

ACTS
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LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1993
First Extraordinary Session, 1993

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CHAPTER 128

(Com. Sub. for H. B. 2285—By Delegates Pettit and Houvouras)

[Passed April 10, 1993; in effect ninety days 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 sixteen, relating to economic and industrial development; creating the steel advisory commission and a steel futures program in the department of commerce, labor and environmental resources; setting forth legislative intent and purposes; appointment of the commission; terms of the commission; reimbursement of expenses; meeting space and staff services for the commission; responsibilities of the commission; and providing for the termination of the advisory commission and program in seven years.

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 sixteen, to read as follows:

ARTICLE 16. WEST VIRGINIA STEEL FUTURES PROGRAM.

- §31-16-1. Legislative intent; purpose and administration.
- §31-16-2. Steel advisory commission; membership, appointment, terms, quorum and selection officers.
- §31-16-3. Responsibilities of commission.
- §31-16-4. Steel futures program.
- §31-16-5. Continuation of program.

§31-16-1. Legislative intent; purpose and administration.

- 1 The Legislature recognizes that the steel industry
- 2 plays a significant role in West Virginia's economy, and
- 3 the industry's survival and success is of significant
- 4 importance to the residents and the tax base of the state.
- 5 Because of this significant economic role, there is hereby
- 6 created in the West Virginia department of commerce,
- 7 labor and environmental resources a steel advisory
- 8 commission and a new program entitled "The Steel

9 Futures Program". The purpose of the commission and
10 the program is to preserve and improve the economy of
11 the state by promoting employment and increased
12 productivity, thereby ensuring continued economic
13 development consistent with these goals, and to main-
14 tain a high standard of living for the residents of the
15 state. The commission, through the steel futures
16 program, may supplement any other enterprise assist-
17 ance program administered by the West Virginia
18 department of commerce, labor and environmental
19 resources. The steel futures program shall be adminis-
20 tered so as to provide financial and technical assistance
21 as provided in this article to increase the competitive-
22 ness of existing steel and steel-related industries within
23 the state and to encourage the establishment and
24 development of new steel and steel-related industries
25 within the state.

**§31-16-2. Steel advisory commission; membership, ap-
pointment, terms, quorum and selection of
officers.**

1 (a) There is hereby created the West Virginia steel
2 advisory commission within the department of com-
3 merce, labor and environmental resources, which shall
4 consist of thirteen members. The secretary of the
5 department of commerce, labor and environmental
6 resources or his or her designee shall be a member of
7 the commission and shall serve as its chairperson. Eight
8 members shall be appointed by the governor with the
9 advice and consent of the Senate. At least four of the
10 members appointed by the governor shall be senior
11 management representatives of steel manufacturing
12 companies that employ over fifty people. At least two of
13 the members appointed by the governor shall be
14 representatives of organized labor. One of the members
15 appointed by the governor shall be a member of the
16 United Steelworkers of America. One of the members
17 appointed by the governor shall be a member of the
18 Independent Steelworkers Union. One member shall be
19 appointed by the university of West Virginia board of
20 trustees and one member shall be appointed by the
21 board of directors of the state college system: *Provided,*

22 That of the members appointed by these educational
23 bodies, one shall be appointed to represent a school of
24 engineering and one shall be appointed to represent a
25 school of business administration. Of the remaining
26 members, the president of the Senate and the speaker
27 of the House of Delegates shall each appoint one
28 member from their respective houses who shall serve as
29 ex officio nonvoting members. No more than seven of the
30 governor's appointees shall be of the same political
31 party. Prior to making the appointments, the governor
32 shall solicit recommendations from individuals repre-
33 senting the steel industry and labor organizations
34 representing steelworkers. The governor shall make
35 appointments based upon the knowledge and experience
36 of the individual in the steel industry.

37 (b) Within ninety days after the effective date of this
38 section, the governor, the university of West Virginia
39 board of trustees and the board of directors of the state
40 college system, the president of the Senate and the
41 speaker of the House of Delegates shall make their
42 respective initial appointments to the commission. The
43 terms of office for nonlegislative appointed members are
44 seven years. Each member shall hold office from the
45 date of his or her appointment until the end of the term
46 for which he or she was appointed. Members may be
47 reappointed. Vacancies shall be filled in the manner
48 provided for original appointments. A member shall
49 continue in office until his or her successor takes office
50 or until a period of sixty days has elapsed, whichever
51 occurs first. The terms of legislative members shall be
52 for the term for which they were elected.

53 (c) Notwithstanding the terms of office stated for
54 members in subsection (b) of this section, each member
55 serves at the pleasure of his or her appointing authority
56 and the appointing authority may remove his or her
57 appointee at any time and for any reason.

58 (d) Seven members constitute a quorum and an
59 affirmative vote of seven members is necessary to
60 transact business of the commission. In the event of the
61 absence of a member appointed by the president of the
62 Senate or by the speaker of the House of Delegates, the

63 president of the Senate or the speaker of the House of
64 Delegates may become a member, as the case may be,
65 or may designate an alternative member of the
66 commission.

67 (e) Before entering upon the duties of office, each
68 member shall take the oath of office prescribed by the
69 constitution of West Virginia.

70 (f) Members of the commission shall receive no
71 compensation but shall be reimbursed for their neces-
72 sary and actual expenses incurred in the course of duties
73 as members of the commission.

74 (g) The commission shall provide for the election of
75 officers. The commission shall meet at least three times
76 annually or upon the call of the chairperson or upon the
77 request of five or more members.

78 (h) The West Virginia department of commerce, labor
79 and environmental resources, as requested by the
80 commission, shall provide the commission with meeting
81 space and staff services and other technical assistance.
82 The West Virginia department of commerce, labor and
83 environmental resource development office shall assist
84 the commission with the costs of production and
85 distribution of commission reports. If the commission
86 determines, by a majority vote, to have any study
87 conducted by a third party, the funds for the study shall
88 be derived from contributions from the steel industry or
89 other interested parties.

§31-16-3. Responsibilities of commission.

1 The West Virginia steel industry advisory commission
2 shall conduct an examination of existing federal and
3 state laws which currently affect the production and
4 consumption of West Virginia steel and shall study
5 problems which the West Virginia steel industry
6 currently faces including unfair competition from
7 foreign industries, the economic factors affecting the
8 West Virginia steel industry, and other matters relevant
9 to the future of the steel industry in this state.

§31-16-4. Steel futures program.

1 The commission shall develop and recommend a
2 strategy for financial and technical assistance to steel
3 and steel-related industries in the state. The strategy
4 shall include investment policies with regard to these
5 industries. In administering the program, the commis-
6 sion shall consult with appropriate representatives of
7 steel, and steel-related industries, appropriate represen-
8 tatives of any union that represents workers in these
9 industries, and any other persons with expert knowledge
10 of these industries. The commission shall consult with
11 the chairman of the public service commission to foster
12 the development of public and private cooperative
13 efforts that would result in energy savings and reduced
14 energy costs for steel and steel-related industries. The
15 commission shall consult with the air pollution control
16 commission, the division of solid waste management, the
17 water resources board, groundwater conservation
18 agencies and other agencies with which the steel
19 industry must interact to assist the steel industry in
20 adhering to regulations in a manner conducive to
21 economic viability. Assistance may be made available to
22 steel and steel-related industries undertaking projects
23 the commission determines to have long-term implica-
24 tions for and broad applicability to the economy of this
25 state when the secretary of the department of com-
26 merce, labor and environmental resources finds that:

27 (a) The undertaking of projects by the steel industries
28 will benefit the people of the state by creating or
29 preserving jobs and employment opportunities; and

30 (b) The undertaking of projects by the steel industries
31 will allow them to compete more effectively in the
32 marketplace.

33 Projects eligible to receive assistance under the steel
34 futures program may include, but are not limited to, the
35 following:

36 (a) Research and development specifically related to
37 steel and steel-related industries and feasibility studies
38 for business development within these industries;

39 (b) Employee training;

40 (c) Labor and management relations; and

41 (d) Technology-driven capital investment.

42 Financial and technical assistance may be in the form
 43 and conditioned upon terms as stipulated by each
 44 enterprise assistance program administered by the
 45 department of commerce, labor and environmental
 46 resources as the secretary considers appropriate. No
 47 later than the thirtieth day of June of the first year after
 48 the effective date of this section, and no later than the
 49 thirtieth day of June of each year thereafter, the
 50 commission shall submit a report to the governor and
 51 Legislature describing projects of the steel futures
 52 program, results obtained from completed projects of
 53 the program and program projects for the next fiscal
 54 year.

§31-16-5. Continuation of program.

1 The steel advisory commission and the steel futures
 2 program shall continue to exist until the first day of
 3 July, two thousand: *Provided*, That prior to the termi-
 4 nation date the joint committee on government organ-
 5 ization shall conduct a performance review of the
 6 commission and program.

CHAPTER 129

(H. B. 2063—By Delegates Martin, Love, Wallace and L. White)

[Passed March 29, 1993; in effect July 1, 1993. 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
 continuation of 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, and following a preliminary perfor-
18 mance audit review conducted through the joint com-
19 mittee on government operations, the capitol building
20 commission shall continue to exist until the first day of
21 July, one thousand nine hundred ninety-nine.

CHAPTER 130

(H. B. 2740—By Delegates Martin, Love, Michael, Fragale,
Heck, Higgins and Willison)

[Passed April 10, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia sunset law; outlining need for legislative oversight of state government; establishing termination schedule for departments, agencies or boards following performance audits, financial audits, and preliminary performance reviews; outlining powers of departments, agencies or boards following termination; requiring acts which create new departments, agencies or boards to include

termination provisions; outlining membership, compensation, powers and duties of joint committee on government operations; permitting joint committee on government operations to collect auditing or reviewing costs from departments, agencies or boards; establishing criteria for performance audits, financial audits and preliminary performance reviews; permitting joint committee on government operations to alter termination schedule; requiring reports by the committee; and establishing criteria for bills continuing or reestablishing departments, agencies or boards.

Be it enacted by the Legislature of West Virginia:

That 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.

- §4-10-1. Short title.
- §4-10-2. Legislative findings.
- §4-10-3. Definitions.
- §4-10-4. Termination of departments, agencies or boards following performance audits.
- §4-10-5. Termination of agencies or boards following preliminary performance reviews.
- §4-10-6. Continuance of department, agency or board after termination and purpose therefor; continuance of powers and authority after termination; cessation of all activities; reestablishment of terminated department, agency or board.
- §4-10-7. Continuation or reestablishment of departments, agencies or boards scheduled for termination.
- §4-10-8. Joint committee on government operations continued; membership; compensation and expenses; meetings.
- §4-10-9. Powers of the committee; failure of witnesses to appear, testify or produce records; public hearings; allowance of per diem and mileage for witnesses; hiring of necessary employees; permitting committee to collect costs associated with audits or reviews.
- §4-10-10. Performance and financial audits of governmental departments and agencies by the committee.
- §4-10-11. Preliminary performance reviews of governmental boards and agencies by the committee.
- §4-10-12. Reports by the committee.
- §4-10-13. Bill for continuation and reestablishment of affected department, agency or board.
- §4-10-14. Preservation of rights and claims.
- §4-10-15. Article not to be construed as limiting new legislation.

§4-10-1. Short title.

1 This article shall be known as and may be cited as
2 the "West Virginia Sunset Law."

§4-10-2. Legislative findings.

1 The Legislature finds that state governmental actions
2 have produced substantial increases in the number of
3 governmental entities, growth in the number of govern-
4 mental programs, proliferation of rules and regulations,
5 and that the process developed without sufficient
6 legislative oversight, regulatory accountability or an
7 effective system of checks and balances; that govern-
8 mental entities have been created without demonstrable
9 evidence that their benefits to the public clearly justify
10 their creation; that once established, governmental
11 entities tend to acquire permanent status, often without
12 regard for the condition which gave rise to their
13 establishment; that the personnel of such entities are
14 often beyond the effective control of elected officials, and
15 efforts to encourage modernization or even to review
16 performance have typically proven difficult at best; that
17 too often, governmental entities acquire a combination
18 of autonomy and authority inconsistent with democratic
19 principles and acquire a capacity for self-perpetuation
20 incompatible with principles of accountability; and that
21 by establishing a system for the termination, continua-
22 tion or reestablishment of such governmental entities,
23 the position of the Legislature to evaluate the need for
24 the continued existence of existing and future govern-
25 mental entities will be enhanced.

§4-10-3. Definitions.

1 As used in this article, unless the context clearly
2 indicates a different meaning:

3 (1) "Committee" means the joint committee on go-
4 vernment operations, hereinafter created, to perform
5 duties under this article.

6 (2) "Department" means any office or division,
7 headed by a gubernatorial appointee, within the state of
8 West Virginia.

9 (3) "Agency" means any department, division, fund,
10 office, position, system, survey or other entity of state
11 government, however designated, in the state of West
12 Virginia.

13 (4) "Board" means any board, commission, authority,
14 council, advisory body, or other body, however desig-
15 nated, consisting of two or more members, in the state
16 of West Virginia.

17 (5) "Performance audit" means to determine for a
18 department, agency, or board whether the department,
19 agency or board is acquiring, protecting and using its
20 resources economically and efficiently; the causes of
21 inefficiencies or fiscally unsound practices; and whether
22 the department, agency or board has complied with laws
23 and regulations concerning matters of economy and
24 efficiency. Also, a performance audit may include
25 determining the extent to which the desired results or
26 benefits established by the legislature are being
27 achieved by the department, agency or board; the
28 effectiveness of organizations, programs, activities or
29 functions; and whether the department, agency or board
30 has complied with laws and regulations applicable to the
31 program.

32 (6) "Financial audit" means to determine for a
33 department, agency, board or person whether the
34 financial statements of the audited department, agency
35 or board present fairly the financial position, results of
36 operations and cash flows or changes in financial
37 position in accordance with generally accepted account-
38 ing principles; and whether the department, agency or
39 board has complied with laws and regulations for those
40 transactions and events that may have a material effect
41 on the financial statements.

42 (7) "Preliminary performance review" means to
43 determine the goals and objectives of a department,
44 agency, or board; and to determine the extent to which
45 plan of a department, agency, board has met or is
46 meeting those goals and objectives.

**§4-10-4. Termination of departments, agencies or boards
following performance audits.**

1 The following departments, agencies or boards shall
2 be terminated on the date indicated, but no department,
3 agency or board shall be terminated under this section
4 unless a performance audit has been conducted upon
5 such department, agency or board:

6 (1) On the first day of July, one thousand nine
7 hundred ninety-four: Division of labor; division of
8 tourism and parks; division of corrections; division of
9 natural resources; and division of highways.

10 (2) On the first day of July, one thousand nine
11 hundred ninety-five: Division of environmental
12 protection.

13 (3) On the first day of July, one thousand nine
14 hundred ninety-six: Division of culture and history;
15 division of personnel.

16 (4) On the first day of July, one thousand nine
17 hundred ninety-seven: Department of health and human
18 resources.

§4-10-5. Termination of agencies or boards following preliminary performance reviews.

1 The following agencies or boards shall be terminated
2 on the date indicated, but no agency or board shall be
3 terminated under this section unless a preliminary
4 performance review has been conducted upon such
5 agency or board:

6 (1) On the first day of July, one thousand nine
7 hundred ninety-four: State water resources board; office
8 of water resources of the division of environmental
9 protection; farm management commission; West Virgi-
10 nia ethics commission; family law masters system; child
11 advocate office of the department of health and human
12 resources; family protection services board; state
13 structural barriers compliance board; board of archi-
14 tects; state building commission; oil and gas inspectors'
15 examining board; public employees insurance agency;
16 public employees insurance agency finance board; Ohio
17 River valley water sanitation commission; veteran's
18 council; share in your future commission; southern

19 regional education board; and the real estate
20 commission.

21 (2) On the first day of July, one thousand nine
22 hundred ninety-five: Emergency medical services
23 advisory council; commission on charitable organiza-
24 tions; information system advisory commission; West
25 Virginia labor-management council; board of social
26 work examiners; the rural health initiative advisory
27 panel; and the marketing and development divisions of
28 the department of agriculture.

29 (3) On the first day of July, one thousand nine
30 hundred ninety-six: U.S. geological survey program and
31 whitewater commission within the division of natural
32 resources; state geological and economic survey; and the
33 board of investments.

34 (4) On the first day of July, one thousand nine
35 hundred ninety-seven: The driver's licensing advisory
36 board; West Virginia health care cost review authority;
37 governor's cabinet on children and families; oil and gas
38 conservation commission; and the West Virginia con-
39 tractors' licensing board.

40 (5) On the first day of July, one thousand nine
41 hundred ninety-eight: State lottery commission; the
42 following divisions or programs of the department of
43 agriculture: Meat inspection program and soil conserva-
44 tion committee; women's commission; state board of risk
45 and insurance management; board of examiners of land
46 surveyors; commission on uniform state laws; council of
47 finance and administration; forest management review
48 commission; West Virginia's membership in the inter-
49 state commission on the Potomac River basin; legislative
50 oversight commission on education accountability; and
51 the board of examiners in counseling; board of examiners
52 in speech pathology and audiology.

53 (6) On the first day of July, one thousand nine
54 hundred ninety-nine: Board of banking and financial
55 institutions; capitol building commission; tree fruit
56 industry self-improvement assessment program; and the
57 public service commission.

§4-10-6. Continuance of department, agency or board after termination and purpose thereof; continuance of powers and authority after termination; cessation of all activities; reestablishment of terminated department, agency or board.

1 Upon termination, each department, agency or board
2 shall continue in existence until the first day of July of
3 the next succeeding year for the purpose of winding up
4 its affairs. During that year, the impending termination
5 shall not reduce or otherwise limit the powers or
6 authority of that terminated department, agency or
7 board. Any funds for such department, agency or board
8 shall revert to the fund from which they were appropri-
9 ated or, if that fund is abolished, to the General
10 Revenue Fund. Upon the expiration of one year after
11 termination, the department, agency or board shall
12 cease all activities: *Provided*, That a department, agency
13 or board which has been terminated pursuant to the
14 provisions of this article, may be reestablished by the
15 Legislature, and if reestablished by the legislature
16 during the winding-up period with substantially the
17 same powers, duties, or functions, the department,
18 agency or board shall be deemed to have been continued.

§4-10-7. Continuation or reestablishment of departments, agencies or boards scheduled for termination.

1 The life of any department, agency, or board sche-
2 duled for termination under this section may be
3 continued or reestablished by the Legislature for a
4 period of time not to exceed six years.

5 Any act which creates a new department, agency, or
6 board and which is enacted after the effective date of
7 this article shall provide for termination and review of
8 the newly-created department, agency or board pursu-
9 ant to this article within six years after the effective
10 date of the act which creates the department, agency or
11 board.

§4-10-8. Joint committee on government operations continued; membership; compensation and expenses; meetings.

1 The joint committee on government operations,
2 heretofore created, is hereby continued. The committee
3 shall be composed of five members of the Senate, to be
4 appointed by the president thereof, no more than three
5 of whom shall be appointed from the same political
6 party; five members of the House of Delegates, to be
7 appointed by the speaker thereof, no more than three of
8 whom shall be appointed from the same political party:
9 *Provided*, That in the event the membership of a
10 political party is less than fifteen percent in the House
11 of Delegates or Senate, that the membership of that
12 political party from the legislative house with less than
13 fifteen percent membership may be one from that house;
14 and five citizens of this state who are not legislators,
15 public officials or public employees, to be appointed by
16 the governor to serve at his will and pleasure, not more
17 than three of whom shall be appointed from the same
18 political party, and at least one of whom shall reside in
19 each congressional district of this state. The committee
20 shall be headed by two cochairmen, one to be selected
21 by the president of the Senate from the members
22 appointed from the Senate, and one to be selected by the
23 speaker of the House of Delegates from the members
24 appointed from the House of Delegates. All members of
25 the committee shall serve until their successors shall
26 have been appointed as heretofore provided. Members
27 of the committee shall receive such compensation and
28 reimbursement for expenses in connection with perfor-
29 mance of interim duties between regular sessions of the
30 Legislature as may be authorized by the citizens
31 legislative compensation commission established by
32 section thirty-three, article six of the constitution of
33 West Virginia. Each citizen member of the committee
34 shall receive such compensation as the legislative
35 interim members receive, in addition to reimbursement
36 for necessary expenses incurred in the performance of
37 duties under this article, such reimbursement to be
38 subject to the same limitations as govern the expenses
39 of the legislative members of the committee. Compen-
40 sation and expenses shall be paid from an appropriation
41 to be made expressly for the committee, but if no such
42 appropriation be made or the total amount appropriated

43 has been expended, such expenses shall be paid from the
44 appropriation under "Account No. 103 for Joint Ex-
45 penses," but no expense of any kind whatever payable
46 under said Account No. 103 for joint expenses shall be
47 incurred unless first approved by the joint committee on
48 government and finance. The committee shall meet upon
49 call of the cochairmen or either of them and may meet
50 at any time, both during sessions of the Legislature and
51 in the interim.

§4-10-9. Powers of the committee; failure of witnesses to appear, testify or produce records; public hearings; allowance of per diem and mileage for witnesses; hiring of necessary employees; permitting committee to collect costs associated with audits or reviews.

1 In order to carry out the duties set forth in this
2 article, the committee, or any duly authorized employee
3 of the committee, shall have access to any and all
4 records of every department, agency or board scheduled
5 for termination under the provisions of section four of
6 this article.

7 In addition to its regular and special meetings, the
8 committee, or any employee duly authorized by the
9 committee, is empowered to hold public hearings in
10 furtherance of the purposes of this article, at such times
11 and places within the state as may be deemed desirable,
12 and any member of the committee shall have the power
13 to administer oaths to persons testifying at such
14 hearings or meetings.

15 By subpoena, issued over the signature of either
16 cochairman of the committee and served in the manner
17 provided by law, the committee may summon and
18 compel the attendance of witnesses and their examina-
19 tion under oath and the production of all books, papers,
20 documents and records necessary or convenient to be
21 examined and used by the committee in the perfor-
22 mance of its duties. If any witness subpoenaed to appear
23 at any hearing or meeting shall refuse or fail to appear
24 or to answer questions put to him, or shall refuse or fail

25 to produce books, papers, documents, or records within
26 his control when the same are demanded, the committee,
27 in its discretion, may enforce obedience to its subpoena
28 by attachment, fine or imprisonment, as provided in
29 section five, article one of this chapter; or it may report
30 the facts to the circuit court of Kanawha County or any
31 other court of competent jurisdiction and such court
32 shall compel obedience to the subpoena as though such
33 subpoena had been issued by such court in the first
34 instance.

35 Witnesses subpoenaed to attend such hearings or
36 meetings, except officers or employees of the state, shall
37 be allowed the same mileage and per diem as is allowed
38 witnesses before any petit jury.

39 The joint committee on government operations,
40 subject to the approval of the joint committee on
41 government and finance, may employ such persons,
42 skilled in the field of performance audit, financial audit
43 or preliminary performance review as it may deem
44 necessary to carry out its duties and responsibilities
45 under this article, and may contract for outside
46 expertise in conducting technical or specialized perfor-
47 mance audits.

48 The joint committee on government operations may
49 collect, and the department, agency or board shall pay,
50 any or all of the costs associated with conducting the
51 performance audits, financial audits or preliminary
52 performance reviews from the department, agency or
53 board being audited or reviewed, when necessary and
54 desirable. The joint committee on government opera-
55 tions shall render to the department, agency or board
56 liable for such costs a statement thereof as soon after
57 the same were incurred as practicable, and it shall be
58 the duty of such department, agency or board to pay
59 promptly in the manner that other claims and accounts
60 are paid. All money received by the joint committee on
61 government operations from this source shall be
62 expended only for the purpose of covering the costs
63 associated with such services, unless otherwise directed
64 by the Legislature.

§4-10-10. Performance and financial audits of governmental departments and agencies by the committee.

1 It shall be the duty of the committee to conduct a
2 performance audit and a financial audit in accordance
3 with generally accepted government auditing standards
4 as promulgated by the federal general accounting office
5 of every department or agency scheduled for termina-
6 tion under section four of this article to ascertain
7 whether there is a demonstrable need for the continua-
8 tion of the department or agency and whether the
9 department or agency should be continued.

10 In conducting performance audits, the committee may
11 determine the following:

12 (1) If the department or agency was created to resolve
13 a problem or provide a service.

14 (2) If the problem has been solved or the service has
15 been provided.

16 (3) The extent to which past department or agency
17 activities and accomplishments, current projects and
18 operations, and planned activities and goals for the
19 future are or have been effective.

20 (4) If the department or agency is operating effi-
21 ciently and effectively in performing its task.

22 (5) The extent to which there would be significant
23 and discernible adverse effects on the public health,
24 safety, or welfare if the department or agency were
25 abolished.

26 (6) If the conditions which led to the creation of the
27 agency have changed.

28 (7) The extent to which the department or agency
29 operates in the public interest.

30 (8) Whether or not the operation of the department
31 or agency is impeded or enhanced by existing statutes,
32 rules, procedures, practices or any other circumstances
33 bearing upon the department or agency's capacity or
34 authority to operate in the public interest, including

35 budgetary, resource and personnel matters.

36 (9) The extent to which administrative and/or statu-
37 tory changes are necessary to improve agency operations
38 or to enhance the public interest.

39 (10) Whether or not the benefits derived from the
40 activities of the department or agency outweigh the
41 costs.

42 (11) If the activities of this department or agency
43 duplicate or overlap with those of other departments or
44 agencies, and if so, how these activities could be
45 consolidated.

46 (12) Whether or not the department or agency causes
47 an unnecessary burden on any citizen or other depart-
48 ment or agency by its decisions and activities.

49 (13) What the impact will be in terms of federal
50 intervention or loss of federal funds if the agency is
51 abolished.

52 The committee may direct that the performance audit
53 focus on a specific area of operation within the depart-
54 ment or agency, and may direct further inquiry, when
55 necessary and desirable, into other areas of concern,
56 including, but not limited to:

57 (1) The economic impact which results from the
58 functions of the department or agency.

59 (2) The extent to which complaint, investigation,
60 and/or disciplinary procedures of the department or
61 agency adequately protect the public, and whether or
62 not final dispositions of complaints serve the public
63 interest.

64 (3) The extent to which the department or agency
65 issues and enforces rules relating to the potential
66 conflicts of interest of its employees.

67 (4) Whether or not the department or agency is in
68 compliance with federal and state affirmative action
69 requirements.

70 (5) Whether or not the department or agency encour-
71 ages participation by the public in the decision making

72 process.

73 Financial audits may include audits of the following
74 items:

75 (1) Segments of financial statements.

76 (2) Financial information.

77 (3) Reports and schedules on financial matters, such
78 as expenditures for specific programs or services,
79 budget requests, and variances between estimated and
80 actual financial performance.

81 (4) Contracts.

82 (5) Grants.

83 (6) Internal control systems and structure over
84 accounting, financial reporting, and transaction
85 processing.

86 (7) Computer-based systems.

87 (8) Financial systems.

88 (9) Evidence of fraud.

**§4-10-11. Preliminary performance reviews of govern-
mental boards and agencies by the
committee.**

1 It shall be the duty of the committee to conduct a
2 preliminary performance review of every board or
3 agency scheduled under section five of this article. In
4 conducting such preliminary performance reviews, the
5 committee shall determine the following:

6 (1) If the board or agency was created to solve a
7 problem or provide a service.

8 (2) If the problem has been solved or the service has
9 been provided.

10 (3) The extent to which past board or agency activ-
11 ities and accomplishments, current projects and opera-
12 tions, and planned activities and goals for the future are
13 or have been effective.

14 (4) The extent to which there would be significant

15 and discernible adverse effects on the public health,
16 safety, or welfare if the board or agency were abolished.

17 (5) Whether or not the board or agency operates in
18 a sound fiscal manner.

19 The joint committee may direct that the focus of the
20 preliminary performance review be on a specific area
21 of operation and may direct further inquiry, when
22 necessary and desirable.

§4-10-12. Reports by the committee.

1 The committee shall complete its deliberations with
2 respect to any department, agency or board scheduled
3 for termination and make a report thereon to the
4 Legislature not later than ten days after the Legislature
5 convenes in regular session in the year of the scheduled
6 termination for the department, agency or board:
7 *Provided*, That any such report required in the year one
8 thousand nine hundred eighty-one, and every fourth
9 year thereafter shall be made not later than ten days
10 after the Legislature convenes on the second Wednesday
11 in February. Such report shall consist of an analysis of
12 the department, agency or board including such matters
13 as are expressly mandated to be considered by the
14 committee as set forth in this article, together with the
15 recommendations of the committee. The committee shall
16 make one of five recommendations: (1) The department,
17 agency or board be terminated as scheduled; (2) the
18 department, agency or board be continued and reestab-
19 lished; (3) the department, agency or board be continued
20 and reestablished, but the statutes governing it be
21 amended in specific ways to correct ineffective or
22 discriminatory practices and procedures, burdensome
23 rules and regulations, lack of protection of the public
24 interest, overlapping of jurisdiction with other govern-
25 mental entities, unwarranted exercise of authority
26 either in law or in fact or any other deficiencies; (4) a
27 performance audit be performed on a department,
28 agency or board on which a preliminary review has been
29 completed; or (5) the department, agency or board be
30 continued for a period of time not to exceed one year
31 for the purpose of completing a full performance audit.

32 Copies of such reports shall be made immediately
33 available to all members of the Legislature, to the
34 department, agency or board which is the subject of the
35 report and the public generally. A copy of each report
36 shall be formally filed by the committee with the clerk
37 of each house.

§4-10-13. Bill for continuation and reestablishment of affected department, agency or board.

1 In the event the committee recommends the continua-
2 tion and reestablishment of a department, agency or
3 board pursuant to this article, its report shall be
4 accompanied by a bill to effectuate its recommendation.

5 Pursuant to the processes of this article, no more than
6 one such department, agency or board shall be con-
7 tinued or reestablished in a bill, and such department,
8 agency or board shall be mentioned in the bill's title.

§4-10-14. Preservation of rights and claims.

1 Nothing in this article shall be construed as adversely
2 affecting any right or claim by any person against a
3 governmental department, agency or board or by any
4 governmental department, agency or board against any
5 person. Responsibility for prosecuting or defending any
6 such rights or claims should the Legislature fail to
7 continue and reestablish a department, agency or board
8 within one year after its termination shall be assumed
9 by the attorney general of the state.

§4-10-15. Article not to be construed as limiting new legislation.

1 Nothing in this article shall be construed as limiting
2 or interfering with the right of any member of the
3 Legislature to introduce or of the Legislature to consider
4 any bill that would create a new state governmental
5 department, agency or board or amend the law with
6 respect to an existing one.

CHAPTER 131

(H. B. 2141—By Delegates Martin, Love and Wallace)

[Passed March 29, 1993; in effect July 1, 1993. 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 continuation of 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 Virgi-
2 nia,” heretofore created, shall continue in existence but
3 on and after the ninth day of February, one thousand
4 nine hundred sixty-six, shall be known and designated
5 as “The state building commission of West Virginia” and
6 shall continue as a body corporate and as an agency of
7 the state of West Virginia. On and after the date
8 aforesaid, the commission shall consist of the governor,
9 attorney general, state treasurer and four additional
10 members to be appointed by the governor by and with
11 the advice and consent of the Senate. The terms of office
12 for said members to be appointed by the governor shall
13 be four years, except that the terms of office of the first
14 four members so appointed by the governor shall be for
15 one, two, three and four years, respectively. No more
16 than three of such members so appointed by the
17 governor shall be members of the same political party,
18 nor shall any of said members be members or employees

19 of the executive, legislative or judicial branches of
20 government of West Virginia or any political subdivi-
21 sion thereof. The governor shall be chairman of the
22 commission. The secretary of state shall be a member
23 of the commission and serve as its secretary, but shall
24 not have the right to vote upon matters before the
25 commission. All members of the commission shall be
26 citizens and residents of this state. The members of the
27 commission shall be paid or reimbursed for their
28 necessary expenses incurred under this article, but shall
29 receive no compensation for their services as members
30 or officers of the commission: *Provided*, That each
31 member of the commission appointed by the governor
32 shall, in addition to such reimbursement for necessary
33 expenses, receive a per diem of thirty-five dollars for
34 each day or substantial portion thereof that he is
35 engaged in the work of the commission. Such expenses
36 and per diem shall be paid solely from funds provided
37 under the authority of this article, and the commission
38 shall not proceed to exercise or carry out any authority
39 or power herein given it to bind said commission beyond
40 the extent to which money has been provided under the
41 authority of this article. On or before the fifteenth day
42 of each month, the commission shall prepare and
43 transmit to the president and minority leader of the
44 Senate and the speaker and the minority leader of the
45 House of Delegates a report covering the activities of the
46 said commission for the preceding calendar month.

47 After having conducted a performance audit through
48 its joint committee on government operations, pursuant
49 to section nine, article ten, chapter four of this code, the
50 Legislature hereby finds and declares that the state
51 building commission should be continued and reestab-
52 lished. Accordingly, notwithstanding the provisions of
53 section four, article ten, chapter four of this code, the
54 state building commission shall continue to exist until
55 the first day of July, one thousand nine hundred ninety-
56 four.

CHAPTER 132

(H. B. 2654—By Delegates Love, Fragale, Heck, Higgins,
Oliverio, Walters and Willison)

[Passed April 7, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact section three, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the public employees insurance agency.

Be it enacted by the Legislature of West Virginia:

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

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

1 (a) The public employees insurance agency, heretofore
2 created, is continued, and shall consist of the director,
3 the finance board, the advisory board and such em-
4 ployees as may be authorized by law. The director shall
5 be appointed by the governor, with the advice and
6 consent of the Senate. He or she shall serve at the will
7 and pleasure of the governor, unless earlier removed
8 from office for cause as provided by law. The director
9 shall have at least three years experience in health
10 insurance administration prior to appointment as
11 director. The director shall receive an annual salary
12 established by the governor not to exceed fifty-five
13 thousand dollars and actual expenses incurred in the
14 performance of official business. The director shall
15 employ such administrative, technical and clerical
16 employees as shall be required for the proper adminis-
17 tration of the insurance programs herein provided. The
18 director shall perform such duties as are required of
19 him or her under the provisions of this article and shall
20 be the chief administrative officer of the public

21 employees insurance agency.

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

41 (c) The director shall be responsible for the adminis-
42 tration and management of the public employees
43 insurance agency as provided for in this article and in
44 connection therewith shall have the power and authority
45 to make all rules and regulations necessary to effectuate
46 the provisions of this article. Nothing in sections four or
47 five of this article shall limit the director's ability to
48 manage on a day-to-day basis the group insurance plans
49 required or authorized by this article, including, but not
50 limited to, administrative contracting, studies, analyses
51 and audits, eligibility determinations, utilization
52 management provisions and incentives, provider nego-
53 tiations, provider contracting and payment, designation
54 of covered and noncovered services, offering of addi-
55 tional coverage options or cost containment incentives,
56 pursuit of coordination of benefits and subrogation, or
57 any other actions which would serve to implement the
58 plan or plans designed by the finance board.

59 (d) The public employees insurance agency shall
60 terminate in the manner provided in section four, article
61 ten, chapter four of this code, on the first day of July,
62 one thousand nine hundred ninety-four, unless extended
63 by legislation enacted before the termination date.

CHAPTER 133

(H. B. 2139—By Delegates Martin and Love)

[Passed March 29, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact section four, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the public employees insurance agency finance board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-4. Public employees insurance agency finance board created; qualifications, terms and removal of members; quorum; compensation and expenses; termination date.

1 (a) There is hereby created the public employees
 2 insurance agency finance board, which shall consist of
 3 the director and four members appointed by the
 4 governor with the advice and consent of the Senate for
 5 terms of four years and until the appointment of their
 6 successors: *Provided*, That the members initially
 7 appointed by the governor shall be appointed not later
 8 than the tenth day of September, one thousand nine
 9 hundred ninety, and may serve and may perform the
 10 duties required by this article until such time as the
 11 Senate may convene to give its advice and consent. Of
 12 the members first appointed, one shall be appointed for
 13 a term of one year, one for two years, one for three years,
 14 and one for four years. Members may be reappointed for
 15 successive terms. No more than three members (includ-
 16 ing the director) may be of the same political party.

17 (b) Of the four members appointed by the governor,

18 one member shall represent the interests of education
19 employees, one shall represent the interests of public
20 employees and two shall be selected from the public at
21 large. The two members appointed from the public shall
22 each have experience in the financing, development or
23 management of employee benefit programs. No member
24 may be removed from office by the governor except for
25 official misconduct, incompetence, neglect of duty,
26 neglect of fiduciary duty or other specific responsibility
27 imposed by this article, or gross immorality.

28 (c) The director shall serve as chairperson of the
29 finance board, which shall meet at such time and place
30 as shall be specified by the call of the director or upon
31 the written request to the director of at least two
32 members. Notice of each meeting shall be given in
33 writing to each member by the director at least three
34 days in advance of the meeting. Three members shall
35 constitute a quorum. Members may be compensated
36 fifty dollars for each day or portion of a day actually
37 spent in the performance of their duties and may be
38 reimbursed for reasonable and necessary expenses
39 actually incurred in the performance of their duties.

40 (d) The finance board shall terminate on the first day
41 of July, one thousand nine hundred ninety-four, unless
42 extended by legislation enacted before the termination
43 date.

44 (e) Upon termination of the board and notwithstand-
45 ing any provisions in this article to the contrary, the
46 director is authorized to assess monthly employee
47 premium contributions and to change the types and
48 levels of costs to employees only in accordance with this
49 subsection. Any assessments or changes in costs imposed
50 pursuant to this subsection shall be implemented by
51 rules and regulations of the director promulgated
52 pursuant to the provisions of chapter twenty-nine-a of
53 this code. Any employee assessments or costs authorized
54 by the finance board shall remain in effect until
55 amended by rule or regulation of the director promul-
56 gated pursuant to this subsection.

CHAPTER 134

(H. B. 2653—By Delegates Love, Fragale, Heck, Higgins,
Nesbitt, Varner and Willison)

[Passed April 7, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact section eight, article twenty-four, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the forest management review commission.

Be it enacted by the Legislature of West Virginia:

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

§5-24-8. Commission termination.

- 1 The commission shall be terminated on the first day
- 2 of July, one thousand nine hundred ninety-eight, or until
- 3 review of its functions shall be undertaken pursuant to
- 4 the provisions of sections nine, ten and eleven, article
- 5 ten, chapter four of this code.

CHAPTER 135

(H. B. 2140—By Delegates Martin, Love and Wallace)

[Passed April 10, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact section eight, article twenty-six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the governor's cabinet on children and families.

Be it enacted by the Legislature of West Virginia:

That section eight, article twenty-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 26. GOVERNOR'S CABINET ON CHILDREN AND FAMILIES.**§5-26-8. Effective date and termination date.**

1 After having conducted a preliminary performance
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 governor's cabinet on children and
6 families should be continued and reestablished. Accord-
7 ingly, notwithstanding the provisions of section four,
8 article ten, chapter four of this code, the governor's
9 cabinet on children and families shall continue to exist
10 until the first day of July, one thousand nine hundred
11 ninety-seven: *Provided*, That the cabinet shall prepare
12 an annual progress report and shall present the report
13 to the joint committee on government operations. The
14 report shall detail the cabinet's compliance with its
15 purposes, duties and responsibilities as set forth in
16 sections one, three and four of this article, together with
17 proposed plans for future compliance and proposed
18 programs for the following year.

CHAPTER 136

(Com. Sub. for H. B. 2008—By Delegates Martin and Love)

[Passed April 7, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact sections one and 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 and compensation of commission members.

Be it enacted by the Legislature of West Virginia:

That sections one and 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-2-1. West Virginia ethics commission created; members; appointment, term of office and oath; compensation and reimbursement for expenses; meetings and quorum.

§6B-2-11. Continuation of commission.

§6B-2-1. West Virginia ethics commission created; members; appointment, term of office and oath; compensation and reimbursement for expenses; meetings and quorum.

1 (a) There is hereby created the West Virginia ethics
2 commission, consisting of twelve members, no more than
3 seven of whom shall be members of the same political
4 party. The members of the commission shall be ap-
5 pointed by the governor with the advice and consent of
6 the Senate. Within thirty days of the effective date of
7 this section, the governor shall make the initial appoint-
8 ments to the commission. No person may be appointed
9 to the commission or continue to serve as a member of
10 the commission, who holds elected or appointed office
11 under the government of the United States, the state of
12 West Virginia or any of its political subdivisions, or who
13 is a candidate for any of such offices, or who is otherwise
14 subject to the provisions of this chapter other than by
15 reason of his or her appointment to or service on the
16 commission. A member may contribute to a political
17 campaign, but no member shall hold any political party
18 office, or participate in a campaign relating to a
19 referendum or other ballot issue.

20 (b) At least two members of the commission shall
21 have served as a member of the West Virginia Legis-
22 lature; at least two members of the commission shall
23 have been employed in a full-time elected or appointed
24 office in state government; at least one member shall
25 have served as an elected official in a county or
26 municipal government or on a county school board; at
27 least one member shall have been employed full time as
28 a county or municipal officer or employee; and at least
29 two members shall have served part time as a member

30 or director of a state, county or municipal board,
31 commission or public service district and at least four
32 members shall be selected from the public at large. No
33 more than four members of the commission shall reside
34 in the same congressional district.

35 (c) Of the initial appointments made to the commis-
36 sion, two shall be for a term ending one year after the
37 effective date of this section, two for a term ending two
38 years after the effective date of this section, two for a
39 term ending three years after the effective date of this
40 section, three for a term ending four years after the
41 effective date of this section, and three shall be for terms
42 ending five years after the effective date of this section.
43 Thereafter, terms of office shall be for five years, each
44 term ending on the same day of the same month of the
45 year as did the term which it succeeds. Each member
46 shall hold office from the date of his or her appointment
47 until the end of the term for which he or she was
48 appointed or until his or her successor qualifies for
49 office. When a vacancy occurs as a result of death,
50 resignation, or removal in the membership of this
51 commission, it shall be filled by appointment within
52 thirty days of the vacancy for the unexpired portion of
53 the term in the same manner as original appointments.
54 No member shall serve more than two consecutive full
55 or partial terms, and no person may be reappointed to
56 the commission until at least two years have elapsed
57 after the completion of a second successive term.

58 (d) Each member of the commission shall take and
59 subscribe to the oath or affirmation required pursuant
60 to Section 5, Article IV of the Constitution of West
61 Virginia. A member may be removed by the governor
62 for substantial neglect of duty, gross misconduct in
63 office or violation of this chapter, after written notice
64 and opportunity for reply.

65 (e) The commission shall meet within thirty days of
66 the initial appointments to the commission at a time and
67 place to be determined by the governor, who shall
68 designate a member to preside at that meeting until a
69 chairman is elected. At its first meeting, the commission
70 shall elect a chairman and such other officers as are

71 necessary. The commission shall within ninety days
72 after its first meeting adopt rules for its procedures.

73 (f) Seven members of the commission shall constitute
74 a quorum, except that when the commission is sitting
75 as a hearing board pursuant to section four of this
76 article, then five members shall constitute a quorum.
77 Except as may be otherwise provided in this article, a
78 majority of the total membership shall be necessary to
79 act at all times.

80 (g) Members of the commission shall receive fifty
81 dollars for each day actually devoted to the business of
82 the commission and, in addition thereto, shall be
83 reimbursed for expenses actually and necessarily
84 incurred in the performance of their official duties as
85 such members.

86 (h) The commission shall appoint an executive direc-
87 tor to assist the commission in carrying out its functions
88 in accordance with commission rules and regulations
89 and with applicable law. Said executive director shall
90 be paid such salary as may be fixed by the commission
91 or as otherwise provided by law. The commission shall
92 appoint and discharge counsel and employees and shall
93 fix the compensation of employees and prescribe their
94 duties. Counsel to the commission shall advise the
95 commission on all legal matters and on the instruction
96 of the commission may commence such civil actions as
97 may be appropriate: *Provided*, That no counsel shall
98 both advise the commission and act in a representative
99 capacity in any proceeding.

100 (i) The commission may delegate authority to the
101 chairman or executive director to act in the name of the
102 commission between meetings of the commission, except
103 that the commission shall not delegate the power to hold
104 hearings and determine violations to the chairman or
105 executive director.

106 (j) The chairman shall have the authority to designate
107 subcommittees of three persons, no more than two of
108 whom may be members of the same political party. Said
109 subcommittees shall be investigative panels which shall
110 have the powers and duties set forth hereinafter in this
111 article.

112 (k) The principal office of the commission shall be in
113 the seat of government but it or its designated subcom-
114 mittees may meet and exercise its power at any other
115 place in the state. Meetings of the commission shall be
116 public unless such meetings or hearings are required to
117 be private in conformity with the provisions of this
118 chapter relating to confidentiality, except that the
119 commission shall exclude the public from attendance at
120 discussions of commission personnel, planned or ongoing
121 litigation and planned or ongoing investigations.

122 (l) Meetings of the commission shall be upon the call
123 of the chairman and shall be conducted by the personal
124 attendance of the commission members and no meeting
125 shall be conducted by telephonic or other electronic
126 conferencing, nor shall any member be allowed to vote
127 by proxy: *Provided*, That telephone conferencing and
128 voting may be held for the purpose of approving and
129 rejecting any proposed advisory opinions prepared by
130 the commission, or for voting on issues involving the
131 administrative functions of the commission. Meetings
132 held by telephone conferencing shall require notice to
133 members in the same manner as meetings to be
134 personally attended, shall be electronically recorded,
135 and the recordings shall be made a permanent part of
136 the commission records. Members shall not be compen-
137 sated for meetings other than those personally attended.

§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-four, to allow
5 for the completion of an audit by the joint committee on
6 government operations.

CHAPTER 137

(H. B. 2612—By Delegates P. White and Gallagher)

[Passed April 10, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four and five, article twenty-nine-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the termination date of the task force on uncompensated health care and medicaid expenditures and deleting obsolete language.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29C. INDIGENT CARE.

§16-29C-4. Legislative study; appointment of members; expenses; reports; termination.

§16-29C-5. Effective date and termination date.

§16-29C-4. Legislative study; appointment of members; expenses; reports; termination.

1 Not later than the first day of June, one thousand nine
 2 hundred eighty-five, the president of the Senate and
 3 speaker of the House of Delegates of the West Virginia
 4 Legislature shall appoint a legislative task force on
 5 uncompensated health care and medicaid expenditures
 6 which shall meet, study and make recommendations as
 7 herein provided.

8 The task force shall be composed of three members
 9 of the Senate appointed by the president from the
 10 membership of the Senate standing committee on health
 11 and human resources, three members of the House of
 12 Delegates appointed by the speaker from the member-
 13 ship of the House of Delegates standing committee on
 14 health and human resources, and a number of citizens
 15 appointed jointly by the president and speaker which,
 16 in their discretion, adequately provides for the approp-
 17 riate representation of the interests of the providers of
 18 health care services, the providers of health care
 19 insurance, state departments involved in the administra-

20 tion of health care and health care related programs and
21 the citizens of this state. Of the members of the Senate
22 appointed by the president, not more than two shall be
23 from the same political party. Of the members of the
24 House of Delegates appointed by the speaker, not more
25 than two shall be from the same political party.

26 Members originally appointed to the task force shall
27 serve for terms beginning on the date of appointment
28 and ending on the thirtieth day of June, one thousand
29 nine hundred ninety-six, unless sooner replaced by the
30 president or the speaker as applicable, or, in the
31 discretion of the president and the speaker, unless the
32 work of the task force is completed or the need for the
33 task force no longer exists prior to that date. The task
34 force shall cease to exist on the thirtieth day of June,
35 one thousand nine hundred ninety-six.

36 The task force shall meet on such dates as may be
37 approved by the joint committee on government and
38 finance for the regular meetings of its subcommittees
39 unless approval is first obtained from the joint commit-
40 tee on government and finance for additional meetings.
41 The task force shall conduct studies on the amount of
42 funds expended by hospitals and other health care
43 providers of this state for services to persons who are
44 unable to pay for those services and for which they
45 receive no other form of reimbursement, the extent to
46 which persons in this state forego needed medical
47 services because of insufficient income and assets to pay
48 for those services, the extent to which the state is
49 maximizing available federal programs and moneys in
50 providing health care services to the citizens of this
51 state, the operation of the programs and funds created
52 by this article and the roles of the public, private and
53 private nonprofit sectors in providing health care
54 services to the citizens of this state. The task force shall
55 also study the state medicaid program in order to
56 determine if the state medicaid agency, as the payor of
57 last resort, is expending maximum effort to identify
58 alternate private insurance resources for medicaid

59 beneficiaries and shall study the feasibility and financial
60 impact upon the state of assuring increased access to
61 medicaid beneficiaries to primary health care in the
62 nonhospital setting by requiring enrollment in a
63 primary care clinic program, if available, and of the
64 establishment of different and lesser schedules of
65 payment for primary health services delivered by a
66 hospital emergency room as compared to the schedule
67 of payments for emergency room services of a true
68 medical emergency nature.

69 The task force shall file an interim report with the
70 joint committee on government and finance and the
71 Legislature on the date of the last meeting of the joint
72 committee on government and finance prior to com-
73 mencement of the regular session of the Legislature in
74 each year before the final report of the task force is filed
75 with the joint committee on government and finance and
76 the Legislature on or before the thirtieth day of June,
77 one thousand nine hundred ninety-six.

78 The members of the task force shall be entitled to
79 compensation at the rate authorized for members of the
80 Legislature participating in legislative interim meetings
81 and to reimbursement for reasonable and necessary
82 expenses actually incurred in attending meetings of the
83 task force, except that any employee of the state
84 appointed to the task force is not entitled to such
85 compensation. Funds necessary for the work of the task
86 force shall be paid from joint appropriations to the
87 Senate and House of Delegates but no such funds shall
88 be spent or obligations incurred in the conduct of such
89 work without prior approval of the joint committee on
90 government and finance.

§16-29C-5. Effective date and termination date.

1 This article shall be effective from passage, and,
2 notwithstanding the provisions of section four of this
3 article, shall terminate on the thirtieth day of June, one
4 thousand nine hundred ninety-six.

CHAPTER 138

(H. B. 2118—By Delegate Martin)

[Passed March 29, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact section one, article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the division of highways.

Be it enacted by the Legislature of West Virginia:

That section one, article two-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:

§17-2A-1. Duties of state road commissioner transferred to division of highways; department to act through commissioner of highways; office of commissioner of highways created; appointment, etc.

1 The office of state road commissioner heretofore
2 existing is hereby continued in all respects as heretofore
3 constituted, but is hereby designated as the West
4 Virginia division of highways. All duties and responsi-
5 bilities heretofore imposed upon the state road commis-
6 sioner and the powers exercised by him are hereby
7 transferred to the West Virginia division of highways
8 and such duties and responsibilities shall be performed
9 by the said division and the powers may be exercised
10 thereby through the West Virginia commissioner of
11 highways, who shall be the chief executive officer of the
12 division.

13 Pursuant to the provisions of section four, article ten,
14 chapter four of this code, the West Virginia division of
15 highways shall continue to exist until the first day of
16 July, one thousand nine hundred ninety-four.

17 There is hereby continued the office of West Virginia
18 commissioner of highways, who shall be appointed by
19 the governor, by and with the advice and consent of the
20 Senate, subject to the provisions of section two-a, article
21 seven, chapter six of this code.

CHAPTER 139

(S. B. 460—By Senator Burdette, Mr. President,
By Request of the Executive)

[Passed April 10, 1993: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to abolishing the forestry commission; appointing the director of the division of forestry; setting forth the director's duties and qualifications; and setting the director's salary."

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-5. Director of division of forestry; appointment; qualifications.

1 The director of the division of forestry shall be
2 appointed by the governor, by and with the advice and
3 consent of the Senate, and shall serve at the will and
4 pleasure of the governor. The director shall be a
5 graduate of a school of forestry accredited by the society
6 of American foresters and have a minimum of ten years
7 experience in forest management. The director's salary
8 shall be sixty-five thousand dollars per year: *Provided,*
9 That the director's salary shall be paid solely from
10 budget appropriations to the division.

CHAPTER 140

(S. B. 7—By Senator Brackenrich)

[Passed April 9, 1993; in effect July 1, 1993. 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-four, to allow
25 for the completion of an audit by the joint committee on
26 government operations.

CHAPTER 141

(S. B. 2—By Senator Brackenrich)

[Passed April 7, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty-one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the state soil conservation committee.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21A. SOIL CONSERVATION DISTRICTS.

§19-21A-4. State soil conservation committee; continuation.

1 (a) There is hereby established, to serve as an agency
2 of the state and to perform the functions conferred upon
3 it in this article, the state soil conservation committee.
4 The committee shall consist of seven members. The
5 following shall serve, ex officio, as members of the
6 committee: The director of the state cooperative exten-
7 sion service; the director of the state agricultural
8 experiment station; the director of the department of
9 natural resources; and the state commissioner of
10 agriculture, who shall be chairman of the committee.

11 The governor shall appoint as additional members of
12 the committee three representative citizens. The term of

13 members thus appointed shall be four years, except that
14 of the first members so appointed, one shall be ap-
15 pointed for a term of two years, one for a term of three
16 years, and one for a term of four years. In the event of
17 a vacancy, appointment shall be for the unexpired term.

18 The committee may invite the secretary of agriculture
19 of the United States of America to appoint one person
20 to serve with the committee as an advisory member.

21 The committee shall keep a record of its official
22 actions, shall adopt a seal, which seal shall be judicially
23 noticed, and may perform such acts, hold such public
24 hearings and promulgate such rules and regulations as
25 may be necessary for the execution of its functions under
26 this article.

27 (b) The state soil conservation committee may employ
28 an administrative officer and such technical experts and
29 such other agents and employees, permanent and
30 temporary, as it may require, and shall determine their
31 qualifications, duties and compensation. The committee
32 may call upon the attorney general of the state for such
33 legal services as it may require. It shall have authority
34 to delegate to its chairman, to one or more of its
35 members, or to one or more agents or employees, such
36 powers and duties as it may deem proper. The commit-
37 tee is empowered to secure necessary and suitable office
38 accommodations, and the necessary supplies and equip-
39 ment. Upon request of the committee, for the purpose
40 of carrying out any of its functions, the supervising
41 officer of any state agency, or of any state institution of
42 learning shall, insofar as may be possible, under
43 available appropriations, and having due regard to the
44 needs of the agency to which the request is directed,
45 assign or detail to the committee, members of the staff
46 or personnel of such agency or institution of learning,
47 and make such special reports, surveys or studies as the
48 committee may request.

49 (c) A member of the committee shall hold office so
50 long as he shall retain the office by virtue of which he

51 shall be serving on the committee. A majority of the
52 committee shall constitute a quorum, and the concur-
53 rence of a majority in any matter within their duties
54 shall be required for its determination. The chairman
55 and members of the committee shall receive no compen-
56 sation for their services on the committee, but shall be
57 entitled to expenses, including traveling expenses,
58 necessarily incurred in the discharge of their duties on
59 the committee. The committee shall provide for the
60 execution of surety bonds for all employees and officers
61 who shall be entrusted with funds or property; shall
62 provide for the keeping of a full and accurate public
63 record of all proceedings and of all resolutions, regula-
64 tions and orders issued or adopted; and shall provide for
65 an annual audit of the accounts of receipts and
66 disbursements.

67 (d) In addition to the duties and powers hereinafter
68 conferred upon the state soil conservation committee, it
69 shall have the following duties and powers:

70 (1) To offer such assistance as may be appropriate to
71 the supervisors of soil conservation districts, organized
72 as provided hereinafter, in the carrying out of any of
73 their powers and programs;

74 (2) To keep the supervisors of each of the several
75 districts, organized under the provisions of this article,
76 informed of the activities and experience of all other
77 districts organized hereunder, and to facilitate an
78 interchange of advice and experience between such
79 districts and cooperation between them;

80 (3) To coordinate the programs of the several soil
81 conservation districts organized hereunder so far as this
82 may be done by advice and consultation;

83 (4) To secure the cooperation and assistance of the
84 United States and any of its agencies, and of agencies
85 of this state, in the work of such districts;

86 (5) To disseminate information throughout the state
87 concerning the activities and programs of the soil

88 conservation districts organized hereunder, and to
89 encourage the formation of such districts in areas where
90 their organization is desirable;

91 (6) To accept and receive donations, gifts, contribu-
92 tions, grants and appropriations in money, services,
93 materials or otherwise, from the United States or any
94 of its agencies, from the state of West Virginia, or from
95 other sources, and to use or expend such money,
96 services, materials or other contributions in carrying out
97 the policy and provisions of this article, including the
98 right to allocate such money, services or materials in
99 part to the various soil conservation districts created by
100 this article in order to assist them in carrying on their
101 operations; and

102 (7) To obtain options upon and to acquire by purchase,
103 exchange, lease, gift, grant, bequest, devise or other-
104 wise, any property, real or personal, or rights or
105 interests therein; to maintain, administer, operate and
106 improve any properties acquired, to receive and retain
107 income from such property and to expend such income
108 as required for operation, maintenance, administration
109 or improvement of such properties or in otherwise
110 carrying out the purposes and provisions of this article;
111 and to sell, lease or otherwise dispose of any of its
112 property or interests therein in furtherance of the
113 purposes and the provisions of this article. Money
114 received from the sale of land acquired in the small
115 watershed program shall be deposited in the special
116 account of the state soil conservation committee and
117 expended as herein provided.

118 After having conducted a performance audit through
119 its joint committee on government operations, pursuant
120 to section nine, article ten, chapter four of this code, the
121 Legislature hereby finds and declares that the state soil
122 conservation committee should be continued and rees-
123 tablished. Accordingly, notwithstanding the provisions
124 of section four of said article, the state soil conservation
125 committee shall continue to exist until the first day of
126 July, one thousand nine hundred ninety-eight.

CHAPTER 142

(Com. Sub. for H. B. 2590—By Delegates Love and Martin)

[Passed April 8, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the division of natural resources and providing for the termination of the division.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-3. Division of natural resources, office of director and commission established; termination date.

1 A division of natural resources, the office of director
2 of the division of natural resources, and a natural
3 resources commission are hereby created and estab-
4 lished in the state government with jurisdiction, powers,
5 functions, services and enforcement processes as pro-
6 vided in this chapter and elsewhere by law.

7 Pursuant to the provisions of article ten, chapter four
8 of this code, the division of natural resources shall
9 continue to exist until the first day of July, one thousand
10 nine hundred ninety-four, to allow for the completion of
11 an audit by the joint committee on government opera-
12 tions.

CHAPTER 143

(H. B. 2015—By Delegates Martin and Wallace)

[Passed April 7, 1993; in effect July 1, 1993. 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.

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-four, 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 know-
21 ledgeable 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 approp-
81 riated 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 144

(S. B. 72—By Senators Brackenrich and Wiedebusch)

[Passed April 10, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact section four, article eight, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the oil and gas conservation commission; changing compensation of members; and removing authority of commission to fix salary of oil and gas conservation commissioner.

Be it enacted by the Legislature of West Virginia:

That section four, article eight, 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 8. OIL AND GAS CONSERVATION.

§22-8-4. Oil and gas conservation commissioner and commission; commission membership; qualifications of members; terms of members; vacancies on commission; meetings; compensation and expenses; appointment and qualifications of commissioner; general powers and duties.

1 (a) There is hereby continued as provided for in
2 subsection (h) of this section, the "West Virginia Oil and
3 Gas Conservation Commission" which shall be composed
4 of five members. The director of the division of
5 environmental protection and the director for the office
6 of oil and gas shall be members of the commission ex
7 officio. The remaining three members of the commission
8 shall be appointed by the governor, by and with the
9 advice and consent of the Senate. Of the three members
10 appointed by the governor, one shall be an independent
11 producer and at least one shall be a public member not
12 engaged in full-time employment in an activity under
13 the jurisdiction of the public service commission or the
14 federal energy regulatory commission. As soon as
15 practical after appointment of the members of the
16 commission, the governor shall call a meeting of the
17 commission to be convened at the state capitol for the
18 purpose of organizing and electing a chairman.

19 (b) The members of the commission appointed by the
20 governor shall be appointed for overlapping terms of six
21 years each, except that the original appointments shall
22 be for terms of two, four and six years, respectively.
23 Each member appointed by the governor shall serve
24 until his successor has been appointed and qualified.
25 Members may be appointed by the governor to serve any
26 number of terms. The members of the commission
27 appointed by the governor, before performing any duty
28 hereunder, shall take and subscribe to the oath required
29 by section five, article IV of the constitution of West
30 Virginia. Vacancies in the membership appointed by the
31 governor shall be filled by appointment by him for the
32 unexpired term of the member whose office shall be
33 vacant and such appointment shall be made by the
34 governor within sixty days of the occurrence of such
35 vacancy. Any member appointed by the governor may
36 be removed by the governor in case of incompetency,
37 neglect of duty, gross immorality or malfeasance in
38 office.

39 (c) The commission shall meet at such times and
40 places as shall be designated by the chairman. The

41 chairman may call a meeting of the commission at any
42 time, and he shall call a meeting of the commission upon
43 the written request of two members or upon the written
44 request of the oil and gas conservation commissioner.
45 Notification of each meeting shall be given in writing
46 to each member by the chairman at least five days in
47 advance of the meeting. Any three members, one of
48 which may be the chairman, shall constitute a quorum
49 for the transaction of any business as herein provided
50 for. A majority of the commission shall be required to
51 determine any issue brought before it.

52 (d) The board shall pay each member the same
53 compensation as is paid to members of the Legislature
54 for their interim duties as recommended by the citizens
55 legislative compensation commission and authorized by
56 law for each day or portion thereof engaged in the
57 discharge of official duties and shall reimburse each
58 member for actual and necessary expenses incurred in
59 the discharge of official duties.

60 (e) The commission shall appoint the oil and gas
61 conservation commissioner and advise him regarding
62 his duties and authority under this article and consult
63 with him prior to his reaching any final decisions and
64 entering orders hereunder. However, the commissioner
65 has full and final authority under this article with the
66 commission serving in an advisory capacity to him. The
67 commissioner shall possess a degree from an accredited
68 college or university in petroleum engineering or
69 geology and must be a registered professional engineer
70 with particular knowledge and experience in the oil and
71 gas industry.

72 (f) The oil and gas commissioner is hereby empowered
73 and it shall be his duty to execute and carry out,
74 administer and enforce the provisions of this article in
75 the manner provided herein. Subject to the provisions
76 of section three of this article, the commissioner shall
77 have jurisdiction and authority over all persons and
78 property necessary therefor. The commissioner is
79 authorized to make such investigation of records and
80 facilities as he deems proper. In the event of a conflict

81 between the duty to prevent waste and the duty to
82 protect correlative rights, the commissioner's duty to
83 prevent waste shall be paramount. He shall serve as
84 secretary of the oil and gas conservation commission.

85 (g) Without limiting his general authority, the
86 commissioner shall have specific authority to:

87 (1) Regulate the spacing of deep wells;

88 (2) Make and enforce reasonable rules and regulations
89 and orders reasonably necessary to prevent waste,
90 protect correlative rights, govern the practice and
91 procedure before the commissioner and otherwise
92 administer the provisions of this article;

93 (3) Issue subpoenas for the attendance of witnesses
94 and subpoenas duces tecum for the production of any
95 books, records, maps, charts, diagrams and other
96 pertinent documents, and administer oaths and affirma-
97 tions to such witnesses, whenever, in the judgment of the
98 commissioner, it is necessary to do so for the effective
99 discharge of his duties under the provisions of this
100 article; and

101 (4) Serve as technical advisor regarding oil and gas
102 to the Legislature, its members and committees, to the
103 director for the office of oil and gas, to the division of
104 environmental protection and to any other agency of
105 state government having responsibility related to the oil
106 and gas industry.

107 (h) After having conducted a preliminary perfor-
108 mance audit through its joint committee on government
109 operations, pursuant to section nine, article ten, chapter
110 four of this code, the Legislature hereby finds and
111 declares that the oil and gas conservation commission
112 should be continued and reestablished. Accordingly,
113 notwithstanding the provisions of section four of said
114 article, the oil and gas conservation commission shall
115 continue to exist until the first day of July, one thousand
116 nine hundred ninety-seven.

CHAPTER 145

(S. B. 110—By Senators Brackenrich and Wiedebusch)

[Passed April 9, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact section three, article thirteen, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the oil and gas inspectors' examining board; and compensation of members.

Be it enacted by the Legislature of West Virginia:

That section three, article thirteen, 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 13. OIL AND GAS INSPECTORS' EXAMINING BOARD.

§22-13-3. Oil and gas inspectors' examining board created; composition; appointment, term and compensation of members; meetings; powers and duties generally; continuation following audit.

1 (a) There is hereby continued an oil and gas inspec-
 2 tors' examining board consisting of five members who,
 3 except for the public representative on such board, shall
 4 be appointed by the governor, by and with the advice
 5 and consent of the Senate. Members may be removed
 6 only for the same causes and like manner as elective
 7 state officers. One member of the board who shall be the
 8 representative of the public shall be a professor in the
 9 petroleum engineering department of the school of
 10 mines at West Virginia University appointed by the
 11 dean of said school; two members shall be persons who
 12 by reason of previous training and experience may
 13 reasonably be said to represent the viewpoint of
 14 independent oil and gas operators; and two members
 15 shall be persons who by reason of previous training and
 16 experience may reasonably be said to represent the
 17 viewpoint of major oil and gas producers.

18 The director for the office of oil and gas shall be an

19 ex officio member of the board and shall serve as
20 secretary of the board without additional compensation,
21 but he shall have no right to vote with respect to any
22 matter before the board.

23 The members of the board, except the public repre-
24 sentative, shall be appointed for overlapping terms of
25 eight years, except that the original appointments shall
26 be for terms of two, four, six and eight years, respec-
27 tively. Any member whose term expires may be
28 reappointed by the governor.

29 The board shall pay each member the same compen-
30 sation as is paid to members of the Legislature for their
31 interim duties as recommended by the citizens legisla-
32 tive compensation commission and authorized by law for
33 each day or portion thereof engaged in the discharge of
34 official duties and shall reimburse each member for
35 actual and necessary expenses incurred in the discharge
36 of official duties.

37 The public member shall serve as chairman of the
38 board.

39 Members of the board, before performing any duty,
40 shall take and subscribe to the oath required by section
41 five, article four of the constitution of West Virginia.

42 The board shall meet at such times and places as shall
43 be designated by the chairman. It shall be the duty of
44 the chairman to call a meeting of the board on the
45 written request of two members, or on the written
46 request of said director or the director of the division
47 of environmental protection. Notice of each meeting
48 shall be given in writing to each member by the
49 secretary at least five days in advance of the meeting.
50 Three voting members shall constitute a quorum for the
51 transaction of business.

52 (b) In addition to other powers and duties expressly
53 set forth elsewhere in this article, the board shall:

54 (1) Establish, and from time to time revise, forms of
55 application for employment as an oil and gas inspector
56 and supervising inspector and forms for written
57 examinations to test the qualifications of candidates,

58 with such distinctions, if any, in the forms for oil and
59 gas inspector and supervising inspector as the board
60 may from time to time deem necessary or advisable;

61 (2) Adopt and promulgate reasonable rules and
62 regulations relating to the examination, qualification
63 and certification of candidates for appointment, and
64 relating to hearings for removal of inspectors or the
65 supervising inspector, required to be held by this article.
66 All of such rules and regulations shall be printed and
67 a copy thereof furnished by the secretary of the board
68 to any person upon request;

69 (3) Conduct, after public notice of the time and place
70 thereof, examinations of candidates for appointment. By
71 unanimous agreement of all members of the board, one
72 or more members of the board or an employee of the
73 division of environmental protection may be designated
74 to give to a candidate the written portion of the
75 examination;

76 (4) Prepare and certify to said director and the
77 director of the division of environmental protection a
78 register of qualified eligible candidates for appointment
79 as oil and gas inspectors or as supervising inspectors,
80 with such differentiation, if any, between the certifica-
81 tion of candidates for oil and gas inspectors and for
82 supervising inspectors as the board may from time to
83 time deem necessary or advisable. The register shall list
84 all qualified eligible candidates in the order of their
85 grades, the candidate with the highest grade appearing
86 at the top of the list. After each meeting of the board
87 held to examine such candidates and at least annually,
88 the board shall prepare and submit to said director and
89 the director of the division of environmental protection
90 a revised and corrected register of qualified eligible
91 candidates for appointment, deleting from such revised
92 register all persons: (a) Who are no longer residents of
93 West Virginia; (b) who have allowed a calendar year to
94 expire without, in writing, indicating their continued
95 availability for such appointment; (c) who have been
96 passed over for appointment for three years; (d) who
97 have become ineligible for appointment since the board
98 originally certified that such persons were qualified and

99 eligible for appointment; or (e) who, in the judgment of
100 at least three members of the board, should be removed
101 from the register for good cause;

102 (5) Cause the secretary of the board to keep and
103 preserve the written examination papers, manuscripts,
104 grading sheets and other papers of all applicants for
105 appointment for such period of time as may be estab-
106 lished by the board. Specimens of the examinations
107 given, together with the correct solution of each
108 question, shall be preserved permanently by the
109 secretary of the board;

110 (6) Issue a letter or written notice of qualification to
111 each successful eligible candidate;

112 (7) Hear and determine proceedings for the removal
113 of inspectors or the supervising inspector in accordance
114 with the provisions of this article;

115 (8) Hear and determine appeals of inspectors or the
116 supervising inspector from suspension orders made by
117 said director pursuant to the provisions of section two,
118 article one, chapter twenty-two-b of this code: *Provided,*
119 That in order to appeal from any order of suspension,
120 an aggrieved inspector or supervising inspector shall
121 file such appeal in writing with the oil and gas
122 inspectors' examining board not later than ten days
123 after receipt of the notice of suspension. On such appeal
124 the board shall affirm the action of said director unless
125 it be satisfied from a clear preponderance of the
126 evidence that said director has acted arbitrarily;

127 (9) Make an annual report to the governor concerning
128 the administration of oil and gas inspection personnel in
129 the state service; making such recommendations as the
130 board considers to be in the public interest; and

131 (10) Render such advice and assistance to the director
132 of the office of oil and gas as he shall from time to time
133 determine necessary or desirable in the performance of
134 his duties.

135 (c) After having conducted a preliminary perfor-
136 mance audit through its joint committee on government
137 operations, pursuant to section nine, article ten, chapter

138 four of this code, the Legislature hereby finds and
139 declares that the oil and gas inspectors' examining
140 board within the division of environmental protection
141 should be continued and reestablished. Accordingly,
142 notwithstanding the provisions of section four of said
143 article, the oil and gas inspectors' examining board
144 within the division of environmental protection shall
145 continue to exist until the first day of July, one thousand
146 nine hundred ninety-four.

CHAPTER 146

(S. B. 4—By Senator Brackenrich)

[Passed April 7, 1993; in effect July 1, 1993. 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. After having
5 conducted a performance audit through its joint
6 committee on government operations, pursuant to
7 section nine, article ten, chapter four of this code, the
8 Legislature hereby finds and declares that the public
9 service commission should be continued and reestab-
10 lished. Accordingly, notwithstanding the provisions of
11 section four of said article, the public service commis-
12 sion shall continue to exist until the first day of July,

13 one thousand nine hundred ninety-nine. The public
14 service commission may sue and be sued by that name.
15 Such public service commission shall consist of three
16 members who shall be appointed by the governor with
17 the advice and consent of the Senate. The commissioners
18 shall be citizens and residents of this state and at least
19 one of them shall be duly licensed to practice law in
20 West Virginia, of not less than ten years' actual
21 experience at the bar. No more than two of said
22 commissioners shall be members of the same political
23 party. Each commissioner shall, before entering upon
24 the duties of his office, take and subscribe to the oath
25 provided by section five, article IV of the constitution
26 of this state, which oath shall be filed in the office of
27 the secretary of state. The governor shall designate one
28 of the commissioners to serve as chairman at the
29 governor's will and pleasure. The chairman shall be the
30 chief administrative officer of the commission. The
31 governor may remove any commissioner only for
32 incompetency, neglect of duty, gross immorality,
33 malfeasance in office or violation of subsection (c) of this
34 section.

35 (b) The unexpired term of members of the public
36 service commission at the time this subsection becomes
37 effective are continued through the thirtieth day of
38 June, one thousand nine hundred seventy-nine. In
39 accordance with the provisions of subsection (a) of this
40 section, the governor shall appoint three commissioners,
41 one for a term of two years, one for a term of four years
42 and one for a term of six years, all the terms beginning
43 on the first day of July, one thousand nine hundred
44 seventy-nine. All future appointments are for terms of
45 six years, except that an appointment to fill a vacancy
46 is for the unexpired term only. The commissioners
47 whose terms are terminated by the provisions of this
48 subsection are eligible for reappointment.

49 (c) No person while in the employ of, or holding any
50 official relation to, any public utility subject to the
51 provisions of this chapter, or holding any stocks or bonds
52 thereof, or who is pecuniarily interested therein, may

53 serve as a member of the commission or as an employee
54 thereof. Nor may any such commissioner be a candidate
55 for or hold public office, or be a member of any political
56 committee, while acting as such commissioner; nor may
57 any commissioner or employee of said commission
58 receive any pass, free transportation or other thing of
59 value, either directly or indirectly, from any public
60 utility or motor carrier subject to the provisions of this
61 chapter. In case any of the commissioners becomes a
62 candidate for any public office or a member of any
63 political committee, the governor shall remove him from
64 office and shall appoint a new commissioner to fill the
65 vacancy created.

66 (d) Effective the first day of November, one thousand
67 nine hundred ninety-one, and in light of the assignment
68 of new, substantial additional duties embracing new
69 areas and fields of activity under certain legislative
70 enactments, each commissioner shall receive an annual
71 salary of sixty thousand dollars to be paid in monthly
72 installments from the special funds in such amounts as
73 follows:

74 (1) From the public service commission fund collected
75 under the provisions of section six, article three of this
76 chapter, forty-eight thousand dollars;

77 (2) From the public service commission motor carrier
78 fund collected under the provisions of section six, article
79 six, chapter twenty-four-a of this code, ten thousand
80 dollars; and

81 (3) From the public service commission gas pipeline
82 safety fund collected under the provisions of section
83 three, article five, chapter twenty-four-b of this code,
84 two thousand dollars.

85 In addition to this salary provided for all commission-
86 ers, the chairman of the commission shall receive five
87 thousand dollars per annum to be paid in monthly
88 installments from the public service commission fund
89 collected under the provisions of section six, article three
90 of this chapter on and after the first day of January, one
91 thousand nine hundred ninety-two.

CHAPTER 147

(H. B. 2034—By Delegates Martin and Love)

[Passed March 29, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact section four, article one-c, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of West Virginia's membership in the interstate commission on the Potomac River Basin.

Be it enacted by the Legislature of West Virginia:

That section four, article one-c, 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 1C. INTERSTATE COMMISSION ON THE POTOMAC RIVER BASIN.

§29-1C-4. Effective date; findings; termination date.

1 This article shall become effective upon the adoption
2 of substantially similar amendments to the interstate
3 compact by each of the signatory states to the compact,
4 and upon the approval of the amendments to the
5 compact by the Congress of the United States.

6 After having conducted a performance and fiscal
7 audit through its joint committee on government
8 operations, pursuant to section nine, article ten, chapter
9 four of this code, the Legislature hereby finds and
10 declares that West Virginia should remain a member of
11 the interstate compact. Accordingly, notwithstanding
12 the provisions of sections four and six, article ten,
13 chapter four of this code, West Virginia shall continue
14 to be a member of this compact until the first day of
15 July, one thousand nine hundred ninety-eight.

CHAPTER 148

(S. B. 23—By Senators Brackenrich and Wiedebusch)

[Passed April 7, 1993; in effect July 1, 1993. 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 continuation of the legislative oversight commission 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 for
33 Joint Expenses", but no expense of any kind whatever
34 payable under said account for joint expenses shall be
35 incurred unless first approved by the joint committee on
36 government and finance. The commission shall meet at
37 any time both during sessions of the Legislature and in
38 the interim.

39 (b) The commission may adopt such rules of procedure
40 as it considers necessary for the submission, presenta-
41 tion and consideration of rules.

42 (c) After having conducted a performance audit
43 through its joint committee on government operations,
44 pursuant to section nine, article ten, chapter four of this
45 code, the Legislature hereby finds and declares that the
46 legislative oversight commission on education accounta-
47 bility should be continued and reestablished. Accord-
48 ingly, notwithstanding the provisions of section four of
49 said article, the legislative oversight commission on
50 education accountability shall continue to exist until the
51 first day of July, one thousand nine hundred ninety-
52 eight. If such commission is terminated pursuant to this
53 subsection, any report required to be submitted to it
54 shall instead be submitted to the joint committee on
55 education of the Legislature.

CHAPTER 149

(S. B. 3—By Senator Brackenrich)

[Passed April 8, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact section one, article twelve, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the West Virginia board of architects; and compensation of members.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. ARCHITECTS.

*§30-12-1. Board of architects; continuation.

1 The West Virginia board of architects, heretofore
2 created, shall continue in existence and shall consist of
3 seven members, five of whom shall be architects,
4 appointed by the governor by and with the advice and
5 consent of the Senate and two of whom shall be lay
6 members, not of the same political party affiliation,
7 appointed by the governor by and with the advice and
8 consent of the Senate. Each member who is an architect
9 shall have been engaged in the active practice of his
10 profession in the state of West Virginia for not fewer
11 than ten years previous to his appointment. The
12 members of the board in office on the date this article
13 takes effect, in the year one thousand nine hundred
14 ninety, shall, unless sooner removed, continue to serve
15 until their respective terms expire and until their
16 successors have been appointed and have qualified.

17 The board shall pay each member the same compen-
18 sation as is paid to members of the Legislature for their
19 interim duties as recommended by the citizens

*Clerk's Note: This section was also amended by S. B. 127 (Chapter 150), which passed subsequent to this act.

20 legislative compensation commission and authorized by
21 law for each day or portion thereof engaged in the
22 discharge of official duties and shall reimburse each
23 member for actual and necessary expenses incurred in
24 the discharge of official duties.

25 The board, in addition to the authority, powers and
26 duties granted to it by this article, has the authority to
27 promulgate rules, pursuant to the provisions of chapter
28 twenty-nine-a of this code. Any disciplinary proceedings
29 held by the board shall be held in accordance with the
30 provisions of the administrative procedures act for
31 contested cases pursuant to the provisions of article five,
32 chapter twenty-nine-a of this code.

33 Pursuant to the provisions of section four, article ten,
34 chapter four of this code, the West Virginia board of
35 architects shall continue to exist until the first day of
36 July, one thousand nine hundred ninety-four, to allow
37 for the completion of an audit by the joint committee on
38 government operations.

CHAPTER 150

(Com. Sub. for S. B. 127—By Senator Craigo)

[Passed April 9, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact section one, article twelve, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the board of architects; granting the board general regulatory authority; continuing the board; and relating to compensation of members.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. ARCHITECTS.

***§30-12-1. Board of architects.**

1 In order to safeguard the life, health, property and
2 public welfare of the people of this state and to protect
3 the people against the unauthorized, unqualified and
4 improper practice of architecture, the West Virginia
5 board of architects, heretofore created, shall continue in
6 existence and shall consist of seven members, five of
7 whom shall be architects, appointed by the governor by
8 and with the advice and consent of the Senate and two
9 of whom shall be lay members, not of the same political
10 party affiliation, appointed by the governor by and with
11 the advice and consent of the Senate. Each member who
12 is an architect shall have been engaged in the active
13 practice of his profession in the state of West Virginia
14 for not fewer than ten years previous to his appointment.
15 The members of the board in office on the date this
16 article takes effect, in the year one thousand nine
17 hundred ninety, shall, unless sooner removed, continue
18 to serve until their respective terms expire and until
19 their successors have been appointed and have qualified.
20 Each member shall be appointed for a term of five
21 years.

22 The board shall pay each member the same compen-
23 sation as is paid to members of the Legislature for their
24 interim duties as recommended by the citizens legisla-
25 tive compensation commission and authorized by law for
26 each day or portion thereof engaged in the discharge of
27 official duties and shall reimburse each member for
28 actual and necessary expenses incurred in the discharge
29 of official duties.

30 Pursuant to the provisions of chapter twenty-nine-a of
31 this code, the board, in addition to the authority, powers
32 and duties granted to it by this article, has the authority
33 to promulgate rules relating to the regulation of the
34 practice of architecture and may include rules pertain-
35 ing to the registration of architects. Any disciplinary
36 proceedings held by the board shall be held in accor-
37 dance with the provisions of the administrative proce-

* Clerk's Note: This section was also amended by S. B. 3 (Chapter 149), which passed prior to this act.

38 dures act for contested cases pursuant to the provisions
39 of article five of said chapter.

40 Pursuant to the provisions of section four, article ten,
41 chapter four of this code, the West Virginia board of
42 architects shall continue to exist until the first day of
43 July, one thousand nine hundred ninety-four, to allow
44 for the completion of an audit by the joint committee on
45 government operations.

CHAPTER 151

(S. B. 9—By Senator Brackenrich)

[Passed April 7, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact section three, article thirteen-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the board of examiners of land surveyors.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. LAND SURVEYORS.

§30-13A-3. Board of examiners of land surveyors created; appointment, terms, removal, etc., of members; officers; meetings; quorum; compensation and expenses.

1 (a) There is hereby created the state board of
2 examiners of land surveyors which shall be composed of
3 three members appointed by the governor by and with
4 the advice and consent of the Senate. Each member
5 shall have been actively engaged in the practice of land
6 surveying for at least ten years and shall be the holder
7 of a license under the provisions of this article.

8 (b) The members of the board shall be appointed for
9 overlapping terms of three years each ending on the

10 thirtieth day of June, and until their respective succes-
11 sors have been appointed and qualified. Members may
12 be reappointed for any number of terms. Before
13 entering upon the performance of his duties, each
14 member shall take and subscribe to the oath required
15 by section five, article IV of the constitution of this state.
16 Vacancies shall be filled by appointment by the
17 governor for the unexpired term of the member whose
18 office shall be vacant and such appointment shall be
19 made within sixty days of the occurrence of such
20 vacancy. Any member may be removed by the governor
21 in case of incompetency, neglect of duty, gross immor-
22 ality or malfeasance in office.

23 (c) The board shall elect from its membership a
24 chairman and secretary-treasurer. A majority of the
25 members of the board shall constitute a quorum and
26 meetings shall be held at the call of the chairman or
27 upon the written request of two members at such time
28 and place as designated in such call or request, and, in
29 any event, the board shall meet at least once annually
30 to conduct the examination hereinafter provided for and
31 to transact such other business as may come before it.

32 (d) Members shall be paid such reasonable compen-
33 sation as the board may from time to time determine,
34 and in addition may be reimbursed for all reasonable
35 and necessary expenses actually incurred in the perfor-
36 mance of their duties, which compensation and expenses
37 shall be paid in accordance with the provisions of
38 subsection (b), section four of this article.

39 (e) After having conducted a performance audit
40 through its joint committee on government operations,
41 pursuant to section nine, article ten, chapter four of this
42 code, the Legislature hereby finds and declares that the
43 board of examiners of land surveyors should be con-
44 tinued and reestablished. Accordingly, notwithstanding
45 the provisions of section four of said article, the board
46 of examiners of land surveyors shall continue to exist
47 until the first day of July, one thousand nine hundred
48 ninety-eight.

CHAPTER 152

(S. B. 28—By Senators Brackenrich and Boley)

[Passed April 7, 1993; in effect July 1, 1993. 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 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 five, article IV
39 of the constitution of this state. The governor shall,
40 within sixty days following the occurrence of a vacancy
41 on the board, fill the same by appointing a person for
42 the unexpired term of, and meeting the same require-
43 ments for membership as, the person vacating said
44 office. Any member may be removed by the governor
45 in case of incompetency, neglect of duty, gross immor-
46 ality or malfeasance in office.

47 (c) A majority of the members of the board shall
48 constitute a quorum. The board shall meet at least once
49 in each calendar quarter on a date fixed by the board.
50 The commissioner may, upon his own motion, or shall
51 upon the written request of three members of the board,
52 call additional meetings of the board upon at least
53 twenty-four hours' notice. No member shall participate
54 in a proceeding before the board to which a corporation,
55 partnership or unincorporated association is a party,
56 and of which he is, or was at any time in the preceding
57 twelve months, a director, officer, owner, partner,
58 employee, member or stockholder. A member may

59 disqualify himself from participation in a proceeding for
60 any other cause deemed by him to be sufficient. Each
61 member shall receive fifty dollars for each day or
62 portion thereof spent in attending meetings of the board
63 and shall be reimbursed for all reasonable and neces-
64 sary expenses incurred incident to his duties as a
65 member of the board.

66 (d) The board shall keep an accurate record of all its
67 proceedings and make certificates thereupon as may be
68 required by law. The commissioner shall make available
69 necessary office space and secretarial and other assist-
70 ance as the board may reasonably require.

71 Pursuant to the provisions of section four, article ten,
72 chapter four of this code, and following a preliminary
73 performance audit review conducted through the joint
74 committee on government operations, the West Virginia
75 board of banking and financial institutions shall
76 continue to exist until the first day of July, one thousand
77 nine hundred ninety-nine.

CHAPTER 153

(S. B. 13—By Senator Brackenrich)

[Passed April 10, 1993; in effect July 1, 1993. 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 continuation of 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 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 family
 5 protection services board should be continued and
 6 reestablished. Accordingly, notwithstanding the provi-
 7 sions of section four of said article, the family protection
 8 services board shall continue to exist until the first day
 9 of July, one thousand nine hundred ninety-four, so that
 10 the joint committee on government operations may
 11 monitor compliance by the family protection services
 12 board with the recommendations of the performance
 13 audit.

CHAPTER 154

(H. B. 2036—By Delegates Martin and Wallace)

[Passed March 29, 1993; in effect July 1, 1993. 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.

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-four, 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.

CHAPTER 155

(S. B. 20—By Senators Brackenrich and Wiedebusch)

[Passed April 10, 1993; in effect July 1, 1993. 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.

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 of said article, the
8 family law masters system shall continue to exist until
9 the first day of July, one thousand nine hundred ninety-
10 four, so that the joint committee on government
11 operations may monitor compliance by the family law
12 masters system with the recommendations of the
13 performance audit.

* Clerk's Note: This section was also amended by S. B. 358 (Chapter 56),
which passed subsequent to this act.

CHAPTER 156

(S. B. 463—By Senator Craigo)

[Passed April 10, 1993: 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 and reenact section two, article nine, chapter eleven of said code; to further amend said article by adding thereto a new section, designated section two-a; to amend and reenact section three, article twelve-b of said chapter; to amend and reenact section two, article thirteen-a of said chapter; to amend and reenact section five, article thirteen-c of said chapter; to further amend said article by adding thereto a new section, designated section fifteen; to amend article thirteen-d of said chapter by adding thereto a new section, designated section three-e; to amend and reenact sections two and nine, article fifteen of said chapter; to amend and reenact section twelve, article twenty-one of said chapter; to further amend said article by adding thereto a new section, designated section seventy-seven; to amend and reenact section nine, article twenty-three of said chapter; to amend and reenact sections six and thirteen, article twenty-four of said chapter; to amend article nine-a, chapter sixteen of said code by adding thereto a new section, designated section six; to amend and reenact sections four, five, six, six-a, twelve, fifteen, sixteen and twenty-four, article twenty, chapter forty-seven of said code; to further amend said article by adding thereto two new sections, designated sections twelve-a and twenty-eight-a; to amend and reenact sections seven, fifteen and twenty-two, article twenty-one of said chapter; and to further amend said chapter by adding thereto a new article, designated article twenty-three, all relating to revenue enhancements; providing expanded application of the crimes and penalties provisions relating to taxation; creating a criminal investigation section within the department of tax and revenue; providing for a reduction in the amount of authorized

credits under the West Virginia capital company act; by increasing the alternative minimum severance tax on coal by twenty-five cents; reduction in gross value for amount of federal energy tax; reducing the amount of super credit that may be taken in remaining years by adding three years to the remaining period; prohibiting the use of credits against sales and use tax liability; providing a one-year suspension of the business investment and jobs expansion tax credit, also known as the super credit; requiring the commission to prepare a report recommending a replacement credit to the Legislature; eliminating the sales tax exemption for contractor engaging in repaving, repair or maintenance of bridges or highways; eliminating the indirect use sales tax exemption; and providing definitions of directly used and consumed; subjecting lottery winnings to personal income tax; subjecting lottery winnings of a certain amount to withholding; extending the due date of business franchise and corporate net income tax returns filed by certain tax exempt organizations; prohibiting any net operating loss from being carried back to any previous taxable year; requiring the amount of depreciation, amortization or cost depletion to be added back into the amount of taxable income for persons asserting specified credits; providing an age limitation on persons permitted to play bingo; changing the fee of super bingo license; limiting the payment of compensation to persons conducting bingo occasions; increasing the percentage of proceeds used for expenses; requiring specified records and reports; requiring bingo operators to designate nonsmoking sections; changing the license fee for charitable raffles; allowing payment of certain expenses; requiring the filing of reports for charitable raffles; imposing a license fee on charitable raffle boards and games; requiring stamp to be affixed to charitable raffle boards and games; requiring wholesaler to pay fee; providing criminal penalties for failure to file a return; allowing forfeitures of vehicles and vessels upon illegal transportation of charitable raffle boards and games; authorizing promulgation of legislative rules; providing a severability clause; and providing for general procedure and administration.

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 section two, article nine, chapter eleven of said code be amended and reenacted; that said article be further amended by adding thereto a new section, designated section two-a; that section three, article twelve-b of said chapter be amended and reenacted; that section two, article thirteen-a of said chapter be amended and reenacted; that section five, article thirteen-c of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section fifteen; that article thirteen-d of said chapter be amended by adding thereto a new section, designated section three-e; that sections two and nine, article fifteen of said chapter be amended and reenacted; that section twelve, article twenty-one of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section seventy-seven; that section nine, article twenty-three of said chapter be amended and reenacted; that sections six and thirteen, article twenty-four of said chapter be amended and reenacted; that article nine-a, chapter sixteen of said code be amended by adding thereto a new section, designated section six; that sections four, five, six, six-a, twelve, fifteen, sixteen and twenty-four, article twenty, chapter forty-seven of said code be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections twelve-a and twenty-eight-a; that sections seven, fifteen and twenty-two, article twenty-one of said chapter be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article twenty-three, all to read as follows:

Chapter

5E. Venture Capital Company.

11. Taxation.

16. Public Health.

47. Regulation of Trade.

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 total credits authorized by the
10 authority for all companies under this section or this
11 article may not exceed a total of eight million dollars
12 each fiscal year: *Provided, however*, That for the fiscal
13 year beginning on the first day of July, one thousand
14 nine hundred ninety-three, and the fiscal year one
15 thousand nine hundred ninety-four, the total credits
16 authorized for all companies under this article may not
17 exceed a total of five million dollars: *Provided further*,
18 That for the fiscal year beginning the first day of July,
19 one thousand nine hundred ninety-three, and for each
20 fiscal year thereafter, the authority shall, for the first
21 one hundred eighty days of the fiscal year, accept
22 applications only from companies who certify in their
23 application that the investment of its entire capital base
24 will be in one or more small business investment
25 corporations organized under the small business invest-
26 ment act: *And provided further*, That the capital base
27 of any such qualified company shall be invested in
28 accordance with the provisions of this article. The
29 authority shall allocate these credits to qualified
30 companies in the order that said companies are
31 qualified.

32 (c) Any investor, including an individual, partnership
33 or corporation who makes a capital investment in a
34 qualified West Virginia capital company, is entitled to
35 a tax credit equal to fifty percent of the investment,
36 except as otherwise provided in this section or in this
37 article. The credit allowed by this article shall be taken
38 after all other credits allowed by chapter eleven of this
39 code. It shall be taken against the same taxes and in the
40 same order as set forth in subsections (c) through (i),
41 section five, article thirteen-c of said chapter. The credit

42 for investments by a partnership or by a corporation
43 electing to be treated as a Subchapter S corporation
44 may be divided pursuant to election of partners or
45 shareholders.

46 (d) The tax credit allowed under this section is to be
47 credited against the taxpayer's tax liability for the
48 taxable year in which the investment in a qualified West
49 Virginia capital company is made. If the amount of the
50 tax credit exceeds the taxpayer's tax liability for the
51 taxable year, the amount of the credit which exceeds the
52 tax liability for the taxable year may be carried to
53 succeeding taxable years until used in full, or until
54 forfeited: *Provided*, That: (i) Tax credits may not be
55 carried forward beyond fifteen years; and (ii) tax credits
56 may not be carried back to prior taxable years. Any tax
57 credit remaining after the fifteenth taxable year is
58 forfeited.

59 (e) The tax credit provided for in this section is
60 available only to those taxpayers whose investment in a
61 qualified West Virginia capital company occurs after
62 the first day of July, one thousand nine hundred eighty-
63 six.

64 (f) The tax credit allowed under this section may not
65 be used against any liability the taxpayer may have for
66 interest, penalties or additions to tax.

67 (g) Notwithstanding any provision in this code to the
68 contrary, the tax commissioner shall publish in the state
69 register the name and address of every taxpayer, and
70 the amount, by category, of any credit asserted under
71 this article for any tax year beginning on or after the
72 first day of January, one thousand nine hundred ninety-
73 one. The categories by dollar amount of credit received
74 shall be as follows:

- 75 (1) More than \$1.00, but not more than \$50,000;
- 76 (2) More than \$50,000, but not more than \$100,000;
- 77 (3) More than \$100,000, but not more than \$250,000;
- 78 (4) More than \$250,000, but not more than \$500,000;
- 79 (5) More than \$500,000, but not more than \$1,000,000;
- 80 (6) More than \$1,000,000.

CHAPTER 11. TAXATION.

- 9. Crimes and Penalties.
- 12B. Minimum Severance Tax on Coal.
- 13A. Severance Taxes.
- 13C. Business Investment and Jobs Expansion Credit.
- 13D. Business and Occupation Tax Credit for Industrial Expansion and Revitalization, for Research and Development Projects, Certain Housing Development and Management Information Services Facilities.
- 13E. Business and Occupation Tax Credit for Coal Loading Facilities.
- 15. Consumers Sales Tax.
- 21. Personal Income Tax.
- 23. Business Franchise Tax.
- 24. Corporation Net Income Tax.

ARTICLE 9. CRIMES AND PENALTIES.

§11-9-1. Application of this article.

§11-9-2a. Criminal investigation section established; funding of same.

§11-9-2. Application of this article.

1 (a) The provisions of this article shall apply to the
2 following taxes imposed by this chapter: (1) The
3 inheritance and transfer taxes and estate taxes imposed
4 by article eleven of this chapter; (2) the business
5 franchise registration tax imposed by article twelve of
6 this chapter; (3) the annual tax on incomes of certain
7 carriers imposed by article twelve-a of this chapter; (4)
8 the business and occupation tax imposed by article
9 thirteen of this chapter; (5) the gasoline and special fuels
10 excise tax imposed by article fourteen of this chapter;
11 (6) the motor carrier road tax imposed by article
12 fourteen-a of this chapter; (7) the consumers sales and
13 service tax imposed by article fifteen of this chapter; (8)
14 the use tax imposed by article fifteen-a of this chapter;
15 (9) the cigarette tax imposed by article seventeen of this
16 chapter; (10) the soft drinks tax imposed by article
17 nineteen of this chapter; (11) the personal income tax
18 imposed by article twenty-one of this chapter; and (12)
19 the corporation net income tax imposed by article
20 twenty-four of this chapter.

21 (b) The provisions of this article shall also apply to the
22 West Virginia tax procedure and administration act in
23 article ten of this chapter, and to any other articles of
24 this chapter when such application is expressly provided
25 for by the Legislature.

26 (c) The provisions of this article shall also apply to the
27 charitable bingo fee imposed by sections six and six-a,
28 article twenty, chapter forty-seven of this code; the
29 charitable raffle fee imposed by section seven, article
30 twenty-one of said chapter; and the charitable raffle
31 boards and games fees imposed by section three, article
32 twenty-three of said chapter.

33 (d) Each and every provision of this article shall apply
34 to the articles of this chapter listed in subsections (a),
35 (b) and (c) of this section, with like effect, as if the
36 provisions of this article were applicable only to such tax
37 and were set forth in extenso in such article.

**§11-9-2a. Criminal investigation section established;
funding of same.**

1 A criminal investigation section consisting of no more
2 than ten investigators plus necessary support staff is
3 hereby established within the state tax division for the
4 purpose of assuring compliance with laws, rules and
5 regulations pertaining to the taxes or credits established
6 by articles eleven, eleven-a, eleven-b, twelve, twelve-a,
7 twelve-b, thirteen, thirteen-a, thirteen-b, thirteen-c,
8 thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-h,
9 fourteen, fourteen-a, fifteen, fifteen-a, sixteen, seven-
10 teen, eighteen, nineteen, twenty-three, twenty-four and
11 twenty-six of this chapter, and articles twenty, twenty-
12 one and twenty-three, chapter forty-seven of this code.
13 Charitable bingo fees imposed under sections six and
14 six-a, article twenty of said chapter; charitable raffle
15 fees imposed under section seven, article twenty-one of
16 said chapter; and charitable raffle boards and games
17 fees imposed under section three, article twenty-three of
18 said chapter shall be deposited in a special revenue
19 account established in the office of the treasurer and
20 shall be used to support compliance expenditures
21 relating to the establishment, maintenance and support
22 of such criminal investigation section. At the close of the
23 fiscal year, any moneys in the special revenue account
24 in excess of twenty thousand dollars shall be transferred
25 to the general revenue fund.

26 Any employee of the criminal investigation section so
27 designated by the tax commissioner who shall have a
28 background in accounting and who shall be certified as
29 a law-enforcement officer pursuant to article twenty-
30 nine, chapter thirty of this code, or its equivalent, shall
31 have all the lawful powers delegated to members of the
32 department of public safety except the power to carry
33 firearms to enforce the provisions of this article in any
34 county or municipality of this state. The commissioner
35 shall establish such additional standards as he or she
36 deems applicable or necessary. Any such employee shall,
37 before entering upon the discharge of his or her duties,
38 execute a bond with security in the sum of three
39 thousand five hundred dollars, payable to the state of
40 West Virginia, conditioned for the faithful performance
41 of his or her duties, as such, and such bond shall be
42 approved as to form by the attorney general, and the
43 same shall be filed with the secretary of state and
44 preserved in his or her office. The department of public
45 safety, any county sheriff, or deputy sheriff, or any
46 municipal police officer, upon request by the tax
47 commissioner, is hereby authorized to assist the tax
48 commissioner in enforcing the provisions of this article
49 and the criminal penalty provisions of this article or any
50 article of this chapter administered under this article.

ARTICLE 12B. MINIMUM SEVERANCE TAX ON COAL.

§11-12B-3. Imposition of tax, credit.

1 (a) *Imposition of tax.* — Upon every person exercising
2 the privilege of engaging within this state in severing,
3 extracting, reducing to possession or producing coal for
4 sale, profit or commercial use there is hereby imposed
5 an annual minimum severance tax equal to fifty cents
6 per ton of coal produced by the taxpayer for sale, profit
7 or commercial use during the taxable year: *Provided,*
8 That for taxable years ending after the thirty-first day
9 of May, one thousand nine hundred ninety-three, the
10 minimum severance tax imposed on coal produced by
11 the taxpayer for sale, profit or commercial use for such
12 taxable year shall be seventy-five cents, with such rate
13 increase to apply only to tons of coal produced after the

14 thirty-first day of May, one thousand nine hundred
15 ninety-three.

16 (b) *Credit against article thirteen-a tax.* — A person
17 who pays the minimum severance tax imposed by this
18 article shall be allowed a credit against the severance
19 tax imposed on coal by section three, article thirteen-a
20 of this chapter, but not including the additional
21 severance tax on coal imposed by section six of said
22 article, equal to the liability of the taxpayer for the
23 taxable year for payment of the minimum severance tax
24 on coal imposed by this article: *Provided*, That the
25 amount of credit allowed by this section shall not exceed
26 the severance tax liability of the taxpayer for the
27 taxable year determined under paragraph (1), subsec-
28 tion (b), section three of said article exclusive of the
29 additional tax on coal imposed by section six of said
30 article after application of all credits to which the
31 taxpayer may be entitled except any credit allowed
32 pursuant to chapter five-e of this code any credit for
33 installment payments of estimated tax paid pursuant to
34 section six of this article during the tax year and any
35 credit for overpayment of article thirteen-a tax. Not-
36 withstanding anything herein to the contrary, in no
37 event shall the credit allowed under chapter five-e of
38 this code be allowed as a credit against the minimum
39 severance tax imposed by this article.

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-2. Definitions.

1 (a) *General.* — When used in this article, or in the
2 administration of this article, the terms defined in
3 subsection (b) of this section shall have the meanings
4 ascribed to them by this section, unless a different
5 meaning is clearly required by either the context in
6 which the term is used or by specific definition.

7 (b) *Terms defined.* —

8 (1) "Coal" means and includes any material composed
9 predominantly of hydrocarbons in a solid state.

10 (2) "Delegate" in the phrase "or his or her delegate",
11 when used in reference to the tax commissioner, means

12 any officer or employee of the state tax department duly
13 authorized by the tax commissioner directly, or indi-
14 rectly by one or more redelegations of authority, to
15 perform the function mentioned or described in this
16 article or regulations promulgated thereunder.

17 (3) "Economic interest" for the purpose of this article
18 is synonymous with the economic interest ownership
19 required by Section 611 of the Internal Revenue Code
20 in effect on the thirty-first day of December, one
21 thousand nine hundred eighty-five, entitling the tax-
22 payer to a depletion deduction for income tax purposes:
23 *Provided*, That a person who only receives an arm's
24 length royalty shall not be considered as having an
25 economic interest.

26 (4) "Extraction of ores or minerals from the ground"
27 includes extraction by mine owners or operators of ores
28 or minerals from the waste or residue of prior mining.

