manner provided by section twelve, article two of this
7 chapter a statement of the charges and notice of a
8 hearing to be conducted in accordance with section
9 thirteen, article two of this chapter.

10 (b) At such hearing, the commissioner must establish
11 that the controlling producer engaged in a violation, as
12 defined in subsection (f), section two of this article. The
13 controlling producer shall have an opportunity to be
14 heard and to present evidence rebutting the charges and
15 to establish that the insolvency of the controlled insurer
16 arose out of events not attributable to the violation. The
17 decision, determination or order of the commissioner
18 shall be subject to judicial review pursuant to section

19 fourteen, article two of this chapter.

20 (c) Upon the finding, pursuant to the hearing des-
21 cribed in subsection (b) of this section, that the
22 controlling producer committed a violation, as defined
23 in subsection (f), section two of this article, and the
24 controlling producer failed to establish that such
25 violation did not substantially contribute to the insol-
26 vency, the controlling producer shall reimburse to the
27 West Virginia insurance guaranty association for all
28 payments made for losses, loss adjustment and adminis-
29 trative expenses on the business placed by such pro-
30 ducer in excess of gross earned premiums and invest-
31 ment income earned on premiums and loss reserves for
32 such business.

33 (d) Nothing contained in this section shall affect the
34 right of the commissioner to impose any other penalties
35 provided for in this chapter.

36 (e) Nothing contained in this article is intended to or
37 shall in any manner alter or affect the rights of
38 policyholders, claimants, creditors or other third
39 parties.

ARTICLE 37. MANAGING GENERAL AGENTS.

§33-37-1. Definitions.

§33-37-2. Licensure.

§33-37-3. Required contract provisions.

§33-37-4. Duties of insurers.

§33-37-5. Examination authority.

§33-37-6. Penalties and liabilities.

§33-37-7. Rule-making authority.

§33-37-1. Definitions.

1 For the purposes of this article:

2 (a) "Actuary" means a person who is a member in
3 good standing of the American academy of actuaries.

4 (b) "Insurer" means any person, firm, association or
5 corporation engaged as indemnitor, surety or contractor
6 in the business of entering into contracts of insurance
7 or of annuities as limited to:

8 (1) Any insurer who is doing an insurance business,

9 or has transacted insurance in this state, and against
10 whom claims arising from that transaction may exist
11 now or in the future:

12 (2) This includes, but is not limited to, any domestic
13 insurer as defined in section six, article one of this
14 chapter and any foreign insurer as defined in section
15 seven, article one of this chapter, including any stock
16 insurer, mutual insurer, reciprocal insurer, farmers'
17 mutual fire insurance company, fraternal benefit
18 society, hospital service corporation, medical service
19 corporation, dental service corporation, health service
20 corporation, health care corporation, health mainte-
21 nance organization, captive insurance company or risk
22 retention group.

23 (c) "Managing general agent" means any person, firm,
24 association or corporation who negotiates and binds
25 ceding reinsurance contracts on behalf of an insurer or
26 manages all or part of the insurance business of an
27 insurer, including the management of a separate
28 division, department or underwriting office, and acts as
29 an agent for such insurer whether known as a managing
30 general agent, manager or other similar term, who, with
31 or without the authority, either separately or together
32 with affiliates, produces, directly or indirectly, and
33 underwrites an amount of gross direct written premium
34 equal to or greater than five percent of the policyholder
35 surplus as reported in the last annual statement of the
36 insurer in any one quarter or year, together with one
37 or more of the following:

38 (1) Adjusts or pays claims in excess of an amount
39 determined by the commissioner; or

40 (2) Negotiates reinsurance on behalf of the insurer.

41 Notwithstanding the preceding provision, the follow-
42 ing persons are not to be considered as managing
43 general agents for the purposes of this article:

44 (1) An employee of the insurer;

45 (2) A United States manager of the United States
46 branch of an alien insurer;

47 (3) An underwriting manager that, pursuant to

48 contract, manages all or part of the insurance operations
49 of the insurer, is under common control with the
50 insurer, is subject to the holding company regulatory
51 act, and whose compensation is not based on the volume
52 of premiums written without regard to the profitability
53 of the business written;

54 (4) The attorney-in-fact authorized by and acting for
55 the subscribers of a reciprocal insurer or inter-insu-
56 rance exchange under powers of attorney.

57 (d) "Underwrite" means to accept or reject risk on
58 behalf of the insurer, as authorized by the insurer.

§33-37-2. Licensure.

1 (a) Any person, or a person working for a firm,
2 association or corporation, shall not act in the capacity
3 of a managing general agent with respect to risks
4 located in this state for an insurer licensed in this state
5 unless such person is licensed and appointed as an agent
6 of the insurer in this state.

7 (b) Any person, or a person working for a firm,
8 association or corporation, shall not act in the capacity
9 of a managing general agent representing an insurer
10 domiciled in this state with respect to risks located
11 outside this state unless such person is licensed and
12 appointed as an agent of the insurer in this state. The
13 license held by such person may be a nonresident
14 license.

15 (c) The commissioner may require a bond in an
16 amount acceptable to him or her for the protection of
17 the insurer.

18 (d) The commissioner may require the managing
19 general agent to maintain an errors and omissions policy
20 of liability insurance.

§33-37-3. Required contract provisions.

1 Any person, or a person working for a firm, associ-
2 ation or corporation, acting in the capacity of a
3 managing general agent shall not place business with
4 an insurer unless there is in force a written contract
5 between the parties which sets forth the responsibilities

6 of each party and whereby both parties share respon-
7 sibility for a particular function, which specifies the
8 division of such responsibilities, and which contains the
9 following minimum provisions:

10 (a) The insurer may terminate the contract for cause
11 upon written notice to the managing general agent. The
12 insurer may suspend the underwriting authority of the
13 managing general agent during the pendency of any
14 dispute regarding the cause for termination.

15 (b) The managing general agent will render accounts
16 to the insurer detailing all transactions and remit all
17 funds due under the contract to the insurer on not less
18 than a monthly basis.

19 (c) All funds collected for the account of an insurer
20 will be held by the managing general agent in a
21 fiduciary capacity in a bank which is a member of the
22 federal reserve system. This account shall be used for
23 all payments on behalf of the insurer. The managing
24 general agent may retain no more than three months'
25 estimated claims payments and allocated loss adjust-
26 ment expenses.

27 (d) The managing general agent shall maintain
28 separate records of business that he or she writes. The
29 insurer shall have access to and the right to copy all
30 accounts and records related to its business, in a form
31 usable by it. The commissioner shall have access to all
32 books, bank accounts and records of the managing
33 general agent in a form usable to him or her.

34 (e) The contract may not be assigned, in whole or in
35 part, by the managing general agent.

36 (f) The contract shall contain appropriate underwrit-
37 ing guidelines including:

- 38 (1) The maximum annual premium volume;
- 39 (2) The basis of the rates to be charged;
- 40 (3) The types of risks that may be written;
- 41 (4) Maximum limits of liability;
- 42 (5) Applicable exclusions;

43 (6) Territorial limitations;

44 (7) Policy cancellation provisions; and

45 (8) The maximum policy period. The insurer shall
46 have the right to cancel or nonrenew any policy of
47 insurance subject to applicable laws and rules concern-
48 ing cancellation and nonrenewal of insurance policies.

49 (g) If the contract permits the managing general
50 agent to settle claims on behalf of the insurer:

51 (1) All claims must be reported to the company in a
52 timely manner.

53 (2) A copy of the claim file will be sent to the insurer
54 at its request or as soon as it becomes known that the
55 claim:

56 (A) Has the potential to exceed an amount determined
57 by the commissioner or exceeds the limit set by the
58 company, whichever is less;

59 (B) Involves a coverage dispute;

60 (C) May exceed the managing general agent's claims
61 settlement authority;

62 (D) Is open for more than six months; or

63 (E) Is closed by payment of an amount set by the
64 commissioner or an amount set by the company,
65 whichever is less.

66 (3) All claim files will be the joint property of the
67 insurer and managing general agent. However, upon an
68 order of liquidation of the insurer, such files shall
69 become the sole property of the insurer or its estate. The
70 managing general agent shall have reasonable access to
71 and the right to copy the files on a timely basis.

72 (4) Any settlement authority granted to the managing
73 general agent may be terminated for cause upon the
74 insurer's written notice to the managing general agent
75 or upon termination of the contract. The insurer may
76 suspend the settlement authority during the pendency
77 of any dispute regarding the cause for termination.

78 (h) If electronic claims files are in existence, the

79 contract must address the timely transmission of the
80 data contained in such files.

81 (i) If the contract provides for a sharing of interim
82 profits by the managing general agent, and the manag-
83 ing general agent has the authority to determine the
84 amount of the interim profits by establishing loss
85 reserves or controlling claim payments, or in any other
86 manner, interim profits shall not be paid to the
87 managing general agent until one year after they are
88 earned for property insurance business and five years
89 after they are earned on casualty business: *Provided,*
90 That no such profits may be paid until they have been
91 verified pursuant to section four of this article.

92 (j) The managing general agent shall not:

93 (1) Bind reinsurance or retrocessions on behalf of the
94 insurer, except that the managing general agent may
95 bind facultative reinsurance contracts pursuant to
96 obligatory facultative agreements if the contract with
97 the insurer contains reinsurance underwriting guide-
98 lines including, for both reinsurance assumed and
99 ceded, a list of reinsurers with which such automatic
100 agreements are in effect, the coverages and amounts or
101 percentages that may be reinsured and commission
102 schedules;

103 (2) Commit the insurer to participate in insurance or
104 reinsurance syndicates;

105 (3) Appoint any agent without assuring that the agent
106 is lawfully licensed to transact the type of insurance for
107 which he or she is appointed;

108 (4) Without prior approval of the insurer, pay or
109 commit the insurer to pay a claim over a specified
110 amount, net of reinsurance, which shall not exceed one
111 percent of the insurer's policyholders' surplus as of the
112 thirty-first day of December off the last completed
113 calendar year;

114 (5) Collect any payment from a reinsurer or commit
115 the insurer to any claim settlement with a reinsurer,
116 without prior approval of the insurer. If prior approval
117 is given, a report must be promptly forwarded to the

118 insurer;

119 (6) Permit its subproducer to serve on the insurer's
120 board of directors;

121 (7) Jointly employ an individual who is employed by
122 the insurer; or

123 (8) Appoint a sub-managing general agent.

§33-37-4. Duties of insurers.

1 (a) The insurer shall have on file an independent
2 financial examination, in a form acceptable to the
3 commissioner, of each managing general agent with
4 which it has done business.

5 (b) If a managing general agent establishes loss
6 reserves, the insurer shall annually obtain the opinion
7 of an actuary in a form consistent with the requirements
8 for actuarial certifications as imposed upon the insurer
9 by statute or rule of the commissioner, attesting to the
10 adequacy of loss reserves established for losses incurred
11 and outstanding on business produced by the managing
12 general agent. This required actuary's opinion is in
13 addition to any other required loss reserve certification.

14 (c) The insurer shall at least semiannually conduct an
15 on-site review of the underwriting and claims process-
16 ing operations of the managing general agent.

17 (d) Binding authority for all reinsurance contracts or
18 participation in insurance or reinsurance syndicates
19 shall rest with an officer of the insurer, who shall not
20 be affiliated with the managing general agent.

21 (e) Within thirty days of entering into or terminating
22 a contract with a managing general agent, the insurer
23 shall provide written notification of such appointment or
24 termination to the commissioner. A notice of appoint-
25 ment of a managing general agent shall include a
26 statement of duties which such agent is expected to
27 perform on behalf of the insurer, the lines of insurance
28 for which such agent is to be authorized to act, and any
29 other information the commissioner may request.

30 (f) An insurer shall review its books and records each

31 quarter to determine if any producer as defined by
32 subsection (c), section one of this article has become, by
33 operation of that subsection, a managing general agent
34 as defined therein. If the insurer determines that a
35 producer has become a managing general agent as
36 defined in subsection (c), section one, the insurer shall
37 promptly notify the producer and the commissioner of
38 such determination and the insurer and producer must
39 fully comply with the provisions of this article within
40 thirty days thereafter.

41 (g) An insurer shall not appoint to its board of
42 directors an officer, director, employee, subproducer or
43 controlling shareholder of its managing general agents.
44 This subsection shall not apply to relationships governed
45 by the Insurance Holding Company Act or the Business
46 Transacted with Producer-Controlled Insurer Act.

§33-37-5. Examination authority.

1 The acts of a managing general agent are considered
2 to be the acts of the insurer on whose behalf such agent
3 is acting. A managing general agent may be examined
4 as if it were the insurer pursuant to the provisions of
5 section nine, article two of this chapter.

§33-37-6. Penalties and liabilities.

1 (a) If the commissioner finds after a hearing con-
2 ducted in accordance with section thirteen, article two
3 of this chapter that any person has violated any
4 provision of this article, the commissioner may order:

5 (1) For each separate violation, a penalty in an
6 amount of one thousand dollars;

7 (2) Revocation or suspension of the producer's license;
8 and

9 (3) Reimbursement by the managing general agent of
10 the insurer, the rehabilitator or liquidator of the insurer
11 for any losses incurred by the insurer caused by a
12 violation of this article committed by the managing
13 general agent.

14 (b) The decision, determination or order of the
15 commissioner pursuant to subsection (a) of this section
16 shall be subject to judicial review pursuant to section
17 fourteen, article two of this chapter.

18 (c) Nothing contained in this section shall affect the
19 right of the commissioner to impose any other penalties
20 provided for in this chapter.

21 (d) Nothing contained in this article is intended to or
22 shall in any manner limit or restrict the rights of
23 policyholders, claimants and creditors.

§33-37-7. Rule-making authority.

1 The commissioner is thereby authorized to promul-
2 gate reasonable rules for the implementation and
3 administration of the provisions of this article, pursuant
4 to chapter twenty-nine-a of this code.

CHAPTER 109

(H. B. 4207—By Delegates Susman and Williams)

[Passed March 5, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to life insurance policies and defining those parties having an insurable interest in the same, including relatives, those with business or economic interests, and charitable institutions.

Be it enacted by the Legislature of West Virginia:

That section two, article six, 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 6. THE INSURANCE POLICY.

§33-6-2. Insurable interest in one's own life or life of another; actions to recover benefits; insurable interests defined; requirements for charitable institutions.

1 (a) Any individual of competent legal capacity may
2 procure or effect an insurance contract upon his own life
3 or body for the benefit of any person. But no person shall
4 procure or cause to be procured any insurance contract
5 upon the life or body of another individual unless the
6 benefits under such contract are payable to the individ-
7 ual insured or his personal representative or to a person
8 having, at the time when such contract was made, an
9 insurable interest in the individual insured.

10 (b) If the beneficiary, assignee, or other payee under
11 any contract made in violation of this section receives
12 from the insurer any benefits thereunder accruing upon
13 the death, disablement, or injury of the individual
14 insured, the individual insured or his executor or
15 administrator, as the case may be, may maintain an
16 action to recover such benefits from the person so
17 receiving them.

18 (c) "Insurable interest" with reference to personal
19 insurance includes only interests as follows:

20 (1) In the case of individuals related closely by blood
21 or by law, a substantial interest engendered by love and
22 affection.

23 (2) In the case of other persons, a lawful and substan-
24 tial economic interest in having the life, health, or bodily
25 safety of the individual insured continue, as distin-
26 guished from an interest which would arise only by, or
27 would be enhanced in value by, the death, disablement
28 or injury of the individual insured.

29 (3) An individual heretofore or hereafter party to a
30 contract or option for the purchase or sale of an interest
31 in a business partnership or firm, or of shares of stock
32 of a closed corporation or of an interest in such shares,
33 has an insurable interest in the life of each individual
34 party to such contract and for the purposes of such
35 contract only, in addition to any insurable interest which
36 may otherwise exist as to the life of such individual.

37 (4) A charitable institution as defined under Sections
38 501(c)(3), 501(c)(6), 501(c)(8) and 501(c)(9) of the Internal
39 Revenue Code of 1986, as amended.

CHAPTER 110

(Com. Sub. for H. B. 4212—By Delegates Roop and Susman)

[Passed March 5, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-nine, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor vehicle insurance; designating the primary insurance coverage on a motor vehicle owned by certain types of businesses while being operated permissively in specified circumstances by an individual who is otherwise insured; and providing that the business owner's motor vehicle insurance shall be primary if the vehicle is being operated with permission by an employee of the business owner who is acting within the scope of his or her employment.

Be it enacted by the Legislature of West Virginia:

That section twenty-nine, article six, 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 6. THE INSURANCE POLICY.

§33-6-29. Motor vehicle policy; injuries to guest passengers; coverage for loaned or leased motor vehicles; exceptions.

1 (a) An insurer shall not issue any policy of bodily
2 injury or property damage liability insurance which
3 excludes coverage to the owner or operator of a motor
4 vehicle on account of bodily injury or property damage
5 to any guest or invitee who is a passenger in such motor
6 vehicle.

7 (b) Every policy or contract of liability insurance
8 which insures a motor vehicle licensed in this state with
9 collision, comprehensive, property or bodily injury
10 coverage shall extend these coverages to cover the
11 insured individual while operating a motor vehicle

12 which he or she is permitted to use by a person, firm
13 or corporation that owns the vehicle and is engaged in
14 the business of selling, repairing, leasing or servicing
15 motor vehicles. Coverage under any motor vehicle
16 insurance policy available to such insured individual
17 shall be primary, and any collision, comprehensive,
18 property or bodily injury insurance coverage owned or
19 obtained by a person, firm or corporation that owns the
20 motor vehicle and is engaged in the business of selling,
21 repairing, leasing or servicing motor vehicles shall be
22 secondary. Recovery under the motor vehicle owner's
23 insurance policy shall not be permitted until the insured
24 individual has exhausted the limits of all other insur-
25 ance policies available to him or her: *Provided*, That the
26 following conditions are met: (1) No separate consider-
27 ation is paid by or on behalf of the insured individual
28 at the time of his or her use of the vehicle; and (2) the
29 insured individual is operating the vehicle with the
30 business owner's permission as a replacement vehicle
31 provided to the insured individual while his or her
32 vehicle is out of use because it is being repaired or
33 serviced by the business owner or another person with
34 the permission of the business owner.

35 (c) Notwithstanding any provision of this section to
36 the contrary, any insurance coverage available to the
37 insured individual as described in the foregoing
38 paragraph shall be secondary to any motor vehicle
39 liability insurance owned or obtained by the person,
40 firm or corporation engaged in the business of selling,
41 repairing, leasing or servicing motor vehicles, if the
42 insured individual is an employee of the business owner
43 and is operating the motor vehicle with the permission
44 of the business owner while acting within the scope of
45 his or her employment or the insured individual is
46 testing the vehicle for possible purchase or for a lease
47 with more than a thirty-day term.

CHAPTER 111

(H. B. 4506—By Delegates Phillips and Ashley)

[Passed February 25, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six-a, 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 one-a, relating to motor vehicle insurance policies; notice of cancellation of the same; definition of loss payee; and notification of cancellation and nonrenewal to loss payee.

Be it enacted by the Legislature of West Virginia:

That article six-a, 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 one-a, to read as follows:

ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES.

§33-6A-1a. Loss payee defined; notification of cancellation and nonrenewal to loss payee.

1 (a) For purposes of this article, a loss payee is defined
2 as the person or persons not a named insured designated
3 on an automobile liability insurance policy contract as
4 being entitled to the proceeds of or payments under such
5 policy.

6 (b) In every instance in which an insurer notifies an
7 insured of its intent to cancel or not renew an automomobile liability insurance contract or policy, the insurer
8 shall also provide notice to the loss payee of such
9 cancellation and nonrenewal in accordance with the
10 same notice requirements established for the insured
11 pursuant to sections one and four of this article.
12

CHAPTER 112

(Com. Sub. for H. B. 4182—By Delegates Morgan and Houvouras)

[Passed February 25, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-d, relating to insurance policies covering motor vehicles; prohibiting any insurer, agent or adjuster from requiring an insured or claimant to use a particular company or location providing automobile glass replacement or repair services or products; prohibiting the use of intimidation, coercion or other specified acts in order to require an insured or claimant to use a particular company or location providing such services or products; permitting agreements or arrangements with particular companies; permitting distribution of lists which include glass companies in the area; requirement of payment of repair or replacement services at the prevailing market rate; and prohibiting waiver of insurance deductibles, offering of rebates or discounts or other incentives for automobile glass repair by any automobile glass company.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6D. MOTOR VEHICLE REPAIR AND REPLACEMENT REFERRALS.

- §33-6D-1. Required use of particular companies or locations providing automobile glass replacement or repair services or products prohibited.
- §33-6D-2. Intimidation, coercion and other acts prohibited; permissive agreements.
- §33-6D-3. Permissible referrals; freedom of choice; payment of costs at prevailing market rates.

§33-6D-1. Required use of particular companies or locations providing automobile glass replacement or repair services or products prohibited.

1 No insurer issuing or renewing in this state any motor
2 vehicle insurance policy, nor any agent or adjuster
3 thereof, may require the insured or any person making
4 a claim under such policy to use a particular company
5 or location to obtain automobile glass replacement or
6 repair services or products insured, in whole or in part,
7 by that policy.

§33-6D-2. Intimidation, coercion and other acts prohibited; permissive agreements.

1 No such insurer, agent or adjuster may engage in any
2 act or practice of intimidation, coercion or threat for or
3 against any such insured or claimant to use a particular
4 company or location to obtain automobile glass replace-
5 ment or repair services or products covered, in whole
6 or in part, by the insurance policy: *Provided*, That
7 nothing contained in this article shall prohibit an
8 insurer, agent or adjuster from entering into an
9 agreement or arrangement with any company regard-
10 ing automobile glass prices or services for the repair or
11 replacement of automobile glass.

§33-6D-3. Permissible referrals; freedom of choice; payment of costs at prevailing market rates.

1 (a) Nothing contained in this article prohibits any
2 insurer, agent or adjuster from providing to an insured
3 or claimant a list that includes the names of automobile
4 glass companies or locations that are reasonably close
5 and convenient to the insured or claimant, and with
6 which the insurer may have made special arrangements
7 with respect to automobile glass prices or services.

8 (b) If an insurer, agent or adjuster provides an
9 insured or claimant with a list of automobile glass
10 companies or locations, such insurer, agent or adjuster
11 shall advise the insured or claimant that he or she may
12 use any other automobile glass company or location of
13 his or her choice.

14 (c) All insurers shall fully and promptly pay the cost
15 of automobile glass replacement or repair services or
16 products from any nonlisted automobile glass company
17 or location, less any applicable deductible amount
18 payable by the insured according to the terms of the
19 insurance policy, at no less than the prevailing market
20 price charged by other automobile glass companies or
21 locations providing comparable services or products in
22 the same geographic area within the state.

23 (d) No automobile glass company or location may
24 waive insurance deductibles or offer rebates, discounts
25 or other incentives for automobile glass repair which is
26 being reimbursed by insurance. An insurer may limit
27 payment of all glass claims to a glass company or
28 location that has violated this provision to the lowest
29 competitive price. The glass company or location may
30 not seek reimbursement for any amounts not paid
31 directly from the insured or claimant.

CHAPTER 113

(Com. Sub. for H. B. 4184—By Delegates Lane and Kiss)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fifteen-b; to amend and reenact section four, article twenty-four; section six, article twenty-five; and section twenty-four, article twenty-five-a of said chapter, all relating to health care administration; creating the uniform health care administration act; setting forth policies and procedures; authorizing the insurance commissioner to promulgate legislative rules; creating an advisory panel; creating a compliance period; reserving rights to additional information; and requiring the participation of certain health care providers, insurers, health care corporations and other such agencies.

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 fifteen-b; and that section four, article twenty-four; section six, article twenty-five; and section twenty-four, article twenty-five-a of said chapter be amended and reenacted, all to read as follows:

CHAPTER 33. INSURANCE.

Article

- 15B. Uniform Health Care Administration Act.
- 24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.
- 25. Health Care Corporations.
- 25A. Health Maintenance Organization Act.

ARTICLE 15B. UNIFORM HEALTH CARE ADMINISTRATION ACT.

- §33-15B-1. Policy provisions.
- §33-15B-2. Scope of article.
- §33-15B-3. Insurance commissioner to promulgate rules; use of standardized forms and classifications; advisory panel and appointments.
- §33-15B-4. Compliance period; reservation of right to additional information.

§33-15B-1. Policy provisions.

1 The Legislature hereby finds that there is a need to
2 provide guidelines regarding uniform health care
3 administration in order to best serve consumers, health
4 care providers and insurers and to organize and
5 streamline the claims process. The purpose of this
6 article is to require the insurance commissioner to
7 develop standard forms and procedures regarding
8 health care claims and to require that all insurers, third
9 party providers, and health care providers implement
10 and use such standards in a uniform manner.

§33-15B-2. Scope of article.

1 The provisions of this article apply to all health care
2 providers in the state; all insurers writing or issuing
3 accident and sickness policies covered by article fifteen
4 of this chapter; hospital service corporations, health
5 service corporations, medical service corporations, and
6 dental service corporations organized in accordance

7 with the provisions of article one, chapter thirty-one and
8 chapter thirty-three of this code; all third party
9 providers; all state agencies and departments, including,
10 but not limited to, the public employees insurance
11 agency; workers' compensation insurance; and providers
12 of services under medicare and medicaid.

**§33-15B-3. Insurance commissioner to promulgate rules;
use of standardized forms and classifica-
tions; advisory panel and appointments.**

1 (a) The insurance commissioner shall promulgate
2 legislative rules in accordance with the provisions of
3 chapter twenty-nine-a of this code regarding the
4 implementation and use of uniform health care adminis-
5 trative forms. Such rules shall be developed no later
6 than the first day of December, one thousand nine
7 hundred ninety-two, and shall establish, where practi-
8 cable, the acceptance and use throughout the health care
9 system of standard administrative forms, terms or
10 procedures, including, but not limited to, the following:

11 (1) The standard health care financing administration
12 fifteen hundred (HCFA 1500) health insurance claim
13 form, or other similar forms, and terms and definitions
14 to be used therewith which are consistent with insur-
15 ance industry standards.

16 (2) International classification of disease, ninth
17 clinical modifications (ICD-9-CM) and common proced-
18 ural terminology (CPT) codes, as amended, or another
19 similar standard code.

20 (3) Consideration of current practices involving
21 reimbursement of claims and explanation of benefits,
22 and the implementation of standards and guidelines
23 regarding explanation of benefits, including, but not
24 limited to, consideration of line item explanations of
25 payments or denial of payments.

26 (b) The legislative rules required herein shall be
27 developed by the insurance commissioner with the
28 advice of a thirteen-member panel to be appointed by
29 the commissioner. Such panel shall consist of the
30 insurance commissioner; one allopath and one osteopath

31 who shall be recommended by the West Virginia State
32 medical association; a representative of the hospital
33 industry who shall be recommended by the West
34 Virginia hospital association; one dentist recommended
35 by the West Virginia dental association and one
36 pharmacist recommended by the West Virginia phar-
37 macists association; two members representing commer-
38 cial health insurers who shall be recommended by the
39 association representing accident and sickness insu-
40 rance; a representative of third party administrators; a
41 representative of the public employees insurance
42 agency; a representative from the workers' compensa-
43 tion commission; and two members representing consu-
44 mers. The insurance commissioner shall make such
45 appointments thirty days after the effective date of this
46 section.

47 (c) The insurance commissioner and the advisory
48 panel shall review the legislative rules effected pursuant
49 to this section as necessary on at least an annual basis
50 and update the same in a timely manner in order to
51 conform to current legislation and health care adminis-
52 trative trends.

§33-15B-4. Compliance period; reservation of right to additional information.

1 (a) All health care providers, insurers, third party
2 providers and state agencies or departments shall have
3 one year from the date the insurance commissioner
4 establishes the legislative rules required by section three
5 herein to comply with the requirements of the same.

6 (b) This section shall not limit the right of any insurer,
7 third party provider, state agency or department to
8 require additional information on any claim.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

***§33-24-4. Exemptions; applicability of insurance laws.**

* Clerk's Note: This section was also amended by H. B. 4666 (Chapter 108), which passed subsequent to this act.

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), article four (general provisions) except that
11 section sixteen of article four shall not be applicable
12 thereto, article six, section thirty-four (fee for form and
13 rate filing), article six-c (guaranteed loss ratio), article
14 seven (assets and liabilities), article ten (rehabilitation
15 and liquidation), article eleven (unfair practices and
16 frauds), article twelve (agents, brokers and solicitors),
17 section fourteen, article fifteen (individual policies),
18 article fifteen-a (long-term care insurance), article
19 fifteen-b (uniform health care administration act),
20 section three-a, article sixteen, (mental illness), section
21 three-c, article sixteen (group accident and sickness
22 insurance), section three-d, article sixteen (medicare
23 supplement), section three-f, article sixteen (treatment
24 of temporomandibular joint disorder and craniomandib-
25 ular disorder), article sixteen-c (small employer group
26 policies), article sixteen-d (marketing and rate practices
27 for small employers), article twenty-six-a (West Virginia
28 life and health insurance guaranty association act), after
29 the first day of October, one thousand nine hundred
30 ninety-one, article twenty-seven (insurance holding
31 company systems), article twenty-eight (individual
32 accident and sickness insurance minimum standards),
33 article thirty-three (annual audited financial report),
34 article thirty-four (administrative supervision), article
35 thirty-four-a (standards and commissioner's authority
36 for companies deemed to be in hazardous financial
37 condition) and article thirty-five (criminal sanctions for
38 failure to report impairment); and no other provision of
39 this chapter shall apply to such corporations unless
40 specifically made applicable by the provisions of this
41 article. If, however, any such corporation shall be
42 converted into a corporation organized for a pecuniary

43 profit, or if it shall transact business without having
44 obtained a license as required by section five of this
45 article, it shall thereupon forfeit its right to these
46 exemptions.

ARTICLE 25. HEALTH CARE CORPORATIONS.

***§33-25-6. Supervision and regulation by insurance commissioner; exemption from insurance laws.**

1 Corporations organized under this article shall be
2 subject to supervision and regulation by the insurance
3 commissioner. Such corporations organized under this
4 article, to the same extent such provisions are applicable
5 to insurers transacting similar kinds of insurance and
6 not inconsistent with the provisions of this article, shall
7 be governed by and be subject to the provisions as
8 hereinbelow indicated, of the following articles of this
9 chapter: Article six-c (guaranteed loss ratio), article
10 seven (assets and liabilities), article eight (investments),
11 article ten (rehabilitation and liquidation), section
12 fourteen, article fifteen (individual policies), article
13 fifteen-b (uniform health care administration act),
14 article sixteen-c (small employer group policies), article
15 sixteen-d (marketing and rate practices for small
16 employers), article twenty-seven (insurance holding
17 company systems), article thirty-three (annual audited
18 financial report), article thirty-four-a (standards and
19 commissioner's authority for companies deemed to be in
20 hazardous financial condition) and article thirty-five
21 (criminal sanctions for failure to report impairment);
22 and no other provision of this chapter shall apply to such
23 corporations unless specifically made applicable by the
24 provisions of this article.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

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

1 (1) Except as otherwise provided in this article,
2 provisions of the insurance law and provisions of

* Clerk's Note: These sections were also amended by H. B. 4666 (Chapter 108), which passed subsequent to this act.

3 hospital or medical service corporation laws shall not be
4 applicable to any health maintenance organization
5 granted a certificate of authority under this article. This
6 provision shall not apply to an insurer or hospital or
7 medical service corporation licensed and regulated
8 pursuant to the insurance laws or the hospital or
9 medical service corporation laws of this state except
10 with respect to its health maintenance corporation
11 activities authorized and regulated pursuant to this
12 article.

13 (2) Factually accurate advertising or solicitation
14 regarding the range of services provided, the premiums
15 and copayments charged, the sites of services and hours
16 of operation, and any other quantifiable, nonprofessional
17 aspects of its operation by a health maintenance
18 organization granted a certificate of authority, or its
19 representative shall not be construed to violate any
20 provision of law relating to solicitation or advertising by
21 health professions: *Provided*, That nothing contained
22 herein shall be construed as authorizing any solicitation
23 or advertising which identifies or refers to any individ-
24 ual provider, or makes any qualitative judgment
25 concerning any provider.

26 (3) Any health maintenance organization authorized
27 under this article shall not be deemed to be practicing
28 medicine and shall be exempt from the provision of
29 chapter thirty of this code, relating to the practice of
30 medicine.

31 (4) The provisions of article six-c (guaranteed loss
32 ratio), article seven (assets and liabilities), article eight
33 (investments), section fourteen, article fifteen (individ-
34 ual policies), article fifteen-b (uniform health care
35 administration act), section three-f, article sixteen
36 (concerning treatment of temporomandibular disorder
37 and craniomandibular disorder), article sixteen-c (small
38 employer group policies), article sixteen-d (marketing
39 and rate practices for small employers), article twenty-
40 seven (insurance holding company systems), article
41 thirty-four-a (standards and commissioner's authority
42 for companies deemed to be in hazardous financial
43 condition) and article thirty-five (criminal sanctions for

44 failure to report impairment) shall be applicable to any
45 health maintenance organization granted a certificate of
46 authority under this article.

47 (5) Any long-term care insurance policy delivered or
48 issued for delivery in this state by a health maintenance
49 organization shall comply with the provisions of article
50 fifteen-a of this chapter.

CHAPTER 114

(H. B. 4734—By Delegates Rutledge and Browning)

[Passed March 2, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the board of investments; charges for expenses of the board; creation of loss expenses account; purpose of the account; expenditures from the account; transfer of funds remaining in the account to the liquidity investment pool; and transfer of excess funds and appropriation of the funds by the Legislature.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

§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.

7 (b) There is hereby created in the state treasury a
8 special revenue account to be known as the "loss
9 expenses account." The purpose of this account is to
10 provide funds to the board of investments to pay costs,
11 fees and expenses incurred, or to be incurred, for the
12 following: (1) Investigation and pursuit of claims against
13 third parties for the investment losses incurred during
14 the period beginning the first day of August, one
15 thousand nine hundred eighty-four, and ending on the
16 thirty-first day of January, one thousand nine hundred
17 eighty-nine; (2) consulting services regarding the
18 restructuring of the office of the treasurer following said
19 losses; and (3) implementation of the recommendations
20 made as a result of the consultations regarding restruc-
21 turing. That special revenue account shall be funded by
22 depositing income derived by the board from securities
23 lending and recoveries from third parties. The board is
24 authorized to deposit into the special revenue account,
25 and to expend in accordance with the provisions of this
26 section, those funds received from such recoveries and
27 not more than two million dollars annually from income
28 derived by the board from securities lending. Funds in
29 the loss expense account in excess of reasonably
30 estimated costs, fees and expenses for any fiscal year
31 and any funds remaining in such special revenue
32 account at the end of each fiscal year after expenditures,
33 for the purposes specified above, may be transferred by
34 the board to its "liquidity investment pool," to be used,
35 in such manner as the board determines, to eliminate
36 the present imbalance in the state accounts caused by
37 the investment losses described above in this subsection:
38 *Provided*, That amounts collected which are found from
39 time to time to exceed the funds needed for the purposes
40 set forth in this section may be transferred to other
41 accounts or funds and redesignated for other purposes
42 by appropriation of the Legislature. The authority for
43 this special revenue account expires on the thirtieth day
44 of June, one thousand nine hundred ninety-five.

CHAPTER 115

(Com. Sub. for H. B. 4373—By Delegate Brown)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, five-a and eight, article one, chapter fifty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section seven, article five, chapter fifty-seven of said code, all relating to providing that a citizen may not be excluded from jury services because of a disability; providing accommodation to jurors with disabilities other than physical; requiring interpreters to assist a juror who is deaf or a deaf mute because of any hearing impairment and readers for those who are visually impaired; and providing for payment therefor.

Be it enacted by the Legislature of West Virginia:

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

Chapter

52. **Juries.**

57. **Evidences and Witnesses.**

CHAPTER 52. JURIES.

ARTICLE 1. PETIT JURIES.

§52-1-2. Prohibition of discrimination.

§52-1-5a. Jury qualification form; contents; procedure for use; penalties.

§52-1-8. Disqualification from jury service.

§52-1-2. Prohibition of discrimination.

- 1 A citizen may not be excluded from jury service on
- 2 account of race, color, religion, sex, national origin,
- 3 economic status or being a qualified individual with a
- 4 disability.

§52-1-5a. **Jury qualification form; contents; procedure for use; penalties.**

1 (a) Not less than twenty days before the date for
2 which persons are to report for jury duty, the clerk may,
3 if directed by the court, serve by first class mail, upon
4 each person listed on the master list, a juror qualifica-
5 tion form accompanied by instructions necessary for its
6 completion: *Provided*, That the clerk may, if directed by
7 the court, mail the juror qualification form to only those
8 prospective jurors drawn for jury service under the
9 provisions of section seven of this article. Each prospec-
10 tive juror shall be directed to complete the form and
11 return it by mail to the clerk within ten days after its
12 receipt. The juror qualification form is subject to
13 approval by the circuit court as to matters of form and
14 shall elicit the following information concerning the
15 prospective juror:

16 (1) The juror's name, sex, race, age and marital status;

17 (2) The juror's level of educational attainment,
18 occupation and place of employment;

19 (3) If married, the name of the juror's spouse, and the
20 occupation and place of employment of the spouse;

21 (4) The juror's residence address and the juror's
22 mailing address if different from the residence address;

23 (5) The number of children which the juror has and
24 their ages;

25 (6) Whether the juror is a citizen of the United States
26 and a resident of the county;

27 (7) Whether the juror is able to read, speak and
28 understand the English language;

29 (8) Whether the juror has any physical or mental
30 disability substantially impairing the capacity to render
31 satisfactory jury service: *Provided*, That a juror with a
32 physical disability, who can with reasonable accommo-
33 dation render competent service, is eligible for service;

34 (9) Whether the juror has, within the preceding two
35 years, been summoned to serve as a petit juror, grand
36 juror or magistrate court juror, and has actually
37 attended sessions of the magistrate or circuit court and
38 been compensated as a juror;

39 (10) Whether the juror has lost the right to vote
40 because of a criminal conviction; and

41 (11) Whether the juror has been convicted of perjury,
42 false swearing or other infamous offense.

43 The juror qualification form may also request infor-
44 mation concerning the prospective juror's religious
45 preferences and organizational affiliations, except that
46 the form and the accompanying instructions shall
47 clearly inform the juror that this information need not
48 be provided if the juror declines to answer such
49 inquiries.

50 (b) The juror qualification form shall contain the
51 prospective juror's declaration that the responses are
52 true to the best of the prospective juror's knowledge and
53 an acknowledgment that a willful misrepresentation of
54 a material fact may be punished by a fine of not more
55 than five hundred dollars or imprisonment for not more
56 than thirty days, or both fine and imprisonment.
57 Notarization of the juror qualification form shall not be
58 required. If the prospective juror is unable to fill out the
59 form, another person may assist the prospective juror in
60 the preparation of the form and indicate that such
61 person has done so and the reason therefor. If an
62 omission, ambiguity or error appear in a returned form,
63 the clerk shall again send the form with instructions to
64 the prospective juror to make the necessary addition,
65 clarification or correction and to return the form to the
66 clerk within ten days after its second receipt.

67 (c) Any prospective juror who fails to return a
68 completed juror qualification form as instructed shall be
69 directed by the jury commission to appear forthwith
70 before the clerk to fill out the juror qualification form.
71 At the time of the prospective juror's appearance for
72 jury service, or at the time of any interview before the
73 court or clerk, any prospective juror may be required
74 to fill out another juror qualification form in the
75 presence of the court or clerk. At that time the
76 prospective juror may be questioned, with regard to the
77 responses to questions contained on the form and the
78 grounds for the prospective juror's excuse or disquali-

79 fication. Any information thus acquired by the court or
80 clerk shall be noted on the juror qualification form.

81 (d) Any person who willfully misrepresents a material
82 fact on a juror qualification form or during any
83 interview described in subsection (c) of this section, for
84 the purpose of avoiding or securing service as a juror,
85 is guilty of a misdemeanor, and, upon conviction, shall
86 be fined not more than five hundred dollars or impri-
87 soned not more than thirty days, or both fined and
88 imprisoned.

§52-1-8. Disqualification from jury service.

1 (a) The court, upon request of the jury commission or
2 a prospective juror or on its own initiative, shall
3 determine on the basis of information provided on the
4 juror qualification form or interview with the prospec-
5 tive juror or other competent evidence whether the
6 prospective juror is disqualified for jury service. The
7 clerk shall enter this determination in the space
8 provided on the juror qualification form and on the
9 alphabetical lists of names drawn from the jury wheel
10 or jury box.

11 (b) A prospective juror is disqualified to serve on a
12 jury if the prospective juror:

13 (1) Is not a citizen of the United States, at least
14 eighteen years old and a resident of the county;

15 (2) Is unable to read, speak and understand the
16 English language. For the purposes of this section, the
17 requirement of speaking and understanding the English
18 language is met by the ability to communicate in
19 American sign language or signed English;

20 (3) Is incapable, by reason of substantial physical or
21 mental disability, of rendering satisfactory jury service;
22 but a person claiming this disqualification may be
23 required to submit a physician's certificate as to the
24 disability and the certifying physician is subject to
25 inquiry by the court at its discretion;

26 (4) Has, within the preceding two years, been sum-
27 moned to serve as a petit juror, grand juror or magis-

28 trate court juror, and has actually attended sessions of
29 the magistrate or circuit court and been compensated
30 as a juror pursuant to the provisions of section twenty-
31 one of this article, section thirteen, article two of this
32 chapter, or pursuant to an applicable rule or regulation
33 of the supreme court of appeals promulgated pursuant
34 to the provisions of section eight, article five, chapter
35 fifty of this code;

36 (5) Has lost the right to vote because of a criminal
37 conviction; or

38 (6) Has been convicted of perjury, false swearing or
39 other infamous offense.

40 (c) A prospective juror sixty-five years of age or older
41 is not disqualified from serving, but shall be excused
42 from service by the court upon the juror's request.

43 (d) A prospective grand juror is disqualified to serve
44 on a grand jury if the prospective grand juror is an
45 officeholder under the laws of the United States or of
46 this state except that the term "officeholder" does not
47 include notaries public.

48 (e) A person who is physically disabled and can render
49 competent service with reasonable accommodation shall
50 not be ineligible to act as juror or be dismissed from a
51 jury panel on the basis of disability alone: *Provided*,
52 That the circuit judge shall, upon motion by either party
53 or upon his or her own motion, disqualify a disabled
54 juror if the circuit judge finds that the nature of
55 potential evidence in the case including, but not limited
56 to, the type or volume of exhibits or the disabled juror's
57 ability to evaluate a witness or witnesses, unduly
58 inhibits the disabled juror's ability to evaluate the
59 potential evidence. For purposes of this section:

60 (1) Reasonable accommodation includes, but is not
61 limited to, certified interpreters for the hearing
62 impaired, spokespersons for the speech impaired and
63 readers for the visually impaired.

64 (2) The court shall administer an oath or affirmation
65 to any person present to facilitate communication for a
66 disabled juror. The substance of such oath or affirma-

67 tion shall be that any person present as an accommo-
68 dation to a disabled juror will not deliberate on his or
69 her own behalf, although present throughout the
70 proceedings, but act only to accurately communicate for
71 and to the disabled juror.

72 (f) Nothing in this article shall be construed so as to
73 limit in any way a party's right to preemptory strikes
74 in civil or criminal actions.

CHAPTER 57. EVIDENCES AND WITNESSES.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§57-5-7. Interpreters required.

1 (a) In any court proceeding wherein a party or witness
2 or juror cannot readily understand or verbally commun-
3 icate the English language because the witness or juror
4 is deaf or a deaf mute or because of any other hearing
5 impairment, such person shall have the right to have a
6 qualified interpreter to assist the witness or juror at
7 every stage of the proceeding. Such right shall also
8 pertain in any proceeding before administrative boards,
9 commissions or agencies of this state or any political
10 subdivision or municipality thereof, and in coroners'
11 inquests and grand jury proceedings.

12 (b) The director of the administrative office of the
13 supreme court of appeals shall establish a program to
14 facilitate the use of interpreters in courts of this state
15 and in extra-judicial criminal proceedings as provided
16 for in this section.

17 (1) The director shall prescribe, determine and certify
18 the qualifications of persons who may serve as certified
19 interpreters in courts of this state in proceedings
20 involving the hearing impaired. Persons certified by the
21 director shall be interpreters certified by the national
22 registry of interpreters for the deaf, or the West
23 Virginia registry of interpreters for the deaf or
24 approved by the chief of services for the deaf and
25 hearing impaired of West Virginia of the West Virginia
26 division of vocational rehabilitation, or shall be such
27 other persons deemed by the director to be qualified by
28 education, training and experience. The director shall

29 maintain a current master list of all interpreters
30 certified by the director and shall report annually on the
31 frequency of requests for, and the use and effectiveness
32 of, interpreters.

33 (2) Each circuit court shall maintain on file in the
34 office of the clerk of the court a list of all persons who
35 have been certified as oral or manual interpreters for
36 the hearing impaired by the director of the administra-
37 tive office of the supreme court of appeals in accordance
38 with the certification program established pursuant to
39 this section.

40 (3) In any criminal or juvenile proceeding, or other
41 proceeding described in section five, article eleven,
42 chapter fifty-one of this code, the judge of the circuit
43 court in which such proceeding is pending, or, if such
44 proceeding is in a magistrate court, then the judge of
45 the circuit court to which such proceeding may be
46 appealed or presented for judicial review, shall, with the
47 assistance of the director of the administrative office of
48 the supreme court of appeals, utilize the services of the
49 most available certified interpreter, or when no certified
50 interpreter is reasonably available, as determined by the
51 judge, the services of an otherwise competent interpre-
52 ter, if the judge determines on his own motion or on the
53 motion of a party that such party or a witness who may
54 present testimony in the proceeding suffers from a
55 hearing impairment so as to inhibit such party's
56 comprehension of the proceedings or communication
57 with counsel or the presiding judicial officer, or so as
58 to inhibit such witness' comprehension of questions and
59 the presentation of such testimony. The utilization of an
60 interpreter shall be appropriate at any stage of the
61 proceeding, judicial or extrajudicial, at which a person
62 would be entitled to representation by an attorney and
63 a waiver of the right to counsel shall not constitute a
64 waiver of the right to an interpreter as provided for by
65 this section.

66 (c) Whenever a qualified interpreter is appointed
67 pursuant to the provisions of subsection (b) of this
68 section, or to accommodate a juror, the court shall, at
69 the conclusion of the proceedings or interrogation, by

70 order, fix the compensation of such interpreter. The
71 compensation shall include reimbursement for all
72 reasonable and necessary expenses actually incurred in
73 the performance of such duties, but expenses shall not
74 be incurred in excess of the prevailing rate for state
75 employees. In all such appointments arising from
76 subdivision (3), subsection (b) of this section, the
77 compensation shall be paid by the state auditor from the
78 fund administered by the supreme court of appeals for
79 other court costs. In other proceedings before any circuit
80 or magistrate court, supreme court of appeals or before
81 any administrative boards, commissions and agencies,
82 the compensation shall be fixed by such court, board,
83 commission or agency and paid, within the limit of
84 available funds, by such court, board, commission or
85 agency.

86 (d) In any proceeding described in subdivision (3),
87 subsection (b) of this section, if the circuit judge does
88 not appoint an interpreter, an individual requiring the
89 services of an interpreter may seek the assistance of the
90 clerk of the circuit court or the director of the adminis-
91 trative office of the supreme court of appeals in
92 obtaining the assistance of a certified interpreter.

93 (e) Whenever an interpreter is necessary in any court
94 proceeding because a witness or party speaks only a
95 foreign language or for any other reason, an interpreter
96 shall be sworn truly to interpret.

CHAPTER 116

(H. B. 4713—By Delegates Damron and Reid)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section eight, article four, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections five, seven-a, nineteen and twenty, article one, chapter fifty-two of said code; and to amend and reenact section two, article one-c, chapter sixty-two of said code, all

relating to court administration generally, repealing the requirement that circuit clerks keep an execution book, allowing the master list to be compiled by a merge sampling; setting a time schedule for compilation of the master list; requiring electronic methods of jury selection be documented in writing and approved by the chief judge; requiring that jury commissioners be notified of all selections from jury lists; requiring attendance at selections only if required by chief judge; eliminating requirement that clerk transmit juror payment order to the auditor; updating language on payment records kept by clerk; allowing method of payment of jurors to be determined by tax commissioner; allowing payment of jurors in cash; and allowing magistrate court to receive cash bail in excess of two thousand five hundred dollars.

Be it enacted by the Legislature of West Virginia:

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

Chapter

52. Juries.

62. Criminal Procedure.

CHAPTER 52. JURIES.

ARTICLE 1. PETIT JURIES.

- §52-1-5. Master list; method for compilation; additional freeholder list; lists to be available to public.
- §52-1-7a. Alternate procedure for selection of jury by electronic data processing methods.
- §52-1-19. Record of allowance to jurors.
- §52-1-20. Payment of compensation.

§52-1-5. Master list; method for compilation; additional freeholder list; lists to be available to public.

- 1 (a) In each county, the jury commission shall compile
2 and maintain a master list of residents of the county

3 from which prospective jurors are to be chosen. The
4 master list shall be a list of individuals compiled from
5 not less than two of the following source lists:

6 (1) Persons who have filed a state personal income tax
7 return for the preceding tax year;

8 (2) Persons who are registered to vote in the county;

9 (3) Persons who hold a valid motor vehicle operator's
10 or chauffeur's license as determined from the drivers'
11 license lists provided by the department of motor
12 vehicles.

13 The jury commission shall compile the master list by
14 combining all the names from each source used and
15 eliminating all duplicates or by selecting a sample of
16 names from each source used by means of a random key
17 number system. If a sample of names is selected from
18 each source list, the same percentage of names must be
19 selected from each list. One source list shall be desig-
20 nated a primary source. Names selected from the second
21 source shall be compared with the entire list of names
22 on the primary source. Duplicate names shall be
23 removed from the second source sample, and the
24 remaining names shall be combined with the sample of
25 names selected from the primary source to form the
26 master list. If more than two source lists are used, this
27 process shall be repeated, using the previously combined
28 list for comparison with the third source list, and so on.

29 (b) The master list so compiled shall be used for a
30 period of two years or such other period as designated
31 by the chief judge.

32 (c) In addition to the master list required to be
33 compiled under the provisions of subsection (a) of this
34 section, the jury commission shall compile a list of
35 persons who pay real property taxes to compile and
36 maintain a list of freeholders to be used as jurors in
37 condemnation cases.

38 (d) Any public officer of an agency, department or
39 political subdivision of this state having custody,
40 possession or control of any of the source lists designated
41 to be used in compiling the master list, shall make the

42 source list available to the jury commission for inspec-
43 tion, reproduction and copying at all reasonable times:
44 *Provided*, That the tax commissioner shall be exempt
45 from this requirement. The master list and the free-
46 holder list shall be open to the public for examination.

**§52-1-7a. Alternate procedure for selection of jury by
electronic data processing methods.**

1 Notwithstanding any provision of this article to the
2 contrary, the court may, after conferring with the clerk
3 and the jury commissioners and documenting in writing
4 the methods to be used, with such documentation to be
5 approved by the chief judge, direct the use of electronic
6 data processing methods, or a combination of manual
7 and machine methods, for any combination of the
8 following tasks:

9 (a) Recording in machine readable form names that
10 are initially selected manually from source lists autho-
11 rized by this article.

12 (b) Copying of names from source lists authorized by
13 this article, from any counties or other sources that
14 maintain those lists in machine readable form such as
15 punched cards, magnetic tapes or magnetic discs.

16 (c) Selecting names from source lists for inclusion in
17 the jury list.

18 (d) Selecting names from the jury list for the list of
19 jurors summoned to attend at any term of court.

20 (e) Sorting or alphabetizing lists of names, deleting
21 duplicate selections of names and deleting names of
22 persons exempt, disqualified or excused from jury
23 service.

24 (f) Selecting and copying names for the creation of
25 any papers, records or correspondence necessary to
26 recruit, select and pay jurors and for other clerical
27 tasks.

28 If the court elects to use electronic machine methods
29 for any tasks described above, the selection system shall
30 be planned and programmed in order to ensure that any
31 group of names chosen will represent all segments of

32 source files from which drawn and that the mathemat-
33 ical odds of any single name being picked are substan-
34 tially equal.

35 When machine methods for jury selection are em-
36 ployed, both the jury list and the jury list as recorded
37 in machine readable form shall be safely kept in a
38 secure location with the office of the clerk of the circuit
39 court. The jury commissioners shall be notified of any
40 selection of jurors from a source list and may be present
41 for such selections or shall be in attendance if directed
42 by the chief circuit judge.

§52-1-19. Record of allowance to jurors.

1 The clerk of any court upon which juries are in
2 attendance shall make an entry upon its record stating
3 separately the amount which each juror is entitled to
4 receive out of the state treasury for services or attend-
5 ance during the term. Any clerk who fails to pay over,
6 as required by law, any moneys so received by the clerk
7 or otherwise to comply with the provisions of this article,
8 is guilty of a misdemeanor, and, upon conviction thereof,
9 shall be fined not less than fifty dollars nor more than
10 three hundred dollars.

§52-1-20. Payment of compensation.

1 The method of payment of jurors shall be determined
2 by the chief judge and approved by the state tax
3 commissioner. It is the duty of the clerk, as soon as
4 practicable after the adjournment of the court or before
5 the adjournment of the court at such time as the chief
6 judge may direct, to deliver to the sheriff of the county
7 a certified accounting of the amount to which each juror
8 is entitled. If any sheriff fails to pay any allowance as
9 required by law, the sheriff may be proceeded against
10 as for a contempt of court.

11 Any allowance paid by the sheriff under the provi-
12 sions of this section shall be repaid to the sheriff out of
13 the state treasury upon the production of satisfactory
14 proof that the same has actually been paid by the
15 sheriff. Proof of payment shall be in the form of a
16 complete itemized statement indicating the total amount
17 eligible for reimbursement.

CHAPTER 62. CRIMINAL PROCEDURE.**ARTICLE 1C. BAIL.****§62-1C-2. Bail defined; form; receipts.**

1 Bail is security for the appearance of a defendant to
2 answer to a specific criminal charge before any court
3 or magistrate at a specific time or at any time to which
4 the case may be continued. It may take any of the
5 following forms:

6 (a) The deposit by the defendant or by some other
7 person for him of cash.

8 (b) The written undertaking by one or more persons
9 to forfeit a sum of money equal to the amount of the bail
10 if the defendant is in default for appearance, which shall
11 be known as a recognizance.

12 (c) Such other form as the judge of the court that will
13 have jurisdiction to try the offense may determine.

14 All bail shall be received by the clerk of the court,
15 or by the magistrate and, except in case of recognizance,
16 receipts shall be given therefor by him.

CHAPTER 117

(Com. Sub. for S. B. 458—By Senator Chemenko)

[Passed March 2, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen, relating to prohibiting discrimination against employees and prospective employees for the use of tobacco products off the premises during nonworking hours.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-one, article 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 nineteen, to read as follows:

ARTICLE 3. SAFETY AND WELFARE OF EMPLOYEES.

§21-3-19. Discrimination for use of tobacco products prohibited.

1 (a) It shall be unlawful for any employer, whether
2 public or private, or the agent of such employer to refuse
3 to hire any individual or to discharge any employee or
4 otherwise to disadvantage or penalize any employee
5 with respect to compensation, terms, conditions or
6 privileges of employment solely because such individual
7 uses tobacco products off the premises of the employer
8 during nonworking hours.

9 (b) This section shall not apply with respect to an
10 employer which is a nonprofit organization which, as
11 one of its primary purposes or objectives, discourages
12 the use of one or more tobacco products by the general
13 public.

14 (c) This section shall not prohibit an employer from
15 offering, imposing or having in effect a health, disability
16 or life insurance policy which makes distinctions
17 between employees for type of coverage or price of
18 coverage based upon the employee's use of tobacco
19 products: *Provided*, That any differential premium rates
20 charged to employees must reflect differential costs to
21 the employer: *Provided, however*, That the employer
22 must provide employees with a statement delineating
23 the differential rates used by its insurance carriers.

24 (d) Nothing in this section shall be construed to
25 prohibit an employer from making available to smokers
26 and other users of tobacco products, programs, free of
27 charge or at reduced rates, which encourage the
28 reduction or cessation of smoking or tobacco use.

CHAPTER 118

(Com. Sub. for H. B. 4190—By Delegates Damron and Reed)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article five-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compensatory time in lieu of overtime pay for employees of county or municipal governments; providing a rate of compensation time; limiting the maximum accrual of compensation time; limiting the usage of compensation time; requiring agreement prior to performance of work; and providing for monetary compensation in event of termination of employment.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOURS STANDARDS FOR EMPLOYEES.

§21-5C-3. Maximum hours; overtime compensation.

1 (a) On and after the first day of July, one thousand
2 nine hundred eighty, no employer shall employ any of
3 his employees for a workweek longer than forty hours,
4 unless such employee receives compensation for his
5 employment in excess of the hours above specified at a
6 rate of not less than one and one-half times the regular
7 rate at which he is employed.

8 (b) As used in this section the "regular rate" at which
9 an employee is employed shall be deemed to include all
10 remuneration for employment paid to, or on behalf of,
11 the employee, but shall not be deemed to include:

12 (1) Sums paid as gifts; payments in the nature of gifts
13 made at Christmas time or on other special occasions,
14 as a reward for service, the amounts of which are not

15 measured by or dependent on hours worked, production,
16 or efficiency;

17 (2) Payments made for occasional periods when no
18 work is performed due to vacation, holiday, illness,
19 failure of the employer to provide sufficient work, or
20 other similar cause; reasonable payments for traveling
21 expenses, or other expenses, incurred by an employee in
22 the furtherance of his employer's interests and properly
23 reimbursable by the employer, and other similar
24 payments to an employee which are not made as
25 compensation for his hours of employment;

26 (3) Sums paid in recognition of services performed
27 during a given period if either: (a) Both the fact that
28 payment is to be made and the amount of the payment
29 are determined at the sole discretion of the employer at
30 or near the end of the period and not pursuant to any
31 prior contract, agreement or promise causing the
32 employee to expect such payments regularly; or (b) the
33 payments are made pursuant to a bona fide profit-
34 sharing plan or trust or bona fide thrift or savings plan,
35 meeting the requirements of the commissioner set forth
36 in appropriate regulation which he shall issue, having
37 due regard among other relevant factors, to the extent
38 to which the amounts paid to the employee are deter-
39 mined without regard to hours of work, production or
40 efficiency; or (c) the payments are talent fees (as such
41 talent fees are defined and delimited by regulations of
42 the commissioner) paid to performers, including an-
43 nouncers, on radio and television programs;

44 (4) Contributions irrevocably made by an employer to
45 a trustee or third person pursuant to a bona fide plan
46 for providing old-age, retirement, life, accident, or
47 health insurance or similar benefits for employees;

48 (5) Extra compensation provided by a premium rate
49 paid for certain hours worked by the employee in any
50 day or workweek because such hours are hours worked
51 in excess of eight in a day or in excess of the maximum
52 workweek applicable to such employee under subsection
53 (a) or in excess of the employee's normal working hours
54 or regular working hours, as the case may be;

55 (6) Extra compensation provided by a premium rate
56 paid for work by the employee on Saturdays, Sundays,
57 holidays or regular days of rest, or on the sixth or
58 seventh day of the workweek, where such premium rate
59 is not less than one and one-half times the rate
60 established in good faith for like work performed in
61 nonovertime hours on other days; or

62 (7) Extra compensation provided by a premium rate
63 paid to the employee, in pursuance of an applicable
64 employment contract or collective bargaining agree-
65 ment, for work outside of the hours established in good
66 faith by the contract or agreement as the basic, normal
67 or regular workweek where such premium rate is not
68 less than one and one-half times the rate established in
69 good faith by the contract or agreement for like work
70 performed during such workweek.

71 (c) No employer shall be deemed to have violated
72 subsection (a) by employing any employee for a work-
73 week in excess of the maximum workweek applicable
74 to such employee under subsection (a) if such employee
75 is employed pursuant to a bona fide individual contract,
76 or pursuant to an agreement made as a result of
77 collective bargaining by representatives of employees, if
78 the duties of such employee necessitate irregular hours
79 of work, and the contract or agreement (1) specifies a
80 regular rate of pay of not less than the minimum hourly
81 rate provided in section two and compensation at not
82 less than one and one-half times such rate for all hours
83 worked in excess of such maximum workweek, and (2)
84 provides a weekly guaranty of pay for not more than
85 sixty hours based on the rates so specified.

86 (d) No employer shall be deemed to have violated
87 subsection (a) by employing any employee for a work-
88 week in excess of the maximum workweek applicable
89 to such employee under such subsection if, pursuant to
90 an agreement or understanding arrived at between the
91 employer and the employee before performance of the
92 work, the amount paid to the employee for the number
93 of hours worked by him in such workweek in excess of
94 the maximum workweek applicable to such employee
95 under such subsection:

96 (1) In the case of an employee employed at piece rates,
97 is computed at piece rates not less than one and one-half
98 times the bona fide piece rates applicable to the same
99 work when performed during nonovertime hours; or

100 (2) In the case of an employee performing two or more
101 kinds of work for which different hourly or piece rates
102 have been established, is computed at rates not less than
103 one and one-half times such bona fide rates applicable
104 to the same work when performed during nonovertime
105 hours; or

106 (3) Is computed at a rate not less than one and one-
107 half times the rate established by such agreement or
108 understanding as the basic rate to be used in computing
109 overtime compensation thereunder: *Provided*, That the
110 rate so established shall be authorized by regulation by
111 the commissioner as being substantially equivalent to
112 the average hourly earnings of the employee, exclusive
113 of overtime premiums, in the particular work over a
114 representative period of time; and if (i) the employee's
115 average hourly earnings for the workweek exclusive of
116 payments described in subdivisions (1) through (7) of
117 subsection (b) are not less than the minimum hourly rate
118 required by applicable law, and (ii) extra overtime
119 compensation is properly computed and paid on other
120 forms of additional pay required to be included in
121 computing the regular rate.

122 (e) Extra compensation paid as described in subdivi-
123 sions (5), (6) and (7) of subsection (b) shall be creditable
124 toward overtime compensation payable pursuant to this
125 section.

126 (f) (1) Employees of county and municipal govern-
127 ments may receive, in accordance with this subsection
128 and in lieu of overtime compensation, compensatory
129 time off at a rate not less than one and one-half hours
130 for each hour of employment for which overtime is
131 required pursuant to this section.

132 (2) County and municipal governments may provide
133 compensatory time under subdivision (1) of this subsec-
134 tion, only pursuant to a written agreement arrived at
135 between the employer and employee before the perfor-

136 mance of the work, and recorded in the employer's
137 record of hours worked, and if the employee has not
138 accrued compensatory time in excess of the limit
139 prescribed in subdivision (3) of this subsection. Any
140 written agreement may be modified at the request of
141 either the employer or the employee, but under no
142 circumstances shall changes in the agreement deny an
143 employee compensatory time heretofore acquired.

144 (3) An employee may accrue up to four hundred
145 eighty hours of compensatory time if the employee's
146 work is a public safety activity, an emergency response
147 activity or a seasonal activity. An employee engaged in
148 other work for a county or municipal government may
149 accrue up to two hundred forty hours of compensatory
150 time. Any such employee who has accrued four hundred
151 eighty or two hundred forty hours of compensatory time,
152 as the case may be, shall for additional overtime hours
153 of work, be paid overtime compensation. If compensa-
154 tion is paid to an employee for accrued compensatory
155 time off, such compensation shall be paid at the regular
156 rate earned by the employee at the time the employee
157 receives such payment.

158 (4) An employee who has accrued compensatory time
159 off authorized to be provided under subdivision (1) of
160 this subsection shall, upon termination of employment,
161 be paid for the unused compensatory time at a rate of
162 compensation not less than:

163 (A) The average regular rate received by such
164 employee during the last three years of the employee's
165 employment; or

166 (B) The final regular rate received by such employee,
167 whichever is higher.

168 (5) An employee of a county or municipal government:

169 (A) Who has accrued compensatory time off autho-
170 rized to be provided under subdivision (1) of this
171 subsection; and

172 (B) Who has requested the use of such compensatory
173 time, shall be permitted by the employee's employer to
174 use such time within a reasonable time after making the

175 request if the use of the compensatory time does not
 176 unduly disrupt the operation of the public agency.
 177 Compensatory time must be used within one year from
 178 the time it was acquired.

179 (6) For purposes of this subsection the terms "compen-
 180 satory time" and "compensatory time off" mean hours
 181 during which an employee is not working, which are not
 182 counted as hours worked during the applicable work-
 183 week or other work period for purposes of overtime
 184 compensation, and for which the employee is compen-
 185 sated at the employee's regular rate.

CHAPTER 119

(H. B. 4043—By Mr. Speaker, Mr. Chambers, and Delegate Damron)

[Passed January 10, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article two, chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to apportionment of membership of the House of Delegates; making technical corrections to delegate districts to reflect the intent of the Legislature in its original reenactment of this section in one thousand nine hundred ninety-one.

Be it enacted by the Legislature of West Virginia:

That section two, article two, chapter 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. APPORTIONMENT OF REPRESENTATION.

§1-2-2. Apportionment of membership of House of Delegates.

- 1 (a) This section shall be known and may be cited as
- 2 "The House of Delegates Apportionment Act of 1991."
- 3 (b) As used in this section:
- 4 (1) "County" means the territory comprising a county

5 of this state as it existed on the first day of January,
6 one thousand nine hundred eighty, notwithstanding any
7 boundary changes made subsequent thereto;

8 (2) "Block," "block group," "census tract," "place" and
9 "voting district" mean those geographic areas as defined
10 by the bureau of the census of the United States
11 department of commerce for the taking of the one
12 thousand nine hundred ninety census of population and
13 described on census maps prepared by the bureau of the
14 census. Such maps are, at the time of this enactment,
15 maintained by the bureau of the census and filed in the
16 office of legislative services;

17 (3) "Magisterial district" means the territory compris-
18 ing a magisterial district of this state as reported to and
19 used by the bureau of the census of the United States
20 department of commerce for the taking of the one
21 thousand nine hundred ninety census of population and
22 described on census maps prepared by the bureau of the
23 census;

24 (c) The House of Delegates shall be composed of one
25 hundred members elected from the delegate districts
26 hereinafter described:

27 (1) The county of Hancock and Block 101, Block 102,
28 Block 103, Block 104, Block 105, Block 106, Block 107,
29 Block 108, Block 110, Block 111, Block 125, Block 126,
30 Block 131 and Block 132 of Block Group 1 in Census
31 Tract 0301 contained in voting district EP 26, Block
32 101, Block 102, Block 103, Block 104, Block 105, Block
33 106, Block 107, Block 108, Block 111, Block 114 and
34 Block 115 of Block Group 1 in Census Tract 0302
35 contained in voting district EP 26, Block 202, Block 203,
36 Block 204, Block 205 and Block 206 of Block Group 2
37 in Census Tract 0302 contained in voting district EP 26,
38 and Block 109, Block 112, Block 113, Block 114, Block
39 115, Block 119, Block 120, Block 121, Block 122 and
40 Block 130 of Block Group 1 in Census Tract 0301
41 contained in voting district EP 34B of the Weirton
42 magisterial district in the county of Brooke shall
43 constitute the first delegate district and shall elect two
44 delegates;

45 (2) That portion of Brooke county not included in the
46 first delegate district, voting district EP 12, voting
47 district EP 13, voting district EP 142, voting district EP
48 146, voting district EP 147, voting district EP 158,
49 voting district EP 159, voting district EP 160, voting
50 district EP 161, and Block 101A, Block 101B, Block
51 101C, Block 102, Block 103, Block 104, Block 105A,
52 Block 105B, Block 106A, Block 106B, Block 107, Block
53 108A, Block 108B, Block 109A, Block 109B, Block 110A,
54 Block 110B, Block 111A, Block 111B, Block 112, Block
55 113A, Block 113B, Block 114, Block 115A, Block 115B
56 and Block 118 of Block Group 1 in Census Tract 0020
57 contained in voting district EP 14, and Block 315A,
58 Block 315C, Block 316A and Block 316C of Block Group
59 3 in Census Tract 0020 contained in voting district EP
60 14 of the District One magisterial district of Ohio county
61 and voting district EP 134, voting district EP 135,
62 voting district EP 138, voting district EP 141, Block
63 319, Block 320, Block 321, Block 322 and Block 335 of
64 Block Group 3 in Census Tract 0018 contained in voting
65 district EP 137, and Block 413, Block 424, Block 428,
66 Block 429, Block 430, Block 431, Block 432 and Block
67 433 of Block Group 4 in Census Tract 0018 contained
68 in voting district EP 137, and Block 504A of Block
69 Group 5 in Census Tract 0018 contained in voting
70 district EP 137, and Block 601A, Block 602A, Block
71 603A, Block 607A, Block 610, Block 611, Block 612 and
72 Block 613 of Block Group 6 in Census Tract 0018
73 contained in voting district EP 137, and Block 701A of
74 Block Group 7 in Census Tract 0018 contained in voting
75 district EP 137 of the District Three magisterial district
76 of Ohio county shall constitute the second delegate
77 district and shall elect two delegates;

78 (3) That portion of Ohio county not included in the
79 second delegate district, except Block 206, Block 216,
80 Block 217, Block 218, Block 220, Block 221, Block 222
81 and Block 299 of Block Group 2 in Census Tract 0025
82 contained in voting district EP 100 of magisterial
83 District Three of Ohio county shall constitute the third
84 delegate district and shall elect two delegates;

85 (4) The county of Marshall and Block 206, Block 216,

86 Block 217, Block 218, Block 220, Block 221, Block 222
87 and Block 299 of Block Group 2 in Census Tract 0025
88 contained in voting district EP 100 of magisterial
89 District Three of Ohio county shall constitute the fourth
90 delegate district and shall elect two delegates;

91 (5) The county of Wetzel except for voting district EP
92 37 and voting district EP 38 of magisterial District Two
93 shall constitute the fifth delegate district and shall elect
94 one delegate;

95 (6) The counties of Doddridge and Tyler and voting
96 district EP 37 and voting district EP 38 of magisterial
97 District Two of Wetzel county shall constitute the sixth
98 delegate district and shall elect one delegate;

99 (7) The counties of Pleasants and Ritchie and voting
100 district EP 27 and voting district EP 31 of the DeKalb-
101 Troy magisterial district of Gilmer county shall consti-
102 tute the seventh delegate district and shall elect one
103 delegate;

104 (8) All of the Union magisterial district, all of the
105 Walker magisterial district, voting district EP 56A, that
106 portion of voting district EP 56 and voting district EP
107 58 of the Clay magisterial district, voting district EP 40
108 and voting district EP 36C of the Parkersburg magis-
109 terial district, and Block 101A, Block 102, Block 103,
110 Block 104, Block 106B, Block 107, Block 108, Block 109,
111 Block 110, Block 111, Block 112, Block 113, Block 114,
112 Block 115, Block 116, Block 117, Block 118, Block 119A
113 of Block Group 1 in Census Tract 0104 contained in
114 voting district EP 46, voting district EP 47, voting
115 district EP 48, voting district EP 49, voting district EP
116 49A, voting district EP 50, voting district EP 51, voting
117 district EP 51A and voting district EP 52 of the
118 Williams magisterial district of Wood county shall
119 constitute the eighth delegate district and shall elect one
120 delegate;

121 (9) The county of Wirt and all of the Steele magiste-
122 rial district, all of the Slate magisterial district, that
123 portion of voting district EP 81 in the Tygart magiste-
124 rial district, that portion of voting district EP 81 and
125 voting district EP 82 of the Harris magisterial district,

126 voting district EP 57 and voting district EP 57A of the
127 Clay magisterial district, and voting district EP 27,
128 voting district EP 37A, voting district EP 37C, voting
129 district EP 37D and voting district EP 38 of the
130 Parkersburg magisterial district of Wood county shall
131 constitute the ninth delegate district and shall elect one
132 delegate;

133 (10) That portion of Wood county not included in the
134 eighth or ninth delegate district shall constitute the
135 tenth delegate district and shall elect three delegates;

136 (11) The county of Roane and voting district EP 23
137 of the Ripley magisterial district and all of the Washing-
138 ton magisterial district of Jackson county shall consti-
139 tute the eleventh delegate district and shall elect one
140 delegate;

141 (12) All of the Grant magisterial district of Jackson
142 county, and that portion of voting district EP 5, voting
143 district EP 6, voting district EP 10, voting district EP
144 11, voting district EP 12 and the place of the city of
145 Ravenswood in the Ravenswood magisterial district of
146 Jackson county, and voting district EP 21, voting
147 district EP 22, voting district EP 24, voting district EP
148 25, voting district EP 26, voting district EP 28, voting
149 district EP 29, voting district EP 33 and the place of
150 the city of Ripley in the Ripley magisterial district of
151 Jackson county shall constitute the twelfth delegate
152 district and shall elect one delegate;

153 (13) All of the Union magisterial district and voting
154 district EP 13 and voting district EP 14 of the
155 Ravenswood magisterial district of Jackson county, and
156 all of the Cologne magisterial district, all of the Copper
157 magisterial district, all of the Graham magisterial
158 district, all of the Union magisterial district, all of the
159 Waggener magisterial district and voting district EP 1,
160 voting district EP 10 and voting district EP 12 of the
161 Robinson magisterial district of Mason county, and all
162 of the Buffalo-Union magisterial district, all of the
163 Pocatlico magisterial district, and voting district EP
164 27, voting district EP 28 of the Scott magisterial district
165 and that portion of voting district EP 28 in the Teays

166 magisterial district of Putnam county shall constitute
167 the thirteenth delegate district and shall elect two
168 delegates;

169 (14) That portion of Mason county not in the thir-
170 teenth delegate district and that portion of Putnam
171 county not in the thirteenth delegate district shall
172 constitute the fourteenth delegate district and shall elect
173 two delegates;

174 (15) That portion of voting district EP 29, voting
175 district EP 46, that portion of voting district EP 47 and
176 voting district EP 48 of the District One magisterial
177 district, voting district EP 13, that portion of voting
178 district EP 19, voting district EP 26, voting district EP
179 27, voting district EP 28, that portion of voting district
180 EP 29, voting district EP 30, voting district EP 31,
181 voting district EP 32, voting district EP 33, voting
182 district EP 34, voting district EP 38, voting district EP
183 39, that portion of voting district EP 40, that portion of
184 voting district EP 42, voting district EP 43 and voting
185 district EP 45 of the District Two magisterial district,
186 voting district EP 14, voting district EP 15, voting
187 district EP 16, voting district EP 17, voting district EP
188 18, that portion of voting district EP 19, voting district
189 EP 20, voting district EP 21, voting district EP 22,
190 voting district EP 23, that portion of voting district EP
191 24, that portion of voting district EP 40, voting district
192 EP 41 and that portion of voting district EP 42 of the
193 District Three magisterial district, that portion of
194 voting district EP 24, that portion of voting district EP
195 47, that portion of Census Tract 0103, Block 199F of
196 Block Group 1 in Census Tract 0104, Block 405A, Block
197 410, Block 411, Block 412, Block 414C, Block 417, Block
198 499B, Block 499H and Block 499K of Block Group 4 in
199 Census Tract 0104, and Block 502A, Block 502B and
200 Block 503A of Block Group 5 in Census Tract 0104 of
201 the District Four magisterial district, and that portion
202 of Census Tract 0103, that portion of Census Tract 0104,
203 Block 401 and Block 402 of Block Group 4 in Census
204 Tract 0105, Block Group 1, Block Group 2, Block Group
205 3, Block 401 and Block 411 of Block Group 4, and Block
206 501, Block 511, Block 512, Block 513, Block 514, Block

207 522, Block 523, Block 531 and Block 532 of Block Group
208 5 in Census Tract 0106, Block 116, Block 117, Block 118,
209 Block 119, Block 120, Block 121, Block 132, Block 133A
210 and Block 133B of Block Group 1, Block Group 2, Block
211 Group 3, Block Group 4 and Block Group 5 in Census
212 Tract 0107, and Census Tract 0108 of the District Five
213 magisterial district of Cabell county and all of the
214 Carroll magisterial district of Lincoln county shall
215 constitute the fifteenth delegate district and shall elect
216 three delegates;

217 (16) That portion of Cabell county not included in the
218 fifteenth delegate district and voting district EP 59,
219 voting district EP 60, voting district EP 61 and voting
220 district EP 63 of the Westmoreland magisterial district
221 and that portion of voting district EP 59 in the Ceredo
222 magisterial district of Wayne county shall constitute the
223 sixteenth delegate district and shall elect three
224 delegates;

225 (17) All of the Union magisterial district except
226 voting district EP 54 of Wayne county, and voting
227 district EP 26, voting district EP 30, voting district EP
228 36, voting district EP 37, voting district EP 41, voting
229 district EP 42 and voting district EP 45 of the Stonewall
230 magisterial district of Wayne county, and voting district
231 EP 56, voting district EP 57, voting district EP 58,
232 voting district EP 62, that portion of voting district EP
233 14, and that portion of voting district EP 19 of the
234 Westmoreland magisterial district of Wayne county, and
235 voting district EP 22 of the Butler magisterial district
236 of Wayne county shall constitute the seventeenth
237 delegate district and shall elect one delegate;

238 (18) That portion of Wayne county not in the sixteenth
239 or seventeenth delegate district shall constitute the
240 eighteenth delegate district and shall elect one delegate;

241 (19) The county of Mingo and voting district EP 43
242 of the West magisterial district of Logan county shall
243 constitute the nineteenth delegate district and shall elect
244 two delegates;

245 (20) All of the county of Logan except voting district
246 EP 43 of the West magisterial district and all of the

247 county of Lincoln except the Carroll magisterial district
248 and voting district EP 1, that portion of voting district
249 EP 2, voting district EP 3, voting district EP 7, voting
250 district EP 15, voting district EP 16, voting district EP
251 17 and voting district EP 18 of the District Three
252 magisterial district and that portion of voting district
253 EP 2, voting district EP 5 and voting district EP 9 of
254 the District Two magisterial district of Boone county
255 shall constitute the twentieth delegate district and shall
256 elect four delegates: *Provided*, That not more than three
257 delegates may be nominated, elected or appointed who
258 are residents of any single county within the twentieth
259 delegate district;

260 (21) That portion of Boone county not included in the
261 twentieth delegate district shall constitute the twenty-
262 first delegate district and shall elect one delegate;

263 (22) The county of McDowell shall constitute the
264 twenty-second delegate district and shall elect two
265 delegates;

266 (23) The county of Wyoming and voting district EP
267 3 and voting district EP 5 of magisterial District I, and
268 Block 201, Block 202 and Block 204B of Block Group
269 2 in Census Tract 9518 contained in voting district EP
270 96 and that portion of Census Tract 9517 contained in
271 voting district EP 96 of magisterial District II of
272 Mercer county, and voting district EP 41, voting district
273 EP 42, voting district EP 46, voting district EP 49,
274 voting district EP 51, voting district EP 55, voting
275 district EP 60, voting district EP 69 of magisterial
276 District III of Mercer county shall constitute the twenty-
277 third delegate district and shall elect two delegates;

278 (24) All of magisterial District I except voting district
279 EP 1, voting district EP 3 and voting district EP 5, and
280 voting district EP 79 of magisterial District II, and
281 voting district EP 61, voting district EP 63, voting
282 district EP 67 and voting district EP 68 of magisterial
283 District III of Mercer county shall constitute the twenty-
284 fourth delegate district and shall elect one delegate;

285 (25) That portion of Mercer county not included in the
286 twenty-third or twenty-fourth delegate district shall

287 constitute the twenty-fifth delegate district and shall
288 elect two delegates;

289 (26) The county of Monroe and voting district EP 1,
290 voting district EP 13, voting district EP 30, voting
291 district EP 31, voting district EP 32 and voting district
292 EP 33 of the Greenbrier River magisterial district of
293 Summers county shall constitute the twenty-sixth
294 delegate district and shall elect one delegate;

295 (27) The county of Raleigh except Block 101, Block
296 102, Block 103, Block 104, Block 106, Block 107, Block
297 108, Block 109, Block 137, Block 138, Block 142 and
298 Block 143 of Block Group 1 in Census Tract 0112
299 contained in voting district EP 61, and Block 301, Block
300 302, Block 303, Block 305, Block 330, Block 331, Block
301 332, Block 333, Block 334, Block 347, Block 348, Block
302 353 and Block 354 of Block Group 3 in Census Tract
303 0112 contained in voting district EP 61 in the District
304 Two magisterial district and that portion of Summers
305 county not included in the twenty-sixth delegate district
306 shall constitute the twenty-seventh delegate district and
307 shall elect five delegates: *Provided*, That not more than
308 four delegates may be nominated, elected or appointed
309 who are residents of any county within the twenty-
310 seventh delegate district;

311 (28) The county of Greenbrier except voting district
312 EP 54 in the Meadow Bluff magisterial district shall
313 constitute the twenty-eighth delegate district and shall
314 elect two delegates;

315 (29) All of the county of Fayette, voting district EP
316 54 in the Meadow Bluff magisterial district of Green-
317 brier county, voting district EP 131 and voting district
318 EP 132 in the District One magisterial district of
319 Kanawha county, voting district EP 25 in the Jefferson
320 magisterial district of Nicholas county, and Block 101,
321 Block 102, Block 103, Block 104, Block 106, Block 107,
322 Block 108, Block 109, Block 137, Block 138, Block 142
323 and Block 143 of Block Group 1 in Census Tract 0112
324 contained in voting district EP 61 and Block 301, Block
325 302, Block 303, Block 305, Block 330, Block 331, Block
326 332, Block 333, Block 334, Block 347, Block 348, Block

327 353 and Block 354 of Block Group 3 in Census Tract
328 0112 contained in voting district EP 61 in the District
329 Two magisterial district of Raleigh county shall
330 constitute the twenty-ninth delegate district and shall
331 elect three delegates;

332 (30) That portion of magisterial District One not
333 included in the twenty-ninth delegate district, all of the
334 magisterial District Two, voting district EP 307, voting
335 district EP 310, voting district EP 312, voting district
336 EP 313, voting district EP 314, voting district EP 350,
337 voting district EP 352, voting district EP 353, voting
338 district EP 355, voting district EP 356, that portion of
339 voting district EP 357, voting district EP 360, voting
340 district EP 379 and that portion of Block Group 1 in
341 Census Tract 0132 contained in voting district EP 311,
342 Block 201, Block 206, Block 207 and Block 208 of Block
343 Group 2 in Census Tract 0132 contained in voting
344 district EP 311, that portion of Block Group 3 in Census
345 Tract 0132 contained in voting district EP 311, Block
346 101, Block 102B, Block 120, Block 121, Block 122, Block
347 123, Block 124, Block 125, Block 126, Block 127, Block
348 128, Block 129, Block 130, Block 131, Block 132, Block
349 133, Block 134, Block 140, Block 141, Block 142, Block
350 143 and Block 199B of Block Group 1 in Census Tract
351 0134 contained in voting district EP 311 of magisterial
352 District Three, voting district EP 412, voting district
353 EP 414, voting district EP 444, voting district EP 447,
354 voting district EP 448, voting district EP 449, voting
355 district EP 450, voting district EP 453, voting district
356 EP 454, voting district EP 455, voting district EP 459,
357 voting district EP 462, voting district EP 463, that
358 portion of voting district EP 311, that portion of voting
359 district EP 350, that portion of voting district EP 355,
360 that portion of voting district EP 360 and that portion
361 of voting district EP 504 of the magisterial District
362 Four, voting district EP 501, voting district EP 502,
363 that portion of voting district EP 504, voting district EP
364 508, voting district EP 509, voting district EP 510,
365 voting district EP 513, voting district EP 515, voting
366 district EP 526, voting district EP 527, voting district
367 EP 528, voting district EP 529, voting district EP 542,
368 voting district EP 546, voting district EP 547, voting

369 district EP 549, voting district EP 553, voting district
370 EP 573, Block 201, Block 202, Block 203, Block 204,
371 Block 205, Block 206, Block 207, Block 208, Block 209,
372 Block 210, Block 211, Block 212, Block 213, Block 214
373 and Block 215 of Block Group 2 in Census Tract 0005
374 contained in voting district EP 541, Block 304 of Block
375 Group 3 in Census Tract 0005 contained in voting
376 district EP 541, Block 305 of Block Group 3 in Census
377 Tract 0011 contained in voting district EP 541, that
378 portion of Census Tract 0110 contained in voting district
379 EP 541, Block 501A and Block 504 of Block Group 5
380 in Census Tract 0011 contained in voting district EP 572
381 of magisterial District Five and voting district EP 617,
382 voting district EP 620, voting district EP 641, voting
383 district EP 642, voting district EP 644 and voting
384 district EP 653 of magisterial District Six of Kanawha
385 county shall constitute the thirtieth delegate district and
386 shall elect seven delegates;

387 (31) That portion of magisterial District Five of
388 Kanawha county not included in the thirtieth delegate
389 district shall constitute the thirty-first delegate district
390 and shall elect one delegate;

391 (32) That portion of Kanawha county not included in
392 the twenty-ninth, thirtieth or thirty-first delegate
393 district shall constitute the thirty-second delegate
394 district and shall elect four delegates;

395 (33) The counties of Calhoun and Clay and voting
396 district EP 12 and voting district EP 13 of the DeKalb-
397 Troy magisterial district of Gilmer county shall consti-
398 tute the thirty-third delegate district and shall elect one
399 delegate;

400 (34) The county of Braxton and the Center magisterial
401 district, the City magisterial district and the Glenville
402 magisterial district of Gilmer county shall constitute the
403 thirty-fourth delegate district and shall elect one
404 delegate;

405 (35) The Grant magisterial district, the Hamilton
406 magisterial district, the Summersville magisterial
407 district, the Wilderness magisterial district, voting
408 district EP 16 of the Beaver magisterial district, voting

409 district EP 24, voting district EP 26 and voting district
410 EP 27 of the Jefferson magisterial district, and voting
411 district EP 28, voting district EP 29 and voting district
412 EP 30 of the Kentucky magisterial district of Nicholas
413 county shall constitute the thirty-fifth delegate district
414 and shall elect one delegate;

415 (36) The county of Webster and that portion of
416 Nicholas county not included in the twenty-ninth or
417 thirty-fifth delegate district shall constitute the thirty-
418 sixth delegate district and shall elect one delegate;

419 (37) The counties of Pocahontas and Randolph shall
420 constitute the thirty-seventh delegate district and shall
421 elect two delegates;

422 (38) The county of Lewis and voting district EP 4 and
423 voting district EP 7 of the Banks magisterial district of
424 Upshur county shall constitute the thirty-eighth dele-
425 gate district and shall elect one delegate;

426 (39) The Buckhannon magisterial district, the Meade
427 magisterial district, the Washington magisterial dis-
428 trict, voting district VTD 10, voting district EP 35, that
429 portion of voting district EP 14 and that portion of
430 voting district EP 15 of the Union magisterial district
431 and voting district EP 6 of the Banks magisterial
432 district of Upshur county shall constitute the thirty-
433 ninth delegate district and shall elect one delegate;

434 (40) The county of Barbour and that portion of
435 Upshur county not included in the thirty-eighth or
436 thirty-ninth delegate district shall constitute the fortieth
437 delegate district and shall elect one delegate;

438 (41) The county of Harrison shall constitute the forty-
439 first delegate district and shall elect four delegates;

440 (42) The county of Taylor, voting district EP 125 of
441 the Palatine magisterial district of Marion county, and
442 voting district EP 62 of the Eastern magisterial district
443 of Monongalia county shall constitute the forty-second
444 delegate district and shall elect one delegate;

445 (43) That portion of Marion county not included in the
446 forty-second delegate district shall constitute the forty-

447 third delegate district and shall elect three delegates;

448 (44) That portion of Monongalia county not included
449 in the forty-second delegate district shall constitute the
450 forty-fourth delegate district and shall elect four
451 delegates;

452 (45) All of the Grant magisterial district, all of the
453 Kingwood magisterial district, all of the Pleasant
454 magisterial district, voting district EP 25 of the Reno
455 magisterial district, that portion of voting district EP
456 6, voting district EP 17, voting district EP 18 and voting
457 district EP 19 of the Portland magisterial district and
458 voting district EP 9, voting district EP 12, that portion
459 of Block Group 1 in Census Tract 9639 contained in
460 voting district EP 10, that portion of Block Group 4 in
461 Census Tract 9639 contained in voting district EP 10,
462 and Block 301, Block 302, Block 303, Block 304, Block
463 305B, Block 312B, Block 313, Block 314, Block 319,
464 Block 320, Block 321, Block 322, Block 323, Block 324,
465 Block 326, Block 337, Block 338 and Block 399 of Block
466 Group 3 in Census Tract 9639 contained in voting
467 district EP 10, and Block 331, Block 332, Block 333,
468 Block 334, Block 335, Block 336, Block 337, Block 338B,
469 Block 340B, Block 349, Block 350, Block 351, Block 352,
470 Block 353, Block 354, Block 355, Block 356, Block 357,
471 Block 358, Block 359, Block 360, Block 361, Block 362,
472 Block 363, Block 364, Block 365, Block 366, Block 367,
473 Block 368 and Block 399C of Block Group 3 in Census
474 Tract 9643 contained in voting district EP 11 of the
475 Valley magisterial district of Preston county shall
476 constitute the forty-fifth delegate district and shall elect
477 one delegate;

478 (46) The county of Tucker and that portion of Preston
479 county not included in the forty-fifth delegate district
480 shall constitute the forty-sixth delegate district and shall
481 elect one delegate;

482 (47) The county of Hardy and all of the county of
483 Pendleton except voting district EP 13 of the Union
484 magisterial district shall constitute the forty-seventh
485 delegate district and shall elect one delegate;

486 (48) The county of Grant and voting district EP 1,

487 voting district EP 2, voting district EP 3, voting district
488 EP 6, voting district EP 8, voting district EP 27, voting
489 district EP 28, voting district EP 29, voting district EP
490 30, voting district EP 31, voting district EP 34 and
491 voting district EP 35 of magisterial District One of
492 Mineral county, and voting district EP 13 of the Union
493 magisterial district of Pendleton county shall constitute
494 the forty-eighth delegate district and shall elect one
495 delegate;

496 (49) All of magisterial District Two, voting district
497 EP 4 and voting district EP 5 of magisterial District
498 One, and that portion of voting district EP 5, voting
499 district EP 7, voting district EP 10, voting district EP
500 12, voting district EP 13, voting district EP 14 and
501 voting district EP 15 of magisterial District Three of
502 Mineral county shall constitute the forty-ninth delegate
503 district and shall elect one delegate;

504 (50) The county of Hampshire and that portion of
505 Mineral county not included in the forty-eighth or forty-
506 ninth delegate district shall constitute the fiftieth
507 delegate district and shall elect one delegate;

508 (51) The county of Morgan and voting district EP 40,
509 voting district EP 41 and voting district EP 42 of the
510 Hedgesville magisterial district of Berkeley county shall
511 constitute the fifty-first delegate district and shall elect
512 one delegate;

513 (52) All of the Martinsburg magisterial district, that
514 portion of voting district EP 2, voting district EP 2A,
515 that portion of voting district EP 5, voting district EP
516 9, voting district EP 11, voting district EP 12, voting
517 district EP 13 and that portion of voting district EP 22
518 of the Arden magisterial district, voting district EP 10,
519 voting district EP 38, voting district EP 39 and voting
520 district VTD 99 of the Hedgesville magisterial district,
521 and voting district EP 15 and voting district EP 17A
522 of the Opequon magisterial district of Berkeley county
523 shall constitute the fifty-second delegate district and
524 shall elect one delegate;

525 (53) All of the Gerrardstown magisterial district, all
526 of the Mill Creek magisterial district and voting district

527 EP 29, voting district EP 31, voting district EP 34,
528 voting district EP 35 and Block 119, Block 127, Block
529 128, Block 130, Block 134, Block 135, Block 136, Block
530 137, Block 138, Block 139, Block 140, Block 141, Block
531 142 and Block 143 of Block Group 1 in Census Tract
532 9720 contained in voting district EP 25 of the Arden
533 magisterial district of Berkeley county shall constitute
534 the fifty-third delegate district and shall elect one
535 delegate;

536 (54) That portion of Berkeley county not included in
537 the fifty-first, fifty-second or fifty-third delegate district
538 shall constitute the fifty-fourth delegate district and
539 shall elect one delegate;

540 (55) All of the Middleway magisterial district, all of
541 the Shepherdstown magisterial district, voting district
542 EP 22 of the Kabletown magisterial district and voting
543 district EP 13 of the Harpers Ferry magisterial district
544 of Jefferson county shall constitute the fifty-fifth
545 delegate district and shall elect one delegate; and

546 (56) That portion of Jefferson county not included in
547 the fifty-fifth delegate district shall constitute the fifty-
548 sixth delegate district and shall elect one delegate.

549 (d) Regardless of the changes in delegate district
550 boundaries made by the provisions of subsection (c) of
551 this section, the delegates elected at the general election
552 held in the year one thousand nine hundred ninety shall
553 continue to hold their offices as members of the House
554 of Delegates for the term, and as representatives of the
555 county or delegate district, for which each thereof,
556 respectively, was elected. Any appointment made prior
557 to the first day of December, one thousand nine hundred
558 ninety-two, to fill a vacancy in the office of a member
559 of the House of Delegates shall be made for the
560 remainder of the term, and as representative of the
561 county or delegate district, for which the vacating
562 delegate was elected or appointed.

563 (e) In amending and reenacting this section, it is not
564 the intention of the Legislature to alter or change the
565 arrangement of the delegate districts and the apportion-
566 ment of delegates as they were intended to be adopted

567 in the prior enactment of this section subsequent to the
568 United States census for the year one thousand nine
569 hundred ninety. Rather, it is the intent of the Legisla-
570 ture in amending this section to have the language
571 comport with the maps relied upon by the Legislature
572 and the map attached to Enrolled House Bill 301 (1991
573 third extraordinary session) and to correct certain other
574 technical errors, such amendments being necessary to
575 reflect the intention of the Legislature at the time of its
576 initial reenactment of this section after the census.

CHAPTER 120

(Com. Sub. for H. B. 4655—By Mr. Speaker, Mr. Chambers,
and Delegate J. Martin)

[Passed March 7, 1992; 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 three-c, relating to restructuring and reorganizing joint legislative agencies, personnel and services; creation of divisions; and placing the operation of the divisions, joint agencies, personnel and services under the direction and policies of 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 three-c, to read as follows:

ARTICLE 3. JOINT COMMITTEE ON GOVERNMENT AND FINANCE.

§4-3-3c. Reorganization of joint legislative agencies.

- 1 (a) The joint committee on government and finance
- 2 has the authority over and direction of joint legislative
- 3 agencies, personnel and services, including, but not
- 4 limited to, the following:

5 (1) The commission on special investigations provided
6 for in article five, chapter four of this code;

7 (2) The court of claims provided for in article two and
8 crime victims compensation provided for in article two-
9 a, chapter fourteen of this code;

10 (3) The legislative auditor provided for in article two,
11 chapter four of this code;

12 (4) The legislative rule-making review committee
13 provided for in article three, chapter twenty-nine-a of
14 this code;

15 (5) The legislative reference library provided for in
16 section three of this article;

17 (6) The legislative automated systems division;

18 (7) Legislative services;

19 (8) Public information; and

20 (9) Joint services provided by one or more of the joint
21 agencies set forth in this subsection. The following joint
22 services are included:

23 (A) Bill drafting;

24 (B) Budget analysis;

25 (C) Duplicating;

26 (D) Financial, payroll, personnel and purchasing for
27 joint agencies and personnel;

28 (E) Fiscal analysis;

29 (F) Post audits and performance audits;

30 (G) Research; and

31 (H) Joint services to other joint legislative committees
32 created and authorized by this code, to joint standing
33 committees of the Senate and House of Delegates, to
34 standing committees of the Senate and House of
35 Delegates and to legislative interim committees.

36 (b) Notwithstanding any other provision of this
37 chapter to the contrary, the joint committee on govern-
38 ment and finance has the authority to reorganize and

89 restructure the joint legislative agencies, personnel and
90 services as provided in subsection (a) of this section for
91 the purposes of improving their efficiency and the
92 service they provide to the Legislature and to improve
93 the management thereof by the joint committee. To
94 accomplish these purposes, the joint committee may
95 create divisions as it determines necessary and transfer
96 and assign the joint agencies, personnel and services to
97 the divisions. The divisions, joint agencies, personnel
98 and services shall operate under the direction and
99 policies of the joint committee: *Provided*, That nothing
100 in this section shall be construed to permit the joint
101 committee to alter or redefine the powers, duties and
102 responsibilities vested in the commission on special
103 investigations pursuant to article five of this chapter.

CHAPTER 121

(Com. Sub. for S. B. 48—By Senators J. Manchin, Hawse, Felton,
Chernenko and Dittmar)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article five, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-six, article seven of said chapter, relating to littering and criminal penalties therefor; presumption; responsibility for animals; alternative sentences and courts authorized to impose them; verification of compliance with alternative sentence; penalties for failure to comply with alternative sentence; requirement that litter control fund be appropriated; and requirement that commissioner of highways place signs informing persons of maximum penalties for littering.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article five, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section twenty-

six, article seven of said chapter be amended and reenacted to read as follows:

Article

5. **Water Resources.**

7. **Law Enforcement, Motorboating, Litter.**

ARTICLE 5. WATER RESOURCES.

§20-5-15. Litter along streams, criminal penalties, enforcement.

1 (a) It shall be unlawful to place, deposit, dump or
2 throw, or cause to be placed, deposited, dumped or
3 thrown, any litter as defined in section twenty-four,
4 article seven of this chapter and also any garbage,
5 refuse, trash, can, bottle, paper, ashes, carcass of any
6 dead animal or any part thereof, offal or any other
7 offensive or unsightly matter into any river, stream,
8 creek, branch, brook, lake or pond, or upon the surface
9 of any land within one hundred yards thereof, or in such
10 location that high water or normal drainage conditions
11 will cause any such materials or substances to be
12 washed into any river, stream, creek, branch, brook,
13 lake or pond.

14 (b) No portion of this section shall be construed to
15 restrict an owner, renter or lessee in the use of his own
16 private property or rented or leased property or to
17 prohibit the disposal of any industrial and other wastes
18 into waters of this state in a manner consistent with the
19 provisions of article five-a of this chapter. But if any
20 owner, renter or lessee, private or otherwise, knowingly
21 permits any such materials or substances to be placed,
22 deposited, dumped or thrown in such location that high
23 water or normal drainage conditions will cause any such
24 materials or substances to wash into any river, stream,
25 creek, branch, brook, lake or pond, it shall be deemed
26 prima facie evidence that such owner, renter or lessee
27 intended to violate the provisions of this section:
28 *Provided*, That if a landowner, renter or lessee, private
29 or otherwise, reports any such placing, depositing,
30 dumping or throwing of any such substances or mate-
31 rials upon his or her property to the prosecuting
32 attorney, county commission, or the division of natural

33 resources, then the landowner, renter or lessee will be
34 presumed to not have knowingly permitted such
35 placing, depositing, dumping or throwing of such
36 materials or substances.

37 (c) In addition to enforcement by the director, the
38 chief of the division of water resources, and the
39 division's chief law-enforcement officer, the provisions of
40 this section may be enforced by all other proper law-
41 enforcement agencies.

42 (d) (1) Any person violating any provision of this
43 section shall be guilty of a misdemeanor, and, upon his
44 or her first conviction, shall be fined not less than fifty
45 nor more than five hundred dollars. At the request of
46 the defendant or in the discretion of the court, the court
47 may sentence the defendant to pick up and remove from
48 any area of a bank of any river, stream, creek, branch,
49 brook, lake or pond, or other property with prior
50 permission of the owner, the area to be specified by the
51 court, any and all litter, garbage, refuse, trash, cans,
52 bottles, papers, ashes, carcass of any dead animal or any
53 part thereof, offal or any other offensive or unsightly
54 matter placed, deposited, dumped or thrown contrary to
55 the provisions of this section by anyone prior to the date
56 of such conviction. For the first offense, the alternative
57 sentence of litter pickup shall be not less than eight
58 hours nor more than sixteen hours in lieu of a fine. For
59 purposes of this subdivision, the term "court" shall
60 include circuit, magistrate and municipal courts.

61 (2) Upon his or her second conviction, such person
62 shall be fined not less than two hundred fifty dollars nor
63 more than one thousand dollars and imprisoned in the
64 county jail not less than twenty-four hours nor more
65 than six months. At the request of the defendant or in
66 the discretion of the court, the court may sentence the
67 defendant to pick up and remove from any area of a
68 bank of any river, stream, creek, branch, brook, lake or
69 pond, or other property with prior permission of the
70 owner, the area to be specified by the court, any and all
71 litter, garbage, refuse, trash, cans, bottles, papers,
72 ashes, carcass of any dead animal or any part thereof,
73 offal or any other offensive or unsightly matter placed.

74 deposited, dumped or thrown contrary to the provisions
75 of this section by anyone prior to the date of such
76 conviction. For the second offense, the alternative
77 sentence of litter pickup shall be not less than sixteen
78 hours nor more than thirty-two hours in lieu of such fine
79 or incarceration, but not both. For purposes of this
80 subdivision, the term "court" shall include circuit and
81 magistrate courts.

82 (3) Upon such person's third and successive convic-
83 tion, he or she shall be fined not less than five hundred
84 dollars nor more than two thousand dollars and impris-
85 oned in the county jail not less than forty-eight hours
86 nor more than one year. At the request of the defendant
87 or in the discretion of the court, the court may sentence
88 the defendant to pick up and remove from any area of
89 a bank of any river, stream, creek, branch, brook, lake
90 or pond, or other property with prior permission of the
91 owner, the area to be specified by the court, any and all
92 litter, garbage, refuse, trash, cans, bottles, papers,
93 ashes, carcass of any dead animal or any part thereof,
94 offal or any other offensive or unsightly matter placed,
95 deposited, dumped or thrown contrary to the provisions
96 of this section by anyone prior to the date of such
97 conviction. Upon a third conviction the alternative
98 sentence of litter pickup shall be not less than thirty-
99 two hours nor more than sixty-four hours in lieu of such
100 fine or incarceration, but not both. For purposes of this
101 subdivision, the term "court" shall include circuit and
102 magistrate courts.

103 (4) The alternative sentence of litter pickup herein set
104 forth shall be verified by the conservation officers or
105 environmental inspectors from the division of natural
106 resources, office of environmental enforcement or a
107 regional engineering technician from the division of
108 natural resources, pollution prevention and open dumps
109 program (PPOD) of the county in which the offense
110 occurred. Any defendant receiving the herein specified
111 alternative sentence of litter pickup shall provide within
112 a time to be set by the court written acknowledgement
113 from said conservation officers or environmental officers
114 that the sentence has been completed.

115 (5) Any person who has been found by the court to
116 have willfully failed to comply with the terms of an
117 alternative sentence imposed by the court pursuant to
118 this section shall be subject at the discretion of the court
119 to up to twice the original penalty provisions available
120 to the court at the time of conviction.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

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

1 (a) (1) Any person who places, deposits, dumps or
2 throws or causes to be placed, deposited, dumped or
3 thrown any litter as defined in section twenty-four of
4 this article, in or upon any public or private highway,
5 road, street or alley, or upon any private property
6 without the consent of the owner, or in or upon any
7 public park or other public property other than in such
8 place as may be set aside for such purpose by the
9 governing body having charge thereof, is guilty of a
10 misdemeanor, and, upon his or her first conviction, shall
11 be fined not less than fifty dollars nor more than five
12 hundred dollars: *Provided*, That a person shall not be
13 held responsible for the actions of animals under their
14 direct control. At the request of the defendant or in the
15 discretion of the court, the court may sentence the
16 defendant to pick up and remove from any public
17 highway, road, street, alley or any other public park or
18 public property as designated by the court, any and all
19 litter, garbage, refuse, trash, cans, bottles, papers,
20 ashes, carcass of any dead animal or any part thereof,
21 offal or any other offensive or unsightly matter placed,
22 deposited, dumped or thrown contrary to the provisions
23 of this section by anyone prior to the date of such
24 conviction. For the first offense, the alternative sentence
25 of litter pickup shall be not less than eight hours nor
26 more than sixteen hours in lieu of other such fine. For
27 purposes of this subdivision, the term "court" shall
28 include circuit, magistrate and municipal courts.

29 (2) Upon his or her second conviction, such person

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

51 (3) Upon such person's third and successive convic-
52 tion, he or she shall be fined not less than five hundred
53 dollars nor more than two thousand dollars and impri-
54 soned in the county jail not less than forty-eight hours
55 nor more than one year: *Provided*, That a person shall
56 not be held responsible for the actions of animals under
57 their direct control. At the request of the defendant or
58 in the discretion of the court, the court may sentence the
59 defendant to pick up and remove from any public
60 highway, road, street, alley or any other public park or
61 public property as designated by the court, any and all
62 litter, garbage, refuse, trash, cans, bottles, papers,
63 ashes, carcass of any dead animal or any part thereof,
64 offal or any other offensive or unsightly matter placed,
65 deposited, dumped or thrown contrary to the provisions
66 of this section by anyone prior to the date of such
67 conviction. Upon a third conviction, the alternative
68 sentence of litter pickup shall be not less than thirty-
69 two hours nor more than sixty-four hours in lieu of such
70 fine or incarceration, but not both. For purposes of this

71 subdivision, the term "court" shall include circuit and
72 magistrate courts.

73 (4) The alternative sentence of litter pickup herein set
74 forth shall be verified by the conservation officers or
75 environmental inspectors from the division of natural
76 resources, office of environmental enforcement or a
77 regional engineering technician from the division of
78 natural resources, pollution prevention and open dumps
79 program (PPOD) of the county in which the offense
80 occurred. Any defendant receiving the herein specified
81 alternative sentence of litter pickup shall provide within
82 a time to be set by the court written acknowledgement
83 from said conservation officers or environmental officers
84 that the sentence has been completed.

85 (5) Any person who has been found by the court to
86 have willfully failed to comply with the terms of an
87 alternative sentence imposed by the court pursuant to
88 this section shall be subject at the discretion of the court
89 to up to twice the original penalty provisions available
90 to the court at the time of conviction.

91 (6) If any litter be thrown or cast from a motor vehicle
92 or boat, such action is prima facie evidence that the
93 driver of such motor vehicle or boat intended to violate
94 the provisions of this section. If any litter be dumped
95 or discharged from a motor vehicle or boat, such action
96 is prima facie evidence that the owner and driver of
97 such motor vehicle or boat intended to violate the
98 provisions of this section.

99 (b) Any litter found on any public or private property
100 with any indication of ownership on it will be evidence
101 creating a rebuttable inference it was deposited improper-
102 ly by the person whose identity is indicated, and any
103 person who improperly disposes of litter shall be subject
104 to either a civil fine of up to five hundred dollars for
105 such litter or required to pay the costs of removal of
106 such litter if the removal of such litter is required to
107 be done by the division, at the discretion of the director.
108 All such fines and costs shall be deposited to the litter
109 control fund: *Provided*, That no inference shall be drawn
110 solely from the presence of any logo, trademark, trade

111 name or other similar mass reproduced identifying
112 character appearing on litter found.

113 (c) Every person who is convicted of or pleads guilty
114 to disposing of litter in violation of subsection (a) of this
115 section shall pay the sum of not less than fifty dollars
116 nor more than five hundred dollars as costs for clean-
117 up, investigation and prosecution in such case, in
118 addition to any other court costs that the court is
119 otherwise required by law to impose upon such con-
120 victed person.

121 The clerk of the circuit court, magistrate court or
122 municipal court wherein such additional costs are
123 imposed shall, on or before the last day of each month,
124 transmit all such costs received under this subsection to
125 the state treasurer for deposit in the state treasury to
126 the credit of a special revenue fund to be known as the
127 litter control fund which is hereby continued. Expendi-
128 tures for purposes set forth in this section are not
129 authorized from collections but are to be made only in
130 accordance with appropriation and in accordance with
131 the provisions of article three, chapter twelve of this
132 code and upon fulfillment of the provisions set forth in
133 article two, chapter five-a of this code: *Provided*, That
134 for the fiscal year ending the thirtieth day of June, one
135 thousand nine hundred ninety-three, expenditures shall
136 be authorized from collections. Amounts collected which
137 are found from time to time to exceed the funds needed
138 for the purposes set forth in this article may be
139 transferred to other accounts or funds and redesignated
140 for other purposes by appropriation of the Legislature.

141 (d) (1) The commissioner of motor vehicles, upon
142 registering a motor vehicle or issuing an operator's or
143 chauffeur's license, shall issue to the owner or licensee,
144 as the case may be, a copy of subsection (a) of this
145 section.

146 (2) The commissioner of highways shall cause appropri-
147 ate signs to be placed at the state boundary on each
148 primary and secondary road, and at other locations
149 throughout the state, informing those entering the state

150 of the maximum penalty provided for disposing of litter
151 in violation of subsection (a) of this section.

152 (e) Any state agency or political subdivision that owns,
153 operates or otherwise controls any public area as may
154 be designated by the director by rule promulgated
155 pursuant to subdivision (8), subsection (a), section
156 twenty-five of this article, shall procure and place litter
157 receptacles at his own expense upon his premises and
158 shall remove and dispose of litter collected in such litter
159 receptacles. After receiving two written warnings from
160 any law-enforcement officer or officers to comply with
161 this subsection or the said rules of the director, any
162 person who fails to place and maintain such litter
163 receptacles upon his or her premises in violation of this
164 subsection or the rules of the director shall be fined
165 fifteen dollars per day of such violation.

166 (f) No portion of this section shall be construed to
167 restrict a private owner in the use of his own private
168 property in any manner otherwise authorized by law.

169 (g) Any law-enforcement officer who shall observe a
170 person violating the provisions of this section shall have
171 a mandatory duty to arrest or otherwise prosecute the
172 violator to the limits provided herein. The West Virginia
173 division of highways shall investigate and cause to be
174 prosecuted violations of this section occurring upon the
175 highways of the state as the term "highways" is defined
176 in chapter seventeen of this code.

CHAPTER 122

(H. B. 4094—By Delegates Love and L. White)

[Passed February 27, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-six, article twenty-two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the state lottery commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. STATE LOTTERY ACT.

§29-22-26. Continuation of state lottery commission.

1 After having conducted a performance audit through
2 its joint committee on government operations, pursuant
3 to section nine, article ten, chapter four of this code, the
4 Legislature hereby finds and declares that the state
5 lottery commission should be continued and reestab-
6 lished. Accordingly, notwithstanding the provisions of
7 section four, article ten, chapter four of this code, the
8 state lottery commission shall continue to exist until the
9 first day of July, one thousand nine hundred ninety-
10 eight.

CHAPTER 123

(H. B. 4077—By Delegates Gallagher and Ashley)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four and fourteen, article one; section one, article two; sections two-a, four and six, article three; sections one, two, three, four, five, six, seven, nine and ten, article four; sections two, eight, ten, eleven and thirteen, article five; and section one, article six, all of chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to magistrate courts.

Be it enacted by the Legislature of West Virginia:

That sections four and fourteen, article one; section one, article two; sections two-a, four and six, article three; sections one, two, three, four, five, six, seven, nine and ten, article four;

sections two, eight, ten, eleven and thirteen, article five; and section one, article six, all of chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

Article

1. Courts and Officers.
2. Jurisdiction and Authority.
3. Costs, Fines and Records.
4. Procedure Before Trial.
5. Trials, Hearings and Appeals.
6. Enforcement of Civil Judgments.

ARTICLE 1. COURTS AND OFFICERS.

§50-1-4. Qualifications of magistrates; training; oath; continuing education, time devoted to public duties.

§50-1-14. Duties of sheriff; service of process; bailiff.

§50-1-4. Qualifications of magistrates; training; oath; continuing education; time devoted to public duties.

1 Each magistrate shall be at least twenty-one years of
2 age, shall have a high school education or its equivalent,
3 shall not have been convicted of any felony or any
4 misdemeanor involving moral turpitude and shall reside
5 in the county of his election. No magistrate shall be a
6 member of the immediate family of any other magis-
7 trate in the county. In the event more than one member
8 of an immediate family shall be elected in a county, only
9 the member receiving the highest number of votes shall
10 be eligible to serve. For purposes of this section,
11 immediate family means the relationship of mother,
12 father, sister, brother, child or spouse. Notwithstanding
13 the foregoing provisions of this section, each person who
14 held the office of justice of the peace on the fifth day
15 of November, one thousand nine hundred seventy-four,
16 and who served in or performed the functions of such
17 office for at least one year immediately prior thereto
18 shall be deemed qualified to run for the office of
19 magistrate in the county of his residence.

20 No person shall assume the duties of magistrate
21 unless he shall have first attended and completed a
22 course of instruction in rudimentary principles of law
23 and procedure which shall be given in accordance with

24 the supervisory rules of the supreme court of appeals.

25 All magistrates shall be required to attend such other
26 courses of continuing educational instruction as may be
27 required by supervisory rule of the supreme court of
28 appeals. Failure to attend such courses of continuing
29 educational instruction without good cause shall consti-
30 tute neglect of duty. Such courses shall be provided at
31 least once every other year. Persons attending such
32 courses outside of the county of their residence shall be
33 reimbursed by the state for expenses actually incurred
34 in accordance with the supervisory rules of the supreme
35 court of appeals.

36 Each magistrate shall, before assuming the duties of
37 office, take an oath of office to be administered by the
38 circuit judge of the county, or the chief judge thereof
39 if there is more than one judge of the circuit court. Each
40 magistrate shall maintain the qualifications for office at
41 all times.

42 Each magistrate who serves five thousand or less in
43 population shall devote such time to his public duties as
44 shall be required by rule or regulation of the judge of
45 the circuit court, or the chief judge thereof if there is
46 more than one judge of the circuit court. Each magis-
47 trate who serves more than five thousand in population
48 shall devote full time to his public duties. As nearly as
49 practicable, the workload and the total number of hours
50 required shall be divided evenly among the magistrates
51 in a county by such judge.

§50-1-14. Duties of sheriff; service of process; bailiff.

1 (a) It shall be the duty of each sheriff to execute all
2 civil and criminal process from any magistrate court
3 which may be directed to such sheriff. Process shall be
4 served in the same manner as provided by law for
5 process from circuit courts.

6 Subject to the supervision of the chief justice of the
7 supreme court of appeals or of the judge of the circuit
8 court, or the chief judge thereof if there is more than
9 one judge of the circuit court, it shall be the duty of the
10 sheriff, or his designated deputy, to serve as bailiff of

11 a magistrate court upon the request of the magistrate.
12 Such service shall also be subject to such administrative
13 rules as may be promulgated by the supreme court of
14 appeals. A writ of mandamus shall lie on behalf of a
15 magistrate to enforce the provisions of this section.

16 (b) The sheriff of any county may employ, by and with
17 the consent of the county commission, one or more
18 persons whose sole duties shall be the service of civil
19 process and the service of subpoenas and subpoenas
20 duces tecum. Any such person shall not be considered
21 a deputy or deputy sheriff within the meaning of
22 subdivision (2), subsection (a), section two, article
23 fourteen, chapter seven of this code, nor shall any such
24 person be authorized to carry deadly weapons in the
25 performance of his duties.

ARTICLE 2. JURISDICTION AND AUTHORITY.

§50-2-1. Civil jurisdiction.

1 Except as limited herein and in addition to jurisdic-
2 tion granted elsewhere to magistrate courts or justices
3 of the peace, magistrate courts shall have jurisdiction of
4 all civil actions wherein the value or amount in
5 controversy or the value of property sought, exclusive of
6 interest and cost, is not more than three thousand
7 dollars. Magistrate courts shall have jurisdiction of all
8 matters involving unlawful entry or detainer of real
9 property or involving wrongful occupation of residential
10 rental property, so long as the title to such property is
11 not in dispute. Except as the same may be in conflict
12 with the provisions of this chapter, the provisions of
13 article three, chapter fifty-five of this code, regarding
14 unlawful entry and detainer, shall apply to such actions
15 in magistrate court. Magistrate courts shall have
16 jurisdiction of actions on bonds given pursuant to the
17 provisions of this chapter. Magistrate courts shall have
18 continuing jurisdiction to entertain motions in regard to
19 post-judgment process issued from magistrate court and
20 decisions thereon may be appealed in the same manner
21 as judgments.

22 Magistrate courts shall not have jurisdiction of actions
23 in equity, of matters in eminent domain, of matters in

24 which the title to real estate is in issue, of proceedings
25 seeking satisfaction of liens through the sale of real
26 estate, of actions for false imprisonment, of actions for
27 malicious prosecution or of actions for slander or libel
28 or of any of the extraordinary remedies set forth in
29 chapter fifty-three of this code.

30 Magistrates, magistrate court clerks, magistrate
31 court deputy clerks, and magistrate assistants shall have
32 the authority to administer any oath or affirmation, to
33 take any affidavit or deposition, unless otherwise
34 expressly provided by law, and to take, under such
35 regulations as are prescribed by law, the acknowledg-
36 ment of deeds and other writings.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-2a. Payment of fines by credit card or payment plan; suspension of licenses for failure to pay fines.

§50-3-4. Disposition of costs; magistrate court fund.

§50-3-6. Collection of costs and fines.

§50-3-2a. Payment of fines by credit card or payment plan; suspension of licenses for failure to pay fines.

1 (a) A magistrate court may accept credit cards in
2 payment of all costs, fines, forfeitures or penalties. The
3 supreme court of appeals shall adopt rules and regula-
4 tions regarding the use of credit cards to pay fines, and
5 such rules and regulations shall state that any charges
6 made by the credit company shall be paid by the person
7 responsible for paying the fine. A magistrate court may
8 collect a substantial portion of all costs, fines, forfeitures
9 or penalties at the time such amount is imposed by the
10 court so long as the court requires the balance to be paid
11 within ninety days and in accordance with a payment
12 plan which specifies: (1) The number of additional
13 payments to be made; (2) the dates on which such
14 payments and amounts shall be made; and (3) amounts
15 due on such dates.

16 (b) If costs, fines, forfeitures or penalties imposed by
17 the magistrate court for hunting or fishing violations as
18 described in chapter twenty of this code, or for motor
19 vehicle violations as described in section three-a, article

20 three, chapter seventeen-b of this code are not paid in
21 full within ninety days of the judgment, the magistrate
22 court clerk or, upon a judgment rendered on appeal, the
23 circuit clerk must notify the director of the division of
24 natural resources or the division of motor vehicles,
25 whichever is applicable, of such failure to pay.

26 Upon such notice, the division of motor vehicles shall
27 suspend the operator's or commercial driver's license
28 and the director of the division of natural resources shall
29 suspend the hunting or fishing license of the person
30 defaulting on payment until such time that the costs,
31 fines, forfeitures or penalties are paid.

32 (c) If a person charged with a motor vehicle violation,
33 as defined in section three-a, article three, chapter
34 seventeen-b of this code, fails to appear or otherwise
35 respond in court, the magistrate court must notify the
36 director of the division of motor vehicles thereof within
37 fifteen days of the scheduled date to appear, unless such
38 person sooner appears or otherwise responds in court to
39 the satisfaction of the magistrate. Upon such notice, the
40 division of motor vehicles shall suspend the operator's
41 or commercial driver's license of the person failing to
42 appear or otherwise respond in accordance with the
43 provisions of section six, article three, chapter seven-
44 teen-b of this code.

45 (d) In every criminal case which involves a misdemea-
46 nor violation, a magistrate may order restitution when
47 rendering judgment.

§50-3-4. Disposition of costs; magistrate court fund.

1 Except for the funds specified in section four-a, all
2 costs collected in magistrate courts in a civil or criminal
3 proceeding shall be submitted on or before the tenth day
4 of the month following the month of their collection to
5 the magistrate court clerk or, if there is no magistrate
6 court clerk, to the clerk of the circuit court along with
7 such information as may be required by the rules of the
8 supreme court and by the rules of the chief inspector
9 of public offices. Such clerk shall pay costs into the
10 special county fund hereafter created during each fiscal
11 year until there shall have been paid a sum equal to

12 twelve thousand five hundred dollars multiplied by the
13 number of magistrates authorized for such county. All
14 costs collected in excess of such sum during a fiscal year
15 shall be paid to the state. All costs and fees collected by
16 magistrates on or after the first day of July, one
17 thousand nine hundred seventy-six, shall be paid into
18 said special county fund hereinafter created.

19 There is hereby created in each county a special
20 county fund designated as the magistrate court fund. No
21 moneys shall be appropriated from the fund except for
22 the purposes provided for in this section. Any money
23 remaining in the magistrate court fund on the thirtieth
24 day of June, one thousand nine hundred seventy-nine,
25 and on the thirtieth day of June of each year thereafter,
26 shall be paid to the state.

27 A county may, in accordance with the supervisory
28 rules of the supreme court of appeals, appropriate and
29 spend from such fund such sums as shall be necessary
30 to defray the expenses of providing services to magis-
31 trate courts.

§50-3-6. Collection of costs and fines.

1 On motion of the prosecuting attorney, the magistrate
2 court may issue execution or employ other means of
3 enforcing judgment to collect fines and costs imposed in
4 proceedings before the court and tax the cost thereof as
5 a part of the execution or other process. Such execution
6 or other process shall be directed to the sheriff for
7 collection. The sheriff shall collect the fees prescribed
8 for his services from the party from whom the fine or
9 costs are being collected. Money so collected shall be
10 paid by the sheriff to the magistrate court and shall be
11 paid by the magistrate court in the manner provided by
12 law.

ARTICLE 4. PROCEDURE BEFORE TRIAL.

- §50-4-1. Commencement of civil actions.
- §50-4-2. Commencement of criminal actions.
- §50-4-3. Appointment of counsel in criminal proceeding.
- §50-4-4. Long-arm jurisdiction; manner of service in civil cases.
- §50-4-5. Return date in civil action; setting of trial date; failure to appear or notify.

- §50-4-6. Return date in criminal proceedings; setting trial date.
§50-4-7. Transfer to another magistrate.
§50-4-9. Counterclaim.
§50-4-10. Judgment before trial.

§50-4-1. Commencement of civil actions.

1 There shall be one form of civil action in magistrate
2 court. Civil actions shall be commenced by the payment
3 of the fees required by article three of this chapter and
4 by providing any magistrate court clerk, magistrate
5 court deputy clerk, or magistrate assistant with a
6 concise statement, either oral or written, of the nature
7 of the cause of action. Where such statement is filed by
8 a commercial creditor, the statement shall include, but
9 not be limited to, a setting forth of the amount of the
10 original obligation, the portion thereof which constitutes
11 principal, the portion thereof which represents interest,
12 the date and amount of payments thereon, the amount,
13 if any, credited for the sale of repossessed collateral, and
14 the amount alleged to be due. The magistrate court
15 clerk, the magistrate court deputy clerk, or magistrate
16 assistant shall immediately prepare a summons in such
17 form and containing such information as may be
18 required by the rules of the supreme court of appeals.
19 The summons shall be dated the same day the request
20 therefor is received and the appropriate fees received,
21 and the action shall be deemed commenced as of that
22 date. The magistrate assistant shall thereupon forward
23 the matter to the magistrate court clerk together with
24 any service of process fees which may have been
25 collected.

26 Upon receipt of the matter by the magistrate court
27 clerk, such clerk shall docket the same in a central
28 docket, and shall sign the summons and forward it,
29 together with any service of process fees, to the sheriff
30 for service. Such clerk shall assign the action for trial
31 in the manner as shall be prescribed by the judge of the
32 circuit court, or the chief judge thereof if there is more
33 than one judge of the circuit court, to promote and
34 secure the convenient and expeditious transaction of the
35 business of the court.

§50-4-2. Commencement of criminal actions.

1 Criminal actions shall be commenced by a complaint
2 filed in compliance with the provisions of article one,
3 chapter sixty-two of this code.

§50-4-3. Appointment of counsel in criminal proceeding.

1 In any criminal proceeding in a magistrate court in
2 which the applicable statutes authorize a sentence of
3 confinement the magistrate shall at the time of the
4 initial appearance advise a defendant of his right to
5 counsel and his right to have counsel appointed if such
6 defendant cannot afford to retain counsel. In the event
7 a defendant requests that counsel be appointed and
8 executes an affidavit that he is unable to afford counsel,
9 the magistrate shall stay further proceedings and shall
10 request the judge of the circuit court, or the chief judge
11 thereof if there is more than one judge of the circuit
12 court, to appoint counsel. Such judge shall thereupon
13 appoint counsel. If there is no judge sitting in the county
14 at the time of the request, then the clerk of the circuit
15 court shall appoint counsel from a list of attorneys in
16 accordance with the rules established by such judge of
17 the circuit court. Counsel shall be paid for his services
18 and expenses in accordance with the provisions of article
19 twenty-one, chapter twenty-nine of this code.

§50-4-4. Long-arm jurisdiction; manner of service in civil cases.

1 Magistrate courts shall have long-arm jurisdiction as
2 follows: Over domestic and foreign corporations as
3 provided in section fifteen, article one, chapter thirty-
4 one of this code; over nonresident holders of consumer
5 instruments as provided in section one hundred thirty-
6 seven, article two, chapter forty-six-a of this code; over
7 domestic and foreign limited partnerships as provided
8 in section four, article nine, chapter forty-seven of this
9 code; over voluntary associations and business trusts as
10 provided in section five, article nine-a, chapter forty-
11 seven of this code; over nonresident motorists as
12 provided in section thirty-one, article three, chapter
13 fifty-six of this code; and over nonresidents with certain
14 contacts with this state as provided in section thirty-
15 three, article three, chapter fifty-six of this code.

16 Service of process in civil actions shall be made in the
17 same manner as is provided for service of process in
18 trial courts of record.

**§50-4-5. Return date in civil action; setting of trial date;
failure to appear or notify.**

1 Except as may otherwise be provided by law, each
2 summons in a civil action shall notify the defendant that
3 he must appear within twenty days after service of the
4 summons upon him or that he must otherwise notify the
5 magistrate court by that time that he wishes to contest
6 the matter.

7 If the magistrate court is notified by the defendant
8 that he wishes to contest the matter a trial date shall
9 be set in accordance with the supervisory rules of the
10 supreme court of appeals.

11 If no appearance or other notification is made within
12 twenty days after the service of the summons on the
13 defendant, or within such other time as may be provided
14 by law, judgment by default may be entered in accor-
15 dance with the provisions of section ten of this article.

16 At any trial in any matter involving unlawful entry
17 and detainer and in the trial of any case in any way
18 involving the possession, use or control of rental
19 property, it is permissible for a party to plead, prove
20 and obtain judgment for all rent due and owing the
21 party.

**§50-4-6. Return date in criminal proceedings; setting
trial date.**

1 When a warrant has been duly executed or when a
2 defendant appears in response to a summons, the
3 defendant shall be notified of the return date set by the
4 court. The defendant shall appear before the magistrate
5 on or before the return date. In the event a trial or
6 preliminary examination is not expressly waived by
7 such defendant, the magistrate shall set a date for such
8 trial or preliminary examination and shall notify all
9 parties.

§50-4-7. Transfer to another magistrate.

1 Any party to a civil or criminal proceeding before a
2 magistrate in any county wherein there is more than one
3 magistrate may file an affidavit that the magistrate
4 before whom the matter is pending has a personal bias
5 or prejudice either against him or in favor of any
6 opposite party or that such magistrate has counseled
7 with any opposite party with respect to the merits of the
8 proceeding. The affidavit shall state the facts and
9 reasons for belief in the truth thereof. Such affidavit
10 must be filed within such time as may be provided by
11 the supervisory rules of the supreme court of appeals.
12 The supreme court of appeals shall provide a form
13 affidavit which shall be made available to all parties
14 and which shall comply with the requirements of this
15 section.

16 Upon the timely filing of such affidavit, the magis-
17 trate shall transfer all matters relating to the case to
18 the magistrate court clerk, who shall thereupon assign
19 and transfer the matter to be heard by some other
20 magistrate within the county upon a basis to be
21 established by the judge of the circuit court, or the chief
22 judge thereof if there is more than one judge of the
23 circuit court. Such transfer and assignment shall be
24 permitted, however, only if there is some other magis-
25 trate in the county before whom the matter had not been
26 previously pending. No party shall be entitled to cause
27 such a transfer more than once.

28 The magistrate to whom the matter is assigned shall
29 set a new return date not more than five days from his
30 receipt of the matter, shall notify all parties thereof, and
31 shall proceed with the matter as if it had been originally
32 assigned to him.

§50-4-9. Counterclaim.

1 A defendant in a civil action may file a counterclaim
2 and if such counterclaim arises from the same transac-
3 tion or occurrence that is the subject matter of the initial
4 claim they shall be tried together. The failure to
5 institute a counterclaim permitted by this section shall
6 not preclude the institution of an action on such claim

7 at a later date. The adjudication of the original claim
8 shall not constitute res judicata as to any such permitted
9 counterclaim nor shall it act as an estoppel as to such
10 permitted counterclaim.

§50-4-10. Judgment before trial.

1 If a defendant in a civil action fails to appear or
2 otherwise notify the magistrate court within the time
3 limits prescribed by section five of this article that he
4 wishes to contest the action, the magistrate may enter
5 judgment as justice may require as follows:

6 (a) The magistrate shall enter judgment by default
7 only upon affidavit or sworn testimony reflecting the
8 nature of the claim, whether or not it is for a sum
9 certain or for a sum which can by computation be made
10 certain, the defendant's failure to appear or otherwise
11 notify the court within the time limits prescribed by
12 section five of this article that he wishes to contest the
13 action and supporting the relief sought. In the event the
14 plaintiff's claim is not for a sum certain or for a sum
15 which can by computation be made certain, the court
16 shall require such further proof by affidavit or sworn
17 testimony as is necessary to determine the propriety of
18 the relief sought.

19 (b) No judgment by default shall be rendered against
20 a person who is an infant, incompetent person or
21 incarcerated convict unless such person is represented
22 in the action by a guardian ad litem, guardian,
23 committee, curator or other like fiduciary.

24 Upon motion made by the defendant within twenty
25 days after the entry of such judgment, the magistrate
26 may, for good cause shown, set aside the judgment and
27 set the matter for trial.

28 If a defendant offers to confess judgment at any time,
29 the magistrate shall take the same in writing and enter
30 judgment for the amount confessed plus costs. In the
31 event the amount claimed by the plaintiff exceeds the
32 amount confessed by the defendant the plaintiff may
33 request that the matter be set for trial. If the plaintiff's
34 recovery therein does not exceed the amount confessed,

35 costs shall be assessed against the plaintiff.

ARTICLE 5. TRIALS, HEARING AND APPEALS.

§50-5-2. Continuances.

§50-5-8. Trial by jury.

§50-5-10. Setting aside judgment.

§50-5-11. Contempt.

§50-5-13. Appeals in criminal cases.

§50-5-2. Continuances.

1 A magistrate may continue the holding of a trial or
2 hearing as provided in the supervisory rules of the
3 supreme court of appeals. In criminal proceedings when
4 the defendant is in custody, the state shall not have the
5 right to a continuance but may be granted a continuance
6 for no more than five days if good cause is shown. In
7 criminal proceedings when the defendant is in custody,
8 the magistrate may continue the matter no more than
9 once on his own motion over the objection of the
10 defendant and such continuance over the objection of the
11 defendant shall not be for more than two days.

§50-5-8. Trial by jury.

1 Any party to a civil action is entitled to a trial by jury
2 when the amount in controversy exceeds twenty dollars
3 or involves possession to real estate. Any defendant in
4 any criminal action shall be entitled to a trial by jury,
5 and any such verdict must be unanimous. A defendant
6 in a criminal proceeding may waive a jury trial if he
7 is advised of his right to a jury trial and such waiver
8 is made in writing. A magistrate court jury shall consist
9 of six persons, to be selected from a panel of ten persons.
10 The selection and summoning of jurors shall be con-
11 ducted in accordance with the provisions of article one,
12 chapter fifty-two of this code and with the supervisory
13 rules of the supreme court of appeals. Jurors shall be
14 paid by the state in accordance with such rules.

§50-5-10. Setting aside judgment.

1 Upon motion made within twenty days after judg-
2 ment by any party in a civil action or by the defendant
3 in a criminal action, the magistrate who heard the
4 matter or his successor or designee may, upon good

- 5 cause shown, set aside judgment and order a new trial.
- 6 All parties shall be given notice of such motion and an
- 7 opportunity to be heard.

§50-5-11. Contempt.

1 A magistrate may punish for contempt of court a
2 person guilty of any of the following acts:

3 (a) Contemptuous or insolent behavior toward such
4 magistrate while engaged in the trial of a case or in any
5 other judicial proceeding;

6 (b) Any breach of the peace, willful disturbance, or
7 indecent conduct in the presence of such magistrate
8 while so engaged, or so near as to obstruct or interrupt
9 the proceedings;

10 (c) Violence or threats of violence to such magistrate,
11 or any officer, juror, witness, or party going to,
12 attending, or returning from, any judicial proceeding
13 before the court with respect to anything done or to be
14 done in the course of such proceeding;

15 (d) Flagrant misbehavior of any officer of the county
16 acting in his official capacity with respect to any action
17 or judicial proceeding had or pending before the court,
18 or any process, judgment, order or notice therein; or

19 (e) Willful resistance by an officer of the court, juror,
20 witness, party or other person to any lawful process or
21 order of the court.

22 A magistrate may, if necessary, issue a warrant of
23 arrest for such person, who shall be given an opportu-
24 nity to be heard. In the event such person is adjudged
25 guilty of contempt, the person may be fined not more
26 than fifty dollars for the first offense. For a second
27 offense pertaining to the same matter the person may
28 be fined not more than one hundred dollars. For the
29 third or any subsequent offense pertaining to the same
30 matter the person may be fined not more than one
31 hundred dollars, or imprisoned in the county jail not
32 more than ten days, or both fined and imprisoned.

33 An appeal to the circuit court of such conviction shall
34 lie as in criminal cases.

§50-5-13. Appeals in criminal cases.

1 Any person convicted of an offense in a magistrate
2 court may appeal such conviction to circuit court as a
3 matter of right by requesting such appeal within twenty
4 days of the sentencing for such conviction. The magis-
5 trate may require the posting of bond with good security
6 conditioned upon the appearance of the defendant as
7 required in circuit court, but such bond may not exceed
8 the maximum amount of any fine which could be
9 imposed for the offense. Such bond may be upon the
10 defendant's own recognizance. If no appeal is perfected
11 within such twenty-day period, the circuit court of the
12 county may, not later than ninety days after the
13 sentencing, grant an appeal upon a showing of good
14 cause why such appeal was not filed within such twenty-
15 day period. The filing or granting of an appeal shall
16 automatically stay the sentence of the magistrate. Trial
17 in circuit court shall be de novo. Notwithstanding any
18 other provision of this code to the contrary, there shall
19 be no appeal from a plea of guilty where the defendant
20 was represented by counsel at the time the plea was
21 entered: *Provided*, That the defendant shall have an
22 appeal from a plea of guilty where an extraordinary
23 remedy would lie or where the magistrate court lacked
24 jurisdiction.

ARTICLE 6. ENFORCEMENT OF CIVIL JUDGMENTS.**§50-6-1. Enforcement of judgments.**

1 (a) The provisions of articles three, four, five, five-a,
2 five-b and six, chapter thirty-eight of this code, except
3 as the same are in conflict with the provisions of this
4 chapter or are clearly applicable only to courts of
5 record, shall apply to the enforcement of judgments
6 rendered in magistrate court and process therefor shall
7 issue from magistrate court. Process issued in violation
8 of such provisions shall be void. The form of such
9 process shall be in accord with the rules of the supreme
10 court of appeals. No such process shall issue until after
11 twenty days after the judgment is rendered or, if a
12 motion to set aside such judgment is then pending, until
13 after twenty days after the determination of such
14 motion.

15 (b) A magistrate court clerk, deputy clerk or magis-
16 trate assistant before whom a suggestion of salary and
17 wages is instituted pursuant to the provisions of articles
18 five-a and five-b, chapter thirty-eight of this code shall
19 forward all post judgment process directly to the sheriff
20 of any county in the same manner and with the same
21 authority as has been given to circuit clerks, pursuant
22 to section five, article three, chapter fifty-six.

CHAPTER 124

(H. B. 4208—By Delegates Lane and Manuel)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine and nine-a, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing the requirement that a magistrate assistant or magistrate court deputy clerk reside in the county where appointed.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COURTS AND OFFICERS.

§50-1-9. Magistrate assistants; salary; duties.

§50-1-9a. Magistrate court deputy clerks; salary; duties.

§50-1-9. Magistrate assistants; salary; duties.

1 In each county there shall be one magistrate assistant
2 for each magistrate. Each magistrate assistant shall be
3 appointed by the magistrate under whose authority and
4 supervision and at whose will and pleasure he or she
5 shall serve. The assistant shall not be a member of the
6 immediate family of any magistrate and shall not have
7 been convicted of a felony or any misdemeanor involving
8 moral turpitude and shall reside in the state of West

9 Virginia. For the purpose of this section, "immediate
10 family" means the relationships of mother, father, sister,
11 brother, child or spouse.

12 A magistrate assistant shall have such duties, clerical
13 or otherwise, as may be assigned by the magistrate and
14 as may be prescribed by the rules of the supreme court
15 of appeals or the judge of the circuit court, or the chief
16 judge thereof if there is more than one judge of the
17 circuit court. In addition to these duties, magistrate
18 assistants shall perform and be accountable to the
19 magistrate court clerks with respect to the following
20 duties:

21 (1) The preparation of summons in civil actions;

22 (2) The assignment of civil actions to the various
23 magistrates;

24 (3) The collection of all costs, fees, fines, forfeitures
25 and penalties which may be payable to the court;

26 (4) The submission of such moneys, along with an
27 accounting thereof, to appropriate authorities as
28 provided by law;

29 (5) The daily disposition of closed files which are to
30 be located in the magistrate clerk's office;

31 (6) All duties related to the gathering of information
32 and documents necessary for the preparation of admin-
33 istrative reports and documents required by the rules
34 of the supreme court of appeals or the judge of the
35 circuit court, or the chief judge thereof if there is more
36 than one judge of the circuit court;

37 (7) All duties relating to the notification, certification
38 and payment of jurors serving pursuant to the terms of
39 this chapter;

40 (8) All other duties or responsibilities whereby the
41 magistrate assistant is accountable to the magistrate
42 court clerk as the magistrate determines.

43 Magistrate assistants shall be paid a monthly salary
44 by the state. Magistrate assistants serving magistrates
45 who serve less than ten thousand in population shall be

46 paid up to nine hundred sixty-seven dollars per month
47 and magistrate assistants serving magistrates who serve
48 ten thousand or more in population shall be paid up to
49 one thousand two hundred twenty-five dollars per
50 month: *Provided*, That on and after the first day of
51 January, one thousand nine hundred ninety-two, mag-
52 istrate assistants serving magistrates who serve less
53 than ten thousand in population shall be paid up to one
54 thousand fifty-one dollars per month and magistrate
55 assistants serving magistrates who serve ten thousand
56 or more in population shall be paid up to one thousand
57 three hundred nine dollars per month: *Provided*,
58 *however*, That on and after the first day of January, one
59 thousand nine hundred ninety-three, magistrate assist-
60 ants serving magistrates who serve less than eight
61 thousand five hundred in population shall be paid up to
62 one thousand one hundred seventy-six dollars per month
63 and magistrate assistants serving magistrates who serve
64 eight thousand five hundred or more in population shall
65 be paid up to one thousand four hundred thirty-four
66 dollars per month: *Provided further*, That after the
67 effective date of this section, any general salary increase
68 granted to all state employees, whose salaries are not set
69 by statute, expressed as a percentage increase or an
70 "across-the-board" increase, may also be granted to
71 magistrate assistants. For the purpose of determining
72 the population served by each magistrate, the number
73 of magistrates authorized for each county shall be
74 divided into the population of each county. The salary
75 of the magistrate assistant shall be established by the
76 magistrate within the limits set forth in this section.