29 (5) "Fiduciary" means and includes, a guardian,
30 trustee, executor, administrator, receiver, conservator
31 or any person acting in any fiduciary capacity for any
32 person.

33 (6) "Gross value" in the case of natural resources
34 means the market value of the natural resource product,
35 in the immediate vicinity, where severed, determined
36 after application of post production processing generally
37 applied by the industry to obtain commercially market-
38 able or usable natural resource products. For all natural
39 resources, "gross value" is to be reported as follows:

40 (A) For natural resources severed or processed (or
41 both severed and processed) and sold during a reporting
42 period, gross value is the amount received or receivable
43 by the taxpayer.

44 (B) In a transaction involving related parties, gross
45 value shall not be less than the fair market value for
46 natural resources of similar grade and quality.

47 (C) In the absence of a sale, gross value shall be the
48 fair market value for natural resources of similar grade
49 and quality.

50 (D) If severed natural resources are purchased for the
51 purpose of processing and resale, the gross value is the
52 amount received or receivable during the reporting
53 period reduced by the amount paid or payable to the
54 taxpayer actually severing the natural resource. If
55 natural resources are severed outside the state of West
56 Virginia and brought into the state of West Virginia by
57 the taxpayer for the purpose of processing and resale,
58 the gross value is the amount received or receivable
59 during the reporting period reduced by the fair market
60 value of the natural resources of similar grade and
61 quality and in the same condition immediately preced-
62 ing the processing of the natural resources in this state.

63 (E) If severed natural resources are purchased for the
64 purpose of processing and consumption, the gross value
65 is the fair market value of processed natural resources
66 of similar grade and quality reduced by the amount paid
67 or payable to the taxpayer actually severing the natural
68 resource. If severed natural resources are severed
69 outside the state of West Virginia and brought into the
70 state of West Virginia by the taxpayer for the purpose
71 of processing and consumption, the gross value is the
72 fair market value of processing natural resources of
73 similar grade and quality reduced by the fair market
74 value of the natural resources of similar grade and
75 quality and in the same condition immediately preced-
76 ing the processing of the natural resources.

77 (F) In all instances, the gross value shall be reduced
78 by the amount of any federal energy tax imposed upon
79 the taxpayer after the first day of June, one thousand
80 nine hundred ninety-three, but shall not be reduced by
81 any state or federal taxes, royalties, sales commissions
82 or any other expense.

83 (G) For natural gas, gross value is the value of the
84 natural gas at the wellhead immediately preceding
85 transportation and transmission.

86 (H) For limestone or sandstone quarried or mined,
87 gross value is the value of such stone immediately upon
88 severance from the earth.

89 (7) "Mining" includes not merely the extraction of ores

90 or minerals from the ground but also those treatment
91 processes considered as mining under this article and
92 those treatment processes necessary or incidental
93 thereto.

94 (8) "Natural resource" means all forms of minerals
95 including, but not limited to, rock, stone, limestone, coal,
96 shale, gravel, sand, clay, natural gas, oil and natural gas
97 liquids which are contained in or on the soils or waters
98 of this state, and includes standing timber.

99 (9) "Partnership" includes a syndicate, group, pool,
100 joint venture or other unincorporated organization,
101 through or by means of which natural resources are
102 severed, extracted, reduced to possession and produced
103 or prepared in this state for sale, profit or commercial
104 use. "Partner" includes a member of such a syndicate,
105 group, pool, joint venture or organization.

106 (10) "Person" or "company" are herein used interchan-
107 geably and include any individual, firm, partnership,
108 mining partnership, joint venture, association, corpora-
109 tion, trust or any other group or combination acting as
110 a unit, and the plural as well as the singular number,
111 unless the intention to give a more limited meaning is
112 declared by the context.

113 (11) "Processed" or "processing" as applied to:

114 (A) Oil and natural gas shall not include any conver-
115 sion or refining process; and

116 (B) Limestone or sandstone quarried or mined shall
117 not include any treatment process or transportation
118 after the limestone or sandstone is severed from the
119 earth.

120 (12) "Related parties" means two or more persons,
121 organizations or businesses owned or controlled directly
122 or indirectly by the same interests. Control exists if a
123 contract or lease, either written or oral, is entered into
124 whereby one party mines or processes natural resources
125 owned or held by another party and the owner or lessor
126 participates in the severing, processing or marketing of
127 the natural resources or receives any value other than
128 an arm's length passive royalty interest. In the case of

129 related parties, the tax commissioner may apportion or
130 allocate the receipts between or among such persons,
131 organizations or businesses if he determines that such
132 apportionment or allocation is necessary to more clearly
133 reflect gross value.

134 (13) "Sale" includes any transfer of the ownership or
135 title to property, whether for money or in exchange for
136 other property or services, or any combination thereof.

137 (14) "Severing" or "severed" means the physical
138 removal of the natural resources from the earth or
139 waters of this state by any means: *Provided*, That
140 "severing" or "severed" shall not include the removal of
141 natural gas from underground storage facilities into
142 which the natural gas has been mechanically injected
143 following its initial removal from the earth: *Provided*,
144 *however*, That "severing" or "severed" oil and natural
145 gas shall not include any separation process of oil or
146 natural gas commonly employed to obtain marketable
147 natural resource products.

148 (15) "Stock" includes shares in an association, joint-
149 stock company or corporation.

150 (16) "Tax commissioner" means the tax commissioner
151 of the state of West Virginia, or his delegate.

152 (17) "Taxable year" means the calendar year, or the
153 fiscal year ending during such calendar year, upon the
154 basis of which tax liability is computed under this
155 article. "Taxable year" means, in case of a return made
156 for a fractional part of a year under the provisions of
157 this article, or under regulations promulgated by the tax
158 commissioner, the period for which such return is made.

159 (18) "Taxpayer" means and includes any individual,
160 partnership, joint venture, association, corporation,
161 receiver, trustee, guardian, executor, administrator,
162 fiduciary or representative of any kind engaged in the
163 business of severing or processing (or both severing and
164 processing) natural resources in this state for sale or use.
165 In instances where contracts (either oral or written) are
166 entered into whereby persons, organizations or busi-
167 nesses are engaged in the business of severing or

168 processing (or both severing and processing) a natural
169 resource but do not obtain title to or do not have an
170 economic interest therein, the party who owns the
171 natural resource or has an economic interest therein is
172 the taxpayer.

173 (19) "This code" means the code of West Virginia, one
174 thousand nine hundred thirty-one, as amended.

175 (20) "This state" means the state of West Virginia.

ARTICLE 13C. BUSINESS INVESTMENT AND JOBS EXPANSION CREDIT.

§11-13C-5. Application of annual credit allowance.

§11-13C-15. One year suspension of new credit entitlements, exceptions,
effective date.

§11-13C-5. Application of annual credit allowance.

1 (a) *In general.* — The aggregate annual credit
2 allowance for the current taxable year is an amount
3 equal to the sum of the following as modified under
4 subsections (o) and (p) of this section:

5 (1) The one-tenth part allowed under section four of
6 this article for qualified investment placed into service
7 or use during a prior taxable year; plus

8 (2) The one-tenth part allowed under section four of
9 this article for qualified investment placed into service
10 or use during the current taxable year; plus

11 (3) The one-tenth part allowed under section four-a of
12 this article for locating corporate headquarters in this
13 state; or the amount allowed under section seven-a of
14 this article of the taxable year.

15 (b) *Application of current year annual credit allow-*
16 *ance.* — The amount determined under subsection (a) of
17 this section shall be allowed as a credit against that
18 portion of the taxpayer's state tax liability which is
19 attributable to and the direct result of the taxpayer's
20 qualified investment, and shall be applied as provided
21 in subsections (c) through (k), both inclusive, of this
22 section, and in that order.

23 (c) *Business and occupation taxes.* —

24 (1) That portion of the allowable credit attributable
25 to qualified investment in a business or other activity
26 subject to the taxes imposed by article thirteen of this
27 chapter shall first be applied to reduce up to eighty
28 percent of the taxes imposed by said article for the
29 taxable year (determined before application of allowable
30 credits against tax and the annual exemption).

31 (2) If the taxes due under article thirteen of this
32 chapter are not solely attributable to and the direct
33 result of the taxpayer's qualified investment in a
34 business or other activity taxable under said article, the
35 amount of such taxes, which are so attributable, shall
36 be determined by multiplying the amount of taxes due
37 under said article, for the taxable year (determined
38 before application of any allowable credits against tax
39 and the annual exemption), by a fraction, the numerator
40 of which is all wages, salaries and other compensation
41 paid during the taxable year to all employees of the
42 taxpayer employed in this state, whose positions are
43 directly attributable to the qualified investment in a
44 business or other activity taxable under said article. The
45 denominator of the fraction shall be the wages, salaries
46 and other compensation paid during the taxable year to
47 all employees of the taxpayer employed in this state,
48 whose positions are directly attributable to the business
49 or other activity of the taxpayer that is taxable under
50 said article.

51 (3) The annual exemption allowed by section three,
52 article thirteen of this chapter, plus any credits
53 allowable under articles thirteen-d and thirteen-e of this
54 chapter, shall be applied against and reduce only the
55 portion of article thirteen taxes not apportioned to the
56 qualified investment under this article: *Provided*, That
57 any excess exemption or credits may be applied against
58 the amount of article thirteen taxes apportioned to the
59 qualified investment under this article, that is not offset
60 by the amount of annual credit against such taxes
61 allowed under this article for the taxable year, unless
62 their application is otherwise prohibited by this chapter.

63 (d) *Carrier income taxes.* —

64 (1) That portion of the allowable credit attributable
65 to qualified investment in a business or other activity
66 subject to the taxes imposed by article twelve-a of this
67 chapter shall first be applied to reduce up to eighty
68 percent of the taxes imposed by said article for the
69 taxable year.

70 (2) If the taxes due under article twelve-a of this
71 chapter are not solely attributable to and the direct
72 result of the taxpayer's qualified investment in a
73 business or other activity taxable under said article, the
74 amount of such taxes, which are so attributable, shall
75 be determined by multiplying the amount of taxes due
76 under said article for the taxable year, by a fraction, the
77 numerator of which is all wages, salaries and other
78 compensation paid during the taxable year to all
79 employees of the taxpayer employed in this state, whose
80 positions are directly attributable to the qualified
81 investment in a business or other activity taxable under
82 said article. The denominator of the fraction shall be the
83 wages, salaries and other compensation paid during the
84 taxable year to all employees of the taxpayer, employed
85 in this state, whose positions are directly attributable to
86 the business or other activity of the taxpayer that is
87 taxable under said article.

88 (e) *Severance taxes.* —

89 (1) On and after the first day of July, one thousand
90 nine hundred eighty-seven, that portion of the allowable
91 credit attributable to qualified investment in a business
92 or other activity subject to the tax imposed by article
93 thirteen-a of this chapter, and qualified investment in
94 a business or activity that was subject to the tax imposed
95 by article thirteen of this chapter prior to said first day
96 of July, but on and after said first day of July, is subject
97 to the tax imposed by article thirteen-a of this chapter,
98 shall first be applied to reduce up to eighty percent of
99 the taxes imposed by said article for the taxable year
100 (determined before application of any allowable credits
101 against tax).

102 (2) If the taxes due under article thirteen-a of this
103 chapter are not solely attributable to and the direct

104 result of the taxpayer's qualified investment in a
105 business or other activity taxable under said article, the
106 amount of such taxes, which are so attributable, shall
107 be determined by multiplying the amount of taxes due
108 under said article for the taxable year (determined
109 before application of any allowable credits against tax),
110 by a fraction, the numerator of which is all wages,
111 salaries and other compensation paid during the taxable
112 year to all employees of the taxpayer employed in this
113 state, whose positions are directly attributable to the
114 qualified investment in a business or other activity
115 taxable under said article. The denominator of the
116 fraction shall be the wages, salaries and other compen-
117 sation paid during the taxable year to all employees of
118 the taxpayer employed in this state, whose positions are
119 directly attributable to the business or other activity of
120 the taxpayer that is taxable under said article.

121 (3) Any credits allowable under articles thirteen-d
122 and thirteen-e of this chapter shall be applied against
123 and reduce only the portion of article thirteen-a taxes
124 not apportioned to the qualified investment under this
125 article: *Provided*, That any excess credits may be
126 applied against the amount of article thirteen taxes
127 apportioned to the qualified investment under this
128 article, that is not offset by the amount of annual credit
129 against such taxes allowed under this article for the
130 taxable year, unless their application is otherwise
131 prohibited by this chapter.

132 (f) *Telecommunications taxes.* —

133 (1) On and after the first day of July, one thousand
134 nine hundred eighty-seven, that portion of the allowable
135 credit attributable to qualified investment in a business
136 or other activity subject to the taxes imposed by article
137 thirteen-b of this chapter, shall first be applied to reduce
138 up to eighty percent of the taxes imposed by said article
139 for the taxable year (determined before application of
140 allowable credits against tax) and qualified investment
141 in a business or activity that was subject to the taxes
142 imposed by article twelve-a of this chapter prior to said
143 first day of July, but on and after said first day of July
144 is subject to the tax imposed by article thirteen-b of this

145 chapter.

146 (2) If the taxes due under article thirteen-b of this
147 chapter are not solely attributable to and the direct
148 result of the taxpayer's qualified investment in a
149 business or other activity taxable under said article, the
150 amount of such taxes, which are so attributable, shall
151 be determined by multiplying the amount of taxes due
152 under said article for the taxable year (determined
153 before application of any allowable credits against tax),
154 by a fraction, the numerator of which is all wages,
155 salaries and other compensation paid during the taxable
156 year to all employees of the taxpayer employed in this
157 state whose positions are directly attributable to the
158 qualified investment in a business or other activity
159 taxable under said article. The denominator of the
160 fraction shall be the wages, salaries and other compen-
161 sation paid during the taxable year to all employees of
162 the taxpayer employed in this state whose positions are
163 directly attributable to the business or other activity of
164 the taxpayer that is taxable under said article.

165 (g) *Business franchise tax.* —

166 (1) On and after the first day of July, one thousand
167 nine hundred eighty-seven, that portion of the allowable
168 credit attributable to qualified investment in a business
169 or activity subject to the taxes imposed by article
170 twenty-three of this chapter, and qualified investment
171 in a business or activity that was subject to the taxes
172 imposed by article thirteen of this chapter prior to said
173 first day of July, but on and after said first day of July,
174 is subject to the tax imposed by article twenty-three of
175 this chapter, shall first be applied to reduce up to eighty
176 percent of the taxes imposed by said article for the
177 taxable year (determined after application of the credits
178 against tax provided in section seventeen of said article,
179 but before application of any other allowable credits
180 against tax).

181 (2) If the taxes due under article twenty-three of this
182 chapter are not solely attributable to and the direct
183 result of the taxpayer's qualified investment in a
184 business or other activity taxable under said article for

185 the taxable year (determined after application of the
186 credits against tax provided in section seventeen of said
187 article, but before application of any other allowable
188 credits), by a fraction, the numerator of which is all
189 wages, salaries and other compensation paid during the
190 taxable year to all employees of the taxpayer employed
191 in this state, whose positions are directly attributable to
192 the qualified investment in a business or other activity
193 taxable under said article. The denominator of the
194 fraction shall be wages, salaries and other compensation
195 paid during the taxable year to all employees of the
196 taxpayer employed in this state, whose positions are
197 directly attributable to the business or other activity of
198 the taxpayer that is taxable under said article.

199 (3) Any credits allowable under articles thirteen-d
200 and thirteen-e of this chapter shall be applied against
201 and reduce only the portion of article twenty-three taxes
202 not apportioned to the qualified investment under this
203 article: *Provided*, That any excess exemption or credits
204 may be applied against the amount of article twenty-
205 three taxes apportioned to the qualified investment
206 under this article that is not offset by the amount of
207 annual credit against such taxes allowed under this
208 article for the taxable year, unless their application is
209 otherwise prohibited by this chapter.

210 (h) *Corporation net income taxes.* —

211 (1) After application of subsections (c) through (g),
212 both inclusive of this section, any unused credit shall
213 next be applied to reduce up to eighty percent of the
214 taxes imposed by article twenty-four of this chapter for
215 the taxable year (determined before application of
216 allowable credits against tax).

217 (2) If the taxes due under article twenty-four of this
218 chapter (determined before application of allowable
219 credits against tax) are not solely attributable to and the
220 direct result of the taxpayer's qualified investment, the
221 amount of such taxes which are so attributable, shall be
222 determined by multiplying the amount of taxes due
223 under said article for the taxable year (determined
224 before application of allowable credits against tax), by

225 a fraction, the numerator of which is all wages, salaries
226 and other compensation paid during the taxable year to
227 all employees of the taxpayer employed in this state
228 whose positions are directly attributable to the qualified
229 investment. The denominator of the fraction shall be the
230 wages, salaries and other compensation paid during the
231 taxable year to all employees of the taxpayer employed
232 in this state.

233 (3) Any credits allowable under article twenty-four of
234 this chapter shall be applied against and reduce only the
235 amount of article twenty-four taxes not apportioned to
236 the qualified investment under this article: *Provided,*
237 That any excess credits may be applied against the
238 amount of article twenty-four taxes apportioned to the
239 qualified investment under this article that is not offset
240 by the amount of annual credit against such taxes
241 allowed under this article for the taxable year, unless
242 their application is otherwise prohibited by this chapter.

243 (i) *Personal income taxes.* —

244 (1) If the person making the qualified investment is
245 an electing small business corporation (as defined in
246 Section 1361 of the United States Internal Revenue Code
247 of 1954, as amended), a partnership or a sole proprie-
248 torship, then any unused credit (after application of
249 subsections (c), (d), (e), (f) and (g)) shall be allowed as
250 a credit against up to eighty percent of the taxes
251 imposed by article twenty-one of this chapter on the
252 income from business or other activity subject to tax
253 under article twelve-a, thirteen, thirteen-a, thirteen-b or
254 twenty-three of this chapter.

255 (2) Electing small business corporations, partnerships
256 and other unincorporated organizations shall allocate
257 the credit allowed by this article among its members in
258 the same manner as profits and losses are allocated for
259 the taxable year.

260 (3) If the amount of taxes due under article twenty-
261 one of this chapter (determined before application of
262 allowable credits against tax) that is attributable to
263 business, is not solely attributable to and the direct
264 result of the qualified investment of the electing small

265 business corporation, partnership, other unincorporated
266 organization or sole proprietorship, the amount of such
267 taxes which are so attributable shall be determined by
268 multiplying the amount of taxes due under said article
269 (determined before application of allowable credits
270 against tax), that is attributable to business by a
271 fraction, the numerator of which is all wages, salaries
272 and other compensation paid during the taxable year to
273 all employees of the electing small business corporation,
274 partnership, other unincorporated organization or sole
275 proprietorship employed in this state, whose positions
276 are directly attributable to the qualified investment.
277 The denominator of the fraction shall be the wages,
278 salaries and other compensation paid during the taxable
279 year to all employees of the taxpayer.

280 (4) No credit shall be allowed under this section
281 against any employer withholding taxes imposed by
282 article twenty-one of this chapter.

283 (j) For tax years beginning after the thirty-first day
284 of December, one thousand nine hundred ninety-two,
285 and thereafter, if the formula provisions of subsections
286 (c) through (i) of this section, inclusive, do not fairly
287 represent the taxes solely attributable to and the direct
288 result of the taxpayer's qualified investment of the
289 taxpayer and all other project participants in the
290 business or other activity subject to tax, the commis-
291 sioner may require, in respect to all or any part of the
292 taxpayer's businesses or activities, if reasonable:

293 (1) Separate accounting or identification; or

294 (2) Adjustment to the wages formula to reflect all
295 components of the tax liability; or

296 (3) The inclusion of one or more additional factors
297 which will fairly represent the taxes solely attributable
298 to and the direct result of the qualified investment of
299 the taxpayer and all other project participants in the
300 businesses or other activities subject to tax; or

301 (4) The employment of any other method to effectuate
302 an equitable attribution of the taxes.

303 In order to effectuate the purposes of this subsection,

304 the commissioner shall propose for promulgation
305 legislative rules in accordance with article three,
306 chapter twenty-nine-a of this code: *Provided*, That the
307 initial promulgation may be by emergency rule. The
308 rule shall set forth the standards by which this
309 subsection will be implemented and enforced: *Provided*,
310 *however*, That with regard to investment placed in
311 service prior to the passage of this provision, taxpayers
312 having a specific written determination from the tax
313 commissioner that the taxpayer is authorized or
314 required to take credit against tax not attributable to
315 qualified investment shall not be subject to the alterna-
316 tive allocation of credit provided for under this
317 subsection.

318 (k) *Sales and use taxes.* —

319 On and after the first day of July, one thousand nine
320 hundred eighty-seven, for purchases of tangible personal
321 property and taxable services made on or after that
322 date, that portion of the allowable credit, which is
323 attributable to qualified investment in a business or
324 activity subject to the taxes imposed by articles fifteen
325 and fifteen-a of this chapter on purchases for use or
326 consumption in the conduct of such business or activity,
327 shall be applied to reduce up to eighty percent of the
328 taxes imposed by said articles on purchases that are
329 directly used or consumed in the qualified investment
330 activity. When property and services purchased for use
331 or consumption are not solely used or consumed in the
332 qualified investment activity, the cost thereof shall be
333 apportioned between such activities. Only that amount
334 apportioned to purchases directly used or consumed in
335 the qualified investment activity shall be included when
336 applying the credit allowable under this subsection. On
337 and after the first day of July, one thousand nine
338 hundred ninety-three, for purchases of tangible personal
339 property and taxable services made on or after that date
340 for use or consumption in the conduct of business, no
341 portion of the allowable credit may be applied against
342 the taxes imposed by said articles.

343 (l) *Ad valorem property taxes; unemployment taxes*
344 *and workers' compensation premiums.* —

345 (1) After application of subsections (a) through (i),
346 both inclusive, of this section, any unused credit shall
347 be applied as a rebate for payment of the sum of the
348 following amounts:

349 (A) Eighty percent of the ad valorem property taxes
350 imposed by levying bodies pursuant to article eight of
351 this chapter, for the taxable year (including payments
352 in lieu of such taxes), on property of the taxpayer that
353 is directly attributable to the qualified investment
354 (including property having a useful life of less than four
355 years) of the taxpayer, in the new or expanded business
356 facility of the taxpayer resulting in new jobs; plus

357 (B) Eighty percent of the taxes imposed by article
358 five, chapter twenty-one-a of this code for the taxable
359 year attributable to the compensation of new employees
360 filling the new jobs that are directly attributable to the
361 qualified investment; plus

362 (C) Twenty percent of the workers' compensation
363 premiums imposed by article two, chapter twenty-three
364 of this code, for the taxable year attributable to the
365 compensation paid new employees filling the new jobs,
366 that are directly attributable to the qualified
367 investment.

368 (2) A taxpayer eligible to claim this rebate shall apply
369 either the amount of the unused credit or the sum
370 determined under subdivision (1) of this subsection,
371 whichever is less, against the remaining twenty percent
372 of the taxes imposed by articles twelve-a, thirteen,
373 thirteen-a, thirteen-b, twenty-one, twenty-three and
374 twenty-four of this chapter, attributable to the qualified
375 investment under this article. If any amount of rebate
376 remains after its application against the remaining
377 twenty percent of taxes as aforesaid, the amount
378 remaining shall be carried forward to each ensuing tax
379 year until used or the expiration of the twelfth subse-
380 quent tax year in which the qualified investment was
381 placed in service or use in this state by the taxpayer.

382 (m) *Unused credit forfeited.* — If any credit remains
383 after application of subsection (b) of this section, the
384 amount thereof shall be forfeited. No carryover to a

385 subsequent taxable year or carryback to a prior taxable
386 year shall be allowed for the amount of any unused
387 portion of any annual credit allowance, except as
388 specifically provided in subsection (l), (o) or (p) of this
389 section.

390 (n) Notwithstanding any provision of this section to
391 the contrary and notwithstanding the reenactment of
392 this section later in time than the enactment or
393 reenactment of section fourteen of this article, the
394 restrictions, limitations, constraints and provisions of
395 said section shall apply to and supersede the provisions
396 of this section.

397 (o) *Deferral of twenty percent of annual credit, eighty*
398 *percent current limitation.* —

399 (1) Eighty percent of the amount of annual credit
400 calculated under subsections (a) through (n) of this
401 section before application of the minimum severance tax
402 against coal and before the adjustment set forth in
403 subsection (p) of this section, shall be applied against the
404 taxes enumerated in subsections (c) through (i), inclu-
405 sive, of this section for the current tax year.

406 (2) The remaining twenty percent of such annual
407 credit so calculated in subsections (c) through (n) of this
408 section shall be applied against the taxes enumerated in
409 subsections (c) through (i), inclusive, of this section
410 beginning in the tenth tax year subsequent to the tax
411 year in which qualified investment was first placed in
412 service or use in this state by the taxpayer, and the
413 amount thereof remaining shall be carried forward each
414 ensuing tax year until used or until the expiration of the
415 twelfth tax year subsequent to the tax year in which
416 qualified investment was first placed in service or use
417 in this state by the taxpayer. No deferral of credit under
418 this subsection shall apply to this credit when applied
419 in such tenth through twelfth years.

420 (p) *Additional allowance.* —

421 (1) After application of up to eighty percent of annual
422 credit against the taxes enumerated in subsections (c)
423 through (i), inclusive, of this section for the current tax

424 year under subsection (o) of this section, there shall be
425 allowed an additional amount of credit, as determined
426 under subdivision (2) of this subsection, which may
427 offset up to one hundred percent of the remaining taxes
428 enumerated in subsections (g), (h) and (i), in that order,
429 of this section for the current tax year. Any credit
430 calculated and determined under this subsection which
431 remains after application against the taxes enumerated
432 in subsections (g), (h) and (i) under this section shall be
433 forfeited and shall not carryover to any other taxable
434 year.

435 (2) The amount of credit allowable under this subsection
436 shall be the lesser of one third of the taxpayer's
437 minimum severance tax on coal payable, or the taxpayer's
438 net minimum severance tax on coal payable. For
439 purposes of this subsection, the term "net minimum
440 severance tax on coal payable" means the amount of the
441 excess of the minimum severance tax on coal over the
442 amount of the state severance tax on coal severed and
443 extracted by the taxpayer in this state not including the
444 additional severance tax on coal imposed by section six,
445 article thirteen-a of this chapter, calculated after
446 application of the credit allowed under this article, and
447 before application of all other credits, and after
448 application of the five hundred dollar exemption to the
449 said severance tax on coal.

450 (q) *Effective date.* —

451 (1) This section, as amended in the year one thousand
452 nine hundred eighty-six, shall be effective upon passage.
453 It shall be retroactive, and shall be in lieu of the method
454 provided by this section for application of this credit
455 prior to this amendment, for qualified investment made
456 on or after the first day of March, one thousand nine
457 hundred eighty-five.

458 (2) This section, as amended in the year one thousand
459 nine hundred eighty-seven, shall be effective for taxable
460 years ending after the thirtieth day of June, one
461 thousand nine hundred eighty-seven.

462 (3) This section, as amended in the year one thousand
463 nine hundred ninety-three, shall be effective for taxable

464 years ending after the thirty-first day of May, one
465 thousand nine hundred ninety-three.

§11-13C-15. One-year suspension of new credit entitlements, exceptions, effective date.

1 (a) Notwithstanding any other provision of this article
2 to the contrary, no entitlement to the business invest-
3 ment and jobs expansion tax credit under this article
4 shall result from, and no credit shall be available to any
5 taxpayer for, investment placed in service or use during
6 the period beginning on the date of passage of this
7 section by the Legislature, and ending on the three
8 hundred and sixty-sixth day thereafter.

9 (b) The suspension of new entitlements to credits set
10 forth in subsection (a) of this section shall not apply to
11 companies, entities or taxpayers engaged in the follow-
12 ing industries or business activities:

13 (1) Manufacturing, including, but not limited to,
14 chemical processing and chemical manufacturing,
15 manufacture of wood products and forestry products,
16 manufacture of aluminum, manufacture of paper, paper
17 processing, recyclable paper processing, food process-
18 ing, manufacture of aircraft or aircraft parts, manufac-
19 ture of automobiles or automobile parts, and all other
20 manufacturing activities, but not timbering or timber
21 severance or timber hauling, or mineral severance,
22 hauling, processing or preparation, or coal severance,
23 hauling, processing or preparation;

24 (2) Information processing, including, but not limited
25 to, telemarketing, information processing, systems
26 engineering, backoffice operations and software
27 development;

28 (3) The activity of warehousing, including, but not
29 limited to, commercial warehousing and the operation
30 of regional distribution centers by manufacturers,
31 wholesalers or retailers;

32 (4) The activity of goods distribution;

33 (5) Destination oriented recreation and tourism.

34 (c) Notwithstanding the fact that a company, entity

35 or taxpayer is engaged in an industry or business
36 activity enumerated in subsection (b) of this section,
37 such company, entity or taxpayer must qualify for the
38 business investment and jobs expansion tax credit by
39 fulfilling the qualified investment, jobs creation and
40 other credit entitlement requirements of the business
41 investment and jobs expansion tax credit act in order
42 to obtain entitlement to any credit under this article.
43 Failure to fulfill the statutory requirements of the
44 business investment and jobs expansion tax credit act
45 will result in a partial or complete loss of the tax credit.

46 (d) *Transition rule.* — Notwithstanding any provision
47 herein contained to the contrary, this section shall not
48 apply to investments for which applications for credit
49 or applications for projected certification were filed
50 prior to the effective date of this section.

51 (e) *Effective date.* — This section shall be effective
52 upon passage by the Legislature.

53 (f) *Reports to the Legislature.* — On or before the
54 fifteenth day of January, one thousand nine hundred
55 ninety-four, the secretary of the department of tax and
56 revenue shall submit a report to the governor, the
57 president of the Senate and the speaker of the House of
58 Delegates. The report shall include recommendations
59 regarding a tax credit to promote economic development
60 to replace the business investment and jobs expansion
61 credit provided pursuant to this article. The recom-
62 mended replacement credit should provide for a
63 maximum amount of total credit which may be taken
64 by all taxpayers in any one year so that the total fiscal
65 impact of the credit to the state can be readily deter-
66 mined. The secretary shall consult with all other state
67 agencies that are responsible for economic development
68 in this state and include any recommendations forth-
69 coming from those agencies in the report.

**ARTICLE 13D. TAX CREDITS FOR INDUSTRIAL EXPANSION
AND REVITALIZATION, RESEARCH AND DE-
VELOPMENT PROJECTS, CERTAIN HOUSING
DEVELOPMENT PROJECTS, MANAGEMENT
INFORMATION SERVICES FACILITIES, AND
INDUSTRIAL FACILITIES PRODUCING
COAL-BASED LIQUIDS USED TO PRODUCE
SYNTHETIC FUELS.**

§11-13D-3e. Application of credit after June 30, 1993.

1 Notwithstanding any other provision of this code to
2 the contrary, for taxable years ending on and after the
3 first day of July, one thousand nine hundred ninety-
4 three, the credits allowed under section three may not
5 be applied to reduce the taxes imposed by articles
6 fifteen and fifteen-a of this chapter: *Provided*, That this
7 section shall not apply to credits allowed under subsec-
8 tion (g), section three of this article for qualified housing
9 development projects existing in this state on or before
10 the first day of July, one thousand nine hundred ninety-
11 two.

**ARTICLE 13E. BUSINESS AND OCCUPATION TAX CREDIT FOR
COAL LOADING FACILITIES.****§11-13E-3b. Application of credit after June 30, 1993.**

1 Notwithstanding any other provision of this code to
2 the contrary, for taxable years ending on and after the
3 first day of July, one thousand nine hundred ninety-
4 three, the credits allowed under section three may not
5 be applied to reduce the taxes imposed by articles
6 fifteen and fifteen-a of this chapter.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-2. Definitions.

§11-15-9. Exemptions.

§11-15-2. Definitions.

1 For the purpose of this article:

2 (a) "Persons" means any individual, partnership,
3 association, corporation, state or its political subdivi-
4 sions or agency of either, guardian, trustee, committee,
5 executor or administrator.

6 (b) "Tax commissioner" means the state tax
7 commissioner.

8 (c) "Gross proceeds" means the amount received in
9 money, credits, property or other consideration from
10 sales and services within this state, without deduction
11 on account of the cost of property sold, amounts paid for
12 interest or discounts or other expenses whatsoever.

13 Losses shall not be deducted, but any credit or refund
14 made for goods returned may be deducted.

15 (d) "Sale", "sales" or "selling" includes any transfer of
16 the possession or ownership of tangible personal
17 property for a consideration, including a lease or rental,
18 when the transfer or delivery is made in the ordinary
19 course of the transferor's business and is made to the
20 transferee or his agent for consumption or use or any
21 other purpose.

22 (e) "Vendor" means any person engaged in this state
23 in furnishing services taxed by this article or making
24 sales of tangible personal property.

25 (f) "Ultimate consumer" or "consumer" means a
26 person who uses or consumes services or personal
27 property.

28 (g) "Business" includes all activities engaged in or
29 caused to be engaged in with the object of gain or
30 economic benefit, direct or indirect, and all activities of
31 the state and its political subdivisions which involve
32 sales of tangible personal property or the rendering of
33 services when those service activities compete with or
34 may compete with the activities of other persons.

35 (h) "Tax" includes all taxes, interest and penalties
36 levied hereunder.

37 (i) "Service" or "selected service" includes all nonpro-
38 fessional activities engaged in for other persons for a
39 consideration, which involve the rendering of a service
40 as distinguished from the sale of tangible personal
41 property, but shall not include contracting, personal
42 services or the services rendered by an employee to his
43 employer or any service rendered for resale.

44 (j) "Purchaser" means a person who purchases
45 tangible personal property or a service taxed by this
46 article.

47 (k) "Personal service" includes those:

48 (1) Compensated by the payment of wages in the
49 ordinary course of employment; and

50 (2) Rendered to the person of an individual without,
51 at the same time, selling tangible personal property,
52 such as nursing, barbering, shoe shining, manicuring
53 and similar services.

54 (l) "Taxpayer" means any person liable for the tax
55 imposed by this article.

56 (m) "Drugs" includes all sales of drugs or appliances
57 to a purchaser, upon prescription of a physician or
58 dentist and any other professional person licensed to
59 prescribe.

60 (n) (1) "Directly used or consumed" in the activities
61 of manufacturing, transportation, transmission, com-
62 munication or the production of natural resources means
63 used or consumed in those activities or operations which
64 constitute an integral and essential part of such
65 activities, as contrasted with and distinguished from
66 those activities or operations which are simply inciden-
67 tal, convenient or remote to such activities.

68 (2) Uses of property or consumption of services which
69 constitute direct use or consumption in the activities of
70 manufacturing, transportation, transmission, communi-
71 cation or the production of natural resources includes
72 only:

73 (A) In the case of tangible personal property, physical
74 incorporation of property into a finished product
75 resulting from manufacturing production or the produc-
76 tion of natural resources;

77 (B) Causing a direct physical, chemical or other
78 change upon property undergoing manufacturing
79 production or production of natural resources;

80 (C) Transporting or storing property undergoing
81 transportation, communication, transmission, manufac-
82 turing production or production of natural resources;

83 (D) Measuring or verifying a change in property
84 directly used in transportation, communication, trans-
85 mission, manufacturing production or production of
86 natural resources;

87 (E) Physically controlling or directing the physical

- 88 movement or operation of property directly used in
89 transportation, communication, transmission, manufac-
90 turing production or production of natural resources;
- 91 (F) Directly and physically recording the flow of
92 property undergoing transportation, communication,
93 transmission, manufacturing production or production
94 of natural resources;
- 95 (G) Producing energy for property directly used in
96 transportation, communication, transmission, manufac-
97 turing production or production of natural resources;
- 98 (H) Facilitating the transmission of gas, water, steam
99 or electricity from the point of their diversion to
100 property directly used in transportation, communica-
101 tion, transmission, manufacturing production or produc-
102 tion of natural resources;
- 103 (I) Controlling or otherwise regulating atmospheric
104 conditions required for transportation, communication,
105 transmission, manufacturing production or production
106 of natural resources;
- 107 (J) Serving as an operating supply for property
108 undergoing transmission, manufacturing production or
109 production of natural resources, or for property directly
110 used in transportation, communication, transmission,
111 manufacturing production or production of natural
112 resources;
- 113 (K) Maintenance or repair of property, including
114 maintenance equipment, directly used in transportation,
115 communication, transmission, manufacturing produc-
116 tion or production of natural resources;
- 117 (L) Storage, removal or transportation of economic
118 waste resulting from the activities of manufacturing,
119 transportation, communication, transmission or the
120 production of natural resources;
- 121 (M) Pollution control or environmental quality or
122 protection activity directly relating to the activities of
123 manufacturing, transportation, communication, trans-
124 mission or the production of natural resources and
125 personnel, plant, product or community safety or

126 security activity directly relating to the activities of
127 manufacturing, transportation, communication, trans-
128 mission or the production of natural resources; or

129 (N) Otherwise be used as an integral and essential
130 part of transportation, communication, transmission,
131 manufacturing production or production of natural
132 resources.

133 (3) Uses of property or services which would not
134 constitute direct use or consumption in the activities of
135 manufacturing, transportation, transmission, communi-
136 cation or the production of natural resources include,
137 but are not limited to:

138 (A) Heating and illumination of office buildings;

139 (B) Janitorial or general cleaning activities;

140 (C) Personal comfort of personnel;

141 (D) Production planning, scheduling of work, or
142 inventory control;

143 (E) Marketing, general management, supervision,
144 finance, training, accounting and administration; or

145 (F) An activity or function incidental or convenient to
146 transportation, communication, transmission, manufac-
147 turing production or production of natural resources,
148 rather than an integral and essential part of such
149 activities.

150 (o) "Contracting":

151 (1) *In general.* — "Contracting" means and includes
152 the furnishing of work, or both materials and work, for
153 another (by a sole contractor, general contractor, prime
154 contractor or subcontractor) in fulfillment of a contract
155 for the construction, alteration, repair, decoration or
156 improvement of a new or existing building or structure,
157 or any part thereof, or for removal or demolition of a
158 building or structure, or any part thereof, or for the
159 alteration, improvement or development of real
160 property.

161 (2) *Form of contract not controlling.* — An activity that
162 falls within the scope of the definition of contracting

163 shall constitute contracting regardless of whether such
164 contract governing the activity is written or verbal and
165 regardless of whether it is in substance or form a lump
166 sum contract, a cost-plus contract, a time and materials
167 contract, whether or not open-ended, or any other kind
168 of construction contract.

169 (3) *Special rules.* — For purposes of this definition:

170 (A) The term “structure” includes, but is not limited
171 to, everything built up or composed of parts joined
172 together in some definite manner and attached or
173 affixed to real property, or which adds utility to real
174 property or any part thereof, or which adds utility to
175 a particular parcel of property and is intended to
176 remain there for an indefinite period of time.

177 (B) The term “alteration” means, and is limited to,
178 alterations which are capital improvements to a build-
179 ing or structure or to real property.

180 (C) The term “repair” means, and is limited to, repairs
181 which are capital improvements to a building or
182 structure or to real property.

183 (D) The term “decoration” means, and is limited to,
184 decorations which are capital improvements to a
185 building or structure or to real property.

186 (E) The term “improvement” means, and is limited to,
187 improvements which are capital improvements to a
188 building or structure or to real property.

189 (F) The term “capital improvement” means improve-
190 ments that are affixed to or attached to and become a
191 part of a building or structure or the real property or
192 which add utility to real property or any part thereof
193 and that last, or are intended to be relatively permanent.
194 As used herein, “relatively permanent” means lasting at
195 least a year or longer in duration without the necessity
196 for regularly scheduled recurring service to maintain
197 such capital improvement. “Regular recurring service”
198 means regularly scheduled service intervals of less than
199 one year.

200 (G) Contracting does not include the furnishing of

201 work, or both materials and work in the nature of
202 hookup, connection, installation or other services if such
203 service is incidental to the retail sale of tangible
204 personal property from the service provider's inventory:
205 *Provided*, That such hookup, connection or installation
206 of the foregoing is incidental to the sale of the same and
207 performed by the seller thereof or performed in
208 accordance with arrangements made by the seller
209 thereof. Examples of transactions that are excluded
210 from the definition of contracting pursuant hereto
211 include, but are not limited to, the sale of wall-to-wall
212 carpeting and the installation of wall-to-wall carpeting,
213 the sale, hookup and connection of mobile homes,
214 window air conditioning units, dishwashers, clothing
215 washing machines or dryers, other household applian-
216 ces, drapery rods, window shades, venetian blinds,
217 canvas awnings, free standing industrial or commercial
218 equipment and other similar items of tangible personal
219 property. Repairs made to the foregoing are within the
220 definition of contracting if such repairs involve perman-
221 ently affixing to or improving real property or some-
222 thing attached thereto which extends the life of the real
223 property or something affixed thereto or allows or is
224 intended to allow such real property or thing perman-
225 ently attached thereto to remain in service for a year
226 or longer.

227 (p) "Manufacturing" means a systematic operation or
228 integrated series of systematic operations engaged in as
229 a business or segment of a business which transforms
230 or converts tangible personal property by physical,
231 chemical or other means into a different form, compo-
232 sition or character from that in which it originally
233 existed.

234 (q) "Transportation" means the act or process of
235 conveying, as a commercial enterprise, passengers or
236 goods from one place or geographical location to another
237 place or geographical location.

238 (r) "Transmission" means the act or process of causing
239 liquid, natural gas or electricity to pass or be conveyed
240 from one place or geographical location to another place
241 or geographical location through a pipeline or other

242 medium for commercial purposes.

243 (s) "Communication" means all telephone, radio, light,
244 light wave, radio telephone, telegraph and other
245 communication or means of communication, whether
246 used for voice communication, computer data transmis-
247 sion or other encoded symbolic information transfers
248 and shall include commercial broadcast radio, commer-
249 cial broadcast television and cable television.

250 (t) "Production of natural resources" means the
251 performance, by either the owner of the natural
252 resources or another, of the act or process of exploring,
253 developing, severing, extracting, reducing to possession,
254 processing and loading for shipment and shipment for
255 sale, profit or commercial use of any natural resource
256 products and any reclamation, waste disposal or
257 environmental activities associated therewith.

258 (u) "Management information services facility" means
259 a building, or any part thereof, or a complex of
260 buildings, or any part thereof, including the machinery
261 and equipment located therein, that is exclusively
262 dedicated to providing management information servi-
263 ces to the owner or operator thereof or to another person.

264 (v) "Management information services" means, and is
265 limited to, data processing, data storage, data recovery
266 and backup, programming recovery and backup,
267 telecommunications, computation and computer process-
268 ing, computer programming, electronic information,
269 and data management activities, or any combination of
270 such activities, when such activity, or activities, is not
271 subject to regulation by the West Virginia public service
272 commission and such activity, or activities, is for the
273 purpose of managing, planning for, organizing or
274 operating, any industrial or commercial business, or any
275 enterprise, facility or facilities of an industrial or
276 commercial business, whether such industrial or
277 commercial business or enterprise, facility or facilities
278 of an industrial or commercial business is located within
279 or without this state and without regard to whether such
280 industrial or commercial business, or enterprise, facility
281 or facilities of an industrial or commercial business is

282 owned by the provider of the management information
283 services or by a "related person", as defined in Section
284 267(b) of the Internal Revenue Code of 1986, as
285 amended.

286 (w) (1) "Directly used or consumed" in the activities
287 of gas storage, the generation or production or sale of
288 electric power, the provision of a public utility service
289 or the operation of a utility business, means used or
290 consumed in those activities or operations which
291 constitute an integral and essential part of such
292 activities or operation, as contrasted with and distin-
293 guished from activities or operations which are simply
294 incidental, convenient or remote to such activities.

295 (2) Uses of property or consumption of services which
296 constitute direct use or consumption in the activities of
297 gas storage, the generation or production of sale of
298 electric power, the provision of a public utility service,
299 or the operation of a utility business include only:

300 (A) Tangible personal property or services, including
301 equipment, machinery, apparatus, supplies, fuel and
302 power and appliances, which are used immediately in
303 production or generation activities and equipment,
304 machinery, supplies, tools, and repair parts used to keep
305 in operation exempt production or generation devices.
306 For purposes of this subsection, production or genera-
307 tion activities shall commence from the intake, receipt
308 or storage of raw materials at the production plant site;

309 (B) Tangible personal property or services, including
310 equipment, machinery, apparatus, supplies, fuel and
311 power, appliances, pipes, wires and mains which are
312 used immediately in the transmission or distribution of
313 gas, water and electricity to the public, and equipment,
314 machinery, tools, repair parts and supplies used to keep
315 in operation exempt transmission or distribution
316 devices, and such vehicles and their equipment as are
317 specifically designed and equipped for such purposes
318 are exempt from the tax when used to keep a transmis-
319 sion or distribution system in operation or repair. For
320 purposes of this subsection, transmission or distribution
321 activities shall commence from the close of production

322 at a production plant or wellhead when a product is
323 ready for transmission or distribution to the public and
324 shall conclude at the point where the product is received
325 by the public;

326 (C) Tangible personal property or services, including
327 equipment, machinery, apparatus, supplies, fuel and
328 power, appliance, pipes, wires and mains, which are
329 used immediately in the storage of gas or water, and
330 equipment, machinery, tools, supplies and repair parts
331 used to keep in operation exempt storage devices;

332 (D) Tangible personal property or services used
333 immediately in the storage, removal or transportation of
334 economic waste resulting from the activities of gas
335 storage, the generation or production or sale of electric
336 power, the provision of a public utility service, or the
337 operation of a utility business;

338 (E) Tangible personal property or services used
339 immediately in pollution control or environmental
340 quality or protection activity or community safety or
341 security directly relating to the activities of gas storage,
342 generation or production or sale of electric power, the
343 provision of a public utility service or the operation of
344 a utility business.

345 (3) Uses of property or services which would not
346 constitute direct use or consumption in the activities of
347 gas storage, generation or production or sale of electric
348 power, the provision of a public utility service or the
349 operation of a utility business include, but are not
350 limited to:

351 (A) Heating and illumination of office buildings;

352 (B) Janitorial or general cleaning activities;

353 (C) Personal comfort of personnel;

354 (D) Production planning, scheduling of work or
355 inventory control;

356 (E) Marketing, general management, supervision,
357 finance, training, accounting and administration; or

358 (F) An activity or function incidental or convenient to

359 the activities of gas storage, generation or production or
360 sale of electric power, the provision of public utility
361 service or the operation of a utility business.

362 (x) "Gas storage" means the injection of gas into a
363 storage reservoir, or the storage of gas for any period
364 of time in a storage reservoir, or the withdrawal of gas
365 from a storage reservoir, engaged in by businesses
366 subject to the business and occupation tax imposed by
367 sections two and two-e, article thirteen, chapter eleven
368 of this code.

369 (y) "Generating or producing or selling of electric
370 power" means the generation, production or sale of
371 electric power engaged in by businesses subject to the
372 business and occupation tax imposed by section two,
373 two-d, two-m or two-n, article thirteen of this chapter.

374 (z) "Providing a public service or the operating of a
375 utility business" means the providing of a public service
376 or the operating of a utility by businesses subject to the
377 business and occupation tax imposed by sections two and
378 two-d, article thirteen of this chapter.

§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 subsection (f) does not
102 apply to sales of gasoline or special fuel or to sales of
103 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 on and after
120 the first day of July, one thousand nine hundred eighty-
121 seven, the exemption provided in this subsection shall
122 apply only to services, machinery, supplies and mate-
123 rials directly used or consumed in the activities of
124 manufacturing, transportation, transmission, communi-
125 cation or the production of natural resources in the
126 businesses or organizations named above and shall not
127 apply to purchases of gasoline or special fuel: *Provided*,
128 *however*, That on and after the first day of May, one
129 thousand nine hundred ninety-three, the exemption
130 provided in this subsection shall apply only to services,
131 machinery, supplies and materials directly used or
132 consumed in the activities of manufacturing, transpor-
133 tation, transmission, communication, production of

134 natural resources, gas storage, generation or production
135 of selling electric power, provision of a public utility
136 service or the operation of a utility service or the
137 operation of a utility business, in the businesses or
138 organizations named above and shall not apply to
139 purchases of gasoline or special fuel;

140 (h) An isolated transaction in which any taxable
141 service or any tangible personal property is sold,
142 transferred, offered for sale or delivered by the owner
143 thereof or by his representative for the owner's account,
144 such sale, transfer, offer for sale or delivery not being
145 made in the ordinary course of repeated and successive
146 transactions of like character by such owner or on his
147 account by such representative: *Provided*, That nothing
148 contained herein may be construed to prevent an owner
149 who sells, transfers or offers for sale tangible personal
150 property in an isolated transaction through an auctioneer
151 from availing himself or herself of the exemption
152 provided herein, regardless where such isolated sale
153 takes place. The tax commissioner may adopt such
154 legislative rule pursuant to chapter twenty-nine-a of this
155 code as he deems necessary for the efficient administration
156 of this exemption;

157 (i) Sales of tangible personal property or of any
158 taxable services rendered for use or consumption in
159 connection with the commercial production of an
160 agricultural product the ultimate sale of which will be
161 subject to the tax imposed by this article or which would
162 have been subject to tax under this article: *Provided*,
163 That sales of tangible personal property and services to
164 be used or consumed in the construction of or permanent
165 improvement to real property and sales of gasoline and
166 special fuel shall not be exempt: *Provided, however*, That
167 nails and fencing shall not be considered as improvements
168 to real property;

169 (j) Sales of tangible personal property to a person for
170 the purpose of resale in the form of tangible personal
171 property: *Provided*, That sales of gasoline and special
172 fuel by distributors and importers shall be taxable
173 except when the sale is to another distributor for resale:
174 *Provided, however*, That sales of building materials or

175 building supplies or other property to any person
176 engaging in the activity of contracting, as defined in this
177 article, which is to be installed in, affixed to or
178 incorporated by such person or his agent into any real
179 property, building or structure shall not be exempt
180 under this subsection, except that sales of tangible
181 personal property to a person engaging in the activity
182 of contracting pursuant to a written contract with the
183 United States, this state, or with a political subdivision
184 thereof, or with a public corporation created by the
185 Legislature or by another governmental entity pursuant
186 to an act of the Legislature, for a building or structure,
187 or improvement thereto, or other improvement to real
188 property that is or will be owned and used by the
189 governmental entity for a governmental or proprietary
190 purpose, who incorporates such property in such
191 building, structure or improvement shall, with respect
192 to such tangible personal property, nevertheless be
193 deemed to be the vendor of such property to the
194 governmental entity and any person seeking to qualify
195 for and assert this exception must do so pursuant to such
196 legislative rules and regulations as the tax commissioner
197 may promulgate and upon such forms as the tax
198 commissioner may prescribe. A subcontractor who,
199 pursuant to a written subcontract with a prime contrac-
200 tor who qualifies for this exception, provides equipment,
201 or materials, and labor to such a prime contractor shall
202 be treated in the same manner as the prime contractor
203 is treated with respect to the prime contract under this
204 exception and the legislative rules and regulations
205 promulgated by the tax commissioner: *Provided further,*
206 That the exemption for government contractors in the
207 preceding proviso shall expire on the first day of
208 October, one thousand nine hundred ninety, subject to
209 the transition rules set forth in section eight-c of this
210 article;

211 (k) Sales of property or services to nationally char-
212 tered fraternal or social organizations for the sole
213 purpose of free distribution in public welfare or relief
214 work: *Provided,* That sales of gasoline and special fuel
215 shall be taxable;

216 (l) Sales and services, fire fighting or station house
217 equipment, including construction and automotive,
218 made to any volunteer fire department organized and
219 incorporated under the laws of the state of West
220 Virginia: *Provided*, That sales of gasoline and special
221 fuel shall be taxable;

222 (m) Sales of newspapers when delivered to consumers
223 by route carriers;

224 (n) Sales of drugs dispensed upon prescription and
225 sales of insulin to consumers for medical purposes;

226 (o) Sales of radio and television broadcasting time,
227 preprinted advertising circulars and newspaper and
228 outdoor advertising space for the advertisement of goods
229 or services;

230 (p) Sales and services performed by day-care centers;

231 (q) Casual and occasional sales of property or services
232 not conducted in a repeated manner or in the ordinary
233 course of repetitive and successive transactions of like
234 character by a corporation or organization which is
235 exempt from tax under subsection (f) of this section on
236 its purchases of tangible personal property or services:

237 (1) For purposes of this subsection, the term "casual
238 and occasional sales not conducted in a repeated manner
239 or in the ordinary course of repetitive and successive
240 transactions of like character" means sales of tangible
241 personal property or services at fund raisers sponsored
242 by a corporation or organization which is exempt, under
243 subsection (f) of this section, from payment of the tax
244 imposed by this article on its purchases, when such fund
245 raisers are of limited duration and are held no more
246 than six times during any twelve-month period and
247 limited duration means no more than eighty-four
248 consecutive hours;

249 (2) The provisions of this subsection, as amended by
250 this article, shall apply to sales made after the thirtieth
251 day of June, one thousand nine hundred eighty-nine;

252 (r) Sales of property or services to a school which has
253 approval from the board of trustees of the university

254 system of West Virginia or the board of directors of the
255 state college system to award degrees, which has its
256 principal campus in this state, and which is exempt
257 from federal and state income taxes under Section
258 501(c)(3) of the Internal Revenue Code of 1986, as
259 amended: *Provided*, That sales of gasoline and special
260 fuel shall be taxable;

261 (s) Sales of mobile homes to be utilized by purchasers
262 as their principal year-round residence and dwelling:
263 *Provided*, That these mobile homes shall be subject to
264 tax at the three percent rate;

265 (t) Sales of lottery tickets and materials by licensed
266 lottery sales agents and lottery retailers authorized by
267 the state lottery commission, under the provisions of
268 article twenty-two, chapter twenty-nine of this code;

269 (u) Leases of motor vehicles titled pursuant to the
270 provisions of article three, chapter seventeen-a of this
271 code to lessees for a period of thirty or more consecutive
272 days. This exemption shall apply to leases executed on
273 or after the first day of July, one thousand nine hundred
274 eighty-seven, and to payments under long-term leases
275 executed before such date, for months thereof beginning
276 on or after such date;

277 (v) Sales of propane to consumers for poultry house
278 heating purposes, with any seller to such consumer who
279 may have prior paid such tax in his price, to not pass
280 on the same to the consumer, but to make application
281 and receive refund of such tax from the tax commis-
282 sioner, pursuant to rules and regulations which shall be
283 promulgated by the tax commissioner; and notwith-
284 standing the provisions of section eighteen of this article
285 or any other provisions of such article to the contrary;

286 (w) Any sales of tangible personal property or services
287 purchased after the thirtieth day of September, one
288 thousand nine hundred eighty-seven, and lawfully paid
289 for with food stamps pursuant to the federal food stamp
290 program codified in 7 United States Code, §2011, et seq.,
291 as amended, or with drafts issued through the West
292 Virginia special supplemental food program for women,

293 infants and children codified in 42 United States Code,
294 §1786;

295 (x) Sales of tickets for activities sponsored by
296 elementary and secondary schools located within this
297 state;

298 (y) Sales of electronic data processing services and
299 related software: *Provided*, That for the purposes of this
300 subsection "electronic data processing services" means:
301 (1) The processing of another's data, including all
302 processes incident to processing of data such as key-
303 punching, keystroke verification, rearranging or sorting
304 of previously documented data for the purpose of data
305 entry or automatic processing and changing the medium
306 on which data is sorted, whether these processes are
307 done by the same person or several persons; and (2)
308 providing access to computer equipment for the purpose
309 of processing data or examining or acquiring data
310 stored in or accessible to such computer equipment;

311 (z) Tuition charged for attending educational summer
312 camps;

313 (aa) Sales of building materials or building supplies
314 or other property to an organization qualified under
315 Section 501(c)(3) or (c)(4) of the Internal Revenue Code
316 of 1986, as amended, which are to be installed in, affixed
317 to or incorporated by such organization or its agent into
318 real property, or into a building or structure which is
319 or will be used as permanent low-income housing,
320 transitional housing, emergency homeless shelter,
321 domestic violence shelter or emergency children and
322 youth shelter if such shelter is owned, managed,
323 developed or operated by an organization qualified
324 under Section 501(c)(3) or (c)(4) of the Internal Revenue
325 Code of 1986, as amended;

326 (bb) Dispensing of services performed by one corpo-
327 ration for another corporation when both corporations
328 are members of the same controlled group. Control
329 means ownership, directly or indirectly, of stock
330 possessing fifty percent or more of the total combined
331 voting power of all classes of the stock of a corporation
332 entitled to vote or ownership, directly or indirectly, of

333 stock possessing fifty percent or more of the value of the
334 corporation;

335 (cc) Food for the following shall be exempt:

336 (1) Food purchased or sold by public or private
337 schools, school sponsored student organizations or school
338 sponsored parent-teacher associations to students
339 enrolled in such school or to employees of such school
340 during normal school hours; but not those sales of food
341 made to the general public;

342 (2) Food purchased or sold by a public or private
343 college or university or by a student organization
344 officially recognized by such college or university to
345 students enrolled at such college or university when
346 such sales are made on a contract basis so that a fixed
347 price is paid for consumption of food products for a
348 specific period of time without respect to the amount of
349 food product actually consumed by the particular
350 individual contracting for the sale and no money is paid
351 at the time the food product is served or consumed;

352 (3) Food purchased or sold by a charitable or private
353 nonprofit organization, a nonprofit organization or a
354 governmental agency under a program to provide food
355 to low-income persons at or below cost;

356 (4) Food sold in an occasional sale by a charitable or
357 nonprofit organization including volunteer fire depart-
358 ments and rescue squads, if the purpose of the sale is
359 to obtain revenue for the functions and activities of the
360 organization and the revenue so obtained is actually
361 expended for that purpose;

362 (5) Food sold by any religious organization at a social
363 or other gathering conducted by it or under its auspices,
364 if the purpose in selling the food is to obtain revenue
365 for the functions and activities of the organization and
366 the revenue obtained from selling the food is actually
367 used in carrying on such functions and activities:
368 *Provided*, That purchases made by such organizations
369 shall not be exempt as a purchase for resale;

370 (dd) Sales of food by little leagues, midget football
371 leagues, youth football or soccer leagues and similar

372 types of organizations, including scouting groups and
373 church youth groups, if the purpose in selling the food
374 is to obtain revenue for the functions and activities of
375 the organization and the revenues obtained from selling
376 the food is actually used in supporting or carrying on
377 functions and activities of the groups: *Provided*, That
378 such purchases made by such organizations shall not be
379 exempt as a purchase for resale;

380 (ee) Charges for room and meals by fraternities and
381 sororities to their members: *Provided*, That such
382 purchases made by a fraternity or sorority shall not be
383 exempt as a purchase for resale;

384 (ff) Sales of or charges for the transportation of
385 passengers in interstate commerce;

386 (gg) Sales of tangible personal property or services to
387 any person which this state is prohibited from taxing
388 under the laws of the United States or under the
389 constitution of this state;

390 (hh) Sales of tangible personal property or services to
391 any person who claims exemption from the tax imposed
392 by this article or article fifteen-a of this chapter
393 pursuant to the provisions of any other chapter of this
394 code;

395 (ii) Charges for the services of opening and closing a
396 burial lot;

397 (jj) Sales of livestock, poultry or other farm products
398 in their original state by the producer thereof or a
399 member of the producer's immediate family who is not
400 otherwise engaged in making retail sales of tangible
401 personal property; and sales of livestock sold at public
402 sales sponsored by breeders or registry associations or
403 livestock auction markets: *Provided*, That the exemp-
404 tions allowed by this subsection shall apply to sales
405 made on or after the first day of July, one thousand nine
406 hundred ninety, and may be claimed without presenting
407 or obtaining exemption certificates: *Provided, however*,
408 That the farmer shall maintain adequate records;

409 (kk) Sales of motion picture films to motion picture
410 exhibitors for exhibition if the sale of tickets or the

411 charge for admission to the exhibition of the film is
412 subject to the tax imposed by this article and sales of
413 coin-operated video arcade machines or video arcade
414 games to a person engaged in the business of providing
415 such machines to the public for a charge upon which the
416 tax imposed by this article is remitted to the tax
417 commissioner: *Provided*, That the exemption provided in
418 this subsection shall apply to sales made on or after the
419 first day of July, one thousand nine hundred ninety, and
420 may be claimed by presenting to the seller a properly
421 executed exemption certificate;

422 (ll) Sales of aircraft repair, remodeling and mainte-
423 nance services when such services are to an aircraft
424 operated by a certified or licensed carrier of persons or
425 property, or by a governmental entity, or to an engine
426 or other component part of an aircraft operated by a
427 certificated or licensed carrier of persons or property,
428 or by a governmental entity and sales of tangible
429 personal property that is permanently affixed or
430 permanently attached as a component part of an aircraft
431 owned or operated by a certificated or licensed carrier
432 of persons or property, or by a governmental entity, as
433 part of the repair, remodeling or maintenance service
434 and sales of machinery, tools, or equipment, directly
435 used or consumed exclusively in the repair, remodeling
436 or maintenance of aircraft, aircraft engines, or aircraft
437 component parts, for a certificated or licensed carrier
438 of persons or property, or for a governmental entity;

439 (mm) Sales of tangible personal property and services
440 to a person entitled to claim the tax credit for invest-
441 ment in certain management information services
442 facilities allowed under section three-c, article thirteen-
443 d of this chapter, pursuant to the issuance of a manage-
444 ment information services tax credit certification by the
445 tax commissioner in accordance with subsection (e) of
446 said section, when such property or services are directly
447 used or consumed by the purchaser in the operation of
448 the management information services facility, as
449 defined in section two of this article for which credit is
450 allowed under section three-c, article thirteen-d of this
451 chapter. Tangible personal property, or services,

452 directly used or consumed in the operation of a manage-
453 ment information services facility includes only: (1)
454 Computer processing and telecommunications equip-
455 ment; (2) data storage and input/output devices; (3)
456 disaster recovery services; (4) supplies; (5) application,
457 telecommunication and operating system software; (6)
458 repair and maintenance of any of the aforesaid items;
459 and (7) other tangible personal property or services
460 directly used or consumed in the operation of a manage-
461 ment information services facility: *Provided*, That the
462 property is purchased or leased after the thirty-first day
463 of March, one thousand nine hundred ninety-one. This
464 exemption shall not apply to tangible personal property,
465 or services, that are not directly used or consumed in
466 the operation of a management information services
467 facility, or to gasoline or special fuel: *Provided, however*,
468 That nothing in this paragraph shall be construed to
469 limit, exclude or preclude the application or availability
470 of any other exemption set forth in this section, or
471 elsewhere in this code, which might otherwise apply to
472 any sale of tangible personal property or services;

473 (nn) Charges for memberships or services provided by
474 health and fitness organizations relating to personalized
475 fitness programs;

476 (oo) Sales of services by individuals who baby-sit for
477 a profit: *Provided*, That the gross receipts of the
478 individual from the performance of baby-sitting services
479 do not exceed five thousand dollars in a taxable year;
480 and

481 (pp) A corporation or organization which is a not-for-
482 profit entity which charges membership dues utilized
483 for and contributing significantly to traffic and pedes-
484 trian safety and education programs whether or not the
485 corporation or organization is exempt from income tax
486 under Section 501(c)(3) of the Internal Revenue Code of
487 1986, as amended.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12. West Virginia adjusted gross income of resident individual.

§11-21-77. Extension of withholding to certain lottery winnings.

§11-21-12. West Virginia adjusted gross income of resident individual.

1 (a) *General.* — The West Virginia adjusted gross
2 income of a resident individual means his federal
3 adjusted gross income as defined in the laws of the
4 United States for the taxable year with the modifica-
5 tions specified in this section.

6 (b) *Modifications increasing federal adjusted gross*
7 *income.* — There shall be added to federal adjusted gross
8 income unless already included therein the following
9 items:

10 (1) Interest income on obligations of any state other
11 than this state or of a political subdivision of any such
12 other state unless created by compact or agreement to
13 which this state is a party;

14 (2) Interest or dividend income on obligations or
15 securities of any authority, commission or instrumental-
16 ity of the United States, which the laws of the United
17 States exempt from federal income tax but not from
18 state income taxes;

19 (3) Income taxes imposed by this state or any other
20 taxing jurisdiction, to the extent deductible in determin-
21 ing federal adjusted gross income and not credited
22 against federal income tax: *Provided*, That this modifi-
23 cation shall not be made for taxable years beginning
24 after the thirty-first day of December, one thousand nine
25 hundred eighty-six;

26 (4) Interest on indebtedness incurred or continued to
27 purchase or carry obligations or securities the income
28 from which is exempt from tax under this article, to the
29 extent deductible in determining federal adjusted gross
30 income;

31 (5) Interest on a depository institution tax-exempt
32 savings certificate which is allowed as an exclusion from
33 federal gross income under Section 128 of the Internal
34 Revenue Code, for the federal taxable year;

35 (6) The amount allowed as a deduction from federal

36 gross income under Section 221 of the Internal Revenue
37 Code by married couples who file a joint federal return
38 for the federal taxable year: *Provided*, That this
39 modification shall not be made for taxable years
40 beginning after the thirty-first day of December, one
41 thousand nine hundred eighty-six;

42 (7) The deferral value of certain income that is not
43 recognized for federal tax purposes, which value shall
44 be an amount equal to a percentage of the amount
45 allowed as a deduction in determining federal adjusted
46 gross income pursuant to the accelerated cost recovery
47 system under Section 168 of the Internal Revenue Code
48 for the federal taxable year, with the percentage of the
49 federal deduction to be added as follows with respect to
50 the following recovery property: Three-year property —
51 no modification; five-year property — ten percent; ten-
52 year property — fifteen percent; fifteen-year public
53 utility property — twenty-five percent; and fifteen-year
54 real property — thirty-five percent: *Provided*, That this
55 modification shall not apply to any person whose federal
56 deduction is determined by the use of the straight line
57 method: *Provided, however*, That this modification shall
58 not be made for taxable years beginning after the thirty-
59 first day of December, one thousand nine hundred
60 eighty-six; and

61 (8) The amount of a lump sum distribution for which
62 the taxpayer has elected under Section 402(e) of the
63 Internal Revenue Code of 1986, as amended, to be
64 separately taxed for federal income tax purposes.

65 (c) *Modifications reducing federal adjusted gross*
66 *income.* — There shall be subtracted from federal
67 adjusted gross income to the extent included therein:

68 (1) Interest income on obligations of the United States
69 and its possessions to the extent includible in gross
70 income for federal income tax purposes;

71 (2) Interest or dividend income on obligations or
72 securities of any authority, commission or instrumental-
73 ity of the United States or of the state of West Virginia
74 to the extent includible in gross income for federal

75 income tax purposes but exempt from state income
76 taxes under the laws of the United States or of the state
77 of West Virginia, including federal interest or dividends
78 paid to shareholders of a regulated investment company,
79 under Section 852 of the Internal Revenue Code for
80 taxable years ending after the thirtieth day of June, one
81 thousand nine hundred eighty-seven;

82 (3) Any gain from the sale or other disposition of
83 property having a higher fair market value on the first
84 day of January, one thousand nine hundred sixty-one,
85 than the adjusted basis at said date for federal income
86 tax purposes: *Provided*, That the amount of this
87 adjustment is limited to that portion of any such gain
88 which does not exceed the difference between such fair
89 market value and such adjusted basis: *Provided*,
90 *however*, That if such gain is considered a long-term
91 capital gain for federal income tax purposes, the
92 modification shall be limited to forty percent of such
93 portion of the gain: *Provided further*, That this modifi-
94 cation shall not be made for taxable years beginning
95 after the thirty-first day of December, one thousand nine
96 hundred eighty-six;

97 (4) The amount of any refund or credit for overpay-
98 ment of income taxes imposed by this state, or any other
99 taxing jurisdiction, to the extent properly included in
100 gross income for federal income tax purposes;

101 (5) Annuities, retirement allowances, returns of
102 contributions and any other benefit received under the
103 West Virginia public employees retirement system, the
104 West Virginia state teachers retirement system and all
105 forms of military retirement, including regular armed
106 forces, reserves and national guard, including any
107 survivorship annuities derived therefrom, to the extent
108 includible in gross income for federal income tax
109 purposes: *Provided*, That notwithstanding any provi-
110 sions in this code to the contrary this modification shall
111 be limited to the first two thousand dollars of benefits
112 received under the West Virginia public employees
113 retirement system, the West Virginia state teachers
114 retirement system and all forms of military retirement

115 including regular armed forces, reserves and national
116 guard, including any survivorship annuities derived
117 therefrom, to the extent includible in gross income for
118 federal income tax purposes for taxable years beginning
119 after the thirty-first day of December, one thousand nine
120 hundred eighty-six; and the first two thousand dollars
121 of benefits received under any federal retirement system
122 to which Title 4 U.S.C. §111 applies: *Provided, however,*
123 That the total modification under this paragraph shall
124 not exceed two thousand dollars per person receiving
125 such retirement benefits and this limitation shall apply
126 to all returns or amended returns filed after the last day
127 of December, one thousand nine hundred eighty-eight;

128 (6) Retirement income received in the form of
129 pensions and annuities after the thirty-first day of
130 December, one thousand nine hundred seventy-nine,
131 under any West Virginia police, West Virginia firemen's
132 retirement system or the West Virginia department of
133 public safety death, disability and retirement fund,
134 including any survivorship annuities derived therefrom,
135 to the extent includible in gross income for federal
136 income tax purposes;

137 (7) Federal adjusted gross income in the amount of
138 eight thousand dollars received from any source after
139 the thirty-first day of December, one thousand nine
140 hundred eighty-six, by any person who has attained the
141 age of sixty-five on or before the last day of the taxable
142 year, or by any person certified by proper authority as
143 permanently and totally disabled, regardless of age, on
144 or before the last day of the taxable year, to the extent
145 includible in federal adjusted gross income for federal
146 tax purposes: *Provided,* That if a person has a medical
147 certification from a prior year and he is still perman-
148 ently and totally disabled, a copy of the original
149 certificate is acceptable as proof of disability. A copy of
150 the form filed for the federal disability income tax
151 exclusion is acceptable: *Provided, however,* That:

152 (i) Where the total modification under subdivisions
153 (1), (2), (5) and (6) of this subsection is eight thousand
154 dollars per person or more, no deduction shall be

155 allowed under this subdivision; and

156 (ii) Where the total modification under subdivisions
157 (1), (2), (5) and (6) of this subsection is less than eight
158 thousand dollars per person, the total modification
159 allowed under this subdivision for all gross income
160 received by such person shall be limited to the differ-
161 ence between eight thousand dollars and the sum of
162 modifications under such subdivisions;

163 (8) Federal adjusted gross income in the amount of
164 eight thousand dollars received from any source after
165 the thirty-first day of December, one thousand nine
166 hundred eighty-six, by the surviving spouse of any
167 person who had attained the age of sixty-five or who had
168 been certified as permanently and totally disabled, to
169 the extent includible in federal adjusted gross income
170 for federal tax purposes: *Provided, That:*

171 (i) Where the total modification under subdivisions
172 (1), (2), (5), (6) and (7) of this subsection is eight thousand
173 dollars or more, no deduction shall be allowed under this
174 subdivision; and

175 (ii) Where the total modification under subdivisions
176 (1), (2), (5), (6) and (7) of this subsection is less than eight
177 thousand dollars per person, the total modification
178 allowed under this subdivision for all gross income
179 received by such person shall be limited to the differ-
180 ence between eight thousand dollars and the sum of such
181 subdivisions;

182 (9) Any pay or allowances received, after the thirty-
183 first day of December, one thousand nine hundred
184 seventy-nine, by West Virginia residents who have not
185 attained the age of sixty-five, as compensation for active
186 service in the armed forces of the United States:
187 *Provided, That* such deduction shall be limited to an
188 amount not to exceed four thousand dollars: *Provided,*
189 *however,* That this modification shall not be made for
190 taxable years beginning after the thirty-first day of
191 December, one thousand nine hundred eighty-six;

192 (10) Gross income to the extent included in federal

193 adjusted gross income under Section 86 of the Internal
194 Revenue Code for federal income tax purposes: *Pro-*
195 *vided*, That this modification shall not be made for
196 taxable years beginning after the thirty-first day of
197 December, one thousand nine hundred eighty-six;

198 (11) The amount of any lottery prize awarded by the
199 West Virginia state lottery commission, to the extent
200 properly included in gross income for federal income tax
201 purposes: *Provided*, That for taxable years beginning
202 after the thirty first day of December, one thousand nine
203 hundred ninety-two, this modification shall not be made
204 for lottery prizes awarded by the West Virginia state
205 lottery commission.

206 (12) Any other income which this state is prohibited
207 from taxing under the laws of the United States.

208 (d) *Modification for West Virginia fiduciary adjust-*
209 *ment.* — There shall be added to or subtracted from
210 federal adjusted gross income, as the case may be, the
211 taxpayer's share, as beneficiary of an estate or trust, of
212 the West Virginia fiduciary adjustment determined
213 under section nineteen of this article.

214 (e) *Partners and S corporation shareholders.* — The
215 amounts of modifications required to be made under this
216 section by a partner or an S corporation shareholder,
217 which relate to items of income, gain, loss or deduction
218 of a partnership or an S corporation, shall be deter-
219 mined under section seventeen of this article.

220 (f) *Husband and wife.* — If husband and wife deter-
221 mine their federal income tax on a joint return but
222 determine their West Virginia income taxes separately,
223 they shall determine their West Virginia adjusted gross
224 incomes separately as if their federal adjusted gross
225 incomes had been determined separately.

**§11-21-77. Extension of withholding to certain lottery
winnings.**

1 (a) *Lottery winnings subject to withholding.* — Pro-
2 ceeds of more than five thousand dollars from any
3 lottery prize awarded by the West Virginia state lottery

4 commission shall be subject to withholding. The West
5 Virginia state lottery commission in making any
6 payment of a lottery prize subject to withholding shall
7 deduct and withhold from such payment a tax in an
8 amount equal to six and one-half percent of such
9 payment.

10 (b) *Statement by recipient.* — Every person who is to
11 receive payment of winning which are subject to
12 withholding shall furnish the person making such
13 payment a statement made under the penalties of
14 perjury, containing the name, address and taxpayer
15 identification number of the person receiving the
16 payment and each person entitled to any portion of such
17 payment.

18 (c) *Coordination with other sections.* — For the
19 purposes of determining liability for payment of taxes
20 and filing of returns, payments of winnings which are
21 subject to withholding shall be treated as if they were
22 wages paid by an employer to an employee.

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-9. Annual returns.

1 (a) *In general.* — Every person subject to the tax
2 imposed by this article shall make and file an annual
3 return for the taxable year with the tax commissioner
4 on or before:

5 (1) The fifteenth day of the third month of the next
6 succeeding taxable year if the person is a corporation;
7 or

8 (2) The fifteenth day of the fourth month of the next
9 succeeding taxable year if the person is a partnership.

10 The annual return shall include such information as
11 the tax commissioner may require for determining the
12 amount of taxes due under this article for the taxable
13 year.

14 (b) *Special rule for tax exempt organizations with*
15 *unrelated business taxable income.* — Notwithstanding

16 the provisions of subsection (a) of this section, when a
17 business franchise tax return is required from an
18 organization generally exempt from tax under subsec-
19 tion (b), section seven of this article, which has unrelated
20 business taxable income, the annual return shall be filed
21 on or before the fifteenth day of the fifth month
22 following the close of the taxable year.

23 (c) *Consolidated returns.* — Any corporation that files
24 as part of an affiliated group for purposes of the tax
25 imposed by article twenty-four of this chapter shall file
26 a consolidated return under this article.

27 (d) The tax commissioner may, at his or her discre-
28 tion, require an affiliated group of corporations to file
29 a consolidated tax return under this article in order to
30 accurately determine the taxes due under this article.

31 (e) *Effective date.* — The amendments to this section
32 made in the year one thousand nine hundred ninety-
33 three shall apply to tax returns that become due after
34 the first day of that year.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-6. Adjustments in determining West Virginia taxable income.

§11-24-13. Returns; time for filing.

§11-24-6. Adjustments in determining West Virginia taxable income.

1 (a) *General.* — In determining West Virginia taxable
2 income of a corporation, its taxable income as defined
3 for federal income tax purposes shall be adjusted and
4 determined before the apportionment provided by
5 section seven of this article, by the items specified in this
6 section.

7 (b) *Adjustments increasing federal taxable income.* —
8 There shall be added to federal taxable income, unless
9 already included in the computation of federal taxable
10 income, the following items:

11 (1) Interest or dividends on obligations or securities
12 of any state or of a political subdivision or authority
13 thereof;

14 (2) Interest or dividends (less related expenses to the
15 extent not deducted in determining federal taxable
16 income) on obligations or securities of any authority,
17 commission or instrumentality of the United States
18 which the laws of the United States exempt from federal
19 income tax but not from state income taxes;

20 (3) Income taxes and other taxes, including franchise
21 and excise taxes, which are based on, measured by, or
22 computed with reference to net income, imposed by this
23 state or any other taxing jurisdiction, to the extent
24 deducted in determining federal taxable income;

25 (4) The amount of unrelated business taxable income
26 as defined by Section 512 of the Internal Revenue Code
27 of 1986, as amended, of a corporation which by reason
28 of its purposes is generally exempt from federal income
29 taxes; and

30 (5) The amount of any net operating loss deduction
31 taken for federal income tax purposes under Section 172
32 of the Internal Revenue Code of 1986, as amended.

33 (c) *Adjustments decreasing federal taxable income.* —
34 There shall be subtracted from federal taxable income
35 to the extent included therein:

36 (1) Any gain from the sale or other disposition of
37 property having a higher fair market value on the first
38 day of July, one thousand nine hundred sixty-seven, than
39 the adjusted basis at said date for federal income tax
40 purposes: *Provided*, That the amount of this adjustment
41 is limited to that portion of any such gain which does
42 not exceed the difference between such fair market
43 value and such adjusted basis;

44 (2) The amount of any refund or credit for overpay-
45 ment of income taxes and other taxes, including
46 franchise and excise taxes, which are based on, mea-
47 sured by, or computed with reference to net income,
48 imposed by this state or any other taxing jurisdiction,
49 to the extent properly included in gross income for
50 federal income tax purposes;

51 (3) The amount added to federal taxable income due

52 to the elimination of the reserve method for computation
53 of the bad debt deduction;

54 (4) The full amount of interest expense actually
55 disallowed in determining federal taxable income which
56 was incurred or continued to purchase or carry obliga-
57 tions or securities of any state or of any political
58 subdivision thereof;

59 (5) The amount required to be added to federal
60 taxable income as a dividend received from a foreign
61 (non-United States) corporation under Section 78 of the
62 Internal Revenue Code of 1986, as amended, by a
63 corporation electing to take the foreign tax credit for
64 federal income tax purposes;

65 (6) The amount of salary expenses disallowed as a
66 deduction for federal income tax purposes due to
67 claiming the federal jobs credit under Section 51 of the
68 Internal Revenue Code of 1986, as amended;

69 (7) The amount included in federal adjusted gross
70 income by the operation of Section 951 of the Internal
71 Revenue Code of 1986, as amended; and

72 (8) Any amount included in federal adjusted gross
73 income which is foreign source income. Foreign source
74 income includes:

75 (A) Interest and dividends, other than those derived
76 from sources within the United States;

77 (B) Rents, royalties, license and technical fees from
78 property located or services performed without the
79 United States or from any interest in such property,
80 including rents, royalties or fees for the use of or the
81 privilege of using without the United States any patents,
82 copyrights, secret process and formulas, good will,
83 trademarks, trade brands, franchises and other like
84 properties; and

85 (C) Gains, profits or other income from the sale of
86 intangible or real property located without the United
87 States.

88 In determining the source of "foreign source income",
89 the provisions of Sections 861, 862 and 863 of the
90 Internal Revenue Code of 1986, as amended, shall be
91 applied.

92 (d) *Net operating loss deduction.* — Except as other-
93 wise provided in this subsection, there shall be allowed
94 as a deduction for the taxable year an amount equal to
95 the aggregate of: (1) The West Virginia net operating
96 loss carryovers to such year; plus (2) the net operating
97 loss carrybacks to such year: *Provided,* That no more
98 than three hundred thousand dollars of net operating
99 loss from any taxable year beginning after the thirty-
100 first day of December, one thousand nine hundred
101 ninety-two, may be carried back to any previous taxable
102 year. For purposes of this subsection, the term "West
103 Virginia net operating loss deduction" means the
104 deduction allowed by this subsection, determined in
105 accordance with Section 172 of the Internal Revenue
106 Code of 1986, as amended.

107 (1) *Special rules.* —

108 (A) When the corporation further adjusts its adjusted
109 federal taxable income under section seven of this
110 article, the West Virginia net operating loss deduction
111 allowed by this subsection shall be deducted after the
112 section seven adjustments are made;

113 (B) The tax commissioner shall prescribe such
114 transition regulations as he deems necessary for fair and
115 equitable administration of this subsection as amended
116 by this act.

117 (2) *Effective date.* — The provisions of this subsection,
118 as amended by chapter one hundred nineteen, acts of the
119 Legislature, one thousand nine hundred eighty-eight,
120 shall apply to all taxable years ending after the thirtieth
121 day of June, one thousand nine hundred eighty-eight;
122 and to all loss carryovers from taxable years ending on
123 or before said thirtieth day of June.

124 (e) *Special adjustments for expenditures for water and*
125 *air pollution control facilities.* —

126 (1) If the taxpayer so elects under subdivision (2) of
127 this subsection, there shall be:

128 (A) Subtracted from federal taxable income the total
129 of the amounts paid or incurred during the taxable year
130 for the acquisition, construction or development within
131 this state of water pollution control facilities or air
132 pollution control facilities as defined in Section 169 of
133 the Internal Revenue Code; and

134 (B) Added to federal taxable income the total of the
135 amounts of any allowances for depreciation and amor-
136 tization of such water pollution control facilities or air
137 pollution control facilities, as so defined, to the extent
138 deductible in determining federal taxable income.

139 (2) The election referred to in subdivision (1) of this
140 subsection shall be made in the return filed within the
141 time prescribed by law (including extensions thereof)
142 for the taxable year in which such amounts were paid
143 or incurred. Such election shall be made in such
144 manner, and the scope of application of such election
145 shall be defined, as the tax commissioner may by
146 regulations prescribe, and shall be irrevocable when
147 made as to all amounts paid or incurred for any
148 particular water pollution control facility or air
149 pollution control facility.

150 (3) Notwithstanding any other provisions of this
151 subsection or of section seven to the contrary, if the
152 taxpayer's federal taxable income is subject to allocation
153 and apportionment under section seven, the adjustments
154 prescribed in paragraphs (A) and (B), subdivision (1) of
155 this subsection shall (instead of being made to the
156 taxpayer's federal taxable income before allocation and
157 apportionment thereof as provided in section seven) be
158 made to the portion of the taxpayer's net income,
159 computed without regard to such adjustments, allocated
160 and apportioned to this state in accordance with section
161 seven.

162 (f) *Allowance for certain government obligations and*
163 *obligations secured by residential property.* — The West
164 Virginia taxable income of a taxpayer subject to this

165 article as adjusted in accordance with subsections (b),
166 (c), (d) and (e) of this section shall be further adjusted
167 by multiplying such taxable income after such adjust-
168 ment by said subsections by a fraction equal to one
169 minus a fraction:

170 (1) The numerator of which is the sum of the average
171 of the monthly beginning and ending account balances
172 during the taxable year (account balances to be deter-
173 mined at cost in the same manner that such obligations,
174 investments and loans are reported on Schedule L of the
175 Federal Form 1120) of the following:

176 (A) Obligations or securities of the United States, or
177 of any agency, authority, commission or instrumentality
178 of the United States and any other corporation or entity
179 created under the authority of the United States
180 Congress for the purpose of implementing or furthering
181 an objective of national policy;

182 (B) Obligations or securities of this state and any
183 political subdivision or authority thereof;

184 (C) Investments or loans primarily secured by
185 mortgages, or deeds of trust, on residential property
186 located in this state and occupied by nontransients; and

187 (D) Loans primarily secured by a lien or security
188 agreement on residential property in the form of a
189 mobile home, modular home or double-wide, located in
190 this state and occupied by nontransients;

191 (2) The denominator of which is the average of the
192 monthly beginning and ending account balances of the
193 total assets of the taxpayer which are shown on Schedule
194 L of Federal Form 1120, which are filed by the taxpayer
195 with the Internal Revenue Service.

§11-24-13. Returns; time for filing.

1 (a) On or before the fifteenth day of the third month
2 following the close of a taxable year, an income tax
3 return under this article shall be made and filed by or
4 for every corporation subject to the tax imposed by this
5 article.

6 (b) *Special rule for tax exempt corporations with*
7 *unrelated business taxable income.* — Notwithstanding
8 the provisions of subsection (a) of this section, when an
9 income tax return is required from a corporation
10 generally exempt from tax under subsection (a), section
11 five of this article, which has unrelated business taxable
12 income, the annual return shall be filed on or before the
13 fifteenth day of the fifth month following the close of the
14 taxable year.

15 (c) The tax commissioner may combine into one form
16 the annual return due under this article and the annual
17 return due under article twenty-three of this chapter.
18 When a combined business franchise tax and corpora-
19 tion net income tax annual return is filed by a taxpayer,
20 the amount of tax remitted shall be applied first against
21 any business franchise tax that may be due for the
22 taxable year under said article and then against any
23 corporation net income tax that may be due for the
24 taxable year. The tax commissioner may also combine
25 the forms for filing declarations of estimated tax and the
26 forms for making installment payments of estimated
27 tax.

28 (d) *Effective date.* — The amendments to this section
29 made in the year one thousand nine hundred ninety-
30 three shall apply to tax returns that become due after
31 the first day of that year.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-6. Preemption.

1 Except as otherwise provided in this article, no state
2 agency, county, municipality or political subdivision or
3 agency of this state may impose any law, regulation,
4 rule or requirement of any sort relating to the use, sale
5 or distribution of tobacco products which is more
6 restrictive than the provisions of this article: *Provided,*
7 That any law, regulation, rule or requirement duly
8 enacted and in effect on the first day of January, one
9 thousand nine hundred ninety-three, shall remain in

10 effect and enforceable, but may not be amended to make
11 it more restrictive than it was on the first day of
12 January, one thousand nine hundred ninety-three.

CHAPTER 47. REGULATION OF TRADE.

Article

- 20. Charitable Bingo.
- 21. Charitable Raffles.
- 23. Charitable Raffle Boards and Games.

ARTICLE 20. CHARITABLE BINGO.

- §47-20-4. Annual license; conditions on holding of games.
- §47-20-5. Limited occasion license; conditions on holding of games.
- §47-20-6. License fee and exemption from taxes.
- §47-20-6a. Super bingo license.
- §47-20-12. Compensation.
- §47-20-12a. Compensation of bingo operator.
- §47-20-15. Payment of reasonable expenses from proceeds; net proceeds disbursement.
- §47-20-16. Records; commissioner audit.
- §47-20-24. Filing of reports.
- §47-20-28a. Certain operators of bingo games to provide for smoking and nonsmoking sections.

§47-20-4. Annual license; conditions on holding of games.

1 A charitable or public service organization or any of
2 its auxiliaries or other organizations otherwise affiliated
3 with it may apply for an annual license. Only one license
4 per year in the aggregate may be granted to a charit-
5 able or public service organization and all of its
6 auxiliaries or other associations or organizations
7 otherwise affiliated with it: *Provided*, That for purposes
8 of this section the various branches, chapters or lodges
9 of any national association or organization or local
10 churches of a nationally organized church are not
11 considered affiliates or auxiliaries of each other. The
12 commissioner shall by regulation provide for the
13 manner for determining to which organization, whether
14 the parent organization, an affiliate or an auxiliary, the
15 one license allowed under this section is granted. An
16 annual license is valid for one year from the date of
17 issuance and entitles only the licensee to hold no more
18 than two bingo occasions per week. No two or more
19 organizations may hold a joint bingo occasion under

20 any annual licenses. No bingo occasion held pursuant to
21 an annual license may exceed six hours duration.

22 A licensee shall display its annual bingo license
23 conspicuously at the location where the bingo occasion
24 is held.

25 All bingo occasions shall be open to the general
26 public: *Provided*, That no licensee shall permit or allow
27 any individual under the age of eighteen to participate
28 in the playing of any bingo game with knowledge or
29 reason to believe that the individual is under the age of
30 eighteen: *Provided, however*, That an individual under
31 the age of eighteen may attend the playing of a bingo
32 game when accompanied by and under the supervision
33 of an adult relative or a legal guardian of said in-
34 dividual.

**§47-20-5. Limited occasion license; conditions on holding
of games.**

1 A limited occasion license is valid only for the time
2 period specified in the application and entitles only the
3 licensee to hold a bingo occasion once every twenty-four
4 hours for a time period not to exceed two weeks. Two
5 or more organizations may hold a joint bingo occasion
6 provided each participating organization has been
7 granted a limited occasion bingo license for such jointly
8 held occasion. No bingo occasion held pursuant to a
9 limited occasion license may exceed twelve hours in
10 duration. Each charitable or public service organization
11 which desires to hold bingo occasions pursuant to this
12 section, or any of its auxiliaries or other organizations
13 otherwise affiliated with it, shall obtain a limited
14 occasion license notwithstanding the fact that it holds a
15 valid annual license: *Provided*, That no licensee which
16 holds an annual license may obtain more than one
17 limited occasion license.

18 Only three limited occasion licenses per year in the
19 aggregate may be granted to a charitable or public
20 service organization and all of its auxiliaries or other
21 associations or organizations otherwise affiliated with it,
22 none of which hold an annual license. For purposes of
23 this section, the various branches, chapters or lodges of

24 any national association or organization or local
25 churches of a nationally organized church are not
26 considered affiliates or auxiliaries of each other. The
27 commissioner shall by regulation provide the manner
28 for determining to which organization, whether the
29 parent organization, an affiliate or an auxiliary, the
30 three licenses allowed under this section are granted.

31 A licensee shall display its limited occasion license
32 conspicuously at the location where the bingo occasion
33 is held.

34 All bingo occasions shall be open to the general
35 public: *Provided*, That no licensee shall permit or allow
36 any individual under the age of eighteen to participate
37 in the playing of any bingo game with knowledge or
38 reason to believe that the individual is under the age of
39 eighteen: *Provided, however*, That an individual under
40 the age of eighteen may attend the playing of a bingo
41 game when accompanied by and under the supervision
42 of an adult relative or a legal guardian of said individ-
43 ual.

§47-20-6. License fee and exemption from taxes.

1 (a) A license fee shall be paid to the tax commissioner
2 for annual licenses in the amount of five hundred
3 dollars, except that for volunteer or nonprofit groups
4 who gross less than twenty thousand dollars the fee shall
5 be two hundred dollars and for bona fide senior citizen
6 organizations the fee is fifty dollars. A license fee shall
7 be paid to the tax commissioner for a limited occasion
8 license in the amount of one hundred dollars. A license
9 fee of five hundred dollars shall be paid to the tax
10 commissioner for a state fair license as provided in
11 section twenty-two of this article. All revenue from said
12 license fee shall be deposited in the special revenue
13 account established under the authority of section two-
14 a, article nine, chapter eleven of this code and used to
15 support the investigatory activities provided for in said
16 section. The license fee imposed by this section is in lieu
17 of all other license or franchise taxes or fees of this state,
18 and no county or municipality or other political
19 subdivision of this state is empowered to impose a

20 license or franchise tax or fee.

21 (b) The gross proceeds derived from the conduct of a
22 bingo occasion are exempt from state and local business
23 and occupation taxes, income taxes, excise taxes and all
24 special taxes. The licensee is exempt from payment of
25 consumers sales and service taxes and use taxes on all
26 purchases for use or consumption in the conduct of a
27 bingo occasion and is exempt from collecting consumers
28 sales taxes on any admission fees and sales of bingo
29 cards: *Provided*, That the exemption provided in this
30 subsection does not apply to state fair bingo proceeds.

§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. All revenue from said license fee shall be
5 deposited in the special revenue account established
6 under the authority of section two-a, article nine,
7 chapter eleven of this code and used to support the
8 investigatory activities provided for in said section. The
9 tax commissioner shall promulgate rules in accordance
10 with article three, chapter twenty-nine-a of this code
11 specifying those organizations which qualify as charit-
12 able or public service organizations.

13 A holder of a super bingo license may conduct one
14 super bingo occasion each month during the period of
15 the license at which up to thirty thousand dollars in
16 prizes may be awarded, notwithstanding the seven
17 thousand five hundred dollar limitation on prizes
18 specified in section ten of this article.

19 A charitable or public service organization that has
20 a regular or limited occasion bingo license may apply
21 for a super bingo license.

§47-20-12. Compensation.

1 Except as provided otherwise in sections twelve-a,
2 thirteen and twenty-two of this article, no individual
3 who participates in any manner in the conduct of a
4 bingo occasion or the operation of a concession in
5 conjunction with a bingo occasion may receive or accept

6 any commission, wage, salary, reward, tip, donation,
7 gratuity or other form of compensation or remuneration
8 whether directly or indirectly, regardless of the source,
9 for his work, labor or services.

§47-20-12a. Compensation of bingo operator.

1 (a) Within the guidelines set forth in subsections (b),
2 (c) and (d) of this section, a licensee may pay a salary,
3 not to exceed the federal minimum wage, to operators
4 of bingo games who are active members of the licensee
5 organization.

6 (b) If the licensee's gross receipts from bingo occasions
7 equal or exceed one hundred thousand dollars for the
8 licensee's most recently filed annual financial report, a
9 salary may be paid to not more than three operators.

10 (c) If the licensee's gross receipts from bingo occasions
11 are less than one hundred thousand dollars, but equal
12 or exceed fifty thousand dollars for the licensee's most
13 recently filed annual financial report, a salary may be
14 paid to not more than two operators.

15 (d) If the licensee's gross receipts from bingo occasions
16 are less than fifty thousand dollars for the licensee's
17 most recently filed annual financial report, a salary may
18 be paid to no more than one operator.

§47-20-15. Payment of reasonable expenses from proceeds; net proceeds disbursement.

1 (a) The reasonable, necessary and actual expenses
2 incurred in connection with the conduct of bingo
3 occasions, not to exceed fifteen percent of the gross
4 proceeds collected during a license period, may be paid
5 out of the gross proceeds of the conduct of bingo,
6 including, but not limited to:

7 (1) Rent paid for the use of the premises: *Provided*,
8 That a copy of the rental agreement was filed with the
9 bingo license application and any changes thereto were
10 filed within ten days of being made;

11 (2) The cost of custodial services;

12 (3) The cost to the licensee organization for equipment

13 and supplies used to conduct the bingo occasion;

14 (4) The cost to the licensee organization for advertis-
15 ing the bingo occasion;

16 (5) The cost of hiring security personnel, licensed
17 pursuant to the provisions of article eighteen, chapter
18 thirty of this code; and

19 (6) The cost of providing child care services to the
20 bingo patrons: *Provided*, That any proceeds received
21 from the provision of child care services shall be
22 handled the same as bingo proceeds.

23 (b) The actual cost to the licensee for prizes, not to
24 exceed the amounts as specified in section ten of this
25 article, may be paid out of the gross proceeds of the
26 conduct of bingo.

27 (c) The cost of any refreshments, souvenirs or any
28 other item sold or otherwise provided through any
29 concession to the patrons may not be paid for out of the
30 gross proceeds from the bingo occasion. The licensee
31 shall expend all net bingo proceeds and any interest
32 earned thereon for the charitable or public service
33 purposes stated in the application within one year after
34 the expiration of the license under which the bingo
35 occasions were conducted. A licensee which does not
36 qualify as a qualified recipient organization may apply
37 to the commissioner at the time it applies for a bingo
38 license or as provided in subsection (e) of this section for
39 permission to apply any or all of its net proceeds to
40 directly support a charitable or public service activity
41 or endeavor which it sponsors.

42 (d) No gross proceeds from any bingo operation may
43 be devoted or in any manner used by any licensee or
44 qualified recipient organization for the construction,
45 acquisition, improvement, maintenance or repair of real
46 or personal property except that which is used exclu-
47 sively for one or more charitable or public service
48 purposes or as provided in subdivision (3), subsection (a)
49 of this section.

50 (e) Any licensee which, in good faith, finds itself
51 unable to comply with the requirements of this provision

52 shall apply to the commissioner for permission to
53 expend its net proceeds for one or more charitable or
54 public service purposes other than that stated in its
55 license application or for permission to expend its net
56 proceeds later than the one-year time period specified
57 in this section. The application shall be on a form
58 furnished by the commissioner and shall include the
59 particulars of the requested changes and the reasons for
60 the changes. The application shall be filed no later than
61 sixty days before the end of the one-year period specified
62 in this section. In the case of an application to extend
63 the time in which the net proceeds are to be expended
64 for a charitable or public service purpose, the licensee
65 shall file such periodic reports with the commissioner
66 as the commissioner directs until the proceeds are so
67 expended.

§47-20-16. Records; commissioner audit.

1 Any licensee which holds a bingo occasion as provided
2 by this article shall maintain a separate checking
3 account and separate bookkeeping procedure for its
4 bingo operations. Money for expenses shall be with-
5 drawn only by checks having preprinted consecutive
6 numbers and made payable to a specific person, firm or
7 corporation and at no time shall a check be made
8 payable to cash. A licensee shall maintain all records
9 required by this article for at least three years and the
10 records shall be open to the commissioner for reasonable
11 inspection. Whenever the tax commissioner has reasona-
12 ble cause to believe a licensee has violated any of the
13 provisions of this article, he or she may perform or cause
14 to be performed an audit of the licensee's books and
15 records: *Provided*, That the tax commissioner shall
16 perform or cause to be performed an audit of the books
17 and records of any licensee that has awarded total prizes
18 in excess of one hundred seventy-five thousand dollars.
19 The tax commissioner shall file a copy of the completed
20 audit with the county commission of the county wherein
21 the licensee holds bingo occasions.

§47-20-24. Filing of reports.

1 Each licensee holding an annual license shall file with

2 the tax commissioner quarterly and an annual financial
3 report summarizing its bingo operations for the time
4 period covered by the report. Each quarterly report
5 shall be filed within twenty days after the end of the
6 quarter which it covers. The annual report shall be filed
7 within thirty days after the expiration of the license
8 under which the operations covered by the report were
9 held.

10 Each licensee holding a limited occasion license or
11 state fair license shall file with the tax commissioner a
12 financial report summarizing its bingo operations for
13 the license period within thirty days after the expiration
14 of the license under which the operations covered by the
15 report are held. The report shall contain the name,
16 address and social security number of any individual
17 who receives during the course of a bingo occasion
18 prizes the aggregate value of which exceeds one
19 hundred dollars, and other information required by the
20 commissioner: *Provided*, That any licensee failing to file
21 such report when due shall be liable for a penalty of
22 twenty-five dollars for each month or fraction thereof
23 during which the failure continues, such penalty not to
24 exceed one hundred dollars: *Provided, however*, That
25 annual financial reports for license years ending after
26 the first day of July, one thousand nine hundred ninety-
27 three, must be audited financial reports as defined by
28 the American institute of certified public accountants if
29 a licensee's gross receipts exceed one hundred thousand
30 dollars: *Provided further*, That annual financial reports
31 for license years ending after the first day of July, one
32 thousand nine hundred ninety-three, must contain a
33 compilation and review of such financial report, as
34 defined by the American institute of certified public
35 accountants, if a licensee's gross receipts exceed fifty
36 thousand dollars but are less than one hundred thousand
37 dollars.

**§47-20-28a. Certain operators of bingo games to provide
for smoking and nonsmoking sections.**

1 Any bingo operator who distributes more than one

2 hundred bingo cards or bingo sheets at any bingo
3 occasion shall provide a smoking and nonsmoking
4 section, if smoking is permitted.

ARTICLE 21. CHARITABLE RAFFLES.

§47-21-7. License fee and exemption from taxes.

§47-21-15. Payment of reasonable expenses from proceeds; net proceeds disbursement.

§47-21-22. Filing of reports.

§47-21-7. License fee and exemption from taxes.

1 (a) A license fee shall be paid to the tax commissioner
2 for annual licenses in the amount of five hundred
3 dollars. A license fee shall be paid to the tax commis-
4 sioner for a limited occasion license in the amount of
5 fifty dollars. All revenue from said license fee shall be
6 deposited in the special revenue account established
7 under the authority of section two-a, article nine,
8 chapter eleven of this code and used to support the
9 investigatory activities provided for in said section. The
10 license fee imposed by this section is in lieu of all other
11 license or franchise taxes or fees of this state and no
12 county or municipality or other political subdivision of
13 this state is empowered to impose a license or franchise
14 tax or fee on any raffle or raffle occasion.

15 (b) The gross proceeds derived from the conduct of a
16 raffle occasion are exempt from state and local business
17 and occupation taxes, income taxes, excise taxes and all
18 special taxes. Any charitable or public service organi-
19 zation conducting a raffle occasion pursuant to the
20 provisions of this article is exempt from payment of
21 consumers sales and service taxes, use taxes and all
22 other taxes on all purchases for use or consumption in
23 the conduct of a raffle occasion and is exempt from
24 collecting consumers sales taxes on any admission fees
25 and sales of raffle tickets.

**§47-21-15. Payment of reasonable expenses from pro-
ceeds; net proceeds disbursement.**

1 (a) The reasonable, necessary and actual expenses
2 incurred in connection with the conduct of raffle
3 occasions, not to exceed fifteen percent of the gross

4 proceeds collected during a license period, may be paid
5 out of the gross proceeds of the conduct of raffle,
6 including, but not limited to:

7 (1) Rent paid for the use of the premises: *Provided*,
8 That a copy of the rental agreement was filed with the
9 raffle license application with any modifications thereto
10 to be filed within ten days of being made;

11 (2) The cost of custodial services;

12 (3) The cost to the licensee organization for equipment
13 and supplies used to conduct the raffle occasion;

14 (4) The cost to the licensee organization for advertis-
15 ing the raffle occasion;

16 (5) The cost of hiring security personnel, licensed
17 pursuant to the provisions of article eighteen, chapter
18 thirty of this code; and

19 (6) The cost of providing child care services to the
20 raffle patrons: *Provided*, That any proceeds received
21 from the provision of child care services shall be
22 handled the same as raffle proceeds.

23 (b) The actual cost to the licensee for prizes, not to
24 exceed the amounts as specified in section eleven of this
25 article, may be paid out of the gross proceeds of the
26 conduct of raffle.

27 (c) The cost of any refreshments, souvenirs or any
28 other item sold or otherwise provided through any
29 concession to the patrons may not be paid for out of the
30 gross proceeds from the raffle occasion. The licensee
31 shall expend all net raffle proceeds and any interest
32 earned thereon for the charitable or public service
33 purposes stated in the application within one year after
34 the expiration of the license under which the raffle
35 occasions were conducted. A licensee which does not
36 qualify as a qualified recipient organization may apply
37 to the commissioner at the time it applies for a raffle
38 license or as provided in subsection (e) of this section for
39 permission to apply any or all of its net proceeds to
40 directly support a charitable or public service activity
41 or endeavor which it sponsors.

42 (d) No gross proceeds from any raffle operation may
43 be devoted or in any manner used by any licensee or
44 qualified recipient organization for the construction,
45 acquisition, improvement, maintenance or repair of real
46 or personal property except that which is used exclu-
47 sively for one or more charitable or public service
48 purposes or as provided in subdivision (3), subsection (a)
49 of this section.

50 (e) Any licensee which, in good faith, finds itself
51 unable to comply with the requirements of the foregoing
52 provisions of this section shall apply to the commissioner
53 for permission to expend its net proceeds for one or more
54 charitable or public service purposes other than that
55 stated in its license application or for permission to
56 expend its net proceeds later than the one-year time
57 period specified in this section. The application shall be
58 on a form furnished by the commissioner and shall
59 include the particulars of the requested changes and the
60 reasons for the changes. The application shall be filed
61 no later than sixty days before the end of the one-year
62 period specified in this section. In the case of an
63 application to extend the time in which the net proceeds
64 are to be expended for a charitable or public service
65 purpose, the licensee shall file such periodic reports with
66 the commissioner as the commissioner directs until the
67 proceeds are so expended.

§47-21-22. Filing of reports.

1 Each licensee holding an annual, limited or state fair
2 license shall file with the commissioner a financial
3 report summarizing its raffle operations within thirty
4 days after the expiration date of such license.

5 The reports required by this section shall contain the
6 name, address and social security number of any
7 individual who received during the course of a raffle
8 occasion prizes the aggregate value of which exceeded
9 one hundred dollars, and other information required by
10 the commissioner: *Provided*, That any licensee failing to
11 file such report when due shall be liable for a penalty
12 of twenty-five dollars for each month or fraction thereof
13 during which the failure continues, such penalty not to

14 exceed one hundred dollars: *Provided, however,* That
15 annual financial reports for license years ending after
16 the first day of July, one thousand nine hundred ninety-
17 three, must be audited financial reports as defined by
18 the American institute of certified public accountants if
19 a licensee's gross receipts exceed one hundred thousand
20 dollars: *Provided further,* That annual financial reports
21 for license years ending after the first day of July, one
22 thousand nine hundred ninety-three, must contain a
23 compilation and review of such financial report, as
24 defined by the American institute of certified public
25 accountants, if a licensee's gross receipts exceed fifty
26 thousand dollars but are less than one hundred thousand
27 dollars.

ARTICLE 23. CHARITABLE RAFFLE BOARDS AND GAMES.

- §47-23-1. Short title.
- §47-23-2. Definitions.
- §47-23-3. License fee.
- §47-23-4. No fee on charitable raffle boards and games by municipalities or other governmental subdivisions.
- §47-23-5. Indicia; how affixed; violations.
- §47-23-6. Form of indicia; custody; security for payments.
- §47-23-7. Surety bonds required; release of surety; new bond.
- §47-23-8. How fee paid; reports required; due date; records to be kept; inspection of records and stocks; examination of witnesses, summons, etc.
- §47-23-9. Penalty for failure to file return when no fee due; crimes.
- §47-23-10. Transportation of unstamped charitable raffle boards and games; forfeitures and sales of charitable raffle boards; charitable raffle games and equipment; criminal sanctions.
- §47-23-11. Administration; rules.
- §47-23-12. Severability.
- §47-23-13. General procedure and administration.

§47-23-1. Short title.

1 This article shall be known as and may be cited as
2 the "Charitable Raffle Boards and Games Act".

§47-23-2. Definitions.

1 For purposes of this article, unless specified
2 otherwise:

3 (a) "Commissioner" means tax commissioner of the
4 state of West Virginia, or his delegate.

5 (b) "Retail face value" means the projected gross
6 income to be received by the retailer from the sale of
7 all raffle chances on or in the charitable raffle boards
8 or games.

9 (c) "Indicia" means the impression authorized by the
10 commissioner to serve as such indicia, and shall be of
11 the design and color prescribed by the commissioner.

12 (d) "Person" means any individual, association,
13 society, incorporated or unincorporated organization,
14 firm, partnership or other nongovernmental entity or
15 institution.

16 (e) "Retailer" means every person engaged in the
17 business of making retail sales of raffle chances.

18 (f) "Charitable raffle board" or "charitable raffle
19 game" means a board or other device that has many
20 folded printed slips to be pulled from the board or
21 otherwise distributed without a board on payment of a
22 nominal sum in an effort to obtain a slip or chance that
23 entitles the player to a designated prize: *Provided*, That
24 a "charitable raffle board" or "charitable raffle game"
25 shall not include the sale, by an elementary or secondary
26 school, parent-teacher organization of an elementary or
27 secondary school, youth organization, such as the girl
28 scouts of America or the boy scouts of America, or any
29 political party executive committee, of chances in an
30 effort, by the person purchasing the chance, to obtain
31 a designated prize: *Provided, however*, That the aggre-
32 gate value of all such prizes in any given calendar year
33 shall not exceed three thousand five hundred dollars.

34 (g) "Sale" means the transfer of the ownership of
35 tangible personal property for a consideration.

36 (h) "Wholesaler" or "distributor" means any person or
37 entity engaged in the wholesale distribution of charit-
38 able raffle boards or games or similar boards or devices,
39 as defined by the commissioner, and licensed under the
40 provisions of this article, to distribute said devices to
41 charitable raffle boards or games retailers as defined in
42 this article. It also includes anyone who is engaged in
43 the manufacturing, packaging, preparing or repackag-

44 ing of charitable raffle boards or games for distribution
45 in this state.

§47-23-3. License fee.

1 Wholesalers or distributors of charitable raffle boards
2 and games to retailers shall be licensed and a license
3 fee in the amount of five hundred dollars shall be paid
4 to the commissioner by each wholesaler or distributor
5 for an annual license. Wholesalers shall also pay a fee
6 of six cents on each dollar of retail value of each
7 charitable raffle board or game sold to a retailer. There
8 is hereby imposed an excise tax of six percent of the
9 winnings on any charitable raffle boards and games.
10 The tax shall be collected and remitted to the tax
11 commissioner on a monthly basis by the holder of the
12 raffle game. All revenue from said fee shall be placed
13 in the special revenue account established under the
14 authority of section two-a, article nine, chapter eleven
15 of this code.

**§47-23-4. No fee on charitable raffle boards and games
by municipalities or other governmental
subdivisions.**

1 No municipality or governmental subdivision shall
2 levy any excise or other tax or fee requiring charitable
3 raffle boards or games to be stamped, or requiring
4 licenses for sale thereof, other than licenses which may
5 be imposed as a result of licenses provided for in article
6 twelve, chapter eleven of this code.

§47-23-5. Indicia; how affixed; violations.

1 The indicia required by this article, as described in
2 the charitable raffle boards and games fee rules and
3 regulations, shall be impressed upon each charitable
4 raffle board or game, of an aggregate value of not less
5 than the amount of the fee imposed. The indicia so
6 impressed shall be prima facie evidence of payment of
7 the annual license fee imposed by this article. Indicia
8 printing approval shall be received from only the
9 commissioner by wholesalers and distributors who have
10 paid the annual license fee provided in section three of
11 this article.

12 Except as may be otherwise provided in the rules and
13 regulations prescribed by the commissioner under
14 authority of this article, such indicia shall be impressed
15 by each wholesaler or distributor prior to the sale of
16 such boards or games to a retailer. Each wholesaler or
17 distributor making such sales must be authorized to do
18 business in this state prior to the sale or delivery of any
19 charitable raffle boards or games to any retailer in this
20 state.

21 Whenever any charitable raffle boards or games are
22 found in the place of business of any retailer without the
23 indicia so impressed, the prima facie presumption shall
24 arise that such charitable raffle boards or games are
25 kept therein in violation of the provisions of this article.

§47-23-6. Form of indicia; custody; security for payments.

1 The commissioner shall design the indicia to be used
2 as herein provided for impression on charitable raffle
3 boards or games. The charitable raffle boards or games
4 shall have the purchase price clearly imprinted thereon
5 and shall have printed or impressed thereon the words
6 "State of West Virginia — Raffle Board Stamp" or such
7 other words and figures as the commissioner may deem
8 proper.

§47-23-7. Surety bonds required; release of surety; new bond.

1 The commissioner may require wholesalers and
2 distributors to file continuous surety bond in an amount
3 to be fixed by the commissioner except that the amount
4 shall not be less than one thousand dollars. Upon
5 completion of the filing of a surety bond an annual
6 notice of renewal, only, shall be required thereafter. The
7 surety must be authorized to engage in business within
8 this state. The bond shall be conditioned upon faithfully
9 complying with the provisions of this article including
10 the filing of the returns and payment of all fees
11 prescribed by this article.

12 Any surety on a bond furnished hereunder shall be
13 released and discharged from all liability accruing on
14 such bond after the expiration of sixty days from the

15 date the surety shall have lodged, by certified mail, with
16 the tax commissioner a written request to be dis-
17 charged. This shall not relieve, release or discharge the
18 surety from liability already accrued or which shall
19 accrue before the expiration of the sixty-day period.
20 Whenever any surety shall seek release as herein
21 provided, it shall be the duty of the wholesaler or
22 distributor to supply the commissioner with another
23 bond.

**§47-23-8. How fee paid; reports required; due date;
records to be kept; inspection of records and
stocks; examination of witnesses, summons,
etc.**

1 The fee hereby imposed shall be paid by each licensed
2 wholesaler or distributor to the commissioner on or
3 before the fifteenth day of April, July, October and
4 January for the preceding three calendar months. The
5 measure of the fee shall be determined by multiplying
6 the total amount of the retail face value of all charitable
7 raffle boards and games sold by wholesalers or distrib-
8 utors to retailers during the said three-month period by
9 six percent. All fees due and owing to the commissioner
10 by reason of this article, if paid after the due dates
11 required by this section, shall be subject to the provi-
12 sions of article ten, chapter eleven of this code. Each
13 wholesaler or distributor shall provide with each
14 quarterly payment of fees a report covering the business
15 transacted in the previous three calendar months and
16 providing such other information as the commissioner
17 may deem necessary for the ascertainment or assess-
18 ment of the fee imposed by this article. Such report shall
19 be signed under penalty of perjury on such forms as the
20 tax commissioner may prescribe and the wholesaler or
21 distributor shall at the time of filing remit all fees owed
22 or due.

23 The commissioner may authorize any wholesaler or
24 distributor holding the license required by this article
25 to use any metering device approved by the commis-
26 sioner, such devices to be sealed by the commissioner,
27 before being used, which device shall be used only in
28 accordance with the regulations prescribed by the

29 commissioner. A wholesaler or distributor shall pay the
30 fee in advance where a metering device is used, in which
31 event such wholesaler or distributor shall deliver the
32 metering device to the commissioner who shall seal the
33 meter in accordance with the prepayment so made.

34 The reports prescribed herein are required, although
35 a fee might not be due or no business transacted for the
36 period covered by the report.

37 Each person required to file a report under this
38 article shall make and keep such records as shall be
39 prescribed by the commissioner that are necessary to
40 substantiate the returns required by this article,
41 including, but not limited to, inventories, receipts,
42 disbursements and sales, for a period of time not less
43 than three years.

44 Unless otherwise permitted, in writing, by authority
45 of the commissioner, each delivery ticket or invoice for
46 each purchase or sale of charitable raffle boards or
47 games must be recorded upon a serially numbered
48 invoice showing the name and address of the seller and
49 the purchaser, the point of delivery, the date, quantity
50 and price of the product sold, and the fee must be set
51 out separately, and such other reasonable information as
52 the commissioner may require. These invoicing require-
53 ments also apply to cash sales and a person making such
54 sales must maintain such records as may be reasonably
55 necessary to substantiate his return.

56 In addition to the commissioner's powers set forth in
57 section five, article ten, chapter eleven of this code, the
58 commissioner shall have authority to inspect or examine
59 the stock of charitable raffle boards and games kept in
60 and upon the premises of any person where charitable
61 raffle boards and games are placed, stored or sold, and
62 he shall have authority to inspect or examine the
63 records, books, papers and any equipment or records of
64 manufacturers, wholesalers and distributors or any
65 other person for the purpose of determining the quantity
66 of charitable raffle boards and games acquired or
67 disbursed to verify the truth and accuracy of any
68 statement or report and to ascertain whether the fee

69 imposed by this article has been properly paid.

70 In addition to the commissioner's powers set forth in
71 section five, article ten, chapter eleven of this code, and
72 as a further means of obtaining the records, books and
73 papers of a manufacturer, wholesaler, distributor or any
74 other person and ascertaining the amount of fees and
75 reports due under this article, the commissioner shall
76 have the power to examine witnesses under oath; and
77 if the witness shall fail or refuse at the request of the
78 commissioner to grant access to the books, records or
79 papers, the commissioner shall certify the facts and
80 names to the circuit court of the county having jurisdic-
81 tion of the party and such court shall thereupon issue
82 summons to such party to appear before the commis-
83 sioner, at a place designated within the jurisdiction of
84 such court, on a day fixed, to be continued as the
85 occasion may require for good cause shown and give
86 such evidence and lay open for inspection such books
87 and papers as may be required for the purpose of
88 ascertaining the amount of fee and reports due, if any.

§47-23-9. Penalty for failure to file return when no fee due; crimes.

1 (a) *Penalty for failure to file required return where no*
2 *fee due.* — In the case of any failure to make or file a
3 return when no fee is due, as required by this article,
4 on the date prescribed therefor, unless it be shown that
5 such failure was due to reasonable cause and not due
6 to willful neglect, there shall be collected a penalty of
7 twenty-five dollars for each month of such failure or
8 fraction thereof.

9 (b) It shall be a misdemeanor, punishable pursuant to
10 the terms of this article, if any person:

11 (1) Makes any false entry upon an invoice required to
12 be made under the provisions of this article or with
13 intent to evade the fee imposed by this article presents
14 any such false entry for the inspection of the
15 commissioner;

16 (2) Prevents or hinders the commissioner from
17 making a full inspection of any place where charitable

18 raffle boards or games subject to the fee imposed by this
19 state are sold or stored or prevents or hinders the full
20 inspection of invoices, books, records or papers required
21 to be kept under the provisions of this article;

22 (3) Sells any charitable raffle boards or games in this
23 state without there having been first affixed thereto the
24 indicia required by this article;

25 (4) Being a retailer in this state, has in his possession
26 any charitable raffle boards or games not bearing the
27 indicia herein required to be affixed thereto or, whoever
28 fails to produce on demand by the commissioner invoices
29 of all charitable raffle boards and games purchased or
30 received by him within three years prior to such
31 demand, unless upon satisfactory proof it is shown that
32 such nonproduction is due to providential or other
33 causes beyond his control;

34 (5) Being a retailer in this state, purchases or acquires
35 charitable raffle boards and games from any person
36 other than a wholesaler or distributor licensed under
37 this article; or

38 (6) Who is not a wholesaler or distributor of charitable
39 raffle boards or games, as provided by this article, shall
40 have in his possession within the state any charitable
41 raffle boards or games not bearing the proper indicia
42 of this state, such possession shall be inferred to be for
43 the purpose of evading the payment of the fees imposed
44 or due thereon.

45 (c) Any person convicted of violating the provisions of
46 subsection (b) of this section shall be confined in the
47 county jail for not less than one year or fined not less
48 than one thousand dollars nor more than ten thousand
49 dollars, or both fined and imprisoned.

50 (d) Any person who falsely or fraudulently makes,
51 forges, alters or counterfeits any indicia prescribed, or
52 defined, by the provisions of this article, or its related
53 rules and regulations, or who knowingly and willfully
54 makes, causes to be made, purchases, receives or has in
55 his possession, any device for forging or counterfeiting
56 any indicia, or has in his possession, any indicia not

57 properly issued by the commissioner or tampers with or
58 alters any stamping device authorized by the commis-
59 sioner, or uses more than once any indicia provided for
60 and required by this article for the purpose of evading
61 the fee hereby imposed, shall be guilty of a felony, and,
62 upon conviction thereof, shall be sentenced to pay a fine
63 of not less than five thousand dollars nor more than ten
64 thousand dollars or imprisoned in the penitentiary for
65 a term of not less than one year nor more than five
66 years, or both fined and imprisoned.

67 (e) Whenever the commissioner, or any of his deputies
68 or employees authorized by him, or any peace officer of
69 this state shall discover any charitable raffle boards or
70 games subject to the fee as provided by this article and
71 upon which the fee has not been paid as herein required,
72 such charitable raffle boards and games shall thereupon
73 be deemed to be contraband, and the commissioner, or
74 such deputy or employee or any peace officer of this
75 state, is hereby authorized and empowered forthwith to
76 seize and take possession of such charitable raffle boards
77 or games, without a warrant, and such charitable raffle
78 boards and games shall be forfeited to the state, and the
79 commissioner shall retain the forfeited charitable raffle
80 boards and games until they are no longer needed as
81 evidence in any prosecution of the person from whom
82 the raffle boards and games were seized. The commis-
83 sioner may within a reasonable time thereafter destroy
84 such charitable raffle boards and games or may affix
85 the indicia required by this article upon each charitable
86 raffle board or game and sell said charitable raffle
87 boards or games at public auction to the highest bidder:
88 *Provided*, That such seizure and destruction or public
89 auction shall not be deemed to relieve any person from
90 fine or imprisonment as provided herein for violation of
91 any provisions of this article. Such destruction may be
92 made in any county the commissioner deems most
93 convenient and economical. All revenue from said
94 license fee shall be deposited in the special revenue
95 account established under the authority of section two-
96 a, article nine, chapter eleven of this code and used to
97 support the investigatory activities provided for in said
98 section.

99 (f) Magistrates shall have concurrent jurisdiction with
100 any other courts having jurisdiction for the trial of all
101 misdemeanors arising under this article.

§47-23-10. Transportation of unstamped charitable raffle boards and games; forfeitures and sales of charitable raffle boards, charitable raffle games and equipment; criminal sanctions.

1 Every person who shall knowingly transport charit-
2 able raffle boards or games not bearing indicia as
3 required by section six of this article upon the public
4 highways, waterways, airways, roads or streets of this
5 state shall have in his actual possession invoices or
6 delivery tickets for such charitable raffle boards or
7 games which shall show the true name and the complete
8 and exact address of the manufacturer, the true name
9 and complete and exact address of the wholesaler or
10 distributor who is the purchaser, the quantity and
11 description of the charitable raffle boards and games
12 transported and the true name and complete and exact
13 address of the person who has or shall assume payment
14 of the West Virginia state fee, or the tax, if any, of the
15 state or foreign country at the point of ultimate
16 destination: *Provided*, That any common carrier which
17 has issued a bill of lading for a shipment of charitable
18 raffle boards and games and is without notice to itself
19 or to any of its agents or employees that said charitable
20 raffle boards or games have no proper indicia affixed
21 thereto as required by section six of this article shall be
22 deemed to have complied with this article and the
23 vehicle or vessel in which said charitable raffle boards
24 or games are being transported shall not be subject to
25 confiscation hereunder. In the absence of such invoices,
26 delivery tickets or bills of lading, as the case may be,
27 the charitable raffle boards or games so transported, the
28 vehicle or vessel in which the charitable raffle boards
29 or games are being transported and any paraphernalia
30 or devices used in connection with such, are declared to
31 be contraband goods and may be seized by the commis-
32 sioner, his agents or employees or by any peace officer
33 of the state without a warrant.

34 Any person who transports charitable raffle boards or

35 games in violation of this section shall be guilty of a
36 misdemeanor, and, upon conviction thereof, shall be
37 fined not less than three hundred dollars nor more than
38 five thousand dollars, or imprisoned in the county jail
39 not more than one year, or both fined and imprisoned.

40 Charitable raffle boards and games seized under this
41 section shall be forthwith destroyed in the manner
42 provided hereinafter in this section and such destruction
43 shall not relieve the owner of the destroyed charitable
44 raffle boards and games of any action by the commis-
45 sioner for violations of this or any other sections of this
46 article.

47 The commissioner shall immediately, after any
48 seizure made pursuant to this section, institute a
49 proceeding for the confiscation thereof in the circuit
50 court of the county in which the seizure is made. The
51 court may proceed in a summary manner and may
52 direct confiscation by the commissioner: *Provided*, That
53 any person claiming to be the holder of a security
54 interest in any vehicle or vessel, the disposition of which
55 is provided for above, may present his petition so
56 alleging and be heard, and in the event it appears to the
57 court that the property was unlawfully used by a person
58 other than such claimant, and if the said claimant
59 acquired his security interest in good faith and without
60 knowledge that the vehicle or vessel was going to be so
61 used, the court shall waive forfeiture in favor of such
62 claimant and order the vehicle or vessel returned to such
63 claimant.

§47-23-11. Administration; rules.

1 (a) The commissioner shall promulgate rules to
2 administer the provisions of this article in accordance
3 with the provisions of chapter twenty-nine-a of this code.
4 Additionally, the commissioner shall promulgate a rule
5 which sets forth a means of verifying on the face of
6 every charitable raffle board or game that the charit-
7 able raffle board or game is distributed by a wholesaler
8 licensed pursuant to the provisions of this article.

9 (b) The commissioner shall deny an application for a
10 license if he finds that the issuance thereof would be in
11 violation of the provisions of this article.

12 (c) The commissioner may suspend, revoke or refuse
13 to renew any license issued hereunder for a material
14 failure to maintain the records or file the reports
15 required by this article or administrative rule if the
16 commissioner finds that said failure will substantially
17 impair the commissioner's ability to administer the
18 provisions of this article with regard to said licensee.

19 (d) The burden of proof in any administrative or court
20 proceeding is on the applicant to show cause why a
21 charitable raffle boards or games wholesaler's or
22 distributor's license should be issued or renewed and on
23 the licensee to show cause why its license should not be
24 revoked or suspended.

§47-23-12. Severability.

1 If any provision of this article or the application
2 thereof shall for any reason be adjudged by any court
3 of competent jurisdiction to be invalid, such judgment
4 shall not affect, impair or invalidate the remainder of
5 said article, but shall be confined in its operation to the
6 provision thereof directly involved in the controversy in
7 which such judgment shall have been rendered and the
8 applicability of such provision to other persons or
9 circumstances shall not be affected thereby.

§47-23-13. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article
3 ten, chapter eleven of this code shall apply to the fees
4 imposed by this article with like effect as if said act
5 were applicable only to the fees imposed by this article
6 and were set forth in extenso in this article.

CHAPTER 157

(Com. Sub. for H. B. 2088—By Delegate Burk)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twelve and sixteen,
article ten, chapter eleven of the code of West Virginia,

one thousand nine hundred thirty-one, as amended, all relating to tax liens; providing for a ten-year limitation on enforcement; requiring the notice of lien to include the date the tax, addition to tax, penalties and interest are due and payable or the date the tax return is filed; eliminating the exception to the statute of limitations on collections where there has been a false or fraudulent return filed or no return filed; and requiring the tax commissioner to record extensions by agreement.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-12. Liens, release; subordination; foreclosure.

§11-10-16. Limitations on collection.

§11-10-12. Liens, release; subordination; foreclosure.

1 (a) *General.* — Any tax, additions to tax, penalties or
2 interest due and payable under this article or any of the
3 other articles of this chapter to which this article is
4 applicable shall be a debt due this state. It shall be a
5 personal obligation of the taxpayer and shall be a lien
6 upon the real and personal property of the taxpayer.

7 (b) *Duration of lien.* — The lien created by this section
8 shall continue until the liability for the tax, additions to
9 tax, penalties and interest is satisfied or upon the
10 expiration of ten years from the date the tax, additions
11 to tax, penalties and interest are due and payable under
12 section eight of this article or the date the tax return
13 is filed, whichever is later.

14 (c) *Recordation.* — The lien created by this section
15 shall be subject to the restrictions and conditions
16 embodied in article ten-c, chapter thirty-eight of this
17 code and any amendment made or which may hereafter
18 be made thereto: *Provided,* That the notice of lien shall
19 indicate the date the tax, additions to tax, penalties and
20 interest are due and payable under section eight of this
21 article or the date the tax return was filed.

22 (d) *Release or subordination.* — The tax commissioner,
23 pursuant to rules or regulations prescribed by him, may
24 issue his certificate of release of any lien created
25 pursuant to this section when the debt is adequately
26 secured by bond or other security. He shall issue his
27 certificate of release when the debt secured has been
28 satisfied. The certificate of release shall be issued in
29 duplicate. One copy shall be forwarded to the taxpayer,
30 and the other copy shall be forwarded to the clerk of
31 the county commission of the county wherein the lien is
32 recorded. The clerk of the county commission shall
33 record the release without payment of any fee and such
34 recordation shall constitute a release and full discharge
35 of the lien. The tax commissioner may issue his
36 certificate of release of any such lien as to all or any part
37 of the property subject to the lien, or may subordinate
38 such lien to any other lien or interest, but only if there
39 is paid to the state an amount not less than the value
40 of the interest of the state in such property, or if the
41 interest of the state in such property has no value.

42 (e) *Foreclosure.* — The tax commissioner may enforce
43 any lien created and recorded under this section, against
44 any property subject to such lien by civil action in the
45 circuit court of the county wherein such property is
46 located, in order to subject such property to the payment
47 of the tax secured by such lien. All persons having liens
48 upon or having any interest in the property shall be
49 made parties to such action. The court may appoint a
50 receiver or commissioner who shall ascertain and report
51 all liens, claims and interests in and upon the property,
52 the validity, amount and priority of each. The court
53 shall, after notice to all parties, proceed to adjudicate
54 all matters involved therein, shall determine the
55 validity, amount and priorities of all liens, claims and
56 interests in and upon the property and shall decree a
57 sale of such property by the sheriff or any commissioner
58 to whom the action is referred, and shall decree
59 distribution of the proceeds of such sale according to the
60 findings of the court in respect to the interests of the
61 parties.

62 (f) *Discharge of lien.* — A sale of property against

63 which the state has a lien under this section, made
64 pursuant to an instrument creating a lien on such
65 property, or made pursuant to a statutory lien on such
66 property, or made pursuant to a judicial order to enforce
67 any judgment in any civil action, shall be made subject
68 to and without disturbing the state tax lien if the state
69 tax lien was recorded more than thirty days before such
70 sale, unless:

71 (1) The tax commissioner is made a party to such civil
72 action, or

73 (2) The tax commissioner is given notice of such sale
74 in writing not less than fifteen days prior to sale, or

75 (3) The tax commissioner consents to such sale. Such
76 notice shall contain the name of the owner of the
77 property and the social security number or federal
78 employer identification number of the owner.

§11-10-16. Limitations on collection.

1 (a) *Where assessment is issued.* — Every proceeding
2 instituted by the tax commissioner for the collection of
3 the amount found to be due under an assessment which
4 has become final of any tax, additions to tax, penalties
5 or interest imposed by this article or any of the other
6 articles of this chapter to which this article is applica-
7 ble, irrespective of whether such proceeding shall be
8 instituted in a court or by utilization of other methods
9 provided by law for the collection of such tax, additions
10 to tax, penalty or interest, shall be brought or com-
11 menced within ten years after the date on which such
12 assessment has become final.

13 (b) *Where assessment is not issued.* — Every proceed-
14 ing instituted by the tax commissioner for the collection
15 of the amount determined to be due by methods
16 provided by law other than the issuance of an assess-
17 ment, of any tax, additions to tax, penalties or interest
18 imposed by this article or any of the other articles of
19 this chapter to which this article is applicable, irrespec-
20 tive of whether such proceeding shall be instituted in a
21 court or by utilization of other methods provided by law
22 for the collection of such tax, additions to tax, penalties

23 or interest, shall be brought or commenced within ten
24 years after the date on which the taxpayer filed the
25 annual return required to be filed by any of the articles
26 of this chapter and, if no annual return is required, such
27 ten-year period shall begin on the day after the latest
28 periodical return required to be filed in any year is filed.

29 (c) *Exception as to inheritance tax liens.* — This
30 section shall not apply to, or in any manner affect, the
31 inheritance tax liens created by sections nine and
32 eighteen, article eleven of this chapter.

33 (d) *Extension of time for institutions of collection*
34 *proceedings by agreement.* — The tax commissioner and
35 the taxpayer may enter into written agreement to
36 extend the period within which the tax commissioner
37 may institute proceedings for the collection of the
38 amount found to be due under an assessment which has
39 become final, or the amount determined to be due by
40 methods provided by law other than the issuance of the
41 assessment, of any tax, additions to tax, penalties or
42 interest imposed by this article or any of the other
43 articles of this chapter to which this article is applica-
44 ble. Such period shall not exceed two years. The period
45 so agreed upon may be extended for additional periods
46 not in excess of two years each by subsequent agree-
47 ments in writing made before the expiration of the
48 period previously agreed upon.

49 An extension of a tax lien, including an extension
50 agreed to in writing by the taxpayer and the tax
51 commissioner, beyond ten years is not effective under
52 the provisions of this section unless the extension is
53 docketed by the tax commissioner in the office of the
54 county commission as is required under the provisions
55 of article ten-c, chapter thirty-eight of this code for
56 docketing tax liens.

CHAPTER 158

(Com. Sub. for H. B. 2303—By Mr. Speaker, Mr. Chambers, and
Delegate Burk, By Request of the Executive)

[Passed April 9, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section sixteen; and to amend and reenact section four, article six, chapter twenty-nine of said code, all relating to highway construction programs throughout the state; providing an increase in the gasoline tax; providing a sunset date for the increase; providing legislative findings; providing that the tax increase be deposited in an appropriated special revenue account to be used only to match available federal funds; and clarifying persons subject to civil service by gubernatorial appointment.

Be it enacted by the Legislature of West Virginia:

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

Chapter

11. Taxation.

29. Miscellaneous Boards and Officers.

CHAPTER 11. TAXATION.

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-3. Imposition of tax.

§11-14-16. Disposition of increase in tax collected.

§11-14-3. Imposition of tax.

1 There is hereby levied an excise tax of fifteen and one-

2 half cents per gallon on all gasoline or special fuel,
3 which tax shall be computed in accordance with the
4 appropriate measure of tax as hereinafter prescribed in
5 this article: *Provided*, That beginning the first day of
6 May, one thousand nine hundred ninety-three, the tax
7 levied by this article shall be twenty and one-half cents
8 per gallon: *Provided, however*, That on and after the first
9 day of August, two thousand one, the tax levied by this
10 article shall be fifteen and one-half cents per gallon.

§11-14-16. Disposition of increase in tax collected.

- 1 (a) The Legislature finds:
- 2 (1) That the "Intermodal Surface Transportation
3 Efficiency Act of 1991" provides a window of opportun-
4 ity for highway and bridge construction in the state of
5 West Virginia;
- 6 (2) That the "Intermodal Surface Transportation
7 Efficiency Act of 1991" provides for one billion dollars
8 of regular federal highway and bridge funding over the
9 effective period of the legislation;
- 10 (3) That the "Intermodal Surface Transportation
11 Efficiency Act of 1991" additionally authorizes the
12 necessary funding to complete the Appalachian highway
13 corridor system in the state of West Virginia;
- 14 (4) That the "Intermodal Surface Transportation
15 Efficiency Act of 1991" provides authorization for
16 additional funding for other specifically identified
17 highway corridors and projects throughout the state of
18 West Virginia;
- 19 (5) That the anticipated level of total funding result-
20 ing from the passage of the "Intermodal Surface
21 Transportation Act of 1991", if matched by sufficient
22 state funds, would reach approximately six billion
23 dollars through the year two thousand one;
- 24 (6) That this program level would be made possible
25 by a five cent increase in the rate of tax on gasoline and
26 special fuels;
- 27 (7) That such a program level would enable a
28 continued aggressive highway paving, bridge safety and

29 highway maintenance program; and

30 (8) That the highways constructed and improvements
31 to the existing transportation system in the state of West
32 Virginia resulting from this highway construction
33 program would be a substantial stimulus to economic
34 development in this state.

35 (b) The Legislature further finds that in view of this
36 anticipated highways construction program, the division
37 of highways must increase its efficiency and profession-
38 alism and make better use of the resources provided to
39 the division by the citizens of our state. To this end, the
40 division of highways shall undertake the efficiency
41 initiatives set forth in subsection (c) of this section, as
42 well as other efficiency initiatives deemed appropriate
43 by the secretary of the department of transportation and
44 the director of the division of highways. The secretary
45 of the department of transportation shall report to the
46 Legislature on the first day of the regular legislative
47 session, one thousand nine hundred ninety-four, regard-
48 ing the implementation of all the efficiency initiatives
49 undertaken by the division of highways. The report shall
50 also include the source and amount of savings from these
51 efficiency initiatives. Any savings resulting from these
52 efficiency initiatives shall be utilized by the department
53 of transportation to increase state funds available to
54 match federal dollars to promote the highway construc-
55 tion program.

56 (c) The following efficiency initiatives shall be
57 implemented by the division of highways:

58 (1) Reduction in the division's passenger vehicle fleet
59 by one hundred seventy vehicles; and

60 (2) Restriction on the use and number of passenger
61 vehicles utilized for twenty-four hour duty so as to cause
62 a reduction in the total cost of operation of the twenty-
63 four hour duty vehicle fleet by fifty percent.

64 (d) The amount of the tax collected attributable to the
65 five cent increase in the tax collected under the
66 provisions of this article effective the first day of May,
67 one thousand nine hundred ninety-three, shall be

68 deposited in a special account in the state treasury
69 known as the "Federal Aid Highway Matching Fund"
70 and shall only be used to match federal moneys available
71 for highway purposes as authorized by Title 23 and Title
72 40 or other provisions of the United States Code:
73 *Provided*, That the "Federal Aid Highway Matching
74 Fund" shall be appropriated by line item by the
75 Legislature.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-4. Classified-exempt service; additions to classified service; exemptions.

- 1 (a) The classified-exempt service includes all positions
2 included in the classified-exempt service on the effective
3 date of this article.
- 4 (b) Except for the period commencing on the first day
5 of July, one thousand nine hundred ninety-two, and
6 ending on the first Monday after the second Wednesday
7 of the following January and except for the same periods
8 commencing in the year one thousand nine hundred
9 ninety-six, and in each fourth year thereafter, the
10 governor may, by executive order, with the written
11 consent of the state personnel board and the appointing
12 authority concerned, add to the list of positions in the
13 classified service, but such additions shall not include
14 any positions specifically exempted from coverage as
15 provided in this section.
- 16 (c) The following offices and positions are exempt
17 from coverage under the classified service:
- 18 (1) All judges, officers and employees of the judiciary;
19 (2) All members, officers and employees of the
20 Legislature;
21 (3) All officers elected by popular vote and employees
22 of the officer;
23 (4) All secretaries of departments and employees
24 within the office of a secretary;

25 (5) Members of boards and commissions and heads of
26 departments appointed by the governor or such heads
27 of departments selected by commissions or boards when
28 expressly exempt by law or board order;

29 (6) Excluding the policy-making positions in an
30 agency, one principal assistant or deputy and one
31 private secretary for each board or commission or head
32 of a department elected or appointed by the governor
33 or Legislature;

34 (7) All policymaking positions;

35 (8) Patients or inmates employed in state institutions;

36 (9) Persons employed in a professional or scientific
37 capacity to make or conduct a temporary and special
38 inquiry, investigation or examination on behalf of the
39 Legislature or a committee thereof, an executive
40 department or by authority of the governor;

41 (10) All employees of the office of the governor,
42 including all employees assigned to the executive
43 mansion;

44 (11) County road supervisors employed by the division
45 of highways or their successors;

46 (12) Part-time professional personnel engaged in
47 professional services without administrative duties and
48 personnel employed for ninety days or less during a
49 working year;

50 (13) Members and employees of the board of regents
51 or its successor agencies;

52 (14) Uniformed personnel of the division of public
53 safety; and

54 (15) Seasonal employees in the state forests, parks,
55 and recreational areas working less than 1,560 hours per
56 calendar year: *Provided*, That notwithstanding any
57 provision of law to the contrary, seasonal employees
58 shall not be considered full-time employees.

59 (d) The Legislature finds that the holding of political
60 beliefs and party commitments consistent or compatible
61 with those of the governor contributes in an essential

62 way to the effective performance of and is an approp-
 63 riate requirement for occupying certain offices or
 64 positions in state government, such as the secretaries of
 65 departments and the employees within their offices, the
 66 heads of agencies appointed by the governor and, for
 67 each such head of agency, a private secretary and one
 68 principal assistant or deputy, all employees of the office
 69 of the governor including all employees assigned to the
 70 executive mansion, as well as any persons appointed by
 71 the governor to fill policy-making positions and county
 72 road supervisors or their successors; in that such offices
 73 or positions are confidential in character and/or require
 74 their holders to act as advisors to the governor or the
 75 governor's appointees, to formulate and implement the
 76 policies and goals of the governor or of the governor's
 77 appointees, or to help the governor or the governor's
 78 appointees communicate with and explain their policies
 79 and views to the public, the Legislature and the press.

CHAPTER 159

(Com. Sub. for H. B. 2451—By Mr. Speaker, Mr. Chambers and
 Delegates Gallagher, Brown and Houvouras)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to West Virginia brewpubs; barrel tax; and reporting requirements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. NONINTOXICATING BEER.

§11-16-13. Barrel tax on nonintoxicating beer.

- 1 (a) There is hereby levied and imposed, in addition to
- 2 the license taxes provided for in this article, a tax of five

3 dollars and fifty cents on each barrel of thirty-one
4 gallons and in like ratio on each part barrel of nonin-
5 toxicating beer manufactured in this state for sale
6 within this state, whether contained or sold in barrels,
7 bottles or other containers, and a like tax is hereby
8 levied and imposed upon all nonintoxicating beer
9 manufactured outside of this state and brought into this
10 state for sale within this state; but no nonintoxicating
11 beer manufactured, sold or distributed in this state is
12 subject to more than one barrel tax. The brewer
13 manufacturing or producing nonintoxicating beer
14 within this state for sale within this state shall pay the
15 barrel tax on such nonintoxicating beer, and, except as
16 provided otherwise, the distributor who is the original
17 consignee of nonintoxicating beer manufactured or
18 produced outside of this state, or who brings such
19 nonintoxicating beer into this state, shall pay the barrel
20 tax on such nonintoxicating beer manufactured or
21 produced outside of this state: *Provided*, That the barrel
22 tax imposed by this section shall not apply to nonintox-
23 icating beer manufactured by a brewpub.

24 (b) On or before the tenth day of each month during
25 the license period, every brewer or operator of a
26 brewpub who manufactures or produces nonintoxicating
27 beer within this state shall file a report in writing,
28 under oath, to the tax commissioner, in the form
29 prescribed by the tax commissioner, stating its total
30 sales, or in the case of a brewpub, its total estimated
31 production of nonintoxicating beer within this state
32 during that month, and at the same time shall pay the
33 tax levied by this article on such production. On or
34 before the tenth day of each month during the license
35 period, every distributor who is the original consignee
36 of nonintoxicating beer manufactured or produced
37 outside this state or who brings such beer into this state
38 for sale shall file a report in writing, under oath, to the
39 tax commissioner, in the form prescribed by the tax
40 commissioner, stating its total estimated purchases of
41 such nonintoxicating beer during that month, and at the
42 same time shall pay the tax thereon levied by this article
43 for such estimated monthly purchase: *Provided*, That
44 the tax commissioner may allow, or require, a brewer

45 who manufactures or produces nonintoxicating beer
46 outside this state to file the required report and pay the
47 required tax on behalf of its distributor or distributors.
48 Any brewer or distributor or operator of a brewpub who
49 files a report under this subsection may adjust its
50 monthly estimated sales or purchases or production
51 report or reports by filing amended reports by the
52 twenty-fifth day of the reporting month.

53 (c) Every brewer or distributor or operator of a
54 brewpub who files a report under subsection (b) of this
55 section shall file a final monthly report of said sales or
56 purchases or production, in a form and at a time
57 prescribed by the tax commissioner, stating actual
58 nonintoxicating beer sales, purchases, or production and
59 other information which the tax commissioner may
60 require, and shall include a remittance for any barrel
61 tax owed for actual sales or purchases or production
62 made in excess of the amount estimated for that month.

63 (d) Any brewer or distributor or operator of a
64 brewpub who files a report pursuant to subsection (b)
65 of this section reflecting an underestimation of twenty-
66 five percent or more of actual sales or purchases or
67 production of nonintoxicating beer as shown by the
68 report filed pursuant to subsection (c) of this section
69 shall be assessed a penalty of one percent of the total
70 taxes due in such prior month.

71 (e) Brewers and distributors and operators of brew-
72 pubs shall keep all records which relate to the sale or
73 purchase in this state of nonintoxicating beer for a
74 period of three years unless written approval for earlier
75 disposal is granted by the tax commissioner.

76 (f) Brewpubs shall keep such records as required by
77 the federal government and may, in lieu of the record-
78 keeping and reporting requirements contained in
79 subsections (a) through (e) of this section, file copies of
80 the federal reports contemporaneously with the tax
81 commissioner at the time of such filings with the federal
82 government. The filing of duplicate copies of the federal
83 reports with the state tax commissioner shall be deemed
84 as compliance with subsections (a) through (e) of this
85 section.

CHAPTER 160

(S. B. 70—Originating in the Committee on Finance)

[Passed March 10, 1993; 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-one; 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-three, 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-two, 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-three,
18 shall be given effect.

19 (b) *Effective date.* — The amendments to this section
20 enacted in the year one thousand nine hundred ninety-
21 three 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-two, to the extent
24 allowable under federal income tax law. With respect
25 to taxable years that begin prior to the first day of
26 January, one thousand nine hundred ninety-two, the law
27 in effect for each of those years shall be fully preserved
28 as to each such year.

CHAPTER 161

(S. B. 71—Originating in the Committee on Finance)

[Passed March 10, 1993; 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-one; preserving 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 to read as follows:

Article

23. **Busines 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-three, shall
13 be 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-two, 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-three, shall be given
19 effect.

20 (b) *Effective date.* — The amendments to this section
21 reenacted in the year one thousand nine hundred ninety-
22 three shall be retroactive and shall apply to taxable
23 years beginning on or after the first day of January, one
24 thousand nine hundred ninety-two, to the extent
25 allowable under federal income tax law. With respect
26 to taxable years that began prior to the first day of
27 January, one thousand nine hundred ninety-two, the law
28 in effect for each of those years shall be fully preserved
29 as to each such year.

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-three,
13 shall be given effect in determining the taxes imposed
14 by this article for any taxable year beginning the first
15 day of January, one thousand nine hundred ninety-two,
16 and thereafter, but no amendment to the laws of the
17 United States effective on or after the first day of
18 January, one thousand nine hundred ninety-three, shall
19 be given any 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.* — The amendments to this section
36 enacted in the year one thousand nine hundred ninety-
37 three 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-two, to the extent
40 allowable under federal income tax law. With respect
41 to taxable years that began prior to the first day of
42 January, one thousand nine hundred ninety-two, the law
43 in effect for each of those years shall be fully preserved
44 as to each such year.

CHAPTER 162

(H. B. 2773—By Delegates Reed, Manuel, Huffman,
Whitman and Trump)

[Passed April 10, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article two, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the enforcement of tax delinquencies by civil action; and the prosecution of such actions without the payment of fees and costs or the giving of bond or security.

Be it enacted by the Legislature of West Virginia:

That section two, article two, 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 2. DELINQUENCY AND METHODS OF ENFORCING PAYMENT.

§11A-2-2. Collection by civil action; fees and costs not required of sheriff.

1 (a) Taxes are hereby declared to be debts owing by
2 the taxpayer, for which he shall be personally liable.
3 After delinquency, the sheriff may enforce this liability
4 by appropriate action in any court of competent
5 jurisdiction. No such action shall be brought after five
6 years from the time the action accrued.

7 (b) In any such action, the sheriff shall be permitted
8 to prosecute the same without paying fees or costs, and
9 without providing bond or security, as may otherwise be
10 required of civil litigants by the provisions of this code,
11 and shall have all services and process, including the
12 services of witnesses, without paying therefor: *Provided,*
13 That where the sheriff recovers in or as the result of
14 such action, whether by way of settlement or judgment,
15 such fees and costs shall be recoverable from the
16 opposite party and upon receipt of any recovery, the
17 sheriff shall pay such fees or costs to the officer who
18 otherwise would have been entitled thereto but for the
19 provisions of this section.

CHAPTER 163

(H. B. 2082—By Delegates Martin, Love, Wallace and L. White)

[Passed April 8, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to repeal sections four, five and eight, article two-g, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections six, seven and ten of said article two-g, all relating to the tree fruit industry self-improvement assessment program; deleting provision for implementing or terminating the program by referendum of producers; deleting provision allowing refunds of assessments to producers; requiring promulgation of rules by board; requiring board to set amount of assessments by rule; continuation of program.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2G. TREE FRUIT INDUSTRY SELF-IMPROVEMENT ASSESSMENT PROGRAM.

§19-2G-6. Tree fruit industry self-improvement assessment board; administration of program; report to Legislature; rules and regulations.

§19-2G-7. Assessment on sales; reimbursement for collecting.

§19-2G-10. Continuation of program.

§19-2G-6. Tree fruit industry self-improvement assessment board; administration of program; report to Legislature; rules and regulations.

- 1 (a) There is hereby created a West Virginia tree fruit
- 2 self-improvement assessment board consisting of nine
- 3 persons who are residents of the state and citizens of the
- 4 United States and who are and have been actually
- 5 engaged in the industry of producing tree fruits for the
- 6 preceding five years. The nine persons who shall serve
- 7 as members of the board shall be appointed by the

8 governor for terms of three years and may serve
9 successive terms: *Provided*, That the initial appoint-
10 ments of members of the board shall be three members
11 to serve for terms of one year each, three members to
12 serve for terms of two years each and three members
13 to serve for terms of three years each.

14 (b) The governor shall make appointments to fill any
15 vacancies which may occur on the board and these
16 appointments shall be only for the unexpired term of the
17 position on the board. In making appointments to the
18 board, the governor shall consider the recommendations
19 made by organizations and groups in West Virginia
20 which are concerned with or engaged in the production
21 of tree fruits for the purpose of marketing tree fruits
22 to consumers or processors. If the governor fails to make
23 an appointment within ninety days after the expiration
24 of any term or within ninety days after a vacancy
25 occurs, the board shall, with the concurrence of a
26 majority of the members still serving, make the
27 necessary appointment. Each member shall hold office
28 until the expiration of his term or until a successor is
29 duly appointed and qualified.

30 (c) The board shall elect a chairman, a secretary and
31 a treasurer from its membership and shall meet at such
32 times and places as designated by call of the chairman
33 or by a majority of the board. All board meetings shall
34 be held in accordance with the state open meetings law.
35 A stipend shall be paid to each member from board
36 collections not to exceed thirty-five dollars per meeting
37 for each meeting actually attended, and each member
38 shall be reimbursed for his actual expenses incurred
39 with respect to each meeting for room, meals and
40 mileage in the same amount as is provided for by the
41 rules and regulations promulgated by the governor for
42 reimbursing state officials and employees of the state.
43 No board member may receive any other salary or
44 compensation for his services.

45 (d) The board may contract for services, employ and
46 discharge employees, provide for such facilities and
47 equipment as are necessary for the employees to
48 perform their duties and may cooperate with other state

49 or federal agencies or other organizations whose
50 activities may be beneficial to the purposes of this
51 article. The board may not expend funds to influence
52 legislation or for any political campaign.

53 (e) The board shall administer the tree fruit self-
54 improvement assessment program. All such activities
55 shall be directed toward increasing the sale of tree fruits
56 produced in the state without reference to any partic-
57 ular firm, individual, brand or trade name.

58 (f) The board shall submit a report, including a
59 complete fiscal accounting of its activities, to the
60 Legislature not later than the fifteenth day of January
61 of each year.

62 (g) The board shall promulgate rules and regulations
63 to carry out the purposes of this article after a public
64 hearing following due notice to all interested persons
65 and compliance with the provisions of the state admi-
66 nistrative procedures set forth in chapter twenty-nine-
67 a of this code.

**§19-2G-7. Assessment on sales; reimbursement for
collecting.**

1 (a) All tree fruit markets, packers, processors,
2 wholesalers, dealers and other persons, excluding
3 persons purchasing tree fruits for their personal
4 consumption or use, purchasing tree fruits, including
5 direct shipments from producers, shall deduct the
6 assessments, which shall be set by rules promulgated by
7 the board as provided for in section six of this article,
8 from the settlement for such tree fruit and to forward
9 it within thirty days to the treasurer of the board.

10 (b) The board shall keep accurate records of the
11 amounts of assessments and the dates on which they are
12 received, and of the expenditures of funds and the dates
13 on which they are made. These records shall be
14 preserved for at least five years.

§19-2G-10. Continuation of program.

1 Pursuant to the provisions of section four, article ten,
2 chapter four of this code, and following a preliminary

3 performance review conducted through the joint com-
4 mittee on government operations, the tree fruit industry
5 self-improvement assessment board shall continue to
6 exist until the first day of July, one thousand nine
7 hundred ninety-nine, to allow for the completion of an
8 audit by the joint committee on government operations.

CHAPTER 164

(Com. Sub. for S. B. 430—Originating in the Committee on the Judiciary)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five-s, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three, four, five, seven, eight, eight-a, eight-b, nine and eleven, article eight, chapter thirty-six of said code, all relating to taxation procedure and administration; permitting disclosure of certain business registration information to the state treasurer for recovery and disposition of unclaimed property; defining due diligence; reducing the time period for a presumption of abandonment of property from seven years to five years; clarifying state's authority to take custody of abandoned property; requiring the holder of unclaimed property to exercise due diligence to locate the whereabouts of the owner of the property; and definitions.

Be it enacted by the Legislature of West Virginia:

That section five-s, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one, two, three, four, five, seven, eight, eight-a, eight-b, nine and eleven, article eight, chapter thirty-six of said code be amended and reenacted, all to read as follows:

Chapter

11. Taxation.

36. Estates and Property.

CHAPTER 11. TAXATION.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-5s. Disclosure of certain taxpayer information.

1 (a) *Purpose.* — The Legislature hereby recognizes the
2 importance of confidentiality of taxpayer information as
3 a protection of taxpayers' privacy rights and to enhance
4 voluntary compliance with the tax law. The Legislature
5 also recognizes the citizens' right to accountable and
6 efficient state government. To accomplish these ends,
7 the Legislature hereby creates certain exceptions to the
8 general principle of confidentiality of taxpayer
9 information.

10 (b) *Exceptions to confidentiality.* —

11 (1) Notwithstanding any provision in this code to the
12 contrary, the tax commissioner shall publish in the state
13 register the name and address of every taxpayer, and
14 the amount, by category, of any credit asserted on a tax
15 return under articles thirteen-c, thirteen-d, thirteen-e,
16 thirteen-f, thirteen-g and thirteen-h of this chapter and
17 article one, chapter five-e of this code for any tax year
18 beginning on or after the first day of July, one thousand
19 nine hundred ninety-one. The categories by dollar
20 amount of credit received shall be as follows:

21 (A) More than \$1.00, but not more than \$50,000;

22 (B) More than \$50,000, but not more than \$100,000;

23 (C) More than \$100,000, but not more than \$250,000;

24 (D) More than \$250,000, but not more than \$500,000;

25 (E) More than \$500,000, but not more than \$1,000,000;

26 and

27 (F) More than \$1,000,000.

28 (2) Notwithstanding any provision in this code to the
29 contrary, the tax commissioner shall publish in the state
30 register the following information regarding any
31 compromise of a pending civil tax case that occurs on
32 or after the effective date of this section in which the
33 tax commissioner is required to seek the written

34 recommendation of the attorney general and the
35 attorney general has not recommended acceptance of
36 such compromise or when the tax commissioner com-
37 promises any civil tax case for an amount that is more
38 than two hundred fifty thousand dollars less than the
39 assessment of tax owed made by the tax commissioner:

40 (A) The names and addresses of taxpayers that are
41 parties to such compromise;

42 (B) A summary of such compromise;

43 (C) Any written advice or recommendation rendered
44 by the attorney general regarding such compromise;
45 and

46 (D) Any written advice or recommendation rendered
47 by the tax commissioner's staff.

48 Under no circumstances may the tax return of the
49 taxpayer nor any other information which would
50 otherwise be confidential under any other provisions of
51 law be disclosed pursuant to the provisions of this
52 subsection.

53 (3) Notwithstanding any provision in this code to the
54 contrary, the tax commissioner may disclose any
55 relevant return information to the prosecuting attorney
56 for the county in which venue lies for a criminal tax
57 offense when there is reasonable cause, based upon and
58 substantiated by such information, to believe that a
59 criminal tax law has been or is being violated.

60 (4) Notwithstanding any provision in this code to the
61 contrary, the tax commissioner may enter into written
62 exchange of information agreements with the commis-
63 sioners of labor, employment security and workers'
64 compensation to disclose and receive return information:
65 *Provided*, That the tax commissioner may promulgate
66 rules pursuant to chapter twenty-nine-a of this code
67 regarding further agencies with which written ex-
68 change of information agreements may be sought:
69 *Provided, however*, That the tax commissioner may not
70 promulgate emergency rules regarding further agencies
71 with which written exchange of information agreements
72 may be sought. Such agreements shall be published in

73 the state register and shall only be for the purpose of
74 facilitating premium collection, tax collection and
75 facilitating licensure requirements directly enforced,
76 administered or collected by the respective agencies.
77 The provisions of this subsection shall not be construed
78 to preclude or limit disclosure of tax information
79 authorized by other provisions of this code. Any
80 confidential return information so disclosed shall
81 remain confidential in the hands of such other division
82 to the extent provided by section five-d of this article
83 and by other applicable federal or state laws.

84 (5) Notwithstanding any provision of this code to the
85 contrary, the tax commissioner may enter into a written
86 agreement with the state treasurer to disclose to the
87 state treasurer the following business registration
88 information: (1) The names, addresses and federal
89 employer identification numbers of businesses which
90 have registered to do business in West Virginia; and (2)
91 the type of business activity and organization of those
92 businesses. Disclosure of such information shall begin as
93 soon as practicable after the effective date of this
94 subsection and may be used only for the purpose of
95 recovery and disposition of unclaimed property in
96 accordance with the provisions of article eight, chapter
97 thirty-six of this code. The provisions of this subsection
98 shall not be construed to preclude or limit disclosure of
99 tax information authorized by other provisions of this
100 code. Any confidential return information disclosed
101 hereunder or thereunder shall otherwise remain confi-
102 dential to the extent provided by section five-d of this
103 article and by other applicable federal or state laws.

104 (c) *Tax expenditure reports.* — Beginning on the
105 fifteenth day of January, one thousand nine hundred
106 ninety-two and every fifteenth day of January thereaf-
107 ter, the governor shall submit to the president of the
108 Senate and the speaker of the House of Delegates a tax
109 expenditure report. Such report shall expressly identify
110 all tax expenditures. Within three-year cycles, such
111 reports shall be considered together to analyze all tax
112 expenditures by describing the annual revenue loss and
113 benefits of the tax expenditure based upon information

114 available to the tax commissioner. For purposes of this
115 section, the term "tax expenditure" shall mean a
116 provision in the tax laws administered under this
117 article, including, but not limited to, exclusions,
118 deductions, tax preferences, credits and deferrals
119 designed to encourage certain kinds of activities or to
120 aid taxpayers in special circumstances: *Provided*, That
121 the tax commissioner shall promulgate rules setting
122 forth the procedure by which he or she will compile such
123 reports and setting forth a priority for the order in
124 which the reports will be compiled according to type of
125 tax expenditure.

126 (d) *Federal and state return information confidential.*
127 — Notwithstanding any other provisions of this section
128 or of this code, no return information made available to
129 the tax commissioner by the Internal Revenue Service
130 or department or agency of any other state may be
131 disclosed to another person in any manner inconsistent
132 with the provisions of Section 6103 of the Internal
133 Revenue Code of 1986, as amended, or of such other
134 states' confidentiality laws.

CHAPTER 36. ESTATES AND PROPERTY.

ARTICLE 8. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT.

- §36-8-1. Definitions and use of terms.
- §36-8-2. Property held by banking or financial organizations.
- §36-8-3. Unclaimed funds held by life insurance corporations.
- §36-8-4. Deposits and refunds held by utilities.
- §36-8-5. Undistributed dividends and distributions of business associations.
- §36-8-7. Property held by fiduciaries.
- §36-8-8. Property held by courts and public officers and agencies.
- §36-8-8.a Providing for recovery of abandoned property.
- §36-8-8b. Presumption of abandonment of personal property held by federal government.
- §36-8-9. Miscellaneous personal property held for another person; exception: prohibiting the levying of charges on inactive savings account.
- §36-8-11. Report of abandoned property.

§36-8-1. Definitions and use of terms.

- 1 As used in this article, unless the context otherwise
- 2 requires:

3 (a) "Banking organization" means any bank, trust
4 company or a private banker engaged in business in this
5 state, or a banking institution as defined in section one,
6 article four, chapter thirty-one of this code.

7 (b) "Business association" means any corporation
8 (other than a public corporation), joint stock company,
9 business trust, partnership or any association for
10 business purposes of two or more individuals.

11 (c) "Due diligence" shall include, but not be limited
12 to, the mailing of a letter by first-class mail to the last
13 known address of the owner as indicated on the records
14 of the holder.

15 (d) "Financial organization" means any savings and
16 loan association, building and loan association, indus-
17 trial loan company, credit union, business association
18 which issues travelers' checks or investment company
19 engaged in business in this state.

20 (e) "Holder" means any person in possession of
21 property subject to this article belonging to another, or
22 who is trustee in case of a trust, or is indebted to another
23 on an obligation subject to this article.

24 (f) "Life insurance corporation" means any association
25 or corporation transacting within this state the business
26 of insurance on the lives of persons or insurance
27 appertaining thereto, including, but not by way of
28 limitation, endowments and annuities.

29 (g) "Owner" means a depositor in case of a deposit,
30 a beneficiary in case of a trust, a creditor, claimant or
31 payee in case of other choses in action, or any person
32 having a legal or equitable interest in property subject
33 to this article or his legal representative.

34 (h) "Person" means any individual, business associa-
35 tion, government or political subdivision, public corpo-
36 ration, public authority, estate, trust, two or more
37 persons having a joint or common interest, or any other
38 legal or commercial entity; but shall not include any
39 retirement system supported entirely or in part by the
40 state of West Virginia.

41 (i) "Utility" means any person who owns or operates
42 within this state, for public use, any plant, equipment,
43 property, franchise or license for the transmission of
44 communications or the production, storage, transmis-
45 sion, sale, delivery or furnishing of electricity, water,
46 steam or gas.

§36-8-2. Property held by banking or financial organizations.

1 The following property held or owing by a banking
2 or financial organization is presumed abandoned:

3 (a) Any noninterest bearing demand, savings or
4 matured time deposit made in this state with a banking
5 organization, or other financial organization, excluding
6 any charges which may lawfully be withheld, if the
7 owner has not within the immediately preceding five
8 years increased or decreased the amount of the deposit:
9 *Provided*, That notwithstanding the fact that there has
10 been no increase or decrease in the amount of the deposit
11 within the five-year period, there shall be no presump-
12 tion of abandonment if the owner has within the
13 immediately preceding year:

14 (1) Corresponded in writing with the organization
15 concerning the deposit; or

16 (2) Otherwise indicated an interest in the deposit as
17 evidenced by a memorandum on file with the
18 organization.

19 In any case where the owner has taken any of the
20 actions specified in paragraph (1) or (2) of this subdivi-
21 sion there shall thereafter be no presumption of
22 abandonment unless and until another five years have
23 passed without any increase or decrease in the amount
24 of the deposit and without any of such actions having
25 been taken in the last year of such further five-year
26 period.

27 (b) Any interest bearing demand, savings or matured
28 time deposit made in this state with a banking organ-
29 ization or other financial organization, together with
30 any interest or dividend thereon, excluding any charges
31 that may lawfully be withheld, if the owner has not

32 within the immediately preceding fifteen years in-
33 creased or decreased the amount of the deposit: *Pro-*
34 *vided*, That notwithstanding the fact that there has been
35 no increase or decrease in the amount of the deposit
36 within the fifteen-year period, there shall be no
37 presumption of abandonment if the owner has within
38 the immediately preceding year:

39 (1) Presented the passbook or other similar evidence
40 of deposit for the crediting of interest; or

41 (2) Corresponded in writing with the organization
42 concerning the deposit; or

43 (3) Otherwise indicated an interest in the deposit as
44 evidenced by a memorandum on file with the
45 organization.

46 In any case where the owner has taken any of the
47 actions specified in paragraph (1), (2) or (3) of this
48 subdivision there shall thereafter be no presumption of
49 abandonment unless and until another fifteen years have
50 passed without any increase or decrease in the amount
51 of the deposit and without any of such actions having
52 been taken in the last year of such further fifteen-year
53 period.

54 (c) Any noninterest bearing funds paid in this state
55 toward the purchase of shares or other interest in a
56 financial organization or any deposit made therewith in
57 this state, excluding any charges that may lawfully be
58 withheld, if the owner has not within the immediately
59 preceding five years increased or decreased the amount
60 of the funds or deposit: *Provided*, That notwithstanding
61 the fact that there has been no increase or decrease in
62 the amount of the funds or deposit within said five-year
63 period, there shall be no presumption of abandonment
64 if the owner has within the immediately preceding year:

65 (1) Corresponded in writing with the financial
66 organization concerning the funds or deposit; or

67 (2) Otherwise indicated an interest in the funds or
68 deposit as evidenced by a memorandum on file with the
69 financial organization.

70 In any case where the owner has taken any of the
71 actions specified in paragraph (1) or (2) of this subdi-
72 vision there shall thereafter be no presumption of
73 abandonment unless and until another five years have
74 passed without any increase or decrease in the amount
75 of the funds or deposit and without any of such actions
76 having been taken in the last year of such further five-
77 year period.

78 (d) Any interest bearing funds paid in this state
79 toward the purchase of shares or other interest in a
80 financial organization or any deposit made therewith in
81 this state, and any interest or dividends thereon,
82 excluding any charges that may lawfully be withheld,
83 if the owner has not within the immediately preceding
84 fifteen years increased or decreased the amount of the
85 funds or deposit: *Provided*, That notwithstanding the
86 fact that there has been no increase or decrease in the
87 amount of the funds or deposit within said fifteen-year
88 period, there shall be no presumption of abandonment
89 if the owner has within the immediately preceding year:

90 (1) Presented an appropriate record for the crediting
91 of interest or dividends; or

92 (2) Corresponded in writing with the financial
93 organization concerning the funds or deposit; or

94 (3) Otherwise indicated an interest in the funds or
95 deposit as evidenced by a memorandum on file with the
96 financial organization.

97 In any case where the owner has taken any of the
98 actions specified in paragraph (1), (2) or (3) of this
99 subdivision (d), there shall thereafter be no presumption
100 of abandonment unless and until another fifteen years
101 have passed without any increase or decrease in the
102 amount of the funds or deposit and without any of such
103 actions having been taken in the last year of such
104 further fifteen-year period.

105 (e) Any sum payable on any check certified in this
106 state or on any written instrument issued in this state
107 on which a banking or financial organization is directly
108 liable, including, by way of illustration but not of

109 limitation, a certificate of deposit and draft that has
110 been outstanding for more than five years from the date
111 it was payable, or from the date of its issuance if payable
112 on demand, unless the owner has within the preceding
113 year corresponded in writing with the banking or
114 financial organization concerning it, or otherwise
115 indicated an interest as evidenced by a memorandum on
116 file with the banking or financial organization.

117 (f) Any funds or other personal property, tangible or
118 intangible, removed from a safe-deposit box or any other
119 safekeeping depository in this state on which the lease
120 or rental period has expired due to nonpayment of rental
121 charges or other reason, or any surplus amounts arising
122 from the sale thereof pursuant to law, that have been
123 unclaimed by the owner for more than five years from
124 the date on which the lease or rental period expired.

125 (g) No holder may impose with respect to property
126 described in this section any charges due to dormancy
127 or inactivity or cease payment of interest unless there
128 is an enforceable written contract between the holder
129 and the owner of the property pursuant to which the
130 holder may impose those charges or cease payment of
131 interest.

132 (h) Any amount held or owing by any organization for
133 the payment of a travelers check on which such
134 organization is directly liable shall be presumed
135 abandoned if such amount is held or owing for payment
136 of a travelers check which shall have been outstanding
137 for more than fifteen years from the date of its sale.

§36-8-3. Unclaimed funds held by life insurance corporations.

1 (a) Unclaimed funds, as defined in this section, held
2 and owing by a life insurance corporation shall be
3 presumed abandoned if the last-known address, accord-
4 ing to the records of the corporation, of the person
5 entitled to the funds is within this state. If a person
6 other than the insured or annuitant is entitled to the
7 funds and no address of such person is known to the
8 corporation or if it is not definite and certain from the
9 records of the corporation what person is entitled to the

10 funds, it is presumed that the last-known address of the
11 person entitled to the funds is the same as the last-
12 known address of the insured or annuitant according to
13 the records of the corporation.

14 (b) "Unclaimed funds," as used in this section, means
15 all moneys held and owing by any life insurance
16 corporation unclaimed and unpaid for more than five
17 years after the moneys became due and payable as
18 established from the records of the corporation under
19 any life or endowment insurance policy or annuity
20 contract which has matured or terminated. A life
21 insurance policy not matured by actual proof of the
22 death of the insured is deemed to be matured and the
23 proceeds thereof are deemed to be due and payable if
24 such policy was in force when the insured attained the
25 limiting age under the mortality table on which the
26 reserve is based, unless the person appearing entitled
27 thereto has within the preceding five years: (1) As-
28 signed, readjusted or paid premiums on the policy, or
29 subjected the policy to loan; or (2) corresponded in
30 writing with the life insurance corporation concerning
31 the policy. Moneys otherwise payable according to the
32 records of the corporation are deemed due and payable
33 although the policy or contract has not been surrendered
34 as required.

§36-8-4. Deposits and refunds held by utilities.

1 The following funds held or owing by any utility are
2 presumed abandoned:

3 (a) Any deposit made subsequent to the year one
4 thousand nine hundred fifty-seven, by a subscriber with
5 a utility to secure payment for, or any sum paid in
6 advance for, utility services to be furnished in this state,
7 less any lawful deductions, that has remained unclaimed
8 by the person appearing on the records of the utility
9 entitled thereto for more than five years after the
10 termination of the services for which the deposit or
11 advance payment was made.

12 (b) Any sum which a utility has been ordered to
13 refund and which was received subsequent to the year
14 one thousand nine hundred fifty-seven, for utility

15 services rendered in this state, together with any
16 interest thereon, less any lawful deductions, that has
17 remained unclaimed by the person appearing on the
18 records of the utility entitled thereto for more than five
19 years after the date it became payable in accordance
20 with the final determination or order providing for the
21 refund.

**§36-8-5. Undistributed dividends and distributions of
business associations.**

1 Any stock or other certificate of ownership, or any
2 dividend, profit, distribution, interest, payment on
3 principal or other sum held or owing by a business
4 association for or to a shareholder, certificate holder,
5 member, bondholder or other security holder, or a
6 participating patron of a cooperative, who has not
7 claimed it or corresponded in writing with the business
8 association concerning it, within five years after the date
9 prescribed for payment or delivery, is presumed
10 abandoned if:

11 (a) It is held or owing by a business association
12 organized under the laws of or created in this state; or

13 (b) It is held or owing by a business association doing
14 business in this state, but not organized under the laws
15 of or created in this state and the records of the business
16 association indicate that the last-known address of the
17 person entitled thereto is in this state.

§36-8-7. Property held by fiduciaries.

1 All intangible personal property and any income or
2 increment thereon, held in a fiduciary capacity for the
3 benefit of another person is presumed abandoned unless
4 the owner has, within five years after the final date for
5 distribution of such property and the cessation of all
6 active fiduciary duties as required by law or the
7 instrument under which the fiduciary is acting, in-
8 creased or decreased the principal, accepted payment of
9 principal or income, corresponded in writing with the
10 fiduciary concerning the property, or otherwise indi-
11 cated an interest as evidenced by a memorandum on file
12 with the fiduciary:

13 (a) If the property is held by a banking organization
14 or a financial organization, or by a business association
15 organized under the laws of or created in this state; or

16 (b) If it is held by a business association, doing
17 business in this state, but not organized under the laws
18 of or created in this state, and the records of the business
19 association indicate that the last-known address of the
20 person entitled thereto is in this state; or

21 (c) If it is held in this state by any other person.

§36-8-8. Property held by courts and public officers and agencies.

1 (a) All intangible personal property held for the
2 owner by any state or federal court, public corporation,
3 public authority or public officer in this state, or a
4 political subdivision thereof, that has remained un-
5 claimed by the owner for more than five years is
6 presumed abandoned: *Provided*, That this provision
7 shall in no way affect such property in the custody or
8 control of any state or federal court in any pending
9 action: *Provided, however*, That if any federal statute
10 provides for the distribution of any unclaimed property
11 subject to the jurisdiction of a federal court, this statute
12 shall not apply.

13 (b) Notwithstanding the provisions of subsection (a) of
14 this section, all intangible personal property in the
15 custody or control of a general receiver of a state court
16 of record appointed pursuant to the provisions of article
17 six, chapter fifty-one of this code, that has remained
18 unclaimed by the owner for more than five years is
19 presumed abandoned: *Provided*, That any such property
20 in the custody or control of any such general receiver
21 in which there is any contingent remainder interest, or
22 any vested remainder interest which is subject to open
23 to let in persons not yet in being or to open to let in
24 members of any class, or any executory interest, or
25 executory devise interest, or any base, qualified,
26 conditional or limited fee estate or interest, or any other
27 qualified, conditional, limited or determinable estate or
28 interest, shall not be presumed abandoned until such
29 property has remained unclaimed for more than five

30 years after such estate or interest has vested or any such
31 class has closed and the persons entitled to such
32 property have been determined.

§36-8-8a. Providing for recovery of abandoned property.

1 With respect to property originating or issued by this
2 state, any political subdivision thereof or any entity
3 incorporated, organized, created or otherwise located
4 therein, the following provision shall apply:

5 (a) Unless presumed abandoned and subject to the
6 custody of this state by any other provision of law, all
7 intangible property, including, but not limited to, any
8 interest, dividend, or other earnings thereon, less any
9 lawful charges, that is held by a business association,
10 federal, state or local government or person or entity,
11 regardless of where the holder may be found, is
12 presumed abandoned and subject to the custody of this
13 state as unclaimed property if:

14 (1) The address of the owner was never known or the
15 last-known address of the owner is unknown; and

16 (2) The entity originating or issuing the intangible
17 property is in this state or any of its political subdivi-
18 sions or is incorporated, organized, created or otherwise
19 located in this state.

20 (b) Subsection (a) of this section shall apply to all
21 property held at the time of enactment or at anytime
22 thereafter regardless of when such property became or
23 becomes presumptively abandoned.

**§36-8-8b. Presumption of abandonment of personal
property held by federal government.**

1 (a) All tangible personal property or intangible
2 personal property, including choses in action in amounts
3 certain, and all debts owed, entrusted funds or other
4 property held by any federal, state or local government
5 or governmental subdivision, agency, entity, officer or
6 appointee thereof, shall be presumed abandoned in this
7 state if the last-known address of the owner of the
8 property is in this state and the property has remained
9 unclaimed for five years: *Provided*, That if another

10 provision of law provides for a presumption of abandon-
11 ment and custodial taking of the subject property by this
12 state upon the passage of a longer period of time, such
13 longer period of time shall control.

14 (b) This section shall apply to all abandoned property
15 held by any federal, state or local government or
16 governmental subdivision, agency, entity, officer or
17 appointee thereof, at the time of enactment, or at any
18 time thereafter, regardless of when such property
19 became or becomes presumptively abandoned.

**§36-8-9. Miscellaneous personal property held for
another person; exception; prohibiting the
levying of charges on inactive savings
account.**

1 All personal property not otherwise covered by this
2 article, including any income or increment thereon and
3 after deducting any lawful charges, that is held or
4 owing in this state in the ordinary course of the holder's
5 business and has remained unclaimed by the owner for
6 more than five years after it became payable or
7 distributable is presumed abandoned: *Provided*, That
8 this section shall not apply to such property held or
9 owing by a utility prior to the year one thousand nine
10 hundred fifty-seven: *Provided, however*, That notwith-
11 standing the provisions of section two of this article, no
12 banking or other financial organization or institution
13 shall, after the effective date of this section, demand,
14 collect, charge or contract to receive any charge due to
15 dormancy or inactivity on any interest bearing savings
16 or time deposit for any period of time prior to the
17 withdrawal of such funds by the depositor, his personal
18 agent or representative, or the accrual under this article
19 of the right of the state to deposit or sell as abandoned
20 property any such deposit. For purposes of this proviso,
21 any interest bearing savings or time deposit shall be
22 deemed to be dormant or inactive if the depositor, his
23 personal agent or representative has not within the
24 immediately preceding two years increased or decreased
25 the amount of the deposit.

§36-8-11. Report of abandoned property.

1 (a) Every person holding funds or other property,
2 tangible or intangible, presumed abandoned under this
3 article shall report to the state treasurer with respect
4 to the property as hereinafter provided.

5 (b) The report shall be verified and shall include:

6 (1) The name, if known, and last-known address, if
7 any, of each person appearing from the records of the
8 holder to be the owner of any property of the value of
9 fifty dollars or more presumed abandoned under this
10 article;

11 (2) In case of unclaimed funds of life insurance
12 corporations, the full name of the insured or annuitant
13 and his last-known address according to the life
14 insurance corporation's records;

15 (3) The nature and identifying number, if any, or
16 description of the property and the amount appearing
17 from the records to be due, except that items of value
18 under fifty dollars each may be reported in aggregate;

19 (4) The date when the property became payable,
20 demandable or returnable and the date of the last
21 transaction with the owner with respect to the property;
22 and

23 (5) Other information which the state treasurer
24 prescribes by rule as necessary for the administration
25 of this article.

26 (c) If the person holding property presumed aban-
27 doned is a successor to other persons who previously
28 held the property for the owner, or if the holder has
29 changed his name while holding the property, he shall
30 file with his report all prior known names and addresses
31 of each holder of the property.

32 (d) The report shall be filed before the thirty-first day
33 of March of each year as of the thirty-first day of
34 December next preceding. The state treasurer may
35 postpone the reporting date upon written request by any
36 person required to file a report.

37 (e) If the holder of property presumed abandoned
38 under this chapter knows the whereabouts of the owner,

39 the holder shall, before filing the annual report,
40 communicate with the owner and take necessary steps
41 to prevent abandonment from being presumed. All
42 holders shall exercise due diligence, as defined in
43 subdivision (c), section one of this article, at least sixty
44 days but no more than one hundred twenty days prior
45 to submission of the report to ascertain the whereabouts
46 of the owner if: (1) The holder has in its records an
47 address for the apparent owner which the holder's
48 records do not disclose to be inaccurate; and (2) the
49 property has a value of fifty dollars or more.

50 (f) Verification, if made by a partnership, shall be
51 executed by a partner; if made by an unincorporated
52 association or private corporation, by an officer; and if
53 made by a public corporation, by its chief fiscal officer.

54 (g) The initial report filed under this article shall
55 include all items of property which, under the provisions
56 hereof, would have been presumed abandoned on the
57 effective date of this article had this article been in
58 effect on the first day of July, one thousand nine
59 hundred fifty-two.

60 (h) The state treasurer may at reasonable times and
61 upon reasonable notice examine the records of any
62 person if he has reason to believe that the person has
63 failed to report property that should have been reported
64 pursuant to this section.

65 (i) Every person filing a report shall deliver or pay
66 to the state treasurer all abandoned property specified
67 in the report, at the time of the report.

68 If an examination of the records of a person results
69 in disclosure of property reportable and deliverable
70 under this section, the treasurer may assess the cost of
71 the examination against the holder at a rate established
72 by administrative regulation promulgated pursuant to
73 chapter twenty-nine-a of this code, but in no case may
74 the charges exceed the value of the property found to
75 be reportable and deliverable.

CHAPTER 165

(H. B. 2626—By Delegates L. White, Manuel, Pethel,
Gallagher, Kessel, Pino and Tribett)

[Passed April 10, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article six-a of said chapter, all relating to unemployment compensation coverage and benefits.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

Article

1. Bureau of Employment Programs.
- 6A. Extended Benefits Program.

ARTICLE 1. BUREAU OF EMPLOYMENT PROGRAMS.

§21A-1-3. Definitions.

- 1 As used in this chapter, unless the context clearly
- 2 requires otherwise:
- 3 “Administration fund” means the employment secur-
- 4 ity administration fund, from which the administrative
- 5 expenses under this chapter shall be paid.
- 6 “Annual payroll” means the total amount of wages for
- 7 employment paid by an employer during a twelve-
- 8 month period ending with the thirtieth day of June of
- 9 any calendar year.
- 10 “Average annual payroll” means the average of the
- 11 last three annual payrolls of an employer.

12 “Base period” means the first four out of the last five
13 completed calendar quarters immediately preceding the
14 first day of the individual benefit year.

15 “Base period employer” means any employer who in
16 the base period for any benefit year paid wages to an
17 individual who filed claim for unemployment compen-
18 sation within such benefit year.

19 “Base period wages” means wages paid to an individ-
20 ual during the base period by all his base period
21 employers.

22 “Benefit year” with respect to an individual means the
23 fifty-two-week period beginning with the first day of the
24 calendar week in which a valid claim is effective, and
25 thereafter the fifty-two-week period beginning with the
26 first day of the calendar week in which such individual
27 next files a valid claim for benefits after the termination
28 of his last preceding benefit year; however, if a claim
29 is effective on the first day of a quarter, the benefit year
30 will be fifty-three weeks, in order to prevent an
31 overlapping of the base period wages. An initial claim
32 for benefits filed in accordance with the provisions of
33 this chapter shall be considered to be a valid claim
34 within the purposes of this definition if the individual
35 has been paid wages in his base period sufficient to
36 make him eligible for benefits under the provisions of
37 this chapter.

38 “Benefits” means the money payable to an individual
39 with respect to his unemployment.

40 “Board” means board of review.

41 “Calendar quarter” means the period of three consec-
42 utive calendar months ending on the thirty-first day of
43 March, the thirtieth day of June, the thirtieth day of
44 September, the thirty-first day of December, or the
45 equivalent thereof as the commissioner may by regula-
46 tion prescribe.

47 “Commissioner” means the bureau of employment
48 programs’ commissioner.

49 “Computation date” means the thirtieth day of June

50 the year immediately preceding the first day of January
51 on which an employer's contribution rate becomes
52 effective.

53 "Employing unit" means an individual, or type of
54 organization, including any partnership, association,
55 trust, estate, joint-stock company, insurance company,
56 corporation (domestic or foreign), state or political
57 subdivision thereof, or their instrumentalities, as
58 provided in paragraph (b), subdivision (9) of the
59 definition of "employment" in this section, institution of
60 higher education, or the receiver, trustee in bankruptcy,
61 trustee or successor thereof, or the legal representative
62 of a deceased person, which has on the first day of
63 January, one thousand nine hundred thirty-five, or
64 subsequent thereto, had in its employ one or more
65 individuals performing service within this state.

66 "Employer" means:

67 (1) Until the first day of January, one thousand nine
68 hundred seventy-two, any employing unit which for
69 some portion of a day, not necessarily simultaneously, in
70 each of twenty different calendar weeks, which weeks
71 need not be consecutive, within either the current
72 calendar year, or the preceding calendar year, has had
73 in employment four or more individuals irrespective of
74 whether the same individuals were or were not em-
75 ployed on each of such days;

76 (2) Any employing unit which is or becomes a liable
77 employer under any federal unemployment tax act;

78 (3) Any employing unit which has acquired or
79 acquires the organization, trade or business, or substan-
80 tially all the assets thereof, of an employing unit which
81 at the time of such acquisition was an employer subject
82 to this chapter;

83 (4) Any employing unit which, after the thirty-first
84 day of December, one thousand nine hundred sixty-
85 three, and until the first day of January, one thousand
86 nine hundred seventy-two, in any one calendar quarter,
87 in any calendar year, has in employment four or more
88 individuals and has paid wages for employment in the

89 total sum of five thousand dollars or more, or which,
90 after such date, has paid wages for employment in any
91 calendar year in the sum total of twenty thousand
92 dollars or more;

93 (5) Any employing unit which, after the thirty-first
94 day of December, one thousand nine hundred sixty-
95 three, and until the first day of January, one thousand
96 nine hundred seventy-two, in any three-week period, in
97 any calendar year, has in employment ten or more
98 individuals;

99 (6) For the effective period of its election pursuant to
100 section three, article five of this chapter, any employing
101 unit which has elected to become subject to this chapter;

102 (7) Any employing unit which, after the thirty-first
103 day of December, one thousand nine hundred seventy-
104 one, (i) in any calendar quarter in either the current or
105 preceding calendar year paid for service in employment
106 wages of one thousand five hundred dollars or more, or
107 (ii) for some portion of a day in each of twenty different
108 calendar weeks, whether or not such weeks were
109 consecutive, in either the current or the preceding
110 calendar year had in employment at least one individual
111 (irrespective of whether the same individual was in
112 employment in each such day) except as provided in
113 subdivisions (11) and (12) hereof;

114 (8) Any employing unit for which service in employ-
115 ment, as defined in subdivision (9) of the definition of
116 "employment" in this section, is performed after the
117 thirty-first day of December, one thousand nine hundred
118 seventy-one;

119 (9) Any employing unit for which service in employ-
120 ment, as defined in subdivision (10) of the definition of
121 "employment" in this section, is performed after the
122 thirty-first day of December, one thousand nine hundred
123 seventy-one;

124 (10) Any employing unit for which service in employ-
125 ment, as defined in paragraphs (b) and (c) of subdivision
126 (9) of the definition of "employment" in this section, is
127 performed after the thirty-first day of December, one

128 thousand nine hundred seventy-seven;

129 (11) Any employing unit for which agricultural labor,
130 as defined in subdivision (12) of the definition of
131 "employment" in this section, is performed after the
132 thirty-first day of December, one thousand nine hundred
133 seventy-seven; or

134 (12) Any employing unit for which domestic service
135 in employment, as defined in subdivision (13) of the
136 definition of "employment" in this section, is performed
137 after the thirty-first day of December, one thousand nine
138 hundred seventy-seven.

139 "Employment", subject to the other provisions of this
140 section, means:

141 (1) Service, including service in interstate commerce,
142 performed for wages or under any contract of hire,
143 written or oral, express or implied;

144 (2) Any service performed prior to the first day of
145 January, one thousand nine hundred seventy-two, which
146 was employment as defined in this section prior to such
147 date and, subject to the other provisions of this section,
148 service performed after the thirty-first day of De-
149 cember, one thousand nine hundred seventy-one, by an
150 employee, as defined in section 3306 (i) of the Federal
151 Unemployment Tax Act, including service in interstate
152 commerce;

153 (3) Any service performed prior to the first day of
154 January, one thousand nine hundred seventy-two, which
155 was employment as defined in this section prior to such
156 date and, subject to the other provisions of this section,
157 service performed after the thirty-first day of De-
158 cember, one thousand nine hundred seventy-one, includ-
159 ing service in interstate commerce, by any officer of a
160 corporation;

161 (4) An individual's entire service, performed within or
162 both within and without this state if: (a) The service is
163 localized in this state, or (b) the service is not localized
164 in any state but some of the service is performed in this
165 state and (i) the base of operations, or, if there is no base
166 of operations, then the place from which such service is

167 directed or controlled, is in this state; or (ii) the base of
168 operations or place from which such service is directed
169 or controlled is not in any state in which some part of
170 the service is performed but the individual's residence
171 is in this state;

172 (5) Service not covered under paragraph (4) of this
173 subdivision and performed entirely without this state
174 with respect to no part of which contributions are
175 required and paid under an unemployment compensa-
176 tion law of any other state or of the federal government,
177 is employment subject to this chapter if the individual
178 performing such services is a resident of this state and
179 the commissioner approves the election of the employing
180 unit for whom such services are performed that the
181 entire service of such individual is employment subject
182 to this chapter;

183 (6) Service is localized within a state, if: (a) The
184 service is performed entirely within such state; or (b) the
185 service is performed both within and without such state,
186 but the service performed without such state is inci-
187 dental to the individual's service within this state, as, for
188 example, is temporary or transitory in nature or consists
189 of isolated transactions;

190 (7) Services performed by an individual for wages are
191 employment subject to this chapter unless and until it
192 is shown to the satisfaction of the commissioner that: (a)
193 Such individual has been and will continue to be free
194 from control or direction over the performance of such
195 services, both under his contract of service and in fact;
196 and (b) such service is either outside the usual course
197 of the business for which such service is performed or
198 that such service is performed outside of all the places
199 of business of the enterprise for which such service is
200 performed; and (c) such individual is customarily
201 engaged in an independently established trade, occupa-
202 tion, profession or business;

203 (8) All service performed by an officer or member of
204 the crew of an American vessel (as defined in section
205 three hundred five of an act of Congress entitled Social
206 Security Act Amendment of 1946, approved the tenth

207 day of August, one thousand nine hundred forty-six), on
208 or in connection with such vessel, provided that the
209 operating office, from which the operations of such
210 vessel operating on navigable waters within and without
211 the United States is ordinarily and regularly supervised,
212 managed, directed and controlled, is within this state;

213 (9) (a) Service performed after the thirty-first day of
214 December, one thousand nine hundred seventy-one, by
215 an individual in the employ of this state or any of its
216 instrumentalities (or in the employ of this state and one
217 or more other states or their instrumentalities) for a
218 hospital or institution of higher education located in this
219 state: *Provided*, That such service is excluded from
220 "employment" as defined in the Federal Unemployment
221 Tax Act solely by reason of section 3306 (c) (7) of that
222 act and is not excluded from "employment" under
223 subdivision (11) of the exclusion from employment in
224 this section;

225 (b) Service performed after the thirty-first day of
226 December, one thousand nine hundred seventy-seven, in
227 the employ of this state or any of its instrumentalities
228 or political subdivisions thereof or any of its instrumen-
229 talities or any instrumentality of more than one of the
230 foregoing or any instrumentality of any foregoing and
231 one or more other states or political subdivisions:
232 *Provided*, That such service is excluded from "employ-
233 ment" as defined in the Federal Unemployment Tax Act
234 by section 3306 (c) (7) of that act and is not excluded
235 from "employment" under subdivision (15) of the
236 exclusion from employment in this section; and

237 (c) Service performed after the thirty-first day of
238 December, one thousand nine hundred seventy-seven, in
239 the employ of a nonprofit educational institution which
240 is not an institution of higher education;

241 (10) Service performed after the thirty-first day of
242 December, one thousand nine hundred seventy-one, by
243 an individual in the employ of a religious, charitable,
244 educational or other organization but only if the
245 following conditions are met:

246 (a) The service is excluded from "employment" as

247 defined in the Federal Unemployment Tax Act solely by
248 reason of section 3306 (c) (8) of that act; and

249 (b) The organization had four or more individuals in
250 employment for some portion of a day in each of twenty
251 different weeks, whether or not such weeks were
252 consecutive, within either the current or preceding
253 calendar year, regardless of whether they were em-
254 ployed at the same moment of time;

255 (11) Service of an individual who is a citizen of the
256 United States, performed outside the United States
257 after the thirty-first day of December, one thousand nine
258 hundred seventy-one (except in Canada and in the case
259 of Virgin Islands after the thirty-first day of December,
260 one thousand nine hundred seventy-one, and before the
261 first day of January, the year following the year in
262 which the secretary of labor approves for the first time
263 an unemployment insurance law submitted to him by
264 the Virgin Islands for approval) in the employ of an
265 American employer (other than service which is
266 considered "employment" under the provisions of
267 subdivision (4), (5) or (6) of this definition of "employ-
268 ment" or the parallel provisions of another state's law)
269 if:

270 (a) The employer's principal place of business in the
271 United States is located in this state; or

272 (b) The employer has no place of business in the
273 United States, but (i) the employer is an individual who
274 is a resident of this state; or (ii) the employer is a
275 corporation which is organized under the laws of this
276 state; or (iii) the employer is a partnership or a trust
277 and the number of the partners or trustees who are
278 residents of this state is greater than the number who
279 are residents of any one other state; or

280 (c) None of the criteria of subparagraphs (a) and (b)
281 of this subdivision (11) is met but the employer has
282 elected coverage in this state or, the employer having
283 failed to elect coverage in any state, the individual has
284 filed a claim for benefits, based on such service, under
285 the law of this state.

286 An "American employer", for purposes of this
287 subdivision (11), means a person who is (i) an individual
288 who is a resident of the United States; or (ii) a
289 partnership if two thirds or more of the partners are
290 residents of the United States; or (iii) a trust, if all of
291 the trustees are residents of the United States; or (iv)
292 a corporation organized under the laws of the United
293 States or of any state;

294 (12) Service performed after the thirty-first day of
295 December, one thousand nine hundred seventy-seven, by
296 an individual in agricultural labor as defined in
297 subdivision (5) of the exclusions from employment in
298 this section when:

299 (a) Such service is performed for a person who (i)
300 during any calendar quarter in either the current or the
301 preceding calendar year paid remuneration in cash of
302 twenty thousand dollars or more to individuals em-
303 ployed in agricultural labor including labor performed
304 by an alien referred to in paragraph (b) of this
305 subdivision (12); or (ii) for some portion of a day in each
306 of twenty different calendar weeks, whether or not such
307 weeks were consecutive, in either the current or the
308 preceding calendar year, employed in agricultural
309 labor, including labor performed by an alien referred
310 to in paragraph (b) of this subdivision (12), ten or more
311 individuals, regardless of whether they were employed
312 at the same moment of time;

313 (b) Such service is not performed in agricultural labor
314 if performed before the first day of January, one
315 thousand nine hundred ninety-five, by an individual who
316 is an alien admitted to the United States to perform
317 service in agricultural labor pursuant to sections 214 (c)
318 and 101 (a) (15) (H) of the Immigration and Nationality
319 Act;

320 (c) For the purposes of the definition of employment,
321 any individual who is a member of a crew furnished by
322 a crew leader to perform service in agricultural labor
323 for any other person shall be treated as an employee of
324 such crew leader: (i) If such crew leader holds a valid
325 certificate of registration under the Migrant and

326 Seasonal Agricultural Worker Protection Act; or
327 substantially all the members of such crew operate or
328 maintain tractors, mechanized harvesting or crop-
329 dusting equipment, or any other mechanized equipment,
330 which is provided by such crew leader; and (ii) if such
331 individual is not an employee of such other person
332 within the meaning of subdivision (7) of the definition
333 of employer;

334 (d) For the purposes of this subdivision (12), in the
335 case of any individual who is furnished by a crew leader
336 to perform service in agricultural labor for any other
337 person and who is not treated as an employee of such
338 crew leader under subparagraph (c) of this subdivision
339 (12): (i) Such other person and not the crew leader shall
340 be treated as the employer of such individual; and (ii)
341 such other person shall be treated as having paid cash
342 remuneration to such individual in an amount equal to
343 the amount of cash remuneration paid to such individual
344 by the crew leader (either on his own behalf or on behalf
345 of such other person) for the service in agricultural
346 labor performed for such other person; and

347 (e) For the purposes of this subdivision (12), the term
348 "crew leader" means an individual who: (i) Furnishes
349 individuals to perform service in agricultural labor for
350 any other person; (ii) pays (either on his own behalf or
351 on behalf of such other person) the individuals so
352 furnished by him for the service in agricultural labor
353 performed by them, and (iii) has not entered into a
354 written agreement with such other person under which
355 such individual is designated as an employee of such
356 other person;

357 (13) The term "employment" includes domestic service
358 after the thirty-first day of December, one thousand nine
359 hundred seventy-seven, in a private home, local college
360 club or local chapter of a college fraternity or sorority
361 performed for a person who paid cash remuneration of
362 one thousand dollars or more after the thirty-first day
363 of December, one thousand nine hundred seventy-seven,
364 in any calendar quarter in the current calendar year or
365 the preceding calendar year to individuals employed in
366 such domestic service.

367 Notwithstanding the foregoing definition of “employ-
368 ment”, if the services performed during one half or more
369 of any pay period by an employee for the person
370 employing him constitute employment, all the services
371 of such employee for such period are employment; but
372 if the services performed during more than one half of
373 any such pay period by an employee for the person
374 employing him do not constitute employment, then none
375 of the services of such employee for such period are
376 employment.

377 The term “employment” does not include:

378 (1) Service performed in the employ of this state or
379 any political subdivision thereof, or any instrumentality
380 of this state or its subdivisions, except as otherwise
381 provided herein until the thirty-first day of December,
382 one thousand nine hundred seventy-seven;

383 (2) Service performed directly in the employ of
384 another state, or its political subdivisions, except as
385 otherwise provided in paragraph (a), subdivision (9) of
386 the definition of “employment”, until the thirty-first day
387 of December, one thousand nine hundred seventy-seven;

388 (3) Service performed in the employ of the United
389 States or any instrumentality of the United States
390 exempt under the constitution of the United States from
391 the payments imposed by this law, except that to the
392 extent that the Congress of the United States shall
393 permit states to require any instrumentalities of the
394 United States to make payments into an unemployment
395 fund under a state unemployment compensation law, all
396 of the provisions of this law shall be applicable to such
397 instrumentalities and to service performed for such
398 instrumentalities in the same manner, to the same
399 extent and on the same terms as to all other employers,
400 employing units, individuals and services: *Provided*,
401 That if this state shall not be certified for any year by
402 the secretary of labor under section 1603 (c) of the
403 federal Internal Revenue Code, the payments required
404 of such instrumentalities with respect to such year shall
405 be refunded by the commissioner from the fund in the
406 same manner and within the same period as is provided

407 in section nineteen, article five of this chapter, with
408 respect to payments erroneously collected;

409 (4) Service performed after the thirtieth day of June,
410 one thousand nine hundred thirty-nine, with respect to
411 which unemployment compensation is payable under the
412 Railroad Unemployment Insurance Act and service with
413 respect to which unemployment benefits are payable
414 under an unemployment compensation system for
415 maritime employees established by an act of Congress.
416 The commissioner may enter into agreements with the
417 proper agency established under such an act of Congress
418 to provide reciprocal treatment to individuals who, after
419 acquiring potential rights to unemployment compensa-
420 tion under an act of Congress, or who have, after
421 acquiring potential rights to unemployment compensa-
422 tion under an act of Congress, acquired rights to benefit
423 under this chapter. Such agreement shall become
424 effective ten days after such publications which shall
425 comply with the general rules of the department;

426 (5) Service performed by an individual in agricultural
427 labor, except as provided in subdivision (12) of the
428 definition of "employment" in this section. For purposes
429 of this subdivision (5), the term "agricultural labor"
430 includes all services performed:

431 (a) On a farm, in the employ of any person, in
432 connection with cultivating the soil, or in connection
433 with raising or harvesting any agricultural or horticul-
434 tural commodity, including the raising, shearing,
435 feeding, caring for, training and management of
436 livestock, bees, poultry, and fur-bearing animals and
437 wildlife;

438 (b) In the employ of the owner or tenant or other
439 operator of a farm, in connection with the operation,
440 management, conservation, improvement or mainte-
441 nance of such farm and its tools and equipment, or in
442 salvaging timber or clearing land of brush and other
443 debris left by a hurricane, if the major part of such
444 service is performed on a farm;

445 (c) In connection with the production or harvesting of
446 any commodity defined as an agricultural commodity in

447 section fifteen (g) of the Agricultural Marketing Act, as
448 amended, or in connection with the ginning of cotton,
449 or in connection with the operation or maintenance of
450 ditches, canals, reservoirs or waterways, not owned or
451 operated for profit, used exclusively for supplying and
452 storing water for farming purposes;

453 (d) (i) In the employ of the operator of a farm in
454 handling, planting, drying, packing, packaging, process-
455 ing, freezing, grading, storing or delivering to storage
456 or to market or to a carrier for transportation to market,
457 in its unmanufactured state, any agricultural or
458 horticultural commodity; but only if such operator
459 produced more than one half of the commodity with
460 respect to which such service is performed; or (ii) in the
461 employ of a group of operators of farms (or a cooperative
462 organization of which such operators are members) in
463 the performance of service described in clause (i), but
464 only if such operators produced more than one half of
465 the commodity with respect to which such service is
466 performed; but the provisions of clauses (i) and (ii) are
467 not applicable with respect to service performed in
468 connection with commercial canning or commercial
469 freezing or in connection with any agricultural or
470 horticultural commodity after its delivery to a terminal
471 market for distribution for consumption;

472 (e) On a farm operated for profit if such service is not
473 in the course of the employer's trade or business or is
474 domestic service in a private home of the employer. As
475 used in this subdivision (5), the term "farm" includes
476 stock, dairy, poultry, fruit, fur-bearing animals, truck
477 farms, plantations, ranches, greenhouses, ranges and
478 nurseries, or other similar land areas or structures used
479 primarily for the raising of any agricultural or horti-
480 cultural commodities;

481 (6) Domestic service in a private home except as
482 provided in subdivision (13) of the definition of "employ-
483 ment" in this section;

484 (7) Service performed by an individual in the employ
485 of his son, daughter or spouse;

486 (8) Service performed by a child under the age of

- 487 eighteen years in the employ of his father or mother;
- 488 (9) Service as an officer or member of a crew of an
489 American vessel, performed on or in connection with
490 such vessel, if the operating office, from which the
491 operations of the vessel operating on navigable waters
492 within or without the United States are ordinarily and
493 regularly supervised, managed, directed and controlled,
494 is without this state;
- 495 (10) Service performed by agents of mutual fund
496 broker-dealers or insurance companies, exclusive of
497 industrial insurance agents, or by agents of investment
498 companies, who are compensated wholly on a commis-
499 sion basis;
- 500 (11) Service performed: (i) In the employ of a church
501 or convention or association of churches, or an organi-
502 zation which is operated primarily for religious pur-
503 poses and which is operated, supervised, controlled or
504 principally supported by a church or convention or
505 association of churches; or (ii) by a duly ordained,
506 commissioned or licensed minister of a church in the
507 exercise of his ministry or by a member of a religious
508 order in the exercise of duties required by such order;
509 or (iii) prior to the first day of January, one thousand
510 nine hundred seventy-eight, in the employ of a school
511 which is not an institution of higher education; or (iv)
512 in a facility conducted for the purpose of carrying out
513 a program of rehabilitation for individuals whose
514 earning capacity is impaired by age or physical or
515 mental deficiency or injury or providing remunerative
516 work for individuals who because of their impaired
517 physical or mental capacity cannot be readily absorbed
518 in the competitive labor market by an individual
519 receiving such rehabilitation or remunerative work; or
520 (v) as part of an unemployment work-relief or work-
521 training program assisted or financed, in whole or in
522 part, by any federal agency or an agency of a state or
523 political subdivision thereof, by an individual receiving
524 such work relief or work training; or (vi) prior to the
525 first day of January, one thousand nine hundred
526 seventy-eight, for a hospital in a state prison or other
527 state correctional institution by an inmate of the prison

528 or correctional institution, and after the thirty-first day
529 of December, one thousand nine hundred seventy-seven,
530 by an inmate of a custodial or penal institution;

531 (12) Service performed in the employ of a school,
532 college or university, if such service is performed: (i) By
533 a student who is enrolled and is regularly attending
534 classes at such school, college or university, or (ii) by the
535 spouse of such a student, if such spouse is advised, at
536 the time such spouse commences to perform such
537 service, that: (I) The employment of such spouse to
538 perform such service is provided under a program to
539 provide financial assistance to such student by such
540 school, college or university; and (II) such employment
541 will not be covered by any program of unemployment
542 insurance;

543 (13) Service performed by an individual who is
544 enrolled at a nonprofit or public educational institution
545 which normally maintains a regular faculty and
546 curriculum and normally has a regularly organized
547 body of students in attendance at the place where its
548 educational activities are carried on as a student in a
549 full-time program, taken for credit at such institution,
550 which combines academic instruction with work exper-
551 ience, if such service is an integral part of such
552 program, and such institution has so certified to the
553 employer, except that this subdivision shall not apply to
554 service performed in a program established for or on
555 behalf of an employer or group of employers;

556 (14) Service performed in the employ of a hospital, if
557 such service is performed by a patient of the hospital,
558 as defined in this section; and

559 (15) Service in the employ of a governmental entity
560 referred to in subdivision (9) of the definition of
561 "employment" in this section if such service is per-
562 formed by an individual in the exercise of duties (i) as
563 an elected official; (ii) as a member of a legislative body,
564 or a member of the judiciary, of a state or political
565 subdivision; (iii) as a member of the state national guard
566 or air national guard; (iv) as an employee serving on a
567 temporary basis in case of fire, storm, snow, earthquake,

568 flood or similar emergency; (v) in a position which,
569 under or pursuant to the laws of this state, is designated
570 as: (I) A major nontenured policymaking or advisory
571 position, or (II) a policymaking or advisory position the
572 performance of the duties of which ordinarily does not
573 require more than eight hours per week.