§50-1-9a. Magistrate court deputy clerks; salary; duties.

1 Whenever required by workload and upon the recom-
2 mendation of the judge of the circuit court, or the chief
3 judge thereof if there is more than one judge of the
4 circuit court, the supreme court of appeals may by rule
5 provide for the appointment of magistrate court deputy
6 clerks, not to exceed fifty-two in number. Such magis-
7 trate court deputy clerks shall be appointed by the judge
8 of the circuit court, or the chief judge thereof if there
9 is more than one judge of the circuit court, with such

10 appointee to serve at his will and pleasure under the
11 immediate supervision of the magistrate court clerk.
12 Such magistrate court deputy clerk shall have such
13 duties, clerical or otherwise, as may be assigned by the
14 magistrate court clerk and as may be prescribed by the
15 rules of the supreme court of appeals or the judge of the
16 circuit court, or the chief judge thereof if there is more
17 than one judge of the circuit court. Such magistrate
18 court deputy clerks shall also have authority to exercise
19 the power and perform the duties of the magistrate
20 court clerk as may be delegated or assigned by such
21 magistrate court clerk.

22 Such magistrate court deputy clerk shall not be a
23 member of the immediate family of any magistrate,
24 magistrate court clerk, magistrate assistant or circuit
25 court judge within the same county, shall not have been
26 convicted of a felony or any misdemeanor involving
27 moral turpitude and shall reside in the state of West
28 Virginia. For the purpose of this section, "immediate
29 family" shall mean the relationships of mother, father,
30 sister, brother, child or spouse.

31 Magistrate court deputy clerks shall be paid a
32 monthly salary by the state. Such salary shall be paid
33 on the same basis and in the same applicable amounts
34 as for magistrate assistants in each county as provided
35 in section nine of this article.

CHAPTER 125

(Com. Sub. for S. B. 76—By Senators Blatnik, Holliday and Boley)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seven and ten, article one, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three and four, article five of said chapter, relating to mental health facilities and proceedings for involuntary hospitalization; setting forth requirements and duties of adminis-

trators and clinical directors of facilities; changing certain terminology consistent with government reorganization; defining and redefining certain terms; providing for the appointment of additional mental hygiene commissioners; providing for the designation of magistrates to hold probable cause and emergency detention hearings; mandating the supreme court of appeals to conduct a training course and to promulgate rules providing therefor; requiring the sheriff to maintain custody of individuals prior to and during involuntary hospitalization hearings; provisions for county commissions to pay for security; setting forth duty of the supreme court of appeals to provide forms for proceedings; establishing civil and criminal immunity for health care facilities and professionals; and making provisions gender neutral.

Be it enacted by the Legislature of West Virginia:

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

Article

1. **Words and Phrases Defined.**
5. **Involuntary Hospitalization.**

ARTICLE 1. WORDS AND PHRASES DEFINED.

- §27-1-7. Administrator and clinical director.
 §27-1-10. Psychologists and psychiatrists.

§27-1-7. Administrator and clinical director.

- 1 (a) The administrator of a state-operated treatment
- 2 facility shall be its chief executive officer and shall have
- 3 the authority to manage and administer the financial,
- 4 business and personnel affairs of such facility. All other
- 5 persons employed at the state-operated treatment
- 6 facility shall be under the jurisdiction and authority of
- 7 the administrator of the treatment facility who need not
- 8 be a physician.
- 9 (b) The clinical director shall have the responsibility
- 10 for decisions involving clinical and medical treatment of

11 patients in a state-operated mental health facility. The
12 clinical director must be a physician duly licensed to
13 practice medicine in this state who has completed
14 training in an accredited program of post-graduate
15 education in psychiatry.

16 (c) In any facility designated by the secretary of the
17 department of health and human resources as a facility
18 for the mentally retarded in which programs and
19 services are designed primarily to provide education,
20 training and rehabilitation rather than medical or
21 psychiatric treatment, the duties and responsibilities,
22 other than those directly related to medical treatment
23 services, assigned to the clinical director by this section
24 or elsewhere in this chapter, shall be assigned to and
25 become the responsibility of the administrator of such
26 facility, or of a person with expertise in the field of
27 mental retardation, who need not be a physician,
28 designated by the administrator.

§27-1-10. Psychologists and psychiatrists.

1 (a) For the purposes of this chapter, "psychologist"
2 means any person licensed under the laws of this state
3 to engage in the practice of psychology, or any other
4 psychologist not a resident of this state who engages in
5 the practice of psychology in this state and who holds
6 a license or certificate to engage in the practice of
7 psychology issued by another state with licensing or
8 certification requirements comparable to the licensing
9 requirements of this state, as may be determined by the
10 state board of examiners of psychologists.

11 (b) For purposes of this chapter, "psychiatrist" means
12 a physician licensed under the laws of this state to
13 practice medicine who has completed training in an
14 accredited program of post-graduate education in
psychiatry.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-1. Appointment of mental hygiene commissioner; duties of mental
hygiene commissioner; duties of prosecuting attorney; duties of
sheriff.

§27-5-2. Institution of proceedings for involuntary custody for examination;
custody; probable cause hearing; examination of individual.

§27-5-3. Admission under involuntary hospitalization for examination; hearing; release.

§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

§27-5-1. Appointment of mental hygiene commissioner; duties of mental hygiene commissioner; duties of prosecuting attorney; duties of sheriff.

1 (a) *Appointment of mental hygiene commissioners.* —
2 The chief judge in each judicial circuit of this state shall
3 appoint a competent attorney and may, if necessary,
4 appoint additional attorneys to serve as mental hygiene
5 commissioners to preside over involuntary hospitaliza-
6 tion hearings. Mental hygiene commissioners shall be
7 persons of good moral character and of standing in their
8 profession and they shall, before assuming the duties of
9 such commissioner, take the oath required of other
10 special commissioners as provided in article one,
11 chapter six of this code.

12 All persons appointed to serve as mental hygiene
13 commissioners and any magistrates designated by the
14 chief judge of a judicial circuit to hold probable cause
15 and emergency detention hearings involving involuntary
16 hospitalization must attend and complete a course
17 provided by the supreme court of appeals which course
18 shall include, but not be limited to, instruction on the
19 manifestations of mental illness, mental retardation and
20 addiction. Persons attending such courses outside the
21 county of their residence shall be reimbursed out of the
22 budget of the supreme court—general judicial for
23 reasonable expenses incurred. The supreme court shall
24 establish rules for such course, including rules provid-
25 ing for the reimbursement of reasonable expenses as
26 authorized herein.

27 (b) *Duties of mental hygiene commissioners.* — Mental
28 hygiene commissioners may sign and issue summonses
29 for the attendance, at any hearing held pursuant to
30 section four, article five of this chapter, of the individual
31 sought to be committed; may sign and issue subpoenas
32 for witnesses, including subpoenas duces tecum; may
33 place any witness under oath; and may make findings
34 of fact on evidence and may make conclusions of law,

35 but such findings and conclusions shall not be binding
36 on the circuit court. The circuit court, by order entered
37 of record, shall allow the commissioner a reasonable fee
38 for services rendered in connection with each case.
39 Mental hygiene commissioners shall discharge their
40 duties and hold their office at the pleasure of the chief
41 judge of the judicial circuit in which he or she is
42 appointed and may be removed at any time by such
43 chief judge. It shall be the duty of a mental hygiene
44 commissioner to conduct orderly inquiries into the
45 mental health of the individual sought to be committed
46 concerning the advisability of committing the individual
47 to a mental health facility. The mental hygiene commis-
48 sioner shall safeguard, at all times, the rights and
49 interests of the individual as well as the interests of the
50 state. The mental hygiene commissioner shall make a
51 written report of his findings to the circuit court. In any
52 proceedings before any court of record as set forth in
53 this article, the court of record shall appoint an
54 interpreter for any individual who is deaf or cannot
55 speak or who speaks a foreign language and who may
56 be subject to involuntary commitment to a mental health
57 facility.

58 (c) *Duties of prosecuting attorney.* — It shall be the
59 duty of the prosecuting attorney or one of his or her
60 assistants to represent the applicants in all proceedings
61 filed pursuant to the provisions of this article.

62 (d) *Duties of sheriff.* — Upon written order of the
63 circuit court or of a mental hygiene commissioner in the
64 county where the individual formally accused of being
65 mentally incompetent, mentally retarded or addicted is
66 a resident or is found, the sheriff of that county shall
67 take said individual into custody and transport him or
68 her to and from the place of hearing and the mental
69 health facility. The sheriff shall also maintain custody
70 and control of the accused individual during the period
71 of time in which the individual is waiting for the
72 involuntary commitment hearing to be convened and
73 while such hearing is being conducted.

74 (e) *Duties of sheriff upon presentment to mental health*
75 *care facility.* — Where a person is brought to a mental

76 health care facility for purposes of evaluation for
77 commitment under the provisions of this article, if he
78 or she is violent or combative, the sheriff or his or her
79 designee shall maintain custody of the person in the
80 facility until the evaluation is completed or the county
81 commission shall reimburse the mental health care
82 facility at a reasonable rate for security services
83 provided by the mental health care facility for the
84 period of time the person is at the hospital prior to the
85 determination of mental competence or incompetence.

86 (f) *Duties of supreme court of appeals.* — The supreme
87 court of appeals shall provide uniform petition, proce-
88 dure and order forms which shall be used in all
89 involuntary hospitalization proceedings brought in this
90 state.

**§27-5-2. Institution of proceedings for involuntary cus-
tody for examination; custody; probable cause
hearing; examination of individual.**

1 (a) *When application for involuntary custody for*
2 *examination may be made.* — Any adult person may
3 make application for involuntary hospitalization for
4 examination of an individual when said person has
5 reason to believe that:

6 (1) The individual is addicted, as defined in section
7 eleven, article one of this chapter: *Provided*, That for
8 purposes of this subdivision and the involuntary
9 hospitalization procedures specified in this article, the
10 sole issue to be determined is whether the individual is
11 addicted, which by definition includes the notion of
12 being incapacitated, causing harm to others or being
13 unable to prevent harm to himself: *Provided, however*,
14 That whenever a provision of this article refers to or
15 requires a finding of likelihood to cause serious harm,
16 a finding that an individual is addicted shall be deemed
17 to satisfy such reference or requirement; or

18 (2) The individual is mentally ill or mentally retarded
19 and, because of his or her mental illness or mental
20 retardation, the individual is likely to cause serious
21 harm to himself or herself or to others if allowed to
22 remain at liberty while awaiting an examination and

23 certification by a physician or psychologist.

24 (b) *Oath; to whom application for involuntary custody*
25 *for examination is made; contents of application; custody;*
26 *probable cause hearing; examination. —*

27 (1) The person making such application shall do so
28 under oath.

29 (2) Application for involuntary custody for examina-
30 tion may be made to the circuit court or a mental
31 hygiene commissioner of the county in which the
32 individual resides or of the county in which he or she
33 may be found.

34 (3) The person making such application shall give
35 such information and state such facts therein as may be
36 required, upon the form provided for this purpose by the
37 supreme court of appeals.

38 (4) The circuit court or the mental hygiene commis-
39 sioner may thereupon enter an order for the individual
40 named in such action to be detained and taken into
41 custody, for the purpose of holding a probable cause
42 hearing as provided for in subdivision (5) of this
43 subsection and for the purpose of an examination of the
44 individual by a physician or a psychologist. Such
45 examination shall be provided or arranged by a
46 community mental health center designated by the
47 secretary of the department of health and human
48 resources to serve the county in which the action takes
49 place. The said order shall specify that such hearing be
50 held forthwith and shall provide for the appointment of
51 counsel for the individual: *Provided*, That where a
52 physician or psychologist has performed such examina-
53 tion, the community mental health center may waive
54 this requirement upon approving such examination.
55 Notwithstanding the provisions of this subsection,
56 subsection (r), section four of this article shall apply
57 regarding payment by the county commission for
58 examinations at hearings.

59 In the event immediate detention is believed to be
60 necessary for the protection of the individual or others
61 at a time when no circuit court judge or mental hygiene

62 commissioner is available for immediate presentation of
63 the application, a magistrate designated by the chief
64 judge of the judicial circuit may accept the application
65 and, upon a finding that such immediate detention is
66 necessary pending presentation of the application to the
67 circuit court or mental hygiene commissioner, may
68 order the individual to be temporarily detained in
69 custody until the earliest reasonable time that the
70 application can be presented to the circuit court or
71 mental hygiene commissioner, which temporary period
72 of detention may not exceed twenty-four hours.

73 (5) A probable cause hearing shall be held before a
74 magistrate designated by the chief judge of the judicial
75 circuit, the mental hygiene commissioner or circuit
76 judge of the county of which the individual is a resident
77 or where he or she was found. If requested by the
78 individual or his or her counsel, the hearing may be
79 postponed for a period not to exceed forty-eight hours.

80 The individual must be present at the hearing and
81 shall have the right to present evidence, confront all
82 witnesses and other evidence against him or her and to
83 examine testimony offered, including testimony by
84 representatives of the community mental health center
85 serving the area. The individual shall have the right to
86 remain silent and to be proceeded against in accordance
87 with the rules of evidence of the supreme court of
88 appeals. At the conclusion of the hearing, the magis-
89 trate, mental hygiene commissioner or circuit court
90 judge shall find and enter an order stating whether or
91 not there is probable cause to believe that such individ-
92 ual, as a result of mental illness, mental retardation or
93 addiction, is likely to cause serious harm to himself or
94 herself or to others.

**§27-5-3. Admission under involuntary hospitalization for
examination; hearing; release.**

1 (a) *Admission to a mental health facility for examina-*
2 *tion.* — Any individual may be admitted to a mental
3 health facility for examination upon entry of an order
4 finding probable cause as provided in section two of this
5 article and upon certification by one physician or one

6 psychologist that he or she has examined the individual
7 and is of the opinion that the individual is mentally ill,
8 mentally retarded or addicted and because of such
9 mental illness, mental retardation or addiction is likely
10 to cause serious harm to himself or herself or to others
11 if not immediately restrained. The chief medical officer
12 of said mental health facility may, with the approval of
13 the secretary of health and human resources, transfer
14 such individual to a state hospital or to another similar
15 type of mental health facility after determining that no
16 less restrictive treatment alternative is suitable or
17 available. The chief medical officer of the mental health
18 facility admitting the individual shall forthwith make a
19 report thereof to the secretary of the department of
20 health and human resources.

21 (b) *Three-day time limitation on examination.* — If
22 said examination does not take place within three days
23 from the date the individual is taken into custody, the
24 individual shall be released. If the examination reveals
25 that the individual is not mentally ill, mentally retarded
26 or addicted, the individual shall be released.

27 (c) *Three-day time limitation on certification.* — The
28 certification required in subsection (a) of this section
29 shall be valid for three days. Any individual with
30 respect to whom such certification has been issued may
31 not be admitted on the basis thereof at any time after
32 the expiration of three days from the date of such
33 examination.

34 (d) *Findings and conclusions required for certification.*
35 — A certification under this section must include
36 findings and conclusions of the mental examination, the
37 date, time and place thereof and the facts upon which
38 the conclusion of likelihood of causing serious harm is
39 based.

40 (e) *Notice requirements.* — When an individual is
41 admitted to a mental health facility pursuant to the
42 provisions of this section, the chief medical officer
43 thereof shall immediately give notice of the individual's
44 admission to the individual's spouse, if any, and one of
45 the individual's parents or guardians, or if there be no

46 such spouse, parents or guardians, to one of the
47 individual's adult next of kin: *Provided*, That such next
48 of kin shall not be the applicant. Notice shall also be
49 given to the community mental health facility, if any,
50 having jurisdiction in the county of the individual's
51 residence. Such notices other than to the community
52 mental health facility shall be in writing and shall be
53 transmitted to such person or persons at his, her or their
54 last-known address by certified or registered mail,
55 return receipt requested.

56 (f) *Five-day time limitation for examination and*
57 *certification at mental health facility.* — After the
58 individual's admission to a mental health facility, he or
59 she may not be detained more than five days excluding
60 Sundays and holidays, unless, within such period, the
61 individual is examined by a staff physician and such
62 physician certifies that in his or her opinion, the patient
63 is mentally ill, mentally retarded or addicted and is
64 likely to injure himself or herself or others if allowed
65 to be at liberty.

66 (g) *Ten-day time limitation for institution of final*
67 *commitment proceedings.* — If, in the opinion of the
68 examining physician, the patient is mentally ill,
69 mentally retarded or addicted and because of such
70 mental illness, mental retardation or addiction is likely
71 to injure himself or herself or others if allowed to be at
72 liberty, the chief medical officer shall, within ten days
73 from the date of admission, institute final commitment
74 proceedings as provided in section four of this article.
75 If such proceedings are not instituted within such ten-
76 day period, the patient shall be immediately released.
77 After the request for hearing is filed, the hearing shall
78 not be canceled on the basis that the individual has
79 become a voluntary patient unless the mental hygiene
80 commissioner concurs in the motion for cancellation of
81 the hearing.

82 (h) *Thirty-day time limitation for conclusion of all*
83 *proceedings.* — If all proceedings as provided in articles
84 three and four of this chapter are not completed within
85 thirty days from the date of institution of such proceed-
86 ings, the patient shall be immediately released.

§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

1 (a) *Involuntary commitment.* — Except as provided in
2 section three of this article, no individual may be
3 involuntarily committed to a mental health facility
4 except by order entered of record at any time by the
5 circuit court of the county wherein such person resides
6 or was found, or if the individual is hospitalized in a
7 mental health facility located in a county other than
8 where he or she resides or was found, in the county of
9 the mental health facility, and then only after a full
10 hearing on issues relating to the necessity of committing
11 an individual to a mental health facility: *Provided*, That
12 if said individual objects to the hearing being held in
13 the county where the mental health facility is located,
14 the hearing shall be conducted in the county of the
15 individual's residence.

16 (b) *How final commitment proceedings are commenced.*
17 — Final commitment proceedings for an individual may
18 be commenced by the filing of a written application
19 under oath and the certificate or affidavit is hereinafter
20 provided with the clerk of the circuit court or mental
21 hygiene commissioner of the county of which the
22 individual is a resident, or where he or she may be
23 found, or the county of the mental health facility, if he
24 or she is hospitalized in a mental health facility located
25 in a county other than where he or she resides or may
26 be found by an adult person having personal knowledge
27 of the facts of the case.

28 (c) *Oath; contents of application; who may inspect*
29 *application; when application cannot be filed.* —

30 (1) The person making such application shall do so
31 under oath.

32 (2) The application shall contain statements by the
33 applicant that he or she believes because of symptoms
34 of mental illness, mental retardation or addiction, the
35 individual is likely to cause serious harm to himself or
36 herself or to others and the grounds for such belief,
37 stating in detail the recent overt acts upon which such
38 belief is based: *Provided*, That no such statement of

39 recent overt acts need be made when the applicant
40 alleges the individual is likely to cause serious harm as
41 a result of having a complete inability to care for
42 himself or herself by reason of mental retardation.

43 (3) The written application, certificate, affidavit and
44 any warrants issued pursuant thereto, including any
45 papers and documents related thereto filed with any
46 circuit court or mental hygiene commissioner for the
47 involuntary hospitalization of any individual shall not be
48 open to inspection by any person other than the
49 individual, except upon authorization of the individual
50 or his or her legal representative or by order of the
51 circuit court, and such records may not be published
52 except upon the authorization of the individual or his or
53 her legal representative.

54 (4) Applications shall not be accepted for individuals
55 who only have epilepsy, a mental deficiency or senility.

56 (d) *Certificate filed with application; contents of*
57 *certificate; affidavit by applicant in place of cer-*
58 *tificate. —*

59 (1) The applicant shall file with his or her application
60 the certificate of a physician or a psychologist stating
61 that in his or her opinion the individual is mentally ill,
62 mentally retarded or addicted and that because of such
63 mental illness, mental retardation or addiction, the
64 individual is likely to cause serious harm to himself or
65 herself or to others if he or she is allowed to remain at
66 liberty and therefore he or she should be hospitalized,
67 stating in detail the recent overt acts upon which such
68 conclusion is based: *Provided*, That no such statement
69 of recent overt acts need be made when the applicant
70 alleges the individual is likely to cause serious harm as
71 a result of having a complete inability to care for
72 himself or herself by reason of mental retardation.

73 (2) A certificate is not necessary only when an
74 affidavit is filed by the applicant showing facts and the
75 individual has refused to submit to examination by a
76 physician or a psychologist.

77 (e) *Notice requirements; eight days' notice required. —*

78 Upon receipt of an application, the mental hygiene
79 commissioner or circuit court shall review the applica-
80 tion and if it is determined that the facts alleged, if any,
81 are sufficient to warrant involuntary hospitalization,
82 forthwith fix a date for and have the clerk of the circuit
83 court give notice of the hearing: (1) To the individual;
84 (2) to the applicant or applicants; (3) to the individual's
85 spouse, one of the parents or guardians, or if the
86 individual does not have a spouse, parents or parent or
87 guardian, to one of the individual's adult next of kin:
88 *Provided*, That such person is not the applicant; (4) to
89 the mental health authorities serving the area; (5) to the
90 circuit court in the county of the individual's residence
91 if the hearing is to be held in a county other than that
92 of such individual's residence; and (6) to the prosecuting
93 attorney of the county in which the hearing is to be held.
94 Such notice shall be served on the individual by personal
95 service of process not less than eight days prior to the
96 date of the hearing, and shall specify the nature of the
97 charges against the individual; the facts underlying and
98 supporting the application of involuntary commitment;
99 the right to have counsel appointed; the right to consult
100 with and be represented by counsel at every stage of the
101 proceedings; and the time and place of the hearing. The
102 notice to the individual's spouse, parents or parent or
103 guardian, the individual's adult next of kin, or to the
104 circuit court in the county of the individual's residence
105 may be by personal service of process or by certified or
106 registered mail, return receipt requested, and shall state
107 the time and place of the hearing.

108 (f) *Examination of individual by court-appointed*
109 *physician or psychologist; custody for examination;*
110 *dismissal of proceedings. —*

111 (1) Except as provided in subdivision (3) of this
112 subsection, within a reasonable time after notice of the
113 commencement of final commitment proceedings is
114 given, the circuit court or mental hygiene commissioner
115 shall appoint a physician or psychologist to examine the
116 individual and report to the circuit court or mental
117 hygiene commissioner his or her findings as to the
118 mental condition of the individual and the likelihood of

119 him or her causing serious harm to himself or herself
120 or to others.

121 (2) If the designated physician or psychologist reports
122 to the circuit court or mental hygiene commissioner that
123 the individual has refused to submit to an examination,
124 the circuit court or mental hygiene commissioner shall
125 order him or her to submit to such examination. The
126 circuit court or mental hygiene commissioner may
127 direct that the individual be detained or taken into
128 custody for the purpose of an immediate examination by
129 the designated physician or psychologist. All such orders
130 shall be directed to the sheriff of the county or other
131 appropriate law-enforcement officer. After such exam-
132 ination has been completed, the individual shall be
133 released from custody unless proceedings are instituted
134 pursuant to section three of this article.

135 (3) If the reports of the appointed physician or
136 psychologist do not confirm that the individual is
137 mentally ill, mentally retarded or addicted and might
138 be harmful to himself or herself or to others, then the
139 proceedings for involuntary hospitalization shall be
140 dismissed.

141 (g) *Rights of the individual at the final commitment*
142 *hearing; seven days' notice to counsel required. --*

143 (1) The individual shall be present at the final
144 commitment hearing and he or she, the applicant and
145 all persons entitled to notice of such hearing shall be
146 afforded an opportunity to testify and to present and
147 cross-examine witnesses.

148 (2) In the event that the individual has not retained
149 counsel, the court or mental hygiene commissioner at
150 least six days prior to hearing shall appoint a competent
151 attorney, and shall inform the individual of the name,
152 address and telephone number of his or her appointed
153 counsel.

154 (3) The individual shall have the right to have an
155 examination by an independent expert of his or her
156 choice and testimony from such expert as a medical
157 witness on his or her behalf. The cost of such independ-

158 ent expert shall be borne by the individual unless he or
159 she is indigent.

160 (4) The individual shall not be compelled to be a
161 witness against himself or herself.

162 (h) *Duties of counsel representing individual; payment*
163 *of counsel representing indigent. —*

164 (1) The counsel representing an individual shall
165 conduct a timely interview, make investigation and
166 secure appropriate witnesses and shall be present at the
167 hearing and protect the interest of the individual.

168 (2) Any counsel representing an individual shall be
169 entitled to copies of all medical reports, psychiatric or
170 otherwise.

171 (3) The circuit court, by order of record, may allow
172 the attorney a reasonable fee not to exceed the amount
173 allowed for attorneys in defense of needy persons as
174 provided in article twenty-one, chapter twenty-nine of
175 this code.

176 (i) *Conduct of hearing; receipt of evidence; no eviden-*
177 *tiary privilege; record of hearing. —*

178 (1) The circuit court or mental hygiene commissioner
179 shall hear evidence from all interested parties in
180 chamber, including testimony from representatives of
181 the community mental health facility.

182 (2) The circuit court or mental hygiene commissioner
183 shall receive all relevant and material evidence which
184 may be offered.

185 (3) The circuit court or mental hygiene commissioner
186 shall be bound by the rules of evidence promulgated by
187 the supreme court of appeals except that statements
188 made to physicians or psychologists by the individual
189 may be admitted into evidence by the physician's or
190 psychologist's testimony notwithstanding failure to
191 inform the individual that this statement may be used
192 against him or her. Any psychologist or physician
193 testifying shall bring all records pertaining to said
194 individual to said hearing. Such medical evidence
195 obtained pursuant to an examination under this section,

196 or section two or three of this article, is not privileged
197 information for purposes of a hearing pursuant to this
198 section.

199 (4) All final commitment proceedings shall be re-
200 ported or recorded, whether before the circuit court or
201 mental hygiene commissioner, and a transcript shall be
202 made available to the individual, his or her counsel or
203 the prosecuting attorney within thirty days, if the same
204 is requested for the purpose of further proceedings. In
205 any case wherein an indigent person intends to pursue
206 further proceedings, the circuit court shall, by order
207 entered of record, authorize and direct the court
208 reporter to furnish a transcript of the hearings.

209 (j) *Requisite findings by the court.* —

210 (1) Upon completion of the final commitment hearing,
211 and the evidence presented therein, the circuit court or
212 mental hygiene commissioner shall make findings as to
213 whether or not the individual is mentally ill, retarded
214 or addicted and because of illness, retardation or
215 addiction is likely to cause serious harm to himself or
216 herself or to others if allowed to remain at liberty and
217 is a resident of the county in which the hearing is held
218 or currently is a patient at a mental health facility in
219 such county.

220 (2) The circuit court or mental hygiene commissioner
221 shall also make a finding as to whether or not there is
222 a less restrictive alternative than commitment approp-
223 riate for the individual. The burden of proof of the lack
224 of a less restrictive alternative than commitment shall
225 be on the person or persons seeking the commitment of
226 the individual.

227 (3) The findings of fact shall be incorporated into the
228 order entered by the circuit court and must be based
229 upon clear, cogent and convincing proof.

230 (k) *Orders issued pursuant to final commitment*
231 *hearing; entry of order; change in order of court;*
232 *expiration of order.* —

233 (1) Upon the requisite findings, the circuit court may
234 order the individual to a mental health facility for an

235 indeterminate period or for a temporary observatory
236 period not exceeding six months.

237 (2) The individual shall not be detained in a mental
238 health facility for a period in excess of ten days after
239 a final commitment hearing pursuant to this section
240 unless an order has been entered and received by the
241 facility.

242 (3) If the order pursuant to a final commitment
243 hearing is for a temporary observation period, the
244 circuit court or mental hygiene commissioner may, at
245 any time prior to the expiration of such period on the
246 basis of a report by the chief medical officer of the
247 mental health facility in which the patient is confined,
248 hold another hearing pursuant to the terms of this
249 section and in the same manner as the hearing was held
250 as if it were an original petition for involuntary
251 hospitalization, to determine whether the original order
252 for a temporary observation period should be modified
253 or changed to an order of indeterminate hospitalization
254 of the patient. At the conclusion of the hearing, the
255 circuit court shall order indeterminate hospitalization of
256 the patient or dismissal of the proceedings.

257 (4) An order for an indeterminate period shall expire
258 of its own terms at the expiration of two years from the
259 date of the last order of commitment unless prior to the
260 expiration, the department of health, upon findings
261 based on an examination of the patient by a physician
262 or a psychologist, extends the order for indeterminate
263 hospitalization: *Provided*, That if the patient or his or
264 her counsel requests a hearing, then a hearing shall be
265 held by the mental hygiene commissioner; or by the
266 circuit court of the county as provided in subsection (a)
267 of this section.

268 (1) *Dismissal of proceedings.* — If the circuit court or
269 mental hygiene commissioner finds that the individual
270 is not mentally ill, mentally retarded or addicted, the
271 proceedings shall be dismissed. If the circuit court or
272 mental hygiene commissioner finds that the individual
273 is mentally ill, mentally retarded or addicted but is not
274 because of such illness, retardation or addiction likely

275 to cause serious harm to himself or herself or to others
276 if allowed to remain at liberty, the proceedings shall be
277 dismissed.

278 (m) *Immediate notification of order of hospitalization.*
279 — The clerk of the circuit court in which an order
280 directing hospitalization is entered, if not in the county
281 of the individual's residence, shall immediately upon
282 entry thereof forward a certified copy of same to the
283 clerk of the circuit court of the county of which the
284 individual is a resident.

285 (n) *Consideration of transcript by circuit court of*
286 *county of individual's residence; order of hospitalization;*
287 *execution of order. —*

288 (1) If the circuit court or mental hygiene commis-
289 sioner is satisfied that hospitalization should be ordered
290 but finds that the individual is not a resident of the
291 county in which the hearing is held, and the individual
292 is not currently a resident of a mental health facility,
293 a transcript of the evidence adduced at the final
294 commitment hearing of such individual, certified by the
295 clerk of the circuit court, shall forthwith be forwarded
296 to the clerk of the circuit court of the county of which
297 such individual is a resident, who shall immediately
298 present such transcript to the circuit court or mental
299 hygiene commissioner of said county.

300 (2) If the circuit court or mental hygiene commis-
301 sioner of the county of the residence of the individual
302 is satisfied from the evidence contained in such trans-
303 cript that such individual should be hospitalized as
304 determined by the standard set forth above, the circuit
305 court shall order the appropriate hospitalization as
306 though the individual had been brought before the
307 circuit court or its mental hygiene commissioner in the
308 first instance.

309 (3) This order shall be transmitted forthwith to the
310 clerk of the circuit court of the county in which the
311 hearing was held who shall execute said order promptly.

312 (o) *Order of custody to responsible person. — In lieu*
313 *of ordering the patient to a mental health facility, the*

314 circuit court may order the individual delivered to some
315 responsible person who will agree to take care of the
316 individual and the circuit court may take from such
317 responsible person a bond in an amount to be deter-
318 mined by the circuit court with condition to restrain and
319 take proper care of such individual until further order
320 of the court.

321 (p) *Individual not a resident of this state.* — If the
322 individual found to be mentally ill, mentally retarded or
323 addicted by the circuit court or mental hygiene commis-
324 sioner is a resident of another state, this information
325 shall be forthwith given to the secretary of the depart-
326 ment of health and human resources, or to his or her
327 designee, who shall make appropriate arrangements for
328 transfer of the individual to the state of his or her
329 residence conditioned on the agreement of the individual
330 except as qualified by the interstate compact on mental
331 health.

332 (q) *Report to the secretary of the department of health*
333 *and human resources.* —

334 (1) The chief medical officer of a mental health
335 facility admitting a patient pursuant to proceedings
336 under this section shall forthwith make a report of such
337 admission to the secretary of the department of health
338 and human resources or to his or her designee.

339 (2) Whenever an individual is released from custody
340 due to the failure of an employee of a mental health
341 facility to comply with the time requirements of this
342 article, the chief medical officer of such mental health
343 facility shall forthwith after the release of the individual
344 make a report to the secretary of the department of
345 health and human resources or to his or her designee
346 of the failure to comply.

347 (r) *Payment of some expenses by the state; mental*
348 *hygiene fund established; expenses paid by the county*
349 *commission.* —

350 (1) The state shall pay the commissioner's fee and such
351 court reporter fees as are not paid and reimbursed
352 under article twenty-one, chapter twenty-nine of this

353 code out of a special fund to be established within the
354 supreme court of appeals to be known as the "mental
355 hygiene fund".

356 (2) The county commission shall pay out of the county
357 treasury all other expenses incurred in the hearings
358 conducted under the provisions of this article whether
359 or not hospitalization is ordered, including any fee
360 allowed by the circuit court by order entered of record
361 for any physician, psychologist and witness called by the
362 indigent individual.

CHAPTER 126

(Com. Sub. for S. B. 297—By Senator Spears)

[Passed March 3, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter five-f of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article two of said chapter, relating to the reorganization of the executive branch of state government; seven departments; changing the name of the department of public safety to department of military affairs and public safety; the office of secretary as the head of each department; transfer to such departments of numerous state agencies and boards and their allied, advisory, affiliated and related entities and funds; removing and correcting transfer references to certain agencies and boards; retaining the existence, powers, authority, duties and status of administrators, agencies and boards; providing for code references elsewhere; and removing the crime victims compensation fund from reorganization of the executive branch of state government.

Be it enacted by the Legislature of West Virginia:

That section two, article one, chapter five-f of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section one,

article two of said chapter be amended and reenacted to read as follows:

Article

1. **General Provisions.**
2. **Transfer of Agencies and Boards.**

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-2. Executive departments created; offices of secretary created.

1 (a) There are hereby created, within the executive
2 branch of the state government, the following
3 departments:

4 (1) Department of administration;

5 (2) Department of commerce, labor and environmen-
6 tal resources;

7 (3) Department of education and the arts;

8 (4) Department of health and human resources;

9 (5) Department of military affairs and public safety;

10 (6) Department of tax and revenue; and

11 (7) Department of transportation.

12 (b) Each department shall be headed by a secretary
13 who shall be appointed by the governor by and with the
14 advice and consent of the Senate and who shall serve at
15 the will and pleasure of the governor.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1. Transfer and incorporation of agencies and boards; funds.

1 (a) The following agencies and boards, including all
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;

9 (2) Public employees insurance agency and public
10 employees insurance agency advisory board provided for
11 in article sixteen, chapter five of this code;

12 (3) Council of finance and administration provided for
13 in article one, chapter five-a of this code;

14 (4) Employee suggestion award board provided for in
15 article one-a, chapter five-a of this code;

16 (5) Governor's mansion advisory committee provided
17 for in article four-a, chapter five-a of this code;

18 (6) Commission on uniform state laws provided for in
19 article one-a, chapter twenty-nine of this code;

20 (7) Education and state employees grievance board
21 provided for in article twenty-nine, chapter eighteen
22 and article six-a, chapter twenty-nine of this code;

23 (8) Board of risk and insurance management provided
24 for in article twelve, chapter twenty-nine of this code;

25 (9) Boundary commission provided for in article
26 twenty-three, chapter twenty-nine of this code;

27 (10) Public defender services provided for in article
28 twenty-one, chapter twenty-nine of this code;

29 (11) Division of personnel provided for in article six,
30 chapter twenty-nine of this code;

31 (12) The West Virginia ethics commission provided
32 for in article two, chapter six-b of this code; and

33 (13) Consolidated public retirement board provided
34 for in article ten-d, chapter five of this code.

35 (b) The following agencies and boards, including all
36 of the allied, advisory, affiliated or related entities and
37 funds associated with any such agency or board, are
38 hereby transferred to and incorporated in and shall be
39 administered as a part of the department of commerce,
40 labor and environmental resources:

41 (1) Forest management review commission provided
42 for in article twenty-four, chapter five of this code;

43 (2) Division of tourism and parks provided for in

- 44 article one, chapter five-b of this code;
- 45 (3) Office of community and industrial development
46 or successor agency provided for in article two, chapter
47 five-b of this code;
- 48 (4) Enterprise zone authority provided for in article
49 two-b, chapter five-b of this code;
- 50 (5) Office of federal procurement assistance provided
51 for in article two-c, chapter five-b of this code;
- 52 (6) Labor-management council provided for in article
53 four, chapter five-b of this code;
- 54 (7) Public energy authority and board provided for in
55 chapter five-d of this code;
- 56 (8) Air pollution control commission provided for in
57 article twenty, chapter sixteen of this code;
- 58 (9) Solid waste management board provided for in
59 article twenty-six, chapter sixteen of this code;
- 60 (10) Division of forestry and forestry commission
61 provided for in article one-a, chapter nineteen of this
62 code;
- 63 (11) Division of natural resources and natural resour-
64 ces commission provided for in article one, chapter
65 twenty of this code;
- 66 (12) Water resources board provided for in article
67 five, chapter twenty of this code;
- 68 (13) Water development authority and board provided
69 for in article five-c, chapter twenty of this code;
- 70 (14) Division of labor provided for in article one,
71 chapter twenty-one of this code;
- 72 (15) Occupational safety and health review commis-
73 sion provided for in article three-a, chapter twenty-one
74 of this code;
- 75 (16) Board of manufactured housing construction and
76 safety provided for in article nine, chapter twenty-one
77 of this code;
- 78 (17) Division of environmental protection provided for

- 79 in article one, chapter twenty-two of this code;
- 80 (18) Reclamation board of review provided for in
81 article four, chapter twenty-two of this code;
- 82 (19) Board of appeals provided for in article five,
83 chapter twenty-two of this code;
- 84 (20) Board of coal mine health and safety and coal
85 mine safety and technical review committee provided
86 for in article six, chapter twenty-two of this code;
- 87 (21) Shallow gas well review board provided for in
88 article seven, chapter twenty-two of this code;
- 89 (22) Oil and gas conservation commission provided for
90 in article eight, chapter twenty-two of this code;
- 91 (23) Board of miner training, education and certifica-
92 tion provided for in article nine, chapter twenty-two of
93 this code;
- 94 (24) Mine inspectors' examining board provided for in
95 article eleven, chapter twenty-two of this code;
- 96 (25) Oil and gas inspectors' examining board provided
97 for in article thirteen, chapter twenty-two of this code;
- 98 (26) Geological and economic survey provided for in
99 article two, chapter twenty-nine of this code;
- 100 (27) Blennerhassett historical state park commission
101 provided for in article eight, chapter twenty-nine of this
102 code;
- 103 (28) Economic development authority provided for in
104 article fifteen, chapter thirty-one of this code;
- 105 (29) Division of banking provided for in article two,
106 chapter thirty-one-a of this code;
- 107 (30) Board of banking and financial institutions
108 provided for in article three, chapter thirty-one-a of this
109 code;
- 110 (31) Lending and credit rate board provided for in
111 chapter forty-seven-a of this code; and
- 112 (32) Bureau of employment programs provided for in
113 article one, chapter twenty-one-a of this code.

114 (c) The following agencies and boards, including all
115 of the allied, advisory, affiliated or related entities and
116 funds associated with any such agency or board, are
117 hereby transferred to and incorporated in and shall be
118 administered as a part of the department of education
119 and the arts:

120 (1) Library commission provided for in article one,
121 chapter ten of this code;

122 (2) Educational broadcasting authority provided for
123 in article five, chapter ten of this code;

124 (3) University of West Virginia board of trustees
125 provided for in article two and board of directors of the
126 state college system provided for in article three,
127 chapter eighteen-b of this code; and

128 (4) Division of culture and history provided for in
129 article one, chapter twenty-nine of this code.

130 (d) The following agencies and boards, including all
131 of the allied, advisory, affiliated or related entities and
132 funds associated with any such agency or board, are
133 hereby transferred to and incorporated in and shall be
134 administered as a part of the department of health and
135 human resources:

136 (1) Human rights commission provided for in article
137 eleven, chapter five of this code;

138 (2) Division of human services provided for in article
139 two, chapter nine of this code;

140 (3) Division of health provided for in article one,
141 chapter sixteen of this code;

142 (4) Office of emergency medical services and advisory
143 council thereto provided for in article four-c, chapter
144 sixteen of this code;

145 (5) Hospital finance authority provided for in article
146 twenty-nine-a, chapter sixteen of this code;

147 (6) Health care cost review authority provided for in
148 article twenty-nine-b, chapter sixteen of this code;

149 (7) Structural barriers compliance board provided for

- 150 in article ten-f, chapter eighteen of this code;
- 151 (8) Commission on aging provided for in article
152 fourteen, chapter twenty-nine of this code;
- 153 (9) Commission on mental retardation provided for in
154 article fifteen, chapter twenty-nine of this code; and
- 155 (10) Women's commission provided for in article
156 twenty, chapter twenty-nine of this code.
- 157 (e) The following agencies and boards, including all
158 of the allied, advisory, affiliated or related entities and
159 funds associated with any such agency or board, are
160 hereby transferred to and incorporated in and shall be
161 administered as a part of the department of military
162 affairs and public safety:
- 163 (1) Adjutant general's department provided for in
164 article one-a, chapter fifteen of this code;
- 165 (2) Armory board provided for in article six, chapter
166 fifteen of this code;
- 167 (3) Military awards board provided for in article one-
168 g, chapter fifteen of this code;
- 169 (4) Division of public safety provided for in article
170 two, chapter fifteen of this code;
- 171 (5) Office of emergency services and disaster recovery
172 board provided for in article five and emergency
173 response commission provided for in article five-a,
174 chapter fifteen of this code;
- 175 (6) Sheriffs' bureau provided for in article eight,
176 chapter fifteen of this code;
- 177 (7) Division of corrections provided for in chapter
178 twenty-five of this code;
- 179 (8) Fire commission provided for in article three,
180 chapter twenty-nine of this code;
- 181 (9) Regional jail and correctional facility authority
182 provided for in article twenty, chapter thirty-one of this
183 code;
- 184 (10) Board of probation and parole provided for in

185 article twelve, chapter sixty-two of this code; and

186 (11) Division of veterans' affairs and veterans' council
187 provided for in article one, chapter nine-a of this code.

188 (f) The following agencies and boards, including all
189 of the allied, advisory, affiliated or related entities and
190 funds associated with any such agency or board, are
191 hereby transferred to and incorporated in and shall be
192 administered as a part of the department of tax and
193 revenue:

194 (1) Tax division provided for in article one, chapter
195 eleven of this code;

196 (2) Appraisal control and review commission provided
197 for in article one-a, chapter eleven of this code;

198 (3) Municipal bond commission provided for in article
199 three, chapter thirteen of this code;

200 (4) Racing commission provided for in article twenty-
201 three, chapter nineteen of this code;

202 (5) Lottery commission and position of lottery director
203 provided for in article twenty-two, chapter twenty-nine
204 of this code;

205 (6) Agency of insurance commissioner provided for in
206 article two, chapter thirty-three of this code;

207 (7) Office of alcohol beverage control commissioner
208 provided for in article sixteen, chapter eleven and
209 article two, chapter sixty of this code; and

210 (8) Division of professional and occupational licenses
211 which may be hereafter created by the Legislature.

212 (g) The following agencies and boards, including all
213 of the allied, advisory, affiliated or related entities and
214 funds associated with any such agency or board, are
215 hereby transferred to and incorporated in and shall be
216 administered as a part of the department of
217 transportation:

218 (1) Road commission provided for in article two,
219 chapter seventeen of this code;

220 (2) Division of highways provided for in article two-
221 a, chapter seventeen of this code;

222 (3) Parkways, economic development and tourism
223 authority provided for in article sixteen-a, chapter
224 seventeen of this code;

225 (4) Division of motor vehicles provided for in article
226 two, chapter seventeen-a of this code;

227 (5) Driver's licensing advisory board provided for in
228 article two, chapter seventeen-b of this code;

229 (6) Aeronautics commission provided for in article
230 two-a, chapter twenty-nine of this code;

231 (7) Railroad maintenance authority provided for in
232 article eighteen, chapter twenty-nine of this code; and

233 (8) Port authority provided for in article sixteen-b,
234 chapter seventeen of this code.

235 (h) Except for such powers, authority and duties as
236 have been delegated to the secretaries of the depart-
237 ments by the provisions of section two of this article, the
238 existence of the position of administrator and of the
239 agency and the powers, authority and duties of each
240 administrator and agency shall not be affected by the
241 enactment of this chapter.

242 (i) Except for such powers, authority and duties as
243 have been delegated to the secretaries of the depart-
244 ments by the provisions of section two of this article, the
245 existence, powers, authority and duties of boards and
246 the membership, terms and qualifications of members
247 of such boards shall not be affected by the enactment
248 of this chapter, and all boards which are appellate
249 bodies or were otherwise established to be independent
250 decisionmakers shall not have their appellate or
251 independent decision-making status affected by the
252 enactment of this chapter.

253 (j) Any department previously transferred to and
254 incorporated in a department created in section two,
255 article one of this chapter by prior enactment of this
256 section in chapter three, acts of the Legislature, first
257 extraordinary session, one thousand nine hundred

258 eighty-nine, and subsequent amendments thereto, shall
259 henceforth be read, construed and understood to mean
260 a division of the appropriate department so created.
261 Wherever elsewhere in this code, in any act, in general
262 or other law, in any rule or regulation, or in any
263 ordinance, resolution or order, reference is made to any
264 department transferred to and incorporated in a
265 department created in section two, article one of this
266 chapter, such reference shall henceforth be read,
267 construed and understood to mean a division of the
268 appropriate department so created, and any such
269 reference elsewhere to a division of a department so
270 transferred and incorporated shall henceforth be read,
271 construed and understood to mean a section of the
272 appropriate division of the department so created.

CHAPTER 127

(Com. Sub. for S. B. 447—By Senator Bailey)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty, article one-e, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the code of military justice; and authorizing appointment of a member of the bar of a federal court or the highest court of any state to serve as trial counsel or defense counsel at courts-martial.

Be it enacted by the Legislature of West Virginia:

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

PART V. APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL.

ARTICLE 1E. CODE OF MILITARY JUSTICE.

§15-1E-30. Appointment of trial counsel and defense counsel.

- 1 (a) For each general and special court-martial the
- 2 authority convening the court shall appoint trial counsel

3 and defense counsel, and such assistants as he considers
4 appropriate. No person who has acted as investigating
5 officer, military judge or court member in any case shall
6 act subsequently as trial counsel, assistant trial counsel
7 or, unless expressly requested by the accused, as defense
8 counsel or assistant defense counsel in the same case. No
9 person who has acted for the prosecution shall act later
10 in the same case for the defense, nor shall any person
11 who has acted for the defense act later in the same case
12 for the prosecution.

13 (b) Any person who is appointed trial counsel or
14 defense counsel in the case of a general or a special
15 court-martial:

16 (1) Shall be a person who is a member in good
17 standing of the federal bar or the bar of any state of
18 the United States; and

19 (2) Shall be certified as competent to perform such
20 duties by the state judge advocate.

CHAPTER 128

(Com. Sub. for S. B. 6—By Senators Wooton, Spears and Felton)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend article one-f, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a, relating to military leave of absence from educational institutions for members of the national guard and members of a reserve component of the armed forces of the United States called or ordered to active duty.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1F. PRIVILEGES AND PROHIBITIONS.**§15-1F-1a. Educational leave of absence for active duty.**

1 Whenever any member of the national guard or other
 2 reserve component of the armed forces of the United
 3 States is called or ordered to active duty, other than
 4 active duty for training, including, in the case of
 5 members of the national guard, active state duty, the
 6 educational institution in which the member is enrolled
 7 shall grant the member a military leave of absence from
 8 their education. Persons on military leave of absence
 9 from their educational institution shall be entitled, upon
 10 release from military duty, to be restored to the
 11 educational status they had attained prior to their being
 12 ordered to military duty without loss of academic credits
 13 earned, scholarships or grants awarded or tuition and
 14 other fees paid prior to the commencement of the
 15 military duty. It shall be the duty of the educational
 16 institution to refund tuition or fees paid or to credit the
 17 tuition and fees to the next semester or term after the
 18 termination of the educational military leave of absence
 19 at the option of the student. The provisions of this section
 20 shall not supercede federal laws, rules and regulations
 21 at the time of the military leave of absence.

CHAPTER 129

(S. B. 37—By Senators Burdette, Mr. President, and Boley,
 By Request of the Executive)

[Passed February 17, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article one-f, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to extending reemployment rights to members of the organized militia who perform active state service for less than thirty days.

Be it enacted by the Legislature of West Virginia:

That section eight, article one-f, 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 1F. PRIVILEGES AND PROHIBITIONS.**§15-1F-8. Reemployment rights of members of the organized militia.**

1 Members of the organized militia in the active service
2 of the state shall be entitled to the same reemployment
3 rights granted to members of the reserve components of
4 the armed forces of the United States by applicable
5 federal law.

CHAPTER 130

(Com. Sub. for H. B. 4630—By Delegate Collins)

[Passed March 2, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections thirty-two and thirty-three, article one-a, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the establishment and training of state mine rescue crews; specifying compensation for state mine rescue crews; authorizing the director to remove members of mine rescue crews; requiring every mine operator to establish mine rescue teams; specifying manner for providing mine rescue coverage; specifying the terms of availability of mine rescue teams; specifying the director's authority to assign mine rescue teams; specifying limitations of mine rescue coverage for mine rescue stations; specifying membership requirements for mine rescue teams; specifying training and experience requirements for mine rescue teams; specifying compensation for mine rescue teams; requiring reimbursement to employers of mine rescue team members for services rendered; specifying certain procedures to be used while performing mine rescue; specifying certain equipment required for mine rescue stations; specifying maintenance and inspection requirements for breathing apparatuses; requiring inspection records at mine rescue stations; requiring inspection of mine rescue stations; authorizing representatives of the director to inspect mine rescue stations; authorizing

representatives of the director to issue notices of violation for noncompliance; specifying the time frame within which operators receiving such notice must submit a revised mine rescue plan; requiring underground mine operators to submit a mine rescue program to the director; requiring the posting of the mine rescue program; and requiring notification to the director of any conditions materially affecting said program.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. ADMINISTRATION; ENFORCEMENT.

§22A-1A-32. Mine rescue crews.

§22A-1A-33. Mine rescue teams.

§22A-1A-32. Mine rescue crews.

1 The director is hereby authorized to have trained and
2 employed at the rescue stations, operated by the division
3 within the state, such rescue crews as he may deem
4 necessary. Each member of a rescue crew shall devote
5 four hours each month for training purposes and shall
6 be available at all times to assist in rescue work at
7 explosions and mine fires. Regular members shall
8 receive for such services the sum of thirty-two dollars
9 per month, and captains shall receive thirty-five dollars
10 per month, payable on requisition approved by the
11 director. The director may remove any member of a
12 rescue crew at any time.

§22A-1A-33. Mine rescue teams.

1 (a) It shall be the responsibility of the operator to
2 provide mine rescue coverage at each active under-
3 ground mine.

4 (b) Mine rescue coverage may be provided by:

5 (1) Establishing at least two mine rescue teams which
6 are available at all times when miners are underground;
7 or

8 (2) Entering into an arrangement for mine rescue
9 services which assures that at least two mine rescue
10 teams are available at all times when miners are
11 underground.

12 (c) As used in this section, mine rescue teams shall
13 be considered available where teams are capable of
14 presenting themselves at the mine site(s) within a
15 reasonable time after notification of an occurrence
16 which might require their services. Rescue team
17 members will be considered available even though
18 performing regular work duties or while in an off-duty
19 capacity. The requirement that mine rescue teams be
20 available shall not apply when teams are participating
21 in mine rescue contests or providing rescue services to
22 another mine.

23 (d) In the event of a fire, explosion or recovery
24 operations in or about any mine, the director is hereby
25 authorized to assign any mine rescue team to said mine
26 to protect and preserve life and property. The director
27 may also assign mine rescue and recovery work to
28 inspectors, instructors or other qualified employees of
29 the division as he deems necessary.

30 (e) The ground travel time between any mine rescue
31 station and any mine served by that station shall not
32 exceed two hours. To ensure adequate rescue coverage
33 for all underground mines, no mine rescue station may
34 provide coverage for more than seventy mines within
35 the two-hour ground travel limit as defined in this
36 subsection.

37 (f) Each mine rescue team shall consist of five
38 members and one alternate, who are fully qualified,
39 trained and equipped for providing emergency mine
40 rescue service. Each mine rescue team shall be trained
41 by a state certified mine rescue instructor.

42 (g) Each member of a mine rescue team must have
43 been employed in an underground mine for a minimum
44 of one year. For the purpose of mine rescue work only,
45 miners who are employed on the surface but work
46 regularly underground meet the experience require-
47 ment. The underground experience requirement is

48 waived for those members of a mine rescue team on the
49 effective date of this statute.

50 (h) An applicant for initial mine rescue training must
51 not have reached his fiftieth birthday, and shall pass,
52 on at least an annual basis, a physical examination by
53 a licensed physician certifying his fitness to perform
54 mine rescue work. A record that such examination was
55 taken, together with pertinent data relating thereto,
56 shall be kept on file by the operator and a copy shall
57 be furnished to the director.

58 (i) Upon completion of the initial training, all mine
59 rescue team members shall receive at least forty hours
60 of refresher training annually. This training shall be
61 given at least four hours each month, or for a period of
62 eight hours every two months, and shall include:

63 (1) Sessions underground at least once every six
64 months;

65 (2) The wearing and use of a breathing apparatus by
66 team members for a period of at least two hours, while
67 under oxygen, once every two months;

68 (3) Where applicable, the use, care, capabilities and
69 limitations of auxiliary mine rescue equipment, or a
70 different breathing apparatus;

71 (4) Mine map training and ventilation procedures.

72 (j) When engaged in rescue work required by an
73 explosion, fire or other emergency at a mine, all
74 members of mine rescue teams assigned to rescue
75 operations shall, during the period of their rescue work,
76 be employees of the operator of the mine where the
77 emergency exists, and shall be compensated by the
78 operator at the rate established in the area for such
79 work. In no case shall this rate be less than the
80 prevailing wage rate in the industry for the most skilled
81 class of inside mine labor. During the period of their
82 emergency employment, members of mine rescue teams
83 shall be protected by the workers' compensation
84 subscription of such emergency employer.

85 (k) During the recovery work and prior to entering

86 any mine at the start of each shift, all rescue or recovery
87 teams shall be properly informed of existing conditions
88 and work to be performed by the designated company
89 official in charge.

90 (1) For every two teams performing rescue or recovery
91 work underground, one six-member team shall be
92 stationed at the mine portal.

93 (2) Each rescue or recovery team performing work
94 with a breathing apparatus shall be provided with a
95 backup team of equal number, stationed at each fresh
96 air base.

97 (3) Two-way communication and a lifeline or its
98 equivalent shall be provided at each fresh air base for
99 all mine rescue or recovery teams and no mine rescue
100 team member shall advance more than one thousand
101 feet in by the fresh air base: *Provided*, That if a life may
102 possibly be saved and existing conditions do not create
103 an unreasonable hazard to mine rescue team members,
104 the rescue team may advance a distance agreed upon by
105 those persons directing the mine rescue or recovery
106 operations: *Provided, however*, That a lifeline or its
107 equivalent shall be provided in each fresh air base for
108 all mine rescue or recovery teams.

109 (4) A rescue or recovery team shall immediately
110 return to the fresh air base when the atmospheric
111 pressure of any member's breathing apparatus depletes
112 to sixty atmospheres, or its equivalent.

113 (1) Mine rescue stations shall provide a centralized
114 storage location for rescue equipment. This storage
115 location may be either at the mine site, affiliated mines
116 or a separate mine rescue structure. All mine rescue
117 teams shall be guided by the mine rescue apparatus and
118 auxiliary equipment manual. Each mine rescue station
119 shall be provided with at least the following equipment:

120 (1) Twelve self-contained oxygen breathing apparatuses,
121 each with a minimum of two hours capacity, and
122 any necessary equipment for testing such breathing
123 apparatuses;

124 (2) A portable supply of liquid air, liquid oxygen,
125 pressurized oxygen, oxygen generating or carbon
126 dioxide absorbent chemicals, as applicable to the

127 supplied breathing apparatuses and sufficient to sustain
128 each team for six hours while using the breathing
129 apparatuses during rescue operations;

130 (3) One extra, fully charged, oxygen bottle for each
131 self-contained compressed oxygen breathing apparatus,
132 as required under subdivision (1) of this subsection;

133 (4) One oxygen pump or a cascading system, compat-
134 ible with the supplied breathing apparatuses;

135 (5) Twelve permissible cap lamps and a charging
136 rack;

137 (6) Two gas detectors appropriate for each type of gas
138 which may be encountered at the mines served;

139 (7) Two oxygen indicators or two flame safety lamps;

140 (8) One portable mine rescue communication system
141 or a sound-powered communication system. The wires
142 or cable to the communication system shall be of
143 sufficient tensile strength to be used as a manual
144 communication system. The communication system shall
145 be at least one thousand feet in length; and

146 (9) Necessary spare parts and tools for repairing the
147 breathing apparatuses and communication system, as
148 presently prescribed by the manufacturer.

149 (m) Mine rescue apparatuses and equipment shall be
150 maintained in a manner that will ensure readiness for
151 immediate use. A person trained in the use and care of
152 breathing apparatuses shall inspect and test the
153 apparatuses at intervals not exceeding thirty days and
154 shall certify by signature and date that the inspections
155 and tests were done. When the inspection indicates that
156 a corrective action is necessary, the corrective action
157 shall be made and recorded by said person. The
158 certification and corrective action records shall be
159 maintained at the mine rescue station for a period of one
160 year and made available on request to an authorized
161 representative of the director.

162 (n) Authorized representatives of the director have
163 the right of entry to inspect any designated mine rescue
164 station.

165 (o) When an authorized representative finds a viola-
166 tion of any of the mine rescue requirements, he shall

167 take appropriate corrective action in accordance with
168 section thirteen, article one-a of this chapter.

169 (p) Operators affiliated with a station issued an order
170 by an authorized representative will be notified of that
171 order and that their mine rescue program is invalid.
172 The operators shall have twenty-four hours to submit to
173 the director a revised mine rescue program.

174 (q) Every operator of an underground mine shall
175 develop and adopt a mine rescue program for submis-
176 sion to the director within thirty days of the effective
177 date of this statute: *Provided*, That a new program need
178 only be submitted when conditions exist as defined in
179 subsection (p) of this section, or when information
180 contained within the program has changed.

181 (r) A copy of the mine rescue program shall be posted
182 at the mine and kept on file at the operator's mine
183 rescue station or rescue station affiliate and the state
184 regional office where the mine is located. A copy of the
185 mine emergency notification plan filed pursuant to 30
186 CFR §49.9(a) will satisfy the requirements of subsection
187 (q) of this section if submitted to the director.

188 (s) The operator shall immediately notify the director
189 of any changed conditions materially affecting the
190 information submitted in the mine rescue program.

CHAPTER 131

(Com. Sub. for H. B. 4559—By Delegate Pethel)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to monuments, tablets and memorials; setting the minimum number of members of county memorial board at five; setting the maximum number of members of county memorial board at eleven; and requiring at least one member be appointed from each magisterial district within the county.

Be it enacted by the Legislature of West Virginia:

That section two, article three, 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 3. MONUMENTS, TABLETS AND MEMORIALS.

§10-3-2. Memorials to soldiers and sailors; sale of existing memorials; memorial fund; levies; board of directors; report of board to county commission; use of memorial; itemized report for public inspection; itemized budget estimate.

1 (a) The county commission of any county shall have
2 the power, upon petition of twenty percent of the voters
3 of such county, based on the number of votes cast at the
4 last general election for governor, to acquire and
5 establish at the county seat, or at any other suitable
6 place within the county, by purchase or otherwise,
7 ground, park or grove, and to erect and maintain
8 thereon a building or buildings, structure or structures,
9 monument or monuments, to remodel, repair, remove or
10 replace existing buildings or structures, or, within its
11 discretion, to contribute money out of the county
12 treasury to aid in the erection or the maintenance, or
13 both, of any building or buildings, structure or struc-
14 tures, where same is to be used with educational
15 institutions operated by the state or any political
16 subdivision thereof, or to aid in the erection or the
17 maintenance, or both, of any memorial hospital owned
18 and operated by a nonprofit corporation incorporated
19 under the laws of this state, as a memorial or memorials,
20 and, also shall have the power to sell any existing
21 building or structure established and owned by the
22 county commission as a war memorial and use the funds
23 realized from the sale thereof together with other funds
24 hereby authorized to create and establish and maintain
25 new memorials, for the use of the public and to render
26 the greatest benefit to the greatest number, in memory
27 and in recognition of the virtues and sacrifices of the
28 soldiers, sailors and marines from the state of West
29 Virginia and each county thereof, and who served in the
30 armed forces of the United States in the world wars. It

31 is the declared purpose of this section to create or assist
32 in creating memorials to the memory of such soldiers,
33 sailors and marines by aiding all the living, for their
34 health, safety and betterment.

35 (b) The county commission is authorized to and may
36 lay a tax on all property in the county for the purposes
37 of acquiring and establishing such memorials, remodel-
38 ing, repairing, removing or replacing existing memor-
39 ials, or making the initial contribution to memorials,
40 said tax to be not in excess of the following maximum
41 levies on each one hundred dollars' assessed valuation:
42 On Class I property, six cents; on Class II property,
43 twelve cents; and on Classes III and IV property,
44 twenty-four cents; and thereafter for maintenance
45 purposes a like tax to be not in excess of the following
46 maximum levies on each one hundred dollars assessed
47 valuation: On Class I property, two cents; on Class II
48 property, four cents; and on Classes III and IV property,
49 eight cents, such tax to be levied and collected in like
50 manner as the general taxes of the county, which shall
51 be kept separate in a fund to be known as the "memorial
52 fund": *Provided*, That in any county where such
53 memorial has been established and under construction
54 or partly completed the amount of tax for acquiring and
55 establishing the same, or making the initial contribution
56 thereto, shall not be in excess of the following maximum
57 levies on each one hundred dollars assessed valuation:
58 On Class I property, three cents; on Class II property,
59 six cents; and on Classes III and IV property, twelve
60 cents; and thereafter for maintenance purposes a like
61 tax to be not in excess of the following maximum levies
62 on each one hundred dollars assessed valuation: On Class
63 I property, two cents; on Class II property, four cents;
64 and on Classes III and IV property, eight cents.

65 (c) Whenever such memorial is acquired or estab-
66 lished wholly by the county commission under this
67 section, the county commission shall appoint a board of
68 directors composed of at least five members with at least
69 one member from each of the magisterial districts of the
70 county not to exceed a total of eleven members. Such
71 directors shall hold office for four years from the first

72 day of July following their appointment, and until their
73 successors are appointed. No person shall be ineligible
74 to appointment by reason of sex. Vacancies in the board
75 shall be reported to the county commission and filled by
76 appointment in like manner as original appointments
77 for the unexpired term. The county commission may
78 remove any director for misconduct or neglect of duty.
79 No compensation shall be paid or allowed any director.

80 The board of directors of each memorial shall,
81 immediately after their appointment, meet and organize
82 by electing one of their number as president and one as
83 secretary; a majority of all the members of any board
84 shall constitute a quorum for the transaction of business.
85 They shall make and adopt such bylaws, rules and
86 regulations from time to time, for their own guidance
87 and for the government and use of the memorial, as may
88 be expedient and not inconsistent with this section. Such
89 board shall have authority to contract for the construc-
90 tion or purchase of a memorial established under this
91 section and for repairs thereon or maintenance thereof
92 and the supervision, care and custody of the ground,
93 structure or structures: *Provided*, That all contracts
94 shall be approved by the county commission and that the
95 expenditures of all funds shall be subject to the approval
96 of the county commission, and all moneys belonging to
97 the memorial fund shall be deposited in the treasury of
98 such county to the credit of the memorial fund and shall
99 be drawn therefrom on orders issued by the county
100 commission. Such orders shall not be drawn except upon
101 requisition of the memorial board attached to proper
102 authenticated vouchers. Ground, park or a grove for a
103 memorial may be acquired by condemnation by such
104 board in the same manner as the county commission
105 may acquire other real estate for public uses and
106 purposes, and the title of all such property shall be and
107 vest in the county commission. The board shall have
108 power to appoint a suitable custodian and assistants and
109 prescribe rules for their conduct, fix their duties and
110 compensation, and shall have power to remove such
111 appointees and, in general, to carry out the spirit and
112 intention of this section.

113 Each memorial operated by a board of directors as
114 provided hereby shall be free for the use of the
115 inhabitants of the county, subject to such reasonable
116 rules and regulations as the board may adopt, in order
117 to render the use of such building or structure of
118 greatest benefit to the greatest number; and the board
119 may exclude from the use of the building any and all
120 persons who shall wilfully violate such rules. The board
121 of directors may extend the use and privileges of the
122 building and structure to an educational institution or
123 to nonresidents of the county upon such terms and
124 conditions as the board may prescribe.

125 The board of directors shall, on or before the first day
126 of July in each year, make a report to the county
127 commission, stating the condition of the property, the
128 various sums of money received from the memorial
129 fund, and from all other sources, how much money was
130 expended and for what expended; also an itemized
131 budget estimate of expense of the property for the
132 ensuing year, with such other information and sugges-
133 tions as they deem of general interest, or that may be
134 required by the county commission.

135 Any person or persons, including corporations,
136 desiring to make donations of cash or other personal
137 property or real estate for the benefit of the memorial,
138 shall have the right to do so, and shall have the right
139 to vest the title thereof in the county commission, to be
140 held in trust and controlled by such board, the same as
141 the other property owned or acquired, and according to
142 the terms and for the purposes set out in the deed, gift,
143 devise or bequest.

144 (d) Whenever the county commission contributes
145 money out of the county treasury to aid in the erection
146 or the maintenance, or both, of any building or build-
147 ings, structure or structures, where same is or are
148 operated by the state or any political subdivision thereof,
149 or to aid in the erection or the maintenance, or both, of
150 a memorial hospital owned and operated by a nonprofit
151 corporation incorporated under the laws of this state, as
152 such memorial or memorials, there shall be filed with
153 the county commission, on or before the first day of July

154 in each year, an annual itemized report, for public
155 inspection, of the operation, income and expenditures for
156 the twelve months preceding as of the thirty-first day
157 of May in each year, and the condition of the property,
158 by the officials, or board of directors, as the case may
159 be, in charge thereof, and in the case of such memorial
160 hospital such report also shall contain a complete
161 schedule of the rates and charges to the public and the
162 services rendered free to the indigent and needy unable
163 to pay therefor; and there also shall be filed with the
164 county commission, on or before the first day of July in
165 each year, an itemized budget estimate of the expense
166 and operation of such memorial or memorials for the
167 ensuing year, with such other information and sugges-
168 tions as may be deemed of public interest, or that may
169 be required by the county commission.

CHAPTER 132

(S. B. 317—By Senators Sharpe, Whitlow, Helmick and Hawse)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor vehicle registration; increasing from ten to twenty-five miles the distance that a farm use vehicle or trailer may be moved along a public highway under certain circumstances in order to be exempt from motor vehicle registration and licensing requirements; providing that a farm use exemption certificate be displayed on a vehicle otherwise subject to registration; and providing that farm use exemption certificate be issued and fee collected by county assessor.

Be it enacted by the Legislature of West Virginia:

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

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

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

5 (1) Any such vehicle driven or moved upon a highway
6 in conformance with the provisions of this chapter
7 relating to manufacturers, transporters, dealers, lien-
8 holders or nonresidents or under a temporary registra-
9 tion permit issued by the department as hereinafter
10 authorized;

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

36 (A) The exemptions contained in this section shall also
37 apply to farm machinery and tractors: *Provided*, That
38 such machinery and tractors may use the highways in
39 going from one tract of land to another tract of land
40 regardless of whether such land be owned by the same
41 or different persons.

42 (B) Any vehicle exempted hereunder from the re-
43 quirements of annual registration certificate and license
44 plates and fees therefor shall not be permitted to use the
45 highways between sunset and sunrise.

46 (C) Any vehicle exempted hereunder from the re-
47 quirements of annual registration certificate and license
48 plates shall be permitted to use the highways as herein
49 provided whether such exempt vehicle is self-propelled,
50 towed by another exempt vehicle or towed by another
51 vehicle for which registration is required.

52 (D) Any vehicle used as an implement of husbandry
53 exempt hereunder must have the words "farm use"
54 affixed to both sides of the implement in ten inch letters.
55 Any vehicle which would be subject to registration as
56 a Class A or B vehicle if not exempted by this section
57 shall display a farm use exemption certificate on the
58 lower driver's side of the windshield.

59 (i) The farm use exemption certificate shall be
60 provided by the commissioner and shall be issued
61 annually by the assessor of the applicant's county of
62 residence. The assessor shall issue a farm use exemption
63 certificate upon his or her determination pursuant to an
64 examination of the property books or documentation
65 provided by the applicant that the vehicle has been
66 properly assessed as Class I personal property. The
67 assessor shall charge a fee of two dollars for each
68 certificate, one dollar of the fee shall be retained by the
69 assessor and one dollar shall be remitted by the assessor
70 to the commissioner of the division of motor vehicles to
71 be deposited in a special revolving fund to be used in
72 the administration of this section.

73 (ii) A farm use exemption certificate shall in no way
74 exempt the applicant from maintaining the security as
75 required by chapter seventeen-d of this code on any

76 vehicle being operated on the roads or highways of this
77 state.

78 (iii) No person charged with operating a vehicle
79 without a farm use exemption certificate, if required
80 under this section, shall be convicted if he or she
81 produces in court or in the office of the arresting officer
82 a valid farm use exemption certificate for the vehicle in
83 question within five days;

84 (3) Any vehicle which is propelled exclusively by
85 electric power obtained from overhead trolley wires
86 though not operated upon rails;

87 (4) Any vehicle of a type subject to registration owned
88 by the government of the United States;

89 (5) Any wrecked or disabled vehicle which is being
90 towed by a licensed wrecker or dealer on the public
91 highways of this state;

92 (6) The following recreational vehicles shall be
93 exempt from the requirements of annual registration,
94 license plates and fees, unless otherwise specified by
95 law, but shall be subject to the certificate of title
96 provisions of this chapter regardless of highway use:
97 Motorboats, all-terrain vehicles and snowmobiles.

98 (b) The provisions of this article relating to recrea-
99 tional vehicles shall become effective on the first day of
100 July, one thousand nine hundred eighty-nine.

CHAPTER 133

(Com. Sub. for H. B. 4156—By Delegates Reid and L. White)

[Passed March 7, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend and reenact section four, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections four, ten and thirteen, article six of said chapter, all relating to automobile dealers and owners; vehicle owners' application for

certificate of title; tax for privilege of certification of title; providing that the division of motor vehicles may issue a certificate of registration and title to an applicant if the applicant provides proof that the dealership has gone out of business and not paid the fees to the division; providing for transfer of certificates of registration and title among members of the same controlled group; criminal penalty for false swearing; application for license certificate; information required in an application; insurance; requiring an applicant for a new or used motor vehicle dealer's license to disclose on the application form information regarding retail and wholesale sales of motor vehicles during the preceding fiscal year; requiring a license applicant who sold no motor vehicles during the preceding fiscal year to disclose the information regarding anticipated sales during the ensuing fiscal year; authorizing the increase from two thousand dollars to ten thousand dollars the amount of the surety bond to be posted by an applicant for a motor vehicles dealer's license; application and renewal fees; issuance of dealers' plates; changing the formula under which new and used car dealers apply for and receive dealers' plates; limiting the use of dealer plates on courtesy vehicles to one per dealership; and maintenance of records.

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 sections four, ten and thirteen, article six of said chapter be amended and reenacted, all to read as follows:

Article

3. **Original and Renewal of Registration; Issuance of Certificates of Title.**
6. **Licensing of Dealers and Wreckers or Dismantlers; Special Plates; Temporary Plates or Markers, 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 the motor
23 vehicle at the time of the certification. If the vehicle is
24 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 imposed by this section has been paid by the
32 purchaser shall be deducted from the total actual price
33 or consideration paid for the vehicle, whether the same
34 be 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 the 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 transferred to the state of West Virginia:
49 *Provided further,* That the division of motor vehicles
50 may issue a certificate of registration and title to an
51 applicant if the applicant provides sufficient proof to the
52 division of motor vehicles that the applicant has paid the
53 taxes and fees required by this section to a motor vehicle
54 dealership that has gone out of business or has filed
55 bankruptcy proceedings in the United States bank-
56 ruptcy court and the taxes and fees so required to be
57 paid by the applicant have not been sent to the division
58 by the motor vehicle dealership or have been impounded
59 due to the bankruptcy proceedings: *And provided*
60 *further,* That the applicant makes an affidavit of the
61 same and assigns all rights to claims for money the
62 applicant may have against the motor vehicle dealership
63 to the division of motor vehicles: *And provided further,*
64 That the division of motor vehicles shall issue a
65 certificate of registration and title to an applicant
66 without payment of the tax imposed by this section if
67 the applicant is a corporation, partnership or limited
68 liability company transferring the vehicle to another
69 corporation, partnership or limited liability company
70 when the entities involved in the transfer are members
71 of the same controlled group and the transferring entity
72 has previously paid the tax on the vehicle transferred.
73 For the purposes of this section, control means owner-
74 ship, directly or indirectly, of stock or equity interests
75 possessing fifty percent or more of the total combined
76 voting power of all classes of the stock of a corporation
77 or equity interests of a partnership or limited liability
78 company entitled to vote or ownership, directly or
79 indirectly, of stock or equity interests possessing fifty
80 percent or more of the value of the corporation,
81 partnership or limited liability company.

82 The tax imposed by this section does not apply to
83 vehicles to be registered as Class H vehicles, or Class
84 S vehicles, as defined in section one, article ten of this

85 chapter, which are used or to be used in interstate
86 commerce. Nor does the tax imposed by this section
87 apply to the titling of Class B, Class K or Class E
88 vehicles registered at a gross weight of fifty-five
89 thousand pounds or more, or to the titling of Class C or
90 Class L semitrailers, full trailers, pole trailers, and
91 converter gear: *Provided*, That if an owner of a vehicle
92 has previously titled the vehicle at a declared gross
93 weight of fifty-five thousand pounds or more and the
94 title was issued without the payment of the tax imposed
95 by this section, then before the owner may obtain
96 registration for the vehicle at a gross weight less than
97 fifty-five thousand pounds, the owner must surrender to
98 the commissioner the exempted registration, the exemp-
99 ted certificate of title, and pay the tax imposed by this
100 section based upon the current market value of the
101 vehicle: *Provided, however*, That notwithstanding the
102 provisions of section nine, article fifteen, chapter eleven
103 of this code, the exemption from tax under this section
104 for Class B, Class K or Class E vehicles in excess of fifty-
105 five thousand pounds and Class C or Class L semitrail-
106 ers, full trailers, pole trailers and converter gear shall
107 not subject the sale or purchase of the vehicles to the
108 consumers sales tax. The tax imposed by this section
109 does not apply to titling of vehicles by a registered
110 dealer of this state for resale only, nor does the tax
111 imposed by this section apply to titling of vehicles by
112 this state or any political subdivision thereof, or by any
113 volunteer fire department or duly chartered rescue or
114 ambulance squad organized and incorporated under the
115 laws of the state of West Virginia as a nonprofit
116 corporation for protection of life or property. The total
117 amount of revenue collected by reason of this tax shall
118 be paid into the state road fund and expended by the
119 commissioner of highways for matching federal funds
120 allocated for West Virginia. In addition to the tax, there
121 is a charge of five dollars for each original certificate
122 of title or duplicate certificate of title so issued: *Provided*
123 *further*, That this state or any political subdivision
124 thereof, or any volunteer fire department, or duly
125 chartered rescue squad, is exempt from payment of the
126 charge.

127 The certificate is good for the life of the vehicle, so
128 long as the same is owned or held by the original holder
129 of the certificate, and need not be renewed annually, or
130 any other time, except as provided in this section.

131 If, by will or direct inheritance, a person becomes the
132 owner of a motor vehicle and the tax imposed by this
133 section previously has been paid, to the division of motor
134 vehicles, on that vehicle, he or she is not required to pay
135 the tax.

136 A person who has paid the tax imposed by this section
137 is not required to pay the tax a second time for the same
138 motor vehicle, but is required to pay a charge of five
139 dollars for the certificate of retitling of that motor vehicle,
140 except that the tax shall be paid by the person when the
141 title to the vehicle has been transferred either in this
142 or another state from such person to another person and
143 transferred back to such person.

144 (c) Notwithstanding any provisions of this code to the
145 contrary, the owners of trailers, semitrailers, recrea-
146 tional vehicles and other vehicles not subject to the
147 certificate of title tax prior to the enactment of this
148 chapter are subject to the privilege tax imposed by this
149 section: *Provided*, That the certification of title of any
150 recreational vehicle owned by the applicant on the
151 thirtieth day of June, one thousand nine hundred eighty-
152 nine, is not subject to the tax imposed by this section:
153 *Provided, however*, That mobile homes, house trailers,
154 modular homes and similar nonmotive propelled vehi-
155 cles, except recreational vehicles, susceptible of being
156 moved upon the highways but primarily designed for
157 habitation and occupancy, rather than for transporting
158 persons or property, or any vehicle operated on a
159 nonprofit basis and used exclusively for the transporta-
160 tion of mentally retarded or physically handicapped
161 children when the application for certificate of registra-
162 tion for the vehicle is accompanied by an affidavit
163 stating that the vehicle will be operated on a nonprofit
164 basis and used exclusively for the transportation of
165 mentally retarded and physically handicapped children,
166 are not subject to the tax imposed by this section, but
167 are taxable under the provisions of articles fifteen and

168 fifteen-a, chapter eleven of this code.

169 (d) Any person making any affidavit required under
170 any provision of this section, who knowingly swears
171 falsely, or any person who counsels, advises, aids or
172 abets another in the commission of false swearing, is on
173 the first offense guilty of a misdemeanor, and, upon
174 conviction thereof, shall be fined not more than five
175 hundred dollars or be imprisoned in the county jail for
176 a period not to exceed six months, or, in the discretion
177 of the court, both fined and imprisoned. For a second
178 or any subsequent conviction within five years, that
179 person is guilty of a felony, and, upon conviction thereof,
180 shall be fined not more than five thousand dollars or be
181 imprisoned in the penitentiary for not less than one year
182 nor more than five years or, in the discretion of the
183 court, fined and imprisoned.

184 (e) Notwithstanding any other provisions of this
185 section, any person in the military stationed outside
186 West Virginia, or his or her dependents who possess a
187 motor vehicle with valid registration, are exempt from
188 the provisions of this article for a period of nine months
189 from the date that that person returns to this state or
190 the date his or her dependent returns to this state,
191 whichever is later.

**ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR
DISMANTLERS; SPECIAL PLATES; TEMPORARY
PLATES OR MARKERS, ETC.**

§17A-6-4. Application for license certificate; insurance; bonds; investigation; information confidential.

§17A-6-10. Fee required for license certificate; dealer special plates.

§17A-6-13. Use of special plates, records to be maintained by dealer.

**§17A-6-4. Application for license certificate; insurance;
bonds; investigation; information confidential.**

1 (a) Application for any license certificate required by
2 section three of this article shall be made on a form
3 prescribed by the commissioner. There shall be attached
4 to the application a certificate of insurance certifying
5 that the applicant has in force an insurance policy issued
6 by an insurance company authorized to do business in

7 this state insuring the applicant and any other person,
8 as insured, using any vehicle or vehicles owned by the
9 applicant with the express or implied permission of the
10 named insured, against loss from the liability imposed
11 by law for damages arising out of the ownership,
12 operation, maintenance or use of the vehicle or vehicles,
13 subject to minimum limits, exclusive of interest and
14 costs, with respect to each vehicle, as follows: Twenty
15 thousand dollars because of bodily injury to or death of
16 one person in any one accident and, subject to the limit
17 for one person, forty thousand dollars because of bodily
18 injury to or death of two or more persons in any one
19 accident, and ten thousand dollars because of injury to
20 or destruction of property of others in any one accident.

21 (b) In the case of an application for a license
22 certificate to engage in the business of new motor
23 vehicle dealer, used motor vehicle dealer or house trailer
24 dealer, the application shall disclose, but not be limited
25 to, the following:

26 (1) The type of business for which a license certificate
27 is sought;

28 (2) If the applicant is an individual, the full name and
29 address of the applicant and any trade name under
30 which he or she will engage in the business;

31 (3) If the applicant is a copartnership, the full name
32 and address of each partner therein, the name of the
33 copartnership, its post-office address and any trade
34 name under which it will engage in the business;

35 (4) If the applicant is a corporation, its name, the state
36 of its incorporation, its post-office address and the full
37 name and address of each officer and director thereof;

38 (5) The location of each place in this state at which
39 the applicant will engage in the business and whether
40 the business is owned or leased by the applicant;

41 (6) Whether the applicant, any partner, officer or
42 director thereof has previously engaged in the business
43 or any other business required to be licensed under the
44 provisions of this article and if so, with or for whom,
45 at what location and for what periods of time;

46 (7) Whether the applicant, any partner, officer,
47 director or employer thereof has previously applied for
48 a license certificate under the provisions of this article
49 or a similar license certificate in this or any other state,
50 and if so, whether the license certificate was issued or
51 refused, and, if issued, whether it was ever suspended
52 or revoked;

53 (8) A statement of previous general business expe-
54 rience and the past history of the applicant; and

55 (9) Any other information that the commissioner may
56 reasonably require which may include information
57 relating to any contracts, agreements or understandings
58 between the applicant and other persons respecting the
59 transaction of the business, and any criminal record of
60 the applicant if an individual, or of each partner if a
61 copartnership, or of each officer and director, if a
62 corporation.

63 (c) In the case of an application for a license certifi-
64 cate to engage in the business of new motor vehicle
65 dealer, the application shall, in addition to the matters
66 outlined in subsection (b) of this section disclose:

67 (1) The make or makes of new motor vehicles which
68 the applicant will offer for sale in this state during the
69 ensuing fiscal year; and

70 (2) The exact number of new and used motor vehicles,
71 if any, sold at retail and wholesale by the applicant or
72 his or her predecessor, if any, during the preceding
73 fiscal year, and if no new and used motor vehicles were
74 sold at retail and wholesale by the applicant or his or
75 her predecessor, if any, during the preceding fiscal year,
76 the number of new and used motor vehicles the
77 applicant reasonably expects to sell at retail and
78 wholesale during the ensuing fiscal year.

79 (d) In the case of an application for a license
80 certificate to engage in the business of used motor
81 vehicle dealer, the application shall in addition to the
82 matters outlined in subsection (b) of this section, disclose
83 the exact number of used motor vehicles, if any, sold at

84 retail and wholesale by the applicant or his or her
85 predecessor, if any, during the preceding fiscal year,
86 and if no used motor vehicles were sold at retail and
87 wholesale by the applicant or his or her predecessor, if
88 any, during the preceding fiscal year, the number of
89 used motor vehicles the applicant reasonably expects to
90 sell at retail and wholesale during the ensuing fiscal
91 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, the
96 application shall disclose any information that the
97 commissioner may reasonably require.

98 (f) The 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. The application
102 must be accompanied by a bond of the applicant in the
103 penal sum of ten thousand dollars, in the form pres-
104 cribed by the commissioner, conditioned that the
105 applicant will not in the conduct of his or her business
106 practice any fraud which, or make any fraudulent
107 representation which, shall cause a financial loss to any
108 purchaser, seller or financial institution or agency, or
109 the state of West Virginia, with a corporate surety
110 thereon authorized to do business in this state, which
111 bond shall be effective as of the date on which the license
112 certificate sought is issued.

113 (g) Upon receipt of any fully completed application,
114 together with any bond required under subsection (f) of
115 this section, the certificate of insurance as aforesaid and
116 the appropriate fee provided for in section ten of this
117 article, the commissioner may conduct any investigation
118 as he considers necessary to determine the accuracy of
119 any statements contained in the application and the
120 existence of any other facts which he deems relevant in
121 considering such application. To facilitate the investiga-
122 tion, the commissioner may withhold issuance or refusal

123 of the license certificate for a period not to exceed
124 twenty days.

125 (h) Any application for a license certificate under the
126 provisions of this article and any information submitted
127 with the application is confidential for the use of the
128 division. No person shall divulge any information
129 contained in any application or any information submit-
130 ted with the application except in response to a valid
131 subpoena or subpoena duces tecum issued pursuant to
132 law.

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 is two hundred fifty
6 dollars: *Provided*, That if an application for a license
7 certificate is denied or refused in accordance with
8 section six of this article, one hundred twenty-five
9 dollars shall be refunded to the applicant. The initial
10 application fee entitles 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 is one hundred dollars. This fee shall also
16 entitle the licensee to one dealer's special plate which
17 shall be known as a Class D special plate. Up to two
18 additional Class D special plates shall be issued to the
19 licensee upon application on a form prescribed by the
20 commissioner for such purpose and the payment of a fee
21 of five dollars for each additional Class D special plate.
22 Any licensee is also entitled to receive additional Class
23 D special plates on a formula basis, that is, one
24 additional Class D special plate per twenty new and
25 used motor vehicles sold at retail and wholesale by the

26 licensee or predecessor during the preceding fiscal year,
27 upon application on a form prescribed by the commis-
28 sioner for such purpose and the payment of a fee of five
29 dollars for each additional Class D special plate:
30 *Provided*, That in the case of a licensee who did not own
31 or operate the business during the preceding fiscal year
32 and who has no predecessor who owned or operated a
33 business during the fiscal year, additional Class D plates
34 shall be issued for the ensuing fiscal year only on a
35 formula basis of one additional Class D plate per twenty
36 new and used motor vehicles which the licensee esti-
37 mates on his or her application for his or her license
38 certificate he or she will sell at retail and wholesale
39 during the ensuing fiscal year. The licensee may revise
40 his or her estimate if actual sales of new and used motor
41 vehicles in the initial year exceed the estimate by filing
42 an amended application for his or her license certificate.
43 Additional Class D plates shall be issued for the
44 remaining portion of the fiscal year only on a formula
45 basis of one additional Class D plate per twenty new and
46 used vehicles in the revised estimate.

47 (c) The annual renewal fee required for a license
48 certificate to engage in the business of used motor
49 vehicle dealer is one hundred dollars. This fee also
50 entitles the licensee to one dealer's special plate which
51 shall be known as a Class D-U/C special plate. Up to
52 two additional Class D-U/C special plates shall be issued
53 to the licensee upon application on a form prescribed by
54 the commissioner for such purpose and the payment of
55 a fee of five dollars for each additional Class D-U/C
56 special plate. Any licensee is also entitled to receive
57 additional Class D-U/C special plates on a formula basis,
58 that is, one additional Class D-U/C special plate per
59 twenty used motor vehicles sold at retail and/or
60 wholesale by the licensee or his or her predecessor
61 during the preceding fiscal year, upon application
62 therefor on a form prescribed by the commissioner for
63 such purpose and the payment of a fee of five dollars
64 for each additional Class D-U/C special plate: *Provided*,
65 That in the case of a licensee who did not own or operate

66 the business during the preceding fiscal year and who
67 has no predecessor who owned or operated the business
68 during the preceding fiscal year, additional Class D-U/C
69 plates shall be issued for the ensuing fiscal year only on
70 a formula basis of one additional Class D-U/C plate per
71 twenty used motor vehicles which the licensee estimates
72 on his or her application for the license certificate he
73 or she will sell at retail and/or wholesale during the
74 ensuing fiscal year. The licensee may revise his or her
75 estimate if actual sales of used motor vehicles in the
76 ensuing fiscal year exceed the estimate by filing an
77 amended application for his or her license certificate.
78 Additional Class D-U/C plates shall be issued for the
79 remaining portion of the fiscal year only on a formula
80 basis of one additional Class D-U/C plate per twenty
81 used vehicles in the revised estimate.

82 (d) The annual renewal fee required for a license
83 certificate to engage in the business of house trailer
84 dealer or trailer dealer, as the case may be, is twenty-
85 five dollars. This fee also entitles the licensee to four
86 dealer's special plates which shall be known as Class D-
87 T/R special plates. Additional Class D-T/R special plates
88 shall be issued to any licensee upon application therefor
89 on a form prescribed by the commissioner for such
90 purpose and the payment of a fee of five dollars for each
91 such additional Class D-T/R special plate.

92 (e) The annual renewal fee required for a license
93 certificate to engage in the business of recreational
94 vehicle dealer is one hundred dollars. This fee shall also
95 entitle the licensee to four dealer special plates which
96 shall be known as Class D-R/V special plates. Additional
97 Class D-R/V special plates shall be issued to any licensee
98 upon application therefor on a form prescribed by the
99 commissioner for such purpose on the payment of a fee
100 of twenty-five dollars for each additional Class D-R/V
101 special plate.

102 (f) The annual renewal fee required for a license
103 certificate to engage in the business of motorcycle dealer
104 is ten dollars. This fee shall also entitle the licensee to

105 two dealer's special plates which shall be known as Class
106 F special plates. Additional Class F special plates shall
107 be issued to any dealer upon application therefor on a
108 form prescribed by the commissioner for such purpose
109 and the payment of a fee of five dollars for each
110 additional Class F special plate.

111 (g) The annual renewal fee required for a license
112 certificate to engage in the business of wrecker/
113 dismantler/rebuilder is fifteen dollars. Upon payment of
114 the fee for the license certificate, a licensee is entitled
115 to up to four special license plates which shall be known
116 as Class WD special plates. The plates shall be issued
117 to any licensee upon application therefor on a form
118 prescribed by the commissioner for such purpose and
119 the payment of a fee of twenty-five dollars for each
120 plate. The plate issued under the provisions of this
121 subsection shall have the words "Towing Only" affixed
122 thereon. A wrecker/dismantler/rebuilder is entitled to
123 one special plate known as a Class WD/Demo special
124 plate upon payment of a twenty-five dollar fee. This
125 plate shall only be used for demonstrating rebuilt
126 automobiles owned by the wrecker/dismantler/
127 rebuilder.

128 (h) All of the special plates provided for in this section
129 shall be of such form and design and contain such other
130 distinguishing marks or characteristics as the commis-
131 sioner may prescribe.

**§17A-6-13. Use of special plates; records to be maintained
by dealer.**

1 (a) The Class D special plates and the Class D-U/C
2 special plates authorized in this article may be used for
3 any purpose on any motor vehicle owned by the dealer
4 to whom issued and which is being operated with his
5 or her knowledge and consent and not otherwise:
6 *Provided*, That under no circumstances whatever shall
7 a Class D special plate or Class D-U/C special plate be
8 used on any work or service vehicle owned by a dealer,
9 on any vehicle owned by a dealer and offered for hire
10 or lease, or on any vehicle which has been sold by a

11 dealer to a customer: *Provided, however,* That a dealer
12 is authorized to use a Class D or Class D-U/C special
13 plate on no more than one courtesy vehicle per
14 dealership.

15 (b) Under no circumstances whatever shall a Class D-
16 T/R special plate be used for the purpose of operating
17 a motor vehicle upon the streets and highways, or on any
18 house trailer or other trailer owned by a dealer and
19 offered for hire or lease, or on any house trailer or other
20 trailer which has been sold by a dealer to a customer:
21 *Provided,* That notwithstanding the sale or any provi-
22 sion of this code to the contrary, a Class D-T/R special
23 plate may be used in moving a house trailer sold by a
24 house trailer dealer to a customer for one trip only from
25 the house trailer dealer's established place of business
26 to a place designated by the customer.

27 (c) Under no circumstances whatever shall a Class D-
28 R/V special plate be used for the purpose of operating
29 a motor vehicle upon the streets and highways, or on any
30 recreational vehicle owned by a dealer and offered for
31 hire or lease, or on any recreational vehicle which has
32 been sold by a dealer to a customer: *Provided,* That
33 notwithstanding any provision of this code to the
34 contrary, a Class D-R/V special plate may be used upon
35 the streets and highways for demonstration purposes
36 only on those recreational vehicles that are subject to
37 registration under article three of this chapter.

38 (d) Under no circumstances whatever shall a Class F
39 special plate be used for the purpose of operating any
40 type of motor vehicle other than a motorcycle on the
41 streets and highways, or on a motorcycle owned by a
42 dealer and offered for hire or lease, or on any motorcycle
43 which has been sold by a dealer to a customer.

44 (e) Every dealer entitled to and issued a special plate
45 or plates under the provisions of this article shall keep
46 a written record of the salesman, mechanic, employee,
47 agent, officer or other person to whom a special plate
48 or plates have been assigned by the dealer. Every record
49 shall be open to inspection by the commissioner or his
50 or her representatives or any law-enforcement officer.

CHAPTER 134

(H. B. 4710—By Delegate Love)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article five, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to special permit and certificate in lieu of registration for nonresident owners of special mobile equipment.

Be it enacted by the Legislature of West Virginia:

That section one, article five, 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:

§17A-5-1. Exemptions from registration of nonresident owners; special permit and certificate in lieu of registration for nonresidents maintaining temporary and recurrent or seasonal residence in state.

1 (a) A nonresident owner, except as otherwise pro-
2 vided in this section, owning any vehicle registered in
3 a foreign state or country of a Class A type otherwise
4 subject to registration hereunder may operate or permit
5 the operation of such vehicle within this state for a
6 period of thirty days without registering such vehicle in,
7 or paying any fees to, this state subject to the condition
8 that such vehicle at all times when operated in this state
9 is duly registered in and displays upon it a valid
10 registration card and registration plate or plates issued
11 for such vehicle in the place of residence of such owner
12 and that such vehicle is not operated for commercial
13 purposes.

14 (b) Every nonresident, including any foreign corpora-
15 tion, carrying on business within this state and owning
16 and regularly operating in such business any motor
17 vehicle, trailer, semitrailer or special mobile equipment
18 as defined in section one, article one, chapter seventeen-
19 a, within this state, shall be required to register each

20 such vehicle and pay the same fee therefor as is required
21 with reference to like vehicles owned by residents of this
22 state, except as otherwise provided by reciprocal
23 agreements with other states accomplished pursuant to
24 sections ten and ten-a, article two of this chapter.

25 (c) Any nonresident who accepts or engages in
26 temporary and recurrent or seasonal employment,
27 business, profession or occupation in this state and
28 maintains temporary and recurrent or seasonal resi-
29 dence in this state in connection with such employment,
30 business, profession or occupation, and any nonresident,
31 including any corporation carrying on business of a
32 temporary and recurrent or seasonal nature in this state
33 and owning and temporarily and recurrently or season-
34 ally operating in such business any motor vehicle,
35 trailer, semitrailer or special mobile equipment as
36 defined in section one, article one, chapter seventeen-a,
37 within this state, may operate or permit the operation
38 of such vehicle within this state without causing said
39 vehicle to be registered as otherwise required by article
40 three of this chapter: *Provided*, That such nonresident,
41 in lieu of registration of such vehicle, shall make
42 application to the department and receive a special
43 permit for such vehicle which shall be evidenced by a
44 metal identification plate and certificate in writing,
45 which special permit plate and certificate shall together
46 identify the vehicle for which such special permit and
47 plate shall issue and such certificate shall bear the name
48 and address of the owner of such vehicle. Such special
49 permit shall be issued without previous certification of
50 title to such vehicle as otherwise required by article
51 three of this chapter or the provisions of subsection (b)
52 of this section.

53 (1) Every owner of a vehicle for which such special
54 permit is desired shall make a verified application to the
55 division for such special permit upon the appropriate
56 form or forms furnished by the division and shall bear
57 the signature of the owner written with pen and ink and
58 shall contain the character of information called for by
59 section three, article three of this chapter, a description
60 of the employment, residence, business and location of

61 such business set forth in such manner as to show the
62 temporary and recurrent or seasonal nature of such
63 residence, employment, business, profession or occupa-
64 tion, and that such vehicle is duly registered in the state
65 of residence of such owner. There shall be an application
66 for each vehicle for which a special permit is desired.

67 (2) Any special permit or plate issued by the division
68 under this section shall be effective and valid for a
69 period of sixty consecutive days from and including the
70 date of issuance and, upon similar application by the
71 owner, the commissioner may renew any such special
72 permit for immediately ensuing similar period or
73 periods of sixty days in any fiscal year. The division
74 shall charge a fee of fifty dollars for each special permit
75 issued under this section.

76 (A) A special permit shall be issued for one vehicle
77 only and no combination of two or more vehicles shall
78 be operated under fewer special permits than the
79 number of vehicles in such combination. A special
80 permit shall not be issued for any vehicle which is not
81 duly registered in the state of residence of the owner
82 thereof.

83 (B) The registration plate issued for such vehicle by
84 the state of residence of the owner shall not be displayed
85 on such vehicle while being operated over any highway
86 during any period for which a special permit shall have
87 been issued for such vehicle under this section, but there
88 shall be carried in such vehicle the certificate of
89 registration issued for such vehicle by the state of
90 residence of such owner.

91 (C) Any owner of any vehicle making application to
92 operate such vehicle upon the highways of this state
93 pursuant to the provisions of this article shall also be
94 required to comply with the provisions of chapter
95 seventeen-d of this code prior to commencing such
96 operation.

97 (3) The commissioner shall prescribe the substance,
98 form, color and context of the certificate or special
99 permit and the special permit plate, each of which shall
100 be visually distinguishable from the certificates of

101 registration and registration plates issued under article
102 three of this chapter.

103 (4) It is a misdemeanor for any person to drive or
104 move or knowingly to permit to be moved or driven upon
105 any highway any vehicle for which a special permit
106 shall have been issued under this section unless such
107 vehicle shall bear the special plate called for by the
108 certificate evidencing such special permit.

109 (5) When the employment, business, profession,
110 occupation or residence of the owner of a vehicle for
111 which such special permit shall have been issued shall
112 cease to be temporary and recurrent or seasonal, any
113 special permit issued for such vehicle pursuant to this
114 section shall immediately terminate and become void
115 and such vehicle shall thereupon become subject to
116 registration under article three of this chapter or the
117 provisions of subsection (b) of this section.

118 (6) Any special permit issued pursuant to this section
119 shall be valid and effective on and after the first day
120 of a month; that is, such special permit issued between
121 the first and fifteenth days of a month shall be effective
122 during sixty consecutive days from and including the
123 first day of the month in which the permit shall issue;
124 and a special permit issued after the fifteenth day of any
125 month shall be effective during sixty consecutive days
126 commencing with and including the first day of the
127 month next following the month in which such special
128 permit shall be issued.

129 (d) Any other provision of this section notwithstand-
130 ing any nonresident referred to in subsection (c) of this
131 section who is engaged by a public utility, as the later
132 is defined in chapter twenty-four of this code, for the
133 exclusive purpose of restoring the service of said utility
134 as a result of an emergency in which such service is
135 affected shall be permitted to operate such motor
136 vehicle, trailer, semitrailer or special mobile equipment
137 as defined in section one, article one, chapter seventeen-
138 a within this state without causing said motor vehicle,
139 trailer, semitrailer or special mobile equipment as
140 defined in section one, article one, chapter seventeen-a

141 to be registered as otherwise provided by this section
 142 and article three of this chapter for the period actually
 143 necessary for such restoration but not to exceed a period
 144 of ten consecutive days: *Provided*, That said motor
 145 vehicle, trailer, semitrailer or special mobile equipment
 146 shall be registered in another state upon entry into this
 147 state. The provisions of this subsection shall not affect
 148 the requirements of reciprocal agreements with other
 149 states accomplished pursuant to sections ten and ten-a,
 150 article two of this chapter.

CHAPTER 135

(Com. Sub. for H. B. 4136—By Delegates Reid and Brum)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to licensed motor vehicle dealers; and mandating minimum requirements relating to the display area, office space, telephone service and public hours of operation for a motor vehicle dealer's established place of business.

Be it enacted by the Legislature of West Virginia:

That section one, article six, 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 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS, ETC.

§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 or her,
99 as the case may be, which is or is to be used exclusively
100 for 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 or her, which shall
110 be easily accessible to the public, which shall conform
111 to all applicable laws of the state of West Virginia and
112 the ordinances of the municipality in which it is located,
113 if any, which shall display thereon at least one perman-
114 ent sign, clearly visible from the principal public street
115 or 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 each established place
122 of business shall have a display area which may be
123 outside or inside or a combination thereof of at least
124 twelve hundred square feet which is to be used exclu-
125 sively for the display of vehicles which are offered for
126 sale by the dealer, office space of at least one hundred
127 forty-four square feet, and a telephone listed in the name

128 of the dealership. Each established place of business
129 shall be open to the public a minimum of twenty hours
130 per week at least forty weeks per calendar year with at
131 least ten of those hours being between the hours of nine-
132 thirty a.m. and eight-thirty p.m., Monday through
133 Saturday: *Provided, however,* That the requirement of
134 exclusive use shall be met even though (i) some new and
135 any used motor vehicles sold or to be sold by such dealer
136 or sold or are to be sold at a different location or
137 locations not meeting the definition of an established
138 place of business of a new motor vehicle dealer, if each
139 such location is or is to be served by other facilities and
140 space of such dealer for the servicing and repair of at
141 least one motor vehicle, adequate and suitable as
142 aforesaid, and each such location used for the sale of
143 some new and any used motor vehicles otherwise meets
144 the definition of an established place of business of a
145 used motor vehicle dealer; (ii) house trailers, trailers
146 and/or motorcycles are sold or are to be sold thereat, if,
147 subject to the provisions of section five of this article,
148 a separate license certificate is obtained for each such
149 type of vehicle business, which license certificate
150 remains unexpired, unsuspended and unrevoked; (iii)
151 farm machinery is sold thereat; and (iv) accessory,
152 gasoline and oil, or storage departments are maintained
153 thereat, if such departments are operated for the
154 purpose of furthering and assisting in the licensed
155 business or businesses.

156 (18) "Farm machinery" means all machines and tools
157 used in the production, harvesting or care of farm
158 products.

159 (19) "Established place of business" shall, in the case
160 of a used motor vehicle dealer, mean a permanent
161 location, not a temporary stand or other temporary
162 quarters, owned or leased by the licensee or applicant
163 and actually occupied or to be occupied by him, as the
164 case may be, which is or is to be used exclusively for
165 the purpose of selling used motor vehicles, which shall
166 have facilities and space therewith for the servicing and
167 repair of at least one motor vehicle, which servicing and
168 repair facilities and space shall be adequate and suitable

169 to carry out servicing and to make repairs necessary to
170 keep and carry out all representations, warranties and
171 agreements made or to be made by such dealer with
172 respect to used motor vehicles sold by him or her, which
173 shall be easily accessible to the public, shall conform to
174 all applicable laws of the state of West Virginia, and the
175 ordinances of the municipality in which it is located, if
176 any, which shall display thereon at least one permanent
177 sign, clearly visible from the principal public street or
178 highway nearest said location and clearly stating the
179 business which is or shall be conducted thereat, and
180 which shall have adequate facilities to keep, maintain
181 and preserve records, papers and documents necessary
182 to carry on such business and to make the same
183 available to inspection by the commissioner at all
184 reasonable times: *Provided*, That each established place
185 of business shall have a display area which may be
186 outside or inside or a combination thereof of at least
187 twelve hundred square feet which is to be used exclu-
188 sively for the display of vehicles which are offered for
189 sale by the dealer, office space of at least one hundred
190 forty-four square feet, and a telephone listed in the name
191 of the dealership. Each established place of business
192 shall be open to the public a minimum of twenty hours
193 per week at least forty weeks per calendar year with at
194 least ten of those hours being between the hours of nine-
195 thirty a.m. and eight-thirty p.m., Monday through
196 Saturday: *Provided, however*, That if a used motor
197 vehicle dealer has entered into a written agreement or
198 agreements with a person or persons owning or operat-
199 ing a servicing and repair facility or facilities adequate
200 and suitable as aforesaid, the effect of which agreement
201 or agreements is to provide such servicing and repair
202 services and space in like manner as if said servicing
203 and repair facilities and space were located in or on said
204 dealer's place of business, then, so long as such an
205 agreement or agreements are in effect, it shall not be
206 necessary for such dealer to maintain such servicing and
207 repair facilities and space at the place of business in
208 order for such place of business to be an established
209 place of business as herein defined: *Provided further*,
210 That the requirement of exclusive use shall be met even

211 though (i) house trailers, trailers and/or motorcycles are
212 sold or are to be sold thereat, if, subject to the provisions
213 of section five of this article, a separate license
214 certificate is obtained for each such type of vehicle
215 business, which license certificate remains unexpired,
216 unsuspended and unrevoked; (ii) farm machinery is sold
217 thereat; and (iii) accessory, gasoline and oil, or storage
218 departments are maintained thereat, if such depart-
219 ments are operated for the purpose of furthering and
220 assisting in the licensed business or businesses.

221 (20) "Established place of business" shall, in the case
222 of a house trailer dealer, trailer dealer, recreational
223 vehicle dealer, motorcycle dealer, used parts dealer and
224 wrecker or dismantler, mean a permanent location, not
225 a temporary stand or other temporary quarters, owned
226 or leased by the licensee or applicant and actually
227 occupied or to be occupied by him, as the case may be,
228 which shall be easily accessible to the public, which
229 shall conform to all applicable laws of the state of West
230 Virginia and the ordinances of the municipality in
231 which it is located, if any, which shall display thereon
232 at least one permanent sign, clearly visible from the
233 principal public street or highway nearest said location
234 and clearly stating the business which is or shall be
235 conducted thereat, and which shall have adequate
236 facilities to keep, maintain and preserve records, papers
237 and documents necessary to carry on such business and
238 to make the same available to inspection by the
239 commissioner at all reasonable times.

240 (21) "Manufacturer" means every person engaged in
241 the business of reconstructing, assembling or reassem-
242 bling vehicles with a special type body required by the
243 purchaser if said vehicle is subject to the title and
244 registration provision of the code.

245 (22) "Transporter" means every person engaged in the
246 business of transporting vehicles to or from a manufac-
247 turing, assembling or distributing plant to dealers or
248 sales agents of a manufacturer, or purchasers.

249 (23) "Recreational vehicle dealer" means every person
250 (other than his agents and employees, if any, while

251 acting within the scope of their authority or employ-
252 ment), engaged in, or who holds himself out to the public
253 to be engaged in, the business in this state of selling new
254 and/or used recreational vehicles.

255 (24) "Motorboat" means any vessel propelled by an
256 electrical, steam, gas, diesel or other fuel propelled or
257 driven motor, whether or not such motor is the principal
258 source of propulsion, but shall not include a vessel which
259 has a valid marine document issued by the bureau of
260 customs of the United States government or any federal
261 agency successor thereto.

262 (25) "Motorboat trailer" means every vehicle designed
263 for or ordinarily used for the transportation of a
264 motorboat.

265 (26) "All-terrain vehicle" (ATV) means any motor
266 vehicle designed for off-highway use and designed for
267 operator use only with no passengers, having a seat or
268 saddle designed to be straddled by the operator, and
269 handlebars for steering control.

270 (27) "Travel trailer" means every vehicle, mounted on
271 wheels, designed to provide temporary living quarters
272 for recreational, camping or travel use of such size or
273 weight as not to require special highway movement
274 permits when towed by a motor vehicle and of gross
275 trailer area less than four hundred square feet.

276 (28) "Fold down camping trailer" means every vehicle
277 consisting of a portable unit mounted on wheels and
278 constructed with collapsible partial sidewalls which fold
279 for towing by another vehicle and unfold at the camp
280 site to provide temporary living quarters for recrea-
281 tional, camping or travel use.

282 (29) "Motor home" means every vehicle, designed to
283 provide temporary living quarters, built into an integral
284 part of or permanently attached to a self-propelled
285 motor vehicle, chassis or van including: (1) Type A
286 motor home built on an incomplete truck chassis with
287 the truck cab constructed by the second stage manufac-
288 turer; (2) Type B motor home consisting of a van-type
289 vehicle which has been altered to provide temporary

290 living quarters; and (3) Type C motor home built on an
291 incomplete van or truck chassis with a cab constructed
292 by the chassis manufacturer.

293 (30) "Snowmobile" means a self-propelled vehicle
294 intended for travel primarily on snow and driven by a
295 track or tracks in contact with the snow and steered by
296 a ski or skis in contact with the snow.

297 (31) "Recreational vehicle" means a motorboat,
298 motorboat trailer, all-terrain vehicle, travel trailer, fold
299 down camping trailer, motor home or snowmobile.

300 (32) "Major component" means any one of the follow-
301 ing subassemblies of a motor vehicle: (i) Front clip
302 assembly consisting of fenders, grille, hood, bumper and
303 related parts; (ii) engine; (iii) transmission; (iv) rear clip
304 assembly consisting of quarter panels and floor panel
305 assembly; or (v) two or more doors.

306 (b) Under no circumstances whatever shall the terms
307 "new motor vehicle dealer," "used motor vehicle dealer,"
308 "house trailer dealer," "trailer dealer," "recreational
309 vehicle dealer," "motorcycle dealer," "used parts dealer"
310 or "wrecker/dismantler/rebuilder" be construed or
311 applied under this article in such a way as to include
312 a banking institution, insurance company, finance
313 company, or other lending or financial institution, or
314 other person, the state or any agency or political
315 subdivision thereof, or any municipality, who or which
316 owns or shall come in possession or ownership of, or
317 acquire contract rights, or security interests in or to, any
318 vehicle or vehicles or any part thereof and shall sell such
319 vehicle or vehicles or any part thereof for purposes other
320 than engaging in and holding himself or itself out to the
321 public to be engaged in the business of selling vehicles
322 or any part thereof.

323 (c) It is recognized that throughout this code the term
324 "trailer" or "trailers" is used to include, among other
325 types of trailers, house trailers. It is also recognized that
326 throughout this code the term "trailer" or "trailers" is
327 seldom used to include semitrailers or pole trailers.
328 However, for the purposes of this article only, the term
329 "trailers" shall have the meaning ascribed to it in
330 subsection (a) of this section.

CHAPTER 136

(Com. Sub. for S. B. 122—By Senator Blatnik)

[Passed March 3, 1992; in effect 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 ten-c, relating to special demonstration plates for motor vehicle dealers which sell trailers, truck-tractors, road-tractors or trucks; application requirements; fees; record keeping; prohibitions; and certificates of insurance.

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 ten-c, to read as follows:

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS, ETC.

PART III. FEES AND DEALER SPECIAL PLATES GENERALLY.

§17A-6-10c. Special demonstration plates for dealers in trailers, truck-tractors, road-tractors and trucks; application; fee.

1 (a) Notwithstanding any other provisions of this code,
2 any new motor vehicle dealer or used motor vehicle
3 dealer engaged in the business of selling trailers, truck-
4 tractors, road-tractors or trucks who demonstrates the
5 motor vehicles under actual work conditions to potential
6 purchasers shall obtain a special demonstration plate
7 from the division of motor vehicles. The motor vehicle
8 dealer may obtain special demonstration plates without
9 first titling or registering each vehicle.

10 (b) The commissioner shall prescribe the application
11 form for these special demonstration plates and shall
12 require the applicant to submit proof of the applicant's
13 status as a bona fide dealer in motor vehicles and to
14 certify that the applicant needs special demonstration

15 plates in the ordinary course of business.

16 The commissioner, upon approving any application,
17 shall issue to the new motor vehicle dealer or used motor
18 vehicle dealer up to four special demonstration plates
19 which shall display the term "demonstration" or "demo"
20 and a distinguishing number assigned to the motor
21 vehicle dealer.

22 (c) The annual fee for special demonstration plates is
23 one hundred dollars for the first plate and fifty dollars
24 for each additional plate, not to exceed a total of four
25 plates per dealer.

26 (d) Each motor vehicle dealer who is issued special
27 demonstration plates shall keep a written record, on a
28 form approved by the commissioner, containing the
29 following information: Identification of the motor
30 vehicles upon which the special demonstration plates are
31 used; the times and dates during which each special
32 demonstration plate is used; the name and address of the
33 company or individual using a motor vehicle on which
34 a special demonstration plate is used; and any other
35 information considered necessary by the commissioner.
36 This record shall be open to inspection by any police
37 officer or employee of the division.

38 (e) Each motor vehicle operated under the provisions
39 of this section is considered to be registered at the
40 maximum vehicle weights allowable under article
41 seventeen, chapter seventeen-c of this code.

42 (f) A motor vehicle dealer shall not: (1) Use any
43 special demonstration plates issued under the provisions
44 of this section on any motor vehicle which is not being
45 demonstrated; (2) use any special demonstration plates
46 to demonstrate any single motor vehicle for more than
47 seven calendar days in any calendar year for any single
48 customer; (3) use any special demonstration plates on
49 any motor vehicle leased or rented to any customer; or
50 (4) use any special demonstration plates in any way
51 other than to demonstrate the on-the-job capabilities of
52 a motor vehicle to a potential purchaser.

53 (g) The motor vehicle dealer is required to furnish a
54 certificate of insurance in the amount required by

55 regulations of the West Virginia public service commis-
56 sion or the United States department of transportation
57 for the class of motor carrier for which the motor vehicle
58 is to be demonstrated.

CHAPTER 137

(H. B. 4499—By Delegate J. Martin)

[Passed March 6, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to registration of antique motor vehicles, providing for restricted and general use of antique motor vehicles, providing a system of numbering license plates with the model year of the antique motor vehicle and authorizing the commissioner to promulgate certain rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-3a. Special registration of antique motor vehicles.

- 1 The annual registration fee for any antique motor
2 vehicle as defined in this section is two dollars. "Antique
3 motor vehicle" means any motor vehicle which is over
4 twenty-five years old, and is owned solely as a collector's
5 item.
- 6 (a) Except as otherwise provided in this section,
7 antique motor vehicles may not be used for general
8 transportation but may only be used for:
- 9 (1) Participation in club activities, exhibits, tours,
10 parades and similar events;
- 11 (2) The purpose of testing their operation, obtaining
12 repairs or maintenance, and transportation to and from
13 events as described in subdivision (1); and

14 (3) Recreational purposes on Saturdays, Sundays and
15 holidays.

16 (b) A West Virginia motor vehicle displaying license
17 plates of the same year of issue as the model year of the
18 antique motor vehicle, as authorized in this section, may
19 be used for general transportation purposes if the
20 following conditions are met:

21 (1) The license plate's physical condition has been
22 inspected and approved by the division of motor
23 vehicles;

24 (2) The license plate is registered to the specific
25 motor vehicle by the division of motor vehicles;

26 (3) The owner of the motor vehicle annually registers
27 the motor vehicle and pays an annual registration fee
28 for the motor vehicle equal to that charged to obtain
29 regular state license plates;

30 (4) The motor vehicle passes an annual safety inspec-
31 tion; and

32 (5) The motor vehicle displays a sticker attached to
33 the license plate, issued by the division, indicating that
34 the motor vehicle may be used for general
35 transportation.

36 If more than one request is made for license plates
37 having the same number, the division shall accept only
38 the first application.

39 The commissioner may promulgate rules necessary or
40 convenient for the carrying out of the provisions of this
41 section.

CHAPTER 138

(H. B. 4716—By Delegates Manuel and Staton)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, one-a, two, three, four, five, six, seven, seven-b, seven-c, eight, nine, ten, eleven, twelve, thirteen, fourteen and fifteen, article two,

chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three-a, article three of said chapter seventeen-b; to amend and reenact section five, article two-a, chapter seventeen-d; and to amend and reenact sections twelve and fourteen, article one, chapter seventeen-e of said code, all relating to driver's licenses generally; classification of driver's licenses; nonoperator identification cards and fees therefor; surrender of driver's licenses issued by other states; removal of lawful authority to retain certain commercial driver's licenses issued by another state; persons exempt from requirement of driver's license; persons to whom the issuance of driver's licenses are prohibited and exceptions; persons prohibited from driving school buses or transporting persons or property for compensation; instruction permits; applications; examinations and legislative rules therefor; motorcycle examinations and endorsements; window for receiving motorcycle endorsement without examination; motorcycle license examination fund; issuance and contents of driver's licenses and fees therefor; removal of requirement that division of motor vehicles mark reissued driver's licenses with information of prior suspensions; requirement that driver's licenses be in the immediate possession of operator of motor vehicle and that the same be displayed upon demand; restricted licenses; duplicate permits and licenses; expiration of driver's licenses; renewals of driver's licenses and fees therefor; notice of change of name or address; records to be kept by the division of motor vehicles; removal of requirement that the division of motor vehicles file all accident reports; legislative rules necessary to implement certain provisions of chapter; suspension of driver's licenses for failure to pay municipal or magistrate court fines or costs; cancellations of insurance policy; suspension of registration; minimum policy term; classifications of commercial driver's licenses and endorsements or restrictions thereon; and criminal penalties for persons who, having been issued a commercial driver's license, operate a commercial motor vehicle while having any measurable alcohol in such person's system or while having an

alcohol concentration of blood, breath or urine of four hundredths of one percent or more, or who refuse to take a breath test.

Be it enacted by the Legislature of West Virginia:

That sections one, one-a, two, three, four, five, six, seven, seven-b, seven-c, eight, nine, ten, eleven, twelve, thirteen, fourteen and fifteen, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section three-a, article three of said chapter seventeen-b be amended and reenacted; that section five, article two-a, chapter seventeen-d be amended and reenacted; and that sections twelve and fourteen, article one, chapter seventeen-e of said code be amended and reenacted, all to read as follows:

Chapter

17B. Motor Vehicle Operators' and Chauffeurs' Licenses.

17D. Motor Vehicle Safety Responsibility Law.

17E. Uniform Commercial Driver's License Act.

CHAPTER 17B. MOTOR VEHICLE OPERATORS' AND CHAUFFEURS' LICENSES.

Article

2. Issuance of License, Expiration and Renewal.

3. Cancellation, Suspension or Revocation of Licenses.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

- §17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.
- §17B-2-1a. Surrender of license from other state or jurisdiction prior to receipt of license from this state; examination; fees required.
- §17B-2-2. Persons exempt from license.
- §17B-2-3. What persons shall not be licensed; exceptions.
- §17B-2-4. Persons prohibited from driving school buses or transporting persons or property for compensation.
- §17B-2-5. Qualifications, issuance and fee for instruction permits.
- §17B-2-6. Application for license or instruction permit; fee to accompany application.
- §17B-2-7. Examination of applicants.
- §17B-2-7b. Separate examination and endorsement for a license valid for operation of motorcycle.
- §17B-2-7c. Motorcycle license examination fund.

- §17B-2-8. Issuance and contents of licenses; fees.
- §17B-2-9. License to be carried and exhibited on demand.
- §17B-2-10. Restricted licenses.
- §17B-2-11. Duplicate permits and licenses.
- §17B-2-12. Expiration of licenses; renewal; renewal fees.
- §17B-2-13. Notice of change of address or name.
- §17B-2-14. Records and indexes to be kept by the division.
- §17B-2-15. Authority for regulations.

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

1 (a) No person, except those hereinafter expressly
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's
7 license under the provisions of this code for the type or
8 class of vehicle being driven.

9 Any person licensed to operate a motor vehicle as
10 provided in this code may exercise the privilege thereby
11 granted as provided in this code and, except as other-
12 wise provided by law, shall not be required to obtain any
13 other license to exercise such privilege by any county,
14 municipality or local board or body having authority to
15 adopt local police regulations.

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

21 (c) Driver's licenses issued by the division shall be
22 classified in the following manner:

23 (1) Class A, B, or C license shall be issued to those
24 persons eighteen years of age or older with two years
25 driving experience and who have qualified for the
26 commercial driver's license established by chapter
27 seventeen-e of this code and the federal commercial
28 motor vehicle safety act of 1986, Title XII of public law
29 99870 and subsequent rules, and have paid the required
30 fee.

31 (2) Class D license shall be issued to those persons
32 eighteen years and older with one year driving experi-
33 ence who operate motor vehicles other than those types
34 of vehicles which require the operator to be licensed
35 under the provisions of chapter seventeen-e of this code
36 and federal law and rule for the transportation of
37 persons or property for compensation and have paid the
38 required fee. For the purposes of the regulation of the
39 operation of a motor vehicle, wherever the term
40 chauffeur's license is used in this code, it shall be
41 construed to mean the Class A, B, C or D license
42 described in this section or chapter seventeen-e of this
43 code or federal law or rule.

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

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

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

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

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

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

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

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

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

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

84 (3) The identification card shall be surrendered to the
85 division when the holder is issued a driver's license. The
86 division may issue an identification card to an applicant
87 whose privilege to operate a motor vehicle has been
88 refused, cancelled, suspended or revoked under the
89 provisions of this code.

**§17B-2-1a. Surrender of license from other state or
jurisdiction prior to receipt of license from
this state; examination; fees required.**

1 The division of motor vehicles shall not issue a driver's
2 license to a person who holds a valid license to operate
3 a motor vehicle issued by another state or jurisdiction
4 unless or until the applicant shall surrender to the
5 division the foreign license, or such person has signed
6 and submitted to the division an affidavit to the effect
7 that such person has surrendered all valid licenses
8 issued to him or her by other states or jurisdictions. Any
9 surrendered license issued by any other state or
10 jurisdiction shall be returned to the division of motor
11 vehicles or similar agency in that state or jurisdiction
12 together with a notice that the person who surrendered
13 the license has been licensed in this state. It shall be
14 unlawful for a person to possess more than one valid
15 driver's license at any time.

16 All other applicable provisions of this article relating
17 to issuance, fees, expiration and renewal of licenses, and
18 driver examination of applicants shall also apply to this
19 section.

§17B-2-2. Persons exempt from license.

1 The following persons are exempt from license
2 hereunder:

3 (1) Any person while operating a motor vehicle in the
4 armed services of the United States while in the
5 performance of his official duties;

6 (2) A nonresident who is at least sixteen years of age
7 and who has in his immediate possession a valid driver's
8 license issued to such person in such person's home state
9 or country may operate a motor vehicle in this state only
10 as an operator for a period not to exceed ninety days in
11 any one calendar year;

12 (3) A nonresident who is at least sixteen years of age,
13 who has in such person's immediate possession a valid
14 driver's license issued to such person in such person's
15 home state or country and who is employed in this state,
16 or owns, maintains or operates a place or places of
17 business in this state, or engages in any trade, profession
18 or occupation in this state, in addition to the driving
19 privileges extended under subdivision (2) of this section,
20 may operate a motor vehicle in this state only as an
21 operator in traveling to and from such person's place or
22 places of employment, place or places of business or
23 place or places at which such person engages in such
24 trade, profession or occupation and in the discharge of
25 the duties of such person's employment, business, trade,
26 profession or occupation if such duties are such that, if
27 performed by a resident of the state of West Virginia
28 over the age of eighteen years of age, such resident
29 would not be required under the provisions of this
30 chapter to obtain a Class A, B, C or D driver's license;

31 (4) A nonresident who is at least eighteen years of age
32 and who has in such person's immediate possession a
33 valid commercial driver's license issued to such person
34 in such person's home state or country may operate a

35 motor vehicle in this state either as a commercial
36 operator subject to the age limits applicable to commer-
37 cial operators in this state, or as an operator subject to
38 the limitations imposed on nonresident operators in
39 subdivisions (2) and (3) of this section;

40 (5) Any person who is a student, properly enrolled and
41 registered in an accredited school, college or university
42 in this state, who is at least sixteen years of age and who
43 has in such person's immediate possession a valid
44 driver's license issued to such person in such person's
45 home state, notwithstanding the limitations of subdivi-
46 sions (2) and (3) of this section may operate a motor
47 vehicle in this state only as an operator: *Provided*, That
48 the state of which such person is a resident shall extend
49 the same privileges to residents of this state. This
50 exemption shall be cancelled immediately when such
51 student is graduated from school, college or university
52 or is expelled or ceases to be a student.

§17B-2-3. What persons shall not be licensed; exceptions.

1 The division shall not issue any license hereunder:

2 (1) To any person, as an operator, who is under the
3 age of eighteen years: *Provided*, That under rules and
4 regulations to be established by the commissioner and
5 in accordance with the provisions hereinafter set forth
6 in this subdivision (1), a junior driver's license may be
7 issued to any person between the ages of sixteen and
8 eighteen years, who complies with section eleven, article
9 eight, chapter eighteen of this code and is not otherwise
10 disqualified by law, upon application therefor on a form
11 prescribed by the commissioner and successful comple-
12 tion of all examinations and driving tests required by
13 law for the issuance of a driver's license to a person
14 eighteen years of age or older. The commissioner may
15 impose reasonable conditions or restrictions on the
16 operation of a motor vehicle by a person holding such
17 junior driver's license, which conditions or restrictions
18 shall be printed on each such license. In addition to all
19 other provisions of this chapter for which a driver's
20 license may be revoked, suspended or cancelled, when-
21 ever a person holding such a junior driver's license (A)

22 does not comply with the provisions of section eleven,
23 article eight, chapter eighteen of this code, (B) operates
24 a motor vehicle in violation of the conditions or
25 restrictions set forth on such license, or (C) has a record
26 of two convictions for moving violations of the traffic
27 regulations and laws of the road, which convictions have
28 become final, the junior driver's license of such person
29 shall be permanently revoked, with like effect as if such
30 person had never held a junior driver's license: *Pro-*
31 *vided*, That a junior driver's license shall be suspended
32 for noncompliance with the provisions of section eleven,
33 article eight, chapter eighteen of this code, and may be
34 reinstated upon compliance: *Provided, however*, That
35 such junior driver's license shall be revoked upon one
36 final conviction for any offense specified in section five,
37 article three of this chapter. Under no circumstances
38 shall such a license be revoked for convictions of offenses
39 in violation of any regulation or law governing the
40 standing or parking of motor vehicles. A person whose
41 junior driver's license has been revoked shall not
42 thereafter receive a junior driver's license, but such
43 person, upon attaining the age of eighteen, shall be
44 eligible, unless otherwise disqualified by law, for
45 examination and driver testing for a regular driver's
46 license. No person shall receive a junior driver's license
47 unless the application therefor is accompanied by a
48 writing, duly acknowledged, consenting to the issuance
49 of such junior driver's license and executed by the
50 parents of the applicant; or if only one parent is living,
51 then by such parent; or if the parents be living separate
52 and apart, by the one to whom the custody of the
53 applicant was awarded; or if there is a guardian entitled
54 to the custody of the applicant, then by such guardian.
55 Upon attaining the age of eighteen years, a person
56 holding an unrevoked junior driver's license shall, upon
57 payment of the prescribed fee, be entitled to receive a
58 regular driver's license without further examination or
59 driver testing;

60 (2) To any person, as a Class A, B, C or D driver, who
61 is under the age of eighteen years;

62 (3) To any person, whose license has been suspended,

63 during such suspension, nor to any person whose license
64 (other than a junior driver's license) has been revoked,
65 except as provided in section eight, article three of this
66 chapter;

67 (4) To any person who is an habitual drunkard or is
68 addicted to the use of narcotic drugs;

69 (5) To any person, as an operator or chauffeur, who
70 has previously been adjudged to be afflicted with or
71 suffering from any mental disability or disease and who
72 has not at the time of application been restored to
73 competency by judicial decree or released from a
74 hospital for the mentally incompetent upon the certifi-
75 cate of the superintendent of such institution that such
76 person is competent, and not then unless the commis-
77 sioner is satisfied that such person is competent to
78 operate a motor vehicle with a sufficient degree of care
79 for the safety of persons or property;

80 (6) To any person who is required by this chapter to
81 take an examination, unless such person shall have
82 successfully passed such examination;

83 (7) To any person when the commissioner has good
84 cause to believe that the operation of a motor vehicle on
85 the highways by such person would be inimical to public
86 safety or welfare.

**§17B-2-4. Persons prohibited from driving school buses
or transporting persons or property for
compensation.**

1 No person who is under the age of eighteen years and
2 no person who has been convicted of an offense des-
3 cribed in section two, article five, chapter seventeen-c
4 of this code, and which conviction has become final shall
5 drive any school bus transporting school children or any
6 motor vehicle when in use for the transportation of
7 persons or property for compensation nor in either event
8 until such person has been licensed as a Class A, B, C
9 or D driver for either such purpose and the license so
10 indicates.

**§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 such person's
11 immediate possession to drive a motor vehicle upon the
12 public highways when accompanied by a licensed driver
13 of at least twenty-one years of age or a driver's education
14 or 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 years
21 shall expire sixty days after the permittee reaches
22 sixteen years of age: *Provided*, That only permittees who
23 have reached their sixteenth birthday are eligible to
24 take the driving examination as provided in section six
25 of this article. The instruction permit may be renewed
26 for one additional period of sixty days. Any such permit
27 issued to a person who has reached the age of sixteen
28 years shall be valid for a period of sixty days and may
29 be renewed for an additional period of sixty days or a
30 new permit issued. The fee for such instruction permit
31 shall be four dollars, one dollar of which shall be paid
32 into the state treasury and credited to the state road
33 fund, and the other three dollars of which shall be paid
34 into the state treasury and credited to the general fund
35 to be appropriated to the department of public safety for
36 application 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 division 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 such
47 person's immediate possession to drive a motorcycle
48 upon the public streets or highways for a period of sixty
49 days, during the daylight hours between sunrise and
50 sunset only. No holder of a motorcycle instruction
51 permit shall operate a motorcycle while carrying any
52 passenger on the vehicle. A motorcycle instruction
53 permit is not renewable, but a qualified applicant may
54 apply for a new permit. The fee for a motorcycle
55 instruction permit shall be five dollars, which shall be
56 paid into a special fund in the state treasury known as
57 the motorcycle license examination fund as established
58 in section seven-c, article two of this chapter.

**§17B-2-6. Application for license or instruction permit;
fee to accompany application.**

1 Every application for an instruction permit or for a
2 driver's license shall be made upon a form furnished by
3 the division. Every application shall be accompanied by
4 the proper fee and payment of such fee shall entitle the
5 applicant to not more than three attempts to pass the
6 examination within a period of sixty days from the date
7 of application, except that no applicant may be exam-
8 ined twice within a period of one week.

9 Every said application shall state the full name, date
10 of birth, sex, and residence address of the applicant, and
11 briefly describe the applicant, and shall state whether
12 the applicant has theretofore been a licensed driver,
13 and, if so, when and by what state or country, and
14 whether any such license has ever been suspended or
15 revoked within the five years next preceding the date
16 of application, or whether an application has ever been
17 refused, and, if so, the date of and reason for such
18 suspension, revocation or refusal, and such other
19 pertinent information as the commissioner may require.

§17B-2-7. Examination of applicants.

1 (a) Upon the presentment by the applicant under the
2 age of eighteen years of the applicant's birth certificate,

3 or a certified copy thereof, as evidence that the applicant
4 is of lawful age, the division of public safety shall
5 examine every applicant for a license to operate a motor
6 vehicle in this state, except as otherwise provided in this
7 section. Such examination shall include a test of the
8 applicant's eyesight, the applicant's ability to read and
9 understand highway signs regulating, warning, and
10 directing traffic, the applicant's knowledge of the traffic
11 laws of this state, and the applicant's knowledge of the
12 effects of alcohol upon persons and the dangers of
13 driving a motor vehicle under the influence of alcohol,
14 and shall include an actual demonstration of ability to
15 exercise ordinary and reasonable control in the opera-
16 tion of a motor vehicle, and such further physical and
17 mental examination as the division of motor vehicles and
18 the division of public safety deems necessary to deter-
19 mine the applicant's fitness to operate a motor vehicle
20 safely upon the highways.

21 (b) The commissioner and superintendent of public
22 safety shall promulgate legislative rules in accordance
23 with the provisions of chapter twenty-nine-a of this code
24 concerning the examination of applicants for licenses
25 and the qualifications required of such applicants, and
26 the examination of such applicants by the division of
27 public safety shall be in accordance with such rules.
28 Such rules shall provide for the viewing of educational
29 material or films on the effects of alcohol upon persons
30 and the dangers of driving a motor vehicle while under
31 the influence of alcohol.

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

1 The division 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 of
8 this article: *Provided*, That the commissioner of motor
9 vehicles may exempt an applicant for a motorcycle
10 driver license or endorsement from all or part of the

11 motorcycle license examination as provided in section
12 six, article one-d of this chapter. The motorcycle
13 examination shall test the applicant's knowledge of the
14 operation of a motorcycle and of any traffic laws
15 specifically relating thereto and shall include an actual
16 demonstration of the ability to exercise ordinary and
17 reasonable control in the operation of a motorcycle. An
18 applicant for a license valid for the operation of only a
19 motorcycle shall be tested as provided in this section and
20 in section seven of this article, but need not demonstrate
21 actual driving ability in any vehicle other than a
22 motorcycle. The examination provided in this section
23 shall not be made a condition upon the renewal of the
24 license of any person under this section.

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

31 Any person who already holds a valid driver's license
32 on or before the first day of April, one thousand nine
33 hundred ninety-two, upon application and payment of
34 the required fee to the division of motor vehicles at any
35 time between the first day of April, one thousand nine
36 hundred ninety-two, and the thirtieth day of June, one
37 thousand nine hundred ninety-two, may be issued a
38 motorcycle endorsement without being required to take
39 the examination specified in this section. On or after the
40 first day of July, one thousand nine hundred ninety-two,
41 every person, including those holding a valid driver's
42 license, shall be required to take the examination
43 specified in this section to obtain a motorcycle license
44 or endorsement.

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

1 There is hereby created a special revolving fund in
2 the state treasury which shall be designated as the
3 "motorcycle license examination fund". The fund shall
4 consist of all moneys received from fees collected for
5 motorcycle instruction permits under this article and

6 any other moneys specifically allocated to the fund. The
7 fund shall not be treated by the auditor or treasurer as
8 part of the general revenue of the state. The fund shall
9 be a special revolving fund to be used and paid out upon
10 order of the superintendent of public safety solely for the
11 purposes specified in this article.

12 The fund shall be used by the division of public safety
13 to defray the costs of implementing and administering
14 a special motorcycle license examination, including a
15 motorcycle driving test.

§17B-2-8. Issuance and contents of licenses; fees.

1 (1) The division shall, upon payment of the required
2 fee, issue to every applicant qualifying therefor a
3 driver's license, which shall indicate the type or general
4 class or classes of vehicle or vehicles the licensee may
5 operate in accordance with this chapter, or chapter
6 seventeen-e of this code, or motorcycle-only license. Each
7 license shall contain a coded number assigned to the
8 licensee, the full name, date of birth, residence address,
9 a brief description and a color photograph of the licensee
10 and either a facsimile of the signature of the licensee
11 or a space upon which the signature of the licensee shall
12 be written with pen and ink immediately upon receipt
13 of the license. No license shall be valid until it has been
14 so signed by the licensee: *Provided*, That the commis-
15 sioner may issue a valid without-photo license for
16 applicants temporarily out of state. A driver's license
17 which is valid for operation of a motorcycle shall contain
18 a motorcycle endorsement. The division shall use such
19 process or processes in the issuance of licenses that will,
20 insofar as possible, prevent any alteration, counterfeit-
21 ing, duplication, reproduction, forging or modification
22 of, or the superimposition of a photograph on, such
23 license.

24 (2) The fee for the issuance of a Class E driver's
25 license shall be ten dollars and fifty cents. The fee for
26 issuance of a Class D driver's license shall be twenty-
27 five dollars and fifty cents. Fifty cents of each such fee
28 shall be deposited in the "combined voter registration
29 and driver's licensing fund", established pursuant to the

30 provisions of section twenty-two-a, article two, chapter
31 three of this code. The one-time only additional fee for
32 adding a motorcycle endorsement to a driver's license
33 shall be five dollars. The fee for issuance of a motorcy-
34 cle-only license shall be ten dollars. The fees for the
35 motorcycle endorsement or motorcycle-only license shall
36 be paid into a special fund in the state treasury known
37 as the motorcycle safety fund as established in section
38 seven, article one-d of this chapter.

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

1 Every licensee shall have his or her driver's license
2 in such person's immediate possession at all times when
3 operating a motor vehicle and shall display the same,
4 upon demand of a magistrate, municipal judge, circuit
5 court judge, peace officer, or an employee of the division.
6 However, no person charged with violating this section
7 shall be convicted if such person produces in court or
8 the office of the arresting officer a driver's license
9 theretofore issued to such person and valid at the time
10 of such person's arrest.

§17B-2-10. Restricted licenses.

1 The division upon issuing a driver's license shall have
2 authority whenever good cause appears to impose
3 restrictions suitable to the licensee's driving ability with
4 respect to the type of or special mechanical control
5 devices required on a motor vehicle which the licensee
6 may operate or such other restrictions applicable to the
7 licensee as the division may determine to be appropriate
8 to assure the safe operation of a motor vehicle by the
9 licensee.

10 The division may either issue a special restricted
11 license or may set forth such restrictions upon the usual
12 license form.

13 The division may upon receiving satisfactory evidence
14 of any violation of the restrictions of such license
15 suspend or revoke the same but the licensee shall be
16 entitled to a hearing as upon a suspension or revocation
17 under this chapter.

18 It is a misdemeanor for any person to operate a motor
19 vehicle in any manner in violation of the restrictions
20 imposed in a restricted license issued to such person.

§17B-2-11. Duplicate permits and licenses.

1 In the event that an instruction permit or driver's
2 license issued under the provisions of this chapter is lost
3 or destroyed, the person to whom such permit or license
4 was issued may upon making proper application and
5 upon payment of a fee of five dollars obtain a duplicate
6 thereof upon furnishing proof satisfactory to the division
7 that such permit or license has been lost or destroyed.

§17B-2-12. Expiration of licenses; renewal; renewal fees.

1 (a) Every driver's license shall expire four years from
2 the date of its issuance, except that the driver's 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 (b) A person who allows such person's driver's license
8 to expire may apply to the division for renewal thereof.
9 Application shall be made upon a form furnished by the
10 division and shall be accompanied by payment of the fee
11 required by section eight of this article plus an
12 additional fee of five dollars. The commissioner shall
13 determine whether such person qualifies for a renewed
14 license and may, in the commissioner's discretion, renew
15 any expired license without examination of the
16 applicant.

17 (c) Each renewal of a driver's license shall contain a
18 new color photograph of the licensee. By first class mail
19 to the address last known to the division, the commis-
20 sioner shall notify each person who holds a valid driver's
21 license of the expiration date of the license. The notice
22 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-2-13. Notice of change of address or name.

1 Whenever any person after applying for or receiving

2 a driver's license moves from the address named in such
3 application or in the license issued to such person, or
4 when the name of a licensee is changed by marriage or
5 otherwise, such person shall within twenty days thereaf-
6 ter notify the division in writing of the old and new
7 addresses or of such former and new names and of the
8 number of any license then held by such person on the
9 forms prescribed by the division.

§17B-2-14. Records and indexes to be kept by the division.

1 The division shall file every application for a license
2 received by it and shall maintain suitable indexes
3 containing, in alphabetical order:

4 (1) All applications denied and on each a notation of
5 the reasons for such denial;

6 (2) All applications granted; and

7 (3) The name of every licensee whose license has been
8 suspended or revoked by the division and after each
9 such name a notation of the reasons for such action.

10 The division shall also file all abstracts of court
11 records of convictions received by it under the laws of
12 this state and in connection therewith maintain conve-
13 nient records or make suitable notations in order that
14 an individual record of each licensee showing the
15 convictions of such licensee shall be readily ascertain-
16 able and available for the consideration of the division
17 upon any application for renewal of license and at other
18 suitable times.

§17B-2-15. Authority for regulations.