574 Notwithstanding the foregoing exclusions from the
575 definition of "employment", services, except agricultural
576 labor and domestic service in a private home, are in
577 employment if with respect to such services a tax is
578 required to be paid under any federal law imposing a
579 tax against which credit may be taken for contributions
580 required to be paid into a state unemployment compen-
581 sation fund, or which as a condition for full tax credit
582 against the tax imposed by the Federal Unemployment
583 Tax Act are required to be covered under this chapter.

584 "Employment office" means a free employment office
585 or branch thereof, operated by this state, or any free
586 public employment office maintained as a part of a state
587 controlled system of public employment offices in any
588 other state.

589 "Fund" means the unemployment compensation fund
590 established by this chapter.

591 "Hospital" means an institution which has been
592 licensed, certified or approved by the state department
593 of health as a hospital.

594 "Institution of higher education" means an educa-
595 tional institution which:

596 (1) Admits as regular students only individuals
597 having a certificate of graduation from a high school,
598 or the recognized equivalent of such a certificate;

599 (2) Is legally authorized in this state to provide a
600 program of education beyond high school;

601 (3) Provides an educational program for which it
602 awards a bachelor's or higher degree, or provides a
603 program which is acceptable for full credit toward such
604 a degree, or provides a program of post-graduate or
605 post-doctoral studies, or provides a program of training

606 to prepare students for gainful employment in a
607 recognized occupation; and

608 (4) Is a public or other nonprofit institution.

609 Notwithstanding any of the foregoing provisions of
610 this definition all colleges and universities in this state
611 are institutions of higher education for purposes of this
612 section.

613 "Payments" means the money required to be paid or
614 that may be voluntarily paid into the state unemploy-
615 ment compensation fund as provided in article five of
616 this chapter.

617 "Separated from employment" means, for the pur-
618 poses of this chapter, the total severance, whether by
619 quitting, discharge or otherwise, of the employer-
620 employee relationship.

621 "State" includes, in addition to the states of the United
622 States, Puerto Rico, District of Columbia and the Virgin
623 Islands.

624 "Total and partial unemployment" means:

625 (1) An individual is totally unemployed in any week
626 in which such individual is separated from employment
627 for an employing unit and during which he performs no
628 services and with respect to which no wages are payable
629 to him.

630 (2) An individual who has not been separated from
631 employment is partially unemployed in any week in
632 which due to lack of full-time work wages payable to
633 him are less than his weekly benefit amount plus
634 twenty-five dollars: *Provided*, That said individual must
635 have earnings of at least twenty-six dollars.

636 "Wages" means all remuneration for personal service,
637 including commissions, gratuities customarily received
638 by an individual in the course of employment from
639 persons other than the employing unit, as long as such
640 gratuities equal or exceed an amount of not less than
641 twenty dollars each month and which are required to
642 be reported to the employer by the employee, bonuses,
643 and the cash value of all remuneration in any medium

644 other than cash except for agricultural labor and
645 domestic service: *Provided*, That the term "wages" does
646 not include:

647 (1) That part of the remuneration which, after
648 remuneration equal to three thousand dollars has been
649 paid to an individual by an employer with respect to
650 employment during any calendar year, is paid after the
651 thirty-first day of December, one thousand nine hundred
652 thirty-nine, and prior to the first day of January, one
653 thousand nine hundred forty-seven, to such individual
654 by such employer with respect to employment during
655 such calendar year; or that part of the remuneration
656 which, after remuneration equal to three thousand
657 dollars with respect to employment after the year one
658 thousand nine hundred thirty-eight, has been paid to an
659 individual by an employer during any calendar year
660 after one thousand nine hundred forty-six, is paid to
661 such individual by such employer during such calendar
662 year, except that for the purposes of sections one, ten,
663 eleven and thirteen, article six of this chapter, all
664 remuneration earned by an individual in employment
665 shall be credited to the individual and included in his
666 computation of base period wages: *Provided*, That
667 notwithstanding the foregoing provisions, on and after
668 the first day of January, one thousand nine hundred
669 sixty-two, the term "wages" does not include:

670 That part of the remuneration which, after remuner-
671 ation equal to three thousand six hundred dollars has
672 been paid to an individual by an employer with respect
673 to employment during any calendar year, is paid during
674 any calendar year after one thousand nine hundred
675 sixty-one; and shall not include that part of remunera-
676 tion which, after remuneration equal to four thousand
677 two hundred dollars is paid during a calendar year after
678 one thousand nine hundred seventy-one; and shall not
679 include that part of remuneration which, after remun-
680 eration equal to six thousand dollars is paid during a
681 calendar year after one thousand nine hundred seventy-
682 seven; and shall not include that part of remuneration
683 which, after remuneration equal to eight thousand
684 dollars is paid during a calendar year after one

685 thousand nine hundred eighty, to an individual by an
686 employer or his predecessor with respect to employment
687 during any calendar year, is paid to such individual by
688 such employer during such calendar year unless that
689 part of the remuneration is subject to a tax under a
690 federal law imposing a tax against which credit may be
691 taken for contributions required to be paid into a state
692 unemployment fund. For the purposes of this subdivi-
693 sion (1), the term "employment" includes service
694 constituting employment under any unemployment
695 compensation law of another state; or which as a
696 condition for full tax credit against the tax imposed by
697 the Federal Unemployment Tax Act is required to be
698 covered under this chapter; and, except that for the
699 purposes of sections one, ten, eleven and thirteen, article
700 six of this chapter, all remuneration earned by an
701 individual in employment shall be credited to the
702 individual and included in his computation of base
703 period wages: *Provided*, That the remuneration paid to
704 an individual by an employer with respect to employ-
705 ment in another state or other states upon which
706 contributions were required of and paid by such
707 employer under an unemployment compensation law of
708 such other state or states shall be included as a part of
709 the remuneration equal to the amounts of three thou-
710 sand six hundred dollars or four thousand two hundred
711 dollars or six thousand dollars or eight thousand dollars
712 herein referred to. In applying such limitation on the
713 amount of remuneration that is taxable, an employer
714 shall be accorded the benefit of all or any portion of such
715 amount which may have been paid by its predecessor
716 or predecessors: *Provided, however*, That if the definition
717 of the term "wages" as contained in section 3306 (b) of
718 the Internal Revenue Code of 1954, as amended, is
719 amended: (a) Effective prior to the first day of January,
720 one thousand nine hundred sixty-two, to include remun-
721 eration in excess of three thousand dollars, or (b)
722 effective on or after the first day of January, one
723 thousand nine hundred sixty-two, to include remunera-
724 tion in excess of three thousand six hundred dollars, or
725 (c) effective on or after the first day of January, one
726 thousand nine hundred seventy-two, to include remun-

727 eration in excess of four thousand two hundred dollars;
728 or (d) effective on or after the first day of January, one
729 thousand nine hundred seventy-eight, to include remun-
730 eration in excess of six thousand dollars; or (e) effective
731 on or after the first day of January, one thousand nine
732 hundred eighty, to include remuneration in excess of
733 eight thousand dollars, paid to an individual by an
734 employer under the Federal Unemployment Tax Act
735 during any calendar year, wages for the purposes of this
736 definition shall include remuneration paid in a calendar
737 year to an individual by an employer subject to this
738 article or his predecessor with respect to employment
739 during any calendar year up to an amount equal to the
740 amount of remuneration taxable under the Federal
741 Unemployment Tax Act;

742 (2) The amount of any payment made after the thirty-
743 first day of December, one thousand nine hundred fifty-
744 two (including any amount paid by an employer for
745 insurance or annuities, or into a fund, to provide for any
746 such payment), to, or on behalf of, an individual in its
747 employ or any of his dependents, under a plan or system
748 established by an employer which makes provision for
749 individuals in its employ generally (or for such individ-
750 uals and their dependents), or for a class or classes of
751 such individuals (or for a class or classes of such
752 individuals and their dependents), on account of: (A)
753 Retirement; or (B) sickness or accident disability
754 payments made to an employee under an approved state
755 workers' compensation law; or (C) medical or hospital-
756 ization expenses in connection with sickness or accident
757 disability; or (D) death;

758 (3) Any payment made after the thirty-first day of
759 December, one thousand nine hundred fifty-two, by an
760 employer to an individual in its employ (including any
761 amount paid by an employer for insurance or annuities,
762 or into a fund, to provide for any such payment) on
763 account of retirement;

764 (4) Any payment made after the thirty-first day of
765 December, one thousand nine hundred fifty-two, by an
766 employer on account of sickness or accident disability,
767 or medical or hospitalization expenses in connection

768 with sickness or accident disability, to, or on behalf of,
769 an individual in its employ after the expiration of six
770 calendar months following the last calendar month in
771 which such individual worked for such employer;

772 (5) Any payment made after the thirty-first day of
773 December, one thousand nine hundred fifty-two, by an
774 employer to, or on behalf of, an individual in its employ
775 or his beneficiary: (A) From or to a trust described in
776 section 401 (a) which is exempt from tax under section
777 501 (a) of the Federal Internal Revenue Code at the time
778 of such payments unless such payment is made to such
779 individual as an employee of the trust as remuneration
780 for services rendered by such individual and not as a
781 beneficiary of the trust; or (B) under or to an annuity
782 plan which, at the time of such payment, is a plan
783 described in section 403 (a) of the Federal Internal
784 Revenue Code;

785 (6) The payment by an employer of the tax imposed
786 upon an employer under section 3101 of the Federal
787 Internal Revenue Code with respect to remuneration
788 paid to an employee for domestic service in a private
789 home or the employer of agricultural labor;

790 (7) Remuneration paid by an employer after the
791 thirty-first day of December, one thousand nine hundred
792 fifty-two, in any medium other than cash to an individ-
793 ual in its employ for service not in the course of the
794 employer's trade or business;

795 (8) Any payment (other than vacation or sick pay)
796 made by an employer after the thirty-first day of
797 December, one thousand nine hundred fifty-two, to an
798 individual in its employ after the month in which he
799 attains the age of sixty-five, if he did not work for the
800 employer in the period for which such payment is made;

801 (9) Payments, not required under any contract of hire,
802 made to an individual with respect to his period of
803 training or service in the armed forces of the United
804 States by an employer by which such individual was
805 formerly employed; and

806 (10) Vacation pay, severance pay or savings plans

807 received by an individual before or after becoming
808 totally or partially unemployed but earned prior to
809 becoming totally or partially unemployed: *Provided,*
810 That the term totally or partially unemployed shall not
811 be interpreted to include: (A) Employees who are on
812 vacation by reason of the request of the employees or
813 their duly authorized agent, for a vacation at a specific
814 time, and which request by the employees or their agent
815 is acceded to by their employer; (B) employees who are
816 on vacation by reason of the employer's request provided
817 they are so informed at least ninety days prior to such
818 vacation; or (C) employees who are on vacation by reason
819 of the employer's request where such vacation is in
820 addition to the regular vacation and the employer
821 compensates such employee at a rate equal to or
822 exceeding their regular daily rate of pay during the
823 vacation period.

824 The reasonable cash value of remuneration in any
825 medium other than cash shall be estimated and deter-
826 mined in accordance with rules prescribed by the
827 commissioner, except for remuneration other than cash
828 for services performed in agricultural labor and
829 domestic service.

830 "Week" means a calendar week, ending at midnight
831 Saturday, or the equivalent thereof, as determined in
832 accordance with the regulations prescribed by the
833 commissioner.

834 "Weekly benefit rate" means the maximum amount of
835 benefit an eligible individual will receive for one week
836 of total unemployment.

837 "Year" means a calendar year or the equivalent
838 thereof, as determined by the commissioner.

ARTICLE 6A. EXTENDED BENEFITS PROGRAM.

§21A-6A-1. Definitions.

1 As used in this article, unless the context clearly
2 requires otherwise:

3 (1) "Extended benefit period" means a period which:

4 (A) Begins with the third week after a week for which

5 there is a state "on" indicator; and

6 (B) Ends with either of the following weeks, which-
7 ever occurs later:

8 (i) The third week after the first week for which there
9 is a state "off" indicator; or

10 (ii) The thirteenth consecutive week of such period.

11 Notwithstanding the foregoing provisions of this
12 section, no extended benefit period may begin by reason
13 of a state "on" indicator before the fourteenth week
14 following the end of a prior extended benefit period
15 which was in effect with respect to this state, and no
16 extended benefit period may become effective in this
17 state prior to the sixty-first day following the date of
18 enactment of the Federal-State Extended Unemploy-
19 ment Compensation Act of 1970, and, within the period
20 beginning on such sixty-first day and ending on
21 December thirty-one, one thousand nine hundred
22 seventy-one, an extended benefit period may become
23 effective and be terminated in this state solely by reason
24 of a state "on" and state "off" indicator, respectively.

25 (2) There is a "state 'on' indicator" for this state for
26 a week if the commissioner determines, in accordance
27 with the regulations of the United States secretary of
28 labor, that for the period consisting of such week and
29 the immediately preceding twelve weeks, the rate of
30 insured unemployment (not seasonally adjusted) under
31 this article:

32 (A) Equaled or exceeded one hundred twenty percent
33 of the average of such rates for the corresponding
34 thirteen-week period ending in each of the preceding
35 two calendar years, and

36 (B) Equaled or exceeded four percent.

37 (C) The determination of whether there has been a
38 state "on" indicator beginning any extended benefit
39 period shall be made hereunder as if subsection (2) did
40 not contain paragraph (A) thereof, but only if the
41 commissioner determines that the rate of insured
42 unemployment (not seasonally adjusted) equals or

43 exceeds five percent.

44 (3) After the twenty-fifth day of September, one
45 thousand nine hundred eighty-two, there is a "state 'on'
46 indicator" for this state for a week if the commissioner
47 determines, in accordance with the regulations of the
48 United States secretary of labor, that for the period
49 consisting of such week and the immediately preceding
50 twelve weeks, the rate of insured unemployment (not
51 seasonally adjusted) under this article:

52 (A) Equaled or exceeded one hundred twenty percent
53 of the average of such rates for the corresponding
54 thirteen-week period ending in each of the preceding
55 two calendar years, and

56 (B) Equaled or exceeded five percent.

57 (C) An extended benefit period shall be made here-
58 under as if subsection (3) did not contain paragraph (A)
59 thereof, but only if the commissioner determines that
60 the rate of insured unemployment (not seasonally
61 adjusted) equals or exceeds six percent.

62 (4) There is a state "off" indicator for a week if, for
63 the period consisting of such week and the immediately
64 preceding twelve weeks, either subsection (2) or (3) were
65 not satisfied.

66 (5) "Rate of insured unemployment," for purposes of
67 subdivisions (2) and (3) of this section, means the
68 percentage derived by dividing:

69 (A) The average weekly number of individuals filing
70 claims for regular compensation in this state for weeks
71 of unemployment with respect to the most recent
72 thirteen-consecutive-week period, as determined by the
73 commissioner on the basis of his reports to the United
74 States secretary of labor, by

75 (B) The average monthly employment covered under
76 this chapter for the first four of the most recent six
77 completed calendar quarters ending before the end of
78 such thirteen-week period.

79 (6) "Regular benefits" means benefits payable to an
80 individual under this chapter or under any other state

81 law (including benefits payable to federal civilian
82 employees and to ex-servicemen pursuant to 5 U.S.C.,
83 chapter 85) other than extended benefits.

84 (7) "Extended benefits" means benefits (including
85 benefits payable to federal civilian employees and to ex-
86 servicemen pursuant to 5 U.S.C., chapter 85) payable to
87 an individual under the provisions of this article for
88 weeks of unemployment in his eligibility period.

89 (8) "Eligibility period" of an individual means the
90 period consisting of the weeks in his benefit year which
91 begin in an extended benefit period and, if his benefit
92 year ends within such extended benefit period, any
93 weeks thereafter which begin in such period.

94 (9) "Exhaustee" means an individual who, with
95 respect to any week of unemployment in his eligibility
96 period:

97 (A) Has received, prior to such week, all of the regular
98 benefits which were available to him under this chapter
99 or any other state law (including dependents' allowances
100 and benefits payable to federal civilian employees and
101 ex-servicemen under 5 U.S.C., chapter 85) in his current
102 benefit year that includes such week: *Provided*, That for
103 the purposes of this subdivision, an individual shall be
104 deemed to have received all of the regular benefits
105 which were available to him although (i) as a result of
106 a pending appeal with respect to wages and/or employ-
107 ment which were not considered in the original mone-
108 tary determination in his benefit year, he may subse-
109 quently be determined to be entitled to added regular
110 benefits, or (ii) he may be entitled to regular benefits
111 with respect to future weeks of unemployment, but such
112 benefits are not payable with respect to such week of
113 unemployment by reason of the provisions of section one-
114 a, article six of this chapter; or

115 (B) His benefit year having expired prior to such
116 week, has no, or insufficient, wages and/or employment
117 on the basis of which he could establish a new benefit
118 year which would include such week; and

119 (C) Has no right to unemployment benefits or allow-

120 ances, as the case may be, under the Railroad Unem-
121 ployment Insurance Act, the Trade Expansion Act of
122 1962, the Automotive Products Trade Act of 1965 and
123 such other federal laws as are specified in regulations
124 issued by the United States secretary of labor; and has
125 not received and is not seeking unemployment benefits
126 under the unemployment compensation law of the
127 Virgin Islands or of Canada; but if he is seeking such
128 benefits and the appropriate agency finally determines
129 that he is not entitled to benefits under such law he is
130 considered an exhaustee.

131 (10) "State law" means the unemployment insurance
132 law of any state, approved by the United States
133 secretary of labor under section 3304 of the Internal
134 Revenue Code of 1954.

135 (11) No individual shall be entitled to extended
136 benefits during a period of unemployment if he was
137 disqualified under the provisions of subdivision (1),(2) or
138 (3) of section three, article six of this chapter, which
139 disqualification shall not be terminated until such
140 individual has returned to covered employment and has
141 been employed in covered employment for at least thirty
142 working days.

143 (12) (A) Notwithstanding any other provisions of this
144 section, an individual shall be ineligible for payment of
145 extended benefits for any week of unemployment in his
146 eligibility period if the commissioner finds that during
147 such period:

148 (i) He failed to accept any offer of suitable work or
149 failed to apply for any suitable work (as defined under
150 subdivision (12) (C) of this section), to which he was
151 referred by the commissioner; or

152 (ii) He failed to actively engage in seeking work as
153 prescribed under subdivision (12) (E) of this section.

154 (B) Any individual who has been found ineligible for
155 extended benefits by reason of the provisions in
156 subdivision (12) (A) of this section shall also be denied
157 benefits beginning with the first day of the week
158 following the week in which such failure occurred and

159 until he has been employed in each of four subsequent
160 weeks (whether or not consecutive) and has earned
161 remuneration equal to not less than four times the
162 extended weekly benefit amount;

163 (C) For purposes of this subdivision (12) (A) (i) of this
164 section, the term "suitable work" means, with respect to
165 any individual, any work which is within such individ-
166 ual's capabilities: *Provided*, That the gross average
167 weekly remuneration payable for the work must exceed
168 the sum of:

169 (i) The individual's average weekly benefit amount (as
170 determined under subdivision (12) (D) of this section)
171 plus;

172 (ii) The amount, if any, of supplemental unemploy-
173 ment benefits (as defined in section 501 (c) (17) (D) of
174 the Internal Revenue Code of 1954) payable to such
175 individual for such week; and further,

176 (iii) Pays wages equal to the higher of:

177 (I) The minimum wages provided by section (6) (a) (1)
178 of the Fair Labor Standards Act of 1938, without regard
179 to any exemption; or

180 (II) The state or local minimum wage;

181 (iv) Provided that no individual shall be denied
182 extended benefits for failure to accept an offer or
183 referral to any job which meets the definition of
184 suitability as described above if:

185 (I) The position was not offered to such individual in
186 writing and was not listed with the employment service;
187 or

188 (II) Such failure could not result in a denial of benefits
189 under the definition of suitable work for regular benefit
190 claimants in section five, article six of this chapter, to
191 the extent that the criteria of suitability in that section
192 are not inconsistent with the provisions of this subdivi-
193 sion (12) (C) of this section; or

194 (III) The individual furnishes satisfactory evidence to
195 the commissioner that his or her prospects for obtaining

196 work in his or her customary occupation within a
197 reasonably short period are good. If such evidence is
198 deemed satisfactory for this purpose, the determination
199 of whether any work is suitable with respect to such
200 individual shall be made in accordance with the
201 definition of suitable work in section five, article six of
202 this chapter, without regard to the definition specified
203 by subdivision (12) (C) of this section.

204 (D) Notwithstanding the provisions of this section to
205 the contrary, no work shall be deemed to be suitable
206 work for an individual which does not accord with the
207 labor standard provisions required by section 3304(a)(5)
208 of the Internal Revenue Code of 1954 and set forth
209 herein under subdivision (12) (C) (iii) (I) of this section.

210 (E) For the purposes of subdivision (12) (A) (ii) of this
211 section an individual shall be treated as actively
212 engaged in seeking work during any week if:

213 (i) The individual has engaged in a systematic and
214 sustained effort to obtain work during such week, and

215 (ii) The individual furnishes tangible evidence that he
216 has engaged in such effort during such week.

217 (F) The employment service shall refer any claimant
218 entitled to extended benefits under this article to any
219 suitable work which meets the criteria prescribed in
220 subdivision (12) (C) of this section.

221 (G) An individual shall not be eligible to receive
222 extended benefits with respect to any week of unemploy-
223 ment in his eligibility period if such individual has been
224 disqualified for regular benefits under this chapter
225 because he or she voluntarily left work, was discharged
226 for misconduct or refused an offer of suitable work
227 unless the disqualification imposed for such reasons has
228 been terminated in accordance with specific conditions
229 established under this subdivision requiring the individ-
230 ual to perform service for remuneration subsequent to
231 the date of such disqualification.

232 (13) Notwithstanding any other provisions of this
233 chapter, if the benefit year of any individual ends within
234 an extended benefit period, the remaining balance of

235 extended benefits that such individual would, but for
236 this section, be entitled to receive in that extended
237 benefit period, with respect to weeks of unemployment
238 beginning after the end of the benefit year, shall be
239 reduced (but not below zero) by the product of the
240 number of weeks for which the individual received any
241 amounts as trade readjustment allowances within that
242 benefit year, multiplied by the individual's weekly
243 benefit amount for extended benefits.

244 (14) An unemployed individual shall be eligible to
245 receive benefits with respect to any week only if it has
246 been found that he has been paid wages by an employer
247 who was subject to the provisions of this chapter during
248 the base period of his current benefit year in an amount
249 at least equal to forty times his benefit rate for total
250 unemployment.

251 (15) The provisions of subdivisions (11) and (12) of this
252 section shall not apply at any time should such provi-
253 sions be temporarily or permanently suspended by
254 federal law. If these provisions are suspended by federal
255 law, the provisions of state law which apply to claims
256 for and the payment of regular benefits shall apply to
257 claims for and the payment of extended benefits.

CHAPTER 166

(Com. Sub. for H. B. 2494—By Delegate Pethtel)

[Passed April 9, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two hundred one and two hundred seven, article one, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact articles three and four of said chapter, all relating generally to negotiable instruments; providing definitions; excepting accord and satisfaction from effect of reservation of rights; providing for application of article and rules for resolving inconsistent provisions of law; providing rules for construing instruments; providing

that instruments are not payable with interest unless provision for interest is stated in the instrument; providing rules for determining when a postdated instrument is payable; providing contribution rules for liable multiple parties to an instrument; providing statute of limitations; notice of right to defend action; negotiation, transfer and involvement of instruments; reacquisition of an instrument; persons entitled to enforce instrument; holders in due course; when instrument is transferred for value or consideration; defenses to the obligation of a party to pay an instrument; rules for notices; claims of property or possessory right in an instrument; enforcement of lost, destroyed, or stolen instruments; effect of instruments on obligations; rules for determining when a person is obligated on an instrument; rules for determining when signature on an instrument is given effect; acceptance of instruments; obligations of parties issuing, accepting, drawing, or indorsing certain instruments; establishing burden of proof for signatures on an instrument; providing for certain warranties with respect to an instrument; damages upon an obligated bank's refusal to pay certain instruments; instruments signed for accommodation; conversion of instrument; presentment; dishonor; notice of dishonor; discharge and effect of discharge; payment; tender of payment; bank deposits and collections; electronic presentment; agreements for electronic presentment; permitting presentment by transmission of an image of an item or encoded information rather than the item itself; statute of limitations; depository bank holder of unindorsed item; transfer, presentment, and encoding and retention warranties; time of determining insufficiency of account; permitting statements of bank accounts sufficient to permit customer to reasonably identify items paid when bank retains items for seven years.

Be it enacted by the Legislature of West Virginia:

That sections two hundred one and two hundred seven, article one, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that articles three and four of said chapter

be amended and reenacted, all to read as follows:

Article

1. **General Provisions.**
3. **Negotiable Instruments.**
4. **Bank Deposits and Collections.**

ARTICLE 1. GENERAL PROVISIONS.

§46-1-201. General definitions.

§46-1-207. Performance or acceptance under reservation of rights.

**PART 2. GENERAL DEFINITIONS
AND PRINCIPLES OF INTERPRETATION.**

§46-1-201. General definitions.

1 Subject to additional definitions contained in the
2 subsequent articles of this chapter which are applicable
3 to specific articles or parts thereof, and unless the
4 context otherwise requires, in this chapter:

5 (1) "Action" in the sense of a judicial proceeding
6 includes recoupment, counterclaim, setoff, suit in equity
7 and any other proceedings in which rights are
8 determined.

9 (2) "Aggrieved party" means a party entitled to resort
10 to a remedy.

11 (3) "Agreement" means the bargain of the parties in
12 fact as found in their language or by implication from
13 other circumstances including course of dealing or
14 usage of trade or course of performance as provided in
15 this chapter (sections 1-205 and 2-208). Whether an
16 agreement has legal consequences is determined by the
17 provisions of this chapter, if applicable; otherwise by the
18 law of contracts (section 1-103). (Compare "Contract.")

19 (4) "Bank" means any person engaged in the business
20 of banking.

21 (5) "Bearer" means the person in possession of an
22 instrument, document of title, or certificated security
23 payable to bearer or indorsed in blank.

24 (6) "Bill of lading" means a document evidencing the
25 receipt of goods for shipment issued by a person
26 engaged in the business of transporting or forwarding
27 goods, and includes an airbill. "Airbill" means a

28 document serving for air transportation as a bill of
29 lading for marine or rail transportation, and includes an
30 air consignment note or air waybill.

31 (7) "Branch" includes a separately incorporated
32 foreign branch of a bank.

33 (8) "Burden of establishing a fact" means the burden
34 of persuading the triers of fact that the existence of the
35 fact is more probable than its nonexistence.

36 (9) "Buyer in ordinary course of business" means a
37 person who in good faith and without knowledge that
38 the sale to him is in violation of the ownership rights
39 or security interest of a third party in the goods buys
40 in ordinary course from a person in the business of
41 selling goods of that kind but does not include a
42 pawnbroker. All persons who sell minerals or the like
43 (including oil and gas) at wellhead or minehead shall be
44 deemed to be persons in the business of selling goods of
45 that kind. "Buying" may be for cash or by exchange of
46 other property or on secured or unsecured credit and
47 includes receiving goods or documents of title under a
48 preexisting contract for sale but does not include a
49 transfer in bulk or as security for or in total or partial
50 satisfaction of a money debt.

51 (10) "Conspicuous" means a term or clause is conspic-
52 uous when it is so written that a reasonable person
53 against whom it is to operate ought to have noticed it.
54 A printed heading in capitals (as: NONNEGOTIABLE
55 BILL OF LADING) is conspicuous. Language in the
56 body of a form is "conspicuous" if it is in larger or other
57 contrasting type or color. But in a telegram any stated
58 term is "conspicuous." Whether a term or clause is
59 "conspicuous" or not is for decision by the court.

60 (11) "Contract" means the total legal obligation which
61 results from the parties' agreement as affected by this
62 chapter and any other applicable rules of law. (Compare
63 "Agreement.")

64 (12) "Creditor" includes a general creditor, a secured
65 creditor, a lien creditor and any representative of
66 creditors, including an assignee for the benefit of

67 creditors, a trustee in bankruptcy, a receiver in equity
68 and an executor or administrator of an insolvent
69 debtor's or assignor's estate.

70 (13) "Defendant" includes a person in the position of
71 defendant in a cross action or counterclaim.

72 (14) "Delivery" with respect to instruments, docu-
73 ments of title, chattel paper or certificated securities
74 means voluntary transfer of possession.

75 (15) "Document of title" includes bill of lading, dock
76 warrant, dock receipt, warehouse receipt or order for
77 the delivery of goods, and also any other document
78 which in the regular course of business or financing is
79 treated as adequately evidencing that the person in
80 possession of it is entitled to receive, hold and dispose
81 of the document and the goods it covers. To be a
82 document of title a document must purport to be issued
83 by or addressed to a bailee and purport to cover goods
84 in the bailee's possession which are either identified or
85 are fungible portions of an identified mass.

86 (16) "Fault" means wrongful act, omission or breach.

87 (17) "Fungible" with respect to goods or securities
88 means goods or securities of which any unit is, by nature
89 or usage of trade, the equivalent of any other like unit.
90 Goods which are not fungible shall be deemed fungible
91 for the purposes of this chapter to the extent that under
92 a particular agreement or document unlike units are
93 treated as equivalents.

94 (18) "Genuine" means free of forgery or
95 counterfeiting.

96 (19) "Good faith" means honesty in fact in the conduct
97 or transaction concerned.

98 (20) "Holder" with respect to a negotiable instrument
99 means the person in possession if the instrument is
100 payable to bearer or, in the case of an instrument
101 payable to an identified person, if the identified person
102 is in possession. "Holder" with respect to a document of
103 title means the person in possession if the goods are

104 deliverable to the bearer or to the order of the person
105 in possession.

106 (21) To "honor" is to pay or to accept and pay, or
107 where a credit so engages to purchase or discount a
108 draft complying with the terms of the credit.

109 (22) "Insolvency proceedings" includes any assign-
110 ment for the benefit of creditors or other proceedings
111 intended to liquidate or rehabilitate the estate of the
112 person involved.

113 (23) A person is "insolvent" who either has ceased to
114 pay his debts in the ordinary course of business or
115 cannot pay his debts as they become due or is insolvent
116 within the meaning of the Federal Bankruptcy Law.

117 (24) "Money" means a medium of exchange autho-
118 rized or adopted by a domestic or foreign government
119 and includes a monetary unit of account established by
120 an intergovernmental organization or by agreement
121 between two or more nations.

122 (25) A person has "notice" of a fact when:

123 (a) He has actual knowledge of it; or

124 (b) He has received a notice or notification of it; or

125 (c) From all the facts and circumstances known to
126 him at the time in question he has reason to know that
127 it exists. A person "knows" or has "knowledge" of a fact
128 when he has actual knowledge of it. "Discover" or
129 "learn" or a word or phrase of similar import refers to
130 knowledge rather than to reason to know. The time and
131 circumstances under which a notice or notification may
132 cease to be effective are not determined by this chapter.

133 (26) A person "notifies" or "gives" a notice or
134 notification to another by taking such steps as may be
135 reasonably required to inform the other in ordinary
136 course whether or not such other actually comes to know
137 of it. A person "receives" a notice or notification when:

138 (a) It comes to his attention; or

139 (b) It is duly delivered at the place of business
140 through which the contract was made or at any other

141 place held out by him as the place for receipt of such
142 communications.

143 (27) Notice, knowledge or a notice or notification
144 received by an organization is effective for a particular
145 transaction from the time when it is brought to the
146 attention of the individual conducting that transaction,
147 and in any event from the time when it would have been
148 brought to his attention if the organization had exer-
149 cised due diligence. An organization exercises due
150 diligence if it maintains reasonable routines for com-
151 municating significant information to the person
152 conducting the transaction and there is reasonable
153 compliance with the routines. Due diligence does not
154 require an individual acting for the organization to
155 communicate information unless such communication is
156 part of his regular duties or unless he has reason to
157 know of the transaction and that the transaction would
158 be materially affected by the information.

159 (28) "Organization" includes a corporation, govern-
160 ment or governmental subdivision or agency, business
161 trust, estate, trust, partnership or association, two or
162 more persons having a joint or common interest, or any
163 other legal or commercial entity.

164 (29) "Party," as distinct from "third party," means a
165 person who has engaged in a transaction or made an
166 agreement within this chapter.

167 (30) "Person" includes an individual or an organiza-
168 tion (see section 1-102).

169 (31) "Presumption" or "presumed" means that the
170 trier of fact must find the existence of the fact presumed
171 unless and until evidence is introduced which would
172 support a finding of its nonexistence.

173 (32) "Purchase" includes taking by sale, discount,
174 negotiation, mortgage, pledge, lien, issue or reissue, gift
175 or any other voluntary transaction creating an interest
176 in property.

177 (33) "Purchaser" means a person who takes by
178 purchase.

179 (34) "Remedy" means any remedial right to which an
180 aggrieved party is entitled with or without resort to a
181 tribunal.

182 (35) "Representative" includes an agent, an officer of
183 a corporation or association, and a trustee, executor or
184 administrator of an estate, or any other person empow-
185 ered to act for another.

186 (36) "Rights" includes remedies.

187 (37) "Security interest" means an interest in personal
188 property or fixtures which secures payment or perfor-
189 mance of an obligation. The retention or reservation of
190 title by a seller of goods notwithstanding shipment or
191 delivery to the buyer (section 2-401) is limited in effect
192 to a reservation of a "security interest." The term also
193 includes any interest of a buyer of accounts or chattel
194 paper, which is subject to article nine. The special
195 property interest of a buyer of goods on identification
196 of such goods to a contract for sale under section 2-401
197 is not a "security interest," but a buyer may also acquire
198 a "security interest" by complying with article nine.
199 Unless a lease or consignment is intended as security,
200 reservation of title thereunder is not a "security interest"
201 but a consignment is in any event subject to the
202 provisions on consignment sales (section 2-326). Whether
203 a lease is intended as security is to be determined by
204 the facts of each case; however, (a) the inclusion of an
205 option to purchase does not of itself make the lease one
206 intended for security, and (b) an agreement that upon
207 compliance with the terms of the lease the lessee shall
208 become or has the option to become the owner of the
209 property for no additional consideration or for a nominal
210 consideration does make the lease one intended for
211 security.

212 (38) "Send" in connection with any writing or notice
213 means to deposit in the mail or deliver for transmission
214 by any other usual means of communication with
215 postage or cost of transmission provided for and
216 properly addressed and in the case of an instrument to
217 an address specified thereon or otherwise agreed, or if
218 there be none to any address reasonable under the

219 circumstances. The receipt of any writing or notice
220 within the time at which it would have arrived if
221 properly sent has the effect of a proper sending.

222 (39) "Signed" includes any symbol executed or
223 adopted by a party with present intention to authenti-
224 cate a writing.

225 (40) "Surety" includes guarantor.

226 (41) "Telegram" includes a message transmitted by
227 radio, teletype, cable, any mechanical method of
228 transmission, or the like.

229 (42) "Term" means that portion of an agreement
230 which relates to a particular matter.

231 (43) "Unauthorized signature" means one made
232 without actual, implied or apparent authority and
233 includes a forgery.

234 (44) "Value." Except as otherwise provided with
235 respect to negotiable instruments and bank collections
236 (sections 3-303, 4-208 and 4-209), a person gives "value"
237 for rights if he acquires them:

238 (a) In return for a binding commitment to extend
239 credit or for the extension of immediately available
240 credit whether or not drawn upon and whether or not
241 a chargeback is provided for in the event of difficulties
242 in collection; or

243 (b) As security for or in total or partial satisfaction
244 of a preexisting claim; or

245 (c) By accepting delivery pursuant to a preexisting
246 contract for purchase; or

247 (d) Generally, in return for any consideration suffi-
248 cient to support a simple contract.

249 (45) "Warehouse receipt" means a receipt issued by a
250 person engaged in the business of storing goods for hire.

251 (46) "Written" or "writing" includes printing, type-
252 writing or any other intentional reduction to tangible
253 form.

§46-1-207. Performance or acceptance under reservation of rights.

1 (a) A party who with explicit reservation of rights
2 performs or promises performance or assents to perfor-
3 mance in a manner demanded or offered by the other
4 party does not thereby prejudice the rights reserved.
5 Such words as “without prejudice,” “under protest” or
6 the like are sufficient.

7 (b) Subsection (a) does not apply to an accord and
8 satisfaction.

ARTICLE 3. NEGOTIABLE INSTRUMENTS.

- §46-3-101. Short title.
- §46-3-102. Subject matter.
- §46-3-103. Definitions.
- §46-3-104. Negotiable instrument.
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- §46-3-116. Joint and several liability; contribution.
- §46-3-117. Other agreements affecting instrument.
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- §46-3-201. Negotiation.
- §46-3-202. Negotiation subject to rescission.
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- §46-3-205. Special indorsement; blank indorsement; anomalous indorsement.
- §46-3-206. Restrictive indorsement.
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- §46-3-301. Person entitled to enforce instrument.
- §46-3-302. Holder in due course.
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- §46-3-305. Defenses and claims in recoupment.
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- §46-3-307. Notice of breach of fiduciary duty.
- §46-3-308. Proof of signatures and status as holder in due course.
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- §46-3-408. Drawee not liable on unaccepted draft.
- §46-3-409. Acceptance of draft; certified check.
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- §46-3-411. Refusal to pay cashier's checks, teller's checks and certified checks.
- §46-3-412. Obligation of issuer of note or cashier's check.
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- §46-3-416. Transfer warranties.
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- §46-3-501. Presentment.
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- §46-3-503. Notice of dishonor.
- §46-3-504. Excused presentment and notice of dishonor.
- §46-3-505. Evidence of dishonor.
- §46-3-601. Discharge and effect of discharge.
- §46-3-602. Payment.
- §46-3-603. Tender of payment.
- §46-3-604. Discharge by cancellation or renunciation.
- §46-3-605. Discharge of indorsers and accommodation parties.

PART 1. GENERAL PROVISIONS AND DEFINITIONS.

§46-3-101. Short title.

- 1 This article shall be known and may be cited as
- 2 Uniform Commercial Code — Negotiable Instruments.

§46-3-102. Subject matter.

- 1 (a) This article applies to negotiable instruments. It
- 2 does not apply to money, to payment orders governed by
- 3 article four-a, or to securities governed by article eight.

4 (b) If there is conflict between this article and article
5 four or nine, articles four and nine govern.

6 (c) Regulations of the board of governors of the
7 federal reserve system and operating circulars of the
8 federal reserve banks supersede any inconsistent
9 provision of this article to the extent of the inconsis-
10 tency.

§46-3-103. Definitions.

1 (a) In this article:

2 (1) "Acceptor" means a drawee who has accepted a
3 draft.

4 (2) "Drawee" means a person ordered in a draft to
5 make payment.

6 (3) "Drawer" means a person who signs or is identi-
7 fied in a draft as a person ordering payment.

8 (4) "Good faith" means honesty in fact and the
9 observance of reasonable commercial standards of fair
10 dealing.

11 (5) "Maker" means a person who signs or is identified
12 in a note as a person undertaking to pay.

13 (6) "Order" means a written instruction to pay money
14 signed by the person giving the instruction. The
15 instruction may be addressed to any person, including
16 the person giving the instruction, or to one or more
17 persons jointly or in the alternative but not in succes-
18 sion. An authorization to pay is not an order unless the
19 person authorized to pay is also instructed to pay.

20 (7) "Ordinary care" in the case of a person engaged
21 in business means observance of reasonable commercial
22 standards, prevailing in the area in which the person is
23 located, with respect to the business in which the person
24 is engaged. In the case of a bank that takes an
25 instrument for processing for collection or payment by
26 automated means, reasonable commercial standards do
27 not require the bank to examine the instrument if the
28 failure to examine does not violate the bank's prescribed
29 procedures and the bank's procedures do not vary

30 unreasonably from general banking usage not disap-
31 proved by this article or article four.

32 (8) "Party" means a party to an instrument.

33 (9) "Promise" means a written undertaking to pay
34 money signed by the person undertaking to pay. An
35 acknowledgment of an obligation by the obligor is not
36 a promise unless the obligor also undertakes to pay the
37 obligation.

38 (10) "Prove" with respect to a fact means to meet the
39 burden of establishing the fact (section 1-201(8)).

40 (11) "Remitter" means a person who purchases an
41 instrument from its issuer if the instrument is payable
42 to an identified person other than the purchaser.

43 (b) Other definitions applying to this article and the
44 sections in which they appear are:

45	"Acceptance"	Section 3-409.
46	"Accommodated party"	Section 3-419.
47	"Accommodation party"	Section 3-419.
48	"Alteration"	Section 3-407.
49	"Anomalous indorsement"	Section 3-205.
50	"Blank indorsement"	Section 3-205.
51	"Cashier's check"	Section 3-104.
52	"Certificate of deposit"	Section 3-104.
53	"Certified check"	Section 3-409.
54	"Check"	Section 3-104.
55	"Consideration"	Section 3-303.
56	"Draft"	Section 3-104.
57	"Holder in due course"	Section 3-302.
58	"Incomplete instrument"	Section 3-115.
59	"Indorsement"	Section 3-204.
60	"Indorser"	Section 3-204.

61	“Instrument”	Section 3-104.
62	“Issue”	Section 3-105.
63	“Issuer”	Section 3-105.
64	“Negotiable instrument”	Section 3-104.
65	“Negotiation”	Section 3-201.
66	“Note”	Section 3-104.
67	“Payable at a definite time”	Section 3-108.
68	“Payable on demand”	Section 3-108.
69	“Payable to bearer”	Section 3-109.
70	“Payable to order”	Section 3-109.
71	“Payment”	Section 3-602.
72	“Person entitled to enforce”	Section 3-301.
73	“Presentment”	Section 3-501.
74	“Reacquisition”	Section 3-207.
75	“Special indorsement”	Section 3-205.
76	“Teller’s check”	Section 3-104.
77	“Transfer of instrument”	Section 3-203.
78	“Traveler’s check”	Section 3-104.
79	“Value”	Section 3-303.
80	(c) The following definitions in other articles apply to	
81	this article:	
82	“Bank”	Section 4-105.
83	“Banking day”	Section 4-104.
84	“Clearing house”	Section 4-104.
85	“Collecting bank”	Section 4-105.
86	“Depository bank”	Section 4-105.
87	“Documentary draft”	Section 4-104.
88	“Intermediary bank”	Section 4-105.
89	“Item”	Section 4-104.

- 90 "Payor bank" Section 4-105.
91 "Suspends payments" Section 4-104.
92 (d) In addition article one contains general definitions
93 and principles of construction and interpretation
94 applicable throughout this article.

§46-3-104. Negotiable instrument.

1 (a) Except as provided in subsections (c) and (d),
2 "negotiable instrument" means an unconditional prom-
3 ise or order to pay a fixed amount of money, with or
4 without interest or other charges described in the
5 promise or order, if it:

6 (1) Is payable to bearer or to order at the time it is
7 issued or first comes into possession of a holder;

8 (2) Is payable on demand or at a definite time; and

9 (3) Does not state any other undertaking or instruc-
10 tion by the person promising or ordering payment to do
11 any act in addition to the payment of money, but the
12 promise or order may contain (i) an undertaking or
13 power to give, maintain or protect collateral to secure
14 payment, (ii) an authorization or power to the holder to
15 confess judgment or realize on or dispose of collateral
16 or (iii) a waiver of the benefit of any law intended for
17 the advantage or protection of an obligor.

18 (b) "Instrument" means a negotiable instrument.

19 (c) An order that meets all of the requirements of
20 subsection (a), except paragraph (1), and otherwise falls
21 within the definition of "check" in subsection (f) is a
22 negotiable instrument and a check.

23 (d) A promise or order other than a check is not an
24 instrument if, at the time it is issued or first comes into
25 possession of a holder, it contains a conspicuous
26 statement, however expressed, to the effect that the
27 promise or order is not negotiable or is not an instru-
28 ment governed by this article.

29 (e) An instrument is a "note" if it is a promise and
30 is a "draft" if it is an order. If an instrument falls within
31 the definition of both "note" and "draft," a person

32 entitled to enforce the instrument may treat it as either.

33 (f) "Check" means (i) a draft, other than a documen-
34 tary draft, payable on demand and drawn on a bank or
35 (ii) a cashier's check or teller's check. An instrument
36 may be a check even though it is described on its face
37 by another term, such as "money order."

38 (g) "Cashier's check" means a draft with respect to
39 which the drawer and drawee are the same bank or
40 branches of the same bank.

41 (h) "Teller's check" means a draft drawn by a bank
42 (i) on another bank or (ii) payable at or through a bank.

43 (i) "Traveler's check" means an instrument that (i) is
44 payable on demand, (ii) is drawn on or payable at or
45 through a bank, (iii) is designated by the term "travel-
46 er's check" or by a substantially similar term and (iv)
47 requires, as a condition to payment, a countersignature
48 by a person whose specimen signature appears on the
49 instrument.

50 (j) "Certificate of deposit" means an instrument
51 containing an acknowledgment by a bank that a sum of
52 money has been received by the bank and a promise by
53 the bank to repay the sum of money. A certificate of
54 deposit is a note of the bank.

§46-3-105. Issue of instrument.

1 (a) "Issue" means the first delivery of an instrument
2 by the maker or drawer, whether to a holder or
3 nonholder, for the purpose of giving rights on the
4 instrument to any person.

5 (b) An unissued instrument, or an unissued incom-
6 plete instrument that is completed, is binding on the
7 maker or drawer, but nonissuance is a defense. An
8 instrument that is conditionally issued or is issued for
9 a special purpose is binding on the maker or drawer,
10 but failure of the condition or special purpose to be
11 fulfilled is a defense.

12 (c) "Issuer" applies to issued and unissued instru-
13 ments and means a maker or drawer of an instrument.

§46-3-106. Unconditional promise or order.

1 (a) Except as provided in this section, for the
2 purposes of section 3-104(a), a promise or order is
3 unconditional unless it states (i) an express condition to
4 payment, (ii) that the promise or order is subject to or
5 governed by another writing or (iii) that rights or
6 obligations with respect to the promise or order are
7 stated in another writing. A reference to another
8 writing does not of itself make the promise or order
9 conditional.

10 (b) A promise or order is not made conditional (i) by
11 a reference to another writing for a statement of rights
12 with respect to collateral, prepayment or acceleration or
13 (ii) because payment is limited to resort to a particular
14 fund or source.

15 (c) If a promise or order requires, as a condition to
16 payment, a countersignature by a person whose speci-
17 men signature appears on the promise or order, the
18 condition does not make the promise or order conditional
19 for the purpose of section 3-104(a).

§46-3-107. Instrument payable in foreign money.

1 Unless the instrument otherwise provides, an instru-
2 ment that states the amount payable in foreign money
3 may be paid in the foreign money or in an equivalent
4 amount in dollars calculated by using the current bank
5 offered spot rate at the place of payment for the
6 purchase of dollars on the day on which the instrument
7 is paid.

§46-3-108. Payable on demand or at definite time.

1 (a) A promise or order is "payable on demand" if it
2 (i) states that it is payable on demand or at sight, or
3 otherwise indicates that it is payable at the will of the
4 holder or (ii) does not state any time of payment.

5 (b) A promise or order is "payable at a definite time"
6 if it is payable on elapse of a definite period of time after
7 sight or acceptance or at a fixed date or dates or at a
8 time or times readily ascertainable at the time the
9 promise or order is issued, subject to rights of (i)

10 prepayment, (ii) acceleration, (iii) extension at the option
11 of the holder or (iv) extension to a further definite time
12 at the option of the maker or acceptor or automatically
13 upon or after a specified act or event.

14 (c) If an instrument, payable at a fixed date, is also
15 payable upon demand made before the fixed date, the
16 instrument is payable on demand until the fixed date
17 and, if demand for payment is not made before that
18 date, becomes payable at a definite time on the fixed
19 date.

§46-3-109. Payable to bearer or to order.

1 (a) A promise or order is payable to bearer if it:

2 (1) States that it is payable to bearer or to the order
3 of bearer or otherwise indicates that the person in
4 possession of the promise or order is entitled to payment;

5 (2) Does not state a payee; or

6 (3) States that it is payable to or to the order of cash
7 or otherwise indicates that it is not payable to an
8 identified person.

9 (b) A promise or order that is not payable to bearer
10 is payable to order if it is payable (i) to the order of an
11 identified person or (ii) to an identified person or order.
12 A promise or order that is payable to order is payable
13 to the identified person.

14 (c) An instrument payable to bearer may become
15 payable to an identified person if it is specially indorsed
16 pursuant to section 3-205(a). An instrument payable to
17 an identified person may become payable to bearer if
18 it is indorsed in blank pursuant to section 3-205(b).

§46-3-110. Identification of person to whom instrument is payable.

1 (a) The person to whom an instrument is initially
2 payable is determined by the intent of the person,
3 whether or not authorized, signing as, or in the name
4 or behalf of, the issuer of the instrument. The instru-
5 ment is payable to the person intended by the signer
6 even if that person is identified in the instrument by a

7 name or other identification that is not that of the
8 intended person. If more than one person signs in the
9 name or behalf of the issuer of an instrument and all
10 the signers do not intend the same person as payee, the
11 instrument is payable to any person intended by one or
12 more of the signers.

13 (b) If the signature of the issuer of an instrument is
14 made by automated means, such as a check-writing
15 machine, the payee of the instrument is determined by
16 the intent of the person who supplied the name or
17 identification of the payee, whether or not authorized to
18 do so.

19 (c) A person to whom an instrument is payable may
20 be identified in any way, including by name, identifying
21 number, office, or account number. For the purpose of
22 determining the holder of an instrument, the following
23 rules apply:

24 (1) If an instrument is payable to an account and the
25 account is identified only by number, the instrument is
26 payable to the person to whom the account is payable.
27 If an instrument is payable to an account identified by
28 number and by the name of a person, the instrument
29 is payable to the named person, whether or not that
30 person is the owner of the account identified by number.

31 (2) If an instrument is payable to (i) a trust, an estate,
32 or a person described as trustee or representative of a
33 trust or estate, the instrument is payable to the trustee,
34 the representative, or a successor of either, whether or
35 not the beneficiary or estate is also named, (ii) a person
36 described as agent or similar representative of a named
37 or identified person, the instrument is payable to the
38 represented person, the representative, or a successor of
39 the representative, (iii) a fund or organization that is not
40 a legal entity, the instrument is payable to a represen-
41 tative of the members of the fund or organization or (iv)
42 an office or to a person described as holding an office,
43 the instrument is payable to the named person, the
44 incumbent of the office, or a successor to the incumbent.

45 (d) If an instrument is payable to two or more persons
46 alternatively, it is payable to any of them and may be

47 negotiated, discharged, or enforced by any or all of them
48 in possession of the instrument. If an instrument is
49 payable to two or more persons not alternatively, it is
50 payable to all of them and may be negotiated, dis-
51 charged, or enforced only by all of them. If an instru-
52 ment payable to two or more persons is ambiguous as
53 to whether it is payable to the persons alternatively, the
54 instrument is payable to the persons alternatively.

§46-3-111. Place of payment.

1 Except as otherwise provided for items in article four,
2 an instrument is payable at the place of payment stated
3 in the instrument. If no place of payment is stated, an
4 instrument is payable at the address of the drawee or
5 maker stated in the instrument. If no address is stated,
6 the place of payment is the place of business of the
7 drawee or maker. If a drawee or maker has more than
8 one place of business, the place of payment is any place
9 of business of the drawee or maker chosen by the person
10 entitled to enforce the instrument. If the drawee or
11 maker has no place of business, the place of payment
12 is the residence of the drawee or maker.

§46-3-112. Interest.

1 (a) Unless otherwise provided in the instrument (i) an
2 instrument is not payable with interest and (ii) interest
3 on an interest-bearing instrument is payable from the
4 date of the instrument.

5 (b) Interest may be stated in an instrument as a fixed
6 or variable amount of money or it may be expressed as
7 a fixed or variable rate or rates. The amount or rate of
8 interest may be stated or described in the instrument
9 in any manner and may require reference to informa-
10 tion not contained in the instrument. If an instrument
11 provides for interest, but the amount of interest payable
12 cannot be ascertained from the description, interest is
13 payable at the judgment rate in effect at the place of
14 payment of the instrument and at the time interest first
15 accrues.

§46-3-113. Date of instrument.

1 (a) An instrument may be antedated or postdated.

2 The date stated determines the time of payment if the
3 instrument is payable at a fixed period after date.
4 Except as provided in section 4-401 (c), an instrument
5 payable on demand is not payable before the date of the
6 instrument.

7 (b) If an instrument is undated, its date is the date
8 of its issue or, in the case of an unissued instrument, the
9 date it first comes into possession of a holder.

§46-3-114. Contradictory terms of instrument.

1 If an instrument contains contradictory terms,
2 typewritten terms prevail over printed terms, hand
3 written terms prevail over both, and words prevail over
4 numbers.

§46-3-115. Incomplete instrument.

1 (a) "Incomplete instrument" means a signed writing,
2 whether or not issued by the signer, the contents of
3 which show at the time of signing that it is incomplete
4 but that the signer intended it to be completed by the
5 addition of words or numbers.

6 (b) Subject to subsection (c), if an incomplete instru-
7 ment is an instrument under section 3-104, it may be
8 enforced according to its terms if it is not completed,
9 or according to its terms as augmented by completion.
10 If an incomplete instrument is not an instrument under
11 section 3-104, but, after completion, the requirements of
12 section 3-104 are met, the instrument may be enforced
13 according to its terms as augmented by completion.

14 (c) If words or numbers are added to an incomplete
15 instrument without authority of the signer, there is an
16 alteration of the incomplete instrument under section 3-
17 407.

18 (d) The burden of establishing that words or numbers
19 were added to an incomplete instrument without
20 authority of the signer is on the person asserting the
21 lack of authority.

§46-3-116. Joint and several liability; contribution.

1 (a) Except as otherwise provided in the instrument,

2 two or more persons who have the same liability on an
3 instrument as makers, drawers, acceptors, indorsers
4 who indorse as joint payees, or anomalous indorsers are
5 jointly and severally liable in the capacity in which they
6 sign.

7 (b) Except as provided in section 3-419(e) or by
8 agreement of the affected parties, a party having joint
9 and several liability who pays the instrument is entitled
10 to receive from any party having the same joint and
11 several liability contribution in accordance with appli-
12 cable law.

13 (c) Discharge of one party having joint and several
14 liability by a person entitled to enforce the instrument
15 does not affect the right under subsection (b) of a party
16 having the same joint and several liability to receive
17 contribution from the party discharged.

§46-3-117. Other agreements affecting instrument.

1 Subject to applicable law regarding exclusion of proof
2 of contemporaneous or previous agreements, the obliga-
3 tion of a party to an instrument to pay the instrument
4 may be modified, supplemented, or nullified by a
5 separate agreement of the obligor and a person entitled
6 to enforce the instrument, if the instrument is issued or
7 the obligation is incurred in reliance on the agreement
8 or as part of the same transaction giving rise to the
9 agreement. To the extent an obligation is modified,
10 supplemented, or nullified by agreement under this
11 section, the agreement is a defense to the obligation.

§46-3-118. Statute of limitations.

1 (a) Except as provided in subsection (e), an action to
2 enforce the obligation of a party to pay a note payable
3 at a definite time must be commenced within six years
4 after the due date or dates stated in the note or, if a due
5 date is accelerated, within six years after the acceler-
6 ated due date.

7 (b) Except as provided in subsection (d) or (e), if
8 demand for payment is made to the maker of a note
9 payable on demand, an action to enforce the obligation
10 of a party to pay the note must be commenced within

11 six years after the demand. If no demand for payment
12 is made to the maker, an action to enforce the note is
13 barred if neither principal nor interest on the note has
14 been paid for a continuous period of ten years.

15 (c) Except as provided in subsection (d), an action to
16 enforce the obligation of a party to an unaccepted draft
17 to pay the draft must be commenced within three years
18 after dishonor of the draft or ten years after the date
19 of the draft, whichever period expires first.

20 (d) An action to enforce the obligation of the acceptor
21 of a certified check or the issuer of a teller's check,
22 cashier's check, or traveler's check must be commenced
23 within three years after demand for payment is made
24 to the acceptor or issuer, as the case may be.

25 (e) An action to enforce the obligation of a party to
26 a certificate of deposit to pay the instrument must be
27 commenced within six years after demand for payment
28 is made to the maker, but if the instrument states a due
29 date and the maker is not required to pay before that
30 date, the six-year period begins when a demand for
31 payment is in effect and the due date has passed.

32 (f) An action to enforce the obligation of a party to
33 pay an accepted draft, other than a certified check, must
34 be commenced (i) within six years after the due date or
35 dates stated in the draft or acceptance if the obligation
36 of the acceptor is payable at a definite time or (ii) within
37 six years after the date of the acceptance if the
38 obligation of the acceptor is payable on demand.

39 (g) Unless governed by other law regarding claims
40 for indemnity or contribution, an action (i) for conver-
41 sion of an instrument, for money had and received, or
42 like action based on conversion, (ii) for breach of
43 warranty or (iii) to enforce an obligation, duty, or right
44 arising under this article and not governed by this
45 section must be commenced within three years after the
46 cause of action accrues.

§46-3-119. Notice of right to defend action.

1 In an action for breach of an obligation for which a
2 third person is answerable over pursuant to this article

3 or article four, the defendant may give the third person
4 written notice of the litigation, and the person notified
5 may then give similar notice to any other person who
6 is answerable over. If the notice states (i) that the person
7 notified may come in and defend and (ii) that failure to
8 do so will bind the person notified in an action later
9 brought by the person giving the notice as to any
10 determination of fact common to the two litigations, the
11 person notified is so bound unless after reasonable
12 receipt of the notice the person notified does come in and
13 defend.

PART 2. NEGOTIATION TRANSFER. AND INDORSEMENT.

§46-3-201. Negotiation.

1 (a) "Negotiation" means a transfer of possession,
2 whether voluntary or involuntary, or an instrument by
3 a person other than the issuer to a person who thereby
4 becomes its holder.

5 (b) Except for negotiation by a remitter, if an
6 instrument is payable to an identified person, negotia-
7 tion requires transfer of possession of the instrument
8 and its indorsement by the holder. If an instrument is
9 payable to bearer, it may be negotiated by transfer of
10 possession alone.

§46-3-202. Negotiation subject to rescission.

1 (a) Negotiation is effective even if obtained (i) from
2 an infant, a corporation exceeding its powers, or a
3 person without capacity, (ii) by fraud, duress, or mistake
4 or (iii) in breach of duty or as part of an illegal
5 transaction.

6 (b) To the extent permitted by other law, negotiation
7 may be rescinded or may be subject to other remedies,
8 but those remedies may not be asserted against a
9 subsequent holder in due course or a person paying the
10 instrument in good faith and without knowledge of facts
11 that are a basis for rescission or other remedy.

§46-3-203. Transfer of instrument; rights acquired by transfer.

1 (a) An instrument is transferred when it is delivered

2 by a person other than its issuer for the purpose of
3 giving to the person receiving delivery the right to
4 enforce the instrument.

5 (b) Transfer of an instrument, whether or not the
6 transfer is a negotiation, vests in the transferee any
7 right of the transferor to enforce the instrument,
8 including any right as a holder in due course, but the
9 transferee cannot acquire rights of a holder in due
10 course by a transfer, directly or indirectly, from a
11 holder in due course if the transferee engaged in fraud
12 or illegality affecting the instrument.

13 (c) Unless otherwise agreed, if an instrument is
14 transferred for value and the transferee does not become
15 a holder because of lack of indorsement by the trans-
16 feror, the transferee has a specifically enforceable right
17 to the unqualified indorsement of the transferor, but
18 negotiation of the instrument does not occur until the
19 indorsement is made.

20 (d) If a transferor purports to transfer less than the
21 entire instrument, negotiation of the instrument does not
22 occur. The transferee obtains no rights under this article
23 and has only the rights of a partial assignee.

§46-3-204. Indorsement.

1 (a) "Indorsement" means a signature, other than that
2 of a signer as maker, drawer, or acceptor, that alone or
3 accompanied by other words is made on an instrument
4 for the purpose of (i) negotiating the instrument, (ii)
5 restricting payment of the instrument or (iii) incurring
6 indorser's liability on the instrument, but regardless of
7 the intent of the signer, a signature and its accompan-
8 ying words is an indorsement unless the accompanying
9 words, terms of the instrument, place of the signature,
10 or other circumstances unambiguously indicate that the
11 signature was made for a purpose other than indorse-
12 ment. For the purpose of determining whether a
13 signature is made on an instrument, a paper affixed to
14 the instrument is a part of the instrument.

15 (b) "Indorser" means a person who makes an
16 indorsement.

17 (c) For the purpose of determining whether the
18 transferee of an instrument is a holder, an indorsement
19 that transfers a security interest in the instrument is
20 effective as an unqualified indorsement of the
21 instrument.

22 (d) If an instrument is payable to a holder under a
23 name that is not the name of the holder, indorsement
24 may be made by the holder in the name stated in the
25 instrument or in the holder's name or both, but
26 signature in both names may be required by a person
27 paying or taking the instrument for value or collection.

**§46-3-205. Special indorsement; blank indorsement;
anomalous indorsement.**

1 (a) If an indorsement is made by the holder of an
2 instrument, whether payable to an identified person or
3 payable to bearer, and the indorsement identifies a
4 person to whom it makes the instrument payable, it is
5 a "special indorsement." When specially indorsed, an
6 instrument becomes payable to the identified person and
7 may be negotiated only by the indorsement of that
8 person. The principles stated in section 3-110 apply to
9 special indorsements.

10 (b) If an indorsement is made by the holder of an
11 instrument and it is not a special indorsement, it is a
12 "blank indorsement." When indorsed in blank, an
13 instrument becomes payable to bearer and may be
14 negotiated by transfer of possession alone until specially
15 indorsed.

16 (c) The holder may convert a blank indorsement that
17 consists only of a signature into a special indorsement
18 by writing, above the signature of the indorser, words
19 identifying the person to whom the instrument is made
20 payable.

21 (d) "Anomalous indorsement" means an indorsement
22 made by a person who is not the holder of the instru-
23 ment. An anomalous indorsement does not affect the
24 manner in which the instrument may be negotiated.

§46-3-206. Restrictive indorsement.

1 (a) An indorsement limiting payment to a particular

2 person or otherwise prohibiting further transfer or
3 negotiation of the instrument is not effective to prevent
4 further transfer or negotiation of the instrument.

5 (b) An indorsement stating a condition to the right of
6 the indorsee to receive payment does not affect the right
7 of the indorsee to enforce the instrument. A person
8 paying the instrument or taking it for value or collection
9 may disregard the condition, and the rights and
10 liabilities of that person are not affected by whether the
11 condition has been fulfilled.

12 (c) If an instrument bears an indorsement (i) des-
13 cribed in section 4-201(b) or (ii) in blank or to a
14 particular bank using the words "for deposit," "for
15 collection," or other words indicating a purpose of
16 having the instrument collected by a bank for the
17 indorser or for a particular account, the following rules
18 apply:

19 (1) A person, other than a bank, who purchases the
20 instrument when so indorsed converts the instrument
21 unless the amount paid for the instrument is received
22 by the indorser or applied consistently with the
23 indorsement.

24 (2) A depositary bank that purchases the instrument
25 or takes it for collection when so indorsed converts the
26 instrument unless the amount paid by the bank with
27 respect to the instrument is received by the indorser or
28 applied consistently with the indorsement.

29 (3) A payor bank that is also the depositary bank or
30 that takes the instrument for immediate payment over
31 the counter from a person other than a collecting bank
32 converts the instrument unless the proceeds of the
33 instrument are received by the indorser or applied
34 consistently with the indorsement.

35 (4) Except as otherwise provided in paragraph (3), a
36 payor bank or intermediary bank may disregard the
37 indorsement and is not liable if the proceeds of the
38 instrument are not received by the indorser or applied
39 consistently with the indorsement.

40 (d) Except for an indorsement covered by subsection
41 (c), if an instrument bears an indorsement using words

42 to the effect that payment is to be made to the indorsee
43 as agent, trustee, or other fiduciary for the benefit of
44 the indorser or another person, the following rules
45 apply:

46 (1) Unless there is notice of breach of fiduciary duty
47 as provided in section 3-307, a person who purchases the
48 instrument from the indorsee or takes the instrument
49 from the indorsee for collection or payment may pay the
50 proceeds of payment or the value given for the instru-
51 ment to the indorsee without regard to whether the
52 indorsee violates a fiduciary duty to the indorser.

53 (2) A subsequent transferee of the instrument or
54 person who pays the instrument is neither given notice
55 nor otherwise affected by the restriction in the indor-
56 sement unless the transferee or payor knows that the
57 fiduciary dealt with the instrument or its proceeds in
58 breach of fiduciary duty.

59 (e) The presence on an instrument of an indorsement
60 to which this section applies does not prevent a
61 purchaser of the instrument from becoming a holder in
62 due course of the instrument unless the purchaser is a
63 converter under subsection (c) or has notice or knowl-
64 edge of breach of fiduciary duty as stated in subsection
65 (d).

66 (f) In an action to enforce the obligation of a party
67 to pay the instrument, the obligor has a defense if
68 payment would violate an indorsement to which this
69 section applies and the payment is not permitted by this
70 section.

§46-3-207. Reacquisition.

1 Reacquisition of an instrument occurs if it is trans-
2 ferred to a former holder, by negotiation or otherwise.
3 A former holder who reacquires the instrument may
4 cancel indorsements made after the reacquirer first
5 became a holder of the instrument. If the cancellation
6 causes the instrument to be payable to the reacquirer
7 or to bearer, the reacquirer may negotiate the instru-
8 ment. An indorser whose indorsement is canceled is
9 discharged, and the discharge is effective against any
10 subsequent holder.

PART 3. ENFORCEMENT OF INSTRUMENTS.

§46-3-301. Person entitled to enforce instrument.

1 “Person entitled to enforce” an instrument means (i)
2 the holder of the instrument, (ii) a nonholder in
3 possession of the instrument who has the rights of a
4 holder or (iii) a person not in possession of the instru-
5 ment who is entitled to enforce the instrument pursuant
6 to section 3-309 or 3-418(d). A person may be a person
7 entitled to enforce the instrument even though the
8 person is not the owner of the instrument or is in
9 wrongful possession of the instrument.

§46-3-302. Holder in due course.

1 (a) Subject to subsection (c) and section one hundred
2 six-d, “holder in due course” means the holder of an
3 instrument if:

4 (1) The instrument when issued or negotiated to the
5 holder does not bear such apparent evidence of forgery
6 or alteration or is not otherwise so irregular or
7 incomplete as to call into question its authenticity; and

8 (2) The holder took the instrument (i) for value, (ii)
9 in good faith, (iii) without notice that the instrument is
10 overdue or has been dishonored or that there is an
11 uncured default with respect to payment of another
12 instrument issued as part of the same series, (iv) without
13 notice that the instrument contains an unauthorized
14 signature or has been altered, (v) without notice of any
15 claim to the instrument described in section 3-306 and
16 (vi) without notice that any party has a defense or claim
17 in recoupment described in section 3-305(a).

18 (b) Notice of discharge of a party, other than dis-
19 charge in an insolvency proceeding, is not notice of a
20 defense under subsection (a), but discharge is effective
21 against a person who became a holder in due course
22 with notice of the discharge. Public filing or recording
23 of a document does not of itself constitute notice of a
24 defense, claim in recoupment, or claim to the
25 instrument.

26 (c) Except to the extent a transferor or predecessor

27 in interest has rights as a holder in due course, a person
28 does not acquire rights of a holder in due course of an
29 instrument taken (i) by legal process or by purchase in
30 an execution, bankruptcy, or creditor's sale or similar
31 proceeding, (ii) by purchase as part of a bulk transaction
32 not in ordinary course of business of the transferor or
33 (iii) as the successor in interest to an estate or other
34 organization.

35 (d) If, under section 3-303(a)(1), the promise of
36 performance that is the consideration for an instrument
37 has been partially performed, the holder may assert
38 rights as a holder in due course of the instrument only
39 to the fraction of the amount payable under the
40 instrument equal to the value of the partial performance
41 divided by the value of the promised performance.

42 (e) If (i) the person entitled to enforce an instrument
43 has only a security interest in the instrument and (ii)
44 the person obliged to pay the instrument has a defense,
45 claim in recoupment, or claim to the instrument that
46 may be asserted against the person who granted the
47 security interest, the person entitled to enforce the
48 instrument may assert rights as a holder in due course
49 only to an amount payable under the instrument which,
50 at the time of enforcement of the instrument, does not
51 exceed the amount of the unpaid obligation secured.

52 (f) To be effective, notice must be received at a time
53 and in a manner that gives a reasonable opportunity to
54 act on it.

55 (g) This section is subject to any law limiting status
56 as a holder in due course in particular classes of
57 transactions.

§46-3-303. Value and consideration.

1 (a) An instrument is issued or transferred for value
2 if:

3 (1) The instrument is issued or transferred for a
4 promise of performance, to the extent the promise has
5 been performed;

6 (2) The transferee acquires a security interest or

7 other lien in the instrument other than a lien obtained
8 by judicial proceeding;

9 (3) The instrument is issued or transferred as pay-
10 ment of, or as security for, an antecedent claim against
11 any person, whether or not the claim is due;

12 (4) The instrument is issued or transferred in ex-
13 change for a negotiable instrument; or

14 (5) The instrument is issued or transferred in ex-
15 change for the incurring of an irrevocable obligation to
16 a third party by the person taking the instrument.

17 (b) "Consideration" means any consideration suffi-
18 cient to support a simple contract. The drawer or maker
19 of an instrument has a defense if the instrument is
20 issued without consideration. If an instrument is issued
21 for a promise of performance, the issuer has a defense
22 to the extent performance of the promise is due and the
23 promise has not been performed. If an instrument is
24 issued for value as stated in subsection (a), the instru-
25 ment is also issued for consideration.

§46-3-304. Overdue instrument.

1 (a) An instrument payable on demand becomes
2 overdue at the earliest of the following times:

3 (1) On the day after the day demand for payment is
4 duly made;

5 (2) If the instrument is a check, ninety days after its
6 date; or

7 (3) If the instrument is not a check, when the
8 instrument has been outstanding for a period of time
9 after its date which is unreasonably long under the
10 circumstances of the particular case in light of the
11 nature of the instrument and usage of the trade.

12 (b) With respect to an instrument payable at a
13 definite time the following rules apply:

14 (1) If the principal is payable in installments and a
15 due date has not been accelerated, the instrument
16 becomes overdue upon default under the instrument for
17 nonpayment of an installment, and the instrument

18 remains overdue until the default is cured;

19 (2) If the principal is not payable in installments and
20 the due date has not been accelerated, the instrument
21 becomes overdue on the day after the due date;

22 (3) If a due date with respect to principal has been
23 accelerated, the instrument becomes overdue on the day
24 after the accelerated due date.

25 (c) Unless the due date or principal has been accel-
26 erated, an instrument does not become overdue if there
27 is default in payment of interest but no default in
28 payment of principal.

§46-3-305. Defenses and claims in recoupment.

1 (a) Except as stated in subsection (b), the right to
2 enforce the obligation of a party to pay an instrument
3 is subject to the following:

4 (1) A defense of the obligor based on (i) infancy of the
5 obligor to the extent it is a defense to a simple contract,
6 (ii) duress, lack of legal capacity, or illegality of the
7 transaction which, under other law, nullifies the
8 obligation of the obligor, (iii) fraud that induced the
9 obligor to sign the instrument with neither knowledge
10 nor reasonable opportunity to learn of its character or
11 its essential terms or (iv) discharge of the obligor in
12 insolvency proceedings;

13 (2) A defense of the obligor stated in another section
14 of this article or a defense of the obligor that would be
15 available if the person entitled to enforce the instrument
16 were enforcing a right to payment under a simple
17 contract; and

18 (3) A claim in recoupment of the obligor against the
19 original payee of the instrument if the claim arose from
20 the transaction that gave rise to the instrument; but the
21 claim of the obligor may be asserted against a transferee
22 of the instrument only to reduce the amount owing on
23 the instrument at the time the action is brought.

24 (b) The right of a holder in due course to enforce the
25 obligation of a party to pay the instrument is subject to
26 defenses of the obligor stated in subsection (a) (1), but

27 is not subject to defenses of the obligor stated in
28 subsection (a) (2) or claims in recoupment stated in
29 subsection (a) (3) against a person other than the holder.

30 (c) Except as stated in subsection (d), in an action to
31 enforce the obligation of a party to pay the instrument,
32 the obligor may not assert against the person entitled
33 to enforce the instrument a defense, claim in recoup-
34 ment, or claim to the instrument (section 3-306) of
35 another person, but the other person's claim to the
36 instrument may be asserted by the obligor if the other
37 person is joined in the action and personally asserts the
38 claim against the person entitled to enforce the instru-
39 ment. An obligor is not obliged to pay the instrument
40 if the person seeking enforcement of the instrument does
41 not have rights of a holder in due course and the obligor
42 proves that the instrument is a lost or stolen instrument.

43 (d) In an action to enforce the obligation of an
44 accommodation party to pay an instrument, the accom-
45 modation party may assert against the person entitled
46 to enforce the instrument any defense or claim in
47 recoupment under subsection (a) that the accommodated
48 party could assert against the person entitled to enforce
49 the instrument, except the defenses of discharge in
50 insolvency proceedings, infancy and lack of legal
51 capacity.

§46-3-306. Claims to an instrument.

1 A person taking an instrument, other than a person
2 having rights of a holder in due course, is subject to a
3 claim of a property or possessory right in the instrument
4 or its proceeds, including a claim to rescind a negoti-
5 ation and to recover the instrument or its proceeds. A
6 person having rights of a holder in due course takes free
7 of the claim to the instrument.

§46-3-307. Notice of breach of fiduciary duty.

1 (a) In this section:

2 (1) "Fiduciary" means an agent, trustee, partner,
3 corporate officer or director or other representative
4 owing a fiduciary duty with respect to an instrument.

5 (2) "Represented person" means the principal, bene-
6 ficiary, partnership, corporation or other person to
7 whom the duty stated in paragraph (1) is owed.

8 (b) If (i) an instrument is taken from a fiduciary for
9 payment or collection or for value, (ii) the taker has
10 knowledge of the fiduciary status of the fiduciary and
11 (iii) the represented person makes a claim to the
12 instrument or its proceeds on the basis that the
13 transaction of the fiduciary is a breach of fiduciary duty,
14 the following rules apply:

15 (1) Notice of breach of fiduciary duty by the fiduciary
16 is notice of the claim of the represented person.

17 (2) In the case of an instrument payable to the
18 represented person or the fiduciary as such, the taker
19 has notice of the breach of fiduciary duty if the
20 instrument is (i) taken in payment of or as security for
21 a debt known by the taker to be the personal debt of
22 the fiduciary, (ii) taken in a transaction known by the
23 taker to be for the personal benefit of the fiduciary or
24 (iii) deposited to an account other than an account of the
25 fiduciary, as such, or an account of the represented
26 person.

27 (3) If an instrument is issued by the represented
28 person or the fiduciary as such, and made payable to the
29 fiduciary personally, the taker does not have notice of
30 the breach of fiduciary duty unless the taker knows of
31 the breach of fiduciary duty.

32 (4) If an instrument is issued by the represented
33 person or the fiduciary as such, to the taker as payee,
34 the taker has notice of the breach of fiduciary duty if
35 the instrument is (i) taken in payment of or as security
36 for a debt known by the taker to be the personal debt
37 of the fiduciary, (ii) taken in a transaction known by the
38 taker to be for the personal benefit of the fiduciary or
39 (iii) deposited to an account other than an account of the
40 fiduciary, as such, or an account of the represented
41 person.

§46-3-308. Proof of signatures and status as holder in due course.

1 (a) In an action with respect to an instrument, the
2 authenticity of, and authority to make, each signature
3 on the instrument is admitted unless specifically denied
4 in the pleadings. If the validity of a signature is denied
5 in the pleadings, the burden of establishing validity is
6 on the person claiming validity, but the signature is
7 presumed to be authentic and authorized unless the
8 action is to enforce the liability of the purported signer
9 and the signer is dead or incompetent at the time of trial
10 of the issue of validity of the signature. If an action to
11 enforce the instrument is brought against a person as
12 the undisclosed principal of a person who signed the
13 instrument as a party to the instrument, the plaintiff
14 has the burden of establishing that the defendant is
15 liable on the instrument as a represented person under
16 section 3-402(a).

17 (b) If the validity of signatures is admitted or proved
18 and there is compliance with subsection (a), a plaintiff
19 producing the instrument is entitled to payment if the
20 plaintiff proves entitlement to enforce the instrument
21 under section 3-301, unless the defendant proves a
22 defense or claim in recoupment. If a defense or claim
23 in recoupment is proved, the right to payment of the
24 plaintiff is subject to the defense or claim, except to the
25 extent the plaintiff proves that the plaintiff has rights
26 of a holder in due course which are not subject to the
27 defense or claim.

§46-3-309. Enforcement of lost, destroyed, or stolen instrument.

1 (a) A person not in possession of an instrument is
2 entitled to enforce the instrument if (i) the person was
3 in possession of the instrument and entitled to enforce
4 it when loss of possession occurred, (ii) the loss of
5 possession was not the result of a transfer by the person
6 or a lawful seizure and (iii) the person cannot reasonably
7 obtain possession of the instrument because the instru-
8 ment was destroyed, its whereabouts cannot be deter-
9 mined, or it is in the wrongful possession of an unknown
10 person or a person that cannot be found or is not
11 amenable to service of process.

12 (b) A person seeking enforcement of an instrument
13 under subsection (a) must prove the terms of the
14 instrument and the person's right to enforce the
15 instrument. If that proof is made, section 3-308 applies
16 to the case as if the person seeking enforcement had
17 produced the instrument. The court may not enter
18 judgment in favor of the person seeking enforcement
19 unless it finds that the person required to pay the
20 instrument is adequately protected against loss that
21 might occur by reason of a claim by another person to
22 enforce the instrument. Adequate protection may be
23 provided by any reasonable means.

**§46-3-310. Effect of instrument on obligation for which
taken.**

1 (a) Unless otherwise agreed, if a certified check,
2 cashier's check or teller's check is taken for an obliga-
3 tion, the obligation is discharged to the same extent
4 discharge would result if an amount of money equal to
5 the amount of the instrument were taken in payment of
6 the obligation. Discharge of the obligation does not
7 affect any liability that the obligor may have as an
8 indorser of the instrument.

9 (b) Unless otherwise agreed and except as provided
10 in subsection (a), if a note or an uncertified check is
11 taken for an obligation, the obligation is suspended to
12 the same extent the obligation would be discharged if
13 an amount of money equal to the amount of the
14 instrument were taken, and the following rules apply:

15 (1) In the case of an uncertified check, suspension of
16 the obligation continues until dishonor of the check or
17 until it is paid or certified. Payment or certification of
18 the check results in discharge of the obligation to the
19 extent of the amount of the check.

20 (2) In the case of a note, suspension of the obligation
21 continues until dishonor of the note or until it is paid.
22 Payment of the note results in discharge of the obliga-
23 tion to the extent of the payment.

24 (3) Except as provided in paragraph (4), if the check
25 or note is dishonored and the obligee of the obligation

26 for which the instrument was taken is the person
27 entitled to enforce the instrument, the obligee may
28 enforce either the instrument or the obligation. In the
29 case of an instrument of a third person which is
30 negotiated to the obligee by the obligor, discharge of the
31 obligor on the instrument also discharges the obligation.

32 (4) If the person entitled to enforce the instrument
33 taken for an obligation is a person other than the
34 obligee, the obligee may not enforce the obligation to the
35 extent the obligation is suspended. If the obligee is the
36 person entitled to enforce the instrument but no longer
37 has possession of it because it was lost, stolen or
38 destroyed, the obligation may not be enforced to the
39 extent of the amount payable on the instrument, and to
40 that extent the obligee's rights against the obligor are
41 limited to enforcement of the instrument.

42 (c) If an instrument other than one described in
43 subsection (a) or (b) is taken for an obligation, the effect
44 is (i) that stated in subsection (a) if the instrument is
45 one on which a bank is liable as maker or acceptor or
46 (ii) that stated in subsection (b) in any other case.

§46-3-311. Accord and satisfaction by use of instrument.

1 (a) If a person against whom a claim is asserted
2 proved that (i) that person in good faith tendered an
3 instrument to the claimant as full satisfaction of the
4 claim, (ii) the amount of the claim was unliquidated or
5 subject to a bona fide dispute and (iii) the claimant
6 obtained payment of the instrument, the following
7 subsections apply.

8 (b) Unless subsection (c) applies, the claim is dis-
9 charged if the person against whom the claim is
10 asserted proves that the instrument or an accompanying
11 written communication contained a conspicuous state-
12 ment to the effect that the instrument was tendered as
13 full satisfaction of the claim.

14 (c) Subject to subsection (d), a claim is not discharged
15 under subsection (b) if either of the following applies:

16 (1) The claimant, if an organization, proves that (i)
17 within a reasonable time before the tender, the claimant

18 sent a conspicuous statement to the person against
19 whom the claim is asserted that communications
20 concerning disputed debts, including an instrument
21 tendered as full satisfaction of a debt, are to be sent to
22 a designated person, office, or place and (ii) the
23 instrument or accompanying communication was sent to
24 a lock box for the receipt of payments of undisputed
25 claims.

26 (2) The claimant, whether or not an organization,
27 proves that within ninety days after payment of the
28 instrument, the claimant tendered repayment of the
29 amount of the instrument to the person against whom
30 the claim is asserted. This paragraph does not apply if
31 the claimant is an organization that sent a statement
32 complying with paragraph (1)(i).

33 (d) A claim is discharged if the person against whom
34 the claim is asserted proves that within a reasonable
35 time before collection of the instrument was initiated,
36 the claimant, or an agent of the claimant having direct
37 responsibility with respect to the disputed obligation,
38 knew that the instrument was tendered in full satisfac-
39 tion of the claim.

**§46-3-312. Lost, destroyed, or stolen cashier's check,
teller's check or certified check.**

1 (a) In this section:

2 (1) "Check" means a cashier's check, teller's check or
3 certified check.

4 (2) "Claimant" means a person who claims the right
5 to receive the amount of a cashier's check, teller's check
6 or certified check that was lost, destroyed or stolen.

7 (3) "Declaration of loss" means a written statement,
8 made under penalty of perjury, to the effect that (i) the
9 declarer lost possession of a check, (ii) the declarer is
10 the drawer or payee of the check, in the case of a
11 certified check, or the remitter or payee of the check,
12 in the case of a cashier's check or teller's check, (iii) the
13 loss of possession was not the result of a transfer by the
14 declarer or a lawful seizure and (iv) the declarer cannot
15 reasonably obtain possession of the check because the

16 check was destroyed, its whereabouts cannot be deter-
17 mined or it is in the wrongful possession of an unknown
18 person or a person that cannot be found or is not
19 amenable to service of process.

20 (4) "Obligated bank" means the issuer of a cashier's
21 check or teller's check or the acceptor of a certified
22 check.

23 (b) A claimant may assert a claim to the amount of
24 a check by a communication to the obligated bank
25 describing the check with reasonable certainty and
26 requesting payment of the amount of the check, if (i) the
27 claimant is the drawer or payee of a certified check or
28 the remitter or payee of a cashier's check or teller's
29 check, (ii) the communication contains or is accompan-
30 ied by a declaration of loss of the claimant with respect
31 to the check, (iii) the communication is received at a
32 time and in a manner affording the bank a reasonable
33 time to act on it before the check is paid and (iv) the
34 claimant provides reasonable identification if requested
35 by the obligated bank. Delivery of a declaration of loss
36 is a warranty of the truth of the statements made in the
37 declaration. If a claim is asserted in compliance with
38 this subsection, the following rules apply:

39 (1) The claim becomes enforceable at the later of (i)
40 the time the claim is asserted or (ii) the ninetieth day
41 following the date of the check, in the case of a cashier's
42 check or teller's check, or the ninetieth day following the
43 date of the acceptance, in the case of a certified check.

44 (2) Until the claim becomes enforceable, it has no
45 legal effect and the obligated bank may pay the check
46 or, in the case of a teller's check, may permit the drawee
47 to pay the check. Payment to a person entitled to enforce
48 the check discharges all liability of the obligated bank
49 with respect to the check.

50 (3) If the claim becomes enforceable before the check
51 is presented for payment, the obligated bank is not
52 obliged to pay the check.

53 (4) When the claim becomes enforceable, the obli-
54 gated bank becomes obliged to pay the amount of the

55 check to the claimant if payment of the check has not
56 been made to a person entitled to enforce the check.
57 Subject to section 4-302(a)(1), payment to the claimant
58 discharges all liability of the obligated bank with
59 respect to the check.

60 (c) If the obligated bank pays the amount of a check
61 to a claimant under subsection (b)(4) and the check is
62 presented for payment by a person having rights of a
63 holder in due course, the claimant is obliged to (i) refund
64 the payment to the obligated bank if the check is paid
65 or (ii) pay the amount of the check to the person having
66 rights of a holder in due course if the check is
67 dishonored.

68 (d) If a claimant has the right to assert a claim under
69 subsection (b) and is also a person entitled to enforce a
70 cashier's check, teller's check or certified check which
71 is lost, destroyed or stolen, the claimant may assert
72 rights with respect to the check either under this section
73 or section 3-309.

PART 4. LIABILITY OF PARTIES.

§46-3-401. Signature.

1 (a) A person is not liable on an instrument unless (i)
2 the person signed the instrument or (ii) the person is
3 represented by an agent or representative who signed
4 the instrument and the signature is binding on the
5 represented person under section 3-402.

6 (b) A signature may be made (i) manually or by
7 means of a device or machine and (ii) by the use of any
8 name, including a trade or assumed name, or by a word,
9 mark, or symbol executed or adopted by a person with
10 present intention to authenticate a writing.

§46-3-402. Signature by representative.

1 (a) If a person acting, or purporting to act, as a
2 representative signs an instrument by signing either the
3 name of the represented person or the name of the
4 signer, the represented person is bound by the signature
5 to the same extent the represented person would be
6 bound if the signature were on a simple contract. If the

7 represented person is bound, the signature of the
8 representative is the "authorized signature of the
9 represented person" and the represented person is liable
10 on the instrument, whether or not identified in the
11 instrument.

12 (b) If a representative signs the name of the repre-
13 sentative to an instrument and the signature is an
14 authorized signature of the represented person, the
15 following rules apply:

16 (1) If the form of the signature shows unambiguously
17 that the signature is made on behalf of the represented
18 person who is identified in the instrument, the represen-
19 tative is not liable on the instrument.

20 (2) Subject to subsection (c), if (i) the form of the
21 signature does not show unambiguously that the
22 signature is made in a representative capacity or (ii) the
23 represented person is not identified in the instrument,
24 the representative is liable on the instrument to a holder
25 in due course that took the instrument without notice
26 that the representative was not intended to be liable on
27 the instrument. With respect to any other person, the
28 representative is liable on the instrument unless the
29 representative proves that the original parties did not
30 intend the representative to be liable on the instrument.

31 (c) If a representative signs the name of the represen-
32 tative as drawer of a check without indication of the
33 representative status and the check is payable from an
34 account of the represented person who is identified on
35 the check, the signer is not liable on the check if the
36 signature is an authorized signature of the represented
37 person.

§46-3-403. Unauthorized signature.

1 (a) Unless otherwise provided in this article or article
2 four, an unauthorized signature is ineffective except as
3 the signature of the unauthorized signer in favor of a
4 person who in good faith pays the instrument or takes
5 it for value. An unauthorized signature may be ratified
6 for all purposes of this article.

7 (b) If the signature of more than one person is

8 required to constitute the authorized signature of an
9 organization, the signature of the organization is
10 unauthorized if one of the required signatures is
11 lacking.

12 (c) The civil or criminal liability of a person who
13 makes an unauthorized signature is not affected by any
14 provision of this article which makes the unauthorized
15 signature effective for the purposes of this article.

§46-3-404. Impostors; fictitious payees.

1 (a) If an impostor, by use of the mails or otherwise,
2 induces the issuer of an instrument to issue the
3 instrument to the impostor, or to a person acting in
4 concert with the impostor, by impersonating the payee
5 of the instrument or a person authorized to act for the
6 payee, an indorsement of the instrument by any person
7 in the name of the payee is effective as the indorsement
8 of the payee in favor of a person who, in good faith, pays
9 the instrument or takes it for value or for collection.

10 (b) If (i) a person whose intent determines to whom
11 an instrument is payable (section 3-110(a) or (b)) does
12 not intend the person identified as payee to have any
13 interest in the instrument or (ii) the person identified
14 as payee of an instrument is a fictitious person, the
15 following rules apply until the instrument is negotiated
16 by special indorsement:

17 (1) Any person in possession of the instrument is its
18 holder.

19 (2) An indorsement by any person in the name of the
20 payee stated in the instrument is effective as the
21 indorsement of the payee in favor of a person who, in
22 good faith, pays the instrument or takes it for value or
23 for collection.

24 (c) Under subsection (a) or (b), an indorsement is
25 made in the name of a payee if (i) it is made in a name
26 substantially similar to that of the payee or (ii) the
27 instrument, whether or not indorsed, is deposited in a
28 depository bank to an account in a name substantially
29 similar to that of the payee.

30 (d) With respect to an instrument to which subsection
31 (a) or (b) applies, if a person paying the instrument or
32 taking it for value or for collection fails to exercise
33 ordinary care in paying or taking the instrument and
34 that failure substantially contributes to loss resulting
35 from payment of the instrument, the person bearing the
36 loss may recover from the person failing to exercise
37 ordinary care to the extent the failure to exercise
38 ordinary care contributed to the loss.

§46-3-405. Employer's responsibility for fraudulent indorsement by employee.

1 (a) In this section:

2 (1) "Employee" includes an independent contractor
3 and employee of an independent contractor retained by
4 the employer.

5 (2) "Fraudulent indorsement" means (i) in the case of
6 an instrument payable to the employer, a forged
7 indorsement purporting to be that of the employer or (ii)
8 in the case of an instrument with respect to which the
9 employer is the issuer, a forged indorsement purporting
10 to be that of the person identified as payee.

11 (3) "Responsibility" with respect to instruments
12 means authority (i) to sign or indorse instruments on
13 behalf of the employer, (ii) to process instruments
14 received by the employer for bookkeeping purposes, for
15 deposit to an account or for other disposition, (iii) to
16 prepare or process instruments for issue in the name of
17 the employer, (iv) to supply information determining the
18 names or addresses of payees of instruments to be issued
19 in the name of the employer, (v) to control the disposition
20 of instruments to be issued in the name of the employer
21 or (vi) to act otherwise with respect to instruments in
22 a responsible capacity. "Responsibility" does not include
23 authority that merely allows an employee to have access
24 to instruments or blank or incomplete instrument forms
25 that are being stored, transported or are part of
26 incoming or outgoing mail, or similar access.

27 (b) For the purpose of determining the rights and
28 liabilities of a person who, in good faith, pays an

29 instrument or takes it for value or for collection, if an
30 employer entrusted an employee with responsibility
31 with respect to the instrument and the employee or a
32 person acting in concert with the employee makes a
33 fraudulent indorsement of the instrument, the indorse-
34 ment is effective as the indorsement of the person to
35 whom the instrument is payable if it is made in the
36 name of that person. If the person paying the instrument
37 or taking it for value or for collection fails to exercise
38 ordinary care in paying or taking the instrument and
39 that failure substantially contributes to loss resulting
40 from the fraud, the person bearing the loss may recover
41 from the person failing to exercise ordinary care to the
42 extent the failure to exercise ordinary care contributed
43 to the loss.

44 (c) Under subsection (b), an indorsement is made in
45 the name of the person to whom an instrument is
46 payable if (i) it is made in a name substantially similar
47 to the name of that person or (ii) the instrument,
48 whether or not indorsed, is deposited in a depository
49 bank to an account in a name substantially similar to
50 the name of that person.

**§46-3-406. Negligence contributing to forged signature
or alteration of instrument.**

1 (a) A person whose failure to exercise ordinary care
2 substantially contributes to an alteration of an instru-
3 ment or to the making of a forged signature on an
4 instrument is precluded from asserting the alteration or
5 the forgery against a person who, in good faith, pays the
6 instrument or takes it for value or for collection.

7 (b) Under subsection (a), if the person asserting the
8 preclusion fails to exercise ordinary care in paying or
9 taking the instrument and that failure substantially
10 contributes to loss, the loss is allocated between the
11 person precluded and the person asserting the preclu-
12 sion according to the extent to which the failure of each
13 to exercise ordinary care contributed to the loss.

14 (c) Under subsection (a), the burden of proving
15 failure to exercise ordinary care is on the person
16 asserting the preclusion. Under subsection (b), the

17 burden of proving failure to exercise ordinary care is
18 on the person precluded.

§46-3-407. Alteration.

1 (a) "Alteration" means (i) an unauthorized change in
2 an instrument that purports to modify in any respect the
3 obligation of a party or (ii) an unauthorized addition of
4 words or numbers or other change to an incomplete
5 instrument relating to the obligation of a party.

6 (b) Except as provided in subsection (c), an alteration
7 fraudulently made discharges a party whose obligation
8 is affected by the alteration unless that party assents or
9 is precluded from asserting the alteration. No other
10 alteration discharges a party, and the instrument may
11 be enforced according to its original terms.

12 (c) A payor bank or drawee paying a fraudulently
13 altered instrument or a person taking it for value, in
14 good faith and without notice of the alteration, may
15 enforce rights with respect to the instrument (i)
16 according to its original terms or (ii) in the case of an
17 incomplete instrument altered by unauthorized comple-
18 tion, according to its terms as completed.

§46-3-408. Drawee not liable on unaccepted draft.

1 A check or other draft does not of itself operate as an
2 assignment of funds in the hands of the drawee available
3 for its payment, and the drawee is not liable on the
4 instrument until the drawee accepts it.

§46-3-409. Acceptance of draft; certified check.

1 (a) "Acceptance" means the drawee's signed agree-
2 ment to pay a draft as presented. It must be written on
3 the draft and may consist of the drawee's signature
4 alone. Acceptance may be made at any time and
5 becomes effective when notification pursuant to instruc-
6 tions is given or the accepted draft is delivered for the
7 purpose of giving rights on the acceptance to any person.

8 (b) A draft may be accepted although it has not been
9 signed by the drawer, is otherwise incomplete, is
10 overdue or has been dishonored.

11 (c) If a draft is payable at a fixed period after sight
12 and the acceptor fails to date the acceptance, the holder
13 may complete the acceptance by supplying a date in
14 good faith.

15 (d) "Certified check" means a check accepted by the
16 bank on which it is drawn. Acceptance may be made
17 as stated in subsection (a) or by a writing on the check
18 which indicates that the check is certified. The drawee
19 of a check has no obligation to certify the check, and
20 refusal to certify is not dishonor of the check.

§46-3-410. Acceptance varying draft.

1 (a) If the terms of a drawee's acceptance vary from
2 the terms of the draft as presented, the holder may
3 refuse the acceptance and treat the draft as dishonored.
4 In that case, the drawee may cancel the acceptance.

5 (b) The terms of a draft are not varied by an
6 acceptance to pay at the particular bank or place in the
7 United States, unless the acceptance states that the
8 draft is to be paid only at that bank or place.

9 (c) If the holder assents to an acceptance varying the
10 terms of a draft, the obligation of each drawer and
11 indorser that does not expressly assent to the acceptance
12 is discharged.

**§46-3-411. Refusal to pay cashier's checks, teller's checks
and certified checks.**

1 (a) In this section, "obligated bank" means the
2 acceptor of a certified check or the issuer of a cashier's
3 check or teller's check bought from the issuer.

4 (b) If the obligated bank wrongfully (i) refuses to pay
5 a cashier's check or certified check, (ii) stops payment
6 of a teller's check or (iii) refuses to pay a dishonored
7 teller's check, the person asserting the right to enforce
8 the check is entitled to compensation for expenses and
9 loss of interest resulting from the nonpayment and may
10 recover consequential damages if the obligated bank
11 refuses to pay after receiving notice of particular
12 circumstances giving rise to the damages.

13 (c) Expenses or consequential damages under subsec-

14 tion (b) are not recoverable if the refusal of the obligated
15 bank to pay occurs because (i) the bank suspends
16 payments, (ii) the obligated bank asserts a claim or
17 defense of the bank that it has reasonable grounds to
18 believe is available against the person entitled to enforce
19 the instrument, (iii) the obligated bank has a reasonable
20 doubt whether the person demanding payment is the
21 person entitled to enforce the instrument or (iv) payment
22 is prohibited by law.

§46-3-412. Obligation of issuer of note or cashier's check.

1 The issuer of a note or cashier's check or other draft
2 drawn on the drawer is obliged to pay the instrument
3 (i) according to its terms at the time it was issued or,
4 if not issued, at the time it first came into possession of
5 a holder or (ii) if the issuer signed an incomplete
6 instrument, according to its terms when completed, to
7 the extent stated in sections 3-115 and 3-407. The
8 obligation is owed to a person entitled to enforce the
9 instrument or to an indorser who paid the instrument
10 under section 3-415.

§46-3-413. Obligation of acceptor.

1 (a) The acceptor of a draft is obliged to pay the draft
2 (i) according to its terms at the time it was accepted,
3 even though the acceptance states that the draft is
4 payable "as originally drawn" or equivalent terms, (ii)
5 if the acceptance varies the terms of the draft, according
6 to the terms of the draft as varied or (iii) if the
7 acceptance is of a draft that is an incomplete instru-
8 ment, according to its terms when completed, to the
9 extent stated in sections 3-115 and 3-407. The obligation
10 is owed to a person entitled to enforce the draft or to
11 the drawer or an indorser who paid the draft under
12 section 3-414 or 3-415.

13 (b) If the certification of a check or other acceptance
14 of a draft states the amount certified or accepted, the
15 obligation of the acceptor is that amount. If (i) the
16 certification or acceptance does not state an amount, (ii)
17 the amount of the instrument is subsequently raised and
18 (iii) the instrument is then negotiated to a holder in due
19 course, the obligation of the acceptor is the amount of

20 the instrument at the time it was taken by the holder
21 in due course.

§46-3-414. Obligation of drawer.

1 (a) This section does not apply to cashier's checks or
2 other drafts drawn on the drawer.

3 (b) If an unaccepted draft is dishonored, the drawer
4 is obliged to pay the draft (i) according to its terms at
5 the time it was issued or, if not issued, at the time it
6 first came into possession of a holder or (ii) if the drawer
7 signed an incomplete instrument, according to its terms
8 when completed, to the extent stated in sections 3-115
9 and 3-407. The obligation is owed to a person entitled
10 to enforce the draft or to an indorser who paid the draft
11 under section 3-415.

12 (c) If a draft is accepted by a bank, the drawer is
13 discharged, regardless of when or by whom acceptance
14 was obtained.

15 (d) If a draft is accepted and the acceptor is not a
16 bank, the obligation of the drawer to pay the draft if
17 the draft is dishonored by the acceptor is the same as
18 the obligation of an indorser under sections 3-415(a) and
19 (c).

20 (e) If a draft states that it is drawn "without re-
21 course" or otherwise disclaims liability of the drawer to
22 pay the draft, the drawer is not liable under subsection
23 (b) to pay the draft if the draft is not a check. A
24 disclaimer of the liability stated in subsection (b) is not
25 effective if the draft is a check.

26 (f) If (i) a check is not presented for payment or given
27 to a depository bank for collection within thirty days
28 after its date, (ii) the drawee suspends payments after
29 expiration of the thirty-day period without paying the
30 check and (iii) because of the suspension of payments,
31 the drawer is deprived of funds maintained with the
32 drawee to cover payment of the check, the drawer to the
33 extent deprived of funds may discharge its obligation to
34 pay the check by assigning to the person entitled to
35 enforce the check the rights of the drawer against the
36 drawee with respect to the funds.

§46-3-415. Obligation of indorser.

1 (a) Subject to subsections (b), (c), (d) and (e), if an
2 instrument is dishonored, an indorser is obliged to pay
3 the amount due on the instrument (i) according to the
4 terms of the instrument at the time it was indorsed or
5 (ii) if the indorser indorsed an incomplete instrument,
6 according to its terms when completed, to the extent
7 stated in sections 3-115 and 3-407. The obligation of the
8 indorser is owed to a person entitled to enforce the
9 instrument or to a subsequent indorser who paid the
10 instrument under this section.

11 (b) If an indorsement states that it is made "without
12 recourse" or otherwise disclaims liability of the indorser,
13 the indorser is not liable under subsection (a) to pay the
14 instrument.

15 (c) If notice of dishonor of an instrument is required
16 by section 3-503 and notice of dishonor complying with
17 that section is not given to an indorser, the liability of
18 the indorser under subsection (a) is discharged.

19 (d) If a draft is accepted by a bank after an indor-
20 sement is made, the liability of the indorser under
21 subsection (a) is discharged.

22 (e) If an indorser of a check is liable under subsection
23 (a) and the check is not presented for payment, or given
24 to a depository bank for collection, within thirty days
25 after the day the indorsement was made, the liability of
26 the indorser under subsection (a) is discharged.

§46-3-416. Transfer warranties.

1 (a) A person who transfers an instrument for consid-
2 eration warrants to the transferee and, if the transfer
3 is by indorsement, to any subsequent transferee that:

4 (1) The warrantor is a person entitled to enforce the
5 instrument;

6 (2) All signatures on the instrument are authentic
7 and authorized;

8 (3) The instrument has not been altered;

9 (4) The instrument is not subject to a defense or claim

10 in recoupment of any party which can be asserted
11 against the warrantor; and

12 (5) The warrantor has no knowledge of any insolvency
13 proceeding commenced with respect to the maker or
14 acceptor or, in the case of an unaccepted draft, the
15 drawer.

16 (b) A person to whom the warranties under subsec-
17 tion (a) are made and who took the instrument in good
18 faith may recover from the warrantor as damages for
19 breach of warranty an amount equal to the loss suffered
20 as a result of the breach, but not more than the amount
21 of the instrument plus expenses and loss of interest
22 incurred as a result of the breach.

23 (c) The warranties stated in subsection (a) cannot be
24 disclaimed with respect to checks. Unless notice of a
25 claim for breach of warranty is given to the warrantor
26 within thirty days after the claimant has reason to know
27 of the breach and the identity of the warrantor, the
28 liability of the warrantor under subsection (b) is
29 discharged to the extent of any loss caused by the delay
30 in giving notice of the claim.

31 (d) A (cause of action) for breach of warranty under
32 this section accrues when the claimant has reason to
33 know of the breach.

§46-3-417. Presentment warranties.

1 (a) If an unaccepted draft is presented to the drawee
2 for payment of acceptance and the drawee pays or
3 accepts the draft, (i) the person obtaining payment or
4 acceptance, at the time of presentment and (ii) a
5 previous transferor of the draft, at the time of transfer,
6 warrant to the drawee making payment or accepting the
7 draft in good faith that:

8 (1) The warrantor is, or was, at the time the warran-
9 tor transferred the draft, a person entitled to enforce the
10 draft or authorized to obtain payment or acceptance of
11 the draft on behalf of a person entitled to enforce the
12 draft;

13 (2) The draft has not been altered; and

14 (3) The warrantor has no knowledge that the signa-
15 ture of the drawer of the draft is unauthorized.

16 (b) A drawee making payment may recover from any
17 warrantor damages for breach of warranty equal to the
18 amount paid by the drawee less the amount the drawee
19 received or is entitled to receive from the drawer
20 because of the payment. In addition, the drawee is
21 entitled to compensation for expenses and loss of interest
22 resulting from the breach. The right of the drawee to
23 recover damages under this subsection is not affected by
24 any failure of the drawee to exercise ordinary care in
25 making payment. If the drawee accepts the draft,
26 breach of warranty is a defense to the obligation of the
27 acceptor. If the acceptor makes payment with respect
28 to the draft, the acceptor is entitled to recover from any
29 warrantor for breach of warranty the amounts stated in
30 this subsection.

31 (c) If a drawee asserts a claim for breach of warranty
32 under subsection (a) based on an unauthorized indorse-
33 ment of the draft or an alteration of the draft, the
34 warrantor may defend by proving that the indorsement
35 is effective under section 3-404 or 3-405 or the drawer
36 is precluded under section 3-406 or 4-406 from asserting
37 against the drawee the unauthorized indorsement or
38 alteration.

39 (d) If (i) a dishonored draft is presented for payment
40 to the drawer or an indorser or (ii) any other instrument
41 is presented for payment to a party obliged to pay the
42 instrument and (iii) payment is received, the following
43 rules apply:

44 (1) The person obtaining payment and prior trans-
45 feror of the instrument warrant to the person making
46 payment in good faith that the warrantor is, or was, at
47 the time the warrantor transferred the instrument, a
48 person entitled to enforce the instrument or authorized
49 to obtain payment on behalf of a person entitled to
50 enforce the instrument.

51 (2) The person making payment may recover from
52 any warrantor for breach of warranty an amount equal
53 to the amount paid plus expenses and loss of interest

54 resulting from the breach.

55 (3) The warranties stated in subsections (a) and (d).
56 cannot be disclaimed with respect to checks. Unless
57 notice of a claim for breach of warranty is given to the
58 warrantor within thirty days after the claimant has
59 reason to know of the breach and the identity of the
60 warrantor, the liability of the warrantor under subsec-
61 tion (b) or (d) is discharged to the extent of any loss
62 caused by the delay in giving notice of the claim.

63 (e) A (cause of action) for breach of warranty under
64 this section accrues when the claimant has reason to
65 know of the breach.

§46-3-418. Payment of acceptance by mistake.

1 (a) Except as provided in subsection (c), if the drawee
2 of a draft pays or accepts the draft and the drawee acted
3 on the mistaken belief that (i) payment of the draft had
4 not been stopped pursuant to section 4-403 or (ii) the
5 signature of the drawer of the draft was authorized, the
6 drawee may recover the amount of the draft from the
7 person to whom or for whose benefit payment was made
8 or, in the case of acceptance, may revoke the acceptance.
9 Rights of the drawee under this subsection are not
10 affected by failure of the drawee to exercise ordinary
11 care in paying or accepting the draft.

12 (b) Except as provided in subsection (c), if an
13 instrument has been paid or accepted by mistake and
14 the case is not covered by subsection (a), the person
15 paying or accepting may, to the extent permitted by the
16 law governing mistake and restitution, (i) recover the
17 payment from the person to whom or for whose benefit
18 payment was made or (ii) in the case of acceptance, may
19 revoke the acceptance.

20 (c) The remedies provided by subsection (a) or (b)
21 may not be asserted against a person who took the
22 instrument in good faith and for value or who in good
23 faith changed position in reliance on the payment or
24 acceptance. This subsection does not limit remedies
25 provided by section 3-417 or 4-407.

26 (d) Notwithstanding section 4-215, if an instrument is

27 paid or accepted by mistake and the payor or acceptor
28 recovers payment or revokes acceptance under subsection
29 (a) or (b), the instrument is deemed not to have been
30 paid or accepted and is treated as dishonored, and the
31 person from whom payment is recovered has rights as
32 a person entitled to enforce the dishonored instrument.

§46-3-419. Instruments signed for accommodation.

1 (a) If an instrument is issued for value given for the
2 benefit of a party to the instrument (“accommodated
3 party”) and another party to the instrument (“accommodation
4 party”) signs the instrument for the purpose of
5 incurring liability on the instrument without being a
6 direct beneficiary of the value given for the instrument,
7 the instrument is signed by the accommodation party
8 “for accommodation.”

9 (b) An accommodation party may sign the instrument
10 as maker, drawer, acceptor or indorser and, subject to
11 subsection (d), is obliged to pay the instrument in the
12 capacity in which the accommodation party signs. The
13 obligation of an accommodation party may be enforced
14 notwithstanding any statute of frauds and whether or
15 not the accommodation party receives consideration for
16 the accommodation.

17 (c) A person signing an instrument is presumed to be
18 an accommodation party and there is notice that the
19 instrument is signed for accommodation if the signature
20 is an anomalous indorsement or is accompanied by
21 words indicating that the signer is acting as surety or
22 guarantor with respect to the obligation of another party
23 to the instrument. Except as provided in section 3-605,
24 the obligation of an accommodation party to pay the
25 instrument is not affected by the fact that the person
26 enforcing the obligation had notice when the instrument
27 was taken by that person that the accommodation party
28 signed the instrument for accommodation.

29 (d) If the signature of a party to an instrument is
30 accompanied by words indicating unambiguously that
31 the party is guaranteeing collection rather than pay-
32 ment of the obligation of another party to the instru-
33 ment, the signer is obliged to pay the amount due on

34 the instrument to a person entitled to enforce the
35 instrument only if (i) execution of judgment against the
36 other party has been returned unsatisfied, (ii) the other
37 party is insolvent or in an insolvency proceeding, (iii) the
38 other party cannot be served with process or (iv) it is
39 otherwise apparent that payment cannot be obtained
40 from the other party.

41 (e) An accommodation party who pays the instrument
42 is entitled to reimbursement from the accommodated
43 party and is entitled to enforce the instrument against
44 the accommodated party. An accommodated party who
45 pays the instrument has no right of recourse against,
46 and is not entitled to contribution from, an accommo-
47 dation party.

§46-3-420. Conversion of instrument.

1 (a) The law applicable to conversion of personal
2 property applies to instruments. An instrument is also
3 converted if it is taken by the transfer, other than a
4 negotiation, from a person not entitled to enforce the
5 instrument or a bank makes or obtains payment with
6 respect to the instrument for a person not entitled to
7 enforce the instrument or receive payment. An action
8 for conversion of an instrument may not be brought by
9 (i) the issuer or acceptor of the instrument or (ii) a payee
10 or indorsee who did not receive delivery of the instru-
11 ment either directly or through delivery to an agent or
12 a copayee.

13 (b) In an action under subsection (a), the measure of
14 liability is presumed to be the amount payable on the
15 instrument, but recovery may not exceed the amount of
16 the plaintiff's interest in the instrument.

17 (c) A representative, other than a depository bank,
18 who has in good faith dealt with an instrument or its
19 proceeds on behalf of one who was not the person
20 entitled to enforce the instrument is not liable in
21 conversion to that person beyond the amount of any
22 proceeds that it has not paid out.

PART 5. DISHONOR.

§46-3-501. Presentment.

1 (a) "Presentment" means a demand made by or on
2 behalf of a person entitled to enforce an instrument (i)
3 to pay the instrument made to the drawee or a party
4 obliged to pay the instrument or, in the case of a note
5 or accepted draft payable at a bank, to the bank or (ii)
6 to accept a draft made to the drawee.

7 (b) The following rules are subject to article four,
8 agreement of the parties, and clearing-house rules and
9 the like:

10 (1) Presentment may be made at the place of payment
11 of the instrument and must be made at the place of
12 payment if the instrument is payable at a bank in the
13 United States; may be made by any commercially
14 reasonable means, including an oral, written, or
15 electronic communication; is effective when the demand
16 for payment or acceptance is received by the person to
17 whom presentment is made; and is effective if made to
18 any one of two or more makers, acceptors, drawers or
19 other payors.

20 (2) Upon demand of the person to whom presentment
21 is made, the person making presentment must (i) exhibit
22 the instrument, (ii) give reasonable identification and, if
23 presentment is made on behalf of another person,
24 reasonable evidence of authority to do so and (iii) sign
25 a receipt on the instrument for any payment made or
26 surrender the instrument if full payment is made.

27 (3) Without dishonoring the instrument, the party to
28 whom presentment is made may (i) return the instru-
29 ment for lack of a necessary indorsement or (ii) refuse
30 payment or acceptance for failure of the presentment to
31 comply with the terms of the instrument, an agreement
32 of the parties, or other applicable law or rule.

33 (4) The party to whom presentment is made may
34 treat presentment as occurring on the next business day
35 after the day of presentment if the party to whom
36 presentment is made has established a cutoff hour not
37 earlier than two p.m. for the receipt and processing of
38 instruments presented for payment or acceptance and
39 presentment is made after the cutoff hour.

§46-3-502. Dishonor.

1 (a) Dishonor of a note is governed by the following
2 rules:

3 (1) If the note is payable on demand, the note is
4 dishonored if presentment is duly made to the maker
5 and the note is not paid on the day of presentment.

6 (2) If the note is not payable on demand and is
7 payable at or through a bank or the terms of the note
8 require presentment, the note is dishonored if present-
9 ment is duly made and the note is not paid on the day
10 it becomes payable or the day of presentment, whichever
11 is later.

12 (3) If the note is not payable on demand and para-
13 graph (2) does not apply, the note is dishonored if it is
14 not paid on the day it becomes payable.

15 (b) Dishonor of an unaccepted draft other than a
16 documentary draft is governed by the following rules:

17 (1) If a check is duly presented for payment to the
18 payor bank otherwise than for immediate payment over
19 the counter, the check is dishonored if the payor bank
20 makes timely return of the check or sends timely notice
21 of dishonor or nonpayment under section 4-301 or 4-302,
22 or becomes accountable for the amount of the check
23 under section 4-302.

24 (2) If a draft is payable on demand and paragraph
25 (1) does not apply, the draft is dishonored if presentment
26 for payment is duly made to the drawee and the draft
27 is not paid on the day of presentment.

28 (3) If a draft is payable on a date stated in the draft,
29 the draft is dishonored if (i) presentment for payment
30 is duly made to the drawee and payment is not made
31 on the day the draft becomes payable or the day of
32 presentment, whichever is later or (ii) presentment for
33 acceptance is duly made before the day the draft
34 becomes payable and the draft is not accepted on the day
35 of presentment.

36 (4) If a draft is payable on elapse of a period of time
37 after sight or acceptance, the draft is dishonored if

38 presentment for acceptance is duly made and the draft
39 is not accepted on the day of presentment.

40 (c) Dishonor of an unaccepted documentary draft
41 occurs according to the rules stated in subsections (b)
42 (2), (3) and (4), except that payment or acceptance may
43 be delayed without dishonor until no later than the close
44 of the third business day of the drawee following the day
45 on which payment or acceptance is required by those
46 paragraphs.

47 (d) Dishonor of an accepted draft is governed by the
48 following rules:

49 (1) If the draft is payable on demand, the draft is
50 dishonored if presentment for payment is duly made to
51 the acceptor and the draft is not paid on the day of
52 presentment.

53 (2) If the draft is not payable on demand, the draft
54 is dishonored if presentment for payment is duly made
55 to the acceptor and payment is not made on the day it
56 becomes payable or the day of presentment, whichever
57 is later.

58 (e) In any case in which presentment is otherwise
59 required for dishonor under this section and present-
60 ment is excused under section 3-504, dishonor occurs
61 without presentment if the instrument is not duly
62 accepted or paid.

63 (f) If a draft is dishonored because timely acceptance
64 of the draft was not made and the person entitled to
65 demand acceptance consents to a late acceptance, from
66 the time of acceptance the draft is treated as never
67 having been dishonored.

§46-3-503. Notice of dishonor.

1 (a) The obligation of an indorser stated in section 3-
2 415(a) and the obligation of a drawer stated in section
3 3-414(d) may not be enforced unless (i) the indorser or
4 drawer is given notice of dishonor of the instrument
5 complying with this section or (ii) notice of dishonor is
6 excused under section 3-504(b).

7 (b) Notice of dishonor may be given by any person;

8 may be given by any commercially reasonable means,
9 including an oral, written or electronic communication;
10 and is sufficient if it reasonably identifies the instru-
11 ment and indicates that the instrument has been
12 dishonored or has not been paid or accepted. Return of
13 an instrument given to a bank for collection is sufficient
14 notice of dishonor.

15 (c) Subject to section 3-504(c), with respect to an
16 instrument taken for collection by a collecting bank,
17 notice of dishonor must be given (i) by the bank before
18 midnight of the next banking day following the banking
19 day on which the bank receives notice of dishonor of the
20 instrument or (ii) by any other person within thirty days
21 following the day on which the person receives notice of
22 dishonor. With respect to any other instrument, notice
23 of dishonor must be given within thirty days following
24 the day on which dishonor occurs.

§46-3-504. Excused presentment and notice of dishonor.

1 (a) Presentment for payment or acceptance of an
2 instrument is excused if (i) the person entitled to present
3 the instrument cannot with reasonable diligence make
4 presentment, (ii) the maker or acceptor has repudiated
5 an obligation to pay the instrument or is dead or in
6 insolvency proceedings, (iii) by the terms of the instru-
7 ment presentment is not necessary to enforce the
8 obligation of indorsers or the drawer, (iv) the drawer or
9 indorser whose obligation is being enforced has waived
10 presentment or otherwise has no reason to expect or
11 right to require that the instrument be paid or accepted
12 or (v) the drawer instructed the drawee not to pay or
13 accept the draft or the drawee was not obligated to the
14 drawer to pay the draft.

15 (b) Notice of dishonor is excused if (i) by the terms
16 of the instrument notice of dishonor is not necessary to
17 enforce the obligation of a party to pay the instrument
18 or (ii) the party whose obligation is being enforced
19 waived notice of dishonor. A waiver of presentment is
20 also a waiver of notice of dishonor.

21 (c) Delay in giving notice of dishonor is excused if the
22 delay was caused by circumstances beyond the control

23 of the person giving the notice and the person giving the
24 notice exercised reasonable diligence after the cause of
25 the delay ceased to operate.

§46-3-505. Evidence of dishonor.

1 (a) The following are admissible as evidence and
2 create a presumption of dishonor and of any notice of
3 dishonor stated:

4 (1) A document regular in form as provided in
5 subsection (b) which purports to be a protest;

6 (2) A purported stamp or writing of the drawee,
7 payor bank or presenting bank on or accompanying the
8 instrument stating that acceptance or payment has been
9 refused unless reasons for the refusal are stated and the
10 reasons are not consistent with dishonor;

11 (3) A book or record of the drawee, payor bank or
12 collecting bank, kept in the usual course of business
13 which shows dishonor, even if there is no evidence of
14 who made the entry.

15 (b) A protest is a certificate of dishonor made by a
16 United States consul or vice consul, or a notary public
17 or other person authorized to administer oaths by the
18 law of the place where dishonor occurs. It may be made
19 upon information satisfactory to that person. The protest
20 must identify the instrument and certify either that
21 presentment has been made or, if not made, the reason
22 why it was not made, and that the instrument has been
23 dishonored by nonacceptance or nonpayment. The
24 protest may also certify that notice of dishonor has been
25 given to some or all parties.

PART 6. DISCHARGE AND PAYMENT.

§46-3-601. Discharge and effect of discharge.

1 (a) The obligation of a party to pay the instrument is
2 discharged as stated in this article or by an act or
3 agreement with the party which would discharge an
4 obligation to pay money under a simple contract.

5 (b) Discharge of the obligation of a party is not

6 effective against a person acquiring rights of a holder
7 in due course of the instrument without notice of the
8 discharge.

§46-3-602. Payment.

1 (a) Subject to subsection (b), an instrument is paid to
2 the extent payment is made (i) by or on behalf of a party
3 obliged to pay the instrument and (ii) to a person
4 entitled to enforce the instrument. To the extent of the
5 payment, the obligation of the party obliged to pay the
6 instrument is discharged even though payment is made
7 with knowledge of a claim to the instrument under
8 section 3-306 by another person.

9 (b) The obligation of a party to pay the instrument
10 is not discharged under subsection (a) if:

11 (1) A claim to the instrument under section 3-306 is
12 enforceable against the party receiving payment and (i)
13 payment is made with knowledge by the payor that
14 payment is prohibited by injunction or similar process
15 of a court of competent jurisdiction or (ii) in the case
16 of an instrument other than a cashier's check, teller's
17 check or certified check, the party making payment
18 accepted, from the person having a claim to the
19 instrument, indemnity against loss resulting from
20 refusal to pay the person entitled to enforce the
21 instrument; or

22 (2) The person making payment knows that the
23 instrument is a stolen instrument and pays a person it
24 knows is in wrongful possession of the instrument.

§46-3-603. Tender of payment.

1 (a) If tender of payment of an obligation to pay an
2 instrument is made to a person entitled to enforce the
3 instrument, the effect of tender is governed by princi-
4 ples of law applicable to tender of payment under a
5 simple contract.

6 (b) If tender of payment of an obligation to pay an
7 instrument is made to a person entitled to enforce the
8 instrument and the tender is refused, there is discharge,
9 to the extent of the amount of the tender, of the

10 obligation of an indorser or accommodation party
11 having a right of recourse with respect to the obligation
12 to which the tender relates.

13 (c) If tender of payment of an amount due on an
14 instrument is made to a person entitled to enforce the
15 instrument, the obligation of the obligor to pay interest
16 after the due date on the amount tendered is discharged.
17 If presentment is required with respect to an instrument
18 and the obligor is able and ready to pay on the due date
19 at every place of payment stated in the instrument, the
20 obligor is deemed to have made tender of payment on
21 the due date to the person entitled to enforce the
22 instrument.

§46-3-604. Discharged by cancellation or renunciation.

1 (a) A person entitled to enforce an instrument, with
2 or without consideration, may discharge the obligation
3 of a party to pay the instrument (i) by an intentional
4 voluntary act, such as surrender of the instrument to the
5 party, destruction, mutilation, or cancellation of the
6 instrument, cancellation or striking out of the party's
7 signature or the addition of words to the instrument
8 indicating discharge or (ii) by agreeing not to sue or
9 otherwise renouncing rights against the party by a
10 signed writing.

11 (b) Cancellation or striking out of an indorsement
12 pursuant to subsection (a) does not affect the status and
13 rights of a party derived from the indorsement.

§46-3-605. Discharge of indorsers and accommodation parties.

1 (a) In this section, the term "indorser" includes a
2 drawer having the obligation described in section 3-
3 414(d).

4 (b) Discharge, under section 3-604, of the obligation
5 of a party to pay an instrument does not discharge the
6 obligation of an indorser or accommodation party
7 having a right of recourse against the discharge party.

8 (c) If a person entitled to enforce an instrument
9 agrees, with or without consideration, to an extension of

10 the due date of the obligation of a party to pay the
11 instrument, the extension discharges an indorser or
12 accommodation party having a right of recourse against
13 the party whose obligation is extended to the extent the
14 indorser or accommodation party proves that the
15 extension caused loss to the indorser or accommodation
16 party with respect to the right of recourse.

17 (d) If a person entitled to enforce an instrument
18 agrees, with or without consideration, to a material
19 modification of the obligation of a party other than an
20 extension of the due date, the modification discharges
21 the obligation of an indorser or accommodation party
22 having a right of recourse against the person whose
23 obligation is modified to the extent the modification
24 causes loss to the indorser or accommodation party with
25 respect to the right of recourse. The loss suffered by the
26 indorser or accommodation party as a result of the
27 modification is equal to the amount of the right of
28 recourse unless the person enforcing the instrument
29 proves that no loss was caused by the modification or
30 that the loss caused by the modification was an amount
31 less than the amount of the right of recourse.

32 (e) If the obligation of a party to pay an instrument
33 is secured by an interest in collateral and a person
34 entitled to enforce the instrument impairs the value of
35 the interest in collateral, the obligation of an indorser
36 or accommodation party having a right of recourse
37 against the obligor is discharged to the extent of the
38 impairment. The value of an interest in collateral is
39 impaired to the extent (i) the value of the interest is
40 reduced to an amount less than the amount of the right
41 of recourse of the party asserting discharge or (ii) the
42 reduction in value of the interest causes an increase in
43 the amount by which the amount of the right of recourse
44 exceeds the value of the interest. The burden of proving
45 impairment is on the party asserting discharge.

46 (f) If the obligation of a party is secured by an
47 interest in collateral not provided by an accommodation
48 party and a person entitled to enforce the instrument
49 impairs the value of the interest in collateral, the
50 obligation of any party who is jointly and severally liable

51 with respect to the secured obligation is discharged to
52 the extent the impairment causes the party asserting
53 discharge to pay more than that party would have been
54 obliged to pay, taking into account rights of contribu-
55 tion, if impairment had not occurred. If the party
56 asserting discharge is an accommodation party not
57 entitled to discharge under subsection (e), the party is
58 deemed to have a right to contribution based on joint
59 and several liability rather than a right to reimburse-
60 ment. The burden of proving impairment is on the party
61 asserting discharge.

62 (g) Under subsection (e) or (f), impairing value of an
63 interest in collateral includes (i) failure to obtain or
64 maintain perfection or recordation of the interest in
65 collateral, (ii) release of collateral without substitution
66 of collateral of equal value, (iii) failure to perform a duty
67 to preserve the value of collateral owed, under article
68 nine or other law, to a debtor or surety or other person
69 secondarily liable or (iv) failure to comply with appli-
70 cable law in disposing of collateral.

71 (h) An accommodation party is not discharged under
72 subsection (c), (d) or (e) unless the person entitled to
73 enforce the instrument knows of the accommodation or
74 has notice under section 3-419 (c) that the instrument
75 was signed for accommodation.

76 (i) A party is not discharged under this section if (i)
77 the party asserting discharge consents to the event or
78 conduct that is the basis of the discharge or (ii) the
79 instrument or a separate agreement of the party
80 provides for waiver if discharge under this section
81 either specifically or by general language indicating
82 that parties waive defenses based on suretyship or
83 impairment of collateral.

ARTICLE 4. BANK DEPOSITS AND COLLECTIONS.

§46-4-101. Short title.

§46-4-102. Applicability.

§46-4-103. Variation by agreement; measure of damages; action constituting ordinary care.

§46-4-104. Definitions and index of definitions.

§46-4-105. "Bank"; "depository bank"; "intermediary bank"; "collecting bank"; "payor bank"; "presenting bank."

- §46-4-106. Payable through or payable at bank; collecting bank.
- §46-4-107. Separate office of a bank.
- §46-4-108. Time of receipt of items.
- §46-4-109. Delays.
- §46-4-110. Electronic presentment.
- §46-4-111. Statute of limitations.
- §46-4-201. Status of collecting banks as agent and provisional status of credits; applicability of article; item indorsed "pay any bank."
- §46-4-202. Responsibility for collection or return; when action timely.
- §46-4-203. Effect of instructions.
- §46-4-204. Methods of sending and presenting; sending directly to payor bank.
- §46-4-205. Depository bank holder of unindorsed item.
- §46-4-206. Transfer between banks.
- §46-4-207. Transfer warranties.
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- §46-4-209. Encoding and retention warranties.
- §46-4-210. Security interest of collecting bank in items, accompanying documents and proceeds.
- §46-4-211. When bank gives value for purposes of holder in due course.
- §46-4-212. Presentment by notice of item not payable by, through or at a bank; liability of drawer or endorser.
- §46-4-213. Medium and time of settlement by bank.
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- §46-4-215. Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal.
- §46-4-216. Insolvency and preference.
- §46-4-301. Deferred posting; recovery of payment by return of items; time of dishonor; return of items by payor bank.
- §46-4-302. Payor bank's responsibility for late return of item.
- §46-4-303. When items subject to notice, stop-payment order, legal process, or setoff; order in which items may be charged or certified.
- §46-4-401. When bank may charge customer's account.
- §46-4-402. Bank's liability to customer for wrongful dishonor; time of determining insufficiency of account.
- §46-4-403. Customer's right to stop payment; burden of proof of loss.
- §46-4-404. Bank not obligated to pay check more than six months old.
- §46-4-405. Death or incompetence of customer.
- §46-4-406. Customer's duty to discover and report unauthorized signature or alteration.
- §46-4-407. Payor bank's right to subrogation or improper payment.
- §46-4-501. Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor.
- §46-4-502. Presentment of "on arrival" drafts.
- §46-4-503. Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need.
- §46-4-504. Privilege of presenting bank to deal with goods; security interest for expenses.

PART 1. GENERAL PROVISIONS AND DEFINITIONS.

§46-4-101. Short title.

1 This article may be cited as Uniform Commercial
2 Code — Bank Deposits and Collections.

§46-4-102. Applicability.

1 (a) To the extent that items within this article are
2 also within articles three and eight, they are subject to
3 those articles. If there is conflict, this article governs
4 article three but article eight governs this article.

5 (b) The liability of a bank for action or nonaction with
6 respect to an item handled by it for purposes of
7 presentment, payment or collection is governed by the
8 law of the place where the bank is located. In the case
9 of action or nonaction by or at a branch or separate
10 office of a bank, its liability is governed by the law of
11 the place where the branch or separate office is located.

**§46-4-103. Variation by agreement; measure of damages;
action constituting ordinary care.**

1 (a) The effect of the provisions of this article may be
2 varied by agreement but the parties to the agreement
3 cannot disclaim a bank's responsibility for its lack of
4 good faith or failure to exercise ordinary care or limit
5 the measure of damages for the lack or failure.
6 However, the parties may determine by agreement the
7 standards by which the bank's responsibility is to be
8 measured if those standards are not unreasonable.

9 (b) Federal reserve regulations and operating circu-
10 lars, clearing-house rules, and the like, have the effect
11 of agreements under subsection (a), whether or not
12 specifically assented to by all parties interested in items
13 handled.

14 (c) Action or nonaction approved by this article or
15 pursuant to federal reserve regulations or operating
16 circulars is the exercise of ordinary care and, in the
17 absence of special instructions, action or nonaction
18 consistent with clearing-house rules and the like or with
19 a general banking usage not disapproved by this article,
20 is prima facie the exercise of ordinary care.

21 (d) The specification or approval of certain procedures
22 by this article is not disapproval of other procedures
23 that may be reasonable under the circumstances.

24 (e) The measure of damages for failure to exercise
25 ordinary care in handling an item is the amount of the
26 item reduced by an amount that could not have been
27 realized by the exercise of ordinary care. If there is also
28 bad faith it includes any other damages the party
29 suffered as a proximate consequence.

§46-4-104. Definitions and index of definitions.

1 (a) In this article unless the context otherwise
2 requires:

3 (1) "Account" means any deposit or credit account
4 with a bank, including demand, time, savings, passbook,
5 share draft, or like account, other than an account
6 evidenced by a certificate of deposit;

7 (2) "Afternoon" means the period of a day between
8 noon and midnight;

9 (3) "Banking day" means the part of a day on which
10 a bank is open to the public for carrying on substantially
11 all of its banking functions;

12 (4) "Clearing house" means an association of banks or
13 other payors regularly clearing items;

14 (5) "Customer" means a person having an account
15 with a bank or for whom a bank has agreed to collect
16 items, including a bank that maintains an account at
17 another bank;

18 (6) "Documentary draft" means a draft to be pres-
19 ented for acceptance or payment if specified documents,
20 certificated securities (section 8-102) or instructions for
21 uncertificated securities (section 8-308), or other
22 certificates, statements, or the like are to be received by
23 the drawee or other payor before acceptance or payment
24 of the draft;

25 (7) "Draft" means a draft as defined in section 3-104
26 or an item, other than an instrument, that is an order;

27 (8) "Drawee" means a person ordered in a draft to
28 make payment;

29 (9) "Item" means an instrument or a promise or order
30 to pay money handled by a bank for collection or
31 payment. The term does not include a payment order
32 governed by article four-a or a credit or debit card slip;

33 (10) "Midnight deadline" with respect to a bank is
34 midnight on its next banking day following the banking
35 day on which it receives the relevant item or notice or
36 from which the time for taking action commences to
37 run, whichever is later;

38 (11) "Settle" means to pay in cash, by clearing-house
39 settlement, in a charge or credit or by remittance, or
40 otherwise as agreed. A settlement may be either
41 provisional or final;

42 (12) "Suspends payments" with respect to a bank
43 means that it has been closed by order of the supervisory
44 authorities, that a public officer has been appointed to
45 take it over or that it ceases or refuses to make payments
46 in the ordinary course of business.

47 (b) Other definitions applying to this article and the
48 sections in which they appear are:

49 "Agreement for electronic	
50 presentment"	Section 4-110.
51 "Bank"	Section 4-105.
52 "Collecting bank"	Section 4-105.
53 "Depository bank"	Section 4-105.
54 "Intermediary bank"	Section 4-105.
55 "Payor bank"	Section 4-105.
56 "Presenting bank"	Section 4-105.
57 "Presentment notice"	Section 4-110.

58 (c) The following definitions in other articles of this
59 chapter apply to this article:

60 "Acceptance"	Section 3-409.
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61	“Alteration”	Section 3-407.
62	“Cashier’s check”	Section 3-104.
63	“Certificate of deposit”	Section 3-104.
64	“Certified check”	Section 3-409.
65	“Check”	Section 3-104.
66	“Draft”	Section 3-104.
67	“Good faith”	Section 3-103.
68	“Holder in due course”	Section 3-302.
69	“Instrument”	Section 3-104.
70	“Notice of dishonor”	Section 3-503.
71	“Order”	Section 3-103.
72	“Ordinary care”	Section 3-103.
73	“Person entitled to enforce”	Section 3-301.
74	“Presentment”	Section 3-501.
75	“Promise”	Section 3-103.
76	“Prove”	Section 3-103.
77	“Teller’s check”	Section 3-104.
78	“Unauthorized signature”	Section 3-403.
79	(d) In addition article one contains general definitions	
80	and principles of construction and interpretation	
81	applicable throughout this article.	

§46-4-105. “Bank”; “depository bank”; “intermediary bank”; “collecting bank”; “payor bank”; “presenting bank.”

1 In this article:

2 (1) “Bank” means a person engaged in the business
3 of banking, including a savings bank, savings and loan
4 association, credit union or trust company;

5 (2) “Depository bank” means the first bank to take an
6 item even though it is also the payor bank unless the

7 item is presented for immediate payment over the
8 counter;

9 (3) "Payor bank" means a bank that is the drawee of
10 a draft;

11 (4) "Intermediary bank" means a bank to which an
12 item is transferred in course of collection except the
13 depository or payor bank;

14 (5) "Collecting bank" means a bank handling an item
15 for collection except the payor bank;

16 (6) "Presenting bank" means a bank presenting an
17 item except a payor bank.

**§46-4-106. Payable through or payable at bank; collect-
ing bank.**

1 (a) If an item states that it is "payable through" a
2 bank identified in the item, (i) the item designates the
3 bank as a collecting bank and does not by itself
4 authorize the bank to pay the item and (ii) the item may
5 be presented for payment only by or through the bank.

6 (b) If an item states that it is "payable at" a bank
7 identified in the item, (i) the item designates the bank
8 as a collecting bank and does not by itself authorize the
9 bank to pay the item and (ii) the item may be presented
10 for payment only by or through the bank.

11 (c) If a draft names a nonbank drawee and it is
12 unclear whether a bank named in the draft is a co-
13 drawee or a collecting bank, the bank is a collecting
14 bank.

§46-4-107. Separate office of a bank.

1 A branch or separate office of a bank is a separate
2 bank for the purpose of computing the time within
3 which and determining the place at or to which action
4 may be taken or notices or orders must be given under
5 this article and under article three.

§46-4-108. Time of receipt of items.

1 (a) For the purpose of allowing time to process items,
2 prove balances and make the necessary entries on its

3 books to determine its position for the day, a bank may
4 fix an afternoon hour of two p.m. or later as a cutoff
5 hour for the handling of money and items and the
6 making of entries on its books.

7 (b) An item or deposit of money received on any day
8 after a cutoff hour so fixed or after the close of the
9 banking day may be treated as being received at the
10 opening of the next banking day.

§46-4-109. Delays.

1 (a) Unless otherwise instructed, a collecting bank in
2 a good faith effort to secure payment of a specific item
3 drawn on a payor other than a bank, and with or
4 without the approval of any person involved, may waive,
5 modify or extend time limits imposed or permitted by
6 this chapter for a period not exceeding two additional
7 banking days without discharge of drawers or indorsers
8 or liability to its transferor or a prior party.

9 (b) Delay by a collecting bank or payor bank beyond
10 time limits prescribed or permitted by this chapter or
11 by instruction is excused if (i) the delay is caused by
12 interruption of communication or computer facilities,
13 suspension of payments by another bank, war, emer-
14 gency conditions, failure of equipment or other circum-
15 stances beyond the control of the bank and (ii) the bank
16 exercises such diligence as the circumstances require.

§46-4-110. Electronic presentment.

1 (a) "Agreement for electronic presentment" means an
2 agreement, clearing-house rule or federal reserve
3 regulation or operating circular, providing that present-
4 ment of an item may be made by transmission of an
5 image of an item or information describing the item
6 ("presentment notice") rather than delivery of the item
7 itself. The agreement may provide for procedures
8 governing retention, presentment, payment, dishonor
9 and other matters concerning items subject to the
10 agreement.

11 (b) Presentment of an item pursuant to an agreement

12 for presentment is made when the presentment notice
13 is received.

14 (c) If presentment is made by presentment notice, a
15 reference to "item" or "check" in this article means the
16 presentment notice unless the context otherwise indi-
17 cates.

§46-4-111. Statute of limitations.

1 An action to enforce an obligation, duty or right
2 arising under this article must be commenced within
3 three years after the (cause of action) accrues.

PART 2. COLLECTION OF ITEMS; DEPOSITARY AND COLLECTING BANKS.

§46-4-201. Status of collecting banks as agent and provisional status of credits; applicability of article; item indorsed "pay any bank."

1 (a) Unless a contrary intent clearly appears and
2 before the time that a settlement given by a collecting
3 bank for an item is or becomes final, the bank, with
4 respect to the item, is an agent or subagent of the owner
5 of the item and any settlement given for the item is
6 provisional. This provision applies regardless of the
7 form of indorsement or lack of indorsement and even
8 though credit given for the item is subject to immediate
9 withdrawal as of right or is in fact withdrawn; but the
10 continuance of ownership of an item by its owner and
11 any rights of the owner to proceeds of the item are
12 subject to rights of a collecting bank, such as those
13 resulting from outstanding advances on the item and
14 rights of recoupment setoff. If an item is handled by
15 banks for purposes of presentment, payment, collection
16 or return, the relevant provisions of this article apply
17 even though action of the parties clearly establishes that
18 a particular bank has purchased the item and is the
19 owner of it.

20 (b) After an item has been indorsed with the words
21 "pay any bank" or the like, only a bank may acquire the
22 rights of a holder until the item has been:

23 (1) Returned to the customer initiating collection; or

24 (2) Specially indorsed by a bank to a person who is
25 not a bank.

**§46-4-202. Responsibility for collection or return; when
action timely.**

1 (a) A collecting bank must exercise ordinary care in:

2 (1) Presenting an item or sending it for presentment;

3 (2) Sending notice of dishonor or nonpayment or
4 returning an item other than a documentary draft to the
5 bank's transferor after learning that the item has not
6 been paid or accepted, as the case may be;

7 (3) Settling for an item when the bank receives final
8 settlement; and

9 (4) Notifying its transferor of any loss or delay in
10 transit within a reasonable time after discovery thereof.

11 (b) A collecting bank exercises ordinary care under
12 subsection (a) by taking proper action before its
13 midnight deadline following receipt of an item, notice
14 or settlement. Taking proper action within a reasonably
15 longer time may constitute the exercise of ordinary care,
16 but the bank has the burden of establishing timeliness.

17 (c) Subject to subsection (a) (1), a bank is not liable
18 for the insolvency, neglect, misconduct, mistake or
19 default of another bank or person or for loss or
20 destruction of an item in the possession of others or in
21 transit.

§46-4-203. Effect of instructions.

1 Subject to article three concerning conversion of
2 instruments (section 3-420) and restrictive indorsements
3 (section 3-206), only a collecting bank's transferor can
4 give instructions that affect the bank or constitute notice
5 to it and a collecting bank is not liable to prior parties
6 for any action taken pursuant to the instructions or in
7 accordance with any agreement with its transferor.

**§46-4-204. Methods of sending and presenting; sending
directly to payor bank.**

1 (a) A collecting bank shall send items by a reasonably

2 prompt method taking into consideration relevant
3 instructions, the nature of the item, the number of those
4 items on hand, the cost of collection involved and the
5 method generally used by it or others to present those
6 items.

7 (b) A collecting bank may send:

8 (1) An item directly to the payor bank;

9 (2) An item to a nonbank payor if authorized by its
10 transferor; and

11 (3) An item other than documentary drafts to a
12 nonbank payor, if authorized by federal reserve regu-
13 lation or operating circular, clearing-house, rule or the
14 like.

15 (c) Presentment may be made by a presenting bank
16 at a place where the payor bank or other payor has
17 requested that presentment be made.

§46-4-205. Depository bank holder of unindorsed item.

1 If a customer delivers an item to a depository bank
2 for collection:

3 (1) The depository bank becomes a holder of the item
4 at the time it receives the item for collection if the
5 customer at the time of delivery was a holder of the
6 item, whether or not the customer indorses the item,
7 and, if the bank satisfies the other requirements of
8 section 3-302, it is a holder in due course; and

9 (2) The depository bank warrants to collecting banks,
10 the payor bank or other payor, and the drawer that the
11 amount of the item was paid to the customer or
12 deposited to the customer's account.

§46-4-206. Transfer between banks.

1 Any agreed method that identifies the transferor
2 bank is sufficient for the item's further transfer to
3 another bank.

§46-4-207. Transfer warranties.

1 (a) A customer or collecting bank that transfers an
2 item and receives a settlement or other consideration

3 warrants to the transferee and to any subsequent
4 collecting bank that:

5 (1) The warrantor is a person entitled to enforce the
6 item;

7 (2) All signatures on the item are authentic and
8 authorized;

9 (3) The item has not been altered;

10 (4) The item is not subject to a defense or claim in
11 recoupment (section 3-305(a)) of any party that can be
12 asserted against the warrantor; and

13 (5) The warrantor has no knowledge of any insolvency
14 proceeding commenced with respect to the maker or
15 acceptor or, in the case of an unaccepted draft, the
16 drawer.

17 (b) If an item is dishonored, a customer or collecting
18 bank transferring the item and receiving settlement or
19 other consideration is obliged to pay the amount due on
20 the item (i) according to the terms of the item at the
21 time it was transferred or (ii) if the transfer was of an
22 incomplete item, according to its terms when completed
23 as stated in sections 3-115 and 3-407. The obligation of
24 a transferor is owed to the transferee and to any
25 subsequent collecting bank that takes the item in good
26 faith. A transferor cannot disclaim its obligation under
27 this subsection by an indorsement stating that it is made
28 "without recourse" or otherwise disclaiming liability.

29 (c) A person to whom the warranties under subsection
30 (a) are made and who took the item in good faith may
31 recover from the warrantor as damages for breach of
32 warranty an amount equal to the loss suffered as a
33 result of the breach, but not more than the amount of
34 the item plus expenses and loss of interest incurred as
35 a result of the breach.

36 (d) The warranties stated in subsection (a) cannot be
37 disclaimed with respect to checks. Unless notice of a
38 claim for breach of warranty is given to the warrantor
39 within thirty days after the claimant has reason to know
40 of the breach and the identity of the warrantor, the

41 warrantor is discharged to the extent of any loss caused
42 by the delay in giving notice of the claim.

43 (e) A cause of action for breach of warranty under this
44 section accrues when the claimant has reason to know
45 of the breach.

§46-4-208. Presentment warranties.

1 (a) If an unaccepted draft is presented to the drawee
2 for payment or acceptance and the drawee pays or
3 accepts the draft, (i) the person obtaining payment or
4 acceptance, at the time of presentment and (ii) a
5 previous transferor of the draft, at the time of transfer,
6 warrant to the drawee that pays or accepts the draft in
7 good faith that:

8 (1) The warrantor is, or was, at the time the warran-
9 tor transferred the draft, a person entitled to enforce the
10 draft or authorized to obtain payment or acceptance of
11 the draft on behalf of a person entitled to endorse the
12 draft;

13 (2) The draft has not been altered; and

14 (3) The warrantor has no knowledge that the signa-
15 ture of the purported drawer of the draft is
16 unauthorized.

17 (b) A drawee making payment may recover from a
18 warrantor damages for breach of warranty equal to the
19 amount paid by the drawee less the amount the drawee
20 received or is entitled to receive from the drawer
21 because of the payment. In addition, the drawee is
22 entitled to compensation for expenses and loss of interest
23 resulting from the breach. The right of the drawee to
24 recover damages under this subsection is not affected by
25 any failure of the drawee to exercise ordinary care in
26 making payment. If the drawee accepts the draft, (i)
27 breach of warranty is a defense to the obligation of the
28 acceptor and (ii) if the acceptor makes payment with
29 respect to the draft, the acceptor is entitled to recover
30 from a warrantor for breach of warranty the amounts
31 stated in this subsection.

32 (c) If a drawee asserts a claim for breach of warranty

33 under subsection (a) based on an unauthorized indorse-
34 ment of the draft or an alteration of the draft, the
35 warrantor may defend by proving that the indorsement
36 is effective under section 3-404 or 3-405 or the drawer
37 is precluded under section 3-406 or 4-406 from asserting
38 against the drawee the unauthorized indorsement or
39 alteration.

40 (d) If, (i) a dishonored draft is presented for payment
41 to the drawer or an indorser or (ii) any other item is
42 presented for payment to a party obliged to pay the
43 item, and the item is paid, the person obtaining payment
44 and a prior transferor of the item warrant to the person
45 making payment in good faith that the warrantor is, or
46 was, at the time the warrantor transferred the item, a
47 person entitled to enforce the item or authorized to
48 obtain payment on behalf of a person entitled to enforce
49 the item. The person making payment may recover from
50 any warrantor for breach of warranty an amount equal
51 to the amount paid plus expenses and loss of interest
52 resulting from the breach.

53 (e) The warranties stated in subsections (a) and (d)
54 cannot be disclaimed with respect to checks. Unless
55 notice of a claim for breach of warranty is given to the
56 warrantor within thirty days after the claimant has
57 reason to know of the breach and the identity of the
58 warrantor, the warrantor is discharged to the extent of
59 any loss caused by the delay in giving notice of the
60 claim.

61 (f) A cause of action for breach of warranty under
62 this section accrues when the claimant has reason to
63 know of the breach.

§46-4-209. Encoding and retention warranties.

1 (a) A person who encodes information on or with
2 respect to an item after issue warrants to any subse-
3 quent collecting bank and to the payor bank or other
4 payor that the information is correctly encoded. If the
5 customer of a depository bank encodes, that bank also
6 makes the warranty.

7 (b) A person who undertakes to retain an item

8 pursuant to an agreement for electronic presentment
9 warrants to any subsequent collecting bank and to the
10 payor bank or other payor that retention and present-
11 ment of the item comply with the agreement. If a
12 customer of a depository bank undertakes to retain an
13 item, that bank also makes this warranty.

14 (c) A person to whom warranties are made under this
15 section and who took the item in good faith may recover
16 from the warrantor as damages for breach of warranty
17 an amount equal to the loss suffered as a result of the
18 breach, plus expenses and loss of interest incurred as a
19 result of the breach.

**§46-4-210. Security interest of collecting bank in items,
accompanying documents and proceeds.**

1 (a) A collecting bank has a security interest in an item
2 and any accompanying documents or the proceeds of
3 either:

4 (1) In case of an item deposited in an account, to the
5 extent to which credit given for the item has been
6 withdrawn or applied;

7 (2) In case of an item for which it has given credit
8 available for withdrawal as of right, to the extent of the
9 credit given, whether or not the credit is drawn upon
10 or there is a right of charge-back; or

11 (3) If it makes an advance on or against the item.

12 (b) If credit given for several items received at one
13 time or pursuant to a single agreement is withdrawn or
14 applied in part, the security interest remains upon all
15 the items, any accompanying documents or the proceeds
16 of either. For the purpose of this section, credits first
17 given are first withdrawn.

18 (c) Receipt by a collecting bank of a final settlement
19 for an item is a realization on its security interest in the
20 item, accompanying documents and proceeds. So long as
21 the bank does not receive final settlement for the item
22 or give up possession of the item or accompanying
23 documents for purposes other than collection, the

24 security interest continues to that extent and is subject
25 to article nine but:

26 (1) No security agreement is necessary to make the
27 security interest enforceable (section 9-203 (1)(a));

28 (2) No filing is required to perfect the security
29 interest; and

30 (3) The security interest has priority over conflicting
31 perfected security interests in the item, accompanying
32 documents or proceeds.

**§46-4-211. When bank gives value for purposes of holder
in due course.**

1 For purposes of determining its status as a holder in
2 due course, a bank has given value to the extent it has
3 a security interest in an item, if the bank otherwise
4 complies with the requirements of section 3-302 on what
5 constitutes a holder in due course.

**§46-4-212. Presentment by notice of item not payable by,
through or at a bank; liability of drawer or
indorser.**

1 (a) Unless otherwise instructed, a collecting bank may
2 present an item not payable by, through, or at a bank
3 by sending to the party to accept or pay a written notice
4 that the bank holds the item for acceptance or payment.
5 The notice must be sent in time to be received on or
6 before the day when presentment is due and the bank
7 must meet any requirement of the party to accept or pay
8 under section 3-501 by the close of the bank's next
9 banking day after it knows of the requirement.

10 (b) If presentment is made by notice and payment,
11 acceptance, or request for compliance with a require-
12 ment under section 3-501 is not received by the close of
13 business on the day after maturity or in the case of
14 demand items by the close of business on the third
15 banking day after notice was sent, the presenting bank
16 may treat the item as dishonored and charge any
17 drawer or indorser by sending it notice of the facts.

§46-4-213. Medium and time of settlement by bank.

1 (a) With respect to settlement by a bank, the medium
2 and time of settlement may be prescribed by federal
3 reserve regulations or circulars, clearing-house rules,
4 and the like, or agreement. In the absence of such
5 prescription:

6 (1) The medium of settlement is cash or credit to an
7 account in a federal reserve bank of or specified by the
8 person to receive settlement; and

9 (2) The time of settlement is:

10 (i) With respect to tender of settlement by cash, a
11 cashier's check, or teller's check, when the cash or check
12 is sent or delivered;

13 (ii) With respect to tender of settlement by credit in
14 an account in a federal reserve bank, when the credit
15 is made;

16 (iii) With respect to tender of settlement by a credit
17 or debit to an account in a bank, when the credit or debit
18 is made or, in the case of tender of settlement by
19 authority to charge an account, when the authority is
20 sent or delivered; or

21 (iv) With respect to tender of settlement by a funds
22 transfer, when payment is made pursuant to section 4A-
23 406(a) to the person receiving settlement.

24 (b) If the tender of settlement is not by a medium
25 authorized by subsection (a) or the time of settlement is
26 not fixed by subsection (a), no settlement occurs until the
27 tender of settlement is accepted by the person receiving
28 settlement.

29 (c) If settlement for an item is made by cashier's check
30 or teller's check and the person receiving settlement,
31 before its midnight deadline:

32 (1) Presents or forwards the check for collection,
33 settlement is final when the check is finally paid; or

34 (2) Fails to present or forward the check for collection,
35 settlement is final at the midnight deadline of the person
36 receiving settlement.

37 (d) If settlement for an item is made by giving

38 authority to charge the account of the bank giving
39 settlement in the bank receiving settlement, settlement
40 is final when the charge is made by the bank receiving
41 settlement if there are funds available in the account for
42 the amount of the item.

**§46-4-214. Right of charge-back or refund; liability of
collecting bank; return of item.**

1 (a) If a collecting bank has made provisional settle-
2 ment with its customer for an item and fails by reason
3 of dishonor, suspension of payments by a bank or
4 otherwise to receive settlement for the item which is or
5 becomes final, the bank may revoke the settlement given
6 by it, charge back the amount of any credit given for
7 the item to its customer's account or obtain refund from
8 its customer whether or not it is able to return the item
9 if by its midnight deadline or within a longer reasonable
10 time after it learns the facts it returns the item or sends
11 notification of the facts. If the return or notice is delayed
12 beyond the bank's midnight deadline or a longer
13 reasonable time after it learns the facts, the bank may
14 revoke the settlement, charge back the credit, or obtain
15 refund from its customer, but it is liable for any loss
16 resulting from the delay. These rights to revoke, charge-
17 back and obtain refund terminate if and when a
18 settlement for the item received by the bank is or
19 becomes final.

20 (b) A collecting bank returns an item when it is sent
21 or delivered to the bank's customer or transferor or
22 pursuant to its instructions.

23 (c) A depository bank that is also the payor may
24 charge-back the amount of an item to its customer's
25 account or obtain refund in accordance with the section
26 governing return of an item received by a payor bank
27 for credit on its books (section 4-301).

28 (d) The right to charge-back is not affected by:

29 (1) Previous use of a credit given for the item; or

30 (2) Failure by any bank to exercise ordinary care with
31 respect to the item, but a bank so failing remains liable.

32 (e) A failure to charge-back or claim refund does not
33 affect other rights of the bank against the customer or
34 any other party.

35 (f) If credit is given in dollars as the equivalent of the
36 value of an item payable in foreign money, the dollar
37 amount of any charge-back or refund must be calculated
38 on the basis of the bank-offered spot rate for the foreign
39 money prevailing on the day when the person entitled
40 to the charge-back or refund learns that it will not
41 receive payment in ordinary course.

**§46-4-215. Final payment of item by payor bank; when
provisional debits and credits become final;
when certain credits become available for
withdrawal.**

1 (a) An item is finally paid by a payor bank when the
2 bank has first done any of the following:

3 (1) Paid the item in cash;

4 (2) Settled for the item without having a right to
5 revoke the settlement under statute, clearing-house rule
6 or agreement; or

7 (3) Made a provisional settlement for the item and
8 failed to revoke the settlement in the time and manner
9 permitted by statute, clearing-house rule or agreement.

10 (b) If provisional settlement for an item does not
11 become final, the item is not finally paid.

12 (c) If provisional settlement for an item between the
13 presenting and payor banks is made through a clearing-
14 house or by debits or credits in an account between
15 them, then to the extent that provisional debits or
16 credits for the item are entered in accounts between the
17 presenting and payor banks or between the presenting
18 and successive prior collecting banks seriatim, they
19 become final upon final payment of the item by the
20 payor bank.

21 (d) If a collecting bank receives a settlement for an
22 item which is or becomes final, the bank is accountable
23 to its customer for the amount of the item and any
24 provisional credit given for the item in an account with

25 its customer becomes final.

26 (e) Subject to, (i) applicable law stating a time for
27 availability of funds and, (ii) any right of the bank to
28 apply the credit to an obligation of the customer, credit
29 given by a bank for an item in a customer's account
30 becomes available for withdrawal as of right:

31 (1) If the bank has received the provisional settlement
32 for the item, when the settlement becomes final and the
33 bank has had a reasonable time to receive return of the
34 item and the item has not been received within that
35 time;

36 (2) If the bank is both the depository bank and the
37 payor bank and the item is finally paid, at the opening
38 of the bank's second banking day following receipt of the
39 item.

40 (f) Subject to applicable law stating a time for
41 availability of funds and any right of a bank to apply
42 a deposit to an obligation of the depositor, a deposit of
43 money becomes available for withdrawal as of right at
44 the opening of the bank's next banking day after receipt
45 of the deposit.

§46-4-216. Insolvency and preference.

1 (a) If an item is in or comes into the possession of a
2 payor or collecting bank that suspends payment and the
3 item has not been finally paid, the item must be
4 returned by the receiver, trustee or agent in charge of
5 the closed bank to the presenting bank or the closed
6 bank's customer.

7 (b) If a payor bank finally pays an item and suspends
8 payments without making a settlement for the item with
9 its customer or the presenting bank which settlement is
10 or becomes final, the owner of the item has a preferred
11 claim against the payor bank.

12 (c) If a payor bank gives or a collecting bank gives
13 or receives a provisional settlement for an item and
14 thereafter suspends payments, the suspension does not
15 prevent or interfere with the settlement's becoming final
16 if the finality occurs automatically upon the lapse of

17 certain time or the happening of certain events.

18 (d) If a collecting bank receives from subsequent
19 parties settlement for an item, which settlement is or
20 becomes final and the bank suspends payments without
21 making a settlement for the item with its customer
22 which settlement is or becomes final, the owner of the
23 item has a preferred claim against the collecting bank.

PART 3. COLLECTION OF ITEMS: PAYOR BANKS

§46-4-301. Deferred posting; recovery of payment by return of items; time of dishonor; return of items by payor bank.

1 (a) If a payor bank settles for a demand item (other
2 than a documentary draft) presented otherwise than for
3 immediate payment over the counter before midnight of
4 the banking day of receipt, the payor bank may revoke
5 the settlement and recover the settlement if, before it
6 has made final payment and before its midnight
7 deadline it:

8 (1) Returns the item; or

9 (2) Sends written notice of dishonor or nonpayment if
10 the item is unavailable for return.

11 (b) If a demand item is received by a payor bank for
12 credit on its books, it may return the item or send notice
13 of dishonor and may revoke any credit given or recover
14 the amount thereof withdrawn by its customer, if it acts
15 within the time limit and in the manner specified in
16 subsection (a).

17 (c) Unless previous notice of dishonor has been sent
18 an item is dishonored at the time when for purposes of
19 dishonor it is returned or notice sent in accordance with
20 this section.

21 (d) An item is returned:

22 (1) As to an item presented through a clearing-house,
23 when it is delivered to the presenting or last collecting
24 bank or to the clearing-house or is sent or delivered in
25 accordance with clearing-house rules; or

26 (2) In all other cases, when it is sent or delivered to

27 the bank's customer or transferor or pursuant to
28 instructions.

§46-4-302. Payor bank's responsibility for late return of item.

1 (a) If an item is presented to and received by a payor
2 bank, the bank is accountable for the amount of:

3 (1) A demand item, other than a documentary draft,
4 whether properly payable or not, if the bank, in any case
5 in which it is not also the depository bank, retains the
6 item beyond midnight of the banking day of receipt
7 without settling for it or, whether or not it is also the
8 depository bank, does not pay or return the item or send
9 notice of dishonor until after its midnight deadline; or

10 (2) Any other properly payable item unless within the
11 time allowed for acceptance or payment of that item, the
12 bank either accepts or pays the item or returns it and
13 accompanying documents.

14 (b) The liability of a payor bank to pay an item
15 pursuant to subsection (a) is subject to defenses based
16 on breach of a presentment warranty (section 4-208) or
17 proof that the person seeking enforcement of the
18 liability presented or transferred the item for the
19 purpose of defrauding the payor bank.

§46-4-303. When items subject to notice, stop-payment order, legal process, or setoff; order in which items may be charged or certified.

1 (a) Any knowledge, notice, or stop-payment order
2 received by, legal process served upon, or setoff
3 exercised by a payor bank comes too late to terminate,
4 suspend, or modify the bank's right or duty to pay an
5 item or to charge its customer's account for the item if
6 the knowledge, notice, stop-payment order, or legal
7 process is received or served and a reasonable time for
8 the bank to act thereon expires or the setoff is exercised
9 after the earliest of the following:

10 (1) The bank accepts or certifies the item;

11 (2) The bank pays the item in cash;

12 (3) The bank settles for the item without having a
13 right to revoke the settlement under statute, clearing-
14 house rule or agreement;

15 (4) The bank becomes accountable for the amount of
16 the item under section 4-302 dealing with the payor
17 bank's responsibility for late return of items; or

18 (5) With respect to checks, a cutoff hour no earlier
19 than one hour after the opening of the next banking day
20 after the banking day on which the bank received the
21 check and no later than the close of that next banking
22 day or, if no cutoff hour is fixed, the close of the next
23 banking day after the banking day on which the bank
24 received the check.

25 (b) Subject to subsection (a) items may be accepted,
26 paid, certified or charged to the indicated account of its
27 customer in any order.

PART 4. RELATIONSHIP BETWEEN PAYOR
BANK AND ITS CUSTOMER.

§46-4-401. When bank may charge customer's account.

1 (a) A bank may charge against the account of a
2 customer an item that is properly payable from that
3 account even though the charge creates an overdraft. An
4 item is properly payable if it is authorized by the
5 customer and is in accordance with any agreement
6 between the customer and bank.

7 (b) A customer is not liable for the amount of an
8 overdraft if the customer neither signed the item nor
9 benefited from the proceeds of the item.

10 (c) A bank may charge against the account of a
11 customer a check that is otherwise properly payable
12 from the account, even though payment was made
13 before the date of the check, unless the customer has
14 given notice to the bank of the postdating describing the
15 check with reasonable certainty. The notice is effective
16 for the period stated in section 4-403(b) for stop-payment
17 orders, and must be received at such time and in such
18 manner as to afford the bank a reasonable opportunity
19 to act on it before the bank takes any action with respect

20 to the check described in section 4-303. A bank shall
21 accept nine such notices each year for each account
22 without charge for acceptance of the notice or monitor-
23 ing for the postdated check. If a bank charges against
24 the account of a customer a check before the date stated
25 in the notice of postdating, the bank is liable for
26 damages for the loss resulting from its act. The loss may
27 include damages for dishonor of subsequent items under
28 section 4-402.

29 (d) A bank that in good faith makes payment to a
30 holder may charge the indicated account of its customer
31 according to:

32 (1) The original terms of the altered item; or

33 (2) The terms of the completed item, even though the
34 bank knows the item has been completed unless the
35 bank has notice that the completion was improper.

**§46-4-402. Bank's liability to customer for wrongful
dishonor; time of determining insuffi-
ciency of account.**

1 (a) Except as otherwise provided in this article, a
2 payor bank wrongfully dishonors an item if it dishonors
3 an item that is properly payable, but a bank may
4 dishonor an item that would create an overdraft unless
5 it has agreed to pay the overdraft.

6 (b) A payor bank is liable to its customer for damages
7 proximately caused by the wrongful dishonor of an item.
8 Liability is limited to actual damages proved and may
9 include damages for an arrest or prosecution of the
10 customer or other consequential damages. Whether any
11 consequential damages are proximately caused by the
12 wrongful dishonor is a question of fact to be determined
13 in each case.

14 (c) A payor bank's determination of the customer's
15 account balance on which a decision to dishonor for
16 insufficiency of available funds is based may be made
17 at any time between the time the item is received by
18 the payor bank and the time that the payor bank returns
19 the item or gives notice in lieu of return, and no more
20 than one determination need be made. If, at the election

21 of the payor bank, a subsequent balance determination
22 is made for the purpose of reevaluating the bank's
23 decision to dishonor the item, the account balance at that
24 time is determinative of whether a dishonor for insuf-
25 ficiency of available funds is wrongful.

§46-4-403. Customer's right to stop payment; burden of proof of loss.

1 (a) A customer or any person authorized to draw on
2 the account if there is more than one person may stop
3 payment of any item drawn on the customer's account
4 or close the account by an order to the bank describing
5 the item or account with reasonable certainty received
6 at a time and in a manner that affords the bank a
7 reasonable opportunity to act on it before any action by
8 the bank with respect to the item described in section
9 4-303. If the signature of more than one person is
10 required to draw on an account, any of these persons
11 may stop payment or close the account.

12 (b) A stop-payment order is effective for six months,
13 but it lapses after fourteen calendar days if the original
14 order was oral and was not confirmed in writing within
15 that period. A stop-payment order may be renewed for
16 additional six-month periods by a writing given to the
17 bank within a period during which the stop-payment
18 order is effective.

19 (c) The burden of establishing the fact and amount of
20 loss resulting from the payment of an item contrary to
21 a stop-payment order or order to close an account is on
22 the customer. The loss from payment of an item
23 contrary to a stop-payment order may include damages
24 for dishonor of subsequent items under section 4-402.

§46-4-404. Bank not obligated to pay check more than six months old.

1 A bank is under no obligation to a customer having
2 a checking account to pay a check, other than a certified
3 check, which is presented more than six months after
4 its date, but it may charge its customer's account for a
5 payment made thereafter in good faith.

§46-4-405. Death or incompetence of customer.

1 (a) A payor or collecting bank's authority to accept,
2 pay or collect an item or to account for proceeds of its
3 collection, if otherwise effective, is not rendered
4 ineffective by incompetence of a customer of either bank
5 existing at the time the item is issued or its collection
6 is undertaken if the bank does not know of an adjud-
7 ication of incompetence. Neither death nor incompe-
8 tence of a customer revokes the authority to accept, pay,
9 collect or account until the bank knows of the fact of
10 death or of an adjudication of incompetence and has
11 reasonable opportunity to act on it.

12 (b) Even with knowledge a bank may for ten days
13 after the date of death pay or certify checks drawn on
14 or before that date unless ordered to stop payment by
15 a person claiming an interest in the account.

**§46-4-406. Customer's duty to discover and report un-
authorized signature or alteration.**

1 (a) A bank that sends or makes available to a
2 customer a statement of account showing payment of
3 items for the account shall either return or make
4 available to the customer the items paid or provide
5 information in the statement of account sufficient to
6 allow the customer reasonably to identify the items paid.
7 The statement of account provides sufficient information
8 if the item is described by item number, amount, and
9 date of payment.

10 (b) If the items are not returned to the customer, the
11 person retaining the items shall either retain the items
12 or, if the items are destroyed, maintain the capacity to
13 furnish legible copies of the items until the expiration
14 of seven years after receipt of the items. A customer
15 may request an item from the bank that paid the item,
16 and that bank must provide in a reasonable time either
17 the item or, if the item has been destroyed or is not
18 otherwise obtainable, a legible copy of the item.

19 (c) If a bank sends or makes available a statement of
20 account or items pursuant to subsection (a), the custo-
21 mer must exercise reasonable promptness in examining
22 the statement or the items to determine whether any
23 payment was not authorized because of an alteration of

24 an item or because a purported signature by or on
25 behalf of the customer was not authorized. If, based on
26 the statement or items provided, the customer should
27 reasonably have discovered the unauthorized payment,
28 the customer must promptly notify the bank of the
29 relevant facts.

30 (d) If the bank proves that the customer failed with
31 respect to an item to comply with the duties imposed on
32 the customer by subsection (c), the customer is pre-
33 cluded from asserting against the bank:

34 (1) The customer's unauthorized signature or any
35 alteration on the item, if the bank also proves that it
36 suffered a loss by reason of the failure; and

37 (2) The customer's unauthorized signature or altera-
38 tion by the same wrongdoer on any other item paid in
39 good faith by the bank if the payment was made before
40 the bank received notice from the customer of the
41 unauthorized signature or alteration and after the
42 customer had been afforded a reasonable period of time,
43 not exceeding thirty days, in which to examine the item
44 or statement of account and notify the bank.

45 (e) If subsection (d) applies and the customer proves
46 that the bank failed to exercise ordinary care in paying
47 the item and that the failure substantially contributed
48 to loss, the loss is allocated between the customer
49 precluded and the bank asserting the preclusion
50 according to the extent to which the failure of the
51 customer to comply with subsection (c) and the failure
52 of the bank to exercise ordinary care contributed to the
53 loss. If the customer proves that the bank did not pay
54 the item in good faith, the preclusion under subsection
55 (d) does not apply.

56 (f) Without regard to care or lack of care of either the
57 customer or the bank, a customer who does not within
58 one year after the statement or items are made available
59 to the customer (subsection (a)) discover and report the
60 customer's unauthorized signature on or any alteration
61 on the item is precluded from asserting against the bank
62 the unauthorized signature or alteration. If there is a
63 preclusion under this subsection, the payor bank may

64 not recover for breach of warranty under section 4-208
65 with respect to the unauthorized signature or alteration
66 to which the preclusion applies.

67 (g) A bank shall offer at least one account, at a
68 reasonable charge, that provides for the return to the
69 customer of all items or legible copies of all items. With
70 respect to accounts which do not provide for the return
71 of all items or legible copies of all items, a bank must
72 provide eighteen items, or legible copies of eighteen
73 items, in accord with subsection (b) of this section, per
74 year, per account, without charge to the customer.
75 Where a bank returns a copy to the customer, the copy
76 together with a copy of the bank's statement showing
77 payment of the item shall be prima facie evidence of
78 payment.

**§46-4-407. Payor bank's right to subrogation on im-
proper payment.**

1 If a payor bank has paid an item over the order of
2 the drawer or maker to stop payment, or after an
3 account has been closed, or otherwise under circumstan-
4 ces giving a basis for objection by the drawer or maker,
5 to prevent unjust enrichment and only to the extent
6 necessary to prevent loss to the bank by reason of its
7 payment of the item, the payor bank is subrogated to
8 the rights:

9 (1) Of any holder in due course on the item against
10 the drawer or maker;

11 (2) Of the payee or any other holder of the item
12 against the drawer or maker either on the item or under
13 the transaction out of which the item arose; and

14 (3) Of the drawer or maker against the payee or any
15 other holder of the item with respect to the transaction
16 out of which the item arose.

PART 5. COLLECTION OF DOCUMENTARY DRAFTS.

**§46-4-501. Handling of documentary drafts; duty to send
for presentment and to notify customer of
dishonor.**

1 A bank that takes a documentary draft for collection

2 shall present or send the draft and accompanying
3 documents for presentment and, upon learning that the
4 draft has not been paid or accepted in due course, shall
5 seasonably notify its customer of the fact even though
6 it may have discounted or bought the draft or extended
7 credit available for withdrawal as of right.

§46-4-502. Presentment of "on arrival" drafts.

1 If a draft or the relevant instructions require
2 presentment "on arrival," "when goods arrive" or the
3 like, the collecting bank need not present until in its
4 judgment a reasonable time for arrival of the goods has
5 expired. Refusal to pay or accept because the goods have
6 not arrived is not dishonor; the bank must notify its
7 transferor of the refusal but need not present the draft
8 again until it is instructed to do so or learns of the
9 arrival of the goods.

§46-4-503. Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need.

1 Unless otherwise instructed and except as provided in
2 article five a bank presenting a documentary draft:

3 (1) Must deliver the documents to the drawee on
4 acceptance of the draft if it is payable more than three
5 days after presentment; otherwise, only on payment; and

6 (2) Upon dishonor, either in the case of presentment
7 for acceptance or presentment for payment, may seek
8 and follow instructions from any referee in case of need
9 designated in the draft or, if the presenting bank does
10 not choose to utilize the referee's services, it must use
11 diligence and good faith to ascertain the reason for
12 dishonor, must notify its transferor of the dishonor and
13 of the results of its effort to ascertain the reasons
14 therefor and must request instructions.

15 However, the presenting bank is under no obligation
16 with respect to goods represented by the documents
17 except to follow any reasonable instructions seasonably
18 received; it has a right to reimbursement for any
19 expense incurred in following instructions and to
20 prepayment of or indemnity for those expenses.

§46-4-504. Privilege of presenting bank to deal with goods; security interest for expenses.

1 (a) A presenting bank that, following the dishonor of
2 a documentary draft, has seasonably requested instruc-
3 tions but does not receive them within a reasonable time
4 may store, sell, or otherwise deal with the goods in any
5 reasonable manner.

6 (b) For its reasonable expenses incurred by action
7 under subsection (a), the presenting bank has a lien
8 upon the goods or their proceeds, which may be
9 foreclosed in the same manner as an unpaid seller's lien.

CHAPTER 167

(Com. Sub. for S. B. 568—By Senator Anderson)

[Passed April 10, 1993; in effect ninety days 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 purchasing by the state generally; preference for resident vendors; including corporation nonresident vendors which have an affiliate or subsidiary in this state which employ a minimum of one hundred state residents as being eligible for the resident vendor preference which is based on the vendor having its principal place of business or headquarters in West Virginia; increasing from sixty percent to seventy-five percent the number of resident employees required for a resident vendor to qualify for the vendor preference based on the number of West Virginia residents employed by the vendor; allowing a nonresident corporation employing at least one hundred employees in the state or a nonresident corporation whose affiliate or subsidiary employs at least one hundred employees in this state to qualify for a vendor preference if seventy-five percent of its employees are state residents; and including corporation nonresident vendors which have

an affiliate or a subsidiary in this state within the preference.

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:

ARTICLE 3. PURCHASING DIVISION.

§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 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 the purchase, construc-
13 tion, repair or improvement upon competitive bids, the
14 successful bid shall be determined as provided in this
15 section. Effective beginning the first day of July, one
16 thousand nine hundred ninety-two, in any instance that
17 a purchase of commodities or printing by the director
18 or by a state department is required under the provi-
19 sions of this article to be made upon competitive bids,
20 the successful bid shall be determined as provided in
21 this section. The secretary of the department of tax and
22 revenue shall promulgate any rules and regulations
23 necessary to: (i) Determine that vendors have met the
24 residence requirements described in this section; (ii)
25 establish the procedure for vendors to certify the
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 the 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, corpora-
39 tion resident vendor, or from a corporation nonresident
40 vendor which has an affiliate or subsidiary which
41 employs a minimum of one hundred state residents and
42 which has maintained its headquarters or principal
43 place of business within West Virginia continuously for
44 four years immediately preceding the date on which the
45 bid is submitted, if the vendor's bid does not exceed the
46 lowest qualified bid from a nonresident vendor by more
47 than two and one-half percent of the latter bid, and if
48 the vendor has made written claim for the preference
49 at the time the bid was submitted: *Provided*, That for
50 purposes of this subdivision, any partnership, associa-
51 tion or corporation resident vendor of this state, which
52 does not meet the requirements of this subdivision solely
53 because of the continuous four-year residence require-
54 ment, shall be considered to meet the requirement if at
55 least eighty percent of the ownership interest of the
56 resident vendor is held by another individual, partner-
57 ship, association or corporation resident vendor who
58 otherwise meets the requirements of this subdivision,
59 including the continuous four-year residency require-
60 ment: *Provided, however*, That the secretary of the
61 department of tax and revenue shall promulgate rules
62 and regulations relating to attribution of ownership
63 among several resident vendors for purposes of deter-
64 mining the eighty percent ownership requirement; or

65 (2) From a resident vendor, if, for purposes of
66 producing or distributing the commodities or complet-
67 ing the project which is the subject of the vendor's bid

68 and continuously over the entire term of the project, on
69 average at least seventy-five percent of the vendor's
70 employees are residents of West Virginia who have
71 resided in the state continuously for the two imme-
72 diately preceding years and the vendor's bid does not
73 exceed the lowest qualified bid from a nonresident
74 vendor by more than two and one-half percent of the
75 latter bid, and if the vendor has certified the residency
76 requirements of this subdivision and made written
77 claim for the preference, at the time the bid was
78 submitted; or

79 (3) From a nonresident vendor, which employs a
80 minimum of one hundred state residents or a nonresi-
81 dent vendor which has an affiliate or subsidiary which
82 maintains its headquarters or principle place of business
83 within West Virginia and which employs a minimum of
84 one hundred state residents, if, for purposes of produc-
85 ing or distributing the commodities or completing the
86 project which is the subject of the vendor's bid and
87 continuously over the entire term of the project, on
88 average at least seventy-five percent of the vendor's
89 employees or the vendor's affiliate's or subsidiary's
90 employees are residents of West Virginia who have
91 resided in the state continuously for the two imme-
92 diately preceding years and the vendor's bid does not
93 exceed the lowest qualified bid from a nonresident
94 vendor by more than two and one-half percent of the
95 latter bid, and if the vendor has certified the residency
96 requirements of this subdivision and made written
97 claim for the preference, at the time the bid was
98 submitted; or

99 (4) From a vendor who meets either the requirements
100 of both subdivisions (1) and (2) of this subsection or
101 subdivisions (1) and (3) of this subsection, if the bid does
102 not exceed the lowest qualified bid from a nonresident
103 vendor by more than five percent of the latter bid, and
104 if the vendor has certified the residency requirements
105 above and made written claim for the preference at the
106 time the bid was submitted.

107 (b) If the secretary of the department of tax and
108 revenue determines under any audit procedure that a
109 vendor who received a preference under this section
110 fails to continue to meet the requirements for the
111 preference at any time during the term of the project
112 for which the preference was received the secretary
113 may: (1) Reject the vendor's bid; or (2) assess a penalty
114 against the vendor of not more than five percent of the
115 vendor's bid on the project.

116 (c) Political subdivisions of the state including county
117 boards of education may grant the same preferences to
118 any vendor of this state who has made a written claim
119 for the preference at the time a bid is submitted, but
120 for the purposes of this subsection, in determining the
121 lowest bid, any political subdivision shall exclude from
122 the bid the amount of business occupation taxes which
123 must be paid by a resident vendor to any municipality
124 within the county comprising or located within the
125 political subdivision as a result of being awarded the
126 contract which is the object of the bid; in the case of a
127 bid received by a municipality, the municipality shall
128 exclude only the business and occupation taxes as will
129 be paid to the municipality: *Provided*, That prior to
130 soliciting any competitive bids, any political subdivision
131 may, by majority vote of all its members in a public
132 meeting where all the votes are recorded, elect not to
133 exclude from the bid the amount of business and
134 occupation taxes as provided in this subsection.

135 (d) If any of the requirements or provisions set forth
136 in this section jeopardize the receipt of federal funds,
137 then the requirement or provisions are void and of no
138 force and effect for that specific project.

139 (e) If any provision or clause of this section or
140 application thereof to any person or circumstance is held
141 invalid, the invalidity shall not affect other provisions
142 or applications of this section which can be given effect
143 without the invalid provision or application, and to this
144 end the provisions of this section are severable.

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

CHAPTER 168

(S. B. 572—By Senators Minard, Wiedebusch, Dittmar,
Holliday, Felton and Yoder)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article three-a, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exceptions on purchases from the handicapped.

Be it enacted by the Legislature of West Virginia:

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

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

§5A-3A-6. Exceptions.

1 The purchasing unit is exempt from the operation of
2 the mandatory provisions of section ten, article three of
3 this chapter when:

4 (1) The director of purchasing determines that the
5 commodity or printing so produced or provided does not
6 meet the reasonable requirements of the purchasing
7 unit;

8 (2) The committee or central nonprofit agency deter-
9 mines that a nonprofit workshop cannot reasonably
10 provide the commodity or printing;

11 (3) The purchasing director determines, after consid-
12 ering any recommendation of the committee or bids
13 which may have been offered, that the commodity or
14 printing is not of a fair market price; or

15 (4) The purchasing director determines, after consult-
16 ing with the committee, that the commodity or printing
17 is not of like quality to other commodities or printing
18 available.

19 No purchasing unit may evade the intent of this
20 section when required goods or services are reasonably
21 available from nonprofit workshops.

CHAPTER 169

(H. B. 2638—By Delegate Kiss)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section five, article three, chapter forty-two 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 eleven, twelve and thirteen, article five of said chapter; to amend and reenact sections three and three-b, article one, chapter forty-two of said code; to amend and reenact sections one, two, three, three-a and four, article three of said chapter forty-two; to amend and reenact section fourteen, article one, chapter forty-four of said code; to amend and reenact section one, article three, chapter fifty-eight of said code; and to further amend said article by adding thereto a new section, designated section one-a, all relating to the probate of estates; effect of a divorce or annulment of a marriage on dispositions, appointments, conveyances or nominations made in testator's will with respect to former spouse; making certain technical corrections to statutory language; clarifying operative date of certain provisions; setting forth right of surviving spouse to an elective share in the case of intestacy; entitling a surviving spouse to the supplemental share if the amount provided by the will and other entitlements is less than the supplemental share; clarifying the source of payment of the supplemental elective share amount; eliminating need to notify persons against whom surviving spouse is not proceeding for elective share; reducing the time period to challenge certain probate matters; providing for the intestate share of a decedent's surviving spouse when decedent is not survived by any descendants; removing requirement that appraisers be

appointed to appraise decedents' estates; requiring personal representatives to appraise such estates; setting forth when personal representative is guilty of a misdemeanor; providing criminal penalties; and permitting and providing procedures for appeals of county commission final orders in cases involving the elective shares of surviving spouses.

Be it enacted by the Legislature of West Virginia:

That section five, article three, chapter forty-two 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 eleven, twelve and thirteen, article five of said chapter be amended and reenacted; that sections three and three-b, article one, chapter forty-two of said code be amended and reenacted; that sections one, two, three, three-a and four, article three of said chapter forty-two be amended and reenacted; that section fourteen, article one, chapter forty-four of said code be amended and reenacted; that section one, article three, chapter fifty-eight of said code be amended and reenacted; and that said article three be further amended by adding thereto a new section, designated section one-a, all to read as follows:

Chapter

- 41. Wills.
- 42. Descent and Distribution.
- 44. Administration of Estates and Trusts.
- 58. Appeal and Error.

CHAPTER 41. WILLS.

Article

- 1. Capacity to Make; Requisites; Validity.
- 5. Production, Probate and Record of Wills.

ARTICLE 1. CAPACITY TO MAKE; REQUISITES; VALIDITY.

§41-1-6. Revocation by divorce; no revocation by other changes of circumstances.

- 1 (a) If after executing a will the testator is divorced
- 2 or his marriage annulled, the divorce or annulment
- 3 revokes any disposition or appointment of property
- 4 made by the will to the former spouse, any provision

5 conferring a general or special power of appointment on
6 the former spouse, and any nomination of the former
7 spouse as executor, trustee, conservator, or guardian,
8 unless the will expressly provides otherwise. Property
9 prevented from passing to a former spouse because of
10 revocation by divorce or annulment passes as if the
11 former spouse failed to survive the decedent, except that
12 the provisions of section three, article three, chapter
13 forty-one do not apply, and other provisions conferring
14 some power or office on the former spouse are inter-
15 preted as if the spouse failed to survive the decedent.
16 If provisions are revoked solely by this section, they are
17 revived by testator's remarriage to the former spouse.
18 For purposes of this section, divorce or annulment
19 means any divorce or annulment which would exclude
20 the spouse as a surviving spouse. A decree of separation
21 which does not terminate the status of husband and wife
22 is not a divorce for purposes of this section. No change
23 of circumstances other than as described in this section
24 revokes a will.

25 (b) This section applies to all divorces, annulments or
26 remarriages which become effective after the fifth day
27 of June, one thousand nine hundred ninety-two.

ARTICLE 5. PRODUCTION, PROBATE AND RECORD OF WILLS.

§41-5-11. Impeachment or establishment of will—By person who was not party to prior proceeding; trial by jury.

§41-5-12. Impeachment or establishment in court—By person under disability or nonresident.

§41-5-13. Probate of foreign will.

§41-5-11. Impeachment or establishment of will — By person who was not party to prior proceeding; trial by jury.

1 After a judgment or order entered as aforesaid in a
2 proceeding for probate ex parte, any person interested
3 who was not a party to the proceeding, or any person
4 who was not a party to a proceeding for probate in
5 solemn form, may proceed by complaint to impeach or
6 establish the will, on which complaint, if required by
7 any party, a trial by jury shall be ordered, to ascertain
8 whether any, and if any, how much, of what was so
9 offered for probate, be the will of the decedent. The

10 court may require all other testamentary papers of the
11 decedent to be produced, and the inquiry shall then be
12 which one of all, or how much of any, of the testamen-
13 tary papers is the will of the decedent. If the judgment
14 or order was entered by the circuit court on appeal from
15 the county commission, such complaint shall be filed
16 within one year from the date thereof, and if the
17 judgment or order was entered by the county commis-
18 sion and there was no appeal therefrom, such complaint
19 shall be filed within one year from the date of such order
20 of the county commission. If no such complaint be filed
21 within the time prescribed, the judgment or order shall
22 be forever binding. Any complaint filed under this
23 section shall be in the circuit court of the county wherein
24 probate of the will was allowed or denied.

§41-5-12. Impeachment or establishment in court — By person under disability or nonresident.

1 Notwithstanding the two preceding sections, any
2 person interested who, at the time of the judgment or
3 order is under the age of eighteen years, or is a convict
4 or a mentally incapacitated person, may file a complaint
5 to impeach or establish the will, within one year after
6 he becomes of age, or other disability ceases; and any
7 person interested who, at that time, resided out of the
8 state, or was proceeded against by publication, may,
9 unless he actually appeared as a party or was personally
10 summoned, file such complaint within one year after the
11 entry of such judgment or order.

§41-5-13. Probate of foreign will.

1 Where a will relative to an estate within this state has
2 been proved without the same, an authenticated copy
3 thereof and the certificate of probate thereof, may be
4 offered for probate in this state. When such copy is so
5 offered, the county commission, or the clerk thereof in
6 the vacation of the commission, to which or to whom it
7 is offered, shall presume, in the absence of evidence to
8 the contrary, that the will was duly executed and
9 admitted to probate as a will of personalty in the state
10 or country of the testator's domicile, and shall admit
11 such copy to probate as a will of personalty in this state;

12 and if it appears from such copy that the will was
13 proved in the foreign court of probate to have been so
14 executed as to be a valid will of land in this state by
15 the laws thereof, such copy may be admitted to probate
16 as a will of real estate. But any person interested may,
17 within one year from the time such authenticated copy
18 is admitted to record, upon reasonable notice to the
19 parties interested, have the order admitting the same set
20 aside, upon due and satisfactory proof that such
21 authenticated copy was not a true copy of such will, or
22 that the probate of such will has been set aside by the
23 court by which it was admitted to probate, or that such
24 probate was improperly made.

CHAPTER 42. DESCENT AND DISTRIBUTION.

Article

1. Descent.
3. Provisions Relating to Husband or Wife of Decedent.

ARTICLE 1. DESCENT.

§42-1-3. Share of spouse.

§42-1-3b. Requirement that heir survive decedent for one hundred twenty hours.

§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 of the decedent survives the
5 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 fifths of the intestate estate, if all of the
11 decedent's surviving descendants are also descendants of
12 the surviving spouse and the surviving spouse has one
13 or more surviving descendants who are not descendants
14 of the decedent;

15 (c) One half of the intestate estate, if one or more of

- 16 the decedent's surviving descendants are not descend-
- 17 ants of the surviving spouse.

§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 intestate succession, and the
 4 decedent's heirs are determined accordingly. If the time
 5 of death of a decedent or of an individual who would
 6 otherwise be an heir, or the times of death of both,
 7 cannot be determined, and it is not established that the
 8 individual who would otherwise be an heir survived the
 9 decedent by one hundred twenty hours, it is deemed that
 10 the individual failed to survive for the required period.
 11 This section is not to be applied if its application would
 12 result in a taking of intestate estate by the state under
 13 section three-c of this article.

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.

§42-3-1. Right to elective share.

1 (a) The surviving spouse of a decedent who dies
 2 domiciled in this state has a right of election, against
 3 either the will or the intestate share, under the
 4 limitations and conditions stated in this part, to take an
 5 elective-share amount equal to the value of the elective-
 6 share percentage of the augmented estate, determined
 7 by the length of time the spouse and the decedent were
 8 married to each other, in accordance with the following
 9 schedule:

<p>10 If the decedent and the spouse 11 were married to each other</p>	<p>The elective-share percentage is:</p>
<p>12 Less than 1 year</p>	<p>Supplemental Amount Only</p>
<p>13 1 year but less than 2 years</p>	<p>3% of the augmented estate.</p>
<p>14 2 years but less than 3 years</p>	<p>6% of the augmented estate.</p>

15	3 years but less than 4 years	9% of the augmented estate.
16	4 years but less than 5 years	12% of the augmented estate.
17	5 years but less than 6 years	15% of the augmented estate.
18	6 years but less than 7 years	18% of the augmented estate.
19	7 years but less than 8 years	21% of the augmented estate.
20	8 years but less than 9 years	24% of the augmented estate.
21	9 years but less than 10 years	27% of the augmented estate.
22	10 years but less than 11 years	30% of the augmented estate.
23	11 years but less than 12 years	34% of the augmented estate.
24	12 years but less than 13 years	38% of the augmented estate.
25	13 years but less than 14 years	42% of the augmented estate.
26	14 years but less than 15 years	46% of the augmented estate.
27	15 years or more	50% of the augmented estate.

28 (b) If the sum of the amounts described in subdivi-
29 sions (3) and (4), subsection (b) of section two, and
30 subdivisions (1) and (3), subsection (a), section six of this
31 article, and that part of the elective-share amount
32 payable from the decedent's probate and reclaimable
33 estates under subsections (b) and (c), section six of this
34 article, is less than twenty-five thousand dollars, the
35 surviving spouse is entitled to a supplemental elective-
36 share amount equal to twenty-five thousand dollars,
37 minus the sum of the amounts described in those
38 sections. The supplemental elective-share amount is
39 payable from the decedent's probate estate and from
40 recipients of the decedent's reclaimable estate in the
41 order of priority set forth in subsections (b) and (c),
42 section six of this article.

43 (c) The right, if any, of the surviving spouse of a
44 decedent who dies domiciled outside this state to take
45 an elective share in property in this state is governed
46 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 dece-
30 dent's 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, reduced
44 by funeral and administration expenses and enforceable
45 claims;

46 (2) The value of the decedent's reclaimable estate. The
47 decedent's reclaimable estate is composed of all prop-
48 erty, whether real or personal, movable or immovable,
49 wherever situated, not included in the decedent's
50 probate estate, of any of the following types:

51 (i) Property to the extent the passing of the principal
52 thereof to or for the benefit of any person, other than
53 the decedent's surviving spouse, was subject to a
54 presently exercisable general power of appointment
55 held by the decedent alone, if the decedent held that
56 power immediately before his or her death, or if and to
57 the extent the decedent, while married to his or her
58 surviving spouse and during the two-year period next
59 preceding the decedent's death, released that power or
60 exercised that power in favor of any person other than
61 the decedent or the decedent's estate, spouse or surviv-
62 ing spouse;

63 (ii) Property, to the extent of the decedent's unilater-
64 ally severable interest therein, held by the decedent and
65 any other person, except the decedent's surviving
66 spouse, with right of survivorship, acquired during the
67 marriage of the decedent and the surviving spouse, if
68 the decedent held that interest immediately before his
69 or her death or if and to the extent the decedent, while
70 married to his or her surviving spouse and during the
71 two-year period preceding the decedent's death, trans-
72 ferred that interest to any person other than the
73 decedent's surviving spouse;

74 (iii) Proceeds of insurance, including accidental death
75 benefits, on the life of the decedent payable to any
76 person other than the decedent's surviving spouse, if the
77 decedent owned the insurance policy, had the power to
78 change the beneficiary of the insurance policy, or the
79 insurance policy was subject to a presently exercisable
80 general power of appointment held by the decedent
81 alone immediately before his or her death or if and to
82 the extent the decedent, while married to his or her
83 surviving spouse and during the two-year period next
84 preceding the decedent's death, transferred that policy
85 to any person other than the decedent's surviving spouse;
86 and

87 (iv) Property transferred by the decedent to any
88 person other than a bona fide purchaser at any time
89 during the decedent's marriage to the surviving spouse,
90 to or for the benefit of any person, other than the
91 decedent's surviving spouse, if the transfer is of any of
92 the following types:

93 (A) Any transfer to the extent that the decedent
94 retained at the time of or during the two-year period
95 next preceding his or her death the possession or
96 enjoyment of, or right to income from the property;

97 (B) Any transfer to the extent that, at the time of or
98 during the two-year period next preceding the de-
99 cent's death, the income or principal was subject to a
100 power, exercisable by the decedent alone or in conjunc-
101 tion with any other person or exercisable by a nonad-
102 verse party, for the benefit of the decedent or the
103 decedent's estate;

104 (C) Any transfer of property, to the extent the
105 decedent's contribution to it, as a percentage of the
106 whole, was made within two years before the decedent's
107 death, by which the property is held, at the time of or
108 during the two-year period next preceding the de-
109 cent's death, by the decedent and another, other than the
110 decedent's surviving spouse, with right of survivorship;
111 or

112 (D) Any transfer made to a donee within two years
113 before the decedent's death to the extent that the
114 aggregate transfers to any one donee in either of the
115 years exceed ten thousand dollars.

116 (3) The value of property to which the surviving
117 spouse succeeds by reason of the decedent's death, other
118 than by testate succession, or intestate succession,
119 including the proceeds of insurance, including acciden-
120 tal death benefits, on the life of the decedent and
121 benefits payable under a retirement plan in which the
122 decedent was a participant, exclusive of the federal
123 social security system; and

124 (4) The value of property owned by the surviving
125 spouse at the decedent's death, reduced by enforceable

126 claims against that property or that spouse, plus the
127 value of amounts that would have been includible in the
128 surviving spouse's reclaimable estate had the spouse
129 predeceased the decedent. But amounts that would have
130 been includible in the surviving spouse's reclaimable
131 estate under subsection (b)(2)(iii) are not valued as if he
132 or she were deceased.

133 (c) Any transfer or exercise or release of a power of
134 appointment is excluded from the decedent's reclaima-
135 ble estate (i) to the extent the decedent received
136 adequate and full consideration in money or money's
137 worth for the transfer, exercise or release, or (ii) if
138 irrevocably made with the written consent or joinder of
139 the surviving spouse.

140 (d) Property is valued as of the decedent's death, but
141 property irrevocably transferred during the two-year
142 period next preceding the decedent's death which is
143 included in the decedent's reclaimable estate under
144 subsections (b)(2)(i), (ii) and (iv) is valued as of the time
145 of the transfer. If the terms of more than one of the
146 subparagraphs or sub-subparagraphs of subsection
147 (b)(2) apply, the property is included in the augmented
148 estate under the subparagraph or sub-subparagraph
149 that yields the highest value. For the purposes of this
150 subsection, an "irrevocable transfer of property"
151 includes an irrevocable exercise or release of a power
152 of appointment.

153 (e) (1) Although under this section a payment, item
154 of property, or other benefit is included in the decedent's
155 reclaimable estate, a payor or other third party is not
156 liable for having made a payment or transferred an item
157 of property or other benefit to a beneficiary designated
158 in a governing instrument, or for having taken any other
159 action in good faith reliance on the validity of a
160 governing instrument, upon request and satisfactory
161 proof of the decedent's death, before the payor or other
162 third party received written notice from the surviving
163 spouse or spouse's representative of an intention to file
164 a petition for the elective share or that a petition for the
165 elective share has been filed. A payor or other third
166 party is liable for payments made or other actions taken

167 after the payor or other third party received written
168 notice of an intention to file a petition for the elective
169 share or that a petition for the elective share has been
170 filed.

171 (2) The written notice of intention to file a petition for
172 the elective share or that a petition for the elective share
173 has been filed must be mailed to the payor's or other
174 third party's main office or home by registered or
175 certified mail, return receipt requested, or served upon
176 the payor or other third party in the same manner as
177 a summons in a civil action. Upon receipt of written
178 notice of intention to file a petition for the elective share
179 or that a petition for the elective share has been filed,
180 a payor or other third party may pay any amount owed
181 or transfer or deposit any item of property held by it
182 to or with the court having jurisdiction of the probate
183 proceedings relating to the decedent's estate, or if no
184 proceedings have been commenced, to or with the court
185 having jurisdiction of probate proceedings relating to
186 decedents' estates located in the county of the decedent's
187 residence. The court shall hold the funds or item of
188 property and, upon its determination under subsection
189 (d) of section four of this article, shall order disburse-
190 ment in accordance with the determination. If no
191 petition is filed in the court within the specified time
192 under subsection (a) of section four of this article or, if
193 filed, the demand for an elective share is withdrawn
194 under subsection (c) of section four of this article, the
195 court shall order disbursement to the designated
196 beneficiary. Payments, transfers, or deposits made to or
197 with the court discharge the payor or other third party
198 from all claims for the value of amounts paid to or items
199 of property transferred to or deposited with the court.

200 (3) Upon petition to the probate court by the benefi-
201 ciary designated in a governing instrument, the court
202 may order that all or part of the property be paid to
203 the beneficiary in an amount and subject to conditions
204 consistent with this section.

205 (f) (1) A person who purchases property from a
206 recipient for value and without notice, or who receives
207 a payment or other item of property in partial or full

208 satisfaction of a legally enforceable obligation, is neither
209 obligated under this part to return the payment, item
210 of property, or benefit nor is liable under this part for
211 the amount of the payment or the value of the item of
212 property or benefit. But a person who, not for value,
213 receives a payment, item of property, or any other
214 benefit included in the decedent's reclaimable estate is
215 obligated to return the payment, item of property, or
216 benefit, or is personally liable for the amount of the
217 payment or the value of the item of property or benefit,
218 as provided in section six of this article.

219 (2) If any section or part of any section of this part
220 is preempted by federal law with respect to a payment,
221 an item of property, or any other benefit included in the
222 decedent's reclaimable estate, a person who, not for
223 value, receives the payment, item of property, or any
224 other benefit is obligated to return that payment, item
225 of property, or benefit, or is personally liable for the
226 amount of that payment or the value of that item of
227 property or benefit, as provided in section six of this
228 article to the person who would have been entitled to it
229 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 section four of this article. If the election is not exercised
5 by the surviving spouse personally, it may be exercised
6 on the surviving spouse's behalf by his or her conserva-
7 tor, guardian, or agent under the authority of a power
8 of 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), section six of
15 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, or, if there was no residuary clause or
47 no will of that predeceased spouse, to the persons and
48 in such shares as would succeed to that predeceased
49 spouse's intestate estate as if that predeceased spouse
50 died immediately after the surviving spouse.

§42-3-3a. Waiver of right to elect; other rights.

1 (a) The right of election of a surviving spouse may be
2 waived, wholly or partially, before or after marriage, by
3 a written contract, agreement, or waiver signed by the
4 surviving spouse.

5 (b) A surviving spouse's waiver is not enforceable if
6 the surviving spouse proves that:

7 (1) He or she did not execute the waiver voluntarily;
8 or

9 (2) The waiver was unconscionable when it was
10 executed and, before execution of the waiver, he or she:

11 (i) Was not provided a fair and reasonable disclosure
12 of the property or financial obligations of the decedent;

13 (ii) Did not voluntarily and expressly waive, in
14 writing, any right to disclosure of the property or
15 financial obligations of the decedent beyond the disclo-
16 sure provided; and

17 (iii) Did not have, or reasonably could not have had,
18 an adequate knowledge of the property or financial
19 obligations of the decedent.

20 (c) An issue of unconscionability of a waiver is for
21 decision by the court as a matter of law.

22 (d) Unless it provides to the contrary, a waiver of "all
23 rights," or equivalent language, in the property or estate
24 of a present or prospective spouse or a complete
25 property settlement entered into after or in anticipation
26 of separation or divorce is a waiver of all rights of
27 elective share by each spouse in the property of the other
28 and renunciation by each of all benefits that would
29 otherwise pass to him or her from the other by intestate
30 succession or by virtue of any will executed before the
31 waiver or 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), 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, against whom the spouse chooses to
24 proceed under subsection (d) of this section, the court for
25 cause shown by the surviving spouse may extend the
26 time for election. If the court grants the spouse's petition
27 for an extension, the decedent's reclaimable estate,
28 described in subdivision (2), subsection (b), section two
29 of this article, in the hands of those persons against
30 whom the spouse chooses to proceed under subsection (d)
31 of this section, is not excluded from the augmented
32 estate for the purpose of computing the elective-share
33 and supplemental elective-share amounts, if the spouse
34 makes an election by filing in the court and mailing or
35 delivering to the personal representative, if any, a
36 petition for the elective share within the time allowed
37 by the extension.

38 (c) The surviving spouse may withdraw his or her
39 demand for an elective share at any time before entry
40 of a final determination by the court.

41 (d) After notice and hearing, the court shall determine
42 the elective share and supplemental elective-share
43 amounts, and shall order its payment from the assets of
44 the augmented estate or by contribution as appears
45 appropriate under section six of this article. If it
46 appears that a fund or property included in the
47 augmented estate has not come into the possession of the
48 personal representative, or has been distributed by the
49 personal representative, the court nevertheless shall fix
50 the liability of any person who has any interest in the
51 fund or property or who has possession thereof, whether
52 as trustee or otherwise. The proceeding may be main-
53 tained against fewer than all persons against whom

54 relief could be sought, but no person is subject to
55 contribution in any greater amount than he or she would
56 have been under section two had relief been secured
57 against all persons subject to contribution.

58 (e) An order or judgment of the court may be enforced
59 as necessary in suit for contribution or payment in other
60 courts of this state or other jurisdictions.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-14. Appraisal of estates in triplicate; disposition; authority of appraisers to act throughout the state; hiring of experts.

1 The real and personal estate of every deceased person,
2 or in which such deceased person had an interest at the
3 time of his or her death, shall be appraised by the
4 personal representative of such deceased person. Such
5 personal representative, after first taking an oath for
6 the purpose, shall list and appraise at its real and actual
7 value all the real estate and all the tangible property
8 of every description owned by the deceased at the time
9 of his or her death including, but not limited to, all real
10 estate and tangible property in which the decedent had
11 an interest as joint tenant or otherwise or in which any
12 beneficial interest passes to another person by reason of
13 the death of such decedent whose estate is being so
14 appraised and irrespective of whether such real estate
15 or tangible property is subject to administration and
16 located in each county or the counties, as the case may
17 be. The personal representative shall also list and
18 appraise at its real and actual value all of the decedent's
19 intangible property of every description, including
20 moneys, credits, investments, annuities, life insurance
21 policies, (irrespective of whether such policies are
22 payable to named beneficiaries or in trust or otherwise),
23 judgments and decrees for moneys, notes, bonds,
24 accounts and all other evidences of debt, whether owing
25 to him or her by persons or corporations in or out of the
26 state, and the number and value, including both the par
27 value, if any, and the actual value, of any shares of

28 capital stock owned by the decedent in any corporation,
29 and every other item of intangible property of what-
30 soever nature or kind, including all intangible property
31 in which the decedent had an interest as joint tenant or
32 otherwise or in which any beneficial interest passes to
33 another by reason of the death of such decedent, and
34 irrespective of whether such intangible property is
35 subject to administration and whether located in this
36 state or elsewhere. Any real estate or interest therein
37 so appraised shall be identified with particularity and
38 description, shall identify the source of title in the
39 decedent and the location of such realty for purposes of
40 real property ad valorem taxation. In addition to all
41 other information required by law, the appraisement
42 shall contain and include a questionnaire designed and
43 formulated by the tax commissioner which is designed
44 for the purpose of examining the personal representa-
45 tive to determine that he or she has made a thorough
46 and proper search and investigation as to the existence
47 and value of each and every kind and species of property
48 required to be included within, and subject to appraise-
49 ment by, the provisions of this or any other section of
50 this code, which said questionnaire shall be completed
51 and answered upon the oath or adjuration of the
52 personal representative or fiduciary.

53 The appraisement, list and questionnaire aforesaid
54 shall be executed in triplicate and shall be signed by the
55 personal representative and be forthwith returned to the
56 clerk of the county commission by whom such personal
57 representative was appointed or to the fiduciary
58 supervisor. Such clerk or supervisor shall inspect such
59 appraisement, list and questionnaire, see that the same
60 are in proper form, and that all property, if any,
61 suggested by the questionnaire is included within the
62 appraisement. If such appraisement, list and question-
63 naire are returned to a fiduciary supervisor within ten
64 days after they are received and approved by him or
65 her, such supervisor shall deliver two copies of the same
66 to the clerk of the county commission. Upon receipt of
67 the appraisement, list and questionnaire, the clerk of the
68 county commission shall record the same, with the
69 certificate of approval of the supervisor, and mail one

70 copy of the same to the tax commissioner of West
71 Virginia. The date of return of an appraisalment shall
72 be entered by the clerk of the county commission in his
73 or her record of fiduciaries. Every such appraisalment
74 and list shall be prima facie evidence of the value of the
75 property embraced therein, and that the personal estate
76 embraced therein which is subject to administration
77 came to the hands of the personal representative. No
78 person shall be permitted by any means whatsoever to
79 avoid the appraisalment and listing of his or her estate
80 and of all property, real, tangible and intangible, of
81 whatsoever nature and kind, in which a beneficial
82 interest passes to another by reason of the death of the
83 decedent and irrespective of whether such property is
84 subject to administration as herein provided, nor shall
85 his or her personal representative be permitted to do so.
86 Any personal representative who fails, refuses or
87 declines to comply with the provisions of this section
88 shall be guilty of a misdemeanor, and, upon conviction
89 thereof, shall be fined not less than twenty-five dollars
90 nor more than five hundred dollars.

91 Every personal representative shall have authority to
92 retain or hire the services of such expert or experts as
93 may be deemed appropriate to assist and advise him or
94 her in and about his or her duties in appropriately and
95 accurately appraising all or any part of the assets or
96 property to be appraised according to the provisions of
97 this section. Such expert or experts so retained or hired
98 shall be compensated a reasonable sum by the personal
99 representative from the assets coming into his or her
100 hands or of which he or she is embraced, which
101 compensation and the reasonableness thereof shall be
102 subject to review and approval by the county commis-
103 sion, upon recommendation of the fiduciary supervisor.