1 (a) The commissioner of the division of motor vehicles
2 is authorized to promulgate such legislative rules as are
3 necessary to carry out the license and endorsement
4 provisions of this chapter and the provisions regarding
5 motor vehicle registration in accordance with the
6 provisions of chapter twenty-nine-a of this code.

7 (b) The superintendent of the division of public safety
8 is authorized to promulgate such legislative rules as are
9 necessary to carry out the provisions relating to the

10 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.

**ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION
OF LICENSES.**

**§17B-3-3a. Suspending license for failure to pay fines or
penalties imposed by magistrate court or
municipal court.**

1 The division shall suspend the license of any resident
2 of this state or the privilege of a nonresident to drive
3 a motor vehicle in this state upon receiving notice from
4 a magistrate court or municipal court of this state,
5 pursuant to subsection (b), section two-a, article three,
6 chapter fifty or subsection (b), section two-a, article ten,
7 chapter eight of this code, that such person has
8 defaulted on the payment of costs, fines, forfeitures or
9 penalties, which were imposed on the person by the
10 magistrate court or municipal court upon conviction of
11 any motor vehicle violation, after ninety days following
12 such conviction, or that such person has failed to appear
13 in court when charged with a motor vehicle violation.
14 For the purposes of this section, section two-a, article
15 three, chapter fifty and section two-a, article ten,
16 chapter eight, "motor vehicle violation" shall be defined
17 as any violation designated in chapter seventeen-a,
18 seventeen-b, seventeen-c, seventeen-d or seventeen-e of
19 this code, or the violation of any municipal ordinance
20 relating to the operation of a motor vehicle for which
21 the violation thereof would result in a fine or penalty:
22 *Provided*, That any parking violation or other violation
23 for which a citation may be issued to an unattended
24 vehicle shall not be considered a motor vehicle violation
25 for the purposes of this section, section two-a, article
26 three, chapter fifty or section two-a, article ten, chapter
27 eight of this code.

**CHAPTER 17D. MOTOR VEHICLE
SAFETY RESPONSIBILITY LAW.**

ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.

§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. Unless the division of motor vehicles by legislative
8 rule allows for an alternative to suspension, the division
9 shall then suspend the driver license of the owner of
10 such vehicle for a period of thirty days and shall suspend
11 the motor vehicle registration until proof of insurance
12 is presented to the division. If, within the thirty-day
13 period a license or registration is suspended, the owner
14 shows proof of insurance, the owner's license and
15 registration shall be immediately removed from suspen-
16 sion. If a license or registration is not suspended as
17 result of the cancellation of insurance, the owner of the
18 motor vehicle shall submit a statement under penalty of
19 false swearing, that the cancellation will not result in
20 the operation of an uninsured motor vehicle upon the
21 highways of this state, and this verification shall be sent
22 to the commissioner within twenty days of the notice of
23 cancellation.

24 (b) On or before the fifteenth day of January, one
25 thousand nine hundred eighty-five, the commissioner of
26 motor vehicles shall report to the Legislature upon
27 proceedings pursuant to this section. The report shall
28 include the total number of statements selected for
29 verification as required by section three, article three,
30 chapter seventeen-a, the total number of notices received
31 from insurers, the total number of notices of pending
32 suspensions issued and the total number of cases in
33 which cancellation was found to have resulted in a lapse
34 of coverage upon a vehicle operated upon the highways
35 of this state during the prior year.

36 (c) No policy of motor vehicle liability insurance
37 issued or delivered for issuance in this state shall be
38 contracted for a period of less than ninety days:
39 *Provided*, That the insurance commissioner may estab-

40 lish exceptions thereto by rules and regulations to
41 chapter twenty-nine-a.

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

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-12. Classifications, endorsements and restrictions.

§17E-1-14. Commercial drivers prohibited from operating with any alcohol in system; driving with blood alcohol concentration of four hundredths of one percent or more; refusal of preliminary breath test to determine alcohol content of blood; criminal penalties.

§17E-1-12. Classifications, endorsements and restrictions.

1 Commercial driver's licenses may be issued, with the
2 following classifications, endorsements, and restrictions;
3 the holder of a valid commercial driver's license may
4 drive all vehicles in the class for which that license is
5 issued, and all lesser classes of vehicles and vehicles
6 which require an endorsement, unless the proper
7 endorsement appears on the license:

8 (1) *Classifications:*

9 (A) Class A - Any combination of vehicles with a gross
10 combined vehicle weight rating of twenty-six thousand
11 one pounds or more, provided the gross vehicle weight
12 rating of the vehicle(s) being towed is in excess of ten
13 thousand pounds.

14 (B) Class B - Any single vehicle with a gross vehicle
15 weight rating of twenty-six thousand one pounds or
16 more, and any such vehicle towing a vehicle not in
17 excess of ten thousand pounds.

18 (C) Class C - Any single vehicle or combination vehicle
19 with a gross vehicle weight rating of less than twenty-
20 six thousand one pounds or any such vehicle towing a
21 vehicle with a gross vehicle weight rating not in excess
22 of ten thousand pounds comprising:

23 (i) Vehicles designed to transport sixteen or more
24 passengers, including the driver; and

25 (ii) Vehicles used in the transportation of hazardous

26 materials which requires the vehicle to be placarded
27 under 49 C.F.R., part 172, sub-part F.

28 (2) *Endorsements and restrictions:*

29 The commissioner upon issuing a commercial driver's
30 license shall have the authority to impose such endor-
31 sements or restrictions as the commissioner may
32 determine to be appropriate to assure the safe operation
33 of a motor vehicle, and to comply with the Federal
34 Motor Vehicle Act of 1986 and Federal Rules imple-
35 menting such act.

36 (3) *Applicant record check.* — Before issuing a
37 commercial driver's license, the commissioner must
38 obtain driving record information through the commer-
39 cial driver's license information system, the national
40 driver register and from each state in which the person
41 has been commercially licensed.

42 (4) *Notification of license issuance.* — Within ten days
43 after issuing a commercial driver's license, the commis-
44 sioner shall notify the commercial driver's license
45 information system of that fact, providing all informa-
46 tion required to ensure identification of the person.

47 (5) *Expiration of license.* — The commercial driver's
48 license shall expire four years from date of issuance.

49 Commercial driver's licenses held by any person in
50 the armed forces which expire while that person is on
51 active duty shall remain valid for thirty days from the
52 date on which that person reestablishes residence in
53 West Virginia.

54 Any person applying to renew a commercial driver's
55 license which has been expired for two years or more
56 must follow the procedures for an initial issuance of a
57 commercial driver's license, including the testing
58 provisions.

59 (6) *License renewal procedures.* — When applying for
60 renewal of a commercial driver's license, the applicant
61 must complete the application form, and provide
62 updated information and required certifications. If the
63 applicant wishes to retain a hazardous materials

64 endorsement, the written test for a hazardous materials
65 endorsement must be taken and passed.

§17E-1-14. Commercial drivers prohibited from operating with any alcohol in system; driving with blood alcohol concentration of four hundredths of one percent or more; refusal of preliminary breath test to determine alcohol content of blood; criminal penalties.

1 (a) In addition to any other penalties provided by this
2 code, any person who:

3 (1) Drives, operates or is in physical control of a
4 commercial motor vehicle while having any measurable
5 alcohol in his or her system; or

6 (2) Drives, operates, or is in physical control of a
7 commercial motor vehicle while having an alcohol
8 concentration of his or her blood, breath or urine of four
9 hundredths of one percent or more, by weight; or

10 (b) Upon conviction of an offense described in
11 subsection (a) of this section:

12 (1) For a violation of subdivision (1) thereof, such
13 person shall be fined not more than one hundred dollars;
14 for a second offense of subdivision (1) thereof, such
15 person shall be fined not less than one hundred dollars
16 nor more than three hundred dollars or confined in the
17 county jail for a period not to exceed thirty days, and,
18 for a third or any subsequent offense, shall be fined not
19 less than five hundred dollars nor more than one
20 thousand dollars and shall be confined in the county jail
21 for a period of time of not less than twenty-four hours
22 and not more than thirty days.

23 (2) For a violation of subdivision (2) thereof, such
24 person shall be imprisoned in the county jail for not less
25 than twenty-four hours nor more than six months and
26 shall be fined not less than one hundred dollars nor more
27 than five hundred dollars. A person violating the
28 provisions of subdivision (2) thereof shall be, for the
29 second or any subsequent offense, guilty of a misdemeanor,
30 and, upon conviction thereof, shall be imprisoned
31 in the county jail for a period of not less than six months

32 nor more than one year, and the court may, in its
33 discretion, impose a fine of not less than one thousand
34 dollars.

35 (c) A person who violates the provisions of subdivision
36 (2), subsection (a) of this section shall be taken imme-
37 diately before a magistrate or court within the county
38 in which the offense charged is alleged to have been
39 committed and who has jurisdiction of the offense.

40 (d) In addition to any other penalties provided by this
41 code, a person who drives, operates or is in physical
42 control of a commercial motor vehicle having any
43 measurable alcohol in such person's system or who
44 refuses to take a preliminary breath test to determine
45 such person's blood alcohol content as provided by
46 section fifteen of this article must be placed out of
47 service for twenty-four hours.

CHAPTER 139

(Com. Sub. for H. B. 4131—By Delegate Kessel)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five-a, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article five-a by adding thereto a new section, designated section three-a, all relating to revocation of driver's licenses for conduct related to alcohol or drugs; enhancement of periods of revocation for prior suspensions or revocations occurring within the ten years preceding the arrest date; revocation periods for persons under twenty-one years of age; establishment of motor vehicle alcohol test and lock program; users fee; legislative rules; definition of motor vehicle alcohol test and lock system; eligibility to participate in program; minimum revocation periods; restricted driver's licenses; restoration of driver's licenses; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND REVOCATION OF LICENSES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL, CONTROLLED SUBSTANCES OR DRUGS.

§17C-5A-2. Hearing; revocation; review.

§17C-5A-3a. Establishment of and participation in the motor vehicle alcohol test and lock program.

§17C-5A-2. Hearing; revocation; review.

1 (a) Upon the written request of a person whose license
2 to operate a motor vehicle in this state has been revoked
3 under the provisions of section one of this article or
4 section seven, article five of this chapter, the commis-
5 sioner of motor vehicles shall extend the temporary
6 license issued under section one of this article, if
7 applicable, and afford the person an opportunity to be
8 heard. Such written request must be filed with the
9 commissioner in person or by registered or certified
10 mail, return receipt requested, within ten days after
11 receipt of a copy of the order of revocation. The hearing
12 shall be before said commissioner or a hearing examiner
13 retained by the commissioner who shall rule on eviden-
14 tiary issues and submit proposed findings of fact and
15 conclusions of law for the consideration of said commis-
16 sioner and all of the pertinent provisions of article five,
17 chapter twenty-nine-a of this code shall apply: *Provided,*
18 That in the case of a resident of this state the hearing
19 shall be held in the county wherein the arrest was made
20 in this state unless the commissioner or the commis-
21 sioner's authorized deputy or agent and such person agree
22 that the hearing may be held in some other county.

23 (b) Any such hearing shall be held within twenty days
24 after the date upon which the commissioner received the
25 timely written request therefor, unless there is a
26 postponement or continuance. The commissioner may

27 postpone or continue any hearing on the commissioner's
28 own motion, or upon application for each person for good
29 cause shown. The commissioner shall adopt and imple-
30 ment by a procedural rule written policies governing the
31 postponement or continuance of any such hearing on the
32 commissioner's own motion or for the benefit of any law-
33 enforcement officer or any person requesting such
34 hearing, and such policies shall be enforced and applied
35 to all parties equally. For the purpose of conducting
36 such hearing, the commissioner shall have the power
37 and authority to issue subpoenas and subpoenas duces
38 tecum in accordance with the provisions of section one,
39 article five, chapter twenty-nine-a of this code: *Provided,*
40 That the notice of hearing to the appropriate law-
41 enforcement officers by registered or certified mail,
42 return receipt requested, shall constitute a subpoena to
43 appear at such hearing without the necessity of payment
44 of fees by the division of motor vehicles. All subpoenas
45 and subpoenas duces tecum shall be issued and served
46 within the time and for the fees and shall be enforced,
47 as specified in section one, article five of said chapter
48 twenty-nine-a, and all of the said section one provisions
49 dealing with subpoenas and subpoenas duces tecum
50 shall apply to subpoenas and subpoenas duces tecum
51 issued for the purpose of a hearing hereunder.

52 (c) Law-enforcement officers shall be compensated for
53 the time expended in their travel and appearance before
54 the commissioner by the law-enforcement agency by
55 whom they are employed at their regular rate if they
56 are scheduled to be on duty during said time or at their
57 regular overtime rate if they are scheduled to be off
58 duty during said time.

59 (d) The principal question at such hearing shall be
60 whether the person did drive a motor vehicle while
61 under the influence of alcohol, controlled substances or
62 drugs, or did drive a motor vehicle while having an
63 alcohol concentration in the person's blood of ten
64 hundredths of one percent or more, by weight, or did
65 refuse to submit to the designated secondary chemical
66 test.

67 The commissioner may propose a legislative rule in

68 compliance with the provisions of article three, chapter
69 twenty-nine-a of this code, which rule may provide that
70 if a person accused of driving a motor vehicle while
71 under the influence of alcohol, controlled substances or
72 drugs, or accused of driving a motor vehicle while
73 having an alcohol concentration in the person's blood of
74 ten hundredths of one percent or more, by weight,
75 intends to challenge the results of any secondary
76 chemical test of blood, breath or urine, or intends to
77 cross-examine the individual or individuals who admin-
78 istered the test or performed the chemical analysis, the
79 person shall, within an appropriate period of time prior
80 to the hearing, notify the commissioner in writing of
81 such intention. Such rule may provide that when there
82 is a failure to comply with the notice requirement, the
83 results of the secondary test, if any, shall be admissible
84 as though the person and the commissioner had stipu-
85 lated the admissibility of such evidence. Any such rule
86 shall provide that the rule shall not be invoked in the
87 case of a person who is not represented by counsel unless
88 the communication from the commissioner to the person
89 establishing a time and place for the hearing also
90 informed the person of the consequences of the person's
91 failure to timely notify the commissioner of the person's
92 intention to challenge the results of the secondary
93 chemical test or cross-examine the individual or
94 individuals who administered the test or performed the
95 chemical analysis.

96 (e) In the case of a hearing wherein a person is
97 accused of driving a motor vehicle while under the
98 influence of alcohol, controlled substances or drugs, or
99 accused of driving a motor vehicle while having an
100 alcoholic concentration in the person's blood of ten
101 hundredths of one percent or more, by weight, the
102 commissioner shall make specific findings as to (1)
103 whether the arresting law-enforcement officer had
104 reasonable grounds to believe such person to have been
105 driving while under the influence of alcohol, controlled
106 substances or drugs, or while having an alcoholic
107 concentration in the person's blood of ten hundredths of
108 one percent or more, by weight, (2) whether such person
109 was lawfully placed under arrest for an offense involv-

110 ing driving under the influence of alcohol, controlled
111 substances or drugs, and (3) whether the tests, if any,
112 were administered in accordance with the provisions of
113 this article and article five of this chapter.

114 (f) If, in addition to a finding that the person did drive
115 a motor vehicle while under the influence of alcohol,
116 controlled substances or drugs, or did drive a motor
117 vehicle while having an alcoholic concentration in the
118 person's blood of ten hundredths of one percent or more,
119 by weight, the commissioner also finds by a preponder-
120 ance of the evidence that the person when so driving did
121 an act forbidden by law or failed to perform a duty
122 imposed by law, which act or failure proximately caused
123 the death of a person and was committed in reckless
124 disregard of the safety of others, and if the commis-
125 sioner further finds that the influence of alcohol,
126 controlled substances or drugs or the alcoholic concen-
127 tration in the blood was a contributing cause to the
128 death, the commissioner shall revoke the person's license
129 for a period of ten years: *Provided*, That if the commis-
130 sioner has previously suspended or revoked the person's
131 license under the provisions of this section or section one
132 of this article within the ten years immediately preced-
133 ing the date of arrest, the period of revocation shall be
134 for the life of such person.

135 (g) If, in addition to a finding that the person did
136 drive a motor vehicle while under the influence of
137 alcohol, controlled substances or drugs, or did drive a
138 motor vehicle while having an alcoholic concentration in
139 the person's blood of ten hundredths of one percent or
140 more, by weight, the commissioner also finds by a
141 preponderance of the evidence that the person when so
142 driving did an act forbidden by law or failed to perform
143 a duty imposed by law, which act or failure proximately
144 caused the death of a person, the commissioner shall
145 revoke the person's license for a period of five years:
146 *Provided*, That if the commissioner has previously
147 suspended or revoked the person's license under the
148 provisions of this section or section one of this article
149 within the ten years immediately preceding the date of

150 arrest, the period of revocation shall be for the life of
151 such person.

152 (h) If, in addition to a finding that the person did
153 drive a motor vehicle while under the influence of
154 alcohol, controlled substances or drugs, or did drive a
155 motor vehicle while having an alcoholic concentration in
156 the person's blood of ten hundredths of one percent or
157 more, by weight, the commissioner also finds by a
158 preponderance of the evidence that the person when so
159 driving did an act forbidden by law or failed to perform
160 a duty imposed by law, which act or failure proximately
161 caused bodily injury to a person other than himself or
162 herself, the commissioner shall revoke the person's
163 license for a period of two years: *Provided*, That if the
164 commissioner has previously suspended or revoked the
165 person's license under the provisions of this section or
166 section one of this article within the ten years imme-
167 diately preceding the date of arrest, the period of
168 revocation shall be ten years: *Provided, however*, That if
169 the commissioner has previously suspended or revoked
170 the person's license more than once under the provisions
171 of this section or section one of this article within the
172 ten years immediately preceding the date of arrest, the
173 period of revocation shall be for the life of such person.

174 (i) If the commissioner finds by a preponderance of
175 the evidence that the person did drive a motor vehicle
176 while under the influence of alcohol, controlled substan-
177 ces or drugs, or did drive a motor vehicle while having
178 an alcoholic concentration in the person's blood of ten
179 hundredths of one percent or more, by weight, or finds
180 that the person, being an habitual user of narcotic drugs
181 or amphetamine or any derivative thereof, did drive a
182 motor vehicle, or finds that the person knowingly
183 permitted the person's vehicle to be driven by another
184 person who was under the influence of alcohol, con-
185 trolled substances or drugs, or knowingly permitted the
186 person's vehicle to be driven by another person who had
187 an alcoholic concentration in his or her blood of ten
188 hundredths of one percent or more, by weight, the
189 commissioner shall revoke the person's license for a
190 period of six months: *Provided*, That if the commissioner

191 has previously suspended or revoked the person's license
192 under the provisions of this section or section one of this
193 article within the ten years immediately preceding the
194 date of arrest, the period of revocation shall be ten years:
195 *Provided, however,* That if the commissioner has
196 previously suspended or revoked the person's license
197 more than once under the provisions of this section or
198 section one of this article within the ten years imme-
199 diately preceding the date of arrest, the period of
200 revocation shall be for the life of such person.

201 (j) For purposes of this section, where reference is
202 made to previous suspensions or revocations under this
203 section, the following types of criminal convictions or
204 administrative suspensions or revocations shall also be
205 regarded as suspensions or revocations under this
206 section or section one of this article:

207 (1) Any administrative revocation under the provi-
208 sions of the prior enactment of this section for conduct
209 which occurred within the ten years immediately
210 preceding the date of arrest.

211 (2) Any suspension or revocation on the basis of a
212 conviction under a municipal ordinance of another state
213 or a statute of the United States or of any other state
214 of an offense which has the same elements as an offense
215 described in section two, article five of this chapter, for
216 conduct which occurred within the ten years imme-
217 diately preceding the date of arrest.

218 (3) Any revocation under the provisions of section
219 seven, article five of this chapter, for conduct which
220 occurred within the ten years immediately preceding
221 the date of arrest.

222 (k) In the case of a hearing wherein a person is
223 accused of refusing to submit to a designated secondary
224 test, the commissioner shall make specific findings as to
225 (1) whether the arresting law-enforcement officer had
226 reasonable grounds to believe such person had been
227 driving a motor vehicle in this state while under the
228 influence of alcohol, controlled substances or drugs, (2)
229 whether such person was lawfully placed under arrest
230 for an offense relating to driving a motor vehicle in this

231 state while under the influence of alcohol, controlled
232 substances or drugs, (3) whether such person refused to
233 submit to the secondary test finally designated in the
234 manner provided in section four, article five of this
235 chapter, and (4) whether such person had been given a
236 written statement advising the person that the person's
237 license to operate a motor vehicle in this state would be
238 revoked for at least one year and up to life if the person
239 refused to submit to the test finally designated in the
240 manner provided in section four, article five of this
241 chapter.

242 (l) If the commissioner finds by a preponderance of
243 the evidence that (1) the arresting law-enforcement
244 officer had reasonable grounds to believe such person
245 had been driving a motor vehicle in this state while
246 under the influence of alcohol, controlled substances or
247 drugs, (2) such person was lawfully placed under arrest
248 for an offense relating to driving a motor vehicle in this
249 state while under the influence of alcohol, controlled
250 substances or drugs, (3) such person refused to submit
251 to the secondary chemical test finally designated, and (4)
252 such person had been given a written statement
253 advising the person that the person's license to operate
254 a motor vehicle in this state would be revoked for a
255 period of at least one year and up to life if the person
256 refused to submit to the test finally designated, the
257 commissioner shall revoke the person's license to operate
258 a motor vehicle in this state for the periods specified in
259 section seven, article five of this chapter.

260 (m) If the commissioner finds to the contrary with
261 respect to the above issues, the commissioner shall
262 rescind the commissioner's earlier order of revocation or
263 shall reduce the order of revocation to the appropriate
264 period of revocation under this section, or section seven,
265 article five of this chapter.

266 A copy of the commissioner's order made and entered
267 following the hearing shall be served upon such person
268 by registered or certified mail, return receipt requested.
269 During the pendency of any such hearing, the revocation
270 of the person's license to operate a motor vehicle in this
271 state shall be stayed.

272 If the commissioner shall after hearing make and
273 enter an order affirming the commissioner's earlier
274 order of revocation, such person shall be entitled to
275 judicial review as set forth in chapter twenty-nine-a of
276 this code, except that the commissioner shall not stay
277 enforcement of the order; and, pending such appeal, the
278 court may grant a stay or supersedeas of such order only
279 upon motion and hearing, and a finding by the court
280 upon the evidence presented, that there is a substantial
281 probability that the appellant shall prevail upon the
282 merits, and the appellant will suffer irreparable harm
283 if such order is not stayed: *Provided*, That in no event
284 shall the stay or supersedeas of such order exceed thirty
285 days.

286 (n) In any revocation pursuant to this section, if the
287 driver whose license is revoked had not reached the
288 driver's twenty-first birthday at the time of the conduct
289 for which the license is revoked, the driver's license shall
290 be revoked until the driver's twenty-first birthday, or
291 the applicable statutory period of revocation prescribed
292 by this section, whichever is longer.

293 (o) Funds for this section's hearing and appeal process
294 may be provided from the drunk driving prevention
295 fund, as created by section sixteen, article fifteen,
296 chapter eleven of this code, upon application for such
297 funds to the commission on drunk driving prevention.

**§17C-5A-3a. Establishment of and participation in the
motor vehicle alcohol test and lock
program.**

1 (a) On or before the first day of January, one thousand
2 nine hundred ninety-three, the division of motor vehicles
3 shall establish a motor vehicle alcohol test and lock
4 program for persons whose licenses have been revoked
5 pursuant to this article or the provisions of article five
6 of this chapter. Such program shall include the estab-
7 lishment of a users fee for persons participating in the
8 program which shall be paid in advance and deposited
9 into the driver's rehabilitation fund. Except where
10 specified otherwise, the use of the term "program" in
11 this section refers to the motor vehicle alcohol test and

12 lock program. The commissioner of the division of motor
13 vehicles shall promulgate legislative rules in accordance
14 with the provisions of chapter twenty-nine-a of this code
15 for the purpose of implementing the provisions of this
16 section. Such rules shall also prescribe those require-
17 ments which, in addition to the requirements specified
18 by this section for eligibility to participate in the
19 program, the commissioner determines must be met to
20 obtain the commissioner's approval to operate a motor
21 vehicle equipped with a motor vehicle alcohol test and
22 lock system. For purposes of this section, a "motor
23 vehicle alcohol test and lock system" means a mechan-
24 ical or computerized system which, in the opinion of the
25 commissioner, prevents the operation of a motor vehicle
26 when, through the system's assessment of the blood
27 alcohol content of the person operating or attempting to
28 operate the vehicle, such person is determined to be
29 under the influence of alcohol.

30 (b) (1) Any person whose license has been revoked
31 pursuant to this article or the provisions of article five
32 of this chapter is eligible to participate in the program
33 when such person's minimum revocation period as
34 specified by subsection (c) of this section has expired and
35 such person is enrolled in or has successfully completed
36 the safety and treatment program: *Provided*, That no
37 person whose license has been revoked pursuant to the
38 provisions of subsection (f) or (g), section two of this
39 article shall be eligible for participation in the program:
40 *Provided, however*, That any person whose license is
41 revoked pursuant to this article or pursuant to article
42 five of this chapter for an act which occurred either
43 while participating in or after successfully completing
44 the program shall not again be eligible to participate in
45 such program.

46 (2) Notwithstanding the provisions of this section to
47 the contrary, no person eligible to participate in the
48 program shall operate a motor vehicle unless approved
49 to do so by the commissioner.

50 (c) For purposes of this section, "minimum revocation
51 period" means the portion which has actually expired of
52 the period of revocation imposed by the commissioner

53 pursuant to this article or the provisions of article five
54 of this chapter upon a person eligible for participation
55 in the program as follows:

56 (1) For a person whose license has been revoked for
57 six months pursuant to subsection (i), section two of this
58 article, the minimum period of revocation is thirty days;

59 (2) For a person whose license has been revoked for
60 one year pursuant to section seven, article five of this
61 chapter, the minimum period of revocation is ninety
62 days;

63 (3) For a person whose license has been revoked for
64 any other period of time pursuant to section two of this
65 article or pursuant to section seven, article five of this
66 chapter, the minimum period of revocation is one year.

67 (d) Upon permitting an eligible person to participate
68 in the program, the commissioner shall issue to such
69 person, and such person shall be required to exhibit on
70 demand, a driver's license which shall reflect that such
71 person is restricted to the operation of a motor vehicle
72 which is equipped with an approved motor vehicle
73 alcohol test and lock system.

74 (e) Any person who has completed the safety and
75 treatment program and who has not violated the terms
76 required by the commissioner of such person's partici-
77 pation in the motor vehicle alcohol test and lock
78 program shall be entitled to the restoration of such
79 person's driver's license upon the expiration of:

80 (1) One hundred eighty days of the full revocation
81 period imposed by the commissioner for a person
82 described in subdivision (1), subsection (c) of this section;

83 (2) The full revocation period imposed by the commis-
84 sioner for a person described in subdivision (2), subsec-
85 tion (c) of this section;

86 (3) One year from the date a person described in
87 subdivision (3), subsection (c) of this section is permitted
88 to operate a motor vehicle by the commissioner.

89 (f) In addition to any other penalty imposed by this
90 code, any person who operates a motor vehicle not

91 equipped with an approved motor vehicle alcohol test
92 and lock system during such person's participation in
93 the motor vehicle alcohol test and lock program is guilty
94 of a misdemeanor, and, upon conviction thereof, shall be
95 confined in the county jail for a period not less than one
96 month nor more than six months and fined not less than
97 one hundred dollars nor more than five hundred dollars.
98 Any person who assists another person required by the
99 terms of such other person's participation in the motor
100 vehicle alcohol test and lock program to use a motor
101 vehicle alcohol test and lock system in any effort to
102 bypass the system, is guilty of a misdemeanor, and, upon
103 conviction thereof, shall be confined in the county jail
104 not more than six months and fined not less than one
105 hundred dollars nor more than one thousand dollars.

106 (g) No person shall be eligible to participate in the
107 motor vehicle alcohol test and lock program prior to the
108 first day of July, one thousand nine hundred ninety-
109 three.

CHAPTER 140

(H. B. 2102—By Delegate D. Cook)

[Passed March 4, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring lighted headlights during fog, smoke or rain.

Be it enacted by the Legislature of West Virginia:

That section two, 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-15-2. When lighted lamps are required.

1 Every vehicle other than a motorcycle, motor-driven
2 cycle or moped operated upon a highway within this
3 state at any time from sunset to sunrise, or during fog,
4 smoke, rain or other unfavorable atmospheric condi-
5 tions, or at any other time when there is not sufficient
6 light to render clearly discernible persons and vehicles
7 on the highway at a distance of five hundred feet ahead,
8 shall display lighted lamps and illuminating devices as
9 hereinafter respectively required for different classes of
10 vehicles, subject to exceptions with respect to parked
11 vehicles as hereinafter stated. Every motorcycle, motor-
12 driven cycle and moped shall display lighted head lamps
13 at all times when upon the highway.

CHAPTER 141

(Com. Sub. for H. B. 4070—By Delegates Mezzatesta and Schoonover)

[Passed March 3, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-six, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to special restrictions on motor vehicle lamps; removing language requiring all firefighting vehicles to be designated by the fire chief and state fire marshal's office; requiring the fire chief and state fire marshal's office to authorize all fire department vehicles; requiring the squad chief, the sheriff and the department of health and human resources to authorize all rescue squad vehicles not operating out of a fire department; removing language requiring county sheriffs to authorize the use of certain lamps on school buses; and requiring the division of highways to authorize the use of certain lamps on snow removal equipment.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. EQUIPMENT.**§17C-15-26. Special restrictions on lamps.**

1 (a) Any lighted lamp or illuminating device upon a
2 motor vehicle other than head lamps, spot lamps,
3 auxiliary lamps or flashing front-direction signals
4 which projects a beam of light of an intensity greater
5 than three hundred candlepower shall be so directed
6 that no part of the beam will strike the level of the
7 roadway on which the vehicle stands at a distance of
8 more than seventy-five feet from the vehicle.

9 (b) No person shall drive or move any vehicle or
10 equipment upon any highway with any lamp or device
11 thereon displaying other than a white or amber light
12 visible from directly in front of the center thereof except
13 as authorized by subsection (d) of this section.

14 (c) Except as authorized in section nineteen, flashing
15 lights are prohibited on motor vehicles, except on an
16 authorized emergency vehicle, school bus, snow removal
17 equipment or on any vehicle as a means for indicating
18 right or left turn, or on any vehicle as a means of
19 indicating the same is disabled or otherwise stopped for
20 an emergency.

21 (d) Notwithstanding any other provisions of this
22 chapter, the following colors of flashing warning lights
23 are restricted for the use of the type of vehicle
24 designated:

25 (1) Blue flashing warning lights are restricted to
26 police vehicles. Authorization for police vehicles shall be
27 designated by the chief administrative official of each
28 police department.

29 (2) Except for standard vehicle equipment authorized
30 by section nineteen of this article, red flashing warning
31 lights are restricted to ambulances, firefighting vehi-
32 cles, school buses, Class A vehicles, as defined by section
33 one, article ten, chapter seventeen-a of this code, of those
34 firefighters who are authorized by their fire chiefs to
35 have such lights and to Class A vehicles of members of
36 ambulance services or duly chartered rescue squads who
37 are authorized by their respective chiefs to have such

38 lights: *Provided*, That red flashing warning lights
39 attached to such Class A vehicles may be operated only
40 when responding to or engaged in handling an emer-
41 gency requiring the attention of such firefighters or
42 members of such ambulance services or chartered
43 rescue squads.

44 Authorization for all ambulances shall be designated
45 by the department of health and human resources and
46 the sheriff of the county of residence.

47 Authorization for all fire department vehicles shall be
48 designated by the fire chief and the state fire marshal's
49 office.

50 Authorization for all rescue squad vehicles not
51 operating out of a fire department shall be designated
52 by the squad chief, the sheriff of the county of residence
53 and the department of health and human resources.

54 Authorization for school buses shall be designated as
55 set out in section twelve, article fourteen, chapter
56 seventeen-c.

57 Authorization for firefighters to operate Class A
58 vehicles shall be designated by their fire chiefs and the
59 state fire marshal's office.

60 Authorization for members of ambulance services or
61 any other emergency medical service personnel to
62 operate Class A vehicles shall be designated by their
63 chief official, the department of health and human
64 resources and the sheriff of the county of residence.

65 Authorization for members of duly chartered rescue
66 squads not operating out of a fire department to operate
67 Class A vehicles shall be designated by their squad
68 chiefs, the sheriff of the county of residence and the
69 department of health and human resources.

70 (3) All other emergency vehicles, including tow trucks
71 and wreckers, authorized by this chapter and by section
72 twenty-seven of this article shall be restricted to amber
73 or yellow flashing warning lights.

74 Authorization for tow trucks, wreckers, flag car
75 services, vehicles providing road service to disabled

76 vehicles, service vehicles of a public service corporation,
77 and postal service vehicles shall be designated by the
78 sheriff of the county of residence. Authorization for
79 snow removal equipment shall be designated by the
80 commissioner of the division of highways.

81 (e) Notwithstanding the foregoing provisions of this
82 section, any vehicle belonging to a county board of
83 education may be equipped with a white flashing
84 strobotron warning light. This strobe light may be
85 installed on the roof of a school bus not to exceed one-
86 third the body length forward from the rear of the roof
87 edge. The light shall have a single clear lens emitting
88 light three hundred sixty degrees around its vertical
89 axis and may not extend above the roof more than six
90 and one-half inches. A manual switch and a pilot light
91 must be included to indicate the light is in operation.

92 It shall be unlawful for flashing warning lights of an
93 unauthorized color to be installed or used on a vehicle
94 other than as specified in this section, except that a
95 police vehicle may be equipped with either or both blue
96 or red warning lights.

CHAPTER 142

(H. B. 4709—By Delegates Taylor and Schadler)

[Passed March 5, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-four, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, requiring motorcycle helmets, safety glasses, goggles and windscreens to meet current performance safety standards; abolishing motorcycle safety standards and specifications board; removing requirement that commissioner of motor vehicles approve safety equipment for motorcycles; and authorizing the superintendent of the department of public safety to approve safety equipment for motorcyclists.

Be it enacted by the Legislature of West Virginia:

That section forty-four, 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:

§17C-15-44. Safety equipment and requirements for motorcyclists, motorcycles, motor-driven cycles and mopeds; motorcycle safety standards and specifications board.

1 (a) No person shall operate or be a passenger on any
2 motorcycle or motor-driven cycle unless he is wearing
3 securely fastened on his head by either a neck or chin
4 strap a protective helmet designed to deflect blows,
5 resist penetration and spread impact forces. Any helmet
6 worn by an operator or passenger shall meet the current
7 performance specifications established by the American
8 National Standards Institute Standard, Z 90.1, the
9 United States Department of Transportation Federal
10 Motor Vehicle Safety Standard No. 218 or Snell Safety
11 Standards for Protective Headgear for Vehicle Users.

12 (b) No person shall operate or be a passenger on any
13 motorcycle or motor-driven cycle unless he is wearing
14 safety, shatter-resistant eyeglasses (excluding contact
15 lenses), or eyegoggles or face shield that complies with
16 the performance specifications established by the
17 American National Standards Institute for Head, Eye
18 and Respiratory Protection, Z 2.1. In addition, if any
19 motorcycle, motor-driven cycle or moped be equipped
20 with a windshield or windscreen, the windshield or
21 windscreen shall be constructed of safety, shatter-
22 resistant material that complies with the performance
23 specifications established by the Department of Trans-
24 portation Federal Motor Vehicle Safety Standard No.
25 205 and American National Standards Institute, Safety
26 Glazing Materials for Glazing Motor Vehicles Operated
27 on Land Highways, Standard Z 26.1.

28 (c) No person shall operate a motorcycle, motor-
29 driven cycle or moped on which the handlebars or grips
30 are more than fifteen inches higher than the uppermost
31 part of the operator's seat when the seat is not depressed
32 in any manner.

33 (d) A person operating a motorcycle, motor-driven

34 cycle or moped shall ride in a seated position facing
35 forward and only upon a permanent operator's seat
36 attached to the vehicle. No operator shall carry any
37 other person nor shall any other person ride on such a
38 vehicle unless the vehicle is designed to carry more than
39 one person, in which event a passenger may ride behind
40 the operator upon the permanent operator's seat if it is
41 designed for two persons, or upon another seat firmly
42 attached to the vehicle to the rear of the operator's seat
43 and equipped with footrests designed and located for use
44 by the passenger or in a sidecar firmly attached to the
45 vehicle. No more than two persons, the operator and one
46 passenger, shall ride the same vehicle at the same time.
47 No person shall ride sidesaddle on a seat.

48 (e) Every motorcycle, motor-driven cycle and moped
49 shall be equipped with a rearview mirror affixed to the
50 handlebars and adjusted so that the operator shall have
51 a clear view of the road and condition of traffic behind
52 him for a distance of at least two hundred feet.

53 The superintendent of public safety is hereby autho-
54 rized to approve or disapprove types and makes of
55 protective helmets, eye protection devices and equip-
56 ment offered for sale, purchased or used by any person.

CHAPTER 143

(Com. Sub. for H. B. 4179—By Delegate J. Martin)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article sixteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to inspection of vehicles; authorizing temporary suspension of permits to inspect by the superintendent of the department of public safety upon a first finding that an inspection station is not properly equipped or conducted;

permitting reinstatement of permits, upon application, for persons whose permits were previously permanently revoked upon a first finding of violation.

Be it enacted by the Legislature of West Virginia:

That section five, article sixteen, 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 16. INSPECTION OF VEHICLES.

§17C-16-5. Permit for official inspection stations; fees for and certificate of inspection.

1 The superintendent of the department of public safety
2 shall be responsible for the inspection as provided in this
3 article and shall prescribe requirements and qualifica-
4 tions for official inspection stations. He or she shall
5 select and designate such stations and shall issue
6 permits therefor and furnish instructions and all
7 necessary forms thereto for the inspection of vehicles as
8 herein required and the issuance of official certificates
9 of inspection and approval. The certificate of inspection
10 shall be a paper sticker or decal to be affixed to the
11 windshield of a motor vehicle, shall be serially num-
12 bered and shall properly identify the official inspection
13 station by which issued. A charge of one dollar per
14 sticker shall be charged by the department of public
15 safety to the inspection station, and the funds so received
16 shall be deposited into the state treasury and credited
17 to the account of the department of public safety for
18 application in the administration and enforcement of the
19 provisions of this article. Any balance remaining in the
20 fund on the last day of June of each fiscal year, not
21 required for operating expenses, construction, repairs or
22 alterations of police barracks for the ensuing fiscal year
23 and for the administration and enforcement of the
24 provisions of this article, shall be transferred to the state
25 road fund. The superintendent is authorized to exchange
26 stickers or to make refunds to official inspection stations
27 for stickers on hand when permits are revoked or when,
28 for any reason, the stickers become obsolete.

29 Application for permit shall be made upon an official
30 form prescribed by the superintendent and permits
31 shall be granted only when the superintendent is
32 satisfied that the station is properly equipped, and has
33 competent personnel to make such inspections and
34 adjustments and that the inspections and adjustments
35 will be properly conducted. The superintendent, before
36 issuing a permit, may require the applicant to file a
37 bond with surety approved by the superintendent,
38 conditioned that such applicant, as a station operator,
39 will make compensation for any damage to a vehicle
40 during an inspection or adjustment due to negligence on
41 the part of such station operator or employees thereof.

42 The superintendent shall properly supervise and
43 cause inspections to be made of such stations. Upon
44 finding that a station is not properly equipped or
45 conducted, the superintendent may, upon a first viola-
46 tion, suspend the permit for a period of up to one year.
47 Upon a second or subsequent finding that a station is
48 not properly equipped or conducted, the superintendent
49 shall permanently revoke and require the surrender of
50 the permit. The superintendent may reinstate the
51 permit of any person whose permit was permanently
52 revoked prior to the effective date of this section upon
53 a first finding that a station was not properly equipped
54 or conducted, upon application, at any time after the
55 expiration of six months from the time of revocation,
56 and shall reinstate such permit, upon application, after
57 the expiration of one year. He or she shall maintain and
58 post at his office and at such other places as he or she
59 may select lists of all stations holding permits and of
60 those whose permits have been suspended or revoked.

CHAPTER 144

(S. B. 295—By Senator Tomblin)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article sixteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the misdemeanor crime of operating a motor vehicle without a current and valid inspection; making certain technical revisions; setting forth exceptions; providing criminal penalties; and setting forth exceptions to the imposition of criminal penalties.

Be it enacted by the Legislature of West Virginia:

That section nine, article sixteen, 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 16. INSPECTION OF VEHICLES.

§17C-16-9. Operation without certificate or failure to produce certificate; penalty for misdemeanor.

1 It is a misdemeanor for any owner or operator, or both
2 owner and operator, of any vehicle required to be
3 inspected under subsection (a), section four of this
4 article, to operate or permit to be operated such vehicle
5 without having displayed thereon a current and valid
6 certificate of inspection and approval or fail to produce
7 same upon demand of any authorized person as desig-
8 nated under said subsection: *Provided*, That a dealer
9 licensed to sell new vehicles under the provision of
10 article six, chapter seventeen-a of this code shall not be
11 required to display a certificate of inspection and
12 approval upon any new vehicle if the vehicle is driven
13 for an operational purpose including all activities
14 associated with dealer preparation for sale of a motor
15 vehicle belonging to such dealer when such vehicle has
16 not been titled or delivered to a purchaser, and when
17 such car is not to be used in the demonstrator fleet or

18 otherwise routinely driven on the highways or roads of
19 this state.

20 Unless another penalty is by the laws of this state
21 provided, every person convicted of a misdemeanor for
22 operating a vehicle without having displayed thereon a
23 current and valid certificate of inspection and approval
24 or for failure to produce such certificate upon demand
25 of an authorized person shall be punished by a fine of
26 not more than one hundred dollars: *Provided*, That any
27 person who obtains an inspection and a current and
28 valid certificate of inspection and who, within five days
29 of the issuance of a citation for a violation of the
30 provisions of this section, provides a receipt of inspection
31 to and makes the vehicle so operated available for
32 examination by a court of competent jurisdiction, shall
33 not be guilty of a violation of the provisions of this
34 section: *Provided, however*, That the misdemeanor
35 penalty shall be imposed if the certificate of inspection
36 has not been valid for a period exceeding three months
37 prior to the date of the issuance of a citation.

CHAPTER 145

(H. B. 4730—By Delegates Leggett and Higgins)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article nineteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, requiring the commissioner of the division of motor vehicles, superintendent of the division of public safety, and the commissioner of the division of highways to approve traffic citation forms.

Be it enacted by the Legislature of West Virginia:

That section six, article nineteen, 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:

§17C-19-6. Form for and records of books of traffic citations.

1 (a) Every traffic-enforcement agency in this state
2 shall provide in appropriate form approved by the
3 commissioner, the superintendent of the division of
4 public safety and the commissioner of the division of
5 highways, traffic citations containing notices to appear
6 which shall be issued in books with citations in
7 quadruplicate and meeting the requirements of this
8 article.

9 (b) The chief administrative officer of every such
10 traffic-enforcement agency shall be responsible for the
11 issuance of such books and shall maintain a record of
12 every such book and each citation contained therein
13 issued to individual members of the traffic-enforcement
14 agency and shall require and retain a receipt for every
15 book so issued.

CHAPTER 146

(Com. Sub. for S. B. 383—By Senator Dittmar)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article twelve, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to building permits issued by municipalities; exempting structures and equipment owned by the state, a county or other governmental entity from such permits; and providing an exemption from such permits for certain buildings purchased from the state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-14. Permits for construction and alteration.

1 The governing body of every municipality has plenary
 2 power and authority to require a permit as a condition
 3 precedent to the erection, construction, repair or
 4 alteration of any structure or of any equipment or part
 5 of a structure which is regulated by state law or
 6 municipal ordinance: *Provided*, That no such permits
 7 may be required of the state, a county or other
 8 governmental entity, its contractors, agents or em-
 9 ployees for the erection, construction, repair or altera-
 10 tion of any structure or of any equipment or part of a
 11 structure designated for use by the state, a county or
 12 other governmental entity.

CHAPTER 147

(Com. Sub. for H. B. 2916—By Delegate Pettit)

[Passed March 7, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend and reenact section four, article nineteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to revenue bond financing for municipal and county waterworks and electric power systems; providing that electric power systems are exempt from certain taxation under specified circumstances; and providing that any payments in lieu of tax be distributed in a specified manner.

Be it enacted by the Legislature of West Virginia:

That section four, 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 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: *Provided*, That with
31 respect to electric power systems, this exemption for
32 real and personal property shall be applicable only for
33 such real and personal property (1) physically situate
34 within the municipal or county boundaries of the
35 municipality or county which acquired or constructed
36 such electric power system and there was in place prior
37 to the effective date of the amendments to this section
38 made in the year one thousand nine hundred ninety-two
39 an agreement between the municipality and the county
40 commission for payments in lieu of tax, or (2) acquired
41 or constructed with the written agreement of the county
42 school board, county commission and any municipal
43 authority within whose jurisdiction the electric power

44 system is or is to be physically situate. Notwithstanding
45 anything contained in this statute to the contrary, this
46 exemption shall be applicable to any leasehold or similar
47 interest held by persons other than a municipality or
48 county only if acquired or constructed with the written
49 agreement of the county school board, county commis-
50 sion and any municipal authority within whose jurisdic-
51 tion the electric power system is or is to be physically
52 situate: *Provided, however,* That payments made to any
53 county commission, county school board or municipality
54 in lieu of tax pursuant to such an agreement shall be
55 distributed as if the payments resulted from ad valorem
56 property taxation. Such bonds shall bear interest at a
57 rate per annum set by the municipality or county
58 commission, payable at such times, and shall be payable
59 as to principal at such times, not exceeding fifty years
60 from their date, and at such place or places, within or
61 without the state, as shall be prescribed in the ordinance
62 or order providing for their issuance. Unless the
63 governing body of the municipality or county commis-
64 sion shall otherwise determine, such ordinance or order
65 shall also declare that a statutory mortgage lien shall
66 exist upon the property so to be acquired, constructed,
67 established, extended or equipped, fix minimum rates
68 or charges for water or electricity to be collected prior
69 to the payment of all of said bonds and shall pledge the
70 revenues derived from the waterworks or electric power
71 system for the purpose of paying such bonds and interest
72 thereon, which pledge shall definitely fix and determine
73 the amount of revenues which shall be necessary to be
74 set apart and applied to the payment of the principal
75 of and interest upon the bonds and the proportion of the
76 balance of such revenues, which are to be set aside as
77 a proper and adequate depreciation account, and the
78 remainder shall be set aside for the reasonable and
79 proper maintenance and operation thereof. The rates or
80 charges to be charged for the services from such
81 waterworks or electric power system shall be sufficient
82 at all times to provide for the payment of interest upon
83 all bonds and to create a sinking fund to pay the
84 principal thereof as and when the same become due, and
85 reasonable reserves therefor, and to provide for the
86 repair, maintenance and operation of the waterworks or

87 electric power system, and to provide an adequate
88 depreciation fund, and to make any other payments
89 which shall be required or provided for in the ordinance
90 or order authorizing the issuance of said bonds.

CHAPTER 148

(Com. Sub. for H. B. 4185—By Delegate Kiss)

[Passed March 6, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-seven, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to disability, retirement and death benefits for paid police or fire departments; and removing the provision that restricts credits to continuous service members who enter the armed services of the United States or the national guard during hostilities.

Be it enacted by the Legislature of West Virginia:

That section twenty-seven, 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.

§8-22-27. General provisions concerning disability pensions, retirement pensions and death benefits.

1 (a) In determining the years of service of a member
2 in a paid police or fire department for the purpose of
3 ascertaining certain disability pension benefits, all
4 retirement pension benefits and certain death benefits,
5 the following provisions shall be applicable:

6 (1) Absence from the service because of sickness or

7 injury for a period of two years or less shall not be
8 construed as time out of service; and

9 (2) Any member of any paid police or fire department
10 covered by the provisions of sections sixteen through
11 twenty-eight of this article who has been required to or
12 shall at any future time be required to enter the armed
13 forces of the United States by conscription, by reason
14 of being a member of some reserve unit of the armed
15 forces or a member of the West Virginia national guard
16 or air national guard, whose reserve unit or guard unit
17 is called into active duty for one year or more, or who
18 enlists in one of the armed forces of the United States,
19 and who upon receipt of an honorable discharge from
20 such armed forces presents himself for resumption of
21 duty to his appointing municipal official within six
22 months from his date of discharge, and is accepted by
23 the pension board's board of medical examiners as being
24 mentally and physically capable of performing his
25 required duties as a member of such paid police or fire
26 department, shall be given credit for continuous service
27 in said paid police or fire department, and his rights
28 shall be governed as herein provided. No member of a
29 paid police or fire department shall be required to pay
30 the monthly assessment as now required by law, during
31 his period of service in the armed forces of the United
32 States.

33 (b) As to any former member of a paid police or fire
34 department receiving disability pension benefits or
35 retirement pension benefits from a policemen's or
36 firemen's pension and relief fund, on the first day of
37 July, one thousand nine hundred eighty-five, the
38 following provisions shall govern and control the amount
39 of such pension benefits:

40 (1) A former member who on June thirtieth, one
41 thousand nine hundred sixty-two, was receiving disabili-
42 ty pension benefits or retirement pension benefits from
43 a policemen's or firemen's pension and relief fund, shall
44 continue to receive pension benefits, but on and after
45 July one, one thousand nine hundred eighty-five, such
46 pension benefits shall be no less than the amount of five
47 hundred dollars per month; and

48 (2) A former member who became entitled to disabil-
49 ity pension benefits or retirement pension benefits on or
50 after July one, one thousand nine hundred sixty-two,
51 shall continue to receive pension benefits, but on and
52 after July one, one thousand nine hundred eighty-five,
53 shall receive the disability pension benefits, or retire-
54 ment pension benefits provided for in section twenty-
55 four or section twenty-five of this article, as the case
56 may be.

57 (c) As to any surviving spouse, dependent child or
58 children, or dependent father or mother, or dependent
59 brothers or sisters, of any former member of a paid
60 police or fire department, receiving any death benefits
61 from a policemen's pension and relief fund or firemen's
62 pension and relief fund, on the first day of July, one
63 thousand nine hundred eighty-five, the following
64 provisions shall govern and control the amount of such
65 death benefits:

66 (1) A surviving spouse, dependent child or children,
67 or dependent father or mother, or dependent brothers
68 or sisters, of any former member, who on June thirty,
69 one thousand nine hundred sixty-two, was receiving any
70 death benefits from a policemen's pension and relief
71 fund or firemen's pension and relief fund, shall continue
72 to receive death benefits, but on and after July one, one
73 thousand nine hundred eighty-five, such death benefits
74 shall be no less than the following amounts: To a
75 surviving spouse, until death or remarriage, the sum of
76 three hundred dollars per month, to each dependent
77 child the sum of thirty dollars per month, until such
78 child shall attain the age of eighteen years or marries,
79 whichever first occurs; to each dependent orphaned
80 child, the sum of forty-five dollars per month, until such
81 child attains the age of eighteen years or marries,
82 whichever first occurs; to each dependent father and
83 mother the sum of thirty dollars per month for each; to
84 each dependent brother or sister, the sum of fifty dollars
85 per month, until such individual attains the age of
86 eighteen years or marries, whichever first occurs, but
87 in no event shall the aggregate amount paid to such
88 brothers and sisters exceed one hundred dollars per

89 month. If at any time, because of the number of
90 dependents, all such dependents cannot be paid in full
91 as herein provided, then each dependent shall receive
92 his pro rata share of such payments. In no case shall the
93 payments to the surviving spouse and children be cut
94 below sixty-five percent of the total amount paid to all
95 dependents; and

96 (2) A surviving spouse, dependent child or children,
97 or dependent father or mother, or dependent brothers
98 or sisters, of any former member, who became eligible
99 for death benefits on or after July one, one thousand nine
100 hundred sixty-two, shall continue to receive death
101 benefits, but on and after July one, one thousand nine
102 hundred eighty-five, shall receive the death benefits
103 provided for in section twenty-six of this article.

104 (d) A former member who is receiving disability
105 pension benefits on the first day of July, one thousand
106 nine hundred eighty-five, shall continue to receive
107 disability pension benefits provided for in section
108 twenty-four of this article.

CHAPTER 149

(Com. Sub. for H. B. 4021—By Delegate Burk)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty-nine-a, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the qualifications of members of county airport authorities; and providing certain exceptions.

Be it enacted by the Legislature of West Virginia:

That section two, article twenty-nine-a, 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 29A. COUNTY AIRPORT AUTHORITIES.

§8-29A-2. Appointment of members; powers and duties; compensation; terms; removal or replacement.

1 (a) The management and control of the county airport
2 authority, its property, operations, business and affairs,
3 shall be lodged in a board of five persons who shall be
4 known as "Members of the Authority". The board shall
5 constitute and be a public corporation under the name
6 of "_____ County Airport Authority" and
7 as such shall have perpetual succession, may contract
8 and be contracted with, sue and be sued, plead and be
9 impleaded, and have and use a common seal.

10 (b) All members shall be appointed by the county
11 commission: *Provided*, That one member of the author-
12 ity shall be a member of the county commission:
13 *Provided, however*, That of the remaining four members
14 of the authority no more than two shall be members of
15 the same political party. Members shall be residents of
16 the county and be appointed for a term of five years,
17 except that as to the first four appointed to the first
18 board appointed, the term of one member shall expire
19 on the first day of July next ensuing and the term of
20 the next member shall expire on the first day of July
21 two years thereafter, the term of another member shall
22 expire on the first day of July three years thereafter and
23 the term of the remaining member shall expire on the
24 first day of July four years thereafter: *Provided further*,
25 That the county commissioner appointed to serve as a
26 member of the authority shall not serve for a term as
27 member of the authority which is longer than the term
28 of office as a member of the county commission.

29 (c) The members of said board shall receive no
30 compensation for their services, but they shall be
31 entitled to reimbursement for all reasonable and
32 necessary expenses actually incurred in the perform-
33 ance of their duties as members of said board. They
34 shall not be personally interested, directly or indirectly,
35 in any contract entered into by said board, or hold any
36 remunerative position in connection with the establish-

37 ment, construction, improvement, extension, develop-
38 ment, maintenance or operation of any of the property
39 under their control as members of said board: *Provided,*
40 That nothing herein shall be construed to prevent or
41 make unlawful under this chapter or any other chapter
42 of the code of West Virginia the appointment to the
43 board of any person whose only interest in any property
44 under the control of the board is that the person in a
45 noncommercial manner leases hangar space, purchases
46 fuel or contracts for any other goods or service provided
47 by said airport authority subject to the control and
48 management of the board.

49 (d) The county commission shall have the power to
50 remove any member of the authority for consistent
51 violations of any provisions of this article, for reasonable
52 cause which shall include, but not be limited to, a
53 continued failure to attend meetings of the authority,
54 failure to diligently pursue the objectives for which the
55 authority was created or failure to perform any other
56 duty prescribed by law, or for any misconduct in office:
57 *Provided,* That if the county commission desires to
58 remove a member of the authority it shall notify said
59 member in writing, stating the reasons for the county
60 commission desiring said removal. Within ten days of
61 the receipt of the written notice of removal by the
62 member of the authority, the member may request a
63 hearing before the county commission, and any such
64 hearing shall be held within ten days of the member's
65 request for said hearing.

66 If any member of the authority shall die, resign or be
67 removed, or for any other reason cease to be a member
68 of the authority, the county commission shall within
69 thirty days appoint another person to fill the unexpired
70 portion of the term of such member.

CHAPTER 150

(Com. Sub. for H. B. 4583—By Mr. Speaker, Mr. Chambers,
and Delegate Preece)

[Passed March 5, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirteen-b, relating to the West Virginia Community Improvement Act; providing definitions; authorizing counties and municipalities to create assessment districts and providing other powers with respect to flood relief, wastewater and water projects; requiring determination of necessity and economic feasibility of creating an assessment district and constructing a project therein, and notice to public, prior to creation of assessment district, and requiring public hearing with respect thereto; requiring petition of property owners prior to creation of assessment district and establishing minimum number of property owners who must sign petition with respect to each type of project in order for assessment district to be created; requiring that owners of property to be affected by certain flood relief projects be provided at least thirty days to elect not to have the project undertaken with respect to their property; providing that assessment districts be public corporations and setting forth powers thereof; providing for creation of community improvement boards to administer assessment districts and setting forth powers, duties and authority thereof; providing for appointment of board and organization thereof; setting forth procedures for construction of projects; providing for levying of assessments and requiring notice to affected property owners and other procedures relating thereto; providing that assessment district may levy assessments on property improved or protected by a project and establishing procedures for determining the amount of assessments and the apportionment thereof; allowing assessments of public and charitable institutions; providing methods of paying for the costs of a

project; providing for issuance of assessment certificates and payment of assessments, and creation of liens on property improved or protected by a project and that lien will be prior to all other liens except tax liens and other preexisting, special assessment liens; requiring designation of registrar for assessment certificates; requiring payment of assessment fees to sheriff of county in which assessment district located; providing that state, counties and municipalities not liable for debt of assessment district or for payment of any assessment fees, and that assessment district not liable for payment of any assessment fees; providing for reassessments and addition of territory to assessment districts; addressing operation and maintenance of wastewater and water projects and requiring, upon payment of all assessment fees applicable to such a project, that assessment district transfer its right, title and interest in the project to utility or governmental agency operating same; and requiring liberal construction of article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13B. WEST VIRGINIA COMMUNITY IMPROVEMENT ACT.

- §16-13B-1. Short title.
- §16-13B-2. Definitions.
- §16-13B-3. Power and authority of counties and municipalities relating to flood relief, wastewater and water projects.
- §16-13B-4. Determination of need and feasibility of creating an assessment district.
- §16-13B-5. Notice to property owners before creation of assessment district and construction of project; form of notice; affidavit of publication.
- §16-13B-6. Petition of property owners for creation of assessment district.
- §16-13B-7. Receipt of petition of property owners; ordinance or order authorizing creation of assessment district and construction of project.
- §16-13B-8. Assessment district to be a public corporation and political subdivision; powers thereof; community improvement boards.
- §16-13B-9. Provisions for construction of a project.
- §16-13B-10. Notice to property owners of assessments; hearings correcting and laying assessments; report on project completion; permits.

- §16-13B-11. Construction of projects; assessments; corner lots, etc.
§16-13B-12. Apportionment and assessment of cost.
§16-13B-13. Assessment against property of public, charitable, eleemosynary, educational or religious institutions; duty of those in charge to cause assessments to be paid.
§16-13B-14. Method of paying for cost of project; how assessments may be evidenced.
§16-13B-15. Assessment certificates; assignments; designation of registrar for assessment certificates.
§16-13B-16. No liability of state, county, municipality and assessment district.
§16-13B-17. Payment of assessment fees; releases.
§16-13B-18. Liens; recording notice of liens; suit for enforcement; priority.
§16-13B-19. Reassessment for void, irregular or omitted assessments.
§16-13B-20. How additional territory may be added to assessment district.
§16-13B-21. Operation and maintenance of wastewater and water projects; rates and charges therefor.
§16-13B-22. Liberal construction.

§16-13B-1. Short title.

- 1 This article shall be known and may be cited as the
2 "West Virginia Community Improvement Act."

§16-13B-2. Definitions.

- 1 For purposes of this article:
- 2 (a) "Assessment certificate" means a certificate
3 issued by a board pursuant to section fifteen of this
4 article to evidence an assessment levied against property
5 abutting a wastewater or water project, or on which a
6 flood relief project is completed or protects.
- 7 (b) "Assessment district" means a community im-
8 provement assessment district created by a governing
9 body pursuant to section seven of this article.
- 10 (c) "Assessment fee" means the fee paid by a person
11 or governmental agency owning property located within
12 an assessment district, based on the assessment levied
13 against the property pursuant to section ten of this
14 article, to pay for the cost of a project abutting,
15 constructed upon or protecting such property.
- 16 (d) "Board" means the community improvement
17 board of each assessment district provided under section
18 eight of this article.
- 19 (e) "Code" means the code of West Virginia, one

20 thousand nine hundred thirty-one, as amended.

21 (f) "Cost" means, as applied to each wastewater,
22 water or flood relief project financed, in whole or in
23 part, with the proceeds from assessment certificates, all
24 costs and expenses incurred by a county or municipality,
25 and the respective assessment districts created under
26 this article, that are reasonable and necessary for the
27 planning, development, construction and carrying out of
28 all works and undertakings necessary or incident to the
29 completion of a project, including, without limitation,
30 the cost and expense of all labor, work, supervision,
31 inspection, equipment leased and materials furnished
32 and used in completing the project, any interest charged
33 on funds borrowed to finance the construction of a
34 project, advertising expenses, and any engineering,
35 legal, surveying, accounting or other professional fees
36 incurred in connection with or otherwise relating to a
37 project.

38 (g) "Flood relief project" means a project involving
39 one or more of the following activities: (1) The moving,
40 removing, renovating, relocation or demolition of, or any
41 other actions taken to provide protection from flooding
42 to, one or more buildings, structures and other perman-
43 ent improvements located on property owned by any
44 person, which the governing body of the county or
45 municipality in which the project is completed, or any
46 other governmental agency, has determined is within an
47 area threatened by flooding; or (2) the acquisition of
48 property which is located outside of an area threatened
49 by flooding to serve as a site on which one or more
50 buildings, structures and other permanent improve-
51 ments which are located within an area that is threat-
52 ened by flooding may be relocated, or on which new
53 buildings, structures and other permanent improve-
54 ments may be constructed, and the construction of such
55 new buildings, structures and improvements if relocat-
56 ing existing buildings, structures and improvements is
57 not feasible; or (3) the construction of levies or stream
58 channel improvements to provide flood protection to
59 specifically identified lots or parcels of land located
60 within an area which a governing body or other

61 governmental agency has determined is threatened by
62 flooding, all so as to protect the health and safety of
63 persons residing or engaged in business on such
64 threatened property and to eliminate or minimize the
65 risk of damage caused by flooding to such buildings,
66 structures and permanent improvements.

67 (h) "Governing body" means, in the case of a county,
68 the county commission, and in the case of a municipal-
69 ity, the mayor and council together, the council, the
70 board of directors or other board or body of any
71 municipality, by whatever name called, as the case may
72 be, charged with the responsibility of enacting ordinan-
73 ces and determining the public policy of such
74 municipality.

75 (i) "Governmental agency" means the state govern-
76 ment or any agency, department, division or unit
77 thereof; counties; municipalities; any watershed im-
78 provement districts, soil conservation districts, sanitary
79 districts, public service districts, drainage districts,
80 urban renewal authorities or regional governmental
81 authorities established pursuant to this code and any
82 other governmental agency, entity, political subdivision,
83 public corporation or agency having the authority to
84 acquire, construct, maintain or operate wastewater
85 facilities; the United States government or any agency,
86 department, division or unit thereof; and any agency,
87 commission or authority established pursuant to an
88 interstate compact or agreement.

89 (j) "Municipality" means a municipality as defined in
90 section two, article one, chapter eight of this code.

91 (k) "Person" means an individual, firm, partnership,
92 corporation, voluntary association or any other type of
93 entity.

94 (l) "Project" means a flood relief project, wastewater
95 project, water project or any combination thereof.

96 (m) "Public way" means any street, alley, right-of-
97 way, easement or other interest in real estate, or any
98 portion or combination thereof, along or across which a
99 wastewater or water project is constructed.

100 (n) "Public service commission" means the public
101 service commission established under article one,
102 chapter twenty-four of this code.

103 (o) "Recorder" means the recorder, clerk or other
104 municipal officer, by whatever name called, charged
105 with the responsibility of keeping the journal of the
106 proceedings of the governing body of the municipality
107 and other municipal records.

108 (p) "Utility" means a public utility as defined in
109 article one, chapter twenty-four of this code.

110 (q) "Wastewater project" means the planning, acqui-
111 sition, construction, improvement or extension of new or
112 existing sewer lines, pumps and related equipment and
113 facilities, and any land, public ways or other interests
114 in real estate, whether located within or outside of an
115 assessment district, necessary or incident to the trans-
116 portation of sewage, industrial wastes or other wastes,
117 wastewater, and the residue thereof, from property
118 located within an assessment district to a wastewater
119 facility located within or outside of an assessment
120 district.

121 (r) "Wastewater facility" means all facilities used for
122 or in connection with treating, neutralizing, disposing
123 of, stabilizing, cooling, segregating or holding waste-
124 water, including, without limitation, facilities for the
125 treatment and disposal of sewage, industrial wastes or
126 other wastes, wastewater, and the residue thereof,
127 facilities for the temporary or permanent impoundment
128 of wastewater, both surface and underground; and
129 sanitary sewers or other collection systems, whether on
130 the surface or underground, designed to transport
131 wastewater together with the equipment and furnish-
132 ings thereof and their appurtenances and systems,
133 whether on the surface or underground including force
134 mains and pumping facilities therefor.

135 (s) "Water project" means the planning, acquisition,
136 construction, improvement or extension of water lines,
137 pumps and related equipment and facilities, and any
138 land, public ways or other interests in real estate,
139 whether located within or outside of an assessment

140 district, necessary or incident to the transportation and
141 distribution of water from a water facility located
142 within or outside of an assessment district to property
143 located within an assessment district, all for the purpose
144 of providing potable, sanitary water suitable for human
145 consumption and use.

146 (t) "Water facility" means all facilities, land and
147 equipment used for or in connection with the collection
148 of water, both surface and underground, transportation
149 of water, treatment of water and distribution of water
150 all for the purpose of providing potable, sanitary water
151 suitable for human consumption and use.

§16-13B-3. Power and authority of counties and municipalities relating to flood relief, wastewater and water projects.

1 (a) Every county and municipality is hereby empow-
2 ered and authorized, in addition to any other rights,
3 powers and authority conferred upon it elsewhere in this
4 code, to:

5 (1) Create, modify and expand assessment districts in
6 the manner hereinafter set forth in such county or
7 municipality, and to develop, construct, extend or
8 improve, or assist in the development, construction,
9 extension or improvement of, a project located in such
10 county or municipality;

11 (2) Acquire, by purchase, lease, right of eminent
12 domain, gift or otherwise, such lands, public ways and
13 other interests in real estate, or any other property, as
14 may be necessary or incident to the completion of a
15 project, and to convey such real estate and other
16 property to an assessment district;

17 (3) Appoint the members of the community improve-
18 ment board for each assessment district created by it
19 hereunder;

20 (4) Enter into agreements with any person or govern-
21 mental agency necessary or incident to the development,
22 planning, construction or improvement of a project, or
23 for the operation, maintenance or disposition of a project
24 or for any other services required by a project;

25 (5) Expend funds to acquire, or construct part of a
26 project on, property located outside of an assessment
27 district but within the boundaries of such county or
28 municipality, as the case may be, and for any work
29 undertaken thereon, as may be necessary or incident to
30 the completion of a project;

31 (6) Enter into agreements with one or more counties
32 or municipalities to plan, develop, construct or improve
33 a project jointly;

34 (7) Merge two or more assessment districts into one
35 assessment district: *Provided*, That all such districts are
36 located within the boundaries of the county or municipi-
37 pality, as the case may be; and

38 (8) Take any and all other actions consistent with the
39 purpose of this article and not in violation of the
40 constitution of this state, as may be necessary or incident
41 to the construction and completion of a project.

42 (b) Unless agreed to by a municipality, the power and
43 authority hereby conferred on a county shall not extend
44 into territory within the boundaries of any municipality:
45 *Provided*, That notwithstanding any provision in this
46 code to the contrary, the power and authority hereby
47 conferred on counties may extend within the territory
48 of a public service district created under section two,
49 article thirteen-a of this chapter.

**§16-13B-4. Determination of need and feasibility of
creating an assessment district.**

1 (a) The governing body of any county or municipality,
2 on its own motion or upon the receipt of a petition signed
3 by at least twenty-five percent of the total number of
4 persons owning property located within the boundaries
5 of an area described in the petition, by metes and
6 bounds or otherwise in a manner sufficient to describe
7 the area, and which requests that the area be constituted
8 as an assessment district in accordance with this article,
9 may authorize and cause at any time, or from time to
10 time, a study to be prepared to determine the necessity
11 and economic feasibility of creating an assessment
12 district for such area and of developing, constructing,

13 extending or improving a project within such proposed
14 assessment district. All such studies shall be prepared
15 or reviewed under the supervision of a professional
16 engineer or such other person or governmental agency
17 charged by the governing body to prepare or review the
18 study. The study shall describe the boundaries of the
19 proposed assessment district and the nature of the
20 project proposed therefore; list the names and address
21 of all owner of property located within the proposed
22 assessment district; set forth the necessity and economic
23 feasibility of the project and the findings in support of
24 such determinations; and also include plans, drawings
25 and specifications with respect to the project, an
26 estimate of the cost of the project and the amount of the
27 assessments required to be levied against each lot or
28 parcel of land located within the assessment district to
29 pay for the cost of the project. The estimate shall specify
30 the interest rate used in the calculation of the assess-
31 ments and such other data as may be necessary for
32 owners of property within the proposed assessment
33 district to estimate the proportionate part of the cost of
34 the project that may be assessed against their property.

35 (b) In the case of an assessment district created, in
36 whole or in part, to construct a wastewater or water
37 project, the study shall also identify the utility or
38 governmental agency operating the wastewater or water
39 facility, as the case may be, which would serve the
40 assessment district upon completion of the project, and
41 confirm that such wastewater or water facility has the
42 capacity to serve the proposed project.

43 (c) In the case of an assessment district created, in
44 whole or in part, to construct a flood relief project as
45 defined in subparagraph (1) or (2), subsection (g), section
46 two of this article, the study shall also set forth the
47 minimum number of property owners who must elect to
48 have the cost of the proposed project assessed against
49 their property for the project to be economically
50 feasible, and an estimate of the assessments which may
51 be levied against the property owned by such persons
52 if only the minimum number of property owners elect
53 to have the project completed.

54 (d) After reviewing the study prepared pursuant to
55 this section and considering alternative methods of
56 financing the proposed project, the governing body may
57 by order or ordinance determine the necessity and
58 economic feasibility of creating an assessment district
59 and developing, constructing, improving or extending a
60 project therein. If the governing body determines that
61 the creation of an assessment district and construction
62 of the project is necessary and economically feasible, it
63 shall set a date for the public meeting required under
64 section five of this article and shall cause the study to
65 be filed with the clerk of the county commission or the
66 recorder of the municipality, as the case may be, and
67 with the executive secretary of the public service
68 commission, and made available for inspection by
69 interested persons before the hearing.

70 (e) In determining the necessity and economic feasi-
71 bility of an assessment district and the construction of
72 a project, the governing body may rely, in whole or in
73 part, on studies or reports prepared by or for any other
74 governmental agency.

**§16-13B-5. Notice to property owners before creation of
assessment district and construction of
project; form of notice; affidavit of
publication.**

1 (a) Before the adoption or enactment of an order or
2 ordinance creating an assessment district, the governing
3 body shall cause notice to be given to the owners of
4 property abutting a proposed wastewater or water
5 project, or to the owners of property to be protected by
6 a proposed flood relief project, that such ordinance or
7 order will be considered for adoption or enactment, as
8 the case may be, at a public meeting of the governing
9 body at a date, time and place named in the notice and
10 that all persons at that meeting, or any adjournment
11 thereof, shall be given an opportunity to protest or be
12 heard concerning the adoption, enactment or rejection
13 of the order or ordinance. At or after the meeting the
14 governing body may amend, revise or otherwise modify
15 the plans, drawings and specifications for the assess-
16 ment district and project as it may deem appropriate

17 after taking into account any comments received at such
18 meeting.

19 (b) The notice required in this section shall be
20 published at least thirty days prior to the date of the
21 meeting as a Class II-O legal advertisement in com-
22 pliance with the provisions of article three, chapter fifty-
23 nine of this code, and the publication area for such
24 publication shall be the county or municipality in which
25 the proposed assessment district is located. The notice
26 shall be in the form of, or substantially in the form of,
27 the following notice:

28 "NOTICE TO ALL PERSONS OWNING PROP-
29 ERTY LOCATED WITHIN _____ (here
30 describe the boundaries of the proposed assessment
31 district) IN THE _____ (county or
32 municipality) OF _____ (name of county
33 or municipality):

34 A proposal has been made to the _____
35 (county commission, city council or other governing
36 body) of the _____ (county or municipali-
37 ty) of _____ (name of county or munic-
38 ipality) to establish a community improvement assess-
39 ment district under chapter sixteen, article thirteen-b of
40 the code of West Virginia to permanently improve
41 _____ (here describe the portion of the
42 public ways both within and outside of the proposed
43 assessment district to be improved, in the case of
44 wastewater or water project, or the lots or parcels of
45 land which may be protected, in the case of a flood relief
46 project) in _____ (name of county or
47 municipality) by _____ (here provide
48 general description of the project) as the
49 _____ (county commission, city council or
50 other governing body) may deem proper, and to assess
51 the total cost (or, if the assessments are only necessary
52 to pay for part of the total cost, the approximate
53 percentage of the total cost) of such improvement on
54 _____ (in the case of a wastewater or
55 water project, the property abutting said portion of the
56 public ways within the proposed assessment district, or,
57 in the case of a flood relief project, the lots or parcels

58 of land on which the project may be constructed or may
59 protect).

60 The proposal to create an assessment district and to
61 make such improvements, and the plans, drawings,
62 specifications and estimates therefor, will be considered
63 by the _____ (county commission, city
64 council or other governing body) at a public meeting to
65 be held on the _____ day of
66 _____, _____, at ____m.
67 at _____. Any owner of property who may
68 be affected by the creation of the above-described
69 assessment district, and any person whose property is
70 not located within said assessment district but wishes
71 his property to be included, will be given an opportunity
72 to protest or be heard at said meeting or any adjourn-
73 ment thereof:

74 _____ (name of clerk or recorder)

75 _____ (official position).”

76 (c) An affidavit of publication of the notice made by
77 the newspaper publisher, or a person authorized to do
78 so on behalf of such publisher, and a copy of the notice
79 shall be made part of the minutes of the governing body
80 and spread on its records of the meeting described in
81 the notice. The service of said notice upon all persons
82 owning any interest in any property located within the
83 proposed assessment district shall conclusively be
84 deemed to have been given upon the completion of such
85 newspaper publication.

**§16-13B-6. Petition of property owners for creation of
assessment district.**

1 (a) After the meeting described in section five of this
2 article, and before the governing body may adopt or
3 enact an order or ordinance creating an assessment
4 district, the governing body shall receive, within ninety
5 days after the meeting, a petition in writing of (1)
6 persons owning, in the case of a wastewater or water
7 project, or both, not less than sixty percent of the
8 frontage of the lots abutting on both sides of that portion
9 of the public way located within the proposed assess-

10 ment district on which the wastewater or water project
11 or any part thereof may be constructed; (2) in the case
12 of a flood relief project as defined in subparagraph (1)
13 or (2), subsection (g), section two of this article, such
14 percentage of property owners as the governing body
15 shall have previously determined is necessary for such
16 project to be economically feasible; or (3) in the case of
17 a flood relief project as defined in subparagraph (3),
18 subsection (g), section two of this article, persons owning
19 not less than sixty percent of the lots which may receive
20 flood relief protection from such a project, in each case
21 requesting the creation of the assessment district and
22 the completion of the project according to the plans,
23 drawings and specifications submitted at the meeting,
24 and agreeing to have their property assessed with the
25 total cost of the project (or, if the governing body has
26 previously determined that the assessments are only
27 necessary to pay for part of the total cost, agreeing to
28 have their property assessed with that part of the cost).
29 The governing body may prescribe the form of the
30 petition as it may deem appropriate, and the petition
31 shall be held at all times in the office of the county clerk
32 or the recorder, as the case may be, and shall be open
33 to the public for inspection and execution during the
34 normal business hours of such office.

35 (b) Upon receipt of the petition required under
36 subdivision (2), subsection (a) of this section, and before
37 the governing body may adopt or enact an order or
38 ordinance creating an assessment district, the governing
39 body shall establish, solely in the case of a proposed flood
40 relief project as defined in subparagraph (1) or (2),
41 subsection (g), section two of this article, a period which
42 may not be less than thirty days or more than sixty days,
43 during which any owner of property to be affected
44 thereby may elect not to have the project undertaken
45 with respect to his property, in which event the project
46 shall not be undertaken on such property and such
47 property shall not be subject to any assessments
48 thereafter levied or any lien created pursuant to this
49 article. Such election shall be submitted in writing to
50 the governing body prior to the expiration of the election
51 period so established.

52 (c) The governing body shall provide notice of the
53 election period required in subsection (b) of this section
54 to those persons whose property may be affected by such
55 flood relief projects and shall set forth in the notice the
56 property owner's election rights with respect thereto
57 and an estimate of the assessments which may be levied
58 against each lot or parcel of land so affected, based on
59 the number of persons who signed the petition described
60 in subsection (a) of this section, and shall also set forth
61 the minimum number of persons who must elect to have
62 the project completed to make the project economically
63 feasible and the assessments which may be levied if not
64 more than the minimum number of persons so elect. The
65 notice shall be published as a Class II-O legal advertise-
66 ment in compliance with the provisions of article three,
67 chapter fifty-nine of this code, and the publication area
68 for such publication shall be the assessment district.
69 After the expiration of the election period, if the number
70 of property owners not opting out of the flood relief
71 project is less than the minimum number of property
72 owners necessary for the project to be economically
73 feasible, the governing body may, by ordinance or order,
74 terminate any further actions concerning the proposed
75 flood relief project and assessment district.

**§16-13B-7. Receipt of petition of property owners;
ordinance or order authorizing creation
of assessment district and construction of
project.**

1 Upon receipt of the petition required under section six
2 of this article and, solely in the case of a flood relief
3 project as defined in subparagraph (1) or (2), subsection
4 (g), section two of this article, not earlier than the
5 expiration of the election period required under section
6 six of this article, the governing body, by ordinance or
7 order, may create a community improvement assess-
8 ment district and shall set forth in such ordinance or
9 order, as the case may be, the boundaries of the
10 assessment district and authorize the completion of the
11 project therein in accordance with the study described
12 in section four of this article.

§16-13B-8. Assessment district to be a public corporation and political subdivision; powers thereof; community improvement boards.

1 (a) From and after the date of the adoption or
2 enactment of the order or ordinance creating an
3 assessment district, it shall thereafter be a public
4 corporation and political subdivision of this state, but
5 without any power to levy or collect ad valorem taxes.
6 Each assessment district is hereby empowered and
7 authorized, in addition to any other rights, powers and
8 authorities conferred upon it in this article or elsewhere
9 in this code, to:

10 (1) Acquire, own and hold, in its corporate name, by
11 purchase, lease, right of eminent domain, gift or
12 otherwise, such property, both real and personal, public
13 ways and other interests in real estate, or any other
14 property, whether tangible or intangible, as may be
15 necessary or incident to the construction and completion
16 of a project;

17 (2) Construct and complete one or more projects, and
18 assess the cost of all or any portion of a project on
19 abutting property located in the assessment district, in
20 the case of a wastewater or water project, or on the
21 property protected by a flood relief project;

22 (3) Sue or be sued;

23 (4) Establish a bank account or accounts in its name;

24 (5) Enter into agreements or other transactions with
25 any person or governmental agency necessary or
26 incident to the development, planning, construction or
27 improvement of a project, or for the operation, mainte-
28 nance or disposition of a project or for any other services
29 required by a project;

30 (6) Provide grants to any person owning property
31 abutting a wastewater or water project, or on which a
32 flood relief project is undertaken, in consideration of the
33 completion by such person of a portion of the work
34 necessary or incident to the completion of the project;

35 (7) Expend funds to acquire, or construct part of a
36 project on property located outside of an assessment
37 district, and for any work undertaken thereon, as may
38 be necessary or incident to the completion of a project;

39 (8) Enter into agreements with one or more counties,
40 municipalities or assessment districts to plan, develop,
41 construct or improve a project jointly;

42 (9) Accept appropriations, gifts, grants, bequests and
43 devises, and use or dispose of the same to carry out its
44 corporate purpose;

45 (10) Make and execute contracts, releases, assign-
46 ments, compromises, and other instruments necessary or
47 convenient for the exercise of its powers, or to carry out
48 its corporate purpose;

49 (11) Have a seal and alter the same;

50 (12) Issue assessment certificates to carry out and
51 effectuate the purpose of this article;

52 (13) Borrow money to carry out and effectuate the
53 purpose of this article and to issue its notes as evidence
54 of any such borrowing in such principal amounts and
55 upon such terms as shall be necessary to provide
56 sufficient funds for achieving its corporate powers;

57 (14) Obtain options to acquire real property, or any
58 interest therein, by purchase, lease or otherwise, which
59 is found by the board to be suitable as a site, or part
60 of a site, for the construction of a project; and

61 (15) Take any and all other actions consistent with the
62 purpose of this article and not in violation of the
63 Constitution of this state, as may be necessary or
64 incident to the construction and completion of a project.

65 (b) The powers of each assessment district shall be
66 vested in and exercised by a community improvement
67 board which shall be composed of five members, four
68 of whom shall be appointed by the governing body of
69 the county or municipality in which the assessment
70 district is located, and one of whom shall be the sheriff
71 of the county or the treasurer of the municipality (or

72 such other person serving in an equivalent capacity if
73 there is no treasurer), as the case may be, in which the
74 assessment district is located. At least one member of
75 the board shall be a professional engineer and at least
76 three members of the board shall be residents of the
77 assessment district. No more than three members of the
78 board may be from the same political party.

79 (c) The provisions of this subsection apply to the four
80 members appointed by the governing body. They shall
81 be appointed for overlapping terms of four years each
82 and until their respective successors have been ap-
83 pointed and have qualified, except for the original
84 appointments. For the purpose of original appointments,
85 one member shall be appointed for a term of four years
86 and until his or her successor has been appointed and
87 qualified; one member shall be appointed for a term of
88 three years and until his or her successor has been
89 appointed and qualified; one member shall be appointed
90 for a term of two years and until his or her successor
91 has been appointed and qualified; and one member shall
92 be appointed for a term of one year and until his or her
93 successor has been appointed and qualified. Members
94 may be reappointed for any number of terms. Before
95 entering upon the performance of his or her duties, each
96 member shall take and subscribe to the oath required
97 by section five, article four of the constitution of this
98 state. Vacancies shall be filled by appointment by the
99 governing body of the county or municipality creating
100 the assessment district for the unexpired term of the
101 member whose office shall be vacant and such appoint-
102 ment shall be made within thirty days of the occurrence
103 of such vacancy. Any such member may be removed by
104 the governing body which appointed such member in
105 case of incompetency, neglect of duty, gross immorality
106 or malfeasance in office. Members shall not be entitled
107 to any compensation for their services.

108 (d) The board shall organize within thirty days
109 following the first appointments and annually thereafter
110 at its first meeting after the first day of January of each
111 year by selecting one of its members to serve as

112 chairman, one to serve as treasurer and one to serve as
113 secretary. The secretary shall keep a record of all
114 proceedings of the board which shall be available for
115 inspection as other public records, and the treasurer
116 shall maintain records of all financial matters relating
117 to the assessment district, which shall also be available
118 for inspection as other public records. Duplicate records
119 shall be filed with the clerk or recorder, as the case may
120 be, of the county or municipality which created the
121 assessment district and shall include the minutes of all
122 board meetings. The secretary and treasurer shall
123 perform such other duties pertaining to the affairs of the
124 assessment district as shall be prescribed by the board.

125 (e) The members of the board, and the chairman,
126 secretary and treasurer thereof, shall make available to
127 the governing body responsible for appointing the
128 board, at all times, all of its books and records
129 pertaining to the assessment district's operation,
130 finances and affairs, for inspection and audit. The board
131 shall meet at least monthly.

132 (f) A majority of the members of the board constitutes
133 a quorum and meetings shall be held at the call of the
134 chairman.

135 (g) Staff, office facilities and costs of operation of the
136 board shall be provided by the county or municipality
137 which created the assessment district.

138 (h) The chairman shall preside at all meetings of the
139 board and may vote as any other members of the board,
140 but if he should be absent from any meeting the
141 remaining members may select a temporary chairman,
142 and if the member selected as chairman resigns as such
143 or ceases for any reason to be a member of the board,
144 the board shall select one of its members as chairman
145 to serve until the next annual organizational meeting.

146 (i) The board shall by resolution determine its own
147 rules of procedure, fix the time and place of its meetings
148 and the manner in which special meetings may be
149 called. The members of the board shall not be personally
150 liable or responsible for any obligations of the assess-

151 ment district or the board but are answerable only for
152 willful misconduct in the performance of their duties.

153 (j) The official name of an assessment district created
154 under the provisions of this article may contain the
155 name of the county or municipality, as the case may be,
156 in which it is located.

157 (k) Notwithstanding any provision in this code to the
158 contrary, the power and authority hereby conferred on
159 assessment districts may extend within the territory of
160 a public service district created under section two,
161 article thirteen-a of this chapter.

§16-13B-9. Provisions for construction of a project.

1 (a) After the creation of an assessment district and
2 the appointment of the board thereof, the board shall
3 provide by resolution for the construction of the project,
4 and shall also provide in the same or subsequent
5 resolutions for the supervision of such work by a
6 professional engineer, governmental agency or any other
7 person designated by the board. The board may provide
8 for the construction of the project by one of the two
9 following methods, or any combination thereof:

10 (1) If there exists another governmental agency with
11 the experience, knowledge and authority to construct
12 the project, the board may elect to enter into a contract
13 with such agency for the construction of all or part of
14 the project or for any other service necessary or incident
15 to the construction of the project, in which case such
16 governmental agency shall be responsible for entering
17 into contracts, subject to the board's approval, with such
18 other persons as may be necessary or incident to the
19 construction of the project; or

20 (2) The board may elect to enter into one or more
21 contracts with such contractors and other persons as
22 may be necessary or incident to the construction of the
23 project, in which case it shall provide notice to the
24 public and appropriate contractor associations of the
25 general nature of the project, and shall designate in such
26 notice the place where detailed plans, drawings and

27 specifications of the project may be reviewed, and call
28 for sealed proposals for construction of the project by a
29 date not earlier than ten days after the last of such
30 publications. Such notice shall be published as a Class
31 II-O legal advertisement in compliance with the
32 provisions of article three, chapter fifty-nine of this code
33 and the publication area for such publication shall be
34 the assessment district. All contracts for work on any
35 project, the expense of which will exceed five hundred
36 dollars, shall be let to the lowest responsible bidder
37 therefor, and the board may impose such conditions as
38 it may deem necessary upon the bidders with regard to
39 bond and surety, guaranteeing the good faith and
40 responsibility of such bidders, and the faithful perfor-
41 mance of such work according to contract, or for any
42 other purpose. The board may reject any and all bids,
43 and if it rejects all bids notices shall be published as
44 originally required before any other bids may be
45 received. The board may let portions of the work
46 necessary to complete a project under different
47 contracts.

48 (b) The resolution described in subsection (a) of this
49 section shall also provide for payment of the cost of the
50 project. The board shall provide in such resolution for
51 the payment by (1) persons owning property abutting a
52 wastewater or water project, in the case of such a
53 project; (2) persons owning property on which a flood
54 relief project, as defined in subparagraph (1) or (2),
55 subsection (g), section two of this article, is constructed,
56 in the case of such a project; or (3) persons owning
57 property protected by a flood relief project, as defined
58 in subparagraph (3), subsection (g), section two of this
59 article, in the case of such a project, of the cost of the
60 work in equal installments payable over a period of not
61 less than five years nor more than ten years from the
62 date of assessment, with interest payable from the date
63 of assessment at such rate or rates as the board may
64 determine are necessary or appropriate, and shall fix
65 the number of installments in which the amounts
66 assessed shall be payable: *Provided*, That upon failure
67 of the owner of the property assessed to pay any
68 installment as and when due, and if such default

69 continues for sixty days after receipt of written notice
70 of the default, then at the option of the holder of the
71 assessment certificates applicable to such property, the
72 entire balance due may be declared immediately due
73 and payable and the holder of the certificates may
74 forthwith proceed to enforce the collection thereof in
75 accordance with this article. Delivery of notice of default
76 shall be deemed complete upon the delivery of such
77 notice by certified mail, return receipt requested,
78 directed to the address of the property owner in default
79 as shown on the face of the assessment certificate, or
80 such other address provided in writing to the holder of
81 the certificate subsequent to the issuance thereof.

**§16-13B-10. Notice to property owners of assessments;
hearings, correcting and laying assess-
ments; report on project completion;
permits.**

1 (a) After the execution of an agreement or agree-
2 ments for the construction of a project with another
3 governmental agency or the acceptance by the board of
4 a bid by one or more contractors as contemplated by
5 section nine of this article, but prior to the commence-
6 ment of construction, the board shall cause the engineer,
7 governmental agency or person charged by the board
8 with the supervision of the project, to prepare a report
9 describing each lot or parcel of land abutting the project
10 in the case of a wastewater or water project, or each lot
11 or parcel on which a flood relief project shall be
12 undertaken or shall protect in the case of such a project;
13 and setting forth the total cost of the project based on
14 the contract with the governmental agency, or the
15 accepted bid or bids, and all other costs incurred prior
16 to the commencement of construction, and the respective
17 amounts chargeable upon each lot or parcel of land
18 which may be assessed and the proper amount to be
19 assessed against the respective lots or parcels of land in
20 accordance with sections eleven and twelve of this
21 article, with a description of the lots and parcels of land
22 as to ownership, frontage and location. If two or more
23 different kinds of projects are involved, the report shall
24 set forth the portion of the assessment attributable to

25 each respective project. The board shall thereupon give
26 notice to the owners of property to be assessed that on
27 or after a date specified in the notice an assessment may
28 be levied against the property: *Provided*, That construc-
29 tion of a project shall not commence until the assessment
30 district has laid all assessments on the property to be
31 benefitted by the project and has issued all assessment
32 certificates necessary to evidence the assessments in
33 accordance with section fifteen of this article. The notice
34 shall state that the owner of assessed property, or other
35 interested party, may on said date appear before the
36 board to move the revision or correction of the proposed
37 assessment, and shall show the total cost of the project,
38 whether the assessments will pay for all or part of the
39 total cost of the project, and the lots or parcels of
40 property to be assessed and the respective amounts to
41 be assessed against such lots or parcels, with a descrip-
42 tion of the respective lots and parcels of land as to
43 ownership, frontage and location. The notice shall be
44 published as a Class II-O legal advertisement in
45 compliance with the provisions of article three, chapter
46 fifty-nine of the code, and the publication area for such
47 publication shall be the assessment district. On or after
48 the date so advertised, the board may revise, amend,
49 correct and verify the report and proceed by resolution
50 to lay the assessments as corrected and verified.

51 (b) Upon completion of a project, or the completion
52 of that portion of a project that provides water,
53 wastewater or flood protection benefits to the property
54 subject to the assessments, the board shall cause the
55 engineer or committee charged by the board with the
56 supervision of the project, to prepare a final report
57 certifying the completion of the project and showing the
58 total cost of the project and whether the cost is greater
59 or less than the cost originally estimated. If the total cost
60 of the project is less or greater than the cost shown in
61 the report prepared prior to construction, the board may
62 revise the assessment charged on each lot or parcel of
63 land pursuant to subsection (a) of this section to reflect
64 the total cost of the project as completed, and in so doing
65 shall, in the case of an assessment increase only, (1)
66 follow the same procedure with regard to notice and

67 providing each owner of assessed property the right to
68 appear before the board to move for the revision or
69 correction of such proposed reassessment as required for
70 the original assessment, and (2) issue such additional
71 assessment certificates as may be necessary to evidence
72 the amount by which the assessment applicable to each
73 lot or parcel of land has increased. If an assessment is
74 decreased, the board shall, by resolution and written
75 notice to the sheriff of the county in which the assess-
76 ment district is located, cause the next installment or
77 installments of assessment fees then due and payable by
78 each affected property owner to be reduced pro rata,
79 and shall provide written notice to such property owners
80 of the amount of such decrease by the deposit of such
81 notice in the United States mail, postage prepaid. In
82 such cases the board shall also transmit to the sheriff
83 an amount of funds equal to the difference between the
84 cost of the project upon which the assessments were
85 originally laid and the cost of the project as completed,
86 and the sheriff shall disburse such funds to the holders
87 of the assessment certificates issued in connection with
88 the project on a pro rata basis.

89 (c) Prior to the construction of a project, the board
90 shall obtain all permits and licenses required by law for
91 the construction and operation of the project: *Provided,*
92 That the board shall not be required to obtain a
93 certificate of public convenience from the public service
94 commission under article two, chapter twenty-four of
95 this code: *Provided, however,* That prior to the construc-
96 tion of each project, the board shall apply to the public
97 service commission for authorization enabling the
98 construction and shall submit with said application any
99 certificate required by the division of public health, any
100 certification or permit required by the division of
101 natural resources, the contract for utility service, if a
102 utility will be involved, a copy of the utility's applicable,
103 existing rate tariff, a copy of the order or ordinance
104 creating the board and a certificate of a qualified
105 professional engineer that the utility providing service
106 has the capacity to provide or treat, as the case may be.
107 The public service commission shall render its final

108 decision on any application filed under the provisions of
109 this section within (i) ninety days in the case of a project
110 serving twenty-five or fewer residential customers, or
111 (ii) one hundred twenty days in the case projects serving
112 commercial customers or more than twenty-five residen-
113 tial customers, following the submission of such appli-
114 cation and all information herein required.

**§16-13B-11. Construction of projects; assessments; corner
lots, etc.**

1 (a) Each board is hereby empowered and authorized
2 to order and cause to be constructed, within its
3 respective assessment district, any project for the
4 benefit of said assessment district or any part thereof.
5 Upon the completion of a project or any part thereof,
6 (1) the property located within the assessment district
7 abutting on a wastewater or water project or abutting
8 upon that portion of a public way within the assessment
9 district in which such wastewater or water project shall
10 be constructed, or (2) the property protected by the flood
11 relief project, may be charged by the assessment district
12 in which the project is located with all or any part of
13 the cost thereof, including the cost of such wastewater
14 or water project across public ways. No lot or parcel of
15 land abutting any portion of a project which is located
16 outside of an assessment district shall be subject to any
17 assessment unless and until the owner of such lot or
18 parcel receives any services provided by the project, in
19 which event such lot or parcel may be subject to
20 assessment under section twenty of this article.

21 (b) Assessments made with respect to wastewater or
22 water projects shall be subject to the restrictions set
23 forth in this subsection and subsection (c) of this section.
24 In case of a corner lot, or acreage which has not been
25 divided into lots, frontage which may be assessed shall
26 be measured along the longest dimension thereof
27 abutting on each public way in which a wastewater or
28 water project is constructed, but if the project is
29 constructed on two or more sides then such corner lot,
30 or acreage which has not been divided into lots, shall
31 be charged only with the side on which the project is

32 first completed unless such lot or acreage is two
33 hundred feet or more in depth measured from such first
34 side, in which event the corner lot, or acreage which has
35 not been divided into lots, shall be charged only with the
36 footage in excess of two hundred feet. Any lot, or any
37 acreage which has not been divided into lots, having a
38 depth of two hundred feet or more and abutting on two
39 or more public ways, one on the front and one in the
40 rear of said lot, or said acreage which has not been
41 divided into lots, shall be assessed on both of said public
42 ways, if a project is constructed on both such public
43 ways. Where a corner lot, or any acreage which has not
44 been divided into lots, has been assessed on both ends,
45 it shall not be assessed on the side, and where it has been
46 assessed on the side, it shall not be assessed on either
47 end.

48 (c) In case of corner lots, or any acreage which has
49 not been divided into lots, where the cost of a waste-
50 water or water project along one dimension is not
51 assessed against the owner thereof, and in the case of
52 lots, or acreage, less than two hundred feet deep
53 abutting at each end on a public way in which a project
54 is completed, the cost of the project along the dimension
55 or end not assessed against the property owner shall in
56 every case be apportioned and assessed against the other
57 property abutting on the public way within the assess-
58 ment district being improved, in the manner of appor-
59 tionment of the cost of improvements in intersections.

§16-13B-12. Apportionment and assessment of cost.

1 (a) The cost of a wastewater or water project,
2 including the cost of all improvements at and within
3 intersections and the cost attributable to any portion of
4 the project located outside an assessment district, shall
5 be apportioned to, and assessed against and borne by the
6 properties abutting upon all public ways located within
7 the assessment district, in or upon which the improve-
8 ments involved in the project shall have been made.
9 Each lot or parcel of land located within the assessment
10 district so abutting shall be assessed, subject to the
11 provisions of section eleven of this article respecting

12 assessment for improvements of corner lots, acreage not
13 divided into lots and lots or acreage improved on more
14 than one side or end, with that portion of the cost of the
15 entire project, located both within and outside the
16 assessment district, which is represented by the propor-
17 tion which the abutting frontage in feet of such lot or
18 parcel of land bears to the total abutting frontage in feet
19 of all the lots or parcels of land abutting on the public
20 ways so improved within the assessment district:
21 *Provided*, That if the character of the improvements
22 shall be substantially different upon different public
23 ways or portions thereof, the cost may be equitably
24 apportioned to the respective public ways, or portions
25 thereof, in proportion to the character and cost of the
26 respective improvements thereon and the part of the
27 cost so apportioned to each respective public way, or
28 portion thereof, shall be apportioned to and assessed
29 against the respective lots or parcels of land abutting
30 thereupon in the proportion as hereinabove provided:
31 *Provided, however*, That property shall be assessed only
32 to the extent it is benefited and if there is any property
33 abutting on the portion of the public way located within
34 the assessment district, so improved which the board in
35 the resolution authorizing the project has determined
36 will not be specially benefited by the improvements, or
37 will not be specially benefited to the full extent of the
38 cost of the project, or for other reasons which would not
39 be liable to assessment for any of, or for some part of,
40 the cost of the project, then the cost of such project
41 abutting such part of said public way, or so much
42 thereof as is so determined to be nonassessable, shall be
43 apportioned among, assessed against and borne by the
44 remaining property abutting upon the public ways
45 located within the assessment district, improved in
46 proportion, subject to the aforesaid provisions of section
47 eleven of this article, to the frontage of such remaining
48 abutting property as hereinabove provided: *Provided*
49 *further*, That if there be property abutting the public
50 way located in the assessment district, so improved,
51 which is owned by the United States of America, and,
52 for that reason, not legally subject to assessment, then

53 the county or municipality shall pay the proportionate
54 part of the cost of the improvement which otherwise
55 would be assessable against such federally owned
56 property.

57 (b) Solely in the case of a flood relief project as
58 defined in subparagraph (1) or (2), subsection (g), section
59 two of this article, that portion of the cost of the project
60 incurred in the preparation of the studies and reports
61 required under this article prior to the construction of
62 the project and all other costs relating to the develop-
63 ment and planning of the project and which are
64 incurred prior to the commencement of construction of
65 the project and not in the actual construction of the
66 project on or protecting one lot or parcel of land, shall
67 be apportioned equally to each lot or parcel of land
68 benefited and protected by the project, and all construc-
69 tion costs and any development costs incurred solely in
70 completing a flood relief project benefiting and protect-
71 ing a specific lot or parcel of land, shall be apportioned
72 solely to such parcel or lot.

73 (c) Solely in the case of a flood relief project as
74 defined in subparagraph (3), subsection (g), section two
75 of this article, the cost of the project shall be apportioned
76 pro rata to each lot or parcel of land benefited and
77 protected by the project on which a house, building or
78 other structure is situate, based on the ratio which the
79 total square footage of protected space in such house,
80 building or other structure bears to the total square
81 footage of space in all houses, buildings and other
82 structures located on property benefited and protected
83 by the project.

84 (d) In apportioning the cost of any project to any lot
85 or parcel of land in any circumstances not expressly
86 covered in this article, the cost shall be apportioned
87 equitably, as determined by the board, in keeping with
88 the concepts and principles expressed in this article and
89 the special benefit to the property in question from the
90 improvements made.

§16-13B-13. Assessment against property of public, charitable, eleemosynary, educational or religious institutions; duty of those in charge to cause assessments to be paid.

1 When any of the lots or parcels of land within an
2 assessment district abutting the portion of the public
3 way improved by a wastewater or water project consist
4 of property owned or controlled by this state, any
5 municipality, county, board of education or other public
6 body, or consist of property owned by, or used for, a
7 church, or a religious, charitable, educational or
8 eleemosynary institution, for purposes not subject to
9 taxation, such property shall nevertheless be assessed
10 with its proper proportion of the cost of said improve-
11 ment, and it shall be the duty of those persons having
12 charge of the fiscal affairs of such owner or the
13 management of any such property or institution to make
14 proper arrangements for the payment of, and cause to
15 be paid, such assessments as and when due and payable.

§16-13B-14. Method of paying for cost of project; how assessments may be evidenced.

1 The board shall determine and provide in the resolu-
2 tion laying the assessments, adopted in accordance with
3 section ten of this article, the method of financing the
4 cost of a project, for the cost of which assessments are
5 levied as in this article provided, and such method may
6 include the receipt of gifts, grants from any governmen-
7 tal agency or appropriations from the county or
8 municipality in which the assessment district is located,
9 or borrowing funds from any person or governmental
10 agency, or any combination thereof: *Provided*, That any
11 funds borrowed by an assessment district, including any
12 interest accruing thereon, shall be repaid solely from the
13 proceeds of the assessment certificates issued pursuant
14 to section fifteen of this article and from the assessments
15 evidenced thereby.

§16-13B-15. Assessment certificates; assignments; designation of registrar for assessment certificates.

1 (a) All assessments levied under this article shall be
2 evidenced by assessment certificates issued by the
3 assessment district in accordance with this section. The
4 board may issue assessment certificates to any person
5 or governmental agency financing the cost of a project,
6 and may also issue assessment certificates in the name
7 of the assessment district, on behalf of itself or as agent
8 for any other person or governmental agency. The board
9 shall issue the assessment certificates as soon as
10 practicable after it has determined the method of
11 financing the cost of the project and laid the assessments
12 against the property, as provided in section ten of this
13 article. The assessment certificates shall evidence on
14 their face the assessments applicable to the property for
15 which each such certificate has been issued and each
16 installment of principal and interest payable, and a copy
17 of each assessment certificate shall be provided to the
18 owner of the property against which the assessment
19 evidenced by the assessment certificate has been laid.
20 Each assessment certificate shall be issued in registered
21 form and shall show on the face thereof the name and
22 address of the owner of the property to which the
23 assessment certificate applies, the name and address of
24 the person serving as the registrar for such certificate
25 in accordance with subsection (c) of this section, and the
26 name and address of the person to whom the certificate
27 is issued. Assessment certificates shall be signed by the
28 chairman and secretary of the board of the assessment
29 district issuing the certificates, shall refer to the
30 resolution laying the assessments and shall show the
31 amount and date of the assessment and describe the
32 property against which the assessment is laid, describ-
33 ing the same as to ownership, amount, frontage (solely
34 in case of a wastewater and water project) and briefly
35 as to location, and the mailing address of the owner
36 thereof. Assessment certificates shall also show the dates
37 on which principal and interest payments are due, shall
38 set forth that the payment of all such installments shall
39 be made to the sheriff of the county in which the
40 assessment district is located, as provided in section
41 seventeen of this article, and shall contain a provision

42 that in the event there is default in the payment of any
43 one of such installments and such default continues for
44 a period of sixty days after written notice of such
45 default, then all unpaid installments shall become due
46 and payable at the election of the certificate holder and
47 the holder may proceed to collect all of the unpaid
48 balances of installments, with interest until paid.

49 (b) Each assessment certificate issued under this
50 article shall be enforceable by the holder thereof, and
51 shall be assignable by endorsement and delivery of the
52 certificate and upon delivery to the registrar of the
53 assessment certificates of a written notice of such
54 assignment executed by the assignor and assignee, each
55 of whose signatures shall be duly notarized.

56 (c) Prior to the issuance of any assessment certifi-
57 cates, the board shall, by resolution, designate a
58 financial institution located in this state as the registrar
59 for such certificates, who shall maintain a complete and
60 accurate record of the names and addresses of the
61 persons or governmental agencies to whom the assess-
62 ment certificates are issued. Within ten days of the
63 issuance of an assessment certificate or any revised
64 assessment certificates in lieu thereof, the board of the
65 assessment district issuing the same shall provide to
66 such registrar a list of the names and addresses of the
67 person or governmental agency to whom the certificates
68 were issued, which shall be certified by the secretary of
69 the board. The record of certificate holders maintained
70 by the registrar shall be open to inspection by the sheriff
71 of the county in which the assessment district is located
72 and may be relied upon by the sheriff for purposes of
73 disbursing assessment fees in accordance with section
74 seventeen of this article or in otherwise determining the
75 lawful holders of the assessment certificates.

**§16-13B-16. No liability of state, county, municipality and
assessment district.**

1 Neither the state nor any county or municipality shall
2 be liable on notes or other evidences of indebtedness of
3 an assessment district or for the payment of any
4 assessment fees evidenced by any assessment certificate,

5 and such notes or other evidences of indebtedness and
6 assessment certificates shall not be a debt of the state
7 or any county or municipality, and such notes or other
8 evidences of indebtedness and assessment certificates
9 shall contain on the face thereof a statement to such
10 effect. No assessment district shall be liable for the
11 payment of any assessment fees evidenced by any
12 assessment certificates issued pursuant to this article
13 and assessment certificates shall contain on the face
14 thereof a statement to such effect.

§16-13B-17. Payment of assessment fees; releases.

1 (a) Payments of assessment fees or any installment
2 thereof shall be made to the sheriff of the county in
3 which the assessment district is located, who shall hold
4 and disburse all such fees as agent for the assessment
5 district in accordance with this section. The sheriff shall
6 promptly deposit all assessment fees upon receipt
7 thereof in a segregated account established by the
8 sheriff for such purpose and shall maintain a record of
9 the assessment fees so received. Within thirty days of
10 receipt of assessment fees from any person or govern-
11 mental agency, the sheriff shall disburse the assessment
12 fees to the holder of the assessment certificate pursuant
13 to which such assessment fees were paid, and within
14 sixty days after the receipt of all assessment fees due
15 for the calendar year in question, but in no event later
16 than the first day of October of such year, prepare and
17 deliver to the board of each assessment district located
18 in the county, a statement setting forth the aggregate
19 amount of assessment fees received for such district and
20 the name of any property owner who failed to pay the
21 assessment fees due and payable for the period in
22 question.

23 (b) On or before the thirtieth day of April of each
24 year in which assessments are owed with respect to any
25 lot or parcel of property within an assessment district
26 located in a county, the sheriff of the county shall send
27 a notice to the person owning such lot or parcel setting
28 forth the assessment fee due for such period and that
29 such assessment fee shall be due and payable on or

30 before the first day of June of such year. In preparing
31 and mailing such notices, the sheriff may rely on the
32 information contained in the records maintained by the
33 registrar of each assessment district, as provided in
34 section fifteen of this article.

35 (c) If payment in full is made to the holder of a
36 certificate, the holder shall deliver the certificate to the
37 assessment district marked "paid" to evidence the
38 payments made of principal and interest, and the
39 assessment district shall thereupon deliver the certifi-
40 cate to the payor. On presentation to the board for
41 cancellation of all certificates for the full assessment
42 made against a specific lot or parcel of property
43 assessed, the chairman of the board shall on request
44 execute and deliver a release of the lien of such
45 assessment.

§16-13B-18. Liens; recording notice of liens; suit for enforcement; priority.

1 The property abutting the portion of the public way
2 located within the assessment district, so improved, in
3 the case of a wastewater or water project, or the
4 property improved or protected by a flood relief project,
5 against which properties an assessment has been laid as
6 herein provided, shall be subject to a lien, from the date
7 of the resolution laying the assessment, for the payment
8 of that portion of the cost of the project assessed against
9 said property. A notice of the liens of said assessments
10 referring to the assessing resolution, and setting forth
11 a list of the property assessed, described respectively as
12 to amounts of assessment and ownership, frontage
13 (solely in case of a wastewater or water project) and
14 location of the property, shall be certified, by the
15 chairman and secretary of the board, to the clerk of the
16 county commission of the county wherein the project is
17 located. The county clerk shall record the notice of such
18 lien in the appropriate trust deed book or other
19 appropriate county lien book and index the same in the
20 name of each owner of property assessed. From the date
21 of an assessment, the holder of the assessment certificate
22 shall have such lien and shall be entitled to enforce the
23 same in its, his or their name to the extent of the

24 amount, including principal and interest and any
25 penalty due for any failure to pay an installment when
26 due, of such assessments and against the property to
27 which the assessment certificate applies, as to any
28 assessment not paid as and when due. Such assessments
29 shall be and constitute liens in the hands of the holders
30 of said certificates upon the respective lots and parcels
31 of land assessed and shall have priority over all other
32 liens except those for land taxes due the state, county
33 and municipality and except any liens for preexisting
34 special assessments provided under this code. If any
35 assessment is revised in accordance with section ten or
36 twenty of this article, the lien created by this section
37 shall extend to the assessment so revised and shall have
38 the same priority as the priority of the lien created upon
39 the laying of the original assessment. Such assessments
40 and interest thereon shall be paid by the owners of the
41 property assessed as and when the installments are due.
42 The holders of any such assessment certificates may
43 enforce the lien thereof in any proper suit, and when
44 default in the payment, as and when due, of any
45 assessment, principal or interest, or installment thereof,
46 shall occur and such default shall have continued for
47 more than sixty days after the receipt by the property
48 owner of written notice of such default from the sheriff
49 of the county in which the assessment district which
50 issued the certificates is located, the holders of any such
51 certificates may declare the whole unpaid balance due
52 and payable and by proper civil action enforce the lien
53 thereof, upon process issued and served according to law
54 upon the owner or owners of the lots or parcels of land
55 subject to said lien at the time such suit may be brought
56 as shown by the records of the clerk of the county
57 commission of the county in which said lots or parcels
58 of land are located. The notice required under this
59 section shall be complete when such notice is mailed by
60 certified mail, return receipt requested, directed to the
61 address shown on the records maintained by the
62 registrar under section fifteen of this article.

§16-13B-19. Reassessment for void, irregular or omitted assessments.

1 In the case of the construction of any permanent
2 improvements where an assessment has heretofore been
3 laid or may hereafter be laid for the cost thereof, which
4 said assessment is or shall be void or voidable by reason
5 of errors, irregularities or defects in the proceedings
6 under which such improvements were made, or in case
7 such assessment shall have been made against the
8 wrong person or property, or shall have been omitted
9 to be made in a case where the same was proper, it shall
10 be the duty of the board within five years after the
11 completion of such improvements, or after any court
12 shall have declared such assessment invalid, to cause
13 notice to be given to any person or persons against whom
14 the cost of said improvements might properly be or have
15 been assessed, of its intention to lay such assessment and
16 fixing a date, time and place at which the owner or
17 owners may appeal and show case against the same.
18 Said notice shall be served in the manner provided in
19 this article for the giving of notices in assessment
20 proceedings, or in any other manner provided by law.
21 At the time and place specified in the notice aforesaid
22 or at any time thereafter, the board shall proceed to lay
23 and levy an assessment or assessments for the cost of
24 such improvements as would have been lawful under
25 proper proceedings at the time said improvements were
26 completed, unless the owner or owners so notified shall
27 show good cause against the same. The reassessment or
28 reassessments so laid shall be a lien upon the property
29 liable therefor in the manner hereinabove provided from
30 the date of the original assessment, with interest
31 therefrom, and proper assessment certificate may be
32 issued, recordation had, and the payment thereof and
33 the lien thereof may be enforced in the same manner
34 and upon the same terms as would have been proper at
35 the time of the completion of the said improvements had
36 the assessments therefor been then properly laid and
37 levied.

**§16-13B-20. How additional territory may be added to
assessment district.**

1 (a) A governing body may, with respect to any
2 assessment district created by it, modify, expand or

3 extend the boundaries of the assessment district to
4 develop, construct, improve or extend any project, or to
5 enable persons residing or engaged in business on
6 property located outside the assessment district to
7 obtain the services provided by a wastewater or water
8 facility, (1) by satisfying the same requirements
9 provided in this article for the creation of the assessment
10 district, or (2) upon the unanimous written agreement
11 of persons owning all of the property to be added to the
12 assessment district that such property be added to the
13 district and assessed in accordance with subsection (b)
14 of this section: *Provided*, That no property may be added
15 to an assessment district for connection to a wastewater
16 or water project unless it abuts the assessment district.

17 (b) Any property added to an assessment district
18 shall be assessed for and bear a proportionate share of
19 the cost of the project then remaining unpaid, consistent
20 with the concepts and principles set forth in sections
21 eleven and twelve of this article and the assessment so
22 laid shall be a lien upon the property in the same
23 manner hereinabove provided from the date such
24 assessment is laid. Contemporaneously with the resolu-
25 tion laying the assessment against such property, all
26 other property located in the assessment district shall
27 be reassessed to reflect the addition of such property to
28 the assessment district. In all such cases, the assessment
29 district shall be the holder of the assessment certificates
30 issued to evidence the assessments laid upon the added
31 property, and all assessment fees received by the sheriff
32 from such assessment certificates shall be applied, pro
33 rata, to reduce the final installment of principal and
34 interest due from the owners of all other property
35 located in the assessment district as it existed prior to
36 the addition of property to the district.

37 (c) If any property is connected to a wastewater or
38 water project after the cost of the project has been paid
39 in full and the transfer of the project to a utility or
40 governmental agency pursuant to section twenty-one of
41 this article, the owner of such property shall pay to the
42 utility or governmental agency the same rates and
43 charges paid by other customers of the utility or

44 governmental agency for the services provided by the
45 wastewater or water facility operated and maintained
46 by it.

**§16-13B-21. Operation and maintenance of wastewater
and water projects; rates and charges
therefor.**

1 (a) Prior to the construction of a wastewater or water
2 project, the assessment district in which the project
3 shall be located shall enter into one or more agreements
4 with a utility or governmental agency operating a
5 wastewater or water facility within the service area
6 covered by the assessment district for the operation and
7 maintenance of the project and for the provision of
8 wastewater or water services, as the case may be, and
9 such utility or governmental agency shall thereupon be
10 authorized and empowered to charge and collect from
11 each person connected to the project such rates and
12 charges customarily paid by customers of such utility or
13 governmental agency for similar wastewater or water
14 services. All such agreements shall have terms of
15 duration equal to or greater than the period necessary
16 for the cost of the project to be paid in full, and may
17 otherwise contain such terms and conditions as may be
18 mutually agreed to by the parties, and shall be pres-
19 ented as part of the application to the public service
20 commission required by section ten (c) hereof.

21 (b) Immediately upon the final payment of all
22 assessment fees due under all assessment certificates
23 issued in connection with a wastewater or water project
24 constructed within an assessment district, the assess-
25 ment district shall transfer and convey all of its right,
26 title and interest in and to such project to the utility or
27 governmental agency providing wastewater or water
28 services, as the case may be.

§16-13B-22. Liberal construction.

1 This article being necessary for the public health,
2 safety and welfare, it shall be liberally construed to
3 effectuate the purpose hereof.

CHAPTER 151

(Com. Sub. for S. B. 410—By Senators Hawse, Helmick,
Brackenrich, Spears and Dittmar)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight, relating to real estate management; and procedure of the public land corporation authorizing the transfer of certain properties from the division of natural resources to any governmental agency of the state, the federal government or any political subdivision of the state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. REAL ESTATE MANAGEMENT AND PROCEDURES.

§20-1A-8. Authorization to transfer from the division of natural resources to the division of tourism and parks the Stump lands located on the west bank of the south branch of the Potomac River, Romney District, Hampshire County, West Virginia, which contains 216.81 acres, more or less.

1 The public land corporation is hereby authorized and
2 empowered to transfer to any governmental agency, the
3 federal government or any political subdivision of the
4 state all those certain tracts or parcels of real estate
5 known as "Fort Mill Ridge", situate near Romney,
6 Romney District of Hampshire County, West Virginia,
7 containing 216.81 acres, more or less, including the civil
8 war historical site, with all trenches, gun implacements,
9 fort locations and appurtenances, all being of historical

10 significance, as well as all of the timber, minerals,
11 mineral rights, all roads, rights-of-way, easements and
12 appurtenances thereunto belonging: *Provided*, That the
13 transfer comply with the regulations contained in 50
14 CFR, Part 80, Sections 80.4(a) and 80.4(b) of the federal
15 register and that the division of natural resources shall
16 be reimbursed by said agency, the federal government
17 or any political subdivision of the state in an amount
18 equal to the amount of the purchase price or the current
19 market value of the property, whichever is greater.

20 This is the same real estate surveyed by David G.
21 Vanscoy, professional engineer and which was conveyed
22 by James A. Stump III, and others to the state of West
23 Virginia for the use and benefit of the West Virginia
24 division of natural resources by deed dated the twenty-
25 seventh day of January, one thousand nine hundred
26 eighty-nine, and recorded in the office of the clerk of the
27 county commission of Hampshire County in deed book
28 306, at page 693, reference to which survey plat is here
29 made for a more particular description of the property
30 to be transferred hereby.

CHAPTER 152

(S. B. 543—By Senators Craigo and Dittmar)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to weapon restrictions for persons attempting to kill wildlife under crop damage permits.

Be it enacted by the Legislature of West Virginia:

That section fifteen, 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.

§20-2-15. Permit to kill deer or other wildlife causing damage to cultivated crops, fruit trees or commercial nurseries; weapon restrictions.

1 (a) Whenever it shall be found that deer or other
2 wildlife are causing damage to cultivated crops, fruit
3 trees or commercial nurseries, the owner or lessee of the
4 lands on which such damage is done may report such
5 finding to the conservation officer or biologist of the
6 county in which such lands are located or to the director.
7 The director shall then investigate the reported damage
8 and if found substantial, shall issue a permit to the
9 owner or lessee to kill one or more deer or other wildlife
10 in the manner prescribed by the director.

11 (b) In addition to the foregoing, the director shall
12 establish procedures for the issuance of permits or other
13 authorization necessary to control deer or other wildlife
14 causing property damage.

15 (c) All persons attempting to kill deer or other
16 wildlife pursuant to this section are subject to the same
17 minimum caliber restrictions and other firearm restric-
18 tions and the same minimum bow poundage and other
19 bow and arrow restrictions that apply when hunting the
20 same animal species during the regular hunting seasons.

CHAPTER 153

(Com. Sub. for H. B. 4542—By Delegate Love)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to transporting the carcass or fresh skin and head of a deer; requiring that the fresh skin and head or carcass of a deer be checked before it is transported across certain county boundaries.

Be it enacted by the Legislature of West Virginia:

That section twenty-two, 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.**§20-2-22. Tagging, removing, transporting and reporting deer and wild turkey.**

1 Each person killing a deer or wild turkey found in
2 a wild state shall immediately after removing the
3 entrails, but in any event within one hour and before
4 transporting or removing the carcass in any manner
5 from where it was killed, complete and attach thereto
6 the game tag supplied with his or her hunting license.
7 The game tag shall remain on the carcass until it is
8 dressed for consumption.

9 If such wild turkey or deer has been lawfully killed
10 by a person not required to secure a license, or by a
11 person who has previously killed another species of
12 game bird or game animal for which a game tag is
13 required, or by a person who has lost the tag supplied
14 with his or her license, such person shall make and
15 attach a tag to the carcass within the time specified
16 after such killing. The tag shall bear in plain English
17 the name and address of the hunter, and the date of
18 killing, or, if holding a license, the license number and
19 the date and county where the game was killed.

20 The carcass of such wild turkey shall be delivered to
21 a conservation officer or an official checking station for
22 checking and retagging before it is either skinned or
23 transported beyond the boundaries of the county
24 adjacent to that in which the kill was made.

25 The fresh skin and head or carcass of the deer shall
26 be delivered to a conservation officer or an official
27 checking station for checking and retagging before it is
28 transported beyond the boundaries of the county
29 adjacent to that in which the kill was made.

30 Every failure to have said tag or tags attached, or
31 removing or transporting such animal in any manner,
32 or failure to deliver the carcass or fresh skin and head
33 to a conservation officer or to an official checking station
34 for checking, as herein provided, shall subject the
35 person so neglecting to the penalties provided in this
36 article.

CHAPTER 154

(H. B. 4545—By Delegates Love and Stemple)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article two-b, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the wildlife endowment fund; and providing that full-time nonresident students who attend in-state colleges and universities are not eligible to purchase lifetime hunting, fishing and trapping licenses.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2B. WILDLIFE ENDOWMENT FUND.

§20-2B-7. Lifetime hunting, fishing and trapping licenses created.

- 1 Pursuant to section three of this article the following
- 2 lifetime hunting, fishing and trapping licenses are
- 3 hereby created and, for the lifetime of the licensee, shall
- 4 serve in lieu of the equivalent annual license: *Provided,*
- 5 That a full-time nonresident student who attends an in-
- 6 state college or university is not eligible to purchase any
- 7 of these lifetime licenses:
- 8 (a) A Class A-L lifetime resident statewide hunting
- 9 and trapping license, the fee for which shall be two
- 10 hundred dollars: *Provided,* That the fee shall be one
- 11 hundred dollars for any resident who has not reached
- 12 his or her second birthday; for proof of age, a certified
- 13 birth certificate or other notarized record of birth shall
- 14 be submitted with the license application;
- 15 (b) A Class AB-L lifetime resident combination
- 16 statewide hunting, fishing and trapping license, the fee
- 17 for which shall be three hundred dollars: *Provided,* That
- 18 the fee shall be one hundred fifty dollars for any

19 resident who has not reached his or her second birthday;
20 for proof of age, a certified birth certificate or other
21 notarized record of birth shall be submitted with the
22 license application;

23 (c) A Class B-L lifetime resident statewide fishing
24 license, the fee for which shall be two hundred dollars:
25 *Provided*, That the fee shall be one hundred dollars for
26 any resident who has not reached his or her second
27 birthday; for proof of age, a certified birth certificate
28 or other notarized record of birth shall be submitted
29 with the license application; and

30 (d) A Class O-L lifetime resident trout fishing license,
31 the fee for which shall be one hundred dollars: *Provided*,
32 That the fee shall be fifty dollars for any resident who
33 has not reached his or her second birthday; for proof of
34 age, a certified birth certificate or other notarized
35 record of birth shall be submitted with the license
36 application.

CHAPTER 155

(H. B. 4631—By Delegates Reid and Staton)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the specified eighteen-month extension for a permit; and to allow extension periods to be at the discretion of the chief of the water resources section of the division of natural resources.

Be it enacted by the Legislature of West Virginia:

That section seven, 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-7. Procedure concerning permits required under article; transfer of permits; prior permits.

1 (a) The chief or his duly authorized representatives
2 shall conduct such investigation as is deemed necessary
3 and proper in order to determine whether any such
4 application should be granted or denied. In making such
5 investigation and determination as to any application
6 pertaining solely to sewage, the chief shall consult with
7 the director of the division of sanitary engineering of the
8 state department of health, and in making such inves-
9 tigation and determination as to any application
10 pertaining to any activity specified in subdivision (7),
11 subsection (b), section five of this article, the chief shall
12 consult with the director of the state geological and
13 economic survey and the deputy director of the oil and
14 gas division of the department of mines, and all such
15 persons shall cooperate with the chief and assist him in
16 carrying out the duties and responsibilities imposed
17 upon him under the provisions of this article and the
18 rules and regulations of the board; such cooperation
19 shall include, but not be limited to, a written recommen-
20 dation approving or disapproving the granting of the
21 permit and the reason or reasons for such recommen-
22 dation, which recommendation and the reason or
23 reasons therefor shall be submitted to the chief within
24 the specified time period prescribed by rules and
25 regulations of the board.

26 (b) The department's permit shall be issued upon
27 such reasonable terms and conditions as the chief may
28 direct if (1) the application, together with all supporting
29 information and data and other evidence, establishes
30 that any and all discharges or releases, escapes, deposits
31 and disposition of treated or untreated sewage, indus-
32 trial wastes or other wastes, or the effluent therefrom,
33 resulting from the activity or activities for which the
34 application for a permit was made will not cause
35 pollution of the waters of this state or violate any
36 effluent limitations or any rules and regulations of the
37 board: *Provided*, That the chief may issue a permit
38 whenever in his judgment the water quality standards
39 of the state may be best protected by the institution of
40 a program of phased pollution abatement which under
41 the terms of the permit may temporarily allow a limited
42 degree of pollution of the waters of the state; and (2) in

43 cases wherein it is required, such applicant shall include
44 the name and address of the responsible agent as set
45 forth in section eight-b of this article.

46 (c) Each permit issued under this article shall have
47 a fixed term not to exceed five years: *Provided*, That
48 when the applicant, in accordance with agency rules,
49 has made a timely and complete application for permit
50 reissuance, the permit term may be extended by the
51 chief, at his discretion, for a period not to exceed one
52 hundred twenty months beyond its expiration date.
53 Upon expiration of a permit, a new permit may be
54 issued by the chief upon condition that the discharges
55 or releases, escapes, deposits and disposition thereunder
56 meet or will meet all applicable state and federal water
57 quality standards, effluent limitations and all other
58 requirements of this article.

59 (d) An application for a permit incident to remedial
60 action in accordance with the provisions of section
61 eleven of this article shall be processed and decided as
62 any other application for a permit required under the
63 provisions of section five of this article.

64 (e) A complete application for any permit shall be
65 acted upon by the chief, and the department's permit
66 delivered or mailed, or a copy of any order of the chief
67 denying any such application delivered or mailed to the
68 applicant by the chief, within a reasonable time period
69 as prescribed by rules and regulations of the board.

70 (f) When it is established that an application for a
71 permit should be denied, the chief shall make and enter
72 an order to that effect, which order shall specify the
73 reasons for such denial, and shall cause a copy of such
74 order to be served on the applicant by registered or
75 certified mail. The chief shall also cause a notice to be
76 served with a copy of such order, which notice shall
77 advise the applicant of his right to appeal to the board
78 by filing a notice of appeal on the form prescribed by
79 the board for such purpose, with the board, in accor-
80 dance with the provisions of section fifteen of this
81 article, within thirty days after the date upon which the
82 applicant received the copy of such order. However, an
83 applicant may alter the plans and specifications for the

84 proposed activity and submit a new application for any
85 such permit, in which event the procedure hereinbefore
86 outlined with respect to an original application shall
87 apply.

88 (g) A permit shall be transferable to another person
89 upon proper notification to the division and in accor-
90 dance with applicable regulations. Such transfer shall
91 not become effective until it is reflected in the records
92 of the division of water resources.

93 (h) All permits for the discharge of sewage, industrial
94 wastes or other wastes into any waters of the state issued
95 by the water resources board prior to July one, one
96 thousand nine hundred sixty-four, and all permits
97 heretofore issued under the provisions of this article,
98 and which have not been heretofore revoked, are subject
99 to review, revocation, suspension, modification and
100 reissuance in accordance with the terms and conditions
101 of this article and the rules and regulations promulgated
102 thereunder. Any order of revocation, suspension or
103 modification made and entered pursuant to this subsec-
104 tion shall be upon at least twenty days' notice and shall
105 specify the reasons for such revocation, suspension or
106 modification and the chief shall cause a copy of such
107 order, together with a copy of a notice of the right to
108 appeal to the board as provided for in section eight of
109 this article, to be served upon the permit holder as
110 specified in said section eight.

CHAPTER 156

(H. B. 4712—By Delegates Roop and Pethtel)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend article five-c, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-a, relating to power of the West Virginia water development authority to enter into trust agree-

ments when acting in the capacity of fiscal agent, authorizing authority or other capacity for an agency, department, instrumentality or public corporation of the state which is issuing or purchasing bonds or notes; and providing for reimbursement to the West Virginia water development authority of expenses incurred with respect thereto.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 5C. WEST VIRGINIA WATER DEVELOPMENT
AUTHORITY.**

**§20-5C-9a. Trust agreements for related responsibilities;
reimbursements.**

1 Notwithstanding any other provision of this code to
2 the contrary, when the authority acts in the capacity of
3 fiscal agent, authorizing authority or some other
4 capacity for any agency, department, instrumentality or
5 public corporation of the state which is issuing or
6 purchasing bonds or notes, the authority may, in the
7 exercise of its responsibilities, enter into trust agree-
8 ments with one or more trust companies or banking
9 institutions having trust powers, located within or
10 without the state, with respect to the receipt, invest-
11 ment, handling, payment and delivery of funds of such
12 agency, department, instrumentality or public corpora-
13 tion. The authority shall be entitled to reimbursement
14 for the expenses of the authority incident to performing
15 such services, including the fees and expenses of third
16 parties providing services to the authority with respect
17 thereto, from the proceeds of bonds or notes or of the
18 revenues derived by such agency, department, instru-
19 mentality or public corporation.

CHAPTER 157

(Com. Sub. for S. B. 498—By Senator Brackenrich)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article five-d, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the dam control and safety act; legislative findings; intent and purpose of the act; defining terms; general powers and duties of director; maximum fee established for certificates of approval and annual registration; exempting soil conservation service from assessment of fees; prohibiting persons from placing, constructing, enlarging, altering, repairing, removing or abandoning any dam without filing an application for certificate of approval with the division and excluding certain routine repairs; requiring registered professional engineer to prepare plans and specifications; granting and rejecting applications for certificates of approval; publication of notice of application; hearing upon application; content of certificates of approval; revocation or suspension of certificates; inspections during work progress and certain exemptions; corrections of deficiencies; certificates of completion to director from soil conservation service for certain dams; procedures for handling emergencies involving dams; remedial actions; payment of costs of remedial actions; requirements for dams completed prior to effective date of section; legal responsibilities of dam owners; criminal penalties; enforcement orders; hearings; civil penalties; injunctive relief; establishing schedule of application and annual registration fees; creating dam safety fund; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

That article five-d, 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 5D. DAM CONTROL AND SAFETY ACT.

- §20-5D-1. Short title.
- §20-5D-2. Legislative findings; intent and purpose of article.
- §20-5D-3. Definition of terms used in article.
- §20-5D-4. General powers and duties of director; maximum fee established for certificates of approval and annual registration.
- §20-5D-5. Unlawful to place, construct, enlarge, alter, repair, remove or abandon dam without certificate of approval; application required to obtain certificate.
- §20-5D-6. Plans and specifications for dams to be in charge of registered professional engineer.
- §20-5D-7. Granting or rejecting applications for certificate of approval by division; publication of notice of application; hearing upon application.
- §20-5D-8. Content of certificates of approval for dams; revocation or suspension of certificates.
- §20-5D-9. Inspection during progress of work on dam.
- §20-5D-10. Procedures for handling emergencies involving dams; remedial actions to alleviate emergency; payment of costs of remedial actions to be paid by dam owner.
- §20-5D-11. Requirements for dams completed prior to effective date of this section.
- §20-5D-12. Dam owner not relieved of legal responsibilities by any provision of article.
- §20-5D-13. Offenses and penalties.
- §20-5D-14. Enforcement orders; hearings.
- §20-5D-15. Civil penalties and injunctive relief.
- §20-5D-16. Schedule of application fees established.
- §20-5D-17. Schedule of annual registration fees established.
- §20-5D-18. Creation of dam safety fund; components of fund.
- §20-5D-19. Effective date.

§20-5D-1. Short title.

- 1 This article shall be known and cited as the "Dam
- 2 Control and Safety Act".

§20-5D-2. Legislative findings; intent and purpose of article.

- 1 The Legislature finds that dams may constitute a
- 2 potential hazard to people and property; therefore, dams
- 3 in this state must be properly regulated and controlled
- 4 to protect the health, safety and welfare of people and
- 5 property in this state. It is the intent of the Legislature
- 6 by this article to provide for the regulation and
- 7 supervision of dams in this state to the extent necessary
- 8 to protect the public health, safety and welfare. The
- 9 Legislature has ordained this article to fulfill its
- 10 responsibilities to the people of this state and to protect

11 their lives and private and public property from the
12 danger of a potential or actual dam failure. The
13 Legislature finds and declares that in light of the
14 limited state resources available for the purposes of this
15 article, and in view of the high standards to which the
16 United States soil conservation service designs dams,
17 independent state review of the plans and specifications
18 for dams designed by the soil conservation service and
19 construction oversight should not be required. The
20 Legislature further finds and declares that dams
21 designed and constructed by the soil conservation
22 service but not owned or operated by it should be subject
23 to the same provisions of inspection, after construction
24 and certification by the soil conservation service, as
25 other dams covered by this article, so long as any dam
26 under the soil conservation service program is designed
27 with standards equal to or exceeding state requirements
28 under this article.

§20-5D-3. Definition of terms used in article.

1 As used in this article, unless used in a context that
2 clearly requires a different meaning, the term:

3 (a) "Alterations" or "repairs" means only those
4 changes in the structure or integrity of a dam which
5 may affect its safety, which determination shall be made
6 by the director.

7 (b) "Application for a certificate of approval" means
8 the request in writing by a person to the director
9 requesting that person be issued a certificate of
10 approval.

11 (c) "Appurtenant works" means any structure or
12 facility which is an adjunct of, or connected, appended
13 or annexed to a dam, including, but not limited to,
14 spillways, a reservoir and its rim, low level outlet works
15 or water conduits such as tunnels, pipelines and
16 penstocks either through the dam or its abutments.

17 (d) "Certificate of approval" means the approval in
18 writing issued by the director to a person who has
19 applied to the director for a certificate of approval
20 which authorizes the person to place, construct, enlarge,

21 alter, repair or remove a dam and specifies the
22 conditions or limitations under which the work is to be
23 performed by that person.

24 (e) "Director" means the director of the division of
25 natural resources or his or her authorized agents.

26 (f) "Division" means the division of natural resources.

27 (g) "Dam" means an artificial barrier or obstruction,
28 including any works appurtenant to it and any reservoir
29 created by it, which is or will be placed, constructed,
30 enlarged, altered or repaired so that it does or will
31 impound or divert water and: (1) Is or will be twenty-
32 five feet or more in height from the natural bed of the
33 stream or watercourse measured at the downstream toe
34 of the barrier and which does or can impound fifteen
35 acre-feet or more of water; or (2) is or will be six feet
36 or more in height from the natural bed of the stream
37 or watercourse measured at the downstream toe of the
38 barrier and which does or can impound fifty acre-feet
39 or more of water: *Provided*, That the term "dam" shall
40 not include: (A) Any dam owned by the federal govern-
41 ment; (B) any dam for which the operation and main-
42 tenance thereof is the responsibility of the federal
43 government; (C) slack-water dams constructed and
44 maintained in connection with public highways, streets,
45 bridges, culverts or viaducts, which shall continue to be
46 regulated and controlled as provided in article five of
47 this chapter; (D) farm ponds constructed and used
48 primarily for agricultural purposes, including, but not
49 limited to, livestock watering, irrigation, retention of
50 animal wastes and fish culture, and which have no
51 potential to cause loss of human life in the event of
52 embankment failure; or (E) structures which do not or
53 will not impound water under normal conditions and
54 which have a designed culvert or similar conveyance or
55 such capacity as would be used under a highway at the
56 same location: *Provided, however*, That the director may
57 apply the provisions of section ten of this article for
58 hazardous, nonimpounding structures which are
59 brought to his or her attention.

60 (h) "Enlargement" means any change in or addition

61 to an existing dam which: (1) Raises the height of the
62 dam; (2) raises or may raise the water storage elevation
63 of the water impounded by the dam; (3) increases or may
64 increase the amount of water impounded by the dam;
65 or (4) increases or may increase the watershed area from
66 which water is impounded by the dam.

67 (i) "Person" means any public or private corporation,
68 institution, association, society, firm, organization or
69 company organized or existing under the laws of this or
70 any other state or country; the state of West Virginia;
71 any state governmental agency; any political subdivision
72 of the state or of its counties or municipalities; sanitary
73 district; public service district; drainage district; soil
74 conservation district; watershed improvement district;
75 partnership; trust; estate; person or individual; group of
76 persons or individuals acting individually or as a group;
77 or any other legal entity whatever. The term "person",
78 when used in this article, includes and refers to any
79 authorized agent, lessee or trustee of any of the
80 foregoing or receiver or trustee appointed by any court
81 for any of the foregoing.

82 (j) "Reservoir" means any basin which contains or
83 will contain impounded water.

84 (k) "Soil conservation service" means the soil conser-
85 vation service of the United States department of
86 agriculture or any successor agency.

87 (l) "Water" means any liquid, including any solids or
88 other matter which may be contained therein, which is
89 or may be impounded by a dam.

90 (m) "Water storage elevation" means the maximum
91 elevation that water can reach behind a dam without
92 encroaching on the freeboard approved for the dam
93 under flood conditions.

**§20-5D-4. General powers and duties of director; maxi-
mum fee established for certificates of
approval and annual registration.**

1 The director shall have the following powers and
2 duties:

3 (a) To control and exercise regulatory jurisdiction

4 over dams as provided for in this article;

5 (b) To review all applications for a certificate of
6 approval for the placement, construction, enlargement,
7 alteration, repair or removal of any dam;

8 (c) To grant, modify, amend, revoke, restrict or refuse
9 to grant any certificate of approval if proper or
10 necessary to protect life and property as provided in this
11 article;

12 (d) To adopt, modify, repeal and enforce rules and
13 issue orders, in such manner as the director may
14 otherwise do, to implement and make effective the
15 powers and duties vested in it by the provisions of this
16 article;

17 (e) To take any lawful action considered necessary for
18 the effective enforcement of the provisions of this article;

19 (f) To establish and charge reasonable fees not to
20 exceed three hundred dollars for the review of applica-
21 tions for certificates of approval and the issuance thereof
22 and for assessment of an annual registration fee not to
23 exceed one hundred dollars for persons holding a
24 certificate of approval for existing dams. The director
25 shall promulgate rules to establish a schedule of
26 application fees and to establish annual registration
27 fees: *Provided*, That no fee shall be assessed for dams
28 designed and constructed by the soil conservation
29 service for soil conservation districts;

30 (g) To employ qualified consultants or additional
31 persons as necessary to review applications for certifi-
32 cates of approval and to recommend whether they
33 should be approved, to inspect dams and to enforce the
34 provisions of this article;

35 (h) To cooperate and coordinate with agencies of the
36 federal government, this state and counties and munic-
37 ipalities of this state to improve, secure, study and
38 enforce dam safety and dam technology within this
39 state;

40 (i) To investigate and inspect dams as is necessary to
41 implement or enforce the provisions of this article and

42 when necessary to enter the public or private property
43 of any dam owner. The director may investigate, inspect
44 or enter private or public property after notifying the
45 dam owner or other person in charge of the dam of an
46 intent to investigate, inspect or enter: *Provided*, That
47 where the owner or person in charge of the dam is not
48 available, the director may investigate, inspect and
49 enter without notice; and

50 (j) To prepare and publish within a reasonable time,
51 criteria to govern the design, construction, repair,
52 inspection and maintenance of proposed dams herein
53 defined, and to review these criteria annually in order
54 to consider improved technology for inclusion in such
criteria.

**§20-5D-5. Unlawful to place, construct, enlarge, alter,
repair, remove or abandon dam without
certificate of approval; application re-
quired to obtain certificate.**

1 It is unlawful for any person to place, construct,
2 enlarge, alter, repair, remove or abandon any dam
3 under the jurisdiction of the director until he or she has
4 first: (a) Filed an application for a certificate of
5 approval with the division; and (b) obtained from the
6 division a certificate of approval: *Provided*, That routine
7 repairs which do not affect the safety of a dam are not
8 subject to the application and approval requirements. A
9 separate application for a certificate of approval must
10 be submitted by a person for each dam he or she desires
11 to place, construct, enlarge, alter, repair, remove or
12 abandon. One application may be valid for more than
13 one dam involved in a single project or in the formation
14 of a reservoir.