CHAPTER 58. APPEAL AND ERROR.

ARTICLE 3. APPEALS FROM COUNTY COMMISSIONS.

§58-3.1. When appeal lies to circuit court.

§58-3-1a. Procedures for appeals.

§58-3-1. When appeal lies to circuit court.

1 An appeal shall lie to the circuit court of the county
2 from the final order of the county commission in the
3 following cases: (a) In cases of contested elections tried
4 and determined by such court; (b) in cases of contempt;
5 (c) the establishment and regulation of a road, way,
6 bridge, public landing, ferry or mill; (d) the probate of
7 a will; (e) the appointment and qualification of a
8 personal representative, guardian, including, but not
9 limited to, all fiduciaries made pursuant to article ten-
10 a, chapter forty-four of this code, or committee, and the
11 settlement of their accounts; (f) the disposition of
12 disputes arising from the provisions of article three,
13 chapter forty-two of this code, which appeal shall be de
14 novo; (g) in any other case by law specially provided.

§58-3-1a. Procedures for appeals.

1 Any interested person may appeal the final order of
2 the county commission described by the provisions of
3 subdivision (f), section one of this article to the circuit
4 court as a matter of right by requesting the appeal
5 within four months after the final order of the county
6 commission is rendered. The appeal shall be determined
7 by trial de novo. Upon receipt of the request for appeal,
8 the clerk of the county commission shall collect the
9 circuit court filing fee therefor and forward the same,
10 together with the final order and the request, to the
11 clerk of the circuit court. The court may require the
12 clerk of the county commission to file with the circuit
13 clerk all or any portion of the record of the proceedings
14 which resulted in the final order. No bond may be
15 required from any party to the appeal. The final order
16 of the county commission shall be stayed pending the
17 appeal proceedings. If, after the appeal is filed in the
18 circuit court, the matter is not brought on for hearing
19 before the end of the second term thereafter, the appeal
20 shall be considered abandoned and shall be dismissed at
21 the cost of the appellant unless sufficient cause is shown
22 for a further continuance. Upon such dismissal, the final
23 order of the county commission is affirmed. No appeal
24 which has been so dismissed by the circuit court may
25 be reinstated after the expiration of the next regular
26 term following such dismissal.

CHAPTER 170

(Com. Sub. for H. B. 2636—By Mr. Speaker, Mr. Chambers, and
Delegates Houvouras and Brown)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article eight, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to wine shipments; and allowing the shipment of limited quantities of wine from other states or nations to adults in this state if the other states or nations give an equal reciprocal privilege to adults, licensed retailers and distributors of this state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. SALE OF WINES.

§60-8-6. License or registration required for sale or shipment of wine; shipment of limited quantities of wine to adult residents permitted.

1 (a) Except as to the commissioner and except as
2 provided in subsection (b) of this section, no person may
3 offer for sale or sell wine in this state, or offer wine for
4 shipment into this state, except to a distributor who is
5 duly licensed under this article. Every person, whether
6 resident or nonresident in this state, who is engaged in
7 or desires to engage in the sale or shipment of wine to
8 a distributor for resale under this article shall, prior to
9 engaging in such activities, register with the commis-
10 sioner. If any such person violates the provisions of this
11 article, he shall not be permitted to sell, ship or deliver
12 any wine to a distributor or to the commissioner, or
13 otherwise engage in the wine business in this state for
14 a period of one year from the date a notice is mailed
15 to such person by the commissioner of the fact that such
16 person has violated the provisions of this article. During

17 such one-year period, it shall be unlawful for any
18 distributor within this state to buy or receive wine from
19 such person or to have any dealings with such person
20 with respect thereto. Hearings and appeals on such
21 notices may be had in the same manner as in the case
22 of revocations of licenses under this article.

23 (b) Notwithstanding the provisions of this chapter or
24 any other law to the contrary, an adult resident or a duly
25 licensed retailer or distributor of alcoholic beverages in
26 a state or nation which affords adults and duly licensed
27 retailers and distributors of this state an equal recip-
28 rocal shipping privilege may ship, for personal use and not
29 for resale, not more than two cases of wine per month,
30 not to exceed eighteen liters of wine in any month to any
31 adult resident in this state. Delivery of a shipment
32 pursuant to this section shall not be deemed to constitute
33 a sale in this state. The shipping container of any wine
34 sent into or out of this state under this subsection shall
35 be clearly labeled to indicate that the package cannot
36 be delivered to any person under the age of twenty-one
37 or to an intoxicated person. No adult resident or duly
38 licensed retailer or distributor may advertise the
39 availability of wines by shipment to residents of this
40 state.

CHAPTER 171

(H. B. 2802—By Delegates Staton, Rowe, Huffman,
Faircloth, L. White and Ashley)

[Passed April 8, 1993: in effect from passage. Approved by the Governor.]

AN ACT to repeal section eighteen, article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section one-j, article five, chapter twenty-three of said code; to amend chapter twenty-one-a of said code by adding thereto a new article, designated article three; to amend and reenact section eight, article three, chapter twenty-two-a of said code; to amend and reenact sections one, four, eleven, thirteen and sixteen, article one, chapter

twenty-three of said code; to amend and reenact sections one-c, four, five, five-a, five-b, fifteen and seventeen, article two of said chapter; to further amend said article by adding thereto three new sections, designated sections one-d, five-c and five-d; to further amend said chapter by adding thereto a new article, designated article two-b; to amend and reenact sections one-e, three, three-a, three-c, six, eight-c, sixteen and nineteen, article four of said chapter; to further amend said article by adding thereto five new sections, designated sections one-f, twenty-two, twenty-three, twenty-four and twenty-five; and to amend and reenact sections one, one-b, one-h and six, article five of said chapter, all relating to workers' compensation generally; creation of compensation programs performance council; purpose; appointment of members; membership; terms; chair; qualifications; selection by governor; compensation and traveling expenses; insurance; meetings; quorum; powers and duties; special rule-making authority; prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; proof of insurance; termination of permits; permit fees; commissioner of the bureau of employment programs; compensation programs performance council; official seal; legal services; rules; office hours; records; confidentiality; exceptions; depositions; investigations; rules of procedure and evidence; persons authorized to appear in proceedings; withholding of psychiatric and psychological reports and providing summaries thereof; omission to subscribe to workers' compensation fund or perform duty required by commissioner; false testimony or certification; criminal penalties; extraterritorial coverage; approval and change of agreements; primary contractor liability; definitions; applications and exceptions; certificates of good standing; reimbursement and indemnification; termination of contracts; effective date; collections efforts; classification of industries; accounts; rate of premiums; prior notice of rate changes; exceptions; application; payment of premiums; payroll report; premiums; deposits; delinquency; default; reinstatement; payment of benefits; notice to employees; criminal provisions; penalties; collection of premiums from

defaulting employers; interest and penalties; civil remedies; creation and enforcement of lien against employer and purchaser; duty of secretary of state to register liens; distraint powers; insolvency proceedings; secretary of state to withhold certificates of dissolution; injunctive relief; bond; attorney fees and costs; legislative purpose; application for settlement; reinstatement; amount of settlement; when settlement void; notification of rights; statute of limitations; effective date for new payments; previous payments due not affected; uncollectible receivables; write-offs; liabilities of successor employer; waiver of payment by commissioner; assignment of predecessor employer's premium rate to successor; employer right to hearing; content of petition; appeal; occupational safety and health activities; voluntary compliance; consultative services; mandatory programs; safety committees; requirements; rules; exceptions; premium rate credits; qualified loss management program; loss management firms; penalties; rules; temporary total disability benefits not to be paid for periods of penitentiary or jail confinement; denial of workers' compensation benefits for injuries or disease incurred while incarcerated; certain psychiatric injuries and diseases not compensable; schedule of maximum disbursements for medical, surgical, dental and hospital treatment; legislative approval; guidelines; preferred provider agreements; charges in excess of scheduled amounts not to be made; required disclosure of financial interest in sale or rental of medically related mechanical appliances or devices; promulgation of rules to enforce requirements; consequences of failure to disclose; contract by employer with hospital, physician, etc., prohibited; criminal penalties for violation; payments to certain providers prohibited; medical cost and care programs; payments; interlocutory orders; wrongfully seeking payment for services or supplies; criminal penalties; restitution; suspension or termination of providers of health care; classification of and criteria for disability benefits; occupational pneumoconiosis board; reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon; limitations on refilings; consolidation of claims;

commissioner's jurisdiction over case continuous; modification of finding or order; time limitation on awards; reimbursement of claimant for expenses; reopening cases involving permanent total disability; promulgation of rules; wrongfully seeking compensation; criminal penalties; restitution; termination of compensation; permanent disability evaluations; limitations; notice; permanent total disability benefits; reduction of disability benefits; social security benefits; applications; release of information; credit or reduction of benefits; application of section; severability; permanent total disability awards; retirement age; limitations on eligibility and the introduction of evidence; effects of other types of awards; procedures; requests for awards; jurisdiction; permanent total disability benefits; reduction of disability benefits for wages earned by claimant; notice by commissioner of decision; procedures on claims; objections and hearing; mediation; refusal to reopen claim; notice; objection; hearings on objections to commissioner's decisions by office of administrative law judges; and providing for the application of claims and cases of self-insured employers.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section one-j, article five of said chapter be repealed; that chapter twenty-one-a of said code be amended by adding thereto a new article, designated article three; that section eight, article three, chapter twenty-two-a of said code be amended and reenacted; that sections one, four, eleven, thirteen and sixteen, article one, chapter twenty-three of said code be amended and reenacted; that sections one-c, four, five, five-a, five-b, fifteen and seventeen, article two of said chapter be amended and reenacted; that said article be further amended by adding thereto three new sections, designated sections one-d, five-c and five-d; that said chapter be further amended by adding thereto a new article, designated article two-b; that sections one-e, three, three-a, three-c, six, eight-c, sixteen and nineteen, article four of said chapter be amended and reenacted; that said article be further amended by adding thereto five new sections, designated

section one-f, twenty-two, twenty-three, twenty-four and twenty-five; and that sections one, one-b, one-h and six, article five of said chapter be amended and reenacted, all to read as follows:

Chapter

21A. Unemployment Compensation.

22A. Mines and Minerals.

23. Workers' Compensation.

**CHAPTER 21A.
UNEMPLOYMENT COMPENSATION.**

ARTICLE 3. COMPENSATION PROGRAMS PERFORMANCE COUNCIL.

§21A-3-1. Creation of compensation programs performance council; purpose.

§21A-3-2. Appointment of members.

§21A-3-3. Membership; terms; chair.

§21A-3-4. Qualifications; selection by governor.

§21A-3-5. Compensation and traveling expenses; insurance.

§21A-3-6. Meetings; quorum.

§21A-3-7. Powers and duties; special rule-making authority.

§21A-3-1. Creation of compensation programs performance council; purpose.

1 There is hereby created within the bureau of employ-
2 ment programs a "compensation programs performance
3 council". The purpose of said council shall be to ensure
4 the effective, efficient and financially stable operation of
5 the unemployment compensation system and the
6 workers' compensation system of the state of West
7 Virginia.

§21A-3-2. Appointment of members.

1 The members of the council shall be appointed by the
2 governor by and with the advice and consent of the
3 Senate.

§21A-3-3. Membership; terms; chair.

1 The compensation programs performance council
2 shall consist of nine members: Four representing the
3 interests of employees; four representing the interests of
4 employers; and the commissioner of the bureau of
5 employment programs.

6 The term of each member except the commissioner
7 shall be for six years. The term of the commissioner
8 shall continue for that period in which he or she holds
9 that office.

10 The terms of all the initially appointed members of
11 the council shall begin on the first day of July, one
12 thousand nine hundred ninety-three.

13 Of the persons initially appointed, four members,
14 including two members of each of the two representative
15 groups, shall be designated to serve for terms of two
16 years each, two members, including one member of each
17 of the two representative groups, shall be designated to
18 serve for terms of four years each, and two members,
19 including one member of each of the two representative
20 groups shall be designated to serve for terms of six years
21 each. As these appointments expire, subsequent appoint-
22 ments shall be for six-year terms.

23 The commissioner shall serve as chair of the council
24 and shall be entitled to vote on all matters. The council
25 shall elect from its members a vice chair.

§21A-3-4. Qualifications; selection by governor.

1 Members of the council shall be selected with special
2 reference to their ability and fitness to effectuate the
3 purposes of this chapter and chapter twenty-three of this
4 code.

5 In appointing members of this council to represent the
6 interests of employees, the governor shall select
7 members as follows:

8 One member shall be appointed from a list of at least
9 three names submitted to the governor by the united
10 mine workers of America;

11 Two members shall be appointed from a list of at least
12 six names submitted to the governor by the West
13 Virginia labor federation, with one representing
14 construction trades and one representing industrial
15 workers; and

16 One member selected by the governor to represent the
17 general interests of employees covered under the

18 provisions of this chapter and chapter twenty-three of
19 this code.

20 In appointing members of this council to represent the
21 interests of employers, the governor shall select
22 members as follows:

23 One member shall be appointed from a list of at least
24 three names submitted to the governor by the West
25 Virginia coal industry;

26 One member shall be appointed from a list of at least
27 three names submitted to the governor by the West
28 Virginia manufacturers association;

29 One member shall be appointed from a list of at least
30 three names submitted to the governor by the West
31 Virginia chamber of commerce; and

32 One member selected by the governor to represent the
33 general interests of employers covered under the
34 provisions of this chapter and chapter twenty-three of
35 this code.

36 The governor shall ensure that employer representa-
37 tion includes a representative of small businesses
38 employing fifty or less employees on a regular basis.

**§21A-3-5. Compensation and traveling expenses;
insurance.**

1 Members of the council shall receive reasonable
2 compensation for each day actually served in attendance
3 at meetings of the council and such traveling expenses
4 as are incurred in the performance of his or her duties.
5 Payment for traveling expenses shall be made consistent
6 with state law.

7 Each member of this council shall be provided
8 appropriate liability insurance, without additional
9 premium, by the state board of risk and insurance
10 management established pursuant to article twelve,
11 chapter twenty-nine of this code.

§21A-3-6. Meetings; quorum.

1 The council shall hold meetings at any time at the call
2 of the commissioner. The commissioner shall call a

3 meeting whenever three of the other members of the
4 council request the commissioner to do so. The exact
5 date and time of each meeting shall be determined by
6 the commissioner.

7 A majority of the members of the council shall
8 constitute a quorum for the conduct of council business
9 and, except as stated in subdivision (m), section seven
10 of this article, all issues shall be resolved by a majority
11 vote of the total membership.

**§21A-3-7. Powers and duties; special rule-making
authority.**

1 The council shall have the following powers and
2 duties:

3 (a) Assist the governor and the commissioner in the
4 development of overall administrative policy for the
5 unemployment compensation and workers' compensa-
6 tion systems of the state.

7 (b) Recommend legislation and establish regulations
8 designed to ensure the effective administration and
9 financial viability of the unemployment compensation
10 system and the workers' compensation system of West
11 Virginia.

12 (c) Review and approve, reject or modify rules and
13 regulations that are proposed or promulgated by the
14 commissioner for operation of the workers' compensa-
15 tion system before the filing of the rules and regulations
16 with the secretary of state. This provision is applicable
17 to any instance under chapter twenty-three of this code
18 which authorizes the commissioner to promulgate rules
19 and regulations. Notwithstanding any provision in this
20 code to the contrary, including sections one and two,
21 article three and section three, article seven both of
22 chapter twenty-nine-a of this code, any rules and
23 regulations adopted pursuant to this section which are
24 applicable to the provisions of chapter twenty-three of
25 this code shall not be subject to sections nine through
26 sixteen, all of article three, chapter twenty-nine-a of this
27 code. The commissioner and the compensation programs
28 performance council shall follow the remaining provi-

29 sions of said article for giving notice to the public of
30 their actions and the holding of hearings or receiving
31 of comments on the rules. No later amendment to this
32 code shall have precedence over this section unless such
33 later amendment specifically provides to the contrary.

34 (d) In accordance with the laws and regulations of
35 West Virginia and the United States government,
36 establish and monitor performance measurements to
37 ensure the timeliness and accuracy of activities per-
38 formed under the unemployment compensation laws and
39 the workers' compensation laws.

40 (e) Have the final right of approval of all base rates
41 for employers covered by the workers' compensation law
42 as recommended by the commissioner.

43 (f) Advocate sufficient administrative resources to
44 effectively operate the unemployment compensation
45 system and the workers' compensation system of West
46 Virginia.

47 (g) Approve the designation of health care providers
48 to make decisions regarding appropriateness of medical
49 services pursuant to subsection (d), section one, article
50 five, chapter twenty-three of this code.

51 (h) Ensure that the unemployment compensation
52 system and the workers' compensation system of West
53 Virginia develop and pursue an effective program of
54 outreach and communication to employers, workers and
55 others involved in these programs.

56 (i) Analyze opportunities to affect efficiencies and
57 improvements for employers and workers by developing
58 common definitions, interrelated systems and other
59 internal operational improvements, including long-
60 range planning for improvements.

61 (j) Develop programs, linkages in the public sector
62 and the private sector, and information materials
63 designed to promote the early return to work of
64 individuals receiving unemployment compensation
65 benefits or workers' compensation benefits.

66 (k) Examine the current design and report recom-

67 mendations to the governor and the Legislature regard-
68 ing the second injury reserve of the surplus fund and
69 the financial viability of the state's workers' compensa-
70 tion system.

71 (l) Consider such other matters regarding the unem-
72 ployment compensation system or the workers' compen-
73 sation system as the commissioner or any appointed
74 member of the council may desire.

75 (m) On or before the first day of September, one
76 thousand nine hundred ninety-three, establish vocational
77 standards to be considered in making decisions on
78 permanent total disability awards under subdivision (n),
79 section six, article four, chapter twenty-three of this
80 code: *Provided*, That the compensation programs
81 performance council is expressly authorized to establish
82 this standard irrespective of court decisions interpreting
83 any previous enactment of said subdivision: *Provided*,
84 *however*, That adoption of said vocational standard shall
85 require an affirmative vote of two thirds of the members
86 of said compensation programs performance council.

87 (n) Adopt criteria for the determination and stand-
88 ards for the payment of attorneys' fees pursuant to
89 subdivision (2), subsection (c), section sixteen, article
90 four, chapter twenty-three of this code.

CHAPTER 22A. MINES AND MINERALS.

ARTICLE 3. WEST VIRGINIA SURFACE COAL MINING AND RECLAMATION ACT.

§22A-3-8. Prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; proof of insurance; termination of permits; permit fees.

1 No person may engage in surface-mining operations
2 unless such person has first obtained a permit from the
3 commissioner in accordance with the following:

4 (a) Within two months after the secretary of the
5 interior approves a permanent state program for West
6 Virginia, all surface-mining operators shall file an

7 application for a permit or modification of a valid
8 existing permit or underground opening approval
9 relating to those lands to be mined eight months after
10 that approval.

11 (b) No later than eight months after the secretary's
12 approval of a permanent state program for West
13 Virginia, no person may engage in or carry out, on lands
14 within this state, any surface-mining operations unless
15 such person has first obtained a permit from the
16 commissioner: *Provided*, That those persons conducting
17 such operations under a permit or underground opening
18 approval issued in accordance with section 502 (c) of
19 Public Law 95-87, and in compliance therewith, may
20 conduct such operations beyond such period if an
21 application for a permit or modification of a valid
22 existing permit or underground opening approval was
23 filed within two months after the secretary's approval,
24 and the administrative decision pertaining to the
25 granting or denying of such permit has not been made
26 by the commissioner.

27 (c) All permits issued pursuant to the requirements
28 of this article shall be issued for a term not to exceed
29 five years: *Provided*, That if the applicant demonstrates
30 that a specified longer term is reasonably needed to
31 allow the applicant to obtain necessary financing for
32 equipment and the opening of the operation, and if the
33 application is full and complete for such specified longer
34 term, the commissioner may extend a permit for such
35 longer term: *Provided, however*, That subject to the prior
36 approval of the commissioner, with such approval being
37 subject to the provisions of subsection (c), section
38 eighteen of this article, a successor in interest to a
39 permittee who applies for a new permit, or transfer of
40 a permit, within thirty days of succeeding to such
41 interest, and who is able to obtain the bond coverage of
42 the original permittee, may continue surface-mining
43 and reclamation operations according to the approved
44 mining and reclamation plan of the original permittee
45 until such successor's permit application or application
46 for transfer is granted or denied.

47 (d) Proof of insurance shall be required on an annual
48 basis.

49 (e) A permit shall terminate if the permittee has not
50 commenced the surface-mining operations covered by
51 such permit within three years of the date the permit
52 was issued: *Provided*, That the commissioner may grant
53 reasonable extensions of time upon a timely showing
54 that such extensions are necessary by reason of litigation
55 precluding such commencement, or threatening sub-
56 stantial economic loss to the permittee, or by reason of
57 conditions beyond the control and without the fault or
58 negligence of the permittee: *Provided, however*, That
59 with respect to coal to be mined for use in a synthetic
60 fuel facility or specific major electric generating
61 facility, the permittee shall be deemed to have com-
62 menced surface-mining operations at such time as the
63 construction of the synthetic fuel or generating facility
64 is initiated.

65 (f) Each application for a new surface-mining permit
66 filed pursuant to this article shall be accompanied by
67 a fee of one thousand dollars. All permit fees and
68 renewal fees provided for in this section or elsewhere in
69 this article shall be collected by the commissioner and
70 deposited with the treasurer of the state of West
71 Virginia to the credit of the operating permit fees fund
72 and shall be used, upon requisition of the commissioner,
73 for the administration of this article.

74 (g) Prior to the issuance of any permit, the commis-
75 sioner of energy shall ascertain from the commissioner
76 of labor compliance with section fourteen, article five,
77 chapter twenty-one of this code. Upon issuance of the
78 permit, the commissioner of energy shall forward a copy
79 to the commissioner of labor, who shall assure continued
80 compliance under such permit.

81 (h) Prior to the issuance of any permit, the director
82 of the division of environmental protection shall
83 ascertain from the commissioner of the bureau of
84 employment programs whether the applicant is in
85 compliance with the provisions of section five, article
86 two, chapter twenty-three of this code. If the applicant

87 is not in compliance, then the permit shall not be issued
 88 until the applicant returns to compliance: *Provided,*
 89 That in all such inquiries the commissioner of the
 90 bureau of employment programs shall make response to
 91 the division of environmental protection within fifteen
 92 calendar days, otherwise failure to respond timely shall
 93 be considered to indicate the applicant is in compliance
 94 and such failure will not be used to preclude issuance
 95 of the permit.

CHAPTER 23. WORKERS' COMPENSATION.

Article

1. General Administrative Provisions.
2. Employers and Employees Subject to Chapter; Extraterritorial Coverage.
- 2B. Occupational Safety and Health Programs.
4. Disability and Death Benefits.
5. Review.

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

- §23-1-1. Commissioner of the bureau of employment programs; compensation programs performance council; official seal; legal services; rules.
- §23-1-4. Office hours; records; confidentiality; exceptions.
- §23-1-11. Depositions; investigations.
- §23-1-13. Rules of procedure and evidence; persons authorized to appear in proceedings; withholding of psychiatric and psychological reports and providing summaries thereof.
- §23-1-16. Omission to subscribe to workers' compensation fund or to perform duty required by commissioner; false testimony or certification; criminal penalties.

§23-1-1. Commissioner of the bureau of employment programs; compensation programs performance council; official seal; legal services; rules.

1 The commissioner of the bureau of employment
 2 programs appointed under the provisions of section one,
 3 article two, chapter twenty-one-a of this code, has the
 4 sole responsibility for the administration of this chapter
 5 except for such matters as are entrusted to the compen-
 6 sation programs performance council created pursuant
 7 to section one, article three, chapter twenty-one-a of this
 8 code. In the administration of this chapter, the commis-
 9 sioner shall exercise all the powers and duties described

10 in this chapter and in article two of said chapter. The
11 commissioner is authorized to promulgate rules and
12 regulations to implement the provisions of articles one
13 through five of this chapter. The commissioner shall
14 have an official seal for the authentication of orders and
15 proceedings, upon which seal shall be engraved the
16 words "West Virginia Commissioner of Employment
17 Programs" and such other design as the commissioner
18 may prescribe. The courts in this state shall take
19 judicial notice of the seal of the commissioner and in all
20 cases copies of orders, proceedings or records in the
21 office of the West Virginia commissioner of employment
22 programs shall be equal to the original in evidence.

23 The attorney general shall perform all legal services
24 required by the commissioner under the provisions of
25 this chapter: *Provided*, That in any case in which an
26 application for review is prosecuted from any final
27 decision of the workers' compensation appeal board to
28 the supreme court of appeals, as provided by section
29 four, article five of this chapter, or in any court
30 proceeding before the workers' compensation appeal
31 board, or in any proceedings before the office of judges,
32 in which such representation shall appear to the
33 commissioner to be desirable, the commissioner may
34 designate a regular employee of this office, qualified to
35 practice before such court to represent the commissioner
36 upon such appeal or proceeding, and in no case shall the
37 person so appearing for the commissioner before the
38 court receive remuneration therefor other than such
39 person's regular salary.

§23-1-4. Office hours; records; confidentiality; exceptions.

1 (a) The offices of the commissioner shall be open for
2 the transaction of business between the hours of eight-
3 thirty o'clock a.m., and five o'clock p.m., of each and
4 every day, excepting Saturdays, Sundays and legal
5 holidays, and be open upon such additional days and at
6 such additional times as the commissioner may elect,
7 and be in charge of his or her secretary or some other
8 competent person.

9 (b) Except as expressly provided for in this subsec-

10 tion, information obtained from employers and claim-
11 ants pursuant to this chapter for the purposes of its
12 administration shall not be subject to the provisions of
13 chapter twenty-nine-b of this code unless such provisions
14 are hereafter specifically made applicable in whole or
15 in part. Such information as may be reasonably
16 necessary may be released in formal orders or opinions
17 of any tribunal or court which is presented with an issue
18 arising under this chapter as well as in the presentations
19 of the parties before any such tribunal or court.
20 Similarly, claimants or other interested parties to an
21 issue arising under this chapter may, upon request,
22 obtain information from the division's records to the
23 extent necessary for the proper presentation or defense
24 of a claim or other matter. Information may be released
25 to any requestor if all identifying information has first
26 been eliminated from the records. Nothing in this
27 subsection shall prevent the release of information to
28 another agency of the state or of the federal government
29 for the legitimate purposes of those agencies: *Provided,*
30 That any such agency shall guarantee the confidentiality
31 of the information so provided to the fullest extent
32 possible in keeping with its own statutory and regula-
33 tory mandates. Nothing in this section shall prevent the
34 commissioner from complying with any subpoena duces
35 tecum: *Provided, however,* That the issuing tribunal or
36 court shall take such actions as may be proper to
37 maintain the confidentiality of the information.

38 The commissioner may release, pursuant to a proper
39 request under the provisions of chapter twenty-nine-b of
40 this code, the following information:

41 (1) The base premium rate for a specific employer;

42 (2) Whether or not a specific employer has obtained
43 coverage under the provisions of this chapter;

44 (3) Whether or not a specific employer is in good
45 standing or is delinquent or in default according to the
46 commissioner's records and the time periods thereof;
47 and

48 (4) If a specific employer is delinquent or in default,
49 what the payments due the commissioner are and what

50 the components of that payment are including the time
51 periods affected.

§23-1-11. Depositions; investigations.

1 (a) In an investigation into any matter arising under
2 this chapter, the commissioner may cause depositions of
3 witnesses residing within or without the state to be
4 taken in the manner prescribed by law for like depo-
5 sitions in the circuit court, but such depositions shall be
6 upon reasonable notice to claimant and employer or
7 other affected persons or their respective attorneys. The
8 commissioner shall designate the person to represent
9 him or her for the taking of any such deposition.

10 (b) The commissioner shall also have discretion to
11 accept and consider depositions taken within or without
12 the state by either the claimant or employer, provided
13 due and reasonable notice of the taking of such depo-
14 sitions was given to the other party, claimant or
15 employer, as the case may be, or his or her attorney:
16 *Provided*, That the commissioner, upon due notice both
17 to the employer and claimant, shall have authority to
18 refuse or permit the taking of such depositions or to
19 reject such depositions after the taking thereof, if in his
20 or her opinion they were taken at such place or under
21 such circumstances as imposed an undue burden or
22 hardship upon the opposite party, and the commission-
23 er's discretion to accept, refuse to approve, or reject such
24 depositions shall be binding in the absence of abuse of
25 such discretion.

**§23-1-13. Rules of procedure and evidence; persons
authorized to appear in proceedings; with-
holding of psychiatric and psychological
reports and providing summaries thereof.**

1 (a) The commissioner shall adopt reasonable and
2 proper rules of procedure, regulate and provide for the
3 kind and character of notices, and the service thereof,
4 in cases of accident and injury to employees, the nature
5 and extent of the proofs and evidence, the method of
6 taking and furnishing the same to establish the rights
7 to benefits or compensation from the fund hereinafter
8 provided for, or directly from employers as hereinafter

9 provided, as the case may require, and the method of
10 making investigations, physical examinations and
11 inspections, and prescribe the time within which
12 adjudications and awards shall be made.

13 (b) At hearings and other proceedings before the
14 commissioner or before the duly authorized representa-
15 tive of the commissioner, an employer who is a natural
16 person may appear, and a claimant may appear, only
17 as follows:

18 (1) By an attorney duly licensed and admitted to the
19 practice of law in this state;

20 (2) By a nonresident attorney duly licensed and
21 admitted to practice before a court of record of general
22 jurisdiction in another state or country or in the District
23 of Columbia who has complied with the provisions of
24 rule 8.0—admission pro hac vice, West Virginia su-
25 preme court rules for admission to the practice of law,
26 as amended;

27 (3) By a representative from a labor organization who
28 has been recognized by the commissioner as being
29 qualified to represent a claimant or who is an individual
30 otherwise found to be qualified by the commissioner to
31 act as a representative. Such representative shall
32 participate in the presentation of facts, figures and
33 factual conclusions as distinguished from the presenta-
34 tion of legal conclusions in respect to such facts and
35 figures; or

36 (4) Pro se.

37 (c) At hearings and other proceedings before the
38 commissioner or before the duly authorized representa-
39 tive of the commissioner, an employer who is not a
40 natural person may appear only as follows:

41 (1) By an attorney duly licensed and admitted to the
42 practice of law in this state;

43 (2) By a nonresident attorney duly licensed and
44 admitted to practice before a court of record of general
45 jurisdiction in another state or country or in the District
46 of Columbia who has complied with the provisions of

47 rule 8.0—admission pro hac vice, West Virginia su-
48 preme court rules for admission to the practice of law,
49 as amended;

50 (3) By a member of the board of directors of a
51 corporation or by an officer of the corporation, for
52 purposes of representing the interest of the corporation
53 in the presentation of facts, figures and factual conclu-
54 sions as distinguished from the presentation of legal
55 conclusions in respect to such facts and figures; or

56 (4) By a representative from an employer service
57 company who has been recognized by the commissioner
58 as being qualified to represent an employer or who is
59 an individual otherwise found to be qualified by the
60 commissioner to act as a representative. Such represen-
61 tative shall participate in the presentation of facts,
62 figures and factual conclusions as distinguished from
63 the presentation of legal conclusions in respect to such
64 facts and figures.

65 (d) The commissioner or his or her representative may
66 require an individual appearing on behalf of a natural
67 person or corporation to produce satisfactory evidence
68 that he or she is properly qualified and authorized to
69 so appear pursuant to this section.

70 (e) Subsections (b), (c) and (d) of this section shall not
71 be construed as being applicable to proceedings before
72 the office of judges pursuant to the provisions of article
73 five of this chapter.

74 (f) At the direction of a treating or evaluating
75 psychiatrist or clinical doctoral level psychologist, a
76 psychiatric or psychological report concerning a claim-
77 ant who is receiving treatment or is being evaluated for
78 psychiatric or psychological problems may be withheld
79 from the claimant. In that event, a summary of the
80 report shall be compiled by the reporting psychiatrist
81 or clinical doctoral level psychologist which summary
82 shall be provided to the claimant upon his or her
83 request. Any representative or attorney of the claimant
84 must agree to provide such a claimant with only the
85 summary before the full report shall be provided to the
86 representative or attorney for his or her use in prepar-

87 ing the claimant's case. Such a report shall only be
 88 withheld from the claimant in those instances where the
 89 treating or evaluating psychiatrist or clinical doctoral
 90 level psychologist certifies that exposure to the contents
 91 of the full report is likely to cause serious harm to the
 92 claimant or is likely to cause the claimant to pose a
 93 serious threat of harm to a third party.

§23-1-16. Omission to subscribe to workers' compensation fund or to perform duty required by commissioner; false testimony or certification; criminal penalties.

1 Any person, firm or corporation which is required by
 2 the provisions of this chapter to subscribe to the
 3 workers' compensation fund, and which knowingly fails
 4 to subscribe thereto, or which knowingly and willfully
 5 fails to make any report or perform any other act or
 6 duty required by the commissioner within the time
 7 specified by the commissioner, shall be guilty of a
 8 felony, and, upon conviction thereof, shall be fined not
 9 less than one thousand dollars and not more than ten
 10 thousand dollars. Any person or firm, or the officer of
 11 any corporation, who knowingly makes a false report or
 12 statement under oath, affidavit or certification respect-
 13 ing any information required by the commissioner, or
 14 who shall knowingly testify falsely in any proceeding
 15 before the commissioner or the office of judges, shall be
 16 considered guilty of a felony, and, upon conviction
 17 thereof, shall be fined not less than one thousand dollars
 18 and not more than ten thousand dollars or confined in
 19 the penitentiary for not more than three years, or both.

ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER; EXTRATERRITORIAL COVERAGE.

- §23-2-1c. Extraterritorial coverage; approval and change of agreements.
- §23-2-1d. Primary contractor liability; definitions; applications and exceptions; certificates of good standing; reimbursement and indemnification; termination of contracts; effective date; collections efforts.
- §23-2-4. Classification of industries; accounts; rate of premiums; prior notice of rate changes; exceptions.
- §23-2-5. Application; payment of premiums; payroll report; premiums; deposits; delinquency; default; reinstatement; payment of benefits; notice to employees; criminal provisions; penalties.

- §23-2-5a. Collection of premiums from defaulting employers; interest and penalties; civil remedies; creation and enforcement of lien against employer and purchaser; duty of secretary of state to register liens; distraint powers; insolvency proceedings; secretary of state to withhold certificates of dissolution; injunctive relief; bond; attorney fees and costs.
- §23-2-5b. Legislative purpose; application for settlement; reinstatement; amount of settlement; when settlement void; notification of rights.
- §23-2-5c. Statute of limitations; effective date for new payments; previous payments due not affected.
- §23-2-5d. Uncollectible receivables; write-offs.
- §23-2-15. Liabilities of successor employer; waiver of payment by commissioner; assignment of predecessor employer's premium rate to successor.
- §23-2-17. Employer right to hearing; content of petition; appeal.

§23-2-1c. Extraterritorial coverage; approval and change of agreements.

1 (a) Whenever, with respect to an employee of an
2 employer who is a subscriber in good standing to the
3 workers' compensation fund or an employer who has
4 elected to pay compensation directly, as provided in
5 section nine of this article, there is a possibility of
6 conflict with respect to the application of workers'
7 compensation laws because the contract of employment
8 is entered into and all or some portion of the work is
9 performed or is to be performed in a state or states other
10 than this state, the employer and the employee may
11 agree to be bound by the laws of this state or by the
12 laws of such other state in which all or some portion of
13 the work of the employee is to be performed: *Provided,*
14 That the commissioner shall have the authority to
15 review and accept or reject any such agreement. Any
16 such review shall be conducted in keeping with the
17 commissioner's fiduciary obligations to the workers'
18 compensation fund which may include, among other
19 things, the nexus of the employer and the employee to
20 the state: *Provided, however,* That nothing in this section
21 shall be construed so as to require such an agreement
22 in those instances where subdivision (3), subsection (b),
23 section one of this article or subdivision (1), subsection
24 (a), section one-a of this article are applicable. Such
25 agreement shall be in writing and filed with the
26 commissioner within ten days after execution thereof

27 but shall not become effective until approved by the
28 commissioner and shall, thereafter, remain in effect
29 until terminated or modified by agreement of the
30 parties similarly filed or by order of the commissioner.
31 If the parties agree to be bound by the laws of this state,
32 an employee injured within the terms and provisions of
33 this chapter shall be entitled to benefits under this
34 chapter regardless of the situs of the injury or exposure
35 to occupational pneumoconiosis or other occupational
36 disease, and the rights of the employee and his or her
37 dependents under the laws of this state shall be the
38 exclusive remedy against the employer on account of
39 injury, disease or death in the course of and as a result
40 of the employment.

41 (b) If the parties agree to be bound by the laws of
42 another state and the employer has complied with the
43 laws of that state, the rights of the employee and his or
44 her dependents under the laws of that state shall be the
45 exclusive remedy against the employer on account of
46 injury, disease or death in the course of and as a result
47 of the employment without regard to the situs of the
48 injury or exposure to occupational pneumoconiosis or
49 other occupational disease.

50 (c) If the employee is a resident of a state other than
51 this state and is subject to the terms and provisions of
52 the workers' compensation law or similar laws of a state
53 other than this state, such employee and his dependents
54 shall not be entitled to the benefits payable under this
55 chapter on account of injury, disease or death in the
56 course of and as a result of employment temporarily
57 within this state, and the rights of such employee and
58 his dependents under the laws of such other state shall
59 be the exclusive remedy against the employer on
60 account of such injury, disease or death.

61 (d) If any employee or his or her dependents be
62 awarded workers' compensation benefits or recover
63 damages from the employer under the laws of another
64 state for an injury received in the course of and
65 resulting from the employment, the amount so awarded
66 or recovered, whether paid or to be paid in future
67 installments, shall be credited against the amount of any

68 benefits payable under this chapter for the same injury.

§23-2-1d. **Primary contractor liability; definitions; applications and exceptions; certificates of good standing; reimbursement and indemnification; termination of contracts; effective date; collections efforts.**

1 (a) For the exclusive purposes of this section, the term
2 "employer" as defined in section one of this article shall
3 include any primary contractor who regularly subcon-
4 tracts with other employers for the performance of any
5 work arising from or as a result of the primary
6 contractor's own contract: *Provided*, That a subcontractor
7 shall not include one providing goods rather than
8 services. In the event that such a subcontracting
9 employer defaults on its obligations to make payments
10 to the commissioner, then such primary contractor shall
11 be liable for such payments. Notwithstanding the
12 foregoing, nothing contained in this section shall extend
13 or except to such primary contractor or subcontractors
14 the provisions of sections six, six-a or eight of this
15 article. This section is applicable only with regards to
16 subcontractors with whom the primary contractor has
17 a contract. It is not applicable to the primary contractor
18 with regard to sub-subcontractors. However, a subcon-
19 tractor for the purposes of a contract with the primary
20 contractor can itself become a primary contractor with
21 regard to other employers with whom it subcontracts.

22 (b) A primary contractor may avoid initial liability
23 under subsection (a) of this section if it obtains from the
24 commissioner, prior to the initial performance of any
25 work by the subcontractor's employees, a certificate that
26 the subcontractor is in good standing with the workers'
27 compensation fund.

28 (1) Failure to obtain the certificate of good standing
29 prior to the initial performance of any work by the
30 subcontractor shall result in the primary contractor
31 being equally liable with the subcontractor for all
32 delinquent and defaulted premiums, premium deposits,
33 interest and other penalties arising during the life of the
34 contract or due to work performed in furtherance of the

35 contract: *Provided*, That the commissioner shall be
36 entitled to collect only once for the amount of premiums,
37 premium deposits and interest due to the default, but
38 the commissioner may impose other penalties on the
39 primary contractor or on the subcontractor, or both.

40 (2) In order to continue avoiding liability under this
41 section, the primary contractor shall request that the
42 commissioner of the bureau of employment programs
43 inform the primary contractor of any subsequent default
44 by the subcontractor. In the event that the subcontractor
45 does default, the commissioner shall then notify the
46 primary contractor of the default by placing a notice in
47 the first class United States mail, postage prepaid, and
48 addressed to the primary contractor at the address
49 furnished to the commissioner by the primary contrac-
50 tor. Such mailing shall be good and sufficient notice to
51 the primary contractor of the subcontractor's default.
52 However, the primary contractor shall not become liable
53 under this section until the first day of the calendar
54 quarter following the calendar quarter in which the
55 notice is given and then such liability shall only be for
56 that following calendar quarter and thereafter and only
57 if the subcontract has not been terminated: *Provided*,
58 That the commissioner shall be entitled to collect only
59 once for the amount of premiums, premium deposits and
60 interest due to the default, but the commissioner may
61 impose other penalties on the primary contractor or on
62 the subcontractor, or both.

63 (c) In any situation where a subcontractor defaults
64 with regard to its payment obligations under this
65 chapter or fails to provide a certificate of good standing
66 as provided for in this section, such default or failure
67 shall be good and sufficient cause for a primary
68 contractor to hold the subcontractor responsible and to
69 seek reimbursement or indemnification for any amounts
70 paid on behalf of the subcontractor to avoid or cure a
71 workers' compensation default, plus related costs
72 including reasonable attorneys' fees, and to terminate its
73 subcontract with the subcontractor notwithstanding any
74 provision to the contrary in the contract.

75 (d) The provisions of this section are applicable only

76 to those contracts entered into or extended on or after
77 the first day of January, one thousand nine hundred
78 ninety-four.

79 (e) The commissioner may take any action authorized
80 by section five-a of this article in furtherance of his or
81 her efforts to collect amounts due from the primary
82 contractor under this section.

**§23-2-4. Classification of industries; accounts; rate of
premiums; prior notice of rate changes;
exceptions.**

1 The commissioner shall distribute into groups or
2 classes the employments subject to this chapter, in
3 accordance with the nature of the business and the
4 degree of hazard incident thereto. And the commis-
5 sioner shall have power, in like manner, to reclassify
6 such industries into groups or classes at any time, and
7 to create additional groups or classes. The commissioner
8 may make necessary expenditures to obtain statistical
9 and other information to establish the classes provided
10 for in this section.

11 The commissioner shall keep an accurate account of
12 all money or moneys paid or credited to the compensa-
13 tion fund, and of the liability incurred and disburse-
14 ments made against same; and an accurate account of
15 all money or moneys received from each individual
16 subscriber, and of the liability incurred and disburse-
17 ments made on account of injuries and death of the
18 employees of each subscriber, and of the receipts and
19 incurred liability of each group or class.

20 In compensable fatal and total permanent disability
21 cases, other than occupational pneumoconiosis, the
22 amount charged against the employer's account shall be
23 such sum as is estimated to be the average incurred loss
24 of such cases to the fund. The amount charged against
25 the employer's account in compensable occupational
26 pneumoconiosis claims for total permanent disability or
27 for death shall be such sum as is estimated to be the
28 average incurred loss of such occupational pneumoconi-
29 osis cases to the fund.

30 It shall be the duty of the commissioner and the
31 compensation programs performance council to fix and
32 maintain the lowest possible rates of premiums consist-
33 ent with the maintenance of a solvent workers' compen-
34 sation fund and the creation and maintenance of a
35 reasonable surplus in each group after providing for the
36 payment to maturity of all liability incurred by reason
37 of injury or death to employees entitled to benefits under
38 the provisions of this chapter. A readjustment of rates
39 shall be made yearly on the first day of July, or at any
40 time the same may be necessary. At such times as the
41 commissioner elects to readjust the base rates for the
42 various industrial classifications, the commissioner shall
43 file a schedule of the readjusted base rates for each
44 industrial class with the office of the secretary of state
45 for publication in the state register pursuant to article
46 two, chapter twenty-nine-a of this code. Such schedule
47 shall be so filed at least thirty days prior to the first day
48 of the quarter to which an adjustment of rates is to be
49 applicable. At such times as the commissioner elects to
50 readjust the individual merit rates for the subscribers
51 to the fund, the commissioner shall provide notice of
52 such merit rate adjustments to the affected employers
53 at least thirty days prior to the first day of the quarter
54 to which an adjustment of rates is to be applicable. The
55 commissioner shall not retroactively increase or de-
56 crease rates except in instances of fraud, mistake or
57 reliance upon incorrect information furnished by the
58 employer. The determination of the lowest possible rates
59 of premiums within the meaning hereof and of the
60 existence of any surplus or deficit in the fund shall be
61 predicated solely upon the experience and statistical
62 data compiled from the records and files in the
63 commissioner's office under this and prior workers'
64 compensation laws of this state for the period from the
65 first day of June, one thousand nine hundred thirteen,
66 to the nearest practicable date prior to such adjustment:
67 *Provided*, That any expected future return, in the nature
68 of interest or income from invested funds, shall be
69 predicated upon the average realization from invest-
70 ments to the credit of the compensation fund for the two
71 years next preceding. Any reserves set up for future

72 liabilities and any commutation of benefits shall
73 likewise be predicated solely upon prior experience
74 under this and preceding workers' compensation laws
75 and upon expected realization from investments deter-
76 mined by the respective past periods, as aforesaid.

77 The commissioner and the compensation programs
78 performance council may fix a rate of premiums
79 applicable alike to all subscribers forming a group or
80 class, and such rates shall be determined from the
81 record of such group or class shown upon the books of
82 the commissioner: *Provided*, That if any group has a
83 sufficient number of employers with considerable
84 difference in their degrees of hazard, the commissioner
85 may fix a rate for each subscriber of such group, such
86 rate to be based upon the subscriber's record on the
87 books of the commissioner for a period not to exceed
88 three years ending the thirty-first day of December of
89 the year preceding the year in which the rate is to be
90 effective; and the liability part of such record shall
91 include such cases as have been acted upon by the
92 commissioner during such three-year period, irrespec-
93 tive of the date the injury was received; and any
94 subscriber in a group so rated, whose record for such
95 period cannot be obtained, shall be given a rate based
96 upon the subscriber's record for any part of such period
97 as may be deemed just and equitable by the commis-
98 sioner; and the commissioner shall have authority to fix
99 a reasonable minimum and maximum for any group to
100 which this individual method of rating is applied, and
101 to add to the rate determined from the subscriber's
102 record such amount as is necessary to liquidate any
103 deficit in the schedule as to create a reasonable surplus.

104 It shall be the duty of the commissioner, when the
105 commissioner changes any rate, to notify every employer
106 affected thereby of that fact and of the new rate and
107 when the same takes effect. It shall also be the
108 commissioner's duty to furnish to each employer yearly,
109 or more often if requested by the employer, a statement
110 giving the name of each of the employer's employees
111 who were paid for injury and the amounts so paid
112 during the period covered by the statement.

§23-2-5. Application; payment of premiums; payroll report; premiums; deposits; delinquency; default; reinstatement; payment of benefits; notice to employees; criminal provisions; penalties.

1 (a) For the purpose of creating a workers' compensa-
2 tion fund, each employer who is required to subscribe
3 to the fund or who elects to subscribe to the fund shall
4 pay premiums calculated as a percentage of the
5 employer's payroll at the rate determined by the
6 commissioner and then in effect. At the time each
7 employer subscribes to the fund, the application
8 required by the commissioner shall be filed and a
9 premium deposit equal to the first quarter's estimated
10 premium payment shall be remitted. The minimum
11 quarterly premium to be paid by any employer shall be
12 ten dollars.

13 (1) Thereafter, premiums shall be paid quarterly on
14 or before the last day of the month following the end
15 of the quarter, and shall be the prescribed percentage
16 of the total earnings of all employees during the
17 preceding quarter.

18 (2) At the time each premium is paid, every subscrib-
19 ing employer shall make a payroll report to the
20 commissioner for the preceding quarter. The report
21 shall be on the form or forms prescribed by the
22 commissioner, and shall contain all information re-
23 quired by the commissioner.

24 (3) After subscribing to the fund, each employer shall
25 remit with each payroll report and premium payment
26 an amount calculated to be sufficient to maintain a
27 premium deposit equal to the previous quarter's
28 premium payment: *Provided*, That the commissioner
29 may reduce the amount of the premium deposit required
30 from seasonal employers for those quarters during
31 which employment is significantly reduced. The pre-
32 mium deposit shall be credited to the employer's account
33 on the books of the commissioner and used to pay
34 premiums and any other sums due the fund when an
35 employer becomes delinquent.

36 (4) All premiums and premium deposits required to
37 be paid by this chapter shall be paid by the employers
38 to the commissioner, who shall maintain record of all
39 sums so received. On and after the first day of October,
40 one thousand nine hundred ninety-one, any such sum
41 mailed to the commissioner shall be deemed to be
42 received on the date the envelope transmitting it is
43 postmarked by the United States postal service. All
44 sums received by the commissioner shall be deposited
45 in the state treasury to the credit of the workers'
46 compensation division in the manner now prescribed by
47 law.

48 (5) The commissioner may encourage employer efforts
49 to create and maintain safe workplaces, to encourage
50 loss prevention programs, and to encourage employer
51 provided wellness programs, through the normal
52 operation of the experience rating formula, seminars
53 and other public presentations, the development of
54 model safety programs and other initiatives as may be
55 determined by the commissioner.

56 (b) Failure of an employer to timely pay premium, to
57 timely file a payroll report, or to maintain an adequate
58 premium deposit, shall cause the employer's account to
59 become delinquent. No employer will be declared
60 delinquent or be assessed any penalty therefor if the
61 commissioner determines that such delinquency has
62 been caused by delays in the administration of the fund.
63 The commissioner shall, in writing, within sixty days of
64 the end of each quarter notify all delinquent employers
65 of their failure to timely pay premiums, to timely file
66 a payroll report, or to maintain an adequate premium
67 deposit. The notification shall demand the filing of the
68 delinquent payroll report and payment of delinquent
69 premiums, and/or payment of an amount sufficient to
70 maintain the premium deposit, before the end of the
71 third month following the end of the preceding quarter.
72 The notification shall also require payment of interest
73 on the delinquent premium payment and/or premium
74 deposit pursuant to section thirteen of this article.

75 (c) Whenever the commissioner notifies an employer
76 of the delinquent status of his or her account, the

77 notification shall explain the legal consequence of
78 subsequent default by employers required to subscribe
79 to the fund, and the effects of termination of any electing
80 employer's account.

81 (d) Failure by the employer, who is required to
82 subscribe to the fund and who fails to resolve his or her
83 delinquency within the prescribed period, shall place
84 the account in default and shall deprive such defaulting
85 employer of the benefits and protection afforded by this
86 chapter, including section six of this article, and he or
87 she shall be liable as provided in section eight of this
88 article. The defaulting employer's liability under said
89 section shall be retroactive to twelve o'clock p.m., of the
90 last day of the month following the end of the quarter
91 for which the delinquency occurs. The commissioner
92 shall notify the defaulting employer of the method by
93 which the employer may be reinstated with the fund.
94 The commissioner shall also notify the employees of such
95 employer by written notice as hereinafter provided for
96 in this section.

97 (e) Failure by any employer, who voluntarily elects to
98 subscribe, to resolve his or her delinquency within the
99 prescribed period shall automatically terminate the
100 election of such employer to pay into the workers'
101 compensation fund and shall deprive such delinquent
102 employer of the benefits and protection afforded by this
103 chapter, including section six of this article, and he or
104 she shall be liable as provided in section eight of this
105 article. The defaulting employer's liability under said
106 section shall be retroactive to twelve o'clock p.m., of the
107 last day of the month following the end of the quarter
108 for which the delinquency occurs.

109 (f) (1) Except as provided for in subdivision (3) of this
110 subsection, any employer who is required to subscribe
111 to the fund and who is in default on the effective date
112 of this section or who subsequently defaults, and any
113 employer who has elected to subscribe to the fund and
114 whose account is terminated prior to the effective date
115 of this section or whose account is subsequently termi-
116 nated, shall be restored immediately to the benefits and
117 protection of this chapter only upon the filing of all

118 delinquent payroll and other reports required by the
119 commissioner and payment into the fund of all unpaid
120 premiums, an adequate premium deposit, and accrued
121 interest. Interest shall be calculated as provided for by
122 section thirteen of this article. In addition, for every
123 defaulted or terminated employer whose default or
124 termination lasts for two consecutive quarters or who
125 has defaulted or been terminated for two quarters out
126 of the preceding eight consecutive quarters, then when
127 any such employer's application for reinstatement is
128 filed or upon any such employer's restoration to the
129 benefits and protection of this chapter, for the next eight
130 quarters, including the quarter in which such restora-
131 tion occurs, or when any such employer's application for
132 reinstatement is filed, the employer shall pay premiums
133 to the commissioner at a penalty rate. The applicable
134 penalty premium rate shall be determined by first
135 calculating the employer's premium under the provi-
136 sions of section four of this article, but including any
137 applicable experience modification, and then multiply-
138 ing that premium by one hundred ten percent.

139 The commissioner shall not have the authority to
140 waive either accrued interest or the imposition of the
141 penalty premium rate. Any employer whose default or
142 termination does not last for two consecutive quarters
143 or who has not been in default two quarters out of the
144 preceding eight consecutive quarters shall not have a
145 penalty premium rate imposed. The provisions of section
146 seventeen of this article apply to any action or decision
147 of the commissioner under this section. For purposes of
148 section four of this article, the extra ten percent of
149 premium constituting the penalty shall not be used in
150 determining any entitlement to experience modification
151 of the employer's premium rate for future years.

152 (2) The commissioner shall have the authority to
153 restore a defaulted or terminated employer under a
154 reinstatement agreement. Such reinstatement agree-
155 ment shall require the payment in full of all premiums,
156 premium deposits, past accrued interest and future
157 interest calculated pursuant to the provisions of section
158 thirteen of this article. The reinstatement agreement

159 shall not permit any modification or waiver of the
160 penalty premium rate provided for in subdivision (1) of
161 this subsection. Notwithstanding the filing of a rein-
162 statement application or the entering into of a reinstatement
163 agreement, the commissioner is authorized to file
164 a lien against the employer as provided for by section
165 five-a of this article. In addition, entry into a repayment
166 agreement is discretionary with the commissioner. Such
167 discretion shall be exercised in keeping with the
168 commissioner's fiduciary obligations to the workers'
169 compensation fund. Should the commissioner decline to
170 enter into a repayment agreement and should the
171 employer not comply with the provisions of subdivision
172 (1) of this subsection, then the commissioner may
173 proceed with any of the collection efforts provided for
174 by section five-a of this article or as otherwise provided
175 for by this code. Applications for reinstatement shall:
176 (A) Be made upon forms prescribed by the commis-
177 sioner; (B) include a report of the gross payroll of the
178 employer during the entire period of delinquency and
179 default, which payroll information shall be certified by
180 the employer or its authorized agent; and (C) include a
181 payment equal to one half of one percent of the gross
182 payroll during the period of delinquency and default but
183 not to exceed the amount of the entire liability due and
184 owing for the period of delinquency and default. An
185 employer who applies for reinstatement shall be entitled
186 to the benefits and protection of this chapter on the day
187 the application is received by the commissioner:
188 *Provided, That if the commissioner reinstates an*
189 *employer subject to the terms of a repayment agree-*
190 *ment, the subsequent failure of the employer to make*
191 *scheduled payments or to pay accrued or future interest*
192 *in accordance with the repayment agreement or to*
193 *timely file current premiums within the month follow-*
194 *ing the end of the quarter for which the report and*
195 *payment are due, or to otherwise maintain its account*
196 *in good standing or, if the repayment agreement does*
197 *not require earlier restoration of the premium deposit,*
198 *to restore the premium deposit to the required amount*
199 *by the end of the repayment period shall cause the*
200 *reinstatement application or the repayment agreement,*

201 or both, to be null, void and of no effect, and the
202 employer shall be denied the benefits and protection of
203 this chapter effective from the date that such employer's
204 account originally became delinquent.

205 (3) Any employer who fails to maintain his or her
206 account in good standing with regard to subsequent
207 premiums and premium deposits prior to the final
208 resolution of an application for reinstatement as
209 provided for in subdivision (1) of this subsection shall
210 cause the reinstatement application to be null, void and
211 of no effect, and the employer shall be denied the
212 benefits and protection of this chapter effective from the
213 date that such employer's account originally became
214 delinquent.

215 (4) Following any failure of an employer to comply
216 with the provisions of a repayment agreement, the
217 commissioner may then make and continue with any of
218 the collection efforts provided for by this chapter or
219 elsewhere in this code even if the employer files another
220 reinstatement application.

221 (g) No employee of an employer required by this
222 chapter to subscribe to the workers' compensation fund
223 shall be denied benefits provided by this chapter
224 because the employer failed to subscribe or because the
225 employer's account is either delinquent or in default.

226 (h) (1) The provisions of this section shall not deprive
227 any individual of any cause of action which has accrued
228 as a result of an injury or death which occurred during
229 any period of delinquency not resolved in accordance
230 with the provisions of this article, or subsequent failure
231 to comply with the terms of the repayment agreement.

232 (2) Upon withdrawal from the fund or termination of
233 election of any employer, he or she shall be refunded the
234 balance due him or her of his or her deposit, after
235 deducting all amounts owed by him or her to the
236 workers' compensation fund, and the commissioner shall
237 notify the employees of such employer of said termina-
238 tion in such manner as he or she may deem best and
239 sufficient.

240 (3) Notice to employees in this section provided for
241 shall be given by posting written notice that the
242 employer is defaulted under the compensation law of
243 West Virginia, and in the case of employers required by
244 this chapter to subscribe and pay premiums to the fund,
245 that the defaulted employer is liable to his or her
246 employees for injury or death, both in workers' compen-
247 sation benefits and in damages at common law or by
248 statute; and in the case of employers not required by this
249 chapter to subscribe and pay premiums to the fund, but
250 voluntarily electing to do so as herein provided, that
251 neither the employer nor the employees of such em-
252 ployer are protected by said laws as to any injury or
253 death sustained after the date specified in said notice.
254 Such notice shall be in the form prescribed by the
255 commissioner and shall be posted in a conspicuous place
256 at the chief works of the employer, as the same appear
257 in records of the commissioner. If said chief works of
258 the employer cannot be found or identified, then said
259 notices shall be posted at the front door of the courthouse
260 of the county in which said chief works are located,
261 according to the records in the commissioner's office.
262 Any person who shall, prior to the reinstatement of said
263 employer, as hereinbefore provided for, or prior to sixty
264 days after the posting of said notice, whichever shall
265 first occur, remove, deface, or render illegible said
266 notice, shall be guilty of a misdemeanor, and, upon
267 conviction thereof, shall be fined not to exceed five
268 hundred dollars, and said notice shall state this
269 provision upon its face. The commissioner may require
270 any sheriff, deputy sheriff, constable or other official of
271 the state of West Virginia, who may be authorized to
272 serve civil process, to post such notice and to make
273 return thereof of the fact of such posting to the
274 commissioner, and any failure of such officer to post any
275 notice within ten days after he or she shall have received
276 the same from the commissioner, without just cause or
277 excuse, shall constitute a willful failure or refusal to
278 perform a duty required of him or her by law within
279 the meaning of section twenty-eight, article five, chapter
280 sixty-one of this code. Any person actually injured by
281 reason of such failure shall have an action against said

282 official, and upon any official bond he or she may have
283 given, for such damages as such person may actually
284 have incurred, but not to exceed, in the case of any
285 surety upon said bond, the amount of the penalty of said
286 bond. Any official posting said notice as herein required
287 shall be entitled to the same fee as is now or may
288 hereafter be provided for the service of process in suits
289 instituted in courts of record in the state of West
290 Virginia, which fee shall be paid by the commissioner
291 out of any funds at his or her disposal, but shall be
292 charged by him or her against the account of the
293 employer to whose delinquency such notice relates.

§23-2-5a. Collection of premiums from defaulting employers; interest and penalties; civil remedies; creation and enforcement of lien against employer and purchaser; duty of secretary of state to register liens; distraint powers; insolvency proceedings; secretary of state to withhold certificates of dissolution; injunctive relief; bond; attorney fees and costs.

1 (a) The commissioner in the name of the state may
2 commence a civil action against an employer who, after
3 due notice, defaults in any payment required by this
4 chapter. If judgment is against the employer, such
5 employer shall pay the costs of the action. Civil action
6 under this section shall be given preference on the
7 calendar of the court over all other civil actions. Upon
8 prevailing in any such civil action, the commissioner
9 shall be entitled to recover his or her attorneys' fees and
10 costs of action from the employer.

11 (b) In addition to the foregoing provisions of this
12 section, any payment, interest and penalty thereon due
13 and unpaid under this chapter shall be a personal
14 obligation of the employer immediately due and owing
15 to the commissioner and shall, in addition thereto, be a
16 lien enforceable against all the property of the employer:
17 *Provided,* That no such lien shall be enforceable as
18 against a purchaser (including a lien creditor) of real
19 estate or personal property for a valuable consideration
20 without notice, unless docketed as provided in section

21 one, article ten-c, chapter thirty-eight of this code:
22 *Provided, however,* That such lien may be enforced as
23 other judgment liens are enforced through the provi-
24 sions of chapter thirty-eight of this code and the same
25 shall be deemed by the circuit court to be a judgment
26 lien for this purpose.

27 (c) In addition to all other civil remedies prescribed
28 herein, the commissioner may in the name of the state,
29 after giving appropriate notice as required by due
30 process, distrain upon any personal property, including
31 intangible property, of any employer delinquent for any
32 payment, interest and penalty thereon. If the commis-
33 sioner has good reason to believe that such property or
34 a substantial portion thereof is about to be removed
35 from the county in which it is situated, upon giving
36 appropriate notice, either before or after the seizure, as
37 is proper in the circumstances, he or she may likewise
38 distrain in the name of the state before such delinquency
39 occurs. For such purpose, the commissioner may require
40 the services of a sheriff of any county in the state in
41 levying such distress in the county in which the sheriff
42 is an officer and in which such personal property is
43 situated. A sheriff so collecting any payment, interest
44 and penalty thereon shall be entitled to such compen-
45 sation as is provided by law for his or her services in
46 the levy and enforcement of executions. Upon prevailing
47 in any distraint action, the commissioner shall be
48 entitled to recover his or her attorneys' fees and costs
49 of action from the employer.

50 (d) In case a business subject to the payments, interest
51 and penalties thereon imposed under this chapter shall
52 be operated in connection with a receivership or
53 insolvency proceeding in any state court in this state, the
54 court under whose direction such business is operated
55 shall, by the entry of a proper order or decree in the
56 cause, make provisions, so far as the assets in admin-
57 istration will permit, for the regular payment of such
58 payments, interest and penalties as the same become
59 due.

60 (e) The secretary of state of this state shall withhold
61 the issuance of any certificate of dissolution or with-

62 drawal in the case of any corporation organized under
63 the laws of this state or organized under the laws of any
64 other state and admitted to do business in this state,
65 until notified by the commissioner that all payments,
66 interest and penalties thereon against any such corpo-
67 ration which is an employer under this chapter have
68 been paid or that provision satisfactory to the commis-
69 sioner has been made for payment.

70 (f) In any case when an employer required to sub-
71 scribe to the fund defaults in payments of premium,
72 premium deposits, or interest thereon, for as many as
73 two calendar quarters, which quarters need not be
74 consecutive, and remains in default after due notice, and
75 the commissioner has been unable to collect such
76 payments by any of the other civil remedies prescribed
77 herein, the commissioner may bring action in the circuit
78 court of Kanawha county to enjoin such employer from
79 continuing to carry on the business in which such
80 liability was incurred: *Provided*, That the commissioner
81 may as an alternative to this action require such
82 delinquent employer to file a bond in the form pres-
83 cribed by the commissioner with satisfactory surety in
84 an amount not less than fifty percent more than the
85 payments, interest and penalties due.

**§23-2-5b. Legislative purpose; application for settlement;
reinstatement; amount of settlement; when
settlement void; notification of rights.**

1 The Legislature hereby declares that it is the purpose
2 of this section to provide any employer who may, as of
3 the effective date of this section, be in default in any
4 payment due under the provisions in this article an
5 opportunity to settle the amount of the default in
6 accordance with the provisions hereinafter set forth. For
7 purposes of this section, the term "default" shall apply
8 to any employer who has failed to subscribe or pay
9 premiums to the workers' compensation fund in accor-
10 dance with the provisions of this chapter.

11 (a) On or before the first day of February, one
12 thousand nine hundred ninety-four, any employer who
13 may qualify under this section shall apply to the

14 commissioner for a settlement of the amount of default.
15 Such application shall: (1) Be made on a form prescribed
16 by the commissioner; (2) include the gross payroll of the
17 employer during the entire period of delinquency and
18 default, which payroll information shall be certified by
19 the employer or its authorized agent; and (3) include a
20 payment equal to one half of one percent of the gross
21 payroll during the period of delinquency and default,
22 but not to exceed the amount of the entire liability due
23 and owing for the period of delinquency and default.

24 (b) Notwithstanding other provisions of this chapter
25 to the contrary, upon timely receipt of the application
26 prescribed in subdivision (a) of this section, the em-
27 ployer shall be entitled to the benefits and protections
28 of this chapter: *Provided*, That such entitlement shall
29 not affect any cause of action which has accrued against
30 the employer as a result of an injury sustained during
31 any period of default prior to the date of the application:
32 *Provided, however*, That the subsequent failure of the
33 employer to make scheduled payments or to pay accrued
34 or future interest in accordance with any repayment
35 agreement or to timely file current premiums within the
36 month following the end of the quarter for which the
37 report and payment are due, or to otherwise maintain
38 its account in good standing or, if a repayment agree-
39 ment does not require earlier restoration of the pre-
40 mium deposit, to restore the premium deposit to the
41 required amount by the end of any repayment period
42 shall cause the application or any repayment agreement,
43 or both, to be null, void and of no effect, and the
44 employer shall be denied the benefits and protection of
45 this chapter effective from the date that such employer's
46 account originally became delinquent.

47 (c) After the commissioner shall have received the
48 application of an employer as prescribed herein, the
49 commissioner and the employer or its authorized agent
50 shall agree, in writing, on or before the first day of July,
51 one thousand nine hundred ninety-four, to settle the
52 default in an amount which shall include all delinquent
53 premium payments, plus interest, compounded monthly,
54 at the rate of nine percent per annum. The commis-

55 sioner may authorize payment of the amount set forth
56 in the agreement on a payment schedule, which period
57 shall not exceed three years from the date of the
58 execution of the agreement. The agreement shall set
59 forth that the employer shall be in default if any
60 payment shall not be received by the commissioner
61 within fifteen days of the due date thereof.

62 (d) If the employer shall fail to pay timely current
63 premiums in accordance with the provisions of this
64 chapter or if the employer shall default upon any
65 payment set forth under the terms of the agreement,
66 such application or agreement, or both, shall be null,
67 void and of no effect and the commissioner shall have
68 the authority to proceed in accordance with the provi-
69 sions of this chapter. Current premiums shall be timely
70 paid when they are paid within the month following the
71 end of the quarter for which the reported payment is
72 due.

73 (e) The commissioner shall notify in writing, by the
74 first day of January, one thousand nine hundred ninety-
75 four, all employers, who are in default as indicated by
76 the records of the commissioner, of the employer's right
77 to apply for a settlement in accordance with the
78 provisions of this section. The commissioner may also
79 take additional steps, as deemed appropriate, to notify
80 other employers of the rights set forth herein. The
81 written notice of the commissioner shall include the
82 form required for application and the commissioner
83 shall make such form available to other employers.

**§23-2-5c. Statute of limitations; effective date for new
payments; previous payments due not
affected.**

1 For payments due after the effective date of this
2 section, every action or process to collect any premium,
3 premium deposit, interest or penalty due from an
4 employer pursuant to this article by the commissioner
5 shall be brought or issued within five years next after
6 the date on which the employer is required by the
7 section imposing the premium, premium deposit,
8 interest or penalty to file a report and pay the amount

9 due thereunder. The limitation provided by this section
10 shall likewise apply to enforcement of the lien, if any,
11 securing the payment of such premium, premium
12 deposit, interest or penalty, but shall not apply in event
13 of fraud or in event the employer wholly fails to file the
14 report required by the section imposing the premium,
15 premium deposit, interest or penalty. For payments that
16 were due prior to the effective date of this section, there
17 shall continue to be no limitation on when actions or
18 processes may be brought or issued.

§23-2-5d. Uncollectible receivables; write-offs.

1 The commissioner, with the approval of the attorney
2 general, may write-off any uncollected receivable due
3 under the provisions of this article which the commis-
4 sioner and the attorney general deem to be uncollectible.

**§23-2-15. Liabilities of successor employer; waiver of
payment by commissioner; assignment of
predecessor employer's premium rate to
successor.**

1 (a) Notwithstanding any provisions of section five-a of
2 this article to the contrary, in the event that a new
3 employer acquires by sale or other transfer or assumes
4 all or substantially all of a predecessor employer's actual
5 business, business assets, customers, clients, contracts,
6 operations, stock of goods, equipment or substantially all
7 of its employees, then any liens for payments owed to
8 the commissioner for premiums, premium deposits,
9 interest or claims losses by the predecessor employer or
10 any liens held by the commissioner against the prede-
11 cessor employer's property shall be extended to the
12 assets acquired as the result of the sale or transfer by
13 the new employer and shall be enforceable against such
14 assets by the commissioner to the same extent as
15 provided for the enforcement of liens against the
16 predecessor employer pursuant to said section. As used
17 in this section, the term "assets" is defined as provided
18 in section fourteen of this article. The foregoing
19 provisions are expressly intended to impose upon such
20 new employers the duty of obtaining, prior to the date
21 of such acquisition, verification from the commissioner

22 that the predecessor employer's account with the
23 commissioner is in good standing.

24 (b) At any time prior to or following the acquisition
25 described in subsection (a) of this section, the buyer or
26 other recipient may file a certified petition with the
27 commissioner requesting that the commissioner waive
28 the payment by the buyer or other recipient of premi-
29 ums, premium deposits, interest and imposition of the
30 modified rate of premiums attributable to the predeces-
31 sor employer, or any combination thereof. The commis-
32 sioner shall review the petition by considering the six
33 factors set forth below:

34 (1) The exact nature of the default;

35 (2) The amount owed to the commissioner;

36 (3) The solvency of the fund;

37 (4) The financial condition of the buyer or other
38 recipient;

39 (5) The equities exhibited towards the fund by the
40 buyer or other recipient during the acquisition process;
41 and

42 (6) The potential economic impact upon the state and
43 the specific geographic area in which the buyer or other
44 recipient is to be or is located, if the acquisition were
45 not to occur.

46 Unless requested by a party or by the commissioner,
47 no hearing need be held on the petition. However, any
48 decision made by the commissioner on the petition shall
49 be in writing and shall include appropriate findings of
50 fact and conclusions of law. Such decision shall be
51 effective ten days following notice to the public of the
52 decision unless an objection is filed in the manner herein
53 provided. Such notice shall be given by the commis-
54 sioner's publication of a Class I legal advertisement which
55 complies with the provisions of article three, chapter
56 fifty-nine of this code. The publication shall include a
57 summary of the decision and a statement advising that
58 any person objecting to the decision must file, within ten

59 days after publication of the notice, a verified response
60 with the commissioner setting forth the objection and
61 the basis therefor. The publication area shall be
62 Kanawha County, West Virginia. If any such objection
63 is filed, the commissioner shall hold an administrative
64 hearing, conducted pursuant to article five, chapter
65 twenty-nine-a of this code, within fifteen days of
66 receiving the response unless the buyer or other
67 recipient consents to a later hearing. Nothing in this
68 subsection shall be construed to be applicable to the
69 seller or other transferor or to affect in any way a
70 proceeding under sections five and five-a of this article.

71 (c) In the factual situations set forth in subsection (a)
72 of this section, if the predecessor's modified rate of
73 premium, as calculated in accordance with section four
74 of this article, is greater than the manual rate of
75 premium, as calculated in accordance with said section,
76 for other employers in the same class or group, then the
77 new employer shall also assume the predecessor employ-
78 er's modified rates for the payment of premiums as
79 determined under sections four and five of this article
80 until sufficient time has elapsed for the new employer's
81 experience record to be combined with the experience
82 record of the predecessor employer.

**§23-2-17. Employer right to hearing; content of petition;
appeal.**

1 Notwithstanding any provision in this chapter to the
2 contrary and notwithstanding any provision in section
3 five, article five, chapter twenty-nine-a of this code to
4 the contrary, in any situation where an employer objects
5 to a decision or action of the commissioner made under
6 the provisions of this article, then such employer shall
7 be entitled to file a petition demanding a hearing upon
8 such decision or action which petition must be filed
9 within thirty days of the employer's receipt of notice of
10 the disputed commissioner's decision or action or, in the
11 absence of such receipt, within sixty days of the date of
12 the commissioner's making such disputed decision or
13 taking such disputed action, such time limitations being
14 hereby declared to be a condition of the right to litigate
15 such decision or action and hence jurisdictional.

16 The employer's petition shall clearly identify the
17 decision or action disputed and the bases upon which the
18 employer disputes the decision or action. Upon receipt
19 of such a petition, the commissioner shall schedule a
20 hearing which shall be conducted in accordance with the
21 provisions of article five, chapter twenty-nine-a of this
22 code. An appeal from a final decision of the commis-
23 sioner shall be taken in accord with the provisions of
24 articles five and six of said chapter: *Provided*, That all
25 such appeals shall be taken to the circuit court of
26 Kanawha county.

ARTICLE 2B. OCCUPATIONAL SAFETY AND HEALTH PROGRAMS.

§23-2B-1. Occupational safety and health activities; voluntary compliance; consultative services.

§23-2B-2. Mandatory programs; safety committees; requirements; rules; exceptions.

§23-2B-3. Premium rate credits; qualified loss management program; loss management firms; penalties; rules.

§23-2B-1. Occupational safety and health activities; voluntary compliance; consultative services.

1 In order to carry out the purposes of this chapter and
2 to encourage voluntary compliance with occupational
3 safety and health laws, regulations and standards and
4 to promote more effective workplace health and safety
5 programs, the commissioner acting in conjunction with
6 the performance council created pursuant to section one,
7 article three, chapter twenty-one-a of this code, shall:

8 (a) Develop greater knowledge and interest in the
9 causes and prevention of industrial accidents, occupa-
10 tional diseases and related subjects through:

11 (1) Research, conferences, lectures and the use of
12 public communications media;

13 (2) The collection and dissemination of accident and
14 disease statistics; and

15 (3) The publication and distribution of training and
16 accident prevention materials, including audio and
17 visual aids;

18 (b) Provide consultative services for employers on

19 safety and health matters and prescribe procedures
20 which will permit any employer to request a special
21 inspection or investigation, focused on specific problems
22 or hazards in the place of employment of the employer
23 or to request assistance in developing a plan to correct
24 such problems or hazards, which will not directly result
25 in a citation and civil penalty; and

26 (c) Place emphasis, in the research, education and
27 consultation program, on development of a model for
28 providing services to groups of small employers in
29 particular industries and their employees and for all
30 employers whose experience modification factor for
31 rate-setting purposes is in excess of the criteria
32 established by the compensation programs performance
33 council.

**§23-2B-2. Mandatory programs; safety committees;
requirements; rules; exceptions.**

1 (a) Based upon and to the extent authorized by
2 criteria established by the compensation programs
3 performance council, the commissioner is authorized to
4 conduct special inspections or investigations focused on
5 specific problems or hazards in the workplace with or
6 without the agreement of the employer. The commis-
7 sioner shall issue a report on his or her findings and
8 shall furnish a copy of the report to the employer and
9 to any bargaining unit representing the employees of the
10 employer. The commissioner may share information
11 obtained or developed pursuant to this article with other
12 governmental agencies.

13 (b) For any employer whose experience modification
14 factor exceeds the criteria established by the compen-
15 sation programs performance council, the commissioner
16 may require the employer to establish a safety commit-
17 tee composed of representatives of the employer and the
18 employees of the employer.

19 (c) In carrying out the provisions of this article, the
20 commissioner and the compensation programs perfor-
21 mance council shall promulgate rules which shall
22 include, but are not limited to, the following provisions:

23 (1) Prescribing the membership of the committees,
24 training, frequency of meetings, record keeping and
25 compensation of employee representatives on safety
26 committees; and

27 (2) Prescribing the duties and functions of safety
28 committees which include, but are not limited to:

29 (A) Establishing procedures for workplace safety
30 inspections; and for investigating job-related accidents,
31 illnesses and deaths; and

32 (B) Evaluating accident and illness prevention
33 programs.

34 (d) An employer that is a member of a multi-employer
35 group operating under a collective bargaining agree-
36 ment that contains provisions regulating the formation
37 and operation of a safety committee that meets or
38 exceeds the minimum requirements of this section shall
39 be considered to have met the requirements of this
40 section.

41 (e) It is not the purpose of this article to either
42 supercede the federal Occupational Health and Safety
43 Act program, federal Mine Safety and Health Act
44 program or to create a state counterpart to this
45 program.

**§23-2B-3. Premium rate credits; qualified loss manage-
ment program; loss management firms;
penalties; rules.**

1 (a) The commissioner, in conjunction with the com-
2 pensation programs performance council, is authorized
3 to establish by rule a premium credit program for
4 certain employers. The program shall be applicable
5 solely to regular subscribers to the workers' compensa-
6 tion fund and not to self-insurers. Participation in any
7 premium credit program shall be voluntary and no
8 employer shall be required to participate.

9 (b) The program shall apply a prospective credit to
10 the premium rate of a subscribing employer who
11 participates in a qualified loss management program.
12 The prospective credit shall be given for a period of up

13 to three years, provided that the employer remains in
14 the program for a corresponding period of time.

15 (c) The rule shall specify the requirements of a
16 qualified loss management program and shall include a
17 requirement that a recognized loss management firm
18 participate in the program. A loss management firm
19 shall be recognized if it has demonstrated an ability to
20 significantly reduce workers' compensation losses for its
21 client employers by implementing a loss control man-
22 agement program. The amount of credit against
23 premium rates that may be allowed by the commis-
24 sioner shall vary from firm to firm and shall be
25 primarily determined by the loss reduction success
26 experienced by all of the subscribing employers of the
27 sponsoring loss management firm over a period of time
28 to be determined by the commissioner.

29 (d) A credit shall be applied to the employer's
30 premium rate for up to three years. The amount of the
31 credit applied to the first year is based on the credit
32 factor assigned to the loss management firm on the date
33 the employer subscribes to the program. The amount of
34 the credit applied to the second and third years shall be
35 based on the credit factor assigned to the loss manage-
36 ment firm and in effect on each first day of July of the
37 pertinent year: *Provided*, That the applicable credit is
38 halved in the third year.

39 (e) The employer may terminate participation in the
40 program upon three years of continuous participation in
41 the program without penalty. Sooner termination may
42 result in a penalty being applied to the employer's
43 premium rate.

44 (f) An employer who has subscribed to an existing
45 program of a qualified loss management firm prior to
46 the effective date of this section shall be subject to a
47 reduction in credit as follows:

48 (1) Participation for one year or less shall result in
49 credit for the full three years;

50 (2) Participation for more than one year but less than
51 two years shall result in a credit for two years;

52 (3) Participation for two years or more but less than
53 three years shall result in a credit for one year; and

54 (4) Participation for three years or more shall result
55 in no credit.

56 (g) This section shall not become effective until the
57 commissioner, in conjunction with the compensation
58 programs performance council, promulgates an approp-
59 priate rule to implement the section's provisions.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

- §23-4-1e. Temporary total disability benefits not to be paid for periods of penitentiary or jail confinement; denial of workers' compensation benefits for injuries or disease incurred while incarcerated.
- §23-4-1f. Certain psychiatric injuries and diseases not compensable.
- §23-4-3. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; legislative approval; guidelines; preferred provider agreements; charges in excess of scheduled amounts not to be made; required disclosure of financial interest in sale or rental of medically related mechanical appliances or devices; promulgation of rules to enforce requirement; consequences of failure to disclose; contract by employer with hospital, physician, etc., prohibited; criminal penalties for violation; payments to certain providers prohibited; medical cost and care programs; payments; interlocutory orders.
- §23-4-3a. Wrongfully seeking payment for services or supplies; criminal penalties; restitution.
- §23-4-3c. Suspension or termination of providers of health care.
- §23-4-6. Classification of and criteria for disability benefits.
- §23-4-8c. Occupational pneumoconiosis board—Reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon; limitations on refilings; consolidation of claims.
- §23-4-16. Commissioner's jurisdiction over case continuous; modification of finding or order; time limitation on awards; reimbursement of claimant for expenses; reopening cases involving permanent total disability; promulgation of rules.
- §23-4-19. Wrongfully seeking compensation; criminal penalties; restitution; termination of compensation.
- §23-4-22. Permanent disability evaluations; limitations; notice.
- §23-4-23. Permanent total disability benefits; reduction of disability benefits; social security benefits; applications; release of information; credit or reduction of benefits; application of section; severability.
- §23-4-24. Permanent total disability awards; retirement age; limitations on eligibility and the introduction of evidence; effects of other types of awards; procedures; requests for awards; jurisdiction.

§23-4-25. Permanent total disability benefits reduction of disability benefits for wages earned by claimant.

§23-4-1e. Temporary total disability benefits not to be paid for periods of penitentiary or jail confinement; denial of workers' compensation benefits for injuries or disease incurred while incarcerated.

1 (a) Notwithstanding any provision of this code to the
2 contrary, no person shall be jurisdictionally entitled to
3 temporary total disability benefits for that period of
4 time in excess of three days during which such person
5 is incarcerated in a penitentiary or jail: *Provided*, That
6 incarceration shall not affect the claimant's eligibility
7 for payment of expenses: *Provided, however*, That this
8 subsection is applicable only to injuries and diseases
9 incurred prior to any period of incarceration. Upon
10 release from confinement, the payment of benefits for
11 the remaining period of temporary total disability shall
12 be made if justified by the evidence and authorized by
13 order of the commissioner.

14 (b) Notwithstanding any provision of this code to the
15 contrary, no person incarcerated in a penitentiary or jail
16 who suffers injury or a disease in the course of and
17 resulting from his or her work during such period of
18 incarceration which work is imposed by the administra-
19 tion of the penitentiary or jail and is not suffered during
20 such person's usual employment with his or her usual
21 employer when not incarcerated shall receive benefits
22 under the provisions of this chapter for such injury or
23 disease.

§23-4-1f. Certain psychiatric injuries and diseases not compensable.

1 For the purposes of this chapter, no alleged injury or
2 disease shall be recognized as a compensable injury or
3 disease which was solely caused by nonphysical means
4 and which did not result in any physical injury or
5 disease to the person claiming benefits. It is the purpose
6 of this section to clarify that so-called mental-mental
7 claims are not compensable under this chapter.

§23-4-3. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; legislative approval; guidelines; preferred provider agreements; charges in excess of scheduled amounts not to be made; required disclosure of financial interest in sale or rental of medically related mechanical appliances or devices; promulgation of rules to enforce requirement; consequences of failure to disclose; contract by employer with hospital, physician, etc., prohibited; criminal penalties for violation; payments to certain providers prohibited; medical cost and care programs; payments; interlocutory orders.

1 (a) The commissioner shall establish and alter from
2 time to time as he or she may determine to be approp-
3 priate a schedule of the maximum reasonable amounts to
4 be paid to chiropractic physicians, medical physicians,
5 osteopathic physicians, podiatrists, optometrists, voca-
6 tional rehabilitation specialists, pharmacists, ophthal-
7 mologists and others practicing medicine and surgery,
8 surgeons, hospitals or other persons, firms or corpora-
9 tions for the rendering of treatment or services to
10 injured employees under this chapter. The commissioner
11 also, on the first day of each regular session and also
12 from time to time, as the commissioner may consider
13 appropriate, shall submit the schedule, with any
14 changes thereto, to the Legislature. The promulgation of
15 the schedule is not subject to the legislative rule-making
16 review procedures established in sections nine through
17 sixteen, article three, chapter twenty-nine-a of this code.

18 The commissioner shall disburse and pay from the
19 fund for such personal injuries to such employees as may
20 be entitled thereto hereunder as follows:

21 (1) Such sums for medicines, medical, surgical, dental
22 and hospital treatment or services, crutches, artificial
23 limbs and such other and additional approved mechan-
24 ical appliances and devices as may be reasonably
25 required. The commissioner shall determine that which
26 is reasonably required within the meaning of this
27 section in accordance with the guidelines developed by

28 the health care advisory panel pursuant to section three-
29 b of this article: *Provided*, That nothing herein shall
30 prevent the implementation of guidelines applicable to
31 a particular type of treatment or service or to a
32 particular type of injury before guidelines have been
33 developed for other types of treatment or services or
34 injuries: *Provided, however*, That any guidelines for
35 utilization review which are developed in addition to the
36 guidelines provided for in said section may be utilized
37 by the commissioner until superseded by guidelines
38 developed by the health care advisory panel pursuant to
39 said section. Each health care provider who seeks to
40 provide services or treatment which are not within any
41 such guideline shall submit to the commissioner specific
42 justification for the need for such additional services in
43 the particular case and the commissioner shall have the
44 justification reviewed by a health care professional
45 before authorizing any such additional services. The
46 commissioner is authorized to enter into preferred
47 provider agreements.

48 (2) Payment for such medicine, medical, surgical,
49 dental and hospital treatment or services, crutches,
50 artificial limbs and such other and additional approved
51 mechanical appliances and devices authorized under
52 this subdivision may be made to the injured employee
53 or to the person, firm or corporation who or which has
54 rendered such treatment or furnished any of the items
55 specified above, or who has advanced payment for same,
56 as the commissioner may deem proper, but no such
57 payments or disbursements shall be made or awarded
58 by the commissioner unless duly verified statements on
59 forms prescribed by the commissioner shall be filed
60 with the commissioner within two years after the
61 cessation of such treatment or the delivery of such
62 appliances: *Provided*, That no payment hereunder shall
63 be made unless such verified statement shows no charge
64 for or with respect to such treatment or for or with
65 respect to any of the items specified above has been or
66 will be made against the injured employee or any other
67 person, firm or corporation, and when an employee
68 covered under the provisions of this chapter is injured
69 in the course of and as a result of his or her employment

70 and is accepted for medical, surgical, dental or hospital
71 treatment or services or any mechanical appliances and
72 devices, the person, firm or corporation rendering such
73 treatment is hereby prohibited from making any charge
74 or charges therefor or with respect thereto against the
75 injured employee or any other person, firm or corpora-
76 tion which would result in a total charge for the
77 treatment rendered in excess of the maximum amount
78 set forth therefor in the commissioner's schedule
79 established as aforesaid.

80 (b) No chiropractic physician, medical physician,
81 osteopathic physician, podiatrist or others practicing
82 medicine or surgery (collectively and individually
83 referred to hereinafter as "practitioner" or "practition-
84 ers") shall refer his or her patients to the practitioner
85 himself or herself or to a supplier of mechanical
86 appliances or devices owned in whole or in part by the
87 practitioner, the practitioner's partnership or profes-
88 sional corporation, or a member of the practitioner's
89 immediate family for the purchase or rental of any
90 mechanical appliances or devices which the practitioner
91 has prescribed or recommended to such patient except
92 upon the terms prescribed by this section. Examples of
93 mechanical appliances or devices are described as
94 follows, but these examples are described for illustrative
95 purposes only and are not intended to limit the range
96 of items included by this phrase: Hearing aids; crutches;
97 artificial limbs; oxygen concentrators; and TENS units.
98 For the purposes of this subsection, the term "practi-
99 tioner" shall include natural persons, partnerships and
100 professional corporations.

101 (1) In order to avoid the bar of this subdivision, a
102 practitioner shall first disclose to his or her patient the
103 ownership interest of the practitioner, or of the practi-
104 tioner's partnership or professional corporation, or of a
105 member of the practitioner's immediate family in the
106 entity which would sell or rent the mechanical appliance
107 or device to the patient. If the practitioner would sell
108 or rent the mechanical appliance or device as part of his
109 or her practice and not as a separate legal entity, the
110 practitioner shall disclose this fact to the patient. These

111 disclosures must be delivered in writing to the patient.

112 (2) The commissioner may include in any rules
113 promulgated to implement this section a requirement
114 that the written notice disclose to the patient that he or
115 she is free to use any lawful supplier of the mechanical
116 appliance or device prescribed or recommended and
117 that other suppliers may offer the mechanical appliance
118 or device for less cost but of equal or better quality
119 elsewhere and that the patient is encouraged to compar-
120 ison shop. The commissioner's rule may also provide for
121 a differing level of reimbursement to the supplier if the
122 supplier is the practitioner himself or herself or if the
123 supplier is owned in whole or in part by the practitioner,
124 the practitioner's partnership or professional corpora-
125 tion or a member of the practitioner's immediate family
126 as compared to the reimbursement of a supplier who is
127 wholly independent from the practitioner.

128 (3) Failure by a practitioner to comply with the
129 provisions of this subsection shall cause the practitioner
130 to forfeit his, her or its right to reimbursement for the
131 services rendered by the practitioner to the patient and,
132 if any such services have previously been reimbursed,
133 the commissioner shall either seek recovery of such
134 funds by any lawful means or by deducting such
135 amounts from future payments to the practitioner on
136 account of services rendered to the same patient or to
137 other claimants of the workers' compensation fund. In
138 addition, failure by a practitioner to comply with the
139 provisions of this subsection shall also result in the
140 denial of payment to the supplier of the mechanical
141 appliance or device if that supplier is one which is
142 owned in whole or in part by the practitioner, the
143 practitioner's partnership or professional corporation, or
144 a member of the practitioner's immediate family. If
145 such supplier has already been reimbursed for the cost
146 of the pertinent mechanical appliance or device, then the
147 commissioner shall either seek recovery of such funds
148 by any lawful means or by deducting such amounts from
149 future payments to the supplier on account of goods
150 delivered to the same patient or to other claimants of
151 the workers' compensation fund.

152 (c) No employer shall enter into any contracts with
153 any hospital, its physicians, officers, agents or employees
154 to render medical, dental or hospital service or to give
155 medical or surgical attention therein to any employee
156 for injury compensable within the purview of this
157 chapter, and no employer shall permit or require any
158 employee to contribute, directly or indirectly, to any
159 fund for the payment of such medical, surgical, dental
160 or hospital service within such hospital for such
161 compensable injury. Any employer violating this section
162 shall be liable in damages to the employer's employees
163 as provided in section eight, article two of this chapter,
164 and any employer or hospital or agent or employee
165 thereof violating the provisions of this section shall be
166 guilty of a misdemeanor, and, upon conviction thereof,
167 shall be punished by a fine not less than one hundred
168 dollars nor more than one thousand dollars or by
169 imprisonment not exceeding one year, or both: *Provided*,
170 That the foregoing provisions of this subsection shall not
171 be deemed to prohibit an employer from participating
172 in a preferred provider organization or program or a
173 health maintenance organization or other medical cost
174 containment relationship with the providers of medical,
175 hospital or other health care: *Provided, however*, That
176 nothing in this section shall be deemed to restrict the
177 right of a claimant to select a health care provider for
178 treatment of a compensable injury or disease.

179 (d) When an injury has been reported to the commis-
180 sioner by the employer without protest, the commis-
181 sioner may pay, or order an employer who or which
182 made the election and who or which received the
183 permission mentioned in section nine, article two of this
184 chapter to pay, within the maximum amount provided
185 by schedule established by the commissioner as afore-
186 said, bills for medical or hospital services without
187 requiring the injured employee to file an application for
188 benefits.

189 (e) The commissioner shall provide for the replace-
190 ment of artificial limbs, crutches, hearing aids, eye-
191 glasses and all other mechanical appliances provided in
192 accordance with this section which later wear out, or

193 which later need to be refitted because of the progres-
194 sion of the injury which caused the same to be originally
195 furnished, or which are broken in the course of and as
196 a result of the employee's employment. The fund or self-
197 insured employer shall pay for these devices, when
198 needed, notwithstanding any time limits provided by
199 law.

200 (f) No payment shall be made to a health care
201 provider who is suspended or terminated under the
202 terms of section three-c of this article except as provided
203 in subsection (c) of said section.

204 (g) The commissioner is authorized to engage in and
205 contract for medical cost containment programs,
206 medical case management programs and utilization
207 review programs. Payments for these programs shall be
208 made from the supercedeas reserve of the surplus fund.
209 Any order issued pursuant to any such program shall
210 be interlocutory in nature until an objecting party has
211 exhausted all review processes provided for by the
212 commissioner.

213 (h) Notwithstanding the foregoing, the commissioner
214 may establish fee schedules, make payments and take
215 other actions required or allowed pursuant to article
216 twenty-nine-d, chapter sixteen of this code.

**§23-4-3a. Wrongfully seeking payment for services or
supplies; criminal penalties; restitution.**

1 (a) If any person who is a health care provider shall:

2 (1) Knowingly, and with intent to defraud, secure or
3 attempt to secure payment from the workers' compen-
4 sation fund or a self-insured employer for services or
5 supplies when such person is not entitled to such
6 payment or is entitled to some lesser amount of
7 payment; or

8 (2) Knowingly make any charge or charges against
9 any injured employee or any other person, firm or
10 corporation which would result in a total charge for the
11 treatment or service rendered in excess of the maximum
12 amount set forth therefor in the commissioner's schedule
13 of maximum reasonable amounts to be paid for such

14 treatment or services issued pursuant to subsection (a),
15 section three of this article, then in either case, such
16 person shall be guilty of a felony, and, upon conviction
17 thereof, shall be fined not more than ten thousand
18 dollars, or imprisoned not more than two years, or both
19 fined and imprisoned. In addition to any other penalty
20 imposed, the court shall order any person convicted
21 under this section to make full restitution of all moneys
22 paid by the commissioner, a self-insured employer,
23 injured employee or other person as the result of the
24 violation of this section.

25 (b) Any person who is a health care provider who
26 fails, in violation of subsection (e), section three-c of this
27 article, to post a notice, in the form required by the
28 commissioner, in the provider's public waiting area that
29 the provider cannot accept any patient whose treatment
30 or other services or supplies would ordinarily be paid
31 for from the workers' compensation fund unless such
32 patient consents, in writing, prior to the provision of
33 such treatment or other services or supplies, to make
34 payment for that treatment or other services or supplies
35 himself or herself, shall be guilty of a misdemeanor,
36 and, upon conviction thereof, shall be fined one thousand
37 dollars.

38 (c) Any person who is a health care provider, who is
39 suspended or terminated under section three-c of this
40 article and, who intentionally attempts to collect any
41 sum of money from an injured employee who was not,
42 prior to the provision of any treatment or other services
43 or supplies, provided with the notice required by
44 subsection (c) of said section, shall be guilty of a
45 misdemeanor, and, upon conviction thereof, shall be
46 fined not more than ten thousand dollars, or imprisoned
47 in the county jail not more than twelve months, or both
48 fined and imprisoned.

49 (d) For the purposes of this section, the term "person
50 who is a health care provider" shall mean any person
51 who has rendered, or who represents that he has
52 rendered, any treatment to an injured employee under
53 this chapter, or any person who has supplied, or who
54 represents that he has supplied, any medication or any

55 crutches, artificial limbs and other mechanical applian-
56 ces and devices for such injured employee. The term
57 shall include, but not be limited to, persons practicing
58 medicine and surgery, podiatry, dentistry, nursing,
59 pharmacy, optometry, osteopathic medicine and
60 surgery, chiropractic, physical therapy, psychology,
61 radiologic technology, occupational therapy or voca-
62 tional rehabilitation, and shall also include hospitals,
63 professional corporations and other corporations, firms
64 and business entities.

65 (e) Any person convicted under the provisions of this
66 section shall, from and after such conviction, be barred
67 from providing future services or supplies to injured
68 employees under this chapter and shall cease to receive
69 payment for such services or supplies.

§23-4-3c. Suspension or termination of providers of health care.

1 (a) The commissioner may suspend for up to one year
2 or terminate the right of any health care provider,
3 including a provider of rehabilitation services within the
4 meaning of section nine of this article, to obtain payment
5 for services rendered to injured employees:

6 (1) If the commissioner finds that the health care
7 provider is regularly providing excessive, medically
8 unreasonable or unethical care to injured employees;

9 (2) If the commissioner finds that a health care
10 provider is attempting to make any charge or charges
11 against the injured employee or any other person, firm
12 or corporation which would result in a total charge for
13 any treatment rendered in excess of the maximum
14 amount set by the commissioner, in violation of section
15 three of this article;

16 (3) If the commissioner determines that the health
17 care provider has had his or her license to practice
18 suspended or terminated by the appropriate authority
19 in this state or in another state; or

20 (4) If the commissioner determines that the health
21 care provider has been convicted of any crime in
22 relation to his or her practice.

23 The commissioner shall consult with medical experts,
24 including the health care advisory panel established
25 pursuant to section three-b of this article, for purposes
26 of determining whether a health care provider should
27 be suspended or terminated pursuant to this section.

28 (b) Upon the commissioner determining that there is
29 probable cause to believe that a health care provider
30 should be suspended or terminated pursuant to this
31 section, the commissioner shall provide such health care
32 provider with written notice which shall state the nature
33 of the charges against the health care provider and the
34 time and place at which such health care provider shall
35 appear to show cause why the health care provider's
36 right to receive payment under this chapter should not
37 be suspended or terminated, at which time and place
38 such health care provider shall be afforded an opportu-
39 nity to review the commissioner's evidence and to cross-
40 examine the commissioner's witnesses and also afforded
41 the opportunity to present testimony and enter evidence
42 in support of its position. The hearing shall be conducted
43 in accordance with the provisions of article five, chapter
44 twenty-nine-a of this code. The hearing may be con-
45 ducted by the commissioner or a hearing officer
46 appointed by the commissioner. The commissioner or
47 hearing officer shall have the power to subpoena
48 witnesses, papers, records, documents and other data
49 and things in connection with the proceeding hereunder
50 and to administer oaths or affirmations in any such
51 hearing. If, after reviewing the record of such hearing,
52 the commissioner determines that the right of such
53 health care provider to obtain payment under this
54 article should be suspended for a specified period of
55 time or should be terminated, the commissioner shall
56 issue a final order suspending or terminating the right
57 of such health care provider to obtain payment for
58 services under this article. Any health care provider so
59 suspended or terminated shall be notified in writing and
60 the notice shall specify the reasons for the action so
61 taken. Any appeal by the health care provider shall be
62 brought in the circuit court of Kanawha county or in the
63 county in which the provider's principal place of
64 business is located. The scope of the court's review of

65 such an appeal shall be as provided in section four of
66 said article. The provider may be suspended or termi-
67 nated, based upon the final order of the commissioner,
68 pending final disposition of any appeal. Such final order
69 may be stayed by the circuit court after hearing, but
70 shall not be stayed in or as a result of any ex parte
71 proceeding. If the health care provider does not appeal
72 the final order of the commissioner within thirty days,
73 it shall be final.

74 (c) No payment shall be made to a health care
75 provider or to an injured employee for services provided
76 by a health care provider after the effective date of a
77 commissioner's final order terminating or suspending
78 the health care provider: *Provided*, That nothing herein
79 shall prohibit payment by the commissioner or self-
80 insured employer to a suspended or terminated health
81 care provider for medical services rendered where the
82 medical services were rendered to an injured employee
83 in an emergency situation. The suspended or terminated
84 provider is prohibited from making any charge or
85 charges for any services so provided against the injured
86 employee unless the injured employee, before any
87 services are rendered, is given notice by the provider in
88 writing that the provider does not participate in the
89 workers' compensation program and that the injured
90 employee will be solely responsible for all payments to
91 the provider, and unless the injured employee also signs
92 a written consent, before any services are rendered, to
93 make payment directly and to waive any right to
94 reimbursement from the commissioner or the self-
95 insured employer. The written consent and waiver
96 signed by the injured employee shall be filed by the
97 provider with the commissioner and shall be made a
98 part of the claim file.

99 (d) The commissioner shall notify each claimant,
100 whose duly authorized treating physician or other health
101 care provider has been suspended or terminated
102 pursuant to this section, of the suspension or termination
103 of the provider's rights to obtain payment under this
104 chapter and shall assist the claimant in arranging for

105 transfer of his or her care to another physician or
106 provider.

107 (e) Each suspended or terminated provider shall post
108 in the provider's public waiting area or areas a written
109 notice, in the form required by the commissioner, of the
110 suspension or termination of the provider's rights to
111 obtain payment under this chapter.

112 (f) A suspended or terminated provider may apply for
113 reinstatement at the end of the term of suspension or,
114 if terminated, after one year from the effective date of
115 termination.

116 (g) The commissioner shall promulgate rules for the
117 purpose of implementing this section.

§23-4-6. Classification of and criteria for disability benefits.

1 Where compensation is due an employee under the
2 provisions of this chapter for personal injury, the
3 compensation shall be as provided in the following
4 schedule:

5 (a) The expressions "average weekly wage earnings,
6 wherever earned, of the injured employee, at the date
7 of injury" and "average weekly wage in West Virginia",
8 as used in this chapter, shall have the meaning and shall
9 be computed as set forth in section fourteen of this
10 article except for the purpose of computing temporary
11 total disability benefits for part-time employees pursu-
12 ant to the provisions of section six-d of this article.

13 (b) If the injury causes temporary total disability, the
14 employee shall receive during the continuance thereof
15 weekly benefits as follows: A maximum weekly benefit
16 to be computed on the basis of seventy percent of the
17 average weekly wage earnings, wherever earned, of the
18 injured employee, at the date of injury, not to exceed the
19 percentage of the average weekly wage in West Virgi-
20 nia, as follows: On or after the first day of July, one
21 thousand nine hundred sixty-nine, forty-five percent; on
22 or after the first day of July, one thousand nine hundred
23 seventy, fifty percent; on or after the first day of July,
24 one thousand nine hundred seventy-one, fifty-five

25 percent; on or after the first day of July, one thousand
26 nine hundred seventy-three, sixty percent; on or after
27 the first day of July, one thousand nine hundred seventy-
28 four, eighty percent; on or after the first day of July,
29 one thousand nine hundred seventy-five, one hundred
30 percent.