15 Each application for a certificate of approval shall be
16 made in writing on a form prescribed by the director
17 and shall be signed and verified by the applicant. The
18 application shall contain and provide information which
19 may be reasonably required by the director to admin-
20 ister the provisions of this article.

21 In the case of dams designed by the soil conservation
22 service for transfer to any political subdivision, the

23 director shall, within sixty days after receipt of a
24 completed application therefor, issue a certificate of
25 approval without review of the plans and specifications.

§20-5D-6. Plans and specifications for dams to be in charge of registered professional engineer.

1 Plans and specifications for the placement, construc-
2 tion, enlargement, alteration, repair or removal of dams
3 shall be in the charge of a registered professional
4 engineer licensed to practice in West Virginia. Any
5 plans or specifications submitted to the division shall
6 bear the seal of a registered professional engineer.

§20-5D-7. Granting or rejecting applications for certificate of approval by division; publication of notice of application; hearing upon application.

1 Upon receipt of an application for a certificate of
2 approval and the fee required under the provisions of
3 this article, the director shall proceed to consider the
4 application for sufficiency. The director shall approve or
5 disapprove the application within sixty days after
6 receipt.

7 If an application is defective, it shall be returned to
8 the applicant by certified or registered mail, return
9 receipt requested, in order that the applicant may
10 correct any defect: *Provided*, That a defective applica-
11 tion must be returned to the division by the applicant
12 within thirty days after it has been returned to the
13 applicant or it shall be treated as a new application:
14 *Provided, however*, That for good cause shown, the
15 director may extend the thirty-day period.

16 Upon approval by the director of the sufficiency of the
17 application, the applicant shall immediately publish the
18 application as a Class I legal advertisement in com-
19 pliance with the provisions of article three, chapter fifty-
20 nine of this code, and the publication area for the
21 publication shall be the county in which the proposed
22 dam is to be located or in which the existing dam is
23 located. The notice shall include, but not be limited to,
24 the name and address of the owner of the dam and the

25 location of the dam for which the application was filed.

26 Any person who may be adversely affected by the
27 issuance of a certificate of approval has a right to a
28 hearing before the director if the person demands the
29 hearing in writing within fifteen days of publication of
30 the certificate of approval. The written request for
31 hearing shall include specific objections to the certifi-
32 cate of approval.

33 Upon receipt by the director of the written request
34 for hearing, the director shall immediately set a date for
35 the hearing and shall notify the person or persons
36 demanding a hearing. The hearing shall be held within
37 ten days after receipt of the written request. The
38 director shall hear evidence from all interested parties
39 and shall either: (1) Refuse to issue a certificate of
40 approval; or (2) issue a certificate of approval which
41 shall be subject to terms, conditions and limitations as
42 the director may consider necessary to protect life and
43 property.

44 Unless otherwise extended by the director, a certif-
45 icate of approval is valid for a period of not more than
46 one year.

**§20-5D-8. Content of certificates of approval for dams;
revocation or suspension of certificates.**

1 Each certificate of approval issued by the director
2 under the provisions of this article may contain other
3 terms and conditions as the director may prescribe.

4 The director may revoke or suspend any certificate of
5 approval whenever it is determined that the dam for
6 which the certificate was issued constitutes a danger to
7 life and property. If necessary to safeguard life and
8 property, the director may also amend the terms and
9 conditions of any certificate by issuing a new certificate
10 containing the revised terms and conditions.

11 Before any certificate of approval is amended or
12 revoked by the director, the director shall hold a hearing
13 in accordance with the provisions of article five, chapter
14 twenty-nine-a of this code.

15 Any person adversely affected by an order entered
16 following the hearing has the right of judicial review of
17 the order in accordance with the provisions of section
18 four, article five, chapter twenty-nine-a of this code.

§20-5D-9. Inspections during progress of work on dam.

1 During the placement, construction, enlargement,
2 repair, alteration or removal of any dam, the director
3 shall, either with the division's own engineers or by
4 consulting engineers or engineering organizations, make
5 periodic inspections for the purpose of ascertaining
6 compliance with the certificate of approval. The director
7 shall require the owner at his or her expense to perform
8 work or tests as necessary and to provide adequate
9 supervision during the placement, construction, enlarge-
10 ment, repair, alteration or removal of a dam: *Provided,*
11 That with respect to dams designed by and constructed
12 under the supervision of the soil conservation service, as
13 to such dams no state inspections shall be required.

14 If at any time during placement, construction,
15 enlargement, repair, alteration or removal of any dam,
16 the director finds that the work is not being done in
17 accordance with the provisions of the original or revised
18 certificate of approval, the director shall notify the
19 owner by certified or registered mail, return receipt
20 requested, to correct the deficiency, cease and desist
21 work or to show cause as to why the certificate of
22 approval should not be revoked.

23 The notice shall state the reason or reasons why the
24 work is not in accordance with the certificate of
25 approval. The director may order that work on the dam
26 cease until the owner has complied with the notice.

27 If the director finds that amendments, modifications
28 or changes are necessary to ensure the safety of the dam,
29 the director may order the owner to revise his or her
30 plans and specifications. If conditions are revealed
31 which will not permit the placement, construction,
32 enlargement, repair, alteration or removal of the dam
33 in a safe manner, the certificate of approval may be
34 revoked.

35 Immediately upon completion of a new dam or
36 enlargement, repair or alteration of a dam, the owner
37 shall notify the director: *Provided*, That immediately
38 upon completion of a dam constructed under the
39 supervision of the soil conservation service, a certifica-
40 tion of completion shall be sent to the director by the
41 soil conservation service, and a complete set of design
42 documents "as built" plans, and specifications and safety
43 plan of evacuation shall be provided to the director
44 within ninety days after completion of the dam.

**§20-5D-10. Procedures for handling emergencies involv-
ing dams; remedial actions to alleviate
emergency; payment of costs of remedial
actions to be paid by dam owner.**

1 The owner of a dam has the primary responsibility
2 for determining when an emergency involving a dam
3 exists. When the owner of a dam determines an
4 emergency does exist, the owner shall take necessary
5 remedial action and shall notify the director and the
6 owner shall also notify any persons who may be
7 endangered if the dam should fail.

8 The director shall notify any persons, not otherwise
9 notified, who may be endangered if the dam should fail.
10 The director may take any remedial action necessary to
11 protect life and property if: (a) The condition of the dam
12 so endangers life and property that time is not sufficient
13 to permit the issuance and enforcement of an order for
14 the owner to correct the condition; or (b) passing or
15 imminent floods or other conditions threaten the safety
16 of the dam. Remedial actions may include, but are not
17 limited to:

18 (1) Taking full charge and control of the dam.

19 (2) Lowering the level of water impounded by the
20 dam by releasing such impounded water.

21 (3) Completely releasing all water impounded by the
22 dam.

23 (4) Performing any necessary remedial or protective
24 work at the site of the dam.

25 (5) Taking any other steps necessary to safeguard life
26 and property.

27 Once the director has taken full charge of the dam,
28 the director shall remain in charge and control until in
29 the director's opinion it has been rendered safe or the
30 emergency occasioning the action has ceased and the
31 director concludes that the owner is competent to
32 reassume control of the dam and its operation. The
33 assumption of control of the dam will not relieve the
34 owner of a dam of liability for any negligent act or acts
35 of the owner or the owner's agent or employee.

36 When the director declares that making repairs to the
37 dam or breaching the dam is necessary to safeguard life
38 and property, repairs or breaching shall be started
39 immediately by the owner, or by the director at the
40 owner's expense, if the owner fails to do so. The owner
41 shall notify the director at once of any emergency
42 repairs or breaching the owner proposes to undertake
43 and of work he or she has under way to alleviate the
44 emergency. The proposed repairs, breaching and work
45 shall be made to conform with orders of the director.
46 The director may obtain equipment and personnel for
47 emergency work from any person as is necessary and
48 expedient to accomplish the required work. Any person
49 undertaking work at the request of the division shall be
50 paid by the division and shall be immune from civil
51 liability under the provisions of section fifteen, article
52 seven, chapter fifty-five of this code.

53 The costs reasonably incurred in any remedial action
54 taken by the director shall be paid out of funds
55 appropriated to the division. All costs incurred by the
56 division shall be promptly repaid by the owner upon
57 request or, if not repaid, the division may recover costs
58 and damages from the owner by appropriate civil
action.

**§20-5D-11. Requirements for dams completed prior to
effective date of this section.**

1 The director shall give notice to file an application for
2 a certificate of approval to every owner of a dam which
3 was completed prior to the effective date of this section:

4 *Provided*, That no such notice need be given to a person
5 who has applied for and obtained a certificate of
6 approval on or after the first day of July, one thousand
7 nine hundred seventy-three, in accordance with the
8 provisions of the prior enactment of section five of this
9 article. Such notice shall be given by certified or
10 registered mail, return receipt requested, to the owner
11 at his last address of record in the office of the county
12 assessor of the county in which the dam is located and
13 such mailing shall constitute service. A separate
14 application for each dam a person owns shall be filed
15 with the director in writing upon forms supplied by him
16 and shall include or be accompanied by appropriate
17 information concerning the dam as the director
18 requires.

19 The director shall make inspections of such dams or
20 reservoirs at state expense. The director shall require
21 owners of such dams to perform at their expense such
22 work or tests as may reasonably be required to disclose
23 information sufficient to enable the director to deter-
24 mine whether to issue a certificate of approval or to
25 issue an order directing further work at the owner's
26 expense necessary to safeguard life and property. For
27 this purpose, the director may require an owner to lower
28 the water level of, or to empty, water impounded by the
29 dam adjudged by the director to be unsafe. If, upon
30 inspection or upon completion to the satisfaction of the
31 director of all work that he ordered, the director finds
32 that the dam is safe to impound water, a certificate of
33 approval shall be issued.

§20-5D-12. Dam owner not relieved of legal responsibilities by any provision of article.

1 Nothing in this article shall be construed to relieve
2 the owner of a dam of the legal duties, obligations or
3 liabilities incident to the ownership or operation of a
dam.

§20-5D-13. Offenses and penalties.

1 (a) Any person who violates any of the provisions of
2 this article or any certificate of approval, order, rule or
3 requirement of the director or division is guilty of a

4 misdemeanor, and, upon conviction thereof, shall be
5 fined not less than one hundred dollars nor more than
6 one thousand dollars, or imprisoned in the county jail
7 not more than six months, or both fined and imprisoned.

8 (b) Any person who willfully obstructs, hinders or
9 prevents the director or division or its agents or
10 employees from performing the duties imposed on them
11 by the provisions of this article or who willfully resists
12 the exercise of the control and supervision conferred by
13 the provisions of this article upon the director or division
14 or its agents or employees or any owner or any person
15 acting as a director, officer, agent or employee of an
16 owner, or any contractor or agent or employee of a
17 contractor who engages in the placement, construction,
18 enlargement, repair, alteration, maintenance or removal
19 of any dam who knowingly does work or permits work
20 to be executed on the dam without a certificate of
21 approval or in violation of or contrary to any approval
22 as provided for by the provisions of this article; and any
23 inspector, agent or employee of the division who has
24 knowledge of and who fails to notify the director of
25 unapproved modifications to a dam is guilty of a
26 misdemeanor, and, upon conviction thereof, shall be
27 fined not less than one thousand dollars nor more than
28 five thousand dollars, or imprisoned in the county jail
29 not more than one year, or both fined and imprisoned.

§20-5D-14. Enforcement orders; hearings.

1 (a) If the director, upon inspection, investigation or
2 through other means observes, discovers or learns of a
3 violation of the provisions of this article, any certificate
4 of approval, notice, order or rules or regulations issued
5 or promulgated hereunder, he or she may:

6 (1) Issue an order stating with reasonable specificity
7 the nature of the violation and requiring compliance
8 immediately or within a specified time. An order under
9 this section includes, but is not limited to, any or all of
10 the following: Orders suspending, revoking or amending
11 certificates of approval, orders requiring a person to
12 take remedial action or cease and desist orders;

13 (2) Seek an injunction in accordance with subsection
14 (c), section fifteen of this article;

15 (3) Institute a civil action in accordance with subsec-
16 tion (c), section fifteen of this article; or

17 (4) Request the attorney general, or the prosecuting
18 attorney of the county in which the alleged violation
19 occurred, to bring a criminal action in accordance with
20 section twelve of this article.

21 (b) Any person issued a cease and desist order may
22 file a notice of request for reconsideration with the
23 director not more than seven days from the issuance of
24 the order and shall have a hearing before the director
25 contesting the terms and conditions of the order within
26 ten days of the filing of the notice of a request for
27 reconsideration. The filing of a notice of request for
28 reconsideration shall not stay or suspend the execution
29 or enforcement of the cease and desist order.

§20-5D-15. Civil penalties and injunctive relief.

1 (a) Any person who violates any provision of this
2 article, any certificate of approval or any rule, regula-
3 tion, notice or order issued pursuant to this article is
4 subject to a civil administrative penalty, to be levied by
5 the director, of not more than two hundred dollars for
6 each day of the violation, not to exceed a maximum of
7 four hundred dollars. In assessing any penalty, the
8 director shall take into account the seriousness of the
9 violation and any good faith efforts to comply with
10 applicable requirements as well as any other approp-
11 riate factors as may be established by rules and
12 regulations promulgated by the director. No assessment
13 shall be levied pursuant to this subsection until after the
14 alleged violator has been notified by certified mail or
15 personal service. The notice shall include a reference to
16 the section of the statute, rule, regulation, notice, order
17 or statement of the certificate of approval's terms that
18 was allegedly violated, a concise statement of the facts
19 alleged to constitute the violation, a statement of the
20 amount of the administrative penalty to be imposed and
21 a statement of the alleged violator's right to an informal

22 hearing. The alleged violator has twenty calendar days
23 from receipt of the notice within which to deliver to the
24 director a written request for an informal hearing. If
25 no hearing is requested, the notice becomes a final order
26 after the expiration date of the twenty-day period. If a
27 hearing is requested, the director shall inform the
28 alleged violator of the time and place of the hearing.
29 Within thirty days following the informal hearing, the
30 director shall issue and furnish to the violator a written
31 decision, and the reasons therefor, concerning the
32 assessment of a civil administrative penalty. The
33 authority to levy an administrative penalty is in addition
34 to all other enforcement provisions of this article and the
35 payment of any assessment does not affect the availa-
36 bility of any other enforcement provision in connection
37 with the violation for which the assessment is levied:
38 *Provided*, That no combination of assessments against a
39 violator shall exceed four hundred dollars per day of
40 each violation: *Provided, however*, That any violation for
41 which the violator has paid a civil administrative
42 penalty assessed under this subsection is not subject to
43 a separate civil penalty action under this article to the
44 extent of the amount of the civil administrative penalty
45 paid. Civil administrative penalties shall be levied in
46 accordance with the rules and regulations promulgated
47 under the authority of section four of this article. The
48 net proceeds of assessments collected pursuant to this
49 subsection shall be deposited in the dam safety fund
50 established pursuant to section seventeen of this article.
51 Any person adversely affected by the assessment of a
52 civil administrative penalty has the right of judicial
53 review of the assessment in accordance with the
54 provisions of section four, article five, chapter twenty-
55 nine-a of this code.

56 (b) No assessment levied pursuant to subsection (a) of
57 this section is due and payable until the procedures for
58 review of the assessment as set out in said subsection
59 have been completed.

60 (c) The director may seek an injunction, or may
61 institute a civil action against any person in violation of

62 any provisions of this article or any certificate of
63 approval, rule, regulation, notice or order issued
64 pursuant to this article. In seeking an injunction, it is
65 not necessary for the director to post bond on or to allege
66 or prove at any stage of the proceeding that irreparable
67 damage will occur if the injunction is not issued or that
68 the remedy at law is inadequate. An application for
69 injunctive relief or a civil penalty action under this
70 section may be filed and relief granted notwithstanding
71 the fact that all administrative remedies provided for in
72 this article have not been exhausted or invoked against
73 the person or persons against whom the relief is sought.

74 (d) Upon request of the director, the attorney general
75 or the prosecuting attorney of the county in which the
76 violation occurs, shall assist the director in any civil
77 action under this section.

78 (e) In any action brought pursuant to the provisions
79 of this section, the state or any agency of the state which
80 prevails, may be awarded costs and reasonable attor-
81 ney's fees.

§20-5D-16. Schedule of application fees established.

1 The director shall promulgate rules in accordance
2 with the provisions of section four of this article, to
3 establish a schedule of application fees for which the
4 appropriate fee shall be submitted by the applicant to
5 the division together with the application for a certifi-
6 cate of approval filed pursuant to this article. The
7 schedule of application fees shall be designed to
8 establish reasonable categories of certificate application
9 fees based upon the complexity of the permit application
10 review process required by the director pursuant to the
11 provisions of this article and the rules promulgated
12 under this article. The director shall not process any
13 certificate application pursuant to this article until the
14 certificate application fee has been received.

**§20-5D-17. Schedule of annual registration fees estab-
lished.**

1 The director shall promulgate rules in accordance

2 with the provisions of section four of this article, to
3 establish a schedule of annual registration fees which
4 shall be assessed annually upon each person holding a
5 certificate of approval issued pursuant to this article.
6 Each person holding a certificate of approval shall pay
7 the prescribed annual registration fee to the division
8 pursuant to the rules and regulations promulgated
9 under this article. The schedule of annual registration
10 fees shall be designed to establish reasonable categories
11 of annual registration fees, including, but not limited to,
12 the size of the dam and its classification. Any certificate
13 of approval issued pursuant to this article shall become
14 void without notification to the person holding a
15 certificate of approval when the annual registration fee
16 is more than one hundred eighty days past due pursuant
17 to the rules promulgated under this section.

§20-5D-18. Creation of dam safety fund; components of fund.

1 (a) A special fund designated "The Dam Safety
2 Fund" hereinafter referred to as "the fund" shall be
3 established in the state treasury on the thirtieth day of
4 September, one thousand nine hundred ninety-two.

5 (b) All certificate application fees and annual regis-
6 tration fee assessments, any interest or surcharge
7 assessed and collected by the division, interest accruing
8 on investments and deposits of the fund, and any other
9 moneys designated by the division shall be paid into the
10 fund. Accrual of funds shall not exceed three hundred
11 thousand dollars per year, exclusive of application fees.
12 The division shall expend the proceeds of the fund for
13 the review of applications, inspection of dams, payment
14 of costs of remedial emergency actions and enforcement
15 of the provisions of this article.

§20-5D-19. Effective date.

1 The provisions of this article take effect on the
2 thirtieth day of September, one thousand nine hundred
3 ninety-two.

CHAPTER 158

(Com. Sub. for S. B. 476—By Senators Brackenrich, J. Manchin, Craigo,
Dittmar, Anderson, Holliday, Tomblin, Whitlow and Felton)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

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 seventeen-c, relating to providing a discount card for state campground rental fees for West Virginia residents who are totally and permanently disabled; requiring the commissioner to promulgate rules for documentation of residency and disability; and specifying the time of year during which the discount applies.

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 seventeen-c, to read as follows:

ARTICLE 1. DIVISION OF TOURISM AND PARKS.

§5B-1-17c. Discounts for West Virginia residents who are totally and permanently disabled.

1 The commissioner shall issue a discount card to West
2 Virginia residents who are totally and permanently
3 disabled which would provide a fifty percent reduction
4 in campground rental fees for each campsite to be used
5 exclusively by the eligible camper: *Provided*, That in
6 order to be eligible for the reduction, that person shall
7 document that he or she is a resident of this state and
8 that he or she has a total and permanent disability. The
9 commissioner shall promulgate rules in accordance with
10 article three, chapter twenty-nine of this code setting
11 forth the documentation which is necessary to prove
12 residency and total and permanent disability: *Provided*,
13 *however*, That the fifty percent reduction in campground
14 rental fees applies only to those rentals occurring during
15 the period of time beginning on the day after Labor Day
16 and ending four days prior to Memorial Day.

CHAPTER 159

(Com. Sub. for H. B. 4231—By Delegates Love and Brum)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, five, six and eight, article three-b, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the supervision of electricians; changing the structure of electrician licensing requirements; reciprocity; and providing for specialty electrician licenses.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, six and eight, 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-2. Necessity of license; definitions.

§29-3B-3. Exemptions; nonapplicability of license requirements.

§29-3B-4. Licenses; classes of licenses; issuance of licenses by commissioner; qualifications required for license; nontransferability and nonassignability of license; expiration of license; renewal; reciprocity.

§29-3B-5. Rules; applications and examinations; fees.

§29-3B-6. License without examination; fees.

§29-3B-8. Effect of noncompliance with article; failure to obtain license.

§29-3B-2. Necessity of license; definitions.

1 After the effective date of this article, no electrical
 2 work may be performed, offered or engaged in for
 3 compensation or hire within the state of West Virginia
 4 by any person, firm or corporation unless such person,
 5 firm or corporation possesses a license and a certificate
 6 therefor issued by the state fire marshal in accordance
 7 with this article, and a copy of such license is posted on
 8 any job in which electrical work is being performed for
 9 hire.

10 As used in this article:

11 (a) "Apprentice electrician" means a person with
12 interest in and an aptitude for performing electrical
13 work but who alone is not capable of installing wires,
14 conduits, apparatus, equipment, fixtures and other
15 appliances.

16 (b) "Electrical contractor" means a person, firm or
17 corporation who engages in the business of electrical
18 work or employs master electricians, electricians,
19 apprentice electricians or helpers for the construction,
20 alteration or repair of any electrical wiring, equipment
21 or systems for the purposes of controlling or furnishing
22 heat, light or power.

23 (c) "Electrical work" means the installation of wires,
24 conduits, apparatus, fixtures, other appliances, equip-
25 ment or systems for transmitting, carrying, controlling
26 or using electricity for light, heat or power purposes.

27 (d) "Journeyman electrician" means a person quali-
28 fied by at least four years of electrical work experience
29 to do any work installing wires, conduits, apparatus,
30 equipment, fixtures and other appliances subject to
31 supervision by a master electrician.

32 (e) "License" means a valid and current certificate of
33 competency issued by the state fire marshal.

34 (f) "Master electrician" means a person with at least
35 five years of electrical work experience, including
36 experience in all phases of electrical wiring and
37 installation, who is competent to instruct and supervise
38 the electrical work of journeyman electricians and
39 apprentice electricians.

40 (g) "Specialty electrician" means a person qualified to
41 perform electrical work in a limited or specialized
42 area.

§29-3B-3. Exemptions; nonapplicability of license requirements.

1 This article does not apply to and no license may be
2 required for (a) a person who performs electrical work
3 with respect to any property owned or leased by such
4 person; (b) a person who performs electrical work at any

5 manufacturing plant or other industrial establishment
6 as an employee of the person, firm or corporation
7 operating such plant or establishment; (c) a person who
8 performs electrical work while employed by an em-
9 ployer who engages in the business of selling appliances
10 at retail, so long as such electrical work is performed
11 incident to the installation or repair of appliances sold
12 by the employer; (d) a person who, while employed by
13 a public utility or its affiliate, performs electrical work
14 in connection with the furnishing of public utility
15 service; or (e) any government employee performing
16 electrical work on government property.

**§29-3B-4. Licenses; classes of licenses; issuance of licenses
by commissioner; qualifications required for
license; nontransferability and nonassigna-
bility of licenses; expiration of license; rene-
wal; reciprocity.**

1 (a) The following four classes of license may be issued
2 by the state fire marshal: "Master electrician license,"
3 "journeyman electrician's license," "apprentice electri-
4 cian license" and "temporary electrician license."
5 Additional classes of specialty electrician license may be
6 issued by the state fire marshal.

7 (b) The state fire marshal shall issue the appropriate
8 class of license to a person, firm or corporation upon a
9 finding that such person, firm or corporation possesses
10 the qualifications for the class of license to be issued.

11 (c) The qualifications for each class of license to be
12 issued are as follows:

13 (1) For a "master electrician license" a person must
14 have five years of experience in electrical work of such
15 breadth, independence and quality that such work
16 indicates that the applicant is competent to perform all
17 types of electrical work and can direct and instruct
18 journeyman electricians and apprentice electricians in
19 the performance of electrical work. Such applicant, or
20 a member of a firm or an officer of a corporation if the
21 applicant be a firm or corporation, must also pass the
22 master electrician examination given by the state fire
23 marshal with a grade of eighty percent correct or better;

24 (2) For a "journeyman electrician's license," a person
25 must have at least four years of experience in perform-
26 ing electrical work under the direction or instruction of
27 a master electrician or must have completed a formal
28 apprentice program, or an electrical vocational educa-
29 tion program of at least one thousand eighty hours in
30 length and approved by the state board of education or
31 its successor, providing actual electrical work expe-
32 rience and training conducted by one or more master
33 electricians. Such applicant must also pass the journey-
34 man electrician's examination given by the state fire
35 marshal with a grade of eighty percent correct or better;

36 (3) For an "apprentice electrician license," a person
37 must pass the apprentice electrician's examination given
38 by the state fire marshal with a grade of eighty percent
39 correct or better or be enrolled in an electrical apprent-
40 ice program approved by the state fire marshal;

41 (4) A one time temporary master or journeyman
42 electrician license of ninety-days duration may be issued
43 to an applicant providing the applicant has completed
44 a United States department of labor/bureau of apprent-
45 iceship and training registered electrical apprenticeship
46 program, or an electrical vocational education program
47 of at least one thousand eighty hours in length and
48 approved by the state board of education or its succes-
49 sor, and have at least four years of experience in
50 performing electrical work and furnishes the state fire
51 marshal with satisfactory evidence of electrical work;

52 (5) Other specialty electrician license may be issued
53 by the state fire marshal which limits the work in a
54 limited area of expertise. Such applicant must pass the
55 specialty electrician's examination given by the state
56 fire marshal with a grade of eighty percent correct or
57 better.

58 (d) (1) Certificates of license for a master electri-
59 cian's license issued by the state fire marshal shall
60 specify the name of the person, firm or corporation so
61 qualifying and the name of the person, who in the case
62 of a firm shall be one of its members and in the case

63 of a corporation shall be one of its officers, passing the
64 master electrician examination.

65 (2) Licenses issued to electricians shall specify the
66 name of the person who is thereby authorized to perform
67 electrical work or, in the case of apprentice electricians,
68 to work with other classes of electricians to perform
69 electrical work.

70 (e) No license issued under this article is assignable
71 or transferable.

72 (f) All licenses issued by the state fire marshal shall
73 expire on the thirtieth day of June following the year
74 of issue or renewal.

75 (g) (1) Each expiring license may be renewed with-
76 out need for examination and without limit as to the
77 number of times renewed, for the same class of license
78 previously issued and for the same person, firm or
79 corporation to whom it was originally issued upon
80 payment to the state fire marshal of a renewal fee of
81 fifty dollars if such application for renewal and payment
82 of such fee is made before the date of expiration of the
83 license.

84 (2) In the case of a failure to renew a license on or
85 before the thirtieth day of June the person named in the
86 license may, upon payment of the renewal fee and an
87 additional fee of fifteen dollars, receive from the state
88 fire marshal a deferred renewal of such license which
89 shall expire on the thirtieth day of June in the ensuing
90 year. No person, firm or corporation may perform
91 electrical work upon expiration of such person's, firm's
92 or corporation's license until a deferred renewal for such
93 license is issued by the state fire marshal even if such
94 person, firm or corporation has applied for the deferred
95 renewal of such license.

96 (h) To the extent that other jurisdictions provide for
97 the licensing of electricians, the state fire marshall may
98 grant the same or equivalent classification of license
99 without written examination upon satisfactory proof
100 furnished to the state fire marshall that the qualifica-
101 tions of such applicant are equal to the qualifications

102 required by this article and upon payment of the re-
103 quired fee: *Provided*, That as a condition to reciprocity,
104 the other jurisdictions must extend to licensed electri-
105 cians of this state, the same or equivalent classification.

§29-3B-5. Rules; applications and examinations; fees.

1 (a) The state fire marshal shall promulgate necessary
2 rules pursuant to the provisions of chapter twenty-nine-
3 a of this code to implement the provisions of this article.
4 Rules adopted by the state fire marshal and presently
5 in effect shall remain in effect until and unless the state
6 fire marshal adopts new rules, and the state fire
7 marshal may adopt any or all of the rules presently in
8 effect.

9 (b) The state fire marshal shall prepare and arrange
10 for the receipt of applications from those who intend to
11 perform electrical work in the state of West Virginia.
12 Such application shall be sufficiently detailed to enable
13 the state fire marshal to determine the presence or
14 absence of an applicant's qualifications for a license of
15 a particular class. The state fire marshal may, if he
16 considers it necessary, require applicants to supply
17 affidavits or other documents attesting to the applicant's
18 qualifications from past employers, other electricians,
19 engineers and others with knowledge of the applicant's
20 qualifications. The state fire marshal may make such
21 other inquiries as he considers necessary to determine
22 the qualifications of the applicant. An applicant
23 expressly consents to such inquiries by the state fire
24 marshal by his application.

25 (c) The state fire marshal shall prepare and arrange
26 for the giving of examinations to all applicants for
27 licensure. There shall be a separate and different
28 examination for each class of license, appropriate in
29 subject matter, difficulty and depth of understanding
30 for each class. All examinations shall be based on and
31 derived from the national electric code as promulgated
32 from time to time by the national fire protection
33 association. A minimum grade of eighty percent correct
34 for all examinations is necessary for licensure by the
35 state fire marshal. The examinations shall be given at

36 least four times each year. The places, dates and times
37 of such examinations shall be made known by public
38 notice issued by the state fire marshal. The state fire
39 marshal may contract with the bureau of vocational,
40 technical and adult education, state department of
41 education, to perform such examinations.

42 (d) Each person desiring to take an examination shall
43 make written application therefor at the time desig-
44 nated by and on forms prescribed by the state fire
45 marshal. The applicant shall specify the class of license
46 for which he seeks licensure. The application shall be
47 accompanied by an examination fee of twenty-five
48 dollars for licenses for master electrician or journeyman
49 electrician, or by an examination fee of ten dollars for
50 an apprentice electrician license applicant or twenty-
51 five dollars for a specialty license. The fee is not
52 returnable.

53 (e) An applicant who fails to make the required
54 passing score on any examination or who lacks qualifi-
55 cations for the class of license desired may retake the
56 examination or change his application to request a
57 license of a lesser class upon the payment to the state
58 fire marshal of a fee of ten dollars together with a new
59 application. Any reexamination may be taken or new
60 application may be submitted as many times as the
61 applicant desires, but each such examination or appli-
62 cation requires the payment of the additional fee of ten
63 dollars and the making of a new application to the state
64 fire marshal. When the examination is successfully
65 passed and the requisite qualifications are established
66 by the applicant, the state fire marshal shall issue the
67 appropriate license as provided above.

§29-3B-6. License without examination; fees.

1 (a) An applicant who is enrolled in a formal electrical
2 apprenticeship program and registered with the United
3 States department of labor/bureau of apprenticeship
4 and training or enrolled in an electrical vocational
5 education program of at least one thousand eighty hours
6 in length and approved by the state board of education
7 or its successor shall not be required to take the

8 apprentice examination described in section five of this
9 article for one hundred eighty days, provided a one time
10 temporary license shall be issued for one hundred eighty
11 days. Such applicant is required to submit a completed
12 application on forms prescribed by the state fire
13 marshal accompanied by the appropriate license fee.

14 (b) Such applicant who is exempt from testing is
15 nevertheless required to submit a complete application
16 on forms prescribed by the state fire marshal accompan-
17 ied by a license fee of twenty-five dollars.

18 (c) Such license issued by the state fire marshal upon
19 application without examination expires and is eligible
20 for renewal as provided in section four of this article.

**§29-3B-8. Effect of noncompliance with article; failure to
obtain license.**

1 Any person, firm, corporation or employee thereof, or
2 any representative, member or officer of such firm or
3 corporation, individually, entering upon or engaging in
4 the business of performing any electrical work as
5 defined in this article, without obtaining the required
6 license or otherwise complying with this article, is for
7 the first offense guilty of a misdemeanor, and, upon
8 conviction thereof, shall be fined not more than one
9 hundred dollars. For a second and each subsequent
10 offense, the penalty and punishment is a fine of not less
11 than one hundred dollars nor more than five hundred
12 dollars.

13 Each day during which such electrical work is
14 performed without the required license or while in
15 noncompliance with any of the provisions of this article,
16 after official notice that such work is unlawful, is a
17 separate offense.

18 Any electrical work performed by a person, firm or
19 corporation which is determined by the state fire
20 marshal to constitute a safety or health hazard to
21 members of the public or any electrical work of an
22 extensive nature being performed by any person without
23 the required license or otherwise in noncompliance with
24 the requirements of this article or contrary to an order

1296 or rule promulgated lawfully by the state fire marshal,
 1297 is subject to being issued a citation or a civil action in
 1298 the name of the state in the circuit court of the county
 1299 where such work is being performed for an injunction
 1300 against such person, firm or corporation, enjoining such
 1301 work or violation. A circuit court by mandatory or
 1302 prohibitory injunction may compel compliance with the
 1303 provisions of this article, with the lawful orders of the
 1304 state fire marshal and with any final decision of the
 1305 state fire marshal or state fire commission. The state
 1306 fire marshal shall be represented in all such proceedings
 1307 by the attorney general or his assistants.

CHAPTER 160

(Com. Sub. for H. B. 4511—By Delegates S. Cook and P. White)

[Passed March 5, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to licensure of physician assistants and expanding the use of prescriptive authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-16. Physician assistants; definitions; board of medicine rules; annual report; licensure; temporary license; relicensure; job description required; revocation or suspension of licensure; responsibilities of supervising physician; legal responsibility for physician assistants; reporting by health care facilities; identification; limitations on employment and duties; fees; unlawful use of title of "physician assistant"; continuing education; unlawful representation of physician assistant as a physician; criminal penalties.

1 (a) As used in this section:

2 (1) "Physician assistant" means an assistant to a
3 physician who is a graduate of an approved program of
4 instruction in primary health care or surgery, has
5 attained a baccalaureate or master's degree, has passed
6 the national certification examination and is qualified to
7 perform direct patient care services under the supervi-
8 sion of a physician;

9 (2) "Supervising physician" means a doctor or doctors
10 of medicine or podiatry permanently licensed in this
11 state who assume legal and supervisory responsibility
12 for the work or training of any physician assistant under
13 his or her supervision;

14 (3) "Approved program" means an educational pro-
15 gram for physician assistants approved and accredited
16 by the committee on allied health education and
17 accreditation on behalf of the American Medical
18 Association; and

19 (4) "Health care facility" means any licensed hospital,
20 nursing home, extended care facility, state health or
21 mental institution, clinic or physician's office.

22 (b) The board shall promulgate rules governing the
23 extent to which physician assistants may function in this
24 state. Such rules shall provide that the physician
25 assistant is limited to the performance of those services
26 for which he or she is trained and that he or she
27 performs only under the supervision and control of a
28 physician permanently licensed in this state, but such
29 supervision and control does not require the personal
30 presence of the supervising physician at the place or
31 places where services are rendered if the physician
32 assistant's normal place of employment is on the
33 premises of the supervising physician. The supervising
34 physician may send the physician assistant off the
35 premises to perform duties under his or her direction,
36 but a separate place of work for the physician assistant
37 shall not be established. In promulgating such rules, the
38 board shall allow the physician assistant to perform
39 those procedures and examinations and in the case of
40 certain authorized physician assistants to prescribe at

41 the direction of his or her supervising physician in
42 accordance with subsection (k) of this section those
43 categories of drugs submitted to it in the job description
44 required by subsection (f) of this section. The board shall
45 compile and publish a biennial report that includes a list
46 of currently licensed physician assistants and their
47 employers and location in the state; a list of approved
48 programs; the number of graduates of such approved
49 programs each year; and the number of physician
50 assistants from other states practicing in this state.

51 (c) The board shall license as a physician assistant
52 any person who files an application and furnishes
53 satisfactory evidence to it that he or she has met the
54 following standards:

55 (1) He or she is a graduate of an approved program
56 of instruction in primary health care or surgery;

57 (2) He or she has passed the examination for a
58 primary care physician assistant administered by the
59 National Board of Medical Examiners on behalf of the
60 National Commission on Certification of Physician
61 Assistants and has maintained certification by said
62 commission so as to be currently certified;

63 (3) He or she is of good moral character; and

64 (4) He or she has attained a baccalaureate or master's
65 degree.

66 (d) The board may license as a physician assistant
67 any person who files an application and furnishes
68 satisfactory evidence that he or she is of good moral
69 character and meets either of the following standards:

70 (1) He or she is a graduate of an approved program
71 of instruction in primary health care or surgery prior
72 to the first day of July, one thousand nine hundred
73 ninety-four, and has passed the examination for a
74 primary care physician assistant administered by the
75 National Board of Medical Examiners on behalf of the
76 National Commission on Certification of Physician
77 Assistants; or

78 (2) He or she had been certified by the board as a

79 physician assistant then classified as "Type B," prior to
80 the first day of July, one thousand nine hundred eighty-
81 three.

82 Licensure of an assistant to a physician practicing the
83 specialty of ophthalmology is permitted under this
84 section: *Provided*, That a physician assistant may not
85 dispense a prescription for a refraction.

86 (e) When any graduate of an approved program,
87 within two years of graduation, submits an application
88 to the board, accompanied by a job description in
89 conformity with subsection (f) of this section, for a
90 physician assistant license, the board shall issue to such
91 applicant a temporary license allowing such applicant
92 to function as a physician assistant for the period of one
93 year. Said temporary certificate may be renewed for one
94 additional year upon the request of the supervising
95 physician. A physician assistant who has not been
96 certified as such by the National Board of Medical
97 Examiners on behalf of the National Commission on
98 Certification of Physician Assistants will be restricted
99 to work under the direct supervision of the supervising
100 physician.

101 (f) Any physician applying to the board to supervise
102 a physician assistant shall provide a job description that
103 sets forth the range of medical services to be provided
104 by such assistant. Before a physician assistant can be
105 employed or otherwise use his or her skills, the
106 supervising physician must obtain approval of the job
107 description from the board. The board may revoke or
108 suspend any license of an assistant to a physician for
109 cause, after giving such person an opportunity to be
110 heard in the manner provided by article five of chapter
111 twenty-nine-a of this code and as set forth in rules duly
112 adopted by the board.

113 (g) The supervising physician is responsible for
114 observing, directing and evaluating the work, records
115 and practices of each physician assistant performing
116 under his or her supervision. He or she shall notify the
117 board in writing of any termination of his or her
118 supervisory relationship with a physician assistant

119 within ten days of the termination. The legal responsi-
120 bility for any physician assistant remains with the
121 supervising physician at all times, including occasions
122 when the assistant under his or her direction and
123 supervision, aids in the care and treatment of a patient
124 in a health care facility. In his or her absence, a
125 supervising physician must designate an alternate
126 supervising physician, however, the legal responsibility
127 remains with the supervising physician at all times. A
128 health care facility is not legally responsible for the
129 actions or omissions of the physician assistant unless the
130 physician assistant is an employee of the facility.

131 (h) The acts or omissions of a physician assistant
132 employed by health care facilities providing inpatient or
133 outpatient services shall be the legal responsibility of
134 said facilities. Physician assistants employed by such
135 facilities in staff positions shall be supervised by a
136 permanently licensed physician.

137 (i) A health care facility shall report in writing to the
138 board within sixty days after the completion of the
139 facility's formal disciplinary procedure, and also after
140 the commencement, and again after the conclusion, of
141 any resulting legal action, the name of any physician
142 assistant practicing in the facility whose privileges at
143 the facility have been revoked, restricted, reduced or
144 terminated for any cause including resignation, together
145 with all pertinent information relating to such action.
146 The health care facility shall also report any other
147 formal disciplinary action taken against any physician
148 assistant by the facility relating to professional ethics,
149 medical incompetence, medical malpractice, moral
150 turpitude or drug or alcohol abuse. Temporary suspen-
151 sion for failure to maintain records on a timely basis or
152 failure to attend staff or section meetings need not be
153 reported.

154 (j) When functioning as a physician assistant, the
155 physician assistant shall wear a name tag that identifies
156 him or her as a physician assistant. A two and one-half
157 by three and one-half inch card of identification shall
158 be furnished by the board upon licensure of the
159 physician assistant.

160 (k) A physician assistant may write or sign prescrip-
161 tions or transmit prescriptions by word of mouth,
162 telephone or other means of communication at the
163 direction of his or her supervising physician. The board
164 shall promulgate rules governing the eligibility and
165 extent to which such a physician assistant may prescribe
166 at the direction of the supervising physician. The rules
167 shall provide for a state formulary classifying pharma-
168 cologic categories of drugs which may be prescribed by
169 such a physician assistant. In classifying such pharma-
170 cologic categories, those categories of drugs which shall
171 be excluded shall include, but not be limited to,
172 Schedules I and II of the Uniform Controlled Substances
173 Act, anticoagulants, antineoplastics, radiopharmaceuti-
174 cals, general anesthetics, and radiographic contrast
175 materials. Drugs listed under Schedule III shall be
176 limited to a seventy-two hour supply without refill. The
177 regulations shall provide that all pharmacological
178 categories of drugs to be prescribed by a physician
179 assistant shall be listed in each job description submit-
180 ted to the board as required in subsection (f) of this
181 section. The rules shall provide the maximum dosage a
182 physician assistant may prescribe. The rule shall also
183 provide that to be eligible for such prescription
184 privileges, a physician assistant shall have performed
185 patient care services for a minimum of two years
186 immediately preceding the submission to the board of
187 the job description containing prescription privileges
188 and shall have successfully completed an accredited
189 course of instruction in clinical pharmacology approved
190 by the board. The regulations shall also provide that to
191 maintain prescription privileges, a physician assistant
192 shall continue to maintain national certification as a
193 physician assistant, and in meeting such national
194 certification requirements shall complete a minimum of
195 ten hours of continuing education in rational drug
196 therapy in each certification period. Nothing in this
197 subsection shall be construed to permit a physician
198 assistant to independently prescribe or dispense drugs.

199 (l) A supervising physician shall not supervise at any
200 one time more than two physician assistants, except that
201 a physician may supervise up to four hospital-employed
202 physician assistants.

203 A physician assistant shall not sign any prescription,
204 except in the case of an authorized physician assistant
205 at the direction of his or her supervising physician in
206 accordance with the provisions of subsection (l) of this
207 section. A physician assistant shall not perform any
208 service that his or her supervising physician is not
209 qualified to perform. A physician assistant shall not
210 perform any service that is not included in his or her
211 job description and approved by the board as provided
212 for in this section.

213 The provisions of this section do not authorize any
214 physician assistant to perform any specific function or
215 duty delegated by this code to those persons licensed as
216 chiropractors, dentists, dental hygienists, optometrists
217 or pharmacists or certified as nurse anesthetists.

218 (m) Each application for licensure submitted by a
219 licensed supervising physician under this section shall
220 be accompanied by a fee of one hundred dollars. A fee
221 of fifty dollars shall be charged for the biennial renewal
222 of the license. A fee of twenty-five dollars shall be
223 charged for any change of supervising physician.

224 (n) Beginning with the biennial renewal forms
225 completed by physician assistants and submitted to the
226 board in one thousand nine hundred ninety-three, as a
227 condition of renewal of physician assistant license, each
228 physician assistant shall provide written documentation
229 pursuant to rules promulgated by the board in accor-
230 dance with chapter twenty-nine-a of this code of
231 participation in and successful completion during the
232 preceding two-year period of a minimum of either forty
233 hours of continuing education designated as Category I
234 by the American Medical Association, American
235 Academy of Physician Assistants or the Academy of
236 Family Physicians, and sixty hours of continuing
237 education designated as Category II by such association
238 or either academy. Notwithstanding any provision of
239 this chapter to the contrary, failure to timely submit
240 such required written documentation shall result in the
241 automatic suspension of any license as a physician
242 assistant until such time as the written documentation
243 is submitted to and approved by the board.

244 (o) It is unlawful for any person who is not licensed
245 by the board as a physician assistant to use the title of
246 "physician assistant" or to represent to any other person
247 that he or she is a physician assistant. Any person who
248 violates the provisions of this subsection is guilty of a
249 misdemeanor, and, upon conviction thereof, shall be
250 fined not more than two thousand dollars.

251 (p) It is unlawful for any physician assistant to
252 represent to any person that he or she is a physician,
253 surgeon or podiatrist. Any person who violates the
254 provisions of this subsection is guilty of a felony, and,
255 upon conviction thereof, shall be imprisoned in the
256 penitentiary for not less than one nor more than two
257 years, or be fined not more than two thousand dollars,
258 or both fined and imprisoned.

259 (q) All physician assistants holding valid certificates
260 issued by the board prior to the first day of July, one
261 thousand nine hundred ninety-two, shall be considered
262 to be licensed under this section.

CHAPTER 161

(S. B. 524—By Senator Spears)

[Passed March 2, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen-b, article four, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section seventeen-c, relating to increasing the license renewal fees of dentists and dental hygienists; making continuing education requirements a prerequisite to license renewal; authorizing the board to establish continuing education requirements and criteria for course providers; and establishing the effective dates for compliance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. DENTISTS, DENTAL HYGIENISTS AND DENTAL CORPORATIONS.

§30-4-17b. Annual information and renewal fee; notice; reinstatement; penalty fees; waiver of payment of fee on retirement or disability; change of address.

§30-4-17c. Continuing education requirements as a prerequisite to license renewal; board's authority; compliance deadlines.

§30-4-17b. Annual information and renewal fee; notice; reinstatement; penalty fees; waiver of payment of fee on retirement or disability; change of address.

1 On or before the first day of February of each year,
2 every dentist licensed to practice dentistry in this state,
3 and every dental hygienist licensed to practice dental
4 hygiene in this state, shall transmit to the secretary of
5 the board upon a form prescribed by the board, his
6 signature, post-office address, office address, the serial
7 number of his license certificate, whether he has been
8 engaged during the preceding year in the active and
9 continuous practice of dentistry or dental hygiene, as the
10 case may be, whether within or without this state, and
11 such other information as may be required by the board,
12 together with an information and renewal fee herein
13 provided for.

14 The annual information and renewal fee for a dentist
15 shall be seventy-five dollars and for a dental hygienist
16 shall be fifty dollars.

17 Upon receipt of the required information and the
18 payment of the proper renewal fee, the licensee shall be
19 issued a renewal certificate authorizing him to continue
20 the practice of dentistry or the practice of dental
21 hygiene in this state for a period of one year from the
22 first day of February.

23 A license to practice dentistry or dental hygiene
24 granted under the authority of this article shall be
25 canceled on the first day of May if the holder thereof
26 fails to secure a current renewal certificate by that day.
27 Any licensee whose license is thus canceled by reason
28 of the failure, neglect or refusal to secure the proper
29 renewal certificate may be reinstated by the board at
30 any time within six months from the date of the
31 cancellation of said license upon the payment of the
32 proper renewal fee and an additional fee of twenty-five
33 dollars. If the licensee shall not apply for renewal of his
34 license as herein required within the said six months,
35 that person shall, at the discretion of said board, be
36 required to file an application for and take the exam-
37 ination provided in this article should he desire to
38 practice dentistry or dental hygiene in this state.

39 Upon failure of any licensee to submit the required
40 information and pay the annual renewal fee as herein
41 required by the statutory date, the board shall attempt
42 to notify such licensee in writing by mailing to his last
43 registered address a notice of the requirements of this
44 section apprising him of the fact that his license to
45 practice will be canceled on the statutory date: *Provided,*
46 That failure to mail or receive such notice shall not
47 affect the cancellation of his license.

48 The board may waive the annual payment of the
49 renewal fee herein required, and issue a renewal
50 certificate to any West Virginia licensee for at least
51 twenty-five years and who is presently retired from
52 active practice, or to any West Virginia licensee who has
53 retired for reasons of physical disability, so long as such
54 retirement continues: *Provided,* That the licensee
55 provides the board with the information required by this
56 section.

57 Every licensed dentist within thirty days of changing
58 his place of practice or establishing additional offices
59 shall furnish the secretary of the board with his new
60 professional address.

61 Every licensed dental hygienist within thirty days of
62 changing his place of employment shall furnish the
63 secretary of the board with his new professional address
64 and the name of his employer.

**§30-4-17c. Continuing education requirements as a
prerequisite to license renewal; board's
authority; compliance deadlines.**

1 (a) The board of dental examiners is authorized to
2 establish continuing education requirements as a
3 prerequisite to renewal of licences for dentists and
4 dental hygienists. The board shall develop criteria for
5 course content and publish the same for course
6 providers.

7 Only those courses approved by the board will be
8 accepted for purposes of fulfilling the continuing
9 education requirements.

10 The board will determine the number of continuing
11 education hours necessary for relicensure: *Provided,*
12 That the requirement does not exceed twenty hours for
13 any two-year period.

14 (b) Beginning on the first day of February, one
15 thousand nine hundred ninety-six, and every two years
16 thereafter, each dentist and dental hygienist licensed to
17 practice in this state shall return to the secretary of the
18 board evidence satisfactory to that board that such
19 dentist or dental hygienist has completed the required
20 number of course hours for the previous two-year
21 period.

22 Dentists or dental hygienists receiving their original
23 license to practice after the first day of February, one
24 thousand nine hundred ninety-four, shall comply with
25 the provisions of this section beginning on the first day
26 of February, one thousand nine hundred ninety-eight.

CHAPTER 162

(Com. Sub. for S. B. 152—By Senator Spears)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, five, six, eight, thirteen and sixteen, article six, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to embalmers and funeral directors; further defining educational qualifications and requirements for license and work hours for apprentices; stating when a branch establishment is to be supervised by a funeral director; increasing or imposing certain fees; and increasing fines for criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections three, five, six, eight, thirteen and sixteen, article 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 6. EMBALMERS AND FUNERAL DIRECTORS.

- §30-6-3. Oath of members of board; officers; salary and expenses; bond of treasurer; meetings; powers and duties; notice; rules and regulations; school of instruction; inspection.
- §30-6-5. Embalmers and funeral directors to be licensed; qualifications and requirements for license; advertising; renewal of license; registration as apprentice; courtesy cards.
- §30-6-6. Examination, registration and renewal fees; disposition of fees; report to governor.
- §30-6-8. Duty of public officers, physicians, etc., as to disposition of body of deceased person; penalty for violation of section; hearings on refusing, suspending or revoking licenses; appeals from decisions of board; penalty for engaging in business without license; purpose of article.
- §30-6-13. License required to operate funeral establishment; application and qualifications for license; renewal; fee; manager.
- §30-6-16. Reciprocity in licensing of embalmers and funeral directors.
- §30-6-3. **Oath of members of board; officers; salary and expenses; bond of treasurer; meetings; powers and duties; notice; rules and regulations; school of instruction; inspection.**

1 Members of said board, before entering upon their
2 duties, shall take and subscribe to the oath of office
3 prescribed by the secretary of state.

4 Said board shall select from its own members a
5 president, a secretary and a treasurer. Each member
6 shall be reimbursed for his traveling expenses, incident
7 to his attendance upon the business of the board, and
8 in addition thereto, the sum of fifty dollars per day for
9 each day actually spent by such member upon the
10 business of the board. The secretary shall receive an
11 annual salary of not to exceed one thousand dollars, the
12 amount and payment of which shall be fixed by said
13 board, and in addition thereto shall receive traveling
14 and other incidental expenses incurred in the perfor-
15 mance of his duties.

16 The board may employ an executive director and such
17 clerks, inspectors and assistants as it shall deem
18 necessary to discharge the duties imposed by the
19 provisions of this article and duly promulgated rules
20 and regulations of the board and to effect its purposes,
21 and the board shall determine the duties and fix the
22 compensation of such executive director, clerks, inspec-
23 tors and assistants, subject to the general laws of the
24 state. Any inspector employed by the board shall have
25 either a West Virginia embalmer's license or a West
26 Virginia funeral director's license. Any inspection shall
27 be conducted in such a manner so as not to interfere
28 with the conduct of business within the funeral estab-
29 lishment, and the inspector shall be absolutely prohi-
30 bited from examining any books and records of the
31 funeral establishment.

32 All such expenses, per diem and compensation shall
33 be paid out of the receipts of the board, but such
34 allowances shall at no time exceed the receipts of the
35 board.

36 The treasurer of the board shall give bond to the state
37 of West Virginia in such sum as the board shall direct
38 with two or more sureties or a reliable surety company
39 approved by the board, and such bond shall be condi-
40 tioned for the faithful discharge of the duties of such

41 officer. Such bond, with approval of the board endorsed
42 thereon, shall be deposited with the treasurer of the
43 state of West Virginia.

44 The board shall hold not less than two meetings
45 during each calendar year for the purpose of examining
46 applicants for licenses, such meeting or meetings to be
47 held at such time and place as the board shall deter-
48 mine. The time and place of such meeting shall be
49 announced by publication in three daily newspapers of
50 general circulation in different locations in the state,
51 and publication to be once a week for two consecutive
52 weeks immediately preceding each such meeting.

53 The board may hold such other meetings as it may
54 deem necessary and may transact any business at such
55 meetings. Four or more members shall comprise a
56 quorum authorizing the board to transact such business
57 as is prescribed under this article.

58 The board shall have the power and it shall be its duty
59 to make and enforce all necessary rules and regulations,
60 not inconsistent with this article, for the examination
61 and licensing of funeral directors, and the general
62 practice of funeral directing; the examination and
63 licensing of embalmers and the general practice of
64 embalming and the registration and regulation of
65 apprentices; the licensing and general operation of
66 funeral establishments, except that no rules and
67 regulations issued by the board shall require that an
68 applicant for a license to operate a funeral establish-
69 ment shall be required to have either an embalmer's or
70 funeral director's license.

71 The board shall publish in its rules and regulations
72 the subjects to be covered in the said examinations and
73 the standards to be attained thereon. Changes in the
74 rules and regulations shall be published and shall be
75 given due publicity at least ninety days before becoming
76 effective.

77 The board may conduct annually a school of instruc-
78 tion to apprise funeral directors and embalmers of the
79 most recent scientific knowledge and developments
80 affecting their profession. Qualified lecturers and

81 demonstrators may be employed by the board for this
82 purpose. The board shall give notice of the time and
83 place at which such school will be held for all licensed
84 funeral directors and embalmers, and it shall be the
85 duty of every licensed funeral director and embalmer to
86 attend at least one such school or other approved
87 program, every three years: *Provided*, That the location
88 of any school of continuing education shall accommodate
89 the geographic diversity of the embalmers and funeral
90 directors of this state. Compliance with the require-
91 ments of continuing education is a prerequisite for
92 license renewal.

93 Hours of continuing education may be obtained by
94 attending and participating in board-approved pro-
95 grams, meetings, seminars or activities. It is the
96 responsibility of each licensee to finance his or her costs
97 of continuing education.

98 The board, any of its members or any duly authorized
99 employee of the board shall have the authority to enter
100 at all reasonable hours for the purpose of inspecting the
101 premises in which the business or profession of funeral
102 directing is conducted or practiced or where embalming
103 is practiced.

**§30-6-5. Embalmers and funeral directors to be licensed;
qualifications and requirements for license;
advertising; renewal of license; registration
as apprentice; courtesy cards.**

1 No person shall engage in or hold himself out as
2 engaging in, or discharge any of the duties of the
3 business or profession of embalming, or preserving in
4 any manner dead human bodies in this state, whether
5 for himself or in the employ of another, unless he holds
6 an embalmer's license issued to him by the board, and
7 shall at the date of its issuance have complied with the
8 provisions of this article.

9 No person shall engage in, or hold himself out as
10 engaging in, or discharge any of the duties of the
11 business or profession of funeral directing in this state,
12 unless he holds a funeral director's license issued to him
13 by the board, and shall at the date of its issuance have

14 complied with the provisions of this article, or conduct
15 a funeral unless he be a licensed funeral director.

16 No person shall be entitled to an embalmer's license
17 unless he:

18 (1) Is eighteen years of age or over;

19 (2) A citizen of the United States;

20 (3) Of good moral character and temperate habits;

21 (4) Holds a high school diploma or its equivalent;

22 (5) Holds an associate degree from an accredited
23 college or university or has successfully completed not
24 less than sixty semester hours or ninety quarter hours
25 of academic work in an accredited college or university
26 toward a baccalaureate degree with a declared major
27 field of study, as evidenced by a transcript submitted
28 for evaluation prior to beginning a one-year course of
29 apprenticeship as described in subdivision (6) of this
30 section and prior to obtaining a diploma of graduation
31 from a school of mortuary science as described in
32 subdivision (7) of this section;

33 (6) Has completed a one-year course of apprenticeship
34 under the supervision of a licensed embalmer actively
35 and lawfully engaged in the practice of embalming in
36 this state, such apprenticeship to consist of diligent
37 attention to the work in the course of regular and steady
38 employment and not as a side issue to another employ-
39 ment, and under which said apprenticeship he shall
40 have taken an active part in the operation of embalming
41 not less than thirty-five dead human bodies, under the
42 supervision of a licensed embalmer;

43 (7) Possesses a diploma of graduation from a school
44 of mortuary science which requires as a prerequisite to
45 graduation the completion of a course of study not less
46 than twelve months' duration, and which said school of
47 mortuary science must be one accredited by the
48 American board of funeral service education, inc., and
49 duly approved by the board; and

50 (8) Passes with an average score of not less than
51 seventy-five percent the national conference of funeral

52 services examination at a testing site provided by the
53 national conference, passes with a score of not less than
54 seventy-five percent the state law examination admin-
55 istered by the board and passes such further examina-
56 tion as the board may deem necessary to ascertain his
57 qualification and ability to engage in the practice of
58 embalming. Successfully passing the national confer-
59 ence of funeral services examination is a condition
60 precedent to taking the state law examination admin-
61 istered by the board. The board shall offer the state law
62 examination at least twice each year.

63 The board shall issue licenses separately to em-
64 balmers and to funeral directors.

65 An applicant for a funeral director's license must
66 furnish satisfactory proof to the board that his business
67 or profession of funeral directing is to be conducted in
68 a fixed place or establishment equipped for the care and
69 preparation for burial or disposition of dead human
70 bodies. What shall be deemed "necessary equipment"
71 shall be defined in the rules and regulations of the
72 board, the same to be in compliance with the public
73 health laws of the state or the rules of the state board
74 of health of West Virginia. This shall not be so construed
75 as to deny an applicant for a funeral director's license
76 such a license because he is not the owner, or part
77 owner, of an establishment or proposed funeral business.

78 Licenses issued under the provisions of this article
79 shall not be transferable or assignable.

80 No person shall be eligible to receive a license as a
81 funeral director unless he:

82 (1) Holds an embalmer's license issued by this board;

83 (2) Has been duly registered with the board as an
84 apprentice;

85 (3) Has served not less than a one-year apprenticeship
86 under the personal supervision of a licensed funeral
87 director-embalmer actively and lawfully engaged in the
88 business or profession of funeral directing and embalm-
89 ing in this state, such apprenticeship to consist of
90 diligent attention to the work in the course of regular

91 and steady employment and not as a side issue to
92 another employment including taking an active part in
93 conducting not less than thirty-five funeral services. For
94 the purpose of this section, "regular and steady employ-
95 ment" means a forty-hour week or a longer period of
96 time set at the discretion of the person by whom he is
97 employed.

98 All funeral homes or establishments or any other
99 places pertaining to funeral directing or the conducting
100 of funerals shall display in all advertising the name of
101 the licensed funeral director who is actually in charge
102 of the establishment. All branch establishments must
103 display the name of the funeral director who is actually
104 in charge. At least one licensed funeral director shall
105 supervise each main establishment and at least one
106 licensed funeral director shall directly supervise each
107 branch establishment when professional services are
108 performed at the branch establishment.

109 No licensed funeral director or licensed embalmer
110 shall be permitted to register or have registered more
111 than five apprentices under his license at the same time.

112 Any person now holding a license as an embalmer or
113 funeral director shall not be required to make a new
114 application, or submit to an examination, but shall, upon
115 the payment of the fee therefor, be entitled to a renewal
116 of his license upon the terms and conditions herein
117 provided for the renewal of licenses of those who may
118 be licensed after the effective date of this article, but
119 all such persons shall be subject to every provision of
120 this article, and such rules and regulations as the board
121 may adopt in pursuance of this article.

122 No person shall be registered as an apprentice funeral
123 director or apprentice embalmer unless he is eighteen
124 years of age, or over, a citizen of the United States, of
125 good moral character and temperate habits, the holder
126 of a high school diploma or its equivalent, and holds an
127 associate degree from an accredited college or university
128 or has successfully completed not less than sixty
129 semester hours or ninety quarter hours of academic
130 work in an accredited college or university toward a

131 baccalaureate degree with a declared major field of
132 study.

133 The board may issue annual nonrenewable courtesy
134 cards to licensed funeral directors and licensed em-
135 balmers of the states bordering on West Virginia, upon
136 application for same made on form prescribed by the
137 board. The annual fee for such courtesy cards shall be
138 fifty dollars and said fee shall be paid at the time
139 application is made therefor. Applications for said
140 courtesy cards shall be approved by the board before the
141 same may be issued, and said courtesy cards shall be
142 issued under the following conditions: Holders of
143 courtesy cards shall not be permitted to open or operate
144 a place of business for the purpose of conducting
145 funerals or embalming bodies in the state of West
146 Virginia, nor shall they be permitted to maintain an
147 office or agency in this state. A violation of this section
148 shall be sufficient cause for the board to revoke or cancel
149 the courtesy card of the violator.

**§30-6-6. Examination, registration and renewal fees;
disposition of fees; report to governor.**

1 The examination fee for a funeral director's license
2 shall be one hundred fifty dollars and shall be remitted
3 at the time the application for a funeral director's
4 license is submitted to the board.

5 The examination fee for an embalmer's license shall
6 be one hundred fifty dollars and shall be remitted at the
7 time the application for an embalmer's license is
8 submitted to the board.

9 All the licenses and certificates of registration shall
10 expire on the thirtieth day of June of each calendar year
11 and the renewal date for all licenses and certificates
12 shall be the first day of July of each calendar year.

13 The annual renewal fee for embalmer's license is
14 thirty dollars; the annual renewal fee for a funeral
15 director's license is thirty dollars; the annual renewal
16 fee for an apprentice embalmer's license is twenty-five
17 dollars; the annual renewal fee for an apprentice funeral
18 director's license is twenty-five dollars; and each shall

19 be paid on or before the first day of July of each
20 calendar year.

21 Any person who has been duly licensed as a funeral
22 director or as an embalmer under the laws of this state,
23 but who fails to renew his license within thirty days
24 after the expiration date for renewals, may file an
25 application for a renewal of his license, without
26 examination, upon payment of a penalty of fifty dollars,
27 a reinstatement fee of fifty dollars and the required
28 renewal fee.

29 Any person who has been duly licensed as a funeral
30 director or as an embalmer under the laws of this state,
31 but who fails to renew his license within sixty days after
32 the expiration date for renewals, may file an application
33 for a renewal of his license, without examination, upon
34 payment of a penalty of one hundred dollars, a reinstatement
35 fee of one hundred dollars and the required
36 renewal fee.

37 A funeral director or an embalmer whose license has
38 lapsed one year or more shall make application to the
39 board for a new license in compliance with the provi-
40 sions of this article relating to unlicensed persons.

41 Any person who has been duly registered as an
42 apprentice embalmer or apprentice funeral director and
43 fails to renew his registration within thirty days after
44 the expiration date for renewals may file an application
45 for such renewal upon payment of a penalty of fifty
46 dollars, a reinstatement fee of fifty dollars and the
47 required renewal fee. Otherwise, after the said period
48 of thirty days, his registration will automatically be
49 canceled.

50 All fees and other moneys received by the board
51 pursuant to the provisions of this article shall be kept
52 in a separate fund and expended solely for the purposes
53 of this article. After the expenditures for a fiscal year,
54 of the remaining moneys accrued and set aside for that
55 fiscal year, all sums in excess of twenty thousand dollars
56 in the separate fund shall revert to the general fund of
57 the state. The compensation provided by this article and
58 all expenses incurred, the payment of which is autho-

59 rized under this article, shall be paid from this separate
60 fund. No compensation or expense incurred under this
61 article shall be a charge against the general funds of the
62 state.

§30-6-8. Duty of public officers, physicians, etc., as to disposition of body of deceased person; penalty for violation of section; hearings on refusing, suspending or revoking licenses; appeals from decisions of board; penalty for engaging in business without license; purpose of article.

1 No public officer, employee, physician or surgeon, or
2 any other person having a professional relationship with
3 the deceased, shall send, or cause to be sent, to any
4 funeral director, undertaker, mortician or embalmer,
5 the body of any deceased person without having first
6 made due inquiry as to the desires of the next of kin,
7 or any persons who may be chargeable with the funeral
8 expenses of such deceased person; and if any such kin
9 or person can be found, his authority and direction shall
10 be received as to the disposal of said corpse.

11 Any person who shall violate the provisions of this
12 section shall be deemed guilty of a misdemeanor, and,
13 upon conviction thereof, shall be fined not less than five
14 hundred dollars, nor more than one thousand dollars, or
15 imprisoned not less than ten days nor more than ninety
16 days, or both.

17 The board may make investigations, subpoena wit-
18 nesses, administer oaths and conduct hearings.

19 No order refusing, suspending or revoking a license
20 shall be made until after a public hearing conducted by
21 the board.

22 At least twenty days prior to the date of hearing, the
23 board shall send a written notice of the time and place
24 of such hearing to the applicant, together with a
25 statement of the charges against him, by mailing the
26 same to the last-known address of such person.

27 The testimony presented and the proceedings had at
28 such hearings shall be taken in shorthand, at the

29 expense of the board, and preserved as records of the
30 board. The board shall as soon thereafter as possible
31 make its findings in determination thereof, and send a
32 copy to each interested party.

33 Any person who has been refused a license for any
34 cause or whose license has been revoked or suspended
35 may file with the secretary of the board, within thirty
36 days after the decision of the board, a written notice of
37 appeal therefrom to the circuit court of the county
38 within which such person whose license has been
39 refused, revoked or suspended resides. Upon the filing
40 of such notice, the secretary of the board shall transmit
41 to the clerk of said court the record of such proceedings.
42 Such court shall thereupon hear and determine such
43 case as in other cases of appeal. The judgment of the
44 circuit court may be reviewed upon proceedings in error
45 in the supreme court of appeals.

46 No person shall engage in the profession or business
47 of embalming or funeral directing as defined in this
48 article unless he is duly licensed as an embalmer and/or
49 as a funeral director within the meaning of this article,
50 and any person who shall engage in either business or
51 profession, or both, without having first complied with
52 the provisions of this article, or who shall violate any
53 other provisions of this article, shall be deemed guilty
54 of a misdemeanor, and, upon conviction thereof in any
55 court of competent jurisdiction, shall be fined not less
56 than two hundred dollars nor more than four hundred
57 dollars for the first offense. Upon conviction of a second
58 or subsequent offense, the violator shall be fined not less
59 than five hundred dollars nor more than one thousand
60 dollars.

61 The sanitary preparation of dead human bodies for
62 burial and the burial thereof is a public necessity, and
63 it has direct relation to the health, welfare and
64 convenience to the public, and the Legislature of this
65 state hereby finds, determines and declares that this
66 article is necessary for the immediate preservation of
67 the public peace, welfare, health and safety.

§30-6-13. License required to operate funeral establishment; application and qualifications for license; renewal; fee; manager.

1 On or before the first day of July, one thousand nine
2 hundred sixty-nine, every funeral establishment operat-
3 ing in West Virginia shall obtain a license for the
4 succeeding fiscal year beginning the first day of July,
5 one thousand nine hundred sixty-nine, as provided for
6 in this section.

7 An application for a license to operate a funeral
8 establishment shall be in writing and verified on a form
9 provided by the board and shall be accompanied by a
10 fee as herein provided, and upon receipt of the same, the
11 board shall forthwith issue or renew a license to operate
12 a funeral establishment. Such application to operate a
13 funeral establishment shall be made by any person,
14 partnership, association, corporation, organization or
15 fiduciary having controlling interest in such funeral
16 establishment.

17 Such application shall be signed by the applicant and
18 by the individual who is duly licensed as a funeral
19 director, and who shall be in charge and responsible for
20 all transactions conducted and services performed
21 therein. If such funeral establishment is owned by a
22 person who is not licensed as a funeral director or by
23 a partnership, association, corporation or other organ-
24 ization, then such owner shall have in his or its employ
25 and place in charge of such establishment a person who
26 is duly licensed as a funeral director, who shall manage,
27 conduct and have supervision of the work or business of
28 such establishment and be responsible therefor.

29 A license to operate a funeral establishment shall
30 expire on the thirtieth day of June of each calendar year
31 and the renewal date for any such license shall be the
32 first day of July of each calendar year.

33 Each funeral establishment license shall be valid only
34 for one funeral establishment to be located at a specific
35 street address or location; the fee to operate the

36 principal establishment shall be one hundred twenty-
37 five dollars per year and the fee to operate each
38 additional funeral establishment by the same applicant
39 shall be seventy-five dollars per year. Each separate
40 funeral establishment shall have its own license, which
41 license shall be prominently displayed within the
42 funeral establishment. No additional license fee shall be
43 charged if during any given year it shall be necessary
44 to reapply for a license to operate a funeral establish-
45 ment at the same or different location. A funeral
46 establishment that fails to pay fees for either the
47 principal establishment or additional establishment by
48 the first day of July of each calendar year is subject to
49 a penalty of fifty dollars and a reinstatement fee of fifty
50 dollars for each establishment and the required renewal
51 fee.

52 The holder of any funeral establishment license who
53 ceases to operate the funeral establishment at the
54 location specified in the application shall, within twenty
55 days thereafter, surrender the funeral establishment
56 license to the board and such license shall be canceled
57 by the board, except that in the event of the death of
58 an individual who was the holder of a funeral establish-
59 ment license, it shall be the duty of such holder's
60 personal representative to surrender such funeral
61 establishment license within one hundred twenty days
62 of qualifying as such personal representative. It shall be
63 the duty of any holder of a funeral establishment license,
64 pursuant to this section, to notify the board within thirty
65 days if for any reason the licensed funeral director
66 whose name is signed to the application for the issuance
67 thereof, ceases to be employed by such funeral establish-
68 ment. Within thirty days after such notification, such
69 holder of a funeral establishment license may execute
70 a new application for a funeral establishment license
71 signed by the applicant and by the licensed funeral
72 director who shall be in charge of and responsible for
73 all transactions conducted and services performed
74 within the funeral establishment. Failure to comply

75 with any of these provisions shall be grounds for
76 revocation of a funeral establishment license.

77 A licensee whose embalmer's license, funeral direc-
78 tor's license or license to operate a funeral establishment
79 has been revoked under this article shall not operate,
80 either directly or indirectly, or hold any interest in any
81 funeral establishment. Nothing herein contained shall
82 prohibit a licensee whose license has been revoked from
83 leasing any property owned by him or them for use as
84 a funeral establishment so long as he or they do not
85 participate in the control or profit of such funeral
86 establishment otherwise than as a lessor of the premises
87 for a fixed rental not dependent upon earnings.

**§30-6-16. Reciprocity in licensing of embalmers and
funeral directors.**

1 The board may recognize licenses issued to funeral
2 directors or embalmers from other states, and, upon
3 presentation of such license, may, upon the payment of
4 the sum of sixty dollars to the director of the board,
5 issue to the lawful holder thereof, the funeral director's
6 or embalmer's license provided for in this article:
7 *Provided*, That such recognition shall not be extended
8 to funeral directors or embalmers holding licenses from
9 other states unless reciprocal rights are provided by
10 such other states to holders of funeral director's or
11 embalmer's licenses granted in this state. Such recipro-
12 cal licenses may be renewed annually upon payment of
13 the renewal license fee as provided for in section six for
14 license holders residing in this state. No person is
15 entitled to a reciprocal license as a funeral director or
16 embalmer unless he furnishes proof that he has, in the
17 state in which he is regularly licensed, complied with
18 requirements substantially equal to those set out in this
19 article.

CHAPTER 163

(H. B. 4003—By Delegate Douglas)

[Passed March 6, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, six and eight, article seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the temporary licensure of registered professional nurses duly licensed under the laws of another state; temporary license fees; increase of renewal and reinstatement fees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-1. Definitions.

§30-7-6. Qualifications; licensure; fees; temporary permits.

§30-7-8. Renewal of licenses; reinstatement; fees; penalties; inactive list.

§30-7-1. Definitions.

1 As used in this article the term:

2 (a) "Board" shall mean the West Virginia board of
3 examiners for registered professional nurses;

4 (b) The practice of "registered professional nursing"
5 shall mean the performance for compensation of any
6 service requiring substantial specialized judgment and
7 skill based on knowledge and application of principles
8 of nursing derived from the biological, physical and
9 social sciences, such as responsible supervision of a
10 patient requiring skill in observation of symptoms and
11 reactions and the accurate recording of the facts, or the
12 supervision and teaching of other persons with respect
13 to such principles of nursing, or in the administration
14 of medications and treatments as prescribed by a
15 licensed physician or a licensed dentist, or the applica-

16 tion of such nursing procedures as involve understand-
17 ing of cause and effect in order to safeguard life and
18 health of a patient and others;

19 (c) "Temporary permit" means a permit authorizing
20 the holder to practice registered professional nursing in
21 this state until such permit is no longer effective or the
22 holder is granted a license by the West Virginia state
23 board of examiners for registered professional nurses.

§30-7-6. Qualifications; licensure; fees; temporary permits.

1 To obtain a license to practice registered professional
2 nursing, an applicant for such license shall submit to the
3 board written evidence, verified by oath, that he or she
4 (a) is of good moral character; (b) has completed an
5 approved four-year high school course of study or the
6 equivalent thereof, as determined by the appropriate
7 educational agency; and (c) has completed an accredited
8 program of registered professional nursing education
9 and holds a diploma of a school accredited by the board.

10 The applicant shall also be required to pass a written
11 examination in such subjects as the board may deter-
12 mine. Each written examination may be supplemented
13 by an oral examination. Upon successfully passing such
14 examination or examinations, the board shall issue to
15 the applicant a license to practice registered profes-
16 sional nursing. The board shall determine the times and
17 places for examinations. In the event an applicant shall
18 have failed to pass examinations on two occasions, the
19 applicant shall, in addition to the other requirements of
20 this section, present to the board such other evidence of
21 his or her qualifications as the board may prescribe.

22 The board may, upon application, issue a license to
23 practice registered professional nursing by endorsement
24 to an applicant who has been duly licensed as a
25 registered professional nurse under the laws of another
26 state, territory or foreign country if in the opinion of the
27 board the applicant meets the qualifications required of
28 registered professional nurses at the time of graduation.

29 The board may, upon application and proper identi-

30 fication determined by the board, issue a temporary
31 permit to practice registered professional nursing by
32 endorsement to an applicant who has been duly licensed
33 as a registered professional nurse under the laws of
34 another state, territory or foreign country. Such
35 temporary permit authorizes the holder to practice
36 registered professional nursing in this state while the
37 temporary permit is effective. A temporary permit shall
38 be effective for ninety days, unless the board revokes
39 such permit prior to its expiration, and such permit may
40 not be renewed. Any person applying for a temporary
41 license under the provisions of this paragraph shall,
42 with his or her application, pay to the board a nonre-
43 fundable fee of ten dollars.

44 Any person holding a valid license designated as a
45 "waiver license" may submit an application to the board
46 for a license containing no reference to the fact that such
47 person has theretofore been issued such "waiver license."
48 The provisions of this section relating to examination
49 and fees and the provisions of all other sections of this
50 article shall apply to any application submitted to the
51 board pursuant to the provisions of this paragraph.

52 Any person applying for a license to practice regis-
53 tered professional nursing under the provisions of this
54 article shall, with his or her application, pay to the
55 board a fee of forty dollars: *Provided*, That the fee to
56 be paid for the year commencing the first day of July,
57 one thousand nine hundred eighty-two, shall be seventy
58 dollars: *Provided, however*, That the board in its
59 discretion may, by rule or regulation, decrease either or
60 both said license fees. In the event it shall be necessary
61 for the board to reexamine any applicant for a license,
62 an additional fee shall be paid to the board by the
63 applicant for reexamination: *Provided further*, That the
64 total of such additional fees shall in no case exceed one
65 hundred dollars for any one examination.

66 Any person holding a license heretofore issued by the
67 West Virginia state board of examiners for registered
68 nurses and which license is valid on the date this article
69 becomes effective shall be deemed to be duly licensed
70 under the provisions of this article for the remainder of

71 the period of any such license heretofore issued. Any
72 such license heretofore issued shall also, for all purposes,
73 be deemed to be a license issued under this article and
74 to be subject to the provisions hereof.

75 The board shall, upon receipt of a duly executed
76 application for licensure and of the accompanying fee of
77 seventy dollars, issue a temporary permit to practice
78 registered professional nursing to any applicant who has
79 received a diploma from a school of nursing approved
80 by the board pursuant to this article after the date the
81 board last scheduled a written examination for persons
82 eligible for licensure: *Provided*, That no such temporary
83 permit shall be renewable nor shall any such permit be
84 valid for any purpose subsequent to the date the board
85 has announced the results of the first written examina-
86 tion given by the board following the issuance of such
87 permit.

**§30-7-8. Renewal of licenses; reinstatement; fees; penal-
ties; inactive list.**

1 The license of every person licensed and registered
2 under the provisions of this article shall be annually
3 renewed except as hereinafter provided. At such time
4 or times as the board in its discretion may determine,
5 the board shall mail a renewal application to every
6 person whose license was renewed during the previous
7 year and every such person shall fill in such application
8 blank and return it to the board with a renewal fee of
9 twenty-five dollars within thirty days after receipt of
10 said renewal application: *Provided*, That the board in its
11 discretion by rule may increase or decrease the renewal
12 fee. Upon receipt of the application and fee, the board
13 shall verify the accuracy of the application and, if the
14 same be accurate, issue to the applicant a certificate of
15 renewal for the current year. Such certificate of renewal
16 shall entitle the holder thereof to practice registered
17 professional nursing for the period stated on the
18 certificate of renewal. Any licensee who allows his or
19 her license to lapse by failing to renew the license as
20 provided above may be reinstated by the board on
21 satisfactory explanation for such failure to renew his or
22 her license and on payment to the board of the renewal

23 fee hereinabove provided and a reinstatement fee of fifty
24 dollars. Any person practicing registered professional
25 nursing during the time his or her license has lapsed
26 shall be considered an illegal practitioner and shall be
27 subject to the penalties provided for violation of this
28 article. A person licensed under the provisions of this
29 article desiring to retire from practice temporarily shall
30 send a written notice of such desire to the board. Upon
31 receipt of such notice the board shall place the name of
32 such person upon the inactive list. While remaining on
33 this list the person shall not be subject to the payment
34 of any renewal fees and shall not practice registered
35 professional nursing in this state. When the person
36 desires to resume active practice, application for
37 renewal of license and payment of the renewal fee for
38 the current year shall be made to the board.

CHAPTER 164

(H. B. 4158—By Mr. Speaker, Mr. Chambers, and Delegate Burk,
By Request of the Executive)

[Passed February 10, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto three new sections, designated sections fifteen-a, fifteen-b and fifteen-c; to amend and reenact sections one, two, three, five, six and seven, article fifteen of said chapter thirty; and to further amend said article fifteen by adding thereto three new sections, designated sections seven-a, seven-b and seven-c, all relating to provisions for registered professional nurses and nurse-midwives prescriptive authority for prescription drugs, collaborative relationship with physician requirements, rules, classification of drugs to be prescribed, coordination with boards, eligibility for prescriptive authority, application, fee, form of prescriptions, termination of authority, renewal, notification of termination of authority, nurse-midwives definitions, licenses, qualifications, annual registration

fee, suspension or revocation of licenses, and limitations of authority.

Be it enacted by the Legislature of West Virginia:

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

Article

- 7. Registered Professional Nurses.
- 15. Nurse-Midwives.

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-15a. Prescriptive authority for prescription drugs; collaborative relationship with physician requirements; promulgation of rules; classification of drugs to be prescribed; coordination with other boards; coordination with board of pharmacy.

§30-7-15b. Eligibility for prescriptive authority; application; fee.

§30-7-15c. Form of prescriptions; termination of authority; renewal; notification of termination of authority.

§30-7-15a. Prescriptive authority for prescription drugs; collaborative relationship with physician requirements; promulgation of rules; classification of drugs to be prescribed; coordination with other boards; coordination with board of pharmacy.

1 (a) The board may, in its discretion, authorize an
 2 advanced nurse practitioner to prescribe prescription
 3 drugs in a collaborative relationship with a physician
 4 licensed to practice in West Virginia and in accordance
 5 with applicable state and federal laws. An authorized
 6 advanced nurse practitioner may write or sign prescrip-
 7 tions or transmit prescriptions verbally or by other
 8 means of communication.

9 (b) For purposes of this section an agreement to a
 10 collaborative relationship for prescriptive practice

11 between a physician and an advanced nurse practitioner
12 shall be set forth in writing. Verification of such
13 agreement shall be filed with the board by the advanced
14 nurse practitioner. The board shall forward a copy of
15 such verification to the board of medicine. Collaborative
16 agreements shall include, but not be limited to, the
17 following:

18 (1) Mutually agreed upon written guidelines or
19 protocols for prescriptive authority as it applies to the
20 advanced nurse practitioner's clinical practice;

21 (2) Statements describing the individual and shared
22 responsibilities of the advanced nurse practitioner and
23 the physician pursuant to the collaborative agreement
24 between them;

25 (3) Periodic and joint evaluation of prescriptive
26 practice; and

27 (4) Periodic and joint review and updating of the
28 written guidelines or protocols.

29 (c) The board shall promulgate legislative rules in
30 accordance with the provisions of chapter twenty-nine-
31 a of this code governing the eligibility and extent to
32 which an advanced nurse practitioner may prescribe
33 drugs. Such rules shall provide, at a minimum, a state
34 formulary classifying those categories of drugs which
35 shall not be prescribed by advanced nurse practitioners,
36 including, but not limited to, Schedules I and II of the
37 Uniform Controlled Substances Act, anticoagulants,
38 antineoplastics, radio-pharmaceuticals and general
39 anesthetics. Drugs listed under Schedule III shall be
40 limited to a seventy-two hour supply without refill.

41 (d) The board shall consult with other appropriate
42 boards for the development of the formulary.

43 (e) The board shall transmit to the board of pharmacy
44 a list of all advanced nurse practitioners with prescrip-
45 tive authority. The list shall include:

46 (1) The name of the authorized advanced nurse
47 practitioner;

48 (2) The prescriber's identification number assigned by
49 the board; and

50 (3) The effective date of prescriptive authority.

**§30-7-15b. Eligibility for prescriptive authority; applica-
tion; fee.**

1 An advanced nurse practitioner who applies for
2 authorization to prescribe drugs shall:

3 (a) Be licensed and certified in West Virginia as an
4 advanced nurse practitioner holding a baccalaureate
5 degree in science or the arts;

6 (b) Not be less than eighteen years of age;

7 (c) Provide the board with evidence of successful
8 completion of forty-five contact hours of education in
9 pharmacology and clinical management of drug therapy
10 under a program approved by the board, fifteen hours
11 of which shall be completed within the two-year period
12 immediately before the date of application;

13 (d) Provide the board with evidence that he or she is
14 a person of good moral character and not addicted to
15 alcohol or the use of controlled substances; and

16 (e) Submit a completed, notarized application to the
17 board, accompanied by a fee of one hundred twenty-five
18 dollars.

**§30-7-15c. Form of prescriptions; termination of author-
ity; renewal; notification of termination of
authority.**

1 (a) Prescriptions authorized by an advanced nurse
2 practitioner must comply with all applicable state and
3 federal laws; must be signed by the prescriber with the
4 initials "A.N.P." or the designated certification title of
5 the prescriber; and must include the prescriber's
6 identification number assigned by the board.

7 (b) Prescriptive authorization shall be terminated if
8 the advanced nurse practitioner has:

9 (1) Not maintained current authorization as an

10 advanced nurse practitioner; or

11 (2) Prescribed outside the advanced nurse practition-
12 er's scope of practice or has prescribed drugs for other
13 than therapeutic purposes; or

14 (3) Has not filed verification of a collaborative
15 agreement with the board.

16 (c) Prescriptive authority for an advanced nurse
17 practitioner must be renewed biennially. Documentation
18 of eight contact hours of pharmacology during the
19 previous two years must be submitted at the time of
20 renewal.

21 (d) The board shall notify the board of pharmacy and
22 the board of medicine within twenty-four hours after
23 termination of, or change in, an advanced nurse
24 practitioner's prescriptive authority.

ARTICLE 15. NURSE-MIDWIVES.

§30-15-1. Definitions.

§30-15-2. Licenses required.

§30-15-3. Qualifications for licensing.

§30-15-5. Form of licenses; annual registration fee.

§30-15-6. Suspension or revocation of licenses.

§30-15-7. Limitations of authority; collaborative relationship with phys-
icians.

§30-15-7a. Prescriptive authority for prescription drugs; collaborative rela-
tionship with physician requirements; promulgation of rules;
classification of drugs to be prescribed; consultation with
other boards; coordination with board of pharmacy.

§30-15-7b. Eligibility for prescriptive authority; application; fee.

§30-15-7c. Form of prescription; termination of authority; renewal; notifica-
tion of termination of authority.

§30-15-1. Definitions.

1 The following terms wherever used or referred to in
2 this article shall have the following meaning:

3 (a) "Midwife" means a person who assists in the
4 management and care of a woman and her infant during
5 the prenatal, delivery and postnatal periods.

6 (b) "Midwifery" means the practice of performing the
7 service of a midwife for a fee or compensation.

8 (c) "Nurse-midwife" means a qualified professional

9 nurse registered with the West Virginia board of
10 examiners for registered professional nurses who by
11 virtue of additional training is specifically qualified to
12 practice nurse-midwifery according to the statement of
13 standards for the practice of nurse-midwifery as set
14 forth by the American college of nurse-midwives.

15 (d) "Board" means the West Virginia board of
16 examiners for registered professional nurses.

§30-15-2. Licenses required.

1 (a) No person, other than a physician, shall engage or
2 hold themselves out as practicing nurse-midwifery
3 without a license to do so issued by the West Virginia
4 board of examiners for registered professional nurses:
5 *Provided*, That this requirement does not apply to those
6 midwives who hold a license upon the first day of July,
7 one thousand nine hundred seventy-three, issued by the
8 West Virginia board of health. Persons holding licenses
9 on said date issued by the said board of health shall be
10 permitted to practice midwifery as formerly defined
11 and according to the authority granted to them upon the
12 issuance of their licenses, until the expiration of such
13 licenses without the privilege of renewal.

14 (b) No person may practice or offer to practice as a
15 nurse-midwife with prescriptive authority without a
16 license to do so issued by the West Virginia board of
17 examiners for registered professional nurses and issued
18 pursuant to section seven-a of this article.

§30-15-3. Qualifications for licensing.

1 (a) A nurse-midwife license shall be issued by the
2 board to any applicant who provides evidence that he
3 or she:

4 (1) Is a registered professional nurse licensed by the
5 board;

6 (2) Is a graduate of a nurse-midwifery education
7 program approved by the American college of nurse-
8 midwives or any American college of nurse-midwives
9 designated successor organization; and

10 (3) Is certified by the American college of nurse-
11 midwives.

12 (b) Any nurse-midwife who desires privileges for
13 prescriptive authority as described in section seven-a of
14 this article must, in addition to the evidence required
15 by subsection (a) of this section, submit to the board the
16 information required by section seven-b herein.

§30-15-5. Form of licenses; annual registration fee.

1 (a) Licenses or certificates issued by the board shall
2 bear a serial number, the full name of the applicant, the
3 date of issuance of any such license, the seal of the board
4 and the signature of the executive secretary of the
5 board: *Provided*, That if prescriptive authority has been
6 granted pursuant to section seven-a of this article, such
7 authorization shall also be included on each license or
8 certificate issued by the board.

9 (b) Every licensed nurse-midwife shall procure from
10 the secretary of the board annually, on or before the first
11 day of July, a certificate of registration. The certificate
12 shall be issued by said secretary upon the payment of
13 a fee to be fixed by the board, not to exceed the sum
14 of ten dollars. The secretary shall mail annually, on or
15 before the first day of June, to each licensed nurse-
16 midwife a printed blank form to be properly filled in
17 and returned by such licensed person on or before the
18 first day of July to the secretary of the board. Upon the
19 receipt of the form properly filled in, and such fee, the
20 annual certificate of registration shall be issued and
21 transmitted.

22 (c) The authority to practice as a nurse-midwife with
23 prescriptive authority shall be indicated on the appli-
24 cant's registered professional license issued by the
25 board.

§30-15-6. Suspension or revocation of licenses.

1 (a) The board may suspend or revoke a license for any
2 of the following reasons:

- 3 (1) Failure to remain current in annual registration;
- 4 (2) Gross negligence in performance of service as
5 provided by the statement of standards for the practice
6 of nurse-midwifery by the American college of nurse-
7 midwives; or

8 (3) The commission of a crime in association with the
9 practice of nurse-midwifery.

10 (b) Before any license shall be revoked or suspended,
11 the accused shall be furnished with a written statement
12 of the reasons for such suspension or revocation and
13 shall be given reasonable notice of, and be entitled to,
14 a hearing before the board, in person, or by attorney,
15 according to the provisions of chapter twenty-nine-a of
16 this code.

§30-15-7. Limitations of authority; collaborative relationship with physicians.

1 The license to practice nurse-midwifery shall entitle
2 the holder to practice such profession according to the
3 statement of standards of the American college of nurse-
4 midwives, and such holder shall be required to practice
5 in a collaborative relationship with a licensed physician
6 engaged in family practice or the specialized field of
7 gynecology or obstetrics, or as a member of the staff of
8 any maternity, newborn or family planning service
9 approved by the West Virginia department of health
10 and human resources, who, as such, shall practice nurse-
11 midwifery in a collaborative relationship with a board-
12 certified or board-eligible obstetrician, gynecologist or
13 the primary-care physician normally directly responsible
14 for obstetrical and gynecological care in said area
15 of practice.

§30-15-7a. Prescriptive authority for prescription drugs; collaborative relationship with physician requirements; promulgation of rules; classification of drugs to be prescribed; consultation with other boards; coordination with board of pharmacy.

1 (a) The board shall, in its discretion, authorize a
2 nurse-midwife to prescribe prescription drugs in a
3 collaborative relationship with a physician licensed to
4 practice in West Virginia and in accordance with
5 applicable state and federal laws. An authorized nurse-
6 midwife may write or sign prescriptions or transmit
7 prescriptions verbally or by other means of communi-
8 cation.

9 (b) For purposes of this section an agreement to a
10 collaborative relationship for practice between a
11 physician and a nurse-midwife shall be set forth in
12 writing. Verification of such agreement shall be filed
13 with the board by the nurse-midwife. The board shall
14 forward a copy of such verification to the board of
15 medicine. Collaborative agreements shall include, but
16 not be limited to, the following:

17 (1) Mutually agreed upon written guidelines or
18 protocols for prescriptive practice as it applies to the
19 nurse-midwife's clinical practice;

20 (2) Statements describing the individual and shared
21 responsibilities of the nurse-midwife and the physician
22 pursuant to the collaborative agreement between them;

23 (3) Periodic and joint evaluation of prescriptive
24 practice; and

25 (4) Periodic and joint review and updating of the
26 written guidelines or protocols.

27 (c) The board shall promulgate legislative rules in
28 accordance with the provisions of chapter twenty-nine-
29 a of this code governing the eligibility and extent to
30 which a nurse-midwife may prescribe drugs. Such rules
31 shall provide, at a minimum, a state formulary classi-
32 fying those categories of drugs which shall not be
33 prescribed by nurse-midwives, including, but not
34 limited to, Schedules I and II of the Uniform Controlled
35 Substances Act, anticoagulants, antineoplastics, radio-
36 pharmaceuticals and general anesthetics. Drugs listed
37 under schedule III shall be limited to a seventy-two hour
38 supply without refill.

39 (d) The board shall consult with other appropriate
40 boards for development of the formulary.

41 (e) The board shall transmit to the board of pharmacy
42 a list of all nurse-midwives with prescriptive authority.
43 The list shall include:

44 (1) The name of the authorized nurse-midwife;

45 (2) The prescriber's identification number assigned
46 by the board; and

47 (3) The effective date of prescriptive authority.

§30-15-7b. Eligibility for prescriptive authority; application; fee.

1 A nurse-midwife who applies for authorization to
2 prescribe drugs shall:

3 (a) Be licensed and certified as a nurse-midwife in the
4 state of West Virginia;

5 (b) Not be less than eighteen years of age;

6 (c) Provide the board with evidence of successful
7 completion of forty-five contact hours of education in
8 pharmacology and clinical management of drug therapy
9 under a program approved by the board, fifteen of
10 which shall be completed within the two-year period
11 immediately before the date of application;

12 (d) Provide the board with evidence that he or she is
13 a person of good moral character and not addicted to
14 alcohol or the use of controlled substances; and

15 (e) Submit a completed, notarized application to the
16 board, accompanied by a fee of one hundred twenty-five
17 dollars.

§30-15-7c. Form of prescription; termination of authority; renewal; notification of termination of authority.

1 (a) Prescriptions authorized by a nurse-midwife must
2 comply with all applicable state and federal laws; must
3 be signed by the prescriber with the initials "C.N.M.";
4 and must include the prescriber's identification number
5 assigned by the board.

6 (b) Prescriptive authorization shall be terminated if
7 the nurse-midwife has:

8 (1) Not maintained current authorization as a nurse-
9 midwife; or

10 (2) Prescribed outside the nurse-midwife's scope of
11 practice or has prescribed drugs for other than thera-
12 peutic purposes; or

13 (3) Has not filed verification of a collaborative
14 agreement with the board.

15 (c) Prescriptive authority for a nurse-midwife must
16 be renewed biennially. Documentation of eight contact
17 hours of pharmacology during the previous two years
18 must be submitted at the time of renewal.

19 (d) The board shall notify the board of pharmacy and
20 the board of medicine within twenty-four hours after
21 termination of, or change in, a nurse-midwife's prescrip-
22 tive authority.

CHAPTER 165

(Com. Sub. for S. B. 526—By Senator Burdette, Mr. President)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article thirteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to engineering; establishing an engineering board of registration; providing for legislative findings; defining certain terms; providing for registration of professional engineers; providing for the powers, duties and responsibilities of the board; allowing the board to levy fines; promulgate rules; develop certain ethical standards; and providing for certain criminal penalties.

Be it enacted by the Legislature of West Virginia:

That article thirteen, 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 13. ENGINEERS.

- §30-13-1. Legislative findings; intent.
- §30-13-2. General provisions.
- §30-13-3. Definitions.
- §30-13-4. Board of registration for professional engineers; appointment and term.
- §30-13-5. Board qualifications.
- §30-13-6. Compensation and expenses.
- §30-13-7. Removal of members and vacancies.
- §30-13-8. Organization and meetings.
- §30-13-9. Board powers.

- §30-13-10. Receipt of fees, fund established, disbursements.
- §30-13-11. Records and reports.
- §30-13-12. Roster.
- §30-13-13. General requirements for registration.
- §30-13-14. Application and registration fee.
- §30-13-15. Examinations.
- §30-13-16. Certificates and seals.
- §30-13-17. Authorization certificates.
- §30-13-18. Expirations and renewals.
- §30-13-19. Reissuance of certificates.
- §30-13-20. Public works.
- §30-13-21. Disciplinary action—Revocation, suspension, refusal to issue, restore or renew, probation, fine, reprimand.
- §30-13-22. Disciplinary action—Procedures.
- §30-13-23. Criminal offenses.
- §30-13-24. Exemptions.

§30-13-1. Legislative findings; intent.

1 The Legislature hereby determines the need to
2 regulate the practice of engineering; to provide for the
3 registration of qualified persons as professional engi-
4 neers and the certification of engineer interns; to define
5 the terms “engineer”, “professional engineer”, “engineer
6 intern” and “practice of engineering”; to create a state
7 board of registration for professional engineers and
8 provide for the appointment and compensation of its
9 members; to fix the term of members of the board and
10 define its powers and duties; to set forth the minimum
11 qualifications and other requirements for registration as
12 an engineer and certification as an engineer intern; to
13 establish registration fees with expiration and renewal
14 requirements; to impose certain duties upon the state
15 and political subdivisions thereof in connection with
16 public works; and to provide for the enforcement of this
17 article and penalties for its violation.

§30-13-2. General provisions.

1 In order to safeguard life, health and property and to
2 promote the public welfare, the practice of engineering
3 in this state is hereby declared to be subject to
4 regulation in the public interest. It is unlawful for any
5 person to practice or to offer to practice engineering in
6 this state, as defined in the provisions of this article, or
7 to use in connection with his or her name or otherwise
8 assume or advertise any title or description tending to

9 convey the impression that he or she is a registered or
10 licensed engineer, unless the person has been duly
11 registered or exempted under the provisions of this
12 article. Engineering is hereby declared a learned
13 profession and its practitioners are held accountable to
14 the state and the public by professional standards in
15 keeping with the ethics and practice of other learned
16 professions in this state. The practice of engineering is
17 a privilege granted by the state.

§30-13-3. Definitions.

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

3 (a) "Board" means the West Virginia state board of
4 registration for professional engineers as provided for in
5 this article.

6 (b) "Consulting engineer" means a professional
7 engineer whose principal occupation is the independent
8 practice of engineering; whose livelihood is obtained by
9 offering engineering services to the public; who serves
10 clients as an independent fiduciary; who is devoid of
11 public, commercial and product affiliation that might
12 tend to infer a conflict of interest; and who is cognizant
13 of their public and legal responsibilities and is capable
14 of discharging them.

15 (c) "Engineer" means a person who is qualified to
16 practice engineering by reason of special knowledge and
17 use of the mathematical, physical and engineering
18 sciences and the principles and methods of engineering
19 analysis and design, acquired by engineering education
20 and engineering experience.

21 (d) "Engineer intern" means a person who has
22 qualified for, taken and has passed an examination in
23 the fundamental engineering subjects, as provided in
24 this article.

25 (e) "Practice of engineering" means any service or
26 creative work, the adequate performance of which
27 requires engineering education, training and experience
28 in the application of special knowledge of the mathem-
29 atical, physical and engineering sciences to such services

30 or creative work as consultation, investigation, evaluation,
31 tion, planning and design of engineering works and
32 systems; planning the use of land and water; teaching
33 of advanced engineering subjects, engineering surveys
34 and studies; and the review of construction for the
35 purpose of assuring compliance with drawings and
36 specifications any of which embraces such services or
37 work, either public or private, in connection with any
38 utilities, structures, buildings, machines, equipment,
39 processes, work systems, projects and industrial or
40 consumer products or equipment of a mechanical,
41 electrical, hydraulic, pneumatic or thermal nature,
42 insofar as they involve safeguarding life, health or
43 property, and including such other professional services
44 as may be necessary to the planning, progress and
45 completion of any engineering services. Engineering
46 surveys include all survey activities required to support
47 the sound conception, planning, design, construction,
48 maintenance and operation of engineered projects.

49 Any person who practices any branch of the profes-
50 sion of engineering or who, by verbal claim, sign,
51 advertisement, letterhead, card or in any other way
52 represents himself or herself to be a professional
53 engineer, or by using another title implies that he or she
54 is a professional engineer or that he or she is registered
55 under this article or who holds himself or herself out as
56 able to perform, or who performs any engineering
57 service or work or any other service designated by the
58 practitioner which is recognized as engineering, is
59 considered to practice or offer to practice engineering
60 within the meaning and intent of this article.

61 (f) "Professional engineer" means a person who has
62 been duly registered or licensed as a professional
63 engineer by the board. The board may designate a
64 professional engineer, on the basis of education, expe-
65 rience and examination, as being licensed in a specific
66 discipline or branch of engineering signifying the area
67 in which the engineer has demonstrated competence.

68 (g) "Responsible charge" means direct control and
69 personal supervision of engineering work.

70 (h) "Rules of professional responsibility for profes-
71 sional engineers" means those rules, if any, promulgated
72 by the West Virginia state board of registration for
73 professional engineers as authorized by this article.

§30-13-4. Board of registration for professional engineers; appointment and term.

1 There is hereby created the board of registration for
2 professional engineers which shall hereafter be referred
3 to as the board. The board shall be composed of five
4 members appointed by the governor, by and with the
5 consent of the Senate, preferably from a list of names
6 submitted by the West Virginia society of professional
7 engineers. The members of the board shall be qualified
8 and shall meet the requirements of section five of this
9 article. The governor shall present each board member
10 with a certificate of appointment. Each board member
11 shall make and file an oath or affirmation with the
12 secretary of state to faithfully execute the duties of a
13 member of the board. Members of the board shall serve
14 a term of five years. Of the members first appointed,
15 one shall serve a term of one year, one shall serve a term
16 of two years, one shall serve a term of three years, one
17 shall serve a term of four years and one shall serve a
18 term of five years. Members are eligible for reappoint-
19 ment but no member may be appointed for more than
20 three full consecutive terms. Each member shall hold
21 office until the expiration of the term for which
22 appointed or until a successor has been duly appointed
23 and has qualified. In the event of a vacancy on the board
24 due to resignation, death or for any cause resulting in
25 an unexpired term and if not filled within three months
26 by the governor, the board may appoint a member to
27 serve in the vacancy until the governor makes the
28 appointment. Members of the former board whose terms
29 have not expired shall fill the term on this board which
30 corresponds with the length of the unexpired term of
31 that member.

§30-13-5. Board qualifications.

1 Each member of the board must be a citizen of the
2 United States and a resident of this state. Each member

3 shall have been engaged in the lawful practice of
4 engineering as a professional engineer for at least
5 twelve years; shall have been in responsible charge of
6 engineering projects for at least five years; and shall be
7 a registered professional engineer in this state.

§30-13-6. Compensation and expenses.

1 Members of the board shall be compensated not to
2 exceed fifty dollars per diem for time spent in actually
3 performing the duties of the board and shall be
4 reimbursed for reasonable and necessary expenses
5 actually incurred in the performance of board related
6 duties.

§30-13-7. Removal of members and vacancies.

1 The governor may remove any member of the board
2 for misconduct, incompetency, neglect of duty or for any
3 reason prescribed by law for removal of state officials.
4 Vacancies in the membership of the board shall be filled
5 for the unexpired term.

§30-13-8. Organization and meetings.

1 The board shall hold at least one regular meeting each
2 year. Special meetings may be held as the bylaws of the
3 board provide. Each year the board shall elect the
4 following officers: A president, a vice president and a
5 secretary, who shall serve at the will and pleasure of the
6 board. A quorum of the board shall consist of not less
7 than three professional engineer members.

§30-13-9. Board powers.

1 (a) The board may adopt and amend bylaws not
2 inconsistent with the constitution and laws of this state.
3 The board may promulgate and shall adopt "rules of
4 professional responsibility for professional engineers".
5 These rules are binding to any person registered with
6 the board under the provisions of this article. These
7 rules are also applicable to firms holding a certificate
8 of authorization as provided in section seventeen of this
9 article.

10 (b) The board may subpoena witnesses and compel
11 their attendance and it may also subpoena books,

12 papers, documents or other pertinent data in any
13 disciplinary matters or in any case involving an
14 allegation of a violation of the provisions of this article.
15 The board may apply to the circuit court of Kanawha
16 county to enforce compliance with any subpoena it
17 issues.

18 (c) The board may seek an injunction in circuit court
19 to enforce the provisions of this article or to restrain a
20 person or entity from violating a provision of this article.
21 In pursuing injunctive relief under this section, the
22 board shall not be required to prove that an adequate
23 remedy at law does not exist or that substantial or
24 irreparable damage would result from the continued
25 violation. The members of the board may not be
26 personally liable for any decisions made in good faith
27 in pursuing injunctive relief.

28 (d) The board may require all applicants for registra-
29 tion to take and successfully pass an examination of
30 their fitness and qualifications to become registered.

31 (e) The board may require that a registered profes-
32 sional engineer demonstrate continuing professional
33 competency in engineering as a condition of renewal or
34 reregistration.

35 (f) Board members are exempt from civil liability for
36 any decision made or any act done in good faith in the
37 performance of any duty or the exercise of any power
38 granted under this article.

**§30-13-10. Receipt of fees, fund established, disburse-
ments.**

1 There is hereby established within the state treasury
2 a "board of professional engineers fund". The board
3 shall deposit all fees and other moneys received by the
4 board into the fund. The moneys in the fund shall be
5 used for expenses of the board and shall be requisitioned
6 on the signatures of the president and secretary of the
7 board. The secretary of the board shall annually furnish
8 an accounting of all funds received and expended by the
9 board to the governor and to each house of the Legis-
10 lature. The board may use the moneys in the fund to

11 employ necessary staff, pay for membership fees to the
12 national council of examiners for engineering and
13 surveying and for any other necessary and reasonable
14 expense of the board: *Provided*, That the board may not
15 issue warrants in excess of moneys in the fund.

§30-13-11. Records and reports.

1 (a) The board shall keep a record of its proceedings
2 and of all applications for registration. The record shall
3 show: (1) The name, age and last known address of each
4 applicant; (2) the date of application; (3) place of
5 business of such applicant; (4) education, experience and
6 other qualifications; (5) type of examination required; (6)
7 whether or not the applicant was rejected; (7) whether
8 or not a certificate of registration was granted; (8) the
9 date of the action by the board; and (9) such information
10 as may be deemed necessary by the board.

11 (b) The record of the board is prima facie evidence
12 of the proceedings of the board and a transcript duly
13 certified by the secretary, shall be admissible as
14 evidence with the same force and effect as if the original
15 were produced.

16 (c) On the first day of July of each year, the board
17 shall submit to the governor a report of its transactions
18 of the preceding year and shall transmit to the governor
19 a complete statement of the receipts and expenditures
20 of the board, attested to by affidavits of its chairman
21 and secretary.

22 (d) Board records and papers of the following class
23 are of a confidential nature and are not public records:
24 Examination material for examinations not yet given,
25 file records of examination problem solutions, letters of
26 inquiry and reference concerning applicants, board
27 inquiry forms concerning applicants, investigation files
28 where any investigation is still pending and all other
29 materials of like confidential nature.

§30-13-12. Roster.

1 A complete roster with the names and the last known
2 addresses of all registered professional engineers shall
3 be published by the secretary of the board at intervals

4 established by the board. Copies of this roster may be
5 mailed to each person registered and shall be placed on
6 file with the secretary of state and may be distributed
7 or sold to county and city officials and to the public.

§30-13-13. General requirements for registration.

1 To be eligible for admission to examination for
2 professional engineer or engineer intern, an applicant
3 must be of good character and reputation and he or she
4 shall submit five references along with the application
5 for registration as a professional engineer. Three
6 references shall be from professional engineers having
7 personal knowledge of the engineering experience of the
8 applicant or in the case of an application for certifica-
9 tion as an engineer intern. The references shall be from
10 three persons knowledgeable of the applicant's
11 character.

12 (a) The minimum requirements for qualification for
13 registration as a professional engineer are:

14 (1) *Registration by comity or endorsement.* — A person
15 holding a certificate of registration to engage in the
16 practice of engineering, issued by a proper authority of
17 a state or possession of the United States, the District
18 of Columbia or any foreign country, based on require-
19 ments that do not conflict with the provisions of this
20 article and were of a standard not lower than that
21 specified in the applicable registration article in effect
22 in this state at the time such certificate was issued, may,
23 upon application, be registered without further
24 examination.

25 A person holding an active council record with the
26 national council of examiners for engineering and
27 surveying whose qualifications, as evidenced by the
28 council record, meet the requirements of this article
29 may, upon application, be registered without further
30 examination;

31 (2) *Graduation, experience and examination.* — A
32 graduate of an engineering curriculum of four years or
33 more approved by the board as being of satisfactory
34 standing and with a specific record of an additional four

35 years or more of progressive experience on engineering
36 projects of a grade and a character which indicates to
37 the board that the applicant may be competent to
38 practice engineering, shall be admitted to an eight-hour
39 written examination in the fundamentals of engineering
40 and, if passed, then shall be admitted to an eight-hour
41 written examination in the principles and practice of
42 engineering. Upon passing such examinations, the
43 applicant shall be granted a certificate of registration
44 to practice engineering in West Virginia, provided the
45 applicant is otherwise qualified; and

46 (3) *Engineering teaching.* — Engineering teaching of
47 advanced subjects and the design of engineering
48 research and projects in a college or university offering
49 an approved engineering curriculum of four years or
50 more may be considered as engineering experience.

51 (b) The minimum requirements for registration as an
52 engineer intern are:

53 (1) Graduation from an engineering curriculum of
54 four years or more approved by the board as being of
55 satisfactory standing; and

56 (2) Satisfactorily passing a written exam, eight hours
57 in duration, covering the fundamentals of engineering.

§30-13-14. Application and registration fee.

1 Every person seeking to become registered as a
2 professional engineer or seeking to become certified as
3 an engineer intern shall file an application on forms
4 provided by the board. The application shall be made
5 under oath and shall include:

6 (a) The level of education of the applicant;

7 (b) A summary of the applicant's technical expe-
8 rience; and

9 (c) The names and complete mailing addresses of any
10 references.

11 Applicants may not use the names of board members
12 as references.

13 In lieu of information required on the board's

14 application forms, the board may accept the verified
15 information contained in a valid council record issued
16 by the national council of examiners for engineering and
17 surveying for professional engineer applicants.

18 The board shall set fees for all applicants for
19 registration and certification by promulgating legisla-
20 tive rules under the provisions of article three, chapter
21 twenty-nine-a of this code.

22 Fees of unsuccessful applicants and the fees of
23 applicants who have been refused registration or
24 certification for any purpose shall be retained by the
25 board to cover administrative costs.

§30-13-15. Examinations.

1 (a) The board shall establish examination criteria
2 including the acceptable passing grade.

3 (b) Written examinations shall be given in two
4 sections and may be taken only after the applicant has
5 met the other minimum requirements and has been
6 approved by the board for admission to the examina-
7 tions which are as follows:

8 (1) *Engineering fundamentals.* — The examination
9 consists of an eight-hour test period on the fundamentals
10 of engineering. Passing this examination qualifies the
11 examinee for an engineer intern certificate, provided
12 the examinee has met all other requirements for
13 certification required by this article; and

14 (2) *Principles and practice of engineering.* — The
15 examination consists of an eight-hour test period on
16 applied engineering. Passing this examination qualifies
17 the examinee for registration as a professional engineer,
18 provided the examinee has met the other requirements.

19 (c) A candidate failing one examination may apply
20 for reexamination, which may be granted upon payment
21 of a fee established by the board. In the event of a second
22 failure, the examinee may be required to appear before
23 the board to present evidence of having pursued further
24 instruction in deficit areas.

25 (d) The board shall publish in brochure form and

26 shall make available to any person interested in being
27 registered the requirements and specifications of the
28 written examination.

§30-13-16. Certificates and seals.

1 (a) The board shall issue a certificate of registration
2 to any applicant who, in the opinion of the board, has
3 met the requirements of this article. The certificate of
4 registration shall carry the designation "professional
5 engineer". It shall give the full name of the registrant
6 with their registration number and shall be signed by
7 the chairman and the secretary under the seal of the
8 board. The certificate of registration grants the recip-
9 ient authority to practice in this state.

10 (b) An unexpired and unrevoked certificate is prima
11 facie evidence that the person named on it is entitled to
12 all rights, privileges and responsibilities of a profes-
13 sional engineer.

14 (c) Every registrant shall obtain a seal for use in
15 identifying his or her official professional work. The
16 design of the seal shall be determined by the board and
17 shall bear the registrant's name, registrant's registra-
18 tion number, the legend "registered professional
19 engineer, state of West Virginia" and such other words
20 or figures as the board may prescribe. The seal may be
21 a rubber stamp. Whenever the seal is applied, the
22 registrant's written signature shall be adjacent to or
23 across the seal. No further words or wording are
24 required. A facsimile signature is not acceptable.
25 Whenever presented to a client or any public or
26 governmental agency, the seal, signature and date shall
27 be placed on all specifications, reports, drawings, plans,
28 design information and calculations in accordance with
29 rules promulgated by the board. The seal and signature
30 shall be used by registrants only when the work being
31 stamped was under the registrant's complete direction
32 and control.

33 In the case of a registrant of another state using a
34 temporary permit issued by this state, the registrant
35 shall use the state of permanent registration seal and
36 shall affix his or her signature and temporary permit

37 number to all work. In the case of a registrant checking
38 the work of an out-of-state registrant, the state regis-
39 trant shall completely check and have complete domin-
40 ion and control of the design. The complete dominion
41 and control includes possession of the sealed and signed
42 reproducible construction drawings with complete
43 signed and sealed design calculations indicating all
44 changes in design.

45 (d) The board shall issue to any applicant who, in the
46 opinion of the board, has met the requirements of this
47 article, an enrollment card as engineer intern, which
48 indicates that his or her name has been recorded in the
49 board office. The engineer intern enrollment card does
50 not authorize the holder to practice as a professional
51 engineer. It is unlawful for a registrant to affix or to
52 permit his or her seal and signature to be affixed to any
53 document after the expiration of his or her certificate
54 or for the purpose of aiding or abetting any other person
55 to evade or attempt to evade any provisions of this
56 article.

§30-13-17. Authorization certificates.

1 (a) The practice of or offer to practice engineering by
2 consulting engineers registered under this article,
3 through a firm, corporation, copartnership, joint stock
4 association or private practitioner employing others,
5 referred to hereinafter as a firm, is permitted: *Provided*,
6 That the person in direct control or having personal
7 supervision of the practice and all personnel who act in
8 behalf of the firm in professional matters are registered
9 under this article: *Provided, however*, That the firm has
10 been issued a certificate of authorization by the board.

11 (b) A firm desiring a certificate of authorization must
12 file with the board an application using a form provided
13 by the board and the firm shall provide all the
14 information required by the board. A form as provided
15 by the board is to be filed with the board with the
16 renewal fee and within thirty days of the time any
17 information contained on the form is changed or differs
18 for any reason. If the information contained on the form
19 warrants action, the board, in its judgment, may issue

20 a certificate of authorization for the firm to practice
21 engineering and to contract and collect fees for furnish-
22 ing this service.

23 (c) No firm shall be relieved of responsibility for the
24 conduct or acts of its agents, employees, officers or
25 partners by reason of its compliance with the provisions
26 of this article. No individual practicing engineering
27 under the provisions of this article shall be relieved of
28 responsibility for engineering services performed by
29 reason of his or her employment or other relationship
30 with a firm holding an authorization certificate.

31 (d) An engineer who renders occasional, part-time or
32 consulting engineering services to or for a firm may not,
33 for the purposes of this article, be designated as being
34 responsible for the professional activities of the firm
35 unless that engineer is an owner or principal of the firm.

36 (e) Effective one year from the effective date of this
37 article, the secretary of state shall stop issuing a
38 certificate of incorporation to an applicant or a regis-
39 trant as a foreign firm to a firm which includes, among
40 the objectives for which it is established, the words
41 engineer, engineering or any modification or derivation
42 thereof unless the board of registration for this profes-
43 sion has issued to the applicant or registrant a certif-
44 icate of authorization or a letter indicating eligibility to
45 receive the certificate. The certificate or letter from the
46 board shall be filed with the firm's application for
47 incorporation or registration.

48 (f) Effective one year after the effective date of this
49 article, the secretary of state shall decline to register
50 any trade name or service mark which includes the
51 words engineer, engineering or modifications or deriv-
52 atives thereof in its firm name or logotype except those
53 firms holding authorization certificates issued under the
54 provisions of this article.

55 (g) The certificate of authorization may be renewed.

§30-13-18. Expirations and renewals.

1 Certificates of registration and certificates of author-
2 ization for firms expire on the last day of the month of

3 June following issuance and are invalid after that date
4 unless renewed. The secretary of the board shall notify
5 every person registered and every firm holding a
6 certification of authorization under this article of the
7 pending expiration of a certificate of registration or
8 certificate of authorization issued to that person or firm
9 including notice of the fee required to renew the
10 registration or certificate. The notice shall be mailed to
11 the registrant or firm at their last known address at
12 least one month in advance of the date of the expiration.
13 An expired certificate may be renewed under rules
14 promulgated by the board and may require reexamina-
15 tion and the payment of penalty fees.

§30-13-19. Reissuance of certificates.

1 A new certificate of registration or certificate of
2 authorization to replace any certificate lost, destroyed or
3 mutilated may be issued subject to the rules of the
4 board. A charge established by rule shall be made for
5 each new certificate.

§30-13-20. Public works.

1 Government agencies, authorities, officials and
2 employees may not engage in the practice of engineering
3 involving either public or private property unless the
4 provisions of this article are met.

**§30-13-21. Disciplinary action—Revocation, suspension,
refusal to issue, restore or renew, proba-
tion, fine, reprimand.**

1 (a) The board may suspend or revoke or refuse to
2 issue, restore or renew a certificate of registration of,
3 or place on probation, fine or reprimand any profes-
4 sional engineer who has:

5 (1) Perpetrated any fraud or deceit in obtaining or
6 attempting to obtain or renew a certificate of registra-
7 tion or certificate of authorization;

8 (2) Been negligent, incompetent or committed an act
9 of misconduct in the practice of engineering;

10 (3) Been convicted of or has entered a plea of nolo
11 contendere to any crime under the laws of the United

12 States or any state or territory thereof, which is a felony
13 whether related to practice or not; and conviction of or
14 entry of a plea of nolo contendere to any crime, whether
15 a felony, misdemeanor or otherwise, an essential
16 element of which is dishonesty, or which is directly
17 related to the practice of engineering;

18 (4) Failed to comply with any of the provisions of this
19 article or any of the rules promulgated under it;

20 (5) Been disciplined by another state, territory, the
21 District of Columbia, foreign country, the United States
22 government or any other governmental agency, if at
23 least one of the grounds for discipline is the same or
24 substantially equivalent to those grounds for discipline
25 contained in this article;

26 (6) Failed within thirty days to provide information
27 requested by the board as a result of a formal or
28 informal complaint to the board which would indicate
29 a violation of this article;

30 (7) Knowingly made false statements or signed false
31 statements, certificates or affidavits to induce payment;

32 (8) Aided or assisted another person in violating any
33 provision of this article or the rules promulgated;

34 (9) Violated any terms of probation imposed by the
35 board or using a seal or practicing engineering while
36 the professional engineer's license is suspended, revoked,
37 nonrenewed or inactive;

38 (10) Signed or affixed the professional engineer's seal
39 or permitted the professional engineer's seal or signa-
40 ture to be affixed to any specifications, reports,
41 drawings, plans, design information, construction
42 documents or calculations or revisions which have not
43 been prepared or completely checked by the professional
44 engineer or under the professional engineer's direct
45 supervision or control;

46 (11) Engaged in dishonorable, unethical or unprofes-
47 sional conduct of a character likely to deceive, defraud
48 or harm the public;

49 (12) Provided false testimony or information to the

50 board; and

51 (13) Been habitually intoxicated or addicted to or by
52 the use of drugs or alcohol.

53 In addition to any other penalty provided in this
54 article, any person who violates any provision of this
55 article or any rule promulgated by the board may be
56 fined by the board for each offense in an amount
57 determined by the board.

58 (b) The board shall prepare and shall adopt "rules of
59 professional responsibility for professional engineers".
60 The board may revise and amend these "rules of
61 professional responsibility for professional engineers"
62 from time to time and shall notify each registrant in
63 writing of any revisions or amendments.

64 (c) The board may:

65 (1) Revoke a certificate of authorization;

66 (2) Suspend a certificate of authorization of any firm
67 for a period of time not exceeding two years where one
68 or more of its officers or directors of the firm have been
69 found guilty of any conduct which would authorize a
70 revocation or suspension of his or her certificate of
71 registration under the provisions of this article;

72 (3) Place the person or firm on probation for a period
73 of time and make the person or firm subject to
74 conditions as the board may specify;

75 (4) Levy a fine for each count or separate offense in
76 an amount set by the board.

§30-13-22. Disciplinary action—Procedures.

1 (a) Any person may file a complaint with the board
2 that a person or firm subject to the provisions of this
3 article has committed a fraud, been deceitful, been
4 grossly negligent, incompetent, guilty of misconduct or
5 has violated the "rules of professional responsibility for
6 professional engineers".

7 (b) All complaints, unless dismissed by the board as
8 unfounded, trivial or unless settled informally, shall be
9 heard by the board within six months after the date
10 each complaint was received by the board.

11 (c) The board shall fix the time and place for
12 hearings on complaints and a copy of all charges,
13 together with a notice of the time and place of hearing
14 on the complaint the person or firm complained against
15 or mailed to the last known address of the person or firm
16 holding a certificate of authorization at least thirty days
17 prior to the hearing. At the hearing, the individual
18 registrant or firm holding a certificate of authorization
19 shall have the right to appear in person or by counsel,
20 or both, to cross-examine witnesses and to produce
21 evidence and witnesses in his, her or its defense. If the
22 accused person or corporation fails or refuses to appear,
23 the board may proceed to hear the complaint and
24 determine the validity of the charges.

25 (d) If after the hearing a majority of the board votes
26 in favor of sustaining the charges, the board shall
27 reprimand or fine the person or firm complained
28 against. The board may also suspend, revoke, refuse to
29 issue or refuse to restore or renew an individual's
30 certificate of registration or a firm's certificate of
31 authorization. In addition, the board may place a
32 registrant on probation.

33 (e) An individual registrant, having a certificate of
34 registration, or a firm, having a certificate of author-
35 ization, aggrieved by any action of the board in levying
36 a fine, denying, suspending, refusing to issue, refusing
37 to restore or renew or revoking a certificate of registra-
38 tion or a certificate of authorization, may appeal the
39 board's decision to the circuit court.

40 (f) Any penalty assessed as a result of a hearing shall
41 be paid within fifty days after the decision becomes
42 final.

43 (g) The board may, upon petition of an individual
44 registrant or firm holding a certificate of authorization,
45 reissue a certificate of registration or authorization,
46 provided that a majority of the members of the board
47 votes in favor of such issuance.

§30-13-23. Criminal offenses.

1 Any person who practices or offers to practice

2 engineering in this state without being registered in
3 accordance with the provisions of this article, or any
4 person, firm, partnership, organization, association,
5 corporation or other entity using or employing the words
6 engineer, engineering or any modification or derivative
7 thereof in its name or form of business activity except
8 as authorized in this article, or any person presenting
9 or attempting to use the certificate of registration or the
10 seal of another, or any person who gives any false or
11 forged evidence of any kind to the board or to any
12 member thereof in obtaining or attempting to obtain a
13 certificate of registration, or any person who falsely
14 impersonates any other registrant of like or different
15 name, or any person who attempts to use an expired,
16 suspended or revoked or nonexistent certificate of
17 registration, or who practices or offers to practice when
18 not qualified, or any person who falsely claims that he
19 or she is registered or authorized under this article, or
20 any person who violates any of the provisions of this
21 article is guilty of a misdemeanor, and, upon conviction
22 thereof, shall be fined not more than five hundred
23 dollars, or imprisoned in the county jail not more than
24 six months, or both fined and imprisoned.

25 Any person who commits a second or subsequent
26 offense under this section is guilty of a felony, and, upon
27 conviction thereof, shall be imprisoned in the peniten-
28 tiary not less than ten nor more than twenty years.

29 The attorney general may act as legal adviser to the
30 board and render any legal assistance as may be
31 necessary in carrying out the provisions of this article.
32 The board may employ counsel and necessary assistance
33 to aid in the enforcement of this article and the
34 compensation and expenses of the council shall be paid
35 from the funds of the board.

§30-13-24. Exemptions.

1 This article may not be construed to prevent the
2 practice by:

3 (a) *Other professions.* — The practice of any other
4 legally recognized profession;

5 (b) *Temporary permits.* — The practice or offer to
6 practice engineering by a person not a resident of or
7 having no established place of business in this state,
8 provided the person is legally qualified by registration
9 to practice engineering, as defined in this article, in
10 their own state or country. The person shall make
11 application to the board in writing and after payment
12 of a fee established by the board may be granted a
13 written permit for a definite period of time not to exceed
14 one year to do a specific job: *Provided*, That no right to
15 practice engineering shall accrue to the applicant with
16 respect to any other works not set forth in the permit;
17 and

18 (c) *Employees and subordinates.* — The work of an
19 employee or a subordinate of a person holding a
20 certificate of registration under this article, or an
21 employee of a person practicing lawfully: *Provided*, That
22 the work does not include final engineering designs or
23 decisions and is done under the direct supervision of and
24 verified by a person holding a certificate of registration
25 under this article or a person practicing lawfully. Any
26 regular full-time employee of a person, partnership,
27 corporation or other business entity who is engaged
28 solely and exclusively in performing services for such
29 person, partnership, corporation or other business
30 entity, who is not required by any provision of the law
31 other than this article to be a registered professional
32 engineer and whose services are performed on, or in
33 connection with, property owned or leased by such
34 person, partnership, corporation or other business
35 entity, or in which such person, partnership, corporation
36 or other business entity has an interest, estate or
37 possessory right, and are not offered or made available
38 to the public. This exemption includes the use of job title
39 and personal classification by such person, but no name,
40 title or words may be used which tend to convey the
41 impression that an unlicensed person is offering
42 professional engineering services to the public.

CHAPTER 166

(Com. Sub. for H. B. 4489—By Delegates Campbell and Mezzatesta)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article thirteen-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing a surveyor-in-training examination.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. LAND SURVEYORS.

§30-13A-5. Qualifications of applicants for licenses; surveyor-in-training applications; fees; examinations.

- 1 (a) To be eligible for a license to engage in the
2 practice of land surveying, the applicant must:
 - 3 (1) Be at least eighteen years of age;
 - 4 (2) Be of good moral character;
 - 5 (3) Have been a resident of the United States for one
6 year immediately preceding the date of application;
 - 7 (4) Not have been convicted of a crime involving
8 moral turpitude;
 - 9 (5) Have four years or more experience in the practice
10 of land surveying under the supervision of a person
11 authorized to practice land surveying in this state, or a
12 person authorized in another state or country to engage
13 in the practice of land surveying; and each year of
14 satisfactory study in a surveying or equivalent curric-
15 ulum shall be substituted for one year of experience, but
16 only two years of such experience requirement may be
17 fulfilled by such study. On and after the first day of
18 July, one thousand nine hundred ninety-one, six years
19 or more of such experience under the supervision of a

20 licensee or a person authorized in another state or
21 country to engage in the practice of land surveying shall
22 be required by those applicants who are graduates of a
23 surveying or equivalent curriculum of two scholastic
24 years or more. However, only three years of such
25 experience may be fulfilled by such study, and eight
26 years of such experience under the supervision of a
27 person authorized to practice land surveying in this
28 state, or a person authorized in another state or country
29 to engage in the practice of land surveying, shall be
30 required for those applicants who are not graduates of
31 a surveying or equivalent curriculum; and

32 (6) Have passed the examination prescribed by the
33 board, which examination shall cover the basic subject
34 matter of land surveying and land surveying skills and
35 techniques.

36 (b) Any applicant for any such license shall submit an
37 application therefor on forms provided by the board.
38 Such application shall be verified and shall contain a
39 statement of the applicant's education and experience,
40 the names of five persons for reference (at least three
41 of whom shall be licensees or persons authorized in
42 another state or country to engage in the practice of land
43 surveying, who have knowledge of his work) and such
44 other information as the board may from time to time
45 by reasonable rule prescribe.

46 (c) An applicant shall pay to the board with his
47 application an examination fee for the purpose of
48 covering the cost of the examination not to exceed two
49 hundred dollars as determined by the board by rule.

50 (d) Examinations shall be held at least once each year
51 at such time and place as the board shall determine. The
52 scope of the examination and methods of procedure shall
53 be determined by the board. An applicant who fails to
54 pass all or any part of an examination may reapply at
55 any time and shall furnish additional information as
56 requested by the board. The cost of reexamination will
57 be based on the cost of the examination as determined
58 by the board by rule.

59 (e) The board shall offer a surveyor-in-training (SIT)

60 examination to applicants who meet the requirements of
61 subdivisions (1), (2), (3) and (4), subsection (a) of this
62 section, and are graduates of a surveying or equivalent
63 curriculum of two or more years which has been
64 approved by the board of examiners of land surveyors.
65 The examination shall include an eight-hour portion of
66 fundamentals in science, mathematics and surveying.
67 Applicants must pass the other portions of the surveyor-
68 in-training examination and complete the work expe-
69 rience and other requirements of this section before they
70 are allowed to take the second eight-hour examination
71 which consists of principles and practices.

CHAPTER 167

(H. B. 4689—By Delegate Cerra)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article sixteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to license renewal fees and continuing education requirements for a chiropractic physician.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. CHIROPRACTORS.

§30-16-7. License; annual renewal fee; effect of failure to renew; reinstatement.

1 All holders of certificates of license to practice
2 chiropractic in this state shall renew them annually on
3 or before the first day of July of each year: (1) By paying
4 the board an annual renewal fee in an amount deter-
5 mined by the board; and (2) by presenting to the board
6 evidence of twelve hours or more of continuing educa-
7 tion each year as prescribed by the board. The West

8 Virginia board of chiropractic examiners shall establish
9 by rules and regulations promulgated in accordance
10 with the provisions of article three, chapter twenty-nine-
11 a of this code, all continuing education requirements and
12 all criteria for fulfillment of such continuing education
13 requirements. The board shall notify each certificate
14 holder by mail, at least thirty days prior to the first day
15 of July of each year, of the necessity of renewing his or
16 her certificate. The first annual renewal fee shall be due
17 on the first day of July, one thousand nine hundred
18 sixty-five.

19 The failure to renew a certificate of license to practice
20 chiropractic shall operate as an automatic suspension of
21 the rights and privileges granted by its issuance.

22 A certificate of license suspended by a failure to make
23 an annual renewal may be reinstated by the board upon
24 presentation of evidence of completion of the required
25 hours of continuing education for each year such license
26 has been suspended; payment of all fees that would have
27 been paid had the certificate holder maintained his
28 certificate in good standing and the payment to the
29 board of a reinstatement fee in an amount determined
30 by the board; but no certificate shall be reinstated after
31 a lapse of three years. After a lapse of three years,
32 license may be issued only after the former certificate
33 holder subsequent to said lapse has passed the exami-
34 nation provided for in this article.

CHAPTER 168

(Com. Sub. for H. B. 4656—By Mr. Speaker, Mr. Chambers, and Delegate
Richards)

[Passed March 6, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend and reenact sections three, four, five, six, seven, eight, nine, eleven, twelve, thirteen, fourteen and fifteen, article seventeen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the board of registration for

sanitarians and its functions; stating qualifications, appointment, compensation and expenses of members; providing for registration of sanitarians and sanitarians-in-training; certificates of registration; fees; revocation; expenditures of funds; and criminal penalty.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. SANITARIANS.

- §30-17-3. Registration of sanitarians required.
- §30-17-4. Qualifications for registration.
- §30-17-5. Qualifications for registration as a sanitarian-in-training.
- §30-17-6. Examination for registration as a sanitarian.
- §30-17-7. Board of registration for sanitarians.
- §30-17-8. Terms of office.
- §30-17-9. Board organization; duties of the board, officers, compensation, seal and meetings.
- §30-17-11. Application; fees; renewals, etc.
- §30-17-12. Suspension or revocation of registration.
- §30-17-13. Reciprocity.
- §30-17-14. Use of title.
- §30-17-15. Violation; penalty.

§30-17-3. Registration of sanitarians required.

- 1 On and after the first day of July, one thousand nine
- 2 hundred ninety-two, no person shall perform or offer to
- 3 perform the duties of a sanitarian in this state without
- 4 first applying for and obtaining from the state board of
- 5 registration for sanitarians a certificate of registration
- 6 as a sanitarian or a sanitarian-in-training.

§30-17-4. Qualifications for registration.

- 1 Any person desiring to be registered as a sanitarian
- 2 may make application to the board on a form prescribed
- 3 by the board. The board shall accept such application
- 4 when submitted if accompanied by the required fees.
- 5 Persons meeting the following qualifications shall be
- 6 eligible for registration under this article:
- 7 (a) Graduate with a baccalaureate or higher degree

8 from an accredited college or university.

9 (b) Successfully completed a sanitarian's training
10 course of a minimum of three hundred hours approved
11 by the board of registration within twelve months of
12 hire, employed as a sanitarian in an official health
13 department or allied agency for a period of not less than
14 two years, and has passed an examination given and
15 conducted by the board under the provisions of this
16 article.

17 (c) A master's or higher degree in public health,
18 environmental science, sanitary science, community
19 hygiene or other science field as approved by the board
20 of registration may be substituted for one of the
21 required years of experience.

22 (d) Any person who on or before the first day of July,
23 one thousand nine hundred ninety-two, has been
24 registered as a sanitarian in the state of West Virginia.

§30-17-5. Qualifications for registration as a sanitarian-in-training.

1 Any person meeting the educational qualifications of
2 section four, subdivisions (a) and (c) of this article, but
3 who does not meet the experience requirements of said
4 section may make application to the board on a form
5 prescribed by the board for registration as a sanitarian-
6 in-training. The board shall accept such application
7 when submitted, if accompanied by the required fees.

§30-17-6. Examination for registration as a sanitarian.

1 (a) On and after the first day of July, one thousand
2 nine hundred ninety-two, only persons who meet the
3 education and experience requirements in section four,
4 subdivisions (a), (b) and (c) of this article, shall be
5 eligible for admission to examination for registration as
6 a sanitarian.

7 (b) Examination for the registration of sanitarians-in-
8 training may be required by the discretion of the board.

9 (c) Examination for registration of sanitarians under
10 this article, shall be administered not less than once
11 each calendar year, in the state at such times and places

12 as may be specified from time to time by the board.
13 Such examination may be written, oral, or both, and
14 shall include applicable subjects in the field of environ-
15 mental sanitation as it relates to public health and such
16 other subjects pertinent to the qualifications of sanitar-
17 ians such as, the board may prescribe, physical,
18 biological and sanitary sciences or environmental health
19 and community hygiene. The examination shall be
20 objective and of practical character. The examination
21 papers shall not disclose the name of any applicant, but
22 shall be identified by a number assigned by the
23 chairperson of the board.

24 (d) A person shall not be registered if he or she fails
25 to meet the minimum grade requirements for examina-
26 tion specified by the board. If an applicant fails to meet
27 such minimum grade requirements in his or her first
28 examination, he or she may be reexamined at any time
29 and place specified by the board for the administration
30 of such examination and upon resubmitting his or her
31 application accompanied by the prescribed fees.

32 (e) The board shall hold at least one meeting each
33 year to review and evaluate applications for registration
34 as sanitarians and sanitarians-in-training, conduct
35 examinations, review and approve all bills, prepare and
36 approve reports, and transact all other business as may
37 be necessary to carry out the provisions of this article.

38 (f) The board shall issue certificates of registration to
39 which the official seal of the board has been affixed, and
40 shall annually issue numbered identification cards to
41 applicants who have been found qualified as sanitarians
42 and sanitarians-in-training.

43 (g) The board may hold hearings for the purpose of
44 administrative adjudication of such matters as may
45 properly come before it, make the necessary determina-
46 tions in conjunction therewith and issue such orders as
47 may be consistent with the findings. The board may
48 designate one or more of its members as a hearing
49 agent. Such agent or representative shall conduct such
50 hearings in the manner provided by law.

51 (h) Three members of the board shall constitute a

52 quorum and special meetings of the board shall be
53 called by the chairperson upon written request of any
54 two members of the board, or upon a written request
55 signed by ten registered sanitarians.

56 (i) All board meetings shall be open to the public with
57 the exception of the executive board sessions.

58 (j) The chairperson of the board shall receive and
59 account for all money received from the operation of this
60 article.

61 (k) The examination papers and records pertaining
62 thereto shall be filed with the board and retained for
63 at least one year.

§30-17-7. Board of registration for sanitarians.

1 A board for the registration and examination of
2 sanitarians and sanitarians-in-training is hereby estab-
3 lished to be known as the board of registration for
4 sanitarians. The board shall consist of the commissioner
5 of the bureau of public health, who shall be a nonvoting,
6 ex officio member and secretary of the board, and five
7 registered sanitarians to be appointed by the governor,
8 by and with the advice and consent of the Senate. Each
9 member appointed by the governor shall have been
10 engaged in active practice as a registered sanitarian in
11 this state for at least five years prior to his or her
12 appointment, and except in the case of the original
13 members of the board, shall have been registered in this
14 state as a registered sanitarian.

§30-17-8. Terms of office.

1 On or before the first day of July, one thousand nine
2 hundred ninety-two, the governor shall name the five
3 original appointive board members for terms of one,
4 two, three, four and five years respectively, beginning
5 on that date. Thereafter each appointment shall be for
6 a term of five years, except that an appointment to fill
7 a vacancy shall be for the unexpired term. The gover-
8 nor, with the concurrence of the board, may remove an
9 appointive board member for misconduct in office,
10 incompetency, conflict of interest, neglect of duty or

11 other sufficient cause after due notice and hearing, if
12 requested.

§30-17-9. Board organization; duties of the board, officers, compensation, seal and meetings.

1 (a) The members of the board shall, as soon as
2 appointed, organize and annually thereafter in the
3 month of July, elect from their number a chairperson
4 and vice chairperson.

5 (b) The board shall make such rules as are necessary
6 to carry out the provisions of this article.

7 (c) Funds collected under the provisions of this article
8 shall be used exclusively to pay compensation and
9 expenses of the board and to administer the provisions
10 of this article.

11 (d) The board may at such times as it deems neces-
12 sary employ such administrative employees or other
13 persons as may be necessary to carry out the provisions
14 of this article.

§30-17-11. Application; fees; renewals, etc.

1 The board shall prescribe and provide an application
2 form for use of all applicants. Applicants for registra-
3 tion as sanitarians shall deposit a fee of twenty dollars,
4 and applicants for registration as sanitarians-in-
5 training shall deposit a fee of twenty dollars, at the time
6 of making application for registration. The board may
7 also assess an additional fee for the cost of the exam-
8 ination when deemed necessary. Should the board deny
9 the issuance of a certificate to any applicant, the initial
10 fee deposited shall be retained as a fee for processing
11 and evaluating the application.

12 All sanitarians and sanitarians-in-training registered
13 under the provisions of this article may renew their
14 certificates by paying the board an annual renewal fee
15 of twenty dollars and proof of fifteen hours of continuing
16 education hours. These hours are to be earned annually
17 and the courses approved by the board (excluding

18 retirees of an official health department). Said fee and
19 proof of educational hours shall be due and payable on
20 or before the first day of July for which a renewal
21 certificate for the current year shall be issued. All
22 certificates shall expire on the renewal date unless
23 renewed prior to such date. Registrations expired for
24 failure to pay renewal fees may be reinstated only upon
25 the payment of all lapsed renewal fees up to five years
26 and submit to training approved by the board if in
27 excess of five years.

§30-17-12. Suspension or revocation of registration.

1 The board shall have the power to suspend or revoke,
2 after due notice and proper hearing, a certificate of
3 registration when the holder is found guilty of unpro-
4 fessional conduct, the practice of fraud or deceit in
5 obtaining a certificate of registration, dereliction of
6 duty, conflict of interest, incompetence in the practice
7 of environmental sanitation, malfeasance or misfeasance
8 in office, any criminal, infamous, dishonest, immoral or
9 notoriously disgraceful conduct, drug addiction or
10 habitual use of intoxicants to excess, any acts which
11 furnish reasonable grounds for belief by the board that
12 the certificate holder may be subject to coercion,
13 influence or pressure which may cause him or her to act
14 contrary to the best interest of the profession, or for
15 other good and sufficient cause. Notice of hearing in
16 writing shall be given not less than thirty days prior to
17 the date of the hearing, designating the time and place
18 of hearing and providing the certificate holder with a
19 copy of the charges against him or her. The person
20 charged shall be entitled to be represented at the
21 hearing and present evidence in his or her defense.
22 Every order of the board causing the suspension or
23 revocation of a certificate of registration shall be
24 predicated on findings based upon the record of hearing;
25 the determination of the board may be reviewed by a
26 court only to determine whether the board abused its
27 discretion or exceeded its jurisdiction.

§30-17-13. Reciprocity.

1 The board shall, upon application therefor, and upon
2 payment of a fee of twenty dollars, issue a certificate of
3 registration as a sanitarian to any person who holds a
4 certificate of registration issued to him or her by the
5 proper authority of any state, or territory, or possession
6 of the United States, or any country: *Provided*, That the
7 requirements for the registration of sanitarians under
8 which the certificate was issued do not conflict with the
9 provisions of this article and at the time said certificate
10 was granted were of a standard not lower than those
11 specified in section four, subdivisions (a), (b) and (c) of
12 this article.

§30-17-14. Use of title.

1 Only a person who has qualified as a registered
2 sanitarian and who holds a valid current registration
3 certificate for use in this state shall have the right and
4 privilege of using the title, "registered sanitarian" and
5 to use the abbreviation, "R.S." after his or her name.

§30-17-15. Violation; penalty.

1 It shall be unlawful for any person to represent
2 himself or herself as, or perform duties of a registered
3 sanitarian without being duly registered and the holder
4 of a currently valid certificate of registration issued by
5 the board.

6 On and after the first day of July, one thousand nine
7 hundred ninety-two, each person practicing as a
8 sanitarian shall hold a valid certificate as a registered
9 sanitarian or sanitarian-in-training.

10 A person who violates the provisions of this article is,
11 upon conviction thereof, guilty of a misdemeanor, and
12 shall be punished by a fine not to exceed two hundred
13 dollars, or imprisoned for not more than thirty days, or
14 both fined and imprisoned. Magistrates have concurrent
15 jurisdiction with circuit courts to enforce the provisions
16 of this article. In addition, the board is authorized and
17 empowered to apply to any court having equity powers,
18 or to the judge thereof in vacation, for an injunction to
19 restrain any violation of the provisions of this article.

CHAPTER 169

(S. B. 311—By Senator Spears)

[Passed March 3, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and two, article twenty-five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to nursing home administrators; designating such administrators as professionals; increasing from two to six the number of such administrators appointed to the nursing home administrators licensing board; specifying the terms to be served by such additional board members appointed in the year one thousand nine hundred ninety-two; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That sections one and two, article twenty-five, 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 25. NURSING HOME ADMINISTRATORS.

§30-25-1. Definitions.

§30-25-2. West Virginia nursing home administrators licensing board; creation; appointment, qualifications, term, etc., of members; vacancies; meetings, quorum; chairman; salaries and expenses.

§30-25-1. Definitions.

1 As used in this article, unless a different meaning
2 appears from the context:

3 (1) The term "nursing home" means a nursing home
4 as that term is defined in subdivision (c), section two,
5 article five-c, chapter sixteen of this code.

6 (2) The term "nursing home administrator" means a
7 professional who is an individual responsible for
8 planning, organizing, directing and controlling a
9 nursing home, or who in fact performs such functions,
10 whether or not such individual has an ownership
11 interest in the nursing home and whether or not such

12 functions are shared with one or more other persons.

13 (3) The term "board" shall mean the West Virginia
14 nursing home administrators licensing board created by
15 this article.

16 (4) The term "person" or "applicant" shall mean an
17 individual.

**§30-25-2. West Virginia nursing home administrators
licensing board; creation; appointment,
qualification, term, etc., of members; vacan-
cies; meetings, quorum; chairman; salaries
and expenses.**

1 There is hereby created a state board to be known and
2 designated as the "West Virginia nursing home admin-
3 istrators licensing board" which shall consist of eleven
4 members, all of whom except a lay member, as provided
5 for in section four-a, article one, chapter thirty of this
6 code, shall be appointed by the governor, by and with
7 the advice and consent of the Senate. One of the
8 members shall be a member of the medical profession
9 whose practice involves gerontology, one member shall
10 be a licensed pharmacist, one member shall be a
11 registered nurse with experience in the care of elderly
12 patients, one member shall be a person with experience
13 or education in the field of aging, and six such members
14 shall be persons who have been engaged in the manage-
15 ment of an operating nursing home for four years
16 immediately prior to the date of appointment, who shall
17 hereinafter be referred to as nursing home administra-
18 tors. The eleventh member shall be a lay member. No
19 member of the board, other than the six nursing home
20 administrators, shall have any direct or indirect
21 financial or pecuniary interest in any nursing home in
22 this state. Of the original board members appointed, the
23 one who is a registered nurse shall serve for one year,
24 the one who has experience or education in the field of
25 aging shall serve for two years, the one who is a member
26 of the medical profession shall serve for three years, the
27 one who is a licensed pharmacist shall serve for four
28 years, one of the two nursing home administrators shall
29 serve for five years, and the other nursing home

30 administrator shall serve for six years. Of the members
31 appointed for the positions added in the year one
32 thousand nine hundred ninety-two, one shall serve for
33 six years, one shall serve for five years, one shall serve
34 for four years, and one shall serve for three years. All
35 subsequent appointments shall be for six years, except,
36 that in case of a vacancy, the appointee shall be
37 appointed for the remainder of the unexpired term. Any
38 vacancy shall be filled by appointment of the governor,
39 by and with the advice and consent of the Senate, from
40 the same group as was represented by the outgoing
41 member. All members of the board, unless sooner
42 removed, shall continue to serve until their respective
43 terms expire and until their successors are appointed
44 and have qualified.

CHAPTER 170

(H. B. 4597—By Delegates Rutledge and Stemple)

[Passed March 6, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty-seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to barbers, beauticians and manicurists; renewal of license; fee; penalty for late renewal; withdrawal from active practice.

Be it enacted by the Legislature of West Virginia:

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

§30-27-4. Renewal of license; fee; penalty for late renewal; withdrawal from active practice.

1 Every licensed barber, beautician or manicurist who
2 desires to continue in active practice or service shall,
3 annually upon or before the first day of January, renew
4 his or her license and pay an annual renewal fee of
5 twenty-five dollars. For any renewal which is more than

6 thirty days late, a penalty of five dollars shall be added
7 to the regular renewal fee, and an additional five dollar
8 penalty for each successive thirty-day period said
9 renewal fee is late, not to exceed a total renewal fee of
10 two hundred five dollars. Any license not renewed for
11 three successive years shall be deemed inactive and shall
12 not be liable for additional renewal fees, but may be
13 reactivated by written request to the board and payment
14 of any accrued unpaid renewal fees, not to exceed a total
15 renewal fee of two hundred five dollars. Every licensed
16 barber, beautician or manicurist who does not desire to
17 continue in active practice shall notify the board in
18 writing, and shall, during such period, be listed by the
19 board as being inactive, and shall not be required to
20 renew his or her license until such time as he or she
21 shall again become active, and during such inactive
22 period he or she shall not be liable for any renewal fees.

CHAPTER 171

(H. B. 4388—By Delegates S. Cook and Brown)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article twenty-eight, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the period of time a nonlicensed occupational therapist may practice in the state of West Virginia.

Be it enacted by the Legislature of West Virginia:

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

§30-28-7. License required; persons and practices not affected.

- 1 (a) No person may hold himself out as an occupational
- 2 therapist or an occupational therapy assistant in this
- 3 state unless he is licensed in accordance with the
- 4 provisions of this article.

5 (b) Nothing in this article shall be construed as
6 preventing or restricting the practice, services or
7 activities of:

8 (1) Any person licensed under any other law of this
9 state, including physicians, nurses, clinical psycholo-
10 gists, speech pathologists and audiologists, dentists and
11 physical therapists, from engaging in the profession or
12 occupation for which he is licensed;

13 (2) Any person employed as an occupational therapist
14 or an occupational therapy assistant by the government
15 of the United States, if such a person provides occupa-
16 tional therapy solely under the direction or control of the
17 organization by which he is employed;

18 (3) Any person pursuing a course of study leading to
19 a degree or certificate in occupational therapy in an
20 educational program which is accredited by the Amer-
21 ican occupational therapy association in collaboration
22 with the American medical association, or in an
23 educational program approved by the American occu-
24 pational therapy association, and if such person is
25 designated by a title which clearly indicates his status
26 as a student or trainee;

27 (4) Any person fulfilling the supervised field work
28 experience, if such activities and services constitute a
29 part of the experience necessary to meet the require-
30 ments of section eight of this article;

31 (5) Any person performing occupational therapy
32 services in this state not licensed under this article, if
33 such services are performed for no more than ninety
34 consecutive days a calendar year in association with an
35 occupational therapist licensed under this article, if such
36 person meets the qualification for license under this
37 article, except for the qualifying examination; or

38 (6) Any person performing occupational therapy
39 services in this state not licensed under this article, if
40 such services are performed for no more than ninety
41 consecutive calendar days in a calendar year and if:

42 (A) Such a person is licensed under the law of another
43 state which has licensure requirements equivalent to the
44 requirements of this article; or

45 (B) Such a person meets the requirements for certi-
46 fication as an occupational therapist registered (OTR) or
47 a certified occupational therapy assistant (COTA)
48 established by the American occupational therapy
49 association.

CHAPTER 172

(Com. Sub. for H. B. 4416—By Delegates Ashcraft and Spencer)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-two, relating to the licensure and regulation of audiologists and speech-language pathologists; stating legislative intent; providing definitions; providing requirements for speech-language pathology and audiology assistants; defining persons and practices affected; defining persons and practices not affected; providing exemption from civil liability; establishing the board of examiners for speech-language pathology and audiology; requiring meetings of the board; providing compensation; establishing powers and duties of the board; establishing special revenue account; establishing qualifications for licensure; providing for provisional license; providing for license renewal; providing for reinstatement of expired licenses; providing disciplinary actions; providing procedures for hearing; providing for judicial review; providing for action to enjoin violations; providing civil and criminal penalties; providing for termination of the board; and providing for severability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 32. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS.

- §30-32-1. Purpose and legislative intent.
- §30-32-2. Definitions.
- §30-32-3. Speech-language pathology and audiology assistants.
- §30-32-4. Persons and practices affected.
- §30-32-5. Persons and practices not affected.
- §30-32-6. Exemption from civil liability.
- §30-32-7. Board of examiners for speech-language pathology and audiology.
- §30-32-8. Meetings of the board.
- §30-32-9. Compensation.
- §30-32-10. Powers and duties of the board.
- §30-32-11. Funds.
- §30-32-12. Qualifications for license.
- §30-32-13. Waiver of requirements.
- §30-32-14. Provisional license.
- §30-32-15. License renewal.
- §30-32-16. Reinstatement of expired licenses.
- §30-32-17. Disciplinary actions.
- §30-32-18. Procedures for hearing.
- §30-32-19. Judicial review; appeal to supreme court of appeals; legal counsel.
- §30-32-20. Actions to enjoin violations.
- §30-32-21. Penalties.
- §30-32-22. Termination of board.
- §30-32-23. Severability.

§30-32-1. Purpose and legislative intent.

1 It is hereby declared to be a policy of this state that
 2 the practice of speech-language pathology and audiology
 3 is a privilege granted to qualified persons and that, in
 4 order to safeguard the public health, safety and welfare,
 5 protect the public from being misled by incompetent,
 6 unscrupulous and unauthorized persons, and protect the
 7 public from unprofessional conduct by qualified speech-
 8 language pathologists and audiologists, it is necessary to
 9 provide regulatory authority over persons offering
 10 speech-language pathology and audiology services as
 11 designated in this article.

§30-32-2. Definitions.

1 For the purpose of this article, the terms defined shall
 2 not include persons employed or contracted by the West
 3 Virginia Board of Education, a county board of educa-
 4 tion, or a Regional Education Service Agency:

5 (a) "Audiologist" means any person who engages in
 6 the practice of audiology and who meets the qualifica-
 7 tions set forth in this article. A person represents
 8 himself or herself to be an audiologist when he or she

9 holds out to the public by any means, or by any service
10 or function he or she performs, directly or indirectly, or
11 by using the terms "audiology," "audiologist," "audiome-
12 try," "audiometrist," "audiological," "audiometrics,"
13 "hearing therapy," "hearing therapist," "hearing clinic,"
14 "hearing clinician," "hearing center," "hearing aid
15 audiologist," or any variation, synonym, coinage or
16 whatever expresses, employs, or implies these terms,
17 names or functions.

18 (b) "Audiology" means the application of principles,
19 methods, and procedures related to hearing and the
20 disorders of hearing and to related language and speech
21 disorders. Disorders means and includes any and all
22 conditions, whether of organic or nonorganic origin,
23 peripheral or central, that impede the normal process
24 of human communication including, but not limited to,
25 disorders of auditory sensitivity, acuity, function or
26 processing.

27 (c) "Audiology assistant," or any variation, synonym,
28 or coinage of the term, means an individual who meets
29 minimum qualifications established by the board, which
30 are less than those established by this article as
31 necessary for licensing as an audiologist; who does not
32 act independently; and who works under the direction
33 and supervision of an audiologist licensed under this
34 article.

35 (d) "Board" means the West Virginia board of
36 examiners for speech-language pathology and audiology.

37 (e) "Instruction" means: (1) Providing speech-lan-
38 guage pathology or audiology services or teaching in
39 infant/toddler, preschool, elementary or secondary
40 school programs except for services provided by those
41 persons employed or contracted by the West Virginia
42 board of education, a county board of education or a
43 regional education service agency; or (2) teaching
44 students in institutions of higher education.

45 (f) "Person" means and includes any individual,
46 partnership, trust, association, corporation or other like
47 organization, or any combination thereof, except that
48 only individuals can be licensed under this article.

49 (g) "Practice of audiology" means: (1) Facilitating the
50 conservation of auditory system function, developing
51 and implementing environmental and occupational
52 hearing conservation programs; (2) screening, identify-
53 ing, assessing and interpreting, preventing and rehabil-
54 itating peripheral and central auditory system dysfunc-
55 tions; (3) providing and interpreting behavioral and
56 (electro) physiological measurements of auditory func-
57 tions; (4) providing vestibular assessment and balance
58 system rehabilitation; (5) providing neurophysiologic
59 intraoperative monitoring; (6) selecting, fitting and
60 dispensing of amplification, assistive listening and
61 alerting devices and providing training in their use; (7)
62 evaluating candidacy, fitting and providing training in
63 the use of implantable devices; and (8) providing aural
64 rehabilitation and related counseling services to hearing
65 impaired individuals and their families. In accordance
66 with rules promulgated by the board, the practice of
67 audiology may include screening of speech-language and
68 other factors affecting communication function for the
69 purposes of an audiologic evaluation and/or initial
70 identification of individuals with other communication
71 disorders.

72 (h) "Practice of speech-language pathology" means:
73 (1) screening, identifying, assessing and interpreting,
74 diagnosing, preventing, and rehabilitating disorders of
75 speech (e.g., articulation, fluency, and language); (2)
76 screening, identifying, assessing and interpreting,
77 evaluating and rehabilitating disorders of oral-pharyn-
78 geal function (e.g., dysphagia) voice and related dis-
79 orders; (3) screening, identifying, assessing and inter-
80 preting, diagnosing and rehabilitating cogni-
81 tive/communication disorders; (4) assessing, selecting
82 and developing augmentative and alternative commu-
83 nication systems and providing training in their use; (5)
84 providing aural rehabilitation and related counseling
85 services to hearing impaired individuals and their
86 families; and (6) enhancing speech-language proficiency
87 and communication effectiveness (e.g., accent reduc-
88 tion). In accordance with rules promulgated by the
89 board, the practice of speech-language pathology may
90 include screening of hearing and other factors affecting

91 communication function for the purposes of a speech-
92 language evaluation and/or initial identification of
93 individuals with other communication disorders.

94 (i) "Research" means a systematic investigation
95 designed to develop or contribute to generalizable
96 knowledge about human communication, human com-
97 munication disorders, and/or evaluation or treatment
98 strategies. Activities meeting this definition constitute
99 research: *Provided*, That as used above and for the
100 purposes of this article, research does not include
101 activities that take place under the auspices of a
102 recognized institutional review board which reviews,
103 approves, and monitors proposals and activities involv-
104 ing human subjects to ensure that the rights and welfare
105 of such subjects are protected.

106 (j) "Speech-language pathologist" means any person
107 who engages in the practice of speech-language pathol-
108 ogy and who meets the qualifications set forth in this
109 article. A person represents himself or herself to be a
110 speech-language pathologist when he or she holds out to
111 the public by any means, or by any service or function
112 he or she performs, directly or indirectly, or by using
113 the terms "speech therapy," "speech therapist," "speech
114 correction," "speech correctionist," "speech clinic,"
115 "speech clinician," "language pathology," "language
116 pathologist," "voice therapy," "voice therapist," "voice
117 pathology," "voice pathologist," "logopedics," "logope-
118 dist," "communicology," "communicologist," "aphasiol-
119 ogy," "aphasiologist," "phoniatriest," or any variation,
120 synonym, coinage or whatever expresses, employs, or
121 implies these terms, names or functions.

122 (k) "Speech-language pathology" means the applica-
123 tion of principles, methods, and procedures related to
124 the development and disorders of human communica-
125 tion. Disorders are defined to include any and all
126 conditions, whether of organic or nonorganic origin, that
127 impede the normal process of human communication
128 including, but not limited to, disorders and related
129 disorders of speech, articulation, fluency, voice, verbal
130 and written language, auditory comprehension, cogni-

131 tion/communication, and oral, pharyngeal and/or
132 laryngeal sensorimotor competencies.

133 (l) "Speech-language pathology assistant," or any
134 variation, synonym, or coinage of the term means an
135 individual who meets minimum qualifications estab-
136 lished by the board, which are less than those estab-
137 lished by this article as necessary for licensing as a
138 speech-language pathologist; who does not act independ-
139 ently; and who works under the direction and supervi-
140 sion of a speech-language pathologist licensed under this
141 article.

§30-32-3. Speech-language pathology and audiology assistants.

1 (a) Speech-language pathologists and audiologists
2 supervising speech-language pathology and audiology
3 assistants shall:

4 (1) Register with the board the name of each assistant
5 working under their supervision;

6 (2) Be responsible for the performance of the assistant
7 and for all services provided by the assistant, consistent
8 with the board's designated standards and require-
9 ments; and

10 (3) Ensure that persons receiving services from an
11 assistant receive prior written notification that services
12 are to be provided by an assistant.

13 (b) The board shall establish rules to define the role
14 of the speech-language pathology or audiology assistant,
15 including, but not limited to:

16 (1) The supervisory responsibilities of the licensee;

17 (2) The ratio of assistants to licensees;

18 (3) The scope of duties and restrictions of assistants'
19 responsibilities;

20 (4) The frequency, duration and documentation of
21 direct, on-site supervision;

22 (5) The quantity and content of preservice and
23 inservice instruction; and

24 (6) The procedures for renewing the registration of
25 assistants and terminating their duties.

§30-32-4. Persons and practices affected.

1 The board shall grant licensure in either speech-
2 language pathology or audiology independently. A
3 person may be licensed in both areas if he or she meets
4 the respective qualifications. Except as otherwise
5 provided in this article, effective the first day of
6 October, one thousand nine hundred ninety-two, no
7 person shall practice speech-language pathology or
8 audiology or represent himself or herself as a speech-
9 language pathologist or audiologist in this state, unless
10 such person is licensed in accordance with the laws of
11 this state. A person licensed under this article as an
12 audiologist shall not be required to obtain a license
13 under the provisions of article twenty-six of this chapter.

§30-32-5. Persons and practices not affected.

1 Nothing in this article shall be construed as prevent-
2 ing or restricting:

3 (a) A person licensed or registered by this state in
4 another profession from practicing the profession for
5 which he or she is licensed or registered, so long as they
6 do not hold themselves out to the public as possessing
7 a license issued pursuant to this article or use a title set
8 forth in section two of this article;

9 (b) A physician or surgeon licensed by this state while
10 engaging in the profession for which they are licensed;

11 (c) Hearing testing or balance system assessment by
12 trained individuals under the direct supervision of a
13 licensed physician or surgeon, so long as such individ-
14 uals do not hold themselves out to the public as
15 possessing a license issued pursuant to this article or use
16 a title set forth in section two of this article;

17 (d) A person employed or contracted with the West
18 Virginia Board of Education, a county board of educa-
19 tion, or a Regional Education Service Agency;

20 (e) A person duly credentialed by this state as a
21 teacher of the deaf;

22 (f) The activities and services of persons pursuing a
23 course of study leading to a degree in speech-language
24 pathology or audiology at a college or university, if:

25 (1) These activities and services constitute a part of
26 a planned course of study at that institution;

27 (2) Such persons are designated by a title such as
28 intern, trainee, student, or by other such title clearly
29 indicating the status appropriate to their level of
30 education; and

31 (3) Such persons work under the supervision of a
32 person licensed by this state to practice speech-language
33 pathology or audiology.

34 (g) The activities of persons who are nonresidents of
35 this state from engaging in the practice of speech-
36 language pathology or audiology if the activities of such
37 persons do not exceed five days in any calendar year and
38 such persons:

39 (1) Meet the qualifications of this article;

40 (2) Register with the board in accordance with
41 procedures specified in its rules and regulations; and

42 (3) Agree to abide by the standards of professional
43 conduct contained in this article and rules promulgated
44 by the board.

45 (h) The practices and procedures of qualified licensed
46 hearing aid dealers engaged solely in the practice of
47 dealing in or fitting of hearing aids under article
48 twenty-six of this chapter; and

49 (i) Occupational hearing conservationists engaged in
50 hearing testing as part of a hearing conservation
51 program in compliance with regulations of the Occupa-
52 tional Safety and Health Administration.

§30-32-6. Exemption from civil liability.

1 While serving on any peer review committee, any
2 speech-language pathologist or audiologist shall not be
3 liable for civil damages as a result of his or her
4 decisions, findings or recommendations in connection
5 with his or her duties on such committees, except for

6 decisions, findings or recommendations which are
7 arbitrary or capricious.

§30-32-7. Board of examiners for speech-language pathology and audiology.

1 (a) There is hereby created a state board to be known
2 and designated as the "West Virginia Board of Examin-
3 ers for Speech-Language Pathology and Audiology"
4 which shall consist of five members appointed by the
5 governor, with the advice and consent of the Senate. All
6 members shall be residents of this state and have been
7 residents of this state for at least two years prior to their
8 appointments. The board shall be representative of
9 various geographical regions of the state and of various
10 employment settings.

11 (b) Two of the members shall be speech-language
12 pathologists who are currently practicing speech-
13 language pathology or who have had three years
14 experience practicing speech-language pathology, and
15 who hold active and valid licensure for the practice of
16 speech-language pathology in this state, except for the
17 first speech-language pathologists appointed who shall
18 meet the eligibility requirements for licensure as
19 specified in this article. Two of the members shall be
20 audiologists who are currently practicing audiology or
21 who have had three years experience practicing audi-
22 ology, and who hold active and valid licensure for the
23 practice of audiology in this state, except for the first
24 audiologists appointed who shall meet the eligibility
25 requirements for licensure as specified in this article.
26 The fifth member shall be a lay person who is not
27 associated with or financially interested in the practice
28 or business of speech-language pathology or audiology
29 nor a member of an allied or related profession or
30 occupation.

31 (c) Within thirty days from the effective date of this
32 article, the governor shall appoint the professional
33 members of the first board from a list of names of at
34 least seven speech-language pathologists and seven
35 audiologists submitted by the state speech-language
36 hearing association or from recommendations submitted

37 by interested organizations or persons in the state. Each
38 subsequent appointment of professional members may
39 be made from recommendations submitted by the state
40 speech-language-hearing association which may submit
41 at least three names for each available position or from
42 recommendations submitted by other interested organ-
43 izations or persons in the state. No member of the board
44 shall at the same time serve in an elected, appointed,
45 or employed position in any state-level organization
46 representing speech-language pathologists and audiolo-
47 gists, or both, which presents or may present a conflict
48 of interest.

49 (d) Of the members first appointed, one of the
50 audiologists and one of the speech-language pathologists
51 shall serve for terms expiring the thirtieth day of June
52 one thousand nine hundred ninety-five, and the other of
53 each of the professions shall serve for terms expiring the
54 thirtieth day of June, one thousand nine hundred ninety-
55 four, and the lay member shall serve for a term expiring
56 the thirtieth day of June, one thousand nine hundred
57 ninety-three. All subsequent appointments shall be for
58 three years. Members shall serve until the expiration of
59 the term for which they have been appointed or until
60 their successors have been appointed and qualified. In
61 the event of a vacancy in the office of a member of the
62 board other than by expiration of a term, the governor
63 shall appoint a qualified person to fill the vacancy for
64 the unexpired term. No member may serve more than
65 two consecutive three year terms.

§30-32-8. Meetings of the board.

1 The board shall meet during the first month of each
2 calendar or fiscal year to select a chairperson and to
3 conduct other appropriate business, and shall hold at
4 least one additional meeting before the end of each
5 calendar or fiscal year. Additional meetings may be held
6 at the call of the chairperson. Three members of the
7 board shall constitute a quorum to do business, includ-
8 ing at least one speech-language pathologist and one
9 audiologist.

§30-32-9. Compensation.

1 Members of the board shall receive a per diem of fifty
2 dollars for each day actually engaged in the perfor-
3 mance of the duties of the office, and shall also receive
4 reimbursement for reasonable and necessary expenses
5 actually incurred in the performance of their duties:
6 *Provided*, That a majority of the board shall approve
7 such compensation.

§30-32-10. Powers and duties of the board.

1 (a) The board shall:

2 (1) Administer, coordinate and enforce the provisions
3 of this article, establish licensure fees, evaluate the
4 qualifications of applicants, supervise the examination
5 of applicants, register speech-language pathology and
6 audiology assistants and issue and renew licenses;

7 (2) Investigate allegations of violations of this article
8 and impose penalties if such violations of this article
9 have occurred;

10 (3) Promulgate reasonable rules, in accordance with
11 chapter twenty-nine-a of this code, including, but not
12 limited to, rules that delineate qualifications for
13 licensure; specify requirements for the renewal of
14 licensure; set forth procedures for registering speech-
15 language pathology and audiology assistants; and
16 establish standards of professional conduct. Following
17 their adoption, the rules shall govern and control the
18 professional conduct of every person who holds a license
19 to practice speech-language pathology or audiology or
20 who is registered as a speech-language pathology and
21 audiology assistant in this state;

22 (4) Have available the names of persons currently
23 licensed and registered under the provision of this
24 article;

25 (5) Employ such personnel as determined by its needs
26 and budget;

27 (6) Request legal advice and assistance, as needed,
28 from the attorney general;

29 (7) Enter into such contracts as necessary to carry out
30 its responsibilities under this article;

- 31 (8) Hire legal counsel, if necessary;
- 32 (9) Establish a budget;
- 33 (10) Maintain reports of its operations and finances;
- 34 (11) Adopt an official seal (or seals) by which it shall
35 authenticate its proceedings, copies of proceedings,
36 records, acts of the board and licenses; and
- 37 (12) Communicate disciplinary actions to relevant
38 state and federal authorities and to other state speech-
39 language pathology and audiology licensing authorities.
- 40 (b) The conferral or enumeration of specific powers
41 elsewhere in this article shall not be construed as a
42 limitation of the general functions conferred by this
43 section.
- 44 (c) No member of the board shall be liable to civil
45 action for any act performed in good faith in the
46 performance of his or her duties as prescribed by law.

§30-32-11. Funds.

1 All fees and other moneys received by the board,
2 including civil penalties imposed and collected pursuant
3 to the provisions of section seventeen of this article, shall
4 be deposited in a separate account in the state treasury.
5 Expenditures for the purposes set forth in the article are
6 not authorized from collections but are to be made only
7 in accordance with appropriation and in accordance
8 with the provisions of article three, chapter twelve of
9 this code and upon fulfillment of the provisions set forth
10 in article two, chapter five-a of this code.

11 Amounts collected which are found from time to time
12 to exceed the funds needed for the purposes set forth in
13 this article may be transferred to other accounts or
14 funds and redesignated for other purposes by appropri-
15 ation of the Legislature.

§30-32-12. Qualifications for license.

1 To be eligible for licensure by the board as a speech-
2 language pathologist or audiologist, the applicant shall:

- 3 (a) Make application to the board, upon such a form
4 prescribed by the board;
- 5 (b) Pay to the board the appropriate application fee;
- 6 (c) Possess at least a master's degree or equivalent in
7 speech-language pathology or audiology from an educa-
8 tional institution approved by the board which consists
9 of coursework approved by the board and delineated in
10 the rules;
- 11 (d) Complete supervised clinical practicum experien-
12 ces from an educational institution or its cooperating
13 programs the content of which shall be approved by the
14 board and delineated in the rules;
- 15 (e) Complete a postgraduate professional experience
16 as approved by the board and described in the rules; and
- 17 (f) Pass the national examination in speech-language
18 pathology or audiology which is approved by the
19 American speech-language-hearing association.

§30-32-13. Waiver of requirements.

- 1 (a) The board may waive the practicum and profes-
2 sional experience requirements for applicants who:
- 3 (1) Provide proof of employment in the practice of
4 speech-language pathology or audiology in this state for
5 at least two out of the last five years immediately
6 preceding the effective date of this article;
- 7 (2) Pass an examination, if requested by the board;
- 8 (3) Apply for a license in speech-language pathology
9 or audiology within one year after the effective date of
10 this article; and
- 11 (4) Possess at least a master's degree or equivalent in
12 speech-language pathology or audiology from an educa-
13 tional institution approved by the board which consists
14 of coursework approved by the board and delineated in
15 the rules.
- 16 (b) The board shall waive the examination require-
17 ment for applicants who either:
- 18 (1) Present proof of current licensure in a state that

19 has standards that are at least equivalent to those of this
20 state; or

21 (2) Hold a certificate of clinical competence in speech-
22 language pathology or audiology from the American
23 speech-language-hearing association in the area for
24 which they are applying for licensure.

25 (c) A person who holds current licensure from another
26 state with equivalent standards or who holds the
27 certificate of clinical competence from the American
28 speech-language-hearing association may practice
29 speech-language pathology or audiology in this state,
30 pending board disposition of their applications, if he or
31 she:

32 (1) Is practicing in the area, speech-language pathol-
33 ogy or audiology, in which the licensure or certificate
34 of clinical competence was granted; and

35 (2) Has filed an application with the board and paid
36 the appropriate application fee.

§30-32-14. Provisional license.

1 (a) The board shall issue a provisional license to an
2 applicant who:

3 (1) Except for the postgraduate professional expe-
4 rience, meets the academic, practicum, and examination
5 requirements of this article;

6 (2) Submits an application to the board, upon such a
7 form prescribed by the board, including a plan for the
8 content of the postgraduate professional experience; and

9 (3) Pays to the board the appropriate application fee
10 for a provisional license.

11 (b) The purpose of a provisional license is to permit
12 an individual to practice speech-language pathology or
13 audiology while completing the postgraduate profes-
14 sional experience as required by this article. A person
15 holding a provisional license is authorized to practice
16 speech-language pathology or audiology only while
17 working under the supervision of a person fully licensed
18 by this state in accordance with this article.

19 (c) The term for provisional licenses and the condi-
20 tions for their renewal are to be determined by the
21 board and delineated in its rules and regulations.

§30-32-15. License renewal.

1 (a) Licenses first issued under this article shall expire
2 on the first day of January, one thousand nine hundred
3 ninety-five, and subsequent licenses shall expire every
4 two years thereafter;

5 (b) Every person licensed under this bill shall:

6 (1) Pay an amount established by the board in order
7 for his or her license to be renewed;

8 (2) Submit an application for renewal on a form
9 prescribed by the board;

10 (3) Meet any other requirements the board establishes
11 as conditions for license renewal; and

12 (4) Engage in a minimum of ten hours of continuing
13 education activities during the two-year licensing period
14 whose content is directly related to the professional
15 growth and development of speech-language patholo-
16 gists and audiologists. The following are examples of
17 ways in which these hours may be obtained:

18 (i) Short courses, mini-seminars and teleconferences
19 of the American speech-language-hearing association;

20 (ii) Educational sessions of the West Virginia speech-
21 language-hearing association;

22 (iii) Educational sessions provided within the licen-
23 see's work setting; or

24 (iv) Any other activities approved by the board.

25 (c) Licensees are granted a grace period of thirty days
26 after the expiration of their licenses in which to renew
27 retroactively as long as they otherwise are entitled to
28 have their licenses renewed and pay to the board the
29 renewal fee and any late fee set by the board.

30 (d) A suspended license is subject to expiration and
31 may be renewed as provided in this article, but such
32 renewal shall not entitle the licensee, while the license

33 remains suspended and until it is reinstated, to engage
34 in the licensed activity, or in any other conduct or
35 activity in violation of the order of judgment by which
36 the license was suspended.

37 (e) A license revoked on disciplinary grounds is
38 subject to expiration as provided in this article, but it
39 may not be renewed. If such license is reinstated after
40 its expiration, the licensee, as a condition of reinstatement,
41 shall pay a reinstatement fee that shall equal the
42 renewal fee in effect on the last regular renewal date
43 immediately preceding the date of reinstatement, plus
44 any late fee set by the board.

§30-32-16. Reinstatement of expired licenses.

1 (a) A person who fails to renew his or her license by
2 the end of the thirty-day grace period may have the
3 license reinstated if he or she:

4 (1) Submits an application for reinstatement to the
5 board within five years after the expiration date of the
6 license;

7 (2) Meets requirements established by the board as
8 conditions for license renewal; and

9 (3) Pays to the board a reinstatement fee equal to the
10 renewal fee in effect on the last regular renewal date
11 immediately preceding the date of reinstatement, and
12 any late fee set by rules of the board.

13 (b) A person who fails to renew his or her license
14 within five years after the expiration date may not have
15 the license renewed, and the license may not be restored,
16 reissued, or reinstated thereafter, although such person
17 may apply for and obtain a new license if he or she
18 meets the requirements of this article and pays to the
19 board the appropriate fee or fees.

§30-32-17. Disciplinary actions.

1 (a) The board may impose any of the following
2 disciplinary actions in those instances in which an
3 applicant for a license or a licensee has been guilty of
4 conduct which has endangered, or is likely to endanger
5 the health, welfare or safety of the public:

- 6 (1) Refuse to issue or renew a license;
- 7 (2) Issue a letter of reprimand or concern;
- 8 (3) Require restitution of fees;
- 9 (4) Impose probationary conditions;
- 10 (5) Impose a civil penalty not to exceed five hundred
- 11 dollars; or
- 12 (6) Suspend or revoke a license.
- 13 (b) The board may take disciplinary actions for
- 14 conduct that may result from but not necessarily be
- 15 limited to:
 - 16 (1) Fraudulently or deceptively obtaining or attempt-
 - 17 ing to obtain a license or a provisional license for the
 - 18 applicant, licensee, holder or for another;
 - 19 (2) Fraudulently or deceptively using a license or
 - 20 provisional license;
 - 21 (3) Altering a license or provisional license;
 - 22 (4) Aiding or abetting unlicensed practice; and
 - 23 (5) Committing fraud or deceit in the practice of
 - 24 speech-language pathology or audiology, including, but
 - 25 not limited to:
 - 26 (i) Willfully making or filing a false report or record
 - 27 in the practice of speech-language pathology or
 - 28 audiology;
 - 29 (ii) Submitting a false statement to collect a fee; or
 - 30 (iii) Obtaining a fee through fraud or misrepresenta-
 - 31 tion.
 - 32 (6) Using or promoting or causing the use of any
 - 33 misleading, deceiving, improbable or untruthful adver-
 - 34 tising matter, promotional literature, testimonial,
 - 35 guarantee, warranty, label, brand, insignia or any other
 - 36 representation;
 - 37 (7) Falsely representing the use or availability of
 - 38 services or advice of a physician;
 - 39 (8) Misrepresenting the applicant, licensee or holder

40 by using the word "doctor" or any similar word,
41 abbreviation or symbol if the use is not accurate or if
42 the degree was not obtained from a regionally accre-
43 dited institution;

44 (9) Committing any act of dishonorable, immoral or
45 unprofessional conduct while engaging in the practice
46 of speech-language pathology or audiology;

47 (10) Engaging in illegal, incompetent or habitually
48 negligent practice;

49 (11) Providing professional services while:

50 (i) Mentally incompetent;

51 (ii) Under the influence of alcohol;

52 (iii) Using any narcotic or controlled dangerous
53 substance or other drug that is in excess of therapeutic
54 amounts or without valid medical indication; or

55 (iv) Having a serious contagious disease.

56 (12) Providing services or promoting the sale of
57 devices, appliances or products to a person who cannot
58 reasonably be expected to benefit from such services,
59 devices, appliances or products;

60 (13) Violating any provision of this article, or any
61 lawful order given, or rule adopted by the board;

62 (14) Being convicted of or pleading guilty or nolo
63 contendere to a felony or to a crime involving moral
64 turpitude, whether or not any appeal or other proceed-
65 ing is pending to have the conviction or plea set aside;
66 or

67 (15) Being disciplined by a licensing or disciplinary
68 authority of any other state or country or convicted or
69 disciplined by a court of any state or country for an act
70 that would be grounds for disciplinary action under this
71 section.

§30-32-18. Procedures for hearing.

1 (a) Whenever the board shall deny an application for
2 any original or renewal license of any kind under this
3 article or shall suspend or revoke any such license it

4 shall make and enter an order to that effect and serve
5 a copy thereof on the applicant or licensee, as the case
6 may be, by certified mail, return receipt requested.
7 Such order shall state the grounds for the action taken
8 and shall require that any license suspended or revoked
9 thereby shall be returned to the board by the holder
10 within twenty days after receipt of the copy of the order.

11 (b) Any person adversely affected by any such order
12 shall be entitled to a hearing thereon as to all issues not
13 excluded from the definition of "contested case" as set
14 forth in article one, chapter twenty-nine-a of this code
15 if, within twenty days after receipt of a copy thereof, he
16 or she filed with the board a written demand for such
17 hearing. A demand for hearing shall operate automat-
18 ically to stay or suspend the execution of any order
19 suspending or revoking a license or denying an appli-
20 cation for a renewal of license. The board may require
21 the person demanding such hearing to give reasonable
22 security for the costs thereof, and, if such person does
23 not substantially prevail at such hearing, such costs
24 shall be assessed against the person and may be
25 collected by a civil action or other proper remedy.

26 (c) Upon receipt of a written demand for a hearing,
27 the board shall set a time and place thereof not less than
28 ten nor more than thirty days thereafter. The person
29 demanding the hearing may be granted one continuance
30 as a matter of right and further continuances for good
31 cause shown.

32 (d) All of the pertinent provisions of article five,
33 chapter twenty-nine-a of this code shall apply to and
34 govern the hearing, and the administrative procedures
35 in connection with and following such hearing, with like
36 effect as if the provisions of the article were set forth
37 in this subsection.

38 (e) Any such hearing shall be conducted by a quorum
39 of the board. For the purpose of conducting any such
40 hearing any member of the board may issue subpoenas
41 and subpoenas duces tecum which shall be issued and
42 served within the time and for the fees and shall be
43 enforced, as specified in section one, article five, chapter

44 twenty-nine-a of this code, and all of the provisions of
45 such section dealing with subpoenas and subpoenas
46 duces tecum shall apply to those issued for the purpose
47 of a hearing hereunder.

48 (f) At any such hearing the person who demanded the
49 same may represent himself or herself or be represented
50 by an attorney admitted to practice law in this state.
51 Upon request of the board, it shall be represented at any
52 such hearing by the attorney general or his assistants
53 without additional compensation.

54 (g) After any such hearing and consideration of all of
55 the testimony, evidence and record in the case, the board
56 shall render its decision in writing, accompanied by
57 findings of fact and conclusions of law as specified in
58 section three, article five, chapter twenty-nine-a of this
59 code, and a copy of such decision and accompanying
60 findings and conclusions shall be served by certified
61 mail, return receipt requested, upon the person demand-
62 ing such hearing, and the person's attorney of record,
63 if any.

64 (h) The decision of the board shall be final unless
65 reversed, vacated or modified upon judicial review
66 thereof in accordance with this article.

**§30-32-19. Judicial review; appeal to supreme court of
appeals; legal counsel.**

1 Any person adversely affected by a decision of the
2 board rendered after a hearing held in accordance with
3 the provisions of this article shall be entitled to judicial
4 review thereof. All of the pertinent provisions of section
5 four, article five, chapter twenty-nine-a of this code shall
6 apply to and govern such judicial review with like effect
7 as if they were set forth in this section.

8 The judgment of the circuit court shall be final unless
9 reversed, vacated or modified on appeal to the supreme
10 court of appeals in accordance with the provisions of
11 article six, chapter twenty-nine-a of this code.

12 Legal counsel and services for the board in all appeal
13 proceedings in any circuit court and the supreme court
14 of appeals shall be provided by the attorney general or

15 his assistants and in any circuit court by the prosecuting
16 attorney of the county as well, all without additional
17 compensation.

§30-32-20. Actions to enjoin violations.

1 Whenever it appears to the board that any person has
2 been or is violating or is about to violate any provision
3 of this article, any reasonable rule or regulation
4 promulgated hereunder or any final decision of the
5 board, the board may apply in the name of the state to
6 the circuit court of the county in which the violation or
7 violations or any part thereof has occurred, for an
8 injunction against such person and any other persons
9 who have been, are or are about to be, involved in any
10 practices, acts or omissions, so in violation, enjoining
11 such person or persons from any such violation or
12 violations. Such application may be made and prose-
13 cuted to conclusion whether or not any such violation or
14 violations have resulted or shall result in prosecution or
15 conviction under other provisions of this article.

16 Upon application by the board, the circuit courts of
17 this state may by mandatory or prohibitory injunction
18 compel compliance with the provisions of this article,
19 the reasonable rules promulgated hereunder and all
20 orders and final decisions of the board. The court may
21 issued a temporary injunction in any case pending a
22 decision on the merits of any application filed.

23 The judgment of the circuit court upon any applica-
24 tion permitted by the provisions of this section shall be
25 final unless reversed, vacated or modified on appeal to
26 the supreme court of appeals. Any such appeal shall be
27 sought in the manner and within the time provided by
28 law for appeals from circuit courts in other civil actions.

29 The board shall be represented in all such proceedings
30 by the attorney general or his assistants and in such
31 proceedings in the circuit court by the prosecuting
32 attorney of the several counties as well, all without
33 additional compensation.

§30-32-21. Penalties.

1 Any person who violates this article shall be guilty of

2 a misdemeanor, and, upon conviction thereof, shall be
3 punished by a fine of not more than five hundred
4 dollars, or by imprisonment for not more than six
5 months, or both.

§30-32-22. Termination of board.

1 The West Virginia board of examiners for speech-
2 language pathology and audiology shall be terminated
3 pursuant to the provisions of article ten, chapter four of
4 this code on the first day of July, one thousand nine
5 hundred ninety-eight, unless sooner terminated or
6 unless continued or reestablished pursuant to that
7 article.

§30-32-23. Severability.

1 If any provision of this article or the application
2 thereof to any person or circumstance shall be held
3 invalid, the remainder of the article and the application
4 of such provision to other persons or circumstances shall
5 not be affected thereby.

CHAPTER 173

(S. B. 129—By Senators Minard, J. Manchin, Spears and Brackenrich)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, fourteen, twenty-six, twenty-eight, twenty-nine, thirty, thirty-one, thirty-three, thirty-four, thirty-five and thirty-six, article fourteen, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to licensing and certification of real estate appraisers; exempting financial institutions from certain provisions; allowing the real estate licensing and certification board to set criteria for examination; establishing a new certification classification and amending other provisions of the article to comply with the new classification; and removing certain experience restrictions for examination eligibility.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT.

- §37-14-2. Definitions.
- §37-14-4. Exceptions to license or certification requirement.
- §37-14-14. Continuing education.
- §37-14-26. State certified real estate appraiser; use of term.
- §37-14-28. Classification of licensure and certification.
- §37-14-29. Experience requirement.
- §37-14-30. Qualifications.
- §37-14-31. Examination required.
- §37-14-33. Renewal of license or certification.
- §37-14-34. Basis for denial.
- §37-14-35. Use of term "state licensed or certified real estate appraiser".
- §37-14-36. Continuing education requirement.

§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 article, 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 by the provisions of
37 this article;

38 (e) "Certified appraisal report" means a written
39 appraisal report that is certified by a state licensed or
40 certified real estate appraiser. When a real estate
41 appraiser identifies an appraisal report as "certified",
42 the real estate appraiser must indicate the type of
43 licensure or certification he or she holds. By certifying
44 an appraisal report, a state licensed residential real
45 estate appraiser, a state certified general real estate
46 appraiser or a state certified residential real estate
47 appraiser, represents to the public that the report meets
48 the appraisal standards established by this article;

49 (f) "Licensed real estate appraiser" means a person
50 who holds a current, valid license as a state licensed
51 residential real estate appraiser issued to him or her
52 under the provisions of this article;

53 (g) "Real estate" means an identified parcel or tract
54 of land, including improvements, if any;

55 (h) "Real estate appraisal activity" means the act or
56 process of making an appraisal of real estate or real
57 property and preparing an appraisal report;

58 (i) "Real estate appraiser" means a person who
59 engages in real estate appraisal activity for a fee or
60 other valuable consideration;

61 (j) "Real property interests" means one or more
62 defined interests, benefits or rights inherent in the
63 ownership of real estate; and

64 (k) "Certified real estate appraiser" means a person
65 who holds a current, valid certification as a state
66 certified residential real estate appraiser or a state
67 certified general real estate appraiser issued to him or
68 her under the provisions of this article.

§37-14-4. Exceptions to license or certification requirement.

1 This article does not apply to:

2 (a) A real estate broker or salesperson licensed by
3 this state who, in the ordinary course of his or her
4 business, gives an opinion to a potential seller or third
5 party as to the recommended listing price of real estate
6 or an opinion to a potential purchaser or third party as
7 to the recommended purchase price of real estate, when
8 this opinion as to the listing price or the purchase price
9 is 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;

23 (d) Appraisals of personal property, including, but
24 not limited to, jewelry, household furnishings, vehicles
25 and manufactured homes not attached to real estate;

26 (e) Any officer or employee of the United States, or
27 of the state of West Virginia or a political subdivision
28 thereof, when the employee or officer is performing his

29 official duties: *Provided*, That such individual does not
30 furnish advisory service for compensation to the public
31 or act as an independent contracting party in West
32 Virginia or any subdivision thereof in connection with
33 the appraisal of real estate or real property: *Provided*,
34 *however*, That this exception shall not apply with respect
35 to federally related transactions as defined in Title XI
36 of the United States Code, entitled "Financial Institu-
37 tions Reform, Recovery, and Enforcement Act of 1989";
38 and

39 (f) Any evaluation of the value of real estate serving
40 as collateral for a loan made by a financial institution
41 insured by the federal deposit insurance corporation:
42 *Provided*, That: (1) The amount of the loan is less than
43 fifty thousand dollars or such other amount not to
44 exceed one hundred thousand dollars established by the
45 federal deposit insurance corporation, the board of
46 governors of the federal reserve system, the office of the
47 comptroller of the currency or the office of thrift
48 supervision pursuant to authority granted under Title
49 XI of the United States Code, entitled "Financial
50 Institutions Reform, Recovery, and Enforcement Act of
51 1989" applicable to a particular insured financial
52 institution as the level below which collateral evalua-
53 tions need not be performed by a licensed or certified
54 appraiser; (2) the evaluation is used solely by the lender
55 in its records to document the collateral value; (3) the
56 evaluation clearly indicates on its face that it is for the
57 lender's internal use only; (4) the evaluation shall not be
58 labeled an "appraisal"; and (5) the evaluation be on a
59 form approved by the board. Individuals performing
60 these evaluations may be compensated for their services.

§37-14-14. Continuing education.

1 (a) As a prerequisite to renewal of license, a licensed
2 or certified real estate appraiser shall present evidence
3 satisfactory to the board that he or she has had at least
4 ten hours of continuing education.

5 (b) The board shall adopt rules to ensure that persons
6 licensed under the provisions of this article have a
7 working knowledge of current real estate appraisal

8 theories, practices and techniques that will enable them
9 to provide competent real estate appraisal services to the
10 public and to financial institutions.

§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.

§37-14-28. Classification of licensure and certification.

1 There are three classifications of real estate
2 appraisers:

3 (a) *State licensed residential real estate appraiser.* —
4 The state licensed residential real estate appraiser
5 classification consists of those persons who meet the
6 requirements for licensure that relate to the appraisal
7 of: (1) Complex residential real estate of one to four units
8 having a value of less than two hundred fifty thousand
9 dollars; (2) noncomplex residential real estate of one to
10 four units having a value of less than one million dollars;
11 and (3) nonresidential real estate having a value of less
12 than one hundred thousand dollars.

13 (b) *State certified residential real estate appraiser.* —
14 The state certified residential real estate appraiser
15 classification shall consist of those persons who meet the
16 requirements for certification that relate to the apprai-
17 sal of residential real estate of one to four units without
18 regard to value or complexity, and to the value of
19 nonresidential real estate when the value is less than one
20 hundred thousand dollars.

21 (c) *State certified general real estate appraiser.* — The
22 state certified general real estate appraiser classifica-
23 tion shall consist of those persons who meet the
24 requirements for certification relating to the appraisal
25 of all types of real estate.

26 The board is authorized to establish by rules promul-
27 gated pursuant to the provisions of chapter twenty-nine-

28 a of this code classes or classifications of appraiser
29 licensing not prohibited by applicable federal law.

30 The application for licensure or certification or the
31 application to take an examination shall include the
32 classification of licensure or certification the applicant
33 is seeking and, if applicable, the class of licensure or
34 certification previously granted to the applicant.

§37-14-29. Experience requirement.

1 An applicant for certification shall furnish the board
2 with a detailed listing of the real estate appraisal
3 reports or file memoranda for each year for which
4 experience is claimed by the applicant. Upon request,
5 the applicant shall make available to the board for
6 examination a sample of appraisal reports which the
7 applicant has prepared in the course of his or her
8 practice. All information provided by an applicant shall
9 be under oath or affirmation that the information
10 provided is true and correct and the oath or affirmation
11 shall be notarized.

§37-14-30. Qualifications.

1 (a) *Residential licensed classification.* — As a prereq-
2 uisite to taking the examination for licensure as a state
3 licensed residential real estate appraiser, an applicant
4 shall present evidence satisfactory to the board that he
5 or she has satisfied the criteria, including education and
6 experience criteria, for licensure of licensed appraisers
7 issued by the board pursuant to the provisions of chapter
8 twenty-nine-a of this code.

9 (b) *Residential and general certified classifications.* —
10 As a prerequisite to taking the examination for certi-
11 fication as either a state certified residential or a state
12 certified general real estate appraiser, an applicant
13 shall present evidence satisfactory to the board that he
14 or she has satisfied the criteria, including education and
15 experience criteria, for certification of residential or
16 general appraisers issued by the appraisal qualifications
17 board of the appraisal foundation, which criteria shall
18 be incorporated in regulations of the board adopted

19 pursuant to the provisions of chapter twenty-nine-a of
20 this code.

21 (c) *Transitional license.* — The board may provide for
22 satisfying the requirements of subsection (a) of this
23 section with respect to either education requirements or
24 experience requirements, but not both education and
25 experience requirements, and may issue a transitional
26 license as a state licensed residential real estate
27 appraiser so long as: (1) All other criteria for licensure
28 are satisfied; (2) the applicant passes the examination
29 required pursuant to section thirty-one of this article;
30 and (3) the educational deficiency is corrected within
31 one year of licensure.

§37-14-31. Examination required.

1 An original license as a state licensed residential real
2 estate appraiser shall not be issued to any person who
3 has not passed an examination administered through the
4 board.

5 An original certification as a state certified real estate
6 appraiser shall not be issued to any person who has not
7 passed an examination administered by the board. The
8 examination, administered by the board, shall be
9 consistent with the uniform state examination for
10 licensure or certification issued or endorsed by the
11 appraisal qualifications board of the appraisal
12 foundation.

13 The board may offer for the benefit of prospective
14 applicants for licensure or certification a program of
15 instruction and preparation for the examination.

§37-14-33. Renewal of license or certification.

1 To obtain a renewal of license or certification under
2 this article, the holder of a current, valid license or
3 certification shall make application and pay the pres-
4 cribed fee to the board no earlier than one hundred
5 twenty days nor later than thirty days prior to the
6 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 that the
9 applicant has completed the continuing education

10 requirements for 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 license or certification through mistake, misunderstanding,
14 ing, or circumstances beyond the control of the appli-
15 cant, the board may extend the term of the applicant's
16 license or certification for a period not to exceed six
17 months upon payment by the applicant of a prescribed
18 fee for the extension. If the applicant for renewal of
19 license or certification satisfies the requirements for
20 renewal during the extension period, the beginning date
21 of his or her renewal license or certificate shall be the
22 day following the expiration of the certificate previously
23 held by the applicant.

24 If a state licensed or certified real estate appraiser
25 under this article fails to renew his or her license or
26 certification prior to its expiration or within any period
27 of extension granted by the board pursuant to this
28 article, the applicant may obtain a renewal of his or her
29 license or certification by satisfying all of the require-
30 ments for renewal and filing an application for renewal,
31 accompanied by a late renewal fee, within two years of
32 the date that his or her certification expired.

§37-14-34. Basis for denial.

1 The board may deny the issuance of a license or
2 certificate as a state licensed or certified real estate
3 appraiser to an applicant on any ground enumerated in
4 this article. Any applicant whose application for license
5 or certification is denied may demand and shall be
6 afforded a hearing pursuant to section seven of this
7 article.

§37-14-35. Use of term "state licensed or certified real estate appraiser".

1 The term "state certified real estate appraiser" or
2 "state licensed real estate appraiser" may be used to
3 refer only to an individual who is a state licensed or
4 certified real estate appraiser under this article and
5 may not be used following, or immediately in connection
6 with, the name or signature of a firm, partnership,

7 corporation, group, or in such manner that it might be
8 interpreted as referring to a firm, partnership, corpo-
9 ration or group or to anyone other than the individual
10 who is licensed or certified under this article. This
11 requirement shall not be construed to prevent a state
12 licensed or certified real estate appraiser from signing
13 an appraisal report on behalf of a corporation, partner-
14 ship, firm or group practice if it is clear that only the
15 individual is licensed or certified and that the corpora-
16 tion, partnership, firm or group practice is not. A
17 license or certificate may not be issued under the
18 provisions of this article to a corporation, partnership,
19 firm or group.

§37-14-36. Continuing education requirement.

1 As a prerequisite to renewal of license or certification,
2 a state licensed or certified real estate appraiser shall
3 present evidence satisfactory to the board of having met
4 the continuing education requirements of this section.

5 The basic continuing education requirement for
6 renewal of license or certification shall be the comple-
7 tion by the applicant, during the immediately preceding
8 term of licensure or certification, of not less than ten
9 classroom hours of instruction per year in courses or
10 seminars which have received the approval of the board.

11 In lieu of meeting the requirements set forth above,
12 an applicant for relicensure or recertification may
13 satisfy all or part of the requirements by presenting
14 evidence of the 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 license or
29 certification under this article has a working knowledge
30 of current real estate appraisal theories, practices and
31 techniques that will enable the individual to provide
32 competent real estate appraisal services to the members
33 of the public with whom such individual deals in a
34 professional relationship under the authority of his or
35 her license or certification. All rules shall be promul-
36 gated pursuant to the provisions of chapter twenty-nine-
37 a of this code and shall prescribe the following:

38 (1) Policies and procedures to be followed in approval
39 of courses of instruction and seminars;

40 (2) Standards, policies and procedures to be used in
41 evaluating an applicant's claim of equivalency;

42 (3) Standards, monitoring methods and systems for
43 recording attendance to be employed by course and
44 seminar sponsors as a prerequisite to approval of
45 courses and seminars for credit.

46 In developing and proposing rules pursuant to this
47 section, the board shall give consideration to courses of
48 instruction, seminars, and other appraisal education
49 programs developed by or under the auspices of
50 organizations or associations of professional real estate
51 appraisers which are utilized by such organizations or
52 associations for the purpose of awarding real estate
53 appraisal designations or indicating compliance with
54 the continuing education requirements of the organiza-
55 tions or associations.

56 No amendment or repeal of a rule adopted by the
57 board pursuant to this section shall operate to deprive
58 a state licensed or certified real estate appraiser of
59 credit toward renewal of his or her license or certifica-
60 tion for any course of instruction or seminar that has
61 been completed by the state licensed or certified real
62 estate appraiser prior to the adoption of the rule.

63 On or after the first day of January, one thousand nine
64 hundred ninety-two, a license or certification as a state

65 licensed or certified real estate appraiser that has been
66 revoked or suspended as the result of a disciplinary
67 action taken by the board shall not be reinstated unless
68 the applicant for reinstatement presents evidence that
69 he or she has completed the continuing education
70 requirement that is provided in this article for the
71 renewal of license or certification. This continuing
72 education requirement shall not be imposed upon an
73 applicant for reinstatement who has been required by
74 the board to successfully complete the examination for
75 state licensed or certified real estate appraiser required
76 by section thirty-one of this article as a condition for
77 reinstatement of certification.

CHAPTER 174

(S. B. 602—By Senators Spears, Wiedebusch, Lucht, Boley, Chernenko, Tomblin, Brackenrich, J. Manchin, Felton, Jones, Craigo, Claypole, Holliday and Wehrle)

[Passed March 7, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend and reenact section ten, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to giving preferential recall rights to all state permanent classified employees who are laid off, such recall rights to be based on seniority and fitness; establishing eligible lists for preference; limiting eligibility for appointment to twelve months; and grounds for rejection of candidates.

Be it enacted by the Legislature of West Virginia:

That section ten, 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.

§29-6-10. Rules of division.

1 The board shall have the authority to promulgate,
2 amend or repeal rules, in accordance with chapter
3 twenty-nine-a of this code, to implement the provisions
4 of this article:

5 (1) For the preparation, maintenance and revision of
6 a position classification plan for all positions in the
7 classified service and a position classification plan for
8 all positions in the classified-exempt service, based upon
9 similarity of duties performed and responsibilities
10 assumed, so that the same qualifications may reasonably
11 be required for and the same schedule of pay may be
12 equitably applied to all positions in the same class. The
13 position classification plan for classified-exempt service
14 shall become effective not later than the first day of
15 July, one thousand nine hundred seventy-nine. Except
16 for persons employed by the governing boards of higher
17 education, all persons receiving compensation in the
18 form of a wage or salary, funded either in part or in
19 whole by the state, shall be included in either the
20 position classification plan for classified service or
21 classified-exempt service. After each such classification
22 plan has been approved by the board, the director shall
23 allocate the position of every employee in the classified
24 service to one of the classes in the classified plan and
25 the position of every employee in the classified-exempt
26 service to one of the positions in the classified-exempt
27 plan. Any employee affected by the allocation of a
28 position to a class shall, after filing with the director of
29 personnel a written request for reconsideration thereof
30 in such manner and form as the director may prescribe,
31 be given a reasonable opportunity to be heard thereon
32 by the director. The interested appointing authority
33 shall be given like opportunity to be heard.

34 (2) For a pay plan for all employees in the classified
35 service, after consultation with appointing authorities
36 and the state fiscal officers, and after a public hearing
37 held by the board. Such pay plan shall become effective
38 only after it has been approved by the governor after
39 submission to him by the board. Amendments to the pay
40 plan may be made in the same manner. Each employee
41 shall be paid at one of the rates set forth in the pay plan
42 for the class of position in which he is employed. The
43 principle of equal pay for equal work in the several
44 agencies of the state government shall be followed in the
45 pay plan as established hereby.

46 (3) For open competitive examinations to test the
47 relative fitness of applicants for the respective positions
48 in the classified service. Such examinations need not be
49 held until after the rules have been adopted, the service
50 classified and a pay plan established, but shall be held
51 not later than one year after this article takes effect.
52 Such examinations shall be announced publicly at least
53 fifteen days in advance of the date fixed for the filing
54 of applications therefor, and may be advertised through
55 the press, radio and other media. The director may,
56 however, in his discretion, continue to receive applica-
57 tions and examine candidates long enough to assure a
58 sufficient number of eligibles to meet the needs of the
59 service and may add the names of successful candidates
60 to existing eligible lists in accordance with their
61 respective ratings.

62 An additional five points shall be awarded to the score
63 of any examination successfully completed by a veteran.
64 A disabled veteran shall be entitled to an additional ten
65 points, rather than five points as aforesaid, upon
66 successful completion of any examination.

67 (4) For promotions within the classified service which
68 shall give appropriate consideration to the applicant's
69 qualifications, record of performance and his score on
70 a written examination, when such examination is
71 practicable. In filling vacancies an effort should be
72 made to achieve a balance between promotion from
73 within the service and the introduction into the service
74 of qualified new employees. An advancement in rank or
75 grade or an increase in salary beyond the maximum
76 fixed for the class shall constitute a promotion.

77 (5) For layoffs by classification for reason of lack of
78 funds or work, or abolition of a position, or material
79 changes in duties or organization, or any loss of position
80 because of the provisions of this subdivision and for
81 recall of employees so laid off, consideration shall be
82 given to an employee's seniority as measured by
83 permanent employment in the classified service or a
84 state agency. In the event that the agency wishes to lay
85 off a more senior employee, the agency must demon-
86 strate that the senior employee cannot perform any

87 other job duties held by less senior employees within
88 that agency in the job class or any other equivalent or
89 lower job class for which the senior employee is
90 qualified: *Provided*, That if an employee refuses to
91 accept a position in a lower job class, such employee
92 shall retain all rights of recall as hereinafter provided.

93 (6) For recall of employees, recall shall be by reverse
94 order of layoff to any job class that the employee has
95 previously held or a lower class in the series within the
96 agency as that job class becomes vacant. An employee
97 will retain his place on the recall list for the same period
98 of time as his seniority on the date of his layoff or for
99 a period of two years, whichever is less. No new
100 employees shall be hired for any vacancy in his or her
101 job class or in a lower job class in the series until all
102 eligible employees on layoff are given the opportunity
103 to refuse that job class. An employee shall be recalled
104 onto jobs within the county wherein his last place of
105 employment is located or within a county contiguous
106 thereto. Any laid-off employee who is eligible for a
107 vacant position shall be notified by certified mail of the
108 vacancy. It shall be the responsibility of the employee
109 to notify the agency of any change in his address.

110 Notwithstanding any other provision of the code to the
111 contrary, except for the provisions of section seven,
112 article two, chapter five-b of this code, when filling
113 vacancies at state agencies the directors of state
114 agencies shall, for a period of twelve months after the
115 layoff of a permanent classified employee in another
116 agency, give preference to qualified permanent classi-
117 fied employees based on seniority and fitness over all but
118 existing employees of the agency or its facilities:
119 *Provided*, That employment of these persons who are
120 qualified and who were permanently employed imme-
121 diately prior to their layoff shall not supersede the recall
122 rights of employees who have been laid off in such
123 agency or facility.

124 (7) For the establishment of eligible lists for appoint-
125 ment and promotion within the classified service, upon
126 which lists shall be placed the names of successful
127 candidates in the order of their relative excellence in the

128 respective examinations. Eligibility for appointment
129 from any such list shall continue not longer than three
130 years. An appointing authority shall make his selection
131 from the top ten names on the appropriate lists of
132 eligibles, or may choose any person scoring at or above
133 the ninetieth percentile on the examination.

134 For the establishment of eligible lists for preference
135 as provided in subdivision (6) of this section, a list shall
136 be provided according to seniority. An appointed
137 authority shall make the selection of the most senior
138 qualified person: *Provided*, That eligibility for appoint-
139 ment from any such list shall continue not longer than
140 one year and shall cease immediately upon appointment
141 to a classified position.

142 (8) For the rejection of candidates or eligibles within
143 the classified service who fail to comply with reasonable
144 requirements in regard to such factors as age, physical
145 condition, character, training and experience who are
146 addicted to alcohol or narcotics or who have attempted
147 any deception or fraud in connection with an
148 examination.

149 (9) For a period of probation not to exceed one year
150 before appointment or promotion may be made complete
151 within the classified service.

152 (10) For provisional employment without competitive
153 examination within the classified service when there is
154 no appropriate eligible list available. No such provi-
155 sional employment may continue longer than six
156 months, nor shall successive provisional appointments
157 be allowed, except during the first year after the
158 effective date of this article, in order to avoid stoppage
159 of orderly conduct of the business of the state.

160 (11) For keeping records of performance of all
161 employees in the classified service, which service
162 records may be considered in determining salary
163 increases and decreases provided in the pay plan; as a
164 factor in promotion tests; as a factor in determining the
165 order of layoffs because of lack of funds or work and
166 in reinstatement; and as a factor in demotions, dis-
167 charges and transfers.

168 (12) For discharge or reduction in rank or grade only

169 for cause of employees in the classified service. Dis-
170 charge or reduction of these employees shall take place
171 only after the person to be discharged or reduced has
172 been presented with the reasons for such discharge or
173 reduction stated in writing, and has been allowed a
174 reasonable time to reply thereto in writing, or upon
175 request to appear personally and reply to the appointing
176 authority or his deputy. The statement of reasons and
177 the reply shall be filed as a public record with the
178 director. Notwithstanding the foregoing provisions of
179 this subdivision, no permanent employee shall be
180 discharged from the classified service for absenteeism
181 upon using all entitlement to annual leave and sick leave
182 when such use has been due to illness or injury as
183 verified by a physician's certification or for other
184 extenuating circumstances beyond the employee's
185 control unless his disability is of such a nature as to
186 permanently incapacitate him from the performance of
187 the duties of his position. Upon exhaustion of annual
188 leave and sick leave credits for the reasons specified
189 herein and with certification by a physician that the
190 employee is unable to perform his duties, a permanent
191 employee shall be granted a leave of absence without
192 pay for a period not to exceed six months if such
193 employee is not permanently unable to satisfactorily
194 perform the duties of his position.

195 (13) For such other rules and administrative regula-
196 tions, not inconsistent with this article, as may be proper
197 and necessary for its enforcement.

198 (14) The board shall review and approve by rules and
199 regulations the establishment of all classified-exempt
200 positions to assure consistent interpretation of the
201 provisions of this article.

202 The provisions of this section are subject to any
203 modifications contained in chapter five-f of this code.
204 The board may include in the rules provided for in this
205 article such provisions as are necessary to conform to
206 regulations and standards of any federal agency
207 governing the receipt and use of federal grants-in-aid by
208 any state agency, anything in this article to the contrary
209 notwithstanding. The board and the director shall see
210 that rules and practices meeting such standards are in
211 effect continuously after the effective date of this article.

CHAPTER 175

(S. B. 159—By Senator Woolton)

[Passed March 3, 1992; in effect ninety days from passage. Approved by the Governor.]

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 fourteen, relating to audits of corporations, associations or other organizations that receive state funds or grants; and providing for certain audits by the legislative auditor.

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 fourteen, to read as follows:

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-14. Audits of corporations, associations or other organizations which receive state funds or grants.

1 Any corporation, association or other organization in
2 West Virginia, whether nonprofit or for profit, which
3 receives state funds or grants in the amount of fifteen
4 thousand dollars or more shall file an audit of the
5 disbursement of funds with the legislative auditor's
6 office. The audit shall be filed within two years of the
7 disbursement of funds or grants by the grantee and
8 shall be made by an independent certified public
9 accountant at the cost of the corporation, association or
10 other organization, and must show that the funds or
11 grants were spent for the purposes intended when the
12 grant was made. State funds or audits of state funds or
13 grants under fifteen thousand dollars may be authorized
14 by the joint committee on government and finance to be
15 conducted by the legislative auditor's office, at no cost
16 to the grantee.

CHAPTER 176

(H. B. 4414—By Mr. Speaker, Mr. Chambers, and Delegate Burk,
By request of the Executive)

[Passed March 4, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article sixteen-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the governor to transfer funds from the West Virginia economic development authority insurance fund to a special economic development fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16A. WEST VIRGINIA PARKWAYS, ECONOMIC DEVELOPMENT AND TOURISM AUTHORITY.

§17-16A-23. Special highway fund; appropriations from fund.

1 (a) There is hereby created a special fund in the state
2 treasury which shall be designated and known as the
3 "West Virginia special highway fund." The special
4 highway fund shall consist of (i) all funds allocated and
5 disbursed to the state department of highways by the
6 parkways authority, including without limitation the
7 proceeds of any parkway revenue bonds or revenue
8 refunding bonds issued by the parkways authority
9 pursuant to sections eleven, twenty-one or twenty-two of
10 this article, in repayment of the amount of state funds
11 used to upgrade the West Virginia Turnpike to federal
12 interstate standards, (ii) any appropriations, grants,
13 gifts, contributions or other revenues received by the
14 special highway fund from any source, and (iii) all
15 interest earned on moneys held in the fund. When any
16 funds are received by the state department of highways

17 from the parkways authority pursuant to this section,
18 they shall be paid into the state treasury by the
19 commissioner of the department of highways and
20 credited to the special highway fund, and shall be
21 disbursed in the manner set forth in subsections (b) and
22 (c) of this section. The special highway fund shall not
23 be treated by the auditor and treasurer as part of the
24 state road fund or as part of the general revenues of the
25 state.

26 (b) The governor shall have the authority to transfer
27 to the insurance fund created in section eight, article
28 fifteen, chapter thirty-one of this code, on any date or
29 dates after the enactment of this section, up to thirty-
30 five million dollars of the funds received or earned by
31 the special highway fund, which funds may be used and
32 applied by the West Virginia economic development
33 authority in the manner and to the extent set forth in
34 article fifteen of said chapter thirty-one. On or before
35 the thirty-first day of December, one thousand nine
36 hundred ninety-four, the economic development author-
37 ity shall retransfer to the special highway fund the
38 thirty-five million dollars advanced to the insurance
39 fund pursuant to this section. All interest earned on the
40 thirty-five million dollars while being held in the
41 insurance fund shall remain in, and be the property of,
42 said insurance fund: *Provided*, That on and after the
43 first day of July, one thousand nine hundred ninety-two,
44 the governor shall have the authority to transfer six
45 million dollars from the insurance fund created in
46 section eight, article fifteen, chapter thirty-one of this
47 code to a special fund hereby created in the state
48 treasury and designated "the West Virginia economic
49 development fund." Expenditures from the fund are to
50 be made only in accordance with appropriations by the
51 Legislature.

52 (c) Upon the transfer of thirty-five million dollars to
53 the insurance fund as provided in subsection (b) of this
54 section, the Legislature shall annually appropriate all or
55 any part of the balance of the funds deposited in the
56 special highway fund for the construction, reconstruc-
57 tion, improvement, maintenance or repair of any

58 parkway project or projects: *Provided*, That all of such
 59 funds shall be appropriated to (i) the upgrading or
 60 addition of interchanges; (ii) the construction of express-
 61 ways or feeder roads; or (iii) the upgrading or construc-
 62 tion of information centers, visitors' centers, rest stops,
 63 or any combination thereof, and that all such feeder
 64 roads, expressways, interchanges, information centers,
 65 visitors' centers or rest stops shall connect to the West
 66 Virginia Turnpike and within seventy-five air miles of
 67 the West Virginia Turnpike as it existed on the effective
 68 date of this legislation, or any subsequent expressway,
 69 turnpike or feeder road constructed pursuant to this
 70 subsection. The appropriation of funds pursuant to this
 71 subsection shall be expended on more than one project.

CHAPTER 177

(Com. Sub. for S. B. 423—By Senators Chafin, Dalton, Wagner, Helmick,
 Brackenrich, Jones, Whitlow, M. Manchin, Sharpe, Heck, Felton, Tomblin,
 J. Manchin, Wehrle, Minard, Anderson, Hawse and Blatnik)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one,
 chapter twenty-four-a of the code of West Virginia, one
 thousand nine hundred thirty-one, as amended, relating
 to clarifying provisions concerning motor vehicles
 transporting recycling materials.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PURPOSES, DEFINITIONS AND EXEMPTIONS.

§24A-1-3. Exemptions from chapter.

1 The provisions of this chapter, except where specif-
 2 ically otherwise provided, shall not apply to:

3 (1) Motor vehicles operated exclusively in the trans-
 4 portation of United States mail or in the transportation

5 of newspapers: *Provided*, That such vehicles and their
6 operators shall be subject to the safety rules promul-
7 gated by the commission;

8 (2) Motor vehicles owned and operated by the United
9 States of America, the state of West Virginia or any
10 county, municipality or county board of education,
11 urban mass transportation authority established and
12 maintained pursuant to article twenty-seven, chapter
13 eight of this code, or by any department thereof, and any
14 motor vehicles operated under a contract with a county
15 board of education exclusively for the transportation of
16 children to and from school or such other legitimate
17 transportation for the schools as the commission may
18 specifically authorize;

19 (3) Motor vehicles used exclusively in the transporta-
20 tion of agricultural or horticultural products, livestock,
21 poultry and dairy products from the farm or orchard on
22 which they are raised or produced to markets, process-
23 ing plants, packing houses, canneries, railway shipping
24 points and cold storage plants, and in the transportation
25 of agricultural or horticultural supplies to such farms
26 or orchards to be used thereon;

27 (4) Motor vehicles used exclusively in the transporta-
28 tion of human or animal excreta;

29 (5) Motor vehicles used exclusively in ambulance
30 service or duly chartered rescue squad service;

31 (6) Motor vehicles used exclusively for volunteer fire
32 department service;

33 (7) Motor vehicles used exclusively in the transporta-
34 tion of coal from mining operations to loading facilities
35 for further shipment by rail or water carriers: *Provided*,
36 That such vehicles and their operators shall be subject
37 to the safety rules promulgated by the commission;

38 (8) Motor vehicles used by petroleum commission
39 agents and oil distributors solely for the transportation
40 of petroleum products and related automotive products
41 when such transportation is incidental to the business
42 of selling said products: *Provided*, That such vehicles
43 and their operators shall be subject to the safety rules
44 promulgated by the commission; and

45 (9) Motor vehicles owned, leased by or leased to any
 46 person and used exclusively for the transportation of
 47 processed source-separated recycled materials, gener-
 48 ated by commercial, institutional and industrial custo-
 49 mers, transported free of charge from such customers
 50 to a facility for further processing: *Provided*, That such
 51 vehicles and their operators shall be subject to the safety
 52 rules promulgated by the commission.

CHAPTER 178

(Com. Sub. for S. B. 512—By Senators Burdette, Mr. President and Boley,
 By Request of the Executive)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article sixteen-c, relating to the division of public transit, its creation, its designation, its powers and duties; creation of public transit advisory council; and assistance to be provided by other state agencies.

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:

ARTICLE 16C. DIVISION OF PUBLIC TRANSIT.

- §17-16C-1. Creation of division.
- §17-16C-2. Designation of department.
- §17-16C-3. Powers and duties of the division.
- §17-16C-4. Public transit advisory council.
- §17-16C-5. Assistance of other state agencies.

§17-16C-1. Creation of division.

- 1 The division of public transit is hereby created and
- 2 is under the supervision of the secretary of transporta-
- 3 tion pursuant to the provisions of chapter five-f of this
- 4 code.

§17-16C-2. Designation of department.

1 The department of transportation through the div-
2 ision of public transit is hereby designated as the agency
3 of this state responsible for administering all federal
4 and state programs relating to public transportation.

§17-16C-3. Powers and duties of the division.

1 The division has the power to:

2 (a) Assist in the development of improved public
3 transportation facilities, services, equipment, techniques
4 and methods, with the cooperation of transportation
5 carriers, both public and private;

6 (b) Enhance the mobility of all residents of the state,
7 particularly those who by age, income or physical
8 limitation experience serious transportation
9 disadvantages;

10 (c) Manage publicly funded transportation resources
11 in a cost effective manner and endeavor to achieve an
12 increased ridership with available resources;

13 (d) Establish a system to adequately coordinate and
14 distribute publicly funded transportation services
15 within the state, including, but not limited to, transpor-
16 tation services for senior citizens, for participants in
17 head start programs, for disabled citizens and for
18 private nonprofit organizations and to establish a pilot
19 project or projects as an initial part of implementing a
20 system of coordination and distribution;

21 (e) Maintain a cooperative working relationship with
22 public and private transportation providers, private
23 nonprofit organizations, local planning and development
24 councils, other state agencies and the federal
25 government;

26 (f) Coordinate and assist various public and private
27 transportation entities in strengthening their develop-
28 ment and operation of public transportation facilities
29 and services;

30 (g) Coordinate with other states and the federal
31 government the planning, construction, operation and

32 maintenance of public transportation facilities in the
33 state having an interstate impact;

34 (h) Acquire, plan, hold, construct, improve, maintain
35 and operate, own or lease, either in the capacity of lessor
36 or lessee, all facilities necessary or incidental thereto for
37 the operation of public transportation systems in the
38 state;

39 (i) Apply for and receive from the federal govern-
40 ment or from any other person, corporation, association
41 or other entity, any grants in aid or gifts to be used for
42 public transportation related purposes;

43 (j) Provide financial assistance to local transportation
44 agencies to the extent authorized by the Legislature and
45 federal grants: *Provided*, That no county or local
46 government may reduce the level of funding for
47 transportation services in place upon the effective date
48 of this section and be eligible to receive financial
49 assistance pursuant to this section;

50 (k) Enter into contracts with other agencies of the
51 state, other public bodies, private firms or individuals
52 to provide technical services or public transportation
53 related services;

54 (l) Exercise or perform any power, duty, responsibil-
55 ity or function in carrying out public transportation
56 related activities which are essential to the completion
57 of the projects;

58 (m) Insure local matching funds with state or local
59 money, or both, for federal assistance projects; and

60 (n) Implement rules necessary to accomplish its
61 assigned duties.

§17-16C-4. Public transit advisory council.

1 There is hereby created the West Virginia public
2 transit advisory council which shall consist of eleven
3 members, selected by the governor, who shall serve for
4 two-year terms commencing on the first day of April,
5 one thousand nine hundred ninety-two, and who shall
6 serve at the will and pleasure of the governor. The
7 membership of the council shall be broadly representa-

8 tive of those groups affected by the implementation of
9 this article: *Provided*, That no more than four of the
10 members of the council shall reside in the same
11 congressional district. No more than six members may
12 be of the same political party. The members of the
13 council shall serve without compensation and without
14 provision for their expenses related to the work of the
15 council. The council shall provide consultation, on an
16 advisory basis, to the division of public transit on
17 matters related to the implementation of the pilot
18 program or programs referred to in subdivision (d),
19 section three of this article.

§17-16C-5. Assistance of other state agencies.

1 Notwithstanding any other provision of this code to
2 the contrary, at the division's request and as mutually
3 agreed upon, other state departments, divisions or
4 agencies may enter into agreements with the division to
5 assist or undertake projects that are beneficial to public
6 transportation. All expenses and other requirements
7 connected with the projects remain the responsibility of
8 the division of public transit.

CHAPTER 179

(H. B. 4428—By Delegate D. Miller)

[Passed March 4, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to vaccination of dogs and cats for rabies; and establishing requirements for rabies vaccination certificates.

Be it enacted by the Legislature of West Virginia:

That section four, article twenty-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 20A. VACCINATION OF DOGS AND CATS FOR RABIES.**§19-20A-4. Vaccination tag and certificate.**

1 Each person vaccinating a dog or cat for rabies shall
2 provide a "certificate of rabies vaccination" which shall
3 contain the following information:

4 (a) Name of the county where the owner of the animal
5 resides;

6 (b) Vaccination tag number;

7 (c) Identification of the animal by color, weight,
8 breed, age and sex;

9 (d) Name, address and telephone number of the
10 owner;

11 (e) Type of vaccine, the manufacturer of the vaccine
12 and the serial number;

13 (f) Date of the vaccination;

14 (g) Identification of the veterinarian, doctor of
15 medicine or person administering the vaccination;

16 (h) Such other information as the commissioner of
17 agriculture may require.

18 The owner of the animal shall retain the original
19 certificate of vaccination in his or her records. Copies
20 of the certificate or a computer printout that contains
21 the information required above shall be filed with the
22 person administering the vaccination and the clerk of
23 the county commission in the county where the owner
24 of the animal resides.

25 Tags to be furnished by the county commission shall
26 be of a distinctive and easily recognized color, and shall
27 have thereon engraved, or stamped, the year of vacci-
28 nation and the number indicating the record above
29 described. Such tag shall be securely fastened to the
30 collar worn by the dog and shall be given to the owner
31 by the veterinarian, the doctor of medicine or the person
32 vaccinating the dog or cat at the time of vaccination.

CHAPTER 180

(S. B. 448—By Senators Wiedebusch, Minard, Macnaughtan,
Withers, Brackenrich, Burdette, Mr. President, and Whitlow)

[Passed March 7, 1992: in effect ninety days from passage. Approved by the Governor.]

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 one-a, relating to the West Virginia recreational trails system; the "West Virginia Rails to Trails Program"; establishing a state rail bank procedure; powers and duties of the division of tourism and parks and railroad maintenance authority; and establishing limited liability for adjacent landowners.

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 one-a, to read as follows:

ARTICLE 1A. WEST VIRGINIA RAILS TO TRAILS PROGRAM.

- §5B-1A-1. Purpose.
- §5B-1A-2. Rails to trails program.
- §5B-1A-3. Definitions.
- §5B-1A-4. Powers and duties of the division.
- §5B-1A-5. Railroad maintenance authority.
- §5B-1A-6. Abandoned rights-of-way owned by the state prior to effective date of article.
- §5B-1A-7. Railroad rights-of-way preservation.
- §5B-1A-8. Limitation on liability of owner from whom state acquires land or interest therein.
- §5B-1A-9. Limitation on liability of persons making land available for trail use without charge.

§5B-1A-1. Purpose.

- 1 The Legislature hereby declares that the long-term
- 2 value to the public of retaining networks of abandoned
- 3 railroad corridor lines is substantial, not only for the
- 4 preservation of corridors for future rail transportation
- 5 uses, but in terms of providing interim recreational use,
- 6 providing public open space and linking together other

7 community areas and recreational spaces, providing for
8 efficient and convenient placement of underground
9 utilities and telecommunication lines, providing environ-
10 mental greenways and wildlife habitat, providing public
11 access to other forms of recreation and improving
12 economic development opportunities associated with all
13 of the above listed multiple uses.

§5B-1A-2. Rails to trails program.

1 There is established within the division of tourism and
2 parks the "West Virginia Rails to Trails Program", the
3 purpose of which is to acquire or assist with the
4 acquisition of, and to develop or assist with the
5 development of, abandoned railroad rights-of-way for
6 interim use as public nonmotorized recreational trails.

§5B-1A-3. Definitions.

1 (1) "Abandoned railroad rights-of-way" means land
2 on which discontinuance of rail service has been
3 authorized by the interstate commerce commission.

4 (2) "Division" means the division of tourism and
5 parks.

6 (3) "Nonmotorized recreational trail use" means
7 bicycle, hiking, cross-country skiing, horseback riding,
8 horse drawn wagon, jogging or other similar activities.

9 (4) "Rail bank" means the holding intact of an
10 abandoned railroad right-of-way for future railroad
11 service.

12 (5) "Rail trail" means an abandoned railroad right-of-
13 way utilized in the interim as a public nonmotorized
14 recreational trail.

§5B-1A-4. Powers and duties of the division.

1 The commissioner of the division of tourism and parks
2 is authorized to:

3 (1) Enter into agreements with any person on behalf
4 of the state to acquire an interest in any abandoned
5 railroad right-of-way, and to develop, maintain or
6 promote any rail trails created pursuant to the provi-
7 sions of this article or already existing and under the

8 state's control at the time of the enactment of this
9 article.

10 (2) Assist any political subdivision or any person in
11 acquiring an interest in any abandoned railroad right-
12 of-way and in developing, maintaining or promoting rail
13 trails.

14 (3) Evaluate existing and potential abandoned rail-
15 road rights-of-way so as to identify such lands as may
16 be suitable for nonmotorized recreational trail use.

17 (4) Establish state rail trails, subject to the limita-
18 tions on acquisition of land for state recreational
19 facilities as set forth in section twenty, article one,
20 chapter twenty of this code.

§5B-1A-5. Railroad maintenance authority.

1 (a) The railroad maintenance authority, as created
2 pursuant to the provisions of section four, article
3 eighteen, chapter twenty-nine of this code, shall hold fee
4 simple title or any lesser interest in land, including
5 easements and leaseholds, on all abandoned railroad
6 rights-of-way acquired by the state, and utilized for
7 interim nonmotorized recreational trail use pursuant to
8 the provisions of this article. The railroad maintenance
9 authority may, at the option of a political subdivision of
10 this state, hold fee simple title or any lesser interest in
11 land, including easements and leaseholds, on all aban-
12 doned railroad rights-of-way acquired by such political
13 subdivision, and utilized for interim nonmotorized
14 recreational trail use. Any provision of article one-a,
15 chapter twenty of this code to the contrary notwith-
16 standing, the public land corporation shall not be vested
17 with title to any abandoned railroad right-of-way which
18 becomes vested in the state pursuant to the provisions
19 of this article.

20 (b) The railroad maintenance authority may, at the
21 request of the commissioner of the division of tourism
22 and parks, acquire an interest in an abandoned railroad
23 right-of-way to be used as a rail trail, in accordance with
24 the provisions of section six, article eighteen, chapter
25 twenty-nine of this code.

26 (c) The railroad maintenance authority shall issue a
27 rail bank certificate for each abandoned railroad right-
28 of-way held by the railroad maintenance authority for
29 interim nonmotorized recreational purposes in accordance
30 with the provisions of section six of this article.

**§5B-1A-6. Abandoned rights-of-way owned by the state
prior to effective date of article.**

1 (a) No abandoned railroad right-of-way acquired by
2 the state prior to the effective date of this article and
3 used as a rail trail may be used for any purpose that
4 would unreasonably limit the ability to restore rail
5 service over the right-of-way if such service were to be
6 required in the future.

7 (b) Any and all abandoned railroad rights-of-way
8 acquired by the state prior to the effective date of this
9 article are hereby declared held for railroad transportation
10 purposes as of the date of acquisition, until, by
11 executive order of the governor, the right-of-way is
12 declared no longer suitable for a public transportation
13 purpose as a railroad right-of-way. Such abandoned
14 railroad rights-of-way shall not revert by operation of
15 law to any other ownership while being held for future
16 railroad use in accordance with the provisions of this
article.

§5B-1A-7. Railroad rights-of-way preservation.

1 (a) Upon receipt of a notice to abandon a railroad
2 right-of-way by the owner thereof, the commissioner
3 may enter into an agreement with the owners of the
4 railroad right-of-way to preserve intact the railroad
5 right-of-way for a period of time not to exceed three
6 months to afford the state sufficient time to evaluate the
7 potential for use by the state for the purposes of this
8 article, and the funds available for acquisition.

9 (b) With regard to any land or an interest therein
10 actually acquired by the state pursuant to the provisions
11 of this article:

12 (1) Every specifically identified railroad right-of-
13 way, including all bridges still in place, shall remain
14 intact except for necessary modifications required to

15 adapt the right-of-way for use as a nonmotorized
16 recreational trail, except for where it is necessary for
17 a motorized vehicle to cross the trail;

18 (2) Any abandoned railroad right-of-way shall be
19 used solely for nonmotorized recreational purposes,
20 subject to such right-of-way being made available for
21 future rail use, if necessary; and

22 (3) Any abandoned railroad right-of-way acquired by
23 the state pursuant to the provisions of this article shall
24 be deemed to be held for railroad use and in continua-
25 tion of the railroad easement and shall not revert by
26 operation of law to any other ownership during the term
27 of the agreement or during the term of a rail bank
28 certificate issued pursuant to section five of this article.

**§5B-1A-8. Limitation on liability of owner from whom
state acquires land or interest therein.**

1 During the interim period when an abandoned
2 railroad right-of-way is held by the state for possible
3 future railroad use, the owner of the railroad right-of-
4 way from whom the state acquired the land or an
5 interest therein is relieved from civil liability for any
6 personal injury or property damage occurring on the
7 right-of-way during such interim period, which might
8 otherwise arise from ownership.

**§5B-1A-9. Limitation on liability of persons making land
available for trail use without charge.**

1 (a) *General rule.* — Except as specifically recognized
2 or provided in subsection (d) of this section, an owner
3 or lessee who provides the public with land for use as
4 a trail under this article or who owns land adjoining any
5 trail developed under this article owes no duty of care
6 to keep the land safe for entry or use by others for
7 recreational purposes, or to give any warning to persons
8 entering or going on the trail or adjoining land of a
9 dangerous condition, use, structure or activity thereon.

10 (b) *Owner.* — Any person, public agency or corpora-
11 tion owning an interest in land utilized for recreational
12 trail purposes pursuant to this article shall be treated
13 as an "owner" for purposes of this article.

14 (c) *Specific limitations on liability.* — Except as
15 specifically recognized by or provided in subsection (d)
16 of this section, an owner or lessee who provides the
17 public with land or who owns adjoining land to the trail
18 under this article is not, by providing that trail or land
19 or owning land adjoining the trail:

20 (1) Presumed to extend any assurance that the land
21 is safe for any purpose;

22 (2) Incur any duty of care toward a person who goes
23 on that land; or

24 (3) Become liable for any injury to persons or
25 property caused by an act or an act of omission of a
26 person who goes on that land.

27 (d) *Exception.* —

28 (1) This section does not apply to the owner or lessee
29 of the land used as a trail if there is any charge made
30 or usually made for entering or using the trail or land,
31 or any part thereof.

32 (2) This section does not apply to the owner of land
33 adjoining a trail if there is any charge made or usually
34 made by the owner of such adjoining land for using the
35 trail or land, or any part thereof, or if any commercial
36 or other activity relating to the use of the trail whereby
37 profit is derived from the patronage of the general
38 public is conducted on such adjoining land, or on any
39 part thereof.

40 (3) The foregoing applies whether the person going on
41 the land provided or adjoining is an invitee, licensee,
42 trespasser or otherwise.

43 (e) This article does not relieve any person of liability
44 which would otherwise exist for deliberate, willful or
45 malicious injury to persons or property. The provisions
46 of this article do not create or increase the liability of
47 any person.

CHAPTER 181

(H. B. 4717—By Delegates Johnson and M. Miller)

[Passed March 2, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article seven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the social security agency; the contribution fund; moneys which go into the contribution fund; authorized expenditures from the fund; transfer of excess moneys from the fund; payment to the federal agency of funds; administration of the fund; and submission of estimates to the governor.

Be it enacted by the Legislature of West Virginia:

That section six, article seven, 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 7. SOCIAL SECURITY AGENCY.

§5-7-6. Contribution fund; appropriations thereto.

1 (a) There is hereby established a special fund to be
2 known as the contribution fund. The fund shall consist
3 of and there shall be deposited in the fund: (1) All
4 contributions, interest and penalties collected under
5 sections four and five of this article; (2) all moneys
6 appropriated to the fund under this article; (3) all
7 moneys paid to the state pursuant to any agreement
8 entered into under subsection (b), section three of this
9 article; (4) any property or securities and earnings
10 thereof acquired through the use of moneys belonging
11 to the fund; (5) interest earned upon any moneys in the
12 fund; and (6) all sums recovered upon the bond of the
13 custodian or otherwise for losses sustained by the fund
14 and all other moneys received for the fund from any
15 other source. All moneys in the fund shall be mingled
16 and undivided. Subject to the provisions of this article,
17 the state agency is vested with full power, authority and
18 jurisdiction over the fund, including all moneys and

19 property or securities belonging thereto, and may
20 perform any and all acts whether or not specifically
21 designated, which are necessary to the administration
22 thereof consistent with the provisions of this article.

23 (b) The contribution fund shall be established and
24 held separate and apart from any other funds or moneys
25 of the state and shall be used and administered
26 exclusively for the purpose of this article: *Provided,*
27 That amounts collected which are found from time to
28 time to exceed the funds needed for the purposes set
29 forth in this article may be transferred to other accounts
30 or funds and redesignated for other purposes by
31 appropriation of the Legislature: *Provided, however,*
32 That any other withdrawals from the fund shall be
33 made for, and solely for (1) payment of amounts
34 required to be paid to the federal agency pursuant to
35 an agreement entered into under section three; (2)
36 payment of refunds provided for in subsection (c),
37 section four of this article; and (3) refunds of overpay-
38 ments, not otherwise adjustable, made by a political
39 subdivision or instrumentality.

40 (c) From the contribution fund the custodian of the
41 fund shall pay to the federal agency such amounts and
42 at such time or times as may be directed by the state
43 agency in accordance with any agreement entered into
44 under section three of this article and applicable federal
45 law.

46 (d) The treasurer of the state shall be ex officio
47 treasurer and custodian of the contribution fund and
48 shall administer the fund in accordance with the
49 provisions of this article and the directions of the state
50 agency and shall pay all warrants drawn upon it in
51 accordance with the provisions of this section and with
52 such regulations as the state agency may prescribe
53 pursuant thereto.

54 (e) (1) There are hereby authorized to be approp-
55 riated annually to the contribution fund, in addition to
56 the contributions collected and paid into the contribu-
57 tion fund under sections four and five, to be available
58 for the purposes of subsections (b) and (c) of this section

59 until expended, such additional sums as are found to be
60 necessary in order to make the payments to the federal
61 agency which the state is obligated to make pursuant
62 to an agreement entered into under section three of this
63 article.

64 (2) The state agency shall submit to the governor, at
65 least ninety days in advance of the beginning of each
66 regular session of the Legislature, an estimate of the
67 amounts authorized to be appropriated to the contribu-
68 tion fund by paragraph (1) of this subsection for the next
69 appropriation period.

CHAPTER 182

(S. B. 105—By Senator Blatnik)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and five-a, article five-f, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two and four, article five-n of said chapter; and to amend and reenact sections two and thirteen, article nine of said chapter, relating to solid waste assessment fees exemptions; defining terms; imposing fees, collection, payment requirements, records, personal liability, officer liability, owner or operator liability; primary, secondary, joint and several liability; including by reference tax administration and procedure; providing for exemptions from fees; dedicating proceeds; and providing for criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections two and five-a, article five-f, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections two and four, article five-n of said chapter be amended and reenacted; and that sections two and thirteen, article nine of said chapter be amended and reenacted, all to read as follows:

Article**5F. Solid Waste Management Act.****5N. Solid Waste Landfill Closure Assistance Program.****9. County and Regional Solid Waste Authorities.****ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.**

§20-5F-2. Definitions.

§20-5F-5a. Solid waste assessment fee; penalties.

§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) "Backhauling" means the practice of using the
7 same container to transport solid waste and to transport
8 any substance or material used as food by humans,
9 animals raised for human consumption or reusable item
10 which may be refilled with any substance or material
11 used as food by humans.

12 (c) "Chief" means the chief of the section of waste
13 management of the division of natural resources.

14 (d) "Commercial recycler" means any person, corpo-
15 ration or business entity whose operation involves the
16 mechanical separation of materials for the purpose of
17 reselling or recycling at least seventy percent by weight
18 of the materials coming into the commercial recycling
19 facility.

20 (e) "Municipal solid waste incineration" means the
21 burning of any solid waste collected by any municipal
22 or residential solid waste disposal company.

23 (f) "Commercial solid waste facility" means any solid
24 waste facility which accepts solid waste generated by
25 sources other than the owner or operator of the facility
26 and shall not include an approved solid waste facility
27 owned and operated by a person for the sole purpose of
28 disposing of solid wastes created by that person or such
29 person and other persons on a cost-sharing or nonprofit
30 basis and shall not include the legitimate reuse and

31 recycling of materials for structural fill, road base, mine
32 reclamation and similar applications.

33 (g) "Division" means the division of natural resources.

34 (h) "Director" means the director of the division of
35 natural resources.

36 (i) "Open dump" means any solid waste disposal
37 which does not have a permit under this article, or is
38 in violation of state law, or where solid waste is disposed
39 in a manner that does not protect the environment.

40 (j) "Person", "persons" or "applicant" mean any
41 industrial user, public or private corporation, institu-
42 tion, association, firm or company organized or existing
43 under the laws of this or any other state or country; state
44 of West Virginia; governmental agency, including
45 federal facilities; political subdivision; county commis-
46 sion; municipal corporation; industry; sanitary district;
47 public service district; drainage district; soil conserva-
48 tion district; watershed improvement district; partner-
49 ship; trust; estate; person or individual; group of persons
50 or individuals acting individually or as a group; or any
51 legal entity whatever.

52 (k) "Sludge" means any solid, semisolid, residue or
53 precipitate, separated from or created by a municipal,
54 commercial or industrial waste treatment plant, water
55 supply treatment plant or air pollution control facility
56 or any other such waste having similar origin.

57 (l) "Solid waste" means any garbage, paper, litter,
58 refuse, cans, bottles, waste processed for the express
59 purpose of incineration, sludge from a waste treatment
60 plant, water supply treatment plant or air pollution
61 control facility, other discarded material, including
62 offensive or unsightly matter, solid, liquid, semisolid or
63 contained liquid or gaseous material resulting from
64 industrial, commercial, mining or community activities
65 but does not include solid or dissolved material in
66 sewage, or solid or dissolved materials in irrigation
67 return flows or industrial discharges which are point
68 sources and have permits under article five-a of this
69 chapter, or source, special nuclear or byproduct mate-

70 rial as defined by the Atomic Energy Act of 1954, as
71 amended, including any nuclear or byproduct material
72 considered by federal standards to be below regulatory
73 concern, or a hazardous waste either identified or listed
74 under article five-e of this chapter or refuse, slurry,
75 overburden or other wastes or material resulting from
76 coal-fired electric power or steam generation, the
77 exploration, development, production, storage and
78 recovery of coal, oil and gas, and other mineral
79 resources placed or disposed of at a facility which is
80 regulated under chapter twenty-two, twenty-two-a or
81 twenty-two-b of this code, so long as such placement or
82 disposal is in conformance with a permit issued
83 pursuant to such chapters. "Solid waste" shall not
84 include materials which are recycled by being used or
85 reused in an industrial process to make a product, as
86 an effective substitute for commercial products, or are
87 returned to the original process as a substitute for raw
88 material feedstock.

89 (m) "Solid waste disposal" means the practice of
90 disposing of solid waste including placing, depositing,
91 dumping or throwing or causing to be placed, deposited,
92 dumped or thrown any solid waste.

93 (n) "Solid waste disposal shed" means the geographi-
94 cal area which the solid waste management board
95 designates and files in the state register pursuant to
96 section eight, article twenty-six, chapter sixteen of this
97 code.

98 (o) "Solid waste facility" means any system, facility,
99 land, contiguous land, improvements on the land,
100 structures or other appurtenances or methods used for
101 processing, recycling or disposing of solid waste,
102 including landfills, transfer stations, materials recovery
103 facilities and other such facilities not herein specified.
104 Such facility shall be deemed to be situated, for
105 purposes of this article, in the county where the majority
106 of the spatial area of such facility is located.

107 (p) "Class A facility" means a commercial solid waste
108 facility which handles an aggregate of between ten
109 thousand and thirty thousand tons of solid waste per

110 month. Class A facility shall include two or more Class
111 B solid waste landfills owned or operated by the same
112 person in the same county, if the aggregate tons of solid
113 waste handled per month by such landfills exceeds nine
114 thousand nine hundred ninety-nine tons of solid waste
115 per month.

116 (q) "Applicant" means the person applying for a
117 commercial solid waste facility permit or similar
118 renewal permit and any person related to such person
119 by virtue of common ownership, common management
120 or family relationships as the director of the division of
121 natural resources may specify, including the following:
122 Spouses, parents and children and siblings.

123 (r) "Energy recovery incinerator" means any solid
124 waste facility at which solid wastes are incinerated with
125 the intention of using the resulting energy for the
126 generation of steam, electricity or any other use not
127 specified herein.

128 (s) "Incineration technologies" means any technology
129 that uses controlled flame combustion to thermally
130 break down solid waste, including refuse-derived fuel,
131 to an ash residue that contains little or no combustible
132 materials, regardless of whether the purpose is process-
133 ing, disposal, electric or steam generation or any other
134 method by which solid waste is incinerated.

135 (t) "Incinerator" means an enclosed device using
136 controlled flame combustion to thermally break down
137 solid waste, including refuse-derived fuel, to an ash
138 residue that contains little or no combustible materials.

139 (u) "Materials recovery facility" means any solid
140 waste facility at which solid wastes are manually or
141 mechanically shredded or separated so that materials
142 are recovered from the general waste stream for
143 purposes of reuse and recycling.

§20-5F-5a. Solid waste assessment fee; penalties.

1 (a) *Imposition.* — A solid waste assessment fee is
2 hereby levied and imposed upon the disposal of solid
3 waste at any solid waste disposal facility in this state
4 to be collected and paid as follows: (1) One dollar and

5 twenty-five cents per ton or part thereof of solid waste;
6 and (2) one additional dollar per ton or part thereof of
7 solid waste for solid waste generated from sources
8 outside the solid waste disposal shed in which the solid
9 waste disposal facility is located. The fee imposed by this
10 section shall be in addition to all other fees and taxes
11 levied by law and shall be added to and constitute part
12 of any other fee charged by the operator or owner of the
13 solid waste disposal facility.

14 (b) *Collection, return, payment and records.* — The
15 person disposing of solid waste at the solid waste
16 disposal facility shall pay the fee imposed by this
17 section, whether or not such person owns the solid waste,
18 and the fee shall be collected by the operator of the solid
19 waste facility who shall remit it to the tax commissioner.

20 (1) The fee imposed by this section accrues at the time
21 the solid waste is delivered to the solid waste disposal
22 facility.

23 (2) The operator shall remit the fee imposed by this
24 section to the tax commissioner on or before the fifteenth
25 day of the month next succeeding the month in which
26 the fee accrued. Upon remittance of the fee, the operator
27 shall be required to file returns on forms and in the
28 manner as prescribed by the tax commissioner.

29 (3) The operator shall account to the state for all fees
30 collected under this section and shall hold them in trust
31 for the state until remitted to the tax commissioner.

32 (4) If any operator fails to collect the fee imposed by
33 this section, he or she shall be personally liable for such
34 amount as he or she failed to collect, plus applicable
35 additions to tax, penalties and interest imposed by
36 article ten, chapter eleven of this code.

37 (5) Whenever any operator fails to collect, truthfully
38 account for, remit the fee or file returns with the fee
39 as required in this section, the tax commissioner may
40 serve written notice requiring such operator to collect
41 the fees which become collectible after service of such
42 notice, to deposit such fees in a bank approved by the
43 tax commissioner, in a separate account, in trust for and

44 payable to the tax commissioner, and to keep the amount
45 of such fees in such account until remitted to the tax
46 commissioner. Such notice shall remain in effect until
47 a notice of cancellation is served on the operator or
48 owner by the tax commissioner.

49 (6) Whenever the owner of a solid waste disposal
50 facility leases the solid waste facility to an operator, the
51 operator shall be primarily liable for collection and
52 remittance of the fee imposed by this section and the
53 owner shall be secondarily liable for remittance of the
54 fee imposed by this section. However, if the operator
55 fails, in whole or in part, to discharge his obligations
56 under this section, the owner and the operator of the
57 solid waste facility shall be jointly and severally
58 responsible and liable for compliance with the provi-
59 sions of this section.

60 (7) If the operator or owner responsible for collecting
61 the fee imposed by this section is an association or
62 corporation, the officers thereof shall be liable, jointly
63 and severally, for any default on the part of the
64 association or corporation, and payment of the fee and
65 any additions to tax, penalties and interest imposed by
66 article ten, chapter eleven of this code may be enforced
67 against them as against the association or corporation
68 which they represent.

69 (8) Each person disposing of solid waste at a solid
70 waste disposal facility and each person required to
71 collect the fee imposed by this section shall keep
72 complete and accurate records in such form as the tax
73 commissioner may require in accordance with the rules
74 and regulations of the tax commissioner.

75 (c) *Regulated motor carriers.* — The fee imposed by
76 this section and section twenty-two, article five, chapter
77 seven of this code shall be considered a necessary and
78 reasonable cost for motor carriers of solid waste subject
79 to the jurisdiction of the public service commission
80 under chapter twenty-four-a of this code. Notwithstand-
81 ing any provision of law to the contrary, upon the filing
82 of a petition by an affected motor carrier, the public
83 service commission shall, within fourteen days, reflect

84 the cost of said fee in said motor carrier's rates for solid
85 waste removal service. In calculating the amount of said
86 fee to said motor carrier, the commission shall use the
87 national average of pounds of waste generated per
88 person per day as determined by the United States
89 Environmental Protection Agency.

90 (d) *Definition of solid waste disposal facility.* — For
91 purposes of this section, the term "solid waste disposal
92 facility" means any approved solid waste facility or open
93 dump in this state, and includes a transfer station when
94 the solid waste collected at the transfer station is not
95 finally disposed of at a solid waste disposal facility
96 within this state that collects the fee imposed by this
97 section. Nothing herein shall be construed to authorize
98 in any way the creation or operation of or contribution
99 to an open dump.

100 (e) *Exemptions.* — The following transactions shall be
101 exempt from the fee imposed by this section:

102 (1) Disposal of solid waste at a solid waste disposal
103 facility by the person who owns, operates or leases the
104 solid waste disposal facility if the facility is used
105 exclusively to dispose of waste originally produced by
106 such person in such person's regular business or
107 personal activities or by persons utilizing the facility on
108 a cost-sharing or nonprofit basis;

109 (2) Reuse or recycling of any solid waste;

110 (3) Disposal of residential solid waste by an individ-
111 ual not in the business of hauling or disposing of solid
112 waste on such days and times as designated by the
113 director of the division of natural resources is exempt
114 from the solid waste assessment fee; and

115 (4) Disposal of solid waste at a solid waste disposal
116 facility by a commercial recycler which disposes of
117 thirty percent or less of the total waste it processes for
118 recycling. In order to qualify for this exemption each
119 commercial recycler must keep accurate records of
120 incoming and outgoing waste by weight. Such records
121 must be made available to the appropriate inspectors

122 from the division of natural resources of solid waste
123 authority, upon request.

124 (f) *Procedure and administration.* — Notwithstand-
125 ing section three, article ten, chapter eleven of this code,
126 each and every provision of the “West Virginia Tax
127 Procedure and Administration Act” set forth in article
128 ten, chapter eleven of this code shall apply to the fee
129 imposed by this section with like effect as if said act
130 were applicable only to the fee imposed by this section
131 and were set forth in extenso herein.

132 (g) *Criminal penalties.* — Notwithstanding section
133 two, article nine, chapter eleven of this code, sections
134 three through seventeen, article nine, chapter eleven of
135 this code shall apply to the fee imposed by this section
136 with like effect as if said sections were applicable only
137 to the fee imposed by this section and were set forth in
138 extenso herein.

139 (h) *Dedication of proceeds.* — The net proceeds of the
140 fee collected by the tax commissioner pursuant to this
141 section shall be deposited at least monthly in an account
142 designated by the director of the division of natural
143 resources. The director shall allocate twenty-five cents
144 for each ton of solid waste disposed of in this state upon
145 which the fee imposed by this section is collected and
146 shall deposit the total amount so allocated into the “Solid
147 Waste Reclamation and Environmental Response Fund”
148 to be expended for the purposes hereinafter specified.
149 The first one million dollars of the net proceeds of the
150 fee imposed by this section collected in each fiscal year
151 shall be deposited in the “Solid Waste Enforcement
152 Fund” and expended for the purposes hereinafter
153 specified. The next two hundred fifty thousand dollars
154 of the net proceeds of the fee imposed by this section
155 collected in each fiscal year shall be deposited in the
156 “Resource Recovery — Solid Waste Disposal Authority
157 Reserve Fund” which shall be renamed and hereinafter
158 referred to as the “Solid Waste Management Board
159 Reserve Fund”, and expended for the purposes hereinaf-
160 ter specified: *Provided*, That in any year in which the
161 water development authority determines that the solid
162 waste management board reserve fund is adequate to

163 defer any contingent liability of the fund, the water
164 development authority shall so certify to the director of
165 the division of natural resources and the director shall
166 then cause no less than fifty thousand dollars nor more
167 than two hundred fifty thousand dollars to be deposited
168 to the fund: *Provided, however,* That in any year in
169 which the water development authority determines that
170 the solid waste management board reserve fund is
171 inadequate to defer any contingent liability of the fund,
172 the water development authority shall so certify to the
173 director of the division of natural resources and the
174 director shall then cause not less than two hundred fifty
175 thousand dollars nor more than five hundred thousand
176 dollars to be deposited in the fund: *Provided further,*
177 That if a facility owned or operated by the state of West
178 Virginia is denied site approval by a county or regional
179 solid waste authority, and if such denial contributes, in
180 whole or in part, to a default, or drawing upon a reserve
181 fund, on any indebtedness issued or approved by the
182 solid waste management board, then in that event the
183 solid waste management board or its fiscal agent may
184 withhold all or any part of any funds which would
185 otherwise be directed to such county or regional
186 authority and shall deposit such withheld funds in the
187 appropriate reserve fund. The director of the division of
188 natural resources shall allocate the remainder, if any,
189 of said net proceeds among the following three special
190 revenue accounts for the purpose of maintaining a
191 reasonable balance in each special revenue account,
192 which are hereby continued in the state treasury:

193 (1) The "Solid Waste Enforcement Fund" which shall
194 be expended by the director of the division of natural
195 resources for administration, inspection, enforcement
196 and permitting activities established pursuant to this
197 article;

198 (2) The "Solid Waste Management Board Reserve
199 Fund" which shall be exclusively dedicated to providing
200 a reserve fund for the issuance and security of solid
201 waste disposal revenue bonds issued by the solid waste
202 management board pursuant to article twenty-six,
203 chapter sixteen of this code;

204 (3) The "Solid Waste Reclamation and Environmental
205 Response Fund" which may be expended by the director
206 of the division of natural resources for the purposes of
207 reclamation, cleanup and remedial actions intended to
208 minimize or mitigate damage to the environment,
209 natural resources, public water supplies, water resour-
210 ces and the public health, safety and welfare which may
211 result from open dumps or solid waste not disposed of
212 in a proper or lawful manner.

213 (i) *Findings.* — In addition to the purposes and
214 legislative findings set forth in section one of this article,
215 the Legislature finds as follows:

216 (1) In-state and out-of-state locations producing solid
217 waste should bear the responsibility of disposing of said
218 solid waste or compensate other localities for costs
219 associated with accepting such solid waste;

220 (2) The costs of maintaining and policing the streets
221 and highways of the state and its communities are
222 increased by long distance transportation of large
223 volumes of solid waste; and

224 (3) Local approved solid waste facilities are being
225 prematurely depleted by solid waste originating from
226 other locations.

227 (j) *Severability.* — If any provision of this section or
228 the application thereof shall for any reason be adjudged
229 by any court of competent jurisdiction to be invalid, such
230 judgment shall not affect, impair or invalidate the
231 remainder of this section, but shall be confined in its
232 operation to the provision thereof directly involved in
233 the controversy in which such judgment shall have been
234 rendered, and the applicability of such provision to other
235 persons or circumstances shall not be affected thereby.

236 (k) *Effective date.* — This section is effective on the
237 first day of July, one thousand nine hundred eighty-
238 eight.

ARTICLE 5N. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

§20-5N-2. Definitions.

§20-5N-4. Solid waste assessment fee; penalties.

§20-5N-2. Definitions.

1 As used in this article, unless the context clearly
2 requires a different meaning:

3 (1) "Commercial recycler" means any person, corpo-
4 ration or business entity whose operation involves the
5 mechanical separation of materials for the purpose of
6 reselling or recycling at least seventy percent by weight
7 of the materials coming into the commercial recycling
8 facility;

9 (2) "Cost of project" includes the cost of the services
10 authorized in sections three and ten of this article,
11 property, material and labor which are essential thereto,
12 financing charges, interest during construction and all
13 other expenses, including legal fees, trustees', engineers'
14 and architects' fees which are necessarily or properly
15 incidental to the program;

16 (3) "Director" means the director of the division of
17 natural resources of the department of commerce, labor
18 and environmental resources, or his or her authorized
19 representative;

20 (4) "Landfill" means any solid waste facility for the
21 disposal of solid waste on land, and also means any
22 system, facility, land, contiguous land, improvements on
23 the land, structures or other appurtenances or methods
24 used for processing, recycling or disposing of solid
25 waste, including landfills, transfer stations, resource
26 recovery facilities and other such facilities not herein
27 specified. Such facility shall be deemed to be situated,
28 for purposes of this article, in the county where the
29 majority of the spatial area of such facility is located;

30 (5) "Permittee" means a person who has or should
31 obtain a permit for a commercial solid waste facility
32 that is a landfill;

33 (6) "Project" means the providing of closure assist-
34 ance to one or more landfills under this article.

35 The definitions provided in section two, article five-
36 f of this chapter, to the extent they are applicable, apply
37 in this article.

§20-5N-4. Solid waste assessment fee; penalties.

1 (a) *Imposition.* — A solid waste assessment fee is
2 hereby levied and imposed upon the disposal of solid
3 waste at any solid waste disposal facility in this state
4 in the amount of four dollars per ton or like ratio on any
5 part thereof of solid waste, except as provided in
6 subsections (e) and (i) of this section: *Provided,* That any
7 solid waste disposal facility may deduct from this
8 assessment fee an amount, not to exceed the fee, equal
9 to the amount that such facility is required by the public
10 service commission to set aside for the purpose of closure
11 of that portion of the facility required by the solid waste
12 management regulations to close by the thirtieth day of
13 November, one thousand nine hundred ninety-one or
14 ninety-two, including any extensions authorized pursu-
15 ant to section eight, article five-f of this chapter. The fee
16 imposed by this section is in addition to all other fees
17 and taxes levied by law and shall be added to and
18 constitute part of any other fee charged by the operator
19 or owner of the solid waste disposal facility.

20 (b) *Collection, return, payment and records.* — The
21 person disposing of solid waste at the solid waste
22 disposal facility shall pay the fee imposed by this
23 section, whether or not such person owns the solid waste,
24 and the fee shall be collected by the operator of the solid
25 waste facility who shall remit it to the tax commissioner.

26 (1) The fee imposed by this section accrues at the time
27 the solid waste is delivered to the solid waste disposal
28 facility.

29 (2) The operator shall remit the fee imposed by this
30 section to the tax commissioner on or before the fifteenth
31 day of the month next succeeding the month in which
32 the fee accrued. Upon remittance of the fee, the operator
33 shall file returns on forms and in the manner prescribed
34 by the tax commissioner.

35 (3) The operator shall account to the state for all fees
36 collected under this section and shall hold them in trust
37 for the state until they are remitted to the tax
38 commissioner.

39 (4) If any operator fails to collect the fee imposed by
40 this section, he or she shall be personally liable for such
41 amount as he or she failed to collect, plus applicable
42 additions to tax, penalties and interest imposed by
43 article ten, chapter eleven of this code.

44 (5) Whenever any operator fails to collect, truthfully
45 account for, remit the fee or file returns with the fee
46 as required in this section, the tax commissioner may
47 serve written notice requiring such operator to collect
48 the fees which become collectible after service of such
49 notice, to deposit such fees in a bank approved by the
50 tax commissioner, in a separate account, in trust for and
51 payable to the tax commissioner, and to keep the amount
52 of such fees in such account until remitted to the tax
53 commissioner. Such notice shall remain in effect until
54 a notice of cancellation is served on the operator or
55 owner by the tax commissioner.

56 (6) Whenever the owner of a solid waste disposal
57 facility leases the solid waste facility to an operator, the
58 operator shall be primarily liable for collection and
59 remittance of the fee imposed by this section and the
60 owner shall be secondarily liable for remittance of the
61 fee imposed by this section. However, if the operator
62 fails, in whole or in part, to discharge his obligations
63 under this section, the owner and the operator of the
64 solid waste facility shall be jointly and severally
65 responsible and liable for compliance with the provi-
66 sions of this section.

67 (7) If the operator or owner responsible for collecting
68 the fee imposed by this section is an association or
69 corporation, the officers thereof shall be liable, jointly
70 and severally, for any default on the part of the
71 association or corporation, and payment of the fee and
72 any additions to tax, penalties and interest imposed by
73 article ten, chapter eleven of this code may be enforced
74 against them as against the association or corporation
75 which they represent.

76 (8) Each person disposing of solid waste at a solid
77 waste disposal facility and each person required to
78 collect the fee imposed by this section shall keep

79 complete and accurate records in such form as the tax
80 commissioner may require in accordance with the rules
81 and regulations of the tax commissioner.

82 (c) *Regulated motor carriers.* — The fee imposed by
83 this section is a necessary and reasonable cost for motor
84 carriers of solid waste subject to the jurisdiction of the
85 public service commission under chapter twenty-four-a
86 of this code. Notwithstanding any provision of law to the
87 contrary, upon the filing of a petition by an affected
88 motor carrier, the public service commission shall,
89 within fourteen days, reflect the cost of said fee in said
90 motor carrier's rates for solid waste removal service. In
91 calculating the amount of said fee to said motor carrier,
92 the commission shall use the national average of pounds
93 of waste generated per person per day as determined by
94 the United States Environmental Protection Agency.

95 (d) *Definitions.* — For purposes of this section, the
96 term "solid waste disposal facility" means any approved
97 solid waste facility or open dump in this state, and
98 includes a transfer station when the solid waste collected
99 at the transfer station is not finally disposed of at a solid
100 waste facility within this state that collects the fee
101 imposed by this section. Nothing in this section autho-
102 rizes in any way the creation or operation of or
103 contribution to an open dump.

104 (e) *Exemptions.* — The following transactions are
105 exempt from the fee imposed by this section:

106 (1) Disposal of solid waste at a solid waste disposal
107 facility by the person who owns, operates or leases the
108 solid waste disposal facility if the facility is used
109 exclusively to dispose of waste originally produced by
110 such person in such person's regular business or
111 personal activities or by persons utilizing the facility on
112 a cost-sharing or nonprofit basis;

113 (2) Reuse or recycling of any solid waste;

114 (3) Disposal of residential solid waste by an individ-
115 ual not in the business of hauling or disposing of solid
116 waste on such days and times as designated by the
117 director of the division of natural resources as exempt

118 from the solid waste assessment fee; and

119 (4) Disposal of solid waste at a solid waste disposal
120 facility by a commercial recycler which disposes of
121 thirty percent or less of the total waste it processes for
122 recycling. In order to qualify for this exemption each
123 commercial recycler must keep accurate records of
124 incoming and outgoing waste by weight. Such records
125 must be made available to the appropriate inspectors
126 from the division of natural resources of solid waste
127 authority, upon request.

128 (f) *Procedure and administration.* — Notwithstand-
129 ing section three, article ten, chapter eleven of this code,
130 each and every provision of the “West Virginia Tax
131 Procedure and Administration Act” set forth in article
132 ten, chapter eleven of this code applies to the fee
133 imposed by this section with like effect as if said act
134 were applicable only to the fee imposed by this section
135 and were set forth in extenso herein.

136 (g) *Criminal penalties.* — Notwithstanding section
137 two, article nine, chapter eleven of this code, sections
138 three through seventeen, article nine, chapter eleven of
139 this code apply to the fee imposed by this section with
140 like effect as if said sections were applicable only to the
141 fee imposed by this section and were set forth in extenso
142 herein.

143 (h) *Dedication of proceeds.* — Fifty percent of the
144 proceeds of the fee collected pursuant to this article in
145 excess of thirty thousand tons per month from any
146 landfill which is permitted to accept in excess of thirty
147 thousand tons per month pursuant to section four-d,
148 article five-f of this chapter shall be remitted, at least
149 monthly, to the county commission in the county in
150 which the landfill is located. The remainder of the
151 proceeds of the fee collected pursuant to this section
152 shall be deposited in the closure cost assistance fund
153 established pursuant to section seven of this article.

154 (i) *Additional fee for out-of-shed waste.* — In addition
155 to the four-dollar fee imposed pursuant to the provisions
156 of subsection (a) of this section, on and after the first
157 day of January, one thousand nine hundred ninety-three,

158 there shall be imposed an additional two-dollar fee on
159 the disposal of solid waste generated outside of the
160 watershed wherein the solid waste disposal facility is
161 located.

162 (j) *Effective date.* — This section is effective on the
163 first day of January, one thousand nine hundred ninety-
164 two.

ARTICLE 9. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

§20-9-2. Definitions.

§20-9-13. Solid waste assessment interim fee; regulated motor carriers;
dedication of proceeds; criminal penalties.

§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) “Commercial recycler” means any person, corpo-
18 ration or business entity whose operation involves the
19 mechanical separation of materials for the purpose of
20 reselling or recycling at least seventy percent by weight
21 of the materials coming into the commercial recycling
22 facility.

23 (d) “Class A facility” means a commercial solid waste
24 facility which handles an aggregate of between ten and
25 thirty thousand tons of solid waste per month. Class A

26 facility shall include two or more Class B solid waste
27 landfills owned or operated by the same person in the
28 same county, if the aggregate tons of solid waste
29 handled per month by such landfills exceeds nine
30 thousand nine hundred ninety-nine tons of solid waste
31 per month.

32 (e) "Class B facility" means a commercial solid waste
33 facility which receives or is expected to receive an
34 average daily quantity of mixed solid waste equal to or
35 exceeding one hundred tons each working day, or serves
36 or is expected to serve a population equal to or
37 exceeding forty thousand persons, but which does not
38 receive solid waste exceeding an aggregate of ten
39 thousand tons per month. Class B facilities do not
40 include construction/demolition facilities: *Provided,*
41 That the definition of Class B facility may include such
42 reasonable subdivisions or subclassifications as the
43 director may establish by legislative rule proposed in
44 accordance with the provisions of chapter twenty-nine-
45 a of this code.

46 (f) "Compliance order" means an administrative
47 order issued pursuant to section five, article five-f of this
48 chapter authorizing a solid waste facility to operate
49 without a solid waste permit.

50 (g) "Open dump" means any solid waste disposal
51 which does not have a permit under this article, or is
52 in violation of state law, or where solid waste is disposed
53 in a manner that does not protect the environment.

54 (h) "Person" means any industrial user, public or
55 private corporation, institution, association, firm or
56 company organized or existing under the laws of this or
57 any other state or country; the state of West Virginia;
58 governmental agency, including federal facilities;
59 political subdivision; county commission; municipal
60 corporation; industry; sanitary district; public service
61 district; drainage district; soil conservation district;
62 watershed improvement district; partnership; trust;
63 estate; person or individual; group of persons or
64 individuals acting individually or as a group; or any
65 legal entity whatever.

66 (i) "Sludge" means any solid, semisolid, residue or
67 precipitate, separated from or created by a municipal,
68 commercial or industrial waste treatment plant, water
69 supply treatment plant or air pollution control facility
70 or any other such waste having similar origin.

71 (j) "Solid waste" means any garbage, paper, litter,
72 refuse, cans, bottles, waste processed for the express
73 purpose of incineration, sludge from a waste treatment
74 plant, water supply treatment plant or air pollution
75 control facility, other discarded material, including
76 offensive or unsightly matter, solid, liquid, semisolid or
77 contained liquid or gaseous material resulting from
78 industrial, commercial, mining or community activities
79 but does not include solid or dissolved material in
80 sewage, or solid or dissolved materials in irrigation
81 return flows or industrial discharges which are point
82 sources and have permits under article five-a of this
83 chapter, or source, special nuclear or byproduct mate-
84 rial as defined by the Atomic Energy Act of 1954, as
85 amended, including any nuclear or byproduct material
86 considered by federal standards to be below regulatory
87 concern, or a hazardous waste either identified or listed
88 under article five-e of this chapter, or refuse, slurry,
89 overburden or other waste or material resulting from
90 coal-fired electric power or steam generation, the
91 exploration, development, production, storage and
92 recovery of coal, oil and gas, and other mineral
93 resources placed or disposed of at a facility which is
94 regulated under chapter twenty-two, twenty-two-a or
95 twenty-two-b of this code, so long as such placement or
96 disposal is in conformance with a permit issued
97 pursuant to said chapters. "Solid waste" shall also not
98 include materials which are recycled by being used or
99 reused in an industrial process to make a product, as
100 effective substitutes for commercial products, or are
101 returned to the original process as a substitute for raw
102 material feedstock.

103 (k) "Solid waste disposal" means the practice of
104 disposing of solid waste including placing, depositing,
105 dumping or throwing or causing to be placed, deposited,
106 dumped or thrown any solid waste.

107 (l) "Solid waste disposal shed" means the geographi-
108 cal area which the solid waste management board
109 designates and files in the state register pursuant to
110 section eight, article twenty-six, chapter sixteen of this
111 code.

112 (m) "Solid waste facility" means any system, facility,
113 land, contiguous land, improvements on the land,
114 structures or other appurtenances or methods used for
115 processing, recycling or disposing of solid waste,
116 including landfills, transfer stations, resource-recovery
117 facilities and other such facilities not herein specified.
118 Such facility shall be deemed to be situated, for
119 purposes of this article, in the county where the majority
120 of the spatial area of such facility is located.

121 (n) "Energy recovery incinerator" means any solid
122 waste facility at which solid wastes are incinerated with
123 the intention of using the resulting energy for the
124 generation of steam, electricity or any other use not
125 specified herein.

126 (o) "Incineration technologies" means any technology
127 that uses controlled flame combustion to thermally
128 break down solid waste, including refuse-derived fuel,
129 to an ash residue that contains little or no combustible
130 materials, regardless of whether the purpose is process-
131 ing, disposal, electric or steam generation, or any other
132 method by which solid waste is incinerated.

133 (p) "Incinerator" means an enclosed device using
134 controlled flame combustion to thermally break down
135 solid waste, including refuse-derived fuel, to an ash
136 residue that contains little or no combustible materials.

137 (q) "Materials recovery facility" means any solid
138 waste facility at which solid wastes are manually or
139 mechanically shredded or separated so that materials
140 are recovered from the general waste stream for
141 purposes of reuse and recycling.

**§20-9-13. Solid waste assessment interim fee; regulated
motor carriers; dedication of proceeds; crim-
inal 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
10 person disposing of solid waste at the solid waste
11 disposal facility shall pay the fee imposed by this
12 section, whether or not such person owns the solid waste,
13 and the fee shall be collected by the operator of the solid
14 waste facility who shall remit it to the tax commissioner.

15 (1) The fee imposed by this section accrues at the time
16 the solid waste is delivered to the solid waste disposal
17 facility.

18 (2) The operator shall remit the fee imposed by this
19 section to the tax commissioner on or before the fifteenth
20 day of the month next succeeding the month in which
21 the fee accrued. Upon remittance of the fee, the operator
22 shall be required to file returns on forms and in the
23 manner as prescribed by the tax commissioner.

24 (3) The operator shall account to the state for all fees
25 collected under this section and shall hold them in trust
26 for the state until they are remitted to the tax
27 commissioner.

28 (4) If any operator fails to collect the fee imposed by
29 this section, he or she shall be personally liable for such
30 amount as he or she failed to collect, plus applicable
31 additions to tax, penalties and interest imposed by
32 article ten, chapter eleven of this code.

33 (5) Whenever any operator fails to collect, truthfully
34 account for, remit the fee or file returns with the fee
35 as required in this section, the tax commissioner may
36 serve written notice requiring such operator to collect
37 the fees which become collectible after service of such
38 notice, to deposit such fees in a bank approved by the
39 tax commissioner, in a separate account, in trust for and
40 payable to the tax commissioner, and to keep the amount

41 of such fees in such account until remitted to the tax
42 commissioner. Such notice shall remain in effect until
43 a notice of cancellation is served on the operator or
44 owner by the tax commissioner.

45 (6) Whenever the owner of a solid waste disposal
46 facility leases the solid waste facility to an operator, the
47 operator shall be primarily liable for collection and
48 remittance of the fee imposed by this section and the
49 owner shall be secondarily liable for remittance of the
50 fee imposed by this section. However, if the operator
51 fails, in whole or in part, to discharge his obligations
52 under this section, the owner and the operator of the
53 solid waste facility shall be jointly and severally
54 responsible and liable for compliance with the provi-
55 sions of this section.

56 (7) If the operator or owner responsible for collecting
57 the fee imposed by this section is an association or
58 corporation, the officers thereof shall be liable, jointly
59 and severally, for any default on the part of the
60 association or corporation, and payment of the fee and
61 any additions to tax, penalties and interest imposed by
62 article ten, chapter eleven of this code may be enforced
63 against them as against the association or corporation
64 which they represent.

65 (8) Each person disposing of solid waste at a solid
66 waste disposal facility and each person required to
67 collect the fee imposed by this section shall keep
68 complete and accurate records in such form as the tax
69 commissioner may require in accordance with the rules
70 and regulations of the tax commissioner.

71 (c) *Regulated motor carriers.* — The fee imposed by
72 this section and section twenty-two, article five, chapter
73 seven of this code shall be considered a necessary and
74 reasonable cost for motor carriers of solid waste subject
75 to the jurisdiction of the public service commission
76 under chapter twenty-four-a of this code. Notwithstand-
77 ing any provision of law to the contrary, upon the filing
78 of a petition by an affected motor carrier, the public
79 service commission shall, within fourteen days, reflect
80 the cost of said fee in said motor carrier's rates for solid

81 waste removal service. In calculating the amount of said
82 fee to said motor carrier, the commission shall use the
83 national average of pounds of waste generated per
84 person per day as determined by the United States
85 Environmental Protection Agency.

86 (d) *Definition of solid waste disposal facility.* — For
87 purposes of this section, the term “solid waste disposal
88 facility” means any approved solid waste facility or open
89 dump in this state and includes a transfer station when
90 the solid waste collected at the transfer station is not
91 finally disposed of at a solid waste facility within this
92 state that collects the fee imposed by this section.
93 Nothing herein shall be construed to authorize in any
94 way the creation or operation of or contribution to an
95 open dump.

96 (e) *Exemptions.* — The following transactions shall be
97 exempt from the fee imposed by this section:

98 (1) Disposal of solid waste at a solid waste disposal
99 facility by the person who owns, operates or leases the
100 solid waste disposal facility if it is used exclusively to
101 dispose of waste originally produced by such person in
102 such person’s regular business or personal activities or
103 by persons utilizing the facility on a cost-sharing or
104 nonprofit basis;

105 (2) Reuse or recycling of any solid waste;

106 (3) Disposal of residential solid waste by an individ-
107 ual not in the business of hauling or disposing of solid
108 waste on such days and times as designated by the
109 director of the division of natural resources as exempt
110 from the fee imposed pursuant to section five-a, article
111 five-f of this chapter; and

112 (4) Disposal of solid waste at a solid waste disposal
113 facility by a commercial recycler which disposes of
114 thirty percent or less of the total waste it processes for
115 recycling. In order to qualify for this exemption each
116 commercial recycler must keep accurate records of
117 incoming and outgoing waste by weight. Such records
118 must be made available to the appropriate inspectors
119 from the division of natural resources of solid waste

120 authority, upon request.

121 (f) *Procedure and administration.* — Notwithstand-
122 ing section three, article ten, chapter eleven of this code,
123 each and every provision of the “West Virginia Tax
124 Procedure and Administration Act” set forth in article
125 ten, chapter eleven of this code shall apply to the fee
126 imposed by this section with like effect as if said act
127 were applicable only to the fee imposed by this section
128 and were set forth in extenso herein.

129 (g) *Criminal penalties.* — Notwithstanding section
130 two, article nine, chapter eleven of this code, sections
131 three through seventeen, article nine, chapter eleven of
132 this code shall apply to the fee imposed by this section
133 with like effect as if said sections were the only fee
134 imposed by this section and were set forth in extenso
135 herein.

136 (h) *Dedication of proceeds.* — The net proceeds of the
137 fee collected by the tax commissioner pursuant to this
138 section shall be deposited, at least monthly, in a special
139 revenue account known as the “Solid Waste Planning
140 Fund” which is hereby created. The solid waste
141 management board shall allocate the proceeds of the
142 said fund as follows:

143 (1) Fifty percent of the total proceeds shall be divided
144 equally among, and paid over to, each county solid waste
145 authority to be expended for the purposes of this article:
146 *Provided,* That where a regional solid waste authority
147 exists, such funds shall be paid over to the regional solid
148 waste authority to be expended for the purposes of this
149 article in an amount equal to the total share of all
150 counties within the jurisdiction of said regional solid
151 waste authority; and

152 (2) Fifty percent of the total proceeds shall be
153 expended by the solid waste management board for:

154 (A) Grants to the county or regional solid waste
155 authorities for the purposes of this article; and

156 (B) Administration, technical assistance or other
157 costs of the solid waste management board necessary to
158 implement the purposes of this article and article
159 twenty-six, chapter sixteen of this code.

160 (i) *Severability.* — If any provision of this section or
161 the application thereof shall for any reason be adjudged
162 by any court of competent jurisdiction to be invalid, such
163 judgment shall not affect, impair or invalidate the
164 remainder of this section, but shall be confined in its
165 operation to the provision thereof directly involved in
166 the controversy in which such judgment shall have been
167 rendered, and the applicability of such provision to other
168 persons or circumstances shall not be affected thereby.

169 (j) *Effective date.* — This section is effective on the
170 first day of July, one thousand nine hundred ninety.

CHAPTER 183

(H. B. 4524—By Delegates Rowe and J. Martin)

[Passed March 2, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend article five-f, chapter twenty 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 definition of wood waste and treatment of wood byproducts, wood residue and wood waste.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.

§20-5F-2a. Special provision for wood waste.

1 (a) The purpose of this section is to allow for the
2 combustion of wood waste without a solid waste facility
3 permit and to allow facilities to use wood waste as an
4 alternative fuel.

5 (b) "Wood waste" means wood residues from logging
6 operations, sawmills, wood product manufacturing.

7 furniture making operations, recycling of wood products
8 and other industrial processes, but does not include
9 wood waste which contains hazardous constituents,
10 including copper chromium arsenate, which would
11 cause such wood waste to be regulated pursuant to
12 article five-e, chapter twenty of the code.

13 (c) For purposes of section two of this article and
14 section two, article nine of this chapter:

15 (1) Wood waste is not "solid waste" unless disposed of
16 at a solid waste facility or an open dump;

17 (2) Wood waste is a material which may be used as
18 an effective substitute for commercial products or raw
19 material feedstock.

20 (d) The use of incineration technologies in an energy
21 recovery incinerator for the purposes of combusting
22 wood waste is not prohibited and no solid waste facility
23 permit is required. The provisions of this section shall
24 not be construed to allow the combustion of wood waste
25 without a source permit from the air pollution control
26 commission if such permit is required by article twenty,
27 chapter sixteen of this code or the rules promulgated
28 thereunder.

29 (e) The division of natural resources, in consultation
30 with the air pollution control commission, may promul-
31 gate legislative rules, in accordance with the provisions
32 of chapter twenty-nine-a of this code, to effectuate the
33 purposes of this section.

CHAPTER 184

(H. B. 4149—By Delegates Douglas and Grubb)

[Passed February 20, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article five-f,
chapter twenty of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; to
amend and reenact sections five and six, article five-n

of said chapter; to amend and reenact sections four, five and five-b, article eleven of said chapter; and to amend and reenact section one-h, article two, chapter twenty-four, relating to solid waste management; amending the date of expiration of division of health issued permits; revising the imposition of a fee; extending the deadline for closure assistance for single liner facilities; extending the application deadline for closure assistance for single liner facilities; decreasing the population requirement for municipalities to draft by ordinance a materials recovery facility; redefining "coal combustion byproduct"; allowing the public service commission to add additional classified exempt employees for solid waste program purposes and making other technical corrections.

Be it enacted by the Legislature of West Virginia:

That section five, article five-f, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections five and six, article five-n of said chapter be amended and reenacted; that sections four, five and five-b, article eleven of said chapter be amended and reenacted; and that section one-h, article two, chapter twenty-four be amended and reenacted, all to read as follows:

Chapter

20. Natural Resources.

24. Public Service Commission.

CHAPTER 20. NATURAL RESOURCES.

Article

5F. Solid Waste Management Act.

5N. Solid Waste Landfill Closure Assistance Program.

11. West Virginia Recycling Program.

ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.

§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 issued
35 in compliance with the requirements of this article, its
36 rules and article five-a and the rules promulgated
37 thereunder, so that only a single permit shall be
38 required of a solid waste facility under these two
39 articles. Each permit issued under this article shall have
40 a fixed term not to exceed five years: *Provided*, That the
41 chief may administratively extend a permit beyond its
42 five-year term if the approved solid waste facility is in
43 compliance with this article, its rules and article five-
44 a of this chapter and the rules promulgated thereunder:
45 *Provided, however*, That such administrative extension

46 may not be for more than one year. Upon expiration of
47 a permit, renewal permits may be issued in compliance
48 with rules and regulations promulgated by the director
49 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 this 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 tenth day of June, one
57 thousand nine hundred eighty-three. Within four years
58 of the tenth day of June, one thousand nine hundred
59 eighty-three, all persons holding such division of health
60 permits shall apply to the chief for a permit under this
61 article: *Provided, however*, That the chief may require
62 persons holding such existing health division permits to
63 reapply under this section prior to four years from the
64 tenth day of June, one thousand nine hundred eighty-
65 three, if persistent violations of this article, any permit
66 term or condition, orders or rules promulgated under
67 this article, exist at that facility. Notwithstanding any
68 other provision contained in this subsection, the division
69 of natural resources may enter an extension order for
70 a period of two years while an application for a permit
71 pursuant to this article is pending.

72 (e) No person may dispose in the state of any solid
73 waste, whether such waste originates in state or out of
74 state, in a manner which endangers the environment or
75 the public health, safety or welfare as determined by the
76 director of the division of natural resources: *Provided*,
77 That the carcasses of dead animals may be disposed of
78 in any solid waste facility or in any other manner as
79 provided for in this code. Upon request by the director
80 of the division of natural resources, the director of the
81 division of health shall provide technical advice concern-
82 ing the disposal of solid waste or carcasses of dead
83 animals within the state.

84 (f) To the extent permissible by law, a commercial
85 solid waste facility shall first ensure that the disposal
86 needs of the county, or if applicable the region, in which

87 it is located are met. If the county solid waste authority,
88 or regional solid waste authority if applicable, in which
89 the facility is located determines that the present or
90 future disposal needs of the county, or if applicable the
91 region, are not being, or will not be, met by the
92 commercial solid waste facility, such authority may
93 apply to the director of the division of natural resources
94 to modify the applicable permit in order to reduce the
95 total monthly tonnage of out of county waste, or if
96 applicable, out of region waste, the facility is permitted
97 to accept by an amount that shall not exceed the total
98 monthly tonnage generated by the county, or if appli-
99 cable the region, in which the facility is located.

100 (g) In addition to all the requirements of this article
101 and the rules promulgated hereunder, a permit to
102 construct a new commercial solid waste facility or to
103 expand the spatial area of an existing facility, not
104 otherwise allowed by an existing permit, may not be
105 issued unless the public service commission has granted
106 a certificate of need, as provided in section one-c, article
107 two, chapter twenty-four of this code. If the director
108 approves a permit or permit modification, the certificate
109 of need shall become a part of the permit and all
110 conditions contained in the certificate of need shall be
111 conditions of the permit and may be enforced by the
112 division of natural resources in accordance with the
113 provisions of this article.