31 The minimum weekly benefits paid hereunder shall
32 not be less than twenty-six dollars per week for injuries
33 occurring on or after the first day of July, one thousand
34 nine hundred sixty-nine; not less than thirty-five dollars
35 per week for injuries occurring on or after the first day
36 of July, one thousand nine hundred seventy-one; not less
37 than forty dollars per week for injuries occurring on or
38 after the first day of July, one thousand nine hundred
39 seventy-three; not less than forty-five dollars per week
40 for injuries occurring on or after the first day of July,
41 one thousand nine hundred seventy-four; and for injuries
42 occurring on or after the first day of July, one thousand
43 nine hundred seventy-six, thirty-three and one-third
44 percent of the average weekly wage in West Virginia,
45 except as provided in section six-d of this article.

46 (c) Subdivision (b) of this section shall be limited as
47 follows: Aggregate award for a single injury causing
48 temporary disability shall be for a period not exceeding
49 two hundred eight weeks.

50 (d) If the injury causes permanent total disability,
51 benefits shall be payable during the remainder of life
52 at the maximum or minimum weekly benefits as
53 provided in subdivision (b) of this section for temporary
54 total disability. A permanent disability of eighty-five
55 percent or more shall entitle the employee to a rebut-
56 table presumption of a permanent total disability for the
57 purpose of this section. Under no circumstances shall
58 the commissioner grant an additional permanent
59 disability award to a claimant receiving a permanent
60 total disability award, or to a claimant who has
61 previously been granted permanent disability awards
62 totaling eighty-five percent or more and has been
63 granted a permanent total disability award: *Provided,*
64 That if any claimant thereafter sustains another
65 compensable injury and has permanent partial disabil-

66 ity resulting therefrom, the total permanent disability
67 award benefit rate shall be computed at the highest
68 benefit rate justified by any of the compensable injuries,
69 and the cost of any increase in the permanent total
70 disability benefit rate shall be paid from the second
71 injury reserve created by section one, article three of
72 this chapter. In any claim in which a claimant aggre-
73 gates permanent partial disability awards in the amount
74 of eighty-five percent or more after the effective date of
75 this subsection, the claimant shall be entitled to a
76 permanent total disability award unless the evidence
77 establishes that the claimant is not permanently and
78 totally disabled pursuant to subdivision (n) of this
79 section.

80 (e) If the injury causes permanent disability less than
81 permanent total disability, the percentage of disability
82 to total disability shall be determined and the award
83 computed on the basis of four weeks' compensation for
84 each percent of disability determined, at the following
85 maximum or minimum benefit rates: Seventy percent
86 of the average weekly wage earnings, wherever earned,
87 of the injured employee, at the date of injury, not to
88 exceed the percentage of the average weekly wage in
89 West Virginia, as follows: On or after the first day of
90 July, one thousand nine hundred sixty-nine, forty-five
91 percent; on or after the first day of July, one thousand
92 nine hundred seventy, fifty percent; on or after the first
93 day of July, one thousand nine hundred seventy-one,
94 fifty-five percent; on or after the first day of July, one
95 thousand nine hundred seventy-three, sixty percent; on
96 or after the first day of July, one thousand nine hundred
97 seventy-five, sixty-six and two-thirds percent.

98 The minimum weekly benefit under this subdivision
99 shall be as provided in subdivision (b) of this section for
100 temporary total disability.

101 (f) If the injury results in the total loss by severance
102 of any of the members named in this subdivision, the
103 percentage of disability shall be determined by the
104 commissioner, with the following table establishing the
105 minimum percentage of disability. In determining the
106 percentage of disability, the commissioner may be

107 guided by, but shall not be limited to, the disabilities
108 enumerated in the following table, and in no event shall
109 the disability be less than that specified in the following
110 table:

111 The loss of a great toe shall be considered a ten
112 percent disability.

113 The loss of a great toe (one phalanx) shall be
114 considered a five percent disability.

115 The loss of other toes shall be considered a four
116 percent disability.

117 The loss of other toes (one phalanx) shall be consi-
118 dered a two percent disability.

119 The loss of all toes shall be considered a twenty-five
120 percent disability.

121 The loss of forepart of foot shall be considered a thirty
122 percent disability.

123 The loss of a foot shall be considered a thirty-five
124 percent disability.

125 The loss of a leg shall be considered a forty-five
126 percent disability.

127 The loss of thigh shall be considered a fifty percent
128 disability.

129 The loss of thigh at hip joint shall be considered a
130 sixty percent disability.

131 The loss of a little or fourth finger (one phalanx) shall
132 be considered a three percent disability.

133 The loss of a little or fourth finger shall be considered
134 a five percent disability.

135 The loss of ring or third finger (one phalanx) shall be
136 considered a three percent disability.

137 The loss of ring or third finger shall be considered a
138 five percent disability.

139 The loss of middle or second finger (one phalanx) shall
140 be considered a three percent disability.

141 The loss of middle or second finger shall be considered
142 a seven percent disability.

143 The loss of index or first finger (one phalanx) shall
144 be considered a six percent disability.

145 The loss of index or first finger shall be considered
146 a ten percent disability.

147 The loss of thumb (one phalanx) shall be considered
148 a twelve percent disability.

149 The loss of thumb shall be considered a twenty
150 percent disability.

151 The loss of thumb and index finger shall be consi-
152 dered a thirty-two percent disability.

153 The loss of index and middle finger shall be consi-
154 dered a twenty percent disability.

155 The loss of middle and ring finger shall be considered
156 a fifteen percent disability.

157 The loss of ring and little finger shall be considered
158 a ten percent disability.

159 The loss of thumb, index and middle finger shall be
160 considered a forty percent disability.

161 The loss of index, middle and ring finger shall be
162 considered a thirty percent disability.

163 The loss of middle, ring and little finger shall be
164 considered a twenty percent disability.

165 The loss of four fingers shall be considered a thirty-
166 two percent disability.

167 The loss of hand shall be considered a fifty percent
168 disability.

169 The loss of forearm shall be considered a fifty-five
170 percent disability.

171 The loss of arm shall be considered a sixty percent
172 disability.

173 The total and irrecoverable loss of the sight of one eye
174 shall be considered a thirty-three percent disability. For

175 the partial loss of vision in one, or both eyes, the
176 percentages of disability shall be determined by the
177 commissioner, using as a basis the total loss of one eye.

178 The total and irrecoverable loss of the hearing of one
179 ear shall be considered a twenty-two and one-half
180 percent disability. The total and irrecoverable loss of
181 hearing of both ears shall be considered a fifty-five
182 percent disability.

183 For the partial loss of hearing in one, or both ears,
184 the percentage of disability shall be determined by the
185 commissioner, using as a basis the total loss of hearing
186 in both ears.

187 Should a claimant sustain a compensable injury
188 which results in the total loss by severance of any of the
189 bodily members named in this subdivision, die from
190 sickness or noncompensable injury before the commis-
191 sioner makes the proper award for such injury, the
192 commissioner shall make such award to claimant's
193 dependents as defined in this chapter, if any; such
194 payment to be made in the same installments that would
195 have been paid to claimant if living: *Provided*, That no
196 payment shall be made to any surviving spouse of such
197 claimant after his or her remarriage, and that this
198 liability shall not accrue to the estate of such claimant
199 and shall not be subject to any debts of, or charges
200 against, such estate.

201 (g) Should a claimant to whom has been made a
202 permanent partial award of from one percent to eighty-
203 four percent, both inclusive, die from sickness or
204 noncompensable injury, the unpaid balance of such
205 award shall be paid to claimant's dependents as defined
206 in this chapter, if any; such payment to be made in the
207 same installments that would have been paid to clai-
208 mant if living: *Provided*, That no payment shall be made
209 to any surviving spouse of such claimant after his or her
210 remarriage, and that this liability shall not accrue to the
211 estate of such claimant and shall not be subject to any
212 debts of, or charges against, such estate.

213 (h) For the purposes of this chapter, a finding of the

214 occupational pneumoconiosis board shall have the force
215 and effect of an award.

216 (i) The award for permanent disabilities intermediate
217 to those fixed by the foregoing schedule and permanent
218 disability of from one percent to eighty-four percent
219 shall be the same proportion and shall be computed and
220 allowed by the commissioner.

221 (j) The percentage of all permanent disabilities other
222 than those enumerated in subdivision (f) of this section
223 shall be determined by the commissioner, and awards
224 made in accordance with the provisions of subdivision
225 (d) or (e) of this section. Where there has been an injury
226 to a member as distinguished from total loss by
227 severance of that member, the commissioner in deter-
228 mining the percentage of disability may be guided by,
229 but shall not be limited to, the disabilities enumerated
230 in subdivision (f) of this section.

231 (k) Compensation payable under any subdivision of
232 this section shall not exceed the maximum nor be less
233 than the weekly benefits specified in subdivision (b) of
234 this section.

235 (l) Except as otherwise specifically provided in this
236 chapter, temporary total disability benefits payable
237 under subdivision (b) of this section shall not be
238 deductible from permanent partial disability awards
239 payable under subdivision (e) or (f) of this section.
240 Compensation, either temporary total or permanent
241 partial, under this section shall be payable only to the
242 injured employee and the right thereto shall not vest in
243 his or her estate, except that any unpaid compensation
244 which would have been paid or payable to the employee
245 up to the time of his or her death, if he or she had lived,
246 shall be paid to the dependents of such injured employee
247 if there be such dependents at the time of death.

248 (m) The following permanent disabilities shall be
249 conclusively presumed to be total in character:

250 Loss of both eyes or the sight thereof.

251 Loss of both hands or the use thereof.

252 Loss of both feet or the use thereof.

253 Loss of one hand and one foot or the use thereof.

254 In all other cases permanent disability shall be
255 determined by the commissioner in accordance with the
256 facts in the case and award made in accordance with
257 the provisions of subdivision (d) or (e).

258 (n) A disability which renders the injured employee
259 unable to engage in substantial gainful activity requir-
260 ing skills or abilities comparable to those of any gainful
261 activity in which he or she has previously engaged with
262 some regularity and over a substantial period of time
263 shall be considered in determining the issue of total
264 disability. In addition, the vocational standards adopted
265 pursuant to subsection (m) of section seven, article three,
266 chapter twenty-one-a of this code shall be considered
267 once they are effective.

**§23-4-8c. Occupational pneumoconiosis board—Reports
and distribution thereof; presumption; find-
ings required of board; objection to findings;
procedure thereon; limitations on refilings;
consolidation of claims.**

1 (a) The occupational pneumoconiosis board, as soon as
2 practicable, after it has completed its investigation,
3 shall make its written report, to the commissioner, of its
4 findings and conclusions on every medical question in
5 controversy and the commissioner shall send one copy
6 thereof to the employee or claimant and one copy to the
7 employer, and the board shall also return to and file
8 with the commissioner all the evidence as well as all
9 statements under oath, if any, of the persons who appear
10 before it on behalf of the employee or claimant, or
11 employer, and also all medical reports and X-ray
12 examinations produced by or on behalf of the employee
13 or claimant, or employer.

14 (b) If it can be shown that the claimant or deceased
15 employee has been exposed to the hazard of inhaling
16 minute particles of dust in the course of and resulting
17 from his or her employment for a period of ten years
18 during the fifteen years immediately preceding the date

19 of his or her last exposure to such hazard and that such
20 claimant or deceased employee has sustained a chronic
21 respiratory disability, then it shall be presumed that
22 such claimant is suffering or such deceased employee
23 was suffering at the time of his or her death from
24 occupational pneumoconiosis which arose out of and in
25 the course of his or her employment. This presumption
26 shall not be conclusive.

27 (c) The findings and conclusions of the board shall set
28 forth, among other things, the following:

29 (1) Whether or not the claimant or the deceased
30 employee has contracted occupational pneumoconiosis
31 and, if so, the percentage of permanent disability
32 resulting therefrom.

33 (2) Whether or not the exposure in the employment
34 was sufficient to have caused the claimant's or deceased
35 employee's occupational pneumoconiosis or to have
36 perceptibly aggravated an existing occupational pneu-
37 moconiosis, or other occupational disease.

38 (3) What, if any, physician appeared before the board
39 on behalf of the claimant or employer, and what, if any,
40 medical evidence was produced by or on behalf of the
41 claimant or employer.

42 (d) If either party objects to the whole or any part of
43 such findings and conclusions of the board, such party
44 shall file with the commissioner or, on or after the first
45 day of July, one thousand nine hundred ninety-one, with
46 the office of judges, within thirty days from receipt of
47 such copy to such party, unless for good cause shown,
48 the commissioner or chief administrative law judge
49 extends such time, such party's objections thereto in
50 writing, specifying the particular statements of the
51 board's findings and conclusions to which such party
52 objects. The filing of an objection within the time
53 specified is hereby declared to be a condition of the right
54 to litigate such findings and hence jurisdictional. After
55 the time has expired for the filing of objections to the
56 findings and conclusions of the board, the commissioner
57 or administrative law judge shall proceed to act as
58 provided in this chapter. If after the time has expired

59 for the filing of objections to the findings and conclu-
60 sions of the board no objections have been filed, the
61 report of a majority of the board of its findings and
62 conclusions on any medical question shall be taken to be
63 plenary and conclusive evidence of the findings and
64 conclusions therein stated. If objection has been filed to
65 the findings and conclusions of the board, notice thereof
66 shall be given to the board, and the members thereof
67 joining in such findings and conclusions shall appear at
68 the time fixed by the commissioner or office of judges
69 for the hearing to submit to examination and cross-
70 examination in respect to such findings and conclusions.
71 At such hearing, evidence to support or controvert the
72 findings and conclusions of the board shall be limited
73 to examination and cross-examination of the members
74 of the board, and to the taking of testimony of other
75 qualified physicians and roentgenologists.

76 (e) In the event that a claimant receives a final
77 decision that he or she has no evidence of occupational
78 pneumoconiosis, then such claimant is barred for a
79 period of three years from the date of the occupational
80 pneumoconiosis board's decision or until his or her
81 employment with the employer who employed the
82 claimant at the time designated as the claimant's last
83 date of exposure in the denied claim has terminated,
84 whichever is sooner, from filing a new claim or pursuing
85 a previously filed, but unruled upon, claim for occupa-
86 tional pneumoconiosis or requesting a modification of
87 any prior ruling finding him or her not to be suffering
88 from occupational pneumoconiosis. For the purposes of
89 this subsection, a claimant's employment shall be
90 deemed to be terminated if, for any reason, he or she
91 has not worked for that employer for a period in excess
92 of ninety days. Any previously filed, but unruled upon,
93 claim shall be consolidated with the claim in which the
94 board's decision is made and shall be denied together
95 with the decided claim. The provisions of this subsection
96 shall not be applied in any claim where doing so would,
97 in and of itself, later cause a claimant's claim to be
98 forever barred by the provisions of section fifteen of this
99 article.

§23-4-16. Commissioner's jurisdiction over case continuous; modification of finding or order; time limitation on awards; reimbursement of claimant for expenses; reopening cases involving permanent total disability; promulgation of rules.

1 (a) The power and jurisdiction of the commissioner
2 over each case shall be continuing and he may from time
3 to time, after due notice to the employer, make such
4 modifications or changes with respect to former findings
5 or orders as may be justified: *Provided*, That no further
6 award may be made in fatal cases arising after the
7 seventh day of March, one thousand nine hundred
8 twenty-nine, except within two years after the death of
9 the employee, or in case of nonfatal injuries, on and after
10 the seventh day of March, one thousand nine hundred
11 twenty-nine, except within five years after payments for
12 temporary disability shall have ceased or not more than
13 two times within five years after the commissioner shall
14 have made the last payment in the original award or any
15 subsequent increase thereto in any permanent disability
16 case: *Provided, however*, That no such modification or
17 change may be made in any case in which no award has
18 been made, except within five years after the date of
19 injury: *Provided further*, That a further award may be
20 made for medical benefits only at any time. In any case
21 in which an injured employee shall make application for
22 a further adjustment of his claim, if such application be
23 in writing and filed within the applicable time limit as
24 prescribed herein, the commissioner shall pass upon and
25 determine the merits of such application within thirty
26 days after the filing thereof.

27 (b) If such application is based on a report of any
28 medical examination made of the claimant and submit-
29 ted by the claimant to the commissioner in support of
30 his application, and the claim is opened for further
31 consideration and additional award is later made, the
32 claimant shall be reimbursed for the expenses of such
33 examination. Such reimbursement shall be made by the
34 commissioner to the claimant, in addition to all other
35 benefits awarded, upon due proof of the amount thereof

36 being furnished the commissioner by the claimant, but
37 shall in no case exceed the sum fixed pursuant to the
38 commissioner's schedule of maximum reasonable fees
39 established under the provisions of section three of this
40 article.

41 (c) The commissioner shall have continuing power and
42 jurisdiction over claims in which permanent total
43 disability awards have been made after the effective
44 date of this section.

45 (1) The commissioner shall continuously monitor
46 permanent total disability awards and may from time
47 to time, after due notice to the claimant, reopen a claim
48 for reevaluation of the continuing nature of the disabili-
49 ty and possible modification of the award: *Provided*,
50 That such reopenings shall not be done sooner than
51 every two years: *Provided, however*, That any individual
52 claimant shall only be reevaluated a total of two times
53 after which he or she may not be again reevaluated
54 under the provisions of this subsection. The commis-
55 sioner may reopen a claim for reevaluation when, in the
56 commissioner's sole discretion, he or she concludes that
57 there exists good cause to believe that the claimant no
58 longer meets the eligibility requirements under subdivi-
59 sion (n), section six of this article. The eligibility
60 requirements, including any vocational standards, shall
61 be applied as those requirements are stated at the time
62 of a claim's reopening. This section shall not be
63 applicable to any claim in which the final decision on
64 the eligibility of the claimant to a permanent total
65 disability award was made more than ten years prior
66 to the date of proposed reevaluation.

67 (2) Upon reopening a claim under this subsection, the
68 commissioner may take evidence, have the claimant
69 evaluated, make findings of fact and conclusions of law
70 and shall vacate, modify or affirm the original perman-
71 ent total disability award as the record requires. The
72 claimant's former employer shall not be a party to the
73 reevaluation, but shall be notified of the reevaluation
74 and may submit such information to the commissioner
75 as the employer may elect. In the event the claimant
76 retains his or her award following the reevaluation, then

77 the claimant's reasonable attorneys' fees incurred in
78 defending the award shall be paid by the workers'
79 compensation division from the supercedeas reserve of
80 the surplus fund. In addition, the workers' compensation
81 division shall reimburse a prevailing claimant for his or
82 her costs in obtaining one evaluation on each issue
83 during the course of the reevaluation with such reim-
84 bursement being made from the supercedeas reserve of
85 the surplus fund. The compensation programs perfor-
86 mance council shall adopt criteria for the determination
87 of reasonable attorneys' fees.

88 (3) This subsection shall not be applied to awards
89 made under the provisions of subdivision (m) of section
90 six of this article. The claimant may seek review of the
91 commissioner's final order as otherwise provided for in
92 article five of this chapter for review of orders granting
93 or denying permanent disability awards.

§23-4-19. Wrongfully seeking compensation; criminal penalties; restitution; termination of compensation.

1 Any person who shall knowingly and with fraudulent
2 intent secure or attempt to secure larger compensation,
3 or compensation for a longer term than he or she is
4 entitled to, from the workers' compensation fund or
5 from a self-insured employer, or knowingly and with
6 like intent secure or attempt to secure compensation
7 from such fund or self-insured employer when he or she
8 is not entitled thereto, or shall knowingly and with like
9 intent aid and abet anyone in the commission of the
10 offenses herein set forth, shall be guilty of a felony, and,
11 upon conviction thereof, shall be fined not exceeding five
12 thousand dollars, or imprisoned not exceeding two
13 years, or both, and in addition to any other penalty
14 imposed, the court shall order any person convicted
15 under this section to make full restitution of all moneys
16 paid by the commissioner or self-insured employer as
17 the result of the violation of this section. If the person
18 so convicted is receiving compensation from such fund
19 or self-insured employer, he or she shall, from and after
20 such conviction, cease to receive such compensation as
21 a result of that alleged injury or disease.

§23-4-22. Permanent disability evaluations; limitations; notice.

1 Notwithstanding any provision in this chapter to the
2 contrary, any claim which was closed for the receipt of
3 temporary total disability benefits or which was closed
4 on a no lost time basis and which closure was more than
5 five years prior to the effective date of this section shall
6 not be considered to still be open or the subject for an
7 evaluation of the claimant for permanent disability
8 merely because such evaluation has not heretofore been
9 conducted and a decision on permanent disability has
10 not been made: *Provided*, That if a request for an
11 evaluation was made in such a claim prior to the twenty-
12 ninth day of March, one thousand nine hundred ninety-
13 three, the commissioner shall have such evaluation
14 performed. In every such instance, such a claim shall
15 be a case in which no award has been made for the
16 purposes of section sixteen of this article. In every claim
17 closed after the effective date of this section, the
18 commissioner shall give notice to the parties of the
19 claimant's right to a permanent disability evaluation.

§23-4-23. Permanent total disability benefits; reduction of disability benefits; social security benefits; applications; release of information; credit or reduction of benefits; application of section; severability.

1 (a) This section is applicable whenever benefits are
2 being paid for permanent total disability benefits
3 arising under subdivision (d), (m) or (n), section six of
4 this article or under section eight-c of this article. This
5 section is not applicable to the receipt of temporary total
6 disability benefits, the receipt of permanent partial
7 disability benefits, the receipt of benefits by partially or
8 wholly dependent persons or to the receipt of benefits
9 pursuant to the provisions of subsection (e), section ten
10 of this article. This section is not applicable to the
11 receipt of medical benefits or the payment therefor.

12 (b) Whenever applicable benefits are paid to a
13 beneficiary with respect to the same time period for
14 which old-age insurance benefit payments under the

15 Social Security Act, 42 U.S.C. 401 and 402, or payments
16 under a self-insurance plan, a wage continuation plan
17 or a disability insurance policy provided by an em-
18 ployer, are also received or being received by the
19 beneficiary, then such applicable benefits shall be
20 reduced by these amounts:

21 (1) Fifty percent of the amount of full old-age
22 insurance benefits received or being received under the
23 Social Security Act: *Provided*, That if the claimant is
24 receiving reduced old-age retirement benefits, then ten
25 percent of the amount of old-age social security insu-
26 rance benefits, had such benefits not been reduced, shall
27 be deducted from the applicable benefits: *Provided*,
28 *however*, That social security disability benefits shall not
29 be deducted from the applicable benefits when such
30 disability benefits are later changed to old-age insu-
31 rance benefits upon the claimant's attaining the age
32 specified for such conversion by the social security
33 administration;

34 (2) The after-tax amount of the payments received or
35 being received under a self-insurance plan, a wage
36 continuation plan, or under a disability insurance policy
37 provided by an employer if the employee did not
38 contribute directly to the plan or to the payment of
39 premiums regarding the disability insurance policy; or

40 (3) The proportional amount, based on the ratio of the
41 employer's contributions to the total insurance premi-
42 ums for the policy period involved, of the after-tax
43 amount of the payments received or being received by
44 the employee pursuant to a disability insurance policy
45 provided by an employer if the employee did contribute
46 directly to the payment of premiums regarding the
47 disability insurance policy: *Provided*, That in no event
48 shall applicable benefits be reduced below the minimum
49 weekly benefits as provided for in subdivisions (b) and
50 (d), section six of this article.

51 (c) The commissioner shall notify a claimant or self-
52 insured employer of possible eligibility for social
53 security benefits and the requirements for establishing
54 proof of application for those benefits. Notification shall

55 be promptly mailed by the commissioner or self-insured
56 employer to the claimant after the date on which by
57 reason of age the claimant may be entitled to social
58 security benefits. A self-insured employer shall file a
59 copy of any such notice of possible eligibility with the
60 commissioner within ten days of its mailing to the
61 claimant.

62 (1) Within thirty days after the receipt of the
63 notification of possible eligibility, the claimant shall:

64 (A) Make application for social security benefits;

65 (B) Provide the commissioner or a self-insured
66 employer with proof of that application; and

67 (C) Provide the commissioner or self-insured employer
68 with an authorization for release of information which
69 shall be utilized by the commissioner or self-insured
70 employer to obtain necessary benefit entitlement and
71 amount information from the social security administra-
72 tion. The authorization for release of information shall
73 be effective for one year.

74 (2) Failure of the claimant to provide the proof of
75 application or authorization for release of information
76 shall allow the commissioner or self-insured employer
77 with the approval of the commissioner to discontinue the
78 payment of applicable benefits until the proof of
79 application and the authorization for release of informa-
80 tion is provided. Compensation benefits withheld shall
81 be reimbursed to the claimant upon the providing of the
82 required proof of application or the authorization for
83 release of information, or both.

84 (d) If the commissioner or the self-insured employer
85 is required to submit a new authorization for release of
86 information to the social security administration in
87 order to receive information necessary to comply with
88 this section, the claimant shall provide the new author-
89 ization for release of information within thirty days of
90 a request by the commissioner or self-insured employer.
91 Failure of the claimant to provide the new authorization
92 for release of information shall allow the commissioner
93 or self-insured employer with the approval of the

94 commissioner to discontinue the payment of applicable
95 benefits until the authorization for release of informa-
96 tion is provided. Compensation benefits withheld shall
97 be reimbursed to the claimant upon the providing of the
98 authorization for release of information.

99 (e) Within thirty days after either the date of first
100 payment of benefits or after the date of application for
101 any benefit under subsection (b) of this section, which-
102 ever is later, the claimant shall provide the commis-
103 sioner or self-insured employer with a properly executed
104 authorization for release of information which shall be
105 utilized by the commissioner or self-insured employer to
106 obtain necessary benefit entitlement and amount
107 information from the appropriate source. The authori-
108 zation for release of information shall be effective for
109 one year. Failure of the claimant to provide a properly
110 executed authorization for release of information shall
111 allow the commissioner or self-insured employer with
112 the approval of the commissioner to discontinue the
113 payment of applicable benefits until the authorization
114 for release of information is provided. Compensation
115 benefits withheld shall be reimbursed to the claimant
116 upon the providing of the authorization for release of
117 information. If the commissioner or the self-insured
118 employer is required to submit a new authorization for
119 release of information to the appropriate source in order
120 to receive information necessary to comply with this
121 section, the claimant shall provide the new authorization
122 for release of information within thirty days of a request
123 by the commissioner or self-insured employer. Failure
124 of the claimant to provide the new authorization for
125 release of information shall allow the commissioner or
126 self-insured employer with the approval of the commis-
127 sioner to discontinue the payment of applicable benefits
128 until the authorization for release of information is
129 provided. Compensation benefits withheld shall be
130 reimbursed to the claimant upon the providing of the
131 authorization for release of information.

132 (f) Any benefit payments under the Social Security
133 Act, or any fund, policy or program as specified under
134 subsection (b) of this section which the claimant receives

135 after the effective date of this section and during a
136 period in which the claimant also receives unreduced
137 workers' compensation benefits shall be considered to
138 create an overpayment of benefits for that period. The
139 commissioner or self-insured employer shall calculate
140 the amount of the overpayment and send a notice of
141 overpayment and a request for reimbursement to the
142 claimant. Failure by the claimant to reimburse the
143 commissioner or self-insured employer within thirty
144 days after the mailing date of the notice of request for
145 reimbursement shall allow the commissioner or the self-
146 insured employer, with the approval of the commis-
147 sioner, to discontinue fifty percent of future benefits
148 payments. The benefit payments withheld shall be
149 credited against the amount of the overpayment.
150 Payment of the appropriate benefit shall resume when
151 the total amount of the overpayment has been withheld.
152 Any self-insured employer taking a credit or making a
153 reduction as provided for in this subsection shall
154 immediately report to the commissioner the amount of
155 the credit or reduction and, as requested by the
156 commissioner, furnish to the commissioner satisfactory
157 proof of the basis for a credit or reduction.

158 (g) Nothing in this section shall be considered to
159 compel a claimant to apply for early federal social
160 security old-age benefits or to apply for other early or
161 reduced benefits.

162 (h) This section applies to awards of permanent total
163 disability made after the effective date of this section.

164 (i) The commissioner and the compensation programs
165 performance council shall promulgate the appropriate
166 rules for the interpretation, processing and enforcement
167 of this section.

168 (j) If any portion of this section or any application of
169 this section is subsequently found to be unconstitutional
170 or in violation of applicable law, it shall not affect the
171 validity of the remainder of this section or such
172 applications of the section as are not unconstitutional or
173 in such violation.

§23-4-24. Permanent total disability awards; retirement age; limitations on eligibility and the introduction of evidence; effects of other types of awards; procedures; requests for awards; jurisdiction.

1 Notwithstanding any provision of this chapter to the
2 contrary, from and after the effective date of this section
3 the following provisions shall be in effect.

4 (a) Except as stated below, no claimant shall be
5 awarded permanent total disability benefits arising
6 under subdivision (d) or (n), section six or of section
7 eight-c of this article who terminates active employment
8 and is receiving full old-age retirement benefits under
9 the Social Security Act, 42 U.S.C. 401 and 402. Any such
10 claimant shall be evaluated only for the purposes of
11 receiving a permanent partial disability award pre-
12 mised solely upon the claimant's impairments. This
13 subsection shall not be applicable in any claim in which
14 the claimant has completed the submission of his or her
15 evidence on the issue of permanent total disability prior
16 to the later of the following: Termination of active
17 employment or the initial receipt of full old-age
18 retirement benefits under the Social Security Act. Once
19 the claimant has terminated active employment and has
20 begun to receive full old-age social security retirement
21 benefits, the claimant shall not be permitted to produce
22 additional evidence of permanent total disability before
23 the commissioner, the office of judges, the appeal board
24 or the supreme court of appeals nor shall such a claim
25 be remanded for the production of such evidence.

26 (b) For the purposes of subdivision (d), section six of
27 this article, the award of permanent partial disability
28 benefits under the provisions of section six-b of this
29 article or under that portion of section six-a of this
30 article which awards twenty weeks of benefits to a
31 claimant who has occupational pneumoconiosis but
32 without measurable pulmonary impairment therefrom
33 shall not be counted towards the eighty-five percent
34 needed to gain the rebuttable presumption of permanent
35 total disability when such claimant has terminated
36 active employment and is receiving federal nondisability

37 pension or retirement benefits, including old-age
38 benefits under the Social Security Act. This subsection
39 shall not affect any other awards of permanent partial
40 disability benefits and their use in achieving the
41 rebuttable eighty-five percent presumption.

42 (c) The office of judges shall not have jurisdiction to
43 initially hear and decide any claim pertaining in whole
44 or in part to subdivision (d) or (n), section six of this
45 article. Any claim for permanent total disability
46 benefits arising under said subdivisions shall first be
47 presented to the commissioner as part of the initial
48 claim filing or by way of an application for modification
49 or adjustment pursuant to section sixteen of this article
50 and section one-a, article five of this chapter. The office
51 of judges may consider such a claim only after the
52 commissioner has entered an appropriate order.

**§23-4-25. Permanent total disability benefits; reduction
of disability benefits for wages earned by
claimant.**

1 (a) After the effective date of this section, a reduction
2 in the amount of benefits as specified in subsection (b)
3 of this section shall be made whenever benefits are
4 being paid for a permanent total disability award
5 regardless of when such benefits were awarded. This
6 section is not applicable to the receipt of medical
7 benefits or the payment therefor, the receipt of perman-
8 ent partial disability benefits, the receipt of benefits by
9 partially or wholly dependant persons, or to the receipt
10 of benefits pursuant to the provisions of subsection (e),
11 section ten of this article. Prior to the application of this
12 section to any claimant, the commissioner shall give the
13 claimant notice of the effect of this section upon a
14 claimant's award if and when such claimant later earns
15 wages.

16 (b) Whenever applicable benefits are paid to a
17 claimant with respect to the same time period in which
18 the claimant has earned wages as a result of his or her
19 employment, the following reduction in applicable
20 benefits shall be made. The claimant's applicable
21 monthly benefits and monthly net wages received from
22 the current employment shall be added together. If such
23 total exceeds by more than one hundred and twenty

24 percent of the amount of the claimant's monthly net
25 wages earned during his or her last employment prior
26 to the award of permanent total disability benefits, then
27 such excess shall be reduced by one dollar for each two
28 dollars that the claimant's monthly net wages exceed the
29 one hundred and twenty percent level: *Provided*, That
30 in no event shall applicable benefits be reduced below
31 the minimum weekly benefits as provided for in
32 subdivisions (b) and (d), section six of this article.

ARTICLE 5. REVIEW.

§23-5-1. Notice by commissioner of decision; procedures on claims; objections and hearing; mediation.

§23-5-1b. Refusal to reopen claim; notice; objection.

§23-5-1h. Hearings on objections to commissioner's decisions by office of administrative law judges.

§23-5-6. Article applies to claims arising under §23-2-9.

§23-5-1. Notice by commissioner of decision; procedures on claims; objections and hearing; mediation.

1 (a) The commissioner shall have full power and
2 authority to hear and determine all questions within his
3 or her jurisdiction. In matters arising under articles
4 three and four of this chapter, the commissioner or a
5 designated deputy shall promptly review and investi-
6 gate all claims. The parties to a claim shall file such
7 information in support of their respective positions as
8 they deem proper. In addition, the commissioner or a
9 designated deputy is authorized to develop such addi-
10 tional information as he or she deems to be necessary
11 in the interests of fairness to the parties and in keeping
12 with the commissioner's fiduciary obligations to the
13 fund. With regard to any issue which is ready for a
14 decision, the commissioner or designated deputy shall
15 explain the basis of his or her decisions.

16 (b) Except with regard to interlocutory matters, upon
17 making any decision, upon the making or refusing to
18 make any award, or upon the making of any modifica-
19 tion or change with respect to former findings or orders,
20 as provided by section sixteen, article four of this
21 chapter, the commissioner shall give notice, in writing,
22 to the employer, employee, claimant, as the case may be,
23 of his or her action, which notice shall state the time
24 allowed for filing an objection to such finding, and such
25 action of the commissioner shall be final unless the

26 employer, employee, claimant or dependant shall, within
27 thirty days after the receipt of such notice, object in
28 writing, to such finding, and unless an objection is filed
29 within such thirty-day period, such finding or action
30 shall be forever final, such time limitation being hereby
31 declared to be a condition of the right to litigate such
32 finding or action and hence jurisdictional. Any such
33 objection shall be filed with the office of judges with a
34 copy served upon the commissioner and other parties in
35 accordance with the procedures set forth in sections one-
36 g and one-h of this article.

37 (c) Where a finding or determination of the commis-
38 sioner is protested only by the employer, and the
39 employer does not prevail in its protest and, in the event
40 the claimant is required to attend a hearing by subpoena
41 or agreement of counsel or at the express direction of
42 the commissioner, then such claimant in addition to
43 reasonable traveling and other expenses shall be
44 reimbursed for loss of wages incurred by the claimant
45 in attending such hearing.

46 (d) Once an objection has been filed with the office of
47 judges, the parties to the objection shall be offered an
48 opportunity for mediation of the disputed issue by the
49 commissioner. If all of the parties to the objection agree
50 to mediation, the commissioner shall designate a deputy
51 who was not involved in the original decision to act as
52 mediator: *Provided*, That on issues related solely to the
53 medical necessity of proposed medical treatment or
54 diagnostic services, the commissioner shall offer the
55 parties to the objection a selection of names of medical
56 providers in the appropriate specialty. The parties shall
57 then either agree upon a medical provider who shall act
58 as mediator or, in the absence of an agreement, the
59 commissioner shall select a medical provider who shall
60 act as mediator. In cases where issues of medical
61 necessity are intertwined with nonmedical treatment or
62 nondiagnostic issues, both a medical provider and a
63 designated deputy shall act as comediators and shall
64 consider their respective issues. Neither shall be
65 empowered to overturn the decision of the other.

66 Upon entering into mediation, the parties shall inform
67 the office of judges of that action and the office of judges
68 shall stay further action on the objection.

69 The mediator shall solicit the positions of the parties
70 and shall review such additional information as the
71 parties or the commissioner shall furnish. The mediator
72 shall then issue a decision in writing with the necessary
73 findings of fact and conclusions of law to support that
74 decision. If any party disagrees with the decision, that
75 party may note its objection to the office of judges, the
76 commissioner and the other parties, and the office of
77 judges shall lift the stay on the original protest. The
78 decision and any information introduced during the
79 attempted mediation shall be subject to consideration by
80 the office of judges in making its decision on the
81 objection. Upon acceptance by the parties of the result
82 of the mediation, the office of judges shall dismiss the
83 objection with prejudice.

84 The mediator shall conduct the mediation in an
85 informal manner and without regard to the formal rules
86 of evidence and procedure. Once the parties agree to
87 mediation, then the agreement cannot be withdrawn.

88 (e) The panel of medical providers who shall serve as
89 mediators shall be selected and approved by the
90 compensation programs performance council. A medical
91 provider serving as a mediator shall have the same
92 protections from liability as does the commissioner with
93 regard to his or her decisions including coverage by the
94 board of risk management which shall be provided by
95 the workers' compensation division.

§23-5-1b. Refusal to reopen claim; notice; objection.

1 If, however, in any case in which application for
2 further adjustment of a claim is filed under the next
3 preceding section, it shall appear to the commissioner
4 that such application fails to disclose a progression or
5 aggravation in the claimant's condition, or some other
6 fact or facts which were not theretofore considered by
7 the commissioner in his or her former findings, and
8 which would entitle such claimant to greater benefits
9 than the claimant has already received, the commis-
10 sioner shall, within a reasonable time, notify the
11 claimant and the employer that such application fails to
12 establish a prima facie cause for reopening the claim.
13 Such notice shall be in writing stating the reasons for

14 denial and the time allowed for objection to such
15 decision of the commissioner. The claimant may, within
16 thirty days after receipt of such notice, object in writing
17 to such finding and unless the objection is filed within
18 such thirty-day period, no such objection shall be
19 allowed, such time limitation being hereby declared to
20 be a condition of the right to such objection and hence
21 jurisdictional. Upon receipt of an objection, the commis-
22 sioner or office of judges shall afford the claimant an
23 evidentiary hearing as provided in section one or one-
24 h of this article.

**§23-5-1h. Hearings on objections to commissioner's
decisions by office of administrative law
judges.**

1 On or after the first day of July, one thousand nine
2 hundred ninety-one, objections to a commissioner's
3 decision made pursuant to the provisions of section one
4 of this article shall be filed with the office of judges.
5 Upon receipt of an objection, the office of judges shall,
6 within fifteen days from receipt thereof, set a time and
7 place for the hearing of evidence and shall notify the
8 commissioner of the filing of the objection. Hearings
9 may be conducted at the county seat of the county
10 wherein the injury occurred, or at any other place which
11 may be agreed upon by the interested parties, and in
12 the event the interested parties cannot agree, and it
13 appears in the opinion of the chief administrative law
14 judge or the chief administrative law judge's authorized
15 representative that the ends of justice require the taking
16 of evidence elsewhere, then at such place as the chief
17 administrative law judge or such authorized represent-
18 ative may direct, having due regard for the convenience
19 of witnesses. The employer, the claimant and the
20 commissioner shall be notified of such hearing at least
21 ten days in advance, and the hearing shall be held
22 within thirty days after the filing of the objection unless
23 such hearing be postponed by agreement of the parties
24 or by the chief administrative law judge or such
25 authorized representative for good cause. The commis-
26 sioner shall be a party to any proceeding under this
27 article which involves a claim chargeable against the

28 workers' compensation fund, the disabled workers' relief
29 fund or such other fund as may then be under the
30 commissioner's management and control.

31 The office of judges shall keep full and complete
32 records of all proceedings concerning a disputed claim.
33 All testimony upon a disputed claim shall be recorded
34 but need not be transcribed unless the claim is appealed
35 or in such other circumstances as, in the opinion of the
36 chief administrative law judge, may require such
37 transcription. Upon receipt of notice of the filing of an
38 objection, the commissioner shall forthwith forward to
39 the chief administrative law judge all records, or copies
40 of such records, in the commissioner's office which
41 relate to the matter objected to. All such records or
42 copies thereof and any evidence taken at hearings
43 conducted by the office of judges shall constitute the
44 record upon which the matter shall be decided. The
45 office of judges shall not be bound by the usual common
46 law or statutory rules of evidence. At any time within
47 thirty days after hearing, if the chief administrative law
48 judge or the chief administrative law judge's authorized
49 representative is of the opinion that the facts have not
50 been adequately developed at such hearing, he or she
51 may order supplemental hearings or obtain such
52 additional evidence as he or she deems warranted upon
53 due notice to the parties.

54 All hearings shall be conducted as determined by the
55 chief administrative law judge pursuant to the rules of
56 practice and procedure promulgated pursuant to section
57 one-g of this article. Upon consideration of the entire
58 record, the chief administrative law judge or an
59 administrative law judge within the office of judges
60 shall, within thirty days after final hearing, render a
61 decision affirming, reversing or modifying the commis-
62 sioner's action. Said decision shall contain findings of
63 fact and conclusions of law and shall be mailed to all
64 interested parties.

§23-5-6. Article applies to claims arising under §23-2-9.

1 The provisions of this article shall also apply to all
2 claims arising under section nine, article two of this
3 chapter.

CHAPTER 172

(H. B. 2600—By Delegates Kiss and Ryan)

[Passed April 10, 1993; in effect from passage. Approved by the Governor.]

AN ACT to establish the Beckley-Raleigh County Humane Authority, to provide the authority with powers to operate and to establish the appointment and composition of membership.

Be it enacted by the Legislature of West Virginia:

BECKLEY-RALEIGH COUNTY HUMANE AUTHORITY.

§1. Beckley-Raleigh County Humane Authority created; powers and duties.

1 There is hereby created the Beckley-Raleigh County
2 Humane Authority. The authority shall provide for the
3 employment of humane officers and other employees to
4 investigate all complaints regarding the cruel or
5 inhumane treatment of animals within the city of
6 Beckley and Raleigh County. The authority shall have
7 and exercise all powers, duties and responsibilities
8 authorized and required by article ten, chapter seven of
9 this code, and by section ten, article fifteen, chapter
10 seven and section eleven, article fifteen, chapter seven
11 of this code.

§2. Membership of authority.

1 The Beckley-Raleigh County Humane Authority shall
2 consist of seven members. Two members shall be
3 appointed by the county commission of Raleigh County;
4 two members shall be appointed by the city of Beckley;
5 and three members shall be appointed by the Raleigh-
6 County Humane Society.

CHAPTER 173

(H. B. 2504—By Delegates Manuel and Doyle)

[Passed April 7, 1993; in effect from passage. Approved by the Governor.]

AN ACT to authorize the county commission of Jefferson County to convey a parcel of county-owned land to the Jefferson County Fairgrounds; reserving certain rever- sionary rights.

Be it enacted by the Legislature of West Virginia:

JEFFERSON COUNTY.

§1. County commission authorized to convey land to the Jefferson County Fairgrounds.

1 The Legislature hereby recognizes that an adequate
2 site is necessary for the citizens of Jefferson County to
3 conduct a county fair to enable youth and adults to
4 exhibit livestock, horticultural products, agricultural
5 products and home economic skills. Accordingly, the
6 Legislature hereby finds and declares that transfers of
7 any property, real or personal, made by county commis-
8 sions to any person, organization or corporation for the
9 furtherance of such activities promotes the cultural and
10 educational welfare of the public and, therefore, is a
11 public purpose.

12 The county commission of Jefferson County is hereby
13 authorized and empowered to transfer and convey unto
14 the Jefferson County Fairgrounds all that certain parcel
15 of land situated within Middleway District of Jefferson
16 County, West Virginia, more particularly bounded and
17 described as:

18 **DESCRIPTION OF MERGER PARCEL FOR**
19 **JEFFERSON COUNTY FAIRGROUNDS**

20 A tract or parcel of land located in Middleway
21 District, Jefferson County, West Virginia; said tract or
22 parcel situated on the north side of West Virginia

23 secondary route 15 and more particularly bound and
24 described according to a survey and plat prepared by
25 Appalachian Surveys, Inc., said plat attached hereto and
26 made a part of this description.

27 Beginning at an unmarked point (210) in the center
28 of West Virginia Route 15, said point a common
29 corner with the Jefferson County Commission and
30 the Jefferson County Fair Association; thence with
31 the center of West Virginia Secondary Route 15 for
32 a new line with Jefferson County NW 51-18-36
33 418.56 feet to an unmarked point (212), a new
34 corner with the Jefferson County Commission in
35 the center of West Virginia Secondary Route 15,
36 said point being SW 28-41-56 22.77 feet from a set
37 5/8-inch rebar with ID cap; thence for two (2) new
38 lines with the Jefferson County Commission NE 28-
39 41-56 1463.39 feet to a set 5/8-inch rebar with ID
40 cap (211); thence SE 65-00-00 422.94 feet to a
41 previously set 5/8-inch rebar (203) a corner with
42 the Jefferson County Fair Association; thence for
43 two (2) lines with the Jefferson County Fair
44 Association SW 30-34-53 300.00 feet to an un-
45 marked point (202); thence SW 28-41-56 1263.45
46 feet to the point of beginning, containing 14.352
47 acres.

48 Being a part of the same tract or parcel of land conveyed
49 from Minnor Hurst and Sarah E. Hurst, husband and
50 wife, to the "Overseers of the Poor for the County of
51 Jefferson" by deed dated December 26, 1857, and
52 recorded in the Office of the Clerk of the Jefferson
53 County Commission in Deed Book 38 at page 24.

54 Any proper conveyance made by the county commis-
55 sion of Jefferson County transferring ownership of the
56 above described parcel to the Jefferson County Fair
57 Association shall contain a provision that ownership of
58 such property shall revert to the county commission
59 should the land cease to be used for the purpose of
60 conducting a county fair.

CHAPTER 174

(H. B. 2705—By Delegates Manuel and Doyle)

[Passed April 8, 1993; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the governing body of the board of education of Jefferson County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of said county an election to consider an amendment to clarify an excess levy for schools, from the third Tuesday of April until the third Tuesday in May, one thousand nine hundred ninety-four.

Be it enacted by the Legislature of West Virginia:

BOARD OF EDUCATION OF JEFFERSON COUNTY MEETING AS LEVYING BODY EXTENDED FOR ELECTION ON THE QUESTION CONSIDERING AN AMENDMENT TO AN EXCESS LEVY.

§1. Extending the time for the board of education of Jefferson County to meet as levying body for election to consider an excess levy amendment.

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 board of education of Jefferson County,
5 West Virginia, is hereby authorized to extend the time
6 for its meeting as a levying body, setting the levying
7 rate and certifying its actions to the state tax commis-
8 sioner from the third Tuesday in April until the third
9 Tuesday in May, one thousand nine hundred ninety-
10 three, for the purpose of submitting to the voters of
11 Jefferson County, West Virginia, an amendment to an
12 existing excess levy, said excess levy having been passed
13 by the voters of Jefferson County on the third day of
14 November, one thousand nine hundred ninety-two, so as
15 to clarify that the board of education of Jefferson County
16 may levy such excess levy for less than the maximum
17 rate authorized by the voters of Jefferson County on the
18 third day of November, one thousand nine hundred
19 ninety-two.

CHAPTER 175

(S. B. 526—By Senator Wiedebusch)

[Passed April 9, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, chapter two hundred sixteen, acts of the Legislature, regular session, one thousand nine hundred seventy-five, relating to increasing the number of members on the Marshall county activities development authority from seven to nine members.

Be it enacted by the Legislature of West Virginia:

That section three, chapter two hundred sixteen, acts of the Legislature, regular session, one thousand nine hundred seventy-five, be amended and reenacted to read as follows:

§3. Management and control vested in board; appointment and terms of members; vacancies; removal of members; meetings; quorum.

1 The management and control of the authority, its
2 property, operations, business and affairs shall be
3 lodged in a board of nine persons who shall be known
4 as "members of the authority", each of whom shall be
5 appointed for a term of three years, except that as to
6 the first seven appointed to the first board appointed.
7 The terms of two members shall expire on the first day
8 of July next ensuing, the terms of the next two members
9 shall expire on the first day of July two years thereafter,
10 and the terms of three members shall expire on the first
11 day of July three years thereafter: *Provided*, That each
12 of the two additional members shall be appointed for a
13 term that coincides with the terms of the other members
14 of the authority so that the terms of three members shall
15 expire on the first day of July of each year. Each
16 member shall hold office until the expiration of the term
17 for which such member is appointed or until a successor
18 shall have been duly appointed and shall have qualified.
19 Vacancies on the board shall be filled by appointment
20 by the county commission for the unexpired term of the
21 member whose office shall be vacant.

22 Each member of the board shall be a citizen of the
 23 United States and a resident of Marshall county:
 24 *Provided*, That at least two members of the board shall
 25 be members of the Marshall county 4-H leader's
 26 organization and at least one member of the board shall
 27 be a member of a Marshall county home demonstration
 28 club.

29 The county commission may at any time remove any
 30 member of the board by an order duly entered of record
 31 and may appoint a successor.

32 The board shall elect from its membership a president
 33 and a secretary who shall serve at the will and pleasure
 34 of the board. The majority of the board shall constitute
 35 a quorum and meetings shall be held at the call of the
 36 president or upon request of two members at such time
 37 and place as designated in such call or request.

CHAPTER 176

(H. B. 2783—By Delegates Beach, Manuel and Oliverio)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT authorizing the City of Morgantown, Monongalia
 County, West Virginia, to hire persons residing outside
 the State of West Virginia, but who live within ten miles
 of the city limits.

Be it enacted by the Legislature of West Virginia:

CITY OF MORGANTOWN

§1. **City of Morgantown, Monongalia County, West
 Virginia, authorized to hire nonresidents as police
 officers.**

1 Notwithstanding any provisions of section twelve,
 2 article fourteen, chapter eight and section eleven, article
 3 six, chapter sixty-one of the code of West Virginia, one
 4 thousand nine hundred thirty-one, as amended, to the
 5 contrary, the City of Morgantown, Monongalia County,
 6 is hereby authorized to employ persons not bona fide

7 residents of this state, to perform any police duty of any
8 sort therein, or to aid or assist in the execution of the
9 laws of this state: *Provided*, That any person hired by
10 the City of Morgantown, pursuant to this act, shall live
11 within ten miles of the Morgantown city limits.

CHAPTER 177

(S. B. 19—By Senator Chernenko)

[Passed April 9, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact section two, chapter one hundred seventy-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-five, relating to changing the residency requirements for membership on the city of Wheeling centre market commission and providing that citizens in Wheeling or Ohio county are eligible for appointment to the commission.

Be it enacted by the Legislature of West Virginia:

That section two, chapter one hundred seventy-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-five, be amended and reenacted to read as follows:

CENTRE MARKET COMMISSION.

§2. Centre commission may be created; board of directors; appointment; powers and duties generally; officer; bylaws, rules and regulations.

1 The governing body of the city of Wheeling is hereby
2 authorized to create a centre market commission by
3 ordinance, the same to be a body corporate and politic
4 which shall have a board of directors as its governing
5 body. The commission may be created for a time certain
6 or until terminated by like ordinance of such governing
7 body. The board consists of five persons appointed by the
8 city council, the members shall be citizens of Wheeling
9 or Ohio county and shall serve without compensation.
10 They shall be appointed for a period of four years and
11 may hold no political office, municipal, county or state.
12 The city council shall, on or after the effective date of

13 this act, appoint five members, one for two years, two
14 for three years and two for four years, respectively, as
15 designated by the city council. Their respective succes-
16 sors, however, shall be appointed for the term of four
17 years excepting that any person appointed to fill a
18 vacancy occurring before the expiration of a term shall
19 serve only for the unexpired term. Any commissioner is
20 eligible for reappointment. However, any vacancy
21 created either by the expiration of a term, or otherwise,
22 shall be filled by the appointing body. Upon the
23 appointment of the commission, the members thereof
24 shall elect from among their number a chairman and
25 a secretary-treasurer who shall hold office for one year
26 and be eligible for reelection. Annually thereafter the
27 commission shall organize by the election of a secretary-
28 treasurer and such other officers from its own number
29 as it may deem advisable. Members of the commission
30 may be removed from office in the same manner as
31 provided for the removal of county officers under article
32 six, chapter six of the code of West Virginia, one
33 thousand nine hundred thirty-one, as amended.

CHAPTER 178

(Com. Sub. for H. B. 2456—By Delegates McKinley and L. White)

[Passed April 10, 1993; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the City of Wheeling, Ohio County, West Virginia, the Village of Bethlehem, Ohio County, West Virginia, the City of Benwood, Marshall County, and the City of McMechen, Marshall County, West Virginia, to meet as levying bodies for the purpose of presenting to the voters of each jurisdiction an election on the question of continuing the additional levy for the Ohio Valley Regional Transportation Authority, from the third Tuesday of April until the last Thursday in May, one thousand nine hundred ninety-four.

Be it enacted by the Legislature of West Virginia:

CITY OF WHEELING, OHIO COUNTY, VILLAGE OF BETHLEHEM, OHIO COUNTY, CITY OF BENWOOD, MARSHALL COUNTY, AND CITY OF MCMECHEN, MARSHALL COUNTY, MEETING AS LEVYING BODIES EXTENDED FOR ELECTION ON THE QUESTION OF CONTINUING THE ADDITIONAL LEVY FOR THE OHIO VALLEY REGIONAL TRANSPORTATION AUTHORITY.

§1. Extending time for the City of Wheeling, the Village of Bethlehem, the City of Benwood and the City of McMechen to meet as levying bodies for election on the question of continuing the additional levy for the Ohio Valley Regional Transportation Authority.

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 City of Wheeling, Ohio County, the Village
5 of Bethlehem, Ohio County, the City of Benwood,
6 Marshall County, and the City of McMechen, Marshall
7 County, are hereby authorized to extend the time for
8 each of these governing bodies to meet as levying bodies,
9 setting the levy rate and certifying their actions to the
10 state tax commissioner from the third Tuesday in April,
11 until the last Thursday in May, one thousand nine
12 hundred ninety-four, for the purpose of submitting to
13 the voters of each jurisdiction the question of continuing
14 an additional levy for the Ohio Valley Regional Trans-
15 portation Authority.

CHAPTER 179

(S. B. 55—By Senators Whitlow, Anderson, Wooton,
Bailey, Wagner and Chafin)

[Passed April 3, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to establish the Shawnee Parkway authority; functions; members; appointment; powers and duties; officers; bylaws; rules and regulations; compensation; authority as corporate body; support, maintenance and operation; and severability.

Be it enacted by the Legislature of West Virginia:

SHAWNEE PARKWAY AUTHORITY.**§1. Parkway authority created; functions.**

1 There is hereby created a Shawnee Parkway author-
2 ity, to promote and advance the construction of a scenic
3 parkway through parts of McDowell, Mercer, Mingo,
4 Raleigh, Summers and Wyoming counties and to
5 coordinate with counties, municipalities, state and
6 federal agencies, public nonprofit corporations, private
7 corporations, associations, partnerships and individuals
8 for the purpose of planning, assisting and establishing
9 recreational, tourism, industrial, economic and com-
10 munity development of the Shawnee Parkway for the
11 benefit of West Virginians.

**§2. Members; appointment; powers and duties generally;
officers; bylaws; rules and regulations; compen-
sation.**

1 (a) The authority consists of twelve voting members
2 and three ex officio nonvoting members. All members
3 shall be appointed before the first day of July, one
4 thousand nine hundred ninety-three.

5 (b) Each of the county commissions of the counties of
6 McDowell, Mercer, Mingo, Raleigh, Summers and
7 Wyoming shall appoint two voting members to the
8 commission. The terms of the voting members initially
9 appointed by a county commission are as follows: One
10 member shall be appointed for a term of one year and
11 one member shall be appointed for a term of two years.
12 All successive appointments shall be for a term of four
13 years. Any voting member may be removed for cause
14 by the appointing county commission.

15 (c) The three ex officio nonvoting members are the
16 commissioner of highways or designee, the secretary of
17 commerce, labor and environmental resources or
18 designee and the executive director of the West Virginia
19 development office or designee. All terms of ex officio
20 nonvoting members are for four years.

21 (d) Should a vacancy occur, the person appointed to
22 fill the vacancy shall serve only for the unexpired

23 portion thereof. All members are eligible for
24 reappointment.

25 (e) There shall be an annual meeting of the authority
26 on the third Monday in July in each year and a bi-
27 monthly meeting on a day and at a time as the authority
28 may designate in its bylaws. A special meeting may be
29 called by the president, the secretary or any seven
30 members of the authority and may be held only after
31 all members are given notice of the meeting in writing.
32 Seven voting members constitute a quorum for all
33 meetings. At each annual meeting of the authority, it
34 shall elect a president, vice president, secretary and
35 treasurer. The authority shall adopt bylaws, rules and
36 regulations as may be necessary for its operation and
37 management. The authority has all, but only, those
38 powers necessary, incidental, convenient and advisable
39 for the following purposes:

40 (1) The preparation of a plan or plans for the Shawnee
41 Parkway;

42 (2) The promotion, advancement and support of the
43 construction of a scenic parkway along the general
44 courses of Flattop Mountain and Indian Ridge areas of
45 McDowell, Mercer, Mingo, Raleigh, Summers and
46 Wyoming counties;

47 (3) The promotion of economic development and
48 tourism along the Shawnee Parkway;

49 (4) Advocating actions consistent with that plan or its
50 provisions to or before any governmental entity or any
51 private person or entity; and

52 (5) Otherwise acting in an advisory capacity with
53 regard to any aspects of the Shawnee Parkway at the
54 request of or without the request of any governmental
55 entity or private person or entity.

56 The authority may not own any of the real estate or
57 real property herein described for development and may
58 not be responsible for operating or maintaining the
59 parkway.

60 Each voting member of the authority may be reim-

61 bursed for travel expenses by the governing bodies
62 which appointed the members in an amount to be fixed
63 by the governing body.

§3. Body corporate.

1 The authority hereby created shall be a public
2 corporation and as such it may contract and be con-
3 tracted with, sue and be sued, plead and be impleaded
4 and may have and use a corporate seal.

§4. Support, maintenance and operation.

1 The county commissions of the counties of McDowell,
2 Mercer, Mingo, Raleigh, Summers and Wyoming may
3 provide for the support, maintenance and operation of
4 the Shawnee Parkway authority and other related
5 activities under the jurisdiction of the authority hereby
6 created.

§5. Severability.

1 If any provision hereof is held invalid, such invalidity
2 shall not affect other provisions hereof which can be
3 given effect without the invalid provision, and to this
4 end the provisions of this act are declared to be
5 severable.

CHAPTER 180

(H. B. 2701—By Delegates Kiss, Ryan, McGraw, Pulliam and Reed)

[Passed April 2, 1993; in effect from passage. Became law without signature of the Governor.]

AN ACT to authorize students who are eligible to attend the
new Summers County high school to vote for the school
mascot and colors.

Be it enacted by the Legislature of West Virginia:

NEW SUMMERS COUNTY HIGH SCHOOL.

**§1. Eligible students to vote for school mascot and school
colors at new Summers County high school.**

1 The students eligible to attend the new Summers
2 County high school are entitled to vote for their choice,

3 without restriction, of a school mascot and school colors.
4 The county board of education shall prepare ballots for
5 this election or vote, determine the procedure for
6 election and conduct the election no later than one year
7 before the scheduled opening of the new high school. The
8 choice of mascot and school colors shall be determined
9 by a simple majority and no student may be permitted
10 to cast more than one ballot.

CHAPTER 181

(H. B. 2651—By Delegate Willison)

[Passed April 7, 1993; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the governing body of the City of Sistersville, in Tyler County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of said municipality an election to consider an excess levy for a library, streets, parks and pool, emergency squad and fire department, from the third Tuesday of April until the third Tuesday in May, one thousand nine hundred ninety-three.

Be it enacted by the Legislature of West Virginia:

GOVERNING BODY OF THE CITY OF SISTERSVILLE, MEETING AS LEVYING BODY EXTENDED TO CONSIDER AN EXCESS LEVY.

§1. Extending time for governing body of the City of Sistersville to meet as levying body for election to consider an excess levy.

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 governing body of the City of Sistersville,
5 in Tyler County, West Virginia, is hereby authorized to
6 extend the time for its meeting as a levying body, setting
7 the levy rate and certifying its actions to the state tax
8 commissioner from the third Tuesday in April until the
9 third Tuesday in May, one thousand nine hundred
10 ninety-three, for the purpose of submitting to the voters
11 of the City of Sistersville the consideration of an excess
12 levy for a library, streets, parks and pool, emergency
13 squad and fire department.

RESOLUTIONS

(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION 3

(By Delegate Gallagher)

[Adopted March 19, 1993]

Urging the President and the Congress to select a route between the cities of Morgantown, West Virginia, and Pittsburgh, Pennsylvania, for the federal magnetic elevated train system pilot project and to power the pilot project by electricity produced from coal.

WHEREAS, The need to improve the nation's transportation system for the next century, the need to create jobs, the need to reduce reliance on foreign oil for energy and the need to improve the nation's infrastructure require investment in projects which hold promise of success; and

WHEREAS, Morgantown, West Virginia, has had a long standing and successful elevated train system located on the West Virginia University campus; and

WHEREAS, Pittsburgh, Pennsylvania, is a modern metropolitan center strategically located in a thriving coal-producing area of this nation; and

WHEREAS, The research facilities at West Virginia University and recent innovations and improvements in coal mining and coal burning technology will provide an excellent environment for the pilot study and will assure sufficient clean energy supplies to operate a magnetic elevated train system well into the future; and

WHEREAS, Clean coal technology will benefit the entire nation by increasing employment, by decreasing reliance on foreign oil, by providing upstart byproducts that can be used in a multitude of ways by the United States Department of Defense, the United States Department of Transportation and the United States Department of Energy, as well as many other segments of federal and state governments; and

WHEREAS, Undertaking the pilot project in an area which

includes rural, mountainous and metropolitan terrain strategically situated between large centers of population in the midwest and the east coast offers the best opportunity to expand the pilot project to a modern transportation system worthy of the world's most innovative and powerful nation; therefore, be it

Resolved by the Legislature of West Virginia:

That the President and the Congress of the United States are hereby urged to select a route between Morgantown, West Virginia, and Pittsburgh, Pennsylvania, for the federal magnetic elevated train system pilot project; and, be it

Further Resolved, That this project be powered by electricity produced from coal or natural gas or a combination thereof; and, be it

Further Resolved, That the Clerk of the House of Delegates is hereby directed to send a copy of this resolution to the President, the leadership of both houses of the Congress and West Virginia's delegation in Congress.

HOUSE CONCURRENT RESOLUTION 5

(By Delegates Browning, Prezioso, Campbell,
Lindsey, Smith, Ashley and Wallace)

[Adopted March 31, 1993]

Amending Joint Rules of the Senate and House of Delegates.

Resolved by the Legislature of West Virginia:

That the Joint Rules of the Senate and House of Delegates be amended by adding thereto a new rule, designated Joint Rule No. 29, to read as follows:

Joint Committee on Pensions and Retirement

29. (a) A joint standing committee of the Senate and House of Delegates, named the Joint Committee on Pensions and Retirement, shall continually study and investigate public retirement systems. All pension and retirement related legislation introduced in the Legislature shall be referred to the committee in addition to any other reference the presiding officer may designate. Upon reference of any pension or

retirement related legislation, the committee shall forward such legislation to the actuary of the Consolidated Public Retirement Board or other actuary or actuarial firm who shall return an actuarial letter or note to the committee prior to the committee's consideration of such legislation.

(b) The committee shall consist of seven members of the Senate to be appointed by the President of the Senate and seven members of the House of Delegates to be appointed by the Speaker of the House of Delegates. If possible, no more than five of the seven members appointed by the President of the Senate and the Speaker of the House of Delegates, respectively, may be members of the same political party.

(c) The committee shall make a continuing study and investigation of retirement benefit plans applicable to nonfederal government employees in this state. The powers and duties of the committee include, but are not limited to, the following:

(1) Studying retirement benefit plans applicable to nonfederal government employees in the state of West Virginia, including, without limitation, federal plans available to such employees;

(2) Making recommendations within the scope of the study with particular attention to financing of the various pension funds and financing of accrued liabilities;

(3) Considering all aspects of pension planning and operation, and making recommendations designed to establish and maintain sound pension policy as to all funds;

(4) Filing a report to each regular session of the Legislature concerning activities conducted between sessions;

(5) Analyzing each item of proposed pension and retirement legislation, including amendments thereto, with particular reference to analysis as to cost, actuarial soundness, and adherence to sound pension policy, and reporting of its findings in regard thereto to the Legislature; and

(6) Maintaining reference materials concerning pension and retirement matters, including, without limitation, information as to laws and systems in other states.

(d) The committee shall hold meetings at such times and

places as it may designate. The President of the Senate shall appoint a cochair of the committee from the Senate members and the Speaker of the House of Delegates shall appoint a cochair of the committee from the House of Delegates members. When the Legislature is not in session, the committee shall meet and conduct its business as a joint committee.

When the Legislature is in session, in addition to joint meetings, the members of either house may meet separately from members of the other house to conduct committee business concerning pension and retirement related legislation introduced or originated in that house. When the members meet separately, they may function as other committees of that house. As far as practicable, relevant information, including actuarial letters or notes, gathered by members meeting separately from the other house shall be sent to the cochair of the other house if it is considering the same or similar legislation.

COMMITTEE SUBSTITUTE FOR
HOUSE CONCURRENT RESOLUTION 9

(By Delegate McKinley, et al)

[Adopted April 10, 1993]

Requesting the State Board of Education and the Division of Corrections to undertake a study to develop a plan to require public school cafeterias and state prison cafeterias to provide unused, cooked food to community agencies providing food for persons in need.

WHEREAS, Many homeless, destitute and needy people are without sufficient food to meet minimum requirements for daily living; and

WHEREAS, Public school cafeterias and prison cafeterias prepare a large number of meals each day; and

WHEREAS, Many of these meals are not eaten and the unused food is wasted; and

WHEREAS, Nearby community agencies are trying to feed homeless, destitute and needy people on a daily basis with limited supplies of food; therefore, be it

Resolved by the Legislature of West Virginia:

That the State Board of Education and the Division of Corrections are hereby requested to undertake a study to develop a plan for requiring public school cafeterias and state prison cafeterias to provide unused, cooked food to community agencies providing food to persons in need by October 1, 1993; and, be it

Further Resolved, That the State Board of Education and the Division of Corrections are requested to report their findings, conclusions and recommendations to the Speaker of the House of Delegates and the President of the Senate on the first day of the 1994 regular session of the Legislature; and, be it

Further Resolved, That the Clerk of the House of Delegates is hereby requested to forward a copy of this resolution to the State Board of Education and the Division of Corrections.

SENATE CONCURRENT RESOLUTION 5

(By Senators Helmick, Sharpe, Ross, Burdette, Mr. President, Holliday, Brackenrich, Whitlow, Manchin and Minard)

[Adopted February 24, 1993]

Commemorating the passing of the Honorable E. Hansford McCourt, of Webster County, former member of the House of Delegates, former member of the Senate, former Senate President and distinguished West Virginian.

WHEREAS, The Honorable E. Hansford McCourt of Webster County, West Virginia, was born in Webster Springs, the son of William L. and Maggie J. (Lough) McCourt; and

WHEREAS, The Honorable E. Hansford McCourt was educated in the public schools of West Virginia and was a graduate of Wesleyan College with a B.S. degree; and

WHEREAS, The Honorable E. Hansford McCourt was married October 19, 1936, to his beloved Georgie Frances McCourt, with whom he shared the joy of having two children, William McCourt of Huntington, West Virginia, and Maggie Jane Spangler of Ranson, West Virginia; and

WHEREAS, The Honorable E. Hansford McCourt served his nation with pride after enlisting in the United States Army

in 1942, and was discharged in 1945, having attained the rank of Lieutenant; and

WHEREAS, The Honorable E. Hansford McCourt was elected to the West Virginia House of Delegates from Webster County in 1953, and was elected to the West Virginia Senate in 1956, being reelected in 1960, 1964 and 1968. In 1971 the Honorable E. Hansford McCourt was elected president of the Senate, where he continued to serve until his retirement from public service in 1972; and

WHEREAS, Sadly, the Honorable E. Hansford McCourt died on Monday, August 3, 1992, just a few hours after the death of his beloved wife, Georgie, to whom he had been married for fifty-six years; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature would be remiss if it did not pay tribute to such a distinguished West Virginian as the Honorable E. Hansford "Hans" McCourt, whose years of dedicated public service to the State of West Virginia left a myriad of worthwhile projects, conceived and executed by him for the betterment of all of its citizens; and, be it

Further Resolved, That the Legislature expresses its sincere sadness at the passing of the Honorable E. Hansford McCourt and his beloved wife, Georgie, whose lives came to an end within hours of each other after fifty-six years of marriage; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to Mr. William McCourt of Huntington, West Virginia, and Maggie Jane Spangler of Ranson, West Virginia.

SENATE CONCURRENT RESOLUTION 28

(Originating in the Senate Committee on Rules)

[Adopted April 10, 1993]

Providing for the extension of the first regular session of the Seventy-first Legislature of West Virginia.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each House agreeing thereto:

That the first regular session of the Seventy-first Legislature is hereby extended pursuant to section twenty-two, article VI of the Constitution of the State of West Virginia, for a period not to exceed two weeks for consideration of the budget, budget bills, Engrossed Committee Substitute for House Bill No. 2100, Engrossed Committee Substitute for House Bill No. 2774, Engrossed Senate Bill No. 542 and Engrossed Senate Bill No. 290. Further, that said session is hereby extended for reconsideration of any bills vetoed or disapproved by the governor and any budget bill vetoed, disapproved, reduced or increased by the governor as to any item or part or as to the entire bill; and, be it

Further Resolved, That when adjournment is taken by the two houses of the Legislature at the close of their respective sessions on the tenth day of April, one thousand nine hundred ninety-three, such adjournment shall be until 12:01 a.m. on the eleventh day of April, one thousand nine hundred ninety-three, pursuant to section twenty-two, article VI of the Constitution of the State of West Virginia, unless the Legislature is called to reconvene prior thereto by a majority vote of the committee on rules of both houses, in which event such adjournment shall be until the date and time of reconvening specified by said committees.

SENATE CONCURRENT RESOLUTION 32

(By Senator Burdette, Mr. President)

[Adopted April 15, 1993]

Commemorating the public service of the Honorable Earl M. Vickers, former member of the West Virginia House of Delegates and the present director of Legislative Services.

WHEREAS, The Honorable Earl M. Vickers of Montgomery, Fayette County, West Virginia, was born April 30, 1923, the son of Charles and Helen (Montgomery) Vickers; and

WHEREAS, The Honorable Earl M. Vickers was educated in public schools of Montgomery. He attended the West Virginia Institute of Technology, the University of Richmond and Washington and Lee University, where he received an LLB degree; and

WHEREAS, The Honorable Earl M. Vickers was married June 28, 1947, to Betty (Beach) Vickers, with whom he has shared the joy of having four children: Henry, Montgomery, Frank and Helen Ann; and

WHEREAS, The Honorable Earl M. Vickers was elected to the West Virginia House of Delegates from Fayette County in 1960, 1962 and 1964, and served as Majority Leader of the House in 1965; and

WHEREAS, In July, 1965, the Honorable Earl M. Vickers resigned from the House of Delegates to assume the duties as director of a newly created office of Legislative Services, created by the Joint Committee on Government and Finance, a statutory authority of the West Virginia Legislature; and

WHEREAS, For almost three decades the legislative expertise of the Honorable Earl M. Vickers has been a prominent force in the operation of the West Virginia Legislature by his efficient administration of the office of Legislative Services, which includes central bill drafting, one of the most crucial operations of the legislative process that includes actually structuring an idea into legislation to be considered by the Legislature. His position as director also made him a statutory member of the governing council of the West Virginia Law Institute, whose purpose is to promote and encourage the clarification and simplification of West Virginia law; and

WHEREAS, The Honorable Earl M. Vickers has announced that he will retire from public service on April 16, 1993, bringing to an end a long and dedicated career to the West Virginia Legislature and the State of West Virginia in which he has served with distinction; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby gratefully acknowledges the long and dedicated public service of the Honorable Earl M. Vickers, whose prominence in and dedication to the West Virginia legislative process has spanned nearly three decades, and whose legal and legislative expertise has made the West Virginia Legislature a model in the nation; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Honorable Earl M. Vickers, attorney, former legislator, the first director

of the office of Legislative Services and distinguished West Virginian.

HOUSE RESOLUTION 12

(By Mr. Speaker, Mr. Chambers, and Delegates Martin,
P. White and Burk)

[Adopted March 4, 1993]

Creating a Select Committee on Health Care Policies.

Resolved by the Legislature of West Virginia:

That for the life of the 71st Legislature there is hereby created a Select Committee on Health Care Policies of the House of Delegates, consisting of twenty-five members, said members to be appointed by the Speaker. Notwithstanding the provisions of any House rule to the contrary, this committee shall have jurisdiction of legislative proposals affecting or defining health care reforms, health care programs and related subjects as the Speaker may deem appropriate; and, be it

Further Resolved, That the rules of the House of Delegates governing Standing committees shall govern the actions and proceedings of this committee insofar as applicable.

SENATE RESOLUTION 40

(By Senators Anderson and Whitlow)

[Adopted April 24, 1993]

Commemorating the life and public service of the Honorable James Clyde Dillon, Jr., former member of the Senate, former Clerk of the Senate, former chairman of the state democratic executive committee and distinguished West Virginian.

WHEREAS, The Honorable J. C. Dillon, Jr., was born December 30, 1916, in Summers County, West Virginia, the son of James Clyde Dillon and Grace (Leftwich) Dillon; and

WHEREAS, The Honorable J. C. Dillon, Jr., was a United States Army veteran of World War II, a respected businessman in Hinton, Summers County, West Virginia, and a former executive secretary of the state road commission; and

WHEREAS, The Honorable J. C. Dillon, Jr., was married January 21, 1939, to the late Margaret Gilbert of Hinton, with whom he shared the joy of having one son, James Gilbert Dillon; and

WHEREAS, The Honorable J. C. Dillon, Jr., was elected to the tenth senatorial district in 1970, and reelected in 1974; and

WHEREAS, During his tenure in the Senate, the Honorable J. C. Dillon, Jr., served as chairman of the Committee on Transportation. He also served as a member of the committees on Agriculture, Confirmations, Finance, Labor, Local Government and Natural Resources and Education, where he served as vice chairman; and

WHEREAS, The Honorable J. C. Dillon, Jr., resigned as a member of the Senate in 1975 and was elected on January 8, 1975, as the seventeenth Clerk of the Senate and was reelected in 1977 and 1979. He resigned as Clerk of the Senate December 31, 1979; and

WHEREAS, The Honorable J. C. Dillon, Jr., devoted much of his life to politics, serving in a myriad of politically powerful positions, including: chairman of the Summers County democratic executive committee; state chairman for the "Hubert H. Humphrey for President" campaign during the 1972 primary and was a delegate-at-large to the 1972 democratic national convention. At the height of his political career, the Honorable J. C. Dillon, Jr., was elected chairman of the West Virginia state democratic executive committee, a powerful and highly respected position; and

WHEREAS, The dedication, wisdom and political expertise of the Honorable J. C. Dillon, Jr., has a direct influence on the political careers of many past and present officeholders in both state and federal government; and

WHEREAS, The Honorable J. C. Dillon, Jr., passed away on April 12, 1993, in the county that launched his political career, his beloved Summers County; therefore, be it

Resolved by the Senate:

That the Senate hereby expresses its sincere sadness at the passing of the Honorable J. C. Dillon, Jr., former member of the Senate; former Clerk of the Senate; and former chairman

of the democratic state executive committee, whose wisdom and influence in politics and government has had a lasting impact on the lives of all who knew and respected him; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the son of the Honorable J. C. Dillon, Jr., James Gilbert Dillon; his daughter-in-law, Donna Dillon; his granddaughter Margaret Dillon; and his brother, Rev. Fred Dillon.



LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 1993

CHAPTER 1

(Com. Sub. for H. B. 105—By Mr. Speaker, Mr. Chambers)

[Passed May 27, 1993; in effect from passage. Approved by the Governor.]

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
2 bill is to appropriate money necessary for the econom-
3 ical and efficient discharge of the duties and responsi-
4 bilities of the state and its agencies during the fiscal
5 year one thousand nine hundred ninety-four.

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

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
2 appropriation 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 five
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 the
78 secretary of each department and the director, commis-
79 sioner, executive secretary, superintendent, chairman,
80 or any other agency head not governed by a departmen-
81 tal secretary as established by chapter five-f of the code
82 shall have the authority to transfer funds appropriated
83 to personal services and employee benefits to other lines
84 within the same account and no funds from other lines
85 shall be transferred to the personal services line: *And*
86 *provided further*, That if the Legislature by subsequent

87 enactment consolidates agencies, boards or functions,
 88 the secretary may transfer the funds formerly approp-
 89 riated to such agency, board or function in order to
 90 implement such consolidation. No funds may be trans-
 91 ferred from a special revenue account, dedicated
 92 account, capital expenditure account or any other
 93 account or funds specifically exempted by the Legisla-
 94 ture from transfer, except that the use of the appropri-
 95 ations from the state road fund transferred to the office
 96 of the secretary of the department of transportation is
 97 not a use other than the purpose for which such funds
 98 were dedicated and is permitted.

99 Appropriations otherwise classified shall be expended
 100 only where the distribution of expenditures for different
 101 purposes cannot well be determined in advance or it is
 102 necessary or desirable to permit the spending unit the
 103 freedom to spend an appropriation for more than one of
 104 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 appropri-
 4 ations set out in this bill.

TITLE II—APPROPRIATIONS.

§1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

Board of Risk and Insurance Management—	
Acct. No. 2250	1536
Commission on Uniform State Laws—Acct. No. 2450	1537
Committee for the Purchase of Commodities and	
Services from the Handicapped—Acct. No. 2140	1536

Department of Administration—Office of the Secretary—Acct. No. 2105	1535
Division of Finance—Acct. No. 2110	1535
Division of General Services—Acct. No. 2130	1536
Division of Purchasing—Acct. No. 2120	1535
Education and State Employees Grievance Board— Acct. No. 6015	1538
Ethics Commission—Acct. No. 6180	1539
Public Defender Services—Acct. No. 5900	1537
Public Employees Insurance Agency—Acct. No. 6150	1539
Public Employees Retirement System—Acct. No. 6140	1538
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Board of Coal Mine Health and Safety—Acct. No. 4720	1542
Coal Mine Safety and Technical Review Committee— Acct. No. 4750	1543
Department of Commerce, Labor and Environmental Resources— Office of the Secretary—Acct. No. 5321	1545
Division of Environmental Protection—Acct. No. 4775	1543
Division of Forestry—Acct. No. 4650	1541
Division of Labor—Acct. No. 4500	1541
Division of Miners' Health, Safety and Training— Acct. No. 4780	1544
Division of Natural Resources—Acct. No. 5650	1545
Division of Tourism and Parks—Acct. No. 4625	1541
Geological and Economic Survey—Acct. No. 5200	1544
Interstate Commission on Potomac River Basin— Acct. No. 4730	1542
Ohio River Valley Water Sanitation Commission— Acct. No. 4740	1543
Water Resources Board—Acct. No. 5640	1545
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State Department of Education—Acct. No. 2860	1546
State Department of Education—Aid for Exceptional Children—Acct. No. 2960	1548
State Department of Education—School Lunch Program—Acct. No. 2870	1546
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State FFA-FHA Camp and Conference Center— Acct. No. 3360	1549
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Board of Trustees of the University System of West Virginia and Board of Directors of the State College System—Acct. No. 2800	1551
Board of Trustees of the University System of West Virginia Control Account—Acct. No. 2795	1550
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Board of Probation and Parole—Acct. No. 3650	1560
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Division of Corrections—Central Office— Acct. No. 3680	1560
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Department of Agriculture—Meat Inspection— Acct. No. 5140	1534
Department of Agriculture—Soil Conservation Committee— Acct. No. 5120	1533
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Division of Highways—Federal Aid Highway Matching Fund— Acct. No. 6705	1569
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Division of Personnel—Acct. No. 8402	1574
Division of Purchasing—Revolving Fund—Acct. No. 8140	1573

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Bureau of Employment Programs—Workers' Compensation Fund— Acct. No. 9000	1584
Division of Banking—Acct. No. 8395	1580
Division of Banking—Lending and Credit Rate Board—Acct. No. 8393	1580
Division of Environmental Protection—Fees and Operating Expenses—Acct. No. 8391	1580
Division of Environmental Protection—Groundwater Planning— Acct. No. 8312	1578
Division of Environmental Protection—Hazardous Waste Emergency and Response Fund—Acct. No. 8323	1578
Division of Environmental Protection—Leaking Underground Storage Tanks Administrative Fund—Acct. No. 8302	1576
Division of Environmental Protection—Mines and Minerals Operations Fund—Acct. No. 8540	1583
Division of Environmental Protection—Oil and Gas Operating Permits—Acct. No. 8539	1583
Division of Environmental Protection—Oil and Gas Reclamation Trust—Acct. No. 8538	1582
Division of Environmental Protection—Solid Waste Enforcement Fund—Acct. No. 8327	1579
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Division of Environmental Protection—Special	
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Division of Forestry—Acct. No. 8478	1582
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State University System—State System Registration Fee—	
Special Capital Improvement Fund (Capital Improvement	
and Bond Retirement Fund)—Acct. No. 8830	1586
State University System—State System Tuition Fee—	
Special Capital Improvement Fund (Capital Improvement	
and Bond Retirement Fund)—Acct. No. 8865	1588
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Health Sciences Center Spending Authority—Acct. No. 9280	1589
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Division of Health—Hepatitis B Vaccine—	
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Division of Health—Hospital Services Revenue Account (Special Fund)	
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Division of Human Services—Ambulance Medicaid Enhancement Tax (Special Fund)—Acct. No. 9126	1595
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Health Care Cost Review Authority—Acct. No. 8564	1593
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Division of Public Safety—Drunk Driving Prevention Fund— Acct. No. 8355	1598
Division of Public Safety—Motor Vehicle Inspection Fund— Acct. No. 8350	1597
Division of Public Safety—Surplus Real Property Proceeds Fund— Acct. No. 8354	1598
Division of Veterans' Affairs—Veterans' Home— Acct. No. 8261	1597
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Insurance Commission—Consumer Advocate— Acct. No. 8015	1599
Insurance Commission—Examination Revolving Fund— Acct. No. 8014	1599
Municipal Bond Commission—Acct. No. 8340	1602
Racing Commission—Acct. No. 8080	1600
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Division of Motor Vehicles—Driver's License Reinstatement Fund—Acct. No. 8422	1603
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Division of Motor Vehicles—Motorboat Licenses— Acct. No. 8425	1604
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General John McCausland Memorial Farm—Acct. No. 8194	1572
Governor's Office—West Virginia Health Care Planning Commission—Acct. No. 8429	1573

LEGISLATIVE

Crime Victims Compensation Fund—Acct. No. 8412	1570
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MISCELLANEOUS BOARDS AND COMMISSIONS

Public Service Commission—Acct. No. 8280	1606
Public Service Commission—Consumer Advocate— Acct. No. 8295	1607
Public Service Commission—Gas Pipeline Division— Acct. No. 8285	1606
Public Service Commission—Motor Carrier Division— Acct. No. 8290	1607
Real Estate Commission—Acct. No. 8010	1605
West Virginia Board of Examiners for Speech-Language Pathology and Audiology—Acct. No. 8113	1605
West Virginia Cable Television—Advisory Board— Acct. No. 8173	1606

§4. Appropriations from lottery net profits.

Board of Trustees of the University System of West Virginia and Board of Directors of the State College System—Acct. No. 8825	1609
Commission on Aging—Acct. No. 8209	1608
Division of Human Services—Acct. No. 9132	1610
Division of Tourism and Parks—Acct. No. 8546	1609
State Department of Education—Acct. No. 8243	1608

§5. Appropriations of federal funds.

DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES

Division of Environmental Protection—Acct. No. 7897	1612
Division of Forestry—Acct. No. 7924	1613
Division of Labor—Acct. No. 7884	1612
Division of Miners' Health, Safety and Training— Acct. No. 7868	1612
Division of Natural Resources—Acct. No. 7930	1613
Geological and Economic Survey—Acct. No. 7929	1613
West Virginia Development Office—Acct. No. 7755	1612

DEPARTMENT OF EDUCATION

State Board of Education—Vocational Division— Acct. No. 7794	1614
State Board of Rehabilitation—Division of Rehabilitation Services— Acct. No. 7873	1615
State Department of Education—Acct. No. 7772	1613
State Department of Education—Aid for Exceptional Children— Acct. No. 7805	1614
State Department of Education—School Lunch Program— Acct. No. 7783	1614
State Department of Education—State Aid to Schools— Acct. No. 7812	1614

DEPARTMENT OF EDUCATION AND THE ARTS	
Division of Culture and History—Acct. No. 7828	1615
Educational Broadcasting Authority—Acct. No. 7803	1615
Library Commission—Acct. No. 7817	1615
DEPARTMENT OF HEALTH AND HUMAN RESOURCES	
Commission on Aging—Acct. No. 7862	1616
Consolidated Medical Service Fund—Acct. No. 7839	1616
Division of Human Services—Acct. No. 7851	1616
Human Rights Commission—Acct. No. 7968	1617
DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY	
Adjutant General—State Militia—Acct. No. 7957	1618
Division of Public Safety—Acct. No. 7946	1617
Division of Veterans' Affairs—Veterans' Home—Acct. No. 7840	1617
Office of Emergency Services—Acct. No. 7761	1617
DEPARTMENT OF TAX AND REVENUE	
Tax Division—Acct. No. 7763	1618
DEPARTMENT OF TRANSPORTATION	
Department of Transportation—Office of the Secretary— Acct. No. 7982	1619
Division of Motor Vehicles—Acct. No. 7970	1618
Division of Public Transit—Acct. No. 7983	1619
Railroad Maintenance Authority—Acct. No. 7932	1618
EXECUTIVE	
Department of Agriculture—Acct. No. 7911	1611
Department of Agriculture—Meat Inspection— Acct. No. 7918	1611
Governor's Office—Governor's Cabinet on Children and Families—Acct. No. 7753	1611
LEGISLATIVE	
Crime Victims Compensation Fund—Acct. No. 7907	1610
MISCELLANEOUS BOARDS AND COMMISSIONS	
Public Service Commission—Gas Pipeline Division— Acct. No. 7996	1619
Public Service Commission—Motor Carrier Division— Acct. No. 7993	1619
§6. Appropriations from federal block grants.	
Bureau of Employment Programs—Job Training Partnership Act—Acct. No. 8255	1620
Division of Health—Alcohol, Drug Abuse and Mental Health—Acct. No. 8503	1621
Division of Health—Community Mental Health Services—Acct. No. 8505	1622
Division of Health—Community Youth Activity Program—Acct. No. 8504	1621
Division of Health—Maternal and Child Health— Acct. No. 8502	1621
Division of Health—Preventive Health— Acct. No. 8506	1622
Division of Health—Substance Abuse Prevention and Treatment—Acct. No. 8501	1621
Division of Human Services—Child Care and Development—Acct. No. 9149	1622

Division of Human Services—Energy Assistance— Acct. No. 9147	1622
Division of Human Services—Social Services— Acct. No. 9161	1622
State Department of Education—Education Grant— Acct. No. 8242	1620
West Virginia Development Office—Community Development— Acct. No. 8029	1620
West Virginia Development Office—Community Service— Acct. No. 8031	1620

§7. Awards for claims against the state.

§8. Appropriations from surplus accrued.

Board of Risk and Insurance Management— Acct. No. 2250	1625
Department of Agriculture—Soil Conservation Committee— Acct. No. 5120	1624
Division of Human Services—Acct. No. 4050	1625
Division of Public Transit—Acct. No. 5380	1625

§9. Supplemental and deficiency appropriation.

Division of Human Services—Acct. No. 4050	1626
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§10. Special revenue appropriations.

§11. State improvement fund appropriations.

§12. Specific funds and collection accounts.

§13. Appropriations for refunding erroneous payment.

§14. Sinking fund deficiencies.

§15. Appropriations for local governments.

§16. Total appropriations.

§17. General school fund.

TITLE II—APPROPRIATIONS.

ORDER OF SECTIONS

SECTION 1. Appropriations from general revenue.

SECTION 2. Appropriations from state road fund.

SECTION 3. Appropriations from other funds.

SECTION 4. Appropriations from lottery net profits.

SECTION 5. Appropriations of federal funds.

SECTION 6. Appropriations from federal block grants.

SECTION 7. Awards for claims against the state.

SECTION 8. Appropriations from surplus accrued.

SECTION 9. Supplemental and deficiency appropriations.

- SECTION 10. Special revenue appropriations.
- SECTION 11. State improvement fund appropriations.
- SECTION 12. Specific funds and collection accounts.
- SECTION 13. Appropriations for refunding erroneous payment.
- SECTION 14. Sinking fund deficiencies.
- SECTION 15. Appropriations for local governments.
- SECTION 16. Total appropriations.
- SECTION 17. General school fund.

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

LEGISLATIVE

1—Senate

“Former” Account No. 1010

“WVFIMS” Account No.

Fund 0165 FY 1994 Org 2100

		Acti-	General
		vity	Revenue
			Fund
1	Compensation of Members (R)	003	\$ 277,000
2	Compensation and Per Diem		
3	of Officers and Employees (R) ..	005	1,232,000
4	Employee Benefits (R)	010	284,760
5	Current Expenses and		
6	Contingent Fund (R)	021	561,000
7	Repairs and Alterations (R)	064	30,000
8	Computer Supplies (R)	101	15,000
9	Printing Blue Book (R)	103	150,000
10	Expenses of Members (R)	399	295,000
11	Total		\$ 2,844,760

12 The appropriations for the senate for the fiscal year
13 1992-93 are to remain in full force and effect and are
14 hereby reappropriated to June 30, 1994. Any balances
15 so reappropriated may be transferred and credited to
16 the 1993-94 accounts.

17 Upon the written request of the clerk of the senate,
18 the auditor shall transfer amounts between items of the
19 total appropriation in order to protect or increase the
20 efficiency of the service.

21 The clerk of the senate, with the approval of the
22 president, is authorized to draw his or her requisitions
23 upon the auditor, payable out of the Current Expenses
24 and Contingent Fund of the senate, for any bills for
25 supplies and services that may have been incurred by
26 the senate and not included in the appropriation bill, for
27 supplies and services incurred in preparation for the
28 opening, the conduct of the business and after adjourn-
29 ment of any regular or extraordinary session, and for
30 the necessary operation of the senate offices, the
31 requisitions for the same to be accompanied by bills to
32 be filed with the auditor.

33 The clerk of the senate, with the written approval of
34 the president, or the president of the senate shall have
35 authority to employ such staff personnel during any
36 session of the Legislature as shall be needed in addition
37 to staff personnel authorized by the senate resolution
38 adopted during any such session. The clerk of the senate,
39 with the written approval of the president, or the
40 president of the senate shall have authority to employ
41 such staff personnel between sessions of the Legislature
42 as shall be needed, the compensation of all staff
43 personnel during and between sessions of the Legisla-
44 ture, notwithstanding any such senate resolution, to be
45 fixed by the president of the senate. The clerk is hereby
46 authorized to draw his or her requisitions upon the
47 auditor for the payment of all such staff personnel for
48 such services, payable out of the appropriation for
49 Compensation and Per Diem of Officers and Employees
50 or Current Expenses and Contingent Fund of the senate.

51 For duties imposed by law and by the senate, the

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

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

2—House of Delegates

“Former” Account No. 1020

“WVFIMS” Account No.

Fund 0170 FY 1994 Org 2200

1	Compensation of Members (R)	003	\$	871,524
2	Compensation and Per Diem			
3	of Officers and Employees (R) ..	005		521,162
4	Current Expenses and			
5	Contingent Fund (R)	021		1,495,427
6	Expenses of Members (R)	399		614,810
7	Total		\$	3,502,923

8 The appropriations for the house of delegates for the
 9 fiscal year 1992-93 are to remain in full force and effect
 10 and are hereby reappropriated to June 30, 1994. Any
 11 balances so reappropriated may be transferred and
 12 credited to the 1993-94 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 requisitions
27 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, notwithstanding
38 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 appropriation
41 for the Compensation and Per Diem of Officers
42 and Employees Fund or Current Expenses and Contingent
43 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)

"Former" Account No. 1030

"WVFIMS" Account No.

Fund 0175 FY 1994 Org 2300

1	Joint Committee on			
2	Government and Finance (R) ...	104	\$	4,078,034
3	Legislative Printing (R)	105		891,000
4	Legislative Rule-Making			
5	Review Committee (R)	106		200,550
6	Legislative Computer System (R)	107		554,059
7	Joint Standing Committee			
8	on Education (R)	108		46,583
9	Joint Commission on Vocational-			
10	Technical-Occupational			
11	Education (R)	109		50,000
12	Total		\$	5,820,226

13 The appropriation for Joint Expenses for the fiscal
 14 year 1992-93 is to remain in full force and effect and
 15 is hereby reappropriated to June 30, 1994. Any balances
 16 so reappropriated may be transferred and credited to
 17 the 1993-94 accounts.

18 Upon the written request of the clerk of the senate,
 19 with the approval of the president of the senate, and the
 20 clerk of the house of delegates, with the approval of the
 21 speaker of the house of delegates, and a copy to the
 22 legislative auditor, the auditor shall transfer amounts
 23 between items of the total appropriation in order to
 24 protect or increase the efficiency of the service.

JUDICIAL

4—Supreme Court—General Judicial

“Former” Account No. 1110

“WVFIMS” Account No.

Fund 0180 FY 1994 Org 2400

1	Personal Services (R)	001	\$	23,685,989
2	Annual Increment (R)	004		226,000
3	Social Security Matching (R)	011		1,818,863
4	Public Employees' Insurance			
5	Matching (R)	012		2,675,713
6	Public Employees'			
7	Retirement Matching (R)	016		2,002,883
8	Other Expenses (R)	029		3,100,000

9	Judges' Retirement System (R) ...	110	1,785,572
10	Other Court Costs (R)	111	2,400,000
11	Judicial Training Program (R) ...	112	250,000
12	Mental Hygiene Fund (R)	113	700,000
13	Family Law Master Program	190	521,488
14	Total		\$ 39,166,508

15 Any unexpended balances remaining in this appropri-
 16 ation at the close of the fiscal year 1992-93 are hereby
 17 reappropriated for expenditure during the fiscal year
 18 1993-94. Any balances so reappropriated may be
 19 transferred and credited to the 1993-94 accounts.

20 The appropriation shall be administered by the
 21 administrative director of the supreme court of appeals,
 22 who shall draw his or her requisitions for warrants in
 23 payment in the form of payrolls, making deductions
 24 therefrom as required by law for taxes and other items.

25 The appropriation for Judges' Retirement System is
 26 to be transferred to the judges' retirement fund, in
 27 accordance with the law relating thereto, upon requisi-
 28 tion of the administrative director of the supreme court
 29 of appeals.

EXECUTIVE

5—Governor's Office

(WV Code Chapter 5)

“Former” Account No. 1200

“WVFIMS” Account No.

Fund 0101 FY 1994 Org 0100

1	Salary of Governor	002	\$ 72,000
2	Personal Services	001	1,356,523
3	Annual Increment	004	10,224
4	Employee Benefits	010	300,000
5	National Governors' Association ..	123	63,580
6	Southern States Energy Board ...	124	28,732
7	Unclassified	099	588,000
8	Total		\$ 2,419,059

6—Governor's Office—Custodial Fund

(WV Code Chapter 5)

"Former" Account No.1230

"WVFIMS" Account No.

Fund 0102 FY 1994 Org 0100

1 Unclassified—Total 096 \$ 349,047

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)

"Former" Account No. 1240

"WVFIMS" Account No.

Fund 0105 FY 1994 Org 0100

1 Civil Contingent Fund—Total (R) 114 \$ 900,000

2 Any unexpended balance remaining in the appropri-
3 ation (account no. 1240-06) at the close of the fiscal year
4 1992-93 is hereby reappropriated for expenditure
5 during the fiscal year 1993-94.

6 From this appropriation there may be expended, at
7 the discretion of the governor, an amount not to exceed
8 one thousand dollars as West Virginia's contribution to
9 the interstate oil compact commission.

10 The above appropriation is intended to provide
11 contingency funding for accidental, unanticipated,
12 emergency, or unplanned events which may occur
13 during the fiscal year and is not to be expended for the
14 normal day-to-day operations of the governor's office.

8—Governor’s Office—
Center for Professional Development
(WV Code Chapter 18A)
“Former” Account No. 1245
“WVFIMS” Account No.
Fund 0103 FY 1994 Org 0100

1 Any unexpended balance remaining in the appropri-
2 ation for Center for Professional Development (account
3 no. 1245-10) at the close of the fiscal year 1992-93 is
4 hereby reappropriated for expenditure during the fiscal
5 year 1993-94 and redesignated as Department of
6 Education and the Arts -Office of the Secretary -Center
7 for Professional Development (account no. 5332-10).

9—Governor’s Office—
Infrastructure Improvements
(WV Code Chapter 5)
“Former” Account No. 1250
“WVFIMS” Account No.
Fund 0106 FY 1994 Org 0100

1 Unclassified—Total 096 \$ 5,000,000

2 The unclassified line item above is to be expended to
3 fund grants and loans for water, sewage, and soil
4 conservation projects.

10—Governor’s Office—
Governor’s Cabinet on Children and Families
(WV Code Chapter 5)
“Former” Account No. 1255
“WVFIMS” Account No.
Fund 0104 FY 1994 Org 0100

1 Governor’s Cabinet on Children
2 and Families—Total (R) 116 \$ 395,600

3 Any unexpended balance remaining in the appropri-
 4 ation for Governor's Cabinet on Children and Families
 5 (account no. 1255-09) at the close of the fiscal year 1992-
 6 93 is hereby reappropriated for expenditure during the
 7 fiscal year 1993-94.

11—Auditor's Office—

General Administration

(WV Code Chapter 12)

"Former" Account No. 1500

"WVFIMS" Account No.

Fund 0116 FY 1994 Org 1200

1	Salary of Auditor	002	\$	46,800
2	Personal Services	001		1,569,038
3	Annual Increment	004		30,124
4	Employee Benefits	010		515,819
5	Unclassified (R)	099		533,933
6	Office Automation	117		750,000
7	Total		\$	3,445,714

8 Any unexpended balance remaining in the appropri-
 9 ation for Unclassified (account no. 1500-12) at the close
 10 of fiscal year 1992-93 is hereby reappropriated for
 11 expenditure during the fiscal year 1993-1994.

12—Auditor's Office—

Family Law Master

Administration Fund

(WV Code Chapter 48A)

"Former" Account No. 1510

"WVFIMS" Account No.

Fund 0116 FY 1994 Org 1200

1	Unclassified—Total	190	\$	450,000
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2 The above appropriation shall be expended for the
 3 administrative expenses of the family law masters

- 4 program, excluding personal services and employee
5 benefits.

13—Treasurer's Office—

(WV Code Chapter 12)

“Former” Account No. 1600

“WVFIMS” Account No.

Fund 0126 FY 1994 Org 1300

1	Salary of Treasurer	002	\$	50,400
2	Personal Services	001		457,610
3	Annual Increment	004		6,876
4	Employee Benefits	010		149,676
5	Unclassified	099		211,678
6	Abandoned Property Program ...	118		311,208
7	Check Encoder	441		125,000
8	Total		\$	1,312,448

14—Attorney General

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

“Former” Account No. 2400

“WVFIMS” Account No.

Fund 0150 FY 1994 Org 1500

1	Salary of Attorney General	002	\$	50,400
2	Personal Services	001		1,927,640
3	Annual Increment	004		12,384
4	Employee Benefits	010		561,278
5	Unclassified	099		574,143
6	Total		\$	3,125,845

- 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: *Provided*, That the spending unit shall reimburse
13 at a rate and upon terms agreed to by the state spending
14 unit and the attorney general: *Provided, however*, That

15 if the spending unit and the attorney general are unable
 16 to agree on the amount and terms of the reimbursement,
 17 the spending unit and the attorney general shall submit
 18 their proposed reimbursement rates and terms to the
 19 joint committee on government and finance for final
 20 determination.

15—Secretary of State

(WV Code Chapters 3, 5 and 59)

“Former” Account No. 2500

“WVFIMS” Account No.

Fund 0155 FY 1994 Org 1600

1	Salary of Secretary of State	002	\$	43,200
2	Personal Services	001		456,391
3	Annual Increment	004		5,112
4	Employee Benefits	010		155,021
5	Unclassified	099		262,376
6	Total		\$	922,100

16—State Elections Commission

(WV Code Chapter 3)

“Former” Account No. 2600

“WVFIMS” Account No.

Fund 0160 FY 1994 Org 1601

1	Unclassified—Total	096	\$	10,616
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17—Department of Agriculture

(WV Code Chapter 19)

“Former” Account No. 5100

“WVFIMS” Account No.

Fund 0131 FY 1994 Org 1400

1	Salary of Commissioner	002	\$	46,800
2	Personal Services	001		2,036,382
3	Annual Increment	004		34,992
4	Employee Benefits	010		778,078

5	Unclassified	099		642,000
6	Gypsy Moth Program	119		750,000
7	Total		\$	4,288,252

18—Department of Agriculture—

Soil Conservation Committee

(WV Code Chapter 19)

“Former” Account No. 5120

“WVFIMS” Account No.

Fund 0132 FY 1994 Org 1400

1	Personal Services	001	\$	357,700
2	Annual Increment	004		5,940
3	Employee Benefits	010		107,808
4	Unclassified (R)	099		284,758
5	Total		\$	756,206

6 Any unexpended balances remaining in the appropri-
 7 ations for Unclassified (account no. 5121-18) and soil
 8 conservation projects (account no. 5120-20) at the close
 9 of the fiscal year 1992-93 are hereby reappropriated for
 10 expenditure during the fiscal year 1993-94.

19—Department of Agriculture—

Marketing and Development Division

(Matching Fund)

(WV Code Chapter 19)

“Former” Account No. 5130

“WVFIMS” Account No.