114 (h) The director of the division of natural resources
115 shall promulgate legislative rules pursuant to chapter
116 twenty-nine-a of this code which reflect the purposes as
117 set forth in this article.

ARTICLE 5N. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

§20-5N-5. Limitation on assistance.

§20-5N-6. Application for closure assistance.

§20-5N-5. Limitation on assistance.

1 The director may provide closure assistance only to
2 permittees who meet the following requirements:

3 (1) The permittee of a landfill that does not have a

4 liner and ceases accepting solid waste on or before the
5 thirtieth day of November, one thousand nine hundred
6 ninety-one, except for those landfills allowed to accept
7 solid waste pursuant to the provisions of section eight,
8 article five-f of this chapter and ceases accepting solid
9 waste on or before the extension deadline as determined
10 by the director; or the permittee of a landfill that has
11 only a single liner and ceases accepting solid waste on
12 or before the thirtieth day of September, one thousand
13 nine hundred ninety-three;

14 (2) The permittee of the landfill must demonstrate to
15 the satisfaction of the director that it does not have the
16 financial resources on hand or the ability to generate the
17 amounts needed to comply, in a timely manner, with the
18 closure requirements provided in article five-f of this
19 chapter and any rules promulgated pursuant thereto;
20 and

21 (3) The permittee must maintain a permit for the
22 landfill pursuant to the provisions of section five, article
23 five-f of this chapter and maintain the full amount of
24 the bond required to be submitted pursuant to section
25 five-b, article five-f of this chapter.

§20-5N-6. Application for closure assistance.

1 (a) The director shall provide an application and
2 application procedure for all permittees of solid waste
3 landfills desiring to receive closure assistance under this
4 article. At a minimum the procedure shall require that:

5 (1) The permittee of a landfill that does not have a
6 liner system must submit its application no later than
7 the fifteenth day of September, one thousand nine
8 hundred ninety-two, except the permittee of a landfill
9 that has been allowed to accept solid waste pursuant to
10 the provisions of section eight, article five-f of this
11 chapter must submit its application no later than the
12 eleven months following the expiration of the extension;
13 and

14 (2) The permittee of a landfill that has only a *single*
15 liner system must submit its application no later than

16 eleven months following the date of closure of the
17 landfill.

18 (b) The director shall, within a reasonable time after
19 receipt of a complete application, notify the applicant of
20 the acceptance or rejection of the application. If the
21 application is rejected the notice shall contain the
22 reasons for the rejection.

ARTICLE 11. WEST VIRGINIA RECYCLING PROGRAM.

§20-11-4. Recycling plans.

§20-11-5. Establishment of county recycling programs for solid waste;
petition for referendum; ballot contents; election procedure;
effect of such election.

§20-11-5b. Solid and hazardous waste supplemental assessment fee.

§20-11-4. Recycling plans.

1 (a) Each county or regional solid waste authority, as
2 part of the comprehensive litter and solid waste control
3 plan required pursuant to the provisions of section
4 seven, article nine of this chapter, shall prepare and
5 adopt a comprehensive recycling plan to assist in the
6 implementation of the recycling goals in section three
7 of this article.

8 (b) Each recycling plan required by this section shall
9 include, but not be limited to:

10 (1) Designation of the recyclable materials that can be
11 most effectively source separated in the region or
12 county, which shall include at least three recyclable
13 materials; and

14 (2) Designation of potential strategies for the collec-
15 tion, marketing and disposition of designated source
16 separated recyclable materials in each region or county.

§20-11-5. Establishment of county recycling programs
for solid waste; petition for referendum;
ballot contents; election procedure; effect of
such election.

1 (a) Within twelve months following the effective date
2 of this section, each municipality described in subsection
3 (b) of this section shall submit a proposal to the solid
4 waste management board, consistent with the provisions

5 of this section, describing the establishment and
6 implementation of the mandatory recycling program.
7 The solid waste management board shall review the
8 submitted plans for consistency with the criteria
9 provided in this section, the county or regional solid
10 waste management plan and the statewide management
11 plan. The solid waste management board may make
12 suggested changes to the plan and shall provide
13 technical assistance to the municipalities in the devel-
14 opment of the plans.

15 (b) Within twenty-four months following the effective
16 date of this section, each municipality with a population
17 of ten thousand or more people, as determined by the
18 most recent decennial census by the Bureau of the
19 Census of the United States Department of Commerce,
20 shall establish and commence implementation of a
21 source separation and curbside collection program for
22 recyclable materials. Implementation may be phased in
23 over a six month time period. Such program shall
24 include, at a minimum, the following:

25 (1) An ordinance adopted by the governing body of
26 the municipality requiring that each person, partner-
27 ship, corporation or other entity in the municipality
28 shall separate at least three recyclable materials, as
29 deemed appropriate by the municipality, from other
30 solid waste: *Provided*, That the list of recyclables to be
31 separated may be adjusted according to whether the
32 generator is residential, commercial or other type of
33 establishment.

34 (2) A scheduled day, at least one per month, during
35 which separated materials are to be placed at the
36 curbside, or similar location, for collection.

37 (3) A system that collects recyclable materials from
38 the curbside, or similar location, at least once per
39 month: *Provided*, That to encourage full participation,
40 the program shall, to the maximum extent possible,
41 provide for the collection of recyclables at the same rate
42 of frequency, and simultaneous with, the regular
43 collection of solid waste.

44 (4) Provisions to ensure compliance with the ordi-

45 nance, including incentives and penalties.

46 (5) A comprehensive public information and educa-
47 tion program covering the importance and benefits of
48 recycling, as well as the specific features and require-
49 ments of the recycling program. As part of the educa-
50 tion program, each municipality shall, at a minimum,
51 notify all persons occupying residential, commercial,
52 institutional or other premises within its boundaries of
53 the requirements of the program, including how the
54 system will operate, the dates of collection, the respon-
55 sibilities of persons within the municipality, and
56 incentives and penalties.

57 (6) Consultation with the county or regional solid
58 waste authority in which the municipality is located to
59 avoid duplication, ensure coordination of solid waste
60 programs, and maximize the market for recyclables.

61 (c) Notwithstanding the provisions of subsection (b) of
62 this section, a comprehensive recycling program for
63 solid waste may be established in any county of this state
64 by action of a county commission in accordance with the
65 provisions of this section. Such program shall require:

66 (1) That, prior to collection at its source, all solid
67 waste shall be segregated into separate identifiable
68 recyclable materials by each person, partnership,
69 corporation and governmental agency subscribing to a
70 solid waste collection service in the county or transport-
71 ing solid waste to a commercial solid waste facility in
72 the county;

73 (2) Each person engaged in the commercial collection,
74 transportation, processing or disposal of solid waste
75 within the county shall accept only such solid waste
76 from which recyclable materials in accordance with said
77 county's comprehensive recycling program have been
78 segregated; and

79 (3) That the provisions of the recycling plan prepared
80 pursuant to section four of this article shall, to the extent
81 practicable, be incorporated in said county's comprehen-
82 sive recycling program.

83 (d) For the purposes of this article, recyclable

84 materials shall include, but not be limited to, steel and
85 bi-metallic cans, aluminum, glass, paper and such other
86 solid waste materials as may be specified by either the
87 municipality or county commission with the advice of
88 the county or regional solid waste authority.

89 (e) A comprehensive recycling program for solid
90 waste may be established in any county of this state by:
91 (1) A petition filed with the county commission bearing
92 the signatures of registered voters of the county equal
93 to not less than five percent of the number of votes cast
94 within the county for governor at the preceding
95 gubernatorial election; and (2) approval by a majority
96 of the voters in a subsequent referendum on the issue.
97 A referendum to determine whether it is the will of the
98 voters of a county that a comprehensive recycling
99 program for solid waste be established in the county
100 may be held at any regular primary or general election
101 or in conjunction with any other countywide election.
102 Any election at which the question of establishing a
103 policy of comprehensive recycling for solid waste is
104 voted upon shall be held at the voting precincts
105 established for holding primary or general elections. All
106 of the provisions of the general election laws, when not
107 in conflict with the provisions of this article, shall apply
108 to voting and elections hereunder, insofar as practicable.
109 The secretary of state shall prescribe the form of the
110 petition which shall include the printed name, address
111 and date of birth of each person whose signature
112 appears on the petition. Upon verification of the
113 required number of signatures on the petition, the
114 county commission shall, not less than seventy days
115 before the election, order that the issue be placed on the
116 ballot and referendum held at the next primary, general
117 or special election to determine whether it is the will of
118 the voters of said county that a policy of comprehensive
119 recycling of solid waste be established in the county:
120 *Provided*, That the petition bearing the necessary
121 signatures has been filed with the county commission at
122 least one hundred days prior to the election.

123 The ballot, or the ballot labels where voting machines

124 are used, shall have printed thereon substantially the
125 following:

126 "Shall the County Commission be required to establish
127 a comprehensive recycling program for solid waste in
128 _____ County, West Virginia?

129 For Recycling

130 Against Recycling

131 (Place a cross mark in the square opposite your
132 choice.)"

133 If a majority of legal votes cast upon the question be
134 for the establishment of a policy of comprehensive
135 recycling of solid waste, the county commission shall,
136 after the certification of the results of the referendum,
137 thereafter adopt an ordinance, within one hundred
138 eighty days of said certification, establishing a compre-
139 hensive recycling program for solid waste in the county:
140 *Provided*, That such program shall be implemented and
141 operational no later than twelve months following said
142 certification. If a majority of the legal votes cast upon
143 the question be against the establishment of a policy of
144 comprehensive recycling of solid waste, said policy shall
145 not take effect, but the question may again be submitted
146 to a vote at any subsequent election in the manner
147 herein provided.

148 (f) A comprehensive recycling program for solid
149 waste established by petition and referendum may be
150 rescinded only pursuant to the procedures set out herein
151 to establish the program.

152 To rescind the program, the ballot, or the ballot labels
153 where voting machines are used, shall have printed
154 thereon substantially the following:

155 "Shall the County Commission be required to termi-
156 nate the comprehensive recycling program for solid
157 waste in _____ County, West
158 Virginia?

159 Continue Recycling

160 End Recycling

161 (Place a cross mark in the square opposite your
162 choice.)”

163 (g) If a majority of legal votes cast upon the question
164 be for the termination of a policy of comprehensive
165 recycling of solid waste previously established in the
166 county, the county commission shall, after the certifica-
167 tion of the results of the referendum, thereafter rescind
168 by ordinance the comprehensive recycling program for
169 solid waste in the county within ninety days of said
170 certification. If a majority of the legal votes cast upon
171 the question be for the continuation of the policy of
172 comprehensive recycling of solid waste, said ordinance
173 shall not be rescinded, but the question may again be
174 submitted to a vote at any subsequent election in the
175 manner herein provided.

176 (h) In the case of any municipality having a popula-
177 tion greater than thirty thousand persons, as indicated
178 by the most recent decennial census conducted by the
179 United States, the governing body of such municipality
180 may by ordinance establish a materials recovery facility
181 in lieu of or in addition to the mandatory recycling
182 program required under the provisions of this section:
183 *Provided*, That such materials recovery facility shall be
184 subject to approval by both the public service commis-
185 sion and the solid waste management board upon a
186 finding by both the public service commission and the
187 solid waste management board that the establishment
188 of such materials recovery facility will not hinder, and
189 will be consistent with, the purposes of this article.

§20-11-5b. Solid and hazardous waste supplemental assessment fee.

1 (a) *Imposition.* — Effective the first day of January,
2 one thousand nine hundred ninety-two, a solid and
3 hazardous waste supplemental assessment fee is hereby
4 levied and imposed upon the disposal of solid or
5 hazardous waste at all solid waste or hazardous waste
6 disposal facilities in this state, to be collected at the rate
7 of twenty-five cents per ton or part thereof of solid or
8 hazardous waste. The fee imposed by this section shall
9 be in addition to all other fees levied by law.

10 (b) *Collection, return, payment and records.* — The
11 person disposing of solid or hazardous waste at the solid
12 or hazardous waste disposal facility shall pay the fee
13 imposed by this section, whether or not such person
14 owns the solid or hazardous waste, and the fee shall be
15 collected by the operator of the solid or hazardous waste
16 facility who shall remit it to the tax commissioner.

17 (1) The fee imposed by this section accrues at the time
18 the solid or hazardous waste is delivered to the solid or
19 hazardous waste disposal facility.

20 (2) The operator shall remit the fee imposed by this
21 section to the tax commissioner on or before the fifteenth
22 day of the month next succeeding the month in which
23 the fee accrued. Upon remittance of the fee, the operator
24 shall be required to file returns on forms and in the
25 manner as prescribed by the tax commissioner.

26 (3) The operator shall account to the state for all fees
27 collected under this section and shall hold them in trust
28 for the state until they are remitted to the tax
29 commissioner.

30 (4) If any operator fails to collect the fee imposed by
31 this section, he or she shall be personally liable for such
32 amount as he or she failed to collect, plus applicable
33 additions to tax, penalties and interest imposed by
34 article ten, chapter eleven of this code.

35 (5) Whenever any operator fails to collect, truthfully
36 account for, remit the fee, or file returns with the fee
37 as required in this section, the tax commissioner may
38 serve written notice requiring such operator to collect
39 the fees which become collectible after service of such
40 notice, to deposit such fees in a bank approved by the
41 tax commissioner, in a separate account, in trust for and
42 payable to the tax commissioner, and to keep the amount
43 of such fees in such account until remitted to the tax
44 commissioner. Such notice shall remain in effect until
45 a notice of cancellation is served on the operator or
46 owner by the tax commissioner.

47 (6) Whenever the owner of a solid or hazardous waste
48 disposal facility leases the solid or hazardous waste

49 facility to an operator, the operator shall be primarily
50 liable for collection and remittance of the fee imposed
51 by this section and the owner shall be secondarily liable
52 for remittance of the fee imposed by this section.
53 However, if the operator fails, in whole or in part, to
54 discharge his obligations under this section, the owner
55 and the operator of the solid or hazardous waste disposal
56 facility shall be jointly and severally responsible and
57 liable for compliance with the provisions of this section.

58 (7) If the operator or owner responsible for collecting
59 the fee imposed by this section is an association or
60 corporation, the officers thereof shall be liable, jointly
61 and severally, for any default on the part of the
62 association or corporation, and payment of the fee and
63 any additions to tax, penalties and interest imposed by
64 article ten, chapter eleven of this code may be enforced
65 against them and against the association or corporation
66 which they represent.

67 (8) Each person disposing of solid or hazardous waste
68 at a solid or hazardous waste disposal facility and each
69 person required to collect the fee imposed by this section
70 shall keep complete and accurate records in such form
71 as the tax commissioner may require in accordance with
72 the rules and regulations of the tax commissioner.

73 (c) *Regulated motor carriers.* — The fee imposed by
74 this section shall be considered a necessary and reason-
75 able cost for motor carriers of solid or hazardous waste
76 subject to the jurisdiction of the public service commis-
77 sion under chapter twenty-four-a of this code. Notwith-
78 standing any provision of law to the contrary, upon the
79 filing of a petition by an affected motor carrier, the
80 public service commission shall, within fourteen days,
81 reflect the cost of said fee in said motor carrier's rates
82 for solid or hazardous waste removal service. In
83 calculating the amount of said fee to said motor carrier,
84 the commission shall use the national average of pounds
85 of waste generated per person per day as determined by
86 the United States Environmental Protection Agency.

87 (d) *Definitions.* — For purposes of this section:

88 (1) "Solid or hazardous waste disposal facility" means

89 any approved solid or hazardous waste facility or open
90 dump in this state and includes a transfer station when
91 the solid or hazardous waste collected at the transfer
92 station is not finally disposed of at a solid or hazardous
93 waste facility within this state that collects the fee
94 imposed by this section.

95 (2) "Coal combustion byproduct" means the residuals,
96 including fly ash, bottom ash, bed ash, and boiler slag
97 produced by coal-fired or coal/gas-fired electrical or
98 steam generating units. For nonelectrical steam gener-
99 ating units burning a combination of solid waste and
100 coal, a carbon monoxide level of less than or equal to
101 one hundred parts per million on a twenty-four hour
102 average basis is required for the byproducts to meet this
103 definition. The carbon monoxide level shall be calcu-
104 lated on a dry gas basis corrected to seven percent
105 oxygen; and

106 (3) "Sludge" means any solid, semisolid, residue or
107 precipitate, separated from or created by a municipal,
108 commercial or industrial waste treatment plant, water
109 supply treatment plant or air pollution control facility
110 or any other such waste having similar origin.

111 Nothing herein shall be construed to authorize in any
112 way the creation or operation of or contribution to an
113 open dump.

114 (e) *Exemptions.* — The following transactions shall be
115 exempt from the fee imposed by this section:

116 (1) Disposal of solid waste in which the recycling
117 assessment fee levied and imposed by section five-a of
118 this article has been paid;

119 (2) Disposal of sludge or coal combustion byproducts;

120 (3) Reuse or recycling of any solid or hazardous waste;
121 or

122 (4) Disposal of residential solid waste by an individual
123 not in the business of hauling or disposing of solid waste
124 on such days and times as designated by the director of
125 the division of natural resources by regulation as
126 exempt from the fee imposed pursuant to section five-

127 a, article five-f, chapter twenty of this code.

128 (f) *Procedure and administration.* — Notwithstanding
129 section three, article ten, chapter eleven of this code,
130 each and every provision of the “West Virginia Tax
131 Procedure and Administration Act” set forth in article
132 ten, chapter eleven of this code shall apply to the fee
133 imposed by this section with like effect as if said act
134 were applicable only to the fee imposed by this section
135 and were set forth in extenso herein.

136 (g) *Criminal penalties.* — Notwithstanding section
137 two, article nine, chapter eleven of this code, sections
138 three through seventeen, article nine, chapter eleven of
139 this code shall apply to the fee imposed by this section
140 with like effect as if said sections were the only fee
141 imposed by this section and were set forth in extenso
142 herein.

143 (h) *Dedication of proceeds.* — The proceeds of the fee
144 collected pursuant to this section shall be deposited by
145 the tax commissioner, at least monthly, to the hazardous
146 waste emergency response fund established in article
147 five-g of this chapter.

148 (i) *Severability.* — If any provision of this section or
149 the application thereof shall for any reason be adjudged
150 by any court of competent jurisdiction to be invalid, such
151 judgment shall not affect, impair or invalidate the
152 remainder of this section, but shall be confined in its
153 operation to the provision thereof directly involved in
154 the controversy in which such judgment shall have been
155 rendered, and the applicability of such provision to other
156 persons or circumstances shall not be affected thereby.

157 (j) *Effective date.* — This section is effective on the
158 first day of January, one thousand nine hundred ninety-
159 two.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1h. Additional powers and duties of commission to control flow of solid waste.

1 (a) Upon the petition of any county or regional solid
2 waste authority, motor carrier or solid waste facility, or
3 upon the commission's own motion, the commission may
4 issue an order that solid waste generated in the
5 surrounding geographical area of a solid waste facility
6 and transported for processing or disposal by solid waste
7 collectors and haulers who are "motor carriers", as
8 defined in chapter twenty-four-a of this code, be
9 processed or disposed of at a designated solid waste
10 facility or facilities: *Provided*, That such order shall not
11 include:

12 (1) Disposal of solid waste at a solid waste facility by
13 the person who owns, operates or leases the solid waste
14 disposal facility if it is used exclusively to dispose of
15 waste originally produced by such person in such
16 person's regular business or personal activities or by
17 persons utilizing the facility on a cost-sharing or
18 nonprofit basis;

19 (2) Reuse or recycling of any solid waste; or

20 (3) Disposal of residential solid waste by an individual
21 not in the business of hauling or disposing of solid waste
22 on such days and times as designated by the director of
23 the division of natural resources pursuant to the
24 provisions of section four-b, article five-f, chapter twenty
25 of this code.

26 (b) In determining whether to issue an order estab-
27 lishing flow control to a solid waste facility, the
28 commission shall consider, but shall not be limited to
29 considering, the nature and composition of the solid
30 waste, the environmental impact of controlling the flow
31 of solid waste, the efficient disposal of solid waste,
32 financial feasibility of proposed or existing solid waste
33 facilities, the county or region solid waste control plan,
34 the statewide solid waste control plan and the public
35 convenience and necessity.

36 (c) The public service commission shall promulgate
37 rules providing standards and criteria to effectuate the
38 purposes of this section.

39 (d) Notwithstanding any provision of this code to the

90 contrary, excepting rules of the public service commis-
91 sion from legislative rule-making review, the public
92 service commission shall propose a legislative rule in
93 accordance with the provisions of article three, chapter
94 twenty-nine-a of this code, which shall mandate that
95 motor carriers transport source-separated recyclable
96 materials to a recycling facility. Such legislative rule
97 shall provide, at a minimum, for a separate rate for the
98 transportation of such materials or that such motor
99 carriers may contract with a customer to waive the
100 charge for transporting such materials in exchange for
101 the value of such materials.

102 (e) Notwithstanding any provision of this code to the
103 contrary, the public service commission is hereby
104 authorized to employ ten persons, who shall be in the
105 classified exempt service, in addition to any personnel
106 positions otherwise authorized or allocated to the
107 commission as of the effective date of this section to
108 facilitate enforcement of duties imposed upon the
109 commission in the regulation of solid waste disposal
110 during the second extraordinary session of the Legisla-
111 ture, one thousand nine hundred ninety-one.

CHAPTER 185

(Com. Sub. for H. B. 4018—By Delegates Roop and Lane)

[Passed March 7, 1992: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article three, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one hundred three, article two, chapter forty-six-a of said code, all relating to student loans for post-secondary education at eligible schools including private proprietary schools; exempting lenders of guaranteed student loans after stated date from being subject to consumer credit claims and defenses under West Virginia consumer credit and protection act; directing board of directors to promul-

gate various rules relating to private, proprietary, post-secondary schools in accordance with legislative oversight commission on education accountability rule-making provisions; exempting schools teaching preparation of tax returns; increasing initial and annual fee for permit for such schools; and requiring additional bonding for private proprietary schools under certain circumstances.

Be it enacted by the Legislature of West Virginia:

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

Chapter

18B. Higher Education.

46A. West Virginia Consumer Credit and Protection Act.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 3. BOARD OF DIRECTORS OF THE STATE COLLEGE SYSTEM.

§18B-3-5. Permits required for correspondence, business, occupational and trade schools; surety bonds and fees; issuance, renewal and revocation of permit; reports; rules and regulations; penalty and enforcement.

1 (a) It shall be unlawful for any person representing
 2 a correspondence, business, occupational or trade school
 3 inside or outside this state, as such shall be defined by
 4 the board of directors by rule promulgated in accor-
 5 dance with article three-a, chapter twenty-nine-a of this
 6 code, to solicit, sell or offer to sell courses of instruction
 7 to any resident of this state for consideration or
 8 remuneration unless the school first obtains a permit
 9 from the West Virginia board of directors in the manner
 10 and on the terms herein prescribed: *Provided*, That this
 11 section shall not apply to schools where the courses of
 12 instruction offered are solely for the purpose of teaching
 13 preparation of tax returns.

14 The application for a permit shall be made on forms
15 to be furnished by the board. An initial application fee
16 of not less than one thousand dollars, but not more than
17 ten thousand dollars, shall be required for a permit for
18 each school newly permitted after the effective date of
19 this section, the amount of such fee to be determined in
20 accordance with objective criteria set forth in rules
21 which shall be promulgated by the board of directors
22 in accordance with article three-a, chapter twenty-nine-
23 a of this code. Thereafter, a five hundred dollar annual
24 fee for each campus shall be required.

25 (b) The application shall be accompanied by a surety
26 bond in the penal sum of thirty-five thousand dollars for
27 any school which has its physical facilities located in this
28 state and which has operated in this state for at least
29 ten years. For any other school, a surety bond in the
30 penal sum of not less than thirty-five thousand dollars,
31 but not more than two hundred thousand dollars, shall
32 be required, such amount to be determined in accor-
33 dance with objective criteria set forth in rules which
34 shall be promulgated by the board of directors in
35 accordance with article three-a, chapter twenty-nine-a
36 of this code. Such rules shall also set forth objective
37 criteria by which any school under bond pursuant to this
38 section may be required to post an additional amount
39 of surety bond, but not more than two hundred thousand
40 dollars, such criteria to indicate circumstances which
41 may necessitate the need for additional surety bond.
42 Schools with more than one campus within the state
43 shall be required to provide a bond for each of its
44 campuses in an amount equal to the bond required for
45 its oldest established campus in this state. The bond may
46 be continuous and shall be conditioned to provide
47 indemnification to any student suffering loss as a result
48 of any fraud or misrepresentation used in procuring the
49 student's enrollment or failure of the school to meet
50 contractual obligations. The bond shall be given by the
51 school itself as a blanket bond covering all of its
52 representatives. The surety on any such bond may
53 cancel the same upon giving thirty days' notice in
54 writing to the principal on said bond and to the state
55 board of directors and thereafter shall be relieved of

56 liability for any breach of condition occurring after the
57 effective date of said cancellation.

58 (c) A permit shall be valid for one year corresponding
59 to the effective date of the bond and, upon application,
60 accompanied by the required fee and the surety bond
61 as herein required, may be renewed. All fees collected
62 for the issuance or renewal of such permit shall be
63 deposited in the state treasury to the credit of the board
64 of directors.

65 The board may refuse a permit to any school if the
66 board finds that the school engages in practices which
67 are inconsistent with this section or with rules and
68 regulations issued pursuant thereto. A permit issued
69 hereunder, upon fifteen days' notice and after a hearing,
70 if a hearing is requested by the school, may be sus-
71 pended or revoked by the board of directors for fraud
72 or misrepresentation in soliciting or enrolling students,
73 for failure of the school to fulfill its contract with one
74 or more students who are residents of West Virginia, or
75 for violation of or failure to comply with any provision
76 of this section or with any regulation of the state board
77 of directors pertinent thereto. Prior to the board taking
78 any adverse action, including refusal, suspension or
79 revocation of a permit, the school shall be given
80 reasonable opportunity to take corrective measures. Any
81 refusal, suspension or revocation of a permit, or any
82 other adverse action against a school, shall comply with
83 all constitutional provisions, including due process,
84 relating to the protection of property rights.

85 (d) All correspondence, business, occupational or
86 trade schools which have been issued a permit shall
87 make annual reports to the board of directors on forms
88 furnished by the board and shall provide such appropri-
89 ate information as the board reasonably may require.
90 All correspondence, business, occupational or trade
91 schools which have been issued a permit shall furnish
92 to the board of directors a list of its official represen-
93 tatives. Each school shall be issued a certificate of
94 identification by the board of directors for each of its
95 official representatives.

96 (e) The issuance of a permit pursuant to this section
97 does not constitute approval or accreditation of any
98 course or school. No school nor any representative of a
99 school shall make any representation stating, asserting
100 or implying that a permit issued pursuant to this section
101 constitutes approval or accreditation by the state of
102 West Virginia, state board of directors or any other
103 department or agency of the state.

104 The board of directors is hereby authorized to adopt
105 rules and conduct on-site reviews to evaluate academic
106 standards maintained by schools for the awarding of
107 certificates, diplomas and specialized associate degrees,
108 which standards may include curriculum, personnel,
109 facilities, materials and equipment: *Provided*, That in
110 the case of accredited correspondence, business, occupa-
111 tional and trade schools under permit on the first day
112 of July, one thousand nine hundred seventy-nine, having
113 their physical facilities located in this state, and which
114 are accredited by the appropriate nationally recognized
115 accrediting agency or association approved by the
116 United States department of education, the accrediting
117 agency's standards, procedures and criteria shall be
118 accepted as meeting applicable laws, standards, rules
119 and regulations of the board of directors: *Provided*,
120 *however*, That such rules as shall be adopted by the
121 board of directors which are applicable to correspon-
122 dence, business, occupational and trade schools which
123 were not under permit on the first day of July, one
124 thousand nine hundred seventy-nine, may be different
125 from the standards, procedures and criteria of an
126 accrediting agency: *Provided further*, That the board of
127 directors may authorize an investigation of written
128 student complaints alleging a violation of this section,
129 board rules, or accreditation standards and may take
130 appropriate action based on the findings of such an
131 investigation. All evaluations or investigations of
132 correspondence, business, occupational and trade
133 schools, and actions resulting from such evaluations or
134 investigations, shall be made in accordance with rules
135 promulgated by the board of directors pursuant to
136 article three-a, chapter twenty-nine-a of this code.

137 The board of directors is hereby authorized to adopt
138 rules for the awarding of any specialized associate
139 degree by accredited proprietary institutions: *Provided,*
140 That nothing contained herein shall infringe upon the
141 rights of accredited West Virginia proprietary schools
142 operating in West Virginia to confer specialized
143 associate degrees, diplomas or certificates based on
144 credit or clock hours in accordance with standards of the
145 appropriate nationally recognized accrediting agency or
146 association that is approved by the United States
147 department of education. For the purposes of this
148 section, proprietary schools that award specialized
149 associate degrees shall be defined as institutions of
150 higher education, and specialized associate degrees shall
151 mean degrees awarded by such institutions pursuant to
152 a program of not less than two academic years:
153 *Provided, however,* That nothing herein shall be
154 construed to qualify the said proprietary schools for
155 additional state moneys not otherwise qualified for
156 under other provisions of the code.

157 (f) In regard to private, proprietary educational
158 institutions operating under this section of the code,
159 accredited by a national or regional accrediting agency
160 or association recognized by the United States depart-
161 ment of education and which provide training at a
162 campus located in this state:

163 (1) Any rule or standard which is authorized by this
164 or any section of the code or other law, and which is now
165 in effect or promulgated hereafter by the board of
166 directors (or other agency with jurisdiction) shall be
167 clearly, specifically, and expressly authorized by
168 narrowly construed enabling law and shall be
169 unenforceable and without legal effect unless authorized
170 by an act of the Legislature under the provisions of
171 article three-a, chapter twenty-nine-a of the code.

172 (2) Notwithstanding any other provision of this
173 section or other law to the contrary, the institution's
174 accrediting agency standards, procedures, and criteria
175 shall be accepted as the standards and rules of the board
176 of directors (or other agency with jurisdiction), and as
177 meeting other law or legal requirements relating to the

178 operation of proprietary institutions which such board
179 or other agency has the legal authority to enforce under
180 any section of the code or other law: *Provided*, That
181 nothing in this section shall be construed to deny
182 students the use of remedies that would otherwise be
183 available under state or federal consumer laws or
184 federal law relating to federal college financial assist-
185 ance programs.

186 (3) Accredited institutions operating hereunder are
187 hereby recognized as postsecondary. Academic progress
188 shall be measured and reported in credit hours and all
189 reports/documents filed on a credit hour basis.

190 (g) A representative of any school violating any
191 provision of this section shall be guilty of a misdemea-
192 nor, and, upon conviction thereof, shall be fined not
193 more than two hundred dollars per day of violation, not
194 to exceed a maximum of two thousand dollars per
195 violation, or imprisoned in the county jail not more than
196 sixty days, or both fined and imprisoned. No correspon-
197 dence, business, occupational or trade school shall
198 maintain an action in any court of this state to recover
199 for services rendered pursuant to a contract solicited by
200 the school if the school did not hold a valid permit at
201 the time the contract was signed by any of the parties
202 thereto. The attorney general or any county prosecuting
203 attorney, at the request of the board of directors or upon
204 his or her own motion, may bring any appropriate action
205 or proceeding in any court of competent jurisdiction for
206 the enforcement of the provisions of this section relating
207 to permits, bonds and sureties.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§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 or a lender of a student loan made on or after the first
6 day of July, one thousand nine hundred ninety-two, in
7 accordance with the federal higher education act of
8 1965, as amended, who, with respect to a particular
9 transaction, makes a consumer loan for the purpose of
10 enabling a borrower to buy goods or services, other than
11 primarily for an agricultural purpose, is subject to all
12 claims and defenses of the borrower against the seller
13 arising from that specific sale of goods or services if the
14 lender participates in or is connected with the sales
15 transaction. A lender is considered to be connected with
16 such sales transaction if:

17 (i) The lender and the seller have arranged for a
18 commission or brokerage or referral fee for the exten-
19 sion of credit by the lender;

20 (ii) The lender is a person related to the seller unless
21 the relationship is remote or is not a factor in the
22 transaction;

23 (iii) The seller guarantees the loan or otherwise
24 assumes the risk of loss by the lender upon the loan
25 other than a risk of loss arising solely from the seller's
26 failure to perfect a lien securing the loan;

27 (iv) The lender directly supplies the seller with
28 documents used by the borrower to evidence the
29 transaction or the seller directly supplies the lender
30 with documents used by the borrower to evidence the
31 transaction;

32 (v) The loan is conditioned upon the borrower's
33 purchase of the goods or services from the particular
34 seller, but the lender's payment of proceeds of the loan
35 to the seller does not in itself establish that the loan was
36 so conditioned;

37 (vi) The seller in such sale has specifically recom-
38 mended such lender by name to the borrower and the
39 lender has made ten or more loans to borrowers within
40 a period of twelve months within which period the loan
41 in question was made, the proceeds of which other ten
42 or more loans were used in consumer credit sales with
43 the seller or a person related to the seller, if in

44 connection with such other ten or more loans, the seller
45 also specifically recommended such lender by name to
46 the borrowers involved; or

47 (vii) The lender was the issuer of a credit card other
48 than a lender credit card which may be used by the
49 borrower in the sales transaction as a result of a prior
50 agreement between the issuer and the seller.

51 (b) The total of all claims and defenses which a
52 borrower is permitted to assert against a lender under
53 the provisions of this section shall not exceed that
54 portion of the loan used for that sale, except (1) as to
55 any claim or defense founded in fraud: *Provided*, That
56 as to any claim or defense founded in fraud arising on
57 or after the first day of July, one thousand nine hundred
58 ninety, the total sought shall not exceed the original
59 amount of the sale and (2) for any excess charges and
60 penalties recoverable under section one hundred one,
61 article five of this chapter.

62 (c) An agreement may not limit or waive the claims
63 and defenses of a borrower under this section.

64 (d) "Lender credit card" as used in this section means
65 an arrangement or loan agreement, other than a seller
66 credit card, pursuant to which a lender gives a debtor
67 the privilege of using the credit card in transactions
68 which entitles the user thereof to purchase goods or
69 services from at least one hundred persons not related
70 to the issuer of the lender credit card, out of which debt
71 arises:

72 (1) By the lender's honoring a draft or similar order
73 for the payment of money drawn or accepted by the
74 consumer;

75 (2) By the lender's payment or agreement to pay the
76 consumer's obligation; or

77 (3) By the lender's purchase from the obligee of the
78 consumer's obligations.

79 (e) A claim or defense which a borrower may assert
80 against a lender under the provisions of this section may
81 be asserted only as a defense to or setoff against a claim

82 by the lender: *Provided*, That if a borrower shall have
83 a claim or defense which could be asserted under the
84 provisions of this section as a matter of defense to or
85 setoff against a claim by the lender were such lender
86 to assert such claim against the borrower, then the
87 borrower shall have the right to institute and maintain
88 an action or proceeding seeking to obtain the cancella-
89 tion, in whole or in part, of the indebtedness evidenced
90 by a negotiable instrument or other instrument or the
91 release, in whole or in part, of any lien upon real or
92 personal property securing the payment thereof: *Pro-*
93 *vided, however*, That any claim or defense founded in
94 fraud, lack or failure of consideration or a violation of
95 the provisions of this chapter as specified in section one
96 hundred one, article five of this chapter, may be
97 asserted by a borrower at any time, subject to the
98 provisions of this code relating to limitation of actions.

99 (f) Nothing contained in this section shall be construed
100 in any manner as affecting any loan made prior to the
101 operative date of this chapter.

102 (g) Notwithstanding any provisions of this section, a
103 lender shall not be subject to any claim or defense
104 arising from or growing out of personal injury or death
105 resulting therefrom or damage to property.

106 (h) Nothing contained in this section shall be
107 construed as affecting any buyer's or lessee's right of
108 action, claim or defense which is otherwise provided for
109 in this code or at common law.

CHAPTER 186

(S. B. 54—By Senators Spears, Brackenrich and Boley)

[Passed March 3, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend and reenact section one, article eight, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the capitol building commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. CAPITOL BUILDING COMMISSION.

§4-8-1. Creation; composition; qualifications; continuation.

1 There is continued a capitol building commission,
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 Pursuant to the provisions of section four, article ten
17 of this chapter, the capitol building commission shall
18 continue to exist until the first day of July, one thousand
19 nine hundred ninety-three, to allow for the completion
20 of an audit by the joint committee on government
21 operations.

CHAPTER 187

(Com. Sub. for H. B. 4211—By Delegates J. Martin and L. White)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

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; and 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; and the state
14 commission 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; and the community
18 development 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; and the West Virginia alcoholic
23 beverage control licensing advisory board.

24 (5) On the first day of July, one thousand nine
25 hundred eighty-five: Beautification commission.

26 (6) On the first day of July, one thousand nine
27 hundred eighty-six: Health resources advisory council.

28 (7) On the first day of July, one thousand nine
29 hundred eighty-seven: Civil service commission advisory
30 board; and the motorcycle safety standards and speci-

31 fications board.

32 (8) On the first day of July, one thousand nine
33 hundred eighty-eight: Labor management relations
34 board; records management and preservation advisory
35 committee; minimum wage rate board; commission on
36 mass transportation; and the public employees insu-
37 rance board.

38 (9) On the first day of July, one thousand nine
39 hundred eighty-nine: Mental retardation advisory
40 committee; board of school finance; veteran's affairs
41 advisory council; and the reclamation commission.

42 (10) On the first day of July, one thousand nine
43 hundred ninety: Consumer affairs advisory council;
44 savings and loan association; and the forest industries
45 industrial foundation.

46 (11) On the first day of July, one thousand nine
47 hundred ninety-one: The following divisions or pro-
48 grams of the department of agriculture: Interagency
49 committee on pesticides.

50 (12) On the first day of July, one thousand nine
51 hundred ninety-three: State structural barriers com-
52 pliance board; the oil and gas inspectors examining
53 board; the tree fruit industry self-improvement pro-
54 gram; the oil and gas conservation commission; gover-
55 nor's cabinet on children and families; state water
56 resources board; water resources division, department of
57 natural resources; board of banking and financial
58 institutions; farm management commission; state
59 building commission; capitol building commission; West
60 Virginia ethics commission; public service commission;
61 family protection services board; family law masters
62 system; and the child advocate office of the department
63 of health and human resources.

64 (13) On the first day of July, one thousand nine
65 hundred ninety-four: Ohio River valley water sanitation
66 commission; the southern regional education board; real
67 estate commission; the division of labor; division of
68 tourism and parks; division of corrections; and the
69 veteran's council.

70 (14) On the first day of July, one thousand nine
71 hundred ninety-five: Emergency medical services
72 advisory council; commission on charitable organiza-
73 tions; information system advisory commission; West
74 Virginia labor-management council; and the board of
75 social work examiners; and the rural health initiative
76 advisory panel and the marketing and development
77 division of the department of agriculture.

78 (15) On the first day of July, one thousand nine
79 hundred ninety-six: U.S. geological survey program and
80 whitewater commission within the division of natural
81 resources; state geological and economic survey; division
82 of culture and history; and the board of investments.

83 (16) On the first day of July, one thousand nine
84 hundred ninety-seven: The driver's licensing advisory
85 board; department of health and human resources; West
86 Virginia health care cost review authority; division of
87 personnel; and the West Virginia contractors licensing
88 board.

89 (17) On the first day of July, one thousand nine
90 hundred ninety-eight: State lottery commission; the
91 following divisions or programs of the department of
92 agriculture: Meat inspection program and soil conserva-
93 tion committee; women's commission; state board of risk
94 and insurance management; board of examiners of land
95 surveyors; commission on uniform state laws; council of
96 finance and administration; forest management review
97 commission; West Virginia's membership in the inter-
98 state commission on the Potomac River basin; legislative
99 oversight commission on education accountability; and
100 the board of examiners in counseling.

CHAPTER 188

(S. B. 63—By Senators Spears, Brackenrich and Boley)

[Passed March 3, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend and reenact section one, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the state building commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. STATE BUILDING COMMISSION.

§5-6-1. Name of state office building commission changed; composition; appointment, terms and qualifications of members; chairman and secretary; compensation and expenses; powers and duties generally; frequency of meetings; continuation.

1 “The State Office Building Commission of West
2 Virginia”, heretofore created, shall continue in existence
3 but on and after the ninth day of February, one
4 thousand nine hundred sixty-six, shall be known and
5 designated as “The State Building Commission of West
6 Virginia” and shall continue as a body corporate and as
7 an agency of the state of West Virginia. On and after
8 the date aforesaid, the commission shall consist of the
9 governor, attorney general, state treasurer and four
10 additional members to be appointed by the governor by
11 and with the advice and consent of the Senate. The
12 terms of office for said members to be appointed by the
13 governor shall be four years, except that the terms of
14 office of the first four members so appointed by the
15 governor shall be for one, two, three and four years,
16 respectively. No more than three of such members so
17 appointed by the governor shall be members of the same
18 political party, nor shall any of said members be
19 members or employees of the executive, legislative or
20 judicial branches of government of West Virginia or any
21 political subdivision thereof. The governor shall be
22 chairman of the commission. The secretary of state shall
23 be a member of the commission and serve as its
24 secretary, but shall not have the right to vote upon
25 matters before the commission. All members of the
26 commission shall be citizens and residents of this state.
27 The members of the commission shall be paid or
28 reimbursed for their necessary expenses incurred under
29 this article, but shall receive no compensation for their

30 services as members or officers of the commission:
31 *Provided*, That each member of the commission ap-
32 pointed by the governor shall, in addition to such
33 reimbursement for necessary expenses, receive a per
34 diem of thirty-five dollars for each day or substantial
35 portion thereof that he is engaged in the work of the
36 commission. Such expenses and per diem shall be paid
37 solely from funds provided under the authority of this
38 article, and the commission shall not proceed to exercise
39 or carry out any authority or power herein given it to
40 bind said commission beyond the extent to which money
41 has been provided under the authority of this article. On
42 or before the fifteenth day of each month, the commis-
43 sion shall prepare and transmit to the president and
44 minority leader of the Senate and the speaker and the
45 minority leader of the House of Delegates a report
46 covering the activities of the said commission for the
47 preceding calendar month.

48 Pursuant to the provisions of section four, article ten,
49 chapter four of this code, the state building commission
50 shall continue to exist until the first day of July, one
51 thousand nine hundred ninety-three, to allow for the
52 completion of an audit by the joint committee on
53 government operations.

CHAPTER 189

(S. B. 64—By Senators Spears, Brackenrich and Boley)

[Passed March 6, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article two, chapter six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the West Virginia ethics commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES.

§6B-2-11. Continuation of commission.

1 Pursuant to the provisions of section four, article ten,
2 chapter four of this code, the West Virginia ethics
3 commission shall continue to exist until the first day of
4 July, one thousand nine hundred ninety-three, to allow
5 for the completion of an audit by the joint committee on
6 government operations.

CHAPTER 190

(S. B. 61—By Senators Spears, Brackenrich, Boley and Hawse)

[Passed March 3, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twelve-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the farm management commission.

Be it enacted by the Legislature of West Virginia:

That section three, article twelve-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 12A. FARM MANAGEMENT COMMISSION.

§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-three, to allow
25 for the completion of an audit by the joint committee on
26 government operations.

CHAPTER 191

(S. B. 62—By Senators Spears, Brackenrich and Boley)

[Passed March 5, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the water resources section of the division of natural resources; and correcting agency references to reflect current administrative structure.

Be it enacted by the Legislature of West Virginia:

That section fourteen, 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.

§20-1-14. Sections within division; continuation of the water resources section.

1 Sections of wildlife resources, of water resources and
2 of law enforcement are hereby created and established
3 within the division of natural resources. Subject to
4 provisions of law, the director of the division of natural
5 resources shall allocate the functions and services of the
6 division to the sections, offices and activities thereof and
7 may from time to time establish and abolish other
8 sections, offices and activities within the division in
9 order to carry out fully and in an orderly manner the
10 powers, duties and responsibilities of the office as
11 director. The director shall select and designate a
12 competent and qualified person to be chief of each
13 section. The chief shall be the principal administrative
14 officer of that section and shall be accountable and
15 responsible for the orderly and efficient performance of
16 the duties, functions and services thereof.

17 Pursuant to the provisions of section four, article ten,
18 chapter four of this code, the water resources section of
19 the division of natural resources shall continue to exist
20 until the first day of July, one thousand nine hundred
21 ninety-three, to allow for the completion of an audit by
22 the joint committee on government operations.

CHAPTER 192

(S. B. 56—By Senators Spears, Brackenrich and Boley)

[Passed March 5, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article five, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the state water resources board; and correcting agency references to reflect current administrative structure.

Be it enacted by the Legislature of West Virginia:

That section three, article five, 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 5. WATER RESOURCES.**§20-5-3. Water resources board created; continuation; composition and organization; appointment, qualifications, terms, oaths, removal, compensation and expenses of members; others to assist board and division; vacancies; quorum; meetings; records.**

1 (a) The state water resources board heretofore
2 created and established as successor to the state water
3 commission and the state water resources commission is
4 hereby abolished. A new state water resources board is
5 hereby created and established as a public corporation.
6 As such, the board may sue and be sued, plead and be
7 impleaded, contract and be contracted with, and shall
8 have and use a common seal.

9 (b) Pursuant to the provisions of section four, article
10 ten, chapter four of this code, the state water resources
11 board shall continue to exist until the first day of July,
12 one thousand nine hundred ninety-three, to allow for the
13 completion of an audit by the joint committee on
14 government operations.

15 (c) The board shall be composed of five members who
16 shall be appointed by the governor with the advice and
17 consent of the Senate. Not more than three members of
18 the board shall be of the same political party. Individ-
19 uals appointed to the board shall be persons who by
20 reasons of previous training and experience are knowl-
21 edgeable in the husbandry of the state's water resources
22 and with at least one member with experience in
23 industrial pollution control. No member of the board
24 shall receive or, during the two years next preceding the
25 member of the board's appointment, shall have received
26 a "significant portion of the member of the board's
27 income" directly or indirectly from a permit holder or
28 an applicant for a permit issued under any of the
29 provisions of this chapter. For the purposes of this
30 subsection: (1) The term "significant portion of the
31 member of the board's income" shall mean ten percent
32 of gross personal income for a calendar year, except that
33 it shall mean fifty percent of gross personal income for

34 a calendar year if the recipient is over sixty years of age
35 and is receiving such portion pursuant to retirement, a
36 pension or similar arrangement; (2) the term "income"
37 includes retirement benefits, consultant fees and stock
38 dividends; (3) income is not received "directly or
39 indirectly" from "permit holders" or "applicants for a
40 permit" where it is derived from mutual-fund payments
41 or from other diversified investments with respect to
42 which the recipient does not know the identity of the
43 primary sources of income; and (4) the terms "permit
44 holders" and "applicants for a permit" shall not include
45 any university or college operated by this state or
46 political subdivision of this state.

47 (d) The members of the board shall be appointed for
48 overlapping terms of five years, except that the original
49 appointments shall be for terms of one, two, three, four
50 and five years, respectively. Any member whose term
51 expires may be reappointed by the governor. At its
52 organizational meeting, one member of the board shall
53 be selected chairman to serve as chairman at the will
54 and pleasure of the members of the board. Members of
55 the board shall, before performing any duty, take and
56 subscribe to the oath required by section five, article
57 four of the constitution of West Virginia. Members of
58 the board may be removed only for the same causes and
59 in like manner as elective state officers. Any vacancy in
60 the office of a member of the board shall be filled by
61 appointment by the governor for the unexpired term of
62 the member whose office shall be vacant. Each vacancy
63 occurring in the office of a member of the board shall
64 be filled by appointment within sixty days after such
65 vacancy occurs. Each member of the board shall be paid
66 as compensation for his work as such member from
67 funds appropriated for such purposes, seventy-five
68 dollars per day when actually engaged in the perfor-
69 mance of work as a board member. In addition to such
70 compensation, each member of the board shall be
71 reimbursed for all reasonable and necessary expenses
72 actually incurred in the performance of the board
73 member's duties. The director of the public health
74 sanitation division within the state department of health
75 and human resources, formerly known as the division of

76 sanitary engineering of the state department of health,
77 shall perform such services as the board and the chief
78 of the division of water resources may request in
79 connection with the discharge of their duties, and the
80 director shall be reimbursed, out of moneys appropri-
81 ated for such purposes, all sums which the director
82 necessarily shall expend in the performance of such
83 service. Nothing contained in this article or in article
84 five-a of this chapter, however, shall be construed to
85 limit or interfere with the power of the state department
86 of health and human resources to select, employ and
87 direct the director of the public health sanitation
88 division of said department, or any employee thereof
89 who in any way may perform any services for the board
90 or the division of water resources. The college of
91 engineering at West Virginia university and the schools
92 and departments of engineering at other institutions of
93 higher education operated by this state, under the
94 direction of the dean or other head thereof, shall, insofar
95 as they can, without interfering with their usual and
96 regular activities, aid and assist the board and the
97 division of water resources in the study and research of
98 questions connected with water pollution and the control
99 and reduction thereof in accordance with the provisions
100 of article five-a of this chapter. Such dean or other head
101 shall be reimbursed, out of moneys appropriated for
102 such purposes, all sums which such dean necessarily
103 shall expend in the performance of any services such
104 dean may render to the board and the division under
105 the provisions hereof.

106 A majority of the board shall constitute a quorum for
107 the transaction of business. The board shall meet at such
108 times and places as it may determine and shall meet on
109 call of the chairman. It shall be the duty of the chairman
110 to call a meeting of the board on the written request of
111 three members thereof. The board shall keep an
112 accurate record of all of its proceedings and maintain
113 such board records and make certificates thereof or
114 therefrom as may be required by law. The board may
115 employ a secretary and necessary scientific and clerical
116 assistance.

CHAPTER 193

(S. B. 156—By Senators Spears and Brackenrich)

[Passed March 6, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the public service commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS.

§24-1-3. Commission continued; membership; chairman; compensation.

1 (a) The public service commission of West Virginia,
2 heretofore established, is continued and directed as
3 provided by this chapter, chapter twenty-four-a and
4 chapter twenty-four-b of this code. Pursuant to the
5 provisions of section four, article ten, chapter four of this
6 code, the public service commission shall continue to
7 exist until the first day of July, one thousand nine
8 hundred ninety-three, to allow for the completion of an
9 audit by the joint committee on government operations.
10 The public service commission may sue and be sued by
11 that name. Such public service commission shall consist
12 of three members who shall be appointed by the
13 governor with the advice and consent of the Senate. The
14 commissioners shall be citizens and residents of this
15 state and at least one of them shall be duly licensed to
16 practice law in West Virginia, of not less than ten years'
17 actual experience at the bar. No more than two of said
18 commissioners shall be members of the same political
19 party. Each commissioner shall, before entering upon
20 the duties of his office, take and subscribe to the oath
21 provided by section five, article four of the constitution,
22 which oath shall be filed in the office of the secretary

23 of state. The governor shall designate one of the
24 commissioners to serve as chairman at the governor's
25 will and pleasure. The chairman shall be the chief
26 administrative officer of the commission. The governor
27 may remove any commissioner only for incompetency,
28 neglect of duty, gross immorality, malfeasance in office
29 or violation of subsection (c) of this section.

30 (b) The unexpired term of members of the public
31 service commission at the time this subsection becomes
32 effective are continued through the thirtieth day of
33 June, one thousand nine hundred seventy-nine. In
34 accordance with the provisions of subsection (a) of this
35 section, the governor shall appoint three commissioners,
36 one for a term of two years, one for a term of four years
37 and one for a term of six years, all the terms beginning
38 on the first day of July, one thousand nine hundred
39 seventy-nine. All future appointments are for terms of
40 six years, except that an appointment to fill a vacancy
41 is for the unexpired term only. The commissioners
42 whose terms are terminated by the provisions of this
43 subsection are eligible for reappointment.

44 (c) No person while in the employ of, or holding any
45 official relation to, any public utility subject to the
46 provisions of this chapter, or holding any stocks or bonds
47 thereof, or who is pecuniarily interested therein, may
48 serve as a member of the commission or as an employee
49 thereof. Nor may any such commissioner be a candidate
50 for or hold public office, or be a member of any political
51 committee, while acting as such commissioner; nor may
52 any commissioner or employee of said commission
53 receive any pass, free transportation or other thing of
54 value, either directly or indirectly, from any public
55 utility or motor carrier subject to the provisions of this
56 chapter. In case any of the commissioners becomes a
57 candidate for any public office or a member of any
58 political committee, the governor shall remove him from
59 office and shall appoint a new commissioner to fill the
60 vacancy created.

61 (d) Effective the first day of November, one thousand
62 nine hundred ninety-one, and in light of the assignment
63 of new, substantial additional duties embracing new

64 areas and fields of activity under certain legislative
65 enactments, each commissioner shall receive an annual
66 salary of sixty thousand dollars to be paid in monthly
67 installments from the special funds in such amounts as
68 follows:

69 (1) From the public service commission fund collected
70 under the provisions of section six, article three of this
71 chapter, forty-eight thousand dollars;

72 (2) From the public service commission motor carrier
73 fund collected under the provisions of section six, article
74 six, chapter twenty-four-b of this code, ten thousand
75 dollars; and

76 (3) From the public service commission gas pipeline
77 safety fund collected under the provisions of section
78 three, article five, chapter twenty-four-b of this code,
79 two thousand dollars.

80 In addition to this salary provided for all commission-
81 ers, the chairman of the commission shall receive five
82 thousand dollars per annum to be paid in monthly
83 installments from the public service commission fund
84 collected under the provisions of section six, article three
85 of this chapter on and after the first day of January, one
86 thousand nine hundred ninety-two.

CHAPTER 194

(H. B. 4148—By Mr. Speaker, Mr. Chambers, and Delegate Burk,
By Request of the Executive)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section eight, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three and nine of said article, relating to removing provisions relating to the state fire administrator; creation of the state fire commission; increasing and changing the composition of the commission; appointment of the commission; terms and reim-

bursement of expenses of commission members; and powers and duties of the commission and state fire marshal.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-3. State fire commission created; composition; qualifications; appointment; terms of office; removal; vacancies; compensation and expenses.

§29-3-9. Powers, duties and authority of state fire commission and state fire marshal.

§29-3-3. State fire commission created; composition; qualifications; appointment; terms of office; removal; vacancies; compensation and expenses.

1 (a) There is hereby created a state fire commission,
 2 which shall consist of thirteen members, qualified by
 3 experience and training to deal with the matters which
 4 are the responsibilities of the commission. The officers
 5 of the West Virginia fire chiefs association, the West
 6 Virginia firemen's association, the West Virginia
 7 professional fire fighters association, the West Virginia
 8 professional fire chiefs association, the West Virginia
 9 manufacturers association, the professional independent
 10 insurance agents of West Virginia, and the West
 11 Virginia society of architects shall submit a list of
 12 names of persons recommended by each of these
 13 associations to the governor for consideration in appoint-
 14 ing the state fire commission. The West Virginia
 15 professional fire fighters association and the West
 16 Virginia professional fire chiefs association shall
 17 recommend the names of two persons from full-time
 18 paid fire departments. The West Virginia fire chiefs
 19 association and the West Virginia firemen's association
 20 shall each recommend the names of three persons from
 21 volunteer fire departments. The West Virginia manu-
 22 facturers association shall recommend the names of

23 three persons to represent business and industry. The
24 professional independent insurance agents of West
25 Virginia shall recommend the names of two persons to
26 represent the fire insurance industry. The West Virgi-
27 nia society of architects shall recommend the names of
28 two persons to represent registered architects. Appoint-
29 ments to the commission shall be made by the governor,
30 by and with the advice and consent of the Senate, from
31 the lists of qualified persons recommended by the
32 organizations. Three members shall be appointed to
33 represent full-time paid fire departments, one member
34 shall be appointed to represent the full-time paid fire
35 chiefs, three members shall be appointed to represent
36 volunteer fire departments and two members shall be
37 appointed to represent the volunteer fire chiefs. Two
38 members shall be appointed to represent business and
39 industry and one member shall be appointed to repres-
40 ent the fire insurance industry. One member shall be
41 appointed to represent registered architects. The term
42 of office of the members shall be staggered five-year
43 terms. The terms of members first appointed shall
44 expire as designated by the governor at the time of
45 appointment, two at the end of one year, two at the end
46 of two years, three at the end of three years, two at the
47 end of four years and two at the end of five years.
48 Vacancies shall be filled in the same manner as the
49 original appointment but only for the remainder of a
50 term. Any member is subject to removal by the governor
51 at any time for neglect of his duties or other conduct
52 unbecoming his office. The governor shall make the
53 appointments within ninety days after this section takes
54 effect.

55 (b) The members of the state fire commission shall
56 serve without compensation but shall be reimbursed for
57 their reasonable and necessary expenses actually
58 incurred in the performance of their duties.

**§29-3-9. Powers, duties and authority of state fire
commission and state fire marshal.**

1 (a) The state fire commission may employ personnel,
2 fix their compensation and, within funds available to do

3 so, incur expenses as necessary in the performance of
4 the duties of its office.

5 (b) The state fire commission is responsible for fire
6 programs within this state, including the state fire
7 marshal's office, training, uniform standards and
8 certification, finance and planning and fire prevention.

9 (c) All state and area training and education in fire
10 service shall be coordinated by the state fire commis-
11 sion. The state fire marshal shall ensure that these
12 programs are operated throughout the state at a level
13 consistent with needs identified by the commissioner.

14 (d) The state fire commission shall develop minimum
15 training levels for fire fighters, minimum levels of
16 equipment needed to protect life and property within
17 fire service areas, minimum performance standards the
18 departments must meet in response times, communica-
19 tions, minimum levels of water flow and pressure and
20 other performance measures as considered necessary to
21 meet the overall goals of improved fire prevention and
22 control. The state fire commission may make recommen-
23 dations to the state insurance commissioner regarding
24 town classifications for fire insurance rates.

25 (e) The formation of any new fire department,
26 including volunteer fire departments, requires the
27 concurrence of the state fire commission. The state fire
28 commission shall develop a method of certification
29 which can be applied to all fire departments and
30 volunteer fire departments.

31 (f) The state fire commission shall develop a plan for
32 fire prevention and control which shall include, but not
33 be limited to, the following areas: Manpower needs;
34 location of training centers; location of fire prevention
35 and control units; communications; fire fighting facili-
36 ties; water sources; vehicular needs; public education
37 and information; public participation; standardization
38 in record keeping; evaluation of personnel; reporting of
39 fire hazards; programs on mutual aid; location of public
40 safety agencies; outline of fire prevention programs; and
41 accessibility of fire prevention information.

42 (g) The state fire commission shall establish fire
43 protection areas and at such times as funds are available
44 shall establish field offices for inspection, planning and
45 certification.

CHAPTER 195

(S. B. 141—By Senators Spears and Brackenrich)

[Passed March 3, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article twelve, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the state board of risk and insurance management.

Be it enacted by the Legislature of West Virginia:

That section twelve, 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.

§29-12-12. Reestablishment of board as state board of risk and insurance management.

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 state board of insurance should be
6 continued and reestablished but shall be known and
7 referred to as the state board of risk and insurance
8 management. Accordingly, notwithstanding the provi-
9 sions of section four, article ten, chapter four of this
10 code, the state board of insurance shall continue to exist
11 until the first day of July, one thousand nine hundred
12 ninety-eight, but shall be known and referred to as the
13 state board of risk and insurance management.

CHAPTER 196

(S. B. 59—By Senators Spears, Brackenrich, Boley and Hawse)

[Passed February 13, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the women's commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. WOMEN'S COMMISSION.

§29-20-1. Continuation; membership; appointment and terms of members; organization; reimbursement for expenses.

1 The West Virginia commission on the status of women
2 is hereby abolished, and there is hereby continued
3 within the department of health and human resources
4 the West Virginia women's commission, to consist of
5 eighteen members, seven of whom shall be ex officio
6 members, not entitled to vote: The attorney general, the
7 state superintendent of schools, the commissioner of
8 labor, the commissioner of the bureau of human
9 resources of the department of health and human
10 resources, the director of the human rights commission,
11 the director of the division of personnel and the
12 chancellor of the board of directors of the state college
13 system. Each ex officio member may designate one
14 representative employed by his or her department to
15 meet with the commission in his or her absence. The
16 governor shall appoint the additional eleven members,
17 by and with the advice and consent of the Senate, from
18 among the citizens of the state. The governor shall
19 designate the chairman and vice chairman of the
20 commission and the commission may elect such other
21 officers as it deems necessary. The members shall serve
22 a term beginning the first day of July, one thousand nine
23 hundred seventy-seven, three to serve for a term of one

24 year, four to serve for a term of two years and the
25 remaining four to serve for a term of three years. The
26 successors of the members initially appointed as
27 provided herein shall be appointed for a term of three
28 years each in the same manner as the members initially
29 appointed under this article, except that any person
30 appointed to fill a vacancy occurring prior to the
31 expiration of the term for which his or her predecessor
32 was appointed shall be appointed for the remainder of
33 such term. Each member shall serve until the appoint-
34 ment and qualification of his or her successor.

35 No member may receive any salary for his or her
36 services, but each may be reimbursed for actual and
37 necessary expenses incurred in the performance of his
38 or her duties out of funds received by the commission
39 under section four of this article, except that in the event
40 the expenses are paid, or are to be paid, by a third party,
41 the members shall not be reimbursed by the
42 commission.

43 After having conducted a performance audit through
44 its joint committee on government operations, pursuant
45 to section nine, article ten, chapter four of this code, the
46 Legislature hereby finds and declares that the West
47 Virginia women's commission should be continued and
48 reestablished. Accordingly, notwithstanding the provi-
49 sions of section four, article ten, chapter four of this
50 code, the West Virginia women's commission shall
51 continue to exist until the first day of July, one thousand
52 nine hundred ninety-eight.

CHAPTER 197

(H. B. 4096—By Delegates Love and L. White)

[Passed February 12, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article three-
a, chapter twenty-nine-a of the code of West Virginia,
one thousand nine hundred thirty-one, as amended,
relating to continuing the legislative oversight commis-
sion on education accountability.

Be it enacted by the Legislature of West Virginia:

That section eleven, article three-a, chapter twenty-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 3A. HIGHER EDUCATION RULE MAKING.

§29A-3A-11. Creation of a legislative oversight commission on education accountability; continuation.

1 (a) There is hereby created a joint commission of the
2 Legislature known as the legislative oversight commis-
3 sion on education accountability to review all legislative
4 rules of the board and such other rules as the commis-
5 sion deems appropriate. The commission shall be
6 composed of six members of the Senate appointed by the
7 president of the Senate and six members of the House
8 of Delegates appointed by the speaker of the House of
9 Delegates. No more than five of the six members
10 appointed by the president of the Senate and the speaker
11 of the House of Delegates, respectively, may be members
12 of the same political party. In addition, the president of
13 the Senate and the speaker of the House of Delegates
14 shall be ex officio nonvoting members of the commission
15 and shall designate the cochairmen. At least one of the
16 Senate members and one of the House members shall
17 be members of the committee on education of the Senate
18 and House, respectively, and at least one of the Senate
19 members and at least one of the House members shall
20 be a member of the committee on finance of the Senate
21 and House, respectively. The members shall serve until
22 their successors shall have been appointed as heretofore
23 provided. Members of the commission shall receive such
24 compensation and expenses as provided in article two-
25 a, chapter four of this code. Such expenses and all other
26 expenses including those incurred in the employment of
27 legal, technical, investigative, clerical, stenographic,
28 advisory and other personnel shall be paid from an
29 appropriation to be made expressly for the legislative
30 oversight commission on education accountability, but if
31 no such appropriation be made, such expenses shall be
32 paid from the appropriation under "Account No. 103

33 for Joint Expenses", but no expense of any kind
34 whatever payable under said account no. 103 for joint
35 expenses shall be incurred unless first approved by the
36 joint committee on government and finance. The
37 commission shall meet at any time both during sessions
38 of the Legislature and in the interim.

39 (b) The commission may adopt such rules of proce-
40 dure as it considers necessary for the submission,
41 presentation and consideration of rules.

42 (c) Pursuant to the provisions of section four, article
43 ten, chapter four of this code, the legislative oversight
44 commission on education accountability shall continue to
45 exist until the first day of July, one thousand nine
46 hundred ninety-three, to allow for the completion of an
47 audit by the joint committee on government operations.
48 If such commission is terminated pursuant to this
49 subsection, any report required to be submitted to it
50 shall instead be submitted to the joint committee on
51 education of the Legislature.

CHAPTER 198

(S. B. 143—By Senators Spears and Brackenrich)

[Passed March 3, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article thirty-one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia board of examiners in counseling.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 31. LICENSED PROFESSIONAL COUNSELORS.

§30-31-15. Continuation of board.

1 After having conducted a performance audit through
2 its joint committee on government operations, pursuant
3 to section nine, article ten, chapter four of this code, the
4 Legislature hereby finds and declares that the West
5 Virginia board of examiners in counseling should be
6 continued and reestablished. Accordingly, notwithstand-
7 ing the provisions of section four, article ten, chapter
8 four of this code, the West Virginia board of examiners
9 in counseling shall continue to exist until the first day
10 of July, one thousand nine hundred ninety-eight.

CHAPTER 199

(S. B. 140—By Senators Spears and Brackenrich)

[Passed March 3, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article two-c, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the family protection services board.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article two-c, 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 2C. DOMESTIC VIOLENCE ACT.

§48-2C-14. Continuation of board.

1 Pursuant to the provisions of section four, article ten,
2 chapter four of this code, the family protection services
3 board shall continue to exist until the first day of July,
4 one thousand nine hundred ninety-three, to allow for the
5 completion of an audit by the joint committee on
6 government operations.

CHAPTER 200

(S. B. 139—By Senators Spears and Brackenrich)

[Passed March 4, 1992; in effect ninety days from passage. Approved by the Governor.]

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 continuation of the West Virginia child advocate office; and the monitoring of compliance by the child advocate office with the recommendations of the performance audit by the joint committee on government operations.

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 department
2 of health and human resources the child advocate office.

3 (b) After having conducted a performance and fiscal
4 audit through its joint committee on government
5 operations, pursuant to section nine, article ten, chapter
6 four of this code, the Legislature hereby finds and
7 declares the child advocate office should be continued
8 and reestablished. Accordingly, notwithstanding the
9 provisions of section four, article ten, chapter four of this
10 code, the child advocate office shall continue to exist
11 until the first day of July, one thousand nine hundred
12 ninety-three, so that the joint committee on government
13 operations may monitor compliance by the child
14 advocate office with the recommendations of the
15 performance audit.

* Clerk's Note: This section was also amended by H. B. 4759 (Chapter 54), which passed subsequent to this act.

CHAPTER 201

(H. B. 4217—By Delegates J. Martin and L. White)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article four, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the family law masters system; and the monitoring of compliance by the family law masters system with the recommendations of the performance audit by the joint committee on government operations.

Be it enacted by the Legislature of West Virginia:

That section twelve, article four, 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 4. PROCEEDINGS BEFORE A MASTER.

§48A-4-12. Continuation of family law masters system.

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 the family law masters system should be
6 continued and reestablished. Accordingly, notwithstand-
7 ing the provisions of section four, article ten, chapter
8 four of this code, the family law masters system shall
9 continue to exist until the first day of July, one thousand
10 nine hundred ninety-three, so that the joint committee
11 on government operations may monitor compliance by
12 the family law masters system with the recommenda-
13 tions of the performance audit.

CHAPTER 202

(S. B. 385—By Senator Helmick)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article eighteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the application of the proceeds from the hotel occupancy tax; and permitting the expenditure of up to one hundred thousand dollars for medical care.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article eighteen, 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 18. HOTEL OCCUPANCY TAX.

§7-18-14. Proceeds of tax; application of proceeds.

1 (a) *Application of proceeds.* — The net proceeds of the
2 tax collected and remitted to the taxing authority
3 pursuant to this article shall be deposited into the
4 general revenue fund of such municipality or county
5 commission and, after appropriation thereof, shall be
6 expended only as provided in subsections (b) and (c) of
7 this section.

8 (b) *Required expenditures.* — At least fifty percent of
9 the net revenue receivable during the fiscal year by a
10 county or a municipality pursuant to this article shall
11 be expended in the following manner for the promotion
12 of conventions and tourism:

13 (1) *Municipalities.* — If a convention and visitor's
14 bureau is located within the municipality, county or
15 region, the governing body of such municipality shall
16 appropriate the percentage required by this subsection
17 to that bureau. If a convention and visitor's bureau is
18 not located within such municipality, county or region,
19 then the percentage appropriation required by this
20 subsection shall be appropriated as follows:

21 (i) Any hotel located within such municipality, county
22 or region may apply to such municipality for an
23 appropriation to such hotel of a portion of the tax
24 authorized by this article and collected by such hotel
25 and remitted to such municipality, for uses directly
26 related to the promotion of tourism and travel, including
27 advertising, salaries, travel, office expenses, publica-
28 tions and similar expenses. The portion of such tax
29 allocable to such hotel shall not exceed seventy-five
30 percent of that portion of such tax collected and
31 remitted by such hotel which is required to be expended
32 pursuant to this subsection: *Provided*, That prior to
33 appropriating any moneys to such hotel such municipal-
34 ity shall require the submission of, and give approval
35 to, a budget setting forth the proposed uses of such
36 moneys.

37 (ii) If there is more than one convention and visitor's
38 bureau located within a municipality, county or region,
39 the city council may allocate the tax authorized by this
40 article to one or more of such bureaus in such portion
41 as the city council in its sole discretion determines.

42 (iii) The balance of net revenue required to be
43 expended by this subsection shall be appropriated to the
44 regional travel council serving the area in which the
45 municipality is located.

46 (2) *Counties*. — If a convention and visitor's bureau
47 is located within a county or region, the county
48 commission shall appropriate the percentage required
49 by this subsection to that convention and visitor's
50 bureau. If a convention and visitor's bureau is not
51 located within such county or region, then the percen-
52 tage appropriation required by this subsection shall be
53 appropriated as follows:

54 (i) Any hotel located within such county or region
55 may apply to such county for an appropriation to such
56 hotel of a portion of the tax authorized by this article
57 and collected by such hotel and remitted to such county,
58 for uses directly related to the promotion of tourism and
59 travel, including advertising, salaries, travel, office
60 expenses, publications and similar expenses. The portion

61 of such tax allocable to such hotel shall not exceed
62 seventy-five percent of that portion of such tax collected
63 and remitted by such hotel which is required to be
64 expended pursuant to this subsection: *Provided*, That
65 prior to appropriating any moneys to such hotel such
66 county shall require the submission of, and give
67 approval to, a budget setting forth the proposed uses of
68 such moneys.

69 (ii) If there is more than one convention and visitor's
70 bureau located within a county or region, the county
71 commission may allocate the tax authorized by this
72 article to one or more of such bureaus in such portion
73 as the county commission in its sole discretion
74 determines.

75 (iii) The balance of net revenue required to be
76 expended by this subsection shall be appropriated to the
77 regional travel council serving the area in which the
78 county is located.

79 (3) *Legislative finding.* — The Legislature hereby
80 finds that the support of convention and visitor's
81 bureaus, hotels and regional travel councils is a public
82 purpose for which funds may be expended. Local
83 convention and visitor's bureaus, hotels and regional
84 travel councils receiving funds under this subsection
85 may expend such funds for the payment of administra-
86 tive expenses, and for the direct or indirect promotion
87 of conventions and tourism, and for any other uses and
88 purposes authorized by subdivisions (1) and (2) of this
89 subsection.

90 (c) *Permissible expenditures.* — After making the
91 appropriation required by subsection (b) of this section,
92 the remaining portion of the net revenues receivable
93 during the fiscal year by such county or municipality,
94 pursuant to this article, may be expended for one or
95 more of the purposes set forth in this subsection, but for
96 no other purpose. The purposes for which expenditures
97 may be made pursuant to this subsection are as follows:

98 (1) The planning, construction, reconstruction, estab-
99 lishment, acquisition, improvement, renovation, exten-
100 sion, enlargement, equipment, maintenance, repair and

101 operation of publicly owned convention facilities,
102 including, but not limited to, arenas, auditoriums, civic
103 centers and convention centers;

104 (2) The payment of principal or interest or both on
105 revenue bonds issued to finance such convention
106 facilities;

107 (3) The promotion of conventions;

108 (4) The construction, operation or maintenance of
109 public parks, tourist information centers and recreation
110 facilities (including land acquisition);

111 (5) The promotion of the arts;

112 (6) Historic sites;

113 (7) Beautification projects; or

114 (8) Medical care, in an amount not exceeding one
115 hundred thousand dollars, in any county where: (i)
116 There is an urgent necessity to preserve the delivery of
117 acute medical care services; (ii) there is an increase in
118 need for acute medical care services directly related to
119 tourism; (iii) recurrent flooding in the county signifi-
120 cantly disrupts, on a periodic basis, the delivery of acute
121 medical care services; (iv) there is an inadequate
122 economic base within the county from any source other
123 than tourism to preserve the delivery of acute medical
124 care services; (v) there is an inadequate economic base
125 directly related to low population in the county,
126 specifically, a population of less than ten thousand
127 persons according to the census of the year one thousand
128 nine hundred ninety; and (vi) there is one and only one
129 hospital within the county; and the county commission
130 makes specific findings, by resolution, that all of the
131 foregoing conditions within the county exist.

132 (d) *Definitions.* — For purposes of this section, the
133 following terms are defined:

134 (1) *Convention and visitor's bureau and visitor's and*
135 *convention bureau.* — "Convention and visitor's bureau"
136 and "visitor's and convention bureau" are interchange-
137 able and either shall mean a nonstock, nonprofit
138 corporation with a full-time staff working exclusively to

139 promote tourism and to attract conventions, conferences
140 and visitors to the municipality, county or region in
141 which such convention and visitor's bureau or visitor's
142 and convention bureau is located or engaged in business
143 within.

144 (2) *Convention center.* — "Convention center" means a
145 convention facility owned by the state, a county, a
146 municipality or other public entity or instrumentality
147 and shall include all facilities, including armories,
148 commercial, office, community service and parking
149 facilities and publicly owned facilities constructed or
150 used for the accommodation and entertainment of
151 tourist and visitors, constructed in conjunction with the
152 convention center and forming reasonable appurtenances
153 thereto.

154 (3) *Fiscal year.* — "Fiscal year" means the year
155 beginning the first day of July and ending the thirtieth
156 day of June of the next calendar year.

157 (4) *Net proceeds.* — "Net proceeds" means the gross
158 amount of tax collections less the amount of tax lawfully
159 refunded.

160 (5) *Promotion of the arts.* — "Promotion of the arts"
161 means activity to promote public appreciation and
162 interest in one or more of the arts. It includes the
163 promotion of music for all types, the dramatic arts,
164 dancing, painting and the creative arts through shows,
165 exhibits, festivals, concerts, musicals and plays.

166 (6) *Recreational facilities.* — "Recreational facilities"
167 means and includes any public park, parkway, play-
168 ground, public recreation center, athletic field, sports
169 arena, stadium, skating rink or arena, golf course,
170 tennis courts and other park and recreation facilities,
171 whether of a like or different nature, that are owned by
172 a county or municipality.

173 (7) *Region.* — "Region" means an area consisting of
174 one or more counties that have agreed by contract to
175 fund a convention and visitor's bureau to promote those
176 counties.

177 (8) *Regional travel council.* — “Regional travel
178 council” means a nonstock, nonprofit corporation, with
179 a full-time staff working exclusively to promote tourism
180 and to attract conventions, conferences and visitors to
181 the region of this state served by the regional travel
182 council.

183 (9) *Historic site.* — “Historic site” means any site
184 listed on the United States national register of historic
185 places, or listed by a local historical landmarks commis-
186 sion, established under state law, when such sites are
187 owned by a city, a county or a nonprofit historical
188 association and are open from time to time to accommo-
189 date visitors.

CHAPTER 203

(H. B. 4557—By Delegates Rutledge and Kiss)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen-b, relating to the West Virginia Tax Procedure and Administration Act; providing for retroactive monetary relief for overpayments of unconstitutional state taxes when retroactive relief is ordered by a final decision of a state or federal court; legislative findings and purpose; legislative intent and rules of construction; criteria for retroactive monetary relief; type and manner of providing relief; finality of relief.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-14b. Monetary remedies for overpayments due to unconstitutionality.

1 (a) *Legislative findings and purpose.* — Taxpayers
2 who successfully challenge the constitutionality of state
3 taxes may be entitled to retroactive monetary relief for
4 the amount of their overpayments. Because there may
5 be many of such taxpayers and the period of retroac-
6 tivity may be extensive, the amount of monetary relief
7 owed to such taxpayers may represent a considerable
8 and unpredictable risk to the fiscal integrity and
9 stability of this state. This section provides the tax
10 commissioner with greater flexibility and discretion in
11 the manner in which such relief may be provided.

12 (b) *Legislative intent and rules of construction.*

13 (1) *Legislative intent.* — It is the intent of the
14 Legislature that this section shall be construed to
15 preserve the fiscal integrity and stability of the state of
16 West Virginia and to provide appropriate relief to the
17 extent required by this section and the state and federal
18 constitutions. The provisions of section fourteen of this
19 article shall remain in full force and effect with regard
20 to overpayments of tax resulting from any reason
21 including unconstitutionality.

22 (2) *Rules of construction.*

23 (A) The remedies provided by this section and section
24 fourteen of this article are exclusive and shall be in lieu
25 of any and all remedies provided at common law or by
26 other statutes.

27 (B) Because all legislative enactments are presump-
28 tively constitutional and because the tax commissioner
29 is without authority to determine the constitutionality of
30 tax laws, other than through the courts, no cause of
31 action shall exist against said tax commissioner, in his
32 individual capacity, for damages, attorney's fees or court
33 costs incurred in litigating the constitutionality of any
34 tax law administered under this article which is
35 subsequently determined to be unconstitutional.

36 (C) A holding of retroactivity shall not be deemed to
37 override any statutes of limitation which have run, or
38 to require relief for any cases which are *res judicata*.

39 (c) *Criteria for retroactive monetary relief.* — No

40 person may be granted relief based on a claim of
41 unconstitutionality, unless the decision that the tax or
42 its application is unconstitutional also mandates retro-
43 active monetary relief and is a final decision of a court
44 of competent jurisdiction of this state or a federal court
45 having appropriate jurisdiction. A final decision is one
46 for which the availability of an appeal has been
47 exhausted, and the time for filing a petition has elapsed
48 or the petition has been finally denied.

49 (d) *Amount of relief; interest.* — The amount of
50 monetary relief shall be comprised solely of the amount
51 of overpayment, together with interest, and shall not
52 include damages of any kind, court costs, or attorney's
53 fees except when ordered by a court of competent
54 jurisdiction. Interest shall be paid as provided by section
55 seventeen of this article.

56 (e) *Type and manner of providing relief.* — In addition
57 to the powers already provided in this article, the tax
58 commissioner may, in his discretion and in accordance
59 with guidelines published by him in the State Register,
60 provide retroactive monetary relief by any one or
61 combination of the following remedies:

62 (1) *Refunds.* — The total amount of any refund to be
63 paid to a taxpayer may be paid either in one lump sum
64 or in periodic installments. Installment payments shall
65 be paid in full not later than three years from the date
66 of the final decision of entitlement to retroactive
67 monetary relief: *Provided*, That the periodic installment
68 method for payment may only be used when the total
69 amount of any refund to an individual taxpayer exceeds
70 one thousand dollars or the aggregate amount of all
71 refunds resulting from a final decision of unconstitution-
72 ality of a particular tax is estimated to be more than
73 five million dollars.

74 (2) *Credits.* — With the taxpayer's consent, the tax
75 commissioner may issue an overpayment credit for tax.

76 (f) *Finality of relief.* — The issuance of refunds or
77 credits shall constitute complete and final settlement of
78 all entitlements based on the claim or claims for which
79 such refunds or credits were made.

CHAPTER 204

(H. B. 4633—By Delegates Kiss and Burk)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections thirty-one, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven-a and fifty-four, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section eighteen-a, article ten of said chapter eleven; to further amend said article ten by adding thereto a new section, designated section nineteen-a; to amend and reenact sections eighteen, thirty-two, thirty-seven, thirty-eight, thirty-nine, fifty-one-a and seventy-one-a, article twenty-one of said chapter eleven; to further amend said article twenty-one by adding thereto two new sections, designated sections thirty and forty-four; and to amend and reenact section thirteen-b, article twenty-four of said chapter eleven, all relating generally to administration and collection of West Virginia personal and corporation net income taxes from nonresident taxpayers and others; changing method by which personal income tax of nonresidents and part-year residents is determined and, as to such change in method: Specifying effective date, preserving prior law for prior taxable years, and making conforming changes in other provisions of personal income tax law necessary for implementation, administration and enforcement of this change in tax computation methodology; defining West Virginia source income in the case of nonresidents and part-year residents; making conforming changes in other statutory provisions pertaining to how West Virginia source income of nonresidents and part-year residents is determined; providing for partnerships, S corporations, estates and trusts to withhold income tax on distributions, both actual and deemed, of West Virginia source income to nonresidents and, as to such, changing rate of withholding to single uniform rate; providing for payment of withholding tax by pass-through entities and for administration and collection by tax commissioner,

including exceptions, limitations, special rules, definitions, and effective date; requiring nonpartnership ventures to file information returns pertaining to West Virginia source income; allowing nonresident individuals who are partners, S corporation shareholders, or beneficiaries of an estate or trust having West Virginia source income to file composite nonresident personal income tax returns and, as to such, changing the composite return rate of tax, defining terms and specifying effective date; changing the rules for imposing, collecting and administering additions to tax for underpayment of estimated tax, with such new rules to apply to all taxpayers and to certain other taxes collected by tax commissioner for taxable years beginning after specified date; imposing money penalties for failure to file certain information returns including but not limited to those filed by pass-through entities, and for failure to file complete and accurate information returns, and, as to such, providing rules for application, waiver, exception and effective date, and for administration and collection of such penalties; eliminating specific money penalty for failure to file S corporation income tax returns, with such penalty being replaced and superseded by generic penalty applicable to such failures; eliminating requirement that S corporation information returns provide certain information, leaving content of information return to information required by tax commissioner; specifying effective for all provision dates; and preserving prior law for prior taxable years.

Be it enacted by the Legislature of West Virginia:

That sections thirty-one, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven-a and fifty-four, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section eighteen-a, article ten of said chapter eleven be amended and reenacted; that said article ten be further amended by adding thereto a new section, designated section nineteen-a; that sections eighteen, thirty-two, thirty-seven, thirty-eight, thirty-nine, fifty-one-a and seventy-one-a, article twenty-one of said chapter eleven be amended and reenacted; that said article

twenty-one be further amended by adding thereto two new sections, designated sections thirty and forty-four; and that section thirteen-b, article twenty-four of said chapter eleven be amended and reenacted, all to read as follows:

Article

10. Tax Procedure and Administration.

21. Personal Income Tax.

24. Corporation Net Income Tax.

ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION.

§11-10-18a. Additions to tax for failure to pay estimated tax.

§11-10-19a. Failure to file correct information returns.

§11-10-18a. Additions to tax for failure to pay estimated tax.

1 (a) *Additions to tax.* — Except as otherwise provided
2 in this section, in the case of any underpayment of
3 estimated tax, there shall be added to the tax due for
4 the taxable year, under any article or section adminis-
5 tered by this article, an amount determined by applying
6 the rate established under section seventeen or seven-
7 teen-a of this article, as appropriate for the taxable year,
8 to the amount of the underpayment of estimated tax, for
9 the period of the underpayment.

10 (b) *Amount of underpayment.* — For purposes of
11 subsection (a), the amount of the underpayment shall be
12 the excess of the amount determined under subdivision
13 (1) over the amount determined under subdivision (2) of
14 this subsection.

15 (1) The amount of the installment required to be paid
16 on or before the due date for the installment, if the
17 estimated tax due for the taxable year were an amount
18 equal to ninety percent of the tax shown on the annual
19 return for the taxable year divided by the number of
20 installments taxpayer was required to make for the
21 taxable year, or, if no return was filed, ninety percent
22 of the tax for such year divided by the number of
23 installment payments taxpayer was required to make
24 for the taxable year.

25 (2) The amount, if any, of the installments paid on or
26 before the last date prescribed for payment of that
27 installment.

28 (c) *Period of underpayment.* — The period of under-
29 payment of an installment shall run from the date the
30 installment was required to be paid (due date) to
31 whichever of the following dates is the earlier:

32 (1) The due date of the annual return following the
33 close of the taxable year for which the installment was
34 due (determined without regard to any extension of time
35 for filing such annual return); or

36 (2) With respect to any portion of the underpayment,
37 the date on which such portion is paid. For purposes of
38 this subdivision (2), a payment of estimated tax shall be
39 credited against unpaid required installments in the
40 order in which such installments are required to be
41 paid.

42 (d) *Exception.* — Notwithstanding the provisions of
43 the preceding subsections, the additions to tax with
44 respect to any underpayment of any installment shall
45 not be imposed if the total amount of all payments of
46 estimated tax made on or before the last date prescribed
47 for the payment of such installment equals or exceeds
48 the amount which would have been required to be paid
49 on or before such date if the estimated tax were
50 whichever of the following is lesser:

51 (1) *Prior year's tax.* — One hundred percent of the tax
52 shown on the return of the taxpayer for the preceding
53 taxable year, if a return showing a liability for tax was
54 filed by the taxpayer for the preceding taxable year and
55 such preceding year was a taxable year of twelve
56 months;

57 (2) *Annualized tax.* — In the case of any required
58 installment, if the taxpayer establishes that the annu-
59 alized income installment is less than the amount
60 determined under subdivision (1) of this subsection and
61 under subsection (b) of this section, then the amount of
62 such required installment shall be the annualized
63 income installment. For purposes of this subdivision (2),
64 there shall be four required installments for each
65 taxable year and the "annualized income installment" is
66 the difference (if any) determined by subtracting the
67 amount determined under paragraph (B) of this subdi-

68 vision from the amount determined under paragraph
69 (A) of this subdivision. When making these computa-
70 tions, the rules in paragraph (C) of this subdivision shall
71 be followed:

72 (A) An amount equal to the applicable percentage of
73 the tax for the taxable year computed by placing on an
74 annualized basis the taxable income:

75 (i) For the first three months of the taxable year, in
76 the case of the first installment;

77 (ii) For the first three months of or the first five
78 months of the taxable year, in the case of the second
79 installment;

80 (iii) For the first six months or the first eight months
81 of the taxable year, in the case of the third installment;
82 and

83 (iv) For the first nine months or for the first eleven
84 months of the taxable year, in the case of the fourth
85 installment.

86 (B) The aggregate amount of any prior required
87 installments for the taxable year.

88 (C) *Special rules.* — For purposes of this subdivision
89 (2):

90 (i) *Annualization.* — Taxpayer's taxable income shall
91 be placed on an annualized basis in the same manner
92 that taxable income is annualized for federal income tax
93 purposes for the taxable year.

94 (ii) *Applicable percentage.* — The applicable percen-
95 tage shall be determined from the following table:

96 In the case of the following	The applicable
97 required installments:	percentage is:
98 1st.....	22.5
99 2nd.....	45
100 3rd.....	67.5
101 4th.....	90
102 (e) <i>Additional exceptions.</i>	

103 (1) *Where tax amount is small.* — No addition to tax
104 shall be imposed under subsection (a) for any taxable
105 year if the tax shown on the return for such taxable year

106 (or, if no return is filed, the tax), reduced by the credit
107 allowable for withheld tax, is less than two hundred fifty
108 dollars.

109 (2) *Where individual has no personal income tax*
110 *liability for preceding taxable year.* — No addition to tax
111 shall be imposed under subsection (a) for any taxable
112 year if:

113 (A) The individual's preceding taxable year was a
114 taxable year of twelve months;

115 (B) The individual did not have any West Virginia
116 personal income tax liability for the preceding taxable
117 year;

118 (C) The individual was a citizen or resident of the
119 United States throughout the preceding taxable year;
120 and

121 (D) The individual's West Virginia personal income
122 tax liability for the current taxable year is less than five
123 thousand dollars.

124 (3) *Waiver in certain cases.* — No addition to tax shall
125 be imposed under subsection (a) with respect to any
126 underpayment if and to the extent the tax commissioner
127 determines that by reason of casualty, disaster, or other
128 unusual circumstances the imposition of such addition
129 to tax would be against equity and good conscience.

130 (f) *Tax computed after application of credits against*
131 *tax.* — For purposes of this section, the term "tax"
132 means the amount of any annual tax or fee administered
133 under this article that is generally payable in two or
134 more installment payments during the taxable year,
135 minus the amount of credits allowable against such tax
136 or fee, other than taxes withheld from the taxpayer
137 under section seventy-one or seventy-one-a, article
138 twenty-one of this chapter (relating to taxes withheld on
139 wages, or from distributions of pass-through income to
140 nonresident partners, S corporation shareholders or
141 beneficiaries of an estate or trust).

142 (g) *Application of section in case of personal income*
143 *tax withheld on wages.*

144 (1) *In general.* — For purposes of applying this
145 section, the amount of the credit allowed under section
146 seventy-one, article twenty-one of this chapter, for the
147 taxable year shall be deemed a payment of estimated
148 tax, and an equal part of such amount shall be deemed
149 to have been paid on each installment payment due date
150 for such taxable year, unless the taxpayer establishes
151 the specific dates on which all amounts were actually
152 withheld, in which case the amounts so withheld shall
153 be deemed payments of estimated tax on the dates on
154 which such amounts were actually withheld.

155 (2) *Separate application.* — The taxpayer may apply
156 subdivision (1) of this subsection separately with respect
157 to:

158 (A) Wage withholding; and

159 (B) All other amounts withheld for which credit is
160 allowed under section seventy-one of article twenty-one.

161 (h) *Application of section in case of income tax*
162 *withheld by pass-through entities from distributions to*
163 *nonresidents.* — For purposes of applying this section,
164 the amount of credit allowed under section seventy-one-
165 a, article twenty-one of this chapter to a nonresident
166 distributee of a pass-through entity, shall be deemed to
167 be a payment of estimated income tax for the taxable
168 year of the nonresident distributee, and an equal part
169 of such amount shall be deemed (only for purposes of
170 this section) to have been paid on each installment due
171 date for the taxable year of the distributee, unless the
172 distributee establishes the dates on which all amounts
173 were actually withheld, in which case the amounts so
174 withheld shall be deemed payments of estimated tax on
175 the dates on which such amounts were actually
176 withheld.

177 (i) *Special rule where personal income tax return filed*
178 *on or before January 31st.* — If on or before the last day
179 of the first month following the end of the taxable year,
180 the taxpayer files his or her annual personal income tax
181 return for that taxable year and pays in full the amount
182 computed on the return as payable, then no addition to

183 tax shall be imposed under subsection (a) with respect
184 to any underpayment of the fourth required installment
185 for that taxable year.

186 (j) *Special rules for farmers.* — For purposes of this
187 section, if an individual is a farmer for any taxable year:

188 (1) There is only one required installment for that
189 taxable year;

190 (2) The due date for such installment is the fifteenth
191 day of January of the following taxable year;

192 (3) The amount of such installment shall be equal to
193 the required annual payment determined under subsec-
194 tion (b) of this section by substituting “sixty-six and two-
195 thirds percent” for “ninety percent”; and

196 (4) Subsection (h) shall be applied:

197 (A) By substituting “the first day of March” for the
198 phrase “the thirty-first day of January”; and

199 (B) By treating the required installment described in
200 this subdivision (1) of this subsection as the fourth
201 required installment.

202 (k) *Fiscal years and short years.*

203 (1) *Fiscal years.* — In applying this section to a
204 taxable year beginning on any date other than the first
205 day of January, there shall be substituted, for the
206 months specified in this section, the months of the fiscal
207 year that correspond thereto.

208 (2) *Short taxable year.* — The application of this
209 section to taxable years of less than twelve months shall
210 be in accordance with regulations prescribed by the tax
211 commissioner.

212 (1) *Reserved.*

213 (m) *Estates and trusts.*

214 (1) *In general.* — Except as otherwise provided in this
215 subsection, this section shall apply to any estate or trust.

216 (2) *Exception for certain estates and certain trusts.* —

217 With respect to any taxable year ending before the date
218 two years after the date of the decedent's death, this
219 section shall not apply to:

220 (A) The estate of such decedent, or

221 (B) Any trust all of which was treated for federal
222 income tax purposes as owned by the decedent, and to
223 which the residue of the decedent's estate will pass
224 under his or her will (or, if no will is admitted to
225 probate, which is the trust primarily responsible for
226 paying debts, taxes, and expenses of administration).

227 (3) *Special rule for annualizations.* — In the case of
228 any estate or trust to which this section applies,
229 subsection (d)(2)(A) shall be applied by substituting
230 "ending before the date one month before the due date
231 of the installment" for the phrase "ending before the due
232 date for the installment".

233 (n) *Regulations.*— The tax commissioner may pres-
234 cribe such regulations as the commissioner deems
235 necessary to carry out the purpose of this section. This
236 includes, but is not limited to, equitable regulations
237 allowing payment of adjusted seasonal installments in
238 lieu of annualized income installments when the
239 commissioner determines, based on known facts and
240 circumstances, that payment of the annualized income
241 installment will result in significant hardship to the
242 taxpayer due to the seasonal nature of taxpayer's
243 business, and equitable regulations for payment of
244 estimated personal income tax by an individual who is:
245 (1) An employee, (2) employed in another state for some
246 portion or all of the taxable year, and (3) required to
247 pay personal income taxes to such other state on (or
248 measured by) wages earned in that state, for which
249 credit is allowed under section twenty, article twenty-
250 one of this chapter.

251 (o) *Effective date.* — This section as amended in the
252 year one thousand nine hundred ninety-two, shall apply
253 to taxable years beginning after the thirtieth day of
254 June, one thousand nine hundred ninety-two, and this
255 section as in effect on the first day of January, one
256 thousand nine hundred ninety-two, is preserved and

257 shall apply to taxable years beginning before the first
258 day of July, one thousand nine hundred ninety-two.

§11-10-19a. Failure to file correct information returns.

1 (a) *Imposition of penalty.* — In addition to any
2 criminal penalty imposed by article nine of this chapter
3 for willful failure to file required return or supply
4 information or for knowingly filing false or fraudulent
5 return, in the case of a failure described in subsection
6 (b) by any person with respect to an information return,
7 such person shall pay a penalty of fifty dollars for each
8 information return with respect to which such failure
9 occurs, but the total amount imposed by this section on
10 such person for all such failures during any calendar
11 year shall not exceed one hundred thousand dollars.

12 (b) *Failures subject to penalty.* — For purposes of
13 subsection (a), the failures described in this subsection
14 are:

15 (1) Any failure to file an information return with the
16 tax commissioner on or before the required filing date;
17 and

18 (2) Any failure to include all of the information
19 required to be shown on the return or the inclusion of
20 incorrect information.

21 (c) *Reduction of penalty where correction in specified*
22 *period.*

23 (1) *Correction within thirty days.* — If any failure
24 described in subsection (b) is corrected on or before the
25 day, thirty days after the required filing date, the
26 penalty imposed by subsection (a) shall be fifteen dollars
27 in lieu of fifty dollars, and the total amount imposed on
28 the person for all such failures during any calendar year
29 which are so corrected shall not exceed twenty-five
30 thousand dollars.

31 (2) *Failures corrected by August first.* — If any failure
32 described in subsection (b) is corrected after the
33 thirtieth day referred to in subdivision (1) of this
34 subsection but on or before the first day of August of
35 the calendar year in which the required filing date

36 occurs, the penalty imposed by subsection (a) shall be
37 calculated using thirty dollars in lieu of fifty dollars and
38 the total amount imposed on the person for all such
39 failures during the calendar year which are so corrected
40 shall not exceed fifty thousand dollars.

41 (d) *Exception for de minimis failures to include all*
42 *required information.*

43 (1) *In general.* — If an information return is filed with
44 the tax commissioner, but there is a failure to include
45 all of the information required to be shown on the return
46 or there is inclusion of incorrect information, and such
47 failure or error is corrected on or before the first day
48 of August of the calendar year in which the required
49 filing date occurs, then for purposes of this section, such
50 return shall be treated as having been filed with all of
51 the correct required information.

52 (2) *Limitation.* — The number of information returns
53 to which subdivision (1) of this subsection applies for any
54 calendar year shall not exceed the greater of: (A) ten,
55 or (B) one-half of one percent of the total number of
56 information returns required to be filed with the tax
57 commissioner by the person during the calendar year.

58 (e) *Penalty in case of intentional disregard.* — If one
59 or more failures described in subsection (b) are due to
60 intentional disregard of the filing requirement or the
61 correct information reporting requirement then, with
62 respect to such failure, subsections (c) and (d) shall not
63 apply and the penalty imposed under subsection (a) shall
64 be one hundred dollars, or, if greater, ten percent of the
65 aggregate amount of the items required to be reported
66 correctly. When the amount of penalty is determined
67 under this subsection, the one hundred thousand dollar
68 limitation under subsection (a) shall not apply, and such
69 penalty shall not be taken into account in applying such
70 limitation (or any similar limitation under subsection
71 (c)) to penalties not determined under this subsection (e).

72 (f) *Reasonable cause waiver.* — No penalty shall be
73 imposed under this section with respect to any failure
74 if it is shown that such failure is due to reasonable cause
75 and not due to willful neglect.

76 (g) *Payment of penalty.* — Any penalty imposed by
77 this section shall be paid on notice and demand by the
78 tax commissioner and in the same manner as tax.

79 (h) *Definitions.* — For purposes of this section:

80 (1) *Information return.* — The term “information
81 return” means any return required by:

82 (A) Subsection (a)(2) or (4), section fifty-one, article
83 twenty-one of this chapter (relating to estates and
84 trusts);

85 (B) Subsection (b), section fifty-eight, article twenty-
86 one of this chapter (relating to partnerships);

87 (C) Subsection (c), section fifty-eight, article twenty-
88 one of this chapter relating to certain information at
89 source; and

90 (D) Section thirteen-b, article twenty-four of this
91 chapter relating to S corporations.

92 (2) *Required filing date.* — The term “required filing
93 date” means the date prescribed for filing an informa-
94 tion return with the tax commissioner determined with
95 regard to any extension of time for filing.

96 (i) *Effective date.* — The provisions of this section shall
97 apply to information returns required to be filed for
98 taxable years beginning after the thirty-first day of
99 December, one thousand nine hundred ninety-one.

ARTICLE 21. PERSONAL INCOME TAX.

- §11-21-18. West Virginia taxable income of resident estate or trust.
§11-21-30. Computation of tax on income of nonresidents and part-year residents.
§11-21-32. West Virginia source income of nonresident individual.
§11-21-37. Nonresident partners and shareholders of S corporations.
§11-21-38. West Virginia source income of nonresident estate or trust.
§11-21-39. Share of nonresident estate, trust or beneficiary in income from West Virginia sources.
§11-21-45. West Virginia source income of part-year resident individuals.
§11-21-51a. Composite returns.
§11-21-71a. Withholding tax on West Virginia source income of nonresident partners, nonresident S corporation shareholders, and nonresident beneficiaries of estates and trusts.

§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 for the taxable
3 year as defined in the laws of the United States and
4 section nine of this article for the taxable year, with the
5 following modifications:

6 (1) There shall be subtracted six hundred dollars as
7 the West Virginia personal exemption of the estate or
8 trust, and there shall be added the amount of its federal
9 deduction for a personal exemption.

10 (2) There shall be added or subtracted, as the case
11 may be, the share of the estate or trust in the West
12 Virginia fiduciary adjustment determined under section
13 nineteen of this article.

14 (3) There shall be added to federal adjusted gross
15 income, unless already included therein, the amount of
16 a lump sum distribution for which the taxpayer has
17 elected under section 402(e) of the Internal Revenue
18 Code of one thousand nine hundred eighty-six, as
19 amended, to be separately taxed for federal income tax
20 purposes: *Provided*, That the provisions of this subdivi-
21 sion shall first be effective for taxable years beginning
22 after the thirty-first day of December, one thousand nine
23 hundred ninety.

PART III. NONRESIDENT AND PART-YEAR RESIDENTS.

§11-21-30. Computation of tax on income of nonresidents and part-year residents.

1 (a) *Computation of tax.* — For taxable years begin-
2 ning after the thirty-first day of December, one
3 thousand nine hundred ninety-one, the tax due under
4 this article on taxable income derived from sources in
5 this state by a nonresident individual, estate, or trust or
6 by a part-year resident individual shall be calculated as
7 provided in this section.

8 (1) Taxpayer shall first calculate tax liability under
9 this article as if taxpayer, whether an individual, estate
10 or trust, were a resident of this state for the entire

11 taxable year. When determining tentative tax liability
12 under this subdivision, a nonresident shall be allowed
13 the same deductions, exemptions and credits that would
14 be allowable if taxpayer were a resident individual,
15 estate or trust, as the case may be, for the entire taxable
16 year, except that no credit shall be allowed under
17 section twenty of this article.

18 (2) The amount of tentative tax determined under
19 subdivision (1) of this subsection shall then be multiplied
20 by a fraction the numerator of which is the taxpayer's
21 West Virginia source income, determined in accordance
22 with Part III of this article for the taxable year, and
23 the denominator of which is such taxpayer's "federal
24 adjusted gross income" for the taxable year as defined
25 in section nine of this article.

26 (b) *Special rules for estates and trusts.* — For pur-
27 poses of subdivision (1) of subsection (a):

28 (1) The "federal adjusted gross income" of an estate
29 or trust shall be determined as if such estate or trust
30 were an individual; and

31 (2) In the case of a trust, "federal adjusted gross
32 income" shall be its "federal adjusted gross income" for
33 the taxable year increased by the amount of any
34 includible gain, reduced by any deductions properly
35 allocable thereto, upon which the tax is imposed for the
36 taxable year pursuant to section 644 of the Internal
37 Revenue Code.

38 (c) *Special rules for part-year residents.* — (1) For
39 purposes of subdivision (1) of subsection (a), the "federal
40 adjusted gross income" of a part-year resident individ-
41 ual shall be taxpayer's federal adjusted gross income for
42 the taxable year, as defined in section nine of this
43 article, increased or decreased, as the case may be, by
44 the items accrued under subdivision (1), subsection (b),
45 section forty-five of this article, to the extent such items
46 are not otherwise included in federal adjusted gross
47 income for the taxable year, and decreased or increased,
48 as the case may be by the items accrued under subdivi-
49 sion (2), subsection (b) of said section forty-five, to the

50 extent such items are included in federal adjusted gross
51 income for the taxable year; and

52 (2) In computing the tax due as if taxpayer were a
53 resident of this state for the entire tax year, West
54 Virginia adjusted gross income shall include the
55 accruals specified in subdivision (1) of this subsection
56 (c), with the applicable modifications described in
57 section forty-five of this article.

58 (d) *Definitions.*

59 (1) "Nonresident estate" means an estate of a decedent
60 who was not a resident of this state at the time of his
61 or her death.

62 (2) "Nonresident trust" means a trust which is not a
63 resident trust, as defined in section seven.

64 (3) "Part-year resident individual" means an individ-
65 ual who is not a resident or nonresident of this state for
66 the entire taxable year.

67 (e) *Effective date.* — The provisions of this section
68 shall apply to taxable years beginning after the thirty-
69 first day of December, one thousand nine hundred
70 ninety-one. As to taxable years beginning prior to that
71 date, the provisions of this article as then in effect shall
72 apply and be controlling, and for that purpose, prior law
73 is fully and completely preserved.

§11-21-32. West Virginia source income of nonresident individual.

1 (a) *General.* — The West Virginia source income of a
2 nonresident individual shall be the sum of the net
3 amount of income, gain, loss and deduction entering into
4 his or her federal adjusted gross income, as defined in
5 the laws of the United States and section nine of this
6 article, for the taxable year, derived from or connected
7 with West Virginia sources, including:

8 (1) His or her distributive share of partnership
9 income, gain, loss and deduction, determined under
10 section thirty-seven; and

11 (2) His or her pro rata share of S corporation income,

12 loss and deduction, determined under section thirty-
13 seven, increased by reductions for taxes described in
14 paragraphs (2) and (3), subsection (f), section 1366 of the
15 Internal Revenue Code; and

16 (3) His or her share of estate or trust income, gain,
17 loss and deduction, determined under section thirty-nine
18 of this article.

19 (b) *Income and deductions from West Virginia*
20 *sources.*

21 (1) Items of income, gain, loss and deduction derived
22 from or connected with West Virginia sources shall be
23 those items attributable to:

24 (A) The ownership of any interest in real or tangible
25 personal property in this state; or

26 (B) A business, trade, profession or occupation
27 carried on in this state; or

28 (C) In the case of a shareholder of an S corporation,
29 the ownership of shares issued by such corporation, to
30 the extent determined under section thirty-seven.

31 (2) Income from intangible personal property, includ-
32 ing annuities, dividends, interest, and gains from the
33 disposition of intangible personal property, shall
34 constitute income derived from West Virginia sources
35 only to the extent that such income is from property
36 employed in a business, trade, profession or occupation
37 carried on in this state.

38 (3) Deductions with respect to capital losses and net
39 operating losses shall be based solely on income, gain,
40 loss and deduction derived from or connected with West
41 Virginia sources, under regulations of the tax commis-
42 sioner, but otherwise shall be determined in the same
43 manner as the corresponding federal deductions.

44 (4) The deduction allowed by section 215 of the
45 Internal Revenue Code, relating to alimony, shall not
46 constitute a deduction derived from West Virginia
47 sources.

48 (c) *Income and deductions partly from West Virginia*
49 *sources.* — If a business, trade, profession or occupation
50 is carried on partly within and partly without this state,
51 as determined under regulations of the tax commis-
52 sioner, the items of income, gain, loss and deduction
53 derived from or connected with West Virginia sources
54 shall be determined by apportionment and allocation
55 under such regulations.

56 (d) *Purchase and sale for own account.* — A nonres-
57 ident, other than a dealer holding property for sale to
58 customers in the ordinary course of his or her trade or
59 business, shall not be deemed to carry on a business,
60 trade, profession or occupation in this state solely by
61 reason of the purchase and sale of property for his or
62 her own account.

63 (e) *Husband and wife.* — If a husband and wife
64 determine their federal income tax on a joint return but
65 determine their West Virginia income taxes separately,
66 they shall determine their West Virginia source incomes
67 separately as if their federal adjusted gross incomes had
68 been determined separately.

69 (f) *Effective date.* — This section as amended and
70 reenacted in the year one thousand nine hundred ninety-
71 two shall apply to taxable years beginning after the
72 thirty-first day of December, one thousand nine hundred
73 ninety-one. As to prior taxable years, the provisions of
74 this section and of section thirty-one of this article, as
75 then in effect, are fully and completely preserved.

§11-21-37. Nonresident partners and shareholders of S corporations.

1 (a) *Portion derived from West Virginia sources.* —

2 (1) In determining the West Virginia source income
3 of a nonresident partner of any partnership, there shall
4 be included only the portion derived from or connected
5 with West Virginia sources of such partner's distribu-
6 tive share, for federal income tax purposes, of items of
7 partnership income, gain, loss and deduction, as such
8 portion shall be determined under regulations of the tax

9 commissioner consistent with the applicable rules of
10 section thirty-two.

11 (2) In determining West Virginia source income of a
12 nonresident shareholder of an S corporation, there shall
13 be included only the portion derived from or connected
14 with West Virginia sources of such shareholder's pro
15 rata share of items of S corporation income, gain, loss
16 and deduction entering into the shareholder's federal
17 adjusted gross income, as defined in section nine,
18 increased by reductions for taxes described in para-
19 graphs (2) and (3), subsection (f), section 1366 of the
20 Internal Revenue Code, as such portion shall be
21 determined under regulations of the tax commissioner
22 consistent with the applicable methods and rules for
23 allocation under article twenty-four of this chapter.

24 (b) *Special rules as to West Virginia sources.* — In
25 determining the sources of a nonresident partner's
26 income, no effect shall be given to a provision of the
27 partnership agreement which:

28 (1) Characterizes payments to the partner as being
29 for services or for the use of capital; or

30 (2) Allocates to the partner, as income or gain from
31 sources outside West Virginia, a greater proportion of
32 his or her distributive share of partnership income or
33 gain than the ratio of partnership income or gain from
34 sources outside West Virginia to partnership income or
35 gain from all sources, except as authorized in subsection
36 (d); or

37 (3) Allocates to the partner a greater proportion of a
38 partnership item of loss or deduction connected with
39 West Virginia sources than his or her proportionate
40 share, for federal income tax purposes, of partnership
41 loss or deduction generally, except as authorized in
42 subsection (c).

43 (c) *Alternative methods.* — The tax commissioner
44 may, on written application filed on or before the due
45 date of the partner's or S corporation shareholder's
46 return under this article for that taxable year deter-
47 mined without regard to any extension of time for filing,

48 authorize the use of such other method or methods of
49 determining the nonresident partner's portion of
50 partnership items, or the nonresident S corporation
51 shareholder's portion of S corporation items, derived
52 from or connected with West Virginia sources, and the
53 modifications related thereto, as may be appropriate
54 and equitable, on such terms and conditions as the
55 commissioner may require.

56 (d) *Application of rules for resident partners to*
57 *nonresident partners and shareholders.*

58 (1) For a partner's distributive share of items, see
59 subsection (a) of section seventeen of this article.

60 (2) The character of partnership items for a nonres-
61 ident partner shall be determined under subsection (b)
62 of section seventeen of this article.

63 (3) The effect of a special provision in a partnership
64 agreement, other than a provision referred to in
65 subsection (b) of this section, having the principal
66 purpose of avoidance or evasion of tax under this article
67 shall be determined under subsection (c) of section
68 seventeen of this article.

69 (e) *Application of rules for resident S corporation*
70 *shareholders to nonresident S corporation shareholders.*

71 (1) For an S corporation shareholder's distributive
72 share of S corporation items, see subsection (a) of section
73 seventeen-a of this article.

74 (2) The character of S corporation items for a
75 nonresident shareholder of an S corporation shall be
76 determined under subsection (b) of section seventeen-a
77 of this article.

78 (f) *Effective date.* — The amendments to this section
79 enacted in the year one thousand nine hundred ninety-
80 two shall apply to taxable years beginning after the
81 thirty-first day of December, one thousand nine hundred
82 ninety-two. As to prior taxable years the provisions of
83 this section and of section thirty-seven-a of this article,
84 as then in effect, are fully and completely preserved.

**§11-21-38. West Virginia source income of nonresident
estate or trust.**

1 (a) *General.* — The West Virginia source income of
2 a nonresident estate or trust shall be determined as
3 follows:

4 (1) *Items in distributable net income.* — There shall be
5 determined its share of income, gain, loss and deduction
6 from West Virginia sources under section thirty-nine of
7 this article (relating to items entering into the definition
8 of distributable net income).

9 (2) *Items not in distributable net income.* — There
10 shall be added to or subtracted (as the case may be) the
11 amount derived from or connected with West Virginia
12 sources of any income, gain, loss and deduction which
13 would be included in the determination of federal
14 adjusted gross income if the estate or trust were an
15 individual and which is recognized for federal income
16 tax purposes, but excluded from the definition of federal
17 distributable net income of the estate or trust. The
18 source of such income, gain, loss and deduction shall be
19 determined in accordance with the applicable rules of
20 section thirty-two of this article as in the case of a
21 nonresident individual.

22 (b) *Special West Virginia source rules.* — Deductions
23 with respect to capital losses and net operating losses
24 shall be based solely on income, gains, losses and
25 deductions derived from or connected with West
26 Virginia sources, under regulations of the tax commis-
27 sioner, but otherwise determined in the same manner as
28 the corresponding federal deductions.

29 (c) *Effective date.* — The provisions of this section as
30 amended and reenacted in the year one thousand nine
31 hundred ninety-two shall apply to taxable years begin-
32 ning after the thirty-first day of December, one
33 thousand nine hundred ninety-one. As to prior taxable
34 years this section, as then in effect, is fully and
35 completely preserved.

**§11-21-39. Share of nonresident estate, trust or benefi-
ciary in income from West Virginia sources.**

1 (a) *General.* — The share of a nonresident estate or
2 trust under paragraph (1) of subsection (a) of section

3 thirty-eight, and the share of a nonresident beneficiary
4 of any estate or trust under subsection (a) of section
5 thirty-two of this article, in estate or trust income, gain,
6 loss and deduction from West Virginia sources shall be
7 determined as follows:

8 (1) *Items of distributable net income from West*
9 *Virginia sources.* — There shall be determined the items
10 of income, gain, loss and deduction, derived from or
11 connected with West Virginia sources, which would be
12 included in the determination of federal adjusted gross
13 income if the estate or trust were an individual and
14 which enter into the definition of federal distributable
15 net income of the estate or trust for the taxable year
16 including such items from another estate or trust of
17 which the first estate or trust is a beneficiary. Such
18 determination of source shall be made in accordance
19 with the applicable rules of section thirty-two of this
20 article as in the case of a nonresident individual.

21 (2) *Allocation among estate or trust beneficiaries.*

22 (A) The amounts determined under subdivision (1) of
23 subsection (a) shall be allocated among the estate or
24 trust and its beneficiaries (including, solely for the
25 purposes of this allocation, resident beneficiaries) in
26 proportion to their respective shares of federal distrib-
27 utable net income.

28 (B) The amounts so allocated shall have the same
29 character under this article as for federal income tax
30 purposes. Where an item entering into the computation
31 of such amounts is not characterized for federal income
32 tax purposes, it shall have the same character as if
33 realized directly from the source from which realized by
34 the estate or trust, or incurred in the same manner as
35 incurred by the estate or trust.

36 (b) *Alternative methods of determining shares.*

37 (1) If the estate or trust has no federal distributable
38 net income for the taxable year, the share of each
39 beneficiary (including, solely for the purposes of this
40 allocation, resident beneficiaries) in the net amount
41 determined under subdivision (1) of subsection (a) shall

42 be in proportion to the beneficiary's share of the estate
43 or trust income for such year, under local law or the
44 governing instrument, which is required to be distrib-
45 uted currently and any such other amounts of such
46 income distributed in such year. Any balance of such net
47 amounts shall be allocated to the estate or trust.

48 (2) The tax commissioner may, on written application
49 filed on or before the due date of the return due under
50 this article for the taxable year from the estate or trust
51 determined without regard to any extension of time for
52 filing such return, authorize use of such other methods
53 of determining the representative shares of the benefi-
54 ciaries and of the estate or trust in its income derived
55 from West Virginia sources, and the modifications
56 related thereto, as may be appropriate and equitable, on
57 such terms and conditions as the commissioner may
58 require.

59 (3) The tax commissioner may by regulation establish
60 such other method or methods of determining the
61 respective shares of the beneficiaries and of the estate
62 or trust in its income derived from West Virginia
63 sources as may be appropriate and equitable. Such
64 method may be used by the fiduciary in his or her
65 discretion whenever the allocation of such respective
66 shares under subsection (a) or subdivision (1) of
67 subsection (b) would result in an inequity which is
68 substantial in amount.

69 (c) *Effective date.* — The amendments to this section
70 enacted in the year one thousand nine hundred ninety-
71 two shall apply to taxable years beginning after the
72 thirty-first day of December, one thousand nine hundred
73 ninety-one.

**§11-21-44. West Virginia source income of part-year
resident individuals.**

1 (a) *Individuals.* — The West Virginia source income
2 of a part-year resident individual shall be the sum of the
3 following:

4 (1) Federal adjusted gross income for the period of
5 residence, computed as if his or her taxable year for

6 federal income tax purposes were limited to the period
7 of residence.

8 (2) West Virginia source income for the period of
9 nonresidence determined in accordance with section
10 thirty-two of this article as if his or her taxable year for
11 federal income tax purposes were limited to the period
12 of nonresidence.

13 (3) The special accruals required by subsection (b) of
14 this section.

15 (b) *Special accruals.*

16 (1) If an individual changes his or her status from
17 resident to nonresident he or she shall, regardless of his
18 or her method of accounting, accrue to the portion of the
19 taxable year prior to such change in status any items
20 of income, gain, loss or deduction accruing prior to the
21 change of status, if not otherwise properly entering into
22 his or her federal adjusted gross income for such portion
23 of the taxable year or a prior taxable year under his or
24 her method of accounting.

25 (2) If an individual changes his or her status from
26 nonresident to resident, he or she shall, regardless of his
27 or her method of accounting, accrue to the portion of the
28 taxable year prior to such change of status any items
29 of income, gain, loss or deduction accruing prior to the
30 change of status, other than items derived from or
31 connected with West Virginia sources, if not otherwise
32 properly entering into his or her federal adjusted gross
33 income for such portion of the taxable year or for a prior
34 taxable year under his or her method of accounting.

35 (3) No item of income, gain, loss or deduction which
36 is accrued under this subsection shall be taken into
37 account in determining West Virginia adjusted gross
38 income or West Virginia source income for any subse-
39 quent period.

40 (4) The accruals under this subsection shall not be
41 required if the individual files with the tax commis-
42 sioner a bond or other security acceptable to the tax
43 commissioner, conditioned upon the inclusion of
44 amounts accruable under this subsection in West

45 Virginia adjusted gross income or West Virginia source
46 income for one or more subsequent taxable years as if
47 the individual had not changed his or her resident
48 status.

49 (c) *Effective date.* — The provisions of this section
50 shall apply to taxable years beginning after the thirty-
51 first day of December, one thousand nine hundred
52 ninety-one, as amended. For taxable years that began
53 prior to the first day of January, one thousand nine
54 hundred ninety-two, the provisions of section fifty-four,
55 which is repealed by this bill, apply and for that
56 purpose, the provisions of section fifty-four are fully and
57 completely preserved.

§11-21-51a. Composite returns.

1 (a) Nonresident individuals who are required by this
2 article to file a return and who are:

3 (1) Partners in a partnership deriving income from
4 a West Virginia source or sources; or

5 (2) Shareholders of a corporation having income from
6 a West Virginia source or sources and which made an
7 election under section 1362(a) of the Internal Revenue
8 Code (S corporations) for the taxable year; or

9 (3) Beneficiaries who received a distribution (actual
10 or deemed) from an estate or trust having income from
11 a West Virginia source or sources, may, upon payment
12 of a composite return processing fee of fifty dollars, file
13 a composite return in accordance with the provisions of
14 this section.

15 (b) In filing a composite return and determining the
16 tax due thereon, no personal exemptions may be
17 utilized, and the rate of tax shall be six and one-half
18 percent. The entity or entities, to which the composite
19 return relates are responsible for collection and remit-
20 tance of all income tax due at the time the return is
21 filed.

22 (c) The composite return shall be filed in a manner
23 and form acceptable to and in accordance with instruc-
24 tions from the commissioner, and need not be signed by

25 all nonresident individuals on whose behalf the return
26 is filed: *Provided*, That the return is signed by a partner,
27 in the case of a partnership, a corporate officer, in the
28 case of a corporation, by a trustee, in the case of a trust
29 or by an executor or administrator in the case of an
30 estate.

31 (d) For the purposes of this section, a composite
32 return means a return filed on a group basis as though
33 there was one taxpayer, and sets forth the name,
34 address, taxpayer identification number and percent
35 ownership or interest of each nonresident individual
36 who consents to be included in the composite return in
37 addition to return information as that term is defined
38 in section five-d, article ten of this chapter; the term
39 includes block filing: *Provided*, That nothing in this
40 section shall prohibit a nonresident from also filing a
41 separate nonresident personal income tax return for the
42 taxable year and a separate return shall be filed if the
43 nonresident has income from any other West Virginia
44 source. If a separate return is also filed for the taxable
45 year, the nonresident shall be allowed credit for his or
46 her share of the tax remitted with the composite return
47 for that taxable year.

48 (e) This section, as amended in the year one thousand
49 nine hundred ninety-two, shall apply to composite
50 returns filed after the thirty-first day of December, one
51 thousand nine hundred ninety-two.

**§11-21-71a. Withholding tax on West Virginia source
income of nonresident partners, nonresi-
dent S corporation shareholders, and
nonresident beneficiaries of estates and
trusts.**

1 (a) *General rule.* — For the privilege of doing
2 business in this state or deriving rents or royalties from
3 real or tangible personal property located in this state,
4 including, but not limited to, natural resources in place
5 and standing timber, a partnership, S corporation,
6 estate or trust, which is treated as a pass-through entity
7 for federal income tax purposes and which has taxable
8 income for the taxable year derived from or connected

9 with West Virginia sources any portion of which is
10 allocable to a nonresident partner, nonresident share-
11 holder, or nonresident beneficiary, as the case may be,
12 shall pay a withholding tax under this section, except
13 as provided in subsections (c) and (k) of this section.

14 (b) *Amount of withholding tax.*

15 (1) *In general.* — The amount of withholding tax
16 payable by any partnership, S corporation, estate, or
17 trust, under subsection (a) shall be equal to four percent
18 of the effectively connected taxable income of the
19 partnership, S corporation, estate or trust, as the case
20 may be, which may lawfully be taxed by this state and
21 which is allocable to a nonresident partner, nonresident
22 shareholder, or nonresident beneficiary of a trust or
23 estate.

24 (2) *Credits against tax.* — When determining the
25 amount of withholding tax due under this section, the
26 pass-through entity may apply any tax credits allowable
27 under this chapter to the pass-through entity which pass
28 through to the nonresident distributees: *Provided*, That
29 in no event may the application of any credit or credits
30 reduce the tax liability of the distributee under this
31 article to less than zero.

32 (c) *When withholding is not required.* — Withholding
33 shall not be required:

34 (1) On distribution to a person, other than a corpora-
35 tion, who is exempt from the tax imposed by this article.
36 For purposes of this subdivision (1), a person is exempt
37 from the tax imposed by this article only if such person
38 is, by reason of such person's purpose or activities,
39 exempt from paying federal income taxes on such
40 person's West Virginia source income. The pass-
41 through entity may rely on the written statement of the
42 person claiming to be exempt from the tax imposed by
43 this article provided the pass-through entity discloses
44 the name and federal taxpayer identification number
45 for all such persons in its return for the taxable year
46 filed under this article or article twenty-four of this
47 chapter; or

48 (2) On distributions to a corporation which is exempt
49 from the tax imposed by article twenty-four of this
50 chapter. For purposes of this subdivision (2), a corpora-
51 tion is exempt from the tax imposed by article twenty-
52 four of this chapter only if the corporation, by reason
53 of its purpose or activities is exempt from paying federal
54 income taxes on the corporation's West Virginia source
55 income. The pass-through entity may rely on the written
56 statement of the person claiming to be exempt from the
57 tax imposed by article twenty-four of this chapter
58 provided the pass-through entity discloses the name and
59 federal taxpayer identification number for all such
60 corporations in its return for the taxable year filed
61 under this article or article twenty-four of this chapter;
62 or

63 (3) On distributions when compliance will cause
64 undue hardship on the pass-through entity: *Provided,*
65 That no pass-through entity shall be exempt under
66 subdivision (3) from complying with the withholding
67 requirements of this section unless the tax commis-
68 sioner, in his or her discretion, approves in writing the
69 pass-through entity's written petition for exemption
70 from the withholding requirements of this section based
71 on undue hardship. The tax commissioner may pre-
72 scribe the form and contents of such a petition and
73 specify standards for when a pass-through entity will
74 not be required to comply with the withholding require-
75 ments of this section due to undue hardship. Such
76 standards shall take into account (among other relevant
77 factors) the ability of a pass-through entity to comply at
78 reasonable cost with the withholding requirements of
79 this section and the cost to this state of collecting the
80 tax directly from a nonresident distributee who does not
81 voluntarily file a return and pay the amount of tax due
82 under this article with respect to such distributions; or

83 (4) On distributions by nonpartnership ventures. An
84 unincorporated organization that has elected, under
85 section 761 of the Internal Revenue Code, to not be
86 treated as a partnership for federal income tax, is not
87 treated as a partnership under this article and is not
88 required to withhold under this section. However, such

89 unincorporated organizations shall make and file with
90 the tax commissioner a true and accurate return of
91 information under subsection (c), section fifty-eight of
92 this article, under such regulations and in such form
93 and manner as the tax commissioner may prescribe,
94 setting forth (A) the amount of fixed or determinable
95 gains, profits and income; (B) the name, address and
96 taxpayer identification number of persons receiving
97 fixed or determinable gains, profits or income from the
98 nonpartnership venture.

99 (d) *Payment of withheld tax.*

100 (1) *General rule.* — Each partnership, S corporation,
101 estate or trust, required to withhold tax under this
102 section shall pay the amount required to be withheld to
103 the tax commissioner no later than:

104 (A) *S corporations.* — The fifteenth day of the third
105 month following the close of the taxable year of the S
106 corporation along with the annual information return
107 due under article twenty-four of this chapter, unless
108 paragraph (C) of this subdivision applies.

109 (B) *Partnerships, estates and trusts.* — The fifteenth
110 day of the fourth month following the close of the
111 taxable year of the partnership, estate or trust, with the
112 annual return of the partnership, estate or trust due
113 under this article, unless paragraph (C) of this subdivi-
114 sion applies.

115 (C) *Composite returns.* — The fifteenth day of the
116 fourth month of the taxable year with the composite
117 return filed under section fifty-one-a of this article.

118 (2) *Special rules.*

119 (A) *Where there is extension of time to file return.* —
120 An extension of time for filing the returns referenced
121 in subdivision (1) of this subsection does not extend the
122 time for paying the amount withholding tax due under
123 this section. In this situation, the pass-through entity
124 shall pay, by the date specified in subdivision (1) of this
125 subsection, at least ninety percent of the withholding tax
126 due for the taxable year, or one hundred percent of the
127 tax paid under this section for the prior taxable year,
128 if such taxable year was a taxable year of twelve months

129 and tax was paid under this section for that taxable
130 year. The remaining portion of the tax due under this
131 section, if any, shall be paid at the time the pass-through
132 entity files the return specified in subdivision (1) of this
133 subsection. If the balance due is paid by the last day of
134 the extension period for filing such return and the
135 amount of tax due with such return is ten percent or
136 less of the tax due under this section for the taxable
137 year, no additions to tax shall be imposed under article
138 ten of this chapter with respect to balance so remitted.
139 If the amount of withholding tax due under this section
140 for the taxable year is less than the estimated withhold-
141 ing taxes paid for the taxable year by the pass-through
142 entity, the excess shall be refunded to the pass-through
143 entity or, at its election, established as a credit against
144 withholding tax due under this section for the then
145 current taxable year.

146 (B) *Deposit in trust for tax commissioner.* — The tax
147 commissioner may, if the commissioner believes such
148 action is necessary for the protection of trust fund
149 moneys due this state, require any pass-through entity
150 to pay over to the tax commissioner the tax deducted
151 and withheld under this section, at any earlier time or
152 times.

153 (e) *Effectively connected taxable income.* — For
154 purposes of this section, the term “effectively connected
155 taxable income” means the taxable income or portion
156 thereof of a partnership, S corporation, estate or trust,
157 as the case may be, which is derived from or attribu-
158 table to West Virginia sources as determined under
159 section thirty-two of this article and such regulations as
160 the tax commissioner may prescribe, whether such
161 amount is actually distributed or is deemed to have been
162 distributed for federal income tax purposes.

163 (f) *Treatment of nonresident partners, S corporation*
164 *shareholders or beneficiaries of a trust or estate.*

165 (1) *Allowance of credit.* — Each nonresident partner,
166 nonresident shareholder, or nonresident beneficiary,
167 shall be allowed a credit for such partner’s or share-
168 holder’s or beneficiary’s share of the tax withheld by the
169 partnership, S corporation, estate or trust, under this

170 section: *Provided*, That when the distribution is to a
171 corporation taxable under article twenty-four of this
172 chapter, the credit allowed by this section shall be
173 applied against the distributee corporation's liability for
174 tax under article twenty-four of this chapter.

175 (2) *Credit treated as distributed to partner, share-*
176 *holder or beneficiary.* — Except as provided in regula-
177 tions, a nonresident partner's share, a nonresident
178 shareholder's share, or a nonresident beneficiary's share,
179 of any withholding tax paid by the partnership, S
180 corporation, estate or trust, under this section shall be
181 treated as distributed to such partner by such partner-
182 ship, or to such shareholder by such S corporation, or
183 to such beneficiary by such estate or trust, on the earlier
184 of:

185 (A) The day on which such tax was paid to the tax
186 commissioner by the partnership, S corporation, estate,
187 or trust; or

188 (B) The last day of the taxable year for which such
189 tax was paid by the partnership, S corporation, estate,
190 or trust.

191 (g) *Regulations.* — The tax commissioner shall
192 prescribe such regulations as may be necessary to carry
193 out the purposes of this section.

194 (h) *Information statement.*

195 (1) Every person required to deduct and withhold tax
196 under this section shall furnish to each nonresident
197 partner, or nonresident shareholder, or nonresident
198 beneficiary, as the case may be, a written statement, as
199 prescribed by the tax commissioner, showing the
200 amount of West Virginia effectively connected taxable
201 income, whether distributed or not distributed for
202 federal income tax purposes by such partnership, S
203 corporation, estate, or trust, to such nonresident partner,
204 or nonresident shareholder, or nonresident beneficiary,
205 the amount deducted and withheld as tax under this
206 section; and such other information as the tax commis-
207 sioner may require.

208 (2) A copy of the information statements required by

209 this subsection must be filed with the West Virginia
210 return filed under this article (or article twenty-four of
211 this chapter in the case of S corporations) by the pass-
212 through entity for its taxable year to which the
213 distribution relates. This information statement must be
214 furnished to each nonresident distributee on or before
215 the due date of the pass-through entity's return under
216 this article or article twenty-four of this chapter for the
217 taxable year, including extensions of time for filing such
218 return, or such later date as may be allowed by the tax
219 commissioner.

220 (i) *Liability for withheld tax.* — Every person re-
221 quired to deduct and withhold tax under this section is
222 hereby made liable for the payment of the tax due under
223 this section for taxable years (of such persons) beginning
224 after the thirty-first day of December, one thousand nine
225 hundred ninety-one, except as otherwise provided in this
226 section. The amount of tax required to be withheld and
227 paid over to the tax commissioner shall be considered
228 the tax of the partnership, estate, or trust, as the case
229 may be, for purposes of articles nine and ten of this
230 chapter. Any amount of tax withheld under this section
231 shall be held in trust for the tax commissioner. No
232 partner, S corporation shareholder, or beneficiary of a
233 trust or estate, shall have a right of action against the
234 partnership, S corporation, estate, or trust, in respect to
235 any moneys withheld from such person's distributive
236 share and paid over to the tax commissioner in com-
237 pliance with or in intended compliance with this section.

238 (j) *Failure to withhold.* — If any partnership, S
239 corporation, estate or trust, fails to deduct and withhold
240 tax as required by this section, and thereafter the tax
241 against which such tax may be credited is paid, the tax
242 so required to be deducted and withheld under this
243 section shall not be collected from the partnership, S
244 corporation, estate or trust, as the case may be, but the
245 partnership, S corporation, estate or trust, shall not be
246 relieved from liability for any penalties or interest on
247 additions to tax otherwise applicable in respect of such
248 failure to withhold.

249 (k) *Distributee agreements.*

250 (1) The tax commissioner shall permit a nonresident
251 distributee to file with a pass-through entity, on a form
252 prescribed by the tax commissioner, the agreement of
253 such nonresident distributee: (A) To timely file returns
254 and make timely payment of all taxes imposed by this
255 article or article twenty-four of this chapter in the case
256 of a C corporation, on the distributee with respect to the
257 effectively connected taxable income of the pass-through
258 entity; and (B) to be subject to personal jurisdiction in
259 this state for purposes of the collection of any unpaid
260 income tax under this article (or article twenty-four of
261 this chapter in the case of a C corporation), together
262 with related interest, penalties, additional amounts and
263 additions to tax, owed by the nonresident distributee.

264 (2) A nonresident distributee electing to execute an
265 agreement under this subsection must file a complete
266 and properly executed agreement with each pass-
267 through entity for which this election is made, on or
268 before the last day of the first taxable year of the pass-
269 through entity in respect of which the agreement
270 applies. The pass-through entity shall file a copy of that
271 agreement with the tax commissioner as provided in
272 subdivision (5) of this subsection.

273 (3) After an agreement is filed with the pass-through
274 entity, that agreement may be revoked by a distributee
275 only in accordance with regulations promulgated by the
276 tax commissioner.

277 (4) Upon receipt of such an agreement properly
278 executed by the nonresident distributee, the pass-
279 through entity shall not withhold tax under this section
280 for the taxable year of the pass-through entity in which
281 the agreement is received by the pass-through entity
282 and for any taxable year subsequent thereto until either
283 the nonresident distributee notifies the pass-through
284 entity, in writing, to begin withholding tax under this
285 section or the tax commissioner directs the pass-through
286 entity, in writing, to begin withholding tax under this
287 section because of the distributee's continuing failure to
288 comply with the terms of such agreement.

289 (5) The pass-through entity shall file with the tax

290 commissioner a copy of all distributee agreements
291 received by the pass-through entity during any taxable
292 year with this annual information return filed under
293 this article, or article twenty- four of this chapter in the
294 case of S corporations. If the pass-through entity fails
295 to timely file with the tax commissioner a copy of an
296 agreement executed by a distributee and furnished to
297 the pass-through entity in accordance with this section,
298 then the pass-through entity shall remit to the tax
299 commissioner an amount equal to the amount that
300 should have been withheld under this section from the
301 nonresident distributee. The pass-through entity may
302 recover payment made pursuant to the preceding
303 sentence from the distributee on whose behalf the
304 payment was made.

305 (l) *Definitions.* — For purposes of this section, the
306 following terms mean:

307 (1) *Corporation.* — The term “corporation” includes
308 associations, joint stock companies and other entities
309 which are taxed as corporations for federal income tax
310 purposes.

311 (A) *C Corporation.* —The term “C corporation”
312 means a corporation which is not an S corporation for
313 federal income tax purposes.

314 (B) *S Corporation.* — The term “S corporation”
315 means a corporation for which a valid election under
316 section 1362(a) of the Internal Revenue Code is in effect
317 for the taxable period. All other corporations are C
318 corporations.

319 (2) *Distributee.* — The term “distributee” includes any
320 partner of a partnership, any shareholder of an S
321 corporation, and any beneficiary of an estate or trust,
322 that is treated as a pass-through entity for federal
323 income tax purposes for the taxable year of the entity,
324 with respect to all or a portion of its income.

325 (3) *Internal Revenue Code.* — The term “internal
326 revenue code” means the Internal Revenue Code of 1986,
327 as amended through the date specified in section nine
328 of this article.

329 (4) *Nonresident distributee*. — The term “nonresident
330 distributee” includes any individual who is treated as a
331 nonresident of this state under this article; and any
332 partnership, estate, trust or corporation, whose commer-
333 cial domicile is located outside this state.

334 (5) *Partner*. — The term “partner” includes a
335 member of a partnership as that term is defined in this
336 section.

337 (6) *Partnership*. — The term “partnership” includes
338 a syndicate, group, pool, joint venture, or other unincor-
339 porated organization through or by means of which any
340 business, financial operation, or venture is carried on,
341 and which is not a trust or estate, a corporation or a sole
342 proprietorship. “Partnership” does not include an
343 unincorporated organization which, under section 761 of
344 the Internal Revenue Code, is not treated as a partner-
345 ship for the taxable year for federal income tax
346 purposes.

347 (7) *Taxable period*. — The term “taxable period”
348 means, in the case of an S corporation, any taxable year
349 or portion of a taxable year during which a corporation
350 is an S corporation.

351 (8) *Taxable year of the pass-through entity*. — The
352 term “taxable year of the pass-through entity” means
353 the taxable year of the pass-through entity for federal
354 income tax purposes. If a pass-through entity does not
355 have a taxable year for federal tax purposes, its tax year
356 for purposes of this article shall be the calendar year.

357 (m) *Effective date*. — The provisions of this section
358 shall first apply to taxable years of pass-through entities
359 beginning after the thirty-first day of December, one
360 thousand nine hundred ninety-one.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-13b. Information return for corporations electing to be taxed under subchapter S.

1 Every corporation electing to be taxed under sub-
2 chapter S of the Internal Revenue Code of 1986, as
3 amended, shall on or before the fifteenth day of the third

4 month following the close of the taxable year file an
5 information return for each tax year providing such
6 information as the tax commissioner may prescribe.
7 Corporations failing to file information returns by the
8 due date as prescribed in this section shall be subject
9 to a penalty of fifty dollars for each failure to file, with
10 such penalty being collected as other penalties are
11 collected by the tax commissioner: *Provided*, That for
12 tax years beginning on or after the first day of January,
13 one thousand nine hundred ninety-two, the penalty for
14 failure to file an information return shall be determined
15 under section nineteen-a, article ten of this chapter.

CHAPTER 205

(Com. Sub. for H. B. 4055—By Mr. Speaker, Mr. Chambers, and Delegate Burk
By Request of the Executive)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections seventy-six, seventy-seven, seventy-eight, seventy-nine, eighty, eighty-one, eighty-two, eighty-three, eighty-four, eighty-six, eighty-seven, eighty-eight, eighty-nine, ninety and ninety-one, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section fifty-six-a, article one, chapter thirty-one of said code; to amend and reenact section eighty-five, article twelve of said chapter eleven; to further amend said chapter eleven by adding thereto a new article, designated article twelve-c; and to amend and reenact article one, chapter thirty-one of said code by adding thereto a new section, designated section seventy-six-a, all relating to the corporate license tax; eliminating previous provision regarding assessment, card collections of the tax; eliminating the annual report required of corporations qualified to hold property or do business in the state; eliminating the preliminary annual report required for foreign corporations; providing definitions; providing imposition and rate of tax; providing exemptions from tax; providing for the payment and collection

of tax; providing for assessment and collection of annual attorney-in-fact fee; providing for notice to taxpayers; providing for reports by the secretary of state; providing for the application of the West Virginia Tax Procedure and Administration Act and the West Virginia Tax Crimes and Penalties Act; providing effective date and preservation of prior law; providing a severability clause; requiring judicial notification of court actions affecting corporation's status; imposing a fine for failure to file annual corporate license tax return; making it a misdemeanor to conduct business without corporate license.

Be it enacted by the Legislature of West Virginia:

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

Chapter

11. Taxation.

31. Corporations.

CHAPTER 11. TAXATION.

Article

12. Business Registration Tax.

12C. Corporate License Tax.

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-85. Investigation of corporations' delinquencies.

1 The tax commissioner, with the approval of the
 2 governor, may appoint agents to investigate all viola-
 3 tions of the provisions of this article concerning
 4 landholding taxes on corporations, and also for the

5 purpose of collecting such taxes from all corporations
6 which have not paid the same, whether due from
7 domestic or foreign corporations. The compensation of
8 all such agents shall be fixed by the tax commissioner.

ARTICLE 12C. CORPORATE LICENSE TAX.

- §11-12C-1. Definitions.
- §11-12C-2. Corporate license required; tax levied; exemption from tax; effective date.
- §11-12C-3. Payment and collection of tax; deposit of money; return required.
- §11-12C-4. Due date of return; payment of tax.
- §11-12C-5. Annual fee of secretary of state as attorney-in-fact.
- §11-12C-6. Notice to corporations taxable; tax as lien.
- §11-12C-7. Monthly report by secretary of state to tax commissioner as to corporations.
- §11-12C-8. Administrative and criminal penalties.
- §11-12C-9. Disposition of corporate license tax collected.
- §11-12C-10. Applicability of tax procedure and administration act and tax crimes and penalties act.
- §11-12C-11. Effective date.
- §11-12C-12. Severability.

§11-12C-1. Definitions.

1 As used in this article:

2 (1) "Business activity" means all activities engaged in
3 or caused to be engaged in with the object of gain or
4 economic benefit, direct or indirect, but does not mean
5 any of the activities of foreign corporations enumerated
6 in subsections (b), (c) and (d), section forty-nine, article
7 one, chapter thirty-one of this code.

8 (2) "Corporate license tax" or "license tax" or "tax"
9 means, in addition to the amount of corporate license tax
10 levied pursuant to this article, all interest, additions to
11 tax, fines and penalties, unless the intention to give the
12 term a more limited meaning is clear from the context
13 in which it is used.

14 (3) "Delegate" in the phrase "or his delegate," when
15 used in reference to the tax commissioner, means any
16 officer or employee of the state tax department duly
17 authorized by the tax commissioner directly, or indi-
18 rectly by one or more redelegations of authority, to
19 perform the functions mentioned or described in this
20 article or rules promulgated thereunder.

21 (4) "Domestic corporation" means a corporation
22 incorporated under the laws of this state and corpora-
23 tions organized under the laws of the state of Virginia
24 before the twentieth day of June, one thousand eight
25 hundred and sixty-three, which have its principal place
26 of business and chief works (if it has chief works) in this
27 state. Every other corporation is a foreign corporation.

28 (5) "Foreign corporation" means a corporation which
29 is not a domestic corporation.

30 (6) "Nonprofit corporation" means a nonprofit corpora-
31 tion as defined by section six, article one, chapter
32 thirty-one of this code.

33 (7) "Tax commissioner" means the tax commissioner
34 of the state of West Virginia or his or her delegate.

**§11-12C-2. Corporate license required; tax levied; exemp-
tion from tax; effective date.**

1 (a) *Corporate license required.* — No corporation,
2 domestic or foreign, may engage in any business activity
3 in this state without paying the corporate license tax to
4 the tax commissioner of the state of West Virginia,
5 except as provided in subsection (c) of this section.

6 (b) *Tax levied.* — Every corporation shall pay an
7 annual corporate license tax for the license year which
8 begins on the first day of July of each year and ends
9 the thirtieth day of the following June. This tax shall
10 be in addition to the annual fee, if any, payable to the
11 secretary of state as attorney-in-fact. The amount of this
12 tax shall be as follows:

13 (1) *Amount of license tax on domestic corporations.* —
14 Every domestic corporation shall pay an annual license
15 tax on its charter for the fiscal year beginning on the
16 first day of July of each year, based on its authorized
17 capital stock as follows: If the authorized capital stock
18 be five thousand dollars, or less, twenty dollars; if more
19 than five thousand dollars and not more than ten
20 thousand dollars, thirty dollars; if more than ten
21 thousand dollars and not more than twenty-five thou-
22 sand dollars, forty dollars; if more than twenty-five
23 thousand dollars and not more than fifty thousand

24 dollars, fifty dollars; if more than fifty thousand dollars
25 and not more than seventy-five thousand dollars, eighty
26 dollars; if more than seventy-five thousand dollars and
27 not more than one hundred thousand dollars, one
28 hundred dollars; if more than one hundred thousand
29 dollars and not more than one hundred and twenty-five
30 thousand dollars, one hundred and ten dollars; if more
31 than one hundred and twenty-five thousand dollars and
32 not more than one hundred and fifty thousand dollars,
33 one hundred and twenty dollars; if more than one
34 hundred and fifty thousand dollars and not more than
35 one hundred and seventy-five thousand dollars, one
36 hundred and forty dollars; if more than one hundred and
37 seventy-five thousand dollars and not more than two
38 hundred thousand dollars, one hundred and fifty dollars;
39 if more than two hundred thousand dollars and not more
40 than one million dollars, one hundred and eighty dollars,
41 and an additional twenty cents on each one thousand
42 dollars, or fraction thereof, in excess of two hundred
43 thousand dollars; if more than one million dollars and
44 not more than fifteen million dollars, three hundred and
45 forty dollars, and an additional fifteen cents on each one
46 thousand dollars, or fraction thereof, in excess of one
47 million dollars; if more than fifteen million dollars,
48 twenty-five hundred dollars. The license tax collected
49 hereunder shall be in addition to the annual fee, if any,
50 payable to the secretary of state as statutory attorney-
51 in-fact. For the purpose of the assessment of the license
52 tax provided by this section, and for no other purpose,
53 shares of stock having no par value shall be presumed
54 to be of the par value of twenty-five dollars each:
55 *Provided*, That if such stock was originally issued for a
56 consideration greater than twenty-five dollars per share,
57 such license taxes as are required to be paid to the tax
58 commissioner shall be computed upon the basis of the
59 consideration for which such stock was issued.

60 (2) *Amount of license tax on foreign corporations.* —
61 It shall be the duty of the tax commissioner to assess
62 and fix the license tax of each foreign corporation
63 engaging in business activity in this state according to
64 the proportion of its issued and outstanding capital stock
65 which is represented by its property owned and used in

66 this state, which license tax shall be at the rate
67 prescribed in subdivision (1) of this subsection (b), plus
68 seventy-five percent of such tax. In no event shall any
69 such foreign corporation pay an annual license tax of
70 less than two hundred fifty dollars, which shall be in
71 addition to the fee of the secretary of state as statutory
72 attorney-in-fact. The tax commissioner may in any case
73 require such additional information as he or she may
74 deem necessary to enable him or her to assess and fix
75 the just amount of license tax of such corporation; it
76 shall be his or her duty to notify every such corporation
77 of the amount so assessed; and it shall be the duty of
78 the corporation to pay the same to the tax commissioner
79 within thirty days thereafter, and if it fail to do so it
80 shall be liable to the penalties prescribed in, or pursuant
81 to, this article.

82 (c) *Exemptions.* — Nonprofit corporations are exempt
83 from payment of the corporate license tax but must file
84 with the tax commissioner the return required by
85 section three of this article, and pay the annual fee of
86 the secretary of state as attorney-in-fact under section
87 five of this article if applicable.

§11-12C-3. Payment and collection of tax; deposit of money; return required.

1 (a) *Payment and collection of tax.* — When application
2 is made to the secretary of state for a certificate of
3 incorporation or authority to do business in this state,
4 it shall be the duty of the applicant to pay all taxes and
5 fees due under this article; and it shall be the duty of
6 the secretary of state to collect the corporate license tax
7 for the first year before issuing such certificate.
8 Thereafter, on or before the first day of the license tax
9 year next following the date of the certificate, and on
10 or before the first day of each succeeding license tax
11 year, such corporation shall pay and the tax commis-
12 sioner shall collect such tax for a full license tax year
13 together with the statutory attorney fee: *Provided*, That
14 if the application is made on or after the first day of
15 the second month preceding the beginning of the next
16 license tax year, and before the first day of such license
17 tax year, the secretary of state shall collect the tax for

18 the full year beginning on such first day of the next
19 license tax year in addition to the initial tax, together
20 with the statutory attorney fee.

21 (b) *Deposit of money.* — The money so received by the
22 secretary of state and the tax commissioner shall be paid
23 by them into the state treasury.

24 (c) *Returns.* — Payment of the tax and statutory
25 attorney fee required under the provisions of this section
26 shall be accompanied by a return on forms provided by
27 the tax commissioner for that purpose. The tax commis-
28 sioner shall upon completion of processing such return,
29 forward it to the secretary of state, together with a list
30 of all corporations which have paid such tax. Such
31 return shall contain (1) the address of its principal
32 office; (2) the names and mailing addresses of its officers
33 and directors; (3) the name and mailing address of the
34 person on whom notice of process may be served and
35 such other information as the tax commissioner deems
36 appropriate.

§11-12C-4. Due date of return; payment of tax.

1 It shall be the duty of every corporation required to
2 pay the tax to file a properly completed return together
3 with payment of tax owed to the tax commissioner by
4 the first day of July of the license year; and if it fails
5 to do so it shall be liable for payment of interest,
6 additions to tax and penalties prescribed in article ten
7 of this chapter and subject to the penalties prescribed
8 in section eight of this article.

§11-12C-5. Annual fee of secretary of state as attorney-in-fact.

1 Every foreign corporation, every foreign limited
2 partnership, every domestic corporation whose principal
3 place of business or chief works is located outside the
4 state, and every domestic limited partnership whose
5 principal place of business is located outside the state,
6 shall pay an annual fee of ten dollars for the services
7 of the secretary of state as attorney-in-fact for such
8 corporation or limited partnership, which fee shall be
9 due and payable at the same time and with the same

10 return, collected by the same officers, and accounted for
11 in the same way, as the annual license tax imposed on
12 corporations under this article. The tax commissioner
13 shall pay over to the secretary of state all attorney-in-
14 fact fees collected under this section, and such fees shall
15 be used to offset the costs of the secretary of state for
16 his or her services as attorney-in-fact.

§11-12C-6. Notice to corporations taxable; tax as lien.

1 (a) It shall be the duty of the tax commissioner,
2 between April fifteenth and May fifteenth each year, to
3 notify every domestic corporation and every foreign
4 corporation currently registered to do business in this
5 state which is or may be liable for payment of the tax
6 imposed by this article of the time of payment of such
7 tax and the amount thereof, together with the statutory
8 attorney fee, if any. Such notices may be sent through
9 the mails, addressed to the corporation at its last known
10 post office address as shown by the records in the office
11 of the secretary of state.

12 (b) The amount of such tax shall be deemed a debt
13 due the state, and shall be a lien as to an innocent
14 purchaser for value, on the property and assets of the
15 corporation prior to all other liens, except the lien for
16 ad valorem property taxes levied on its property, from
17 the time a notice of such lien, specifying the year and
18 the amount for which the lien is claimed, is filed in the
19 office of the clerk of the county commission of the county
20 in which the property subject to such liens is situated.
21 Such clerk shall, upon the filing in his or her office of
22 any such notice, record such notice in the docket where
23 general state tax liens are filed and index the same in
24 the name of the corporation against whom the lien is
25 claimed. Upon payment of such lien debt there shall be
26 executed by the tax commissioner and delivered to the
27 clerk of the county commission in whose office notice of
28 such lien is filed a release thereof, which release shall
29 be filed and recorded by such clerk in like manner as
30 releases of judgment or tax liens are filed and recorded.
31 Such tax shall be a preferred debt in case of insolvency.

§11-12C-7. Monthly report by secretary of state to tax commissioner as to corporations.

1 The secretary of state shall within twenty days after
2 the close of each month make a report to the tax
3 commissioner for the preceding month, in which he or
4 she shall set out the name of every corporation to which
5 he or she issued a certificate of incorporation during the
6 month, as well as the name of each corporation to which
7 he or she issued a certificate of authority, with the
8 amount of license tax paid to him or her by each; also
9 he or she shall set out in such report the names of all
10 corporations to which he or she issued certificates of
11 change of name or of change of location of principal
12 office, dissolution, withdrawal or merger; and a state-
13 ment of all moneys received during such preceding
14 month from all sources which are due to the state, and
15 pay the same into the treasury; if he or she fails to do
16 so it shall be the duty of the tax commissioner to report
17 such failure to the governor.

§11-12C-8. Administrative and criminal penalties.

1 The following penalties shall be in addition to the
2 penalties and remedies available under articles nine and
3 ten of this chapter of the code:

4 (a) *Administrative penalty.* — The commissioner shall
5 impose upon each delinquent corporation a fine in the
6 amount of one hundred dollars per year for each license
7 tax year or portion thereof in which the license tax
8 return which is due is not filed or the license tax which
9 is owed is not paid. This penalty shall be assessed and
10 collected in the same manner as the license tax.

11 (b) *Criminal penalty.* — It shall be a misdemeanor for
12 a corporation to conduct business for more than thirty
13 consecutive calendar days without paying in full the
14 amount of corporate license tax which is due. The
15 penalty for any officer, agent or employee convicted of
16 such offense shall be a fine equal to a sum of two and
17 one-half times the annual corporate license tax assessed
18 for said corporation, not to exceed one thousand dollars
19 per conviction.

20 (c) *Revocation of certificate of incorporation or*
21 *certificate of authority.* — Upon the establishment of a
22 finalized liability for corporate license taxes, not subject
23 to further administrative or judicial review under
24 article ten of this chapter, the certificate of incorpora-
25 tion in the case of a domestic corporation, or the
26 certificate of authority in the case of a foreign corpora-
27 tion, shall be revoked. Any corporation whose certificate
28 of incorporation or certificate of authority has been
29 revoked due to nonpayment of its corporate license taxes
30 shall be reinstated to its former rights as if it had not
31 been delinquent upon payment to the tax commissioner
32 of all delinquent license taxes, plus any interest,
33 additions or penalties accruing thereon.

§11-12C-9. Disposition of corporate license tax collected.

1 All taxes collected under the provisions of this article
2 shall be paid into the general revenue fund of the state
3 treasury in the manner provided by law.

**§11-12C-10. Applicability of tax procedure and adminis-
tration act and tax crimes and penalties
act.**

1 Except when a specific provision of this article
2 directly conflicts with a provision of the “West Virginia
3 Tax Procedure and Administration Act” set forth in
4 article ten of this chapter of the code, the provisions of
5 that act are fully applicable to the corporate license tax
6 imposed by this article. In the event of any conflict, the
7 provisions of this article shall have paramount effect,
8 but the two articles shall be construed as complemen-
9 tary and harmonious unless so clearly in conflict that
10 they cannot reasonably be reconciled. However, notwith-
11 standing any provision of that act, the tax commissioner
12 may lawfully release the names and addresses of the
13 directors and officers of a corporation to anyone upon
14 written request: *Provided*, That such request provides
15 the correct name of the corporation as reported to the
16 tax commissioner. The tax commissioner may charge a
17 reasonable fee to cover the costs of processing such
18 requests.

19 Each and every provision of the “West Virginia Tax

20 Crimes and Penalties Act” set forth in article nine of
21 this chapter shall apply to the tax imposed by this
22 article with like effect as if said act were applicable only
23 to the tax imposed by this article and were set forth in
24 extension in this article.

§11-12C-11. Effective date.

1 (a) The provisions of this article shall take effect on
2 the first day of July, one thousand nine hundred ninety-
3 three, and apply to license tax years beginning the first
4 day of July, one thousand nine hundred ninety-three and
5 thereafter.

6 (b) Tax liabilities, if any, arising for taxable years
7 ending prior to the first day of July, one thousand nine
8 hundred ninety-three, shall be determined, adminis-
9 tered, assessed and collected as if sections seventy-six
10 through eighty-four and eighty-six through ninety-one,
11 article twelve of this chapter had not been repealed; and
12 the rights and duties of the taxpayer and the state of
13 West Virginia thereunder shall be fully and completely
14 preserved.

§11-12C-12. Severability.

1 If any provision of this article or the application
2 thereof to any person or circumstance is for any reason
3 adjudged by any court of competent jurisdiction to be
4 unconstitutional or otherwise invalid, such judgment
5 shall not affect, impair or invalidate the remainder of
6 said article, but shall be confined in its operation to the
7 provision thereof directly involved in the controversy in
8 which such judgment shall have been rendered, and the
9 applicability of other provisions shall not be affected
10 thereby.

CHAPTER 31. CORPORATIONS.

ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.

**§31-1-76a. Notification of court action affecting corpo-
rate status.**

1 It shall be the duty of the clerk of every court of *this*
2 state in which any proceedings are had which result in
3 the forfeiture of the charter or certificate of *incorpora*

4 tion of any corporation issued under the laws of this
 5 state, or result in the dissolution or extinction of any
 6 such corporation, or in the revocation of the rights and
 7 privileges of any foreign corporation to do business in
 8 this state, to notify the secretary of state of any such
 9 forfeiture, dissolution, extinction or revocation, in which
 10 report he shall state the name of the court, the name
 11 of the corporation, the nature of the actions and the date
 12 of the order or judgment, and such other pertinent
 13 matter as may be required by the secretary of state; and
 14 the secretary of state shall file and record such report
 15 in his or her office, and shall note the same in the
 16 indexes of corporations kept in his or her office.

CHAPTER 206

(H. B. 4692—By Delegates Flanigan and Bailey)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-d, article thirteen-d, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, reducing to ten million dollars the amount of qualified investment in a new industrial facility producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel to be eligible for credits against business franchise and corporation net income taxes.

Be it enacted by the Legislature of West Virginia:

That section three-d, article thirteen-d, 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 13D. TAX CREDITS FOR INDUSTRIAL EXPANSION AND REVITALIZATION, RESEARCH AND DEVELOPMENT PROJECTS, CERTAIN HOUSING DEVELOPMENT PROJECTS, MANAGEMENT INFORMATION SERVICES FACILITIES, AND INDUSTRIAL FACILITIES PRODUCING COAL-BASED LIQUIDS USED TO PRODUCE SYNTHETIC FUELS.

§11-13D-3d. Amount of credit allowed and application of

credit for qualified investment in a new industrial facility producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel.

1 (a) *Credit allowed.* — There shall be allowed to eligible
2 taxpayers which have made qualified investment of at
3 least ten million dollars in a new industrial facility for
4 producing coal-based liquids used to produce synthetic
5 motor fuel or synthetic special fuel a credit against the
6 taxes imposed by articles twenty-three and twenty-four
7 of this chapter for qualified investment in a new
8 industrial facility for producing coal-based liquids used
9 to produce synthetic motor fuel or synthetic special fuel.
10 The amount of credit shall be determined as hereinafter
11 provided in this section. Taxpayers who have not placed
12 at least ten million dollars of qualified investment in
13 service or use over a period of one year or less in a new
14 industrial facility used to produce synthetic motor fuel
15 or synthetic special fuel shall not be entitled to credit
16 under this section.

17 (b) *Credit amount for qualified investment purchased*
18 *and placed in service or use in a new industrial facility*
19 *for producing coal-based liquids used to produce synthetic*
20 *motor fuel or synthetic special fuel, after the thirtieth day*
21 *of June, one thousand nine hundred ninety-one.* — For
22 property purchased or leased by an eligible taxpayer
23 and placed in service or use after the thirtieth day of
24 June, one thousand nine hundred ninety-one, as part of
25 a new industrial facility for producing coal-based
26 liquids used to produce synthetic motor fuel or synthetic
27 special fuel the amount of allowable credit shall be equal
28 to one hundred percent of the qualified investment (as
29 determined under section four of this article), and shall
30 reduce that portion of the taxpayer's business franchise
31 tax under article twenty-three of this chapter, which is
32 attributable to and the direct result of the taxpayer's
33 qualified investment, and that portion of the taxpayer's
34 corporation net income tax under article twenty-four of
35 this chapter, which is attributable to and the direct
36 result of the taxpayer's qualified investment; subject to

37 the following conditions and limitations:

38 (1) The total amount of credit allowable to all persons
39 claiming credit under this section shall not exceed ten
40 million dollars during any fiscal year of this state. If and
41 to the extent credit is claimed under this section in
42 excess of ten million dollars in any fiscal year of this
43 state the amount in excess of ten million dollars is lost.
44 In determining which taxpayer or taxpayers loses credit
45 under this subdivision (1), the loss of credit shall apply
46 first to qualified investment property most recently
47 placed in service or use, going backwards in time, until
48 the tax commissioner determines that the total amount
49 of credit allowed under this section is not in excess of
50 ten million dollars.

51 (2) The qualified investment must result in the
52 creation of at least ten new jobs.

53 (3) If, during any taxable year of the ten year tax
54 credit allowance period, the average number of em-
55 ployees of the taxpayer, for the then current taxable
56 year, employed in positions created because of and
57 directly attributable to the qualified investment prop-
58 erty is less than ten, the credit allowance for that
59 taxable year is forfeited.

60 (4) Tax year time limitations for application of credit;
61 credit forfeiture.

62 (A) The amount of this credit allowable shall be
63 applied over a time period of up to ten tax years.

64 (B) This credit shall first be applied against tax
65 liabilities in the manner specified in subdivision (5) of
66 this subsection (b), beginning with the tax year during
67 which the qualified investment was first placed in
68 service or use in this state by the eligible taxpayer.

69 (C) Any amount of this credit remaining after
70 application of this credit against tax as specified in
71 paragraph (A) of subdivision (5) of this subsection (b)
72 shall then be applied against the tax liabilities in the
73 manner specified in paragraph (B), subdivision (5) of
74 this subsection (b) for the tax year immediately
75 succeeding the tax year during which the qualified

76 investment was first placed in service or use in this state
77 and for each succeeding tax year thereafter up through
78 the ninth tax year subsequent to the first tax year in
79 which the qualified investment property was first
80 placed in service or use.

81 (D) Any amount of this credit remaining after
82 application of this credit against tax as specified in
83 subdivision (5) of this subsection (b) shall be forfeited
84 and shall not carry forward to any subsequent tax year.

85 (E) No carryback of credit to a prior tax year shall
86 be allowed.

87 (5) Tax liability percentage offset limitations.

88 (A) This credit for qualified investment in a new
89 industrial facility for producing coal-based liquids used
90 to produce synthetic motor fuel or synthetic special fuel
91 shall first be applied to reduce the annual West Virginia
92 business franchise tax liability imposed under article
93 twenty-three of this chapter for the tax year by an
94 amount such that this credit, in combined application
95 with all other applicable credits allowable under articles
96 thirteen-c, thirteen-d and thirteen-e of this chapter and
97 under chapter five-e of this code and all other tax credits
98 provided in this code, shall not reduce the annual
99 business franchise tax liability for such tax year below
100 fifty percent of the amount of the annual tax liability
101 which would otherwise be imposed for such tax year in
102 the absence of this credit and all credits against such
103 tax, except the credits set forth in section seventeen,
104 article twenty-three of this chapter.

105 (B) After application of this credit against business
106 franchise tax as provided in paragraph (A) of this
107 subdivision (5), the remaining credit for qualified
108 investment in a new industrial facility for producing
109 coal-based liquids used to produce synthetic motor fuel
110 or synthetic special fuel (if any) shall then be applied
111 to reduce the annual West Virginia corporation net
112 income tax liability imposed under article twenty-four
113 of this chapter for the tax year by an amount such that
114 this credit in combined application with all other
115 applicable credits allowable under articles thirteen-c,
116 thirteen-d, thirteen-f and thirteen-g of this chapter and

117 under sections ten, eleven, eleven-a, twelve, twenty-two
118 and twenty-three-a, article twenty-four of this chapter
119 and under chapters five-e and eighteen-b of this code
120 and all other tax credits as provided in this code, shall
121 not reduce the annual corporation net income tax
122 liability for such tax year below fifty percent of the
123 amount of the annual tax liability which would other-
124 wise be imposed for such tax year in the absence of this
125 credit and all other credits against tax, except the
126 credits set forth in sections nine and nine-a, article
127 twenty-four of this chapter.

128 (C) After application of this credit against business
129 franchise tax under paragraph (A) of this subdivision
130 (5), and then against corporation net income tax under
131 paragraph (B) of this subdivision (5), the remaining
132 credit for qualified investment in a new industrial
133 facility for producing coal-based liquids used to produce
134 synthetic motor fuel or synthetic special fuel (if any)
135 shall then be applied to further reduce the annual West
136 Virginia business franchise tax liability imposed under
137 article twenty-three of this chapter for the tax year by
138 an amount such that this credit shall not reduce the
139 annual business franchise tax liability for such tax year
140 below ten percent of the amount of the annual tax
141 liability which would otherwise be imposed for such tax
142 year in the absence of this credit and all other credits
143 against such tax, except the credits set forth in section
144 seventeen, article twenty-three of this chapter.

145 (D) After application of this credit against business
146 franchise tax under paragraph (A) of this subdivision (5)
147 and then against corporation net income tax under
148 paragraph (B) of this subdivision (5), and then against
149 business franchise tax under paragraph (C) of this
150 subdivision (5), the remaining credit for qualified
151 investment in a new industrial facility for producing
152 coal-based liquids used to produce synthetic motor fuel
153 or synthetic special fuel (if any) shall then be applied
154 to further reduce the annual West Virginia corporation
155 net income tax liability imposed under article twenty-
156 four of this chapter for the tax year by an amount such
157 that this credit shall not reduce the annual corporation

158 net income tax liability which would otherwise be
159 imposed for such tax year in the absence of this credit
160 and all other credits against such tax, except the credits
161 set forth in sections nine and nine-a, article twenty-four
162 of this chapter.

163 (c) *Application for credit required.*

164 (1) *Application required.* — No credit shall be allowed
165 or applied under this section for any investment in any
166 new industrial facility for producing coal-based liquids
167 used to produce synthetic motor fuel or synthetic special
168 fuel until the person asserting a claim for the allowance
169 of credit under this article makes written application to
170 the tax commissioner for allowance of credit as provided
171 in this section and receives written certification of its
172 claim from the tax commissioner. An application for
173 credit shall be filed, in such form as the tax commis-
174 sioner shall prescribe, prior to the date when qualified
175 investment property is first placed in service or use, and
176 all information required by such form shall be provided.
177 No credit shall be taken by a taxpayer applicant or
178 prospective applicant pursuant to this section until
179 certification has been issued by the tax commissioner.

180 (2) *Failure to file.* — The failure to timely apply for
181 certification under this subsection (c) shall result in
182 forfeiture of the credit otherwise allowable under this
183 section.

184 (d) *Definitions.* — For purposes of this section:

185 (1) “Synthetic motor fuel” means any product suitable
186 for use in an internal combustion engine except special
187 fuel as defined in this section, containing at least ten
188 percent coal-based liquids blended to meet
189 specifications.

190 (2) “Synthetic special fuel” means special fuel contain-
191 ing at least ten percent coal-based liquids blended to
192 meet specifications.

193 (e) *Report by the governor’s office of community and*
194 *industrial development.* — The governor’s office of
195 community and industrial development shall produce a

196 report to the Legislature to be presented during the
197 regular legislative session of one thousand nine hundred
198 ninety-three and annually thereafter. Such report shall
199 state the identity of taxpayers who have received this
200 credit and shall contain an analysis of the expansion and
201 growth of facilities in this state producing coal-based
202 liquids used to produce synthetic fuels, the expansion of
203 commerce resulting from the creation of this credit, and
204 the number of jobs created as a result of this credit. The
205 report of the governor's office of community and
206 industrial development shall not directly or indirectly
207 reveal the amount of credit available to any particular
208 taxpayer or taxpayer return information other than the
209 names and addresses of taxpayers.

CHAPTER 207

(Com. Sub. for S. B. 348—By Senators Spears, Wooton, Wehrle, Wiedebusch,
Sharpe, Jones, Claypole, Chernenko, Boley, Biatnik,
Burdette, Mr. President, and Whitlow)

[Passed March 7, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eleven, removing nails and fencing from the definition of improvements to real property; exempting health and fitness organizations providing personalized fitness programs from remitting sales tax; exempting sales of services by baby-sitters from remitting sales tax under certain conditions; exempting certain community-based service organizations from collecting and remitting sales tax on specified programs and activities; prohibiting the tax commissioner from taking action against community-based organizations for taxes uncollected prior to the first day of July, one thousand nine hundred ninety-two; and barring refunds of taxes collected and paid over prior to that date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-9. Exemptions.

§11-15-11. Exemption for certain organizations.

§11-15-9. Exemptions.

1 The following sales and services are exempt:

2 (a) Sales of gas, steam and water delivered to
3 consumers through mains or pipes, and sales of
4 electricity;

5 (b) Sales of textbooks required to be used in any of
6 the schools of this state or in any institution in this state
7 which qualifies as a nonprofit or educational institution
8 subject to the West Virginia department of education
9 and the arts, board of trustees of the university system
10 of West Virginia, or the board of directors for colleges
11 located in this state;

12 (c) Sales of property or services to the state, its
13 institutions or subdivisions, governmental units, institu-
14 tions or subdivisions of other states: *Provided*, That the
15 law of such other state provides the same exemption to
16 governmental units or subdivisions of this state and to
17 the United States, including agencies of federal, state or
18 local governments for distribution in public welfare or
19 relief work;

20 (d) Sales of vehicles which are titled by the division
21 of motor vehicles and which are subject to the tax
22 imposed by section four, article three, chapter seven-
23 teen-a of this code, or like tax;

24 (e) Sales of property or services to churches and bona
25 fide charitable organizations who make no charge
26 whatsoever for the services they render: *Provided*, That
27 the exemption herein granted shall apply only to
28 services, equipment, supplies, food for meals and
29 materials directly used or consumed by these organiza-

30 tions, and shall not apply to purchases of gasoline or
31 special fuel;

32 (f) Sales of tangible personal property or services to
33 a corporation or organization which has a current
34 registration certificate issued under article twelve of
35 this chapter is exempt from federal income taxes under
36 Section 501(c)(3) or (c)(4) of the Internal Revenue Code
37 of 1986, as amended, and is:

38 (1) A church or a convention or association of churches
39 as defined in Section 170 of the Internal Revenue Code
40 of 1986, as amended;

41 (2) An elementary or secondary school which main-
42 tains a regular faculty and curriculum and has a
43 regularly enrolled body of pupils or students in attend-
44 ance at the place in this state where its educational
45 activities are regularly carried on;

46 (3) A corporation or organization which annually
47 receives more than one half of its support from any
48 combination of gifts, grants, direct or indirect charita-
49 ble contributions, or membership fees;

50 (4) An organization which has no paid employees and
51 its gross income from fund raisers, less reasonable and
52 necessary expenses incurred to raise such gross income
53 (or the tangible personal property or services purchased
54 with such net income), is donated to an organization
55 which is exempt from income taxes under Section
56 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986,
57 as amended;

58 (5) A youth organization, such as the girl scouts of the
59 United States of America, the boy scouts of America or
60 the YMCA Indian guide/princess program and the local
61 affiliates thereof, which is organized and operated
62 exclusively for charitable purposes and has as its
63 primary purpose the nonsectarian character develop-
64 ment and citizenship training of its members;

65 (6) For purposes of this subsection:

66 (A) The term "support" includes, but is not limited to:

67 (i) Gifts, grants, contributions or membership fees;

68 (ii) Gross receipts from fund raisers which include

69 receipts from admissions, sales of merchandise, perfor-
70 mance of services or furnishing of facilities in any
71 activity which is not an unrelated trade or business
72 within the meaning of Section 513 of the Internal
73 Revenue Code of 1986, as amended;

74 (iii) Net income from unrelated business activities,
75 whether or not such activities are carried on regularly
76 as a trade or business;

77 (iv) Gross investment income as defined in Section
78 509(e) of the Internal Revenue Code of 1986, as
79 amended;

80 (v) Tax revenues levied for the benefit of a corporation
81 or organization either paid to or expended on behalf of
82 such organization; and

83 (vi) The value of services or facilities (exclusive of
84 services or facilities generally furnished to the public
85 without charge) furnished by a governmental unit
86 referred to in Section 170(c)(1) of the Internal Revenue
87 Code of 1986, as amended, to an organization without
88 charge. This term does not include any gain from the
89 sale or other disposition of property which would be
90 considered as gain from the sale or exchange of a capital
91 asset, or the value of an exemption from any federal,
92 state or local tax or any similar benefit;

93 (B) The term "charitable contribution" means a
94 contribution or gift to or for the use of a corporation or
95 organization, described in Section 170(c)(2) of the
96 Internal Revenue Code of 1986, as amended;

97 (C) The term "membership fee" does not include any
98 amounts paid for tangible personal property or specific
99 services rendered to members by the corporation or
100 organization; or

101 (7) The exemption allowed by this subsection (f) does
102 not apply to sales of gasoline or special fuel or to sales
103 of tangible personal property or services to be used or
104 consumed in the generation of unrelated business
105 income as defined in Section 513 of the Internal Revenue
106 Code of 1986, as amended. The provisions of this
107 subsection as amended by this article shall apply to sales
108 made after the thirtieth day of June, one thousand nine

109 hundred eighty-nine: *Provided*, That the exemption
110 herein granted shall apply only to services, equipment,
111 supplies and materials used or consumed in the activ-
112 ities for which such organizations qualify as tax exempt
113 organizations under the Internal Revenue Code by these
114 organizations and shall not apply to purchases of
115 gasoline or special fuel;

116 (g) Sales of property or services to persons engaged
117 in this state in the business of manufacturing, transpor-
118 tation, transmission, communication or in the produc-
119 tion of natural resources: *Provided*, That the exemption
120 herein granted shall apply only to services, machinery,
121 supplies and materials directly used or consumed in the
122 businesses or organizations named above, and shall not
123 apply to purchases of gasoline or special fuel: *Provided*,
124 *however*, That on and after the first day of July, one
125 thousand nine hundred eighty-seven, the exemption
126 provided in this subsection shall apply only to services,
127 machinery, supplies and materials directly used or
128 consumed in the activities of manufacturing, transpor-
129 tation, transmission, communication or the production of
130 natural resources in the businesses or organizations
131 named above and shall not apply to purchases of
132 gasoline or special fuel;

133 (h) An isolated transaction in which any taxable
134 service or any tangible personal property is sold,
135 transferred, offered for sale or delivered by the owner
136 thereof or by his representative for the owner's account,
137 such sale, transfer, offer for sale or delivery not being
138 made in the ordinary course of repeated and successive
139 transactions of like character by such owner or on his
140 account by such representative: *Provided*, That nothing
141 contained herein may be construed to prevent an owner
142 who sells, transfers or offers for sale tangible personal
143 property in an isolated transaction through an auctio-
144 neer from availing himself or herself of the exemption
145 provided herein, regardless where such isolated sale
146 takes place. The tax commissioner may adopt such
147 legislative rule pursuant to chapter twenty-nine-a of this
148 code as he deems necessary for the efficient administra-
149 tion of this exemption;

150 (i) Sales of tangible personal property or of any
151 taxable services rendered for use or consumption in
152 connection with the commercial production of an
153 agricultural product the ultimate sale of which will be
154 subject to the tax imposed by this article or which would
155 have been subject to tax under this article: *Provided,*
156 That sales of tangible personal property and services to
157 be used or consumed in the construction of or permanent
158 improvement to real property and sales of gasoline and
159 special fuel shall not be exempt: *Provided, however,* That
160 nails and fencing shall not be considered as improve-
161 ments to real property;

162 (j) Sales of tangible personal property to a person for
163 the purpose of resale in the form of tangible personal
164 property: *Provided,* That sales of gasoline and special
165 fuel by distributors and importers shall be taxable
166 except when the sale is to another distributor for resale:
167 *Provided, however,* That sales of building materials or
168 building supplies or other property to any person
169 engaging in the activity of contracting, as defined in this
170 article, which is to be installed in, affixed to or
171 incorporated by such person or his agent into any real
172 property, building or structure shall not be exempt
173 under this subsection, except that sales of tangible
174 personal property to a person engaging in the activity
175 of contracting pursuant to a written contract with the
176 United States, this state, or with a political subdivision
177 thereof, or with a public corporation created by the
178 Legislature or by another governmental entity pursuant
179 to an act of the Legislature, for a building or structure,
180 or improvement thereto, or other improvement to real
181 property that is or will be owned and used by the
182 governmental entity for a governmental or proprietary
183 purpose, who incorporates such property in such
184 building, structure or improvement shall, with respect
185 to such tangible personal property, nevertheless be
186 deemed to be the vendor of such property to the
187 governmental entity and any person seeking to qualify
188 for and assert this exception must do so pursuant to such
189 legislative rules and regulations as the tax commissioner
190 may promulgate and upon such forms as the tax
191 commissioner may prescribe. A subcontractor who,

192 pursuant to a written subcontract with a prime contrac-
193 tor who qualifies for this exception, provides equipment,
194 or materials, and labor to such a prime contractor shall
195 be treated in the same manner as the prime contractor
196 is treated with respect to the prime contract under this
197 exception and the legislative rules and regulations
198 promulgated by the tax commissioner: *Provided further*,
199 That the exemption for government contractors in the
200 preceding proviso shall expire on the first day of
201 October, one thousand nine hundred ninety, subject to
202 the transition rules set forth in section eight-c of this
203 article;

204 (k) Sales of property or services to nationally char-
205 tered fraternal or social organizations for the sole
206 purpose of free distribution in public welfare or relief
207 work: *Provided*, That sales of gasoline and special fuel
208 shall be taxable;

209 (l) Sales and services, fire fighting or station house
210 equipment, including construction and automotive,
211 made to any volunteer fire department organized and
212 incorporated under the laws of the state of West
213 Virginia: *Provided*, That sales of gasoline and special
214 fuel shall be taxable;

215 (m) Sales of newspapers when delivered to consumers
216 by route carriers;

217 (n) Sales of drugs dispensed upon prescription and
218 sales of insulin to consumers for medical purposes;

219 (o) Sales of radio and television broadcasting time,
220 preprinted advertising circulars and newspaper and
221 outdoor advertising space for the advertisement of goods
222 or services;

223 (p) Sales and services performed by day-care centers;

224 (q) Casual and occasional sales of property or services
225 not conducted in a repeated manner or in the ordinary
226 course of repetitive and successive transactions of like
227 character by a corporation or organization which is
228 exempt from tax under subsection (f) of this section on
229 its purchases of tangible personal property or services:

230 (1) For purposes of this subsection, the term "casual
231 and occasional sales not conducted in a repeated manner

232 or in the ordinary course of repetitive and successive
233 transactions of like character" means sales of tangible
234 personal property or services at fund raisers sponsored
235 by a corporation or organization which is exempt, under
236 subsection (f) of this section, from payment of the tax
237 imposed by this article on its purchases, when such fund
238 raisers are of limited duration and are held no more
239 than six times during any twelve-month period and
240 limited duration means no more than eighty-four
241 consecutive hours;

242 (2) The provisions of this subsection, as amended by
243 this article, shall apply to sales made after the thirtieth
244 day of June, one thousand nine hundred eighty-nine;

245 (r) Sales of property or services to a school which has
246 approval from the board of trustees of the university
247 system of West Virginia or the board of directors of the
248 state college system to award degrees, which has its
249 principal campus in this state, and which is exempt
250 from federal and state income taxes under Section
251 501(c)(3) of the Internal Revenue Code of 1986, as
252 amended: *Provided*, That sales of gasoline and special
253 fuel shall be taxable;

254 (s) Sales of mobile homes to be utilized by purchasers
255 as their principal year-round residence and dwelling:
256 *Provided*, That these mobile homes shall be subject to
257 tax at the three percent rate;

258 (t) Sales of lottery tickets and materials by licensed
259 lottery sales agents and lottery retailers authorized by
260 the state lottery commission, under the provisions of
261 article twenty-two, chapter twenty-nine of this code;

262 (u) Leases of motor vehicles titled pursuant to the
263 provisions of article three, chapter seventeen-a of this
264 code to lessees for a period of thirty or more consecutive
265 days. This exemption shall apply to leases executed on
266 or after the first day of July, one thousand nine hundred
267 eighty-seven, and to payments under long-term leases
268 executed before such date, for months thereof beginning
269 on or after such date;

270 (v) Notwithstanding the provisions of subsection (g) of
271 this section or any provisions of this article to the

272 contrary, sales of property and services to persons
273 subject to tax under article thirteen, thirteen-a or
274 thirteen-b of this chapter: *Provided*, That the exemption
275 herein granted shall apply both to property or services
276 directly or not directly used or consumed in the conduct
277 of privileges which are subject to tax under such articles
278 but shall not apply to purchases of gasoline or special
279 fuel;

280 (w) Sales of propane to consumers for poultry house
281 heating purposes, with any seller to such consumer who
282 may have prior paid such tax in his price, to not pass
283 on the same to the consumer, but to make application
284 and receive refund of such tax from the tax commis-
285 sioner, pursuant to rules and regulations which shall be
286 promulgated by the tax commissioner; and notwith-
287 standing the provisions of section eighteen of this article
288 or any other provisions of such article to the contrary;

289 (x) Any sales of tangible personal property or services
290 purchased after the thirtieth day of September, one
291 thousand nine hundred eighty-seven, and lawfully paid
292 for with food stamps pursuant to the federal food stamp
293 program codified in 7 United States Code, §2011, et seq.,
294 as amended, or with drafts issued through the West
295 Virginia special supplemental food program for women,
296 infants and children codified in 42 United States Code,
297 §1786;

298 (y) Sales of tickets for activities sponsored by elemen-
299 tary and secondary schools located within this state;

300 (z) Sales of electronic data processing services and
301 related software: *Provided*, That for the purposes of this
302 subsection "electronic data processing services" means:
303 (1) The processing of another's data, including all
304 processes incident to processing of data such as key-
305 punching, keystroke verification, rearranging or sorting
306 of previously documented data for the purpose of data
307 entry or automatic processing, and changing the
308 medium on which data is sorted, whether these pro-
309 cesses are done by the same person or several persons;
310 and (2) providing access to computer equipment for the
311 purpose of processing data or examining or acquiring
312 data stored in or accessible to such computer equipment;

313 (aa) Tuition charged for attending educational
314 summer camps;

315 (bb) Sales of building materials or building supplies
316 or other property to an organization qualified under
317 Section 501(c)(3) or (c)(4) of the Internal Revenue Code
318 of 1986, as amended, which are to be installed in, affixed
319 to or incorporated by such organization or its agent into
320 real property, or into a building or structure which is
321 or will be used as permanent low-income housing,
322 transitional housing, emergency homeless shelter,
323 domestic violence shelter or emergency children and
324 youth shelter if such shelter is owned, managed,
325 developed or operated by an organization qualified
326 under Section 501(c)(3) or (c)(4) of the Internal Revenue
327 Code of 1986, as amended;

328 (cc) Dispensing of services performed by one corpora-
329 tion for another corporation when both corporations are
330 members of the same controlled group. Control means
331 ownership, directly or indirectly, of stock possessing
332 fifty percent or more of the total combined voting power
333 of all classes of the stock of a corporation entitled to vote
334 or ownership, directly or indirectly, of stock possessing
335 fifty percent or more of the value of the corporation;

336 (dd) Food for the following shall be exempt:

337 (1) Food purchased or sold by public or private
338 schools, school sponsored student organizations, or
339 school sponsored parent-teacher associations to students
340 enrolled in such school or to employees of such school
341 during normal school hours; but not those sales of food
342 made to the general public;

343 (2) Food purchased or sold by a public or private
344 college or university or by a student organization
345 officially recognized by such college or university to
346 students enrolled at such college or university when
347 such sales are made on a contract basis so that a fixed
348 price is paid for consumption of food products for a
349 specific period of time without respect to the amount of
350 food product actually consumed by the particular
351 individual contracting for the sale and no money is paid
352 at the time the food product is served or consumed;

353 (3) Food purchased or sold by a charitable or private
354 nonprofit organization, a nonprofit organization or a
355 governmental agency under a program to provide food
356 to low-income persons at or below cost;

357 (4) Food sold in an occasional sale by a charitable or
358 nonprofit organization including volunteer fire depart-
359 ments and rescue squads, if the purpose of the sale is
360 to obtain revenue for the functions and activities of the
361 organization and the revenue so obtained is actually
362 expended for that purpose;

363 (5) Food sold by any religious organization at a social
364 or other gathering conducted by it or under its auspices,
365 if the purpose in selling the food is to obtain revenue
366 for the functions and activities of the organization and
367 the revenue obtained from selling the food is actually
368 used in carrying on such functions and activities:
369 *Provided*, That purchases made by such organizations
370 shall not be exempt as a purchase for resale;

371 (ee) Sales of food by little leagues, midget football
372 leagues, youth football or soccer leagues and similar
373 types of organizations, including scouting groups and
374 church youth groups, if the purpose in selling the food
375 is to obtain revenue for the functions and activities of
376 the organization and the revenues obtained from selling
377 the food is actually used in supporting or carrying on
378 functions and activities of the groups: *Provided*, That
379 such purchases made by such organizations shall not be
380 exempt as a purchase for resale;

381 (ff) Charges for room and meals by fraternities and
382 sororities to their members: *Provided*, That such
383 purchases made by a fraternity or sorority shall not be
384 exempt as a purchase for resale;

385 (gg) Sales of or charges for the transportation of
386 passengers in interstate commerce;

387 (hh) Sales of tangible personal property or services to
388 any person which this state is prohibited from taxing
389 under the laws of the United States or under the
390 constitution of this state;

391 (ii) Sales of tangible personal property or services to
392 any person who claims exemption from the tax imposed

393 by this article or article fifteen-a of this chapter
394 pursuant to the provisions of any other chapter of this
395 code;

396 (jj) Charges for the services of opening and closing a
397 burial lot;

398 (kk) Sales of livestock, poultry or other farm products
399 in their original state by the producer thereof or a
400 member of the producer's immediate family who is not
401 otherwise engaged in making retail sales of tangible
402 personal property; and sales of livestock sold at public
403 sales sponsored by breeder's or registry associations or
404 livestock auction markets: *Provided*, That the exemp-
405 tions allowed by this subsection shall apply to sales
406 made on or after the first day of July, one thousand nine
407 hundred ninety, and may be claimed without presenting
408 or obtaining exemption certificates: *Provided, however*,
409 That the farmer shall maintain adequate records;

410 (ll) Sales of motion picture films to motion picture
411 exhibitors for exhibition if the sale of tickets or the
412 charge for admission to the exhibition of the film is
413 subject to the tax imposed by this article and sales of
414 coin-operated video arcade machines or video arcade
415 games to a person engaged in the business of providing
416 such machines to the public for a charge upon which the
417 tax imposed by this article is remitted to the tax
418 commissioner: *Provided*, That the exemption provided in
419 this subsection shall apply to sales made on or after the
420 first day of July, one thousand nine hundred ninety, and
421 may be claimed by presenting to the seller a properly
422 executed exemption certificate;

423 (mm) Sales of aircraft repair, remodeling and main-
424 tenance services when such services are to an aircraft
425 operated by a certified or licensed carrier of persons or
426 property, or by a governmental entity, or to an engine
427 or other component part of an aircraft operated by a
428 certificated or licensed carrier of persons or property,
429 or by a governmental entity and sales of tangible
430 personal property that is permanently affixed or
431 permanently attached as a component part of an aircraft
432 owned or operated by a certificated or licensed carrier
433 of persons or property, or by a governmental entity, as

434 part of the repair, remodeling or maintenance service
435 and sales of machinery, tools, or equipment, directly
436 used or consumed exclusively in the repair, remodeling,
437 or maintenance of aircraft, aircraft engines, or aircraft
438 component parts, for a certificated or licensed carrier
439 of persons or property, or for a governmental entity;

440 (nn) Sales of tangible personal property and services
441 to a person entitled to claim the tax credit for invest-
442 ment in certain management information services
443 facilities allowed under section three-c, article thirteen-
444 d of this chapter, pursuant to the issuance of a manage-
445 ment information services tax credit certification by the
446 tax commissioner in accordance with subsection (e),
447 section three-c, article thirteen-d of this chapter, when
448 such property or services are directly used or consumed
449 by the purchaser in the operation of the management
450 information services facility, as defined in section two
451 of this article for which credit is allowed under section
452 three-c, article thirteen-d of this chapter. Tangible
453 personal property, or services, directly used or con-
454 sumed in the operation of a management information
455 services facility includes only: (1) Computer processing
456 and telecommunications equipment; (2) data storage and
457 input/output devices; (3) disaster recovery services; (4)
458 supplies; (5) application, telecommunication and operat-
459 ing system software; (6) repair and maintenance of any
460 of the aforesaid items; and (7) other tangible personal
461 property or services directly used or consumed in the
462 operation of a management information services facility:
463 *Provided*, That the property is purchased or leased after
464 the thirty-first day of March, one thousand nine hundred
465 ninety-one. This exemption shall not apply to tangible
466 personal property, or services, that are not directly used
467 or consumed in the operation of a management informa-
468 tion services facility, or to gasoline or special fuel:
469 *Provided, however*, That nothing in this paragraph shall
470 be construed to limit, exclude or preclude the applica-
471 tion or availability of any other exemption set forth in
472 this section, or elsewhere in this code, which might
473 otherwise apply to any sale of tangible personal property
474 or services;

475 (oo) Charges for memberships or services provided by

476 health and fitness organizations relating to personalized
477 fitness programs;

478 (pp) Sales of services by individuals who baby-sit for
479 a profit: *Provided*, That the gross receipts of the
480 individual from the performance of baby sitting services
481 does not exceed \$5,000.00 in a taxable year; and

482 (qq) A corporation or organization which is a not-for-
483 profit entity which charges membership dues utilized
484 for and contributing significantly to traffic and pedes-
485 trian safety and education programs whether or not the
486 corporation or organization is exempt from income tax
487 under Section 501(c)(3) of the Internal Revenue Code of
488 1985, as amended.

§11-15-11. Exemption for certain organizations.

1 (a) Sales of taxable services by a corporation or
2 organization that are exempt from federal income tax
3 under Section 501(c)(3) of the Internal Revenue Code,
4 and that meet the requirements set forth in subsection
5 (b) of this section, are exempt from the tax imposed by
6 this article, except that this exemption shall not apply
7 to sales of taxable services to the extent that income
8 received from the sales of such services is taxable under
9 Section 511 of the Internal Revenue Code.

10 (b) The exemption set forth in this section applies only
11 to those corporations or organizations meeting the
12 following criteria:

13 (1) The corporation or organization is organized and
14 operated primarily for charitable or educational pur-
15 poses and its activities and programs contribute
16 importantly to promoting the general welfare of youth,
17 families and the aged, improving health and fitness and
18 providing recreational opportunities to the public;

19 (2) The corporation or organization offers membership
20 or participation in its programs and activities to the
21 general public and charges fees or dues which make its
22 programs and activities accessible by a reasonable cross-
23 section of the community; and

24 (3) The corporation or organization offers financial
25 assistance on a regular and on-going basis to individuals

26 unable to afford the organization's membership dues or
27 fees.

28 (c) The tax commissioner is prohibited from issuing
29 any assessments and from taking any other action under
30 article ten of this chapter after the thirty-first day of
31 December, one thousand nine hundred ninety-one, to
32 collect the tax imposed by this article from an organ-
33 ization described in subsections (a) and (b) of this section
34 that did not collect the tax on transactions occurring
35 before the first day of July, one thousand nine hundred
36 ninety-two. The tax commissioner is also prohibited
37 from refunding any tax collected by a qualified organ-
38 ization prior to the first day of July, one thousand nine
39 hundred ninety-two, that was paid over to the tax
40 commissioner.

41 (d) For purposes of this section, the term "corporation"
42 and the term "organization" are used interchangeably
43 and mean a corporation or other organization that is
44 exempt from income tax under Section 501(c)(3) of the
45 Internal Revenue Code, as amended.

46 (e) Nothing in this section shall affect the application
47 of this article to nonprofit tax-exempt hospitals.

CHAPTER 208

(H. B. 4052—By Mr. Speaker, Mr. Chambers, and Delegate Burk,
By Request of the Executive)

[Passed February 21, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the meaning of certain terms used in the West Virginia personal income tax act by bringing them into conformity with their meanings for federal income tax purposes for taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety; preserving prior law; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

1 (a) Any term used in this article shall have the same
2 meaning as when used in a comparable context in the
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-two, shall be given effect in determining the
13 taxes imposed by this article for any taxable year
14 beginning the first day of January, one thousand nine
15 hundred ninety-one, or thereafter, but no amendment to
16 the laws of the United States made on or after the first
17 day of January, one thousand nine hundred ninety-two,
18 shall be given effect.

19 (b) *Effective date.* — (1) The amendments to this
20 section enacted in the year one thousand nine hundred
21 ninety-one shall be retroactive and shall apply to taxable
22 years beginning on or after the first day of January, one
23 thousand nine hundred ninety, to the extent allowable
24 under federal income tax law. With respect to taxable
25 years that begin prior to the first day of January, one
26 thousand nine hundred ninety, prior law shall be fully
27 preserved.

28 (2) The amendments to this section enacted in the year
29 one thousand nine hundred ninety-two shall be retroac-
30 tive and shall apply to taxable years beginning on or
31 after the first day of January, one thousand nine
32 hundred ninety-one, to the extent allowable under
33 federal income tax law. With respect to taxable years
34 that begin prior to the first day of January, one
35 thousand nine hundred ninety-one, prior law shall be
36 fully preserved.

CHAPTER 209

(H. B. 4053—By Mr. Speaker, Mr. Chambers, and Delegate Burk,
By Request of the Executive)

[Passed February 10, 1992: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article twenty-three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article twenty-four of said chapter, relating to updating the meaning of certain terms used in the West Virginia business franchise tax act and the West Virginia corporation net income tax act by bringing 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 ninety; preserving the prior law; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

That section three-a, 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 section three, article twenty-four of said chapter 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.

- 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 of this article. Any reference
- 6 in this article to the laws of the United States, or to the
- 7 Internal Revenue Code, or to the federal income tax law
- 8 shall mean the provisions of the laws of the United
- 9 States as related to the determination of income for

10 federal income tax purposes. All amendments made to
11 the laws of the United States prior to the first day of
12 January, one thousand nine hundred ninety-two, shall be
13 given effect in determining the taxes imposed by this
14 article for the tax period beginning the first day of
15 January, one thousand nine hundred ninety-one, and
16 thereafter, but no amendment to laws of the United
17 States made on or after the first day of January, one
18 thousand nine hundred ninety-two, shall be given effect.

19 (b) *Effective date.* — (1) The amendments to this
20 section reenacted in the year one thousand nine hundred
21 ninety-one shall be retroactive and shall apply to taxable
22 years beginning on or after the first day of January, one
23 thousand nine hundred ninety, to the extent allowable
24 under federal income tax law. With respect to taxable
25 years that begin prior to the first day of January, one
26 thousand nine hundred ninety, prior law shall be fully
27 preserved.

28 (2) The amendments to this section reenacted in the
29 year one thousand nine hundred ninety-two shall be
30 retroactive and shall apply to taxable years beginning
31 on or after the first day of January, one thousand nine
32 hundred ninety-one, to the extent allowable under
33 federal income tax law. With respect to taxable years
34 that begin prior to the first day of January, one
35 thousand nine hundred ninety-one, prior law shall be
36 fully preserved.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

1 (a) Any term used in this article shall have the same
2 meaning as when used in a comparable context in the
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-two, shall

13 be 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 ninety-one, 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-two, shall be given any
19 effect.

20 (b) The term "Internal Revenue Code of 1986" means
21 the Internal Revenue Code of the United States enacted
22 by the "Federal Tax Reform Act of 1986" and includes
23 the provisions of law formerly known as the Internal
24 Revenue Code of 1954, as amended, and in effect when
25 the "Federal Tax Reform Act of 1986" was enacted, that
26 were not amended or repealed by the "Federal Tax
27 Reform Act of 1986". Except when inappropriate, any
28 references in any law, executive order, or other
29 document:

30 (1) To the Internal Revenue Code of 1954 shall include
31 reference to the Internal Revenue Code of 1986; and

32 (2) To the Internal Revenue Code of 1986 shall include
33 a reference to the provisions of law formerly known as
34 the Internal Revenue Code of 1954.

35 (c) *Effective date.* — (1) The amendments to this
36 section enacted in the year one thousand nine hundred
37 ninety-one shall be retroactive and shall apply to taxable
38 years beginning on or after the first day of January, one
39 thousand nine hundred ninety, to the extent allowable
40 under federal income tax law. With respect to taxable
41 years that begin prior to the first day of January, one
42 thousand nine hundred ninety, prior law shall be fully
43 preserved.

44 (2) The amendments to this section enacted in the year
45 one thousand nine hundred ninety-one shall be retroac-
46 tive and shall apply to taxable years beginning on or
47 after the first day of January, one thousand nine
48 hundred ninety-one, to the extent allowable under
49 federal income tax law. With respect to taxable years
50 that begin prior to the first day of January, one
51 thousand nine hundred ninety-one, prior law shall be
52 fully preserved.

CHAPTER 210

(H. B. 4677—By Delegates Mezzatesta and L. White)

[Passed March 7, 1992; in effect July 1, 1992. Approved by the Governor.]

AN ACT to amend and reenact section eight, article one, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the sheriff to include notices of taxes and fees owed to the county or a municipality with notices of real or personal property taxes.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ACCRUAL AND COLLECTION OF TAXES.

§11A-1-8. Notice of time and place for payment; mailing of tax tickets.

1 The sheriff may give notice by posting at not less than
2 six public places in each magisterial district, for at least
3 ten days before the time appointed, that between July
4 fifteenth and August thirty-first he will attend at one
5 or more of the most public and convenient places in each
6 district, such places to be specified in the notice, for the
7 purpose of receiving taxes due by the people residing or
8 paying taxes in such district. The notice shall also state
9 that those who pay the first installment of their taxes
10 on or before September first will be entitled to a
11 discount of two and one-half percent. Like notice may
12 be given that between January fifteenth and February
13 twenty-eighth he will again appear in each district for
14 the collection of taxes, and that those who pay their
15 second installment on or before March first will be
16 entitled to the same discount. Failure of the sheriff to
17 post such lists shall not impair the right to collect such
18 taxes, the right to collect any interest or penalty
19 imposed as a result of the failure to pay such taxes, or
20 the methods of enforcing the payment of such taxes.

21 interest or penalty.

22 The county commission of any county may order that
23 the above notice shall also be given by advertisement.
24 Such an order, once entered, shall continue in effect
25 until rescinded by the county commission. Upon entry
26 of such order, the sheriff shall, besides posting as
27 required above, publish the proper notice as a Class II
28 legal advertisement in compliance with the provisions of
29 article three, chapter fifty-nine of this code, and the
30 publication area for such publication shall be the county.
31 Such notice shall be so published within fourteen
32 consecutive days next preceding the fifteenth day of July
33 or the fifteenth day of January as the case may be. For
34 every failure so to advertise, the sheriff shall forfeit one
35 hundred dollars.

36 Notwithstanding the foregoing provisions, the sheriff
37 shall send to every person owing real or personal
38 property taxes a copy of such taxpayers annual tax
39 ticket or tickets showing what tax is due and how such
40 tax may be paid. Such copy shall be sent to the last
41 known address of such taxpayer by first class United
42 States mail.

43 Failure of the sheriff to send or failure of the taxpayer
44 to receive such copy shall not impair the right to collect
45 such taxes, the right to collect any interest or penalty
46 imposed as a result of the failure to pay such taxes, or
47 the method of enforcing the payment of such taxes,
48 interest or penalty.

49 At such time as the sheriff prepares the delinquent
50 list for real property, he shall compare such list with
51 a copy of the landbooks most recently delivered by the
52 assessor to the board of review and equalization
53 pursuant to section nineteen, article three of this
54 chapter. The assessor shall make a copy of said
55 landbooks available to the sheriff. If property on the
56 delinquent list should appear as a transfer on said
57 landbooks with the delinquent owner as the transferor,
58 the sheriff shall send to the transferee at his last known
59 address by first class United States mail a copy of the
60 annual tax ticket or tickets showing what taxes are due

61 upon the real property of such transferee and how they
62 may be paid as prescribed in this section.

63 Failure of the sheriff to send or failure of the taxpayer
64 to receive such copy shall not impair the right to collect
65 such taxes, the right to collect any interest or penalty
66 imposed as a result of the failure to pay such taxes, or
67 the method of enforcing the payment of such taxes,
68 interest or penalty.

69 In addition to the notice of real or property taxes
70 owed, provided in this section, the county commission of
71 any county may order that the sheriff include in the
72 mailing notice of any taxes or other fees owed to the
73 county or a municipality in the county.

CHAPTER 211

(H. B. 4507—By Delegates Browning and Prezioso)

[Passed March 7, 1992: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seven and eight, article seven-b, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to participation in teachers' defined contribution retirement system; limiting participation in existing teachers retirement system; permitting withdrawal of benefits from existing system and deposit in defined contribution system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-7. Participation in teachers' defined contribution retirement system; limiting participation in existing teachers retirement system.

§18-7B-8. Voluntary participation in system.

§18-7B-7. Participation in teachers' defined contribution retirement system; limiting participation in existing teachers retirement system.

1 Beginning the first day of July, one thousand nine
2 hundred ninety-one, the teachers' defined contribution
3 retirement system shall be the single retirement
4 program for all new employees whose employment
5 commences on or after that date. No additional new
6 employees except as may be provided herein may be
7 admitted to the existing retirement system. Members of
8 the existing retirement system whose employment
9 continues beyond the first day of July, one thousand nine
10 hundred ninety-one, are not affected by this article and
11 shall continue to contribute and participate in the
12 existing system without change in provisions or benefits.

13 Notwithstanding the provisions of section twenty-
14 three, article seven-a of this chapter, any employee
15 whose employment terminates after the thirtieth day of
16 June, one thousand nine hundred ninety-one, who is
17 later reemployed by an employer shall be eligible for
18 membership only in the teachers' defined contribution
19 system: *Provided*, That if such reemployment with an
20 existing employer occurs not more than six months after
21 the employee's previous employment, he or she shall be
22 entitled to readmission to the existing retirement system
23 in which he or she was originally a member: *Provided*,
24 *however*, That if such employee has ten or more years
25 of credited service in the existing retirement system, he
26 or she shall be entitled to readmission into the existing
27 retirement system in which he or she was originally a
28 member if said person's employment was suspended or
29 terminated due to reduction-in-force, so long as he or she
30 has not withdrawn his or her contributions from the
31 existing retirement system and if such employee shall
32 apply for readmission before the first day of July, one
33 thousand nine hundred ninety-three: *Provided further*,
34 That if such employee has withdrawn his or her
35 contribution from the existing retirement system, then
36 readmission shall not be permitted and the employee
37 will be entitled only to the defined contribution system.

38 An employee whose employment with an employer or

39 an existing employer is suspended as a result of an
40 approved leave of absence, approved maternity or
41 paternity break in service, or any other approved break
42 in service authorized by the board, is eligible for
43 readmission to the existing retirement system in which
44 he or she was a member.

45 In all cases where a question exists as to readmission
46 to membership in the existing retirement system, the
47 board shall decide the question.

§18-7B-8. Voluntary participation in system.

1 Any employee who is a member of the existing
2 retirement system may, upon written election, voluntar-
3 ily elect membership in the defined contribution system,
4 on a prospective basis, on or after the first day of July,
5 one thousand nine hundred ninety-one. All benefits
6 earned by any employee making such voluntary election
7 under the existing retirement system prior to such a
8 voluntary election shall be frozen and made available to
9 that employee upon retirement as provided by the
10 existing retirement system. A member of the existing
11 retirement system who has less than five years of
12 contributing service in the existing retirement system
13 may elect to withdraw his or her contribution plus
14 interest thereon as if such member is terminating
15 employment and upon withdrawal shall deposit such
16 funds in the defined contribution system: *Provided*, That
17 such member's years of contributing service in the
18 existing system shall be applied toward the years of
19 employment service required under section eleven of
20 this article: *Provided, however*, That this election shall
21 be allowed on a retroactive basis to the first day of July,
22 one thousand nine hundred ninety-one. For the purposes
23 of this section, "frozen" means that the member's salary,
24 years of service and any other factor to determine
25 benefits shall be calculated as of the date that the
26 member elected membership in the defined contribution
27 system and after that date no increase in salary, years
28 of service or any other factor may be used to increase
29 the retirement benefit above that which it would be if
30 a person retired upon the date that the election is made.
31 After having made such election, the employee may not

- 32 change such election or again become a member of the
33 existing retirement system.

CHAPTER 212

(S. B. 153—By Senator Humphreys)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article six, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to uniform commercial code—bulk transfers.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article relating to uniform commercial code—Bulk transfers.

- 1 Article six, chapter forty-six of the code of West
2 Virginia, one thousand nine hundred thirty-one, as
3 amended, is hereby repealed.

CHAPTER 213

(H. B. 4585—By Delegates Houvouras and Burk)

[Passed March 6, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-seven, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to a preference for resident vendors of commodities to the state.

Be it enacted by the Legislature of West Virginia:

That section thirty-seven, 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:

§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. Effective beginning the first day of July,
16 one thousand nine hundred ninety-two, in any instance
17 that a purchase of commodities or printing by the
18 director or by a state department is required under the
19 provisions of this article to be made upon competitive
20 bids, the successful bid shall be determined as provided
21 in this section. The secretary of the department of tax
22 and revenue shall promulgate such rules and regula-
23 tions necessary to (i) determine that vendors have met
24 the residence requirements described in this section; (ii)
25 establish the procedure for vendors to certify such
26 residency requirements at the time of submitting their
27 bids; (iii) establish a procedure to audit bids which make
28 a claim for preference permitted by this section and to
29 reject noncomplying bids; and (iv) otherwise accomplish
30 the objectives of this section. In prescribing such rules
31 and regulations, the secretary shall use a strict construc-
32 tion of the residence requirements set forth in this
33 section. For purposes of this section, a successful bid
34 shall be determined and accepted as follows:

35 (1) From an individual resident vendor who has
36 resided in West Virginia continuously for the four years
37 immediately preceding the date on which the bid is
38 submitted or from a partnership, association or corpo-

39 ration resident vendor which has maintained its
40 headquarters or principal place of business within West
41 Virginia continuously for four years immediately
42 preceding the date on which the bid is submitted, if such
43 resident vendor's bid does not exceed the lowest
44 qualified bid from a nonresident vendor by more than
45 two and one-half percent of the latter bid, and if such
46 resident vendor has made written claim for such
47 preference at the time the bid was submitted: *Provided*,
48 That for purposes of this subparagraph (1), any partner-
49 ship, association or corporation resident vendor of this
50 state, which does not meet the requirements of this
51 subparagraph solely because of the continuous four-year
52 residence requirement, shall be deemed to meet such
53 requirement if at least eighty percent of the ownership
54 interest of such resident vendor is held by another
55 individual, partnership, association or corporation
56 resident vendor who otherwise meets the requirements
57 of this subparagraph, including the continuous four-year
58 residency requirement: *Provided, however*, That the
59 secretary of the department of tax and revenue shall
60 promulgate rules and regulations relating to attribution
61 of ownership among several such resident vendors for
62 purposes of determining the eighty percent ownership
63 requirement; or

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

77 (3) From a vendor who meets the requirements of
78 both subparagraphs (1) and (2) set forth above, if such
79 bid does not exceed the lowest qualified bid from a

80 nonresident vendor by more than five percent of the
81 latter bid, and if such resident vendor has certified the
82 residency requirements above and made written claim
83 for such preference at the time the bid was submitted.

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

93 (c) Political subdivisions of the state including county
94 boards of education may grant the same preferences to
95 any vendor of this state who has made a written claim
96 for such preference at the time a bid is submitted, but
97 for the purposes of this subsection, in determining the
98 lowest bid, any political subdivision shall exclude from
99 the bid the amount of business occupation taxes which
100 must be paid by a resident vendor to any municipality
101 within the county comprising or located within such
102 subdivision as a result of being awarded the contract
103 which is the object of the bid; in the case of a bid
104 received by a municipality, the municipality shall
105 exclude only such business and occupation taxes as will
106 be paid to such municipality: *Provided*, That prior to
107 soliciting any such competitive bids, any such political
108 subdivision may, by majority vote of all its members in
109 a public meeting where all such votes shall be recorded,
110 elect not to exclude from the bid the amount of business
111 and occupation taxes as provided herein.

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

116 (e) If any provision or clause of this section or
117 application thereof to any person or circumstance is held
118 invalid, such invalidity shall not affect other provisions
119 or applications of this section which can be given effect

120 without the invalid provision or application, and to this
121 end the provisions of this section are declared to be
122 severable.

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

CHAPTER 214

(Com. Sub. for S. B. 280—By Senators Brackenrich and Holliday)

[Passed March 7, 1992; in effect May 2, 1992. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three-a, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto three new sections, designated sections twenty-three-b, twenty-three-c and twenty-three-d, relating to creating a whitewater commission within the division of natural resources; powers and duties; providing minimum use allocations for whitewater outfitters; providing civil and criminal penalties for violations; determinations based on prior enactments to remain in effect until amended; creating special revenue accounts; dedicating certain fees for whitewater purposes; bonds; revocation of licenses; and license carrying requirements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

- §20-2-23a. Whitewater commission; powers and duties of commission and division of natural resources; allocations; civil and criminal penalties for violations.
- §20-2-23b. Whitewater study and improvement fund.
- §20-2-23c. Voluntary contributions to whitewater advertising and promotion fund.

§20-2-23d. Bond; revocation of license; licensing carrying requirement; criminal penalties.

§20-2-23a. Whitewater commission; powers and duties of commission and division of natural resources; allocations; civil and criminal penalties for violations.

1 (a) There is hereby created a whitewater commission
2 within the division of natural resources. The commission
3 shall consist of the director of the division of natural
4 resources or his or her designee; the director of the
5 division of parks and tourism or his or her designee;
6 three representatives of private river users who have no
7 affiliation with any commercial river enterprise to be
8 appointed by the governor: *Provided*, That no more than
9 one representative of the private river users may be
10 from each whitewater zone; and four persons represent-
11 ing four different licensed commercial whitewater
12 outfitters currently operating within the state to be
13 appointed by the governor. The superintendent of the
14 New River Gorge national park or his or her designee
15 shall be a nonvoting member of the commission. All
16 appointed members of the commission shall be citizens
17 and residents of West Virginia. Of the four representa-
18 tives of commercial outfitters, two persons shall
19 represent the small commercial whitewater outfitters in
20 West Virginia who have a single license. The director
21 of the division of natural resources shall serve as
22 chairperson of the commission. Of the seven members
23 of the commission first appointed by the governor, two
24 shall be appointed for a term of one year, two for a term
25 of two years and three for a term of three years.
26 Thereafter, the terms of all appointed members of the
27 commission are for three years. Members shall serve
28 until their successors have been appointed and any
29 vacancy in the office of a member shall be filled by
30 appointment for the unexpired term. Members repres-
31 enting commercial outfitters who have served at least
32 two years on the commission are not eligible for
33 reappointment to a successive term.

34 (b) The commission has the following powers and
35 duties:

36 (1) To investigate and study commercial whitewater
37 rafting, outfitting and activities related thereto which
38 take place along the rivers or waters of the state;

39 (2) To designate any such rivers or waters or any
40 portions thereof as "whitewater zones" for which
41 commercial whitewater rafting, outfitting and activities
42 are to be investigated and studied, and to determine the
43 order and the periods of time within which the inves-
44 tigation and studies are to be conducted. The commis-
45 sion shall first investigate and study those whitewater
46 zones which it finds to present serious problems
47 requiring immediate regulation, including, without
48 limitation, safety hazards and problems of overcrowding
49 or environmental misuse;

50 (3) To restrict, deny or postpone the issuance of
51 licenses to additional commercial whitewater outfitters
52 seeking to operate in areas and portions of rivers and
53 waters in this state designated whitewater zones by
54 action of the director of the division of natural resources
55 as authorized under prior enactment of this section and
56 so designated by the filing of a written notice entered
57 upon the records of the division containing the designa-
58 tion and reasonable description of the whitewater zone;

59 (4) To commission a three-year study to determine the
60 physical carrying capacity for the New, Gauley, Cheat,
61 Shenandoah and Tygart rivers and how each relates to
62 the overall economic impact of the state and the safety
63 of the general public: *Provided*, That if, during the
64 three-year study period, the commission deems that
65 overcrowding is not a problem on any whitewater zone,
66 then it may issue a license;

67 (5) Based on the findings of the three-year study of
68 carrying capacity, to formulate rational criteria for an
69 allocation methodology including, but not limited to, a
70 minimum allocation for each river studied;

71 (6) To implement the allocation methodology, which
72 shall be implemented by the commission at the conclu-
73 sion of the three-year study period and not later than
74 the first day of July, one thousand nine hundred ninety-
75 five, by rules promulgated pursuant to chapter twenty-

76 nine-a of this code;

77 (7) To determine administrative policies relating to
78 regulation of the whitewater industry and to administer
79 such policies, except that the commission shall delegate
80 to the director of the division of natural resources or his
81 or her designee the authority to administer the day-to-
82 day responsibilities of the commission pursuant to this
83 section and may vest in the director of the division of
84 natural resources or his or her designee the authority
85 to make determinations with respect to which it is not
86 practicable to convene or to poll the commission, within
87 guidelines established by the commission;

88 (8) To review all contracts or agreements with
89 governmental agencies related to whitewater studies or
90 regulation, and any negotiations related thereto;

91 (9) To verify reports by outfitters of numbers of river
92 users and guides and to establish a system for reporting,
93 prior to the departure of any craft, the number of river
94 users and guides on each whitewater expedition;

95 (10) To regulate the issuance, transfer, and renewal
96 of licenses. However, licenses issued to commercial
97 whitewater outfitters or use allocations or other privi-
98 leges conferred by a license may be transferred, sold,
99 offered as security to financial institutions or otherwise
100 encumbered, upon notice in writing to the commission
101 and the director of the division of natural resources,
102 subject to the following limitations: (i) The commission
103 may refuse a transfer upon a finding that there is
104 reasonable cause to believe that the safety of members
105 of the public may be adversely affected by the transfer;
106 and (ii) the commission shall require that taxes,
107 workers' compensation and other obligations due the
108 state be paid prior to any transfer;

109 (11) To collect, for the study period established in
110 subdivision (4) of this subsection, an annual license fee
111 of five hundred dollars for each river on which a
112 commercial whitewater outfitter operates. The annual
113 per river license fee is limited to the Cheat, Gauley,
114 New, Shenandoah and Tygart rivers. The annual license
115 fee for a commercial whitewater outfitter operating on

116 a river not so designated is five hundred dollars
117 regardless of the number of rivers operated on. A
118 commercial whitewater outfitter who is operating on a
119 river designated in this subdivision and who has paid
120 the annual per river license fee may not be required to
121 pay an additional annual license fee to operate on a
122 nondesignated river. The commercial whitewater
123 outfitter license shall be issued by the commission and
124 is for a period of ten years: *Provided*, That an outfitter
125 pays the required annual license fee. If an outfitter fails
126 to pay the license fee, then the license shall be suspended
127 until the license fee is paid. Licenses are subject to the
128 bonding provisions set forth in section twenty-three-d of
129 this article and the revocation provisions set forth in the
130 rules promulgated by the director of the division of
131 natural resources. License fees shall be used by the
132 division of natural resources for the purpose of enforcing
133 and administering the provisions of this section;

134 (12) To establish a special study and improvement fee
135 to be paid by outfitters and to establish procedures for
136 the collection and enforcement of the special study and
137 improvement fee;

138 (13) To establish a procedure for hearings on viola-
139 tions of this section and rules promulgated thereunder
140 and to establish civil penalties for violations of this
141 section and rules promulgated thereunder; and

142 (14) To approve rules promulgated by the director of
143 the division of natural resources pursuant to chapter
144 twenty-nine-a of this code, with respect to commercial
145 whitewater outfitters operating upon the waters of the
146 state, whether or not such waters have been designated
147 whitewater zones, which relate to: (i) Minimum safety
148 requirements for equipment; (ii) standards for the size
149 of rafts and number of persons which may be trans-
150 ported in any one raft; (iii) qualifications of commercial
151 whitewater guides; and, with respect to waters desig-
152 nated whitewater zones, (iv) standards for the number
153 of rafts and number of persons transported in rafts.

154 (c) The commission shall meet upon the call of the
155 chairperson or a majority of the members of the

156 commission. However, the commission shall meet at
157 least quarterly and shall conduct business when a
158 majority of the members are present. At the meetings,
159 the commission shall review all data, materials and
160 relevant findings compiled relating to any investigation
161 and study then under consideration and, as soon as
162 practicable thereafter, the commission shall recommend
163 rules to govern and apply to the designated whitewater
164 zone(s). At least annually, the commission shall meet for
165 the purpose of considering and adjusting allocations. At
166 least annually, the commission shall review fees and
167 proposed expenditures. The commission may not limit
168 the number of commercial whitewater outfitters oper-
169 ating on rivers not designated as whitewater zones, nor
170 may the commission limit the number of rafts or total
171 number of persons transported in rafts by commercial
172 whitewater outfitters on rivers not designated as
173 whitewater zones. Commission members shall be
174 reimbursed all reasonable and necessary expenses
175 incurred in the exercise of their duties.

176 (d) For the portions of the Gauley and New rivers
177 designated as whitewater zones, the minimum use
178 allocation conferred by a license, for the study period
179 established pursuant to subdivision (4), subsection (b) of
180 this section, is one hundred twenty for the Gauley and
181 one hundred fifty for the New, or an increased min-
182 imum allocation established by the board. The commis-
183 sion may permit additional allocations or licenses for
184 whitewater outfitters which are nonprofit entities
185 operating upon the waters of the state upon the effective
186 date of this section. For other waters designated
187 whitewater zones, the commission may increase but not
188 decrease allocations from those in effect on the effective
189 date of this section.

190 (e) Violation of this section or any rule promulgated
191 pursuant to this section constitutes a misdemeanor
192 punishable by the penalties set forth in section twenty-
193 three-d of this article.

194 (f) The director of the division of natural resources
195 shall promulgate, pursuant to the provisions of chapter
196 twenty-nine-a of this code, all rules necessary to

197 effectuate the purposes of this section and these rules
198 must be approved by the commission. The division of
199 natural resources shall enforce the provisions of this
200 section and rules promulgated pursuant to this section,
201 and shall provide necessary staff and support services
202 to the commission to effectuate the purposes of this
203 section.

204 (g) All orders, determinations, rules, permits, grants,
205 contracts, certificates, licenses, waivers, bonds, author-
206 izations and privileges which have been issued, made,
207 granted or allowed to become effective pursuant to any
208 prior enactments of this section by the governor, the
209 secretary of the department of commerce, labor and
210 environmental resources, the director of the division of
211 natural resources, the whitewater advisory board or by
212 a court of competent jurisdiction, and which are in effect
213 on the effective date of this section, shall continue in
214 effect according to their terms until modified, termi-
215 nated, superseded, set aside or revoked by the governor,
216 secretary, director or commission pursuant to this
217 section, by a court of competent jurisdiction, or by
218 operation of law.

§20-2-23b. Whitewater study and improvement fund.

1 There is hereby created in the state treasury a special
2 revenue account, which shall be an appropriated,
3 interest-bearing account, designated as the whitewater
4 study and improvement fund. All proceeds from this
5 fund shall be used exclusively for the purposes of the
6 administration, regulation, promotion and study of the
7 whitewater industry.

8 The special study and assessment fee collected by the
9 commission pursuant to the provisions of section twenty-
10 three-a of this article shall be deposited, within fifteen
11 days after receipt, to the whitewater study and improve-
12 ment fund and dedicated to the purposes of this section.

**§20-2-23c. Voluntary contributions to whitewater adver-
tising and promotion fund.**

1 There is hereby created in the state treasury a special
2 revenue account, which shall be an appropriated,

3 interest-bearing account designated as the "whitewater
4 advertising and promotion fund". Each whitewater
5 license holder may contribute any sum desired to this
6 fund, which fund shall be used for the purpose of
7 advertising and promoting whitewater in West Virgi-
8 nia.

**§20-2-23d. Bond; revocation of license; licensing carrying
requirement; criminal penalties.**

1 (a) Immediately upon the issuance of a whitewater
2 outfitter's license and before any whitewater outfitter's
3 services are offered or rendered thereunder, the licensee
4 shall execute a surety bond in the penal sum of one
5 thousand dollars payable to the state of West Virginia
6 and conditioned upon the faithful and reliable discharge
7 of his or her services under and pursuant to the license.
8 The bond shall be approved as to form by the attorney
9 general and as to surety by the director, and when so
10 executed and approved, shall be filed in the office of the
11 director of the division of natural resources. The bond
12 shall be for the life of the license.

13 (b) The whitewater commission is hereby authorized
14 to revoke and cancel any whitewater outfitter's license
15 for failure of the licensee to give the bond required by
16 this section, for a licensee's violation or disregard of any
17 of the provisions of this chapter, upon a licensee's
18 conviction of a crime, or for any other reason or cause
19 justifying refusal of the whitewater outfitter's license to
20 the licensee upon a new application therefor. The
21 commission shall afford a licensee an opportunity to be
22 heard upon the revocation and cancellation of the
23 license.

24 (c) No person shall act or serve as a whitewater
25 outfitter, as defined in this article, without procuring
26 and having on his or her person at the time a valid
27 whitewater outfitter's license from the commission
28 authorizing them to do so.

29 (d) Any person who violates any of the provisions of
30 this section or of section twenty-three-a of this article,
31 or any rule promulgated by the director of the division

32 of natural resources or who misrepresents any material
33 fact in an application, record, report or other document
34 filed or required to be maintained under the provisions
35 of this article, or any rules promulgated hereunder by
36 the director of the division of natural resources, is guilty
37 of a misdemeanor, and upon conviction thereof, shall be
38 punished by a fine of not less than five hundred dollars
39 per violation not to exceed a total penalty of seventy-five
40 hundred dollars or by imprisonment in the county jail
41 not exceeding six months, or both fined and imprisoned.

CHAPTER 215

(H. B. 4760—By Delegates Lane and Douglas)

[Passed March 6, 1992; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eight, nine, ten and eleven, article three, chapter forty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to testamentary additions to trusts; and the uniform testamentary additions to trusts act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PROVISIONS AS TO CONSTRUCTION.

- §41-3-8. Testamentary additions to trusts.
- §41-3-9. Effect on existing wills.
- §41-3-10. Uniformity of application and construction.
- §41-3-11. Short title.

§41-3-8. Testamentary additions to trusts.

- 1 (a) A will may validly devise or bequeath property to
- 2 the trustee of a trust established or to be established:
- 3 (i) During the testator's lifetime by the testator, by the
- 4 testator and some other person, or by some other person
- 5 including a funded or unfunded life insurance trust,
- 6 although the trustor has reserved any or all rights of
- 7 ownership of the insurance contracts; or (ii) at the

8 testator's death by the testator's devise to the trustee, if
9 the trust is identified in the testator's will and its terms
10 are set forth in a written instrument, other than a will,
11 executed before or concurrently with the execution of
12 the testator's will or in another individual's will if that
13 other individual has predeceased the testator, regardless
14 of the existence, size, or character of the corpus of the
15 trust. The devise or bequest is not invalid because the
16 trust is amendable or revocable, or because the trust
17 was amended after the execution of the will or the
18 testator's death.

19 (b) Unless the testator's will provides otherwise,
20 property devised or bequeathed to a trust described in
21 subsection (a) is not held under a testamentary trust of
22 the testator but it becomes a part of the trust to which
23 it is devised or bequeathed, and must be administered
24 and disposed of in accordance with the provisions of the
25 governing instrument setting forth the terms of the
26 trust, including any amendments thereto made before or
27 after the testator's death.

28 (c) Unless the testator's will provides otherwise, a
29 revocation or termination of the trust before the
30 testator's death causes the devise or bequest to lapse.

§41-3-9. Effect on existing wills.

1 Sections eight, nine, ten and eleven of this article
2 apply to a will of a testator who dies after the effective
3 date of this legislation.

§41-3-10. Uniformity of application and construction.

1 Sections eight through eleven of this article shall be
2 applied and construed to effectuate its general purpose
3 to make uniform the law with respect to the subject of
4 this legislation among states enacting it.

§41-3-11. Short title.

1 Sections eight through eleven of this article may be
2 cited as the "Uniform Testamentary Additions to
3 Trusts-Uniform Act (1991)".

CHAPTER 216

(H. B. 4720—By Delegates Phillips and P. White)

[Passed March 7, 1992; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the county commission of Mason County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of the county an election to consider an excess levy for the fire departments in Mason County, from the third Tuesday of April until the last Thursday in May, one thousand nine hundred ninety-two.

Be it enacted by the Legislature of West Virginia:

**MASON COUNTY COMMISSION MEETING AS LEVYING BODY
EXTENDED TO CONSIDER AN EXCESS LEVY FOR FIRE
DEPARTMENTS.**

**§1. Extending time for Mason County Commission to
meet as levying body for election to consider an
excess levy for fire departments.**

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 Mason County is
5 hereby authorized to extend the time for its meeting as
6 a levying body, setting the levy rate and certifying its
7 actions to the state tax commissioner from the third
8 Tuesday in April, until the last Thursday in May, one
9 thousand nine hundred ninety-two, for the purpose of
10 submitting to the voters of Mason County the consider-
11 ation of an excess levy for fire departments.

RESOLUTIONS

(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION 21

(By Mr. Speaker, Mr. Chambers, and
Delegates Rowe and P. White)

[Adopted March 6, 1992]

Requesting the Joint Committee on Government and Finance to make a study of current child welfare statutes to determine how those statutes are affecting children and families.

WHEREAS, Children and the families who nurture them must be West Virginia's number one priority; and

WHEREAS, Parents have the primary responsibility for meeting the needs and addressing the development of their children; and

WHEREAS, The responsibility for the children of West Virginia and their families must be a shared partnership of all citizens, community organizations, business, labor and the religious community; and

WHEREAS, The state has a primary responsibility to protect children and to help strengthen and unify the family in situations where crisis in families leave them unable to meet their responsibility; and

WHEREAS, Significant progress has been made in the ability to assess family functioning and to provide home and community based services; and

WHEREAS, Major efforts are under way to protect persons from all types of family violence; and

WHEREAS, Recent administrative and legislative actions and judicial decisions have recognized the need for a comprehensive, coordinated, integrated, effective system to serve families; and

WHEREAS, The most recent major revision to the child welfare code was accomplished in 1977; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to review, examine and study the current statutes affecting families and children including, but not limited to, chapter forty-nine and chapter twenty-seven of the West Virginia code and to prepare a comprehensive revision of these statutes to assist children and families to be healthy, productive and responsible; and, be it

Further Resolved, That the Joint Committee on Government and Finance is also requested to appoint a subcommittee composed of five members of the Senate, five members of the House of Delegates and ten citizen members, five appointed by the President the of Senate and five appointed by the Speaker of the House of Delegates. Child and family advocates, the Department of Health and Human Resources, the Juvenile Justice Committee, the Supreme Court and the Judicial Association should be represented by the President and Speaker appointments; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 1993, on its findings, conclusions and recommendations, together with drafts 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.

HOUSE CONCURRENT RESOLUTION 28

(By Mr. Speaker, Mr. Chambers, and Delegates Anderson and Houvouras, on behalf of the entire membership.)

[Adopted February 11, 1991]

In Memory of Walter "Lefty" Rollins, former member of the House of Delegates, the State Senate and Majority Leader of the House of Delegates.

WHEREAS, The host of friends of Walter Rollins throughout West Virginia were deeply saddened by his death on February 9, 1992, despite the fact that many of them were aware that

he had been bearing the tortures of a serious malady for several years.

Walter Rollins was born on Monday, January 2, 1922, in Catlettsburg, Kentucky, the son of Walter F. Rollins, Sr., and Nellie (Hatfield) Rollins.

He was educated in the public schools of Wayne County, was graduated from Ceredo-Kenova High School, and attended West Virginia University and in 1942 was a member of the national championship basketball squad at WVU.

A veteran of World War II, he served from 1942 until 1946 in the U. S. Army Air Force, where he attained the rank of Staff Sergeant and received the World War II Victory Medal, American Theatre Service Ribbon and Good Conduct Medal. His military specialty was that of investigator.

During and after his military service, he pursued a career in the field of close-up magic, until he returned to West Virginia to work in the family business. He continued to use his talent as a magician while touring the Nation from the east coast to the west coast entertaining thousands of adults and children, always encouraging them to seek excellence in their pursuits.

In the spring of 1943, he was married to Martha Lacock. They had two sons, Walter Franklin Rollins III, who succumbed to cancer at the age of five years, and John Allen, who, with his mother, survives.

He was active in civic affairs, and was a member of Beta Theta Pi, the American Legion, VFW and the Masons.

A Democrat politically, his views and recommendations were sought and delivered forthrightly, whether those seeking them had his agreement or his opposition.

Satisfying a personal goal to serve the public of his State of West Virginia, he was elected to the House of Delegates in 1970, 1972 and 1974. He moved to the west side of the Capitol to serve in the State Senate in 1976. In 1984, he returned to the House of Delegates where he served until his death. Appointed Majority Whip of the 61st and 62nd Legislatures, he was subsequently appointed Majority Leader of the 70th Legislature.

An avid student of the legislative process and the rules of procedure, he accepted what may be called the rule of the democratic process. As a legislator, he was competent and informed, possessing a keen knowledge and understanding of the legislative process and legislative programs and problems. He was thoroughly informed as to the purpose and effect of proposed legislation. During his legislative service, he strove for the enactment of laws which would contribute to West Virginia's being a happier and more prosperous state.

The earthly, physical life of Walter "Lefty" Rollins has come to its close, but his memory will not soon be forgotten; therefore, be it

Resolved by the Legislature of West Virginia, in Joint Assembly convoked:

That this Legislature deplors the demise of Walter "Lefty" Rollins, notes his distinguished public service, lauds his high character and principles, recognizes the terrific grief being suffered by his family as a result of the loss of a beloved husband and father, and hereby conveys to the family the genuine sympathy of the individual members of the 70th Legislature.

COMMITTEE SUBSTITUTE FOR
HOUSE CONCURRENT RESOLUTION 41

(By Delegate Compton, et al.)

[Adopted March 7, 1992]

Relating to the expression of the sense of the Legislature as to the proposal to construct a 765kv high voltage transmission line from Wyoming Station, Wyoming County, West Virginia, to Cloverdale Station, Botetourt County, Virginia, and to authorization for formation of a legislative committee.

WHEREAS, Appalachian Power Company and its parent company, American Electric Power, have proposed the construction of a 765kv high voltage transmission line from Wyoming Station, Wyoming County, West Virginia, to Cloverdale Station, Botetourt County, Virginia, of which line approximately 79 miles would be located in West Virginia

within Wyoming, Mercer, Summers and Monroe Counties; and

WHEREAS, Through letters and petitions directed to all branches of the state government, many governmental and private organizations, as well as thousands of individual West Virginians have asserted that the proposed transmission line is not needed or in the public interest, that the transmission line will have a negative impact on the economy, the communities and the environment of the State and the counties affected, that the proposed corridors cause unacceptable environmental degradation to the southeastern West Virginia region, and that the proposal should therefore be rejected by the Public Service Commission; and

WHEREAS, The 765kv transmission line proposal has created serious concerns among the people of the State as to the health and other environmental risks to the lands, waters and people of southeastern West Virginia presented by the proposed power line and its operation and maintenance, including exposure to herbicides through aerial application for right-of-way maintenance, exposure to electromagnetic fields, ground-water contamination, and other potential threats to the quality of life in that region of the State; and

WHEREAS, The right-of-way for the proposed transmission line is to be located in an area of the State notable for its scenic beauty and recognized as having a substantial and growing recreation and tourism industry, will occupy more than 1,900 acres of West Virginia agricultural lands, current or future residential areas, and recreation areas, including crossing the New River in an unspoiled, free-flowing area within the Bluestone Wildlife Management Area as well as crossing the proposed New River and Shawnee Parkways and the Appalachian National Scenic Trail, and could further adversely affect many thousands of additional acres through visual degradation to surrounding areas which are now noted for the unspoiled rural landscape characteristic of much of that said area impacted by the proposed transmission line route; and

WHEREAS, The Public Service Commission has indicated that it shall not require Appalachian Power Company to include a map or detailed description of the proposed corridors for the transmission line in its public notice of its application and has indicated that the transmission line may be located by the

Commission in a corridor not included in the said public notice of the application, thereby imposing the transmission line by eminent domain on property without specific notice to owners and the general public of such proposed corridor through the application and public notice thereof; and

WHEREAS, The proposed transmission line will enhance American Electric Power's capacity to transmit to the east coast electric power generated in the midwest by use of western coal or nuclear energy, and such enhancement may threaten that said market for West Virginia coal and electricity while decreasing the need to transport coal by rail to eastern power generating facilities, thereby threatening future employment in and tax revenues from the said industries by replacing "coal by rail" with "coal by wire"; and

WHEREAS, It has become a major point of contention as to whether or not the proposed 765kv transmission line will result in significant numbers of permanent jobs or other economic advantage to the State; and

WHEREAS, The statutes of this State authorize and require the Public Service Commission to determine whether the proposed transmission line or its location is against the public interest, including full and independent consideration of the environmental impact of the proposed transmission line; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby finds that the aforesaid concerns are all legitimate concerns relating to the public interest within the meaning of the applicable statutes; and, be it

Further Resolved, That a legislative committee is hereby authorized and directed to study economic, environmental and other issues of public interest relating to high voltage and other electric transmission lines within this State, including a review of the Public Service Commission as to its regulation of utilities planning or proposing such facilities and as to the policies, practices and scope of inquiry of the Commission in consideration of applications for such facilities, with such committee directed to report to the Legislature its findings

and recommendations on or before January 1, 1993; and, be it

Further Resolved, That in view of the scale of the 765kv transmission line proposal, its potential impacts on the lands, waters, people and economy of West Virginia, and the concerns expressed by the citizens of this State as to the said proposal, the Legislature requests that filing of an application to the Public Service Commission for the proposed transmission line be delayed until a date at least ninety days after submission of the report of that said committee; and, be it

Further Resolved, That in anticipation that such an application may nevertheless be filed before that date, the Legislature finds that the statutes of this State require that the Public Service Commission not approve any application for the aforesaid transmission line unless and until it is shown that the line and its proposed location meets all statutory requirements, including being found to be in the public interest within a broad scope of inquiry and with the process of evaluation of any such application including independent verification and analysis of all supporting data and argument submitted to show the need within this State for the line and independent professional evaluation utilizing the best technology available of both the methodology utilized and the data processed and submitted to fulfill the statutory requirement for an environmental impact statement relating to the transmission line; and, be it

Further Resolved, That the Legislature finds that both statutory and constitutional due process rights of citizens and property owners of this State require specific notice upon application of all potential corridors for such a transmission line and further finds the Public Service Commission's authority to modify a high voltage transmission line application does not extend to location of any such transmission line upon any property not subject to such specific notice; and, be it

Further Resolved, That the Legislature is opposed to approval of the proposed transmission line unless the proceeding used to consider the said application affords the property owners and citizens of this State the full and specific notice and the generous opportunity to be heard intended by statute

and required by the constitution, and unless it is shown that the project as proposed is consistent with the public interest, including documented economic advantage to the people of the State from construction of the proposed line sufficient to offset the negative economic impacts, and unless it is shown that the proposal avoids environmental impacts within this State which are neither necessary nor justified by the benefits of the proposed line.

HOUSE CONCURRENT RESOLUTION 49

(By Mr. Speaker, Mr. Chambers, and Delegates Anderson, Ashcraft, Murensky, Mezzatesta, J. Martin, Rowe, P. White, Burk and Faircloth)

[Adopted March 5, 1992]

Relating to creating a joint committee of members of the Senate and House of Delegates to investigate the labor-management dispute existing at Ravenswood Aluminum Corporation.

WHEREAS, There presently exists a labor-management dispute at the Ravenswood Aluminum Corporation production facility located at Ravenswood, Jackson County, West Virginia; and

WHEREAS, The management of such facility has granted the status of permanent employment to persons performing bargaining unit work in the place of employees not presently working on account of either a stoppage of work by employees or a cessation or withholding of work by the employer; and

WHEREAS, A proceeding to determine the legality of such employment practice is presently pending before the National Labor Relations Board who has exclusive jurisdiction to consider whether such practice is lawful; and

WHEREAS, The legality of the actions notwithstanding, the Legislature finds and declares that offering or granting the status of permanent employment to persons performing bargaining unit work for an employer during a stoppage of work by employees or a cessation or withholding of work by

the employer is disruptive to the labor and business community in the State of West Virginia and is costly to the treasury of the State and, therefore, has an ultimate adverse impact upon all of the citizens of this State; and

WHEREAS, The conduct of employers offering or granting permanent employment status to persons performing bargaining unit work in the place of employees not presently working fosters an atmosphere of hopelessness and despair which is conducive to violence and other harmful acts, thus endangering the health and safety of the citizens of this State and necessitating the need for additional protection by law-enforcement officers and officials; and

WHEREAS, Such conduct by employers further results in the economic deprivation of the basic fundamentals of human survival for the replaced workers which must, therefore, be provided or subsidized by the State, through its social agencies and programs to assure the healthy existence of these citizens; and

WHEREAS, As a result of such economic and safety needs, the funds of all citizens of this State are diminished and unavailable for other legitimate public purposes; and

WHEREAS, The Legislature hereby further finds and declares that, in light of the adverse impact and economic loss to the State of West Virginia, the state has a duty, which does not impinge upon the jurisdiction of the National Labor Relations Board, to investigate the nature and cause and to consider the feasibility of recovering all funds so expended by the State in the event such conduct on behalf of employers is declared unlawful; therefore, be it

Resolved by the Legislature of West Virginia:

That there is hereby created a Joint Committee of the Senate and House of Delegates consisting of five members of the Senate, to be designated by the President of the Senate, and five members of the House of Delegates, to be designated by the Speaker of the House of Delegates, who shall receive fifty dollars per diem for each day performing duties hereunder and actual expenses not to exceed seventy dollars per day plus mileage, and who shall be empowered (1) to investigate and determine the nature and cause of the said labor-management

dispute; (2) to ascertain the actual and potential costs to the State by reason of the payment of unemployment compensation, aid to families with dependent children, overtime payments to the division of public safety or other law-enforcement officials and any other public costs attributable to such labor-management dispute; (3) to hold hearings thereon; (4) to make findings of fact and conclusions based upon such investigations and hearings which shall include a determination of the feasibility of recovering the funds so expended, recommendations concerning the recoupment of these funds and a determination of the impact of such labor-management dispute upon the community of Ravenswood, its neighboring communities and, ultimately, upon the State of West Virginia; (5) to determine and make recommendations as to legislation prohibiting replacement workers and whether such legislation would conflict with federal law; and (6) to report, on or before the second Wednesday of January, 1993, to the Governor and Legislature on its findings and any recommendations which the committee may deem proper; and, be it

Further Resolved, That in carrying out its duties pursuant to this resolution, the committee is authorized:

(1) To examine witnesses, to send for persons and papers, documents and other physical evidence, to order the attendance of any witness, or the production of any paper, document and other physical evidence, and to exercise all other powers described under the provisions of section five, article one, chapter four of the Code of West Virginia;

(2) To issue summonses, subpoenas and subpoenas duces tecum and to enforce obedience to its summonses and subpoenas in accordance with the provisions of section five, article one, chapter four of the code of West Virginia or by invoking the aid of the courts of this State;

(3) To administer oaths or affirmations in accordance with the provisions of section six, article one, chapter four of the code of West Virginia; and

(4) To determine whether all or any portion of a meeting or hearing should be held in an executive session, notwithstanding the provisions of any rule of the Senate or of the House of Delegates.

COMMITTEE SUBSTITUTE FOR
SENATE CONCURRENT RESOLUTION 9

(By Senators Claypole, Craigo, M. Manchin, Heck, Humphreys, Burdette, Mr. President, Tomblin, Wehrle, Wagner, Blatnik, Holliday, Wiedebusch, Jones, Lucht, Hawse, Withers, Chafin, Pritt, Bailey, Macnaughtan, Wooton, J. Manchin, Anderson, Whitlow, Chernenko, Dalton, Dittmar, Sharpe, Spears, Felton, Minard, Brackenrich and Helmick)

[Adopted February 7, 1992]

Urging the Congress of the United States to enact the provisions of S. 1989 and H.R. 4013 to ensure continued health care benefits for retired coal miners.

WHEREAS, A federal commission established by U.S. Secretary of Labor Elizabeth Dole recommended that Congress adopt legislation to ensure the continued provision of health benefits to retired coal miners who receive such benefits from the United Mine Workers of America health and retirement funds; and

WHEREAS, This legislation, introduced by Senator Jay Rockefeller of West Virginia (S. 1989) and Congressman John Murtha of Pennsylvania (H.R. 4013), would require all companies to pay a fair share of the cost of providing health benefits to their former employees and place an equitable fee on the entire coal industry to pay for the cost of "orphan" retirees who have no company to pay for benefits; and

WHEREAS, Thirty-three thousand seven hundred seventy-three citizens of this state receive their health care from the UMWA funds; and

WHEREAS, The UMWA funds currently are experiencing serious financial difficulties; and

WHEREAS, The Rockefeller/Murtha legislation has been endorsed by both labor and management in the coal industry; and

WHEREAS, Among those in the United States Congress who are supporting the legislation are the following: Senators

Byrd, Dixon, Riegle, Rockefeller, Simon, Spector and Wofford; and Congressmen Browder, Bruce, Callahan, Clay, Costello, Durbin, Erdreich, Evans, Wise, Gaydos, McCloskey, Mollohan, Mrazek, Murphy, Murtha, Owens, Rahall, Staggers and Volkmer; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby expresses its support for and strongly urges the Congress of the United States to enact S. 1989 and H.R. 4013 into law; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to each member of the state congressional delegation, the governor and the legislative bodies of every coal-producing state with a recommendation that those legislatures adopt similar resolutions of support for S. 1989 and H.R. 4013.

SENATE CONCURRENT RESOLUTION 40

(By Senators Wehrle, Craig and Bailey)

[Adopted March 6, 1992]

Directing the Public Service Commission to study the feasibility of implementing a telecommunication device for the deaf (TDD) program for eligible residents of this state.

WHEREAS, Many citizens of this state are unable to communicate with others by telephone due to hearing and speech deficits; and

WHEREAS, Modern technology has developed a telecommunication device for the deaf (TDD) which is an electrical device that uses a keyboard, acoustic coupler, display screen or braille display to transmit and receive messages by telephone; and

WHEREAS, Telephone companies have the expertise and equipment necessary to provide eligible West Virginians with these devices to enable them to live more independent and productive lives; therefore, be it

Resolved by the Legislature of West Virginia:

That the Public Service Commission is hereby directed to undertake a study of the feasibility of implementing a telecommunication device for the deaf (TDD) program for eligible residents of this state and report to the regular session of the Legislature, 1993, on its findings, recommendations and conclusions; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Public Service Commission.

HOUSE RESOLUTION 10

(By Mr. Speaker, Mr. Chambers,
and Delegate Gallagher, et al.)

[Adopted February 7, 1992]

Recognizing West Virginia University on the occasion of its one hundred twenty-fifth birthday.

WHEREAS, West Virginia was founded as the thirty-fifth state of the Union in 1863 amid the tumultuous period of the war between the states; and

WHEREAS, In the preceding year the Morrill Land Grant College Act of 1862 became law; and

WHEREAS, That Act was extended to the new State of West Virginia to assist in establishing an Agricultural College; and

WHEREAS, The Federal government deeded to West Virginia 150,000 acres of Iowa and Minnesota farmland—30,000 acres for each of the two United States Senators and the three Representatives from West Virginia; and

WHEREAS, Governor Arthur I. Boreman proceeded to liquidate the real estate at fifty-three cents per acre, yielding the West Virginia college fund \$79,000; and

WHEREAS, The West Virginia Legislatures of 1866 and 1867 struggled to make provisions for carrying out the intent of the Morrill Land Grant College Act, deciding where to locate the college, what words and in what order should make up the name, how the new institution would be governed, and what would be the source of funds to put the project in operation; and

WHEREAS, Many members of both the West Virginia Senate and House of Delegates played important roles in the proceedings resulting in heated arguments for locating the new college in any number of the State's counties, taking two years to reach a decision of location and name; and

WHEREAS, The Monongalia County delegation to the Legislature conveyed an offer of two school properties worth \$51,000 and other assets of cash, bonds, bank stock and bills receivable of \$10,000 of the Monongalia Academy and the Woodburn Female Seminary, both schools in Morgantown; and

WHEREAS, The West Virginia Legislature requested but failed to secure from the federal government another 300,000 acres of surplus land to sell for cash to support starting the college; and

WHEREAS, On February 7, 1867, in Wheeling, the West Virginia Legislature established the Agricultural College of West Virginia at the chosen location of Morgantown, vesting control in a Board of Visitors, composed of one member from each of the eleven senatorial districts; and

WHEREAS, One year later, at the request of the first president of the new college, the Reverend Alexander Martin, the West Virginia Legislature changed the name of the Agricultural College of West Virginia to West Virginia University to more nearly reflect the broader mandate given it in its charter; and

WHEREAS, When the Legislature established West Virginia University as the Agricultural College of West Virginia, it ensured that the new State of West Virginia had a public institution of higher learning that "would live through the ages"; and

WHEREAS, During these past one hundred twenty-five years, West Virginia University, which began with two donated buildings and only a handful of students and faculty, has grown into a first class institution with a national reputation, diverse curriculum, over twenty-two thousand students, one thousand acre campus, and two regional campuses—Potomac State College at Keyser and West Virginia University at Parkersburg, plus the over five hundred acre campus of Jackson's Mill, the State 4-H Camp and Conference Center at Weston; and

WHEREAS, West Virginia University's accomplishments are many and varied in teaching, research and public service, more recently establishing the Mary Babb Randolph Cancer Center, the National Research Center for Coal and Energy, the Center for Concurrent Engineering, and the NASA software facility, to name just a few; and

WHEREAS, West Virginia University has excelled in academics, producing twenty-three Rhodes Scholars, one British Marshall scholarship recipient, and twelve Truman Scholars; and

WHEREAS, West Virginia University student John Unger of Martinsburg was among 20 students picked from across the nation to appear in Time Magazine's College Achievement Award 1990 issue, and the January 31, 1992 issue of USA Today, which recognized Unger as one of the nation's top 20 undergraduates from a field of 1,253 who are academic and community leaders; and

WHEREAS, West Virginia University ensures that the human potential of West Virginia sons and daughters is fulfilled, establishing the WVU Scholars program to attract the brightest youths, annually granting 1.8 million dollars in scholarships to 1,800 deserving students; therefore, be it

Resolved by the Legislature of West Virginia:

That on this the seventh day of February, 1992, the West Virginia House of Delegates recognizes West Virginia University on the occasion of its one hundred twenty-fifth birthday, the quasiquicentennial year of service to the State of West Virginia, to these United States and to the world.

COMMITTEE SUBSTITUTE FOR
HOUSE RESOLUTION 18

(By Delegates Houvouras, Anderson, Stemple and Burk)

[Adopted March 4, 1992]

Amending House Rule No. 94, relating to number of sponsors on a bill.

Resolved by the House of Delegates:

That House Rule No. 94 be amended to read as follows:

Joint Sponsors of Bill

94. A bill may be introduced bearing the names of not more than seven members as joint sponsors of the bill.

SENATE RESOLUTION 3

(By Senator Chafin)

[Adopted January 16, 1992]

Amending Senate Rule No. 54, relating to guests and privilege of the floor.

Resolved by the Senate:

That Senate Rule No. 54 be amended to read as follows:

Guests and Privilege of the Floor

54. No person except members of the House of Delegates, former members of the West Virginia Legislature who are not lobbyists, duly accredited representatives of the press, radio and television and legislative officers and employees engaged in the proper discharge of their duties shall be admitted within the Senate Chamber while the Senate is in session. The rear or east balcony of the Senate Chamber shall be reserved for guests of the members of the Senate, and admission thereto shall be by pass signed by the President and the member seeking admission of the guest.

SENATE RESOLUTION 8

(By Senators Chafin, Wagner, Bailey, Sharpe, Hawse, Anderson, Humphreys, Boley, J. Manchin, Blatnik, Wiedebusch, Brackenrich, Burdette, Mr. President, Chernenko, Claypole, Craigo, Dalton, Dittmar, Felton, Heck, Helmick, Holliday, Jones, Lucht, M. Manchin, Minard, Pritt, Spears, Tomblin, Wehrle, Whitlow, Withers and Wooton)

[Adopted January 16, 1992]

Requesting the public employees insurance board to reconsider its action imposing a significant premium increase on retired public employees.

WHEREAS, The PEIA has by prior action imposed a signif-

icant premium increase on the retired public employees of the State of West Virginia; and

WHEREAS, Retired public employees are generally on a fixed income and, as a group, least financially able to bear such increased expense; and

WHEREAS, Retired public employees are older West Virginians; therefore, be it

Resolved by the Senate:

That the public employees insurance board do reconsider and rescind its prior action to significantly increase the premiums paid by retired public employees in the State of West Virginia.

ENROLLED
HOUSE JOINT RESOLUTION 109

(By Mr. Speaker, Mr. Chambers, and Delegate J. Martin)

[Adopted February 29, 1992.]

Proposing an amendment to the Constitution of the State of West Virginia, authorizing appropriations and/or the issuance and sale of additional state bonds in an amount not exceeding four million dollars for the purpose of paying bonuses to certain veterans or to relatives of certain veterans; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each House agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred ninety-two, or at any special election held prior thereto, for the purpose of presenting to the voters of the State the question of ratification or rejection of one or more constitutional amendments, which proposed amendment is as follows:

VETERANS BONUS AMENDMENT**(Persian Gulf, Lebanon, Grenada and Panama)**

The Legislature shall provide by law, either for the appropriation from the general revenues of the State, or for the issuance and sale of state bonds, which shall be in addition to all other state bonds heretofore issued, or a combination of both as the Legislature may determine, for the purpose of paying a cash bonus to veterans of the armed forces of the United States who (1) served on active duty, or who were members of reserve components called to active duty by the President of the United States under Title 10, United States Code section 782(D), 783, or 783(B), during the Persian Gulf conflict, Operation Desert Shield/Desert Storm, between the first day of August, one thousand nine hundred ninety and the date determined by the president or congress of the United States as the end of the involvement of the United States armed forces in the Persian Gulf conflict, both dates inclusive; or (2) veterans, active service members, or members of reserve components, of the armed forces of the United States, who served on active duty in one of the military operations for which he or she received a campaign badge or expeditionary medal during the periods hereinafter described. For purposes of this amendment, periods of active duty in a campaign or expedition are designated as: The conflict in Panama, between the twentieth day of December, one thousand nine hundred eighty-nine, through the thirty-first day of January, one thousand nine hundred ninety, both dates inclusive; the conflict in Grenada, between the twenty-third day of October, one thousand nine hundred eighty-three, and the twenty-first day of November, one thousand nine hundred eighty-three, both dates inclusive; and the conflict in Lebanon, between the twenty-fifth day of August, one thousand nine hundred eighty-two, and the twenty-sixth day of February, one thousand nine hundred eighty-four, both dates inclusive. For purposes of this amendment not more than one bonus shall be paid to or on behalf of the service of any one veteran. In order to be eligible to receive a bonus, such persons must have been bona fide residents of the State of West Virginia at the time of their entry into such active service and for a period of at least six months immediately prior thereto, who have not been separated from such service under conditions other than

honorable. Such bonus shall also be paid to any veteran, otherwise qualified under the two sentences next preceding, who was discharged within ninety days after entering the armed forces because of a service-connected disability. The amount of such bonus shall be five hundred dollars per eligible person who was in active service, inside the combat zone designated by the President or Congress of the United States at anytime during the dates specified hereinabove. In the case of the Persian Gulf conflict, the amount of bonus shall be three hundred dollars per eligible person who was in active service outside of the combat zone designated by the President or Congress of the United States during the dates specified hereinabove. The bonus to which any deceased veteran would have been entitled, if living, shall be paid to the following surviving relatives of such veterans, if such relatives are residents of the State when such application is made and if such relatives are living at the time payment is made: Any unremarried widow or widower, or, if none, all children, stepchildren and adopted children under the age of eighteen, or, if none, any parent, stepparent, adoptive parent or person standing in loco parentis. The categories of persons listed shall be treated as separate categories listed in order of entitlement and where there be more than one member of a class, the bonus shall be paid to each member according to his proportional share. Where a deceased veteran's death was connected with such service and resulted from such service during the time period specified, however, the surviving relatives shall be paid, in accordance with the same order of entitlement, the sum of one thousand dollars in lieu of any bonus to which the deceased might have been entitled if living.

The principal amount of any bonds issued for the purpose of paying the bonuses provided for in this amendment shall not exceed the principal amount of four million dollars, but may be funded or refunded either on the maturity dates of said bonds or on any date on which said bonds are callable prior to maturity, and if any of said bonds have not matured or are not then callable prior to maturity, the Legislature may nevertheless provide at any time for the issuance of refunding bonds to fund or refund such bonds on the dates when said bonds mature or on any date on which said bonds are callable prior to maturity and for the investment or reinvestment of the proceeds of such refunding bonds in direct obligations of

the United States of America until the date or dates upon which such bonds mature or are callable prior to maturity. The principal amount of any refunding bonds issued under the provisions of this paragraph shall not exceed the principal amount of the bonds to be funded or refunded thereby.

The bonds may be issued from time to time for the purposes authorized by this amendment as separate issues or as combined issues.

Whenever the Legislature shall provide for the issuance of any bonds under the authority of this amendment, it shall at the same time provide for the levy, collection and dedication of an additional tax, or enhancement to such other tax as the Legislature may determine, in such amount as may be required to pay annually the interest on such bonds and the principal thereof within and not exceeding fifteen years, and all such taxes or charges so levied shall be irrevocably dedicated for the payment of the principal of and interest on such bonds until such principal of and interest on such bonds are finally paid and discharged and any of the covenants, agreements or provisions in the acts of the Legislature levying such taxes or charges shall be enforceable in any court of competent jurisdiction by any of the holders of said bonds. Any revenue generated in excess of that which is required to pay the bonuses provided herein and to pay any administrative cost associated with such payment shall be used to pay the principal and interest on any bonds issued as soon as is economically practicable.

The Legislature shall have the power to enact legislation necessary and proper to implement the provisions of this amendment.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered "Amendment No. 2" and designated as the "Veterans Bonus Amendment," and the purpose of the proposed amendment is summarized as follows: "To permit the appropriation of general revenues or the sale of state bonds for the payment of bonuses and death benefits to veterans of the conflicts in the Persian Gulf, Lebanon, Panama and Grenada or to their relatives."

ENROLLED
HOUSE JOINT RESOLUTION 113

(By Delegates Mann and Brum)

[Adopted March 7, 1992.]

Proposing an amendment to the Constitution of the State of West Virginia, repealing sections three, four, five and six, article thirteen thereof, relating to the transfer of title to real estate obtained by the State of West Virginia by way of forfeiture, nonpayment of taxes or designation of the same as waste, unappropriated or escheated lands; the establishment of said State's title to said property until sold as part of judicial proceedings; the disposition of surplus receipts for the sale of such land; the forfeiture of real estate to said State for failure by the owner thereof to have the same entered on county land books; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each House agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred ninety-two, which proposed amendment is that sections three, four, five and six, article thirteen, be repealed and that such amendment do take effect on the first day of July, one thousand nine hundred ninety-three.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered "Amendment Number 3" and is designated as the "Landowners Protection Amendment." The purpose of the proposed amendment is summarized as follows: "To amend the state constitution by repealing outdated provisions related to tax-delinquent property. Repeal of these sections will allow for the implementation of laws to protect landowner interests and to simplify the redemption or purchase of tax-delinquent property."

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 1992

CHAPTER 1

(H. B. 1—By Mr. Speaker, Mr. Chambers, and Delegate Burk,
By Request of the Executive)

[Passed March 14, 1992: in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing, expiring and transferring specified unexpended amounts from account no. 8009-99, abandoned and unclaimed property; account no. 8121-06, social security contributions; account no. 7840-20I, Barboursville veterans' home; account no. 8079-06I, West Virginia radiologic technologist board of examiners; account no. 8090-07I restoration tax rec. Mingo county; account no. 8090-08I, county tax fund; account no. 8102-15I, West Virginia board of dental examiners; account no. 8105-30I, board of pharmacy; account no. 8106-35I, board of practical nurses; account no. 8110-55I, board of examiners for registered nurses; account no. 8130-05I, board of chiropractic examiners; account no. 8148-55I, gilding the dome program; account no. 8216-19I, health facility licensure certification; account no. 8222-05I, West Virginia prison industries; account no. 8240-20I, Stonewall Jackson memorial; account no. 8240-21I, Stonewall Jackson memorial fund; account no. 8241-24I, adult literacy education program; account no. 8245-07I, department of education - West Virginia FFA/FHA camp; account no. 8245-12I, department of education -

cedar lakes improvement; account no. 8250-08I, department of employment security; account no. 8260-11I, department of veterans' affairs; account no. 8260-13I, department of veterans' affairs; account no. 8265-06I, public employees insurance board expense fund; account no. 8275-09I, state board of risk and insurance management; account no. 8275-10I, state board of risk and insurance management; account no. 8350-12I, public safety motor vehicle fund; account no. 8351-29I, department of public safety criminal investigations; account no. 8352-12I, department of public safety barracks replacement and construction; account no. 8355-10I, drunk driving prevention fund; account no. 8392-06I, department of banking revolving fund; account no. 8395-08I, department of banking; account no. 8412-23I, court of claims - crime victims reparation; account no. 8418-10I, attorney general - antitrust enforcement fund; account no. 8418-13I, pre-need burial contract regulation fund; account no. 8500-30I, West Virginia department of health; account no 8554-06I, Blennerhassett historical park commission; account no. 8595-07I, WPBY-TV grant expense; account no. 8597-23I, West Virginia public radio - mountain stage; account no. 9500-08I, parking lot operations; account no. 9500-12I, cafeteria; account no. 9500-15I, state building commission; account no. 9500-31I, department of finance and administration - debt service pass through, and transferring as provided herein, such specified amounts for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-two, to account no. 4050, department of health and human resources, division of human services, all amending chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the amount of seven hundred fifty-six thousand five hundred fourteen dollars and fifty-eight cents from account no. 8009-99, abandoned and unclaimed property; the amount of three hundred twenty-one thousand five hundred seventy-one dollars and seventy-three cents from account no. 8121-06,

social security contributions; the amount of two thousand nine hundred sixty-seven dollars and fifty cents from account no. 7840-20I, Barboursville veterans' home; the amount of two hundred thirty-five dollars and eighty-seven cents from account no. 8079-06I, West Virginia radiologic technologists board of examiners; the amount of two thousand six hundred seven dollars and sixty-three cents from account no. 8090-07I, restoration tax rec. Mingo county; the amount of two thousand six hundred sixty-two dollars and sixty-six cents from account no. 8090-08I, county tax fund; the amount of two thousand one hundred twenty-eight dollars and thirty cents from account no. 8102-15I, West Virginia board of dental examiners; the amount of twenty-one thousand ninety-four dollars and sixty-two cents from account no. 8105-30I, board of pharmacy; the amount of one thousand nine hundred eight dollars and eighty-eight cents from account no. 8106-35I, board of practical nurses; the amount of twelve thousand thirty-five dollars and twenty cents from account no. 8110-55I, board of examiners-registered nurses; the amount of two hundred eleven dollars from account no. 8130-05I, board of chiropractic examiners; the amount of six dollars and forty-seven cents from account no. 8148-55I, gilding the dome program; the amount of one thousand one hundred thirty-three dollars and sixty cents from account no. 8216-19I, health facilities licensure certification; the amount of two thousand six hundred forty-six dollars and seventy-nine cents from account no. 8222-05I, West Virginia prison industries; the amount of one thousand sixty-one dollars and two cents from account no. 8240-20I, Stonewall Jackson memorial; the amount of eight hundred thirty-three dollars and forty cents from account no. 8240-21I, Stonewall Jackson memorial fund; the amount of ninety-four dollars and sixty-two cents from account no. 8241-24I, adult literacy education program; the amount of seven dollars and seventy cents from account no. 8245-07I, department of education - West Virginia FFA/FHA camp; the amount of three thousand two hundred ninety-nine dollars and six cents from account no. 8245-12I, department of education - cedar lakes improvement; the amount of eighteen thousand six dollars and twenty-six cents from account no. 8250-08I, department of employment security; the amount of forty-two thousand ninety-three dollars and sixty-seven cents from account no. 8260-11I, department of veterans' affairs; the amount of sixty-one thousand six

hundred eighty-two dollars and twenty-one cents from account no. 8260-13I, department of veterans' affairs; the amount of forty-nine thousand three hundred eighty-two dollars and eight cents from account no. 8265-06I, public employees insurance board expense fund; the amount of seven hundred eleven dollars and forty-nine cents from account no. 8275-09I, state board of risk and insurance management; the amount of one hundred fourteen dollars and seventy-seven cents from account no. 8275-10I, state board of risk and insurance management; the amount of eleven thousand nine hundred thirteen dollars and sixty-six cents from account no. 8350-12I, public safety motor vehicle fund; the amount of nine thousand seven hundred twenty-nine dollars and one cent from account no. 8351-29I, department of public safety criminal investigations; the amount of twenty-seven thousand two hundred sixty-three dollars and four cents from account no. 8352-12I, department of public safety barracks replacement and construction; the amount of forty-two thousand eight hundred nine dollars and eighty-eight cents from account no. 8355-10I, drunk driving prevention fund; the amount of four thousand eight hundred twenty dollars and eleven cents from account no. 8392-06I, department of banking revolving fund; the amount of fourteen thousand eight hundred ninety-nine dollars and sixty-seven cents from account no. 8395-08I, department of banking; the amount of fourteen dollars and eighty-six cents from account no. 8412-23I, court of claims - crime victims reparation; the amount of three thousand ninety-two dollars and eighty-nine cents from account no. 8418-10I, attorney general - antitrust enforcement fund; the amount of five hundred fifty dollars and thirty-six cents from account no. 8418-13I, pre-need burial contract regulation fund; the amount of five hundred seventy-four thousand fifty-eight dollars and sixty-one cents from account no. 8500-30I, West Virginia department of health; the amount of four hundred sixty-seven dollars and one cent from account no. 8554-06I, Blennerhassett historical park commission; the amount of two dollars and fourteen cents from account no. 8595-07I, WPBY-TV grant expense; the amount of twelve dollars and sixteen cents from account no. 8597-23I, West Virginia public radio - mountain stage; the amount of one thousand six hundred twenty dollars and ninety-one cents from account no. 9500-08I, parking lot operations; the amount of one thousand four hundred eighty-

nine dollars and forty-eight cents from account no. 9500-12I, cafeteria; the amount of sixty-six dollars and two cents from account no. 9500-15I, state building commission; the amount of two thousand one hundred seventy-nine dollars and eight cents from account no. 9500-31I, department of finance and administration - debt service pass through, be transferred and added to account no. 4050, as set forth in chapter thirteen, acts of the Legislature, one thousand nine hundred ninety-one, to be added to said account no. 4050 as follows:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	DEPARTMENT OF HEALTH		
4	AND HUMAN RESOURCES		
5	<i>64—Division of Human Services</i>		
6	(WV Code Chapters 9, 48 and 49)		
7	Acct. No. 4050		
8		Federal	General
9		Funds	Revenue
10		Fiscal	Fund
11		Year	Fiscal
12		1991-92	Year
13		1991-92	1991-92
14	6 Medical Services	\$ —	\$ 2,000,000
15	The purpose of this supplementary appropriations bill		
16	is to transfer two million dollars from the accounts		
17	specified herein to supplement account no. 4050 as set		
18	forth herein.		

CHAPTER 2

(H. B. 2—By Mr. Speaker, Mr. Chambers, and Delegate Burk,
By Request of the Executive)

[Passed March 14, 1992; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring specified unexpended amounts from account no. 8121-06, social security contributions, and transferring.

as provided herein, such specified amounts for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-two, to the governor's office, civil contingent fund, account no. 1240, and to the department of public safety, division of corrections, account no. 3770, all amending chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, known as the budget bill.

WHEREAS, The Legislature finds that the amounts collected in account no. 8121-06, social security contributions, exceed the amounts necessary to effectuate the purposes of the fund and should be redesignated; therefore:

Be it enacted by the Legislature of West Virginia:

That the amount of one million two hundred thousand dollars be transferred from account no. 8121-06, social security contributions, to be added to account no. 1240, governor's office, civil contingent fund, and to be added to account no. 3770, department of public safety, division of corrections, as set forth in chapter thirteen, acts of the Legislature, one thousand nine hundred ninety-one, as follows:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	<i>7—Governor's Office—</i>		
4	<i>Civil Contingent Fund</i>		
5	(WV Code Chapter 5)		
6	Acct. No. 1240		
7			General
8		Federal	Revenue
9		Funds	Fund
10		Fiscal	Fiscal
11		Year	Year
12		1991-92	1991-92
13	1	Civil Contingent	
14		Fund—Total \$	\$ 600,000

15	DEPARTMENT OF PUBLIC SAFETY			
16	72— <i>Division of Corrections—</i>			
17	<i>Correctional Units</i>			
18	(WV Code Chapters 25, 28, 29 and 62)			
19	Acct. No. 3770			
20	2	Personal Services	\$ —	\$ 200,000
21	7	Unclassified	\$ —	\$ 400,000

22 The purpose of this supplementary appropriation bill
 23 is to transfer specified amounts from account no. 8121-
 24 06, social security contributions, to supplement and
 25 amend account no. 1240, governor's office, civil conting-
 26 ent fund, by adding six hundred thousand dollars to
 27 items as specified herein, and to supplement and amend
 28 account no. 3770, department of public safety, division
 29 of corrections, by adding six hundred thousand dollars
 30 to items as specified herein, such amounts to be
 31 transferred and available for expenditure immediately
 32 upon the effective date of this bill.

CHAPTER 3

(H. B. 3—By Mr. Speaker, Mr. Chambers, and Delegate Burk,
 By Request of the Executive)

[Passed March 14, 1992: in effect from passage. Approved by the Governor.]

AN ACT to amend article nine-d, chapter eighteen 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 the issuance of revenue bonds by the school building authority; providing for the transfer of unencumbered interest from trustees to the general revenue fund of the state; and setting forth the purpose of such transfer.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.**§18-9D-17. Transfer of unencumbered interest from trustees to general revenue fund; purpose of transfer.**

1 On or after the first day of July, one thousand nine
2 hundred ninety-two, the authority shall transfer to the
3 general revenue fund of the state, from accounts held
4 by any trust company or companies or any bank or
5 banks empowered to act as trustee for the holders of
6 bonds issued pursuant to the provisions of this article,
7 the amount of one million dollars held by such institu-
8 tions as interest accumulated from investments made by
9 such institutions while acting as custodians or safe-
10 guards of funds of the authority or the proceeds of bonds
11 issued in accordance with the provisions of this article:
12 *Provided*, That such transfer shall be effected only to the
13 extent that the accumulated interest to be transferred
14 is wholly unencumbered and is not otherwise committed
15 for the payment of bonds or the completion of authorized
16 projects, designated for transfer to any existing special
17 funds, sinking funds, reserve funds or any other moneys
18 or funds, or in any other manner required to be held
19 so as to protect the rights and remedies of a trust
20 company or bank as trustee or the rights and remedies
21 of the bondholders.

22 The purpose of the transfer of funds required by this
23 section is to facilitate the appropriation of a like amount
24 to the school building capital improvements fund, within
25 the state budget for the fiscal year commencing on the
26 first day of July, one thousand nine hundred ninety-two,
27 to be used as debt service for revenue bonds to be issued
28 by the authority pursuant to the provisions of section
29 eight of this article to finance needs projects to be
30 selected by the authority which have not heretofore been
31 funded because of the unavailability of necessary
32 funding, and to pay the costs and reserves of such bond
33 issues. The proceeds of any revenue bonds issued by the
34 authority for additional projects authorized pursuant to
35 this section shall not be deemed available for distribu-
36 tion by the authority within the meaning of section
37 fifteen of this article. The proceeds of such revenue

38 bonds shall be allocated and expended solely on the basis
39 of need and efficient use of resources, such basis being
40 determined by the authority in accordance with the
41 provisions of section fifteen of this article.

CHAPTER 4

(S. B. 1—By Senator Burdette, Mr. President)

[Passed March 14, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and seven, article two, chapter sixty-four 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 eight; to amend and reenact sections two, four and eight, article three of said chapter; to further amend said article by adding thereto two new sections, designated sections fourteen and fifteen; to amend and reenact sections two, three and eight, article five of said chapter; to amend and reenact section four, article six of said chapter; to amend and reenact sections one, two, three, five and six, article seven of said chapter; to further amend said article by adding thereto a new section, designated section eight; to amend and reenact section two, article eight of said chapter; to amend and reenact sections one, five, eight, nine, sixteen, seventeen, twenty, twenty-three and twenty-four, article nine of said chapter; and to further amend said article by adding thereto five new sections, designated sections twenty-nine, thirty, thirty-one, thirty-two and thirty-three, all relating generally to the promulgation of administrative rules and regulations by the various executive or administrative agencies and the procedures relating thereto; the legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate legislative rules as

amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; directing and authorizing certain of the agencies to promulgate certain legislative rules on file in the office of the secretary of state during the first extraordinary session of the Legislature held in the year one thousand nine hundred ninety-two; authorizing the board of risk and insurance management to promulgate legislative rules relating to the discontinuation of the professional malpractice program, as modified; authorizing the secretary of the department of administration to promulgate legislative rules relating to the reporting of state assets by financial institutions, as modified; authorizing the ethics commission to promulgate legislative rules relating to contributions, as modified and amended; authorizing the ethics commission to promulgate legislative rules relating to gifts, as modified and amended; authorizing the ethics commission to promulgate legislative rules relating to interests in public contracts, as modified and amended; authorizing the ethics commission to promulgate legislative rules relating to lobbying, as modified and amended; authorizing the ethics commission to promulgate legislative rules relating to private gain, as modified and amended; authorizing the ethics commission to promulgate legislative rules relating to voting, as modified and amended; authorizing the ethics commission to promulgate legislative rules relating to employment, as modified and amended; authorizing the division of banking to promulgate legislative rules relating to the West Virginia consumer credit and protection act, as modified; authorizing the division of banking to promulgate legislative rules relating to lease financing transactions, as modified; authorizing the division of banking to promulgate legislative rules relating to the operation of state-chartered financial institutions in West Virginia, as modified; authorizing the division of banking to promulgate legislative rules relating to the West Virginia industrial bank and industrial loan company act, as modified; authorizing

the division of banking to promulgate legislative rules relating to the West Virginia consumer credit and protection act and the money and interest article of chapter forty-seven, as modified; authorizing the division of banking to promulgate legislative rules relating to permissible additional charges in connection with a consumer credit sale, as modified; authorizing the division of energy to promulgate legislative rules relating to the standards for certification of blasters for surface coal mines and surface areas of underground coal mines, as modified; authorizing the division of natural resources to promulgate legislative rules relating to special motorboating, as modified; authorizing the division of natural resources to promulgate legislative rules relating to special fishing, as modified and amended; authorizing the division of natural resources to promulgate legislative rules relating to boating, as modified; authorizing and directing the division of natural resources to promulgate legislative rules relating to water pollution control permit fee schedules, as amended; authorizing the division of tourism and parks to promulgate legislative rules relating to the public use of West Virginia state parks, state forests and state hunting and fishing areas under the division of tourism and parks, as modified and amended; authorizing the public energy authority to promulgate legislative rules relating to the establishment of rules and procedure for the exercise of the power of eminent domain for qualified projects, as modified; authorizing the public energy authority to promulgate legislative rules relating to the establishment of a fee schedule and cost allocations to the issuance of bonds by the West Virginia public energy authority, as modified; authorizing the division of health to promulgate legislative rules relating to specialized health procedures, as modified; authorizing the division of health to promulgate legislative rules relating to emergency medical services, as modified; authorizing and directing the division of health to promulgate legislative rules relating to swimming pools and bathing beaches, as amended; authorizing the secretary of the department of health and human resources to promul-

gate legislative rules relating to retail food store sanitation, as modified; authorizing the health care cost review authority to promulgate legislative rules relating to health services offered by health professionals, as modified; authorizing the health care cost review authority to promulgate legislative rules relating to the review for automatic rate changes, as modified; authorizing the health care cost review authority to promulgate legislative rules relating to certificates of need, as modified; authorizing the health care cost review authority to promulgate legislative rules relating to exemptions for shared services, as modified and amended; authorizing the health care cost review authority to promulgate legislative rules relating to the development of life care retirement centers, as modified; authorizing the health care cost review authority to promulgate legislative rules relating to the conversion of acute care beds to skilled nursing care beds, as modified; authorizing the health care cost review authority to promulgate legislative rules relating to financial disclosure, as modified and amended; authorizing the human rights commission to promulgate legislative rules relating to sexual harassment, as modified; authorizing the human rights commission to promulgate legislative rules relating to the exemption of private clubs, as modified; authorizing the human rights commission to promulgate legislative rules relating to religious discrimination, as modified; authorizing the human rights commission to promulgate legislative rules relating to waiver of rights; authorizing the division of public safety to promulgate legislative rules relating to contracted police or security services, as modified; authorizing the division of public safety to promulgate legislative rules relating to the carrying of handguns by retired or medically discharged members, as modified; authorizing the division of public safety to promulgate legislative rules relating to modified vehicle inspections, as amended; authorizing the alcohol beverage control commission to promulgate legislative rules relating to the retail sale of wine in grocery stores, wine specialty shops and private wine restaurants; authorizing the insurance commissioner to promulgate legisla-

tive rules relating to guaranteed loss ratios as applied to individual sickness and accident insurance policies, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to examiners' compensation, qualifications and classification, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to permanent regulations on medicare supplement insurance, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to "tail" malpractice insurance covering certain medical and allied health care providers, as modified; authorizing the board of investments to promulgate legislative rules relating to the establishment of imprest funds, as modified; authorizing the board of investments to promulgate legislative rules relating to the administration of the consolidated pension fund by the West Virginia board of investments, as modified; authorizing the board of investments to promulgate legislative rules relating to the procedures for processing payments from the state treasury, as modified; authorizing the board of investments to promulgate legislative rules relating to the selection of state depositories for disbursement accounts through competitive bidding, as modified; authorizing the board of investments to promulgate legislative rules relating to the administration of the consolidated fund by the West Virginia board of investments, as modified; authorizing the board of investments to promulgate legislative rules relating to the selection of state depositories for receipt accounts, as modified and amended; authorizing the board of investments to promulgate legislative rules relating to the procedures for the deposit of moneys with the board of investments and the treasurer's office by state agencies, as modified; authorizing the racing commission to promulgate legislative rules relating to thoroughbred racing, as modified; authorizing the racing commission to promulgate legislative rules relating to greyhound racing; authorizing the state tax commissioner to promulgate legislative rules relating to the valuation of timberland and managed timberland, as modified; authorizing the state tax commissioner to

promulgate legislative rules relating to bingo, as modified; authorizing the state tax commissioner to promulgate legislative rules relating to the property transfer tax, as modified; authorizing the division of tax to promulgate legislative rules relating to the municipal business and occupation tax, as modified and amended; authorizing the division of tax to promulgate legislative rules relating to the soft drinks tax, as modified and amended; authorizing the division of tax to promulgate legislative rules relating to the corporation net income tax, as modified and amended; authorizing the state tax commissioner to promulgate legislative rules relating to the appraisal of producing and reserve oil and natural gas property for periodic statewide reappraisals for ad valorem property tax purposes, as modified; authorizing the state tax commissioner to promulgate legislative rules relating to the severance tax, as modified; authorizing the division of tax to promulgate legislative rules relating to the business franchise tax, as modified; authorizing the division of tax to promulgate legislative rules relating to exceptions to confidentiality of taxpayer information and disclosure of certain taxpayer information, as modified; authorizing the division of tax to promulgate legislative rules relating to the consumers sales and service tax and use tax, as modified and amended; authorizing the property valuation training and procedures commission to promulgate legislative rules relating to tax map sales, as modified; authorizing the division of motor vehicles to promulgate legislative rules relating to the denial, suspension, revocation or nonrenewal of driving privileges, as modified and amended; authorizing the commissioner of agriculture to promulgate legislative rules relating to commercial feed, as modified and amended; authorizing the commissioner of agriculture to promulgate legislative rules relating to wood destroying insect treatment standards, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to the fee structure for the pesticide control act of 1990, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to animal disease control, as modified; authorizing the commissioner of

agriculture to promulgate legislative rules relating to the West Virginia plant pest act, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to the licensing of pesticide businesses, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to certified pesticide applicators, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to the assessment of civil penalties and the procedures for consent agreements and negotiated settlements, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to the aerial application of herbicides to rights-of-way, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to frozen desserts and imitation frozen desserts, as modified and amended; authorizing the commissioner of agriculture to promulgate legislative rules relating to the West Virginia apiary law of 1991, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to the disposal of dead poultry, as modified and amended; authorizing the commissioner of agriculture to promulgate legislative rules relating to the licensing of livestock dealers, as modified; authorizing the board of barbers and beauticians to promulgate legislative rules relating to the procedures, criteria and curricula for the examination and licensure of barbers, beauticians and manicurists, as modified; authorizing the board of barbers and beauticians to promulgate legislative rules relating to a fee schedule, as modified and amended; authorizing the board of barbers and beauticians to promulgate legislative rules relating to licensing schools of barbering and beauty culture; authorizing the board of barbers and beauticians to promulgate legislative rules relating to the operation of barber shops, beauty shops and schools of barbering and beauty culture; authorizing the board of barbers and beauticians to promulgate legislative rules relating to operational standards for schools of barbering and beauty culture, as modified; authorizing the board of barbers and beauticians to promulgate legislative rules relating to the qualifications, training,

examination and licensing of instructors in barbering and beauty culture, as modified; authorizing the board of examiners in counseling to promulgate legislative rules relating to licensing, as modified; authorizing the governor's committee on crime, delinquency and correction to promulgate legislative rules relating to protocol for law enforcement response to domestic violence, as modified and amended; authorizing the board of medicine to promulgate legislative rules relating to continuing education for physicians and podiatrists, as modified; authorizing the West Virginia board of examiners for licensed practical nurses to promulgate legislative rules relating to the policies and procedures for the development and maintenance of educational programs in practical nursing, as modified; authorizing the West Virginia board of examiners for licensed practical nurses to promulgate legislative rules relating to policies regulating licensure of the licensed practical nurse, as modified; authorizing the West Virginia board of examiners for licensed practical nurses to promulgate legislative rules relating to legal standards of nursing practice for the licensed practical nurse, as modified; authorizing the West Virginia board of examiners for licensed practical nurses to promulgate legislative rules relating to fees for services rendered by the board, as modified; authorizing the West Virginia board of examiners for licensed practical nurses to promulgate legislative rules relating to continuing competence, as modified; authorizing the board of pharmacy to promulgate legislative rules relating to computers, as modified; authorizing the board of pharmacy to promulgate legislative rules relating to the licensure of wholesale drug distributors, as modified; authorizing the board of pharmacy to promulgate legislative rules relating to mail order houses, as modified; authorizing the real estate commission to promulgate legislative rules relating to the requirements in licensing real estate brokers and salesmen and the conduct of brokerage businesses, as modified; authorizing the secretary of state to promulgate legislative rules relating to absentee voting by military voters who are members of reserve units called to active duty; authorizing the board of

accountancy to promulgate legislative rules relating to professional conduct, as modified; authorizing the board of architects to promulgate legislative rules relating to the board, as modified; authorizing the real estate appraiser licensing and certification board to promulgate legislative rules relating to the board, as modified; authorizing the real estate appraiser licensing and certification board to promulgate legislative rules relating to requirements of licensure and certification, as modified; authorizing the real estate appraiser licensing and certification board to promulgate legislative rules relating to the renewal of licensure or certification, as modified; authorizing the board of veterinary medicine to promulgate legislative rules relating to the organization and operation of the board, as modified; authorizing the board of veterinary medicine to promulgate legislative rules relating to a schedule of fees, as modified; authorizing the board of veterinary medicine to promulgate legislative rules relating to standards of practice, as modified and amended; authorizing the board of veterinary medicine to promulgate legislative rules relating to the registration of veterinary technicians, as modified; and authorizing the contractor licensing board to promulgate legislative rules relating to the West Virginia contractor's licensing act, as modified and amended.

Be it enacted by the Legislature of West Virginia:

That sections five and seven, article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section eight; that sections two, four and eight, article three of said chapter be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections fourteen and fifteen; that sections two, three and eight, article five of said chapter be amended and reenacted; that section four, article six of said chapter be amended and reenacted; that sections one, two, three, five and six, article seven of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section eight; that section two, article eight

of said chapter be amended and reenacted; that sections one, five, eight, nine, sixteen, seventeen, twenty, twenty-three and twenty-four, article nine of said chapter be amended and reenacted; and that said article be further amended by adding thereto five new sections, designated sections twenty-nine, thirty, thirty-one, thirty-two and thirty-three, all to read as follows:

Article

2. Authorization for Department of Administration to Promulgate Legislative Rules.
3. Authorization for Department of Commerce, Labor and Environmental Resources 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 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-5. Board of risk and insurance management.

§64-2-7. Secretary of the department of administration.

§64-2-8. Ethics commission.

§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
24 authorized.

25 (d) The legislative rules filed in the state register on
26 the eleventh day of September, one thousand nine
27 hundred ninety-one, modified by the board of risk and
28 insurance management to meet the objections of the
29 legislative rule-making review committee and refiled in
30 the state register on the fourteenth day of January, one
31 thousand nine hundred ninety-two, relating to the board
32 of risk and insurance management (discontinuation of
33 professional malpractice program), are authorized.

§64-2-7. Secretary of the department of administration.

1 (a) The legislative rules filed in the state register on
2 the twenty-sixth day of September, one thousand nine
3 hundred ninety, modified by the secretary of the
4 department of administration to meet the objections of
5 the legislative rule-making review committee and
6 refiled in the state register on the twenty-fourth day of
7 January, one thousand nine hundred ninety-one, relating
8 to the secretary of the department of administration
9 (plan of operation for the information and communica-
10 tion services division), are authorized.

11 (b) The legislative rules filed in the state register on
12 the twenty-sixth day of September, one thousand nine
13 hundred ninety, modified by the secretary of the
14 department of administration to meet the objections of
15 the legislative rule-making review committee and
16 refiled in the state register on the twenty-fourth day of
17 January, one thousand nine hundred ninety-one, relating
18 to the secretary of the department of administration
19 (parking), are authorized.

20 (c) The legislative rules filed in the state register on

21 the twenty-sixth day of September, one thousand nine
22 hundred ninety, modified by the secretary of the
23 department of administration to meet the objections of
24 the legislative rule-making review committee and
25 refiled in the state register on the twenty-fourth day of
26 January, one thousand nine hundred ninety-one, relating
27 to the secretary of the department of administration
28 (leasing space on behalf of state spending units), are
29 authorized.

30 (d) The legislative rules filed in the state register on
31 the nineteenth day of June, one thousand nine hundred
32 ninety-one, modified by the secretary of the department
33 of administration to meet the objections of the legislative
34 rule-making review committee and refiled in the state
35 register on the thirtieth day of August, one thousand
36 nine hundred ninety-one, relating to the secretary of the
37 department of administration (reporting of state assets
38 by financial institutions), are authorized.

§64-2-8. Ethics commission.

1 (a) The legislative rules filed in the state register on
2 the thirty-first day of January, one thousand nine
3 hundred ninety-one, modified by the ethics commission
4 to meet the objections of the legislative rule-making
5 review committee and refiled in the state register on the
6 thirty-first day of October, one thousand nine hundred
7 ninety-one, relating to the ethics commission (contribu-
8 tions), are authorized, with the amendment set forth
9 below:

10 On page one, subsection 3.4, by striking out the words
11 "use their official title or position in the endorsement or
12 support of" and inserting in lieu thereof "endorse".

13 (b) The legislative rules filed in the state register on
14 the thirty-first day of January, one thousand nine
15 hundred ninety-one, modified by the ethics commission
16 to meet the objections of the legislative rule-making
17 review committee and refiled in the state register on the
18 thirty-first day of October, one thousand nine hundred
19 ninety-one, relating to the ethics commission (gifts), are
20 authorized, with the amendments set forth below:

21 On page two, subsection 3.1, by striking out the word
22 “significant”;

23 On page two, section four, subsection 4.1, by striking
24 out “\$20” and inserting in lieu thereof “\$25”;

25 On page three, subsection 4.2, after the words “hotel
26 room” by inserting a period and striking out the
27 remainder of the sentence;

28 On page three, subsection 5.1, by striking out the word
29 “unlawful” and inserting in lieu thereof “improper”;

30 On page three, subsection 5.1, after the words “health
31 club fees” by striking out the period and adding “, unless
32 such expenses are offered to all of the panelists or
33 speakers.”;

34 On page four, subsection 6.2, by striking out the word
35 “unlawful” and inserting in lieu thereof “improper”.

36 And,

37 On page four, section 7, at the end of the section by
38 striking out the period and adding the following: “:
39 *Provided*, That public officials and public employees
40 may accept complimentary tickets to sporting events, if
41 the tickets are incidental to the conduct of their official
42 or ceremonial duties.”

43 (c) The legislative rules filed in the state register on
44 the thirty-first day of January, one thousand nine
45 hundred ninety-one, modified by the ethics commission
46 to meet the objections of the legislative rule-making
47 review committee and refiled in the state register on the
48 thirty-first day of October, one thousand nine hundred
49 ninety-one, relating to the ethics commission (interest in
50 public contracts), are authorized, with the amendment
51 set forth below:

52 On page two, subsection 6.2, by striking out the words
53 “complete in every particular and including the exact”
54 and inserting in lieu thereof “including the”.

55 (d) The legislative rules filed in the state register on
56 the thirty-first day of January, one thousand nine
57 hundred ninety-one, modified by the ethics commission

58 to meet the objections of the legislative rule-making
59 review committee and refiled in the state register on the
60 thirty-first day of October, one thousand nine hundred
61 ninety-one, relating to the ethics commission (lobbying),
62 are authorized, with the amendment set forth below:

63 On page three, subsection 4.3, after the words "copies
64 of forms" by inserting a period and striking out the
65 remainder of the sentence.

66 (e) The legislative rules filed in the state register on
67 the thirty-first day of January, one thousand nine
68 hundred ninety-one, modified by the ethics commission
69 to meet the objections of the legislative rule-making
70 review committee and refiled in the state register on the
71 seventeenth day of December, one thousand nine
72 hundred ninety-one, relating to the ethics commission
73 (private gain), are authorized, with the amendments set
74 forth below:

75 On page one, subsection 2.2, after the words "A public
76 official" by inserting "acting in his or her capacity as
77 a public official";

78 On page one, subsection 2.2, after the words "the
79 public official." by adding a new sentence to read as
80 follows: "The provisions of this subsection shall not apply
81 to a public official acting in his or her private capacity.";

82 On pages one and two, by striking out all of section
83 three;

84 On pages two through four, by renumbering the
85 remaining sections;

86 On page two, subsection 4.1, by striking out the words
87 "persons in high office" and inserting in lieu thereof "a
88 public official or public employee";

89 On page two, subsection 4.1, by striking out the words
90 "close friends" and inserting in lieu thereof "cohabit-
91 ating sexual partners";

92 On page two, subsection 4.2, after the word "sister"
93 by striking out the remainder of the sentence and
94 inserting in lieu thereof "or spouse.";

95 On page two, subsection 4.3, by striking out the words
96 "close friend" and inserting in lieu thereof "cohabitating
97 sexual partner";

98 On page three, subdivision 4.3.b, by striking out the
99 words "close friend" and inserting in lieu thereof
100 "cohabitating sexual partner";

101 On page three, by striking out all of paragraph 4.3.b.2
102 and inserting in lieu thereof a new paragraph 4.3.b.2 to
103 read as follows:

104 "A public official or public employee should at least
105 have some independent person take part in the selection.
106 He or she should avoid using a subordinate for the
107 independent person.";

108 On page three, by striking out all of subsection 4.4 and
109 inserting in lieu thereof a new subsection to read as
110 follows:

111 "4.4 All hiring by public officials and public em-
112 ployees of relatives prior to the twenty-ninth day of
113 February, one thousand nine hundred ninety-two is not
114 subject to review under the ethics act, in Chapter 6B of
115 the W. Va. Code.";

116 On page three, subsection 4.5, by striking out the
117 words "close friend" and inserting in lieu thereof
118 "cohabitating sexual partner";

119 On page three, after subsection 4.5, by adding thereto
120 a new subsection, designated subsection 4.6, to read as
121 follows:

122 "4.6 It is improper for a public official or public
123 employee to terminate the employment of a person
124 without sufficient cause for the purpose of hiring a
125 relative, friend or political supporter.";

126 On page three, subsection 5.2, after the words
127 "supervisor during work hours.", by adding the follow-
128 ing sentence: "This subsection does not apply to de
129 minimus work or services.";

130 On page four, by striking out all of subsection 6.2 and
131 inserting in lieu thereof a new subsection 6.2, to read

132 as follows:

133 "6.2 Improper Use - Public officials and public
134 employees shall not use government property for
135 personal projects or activities that result in private gain.
136 This subsection does not apply to the de minimus use
137 of government property.";

138 And,

139 On page four, by striking out all of section 9 and
140 inserting in lieu thereof a new section 9 to read as
141 follows:

142 "Full-time appointed public officials and part-time
143 and full-time public employees may not receive private
144 compensation for performing private work during
145 public work hours. This section shall not apply to de
146 minimus private work."

147 (f) The legislative rules filed in the state register on
148 the thirty-first day of January, one thousand nine
149 hundred ninety-one, modified by the ethics commission
150 to meet the objections of the legislative rule-making
151 review committee and refiled in the state register on the
152 seventeenth day of December, one thousand nine
153 hundred ninety-one, relating to the ethics commission
154 (voting), are authorized, with the amendments set forth
155 below:

156 On page one, subsection 2.2, by striking out the second
157 and third paragraphs of subsection 2.2;

158 And,

159 On page one, after subsection 2.3, by adding a new
160 subsection, designated subsection 2.4 to read as follows:

161 "2.4 In any case where a Senator or Delegate is voting
162 as part of their official duties of office, the members of
163 the Senate and the members of the House of Delegates
164 are governed by the rules of their respective houses. The
165 provisions of subsection 2.3 of this rule shall not apply
166 to members of the Legislature when acting as a member
167 thereof."

168 (g) The legislative rules filed in the state register on

169 the thirty-first day of January, one thousand nine
170 hundred ninety-one, modified by the ethics commission
171 to meet the objections of the legislative rule-making
172 review committee and refiled in the state register on the
173 seventeenth day of December, one thousand nine
174 hundred ninety-one, relating to the ethics commission
175 (employment), are authorized, with the amendments set
176 forth below:

177 On page two, subsection 3.3, by striking out the words
178 "if there is a reasonable probability that the person will
179 be regulated. There must be" and inserting in lieu
180 thereof "upon";

181 On page two, subdivision 4.2.c, after the word
182 "prohibition" by inserting the words "for all practical
183 purposes";

184 On page three, by striking out all of subsections 4.5,
185 4.6 and 4.7;

186 And,

187 On page three, by renumbering the remaining sub-
188 sections.

**ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COM-
MERCE, LABOR AND ENVIRONMENTAL RE-
SOURCES TO PROMULGATE LEGISLATIVE
RULES.**

- §64-3-2. Division of banking.
- §64-3-4. Division of energy.
- §64-3-8. Division of natural resources.
- §64-3-14. Division of tourism and parks.
- §64-3-15. Public energy authority.

§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.

32 (f) The legislative rules filed in the state register on
33 the twelfth day of August, one thousand nine hundred
34 ninety-one, modified by the division of banking to meet
35 the objections of the legislative rule-making review
36 committee and refiled in the state register on the
37 fifteenth day of November, one thousand nine hundred
38 ninety-one, relating to the division of banking (West
39 Virginia consumer credit and protection act), are
40 authorized.

41 (g) The legislative rules filed in the state register on
42 the ninth day of August, one thousand nine hundred
43 ninety-one, modified by the division of banking to meet
44 the objections of the legislative rule-making review
45 committee and refiled in the state register on the
46 fifteenth day of November, one thousand nine hundred
47 ninety-one, relating to the division of banking (lease
48 financing transactions), are authorized.

49 (h) The legislative rules filed in the state register on

50 the ninth day of August, one thousand nine hundred
51 ninety-one, modified by the division of banking to meet
52 the objections of the legislative rule-making review
53 committee and refiled in the state register on the
54 fifteenth day of November, one thousand nine hundred
55 ninety-one, relating to the division of banking (operation
56 of state-chartered financial institutions in West Virgi-
57 nia), are authorized.

58 (i) The legislative rules filed in the state register on
59 the twelfth day of August, one thousand nine hundred
60 ninety-one, modified by the division of banking to meet
61 the objections of the legislative rule-making review
62 committee and refiled in the state register on the
63 fifteenth day of November, one thousand nine hundred
64 ninety-one, relating to the division of banking (West
65 Virginia industrial bank and industrial loan company
66 act), are authorized.

67 (j) The legislative rules filed in the state register on
68 the twelfth day of August, one thousand nine hundred
69 ninety-one, modified by the division of banking to meet
70 the objections of the legislative rule-making review
71 committee and refiled in the state register on the
72 fifteenth day of November, one thousand nine hundred
73 ninety-one, relating to the division of banking (West
74 Virginia consumer credit and protection act and the
75 money and interest article of chapter forty-seven), are
76 authorized.

77 (k) The legislative rules filed in the state register on
78 the ninth day of August, one thousand nine hundred
79 ninety-one, modified by the division of banking to meet
80 the objections of the legislative rule-making review
81 committee and refiled in the state register on the
82 fifteenth day of November, one thousand nine hundred
83 ninety-one, relating to the division of banking (permiss-
84 ible additional charges in connection with a consumer
85 credit sale), are authorized.

§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
14 other wells), are authorized with the amendments set
15 forth 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" and a colon.

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 And,

104 Page five, §4.1, subsection (d), line three, following the
105 words "certified electrician prior" by inserting the
106 words "to any work being performed and again prior."

107 (i) The legislative rules filed in the state register on
108 the fifteenth day of December, one thousand nine
109 hundred eighty-six, modified by the commissioner of the
110 department of energy to meet the objections of the
111 legislative rule-making review committee and refiled in
112 the state register on the twenty-first day of January, one
113 thousand nine hundred eighty-seven, relating to the
114 commissioner of the department of energy (safety
115 training program for prospective underground coal
116 miners in West Virginia), are authorized.

117 (j) The legislative rules filed in the state register on

118 the eleventh day of August, one thousand nine hundred
119 eighty-six, modified by the commissioner of the depart-
120 ment of energy to meet the objections of the legislative
121 rule-making review committee and refiled in the state
122 register on the fifteenth day of December, one thousand
123 nine hundred eighty-six, relating to the commissioner of
124 the department of energy (miscellaneous water pollution
125 control), are authorized.

126 (k) The legislative rules filed in the state register on
127 the eleventh day of August, one thousand nine hundred
128 eighty-six, modified by the commissioner of the depart-
129 ment of energy to meet the objections of the legislative
130 rule-making review committee and refiled in the state
131 register on the fifteenth day of December, one thousand
132 nine hundred eighty-six, relating to the commissioner of
133 the department of energy (dam control), are authorized.

134 (l) The legislative rules filed in the state register on
135 the eleventh day of August, one thousand nine hundred
136 eighty-six, modified by the commissioner of the depart-
137 ment of energy to meet the objections of the legislative
138 rule-making review committee and refiled in the state
139 register on the fifteenth day of December, one thousand
140 nine hundred eighty-six, relating to the commissioner of
141 the department of energy (solid waste management), are
142 authorized.

143 (m) The legislative rules filed in the state register on
144 the eleventh day of August, one thousand nine hundred
145 eighty-six, modified by the commissioner of the depart-
146 ment of energy to meet the objections of the legislative
147 rule-making review committee and refiled in the state
148 register on the fifteenth day of December, one thousand
149 nine hundred eighty-six, relating to the commissioner of
150 the department of energy (hazardous waste manage-
151 ment), are authorized.

152 (n) The legislative rules filed in the state register on
153 the twentieth day of April, one thousand nine hundred
154 eighty-seven, relating to the commissioner of the
155 department of energy (roof control), are authorized.

156 (o) The legislative rules filed in the state register on
157 the third day of April, one thousand nine hundred

158 eighty-seven, relating to the department of energy
159 (standards for certification of underground belt examiners
160 for underground coal mines), are authorized.

161 (p) The legislative rules filed in the state register on
162 the ninth day of April, one thousand nine hundred
163 eighty-seven, relating to the commissioner of the
164 department of energy (performance standards for
165 blasting on surface mines), are authorized.

166 (q) The legislative rules filed in the state register on
167 the twelfth day of January, one thousand nine hundred
168 eighty-seven, modified by the commissioner of the
169 department of energy to meet the objections of the
170 legislative rule-making review committee and refiled in
171 the state register on the twentieth day of February, one
172 thousand nine hundred eighty-seven, relating to the
173 commissioner of the department of energy (state
174 national pollutant discharge elimination system
175 (NPDES) for mines and minerals), are authorized.

176 (r) The Legislature hereby authorizes and directs the
177 department of energy to promulgate the procedural
178 rules filed in the state register on the twenty-first day
179 of October, one thousand nine hundred eighty-seven,
180 relating to the department of energy (requests for
181 information) with the amendments set forth below:

182 On page two, subsection 3.1, by striking subdivision
183 (d) and renumbering the remaining subdivisions.

184 And,

185 On page three, section 6, by striking all of subsection
186 6.1 and inserting in lieu thereof, the following:

187 "6.1 The department shall establish fixed rate fees for
188 reproduction of documents, records, and files on the
189 basis of the actual cost of such reproduction and shall
190 document such costs: *Provided*, That where total costs
191 are less than five dollars, no fee shall be charged."

192 (s) The legislative rules filed in the state register on
193 the twelfth day of May, one thousand nine hundred
194 eighty-seven, modified by the commissioner of the
195 department of energy to meet the objections of the

196 legislative rule-making review committee and refiled in
197 the state register on the fourteenth day of August, one
198 thousand nine hundred eighty-seven, relating to the
199 commissioner of the department of energy (blasters
200 certification for surface coal mines and surface areas of
201 coal mines), are authorized.

202 (t) The legislative rules filed in the state register on
203 the twentieth day of January, one thousand nine
204 hundred eighty-eight, modified by the commissioner of
205 the department of energy to meet the objections of the
206 legislative rule-making review committee and refiled in
207 the state register on the twenty-eighth day of November,
208 one thousand nine hundred eighty-eight, relating to the
209 commissioner of the department of energy (abandoned
210 mine reclamation), are authorized.

211 (u) The legislative rules filed in the state register on
212 the nineteenth day of September, one thousand nine
213 hundred eighty-eight, and modified to meet the objec-
214 tions of the West Virginia Legislature and refiled in the
215 state register on the sixth day of April, one thousand
216 nine hundred eighty-nine, relating to the commissioner
217 of the department of energy (West Virginia surface
218 mining reclamation regulations (repealer), are
219 authorized.

220 (v) The legislative rules filed in the state register on
221 the sixteenth day of November, one thousand nine
222 hundred eighty-nine, modified by the department of
223 energy to meet the objections of the legislative rule-
224 making review committee and refiled in the state
225 register on the ninth day of January, one thousand nine
226 hundred ninety, relating to the department of energy
227 (submission and approval of a comprehensive mine
228 safety program for coal mining operations in the state
229 of West Virginia), are authorized.

230 (w) The legislative rules filed in the state register on
231 the sixteenth day of November, one thousand nine
232 hundred eighty-nine, modified by the division of energy
233 to meet the objections of the legislative rule-making
234 review committee and refiled in the state register on the
235 twenty-fifth day of January, one thousand nine hundred

236 ninety, relating to the division of energy (surface mining
237 reclamation), are authorized with the amendments set
238 forth below:

239 On page 64, section 3.25(a)(2), after the words "section
240 18 of the Act and paragraph" by deleting the "(c)" and
241 inserting in lieu thereof the following: "(a), (b), (c), (d),
242 (i), (j) and (k)."

243 And,

244 On page 148, section 12.4(d)(2), by deleting the current
245 language and inserting in lieu thereof the following:

246 "(2) In the event the Commissioner is unable to collect
247 the costs from the permittee, the Commissioner shall in
248 a timely manner but not later than one hundred eighty
249 days after forfeiture of the site-specific bond utilize
250 moneys in the Special Reclamation Fund created by
251 Subsection (g), Section 11 of the Act, to accomplish the
252 completion of reclamation, including the requirements
253 of Section 23 of the Act and Subsection 14.5 of these
254 regulations governing water quality."

255 (x) The legislative rules filed in the state register on
256 the twenty-fifth day of May, one thousand nine hundred
257 ninety, modified by the division of energy to meet the
258 objections of the legislative rule-making review commit-
259 tee and refiled in the state register on the seventeenth
260 day of July, one thousand nine hundred ninety, relating
261 to the division of energy (miscellaneous water pollution
262 control), are authorized.

263 (y) The legislative rules filed in the state register on
264 the first day of November, one thousand nine hundred
265 ninety, modified by the division of energy to meet the
266 objections of the legislative rule-making review commit-
267 tee and refiled in the state register on the twenty-second
268 day of January, one thousand nine hundred ninety-one,
269 relating to the division of energy (West Virginia surface
270 mining and reclamation regulations), are authorized
271 with the amendment set forth below:

272 On page one hundred fifty-three, section 12.2(c)(4),
273 after the number "(4)", by inserting the words "For
274 permits issued after the effective date of these

275 regulations.”.

276 (z) The legislative rules filed in the state register on
277 the eleventh day of July, one thousand nine hundred
278 ninety-one, modified by the division of energy to meet
279 the objections of the legislative rule-making review
280 committee and refiled in the state register on the
281 twenty-second day of October, one thousand nine
282 hundred ninety-one, relating to the division of energy
283 (standards for certification of blasters for surface coal
284 mines and surface areas of underground coal mines), are
285 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 And,

11 Page 3-5, §3E.02, subsection (b), by adding after the
12 first sentence — “Those persons who have been approved
13 to date need not make said demonstration.”

14 (b) The legislative rules filed in the state register on
15 the twentieth day of January, one thousand nine
16 hundred eighty-four, relating to the department of
17 natural resources (solid waste management), are
18 authorized with the amendments set forth below:

19 Page 9, section 4.04, line five, add the following
20 paragraph:

21 “Upon request of any applicant, the division shall
22 meet with the applicant for pre-filing review of the
23 application. The division, with the cooperation of the
24 solid waste authority, shall assist the applicant in
25 preparing a complete and proper application.”

26 would not be rejected as incomplete.”

27 On page 15, section 6.03(c)(1) in the first full sentence,
28 after the word “cease”, strike the remainder of the
29 sentence and insert in lieu thereof the words “within
30 fifteen (15) days of receipt of an order of suspension” and
31 in the second sentence strike the word “recommence”
32 and insert the words “continue beyond fifteen (15) days”;
33 (c)(2) in the first full sentence, after the word “cease”
34 by striking out the remainder of the sentence and insert
35 in lieu thereof the words “immediately upon receipt of
36 an order of revocation.”

37 (c) The legislative rules filed in the state register on
38 the twenty-sixth day of September, one thousand nine
39 hundred eighty-four, relating to the department of
40 natural resources (public use of state parks, forests,
41 hunting and fishing areas), are authorized.

42 (d) The legislative rules filed in the state register on
43 the seventh day of November, one thousand nine
44 hundred eighty-four, relating to the department of
45 natural resources (surface mining reclamation), are
46 authorized.

47 (e) The legislative rules filed in the state register on
48 the seventh day of November, one thousand nine
49 hundred eighty-four, relating to the department of
50 natural resources (coal refuse disposal), are authorized.

51 (f) The legislative rules filed in the state register on
52 the ninth day of November, one thousand nine hundred
53 eighty-four, relating to the department of natural
54 resources (transfer of the state national pollutant
55 discharge elimination system program), are authorized
56 with the amendment set forth below:

57 Page 10-5, by striking §10B.19 and inserting in lieu
58 thereof a new §10B.19, to read as follows: “‘Effluent
59 limitations guidelines’ means a regulation published by
60 the Administrator under Section 304(b) or Section
61 301(b)(1)(B) of the CWA to adopt or revise effluent
62 limitations or levels of effluent quality attainable
63 through the application of secondary or equivalent
64 treatment. For the coal industry these regulations are

65 published at 40 C.F.R. Parts 434 and 133. (See:
66 Appendix G and H).”

67 (g) The legislative rules filed in the state register on
68 the twenty-eighth day of August, one thousand nine
69 hundred eighty-four, relating to the department of
70 natural resources (small arms hunting), are authorized.

71 (h) The legislative rules filed in the state register on
72 the sixth day of January, one thousand nine hundred
73 eighty-four, relating to the department of natural
74 resources (hazardous waste management), are
75 authorized.

76 (i) The legislative rules filed in the state register on
77 the third day of December, one thousand nine hundred
78 eighty-four, modified by the department of natural
79 resources to meet the objections of the legislative rule-
80 making review committee and refiled in the state
81 register on the thirteenth day of February, one thousand
82 nine hundred eighty-five, relating to the department of
83 natural resources (hazardous waste management), are
84 authorized.

85 (j) The legislative rules filed in the state register on
86 the tenth day of October, one thousand nine hundred
87 eighty-five, relating to the department of natural
88 resources (hazardous waste management: Small quan-
89 tity generators and waste minimization certification),
90 are authorized with the amendment set forth below:

91 On page 1, §3.1.4b, delete the word “or” in the
92 reference to “paragraph (g) or (j)” and insert in lieu
93 thereof the words “and, if applicable.”

94 (k) The legislative rules filed in the state register on
95 the ninth day of September, one thousand nine hundred
96 eighty-five, relating to the department of natural
97 resources (WV/NPDES regulations for the coal mining
98 point source category and related sewage facilities), are
99 authorized.

100 (l) The legislative rules filed in the state register on
101 the eleventh day of December, one thousand nine
102 hundred eighty-five, modified by the department of
103 natural resources to meet the objections of the

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.**§18-9D-17. Transfer of unencumbered interest from trustees to general revenue fund; purpose of transfer.**

1 On or after the first day of July, one thousand nine
2 hundred ninety-two, the authority shall transfer to the
3 general revenue fund of the state, from accounts held
4 by any trust company or companies or any bank or
5 banks empowered to act as trustee for the holders of
6 bonds issued pursuant to the provisions of this article,
7 the amount of one million dollars held by such institu-
8 tions as interest accumulated from investments made by
9 such institutions while acting as custodians or safe-
10 guards of funds of the authority or the proceeds of bonds
11 issued in accordance with the provisions of this article:
12 *Provided*, That such transfer shall be effected only to the
13 extent that the accumulated interest to be transferred
14 is wholly unencumbered and is not otherwise committed
15 for the payment of bonds or the completion of authorized
16 projects, designated for transfer to any existing special
17 funds, sinking funds, reserve funds or any other moneys
18 or funds, or in any other manner required to be held
19 so as to protect the rights and remedies of a trust
20 company or bank as trustee or the rights and remedies
21 of the bondholders.

22 The purpose of the transfer of funds required by this
23 section is to facilitate the appropriation of a like amount
24 to the school building capital improvements fund, within
25 the state budget for the fiscal year commencing on the
26 first day of July, one thousand nine hundred ninety-two,
27 to be used as debt service for revenue bonds to be issued
28 by the authority pursuant to the provisions of section
29 eight of this article to finance needs projects to be
30 selected by the authority which have not heretofore been
31 funded because of the unavailability of necessary
32 funding, and to pay the costs and reserves of such bond
33 issues. The proceeds of any revenue bonds issued by the
34 authority for additional projects authorized pursuant to
35 this section shall not be deemed available for distribu-
36 tion by the authority within the meaning of section
37 fifteen of this article. The proceeds of such revenue

38 bonds shall be allocated and expended solely on the basis
39 of need and efficient use of resources, such basis being
40 determined by the authority in accordance with the
41 provisions of section fifteen of this article.

CHAPTER 4

(S. B. 1—By Senator Burdette, Mr. President)

[Passed March 14, 1992; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and seven, article two, chapter sixty-four 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 eight; to amend and reenact sections two, four and eight, article three of said chapter; to further amend said article by adding thereto two new sections, designated sections fourteen and fifteen; to amend and reenact sections two, three and eight, article five of said chapter; to amend and reenact section four, article six of said chapter; to amend and reenact sections one, two, three, five and six, article seven of said chapter; to further amend said article by adding thereto a new section, designated section eight; to amend and reenact section two, article eight of said chapter; to amend and reenact sections one, five, eight, nine, sixteen, seventeen, twenty, twenty-three and twenty-four, article nine of said chapter; and to further amend said article by adding thereto five new sections, designated sections twenty-nine, thirty, thirty-one, thirty-two and thirty-three, all relating generally to the promulgation of administrative rules and regulations by the various executive or administrative agencies and the procedures relating thereto; the legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate legislative rules as

181 refiled in the state register on the seventh day of
182 August, one thousand nine hundred eighty-seven,
183 relating to the director of the department of natural
184 resources (boating regulations), are authorized with the
185 amendment set forth below:

186 On page 16, section 6.2, line 3 by inserting following
187 the period "This regulation does not apply to licensed
188 outfitters and guides." These rules were proposed by the
189 director of the department of natural resources pursu-
190 ant to section seven, article one and section twenty-two,
191 article seven, chapter twenty of this code.

192 (x) The legislative rules filed in the state register on
193 the second day of September, one thousand nine
194 hundred eighty-eight, modified by the department of
195 natural resources to meet the objections of the legislative
196 rule-making review committee and refiled in the state
197 register on the seventeenth day of October, one thousand
198 nine hundred eighty-eight, relating to the department of
199 natural resources (hazardous waste management), are
200 authorized.

201 (y) The legislative rules filed in the state register on
202 the thirty-first day of August, one thousand nine
203 hundred eighty-eight, relating to the director of the
204 department of natural resources (boating), are
205 authorized.

206 (z) The legislative rules filed in the state register on
207 the eighth day of March, one thousand nine hundred
208 eighty-eight, modified by the director of the department
209 of natural resources to meet the objections of the
210 legislative rule-making review committee and refiled in
211 the state register on the thirtieth day of August, one
212 thousand nine hundred eighty-eight, relating to the
213 director of the department of natural resources (com-
214 mercial sale of wildlife), are authorized.

215 (za) The legislative rules filed in the state register on
216 the twenty-seventh day of January, one thousand nine
217 hundred eighty-eight, relating to the director of the
218 department of natural resources (catching and selling
219 bait fish), are authorized.

220 (bb) The legislative rules filed in the state register on
221 the twenty-fifth day of March, one thousand nine
222 hundred eighty-eight, relating to the director of the
223 department of natural resources (West Virginia public
224 hunting and fishing areas), are authorized with the
225 following amendment:

226 On page three, section 3.8.4, by inserting after the
227 word "vehicle" the following: ", all terrain vehicle
228 (ATV)."

229 (cc) The legislative rules filed in the state register on
230 the seventeenth day of March, one thousand nine
231 hundred eighty-nine, modified by the division of natural
232 resources to meet the objections of the legislative rule-
233 making review committee and refiled in the state
234 register on the sixteenth day of January, one thousand
235 nine hundred ninety, relating to the division of natural
236 resources (solid waste management), are authorized
237 with the amendments set forth below:

238 On page 13, Section 3.2.6, by deleting the current
239 language and inserting in lieu thereof the following:

240 "3.2.6. Within two hundred (200) feet of faults that
241 have had displacement in Holocene time (i.e., during the
242 last eleven thousand years);"

243 On page 64, Section 3.14.25, by deleting the current
244 language and inserting in lieu thereof the following
245 language:

246 "3.14.25. **Environmental Compliance History.** The
247 chief or the director may refuse to grant any permit if
248 he has reasonable cause to believe, as indicated by
249 documented evidence, that the applicant, or any officer,
250 director or manager, thereof, or shareholder owning
251 twenty percent (20%) or more of its capital stock,
252 beneficial or otherwise, or other person conducting or
253 managing the affairs of the applicant or of the proposed
254 permitted premises, in whole or part, has exhibited a
255 pattern of violation of the environmental statutes or
256 regulations of this State, any other state, or the federal
257 government."

258 On page 104, section 4.5.4.a, by inserting after the

259 words "at that landfill" the following:

260 "Nothing within these regulations shall be construed
261 to allow the installations of any liner or system on areas
262 not lined as of November 30, 1989, that is not in
263 conformance with section 4.5.4.a.E or 4.5.4.a.G of these
264 regulations. Landfills that do have an article 5f permit
265 and a liner installed as of November 30, 1989, may
266 install a liner as approved by the chief."

267 And,

268 On pages 147 through 151, sections 4.11.5 and 4.11.6,
269 by deleting the current language and inserting in lieu
270 thereof the following:

271 **"4.11.5. Corrective Action Program.**

272 Whenever a statistically significant increase is found
273 in a Phase II or Phase III monitoring parameter, or
274 when groundwater contamination is otherwise identified
275 by the Chief at sites without monitoring programs,
276 which is determined by the Chief to have resulted in a
277 significant adverse effect on an aquifer, and which is
278 attributable to a solid waste facility, the Chief may
279 require appropriate corrective or remedial action
280 pursuant to W. Va. Code Chapter 20, article 5A, and
281 Chapter 20, article 5F to abate, remediate or correct
282 such pollution. Any such corrective or remedial action
283 order shall take into account any applicable ground-
284 water quality protection standards, the existing use of
285 such waters, the reasonable uses of such waters,
286 background water quality, and the protection of human
287 health and the environment."

288 (dd) The legislative rules filed in the state register on
289 the seventeenth day of February, one thousand nine
290 hundred eighty-nine, relating to the director of the
291 department of natural resources (underground storage
292 tanks), are authorized.

293 (ee) The legislative rules filed in the state register on
294 the twenty-seventh day of January, one thousand nine
295 hundred eighty-nine, relating to the director of the
296 department of natural resources (transporting and
297 selling wildlife pelts), are authorized.

298 (ff) The legislative rules filed in the state register on
299 the seventeenth day of February, one thousand nine
300 hundred eighty-nine, modified by the director of the
301 department of natural resources to meet the objections
302 of the legislative rule-making review committee and
303 refiled in the state register on the ninth day of August,
304 one thousand nine hundred eighty-nine, relating to the
305 director of the department of natural resources (under-
306 ground storage tank fee assessments), are authorized.

307 (gg) The legislative rules filed in the state register on
308 the twenty-fourth day of April, one thousand nine
309 hundred eighty-nine, modified by the director of the
310 department of natural resources to meet the objections
311 of the legislative rule-making review committee and
312 refiled in the state register on the twenty-second day of
313 May, one thousand nine hundred eighty-nine, relating to
314 the director of the department of natural resources
315 (public hunting and fishing areas), are authorized.

316 (hh) The legislative rules filed in the state register on
317 the first day of December, one thousand nine hundred
318 eighty-nine, relating to the department of natural
319 resources (water pollution control permit fee schedules),
320 are authorized with the amendments set forth below:

321 On page five, section 3.3, by deleting the following:
322 "Submitted fees are not refundable."

323 On page two, after section 2.6, by inserting the
324 following:

325 "Customer" means any person that purchases waste
326 disposal services from a facility permitted under article
327 five-a, chapter twenty of the code of West Virginia, one
328 thousand nine hundred thirty-one, as amended. For the
329 purposes of these regulations, commercial and other
330 non-single family dwelling customers shall be translated
331 into customer equivalents by dividing the total daily
332 estimated volume of waste water by three hundred and
333 fifty gallons per day." and renumbering the remaining
334 subsections.

335 On page nine, section 7.2, by striking out the words
336 "seven hundred fifty dollars (\$750)." and inserting in

337 lieu thereof the following:

338 “determined using Table D, but in no case shall be less
339 than two hundred fifty dollars (\$250).”

340 And,

341 On page thirteen, by striking out all of Table D,
342 Schedule of Annual Permit Fees, and inserting in lieu
343 thereof a new Table D, designated “Schedule of Annual
344 Permit Fees”, to read as follows:

345 “TABLE D

346 SCHEDULE OF ANNUAL PERMIT FEES

347 SEWAGE FACILITIES

348	Number of Customers	Annual Permit Fee
349	less than 1000	\$ 250
350	1000 to 1499	\$ 500
351	1500 to 1999	\$ 750
352	2000 to 2499	\$ 1000
353	2500 to 2999	\$ 1250
354	3000 to 3499	\$ 1500
355	3500 to 3999	\$ 1750
356	4000 to 4499	\$ 2000
357	4500 to 4999	\$ 2250
358	greater than 5000	\$ 2500

359 INDUSTRIAL OR OTHER WASTE FACILITIES

360	Average Discharge Volume	Annual Permit Fee
361	(gallons per day)	
362	less than 1,000	\$ 50
363	1,001 to 10,000	\$ 500
364	10,001 to 50,000	\$ 1000
365	greater than 50,000	\$ 2500”

366 (ii) The legislative rules filed in the state register on
367 the twenty-fifth day of July, one thousand nine hundred
368 eighty-nine, modified by the director of the department
369 of natural resources to meet the objections of the
370 legislative rule-making review committee and refiled in
371 the state register on the fifteenth day of September, one
372 thousand nine hundred eighty-nine, relating to the

373 director of the department of natural resources (revoca-
374 tion of hunting and fishing licenses), are authorized.

375 (jj) The legislative rules filed in the state register on
376 the twentieth day of December, one thousand nine
377 hundred eighty-nine, modified by the division of natural
378 resources to meet the objections of the legislative rule-
379 making review committee and refiled in the state
380 register on the twenty-fourth day of January, one
381 thousand nine hundred ninety, relating to the division
382 of natural resources (state water pollution control
383 revolving fund program), are authorized.

384 (kk) The legislative rules filed in the state register on
385 the twenty-ninth day of March, one thousand nine
386 hundred ninety, modified by the division of natural
387 resources to meet the objections of the legislative rule-
388 making review committee and refiled in the state
389 register on the thirtieth day of August, one thousand
390 nine hundred ninety, relating to the division of natural
391 resources (assessment of civil administrative penalties),
392 are authorized.

393 (ll) The legislative rules filed in the state register on
394 the sixth day of August, one thousand nine hundred
395 ninety, relating to the division of natural resources
396 (water pollution control permit fee schedules), are
397 authorized.

398 (mm) The legislative rules filed in the state register
399 on the fifteenth day of June, one thousand nine hundred
400 ninety, modified by the division of natural resources to
401 meet the objections of the legislative rule-making review
402 committee and refiled in the state register on the
403 twenty-second day of August, one thousand nine
404 hundred ninety, relating to the division of natural
405 resources (underground storage tank insurance trust
406 fund), are authorized with the amendment set forth
407 below:

408 On page four, after subsection 5.1, by inserting a new
409 subdivision 5.1.1 to read as follows:

410 "5.1.1 The fee shall be one hundred dollars per tank
411 per year (\$100/tank/year) for a period of not less than

412 one (1) year and not more than three (3) years. Second
413 and third year capitalization fees may be levied if there
414 is an inadequate surplus of funds, as determined by the
415 Board of Risk and Insurance Management, the Division
416 of Natural Resources and the Underground Storage
417 Tank Advisory Committee pursuant to W. Va. Code,
418 §20-5H-7.”

419 (nn) The legislative rules filed in the state register on
420 the thirteenth day of August, one thousand nine hundred
421 ninety, modified by the division of natural resources to
422 meet the objections of the legislative rule-making review
423 committee and refiled in the state register on the second
424 day of October, one thousand nine hundred ninety,
425 relating to the division of natural resources (under-
426 ground storage tanks), are authorized with the amend-
427 ment set forth below:

428 On page four, section five, subsection 5.1, after the
429 word “requirements” by striking out the remainder of
430 the subsection and inserting in lieu thereof, the
431 following:

432 “of Title 47, Series 37 (Underground Storage Tank
433 Fee Assessments); Title 47, Series 36, Section 4 (Noti-
434 fication Requirements); and Title 47, Series 37A, Section
435 5 (Capitalization Fees) of the Code of State Regulations
436 and the owner or operator presents proof of the
437 certification to the carrier.”

438 (oo) The legislative rules filed in the state register on
439 the thirteenth day of August, one thousand nine hundred
440 ninety, relating to the division of natural resources (dam
441 safety), are authorized.

442 (pp) The legislative rules filed in the state register on
443 the thirteenth day of August, one thousand nine hundred
444 ninety, modified by the division of natural resources to
445 meet the objections of the legislative rule-making review
446 committee and refiled in the state register on the
447 twenty-eighth day of November, one thousand nine
448 hundred ninety, relating to the division of natural
449 resources (hazardous waste management), are
450 authorized.

451 (qq) The legislative rules filed in the state register on
452 the first day of July, one thousand nine hundred ninety-
453 one, modified by the division of natural resources to
454 meet the objections of the legislative rule-making review
455 committee and refiled in the state register on the
456 nineteenth day of September, one thousand nine
457 hundred ninety-one, relating to the division of natural
458 resources (special motorboating regulations), are
459 authorized.

460 (rr) The legislative rules filed in the state register on
461 the first day of May, one thousand nine hundred ninety-
462 one, modified by the division of natural resources to
463 meet the objections of the legislative rule-making review
464 committee and refiled in the state register on the
465 twenty-second day of July, one thousand nine hundred
466 ninety-one, relating to the division of natural resources
467 (special fishing regulations), are authorized with the
468 amendment set forth below:

469 On page one, by striking out subsection 2.1 and
470 inserting in lieu thereof, a new subsection 2.1, to read
471 as follows:

472 "2.1 "Daylight hours" means the time period between
473 sixty minutes before sunrise and sixty minutes after
474 sunset."

475 (ss) The legislative rules filed in the state register on
476 the first day of July, one thousand nine hundred ninety-
477 one, modified by the division of natural resources to
478 meet the objections of the legislative rule-making review
479 committee and refiled in the state register on the
480 twenty-first day of November, one thousand nine
481 hundred ninety-one, relating to the division of natural
482 resources (boating regulations), are authorized.

483 (tt) The Legislature hereby authorizes and directs the
484 division of natural resources to promulgate the legisla-
485 tive rule relating to water pollution control permit fee
486 schedules, 47 CSR 26, effective the twenty-second day
487 of April, one thousand nine hundred ninety-one, with the
488 amendment set forth below:

489 On page eight, subdivision 7.4.1, at the end of the

490 subdivision by striking the period and adding the
491 following:

492 “: *Provided*, That if the chief determines that a facility
493 is in substantial compliance with its existing permit, the
494 fee is one thousand two hundred fifty dollars
495 (\$1,250.00).”

§64-3-14. Division of tourism and parks.

1 The legislative rules filed in the state register on the
2 twenty-sixth day of April, one thousand nine hundred
3 ninety-one, modified by the division of tourism and
4 parks to meet the objections of the legislative rule-
5 making review committee and refiled in the state
6 register on the twenty-seventh day of September, one
7 thousand nine hundred ninety-one, relating to the
8 division of tourism and parks (public use of West
9 Virginia state parks, state forests and state hunting and
10 fishing areas under the division of tourism and parks),
11 are authorized with the amendment set forth below:

12 On page five, subsection 2.21 by striking out the words
13 “and Tomlinson Run”.

§64-3-15. Public energy authority.

1 (a) The legislative rules filed in the state register on
2 the twentieth day of December, one thousand nine
3 hundred ninety, modified by the public energy authority
4 to meet the objections of the legislative rule-making
5 review committee and refiled in the state register on the
6 twenty-sixth day of July, one thousand nine hundred
7 ninety-one, relating to the public energy authority
8 (establishment of rules and procedure for the exercise
9 of the powers of eminent domain for qualified projects),
10 are authorized.

11 (b) The legislative rules filed in the state register on
12 the twentieth day of December, one thousand nine
13 hundred ninety, modified by the public energy authority
14 to meet the objections of the legislative rule-making
15 review committee and refiled in the state register on the
16 twenty-sixth day of July, one thousand nine hundred
17 ninety-one, relating to the public energy authority
18 (establishment of a fee schedule and cost allocations to

19 the issuance of bonds by the West Virginia public
20 energy authority), are authorized.

**ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH
AND HUMAN RESOURCES TO PROMULGATE
LEGISLATIVE RULES.**

§64-5-2. State board of health; division of health.

§64-5-3. Health care cost review authority.

§64-5-8. Human rights commission.

§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 amendment 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 And,

118 §5.2. Delete the words "four (4)" and insert in lieu
119 thereof the words "two (2)" and delete the words "active,
120 continuous."

121 (q) The legislative rules filed in the state register on
122 the third day of October, one thousand nine hundred
123 eighty-four, relating to the state board of health (trauma
124 center or facility designation), are authorized.

125 (r) The legislative rules filed in the state register on
126 the twenty-first day of December, one thousand nine
127 hundred eighty-four, relating to the state board of
128 health (reportable diseases), are authorized.

129 (s) The legislative rules filed in the state register on
130 the twenty-first day of December, one thousand nine
131 hundred eighty-four, relating to the state board of
132 health (licensure of medical adult day care centers), are
133 authorized.

134 (t) The legislative rules filed in the state register on
135 the third day of October, one thousand nine hundred
136 eighty-four, relating to the state board of health (retail
137 food store sanitation), are authorized.

138 (u) The legislative rules filed in the state register on
139 the seventeenth day of December, one thousand nine
140 hundred eighty-five, modified by the director of health
141 to meet the objections of the legislative rule-making
142 review committee and refiled in the state register on the
143 fifteenth day of January, one thousand nine hundred
144 eighty-six, relating to the director of health (adult group
145 home licensure), are authorized.

146 (v) The legislative rules filed in the state register on
147 the twenty-ninth day of October, one thousand nine
148 hundred eighty-five, modified by the state board of
149 health to meet the objections of the legislative rule-
150 making review committee and refiled in the state
151 register on the twenty-seventh day of December, one
152 thousand nine hundred eighty-five, relating to the state
153 board of health (licensure of hospice care programs), are
154 authorized.

155 (w) The legislative rules filed in the state register on
156 the thirty-first day of October, one thousand nine
157 hundred eighty-five, modified by the director of health
158 to meet the objections of the legislative rule-making
159 review committee and refiled in the state register on the
160 twenty-seventh day of December, one thousand nine
161 hundred eighty-five, relating to the director of health
162 (rules governing emergency medical services), are
163 authorized with the amendments set forth below:

164 On page 3, §3.9 shall read as follows:

165 "3.9 Quorum — When applied to the EMSAC, a
166 majority of the members thereof, except in the instance
167 when at any meeting of the EMSAC, where a quorum
168 is not present and the director causes to be deposited in
169 the United States mail, postage prepaid, return receipt
170 requested, to each member of the EMSAC within three
171 days, a notice calling a meeting of the EMSAC at some
172 convenient place in the state of West Virginia two weeks
173 after the meeting at which no quorum was present.
174 Quorum means any number of members of the EMSAC
175 who attend such subsequent meeting. Any member
176 missing two consecutive meetings shall be removed from
177 the EMSAC."

178 On page 6, §4.7.1 shall be deleted in its entirety;

179 And,

180 On page 7, §4.10.1 shall read as follows:

181 "4.10.1 every applicant for certification as an EMSP
182 prior to such certification, shall demonstrate his or her
183 knowledge and ability by undergoing a written exam-
184 ination and a demonstration of skills, and by attaining

185 a passing score on the same. Passing score shall be the
186 same for all testing programs.”

187 (x) The legislative rules filed in the state register on
188 the fifth day of September, one thousand nine hundred
189 eighty-five, relating to the state department of health
190 (revising the list of hazardous substances), are
191 authorized.

192 (y) The legislative rules filed in the state register on
193 the thirteenth day of August, one thousand nine hundred
194 eighty-six, modified by the director of the department
195 of health to meet the objections of the legislative rule-
196 making review committee and refiled in the state
197 register on the sixteenth day of October, one thousand
198 nine hundred eighty-six, relating to the director of the
199 department of health (hazardous material treatment
200 information repository), are authorized.

201 (z) The legislative rules filed in the state register on
202 the seventeenth day of July, one thousand nine hundred
203 eighty-six, modified by the state board of health to meet
204 the objections of the legislative rule-making review
205 committee and refiled in the state register on the
206 sixteenth day of October, one thousand nine hundred
207 eighty-six, relating to the state board of health (methods
208 and standards for chemical tests for intoxication), are
209 authorized.

210 (aa) The legislative rules filed in the state register on
211 the twenty-first day of November, one thousand nine
212 hundred eighty-six, modified by the state board of
213 health to meet the objections of the legislative rule-
214 making review committee and refiled in the state
215 register on the twenty-third day of December, one
216 thousand nine hundred eighty-six, relating to the state
217 board of health (licensure of behavioral health centers),
218 are authorized.

219 (bb) The legislative rules filed in the state register on
220 the eighteenth day of April, one thousand nine hundred
221 eighty-six, modified by the state board of health to meet
222 the objections of the legislative rule-making review
223 committee and refiled in the state register on the
224 seventeenth day of October, one thousand nine hundred

225 eighty-six, relating to the state board of health (hospital
226 licensure), are authorized.

227 (cc) The legislative rules filed in the state register on
228 the ninth day of December, one thousand nine hundred
229 eighty-six, modified by the state board of health to meet
230 the objections of the legislative rule-making review
231 committee and refiled in the state register on the
232 twenty-third day of December, one thousand nine
233 hundred eighty-six, relating to the state board of health
234 (hospital licensure and allowing hospitals to have
235 licensed hospital professionals, other than licensed
236 physicians, on their medical staff), are authorized.

237 (dd) The legislative rules filed in the state register on
238 the ninth day of December, one thousand nine hundred
239 eighty-six, modified by the state board of health to meet
240 the objections of the legislative rule-making review
241 committee and refiled in the state register on the
242 twenty-third day of December, one thousand nine
243 hundred eighty-six, relating to the state board of health
244 (vital statistics), are authorized.

245 (ee) The legislative rules filed in the state register on
246 the eleventh day of September, one thousand nine
247 hundred eighty-seven, relating to the director of the
248 department of health (immunization criteria for
249 transfer students), are authorized.

250 (ff) The legislative rules filed in the state register on
251 the sixteenth day of November, one thousand nine
252 hundred eighty-seven, relating to the director of the
253 department of health (hazardous substances), are
254 authorized with the amendment set forth below:

255 Page 33, section 8, line 8 (unnumbered), by adding at
256 the end of section 8 the following proviso: "*Provided,*
257 That the owner's or operator's submissions are based on
258 the threshold reporting requirements contained in
259 section 5, article 31, chapter 16."

260 (gg) The legislative rules filed in the state register on
261 the eighteenth day of November, one thousand nine
262 hundred eighty-seven, relating to the director of the
263 department of health (trauma center or facility desig-

264 nation), are authorized.

265 (hh) The legislative rules filed in the state register on
266 the twenty-second day of June, one thousand nine
267 hundred eighty-eight, modified by the state board of
268 health to meet the objections of the legislative rule-
269 making review committee and refiled in the state
270 register on the fifteenth day of September, one thousand
271 nine hundred eighty-eight, relating to the state board of
272 health (licensure of hospice care programs), are
273 authorized.

274 (ii) The legislative rules filed in the state register on
275 the fifteenth day of September, one thousand nine
276 hundred eighty-eight, modified by the state board of
277 health to meet the objections of the legislative rule-
278 making review committee and refiled in the state
279 register on the third day of November, one thousand
280 nine hundred eighty-eight, relating to the state board of
281 health (water wells), are authorized with the amend-
282 ment set forth below:

283 On page 2, §3.8, shall read as follows:

284 "3.8 Water Well — Any excavation or penetration in
285 the ground, whether drilled, bored, cored, driven or
286 jetted that enters or passes through an aquifer for
287 purposes that may include, but are not limited to: A
288 water supply, exploration for water, dewatering or heat
289 pump wells, except that this definition shall not include
290 ground water monitoring activities and all activities for
291 the exploration, development, production, storage and
292 recovery of coal, oil and gas and other mineral resources
293 which are regulated under chapter 22, 22a or 22b of the
294 code."

295 (jj) The legislative rules filed in the state register on
296 the twenty-second day of June, one thousand nine
297 hundred eighty-eight, modified by the state board of
298 health to meet the objections of the legislative rule-
299 making review committee and refiled in the state
300 register on the fifteenth day of September, one thousand
301 nine hundred eighty-eight, relating to the state board of
302 health (plumbing requirements), are authorized.

303 (kk) The legislative rules filed in the state register on
304 the twenty-second day of June, one thousand nine
305 hundred eighty-eight, modified by the state board of
306 health to meet the objections of the legislative rule-
307 making review committee and refiled in the state
308 register on the fifteenth day of September, one thousand
309 nine hundred eighty-eight, relating to the state board of
310 health (public water supply operators), are authorized.

311 (ll) The legislative rules filed in the state register on
312 the nineteenth day of October, one thousand nine
313 hundred eighty-eight, modified by the state board of
314 health to meet the objections of the legislative rule-
315 making review committee and refiled in the state
316 register on the twentieth day of December, one thousand
317 nine hundred eighty-eight, relating to the state board of
318 health (volatile synthetic organic chemicals), are
319 authorized.

320 (mm) The legislative rules filed in the state register
321 on the second day of January, one thousand nine
322 hundred ninety, modified by the division of health to
323 meet the objections of the legislative rule-making review
324 committee and refiled in the state register on the
325 seventeenth day of January, one thousand nine hundred
326 ninety, relating to the division of health (asbestos
327 abatement licensing), are authorized.

328 (nn) The legislative rules filed in the state register on
329 the thirtieth day of August, one thousand nine hundred
330 eighty-nine, modified by the division of health to meet
331 the objections of the legislative rule-making review
332 committee and refiled in the state register on the
333 seventeenth day of November, one thousand nine
334 hundred eighty-nine, relating to the division of public
335 health (AIDS-related medical testing and confidential-
336 ity), are authorized.

337 (oo) The legislative rules filed in the state register on
338 the nineteenth day of December, one thousand nine
339 hundred eighty-nine, modified by the state board of
340 health to meet the objections of the legislative rule-
341 making review committee and refiled in the state
342 register on the twenty-fourth day of January, one

343 thousand nine hundred ninety, relating to the state
344 board of health (nursing home licensure), are
345 authorized.

346 (pp) The legislative rules filed in the state register on
347 the nineteenth day of December, one thousand nine
348 hundred eighty-nine, relating to the state board of
349 health (licensure of behavioral health centers), are
350 authorized.

351 (qq) The legislative rules filed in the state register on
352 the twenty-eighth day of December, one thousand nine
353 hundred eighty-nine, relating to the state board of
354 health (methods and standards for chemical test for
355 intoxication), are authorized.

356 (rr) The legislative rules filed in the state register on
357 the twenty-third day of July, one thousand nine hundred
358 ninety, modified by the board of health to meet the
359 objections of the legislative rule-making review commit-
360 tee and refiled in the state register on the fifth day of
361 September, one thousand nine hundred ninety, relating
362 to the board of health (fees for permits), are authorized
363 with the amendments set forth below:

364 On page two, subsection 3.6, by striking out all of the
365 subsection and renumbering the subsequent subsections.

366 On page four, subsection 5.4, by striking out all of the
367 subsection and renumbering the subsequent subsections.

368 And,

369 On page six, Table 64-30c, by striking out Table 64-
370 30c and inserting in lieu thereof a new table, to read
371 as follows:

372 TABLE 64-30C.

373 Individual On-Site and Innovative Alternative Type
374 Sewage System Permit Fees

375	Type of System	Fees for Permit
376	Class I (New or Modified)	\$100
377	Class II (New or Modified)	\$100
378	Home Aeration Unit	\$100

379 (ss) The legislative rules filed in the state register on
380 the seventh day of December, one thousand nine
381 hundred ninety, modified by the board of health to meet
382 the objections of the legislative rule-making review
383 committee and refiled in the state register on the
384 twenty-second day of January, one thousand nine
385 hundred ninety-one, relating to the board of health
386 (public water systems, bottled water and laboratory
387 certification), are authorized.

388 (tt) The legislative rules filed in the state register on
389 the thirteenth day of December, one thousand nine
390 hundred ninety, modified by the board of health to meet
391 the objections of the legislative rule-making review
392 committee and refiled in the state register on the
393 twenty-second day of January, one thousand nine
394 hundred ninety-one, relating to the board of health (vital
395 statistics), are authorized.

396 (uu) The legislative rules filed in the state register on
397 the seventh day of January, one thousand nine hundred
398 ninety-one, modified by the division of health to meet the
399 objections of the legislative rule-making review commit-
400 tee and refiled in the state register on the twenty-second
401 day of January, one thousand nine hundred ninety-one,
402 relating to the division of health (fees for services), are
403 authorized.

404 (vv) The legislative rules filed in the state register on
405 the twenty-eighth day of December, one thousand nine
406 hundred ninety, modified by the division of health to
407 meet the objections of the legislative rule-making review
408 committee and refiled in the state register on the
409 twenty-sixth day of July, one thousand nine hundred
410 ninety-one, relating to the division of health (specialized
411 health procedures), are authorized.

412 (ww) The legislative rules filed in the state register
413 on the second day of January, one thousand nine
414 hundred ninety-one, modified by the division of health
415 to meet the objections of the legislative rule-making
416 review committee and refiled in the state register on the
417 sixteenth day of May, one thousand nine hundred ninety-
418 one, relating to the division of health (emer

419 medical services), are authorized.

420 (xx) The legislative rules filed in the state register on
421 the tenth day of September, one thousand nine hundred
422 ninety-one, modified by the secretary of the department
423 of health and human resources to meet the objections of
424 the legislative rule-making review committee and
425 refiled in the state register on the third day of January,
426 one thousand nine hundred ninety-two, relating to the
427 secretary of the department of health and human
428 resources (retail food store sanitation), are authorized.

429 (yy) The Legislature hereby authorizes and directs the
430 division of health to promulgate the legislative rule
431 relating to swimming pools and bathing beaches, 64
432 CSR 16, effective the fifth day of May, one thousand nine
433 hundred eighty, with the amendment set forth below:

434 On page five, section 11.3 by striking out the period
435 following the word "beach" and adding the following:
436 "*Provided*, That at hotels, motels, apartment complexes,
437 or condominiums which have swimming pools of five
438 feet or less in depth at the deepest point, employment
439 of lifeguards is recommended but not mandatory,
440 whether or not the establishment charges an admission
441 fee (gate receipt, annual pass or membership dues). If
442 no lifeguards are employed, the management shall post
443 a sign in a prominent location near the swimming pool
444 stating "SWIM AT YOUR OWN RISK - ALL PER-
445 SONS UNDER THE AGE OF 14 MUST BE ACCOM-
446 PANIED BY AN ADULT."

§64-5-3. 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 (exemptions
39 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 hundred

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.

84 (j) The legislative rules filed in the state register on
85 the thirtieth day of July, one thousand nine hundred
86 ninety, modified by the health care cost review authority
87 to meet the objections of the legislative rule-making
88 review committee and refiled in the state register on the
89 twenty-fifth day of September, one thousand nine

90 hundred ninety, relating to the health care cost review
91 authority (exemption for shared services), are
92 authorized.

93 (k) The legislative rules filed in the state register on
94 the thirty-first day of July, one thousand nine hundred
95 ninety, modified by the health care cost review authority
96 to meet the objections of the legislative rule-making
97 review committee and refiled in the state register on the
98 twenty-fifth day of September, one thousand nine
99 hundred ninety, relating to the health care cost review
100 authority (health services offered by health profession-
101 als), are authorized.

102 (l) The legislative rules filed in the state register on
103 the eleventh day of September, one thousand nine
104 hundred ninety, modified by the West Virginia health
105 care cost review authority to meet the objections of the
106 legislative rule-making review committee and refiled in
107 the state register on the twenty-fourth day of January,
108 one thousand nine hundred ninety-one, relating to the
109 West Virginia health care cost review authority (conver-
110 sion of acute care beds to one hundred skilled nursing
111 care beds), are authorized.

112 (m) The legislative rules filed in the state register on
113 the twelfth day of August, one thousand nine hundred
114 ninety-one, modified by the health care cost review
115 authority to meet the objections of the legislative rule-
116 making review committee and refiled in the state
117 register on the eighth day of November, one thousand
118 nine hundred ninety-one, relating to the health care cost
119 review authority (health services offered by health
120 professionals), are authorized.

121 (n) The legislative rules filed in the state register on
122 the first day of May, one thousand nine hundred ninety-
123 one, modified by the health care cost review authority
124 to meet the objections of the legislative rule-making
125 review committee and refiled in the state register on the
126 twenty-second day of July, one thousand nine hundred
127 ninety-one, relating to the health care cost review
128 authority (review for automatic rate changes), are
129 authorized.

130 (o) The legislative rules filed in the state register on
131 the ninth day of August, one thousand nine hundred
132 ninety-one, modified by the health care cost review
133 authority to meet the objections of the legislative rule-
134 making review committee and refiled in the state
135 register on the sixteenth day of October, one thousand
136 nine hundred ninety-one, relating to the health care cost
137 review authority (certificate of need), are authorized.

138 (p) The legislative rules filed in the state register on
139 the twelfth day of August, one thousand nine hundred
140 ninety-one, modified by the health care cost review
141 authority to meet the objections of the legislative rule-
142 making review committee and refiled in the state
143 register on the sixteenth day of October, one thousand
144 nine hundred ninety-one, relating to the health care cost
145 review authority (exemption for shared services), are
146 authorized with the amendments set forth below:

147 On page six, subsection 4.4, after the words "Charles-
148 ton newspapers", by striking out the word "and" and
149 inserting in lieu thereof a comma;

150 On page six, subsection 4.4, after the words "State
151 Register" by adding the words "and a newspaper of
152 general circulation within the area of the facility.";

153 On page seven, subsection 4.5, after the words "notice
154 in the Saturday Charleston newspapers", by striking out
155 the word "and" and inserting in lieu thereof a comma;

156 On page seven, subsection 4.5, before the words "the
157 state agency shall within ten", by striking out the
158 comma and inserting the words "and a newspaper of
159 general circulation within the area of the facility";

160 And,

161 On page seven, subsection 4.5, after the words
162 "decision in the Saturday Charleston newspapers", by
163 striking out the remainder of the sentence and inserting
164 in lieu thereof the following: "the state register and a
165 newspaper of general circulation within the area of the
166 facility."

167 (q) The legislative rules filed in the state register on

168 the twenty-seventh day of June, one thousand nine
169 hundred ninety-one, modified by the health care cost
170 review authority to meet the objections of the legislative
171 rule-making review committee and refiled in the state
172 register on the twenty-third day of September, one
173 thousand nine hundred ninety-one, relating to the health
174 care cost review authority (development of life care
175 retirement centers), are authorized.

176 (r) The legislative rules filed in the state register on
177 the twenty-seventh day of June, one thousand nine
178 hundred ninety-one, modified by the health care cost
179 review authority to meet the objections of the legislative
180 rule-making review committee and refiled in the state
181 register on the twenty-third day of September, one
182 thousand nine hundred ninety-one, relating to the health
183 care cost review authority (conversion of acute care beds
184 to skilled nursing care beds), are authorized.

185 (s) The legislative rules filed in the state register on
186 the ninth day of August, one thousand nine hundred
187 ninety-one, modified by the health care cost review
188 authority to meet the objections of the legislative rule-
189 making review committee and refiled in the state
190 register on the tenth day of January, one thousand nine
191 hundred ninety-two, relating to the health care cost
192 review authority (financial disclosure), are authorized
193 with the amendment set forth below:

194 On page eighteen, after subsection 5.3, by adding
195 thereto a new subsection, designated subsection 5.4, to
196 read as follows:

197 "5.4 A covered facility which is a nonprofit, commun-
198 ity-based primary care center providing primary care
199 services without regard to ability to pay which provides
200 the board with a year-end audited financial statement
201 prepared in accordance with generally accepted audit-
202 ing standards and with governmental auditing stand-
203 ards issued by the comptroller general of the United
204 States shall be considered to have complied with the
205 disclosure requirements of sections 3 and 4 of this rule."

§64-5-8. Human rights commission.

1 (a) The legislative rules filed in the state register on
2 the tenth day of August, one thousand nine hundred
3 ninety, modified by the human rights commission to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the twelfth
6 day of December, one thousand nine hundred ninety,
7 relating to the human rights commission (discrimination
8 against the handicapped), are authorized.

9 (b) The legislative rules filed in the state register on
10 the twenty-second day of March, one thousand nine
11 hundred ninety-one, modified by the human rights
12 commission to meet the objections of the legislative rule-
13 making review committee and refiled in the state
14 register on the fourteenth day of August, one thousand
15 nine hundred ninety-one, relating to the human rights
16 commission (sexual harassment), are authorized.

17 (c) The legislative rules filed in the state register on
18 the twenty-second day of March, one thousand nine
19 hundred ninety-one, modified by the human rights
20 commission to meet the objections of the legislative rule-
21 making review committee and refiled in the state
22 register on the eighteenth day of November, one
23 thousand nine hundred ninety-one, relating to the
24 human rights commission (exemption of private clubs),
25 are authorized.

26 (d) The legislative rules filed in the state register on
27 the twenty-second day of March, one thousand nine
28 hundred ninety-one, modified by the human rights
29 commission to meet the objections of the legislative rule-
30 making review committee and refiled in the state
31 register on the eighteenth day of November, one
32 thousand nine hundred ninety-one, relating to the
33 human rights commission (religious discrimination), are
34 authorized.

35 (e) The legislative rules filed in the state register as
36 an emergency rule on the twenty-second day of March,
37 one thousand nine hundred ninety-one, relating to the
38 human rights commission (waiver of rights under the
39 human rights act), are authorized.

ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF PUBLIC SAFETY TO PROMULGATE LEGISLATIVE RULES.

§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.

17 (c) The legislative rules filed in the state register on
18 the ninth day of August, one thousand nine hundred
19 ninety, modified by the division of public safety to meet
20 the objections of the legislative rule-making review
21 committee and refiled in the state register on the
22 twentieth day of December, one thousand nine hundred
23 ninety, relating to the division of public safety (West
24 Virginia state police career progression system), are
25 authorized.

26 (d) The Legislature hereby authorizes and directs the
27 division of public safety to promulgate legislative rules
28 relating to the requirements and qualifications for
29 official inspection stations and the issuance of permits
30 for the stations. Such legislative rules, in establishing
31 requirements and qualifications for official inspection
32 stations shall not require bay doors at such stations to
33 be greater than eight feet in height.

34 (e) The legislative rules filed in the state register on
35 the twelfth day of August, one thousand nine hundred

36 ninety-one, modified by the division of public safety to
 37 meet the objections of the legislative rule-making review
 38 committee and refiled in the state register on the
 39 nineteenth day of November, one thousand nine hundred
 40 ninety-one, relating to the division of public safety
 41 (contracted police or security services), are authorized.

42 (f) The legislative rules filed in the state register on
 43 the twelfth day of August, one thousand nine hundred
 44 ninety-one, modified by the division of public safety to
 45 meet the objections of the legislative rule-making review
 46 committee and refiled in the state register on the
 47 nineteenth day of November, one thousand nine hundred
 48 ninety-one, relating to the division of public safety
 49 (carrying of handguns by retired or medically dis-
 50 charged members), are authorized.

51 (g) The legislative rules filed in the state register on
 52 the sixth day of January, one thousand nine hundred
 53 ninety-two, relating to the division of public safety
 54 (modified vehicle inspections), are authorized with the
 55 amendments set forth below:

56 On page two, paragraph 2.2.3.3, by striking out the
 57 words "two licensed inspector mechanics" and inserting
 58 in lieu thereof "one licensed inspector mechanic";

59 And,

60 On page two, paragraph 2.2.3.4, by striking out the
 61 word "two-car" and inserting in lieu thereof "one-car".

**ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND
 REVENUE TO PROMULGATE LEGISLATIVE
 RULES.**

§64-7-1. Office of alcohol beverage control commissioner.

§64-7-2. Agency of insurance commissioner.

§64-7-3. Board of investments.

§64-7-5. Racing commission.

§64-7-6. Tax department.

§64-7-8. Property valuation training and procedures commission.

§64-7-1. Office of alcohol beverage control commissioner.

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 bever-
5 ages), 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; or

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."

84 (e) The legislative rules filed in the state register on
85 the first day of August, one thousand nine hundred
86 ninety, modified by the alcohol beverage control
87 commissioner to meet the objections of the legislative
88 rule-making review committee and refiled in the state
89 register on the eighteenth day of October, one thousand
90 nine hundred ninety, relating to the alcohol beverage
91 control commissioner (retail licensee operations), are
92 authorized with the amendment set forth below:

93 On page twelve, section four, subsection 4.8.1, after
94 the word "stored" by changing the period to a colon and
95 adding the following: "*Provided*, That the commissioner
96 may, for good cause shown, permit a retail licensee
97 holding three or more private club licenses to receive
98 and store alcoholic liquors at warehouses or sites off
99 premises."

100 (f) The legislative rules filed in the state register on
101 the first day of August, one thousand nine hundred
102 ninety, modified by the alcohol beverage control
103 commission to meet the objections of the legislative rule-
104 making review committee and refiled in the state
105 register on the twentieth day of November, one thousand
106 nine hundred ninety, relating to the alcohol beverage
107 control commissioner (licensing of retail liquor stores),
108 are authorized.

109 (g) The legislative rules filed in the state register on
110 the first day of August, one thousand nine hundred
111 ninety, modified by the alcohol beverage control
112 commissioner to meet the objections of the legislative
113 rule-making review committee and refiled in the state
114 register on the eighteenth day of October, one thousand
115 nine hundred ninety, relating to the alcohol beverage
116 control commissioner (private club licenses), are autho-
117 rized.

118 (h) The legislative rules filed in the state register on
119 the first day of August, one thousand nine hundred
120 ninety, modified by the alcohol beverage control
121 commissioner to meet the objections of the legislative
122 rule-making review committee and refiled in the state
123 register on the eighteenth day of October, one thousand
124 nine hundred ninety, relating to the alcohol beverage
125 control commissioner (bailment policies and proce-
126 dures), are authorized.

127 (i) The legislative rules filed in the state register on
128 the tenth day of August, one thousand nine hundred
129 ninety, modified by the alcohol beverage control
130 commissioner to meet the objections of the legislative
131 rule-making review committee and refiled in the state
132 register on the eighteenth day of October, one thousand
133 nine hundred ninety, relating to the alcohol beverage
134 control commissioner (farm wineries), are authorized.

135 (j) The legislative rules filed in the state register on
136 the tenth day of August, one thousand nine hundred
137 ninety, modified by the alcohol beverage control
138 commissioner to meet the objections of the legislative
139 rule-making review committee and refiled in the state
140 register on the twenty-third day of October, one
141 thousand nine hundred ninety, relating to the alcohol
142 beverage control commissioner (retail sale of wine in
143 grocery stores, wine specialty shops and private wine
144 restaurants), are authorized.

145 (k) The legislative rules filed in the state register on
146 the ninth day of August, one thousand nine hundred
147 ninety-one, relating to the alcohol beverage control
148 commission (retail sale of wine in grocery stores, wine
149 specialty shops and private wine restaurants), are autho-
150 rized.

§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.

52 (h) The legislative rules filed in the state register on
53 the second day of February, one thousand nine hundred
54 ninety, modified by the insurance commissioner to meet
55 the objections of the legislative rule-making review
56 committee and refiled in the state register on the
57 twenty-ninth day of May, one thousand nine hundred
58 ninety, relating to the insurance commissioner (accident
59 and sickness rate filing), are authorized.

60 (i) The legislative rules filed in the state register on
61 the tenth day of August, one thousand nine hundred
62 ninety, modified by the insurance commissioner to meet
63 the objections of the legislative rule-making review
64 committee and refiled in the state register on the ninth
65 day of October, one thousand nine hundred ninety,
66 relating to the insurance commissioner (group coordina-
67 tion of benefits), are authorized.

68 (j) The legislative rules filed in the state register on
69 the tenth day of August, one thousand nine hundred
70 ninety, modified by the insurance commissioner to meet
71 the objections of the legislative rule-making review
72 committee and refiled in the state register on the
73 seventeenth day of January, one thousand nine hundred
74 ninety-one, relating to the insurance commissioner
75 (AIDS regulations), are authorized.

76 (k) The legislative rules filed in the state register on
77 the third day of December, one thousand nine hundred
78 ninety, relating to the insurance commissioner (health
79 insurance benefits for temporomandibular and cranio-
80 mandibular disorders), are authorized.

81 (l) The legislative rules filed in the state register on
82 the twelfth day of August, one thousand nine hundred
83 ninety-one, modified by the insurance commissioner to
84 meet the objections of the legislative rule-making review
85 committee and refiled in the state register on the

86 thirteenth day of January, one thousand nine hundred
87 ninety-two, relating to the insurance commissioner
88 (guaranteed loss ratios as applied to individual sickness
89 and accident insurance policies), are authorized.

90 (m) The legislative rules filed in the state register on
91 the ninth day of August, one thousand nine hundred
92 ninety-one, modified by the insurance commissioner to
93 meet the objections of the legislative rule-making review
94 committee and refiled in the state register on the
95 thirteenth day of January, one thousand nine hundred
96 ninety-two, relating to the insurance commissioner
97 (examiners' compensation, qualifications and classifica-
98 tion), are authorized.

99 (n) The legislative rules filed in the state register on
100 the seventeenth day of July, one thousand nine hundred
101 ninety-one, modified by the insurance commissioner to
102 meet the objections of the legislative rule-making review
103 committee and refiled in the state register on the
104 thirteenth day of January, one thousand nine hundred
105 ninety-two, relating to the insurance commissioner
106 (permanent regulations on Medicare supplement insu-
107 rance), are authorized.

108 (o) The legislative rules filed in the state register on
109 the twelfth day of August, one thousand nine hundred
110 ninety-one, modified by the insurance commissioner to
111 meet the objections of the legislative rule-making review
112 committee and refiled in the state register on the
113 thirteenth day of January, one thousand nine hundred
114 ninety-two, relating to the insurance commissioner
115 ("tail" malpractice insurance covering certain medical
116 and allied health care providers), 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.

29 (e) The legislative rules filed in the state register on
30 the thirtieth day of November, one thousand nine
31 hundred ninety, modified by the state board of invest-
32 ments to meet the objections of the legislative rule-
33 making review committee and refiled in the state
34 register on the seventeenth day of May, one thousand
35 nine hundred ninety-one, relating to the state board of
36 investments (establishment of imprest funds), are
37 authorized.

38 (f) The legislative rules filed in the state register on
39 the thirtieth day of November, one thousand nine
40 hundred ninety, modified by the state board of invest-
41 ments to meet the objections of the legislative rule-
42 making review committee and refiled in the state
43 register on the seventeenth day of May, one thousand
44 nine hundred ninety-one, relating to the state board of
45 investments (administration of the consolidated pension
46 fund by the West Virginia state board of investments),
47 are authorized.

48 (g) The legislative rules filed in the state register on
49 the thirtieth day of November, one thousand nine
50 hundred ninety, modified by the state board of invest-
51 ments to meet the objections of the legislative rule-
52 making review committee and refiled in the state
53 register on the seventeenth day of May, one thousand
54 nine hundred ninety-one, relating to the state board of
55 investments (procedures for processing payments from
56 the state treasury), are authorized.

57 (h) The legislative rules filed in the state register on
58 the thirtieth day of November, one thousand nine
59 hundred ninety, modified by the state board of invest-
60 ments to meet the objections of the legislative rule-
61 making review committee and refiled in the state
62 register on the seventeenth day of May, one thousand
63 nine hundred ninety-one, relating to the state board of
64 investments (selection of state depositories for disburse-
65 ment accounts through competitive bidding), are
66 authorized.

67 (i) The legislative rules filed in the state register on
68 the thirtieth day of November, one thousand nine
69 hundred ninety, modified by the state board of invest-
70 ments to meet the objections of the legislative rule-
71 making review committee and refiled in the state
72 register on the seventeenth day of May, one thousand
73 nine hundred ninety-one, relating to the state board of
74 investments (administration of the consolidated fund by
75 the West Virginia state board of investments), are
76 authorized.

77 (j) The legislative rules filed in the state register on
78 the thirtieth day of November, one thousand nine
79 hundred ninety, modified by the state board of invest-
80 ments to meet the objections of the legislative rule-
81 making review committee and refiled in the state
82 register on the seventeenth day of May, one thousand
83 nine hundred ninety-one, relating to the state board of
84 investments (selection of state depositories for receipt
85 accounts), are authorized with the amendment set forth
86 below:

87 On page three, section four, by striking out the period

88 after the word "agency" and adding the words "but shall
89 select a depository in the same community or geogra-
90 phical area as the agency."

91 (k) The legislative rules filed in the state register on
92 the thirtieth day of November, one thousand nine
93 hundred ninety, modified by the state board of invest-
94 ments to meet the objections of the legislative rule-
95 making review committee and refiled in the state
96 register on the seventeenth day of May, one thousand
97 nine hundred ninety-one, relating to the state board of
98 investments (procedures for deposit of moneys with the
99 board of investments and treasurer's office by state
100 agencies), 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 amendment 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 period following, 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.

162 (y) The legislative rules filed in the state register on
163 the tenth day of August, one thousand nine hundred
164 ninety, modified by the West Virginia racing commis-
165 sion to meet the objections of the legislative rule-making
166 review committee and refiled in the state register on the
167 fourteenth day of January, one thousand nine hundred
168 ninety-one, relating to the West Virginia racing commis-
169 sion (thoroughbred racing), are authorized.

170 (z) The legislative rules filed in the state register on
171 the twenty-ninth day of October, one thousand nine
172 hundred ninety, modified by the West Virginia racing
173 commission to meet the objections of the legislative rule-
174 making review committee and refiled in the state
175 register on the fourteenth day of January, one thousand
176 nine hundred ninety-one, relating to the West Virginia
177 racing commission (greyhound racing), are authorized
178 with the amendment set forth below:

179 On pages seventy-four-a through seventy-eight, section
180 forty-five, by striking out all of subsection 45.38.

181 (aa) The legislative rules filed in the state register on
182 the twenty-ninth day of July, one thousand nine hundred
183 ninety-one, modified by the racing commission to meet
184 the objections of the legislative rule-making review
185 committee and refiled in the state register on the
186 twentieth day of September, one thousand nine hundred
187 ninety-one, relating to the racing commission (tho-
188 roughbred racing), are authorized.

189 (bb) The legislative rules filed in the state register on
190 the fifteenth day of August, one thousand nine hundred
191 ninety-one, relating to the West Virginia racing commis-
192 sion (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 "Mine-
24 able Coal," by striking the subsection and substituting
25 in lieu thereof the following: "(11) Mineable Coal. Coal
26 which can be mined under present day mining technol-
27 ogy 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
32 multiplying the assessment rate by the statewide
33 average of 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 symbol
55 and figures "\$5.00" and inserting in lieu thereof the
56 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 And,

61 On page 115, section 11.09(a)(3) in the first sentence,
62 insert after the word "land" the words "excluding
63 farmland."

64 (b) The legislative rules filed in the state register on

65 the twenty-eighth day of September, one thousand nine
66 hundred eighty-four, relating to the state tax commis-
67 sioner (estimated personal income tax), are authorized
68 with the amendments set forth below:

69 55.02(a)(2)(on page 182.2) line 18, after the word
70 "profession" strike the words "on his own account" and
71 the comma(,).

72 55.12(b)(1)(page 182.35) at the end of the section,
73 change the period to a comma, and add the following
74 language: "and in the case of a court appointed agent,
75 a copy of the court order of appointment is sufficient."

76 And,

77 55.12(c)(page 182.36) after the word "for," strike the
78 word "erroneous."

79 (c) The legislative rules filed in the state register on
80 the twenty-eighth day of September, one thousand nine
81 hundred eighty-four, modified by the state tax commis-
82 sioner to meet the objections of the legislative rule-
83 making review committee and refiled in the state
84 register on the fourteenth day of November, one
85 thousand nine hundred eighty-four, and on the twenty-
86 first day of March, one thousand nine hundred eighty-
87 five, relating to the state tax commissioner (estimated
88 corporation net income tax), are authorized.

89 (d) The legislative rules filed in the state register on
90 the twelfth day of March, one thousand nine hundred
91 eighty-five, relating to the state tax commissioner
92 (identification and appraisal of farmland subsequent to
93 the base year of statewide reappraisal), are authorized
94 and directed to be promulgated with the following
95 amendments:

96 Title page, Subject; following the word "Farmland,"
97 insert the words "and of Structures Situated Thereon."

98 Page i, Subject; following the word "Farmland,"
99 insert the words "and of Structures Situated Thereon."

100 Page i, TABLE OF CONTENTS, Section 10; follow-
101 ing the words "Valuation of Farmland" add the words
102 "and of Structures Situated Thereon."

103 Page 10.1, Title; following the word "FARMLAND"
104 insert the words "AND STRUCTURES SITUATED
105 THEREON."

106 Page 10.1, Section 10, Title; following the word
107 "Farmland" add the words "and Structures Situated
108 Thereon."

109 Page 10.1, Section 10.01(b); following the word
110 "farmland" insert the words "and structures situated
111 thereon."

112 Page 10.2, Section 10.02(a), first sentence; following
113 the word "farmland" insert the words "and structures
114 situated thereon."

115 Page 10.3, Section 10.02(b), first sentence; following
116 the word "farmland" insert the words "and structures
117 situated thereon." Delete the words "for purposes of the
118 statewide reappraisal."

119 Page 10.3, Section 10.02(b), last sentence; following
120 the word "farmland" insert the words "and structures
121 situated thereon."

122 Page 10.8, Section 10.04(5)(B), last sentence; delete the
123 period and add "or the incapability to be adapted to
124 alternative uses."

125 Page 10.9, Section 10.04(6), first sentence; following
126 the words "land currently being used" insert the words
127 "as part of a farming operation."

128 Page 10.9, Section 10.04(6), following the last sent-
129 ence; add the sentence "For the purposes of this
130 definition, 'contiguous tracts' are farmlands which are
131 in close proximity, but not necessarily adjacent: *Pro-*
132 *vided*, That all such contiguous tracts are operated as
133 part of the same farm management plan."

134 Page 10.10, Section 10.04(8), is amended to read in its
135 entirety as follows:

136 "(8) Farm buildings. — The term 'farm buildings'
137 shall mean structures which directly contribute to the
138 operation of the farm, and shall include tenant houses
139 and quarters furnished farm employees without rent as

140 a part of the terms of their employment.”

141 Page 10.11, Section 10.04; delete the word “No-
142 vember” and insert in lieu thereof the word “Sep-
143 tember.” Delete the period following the word “valua-
144 tion” and add the words, “for the assessment year
145 beginning July first of each year.”

146 Page 10.11, Section 10.04, insert the following
147 subdivision: “(12) Application Form: The application
148 form required to be filed with the assessor on or before
149 September first of each year shall require certification
150 that the farm complies with criteria set forth in Section
151 10.05(c) of these regulations, and renewal applications
152 from year to year shall be sufficient upon statement
153 certifying that no change has been made in the use of
154 farm property which would disqualify ‘farm use’
155 classification for assessment purposes.” Renummer the
156 subdivisions of Section 10.04 following the new
157 10.04(12); formerly 10.04(12) through 10.04(28), to
158 10.04(13) through 10.04(29), respectively.

159 Page 10.14, Section 10.04(28) (formerly 10.04(27));
160 following the words “woodland products” insert a
161 comma and the words “such as nuts or fruits harvested”
162 and add a comma following the words “human consump-
163 tion” on Page 10.15.

164 Page 10.16, Section 10.05, subsection (a), following the
165 words “land is used for farm purposes” by striking the
166 period and inserting in lieu thereof a colon and the
167 following: “*Provided*, That the true and actual value of
168 all farm used, occupied and cultivated by their owners
169 or bona fide tenants shall be arrived at according to the
170 fair and reasonable value of the property for the purpose
171 for which it is actually used regardless of what the value
172 of the property would be if used for some other purpose;
173 and that the true and actual value shall be arrived at
174 by giving consideration to the fair and reasonable
175 income which the same might be expected to earn under
176 normal conditions in the locality wherein situated, if
177 rented: *Provided, however*, That nothing herein shall
178 alter the method of assessment of lands or minerals
179 owned by domestic or foreign corporations.”

180 Page 10.16, Section 10.05(b), first clause; following the
181 words "following factors shall be" insert the words
182 "indicative of but not conclusive" and delete the word
183 "considered."

184 Page 10.16, Section 10.05(b)(2); delete the period and
185 add the words "such as soil conservation, farmland
186 preservation or federal farm lending agencies."

187 Page 10.17, Section 10.05(b)(7); delete the section and
188 insert in lieu thereof the words "(7) Whether or not the
189 farmer practices 'custom farming' on the land in
190 question."

191 Page 10.17, Section 10.05(b)(9); following the word
192 "type" add a comma and insert the word "utility."

193 Page 10.17, Section 10.05(b)(11), first sentence;
194 following the word "sales" insert the words "for nonfarm
195 uses."

196 Page 10.17, Section 10.05(b)(12)(A); following the
197 words "part of" insert the words "or appurtenant to."

198 Page 10.17, Section 10.05(b)(12)(B); following the
199 words "contiguous to" insert the words "or operated in
200 common with."

201 Page 10.18, Section 10.05, subsection (c), the first
202 sentence of which is amended in its entirety to read as
203 follows: "Qualifying farmland and the structures
204 situated thereon shall be subject to farm use valuation,
205 with primary consideration being given to the income
206 which the property might be expected to earn, in the
207 locality wherein situate, if rented."

208 Page 10.18, Section 10.05(b)(12)(B); delete the semicol-
209 ons and the words "it was purchased at the same time
210 as the tract so used." Delete the period following the
211 word "purposes" and add the words "or any nonfarm
212 use."

213 Page 10.19, Section 10.05(c)(2); following the words
214 "*Provided, That no*" delete the word "reason" and insert
215 in lieu thereof the words "individual event."

216 Page 10.20, Section 10.05(c)(4)(C); following the words

217 “(1,000) minimum production value” insert the words
218 “or the small farm five hundred dollars (\$500) minimum
219 production and sale.”

220 Page 10.23, Section 10.05(d)(3)(B), third sentence;
221 following the word “If” insert the words “timber from.”
222 Delete the period following the word “purpose” and add
223 the words “or is being converted to farm production
224 uses.”

225 Page 10.26, Section 10.05(f)(2) is amended in its
226 entirety to read as follows:

227 “(2) Farm buildings. — Rental value of farm buildings
228 and other improvements on the farmland shall be valued
229 by determining the replacement cost of the building or
230 structure by usual farm construction practices, and
231 farm labor standards and subtracting therefrom
232 depreciation.¹ Both of these determinations shall be
233 made in accordance with the tax department’s real
234 property appraisal manual² as filed in the state register
235 in accordance with chapter 29A of the code of West
236 Virginia, 1931, as amended, and as it relates to
237 agricultural buildings and structures. One (1) acre of
238 land shall be assigned to all buildings as a unit situate
239 on the property, regardless of the actual acreage
240 occupied by such buildings and shall be appraised at its
241 farm-use valuation based on the highest class of
242 farmland present on the farm.”

243 Page 10.28, Section 10.05(f)(3)(B)(1); following the
244 words “or more of the” insert the word “usual.”

245 Page 10.28, Section 10.05(f)(3)(B)(2); following the
246 words “(50%) of the” insert the word “usual.”

247 Page 10.29, Section 10.05(f)(3)(C)(1)(a); following the
248 words “(50%) or more of the” insert the word “usual.”

249 Page 10.29, Section 10.05(f)(3)(C)(1)(b); following the
250 words “(50%) of the” insert the word “usual.”

251 Page 10.31, Section 10.05(f)(3)(C)(2)(b); following the
252 last sentence insert the sentence “An individual em-
253 ployed other than in farming is not an unincorporated
254 business.”

255 Page 10.35, Section 10.07, Title; following the word
256 "Farmland" insert the words "and Structures Situated
257 Thereon."

258 Page 10.35, Section 10.07(a), first sentence; following
259 the word "farmland" insert the words "and structures
260 situated thereon."

261 And,

262 Page 10.46, Subject; following the word "Farmland"
263 insert the words "and Structures Situated Thereon."

264 (e) The legislative rules filed in the state register on
265 the twenty-second day of May, one thousand nine
266 hundred eighty-five, relating to the state tax commis-
267 sioner (rules governing the operation of a statewide
268 electronic data processing system network, to facilitate
269 administration of the ad valorem property tax on real
270 and personal property), are authorized.

271 (f) The legislative rules filed in the state register on
272 the twenty-sixth day of March, one thousand nine
273 hundred eighty-six, relating to the state tax commis-
274 sioner (listing of interests in natural resources for the
275 first statewide reappraisal; provision for penalties), are
276 authorized.

277 (g) The legislative rules filed in the state register on
278 the twenty-sixth day of March, one thousand nine
279 hundred eighty-six, modified by the state tax commis-
280 sioner to meet the objections of the legislative rule-
281 making review committee and refiled in the state
282 register on the twelfth day of February, one thousand
283 nine hundred eighty-seven, relating to the state tax
284 commissioner (review of appraisals by county commis-
285 sions sitting as administrative appraisal review boards),
286 are authorized.

287 (h) The legislative rules filed in the state register on
288 the twenty-sixth day of March, one thousand nine
289 hundred eighty-six, modified by the state tax commis-
290 sioner to meet the objections of the legislative rule-
291 making review committee and refiled in the state
292 register on the twelfth day of February, one thousand
293 nine hundred eighty-seven, relating to the state tax

294 commissioner (review of appraisals by a circuit court on
295 certiorari), are authorized with the following
296 amendment:

297 On page 3, §18.3.1 is stricken in its entirety and a new
298 §18.3.1 is inserted in lieu thereof to read as follows:

299 "18.3.1 Who May Request Review. — The property
300 owner, Tax Commissioner, protestor or intervenor may
301 request the county commission to certify the evidence
302 and remove and return the record to the circuit court
303 of the county on a writ of certiorari. Parties to the
304 proceeding wherein review by the circuit court is sought
305 shall pay costs and fees as they are incurred: *Provided,*
306 That the circuit court upon rendering judgment or
307 making any order may award costs to any party in
308 accordance with the provisions of W. Va. Code §53-3-5."

309 (i) The legislative rules filed in the state register on
310 the twenty-sixth day of March, one thousand nine
311 hundred eighty-six, modified by the state tax commis-
312 sioner to meet the objections of the legislative rule-
313 making review committee and refiled in the state
314 register on the twelfth day of February, one thousand
315 nine hundred eighty-seven, relating to the state tax
316 commissioner (administrative review of appraisals by
317 the state tax commissioner), are authorized.

318 (j) The legislative rules filed in the state register on
319 the eighteenth day of August, one thousand nine
320 hundred eighty-six, modified by the state tax commis-
321 sioner to meet the objections of the legislative rule-
322 making review committee and refiled in the state
323 register on the twelfth day of February, one thousand
324 nine hundred eighty-seven, relating to the state tax
325 commissioner (additional review and implementation of
326 property appraisals), are authorized.

327 (k) The legislative rules filed in the state register on
328 the eleventh day of August, one thousand nine hundred
329 eighty-six, relating to the state tax commissioner
330 (guidelines for assessors to assure fair and uniform
331 personal property values), are authorized.

332 (l) The legislative rules filed in the state register on

333 the eighteenth day of August, one thousand nine
334 hundred eighty-six, modified by the state tax commis-
335 sioner to meet the objections of the legislative rule-
336 making review committee and refiled in the state
337 register on the tenth day of December, one thousand
338 nine hundred eighty-six, relating to the state tax
339 commissioner (registration of transient vendors), are
340 authorized.

341 (m) The legislative rules filed in the state register on
342 the fourth day of February, one thousand nine hundred
343 eighty-six, modified by the state tax commissioner to
344 meet the objections of the legislative rule-making review
345 committee and refiled in the state register on the
346 fourteenth day of January, one thousand nine hundred
347 eighty-seven, relating to the state tax commissioner
348 (business and occupation tax), are authorized.

349 (n) The legislative rules filed in the state register on
350 the fourteenth day of August, one thousand nine
351 hundred eighty-seven, modified by the state tax commis-
352 sioner to meet the objections of the legislative rule-
353 making review committee and refiled in the state
354 register on the fourth day of November, one thousand
355 nine hundred eighty-seven, relating to the state tax
356 commissioner (telecommunications tax), are authorized.

357 (o) The legislative rules filed in the state register on
358 the fourteenth day of August, one thousand nine
359 hundred eighty-seven, relating to the state tax commis-
360 sioner (business franchise tax), are authorized.

361 (p) The legislative rules filed in the state register on
362 the seventeenth day of August, one thousand nine
363 hundred eighty-seven, modified by the state tax commis-
364 sioner to meet the objections of the legislative rule-
365 making review committee and refiled in the state
366 register on the twenty-second day of January, one
367 thousand nine hundred eighty-eight, relating to the state
368 tax commissioner (consumers sales and service tax and
369 use tax), are authorized.

370 (q) The legislative rules filed in the state register on
371 the fourteenth day of August, one thousand nine
372 hundred eighty-seven, modified by the state tax commis-

373 sioner to meet the objections of the legislative rule-
374 making review committee and refiled in the state
375 register on the thirteenth day of January, one thousand
376 nine hundred eighty-eight, relating to the state tax
377 commissioner (appraisal of property for periodic
378 statewide reappraisals for ad valorem property tax
379 purposes), are authorized.

380 (r) The legislative rules filed in the state register on
381 the fourteenth day of August, one thousand nine
382 hundred eighty-seven, modified by the state tax commis-
383 sioner to meet the objections of the legislative rule-
384 making review committee and refiled in the state
385 register on the twelfth day of January, one thousand
386 nine hundred eighty-eight, relating to the state tax
387 commissioner (severance tax), are authorized.

388 (s) The legislative rules filed in the state register on
389 the second day of September, one thousand nine
390 hundred eighty-eight, modified by the state tax commis-
391 sioner to meet the objections of the legislative rule-
392 making review committee and refiled in the state
393 register on the twenty-fourth day of February, one
394 thousand nine hundred eighty-nine, relating to the state
395 tax commissioner (solid waste assessment fee), are
396 authorized.

397 (t) The legislative rules filed in the state register on
398 the twelfth day of August, one thousand nine hundred
399 eighty-eight, modified by the state tax commissioner to
400 meet the objections of the legislative rule-making review
401 committee and refiled in the state register on the
402 twenty-first day of September, one thousand nine
403 hundred eighty-eight, relating to the state tax commis-
404 sioner (electronic data processing system network for
405 property tax administration), are authorized.

406 (u) The legislative rules filed in the state register on
407 the nineteenth day of September, one thousand nine
408 hundred eighty-eight, modified by the state tax commis-
409 sioner to meet the objections of the legislative rule-
410 making review committee and refiled in the state
411 register on the twenty-fourth day of February, one
412 thousand nine hundred eighty-nine, relating to the state

413 tax commissioner (exemption of property from ad
414 valorem property taxation), are authorized.

415 (v) The legislative rules filed in the state register on
416 the sixteenth day of September, one thousand nine
417 hundred eighty-eight, modified by the state tax commis-
418 sioner to meet the objections of the legislative rule-
419 making review committee and refiled in the state
420 register on the thirteenth day of January, one thousand
421 nine hundred eighty-nine, relating to the state tax
422 commissioner (consumers sales and service tax and use
423 tax), are authorized.

424 (w) The legislative rules filed in the state register on
425 the twenty-third day of June, one thousand nine hundred
426 eighty-nine, relating to the state tax department
427 (personal income tax), are authorized.

428 (x) The legislative rules filed in the state register on
429 the twenty-ninth day of June, one thousand nine
430 hundred eighty-nine, relating to the state tax depart-
431 ment (severance tax), are authorized.

432 (y) The legislative rules filed in the state register on
433 the fourth day of August, one thousand nine hundred
434 eighty-nine, modified by the state tax department to
435 meet the objections of the legislative rule-making review
436 committee and refiled in the state register on the
437 eleventh day of December, one thousand nine hundred
438 eighty-nine, relating to the state tax department (solid
439 waste assessment fee), are authorized.

440 (z) The legislative rules filed in the state register on
441 the fourteenth day of August, one thousand nine
442 hundred eighty-nine, modified by the department of tax
443 and revenue to meet the objections of the legislative
444 rule-making review committee and refiled in the state
445 register on the twelfth day of December, one thousand
446 nine hundred eighty-nine, relating to the department of
447 tax and revenue (business franchise tax), are authorized.

448 (aa) The legislative rules filed in the state register on
449 the eleventh day of August, one thousand nine hundred
450 eighty-nine, modified by the department of tax and
451 revenue to meet the objections of the legislative rule-

452 making review committee and refiled in the state
453 register on the eleventh day of December, one thousand
454 nine hundred eighty-nine, relating to the department of
455 tax and revenue (business and occupation tax), are
456 authorized.

457 (bb) The legislative rules filed in the state register on
458 the fourteenth day of August, one thousand nine
459 hundred eighty-nine, modified by the department of tax
460 and revenue to meet the objections of the legislative
461 rule-making review committee and refiled in the state
462 register on the nineteenth day of January, one thousand
463 nine hundred ninety, relating to the department of tax
464 and revenue (consumers sales and service tax and use
465 tax), are authorized with the amendments set forth
466 below:

467 On page eight, Section 2.28, after the word "as" by
468 inserting the words "art, science,".

469 On pages eight and nine, Section 2.28.1, after the word
470 "intellectual" by deleting the word "or" and inserting in
471 lieu thereof the words "physical and".

472 On page nine, Section 2.28.2, by deleting the words "or
473 instruction."

474 On page nine, Section 2.28.2, after the word "training"
475 by adding the word "or".

476 On page nine, Section 2.28.2, by deleting the words "or
477 any portion of a school curriculum classified as physical
478 education."

479 On page nine, by deleting all of Section 2.28.2.1.

480 On page nine, Section 2.28.2.2, by deleting the section
481 number.

482 On page nine, Section 2.28.2.2, by deleting the words
483 "or instruction."

484 On page nine, Section 2.28.2.2, after the word
485 "training" by adding the word "or".

486 On page nine, Section 2.28.2.2, after the word
487 "conditioning" by inserting a period and striking the
488 remainder of the sentence.

489 On page one hundred twelve, Section 59.2, after the
490 words "sales of the service of cremation" by adding the
491 words "sales on perpetual care trust fund deposits."

492 And,

493 On page one hundred twenty-eight, Section 91.2, after
494 the words "include food" by inserting the following: "
495 as defined in section 2.30 of this rule,".

496 (cc) The legislative rules filed in the state register on
497 the eleventh day of August, one thousand nine hundred
498 eighty-nine, modified by the department of tax and
499 revenue to meet the objections of the legislative rule-
500 making review committee and refiled in the state
501 register on the eleventh day of December, one thousand
502 nine hundred eighty-nine, relating to the department of
503 tax and revenue (motor carrier road tax), are
504 authorized.

505 (dd) The legislative rules filed in the state register on
506 the eleventh day of August, one thousand nine hundred
507 eighty-nine, modified by the department of tax and
508 revenue to meet the objections of the legislative rule-
509 making review committee and refiled in the state
510 register on the eleventh day of December, one thousand
511 nine hundred eighty-nine, relating to the department of
512 tax and revenue (gasoline and special fuel excise tax),
513 are authorized.

514 (ee) The legislative rules filed in the state register on
515 the eleventh day of August, one thousand nine hundred
516 eighty-nine, modified by the department of tax and
517 revenue to meet the objections of the legislative rule-
518 making review committee and refiled in the state
519 register on the eleventh day of December, one thousand
520 nine hundred eighty-nine, relating to the department of
521 tax and revenue (corporation net income tax), are
522 authorized.

523 (ff) The legislative rules filed in the state register on
524 the eleventh day of August, one thousand nine hundred
525 eighty-nine, modified by the department of tax and
526 revenue to meet the objections of the legislative rule-
527 making review committee and refiled in the state

528 register on the eleventh day of December, one thousand
529 nine hundred eighty-nine, relating to the department of
530 tax and revenue (soft drinks tax), are authorized.

531 (gg) The legislative rules filed in the state register on
532 the twenty-first day of February, one thousand nine
533 hundred ninety-one, relating to the state tax commis-
534 sioner (business investment and jobs expansion tax
535 credit, corporations headquarters relocation tax credit,
536 and small business tax credit), are authorized.

537 (hh) The legislative rules filed in the state register on
538 the twentieth day of December, one thousand nine
539 hundred ninety, modified by the state tax commissioner
540 to meet the objections of the legislative rule-making
541 review committee and refiled in the state register on the
542 twenty-sixth day of April, one thousand nine hundred
543 ninety-one, relating to the state tax commissioner
544 (valuation of timberland and managed timberland), are
545 authorized.

546 (ii) The legislative rules filed in the state register on
547 the twenty-second day of April, one thousand nine
548 hundred ninety-one, modified by the state tax commis-
549 sioner to meet the objections of the legislative rule-
550 making review committee and refiled in the state
551 register on the sixteenth day of September, one thou-
552 sand nine hundred ninety-one, relating to the state tax
553 commissioner (bingo rules and regulations), are
554 authorized.

555 (jj) The legislative rules filed in the state register on
556 the thirty-first day of July, one thousand nine hundred
557 ninety-one, modified by the state tax commissioner to
558 meet the objections of the legislative rule-making review
559 committee and refiled in the state register on the
560 sixteenth day of September, one thousand nine hundred
561 ninety-one, relating to the state tax commissioner
562 (property transfer tax), are authorized.

563 (kk) The legislative rules filed in the state register on
564 the eighth day of August, one thousand nine hundred
565 ninety-one, modified by the division of tax to meet the
566 objections of the legislative rule-making review commit-
567 tee and refiled in the state register on the seven

568 of January, one thousand nine hundred ninety-two,
569 relating to the division of tax (municipal business and
570 occupation tax), are authorized with the amendments set
571 forth below:

572 On page forty-six, section 2g, by striking out all of
573 subsection 2g.3;

574 And,

575 On pages forty-six and forty-seven, by renumbering
576 the remaining subsections.

577 (ll) The legislative rules filed in the state register on
578 the eighth day of August, one thousand nine hundred
579 ninety-one, modified by the division of tax to meet the
580 objections of the legislative rule-making review commit-
581 tee and refiled in the state register on the tenth day of
582 January, one thousand nine hundred ninety-two, relat-
583 ing to the division of tax (soft drinks tax), are authorized
584 with the amendments set forth below:

585 On page six, subsection 5.2, in the section heading, by
586 striking out the word "breakfast" and inserting in lieu
587 thereof "certain bottled";

588 And,

589 On page six, subsection 5.2, after the word "mixes" by
590 inserting the words "low-alcoholic brewed beverages
591 such as near beer."

592 (mm) The legislative rules filed in the state register
593 on the eighth day of August, one thousand nine hundred
594 ninety-one, modified by the division of tax to meet the
595 objections of the legislative rule-making review commit-
596 tee and refiled in the state register on the tenth day of
597 January, one thousand nine hundred ninety-two, relat-
598 ing to the division of tax (corporation net income tax),
599 are authorized with the amendment set forth below:

600 On page twelve, subdivision 6.4.3, by striking out all
601 of subdivision 6.4.3.

602 (nn) The legislative rules filed in the state register on
603 the eighteenth day of June, one thousand nine hundred
604 ninety-one, modified by the state tax commissioner to

605 meet the objections of the legislative rule-making review
606 committee and refiled in the state register on the tenth
607 day of January, one thousand nine hundred ninety-two,
608 relating to the state tax commissioner (appraisal of
609 producing and reserve oil and natural gas property for
610 periodic statewide reappraisals for ad valorem property
611 tax purposes), are authorized.

612 (oo) The legislative rules filed in the state register on
613 the ninth day of August, one thousand nine hundred
614 ninety-one, modified by the state tax commissioner to
615 meet the objections of the legislative rule-making review
616 committee and refiled in the state register on the tenth
617 day of January, one thousand nine hundred ninety-two,
618 relating to the state tax commissioner (severance tax),
619 are authorized.

620 (pp) The legislative rules filed in the state register on
621 the eighth day of August, one thousand nine hundred
622 ninety-one, modified by the division of tax to meet the
623 objections of the legislative rule-making review commit-
624 tee and refiled in the state register on the tenth day of
625 January, one thousand nine hundred ninety-two, relat-
626 ing to the division of tax (business franchise tax), are
627 authorized.

628 (qq) The legislative rules filed in the state register on
629 the eighth day of August, one thousand nine hundred
630 ninety-one, modified by the division of tax to meet the
631 objections of the legislative rule-making review commit-
632 tee and refiled in the state register on the tenth day of
633 January, one thousand nine hundred ninety-two, relat-
634 ing to the division of tax (exceptions to confidentiality
635 of taxpayer information and disclosure of certain
636 taxpayer information), are authorized.

637 (rr) The legislative rules filed in the state register on
638 the ninth day of August, one thousand nine hundred
639 ninety-one, modified by the division of tax to meet the
640 objections of the legislative rule-making review commit-
641 tee and refiled in the state register on the thirteenth day
642 of January, one thousand nine hundred ninety-two,
643 relating to the division of tax (consumers sales and
644 service tax and use tax), are authorized with t

645 amendments set forth below:

646 On page six, by deleting all of subdivisions 2.25.2 and
647 2.25.4;

648 On page six, subsection 2.25 by renumbering the
649 remaining subdivisions;

650 On page forty-five, paragraph 8.1.1.1, after the words
651 "licensed social workers", by inserting "enrolled agents,
652 professional foresters,";

653 On page forty-five, paragraph 8.1.1.1, after the word
654 "electricians", by striking out the words "enrolled
655 agents";

656 On page forty-five, paragraph 8.1.1.1, after the word
657 "musicians" by striking out the word "auctioneers,";

658 On page fifty-six, subdivision 9.2.19, after the word
659 "laws" by striking out the colon and inserting the
660 following ", such as, for example, sales by credit unions
661 under W. Va. Code §31-10-33 the sale of services by
662 owners, trainers or jockeys which are essential to the
663 effective conduct of a horse or dog racing meeting under
664 W. Va. Code §19-23-12, or the commission of an
665 auctioneer licensed under W. Va. Code §19-2C-1 et
666 seq.:";

667 On page one hundred five, subsection 33.5, by striking
668 out the words "child care";

669 On page one hundred ten, subsection 38.1 after the
670 words "daily charge.", by inserting the following
671 sentence: "The daily charge subject to the consumers
672 sales and service tax does not include complimentary
673 items such as shampoo, coffee and newspapers given to
674 guests by hotels and motels.";

675 On page one hundred forty-three, subsection 86.1,
676 after the word "auctioneer" by inserting the following
677 "licensed under W. Va. Code §19-2C-1 et seq.";

678 On page one hundred forty-three, subsection 86.1,
679 after the word "is" by inserting the word "not";

680 On page one hundred forty-three, subsection 86.2 after
681 the word "tax" by inserting the following "on the full

682 sales price of the sales”;

683 On page one hundred forty-three, subsection 86.3, in
684 the last sentence after the word “services” by inserting
685 the following “by an auctioneer not licensed in accor-
686 dance with the W. Va. Code §19-2C-1 et. seq.”;

687 On page one hundred forty-three, subsection 86.3, in
688 the last sentence after the word “sold” by striking out
689 the period and adding the following “: *Provided*, That
690 an auctioneer licensed in accordance with W. Va. Code
691 §19-2C-1 et seq. is not required to collect sales tax on
692 such fees or commissioners.”;

693 And,

694 On page one hundred forty-three, subsection 86.4, by
695 striking out the first sentence and inserting, in lieu
696 thereof, the following sentence: “An auctioneer is
697 taxable on all of his or her purchases except purchases
698 for resale.”

**§64-7-8. Property valuation training and procedures
commission.**

1 The legislative rules filed in the state register on the
2 seventeenth day of April, one thousand nine hundred
3 ninety-one, modified by the property valuation training
4 and procedures commission to meet the objections of the
5 legislative rule-making review committee and refiled in
6 the state register on the thirty-first day of July, one
7 thousand nine hundred ninety-one, relating to the
8 property valuation training and procedures commission
9 (tax map sales), are authorized.

**ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANS-
PORTATION TO PROMULGATE LEGISLATIVE
RULES.**

§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, driver's 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 nonrenewal of driving privileges), are
82 authorized with the amendments 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 of

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.

101 (m) The legislative rules filed in the state register on
102 the thirteenth day of August, one thousand nine hundred
103 ninety-one, modified by the division of motor vehicles to
104 meet the objections of the legislative rule-making review
105 committee and refiled in the state register on the
106 twenty-sixth day of September, one thousand nine
107 hundred ninety-one, relating to the division of motor
108 vehicles (denial, suspension, revocation or nonrenewal of
109 driving privileges), are authorized with the amendment
110 set forth below:

111 "On page nine, after the words "Following too closely",
112 by striking out the number "3" and inserting in lieu
113 thereof the number "2".

**ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGEN-
CIES AND BOARDS TO PROMULGATE LEGISLA-
TIVE RULES.**

- §64-9-1. Commissioner of agriculture.
- §64-9-5. Board of barbers and beauticians.
- §64-9-8. West Virginia board of examiners in counseling.
- §64-9-9. Governor's committee on crime, delinquency and corrections.
- §64-9-16. Board of medicine.
- §64-9-17. West Virginia board of examiners for licensed practical nurses.
- §64-9-20. Board of pharmacy.
- §64-9-23. Real estate commission.
- §64-9-24. Secretary of state.
- §64-9-29. Board of accountancy.

§64-9-30. Board of architects.

§64-9-31. Real estate appraiser licensing and certification board.

§64-9-32. Board of veterinary medicine.

§64-9-33. Contractor licensing 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.

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

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

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

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

149 (x) The legislative rules filed in the state register on
150 the eighth day of August, one thousand nine hundred
151 ninety-one, modified by the commissioner of agriculture
152 to meet the objections of the legislative rule-making

153 review committee and refiled in the state register on the
154 twenty-fourth day of September, one thousand nine
155 hundred ninety-one, relating to the commissioner of
156 agriculture (commercial feed), are authorized with the
157 amendments set forth below:

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

160 "3.4. The commissioner will not assess a tonnage fee
161 on any commercial feed or feed ingredients used in the
162 manufacture of poultry contract feed.";

163 On page five, after subsection 4.3.m., by adding a new
164 subsection, designated subsection 4.3.n., to read as
165 follows:

166 "4.3.n. The commissioner will consider poultry
167 contract feed to be customer-formula feed.";

168 And,

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

171 "5.6. Poultry contract feed labels shall conform to the
172 requirements of West Virginia Code §19-14-8(d), except
173 that:

174 5.6.a. the name of the grower or feeder will substitute
175 for the requirements for the name of the purchaser; and,

176 5.6.b. the net weight (avoir dupois) of the commercial
177 feed and each feed ingredient used in the feed shall not
178 be required to be listed."

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

188 (z) The legislative rules filed in the state register on
189 the twentieth day of December, one thousand nine

190 hundred ninety, modified by the commissioner of
191 agriculture to meet the objections of the legislative rule-
192 making review committee and refiled in the state
193 register on the thirtieth day of April, one thousand nine
194 hundred ninety-one, relating to the commissioner of
195 agriculture (fee structure for the pesticide control act of
196 1990), are authorized.

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

205 (bb) The legislative rules filed in the state register on
206 the eighth day of August, one thousand nine hundred
207 ninety-one, modified by the commissioner of agriculture
208 to meet the objections of the legislative rule-making
209 review committee and refiled in the state register on the
210 tenth day of September, one thousand nine hundred
211 ninety-one, relating to the commissioner of agriculture
212 (West Virginia plant pest act), are authorized.

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

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

229 (ee) The legislative rules filed in the state register on

230 the eighth day of August, one thousand nine hundred
231 ninety-one, modified by the commissioner of agriculture
232 to meet the objections of the legislative rule-making
233 review committee and refiled in the state register on the
234 twenty-fourth day of September, one thousand nine
235 hundred ninety-one, relating to the commissioner of
236 agriculture (assessment of civil penalties and procedures
237 for consent agreements and negotiated settlements), are
238 authorized.

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

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

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

260 **§61-4B-15. Enforcement policy.**

261 15.1. The commissioner may assess a violation of W.
262 Va. Code §19-11B-1 et seq. or of these rules against the
263 manufacturer of product and/or the distributor of the
264 mix used to manufacture the product.

265 15.2. The commissioner will assess any violations of W.
266 Va. Code §19-11B-1 et seq. or of this rule to the
267 distributor for mix sampled from unopened containers.
268 The company will not be assessed additional civil a.

269 notices of violations until the commissioner has deter-
270 mined that the firm has had adequate notice of the
271 previous notice, generally 10 days from the mailing of
272 the notice of violation.

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

282 15.4. Whenever two of the last five consecutive official
283 product sample(s) taken on separate days within a one
284 year period are found to be adulterated or misbranded
285 the commissioner shall send a written "Second Notice"
286 to the manufacturer or distributor whichever is
287 appropriate.

288 15.4.a. The commissioner shall collect additional
289 official product sample(s) within 21 days of the sending
290 of a Second Notice to the manufacturer or distributor,
291 but shall not collect product samples before the lapse of
292 7 days from the sending of a Second Notice.

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

299 15.5.a. The commissioner shall collect additional
300 official product sample(s) within 21 days of the sending
301 of the Third Notice to the manufacturer or distributor,
302 but shall not collect additional product samples before
303 the lapse of 7 days from the date of sending of the notice.

304 15.6. The commissioner will issue a "Shut-down
305 Order" for a period of 24 hours to a manufacturer or
306 distributor when the record of the firm indicates that
307 effective action has not been taken to correct the causes

308 of the violations, for instance when three out of the last
309 five samples from the same machine are violative. The
310 "Shut-down Order" will normally be issued with the
311 "Third Notice". The "Shut-down Order" will give the
312 reasons for the order, state the portion of the manufac-
313 turing or distributing operation that is prohibited from
314 operating while the order is in effect, give conditions of
315 the order, state the length of time that the Shut-down
316 Order will be in effect and specify a time and place for
317 a hearing to be held in this matter. Except that in the
318 case where the public health, safety or welfare is at risk,
319 the commissioner will issue an immediate Shut-down
320 Order and give notice to the manufacturer or distributor
321 under the provisions of subdivision 15.6.a. of this rule.

322 15.6.a. The commissioner will issue an immediate
323 Shut-down Order without giving the manufacturer or
324 distributor the opportunity to be heard where there is
325 a hazard to the public health, safety or welfare. In these
326 cases, the manufacturer or distributor will be given the
327 opportunity to request a hearing before the commis-
328 sioner after the notification of the order is received by
329 the manufacturer or distributor. All Shut-down Orders
330 issued due to noncompliance with subdivisions 8.1.c.,
331 8.1.d. or 8.1.g. of this rule are considered to involve a
332 risk to the public health, safety or welfare.

333 15.6.b. The manufacturer or distributor will be
334 responsible for causing all operations covered by the
335 Shut-down Order to cease and follow all other conditions
336 of the order. At the end of the period of the order, the
337 manufacturer or distributor may resume operations
338 without further action by the commissioner.

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

349 notification of the suspension.

350 15.7.a. All suspensions due to nonconformance to
351 subdivisions 8.1.c., 8.1.d. or 8.1.g. of this rule are
352 summary suspensions.

353 15.7.b. A suspension of the Frozen Desserts Manufac-
354 turer Permit remains in effect until the manufacturer
355 submits and the commissioner accepts a written plan of
356 correction and a request for a reinstatement of the
357 permit.

358 15.7.c. The commissioner has seven days from the date
359 of receipt of this application to respond to a suspension
360 in the case of violations of subdivisions 8.1.c., 8.1.d. or
361 8.1.g. of this rule and fourteen days to respond for all
362 other violations of W. Va. Code §19-11B-1 et seq. or these
363 rules. The commissioner will accept or deny the
364 application for a reinstatement of the permit and will
365 give the terms and conditions under which the permit
366 will be reinstated.

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

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

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

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

395 15.12. The commissioner may apply the enforcement
396 policy in a liberal manner in cases where all official
397 product sample results that involve a product in the
398 form actually sold to the public have been found to be
399 in conformance with W. Va. Code §19-11B-1 et seq. or
400 these rules.

401 15.13. The commissioner may suspend the standard
402 enforcement policy in cases where such action is
403 necessary to protect the public health, safety or welfare.

404 15.14. Resamples will only be taken from machines
405 that were shown to be producing violative product the
406 previous visit, except for resamples needed to check that
407 the nonviolative status is being maintained according to
408 the following schedule:

409 15.14.a. After a first notice and one nonviolative
410 sample, resamples will be taken between 5 to 6 months
411 after the nonviolative sample.

412 15.14.b. After a second notice and one nonviolative
413 sample, resamples will be taken between 3-4 months
414 after the nonviolative sample.

415 15.14.c. Other resamples may be considered necessary
416 to determine that the nonviolative status is being
417 maintained.”

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

427 (ii) The legislative rules filed in the state register on
428 the eighth day of August, one thousand nine hundred
429 ninety-one, modified by the commissioner of agriculture
430 to meet the objections of the legislative rule-making
431 review committee and refiled in the state register on the
432 twenty-fourth day of September, one thousand nine
433 hundred ninety-one, relating to the commissioner of
434 agriculture (disposal of dead poultry), are authorized
435 with the amendments set forth below:

436 On page two, section two, by adding a new subsection
437 to read as follows:

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

448 On page two, subsection 3.1 after the word "inciner-
449 ator," by adding the words "disposal pit,"

450 And,

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

453 **"§61-1C-4. Standards for Site Location for Dis-**
454 **posal Pits.**

455 4.1 No part of a disposal pit system shall be located
456 in a poorly drained or filled area, or in any area where
457 seasonal flooding occurs.

458 4.2 No part of a disposal pit system shall be located
459 within 10 feet of a building, foundation or property line.

460 4.3 No part of a disposal pit system shall be located
461 within 50 feet of a public water supply line or within
462 10 feet of a private water supply system.

463 4.4 A disposal pit shall be located at least 50 feet from

464 a private well or groundwater supply.

465 4.5 There shall be a minimum of three feet between
466 the bottom of a disposal pit and seasonal groundwater
467 or rock, shale or any other impermeable layer.

468 4.6 The evaluation of the site for installation of a
469 disposal pit shall be based upon percolation test results.
470 Percolation tests shall be performed in the following
471 manner:

472 4.6.1 Location - At least two holes shall be placed
473 over the selected site. The results of these two test holes
474 will be averaged.

475 4.6.2 Holes shall be dug or bored from six to eight
476 inches in diameter at the site where the disposal pit will
477 be installed. The holes should be at least 24 inches in
478 depth.

479 4.6.3 The bottom and sides of the holes shall be
480 scratched with a sharp pointed instrument or wire
481 brush to remove any smeared soil surfaces which
482 interfere with the absorption of water into the soil.

483 4.6.4 Loose dirt shall be removed from the bottom
484 of the test holes and two inches of coarse sand or fine
485 gravel shall be placed into the holes to prevent sealing.

486 4.6.5 An eight or ten penny nail shall be placed
487 in the wall of each hole exactly six inches above the level
488 of sand or gravel.

489 4.6.6 The test hole shall be completely filled with
490 water to ground level. Water in the hole shall be kept
491 to a depth of at least 12 inches for a minimum period
492 of four hours before beginning the percolation rate
493 measurement.

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

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

§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 automat-
14 ically 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 amendment 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 subsection 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 And,

98 On page 6, by inserting a new section, designated
99 section 3-5-8, to read as follows:

100 “§3-5-8. **Repeal of rule** — This rule will automati-
101 cally be repealed on July 1, 1991, unless extended prior
102 to that date by an act of the Legislature.”

103 (g) The legislative rules filed in the state register on
104 the tenth day of August, one thousand nine hundred
105 ninety, modified by the board of barbers and beauticians

106 to meet the objections of the legislative rule-making
107 review committee and refiled in the state register on the
108 seventh day of December, one thousand nine hundred
109 ninety, relating to the board of barbers and beauticians
110 (licensing of schools of barbering and beauty culture),
111 are authorized with the amendment set forth below:

112 On page 6, by inserting a new section, designated
113 section 3-5-8, to read as follows:

114 “§3-5-8. **Repeal of rule** — This rule will automati-
115 cally be repealed on July 1, 1992, unless extended prior
116 to that date by an act of the Legislature.”

117 (h) The legislative rules filed in the state register on
118 the tenth day of August, one thousand nine hundred
119 ninety, modified by the board of barbers and beauticians
120 to meet the objections of the legislative rule-making
121 review committee and refiled in the state register on the
122 seventh day of December, one thousand nine hundred
123 ninety, relating to the board of barbers and beauticians
124 (qualifications, training, examination and registration of
125 instructors in barbering and beauty culture), are
126 authorized with the amendment set forth below:

127 On page 6, by inserting a new section, designated
128 section 3-2-9, to read as follows:

129 “§3-2-9. **Repeal of rule** — This rule will automati-
130 cally be repealed on July 1, 1992, unless extended prior
131 to that date by an act of the Legislature.”

132 (i) The legislative rules filed in the state register on
133 the tenth day of August, one thousand nine hundred
134 ninety, modified by the board of barbers and beauticians
135 to meet the objections of the legislative rule-making
136 review committee and refiled in the state register on the
137 seventh day of December, one thousand nine hundred
138 ninety, relating to the board of barbers and beauticians
139 (minimum curriculum for schools of barbering), are
140 authorized with the amendment set forth below:

141 On page 7, by inserting a new section, designated
142 section 3-6-14, to read as follows:

143 “§3-6-14. **Repeal of rule** — This rule will automat-

144 ically be repealed on July 1, 1992, unless extended prior
145 to that date by an act of the Legislature.”

146 (j) The legislative rules filed in the state register on
147 the tenth day of August, one thousand nine hundred
148 ninety, modified by the board of barbers and beauticians
149 to meet the objections of the legislative rule-making
150 review committee and refiled in the state register on the
151 seventh day of December, one thousand nine hundred
152 ninety, relating to the board of barbers and beauticians
153 (curriculum and minimum requirements, subjects and
154 hour schedule, rules and regulations for schools of
155 beauty culture operation in West Virginia; joint barbers
156 and beauticians license), are authorized with the
157 amendment set forth below:

158 On page 7, by inserting a new section, designated
159 section 3-1-11, to read as follows:

160 “§3-1-11. **Repeal of rule** — This rule will automati-
161 cally be repealed on July 1, 1992, unless extended prior
162 to that date by an act of the Legislature.”

163 (k) The legislative rules filed in the state register on
164 the tenth day of August, one thousand nine hundred
165 ninety, modified by the board of barbers and beauticians
166 to meet the objections of the legislative rule-making
167 review committee and refiled in the state register on the
168 seventh day of December, one thousand nine hundred
169 ninety, relating to the board of barbers and beauticians
170 (operation of barber and beauty shops and schools of
171 barbering and beauty culture), are authorized with the
172 amendment set forth below:

173 On page 4, by inserting a new section, designated
174 section 3-3-6, to read as follows:

175 “§3-3-6. **Repeal of rule** — This rule will automati-
176 cally be repealed on July 1, 1992, unless extended prior
177 to that date by an act of the Legislature.”

178 (l) The legislative rules filed in the state register on
179 the thirteenth day of August, one thousand nine hundred
180 ninety-one, modified by the board of barbers and
181 beauticians to meet the objections of the legislative rule-
182 making review committee and refiled in the state

183 register on the thirty-first day of December, one
184 thousand nine hundred ninety-one, relating to the board
185 of barbers and beauticians (procedures, criteria and
186 curricula for examination and licensure of barbers,
187 beauticians and manicurists), are authorized.

188 (m) The legislative rules filed in the state register on
189 the thirteenth day of August, one thousand nine hundred
190 ninety-one, modified by the board of barbers and
191 beauticians to meet the objections of the legislative rule-
192 making review committee and refiled in the state
193 register on the twenty-sixth day of December, one
194 thousand nine hundred ninety-one, relating to the board
195 of barbers and beauticians (fee schedule), are authorized
196 with the amendment set forth below:

197 On page one, subsection 2.14. by striking out "\$5.00"
198 and inserting in lieu thereof "\$10.00".

199 (n) The legislative rules filed in the state register on
200 the thirteenth day of August, one thousand nine hundred
201 ninety-one, relating to the board of barbers and
202 beauticians (licensing schools of barbering and beauty
203 culture), are authorized.

204 (o) The legislative rules filed in the state register on
205 the thirteenth day of August, one thousand nine hundred
206 ninety-one, relating to the board of barbers and
207 beauticians (operation of barber, beauty shops and
208 schools of barbering and beauty culture), are authorized.

209 (p) The legislative rules filed in the state register on
210 the thirteenth day of August, one thousand nine hundred
211 ninety-one, modified by the board of barbers and
212 beauticians to meet the objections of the legislative rule-
213 making review committee and refiled in the state
214 register on the thirty-first day of December, one
215 thousand nine hundred ninety-one, relating to the board
216 of barbers and beauticians (operational standards for
217 schools of barbering and beauty culture), are authorized.

218 (q) The legislative rules filed in the state register on
219 the thirteenth day of August, one thousand nine hundred
220 ninety-one, modified by the board of barbers and
221 beauticians to meet the objections of the legislative rule-

222 making review committee and refiled in the state
223 register on the thirty-first day of December, one
224 thousand nine hundred ninety-one, relating to the board
225 of barbers and beauticians (qualifications, training,
226 examination and licensing of instructors in barbering
227 and beauty culture), are authorized.

§64-9-8. West Virginia board of examiners in counseling.

1 (a) The legislative rules filed in the state register on
2 the 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.

10 (b) The legislative rules filed in the state register on
11 the eighteenth day of July, one thousand nine hundred
12 ninety-one, modified by the board of examiners in
13 counseling to meet the objections of the legislative rule-
14 making review committee and refiled in the state
15 register on the sixth day of December, one thousand
16 nine hundred ninety-one, relating to the board of
17 examiners in counseling (licensing), are authorized.

§64-9-9. Governor's committee on crime, delinquency and corrections.

1 (a) The legislative rules filed in the state register on
2 the 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.

12 (b) The legislative rules filed in the state register on
13 the ninth day of August, one thousand nine hundred

14 ninety-one, modified by the governor's committee on
15 crime, delinquency and corrections to meet the objec-
16 tions of the legislative rule-making review committee
17 and refiled in the state register on the fifteenth day of
18 January, one thousand nine hundred ninety-two, relat-
19 ing to the governor's committee on crime, delinquency
20 and corrections (protocol for law-enforcement response
21 to domestic violence), are authorized with the amend-
22 ments set forth below:

23 On page 1, section 2.1 by striking out the words
24 "member of the Department of Natural Resources,";

25 On page 1, by striking out subsection 2.2.4;

26 On page 1, by striking out section 3;

27 On page 4, section 6.2.1 after the word "home" by
28 adding "or business";

29 On page 6, section 6.4.6 by striking out the word
30 "abuse";

31 On page 6, section 7.2.3 after the words "protective
32 order" by adding "and the officer has actual knowledge
33 that a valid protective order exists.";

34 On page 6, by striking out sections 7.2.4 and 7.2.5;

35 On page 7, by striking out section 7.3.5;

36 On page 8, section 7.5, following the word "prosecu-
37 tion", by striking out the period and by adding the
38 following proviso: "*Provided*, That this section does not
39 authorize a search of the premises unless a search
40 warrant has been obtained or consent was given by the
41 occupant of the premises.";

42 On page 8, by striking out sections 7.6 and 7.7;

43 On page 8, section 8.1 by striking out the words "the
44 officer determines that a warrantless arrest is approp-
45 riate or that";

46 On page 8, section 8.1 by striking out the words "in
47 the event that a warrantless arrest for a misdemeanor
48 is authorized";

49 On page 8, section 8.1 by striking out the word "If"

50 from the sentence "If a warrant is necessary";

51 On page 9, by adding the following:

52 "9.1.4 Advise the victim or victims that upon request
53 of the victim or victims the officer will provide
54 transportation for, or facilitate transportation of the
55 victim or victims to a shelter or the appropriate court
56 where there is reasonable cause to believe that such
57 victim or victims have suffered or are likely to suffer
58 physical injury.

59 9.1.5 Provide transportation for or facilitate transpor-
60 tation of the victim or victims upon the request of such
61 victim or victims to a shelter or the appropriate court
62 where there is reasonable cause to believe that such
63 victim or victims have suffered or are likely to suffer
64 physical injury.";

65 On page 10, section 10.7.1 by striking out the words
66 "should arrest the assailant upon probable cause to
67 believe that a crime has been committed" and inserting
68 in lieu thereof the following "should arrest the assailant
69 if the officer observes the commission of a crime";

70 On page 11, section 11.3 by striking out the word
71 "advise" and inserting in lieu thereof the word "inform";

72 And,

73 On page 11, section 11.3 by striking out the remainder
74 of section 11.3 beginning with the words "the condition
75 may include".

§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 (a) 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 And,

57 Section 3.3 to read as follows: "Physicians or podia-
58 trists who are not registered with the Board as dispens-
59 ing physicians may not dispense legend drugs. However,
60 the following activities by a physician or podiatrist shall
61 be exempt from the requirements of sections 3 through
62 8 applicable to dispensing physicians:

63 a. Legend drugs administered to the patient, which
64 are not controlled substances when an appropriate
65 record is made in the patient's chart;

66 b. Professional samples distributed free of charge by
67 a physician or podiatrist or certified physician assistant
68 under his or her supervision to the patient when an
69 appropriate record is made in the patient's chart; or

70 c. Legend drugs which are not controlled substances
71 provided by free clinics or under West Virginia state
72 authorized programs, including the Medicaid, family
73 planning, maternal and child health, and early and
74 periodic screening and diagnosis and treatment pro-
75 grams: *Provided*, That all labeling provisions of section
76 8 shall be applicable except the requirements of section
77 8.3 (a)."

78 (f) The legislative rules filed in the state register on
79 the tenth day of August, one thousand nine hundred
80 ninety, modified by the board of medicine to meet the
81 objections of the legislative rule-making review commit-
82 tee and refiled in the state register on the first day of
83 October, one thousand nine hundred ninety, relating to
84 the board of medicine (fees for services rendered by the
85 board of medicine), are authorized.

86 (g) The legislative rules filed in the state register on
87 the tenth day of August, one thousand nine hundred
88 ninety, modified by the board of medicine to meet the

89 objections of the legislative rule-making review commit-
90 tee and refiled in the state register on the eleventh day
91 of January, one thousand nine hundred ninety-one,
92 relating to the board of medicine (licensing and
93 disciplinary and complaint procedures: physicians;
94 podiatrists), are authorized.

95 (h) The legislative rules filed in the state register on
96 the tenth day of August, one thousand nine hundred
97 ninety, modified by the board of medicine to meet the
98 objections of the legislative rule-making review commit-
99 tee and refiled in the state register on the eleventh day
100 of January, one thousand nine hundred ninety-one,
101 relating to the board of medicine (certification, discipli-
102 nary and complaint procedures: physician assistants),
103 are authorized.

104 (i) The legislative rules filed in the state register on
105 the tenth day of July, one thousand nine hundred ninety-
106 one, modified by the board of medicine to meet the
107 objections of the legislative rule-making review commit-
108 tee and refiled in the state register on the third day of
109 September, one thousand nine hundred ninety-one,
110 relating to the board of medicine (continuing education
111 for physicians and podiatrists), are authorized.

**§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.

22 (d) The legislative rules filed in the state register on
23 the eleventh day of July, one thousand nine hundred
24 ninety-one, modified by the West Virginia board of
25 examiners for licensed practical nurses to meet the
26 objections of the legislative rule-making review commit-
27 tee and refiled in the state register on the twenty-fourth
28 day of September, one thousand nine hundred ninety-
29 one, relating to the West Virginia board of examiners
30 for licensed practical nurses (policies and procedures for
31 development and maintenance of educational programs
32 in practical nursing), are authorized.

33 (e) The legislative rules filed in the state register on
34 the eleventh day of July, one thousand nine hundred
35 ninety-one, modified by the West Virginia board of
36 examiners for licensed practical nurses to meet the
37 objections of the legislative rule-making review commit-
38 tee and refiled in the state register on the twenty-fourth
39 day of September, one thousand nine hundred ninety-
40 one, relating to the West Virginia board of examiners
41 for licensed practical nurses (policies regulating
42 licensure of the licensed practical nurse), are authorized.

43 (f) The legislative rules filed in the state register on
44 the eleventh day of July, one thousand nine hundred
45 ninety-one, modified by the West Virginia board of
46 examiners for licensed practical nurses to meet the
47 objections of the legislative rule-making review commit-
48 tee and refiled in the state register on the nineteenth day
49 of September, one thousand nine hundred ninety-one,
50 relating to the West Virginia board of examiners for
51 licensed practical nurses (legal standards of nursing
52 practice for the licensed practical nurse), are
53 authorized.

54 (g) The legislative rules filed in the state register on
55 the eleventh day of July, one thousand nine hundred

56 ninety-one, modified by the West Virginia board of
57 examiners for licensed practical nurses to meet the
58 objections of the legislative rule-making review commit-
59 tee and refiled in the state register on the nineteenth day
60 of September, one thousand nine hundred ninety-one,
61 relating to the West Virginia board of examiners for
62 licensed practical nurses (fees for services rendered by
63 the board), are authorized.

64 (h) The legislative rules filed in the state register on
65 the eleventh day of July, one thousand nine hundred
66 ninety-one, modified by the West Virginia board of
67 examiners for licensed practical nurses to meet the
68 objections of the legislative rule-making review commit-
69 tee and refiled in the state register on the twenty-fourth
70 day of September, one thousand nine hundred ninety-
71 one, relating to the West Virginia board of examiners
72 for licensed practical nurses (continuing competence),
73 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.

17 (c) The legislative rules filed in the state register on
18 the sixth day of May, one thousand nine hundred ninety,
19 modified by the board of pharmacy to meet the objec-
20 tions of the legislative rule-making review committee
21 and refiled in the state register on the fifth day of June,

22 one thousand nine hundred ninety, relating to the board
23 of pharmacy (continuing education for the licensure of
24 pharmacists), are authorized.

25 (d) The legislative rules filed in the state register on
26 the eleventh day of March, one thousand nine hundred
27 ninety-one, modified by the board of pharmacy to meet
28 the objections of the legislative rule-making review
29 committee and refiled in the state register on the
30 twenty-fourth day of May, one thousand nine hundred
31 ninety-one, relating to the board of pharmacy (computer
32 regulations), are authorized.

33 (e) The legislative rules filed in the state register on
34 the twenty-eighth day of August, one thousand nine
35 hundred ninety-one, modified by the board of pharmacy
36 to meet the objections of the legislative rule-making
37 review committee and refiled in the state register on the
38 eighth day of January, one thousand nine hundred
39 ninety-two, relating to the board of pharmacy (licensure
40 of wholesale drug distributors), are authorized.

41 (f) The legislative rules filed in the state register on
42 the twenty-eighth day of August, one thousand nine
43 hundred ninety-one, modified by the board of pharmacy
44 to meet the objections of the legislative rule-making
45 review committee and refiled in the state register on the
46 eighth day of January, one thousand nine hundred
47 ninety-two, relating to the board of pharmacy (mail
48 order house), are authorized.

§64-9-23. Real estate commission.

1 (a) The legislative rules filed in the state register on
2 the 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.

9 (b) The legislative rules filed in the state register on
10 the twenty-fifth day of July, one thousand nine hundred
11 ninety-one, modified by the real estate commission to

12 meet the objections of the legislative rule-making review
13 committee and refiled in the state register on the
14 twenty-first day of November, one thousand nine
15 hundred ninety-one, relating to the real estate commis-
16 sion (requirements in licensing real estate brokers and
17 salesmen and the conduct of brokerage businesses), are
18 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.

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

33 ballot), are authorized.

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

§64-9-29. Board of accountancy.

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

§64-9-30. Board of architects.

1 The legislative rules filed in the state register on the
2 twenty-fourth day of January, one thousand nine
3 hundred ninety-one, modified by the board of architects
4 to meet the objections of the legislative rule-making
5 review committee and refiled in the state register on the
6 twenty-fourth day of July, one thousand nine hundred
7 ninety-one, relating to the board of architects (rules of
8 the West Virginia board of architects), are authorized.

§64-9-31. Real estate appraiser licensing and certification board.

1 (a) The legislative rules filed in the state register on
2 the eighteenth day of July, one thousand nine hundred
3 ninety-one, modified by the real estate appraiser
4 licensing and certification board to meet the objections
5 of the legislative rule-making review committee and
6 refiled in the state register on the eighteenth day of
7 November, one thousand nine hundred ninety-one,
8 relating to the real estate appraiser licensing and
9 certification board (rules and regulations of the real
10 estate appraiser licensing and certification board), are
11 authorized.

12 (b) The legislative rules filed in the state register on

13 the eighteenth day of July, one thousand nine hundred
14 ninety-one, modified by the real estate appraiser
15 licensing and certification board to meet the objections
16 of the legislative rule-making review committee and
17 refiled in the state register on the eighteenth day of
18 November, one thousand nine hundred ninety-one,
19 relating to the real estate appraiser licensing and
20 certification board (requirements of licensure and
21 certification), are authorized.

22 (c) The legislative rules filed in the state register on
23 the eighteenth day of July, one thousand nine hundred
24 ninety-one, modified by the real estate appraiser
25 licensing and certification board to meet the objections
26 of the legislative rule-making review committee and
27 refiled in the state register on the eighteenth day of
28 November, one thousand nine hundred ninety-one,
29 relating to the real estate appraiser licensing and
30 certification board (renewal of licensure or certifica-
31 tion), are authorized.

§64-9-32. Board of veterinary medicine.

1 (a) The legislative rules filed in the state register on
2 the nineteenth day of August, one thousand nine
3 hundred ninety-one, modified by the board of veterinary
4 medicine to meet the objections of the legislative rule-
5 making review committee and refiled in the state
6 register on the second day of January, one thousand nine
7 hundred ninety-two, relating to the board of veterinary
8 medicine (organization and operation of the board), are
9 authorized.

10 (b) The legislative rules filed in the state register on
11 the nineteenth day of August, one thousand nine
12 hundred ninety-one, modified by the board of veterinary
13 medicine to meet the objections of the legislative rule-
14 making review committee and refiled in the state
15 register on the second day of January, one thousand nine
16 hundred ninety-two, relating to the board of veterinary
17 medicine (schedule of fees), are authorized.

18 (c) The legislative rules filed in the state register on
19 the nineteenth day of August, one thousand nine
20 hundred ninety-one, modified by the board of veterinary

21 medicine to meet the objections of the legislative rule-
22 making review committee and refiled in the state
23 register on the second day of January, one thousand nine
24 hundred ninety-two, relating to the board of veterinary
25 medicine (standards of practice), are authorized with
26 the amendments set forth below:

27 On page eight, section 3.8., by adding a new subdivi-
28 sion, designated subdivision 2, to read as follows:

29 “2) All dental surgery shall be carried out by a
30 licensed veterinarian or a veterinary assistant under the
31 supervision of a licensed veterinarian.”

32 And,

33 On page eight by renumbering the remaining
34 subdivision.

35 (d) The legislative rules filed in the state register on
36 the nineteenth day of August, one thousand nine
37 hundred ninety-one, modified by the board of veterinary
38 medicine to meet the objections of the legislative rule-
39 making review committee and refiled in the state
40 register on the second day of January, one thousand nine
41 hundred ninety-two, relating to the board of veterinary
42 medicine (registration of veterinary technicians), are
43 authorized.

§64-9-33. Contractor licensing board.

1 The legislative rules filed in the state register on the
2 fourth day of October, one thousand nine hundred
3 ninety-one, modified by the contractor licensing board
4 to meet the objections of the legislative rule-making
5 review committee and refiled in the state register on the
6 twenty-first day of January, one thousand nine hundred
7 ninety-two, relating to the contractor licensing board
8 (West Virginia contractor’s licensing act), are autho-
9 rized with the amendment set forth below:

10 On page nine, subsection 5.3, by striking out the words
11 “of \$100.00” and inserting in lieu thereof “as established
12 by the board”.

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