Fund 0134 FY 1994 Org 1400

1	Personal Services	001	\$	397,477
2	Annual Increment	004		6,192
3	Employee Benefits	010		151,328
4	Unclassified	099		185,162
5	Total		\$	740,159

6 Any part or all of this appropriation may be trans-
 7 ferred to a special revenue fund for the purpose of
 8 matching federal funds for the above-named program.

20—Department of Agriculture—

Meat Inspection

(WV Code Chapter 19)

“Former” Account No. 5140

“WVFIMS” Account No.

Fund 0135 FY 1994 Org 1400

1	Personal Services	001	\$	320,579
2	Annual Increment	004		5,490
3	Employee Benefits	010		119,025
4	Unclassified	099		<u>63,370</u>
5	Total		\$	508,464

6 Any part or all of this appropriation may be trans-
 7 ferred to a special revenue fund for the purpose of
 8 matching federal funds for the above-named program.

21—Department of Agriculture—

Agricultural Awards

(WV Code Chapter 19)

“Former” Account No. 5150

“WVFIMS” Account No.

Fund 0136 FY 1994 Org 1400

1	Agricultural Awards	121	\$	66,066
2	Fairs and Festivals	122		<u>181,598</u>
3	Total		\$	247,664

DEPARTMENT OF ADMINISTRATION

22—Department of Administration—

Office of the Secretary

(WV Code Chapter 5F)

“Former” Account No. 2105

“WVFIMS” Account No.

Fund 0186 FY 1994 Org 0201

1 Unclassified—Total 096 \$ 251,739

23—Division of Finance

(WV Code Chapter 5A)

“Former” Account No. 2110

“WVFIMS” Account No.

Fund 0203 FY 1994 Org 0209

1	Personal Services	001	\$	518,526
2	Annual Increment	004		6,290
3	Employee Benefits	010		141,255
4	Unclassified	099		530,872
5	GAAP Project (R)	125		<u>1,500,000</u>
6	Total		\$	2,696,943

7 Any unexpended balance remaining in the appropri-
8 ation for GAAP Project (account no. 2110-41) at the close
9 of fiscal year 1992-93 is hereby reappropriated for
10 expenditure during the fiscal year 1993-94.

24—Division of Purchasing

(WV Code Chapter 5A)

“Former” Account No. 2120

“WVFIMS” Account No.

Fund 0210 FY 1994 Org 0213

1	Personal Services	001	\$	560,362
2	Annual Increment	004		7,754
3	Employee Benefits	010		149,638
4	Unclassified	099		<u>73,116</u>
5	Total		\$	790,870

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.

25—Division of General Services

(WV Code Chapter 5A)

“Former” Account No. 2130

“WVFIMS” Account No.

Fund 0230 FY 1994 Org 0223

1	Personal Services	001	\$	489,484
2	Annual Increment	004		12,168
3	Employee Benefits	010		199,384
4	Unclassified	099		699,359
5	Fire Service Fee	126		13,440
6	Capitol Building Preservation	503		500,000
7	Total		\$	1,913,835

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

(WV Code Chapter 5A)

“Former” Account No. 2140

“WVFIMS” Account No.

Fund 0233 FY 1994 Org 0224

1	Unclassified—Total	096	\$	4,656
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**27—Board of Risk and
Insurance Management**

(WV Code Chapter 29)

“Former” Account No. 2250

“WVFIMS” Account No.

Fund 0217 FY 1994 Org 0218

1	Unclassified—Total	096	\$	4,054,116
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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.

28—Commission on Uniform State Laws

(WV Code Chapter 29)

“Former” Account No. 2450

“WVFIMS” Account No.

Fund 0214 FY 1994 Org 0217

1	Unclassified—Total	096	\$	19,400
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2 To pay expenses of members of the commission on
 3 uniform state laws.

29—Public Defender Services

(WV Code Chapter 29)

“Former” Account No. 5900

“WVFIMS” Account No.

Fund 0226 FY 1994 Org 0221

1	Personal Services	001	\$	227,547
2	Annual Increment	004		2,628
3	Employee Benefits	010		73,384
4	Unclassified (R)	099		99,026
5	Appointed Counsel Fees and			
6	Public Defender			
7	Corporations (R)	127		11,735,905
8	Total		\$	12,138,490

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 1992-93 are hereby reappropriated for expenditure
 14 during the fiscal year 1993-94.

30—Education and State Employees

Grievance Board

(WV Code Chapter 18)

“Former” Account No. 6015

“WVFIMS” Account No.

Fund 0220 FY 1994 Org 0219

1	Personal Services	001	\$	410,454
2	Annual Increment	004		4,068
3	Employee Benefits	010		115,727
4	Unclassified	099		108,266
5	Total		\$	638,515

31—Public Employees Retirement System

(WV Code Chapter 5)

“Former” Account No. 6140

“WVFIMS” Account No.

Fund 0195 FY 1994 Org 0205

1 The division of highways, division of motor vehicles,
 2 bureau of employment programs, public service com-
 3 mission and other departments or divisions operating
 4 from special revenue funds and/or federal funds shall
 5 pay their proportionate share of the retirement costs for
 6 their respective divisions. When specific appropriations
 7 are not made, such payments may be made from the
 8 balances in the various special revenue funds in excess
 9 of specific appropriations.

32—Public Employees Insurance Agency

(WV Code Chapter 5)

“Former” Account No. 6150

“WVFIMS” Account No.

Fund 0200 FY 1994 Org 0225

- 1 Supplemental for
 2 Retirees' Premiums—Total 129 \$ 970,000
- 3 The division of highways, division of motor vehicles,
 4 bureau of employment programs, public service com-
 5 mission and other departments or divisions operating
 6 from special revenue funds and/or federal funds shall
 7 pay their proportionate share of the public employees
 8 health insurance cost for their respective divisions.
 9 When specific appropriations are not made, such
 10 payments may be made from the balances in the various
 11 special revenue funds in excess of specific appropria-
 12 tions.

33—Ethics Commission

(WV Code Chapter 6B)

“Former” Account No. 6180

“WVFIMS” Account No.

Fund 0223 FY 1994 Org 0220

1	Personal Services	001	\$	159,215
2	Annual Increment	004		432
3	Employee Benefits	010		38,285
4	Unclassified	099		<u>156,741</u>
5	Total		\$	354,673

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

**34—West Virginia
 Development Office**

(WV Code Chapter 5B)

"Former" Account No. 1210

"WVFIMS" Account No.

Fund 0256 FY 1994 Org 0307

1	Personal Services	001	\$	2,020,612
2	Annual Increment	004		22,936
3	Employee Benefits	010		556,719
4	Unclassified	099		1,647,960
5	Partnership Grants (R)	131		1,536,200
6	National Youth Science Camp	132		200,000
7	Local Economic Development			
8	Partnerships (R)	133		1,300,000
9	Guaranteed Work Force Grant (R)	242		1,900,000
10	Total		\$	9,184,427

11 Any unexpended balances remaining in the appropri-
 12 ations for Partnership Grants (account no. 1210-15),
 13 Competitive Grants (account no. 1210-16), Guaranteed
 14 Work Force Grant (account no. 1210-21) and Local
 15 Economic Development Partnerships (account no. 1210-
 16 25) at the close of the fiscal year 1992-93 are hereby
 17 reappropriated for expenditure during the fiscal year
 18 1993-94.

19 The above appropriation local economic development
 20 partnerships shall be used by the West Virginia
 21 development office for the award of funding assistance
 22 to county and regional economic development corpora-
 23 tions or authorities created under the plan developed by
 24 the council for community and economic development
 25 under the provisions of section three, article two,
 26 chapter five-b of the code. The West Virginia develop-
 27 ment office shall award the funding assistance through
 28 a matching grant program, based upon criteria deve-
 29 loped under the provisions of section three, article two,
 30 chapter five-b of the code and based upon a formula
 31 whereby funding assistance may not exceed twenty-five
 32 thousand dollars per county served by a regional
 33 economic development corporation or authority.

35—Division of Labor

(WV Code Chapters 21 and 47)

“Former” Account No. 4500

“WVFIMS” Account No.

Fund 0260 FY 1994 Org 0308

1	Personal Services	001	\$	832,683
2	Annual Increment	004		12,363
3	Employee Benefits	010		323,964
4	Unclassified	099		186,849
5	Total		\$	1,355,859

36—Division of Tourism and Parks

(WV Code Chapter 5B)

“Former” Account No. 4625

“WVFIMS” Account No.

Fund 0246 FY 1994 Org 0304

1	Personal Services	001	\$	4,084,176
2	Annual Increment	004		78,387
3	Employee Benefits	010		1,558,536
4	Unclassified	096		-0-
5	Film Development Office	498		75,000
6	Total		\$	5,796,099

7 Any revenue derived from mineral extraction at any
 8 state park shall be deposited in a special revenue
 9 account of the division of tourism and parks, first for
 10 bond debt payment purposes and with any remainder
 11 to be for park operation and improvement purposes.

37—Division of Forestry

(WV Code Chapter 19)

“Former” Account No. 4650

“WVFIMS” Account No.

Fund 0250 FY 1994 Org 0305

1	Personal Services	001	\$	1,931,629
2	Annual Increment	004		39,006
3	Employee Benefits	010		744,956
4	Unclassified	099		<u>47,023</u>
5	Total		\$	2,762,614

6 Out of the above appropriation a sum may be used to
7 match federal funds for cooperative studies or other
8 funds for similar purposes.

38—Board of Coal Mine

Health and Safety

(WV Code Chapter 22)

“Former” Account No. 4720

“WVFIMS” Account No.

Fund 0280 FY 1994 Org 0319

1	Personal Services	001	\$	50,077
2	Employee Benefits	010		15,424
3	Unclassified	099		<u>10,496</u>
4	Total		\$	75,997

39—Interstate Commission on

Potomac River Basin

(WV Code Chapter 29)

“Former” Account No. 4730

“WVFIMS” Account No.

Fund 0263 FY 1994 Org 0313

1	West Virginia’s Contribution			
2	to the Interstate Commission			
3	on Potomac River Basin—			
4	Total	134	\$	36,045

40—Ohio River Valley Water

Sanitation Commission

(WV Code Chapter 29)

“Former” Account No. 4740

“WVFIMS” Account No.

Fund 0264 FY 1994 Org 0313

1	West Virginia’s Contribution		
2	to the Ohio River Valley Water		
3	Sanitation Commission—		
4	Total	135	\$ 98,280

**41—Coal Mine Safety and
Technical Review Committee**

(WV Code Chapter 22)

“Former” Account No. 4750

“WVFIMS” Account No.

Fund 0285 FY 1994 Org 0320

1	Personal Services	001	\$ 7,400
2	Employee Benefits	010	4,298
3	Unclassified	099	71,303
4	Total		\$ 83,001

42—Division of Environmental Protection

(WV Code Chapter 22)

“Former” Account No. 4775

“WVFIMS” Account No.

Fund 0273 FY 1994 Org 0313

1	Personal Services	001	\$ 3,959,234
2	Annual Increment	004	55,260
3	Employee Benefits	010	1,326,837
4	Unclassified	099	715,883
5	Black Fly Control	137	216,000
6	Total		\$ 6,273,214

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

(WV Code Chapter 22)

"Former" Account No. 4780

"WVFIMS" Account No.

Fund 0277 FY 1994 Org 0314

1	Personal Services	001	\$	3,038,617
2	Annual Increment	004		28,980
3	Employee Benefits	010		1,035,235
4	Unclassified	099		<u>201,722</u>
5	Total		\$	4,304,554

44—Geological and Economic Survey

(WV Code Chapter 29)

"Former" Account No. 5200

"WVFIMS" Account No.

Fund 0253 FY 1994 Org 0306

1	Personal Services	001	\$	1,121,756
2	Annual Increment	004		20,680
3	Employee Benefits	010		345,193
4	Unclassified	099		50,000
5	Roof Repairs—Capital Outlay	446		<u>37,500</u>
6	Total		\$	1,575,129

7 The above unclassified appropriation includes fund-
8 ing to secure federal and other contracts and may be
9 transferred to a special revolving fund (account no.
10 8590-43) for the purpose of providing advance funding
11 for such contracts.

45—Department of Commerce,

Labor and Environmental Resources—

Office of the Secretary

(WV Code Chapter 5F)

"Former" Account No. 5321

"WVFIMS" Account No.

Fund 0236 FY 1994 Org 0301

1	Unclassified	099	\$	335,929
2	ARC Assessment	136		40,000
3	Total		\$	375,929

46—Water Resources Board

(WV Code Chapter 20)

"Former" Account No. 5640

"WVFIMS" Account No.

Fund 0270 FY 1994 Org 0311

1	Personal Services	001	\$	60,152
2	Annual Increment	004		900
3	Employee Benefits	010		18,690
4	Unclassified	099		32,030
5	Total		\$	111,772

47—Division of Natural Resources

(WV Code Chapter 20)

"Former" Account No. 5650

"WVFIMS" Account No.

Fund 0265 FY 1994 Org 0310

1	Personal Services	001	\$	479,304
2	Annual Increment	004		6,408
3	Employee Benefits	010		158,716
4	Unclassified	099		8,290
5	Total		\$	652,718

DEPARTMENT OF EDUCATION**48—State Department of Education**

(WV Code Chapters 18 and 18A)

“Former” Account No. 2860**“WVFIMS” Account No.****Fund 0313 FY 1994 Org 0402**

1	Personal Services	001	\$	2,187,500
2	Annual Increment	004		32,583
3	Employee Benefits	010		633,368
4	Unclassified	099		5,404,342
5	WV Education Information			
6	System (WVEIS)	138		2,693,752
7	34/1000 Waiver	139		300,000
8	Increased Enrollment	140		800,000
9	Coordinator-Educational			
10	Medical Services.....	141		58,536
11	Computer Basic Skills (R)	145		3,500,000
12	Principals' Academy	455		100,000
13	Competitive Grants	130		100,000
14	Microcomputer Network	506		150,000
15	WV Work Heritage Project.....	507		50,000
16	Governor's Honors Academy	478		30,000
17	COGS Writing Project	482		20,000
18	Total		\$	16,060,081

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

21 Any unexpended balance remaining in the appropri-
22 ation for Computer Basic Skills (account no. 2860-41) at
23 the close of the fiscal year 1992-93 is hereby reappropri-
24 ated for expenditure during the fiscal year 1993-94.

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

(WV Code Chapters 18 and 18A)

“Former” Account No. 2870**“WVFIMS” Account No.**

Fund 0303 FY 1994 Org 0402

1	Personal Services	001	\$	148,502
2	Annual Increment	004		2,109
3	Employee Benefits	010		43,744
4	Unclassified	099		1,664,478
5	Total		\$	1,858,833

50—State Board of Education—**Vocational Division**

(WV Code Chapters 18 and 18A)

“Former” Account No. 2890**“WVFIMS” Account No.**Fund 0390 FY 1994 Org 0402

1	Personal Services	001	\$	668,000
2	Annual Increment	004		9,693
3	Employee Benefits	010		178,255
4	Unclassified	099		542,704
5	Wood Products—			
6	Forestry Vocational			
7	Program (R).....	146		63,024
8	Albert Yanni Vocational			
9	Program	147		139,300
10	Vocational Aid	148		10,171,729
11	Adult Basic Education	149		1,449,723
12	Equipment Replacement	150		1,019,750
13	Total		\$	14,242,178

14 Any unexpended balance remaining in the appropri-
 15 ation for Wood Products—Forestry Vocational Program
 16 (account no. 2890-47) at the close of the fiscal year 1992-
 17 93 is hereby reappropriated for expenditure during the
 18 fiscal year 1993-94.

19 From the vocational aid line item above, one hundred
 20 thousand dollars is to be expended to purchase hepatitis
 21 b vaccines to provide immunizations in vocational
 22 education programs.

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

(WV Code Chapters 18 and 18A)

“Former” Account No. 2950**“WVFIMS” Account No.****Fund 0317 FY 1994 Org 0402**

1	Professional Educators	151	\$ 623,515,070
2	Service Personnel	152	190,442,382
3	Fixed Charges	153	70,698,024
4	Transportation	154	25,724,251
5	Administration	155	6,750,000
6	Other Current Expenses	022	90,961,343
7	Improve Instructional		
8	Programs	156	32,520,994
9	Unclassified	099	-0-
10	Basic Foundation Allowances		1,040,612,064
11	Less Local Share	332	(200,429,864)
12	Total Basic State Aid		840,182,200
13	Public Employees		
14	Insurance Match	012	112,027,065
15	School Building Authority	453	35,440,493
16	Teachers' Retirement System	019	154,908,752
17	Total		\$1,142,558,510

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

(WV Code Chapters 18 and 18A)

“Former” Account No. 2960**“WVFIMS” Account No.****Fund 0314 FY 1994 Org 0402**

1	Special Education—Counties	159	\$ 7,336,561
2	Special Education—Institutions ..	160	2,297,128
3	Education of Institutionalized		
4	Juveniles	161	3,007,244
5	Total		\$ 12,640,933

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

(WV Code Chapters 18 and 18A)

“Former” Account No. 3330

“WVFIMS” Account No.

Fund 0320 FY 1994 Org 0403

1	Personal Services	001	\$	4,937,219
2	Annual Increment	004		4,788
3	Employee Benefits	010		1,477,055
4	Unclassified	099		<u>1,009,120</u>
5	Total		\$	7,428,182

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

(WV Code Chapters 18 and 18A)

“Former” Account No. 3360

“WVFIMS” Account No.

Fund 0306 FY 1994 Org 0402

1	Personal Services	001	\$	127,331
2	Annual Increment	004		3,193
3	Employee Benefits	010		46,147
4	Unclassified	099		<u>157,196</u>
5	Total		\$	333,867

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

(WV Code Chapter 18)

“Former” Account No. 4405

“WVFIMS” Account No.

Fund 0310 FY 1994 Org 0932

1550		APPROPRIATIONS		[Ch. 1
1	Personal Services	001	\$	3,693,088
2	Annual Increment	004		88,879
3	Employee Benefits	010		1,207,612
4	Unclassified	099		49,782
5	Case Services	162		2,859,763
6	Workshop Development	163		<u>1,449,000</u>
7	Total		\$	9,348,124

**DEPARTMENT OF EDUCATION
AND THE ARTS**

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

(WV Code Chapter 18B)

“Former” Account No. 2785

“WVFIMS” Account No.

Fund 0330 FY 1994 Org 0481

1	Unclassified	099	\$	77,058,231
2	Micro Computer Labs for			
3	Teacher Education	171		<u>344,800</u>
4	Total		\$	77,403,031

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

(WV Code Chapter 18B)

“Former” Account No. 2795

“WVFIMS” Account No.

Fund 0327 FY 1994 Org 0461

1	Unclassified	099		142,154,211
2	Marshall University-			
3	Southern WV Community			

Ch. 1]	APPROPRIATIONS	1551
4	College 2+2 Program (R)	170 160,000
5	Micro Computer Labs for	
6	Teacher Education (R)	171 255,200
7	Total	\$ 142,569,411

**58—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)

“Former” Account No. 2800

“WVFIMS” Account No.

Fund 0333 FY 1994 Org 0452

1	Unclassified	099	\$ 868,084
2	Higher Education Grant		
3	Program (R)	164	3,757,050
4	Tuition Contract Program	165	599,940
5	Minority Doctoral Fellowship	166	90,000
6	Underwood-Smith Scholarship		
7	Program—Student Awards	167	570,000
8	West Virginia		
9	Humanities Council	168	90,000
10	WVNET	169	2,088,776
11	Total		\$ 8,063,850

12 Any unexpended balance remaining in the appropri-
13 ation for Higher Education Grant Program (account no.
14 2800-07) at the close of the fiscal year 1992-93 is hereby
15 reappropriated for expenditure during the fiscal year
16 1993-94.

17 Any unexpended balance remaining in the appropri-
18 ation for Marshall University—Southern WV Commu-
19 nity College 2+2 Program (account no. 2800-24) at the
20 close of the fiscal year 1992-93 is hereby reappropriated
21 for expenditure during the fiscal year 1993-94.

22 Any unexpended balance remaining in the appropri-
23 ation for Micro Computer Labs for Teacher Education

24 (account no. 2800-25) at the close of the fiscal year 1992-
 25 93 is hereby reappropriated for expenditure during the
 26 fiscal year 1993-94.

**59—Board of Trustees of the
 University System of West Virginia**

University of West Virginia

Health Sciences Account

(WV Code Chapter 18B)

“Former” Account No. 2855

“WVFIMS” Account No.

Fund 0323 FY 1994 Org 0478

1	Unclassified	096	\$	-0-
2	School of Osteopathic Medicine ...	172		5,452,654
3	Marshall Medical School	173		9,755,954
4	WVU—School of Health Sciences	174		34,762,257
5	WVU—School of Health			
6	Sciences—Charleston Division	175		3,427,935
7	WVU Charleston Division—			
8	Poison Control Hot Line	510		250,000
9	Health Sciences			
10	Scholarship Fund	176		148,500
11	Primary Health Education			
12	Program Support (R)	177		3,960,000
13	Rural Health Initiative			
14	Site Support (R)	295		1,980,000
15	Total		\$	59,737,300

16 Any unexpended balances remaining in the appropri-
 17 ations for Primary Health Education Program Support
 18 (account no. 2855-56) and Rural Health Initiative Site
 19 Support (account no. 2855-58) at the close of the fiscal
 20 year 1992-93 are hereby reappropriated for expenditure
 21 during the fiscal year 1993-94.

60—Educational Broadcasting Authority

(WV Code Chapter 10)

"Former" Account No. 2910

"WVFIMS" Account No.

Fund 0300 FY 1994 Org 0439

1	Personal Services	001	\$	2,999,090
2	Annual Increment	004		46,108
3	Employee Benefits	010		880,282
4	Unclassified	099		<u>1,233,466</u>
5	Total		\$	5,158,946

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

61—Library Commission

(WV Code Chapter 10)

"Former" Account No. 3500

"WVFIMS" Account No.

Fund 0296 FY 1994 Org 0433

1	Personal Services	001	\$	966,602
2	Annual Increment	004		24,984
3	Employee Benefits	010		336,332
4	Unclassified	099		225,212
5	Books and Films	179		150,000
6	Services to State Institutions	180		156,310
7	Services to Blind			
8	and Handicapped	181		42,729
9	Grants to Public Libraries	182		<u>5,709,779</u>
10	Total		\$	7,611,948

62—Division of Culture and History

(WV Code Chapter 29)

"Former" Account No. 3510

"WVFIMS" Account No.

Fund 0293 FY 1994 Org 0432

1	Personal Services	001	\$	1,370,605
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2	Annual Increment	004	21,787
3	Employee Benefits	010	448,732
4	Unclassified	099	2,373,529
5	Capital Outlay	511	<u>197,000</u>
6	Total		\$ 4,411,653

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

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

63—Department of Education and the Arts—

Office of the Secretary

(WV Code Chapter 5F)

“Former” Account No. 5332

“WVFIMS” Account No.

Fund 0294 FY 1994 Org 0431

1	Unclassified (R)	099	\$ 297,603
2	Center for Professional		
3	Development (R)	115	2,000,000
4	Technical Preparation Program ..	440	832,397
5	Arts and Literacy Programs	456	<u>200,000</u>
6	Total		\$ 3,330,000

7 Any unexpended balances remaining in the appropri-
 8 ation for Unclassified (account no. 5332-23) and Rural
 9 Health Initiative Site Support (account no. 5332-24) at
 10 the close of the fiscal year 1992-93 are hereby reappropri-
 11 ated for expenditure during the fiscal year 1993-94.

**DEPARTMENT OF HEALTH
AND HUMAN RESOURCES**

64—Division of Health—

Central Office

(WV Code Chapter 16)

“Former” Account No. 4000

“WVFIMS” Account No.

Fund 0407 FY 1994 Org 0506

1	Personal Services	001	\$	5,389,480
2	Annual Increment	004		85,000
3	Employee Benefits	010		2,077,398
4	Unclassified	099		3,603,807
5	Paramedic Training	490		30,000
6	Corporate Nonprofit Community			
7	Health Centers—F.M.H.A.			
8	Mortgage Finance	184		150,269
9	Appalachian States Low Level			
10	Radioactive Waste Commission	185		58,300
11	Safe Drinking Water Program ...	187		440,000
12	Total		\$	11,834,254

65—Division of Human Services

(WV Code Chapters 9, 48 and 49)

“Former” Account No. 4050

“WVFIMS” Account No.

Fund 0403 FY 1994 Org 0511

1	Personal Services	001	\$	14,258,716
2	Annual Increment	004		352,280
3	Employee Benefits	010		5,808,870
4	Unclassified	099		11,952,578
5	OSCAR and RAPIDS	188		3,445,282
6	Medical Services	189		146,100,000
7	Women’s Commission	191		51,365
8	Commission on			
9	Hearing Impaired	192		41,280

10	Public Assistance	193	24,800,412
11	Emergency Assistance	194	1,510,216
12	Social Services	195	23,550,348
13	Family Preservation Program	196	1,565,000
14	JOBS Program	197	3,730,069
15	Education Medical Services	198	900,000
16	Community JOBS Program	199	125,000
17	Total		\$ 238,191,416

18 Notwithstanding the provisions of section two, the
 19 secretary of the department of health and human
 20 resources shall have the authority to transfer funds
 21 within the above account: *Provided*, That no more than
 22 ten percent of the funds appropriated to one line may
 23 be transferred to other lines: *Provided, however*, That no
 24 funds from other lines shall be transferred to the
 25 personal services line item.

66—Commission on Aging

(WV Code Chapter 29)

“Former” Account No. 4060

“WVFIMS” Account No.

Fund 0420 FY 1994 Org 0508

1	Personal Services	001	\$ 110,795
2	Annual Increment	004	1,947
3	Employee Benefits	010	51,062
4	Unclassified	099	175,868
5	Local Programs		
6	Service Delivery Costs	200	2,475,250
7	Silver Haired Legislature	202	14,400
8	Area Agencies Administration ...	203	87,429
9	Ombudsman	204	245,325
10	Total		\$ 3,162,076

11 Any unexpended balance remaining in the appropri-
 12 ation for Senior Citizens Centers—Land Acquisition,
 13 Construction and Repairs and Alterations (account no.
 14 4060-10) at the close of the fiscal year 1992-93 is hereby
 15 reappropriated for expenditure during fiscal year 1993-
 16 94.

67—Consolidated Medical Service Fund**“Former” Account No. 4190****“WVFIMS” Account No.****Fund 0525 FY 1994 Org 0506**

1	Personal Services	001	\$	1,639,571
2	Annual Increment	004		17,949
3	Employee Benefits	010		14,383,743
4	Unclassified	099		-0-
5	Foster Grandparents			
6	Stipends/Travel	205		57,734
7	Special Olympics	208		26,074
8	State Aid to Local Agencies	209		7,031,753
9	Women, Infants and Children	210		400,000
10	Maternal and Child Health			
11	Clinics, Clinicians and			
12	Medical Contracts and Fees	211		4,423,043
13	Preventive Revaccination	212		186,240
14	Primary Care Uncompensated			
15	Care Fund	213		3,900,000
16	Primary Care Support			
17	Program	215		999,306
18	Epidemiology Research	216		538,033
19	Grants to Counties and			
20	EMS Entities	217		1,303,820
21	Rural Non-Profit EMS			
22	Equipment	493		280,000
23	Behavioral Health Program—			
24	Unclassified	219		481,244
25	Behavioral Health Program—			
26	Community Centers	220		11,000,000
27	Family Support Act	221		557,310
28	Early Intervention	223		2,018,357
29	In-Home Services For			
30	Senior Citizens	224		600,000
31	Behavioral Health Medicaid			
32	Match	492		9,345,670
33	Paramedic Training	490		52,500
34	Cancer Registry	225		186,632
35	Institutional Facilities			

36	Operations	335	<u>37,000,000</u>
37	Total		\$ 96,428,979

38 The secretary of the department of health and human
 39 resources, prior to the beginning of the fiscal year, shall
 40 file with the legislative auditor and the department of
 41 administration an expenditure schedule for each
 42 formerly separate spending unit which has been
 43 consolidated into the above account and which receives
 44 a portion of the above appropriation. The secretary shall
 45 also, within fifteen days after the close of the six-month
 46 period of said fiscal year, file with the legislative auditor
 47 and the department of administration an itemized
 48 report of expenditures made during the preceding six-
 49 month period.

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

52 The Behavioral Health Program—Community Cen-
 53 ters line item within account no. 4190 has been reduced
 54 from fiscal year 1993 recognizing that the medicaid
 55 provider tax will provide the state match for federal
 56 medicaid funds. When allocating funds from this line
 57 item through contracts with providers, the department
 58 shall take into consideration the mix of medicaid and
 59 non-medicaid patients being served at each community
 60 center in recognition of the fact that certain providers
 61 will realize a greater increase in revenue from the
 62 provider tax than other providers and in an effort to
 63 allocate funds so that each community center may
 64 maintain at least the current level of services.

65 Services funded from the Behavioral Health Pro-
 66 gram—Community Centers Account will be maintained
 67 at a level which will not exceed that amount approp-
 68 riated for that line item above.

69 Funds identified as Behavioral Health Medicaid
 70 Match shall be transferred by the department to be used
 71 as the state's share of medicaid payments for behavioral
 72 health services.

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

(WV Code Chapter 5F)

“Former” Account No. 5343

“WVFIMS” Account No.

Fund 0400 FY 1994 Org 0501

1	Unclassified—Total	096	\$	174,354
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69—Human Rights Commission

(WV Code Chapter 5)

“Former” Account No. 5980

“WVFIMS” Account No.

Fund 0416 FY 1994 Org 0510

1	Personal Services	001	\$	497,833
2	Annual Increment	004		6,963
3	Employee Benefits	010		156,714
4	Unclassified	099		<u>147,128</u>
5	Total		\$	808,638

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

70—Office of Emergency Services

(WV Code Chapter 15)

“Former” Account No. 1300

“WVFIMS” Account No.

Fund 0443 FY 1994 Org 0606

1	Personal Services	001	\$	163,974
2	Annual Increment	004		3,186
3	Employee Benefits	010		66,669
4	Unclassified	099		<u>1,644</u>
5	Total		\$	235,473

71—Board of Probation and Parole

(WV Code Chapter 62)

“Former” Account No. 3650

“WVFIMS” Account No.

Fund 0440 FY 1994 Org 0605

1	Personal Services	001	\$	36,000
2	Annual Increment	004		756
3	Employee Benefits	010		35,460
4	Unclassified	099		18,931
5	Salaries of Members of Board			
6	of Probation and Parole	227		84,900
7	Total		\$	176,047

72—Division of Corrections—**Central Office**

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

“Former” Account No. 3680

“WVFIMS” Account No.

Fund 0446 FY 1994 Org 0608

1	Personal Services	001	\$	331,044
2	Annual Increment	004		6,552
3	Employee Benefits	010		106,908
4	Unclassified	099		98,928
5	Total		\$	543,432

73—Division of Corrections—**Correctional Units**

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

“Former” Account No. 3770

“WVFIMS” Account No.

Fund 0450 FY 1994 Org 0608

1	Personal Services	001	\$	14,387,160
2	Annual Increment	004		247,248

3	Employee Benefits	010	5,475,445
4	Unclassified	099	8,327,684
5	Payment to Counties and/or		
6	Regional Jails	229	1,425,000
7	Denmar Facility	448	2,000,000
8	Total		\$ 31,862,537

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

74—Division of Veterans' Affairs—

Veterans' Home

(WV Code Chapter 9A)

"Former" Account No. 4010

"WVFIMS" Account No.

Fund 0460 FY 1994 Org 0618

1	Personal Services	001	\$ 210,177
2	Annual Increment	004	5,343
3	Employee Benefits	010	94,011
4	Unclassified	099	-0-
5	Total		\$ 309,531

75—Division of Veterans' Affairs

(WV Code Chapter 9A)

"Former" Account No. 4040

"WVFIMS" Account No.

Fund 0456 FY 1994 Org 0613

1	Personal Services	001	\$	671,185
2	Annual Increment	004		13,863
3	Employee Benefits	010		288,528
4	Unclassified	099		74,763
5	Veterans' Field Offices	228		131,726
6	Total		\$	1,180,065

7 From the unclassified line item above, sixty-six
 8 thousand dollars is to be expended for the administra-
 9 tive costs of implementing the veterans' bonus program.

76—Division of Veterans' Affairs—**Veterans' Bonus**

(WV Code Chapter 9A)

"Former" Account No. 4041

"WVFIMS" Account No.

Fund 0457 FY 1994 Org 0613

1	Unclassified—Total	096	\$	2,000,000
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77—Department of Military Affairs and**Public Safety—****Office of the Secretary**

(WV Code Chapter 5F)

"Former" Account No. 5354

"WVFIMS" Account No.

Fund 0430 FY 1994 Org 0601

1	Unclassified—Total	096	\$	158,312
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78—Division of Public Safety

(WV Code Chapter 15)

"Former" Account No. 5700

"WVFIMS" Account No.

Fund 0453 FY 1994 Org 0612

1	Personal Services	001	\$	15,040,045
2	Annual Increment	004		91,404
3	Employee Benefits	010		4,729,063
4	Unclassified	099		4,344,412
5	Barracks Maintenance			
6	and Construction	494		213,947
7	Communications Equipment	502		377,715
8	Vehicle Purchase	451		1,000,000
9	Safety Equipment	495		100,000
10	Total		\$	25,896,586

79—Adjutant General—State Militia

(WV Code Chapter 15)

"Former" Account No. 5800

"WVFIMS" Account No.

Fund 0433 FY 1994 Org 0603

1	Personal Services	001	\$	249,021
2	Annual Increment	004		6,264
3	Employee Benefits	010		93,964
4	Unclassified	099		2,991,143
5	College Education Fund	232		698,400
6	Total		\$	4,038,792

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.

80—Regional Jail and Correctional

Facility Authority

(WV Code Chapter 31)

"Former" Account No. 6010

"WVFIMS" Account No.

Fund 0536 FY 1994 Org 0615

1	Debt Service—Total	310	\$	4,000,000
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81—Fire Commission

(WV Code Chapter 29)

"Former" Account No. 6170

"WVFIMS" Account No.

Fund 0436 FY 1994 Org 0619

1	Personal Services	001	\$	429,536
2	Annual Increment	004		7,740
3	Employee Benefits	010		147,834
4	Unclassified	099		115,394
5	Total		\$	700,504

DEPARTMENT OF TAX AND REVENUE**82—Tax Division**

(WV Code Chapter 11)

"Former" Account No. 1800

"WVFIMS" Account No.

Fund 0470 FY 1994 Org 0702

1	Personal Services	001	\$	8,975,863
2	Annual Increment	004		159,660
3	Employee Benefits	010		3,077,947
4	Unclassified	099		5,896,530
5	Automation Project	442		500,000
6	Total		\$	18,610,000

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

(WV Code Chapter 29)

"Former" Account No. 4790

"WVFIMS" Account No.

Fund 0523 FY 1994 Org 0933

1	Unclassified—Total	096	\$	4,719
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84—Department of Tax and Revenue—**Office of the Secretary**

(WV Code Chapter 5F)

"Former" Account No. 5365

"WVFIMS" Account No.

Fund 0465 FY 1994 Org 0701

1	Unclassified—Total	096	\$	173,995
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DEPARTMENT OF TRANSPORTATION**85—Department of Transportation—****Office of the Secretary**

(WV Code Chapter 5F)

"Former" Account No. 5376

"WVFIMS" Account No.

Fund 0500 FY 1994 Org 0801

1	Unclassified	099	\$	148,806
2	Civil Air Patrol	234		79,152
3	Port Authority	443		300,000
4	Potomac Highlands			
5	Airport Authority	444		50,000
6	Total		\$	577,958

86—Division of Public Transit

(WV Code Chapter 17)

"Former" Account No. 5380

"WVFIMS" Account No.

Fund 0510 FY 1994 Org 0805

1	Unclassified—Total	096	\$	372,680
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87—Railroad Maintenance Authority

(WV Code Chapter 29)

“Former” Account No. 5690**“WVFIMS” Account No.****Fund 0506 FY 1994 Org 0804**

1	Personal Services	001	\$	341,128
2	Annual Increment	004		6,939
3	Employee Benefits	010		216,715
4	Unclassified	099		67,204
5	Hampshire County			
6	Railroad Siding	497		25,000
7	Total		\$	656,986

8 Any unexpended balance remaining in the appropri-
 9 ation for Capital Outlay (account no. 5690-23) at the
 10 close of the fiscal year 1992-93 is hereby reappropriated
 11 for expenditure during the fiscal year 1993-94.

MISCELLANEOUS BOARDS AND COMMISSIONS**88—Board of Investments**

(WV Code Chapter 12)

“Former” Account No. 1900**“WVFIMS” Account No.****Fund 0513 FY 1994 Org 0920**

1	Personal Services	001	\$	1,176,013
2	Annual Increment	004		12,616
3	Employee Benefits	010		378,571
4	Unclassified	099		2,275,445
5	Total		\$	3,842,645

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

(WV Code Chapter 12)

“Former” Account No. 1905

"WVFIMS" Account No.

Fund 0526 FY 1994 Org 0920

1	Debt Service—Total (R)	310	\$ 11,566,000
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 1992-93 is hereby reappropriated for expen-		
6	diture during the fiscal year 1993-94.		
1	Total TITLE II, Section 1—		
2	General Revenue		<u>\$2,102,987,292</u>

1 **Sec. 2. Appropriations from state road fund.—**
 2 From the state road fund 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-four.

DEPARTMENT OF TRANSPORTATION

90—Division of Highways

(WV Code Chapters 17 and 17C)

"Former" Account No. 6700

"WVFIMS" Account No.

Fund 9017 FY 1994 Org 0803

		Act-	State
		ivity	Road
			Fund
1	Debt Service	040	\$ 52,900,000
2	ARC Assessment	136	700,000
3	Maintenance, Expressway,		
4	Trunkline and Feeder	270	71,298,000
5	Maintenance, State		
6	Local Services	271	101,218,000
7	Maintenance, Contract Paving		
8	and Secondary Road		

9	Maintenance	272	47,500,000
10	Bridge Repair and		
11	Replacement	273	20,000,000
12	Industrial Access Roads	274	2,000,000
13	Inventory Revolving	275	1,250,000
14	Equipment Revolving	276	10,000,000
15	General Operations	277	28,411,502
16	Interstate Construction	278	44,000,000
17	Other Federal Aid Programs	279	128,000,000
18	Appalachian Programs	280	152,000,000
19	Nonfederal Aid Construction	281	54,000,000
20	Highway Litter Control	282	1,500,000
21	Total		<u>\$ 714,777,502</u>

22 The above appropriations are to be expended in
 23 accordance with the provisions of chapters seventeen
 24 and seventeen-c of the code.

25 The commissioner of highways shall have the author-
 26 ity to operate revolving funds within the state road fund
 27 for the operation and purchase of various types of
 28 equipment used directly and indirectly in the construc-
 29 tion and maintenance of roads and for the purchase of
 30 inventories and materials and supplies.

31 There is hereby appropriated within the above items
 32 sufficient money for the payment of claims, accrued or
 33 arising during this budgetary period, to be paid in
 34 accordance with sections seventeen and eighteen, article
 35 two, chapter fourteen of the code.

36 It is the intent of the Legislature to capture and
 37 match all federal funds available for expenditure on the
 38 Appalachian highway system at the earliest possible
 39 time. Therefore, should amounts in excess of those
 40 appropriated be required for the purposes of Appalach-
 41 ian programs, funds in excess of the amount approp-
 42 riated may be made available upon recommendation of
 43 the commissioner and approval of the governor.
 44 Further, for the purpose of Appalachian programs,
 45 funds appropriated to line items may be transferred to
 46 other line items upon recommendation of the commis-
 47 sioner and approval of the governor.

**91—Division of Highways—
Federal Aid Highway Matching Fund**

(WV Code Chapters 17 and 17C)

“Former” Account No. 6705

“WVFIMS” Account No.

Fund 9018 FY 1994 Org 0803

1	Interstate Construction	278	\$ 5,000,000
2	Appalachian Program	280	75,000,000
3	Other Federal Aid Programs	279	<u>179,000,000</u>
4	Total		<u>\$ 259,000,000</u>

92—Division of Motor Vehicles

(WV Code Chapters 17, 17A, 17B, 17C, 20 and 24)

“Former” Account No. 6710

“WVFIMS” Account No.

Fund 9007 FY 1994 Org 0802

1	Personal Services	001	\$ 2,970,396
2	Annual Increment	004	44,928
3	Employee Benefits	010	1,062,346
4	Unclassified	099	10,435,396
5	Optic Scan System (R)	283	2,010,000
6	Electronic Photo Operator		
7	and License System (R)	284	<u>250,000</u>
8	Total		<u>\$ 16,773,066</u>

9 Any unexpended balances remaining in the appropri-
10 ations for Optic Scan System (account no. 6710-38) and
11 Electronic Photo Operator and License System (account
12 no. 6710-39) at the close of fiscal year 1992-93 are hereby
13 reappropriated for expenditure during the fiscal year
14 1993-94.

1	Total TITLE II, Section 2—		
2	State Road Fund		<u><u>\$ 990,550,568</u></u>

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-four.

LEGISLATIVE

93—Crime Victims Compensation Fund—

(WV Code Chapter 14)

“Former” Account No. 8412

“WVFIMS” Account No.

Fund 1731 FY 1994 Org 2300

		Act- ivity	Other Funds
1	Personal Services	001	\$ 110,778
2	Annual Increment	004	1,116
3	Employee Benefits	010	37,742
4	Unclassified	099	42,000
5	Economic Loss Claim		
6	Payment Fund	334	<u>1,450,000</u>
7	Total		\$ 1,641,636

EXECUTIVE

94—Auditor’s Office—

Land Operating Fund

(WV Code Chapters 11A, 12 and 36)

“Former” Account No. 8120

“WVFIMS” Account No.

Fund 1206 FY 1994 Org 1200

1	Personal Services	001	\$ 44,087
2	Annual Increment	004	720
3	Employee Benefits	010	14,408
4	Unclassified	099	<u>11,058</u>
5	Total		\$ 70,273

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.

95—Auditor’s Office—

Securities Regulation Fund

(WV Code Chapter 32)

“Former” Account No. 8122

“WVFIMS” Account No.

Fund 1225 FY 1994 Org 1200

1	Personal Services	001	\$	140,000
2	Annual Increment	004		1,944
3	Employee Benefits	010		35,000
4	Unclassified	099		223,056
5	Total		\$	400,000

96—Department of Agriculture

(WV Code Chapter 19)

“Former” Account No. 8180

“WVFIMS” Account No.

Fund 1401 FY 1994 Org 1400

1	Personal Services	001	\$	201,091
2	Annual Increment	004		2,088
3	Employee Benefits	010		65,532
4	Unclassified	099		510,917
5	Total		\$	779,628

97—Department of Agriculture—

West Virginia Rural Rehabilitation Program

(WV Code Chapter 19)

“Former” Account No. 8192

“WVFIMS” Account No.

Fund 1408 FY 1994 Org 1400

1	Student and Farm			
2	Loans—Total	235	\$	400,000

98—General John McCausland Memorial Farm

(WV Code Chapter 19)

“Former” Account No. 8194

“WVFIMS” Account No.

Fund 1409 FY 1994 Org 1400

1	Personal Services	001	\$	18,084
2	Annual Increment	004		792
3	Employee Benefits	010		10,770
4	Unclassified	099		44,493
5	Total		\$	74,139

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

99—Attorney General—**Anti-Trust Enforcement**

(WV Code Chapter 47)

“Former” Account No. 8419

“WVFIMS” Account No.

Fund 1507 FY 1994 Org 1500

1	Personal Services	001	\$	207,450
2	Annual Increment	004		673
3	Employee Benefits	010		58,625
4	Unclassified	099		177,882
5	Total		\$	444,630

100—Governor’s Office—**West Virginia Health Care****Planning Commission**

(WV Code Chapter 16)

"Former" Account No. 8429

"WVFIMS" Account No.

Fund 1008 FY 1994 Org 0100

1 Unclassified—Total 096 \$ -0-

DEPARTMENT OF ADMINISTRATION**101—Division of Purchasing—****Revolving Fund**

(WV Code Chapter 5A)

"Former" Account No. 8140

"WVFIMS" Account No.

Fund 2320 FY 1994 Org 0216

1	Personal Services	001	\$	707,620
2	Annual Increment	004		20,687
3	Employee Benefits	010		282,033
4	Unclassified	099		717,244
5	Total		\$	1,727,584

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 Purchasing as provided by law.

9 There is hereby appropriated from this fund, in
 10 addition to the above appropriation, the necessary
 11 amount for the expenditure of funds other than personal
 12 services or employee benefits to enable the division to
 13 provide printing, publishing, document services and for
 14 the purchase of supplies for resale to user agencies.
 15 These services include, but are not limited to, offset
 16 printing, electronic duplication/copying, microfilming,
 17 records storage and the sale of general office supplies.

**102—Division of Information Services—
and Communications**

(WV Code Chapter 5A)

"Former" Account No. 8151

"WVFIMS" Account No.

Fund 2220 FY 1994 Org 0210

1	Personal Services	001	\$	3,679,916
2	Annual Increment	004		49,543
3	Employee Benefits	010		1,107,640
4	Unclassified	099		<u>1,029,680</u>
5	Total		\$	5,866,779

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 services 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.

103—Division of Personnel

(WV Code Chapter 29)

"Former" Account No. 8402

"WVFIMS" Account No.

Fund 2440 FY 1994 Org 0222

1	Personal Services	001	\$	1,955,406
2	Annual Increment	004		37,656
3	Employee Benefits	010		627,571
4	Unclassified	099		<u>1,083,744</u>
5	Total		\$	3,704,377

- 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**

104—West Virginia

Development Office

(WV Code Chapter 5B)

“Former” Account No. 8045

“WVFIMS” Account No.

Fund 3144 FY 1994 Org 0307

- 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 1992-93 is hereby reappropriated
 4 for expenditure during the fiscal year 1993-94.

105—Oil and Gas Conservation Commission

(WV Code Chapter 22)

“Former” Account No. 8097

“WVFIMS” Account No.

Fund 3371 FY 1994 Org 0315

1	Personal Services	001	\$	166,435
2	Annual Increment	004		648
3	Employee Benefits	010		38,645
4	Unclassified	099		65,274
5	Total		\$	271,002

106—Division of Labor—

Contractor Licensing Board Fund

(WV Code Chapter 21)

“Former” Account No. 8128

“WVFIMS” Account No.

Fund 3187 FY 1994 Org 0308

1	Personal Services	001	\$	458,268
2	Annual Increment	004		4,590
3	Employee Benefits	010		177,016
4	Unclassified	099		661,796
5	Total		\$	1,301,670

107—Division of Natural Resources

(WV Code Chapter 20)

“Former” Account No. 8300

“WVFIMS” Account No.

Fund 3200 FY 1994 Org 0310

1	Personal Services	001	\$	5,712,828
2	Annual Increment	004		99,756
3	Employee Benefits	010		2,117,228
4	Unclassified	099		3,955,086
5	Capital Improvements and			
6	Land Purchase (R)	248		1,040,000
7	Total		\$	12,924,898

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

11 Any unexpended balances remaining in the appropri-
 12 ations for Land Purchases and Buildings (account no.
 13 8300-09), Renovation of Dams (account no. 8300-11) and
 14 Capital Improvements and Land Purchase (account no.
 15 8300-51) at the close of the fiscal year 1992-93 are
 16 hereby reappropriated for expenditure during the fiscal
 17 year 1993-94.

108—Division of Environmental Protection—**Leaking Underground Storage Tanks****Administrative Fund**

(WV Code Chapter 20)

“Former” Account No. 8302

“WVFIMS” Account No.

Fund 3325 FY 1994 Org 0313

1	Personal Services	001	\$	300,000
2	Annual Increment	004		2,448
3	Employee Benefits	010		115,469
4	Unclassified	099		134,030
5	Total		\$	551,947

109—Division of Natural Resources—

Game, Fish and Aquatic Life Fund

(WV Code Chapter 20)

“Former” Account No. 8303

“WVFIMS” Account No.

Fund 3202 FY 1994 Org 0310

1	Unclassified—Total	096	\$	50,000
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110—Division of Natural Resources—

Nongame Fund

(WV Code Chapter 20)

“Former” Account No. 8304

“WVFIMS” Account No.

Fund 3203 FY 1994 Org 0310

1	Personal Services	001	\$	79,300
2	Annual Increment	004		504
3	Employee Benefits	010		24,839
4	Unclassified	099		31,932
5	Total		\$	136,575

111—Division of Natural Resources—

Planning and Development Division

(WV Code Chapter 20)

“Former” Account No. 8306

"WVFIMS" Account No.

Fund 3205 FY 1994 Org 0310

1	Personal Services	001	\$	116,000
2	Annual Increment	004		2,448
3	Employee Benefits	010		45,383
4	Independence Hall Renovation ...	249		50,000
5	Unclassified	099		85,500
6	Total		\$	299,331

112—Division of Environmental Protection—**Groundwater Planning**

(WV Code Chapter 20)

"Former" Account No. 8312

"WVFIMS" Account No.

Fund 3330 FY 1994 Org 0313

1	Unclassified—Total	096	\$	35,468
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113—Division of Natural Resources—**Recycling Assistance Fund**

(WV Code Chapter 20)

"Former" Account No. 8316

"WVFIMS" Account No.

Fund 3254 FY 1994 Org 0310

1	Personal Services	001	\$	92,759
2	Annual Increment	004		1,224
3	Employee Benefits	010		38,237
4	Unclassified	099		2,841,257
5	Total		\$	2,973,477

114—Division of Environmental Protection—**Hazardous Waste Emergency and Response Fund**

(WV Code Chapter 20)

"Former" Account No. 8323

"WVFIMS" Account No.**Fund 3331 FY 1994 Org 0313**

1	Personal Services	001	\$	212,846
2	Annual Increment	004		2,616
3	Employee Benefits	010		81,804
4	Unclassified	099		439,016
5	Total		\$	736,282

115—Division of Environmental Protection—**Solid Waste Reclamation and
Environmental Response Fund**

(WV Code Chapter 20)

"Former" Account No. 8326**"WVFIMS" Account No.****Fund 3332 FY 1994 Org 0313**

1	Personal Services	001	\$	199,100
2	Annual Increment	004		756
3	Employee Benefits	010		71,970
4	Unclassified	099		1,221,200
5	Total		\$	1,493,026

116—Division of Environmental Protection—**Solid Waste Enforcement Fund**

(WV Code Chapter 20)

"Former" Account No. 8327**"WVFIMS" Account No.****Fund 3333 FY 1994 Org 0313**

1	Personal Services	001	\$	1,891,737
2	Annual Increment	004		15,546
3	Employee Benefits	010		698,755
4	Unclassified	099		911,493
5	Total		\$	3,517,531

117—Division of Environmental Protection**Fees and Operating Expenses**

(WV Code Chapter 16)

“Former” Account No. 8391

“WVFIMS” Account No.

Fund 3336 FY 1994 Org 0313

1	Personal Services	001	\$	802,000
2	Annual Increment	004		612
3	Employee Benefits	010		271,050
4	Unclassified	099		581,500
5	Total		\$	1,655,162

118—Division of Banking—**Lending and Credit Rate Board**

(WV Code Chapter 47A)

“Former” Account No. 8393

“WVFIMS” Account No.

Fund 3040 FY 1994 Org 0303

1	Personal Services	001	\$	10,586
2	Employee Benefits	010		4,411
3	Unclassified	099		10,648
4	Total		\$	25,645

119—Division of Banking

(WV Code Chapter 31A)

“Former” Account No. 8395

“WVFIMS” Account No.

Fund 3041 FY 1994 Org 0303

1	Personal Services	001	\$	969,419
2	Annual Increment	004		6,660
3	Employee Benefits	010		315,655
4	Unclassified	099		542,352
5	Total		\$	1,834,086

120—Solid Waste Management Board

(WV Code Chapter 20)

“Former” Account No. 8461

“WVFIMS” Account No.

Fund 3288 FY 1994 Org 0312

1	Personal Services	001	\$	263,284
2	Annual Increment	004		1,458
3	Employee Benefits	010		82,850
4	Unclassified	099		<u>1,972,408</u>
5	Total		\$	2,320,000

121—Division of Forestry—**Timberland Enforcement Operations**

(WV Code Chapter 19)

“Former” Account No. 8475

“WVFIMS” Account No.

Fund 3082 FY 1994 Org 0305

1	Unclassified—Total	096	\$	105,000
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122—Division of Forestry—**Woodlands and Timberlands****Stamp Fund**

(WV Code Chapter 19)

“Former” Account No. 8476

“WVFIMS” Account No.

Fund 3083 FY 1994 Org 0305

1	Personal Services	001	\$	304,479
2	Annual Increment	004		5,652
3	Employee Benefits	010		99,355
4	Unclassified	099		<u>230,514</u>
5	Total		\$	640,000

123—Division of Forestry

(WV Code Chapter 19)

“Former” Account No. 8478

“WVFIMS” Account No.

Fund 3081 FY 1994 Org 0305

1	Personal Services	001	\$	216,000
2	Annual Increment	004		1,800
3	Employee Benefits	010		55,651
4	Unclassified	099		395,033
5	Total		\$	668,484

124—Division of Environmental Protection—**Special Reclamation Fund**

(WV Code Chapter 22A)

“Former” Account No. 8537

“WVFIMS” Account No.

Fund 3321 FY 1994 Org 0313

1	Personal Services	001	\$	200,000
2	Annual Increment	004		3,888
3	Employee Benefits	010		88,863
4	Unclassified	099		8,768,637
5	Total		\$	9,061,388

125—Division of Environmental Protection—**Oil and Gas Reclamation Trust**

(WV Code Chapter 22B)

“Former” Account No. 8538

“WVFIMS” Account No.

Fund 3322 FY 1994 Org 0313

1	Unclassified—Total	096	\$	450,000
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126—Division of Environmental Protection—**Oil and Gas Operating Permits**

(WV Code Chapter 22B)

"Former" Account No. 8539

"WVFIMS" Account No.

Fund 3323 FY 1994 Org 0313

1	Personal Services	001	\$	180,000
2	Annual Increment	004		2,088
3	Employee Benefits	010		55,866
4	Unclassified	099		412,046
5	Total		\$	650,000

127—Division of Environmental Protection—**Mines and Minerals Operations Fund**

(WV Code Chapter 22)

"Former" Account No. 8540

"WVFIMS" Account No.

Fund 3324 FY 1994 Org 0313

1	Personal Services	001	\$	1,744,290
2	Annual Increment	004		11,290
3	Employee Benefits	010		589,880
4	Unclassified	099		750,382
5	Total		\$	3,095,842

128—Geological and Economic Survey

(WV Code Chapter 29)

"Former" Account No. 8589

"WVFIMS" Account No.

Fund 3100 FY 1994 Org 0306

1	Personal Services	001	\$	30,000
2	Employee Benefits	010		2,925
3	Unclassified	099		167,075
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.

129—Bureau of Employment Programs—**Workers' Compensation Fund**

(WV Code Chapter 23)

"Former" Account No. 9000**"WVFIMS" Account No.****Fund 3440 FY 1994 Org 0322**

1	Personal Services	001	\$	10,992,542
2	Annual Increment	004		164,826
3	Employee Benefits	010		4,193,240
4	Unclassified	099		<u>11,918,796</u>
5	Total		\$	27,269,404

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**130—State Board of Rehabilitation—****Division of Rehabilitation Services—****West Virginia Rehabilitation****Center—Special Account**

(WV Code Chapter 18)

"Former" Account No. 8137**"WVFIMS" Account No.****Fund 8664 FY 1994 Org 0932**

1	Personal Services	001	\$	350,000
2	Workshop Development	163		450,000
3	Workshop-Supported			
4	Employment	484		<u>50,000</u>
5	Total		\$	850,000

131—State Department of Education—**FFA-FHA Conference Center**

(WV Code Chapter 18)

“Former” Account No. 8244**“WVFIMS” Account No.****Fund 3960 FY 1994 Org 0402**

1	Personal Services	001	\$	589,986
2	Annual Increment	004		8,076
3	Employee Benefits	010		225,685
4	Unclassified	099		487,379
5	Total		\$	1,311,126

132—State Department of Education—**School Building Authority**

(WV Code Chapter 18)

“Former” Account No. 8247**“WVFIMS” Account No.****Fund 3959 FY 1994 Org 0402**

1	Personal Services	001	\$	350,600
2	Annual Increment	004		2,556
3	Employee Benefits	010		86,928
4	Unclassified	099		199,112
5	Total		\$	639,196

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**133—State University System—****State System Registration Fee—****Special Capital Improvement Fund**

(Capital Improvement and Bond Retirement Fund)

(WV Code Chapters 18 and 18B)

"Former" Account No. 8830**"WVFIMS" Account No.****Fund 4007 FY 1994 Org 0461**

1	Debt Service (R)	040	\$	3,878,552
2	Capital Repairs and			
3	Alterations (R)	251		2,600,000
4	Miscellaneous Projects (R)	252		420,000
5	Computer and Telecom-			
6	munications Technology	438		1,077,133
7	Total		\$	7,975,685

8 Any unexpended balances remaining in the prior
9 years' and the 1992-93 appropriations are hereby
10 reappropriated for expenditure during the fiscal year
11 1993-94.

12 The total amount of this appropriation shall be paid
13 from the special capital improvement fund created in
14 section eight, article ten, chapter eighteen-b of the code.
15 Projects are to be paid on a cash basis and made
16 available from the date of passage.

134—State College System—**State System Registration Fee—****Special Capital Improvement Fund****(Capital Improvement and Bond Retirement Fund)**

(WV Code Chapters 18 and 18B)

"Former" Account No. 8835**"WVFIMS" Account No.****Fund 4289 FY 1994 Org 0481**

1	Debt Service (R)	040	\$	2,058,924
2	Capital Repairs and			
3	Alterations (R)	251		1,915,660
4	Miscellaneous Projects (R)	252		1,171,790
5	Total		\$	5,146,374

- 6 Any unexpended balances remaining in the prior
 7 years' and 1992-93 appropriations are hereby reapprop-
 8 riated for expenditure during the fiscal year 1993-94.
- 9 The total amount of this appropriation shall be paid
 10 from the special capital improvement fund created in
 11 section eight, article ten, chapter eighteen-b of the code.
 12 Projects are to be paid on a cash basis and made
 13 available from the date of passage.

135—State College and University Systems—

State System Registration Fee—

Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

“Former” Account No. 8845

“WVFIMS” Account No.

Fund 4033 FY 1994 Org 0453

- 1 Any unexpended balances remaining in the prior
 2 years' and 1992-93 appropriations are hereby reapprop-
 3 riated for expenditure during the fiscal year 1993-94.
- 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.

136—State College System—

State System Tuition Fee—

Special Capital Improvement Fund

(Capital Improvement and Bond Retirement Fund)

(WV Code Chapters 18 and 18B)

“Former” Account No. 8855

“WVFIMS” Account No.

Fund 4290 FY 1994 Org 0481

1	Debt Service (R)	040	\$	2,696,096
2	Capital Improvements (New) (R) ..	259		1,890,092
3	Building and Campus			

4	Renewal (R)	385	3,115,660
5	Facilities Planning		
6	and Administration (R)	386	190,000
7	SATNET Fiber Optic System	457	108,000
8	Total		<u>\$ 7,999,848</u>

9 Any unexpended balances remaining in the prior
10 years' and 1992-93 appropriations are hereby reapprop-
11 riated for expenditure during the fiscal year 1993-94.

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.

137—State College and University Systems—

State Systems Tuition Fee—

Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

“Former” Account No. 8860

“WVFIMS” Account No.

Fund 4041 FY 1994 Org 0453

1 Any unexpended balances remaining in the prior
2 years' and 1992-93 appropriations are hereby reapprop-
3 riated for expenditure during the fiscal year 1993-94.

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.

138—State University System—

State System Tuition Fee—

Special Capital Improvement Fund

(Capital Improvement and Bond Retirement Fund)

(WV Code Chapters 18 and 18B)

“Former” Account No. 8865

"WVFIMS" Account No.

Fund 4008 FY 1994 Org 0461

1	Debt Service (R)	040	\$	5,078,843
2	Building and Campus			
3	Renewal (R)	258		10,200,000
4	Facilities Planning and			
5	Administration (R)	386		750,000
6	Computer and Telecom-			
7	munications Technology	438		<u>1,603,472</u>
8	Total		\$	17,632,315

9 Any unexpended balances remaining in the prior
 10 years' and the 1992-93 appropriations are hereby
 11 reappropriated for expenditure during the fiscal year
 12 1993-94.

13 The total amount of this appropriation shall be paid
 14 from the special capital improvement fund created in
 15 article twelve-b, chapter eighteen of the code. Projects
 16 are to be paid on a cash basis and made available from
 17 the date of passage.

139—State University System—**West Virginia University Health Sciences Center****Spending Authority**

(WV Code Chapters 18 and 18B)

"Former" Account No. 9280

"WVFIMS" Account No.

Fund 4179 FY 1994 Org 0463

1	Unclassified—Total	096	\$	14,974,000
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140—Vice Chancellor for Health Sciences—**Health Care Reform Studies**

(WV Code Chapter 18)

"Former" Account No. 9285

"WVFIMS" Account No.

Fund FY 1994 Org

1 Unclassified—Total 096 \$ 220,000

2 Pursuant to section two, article two, chapter twelve
 3 of the code, the above funds are to be transferred from
 4 account no. 8549, health care cost review authority.

**DEPARTMENT OF HEALTH
 AND HUMAN RESOURCES**

141—Division of Health—

Hepatitis B Vaccine

(WV Code Chapter 16)

“Former” Account No. 8214

“WVFIMS” Account No.

Fund 5103 FY 1994 Org 0506

1	Personal Services	001	\$	30,000
2	Employee Benefits	010		9,795
3	Unclassified	099		<u>680,000</u>
4	Total		\$	719,795

142—Board of Barbers and Cosmetologists

(WV Code Chapters 16 and 30)

“Former” Account No. 8220

“WVFIMS” Account No.

Fund 5425 FY 1994 Org 0505

1	Personal Services	001	\$	156,120
2	Annual Increment	004		2,672
3	Employee Benefits	010		51,630
4	Unclassified	099		<u>103,550</u>
5	Total		\$	313,972

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.

**143—Division of Health—
Vital Statistics**

(WV Code Chapter 16)

“Former” Account No. 8236

“WVFIMS” Account No.

Fund 5144 FY 1994 Org 0506

1	Personal Services	001	\$	195,000
2	Annual Increment	004		5,112
3	Employee Benefits	010		86,271
4	Unclassified	099		<u>82,504</u>
5	Total		\$	368,887

144—Hospital Finance Authority

(WV Code Chapter 16)

“Former” Account No. 8330

“WVFIMS” Account No.

Fund 5475 FY 1994 Org 0509

1	Personal Services	001	\$	47,619
2	Annual Increment	004		108
3	Employee Benefits	010		14,784
4	Unclassified	099		<u>67,116</u>
5	Total		\$	129,627

6 The total amount of this appropriation shall be paid
7 from the special revenue fund out of fees and collections
8 as provided by article twenty-nine-a, chapter sixteen of
9 the code.

145—Division of Health—

Hospital Services Revenue Account

(Special Fund)

(Capital Improvement, Renovation and Operations)

(WV Code Chapter 16)

"Former" Account No. 8500

"WVFIMS" Account No.

Fund 5156 FY 1994 Org 0506

1	Debt Service (R)	040	\$	2,740,000
2	Institutional Facilities			
3	Operations (R)	335		29,153,198
4	Medical Services Trust			
5	Fund—Transfer	512		<u>22,020,000</u>
6	Total		\$	53,913,198

7 Any unexpended balance remaining in the appropri-
 8 ation for hospital services revenue account at the close
 9 of the fiscal year 1992-93 is hereby reappropriated for
 10 expenditure during the fiscal year 1993-94, except for
 11 account no. 8500-18 (fiscal year 1989-90) and account no.
 12 8500-52 (fiscal year 1991-92) which shall expire on June
 13 30, 1993.

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 for operating expenses and
 18 for improvements in connection with existing facilities
 19 and bond payments, community based mental health
 20 services needed for patients at Weston state hospital,
 21 and disproportionate share hospital transfers.

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).

146—Division of Health—**Laboratory Services**

(WV Code Chapter 16)

"Former" Account No. 8509

"WVFIMS" Account No.

Fund 5163 FY 1994 Org 0506

1	Personal Services	001	\$	402,768
2	Annual Increment	004		5,004
3	Employee Benefits	010		131,868
4	Unclassified	099		449,900
5	Total		\$	989,540

147—Division of Health—**Health Facility Licensing**

(WV Code Chapter 16)

“Former” Account No. 8529**“WVFIMS” Account No.****Fund 5172 FY 1994 Org 0506**

1	Personal Services	001	\$	157,152
2	Annual Increment	004		684
3	Employee Benefits	010		51,227
4	Unclassified	099		85,200
5	Total		\$	294,263

148—Health Care Cost Review Authority

(WV Code Chapter 16)

“Former” Account No. 8564**“WVFIMS” Account No.****Fund 5375 FY 1994 Org 0507**

1	Personal Services	001	\$	944,477
2	Annual Increment	004		7,308
3	Employee Benefits	010		305,638
4	Unclassified	099		1,088,157
5	Health Care Planning			
6	Commission—Transfer	263		-0-
7	Vice Chancellor for Health			
8	Sciences Health Care			
9	Reform Studies—Transfer	513		220,000
10	Total		\$	2,565,580

11 The above appropriation is to be expended in accor-
 12 dance with and pursuant to the provisions of article

13 twenty-nine-b, chapter sixteen of the code and from the
 14 special revolving fund designated health care cost
 15 review fund.

16 The appropriation for health care reform studies shall
 17 be transferred to the vice chancellor for health science—
 18 health care reform studies (account no. 9290) upon the
 19 written request of the vice chancellor for health
 20 sciences.

**149—Division of Human Services—
 Physician Provider Medicaid Enhancement Tax
 (Special Fund)**

(WV Code Chapters 9 and 11)

“Former” Account No. 9122

“WVFIMS” Account No.

Fund 5086 FY 1994 Org 0511

1	Physician Provider Medicaid			
2	Enhancement Tax—Total	264	\$	-0-

**150—Division of Human Services—
 General Medicaid Enhancement Tax
 (Special Fund)**

(WV Code Chapters 9 and 11)

“Former” Account No. 9123

“WVFIMS” Account No.

Fund 5085 FY 1994 Org 0511

1	General Medicaid Enhance-			
2	ment Tax—Total	265	\$	-0-

**151—Division of Human Services—
 Outpatient Medicaid Enhancement Tax
 (Special Fund)**

(WV Code Chapters 9 and 11)

"Former" Account No. 9124

"WVFIMS" Account No.

Fund 5087 FY 1994 Org 0511

1	Outpatient Medicaid			
2	Enhancement Tax—Total	266	\$	-0-

**152—Division of Human Services—
Dentist Medicaid Enhancement Tax
(Special Fund)**

(WV Code Chapters 9 and 11)

"Former" Account No. 9125

"WVFIMS" Account No.

Fund 5088 FY 1994 Org 0511

1	Dentist Medicaid			
2	Enhancement Tax—Total	267	\$	-0-

**153—Division of Human Services—
Ambulance Medicaid Enhancement Tax
(Special Fund)**

(WV Code Chapters 9 and 11)

"Former" Account No. 9126

"WVFIMS" Account No.

Fund 5089 FY 1994 Org 0511

1	Ambulance Service Provider			
2	Medicaid Enhancement Tax—			
3	Total	268	\$	-0-

**154—Division of Human Services—
Medicaid State Share Fund
(WV Code Chapter 11)**

"Former" Account No. 9175

"WVFIMS" Account No.

Fund 5090 FY 1994 Org 0511

1 Unclassified—Total \$ 106,700,000

2 From the above appropriation, for the Division of
 3 Human Services—Medicaid State Share Fund, an
 4 amount not to exceed three hundred fifty thousand
 5 dollars shall be used for administrative purposes, of
 6 which an amount not to exceed one hundred fifty
 7 thousand dollars shall be transferred to a special
 8 revenue account in the treasury for use by the depart-
 9 ment of tax and revenue and an amount not to exceed
 10 two hundred thousand dollars shall be transferred to a
 11 special revenue account in the treasury for use by the
 12 department of health and human resources. The re-
 13 mainder of all moneys deposited in the fund shall be
 14 transferred to the West Virginia Medical Services
 15 Fund.

**DEPARTMENT OF MILITARY AFFAIRS
 AND PUBLIC SAFETY**

155—Regional Jail and Correctional

Facility Authority

(WV Code Chapter 31)

“Former” Account No. 8051

“WVFIMS” Account No.

Fund 6675 FY 1994 Org 0615

1	Personal Services	001	\$	412,113
2	Annual Increment	004		4,500
3	Employee Benefits	010		143,329
4	Debt Service	040		10,000,000
5	Unclassified	099		200,423
6	Total		\$	10,760,365

156—Division of Veterans' Affairs—

Veterans' Home

(WV Code Chapter 19A)

“Former” Account No. 8261

“WVFIMS” Account No.

Fund 6754 FY 1994 Org 0618

1	Personal Services	001	\$	616,400
2	Annual Increment	004		8,208
3	Employee Benefits	010		245,645
4	Total		\$	870,253

157—Division of Public Safety—

Motor Vehicle Inspection Fund

(WV Code Chapter 17C)

“Former” Account No. 8350

“WVFIMS” Account No.

Fund 6501 FY 1994 Org 0612

1	Personal Services	001	\$	536,004
2	Annual Increment	004		1,548
3	Employee Benefits	010		150,379
4	Unclassified	099		184,516
5	Total		\$	872,447

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.

158—Division of Public Safety—

Barracks Construction

(WV Code Chapter 17C)

“Former” Account No. 8352

“WVFIMS” Account No.

Fund 6511 FY 1994 Org 0612

1	Personal Services	001	\$	-0-
2	Annual Increment	004		-0-
3	Employee Benefits	010		-0-
4	Unclassified	099		-0-
5	Total		\$	-0-

**159—Division of Public Safety—
Surplus Real Property Proceeds Fund**

(WV Code Chapter 15)

Account No. 8354

“WVFIMS” Account No.

Fund FY 1994 Org

1 Unclassified—Total \$ 181,000

**160—Division of Public Safety—
Drunk Driving Prevention Fund**

(WV Code Chapter 15)

“Former” Account No. 8355

“WVFIMS” Account No.

Fund 6513 FY 1994 Org 0612

1 Unclassified—Total 096 \$ 600,000

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.

161—State Armory Board—

General Armory Fund

(WV Code Chapter 15)

“Former” Account No. 8446

“WVFIMS” Account No.

Fund 6102 FY 1994 Org 0604

1 Unclassified—Total 096 \$ 310,000

162—Fire Commission—

Fire Marshal Fees

(WV Code Chapter 29)

"Former" Account No. 8465**"WVFIMS" Account No.****Fund 6152 FY 1994 Org 0619**

1	Personal Services	001	\$	287,660
2	Annual Increment	004		3,132
3	Employee Benefits	010		109,405
4	Unclassified	099		<u>230,386</u>
5	Total		\$	630,583

6 Any unexpended cash balance remaining in account
 7 no. 8465-99 at the close of the fiscal year 1992-93 is
 8 hereby available for expenditure as part of the fiscal
 9 year 1993-94 appropriation.

DEPARTMENT OF TAX AND REVENUE**163—Insurance Commission—****Examination Revolving Fund**

(WV Code Chapter 33)

"Former" Account No. 8014**"WVFIMS" Account No.****Fund 7150 FY 1994 Org 0704**

1	Personal Services	001	\$	251,000
2	Annual Increment	004		1,224
3	Employee Benefits	010		70,565
4	Unclassified	099		<u>177,211</u>
5	Total		\$	500,000

164—Insurance Commission—**Consumer Advocate**

(WV Code Chapter 33)

"Former" Account No. 8015**"WVFIMS" Account No.****Fund 7151 FY 1994 Org 0704**

1600	APPROPRIATIONS		[Ch. 1
1	Personal Services	001	\$ 72,500
2	Annual Increment	004	216
3	Employee Benefits	010	29,046
4	Unclassified	099	120,993
5	Total		\$ 222,755

165—Insurance Commission

(WV Code Chapter 33)

“Former” Account No. 8016

“WVFIMS” Account No.

Fund 7152 FY 1994 Org 0704

1	Personal Services	001	\$ 1,286,088
2	Annual Increment	004	14,904
3	Employee Benefits	010	461,106
4	Unclassified	099	545,096
5	Health Care Planning		
6	Commission—Transfer	263	-0-
7	Total		\$ 2,307,194

8 The total amount of this appropriation shall be paid
9 from a special revenue fund out of collections of fees and
10 charges as provided by law.

166—Racing Commission

(WV Code Chapter 19)

“Former” Account No. 8080

“WVFIMS” Account No.

Fund 7300 FY 1994 Org 0707

1	Medical Expenses—Total	245	\$ 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.

**167—Racing Commission—
Administration and Promotion
(WV Code Chapter 19)**

“Former” Account No. 8082

“WVFIMS” Account No.

Fund 7304 FY 1994 Org 0707

1	Personal Services	001	\$	51,200
2	Annual Increment	004		432
3	Employee Benefits	010		16,044
4	Unclassified	099		47,408
5	Total		\$	115,084

**168—Racing Commission
General Administration
(WV Code Chapter 19)**

“Former” Account No. 8083

“WVFIMS” Account No.

Fund 7305 FY 1994 Org 0707

1	Personal Services	001	\$	977,500
2	Annual Increment	004		8,924
3	Employee Benefits	010		252,996
4	Unclassified	099		65,098
5	Total		\$	1,304,518

**169—Tax Division—
Office of Chief Inspector
(WV Code Chapter 6)**

“Former” Account No. 8091

“WVFIMS” Account No.

Fund 7067 FY 1994 Org 0702

1	Personal Services	001	\$	1,368,000
2	Annual Increment	004		15,768

3	Employee Benefits	010		429,203
4	Unclassified	099		379,300
5	Total		\$	2,192,271

170—Municipal Bond Commission

(WV Code Chapter 13)

“Former” Account No. 8340

“WVFIMS” Account No.

Fund 7253 FY 1994 Org 0706

1	Personal Services	001	\$	102,270
2	Annual Increment	004		1,620
3	Employee Benefits	010		35,200
4	Unclassified	099		39,850
5	Total		\$	178,940

171—Alcohol Beverage Control Administration—**Wine License Special Fund**

(WV Code Chapter 60)

“Former” Account No. 8592

“WVFIMS” Account No.

Fund 7351 FY 1994 Org 0708

1	Personal Services	001	\$	180,908
2	Annual Increment	004		2,304
3	Employee Benefits	010		55,320
4	Unclassified	099		171,484
5	Total		\$	410,016

172—Alcohol Beverage Control Administration

(WV Code Chapter 60)

“Former” Account No. 9270

“WVFIMS” Account No.

Fund 7352 FY 1994 Org 0708

1	Personal Services	001	\$	2,541,656
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2	Annual Increment	004	47,592
3	Employee Benefits	010	1,339,763
4	Unclassified	099	<u>2,172,970</u>
5	Total		\$ 6,101,981

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

173—Division of Motor Vehicles—

Driver's License Reinstatement Fund

(WV Code Chapter 17B)

“Former” Account No. 8422

“WVFIMS” Account No.

Fund 8213 FY 1994 Org 0802

1	Personal Services	001	\$ 171,068
2	Annual Increment	004	2,376
3	Employee Benefits	010	66,347
4	Unclassified	099	<u>113,013</u>
5	Total		\$ 352,804

174—Division of Motor Vehicles—

Driver Rehabilitation

(WV Code Chapter 17C)

“Former” Account No. 8423

“WVFIMS” Account No.

Fund 8214 FY 1994 Org 0802

1	Personal Services	001	\$ 54,766
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2	Annual Increment	004		756
3	Employee Benefits	010		22,537
4	Unclassified	099		508,170
5	Total		\$	586,229

175—Division of Motor Vehicles—**Insurance Certificate Fees**

(WV Code Chapter 20)

“Former” Account No. 8424

“WVFIMS” Account No.

Fund 8215 FY 1994 Org 0802

1	Personal Services	001	\$	509,152
2	Annual Increment	004		8,928
3	Employee Benefits	010		230,526
4	Unclassified	099		149,288
5	Total		\$	897,894

176—Division of Motor Vehicles—**Motorboat Licenses**

(WV Code Chapter 20)

“Former” Account No. 8425

“WVFIMS” Account No.

Fund 8216 FY 1994 Org 0802

1	Personal Services	001	\$	65,500
2	Annual Increment	004		1,980
3	Employee Benefits	010		25,853
4	Unclassified	099		44,340
5	Total		\$	137,673

177—Division of Motor Vehicles—**Returned Check Fees**

(WV Code Chapter 17)

“Former” Account No. 8426

"WVFIMS" Account No.**Fund 8217 FY 1994 Org 0802**

1	Personal Services	001	\$	14,250
2	Annual Increment	004		180
3	Employee Benefits	010		5,110
4	Unclassified	099		8,470
5	Total		\$	28,010

MISCELLANEOUS BOARDS AND COMMISSIONS**178—Real Estate Commission**

(WV Code Chapter 47)

"Former" Account No. 8010**"WVFIMS" Account No.****Fund 8635 FY 1994 Org 0927**

1	Personal Services	001	\$	264,332
2	Annual Increment	004		1,980
3	Employee Benefits	010		87,990
4	Unclassified	099		204,623
5	Total		\$	558,925

- 6 The total amount of this appropriation shall be paid
7 out of collections of license fees as provided by law.

**179—West Virginia Board of Examiners for
Speech-Language Pathology and Audiology**

(WV Code Chapter 30)

"Former" Account No. 8113**"WVFIMS" Account No.****Fund 8646 FY 1994 Org 0930**

1	Unclassified—Total	096	\$	20,000
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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.

180—West Virginia Cable Television—**Advisory Board**

(WV Code Chapter 5)

“Former” Account No. 8173

“WVFIMS” Account No.

Fund 8609 FY 1994 Org 0924

1	Personal Services	001	\$	167,200
2	Annual Increment	004		2,160
3	Employee Benefits	010		43,542
4	Unclassified	099		60,268
5	Total		\$	273,170

181—Public Service Commission

(WV Code Chapter 24)

“Former” Account No. 8280

“WVFIMS” Account No.

Fund 8623 FY 1994 Org 0926

1	Personal Services	001	\$	5,100,000
2	Annual Increment	004		42,578
3	Employee Benefits	010		1,670,352
4	Unclassified	099		1,790,238
5	765 KV Transmission Line Study ..	485		150,000
6	Total		\$	8,753,168

7 The total amount of this appropriation shall be paid
 8 from a special revenue fund out of collections for special
 9 license fees from public service corporations as provided
 10 by law.

182—Public Service Commission—**Gas Pipeline Division**

(WV Code Chapter 24B)

“Former” Account No. 8285

“WVFIMS” Account No.

Fund 8624 FY 1994 Org 0926

1	Personal Services	001	\$	124,323
2	Annual Increment	004		1,200
3	Employee Benefits	010		32,613
4	Unclassified	099		<u>70,369</u>
5	Total		\$	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.

183—Public Service Commission—**Motor Carrier Division**

(WV Code Chapter 24A)

“Former” Account No. 8290

“WVFIMS” Account No.

Fund 8625 FY 1994 Org 0926

1	Personal Services	001	\$	1,225,214
2	Annual Increment	004		18,000
3	Employee Benefits	010		384,121
4	Unclassified	099		<u>531,355</u>
5	Total		\$	2,158,690

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.

184—Public Service Commission—**Consumer Advocate**

(WV Code Chapter 24)

“Former” Account No. 8295

“WVFIMS” Account No.

Fund 8627 FY 1994 Org 0926

1	Personal Services	001	\$	328,195
2	Annual Increment	004		2,160
3	Employee Benefits	010		101,802
4	Unclassified	099		286,314
5	Total		\$	718,471

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	Total TITLE II, Section 3—			
2	Other Funds		\$	<u>352,446,616</u>

1 **Sec. 4. Appropriations from lottery net profits.—**
2 Net profits of the lottery, not to exceed thirty-two
3 million, seven hundred thousand dollars, are to be
4 deposited by the lottery director to the following
5 accounts in the amounts indicated. The auditor shall
6 prorate each deposit of net profits by the lottery director
7 among account nos. 8209, 8243, 8546, 8825 and 9132 in
8 the proportion the appropriation for each account bears
9 to the total of the appropriations for the five accounts.

185—Commission on Aging

(WV Code Chapter 29)

“Former” Account No. 8209

“WVFIMS” Account No.

Fund 5405 FY 1994 Org 0508

			Act-	Lottery
			ivity	Funds
1	In-Home Services for			
2	Senior Citizens—Total	287	\$	600,000

186—State Department of Education

(WV Code Chapters 18 and 18A)

“Former” Account No. 8243

"WVFIMS" Account No.**Fund 3951 FY 1994 Org 0402**

1	Elementary Computer		
2	Education—Total(R)	440	\$ 6,520,000
3	Any unexpended balance remaining in the appropriation Elementary Computer Education (account no. 8243-06) at the close of the fiscal year 1992-93 is hereby reappropriated for expenditure during the fiscal year 1993-94.		

187—Division of Tourism and Parks

(WV Code Chapter 5B)

"Former" Account No. 8546**"WVFIMS" Account No.****Fund 3067 FY 1994 Org 0304**

1	Unclassified (R)	099	\$ 11,020,000
2	Capital Outlay—Parks (R)	288	2,340,000
3	Coopers Rock Land Acquisition ...	439	<u>200,000</u>
4	Total		\$ 13,560,000

5 Any unexpended balances remaining in the appropriations for Unclassified (account no. 8546-06) and Capital
6 Outlay—Parks (account no. 8546-26) at the close of the
7 fiscal year 1992-93 are hereby reappropriated for
8 expenditure during the fiscal year 1993-94.
9

**188—Board of Trustees of the
University System of West Virginia and**

**Board of Directors of the
State College System**

(WV Code Chapter 18B)

"Former" Account No. 8825**"WVFIMS" Account No.****Fund 4030 FY 1994 Org 0453**

1 Unclassified—Total 096 \$ 3,520,000

189—Division of Human Services

(WV Code Chapters 9, 48 and 49)

“Former” Account No. 9132

“WVFIMS” Account No.

Fund 5063 FY 1994 Org 0511

1 Health Care and Title
2 XIX Waiver for Senior
3 Citizens—Total 434 \$ 8,500,000

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.

8 Total TITLE II, Section 4—
9 Lottery Funds \$ 32,700,000

1 **Sec. 5. Appropriations of federal funds.**—In
2 accordance with article eleven, chapter four of the code,
3 from federal funds there are hereby appropriated
4 conditionally upon the fulfillment of the provisions set
5 forth in article two, chapter five-a of the code the
6 following amounts, as itemized, for expenditure during
7 the fiscal year one thousand nine hundred ninety-four.

LEGISLATIVE

190—Crime Victims Compensation Fund

(WV Code Chapter 14)

“Former” Account No. 7907

“WVFIMS” Account No.

Fund 8738 FY 1994 Org 2300

		Act- ivity	Federal Funds
1	Unclassified—Total	096	\$ 550,000

EXECUTIVE

191—Governor’s Office—

Governor’s Cabinet on Children and Families

(WV Code Chapter 5)

“Former” Account No. 7753

“WVFIMS” Account No.

Fund 8792 FY 1994 Org 0100

1 Unclassified—Total 096 \$ 59,697

192—Department of Agriculture

(WV Code Chapter 19)

“Former” Account No. 7911

“WVFIMS” Account No.

Fund 8736 FY 1994 Org 1400

1 Unclassified—Total 096 \$ 1,804,318

193—Department of Agriculture—

Meat Inspection

(WV Code Chapter 19)

“Former” Account No. 7918

“WVFIMS” Account No.

Fund 8737 FY 1994 Org 1400

1 Unclassified—Total 096 \$ 468,729

DEPARTMENT OF COMMERCE, LABOR

AND ENVIRONMENTAL RESOURCES

194—West Virginia

Development Office

(WV Code Chapter 5B)

“Former” Account No. 7755

“WVFIMS” Account No.

Fund 8705 FY 1994 Org 0307

1 Unclassified—Total 096 \$ 14,968,516

195—Division of Miners’ Health,**Safety and Training**

(WV Code Chapter 22)

“Former” Account No. 7868

“WVFIMS” Account No.

Fund 8709 FY 1994 Org 0314

1 Unclassified—Total 096 \$ 418,984

196—Division of Labor

(WV Code Chapters 21 and 47)

“Former” Account No. 7884

“WVFIMS” Account No.

Fund 8706 FY 1994 Org 0308

1 Unclassified—Total 096 \$ 317,883

197—Division of Environmental Protection

(WV Code Chapter 22)

“Former” Account No. 7897

“WVFIMS” Account No.

Fund 8708 FY 1994 Org 0313

1 Unclassified—Total 096 \$102,365,439

198—Division of Forestry

(WV Code Chapter 19)

“Former” Account No. 7924

“WVFIMS” Account No.

Fund 8703 FY 1994 Org 0305

1 Unclassified—Total 096 \$ 2,442,800

199—Geological and Economic Survey

(WV Code Chapter 29)

“Former” Account No. 7929

“WVFIMS” Account No.

Fund 8704 FY 1994 Org 0306

1 Unclassified—Total 096 \$ 619,793

200—Division of Natural Resources

(WV Code Chapter 20)

“Former” Account No. 7930

“WVFIMS” Account No.

Fund 8707 FY 1994 Org 0310

1 Unclassified—Total 096 \$ 5,497,991

DEPARTMENT OF EDUCATION**201—State Department of Education**

(WV Code Chapters 18 and 18A)

“Former” Account No. 7772

“WVFIMS” Account No.

Fund 8712 FY 1994 Org 0402

1 Unclassified—Total 096 \$ 5,293,404

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

(WV Code Chapters 18 and 18A)

“Former” Account No. 7783

“WVFIMS” Account No.

Fund 8713 FY 1994 Org 0402

1 Unclassified—Total 096 \$ 52,930,750

203—State Board of Education—**Vocational Division**

(WV Code Chapters 18 and 18A)

“Former” Account No. 7794

“WVFIMS” Account No.

Fund 8714 FY 1994 Org 0402

1 Unclassified—Total 096 \$ 14,500,000

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

(WV Code Chapters 18 and 18A)

“Former” Account No. 7805

“WVFIMS” Account No.

Fund 8715 FY 1994 Org 0402

1 Unclassified—Total 096 \$ 26,490,000

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

(WV Code Chapters 18 and 18A)

“Former” Account No. 7812

“WVFIMS” Account No.

Fund 8716 FY 1994 Org 0402

1 Unclassified—Total 096 \$ 2,000,000

**206—State Board of Rehabilitation—
Division of Rehabilitation Services
(WV Code Chapter 18)**

“Former” Account No. 7873

“WVFIMS” Account No.

Fund 8734 FY 1994 Org 0932

1 Unclassified—Total 096 \$ 34,632,283

**DEPARTMENT OF EDUCATION
AND THE ARTS**

**207—Educational Broadcasting Authority
(WV Code Chapter 10)**

“Former” Account No. 7803

“WVFIMS” Account No.

Fund 8721 FY 1994 Org 0439

1 Unclassified—Total 096 \$ 800,000

**208—Library Commission
(WV Code Chapter 10)**

“Former” Account No. 7817

“WVFIMS” Account No.

Fund 8720 FY 1994 Org 0433

1 Unclassified—Total 096 \$ 1,800,673

**209—Division of Culture and History
(WV Code Chapter 29)**

“Former” Account No. 7828

“WVFIMS” Account No.

Fund 8718 FY 1994 Org 0432

1 Unclassified—Total 096 \$ 1,240,503

**DEPARTMENT OF HEALTH AND
HUMAN RESOURCES**

210—Division of Human Services

(WV Code Chapters 9, 48 and 49)

“Former” Account No. 7851

“WVFIMS” Account No.

Fund 8722 FY 1994 Org 0511

1	Unclassified	099	\$	60,070,130
2	OSCAR and RAPIDS	188		15,061,621
3	Medical Services	189		1,213,006,268
4	Family Law Masters	190		320,000
5	Public Assistance	193		103,500,000
6	JOBS Program	197		9,500,000
7	Education Medical Services	198		<u>1,200,000</u>
8	Total		\$	1,402,658,019

211—Consolidated Medical Service Fund

“Former” Account No. 7839

“WVFIMS” Account No.

Fund 8723 FY 1994 Org 0506

1 Unclassified—Total 096 \$ 38,699,878

212—Commission on Aging

(WV Code Chapter 29)

“Former” Account No. 7862

“WVFIMS” Account No.

Fund 8724 FY 1994 Org 0508

1 Unclassified—Total 096 \$ 11,260,000

213—Human Rights Commission

(WV Code Chapter 5)

"Former" Account No. 7968

"WVFIMS" Account No.

Fund 8725 FY 1994 Org 0510

1 Unclassified—Total 096 \$ 151,352

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY****214—Office of Emergency Services**

(WV Code Chapter 15)

"Former" Account No. 7761

"WVFIMS" Account No.

Fund 8727 FY 1994 Org 0606

1 Unclassified—Total 096 \$ 3,150,506

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

(WV Code Chapter 9A)

"Former" Account No. 7840

"WVFIMS" Account No.

Fund 8728 FY 1994 Org 0618

1 Unclassified—Total 096 \$ 917,535

216—Division of Public Safety

(WV Code Chapter 15)

"Former" Account No. 7946

"WVFIMS" Account No.

Fund 8741 FY 1994 Org 0612

1 Unclassified—Total 096 \$ 968,080

217—Adjutant General—State Militia

(WV Code Chapter 15)

“Former” Account No. 7957

“WVFIMS” Account No.

Fund 8726 FY 1994 Org 0603

1 Unclassified—Total 096 \$ 5,708,492

DEPARTMENT OF TAX AND REVENUE**218—Tax Division**

(WV Code Chapter 11)

“Former” Account No. 7763

“WVFIMS” Account No.

Fund 7069 FY 1994 Org 0702

1 Unclassified—Total 096 \$ 50,000

DEPARTMENT OF TRANSPORTATION**219—Railroad Maintenance Authority**

(WV Code Chapter 29)

“Former” Account No. 7932

“WVFIMS” Account No.

Fund 8733 FY 1994 Org 0804

1 Unclassified—Total 096 \$ 337,116

220—Division of Motor Vehicles

(WV Code Chapters 17, 17A, 17B, 17C, 20 and 24)

“Former” Account No. 7970

“WVFIMS” Account No.

Fund 8787 FY 1994 Org 0802

1 Unclassified—Total 096 \$ 199,950

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

(WV Code Chapter 5F)

“Former” Account No. 7982

“WVFIMS” Account No.

Fund 8782 FY 1994 Org 0801

1 Unclassified—Total 096 \$ 900,000

222—Division of Public Transit

(WV Code Chapter 17)

“Former” Account No. 7983

“WVFIMS” Account No.

Fund 8745 FY 1994 Org 0805

1 Unclassified—Total 096 \$ 12,256,698

MISCELLANEOUS BOARDS AND COMMISSIONS

223—Public Service Commission—

Motor Carrier Division

(WV Code Chapter 24A)

“Former” Account No. 7993

“WVFIMS” Account No.

Fund 8743 FY 1994 Org 0926

1 Unclassified—Total 096 \$ 417,928

224—Public Service Commission—

Gas Pipeline Division

(WV Code Chapter 24B)

“Former” Account No. 7996

“WVFIMS” Account No.

Fund 8744 FY 1994 Org 0926

1 Unclassified—Total 096 \$ 253,614

2 Total Title II, Section 5—
 3 Federal Funds \$1,747,130,931

1 **Sec. 6. 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 1993-94.

225—West Virginia Development Office—

Community Development

“Former” Account No. 8029

“WVFIMS” Account No.

Fund 8746 FY 1994 Org 0307

1 Unclassified—Total 096 \$ 16,099,000

226—West Virginia Development Office—

Community Service

“Former” Account No. 8031

“WVFIMS” Account No.

Fund 8747 FY 1994 Org 0307

1 Unclassified—Total 096 \$ 6,996,154

227—State Department of Education—

Education Grant

“Former” Account No. 8242

“WVFIMS” Account No.

Fund 8748 FY 1994 Org 0402

1 Unclassified—Total 096 \$ 69,922,000

228—Bureau of Employment Programs—

Job Training Partnership Act

“Former” Account No. 8255

“WVFIMS” Account No.

Fund 8749 FY 1994 Org 0323

1 Unclassified—Total 096 \$ 42,200,644

229—Division of Health—

Substance Abuse Prevention and Treatment

“Former” Account No. 8501

“WVFIMS” Account No.

Fund 8793 FY 1994 Org 0506

1 Unclassified—Total 096 \$ 6,311,527

230—Division of Health—

Maternal and Child Health

“Former” Account No. 8502

“WVFIMS” Account No.

Fund 8750 FY 1994 Org 0506

1 Unclassified—Total 096 \$ 7,000,000

231—Division of Health—

Alcohol, Drug Abuse and Mental Health

“Former” Account No. 8503

“WVFIMS” Account No.

Fund 8751 FY 1994 Org 0506

1 Unclassified—Total 096 \$ 2,200,000

232—Division of Health—

Community Youth Activity Program

“Former” Account No. 8504

“WVFIMS” Account No.

Fund 8752 FY 1994 Org 0506

1 Unclassified—Total 096 \$ 30,000

**233—Division of Health—
Community Mental Health Services**

“Former” Account No. 8505

“WVFIMS” Account No.

Fund 8794 FY 1994 Org 0506

1 Unclassified—Total 096 \$ 2,867,102

234—Division of Health—

Preventive Health

“Former” Account No. 8506

“WVFIMS” Account No.

Fund 8753 FY 1994 Org 0506

1 Unclassified—Total 096 \$ 1,100,000

235—Division of Human Services—

Energy Assistance

“Former” Account No. 9147

“WVFIMS” Account No.

Fund 8755 FY 1994 Org 0511

1 Unclassified—Total 096 \$ 17,000,000

236—Division of Human Services—

Child Care and Development

“Former” Account No. 9149

“WVFIMS” Account No.

Fund 8756 FY 1994 Org 0511

1 Unclassified—Total 096 \$ 6,500,000

237—Division of Human Services—

Social Services

“Former” Account No. 9161

"WVFIMS" Account No.

Fund 8757 FY 1994 Org 0511

1	Unclassified—Total	096	\$ 24,000,000
2	Total TITLE II, Section 6—		
3	Federal Block Grants		<u>\$ 202,226,427</u>

1 **Sec. 7. Awards for claims against the state.—**

2 There are hereby appropriated, for the remainder of the
3 fiscal year 1992-1993 and to remain in effect until June
4 30, 1994, from the fund as designated, in the amounts
5 as specified and for the claimants named in enrolled
6 house bill no. 2686, regular session 1993—crime victims
7 compensation funds of \$285,000.00 for payment of
8 claims against the state.

9 There are hereby appropriated for the fiscal year
10 1993-1994 from the funds as designated, in the amounts
11 as specified and for the claimants as named in enrolled
12 senate bill no. 573, regular session 1993, and enrolled
13 house bill no. 2687, regular session 1993—general
14 revenue funds of \$3,111,517.93.

15 The total of general revenue funds above does not
16 include payment for claims in the amount of \$8,220.00
17 from the senate, account no. 1010; in the amount of
18 \$61,813.61 from the supreme court—general judicial,
19 account no. 1110; and in the amount of \$11,855.77 from
20 the governor's office—civil contingent fund, account no.
21 1240, specifically made payable from the respective
22 appropriations for the current fiscal year 1992-1993.

23 There are hereby appropriated for the fiscal year
24 1993-1994 from the funds as designated, in the amounts
25 as specified and for the claimants as named in enrolled
26 senate bill no. 573, regular session 1993—special
27 revenue funds of \$255,080.16, state road funds of
28 \$1,445,044.30, and workers' compensation funds of
29 \$3,966.59.

1 **Sec. 8. Appropriations from surplus accrued.—**The
2 following items are hereby appropriated from the state
3 fund, general revenue, and are to be available for
4 expenditure during the fiscal year 1993-94 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 appropriations be payable only from
9 surplus accrued as of the thirty-first day of July, one
10 thousand nine hundred ninety-three.

11 In the event that surplus revenues available on the
12 thirty first day of July, one thousand nine hundred
13 ninety-three, are not sufficient to meet all of the
14 appropriations made pursuant to this section, then the
15 appropriations shall be made to the extent that surplus
16 funds are available as of the date mandated and shall
17 be allocated first to provide the necessary funds to meet
18 the first appropriation of this section; next, to provide
19 the funds necessary for the second appropriation of this
20 section; and subsequently to provide the funds necessary
21 for each appropriation in succession before any funds
22 are provided for the next subsequent appropriation.

23 Any surplus balance remaining, after the allocation
24 to meet the appropriations set forth in this section, shall
25 be transferred and made available to the state fund,
26 general revenue, during the fiscal year 1993-94.

238—Department of Agriculture—

Soil Conservation Committee

(WV Code Chapter 19)

“Former” Account No. 5120

“WVFIMS” Account No.

Fund 0132 FY 1994 Org 1400

1 Infrastructure Projects—Total ... 239 \$ 2,100,000

2 The line item above shall be expended to fund grants
3 and loans for water, sewage, and soil conservation
4 projects.

239—Board of Risk and Insurance Management

(WV Code Chapter 29)

"Former" Account No. 2250

"WVFIMS" Account No.

Fund 0217 FY 1994 Org 0218

1	Unclassified—Total		\$	3,000,000
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240—Division of Public Transit

(WV Code Chapter 17)

"Former" Account No. 5380

"WVFIMS" Account No.

Fund 0510 FY 1994 Org 0805

1	Public			
2	Transportation—Total	206	\$	1,000,000

241—Division of Human Services

(WV Code Chapters 9, 48 and 49)

"Former" Account No. 4050

"WVFIMS" Account No.

Fund 0403 FY 1994 Org 0511

1	Repayment of Consolidated			
2	Fund Loan—Total	514	\$	<u>3,900,900</u>
3	Total TITLE II, Section 8—			
4	Surplus Accrued		\$	<u><u>10,000,000</u></u>

1 **Sec. 9. Supplemental and deficiency appropriation.**—From the state fund, general revenue, except as
2 otherwise provided, there is hereby appropriated the
3 following amount, as itemized, for expenditure during
4 the fiscal year 1992-93 to supplement the appropriation
5 for such fiscal year and to be available for expenditure
6 upon date of passage.
7

242—Division of Human Services—

(WV Code Chapters 9, 48, and 49)

“Former” Account No. 4050

“WVFIMS” Account No.

Fund 0403 FY 1994 Org 0511

1	Family Law Masters	190	\$	-0-
2	Total Title II, Section 9—			
3	Supplemental and Deficiency ..			-0-

1 **Sec. 10. Special revenue appropriations.**—There
 2 are hereby appropriated for expenditure during the
 3 fiscal year one thousand nine hundred ninety-four
 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. 11. State improvement fund appropriati-**
 2 **ons.**—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-four,
 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-four 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. 12. 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. 13. 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. 14. 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 super-
6 vision 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
21 or 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. 15. 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. 16. 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. 17. 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.

§1. Constitutionality.

TITLE III—ADMINISTRATION.

1 **Section 1. Appropriations conditional.—**The ex-
2 penditure of the appropriations made by this act, except
3 those appropriations made to the legislative and judicial

4 branches of the state government, are conditioned upon
5 the compliance by the spending unit with the require-
6 ments of article two, chapter five-a of the code.

7 Where spending units or parts of spending units have
8 been absorbed by or combined with other spending
9 units, it is the intent of this act that reappropriations
10 shall be to the succeeding or later spending unit created,
11 unless otherwise indicated.

1 **Sec. 2. Constitutionality.**—If any part of this act is
2 declared unconstitutional by a court of competent
3 jurisdiction, its decision shall not affect any portion of
4 this act which remains, but the remaining portion shall
5 be in full force and effect as if the portion declared
6 unconstitutional had never been a part of the act.

CHAPTER 2

(H. B. 109—By Delegates Kiss, Browning and Rutledge)

[Passed May 26, 1993; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing, expiring and transferring specified amounts from Acct. No. 7030-07, public service corporation taxes; Acct. No. 7030-10, tax forfeitures; Acct. No. 8004-21, board of investments; Acct. No. 8014-99, insurance commission—cash control; Acct. No. 8016-99, insurance commission—cash control; Acct. No. 8121-06, social security contributions; and Acct. No. 8280-99, public service commission—cash control; 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-three, to Acct. No. 4050, department of health and human resources, division of human services, all amending chapter twelve, acts of the Legislature, regular session, one thousand nine hundred ninety-two, known as the budget bill.

WHEREAS, The Legislature finds that the amounts collected in Acct. No. 7030-07, public service corporation taxes;

Acct. No. 7030-10, tax forfeitures; Acct. No. 8004-21, board of investments; Acct. No. 8014-99, insurance commission—cash control; Acct. No. 8016-99, insurance commission—cash control; Acct. No. 8121-06, social security contributions; and Acct. No. 8280-99, public service commission—cash control, exceed the amounts necessary to effectuate the purposes of these funds and should be redesignated; therefore

Be it enacted by the Legislature of West Virginia:

That the amount of two hundred twenty-five thousand one hundred dollars be transferred from Acct. No. 7030-07, public service corporation taxes; the amount of thirty-four thousand four hundred fifty-nine dollars and eighty-nine cents be transferred from Acct. No. 7030-10, tax forfeitures; the amount of four million dollars be transferred from Acct. No. 8004-21, board of investments; the amount of three hundred fifty-three thousand dollars be transferred from Acct. No. 8014-99, insurance commission—cash control; the amount of six hundred fifty thousand dollars be transferred from Acct. No. 8016-99, insurance commission—cash control; the amount of two million five hundred thousand dollars be transferred from Acct. No. 8121-06, social security contributions; and the amount of one million two hundred thousand dollars be transferred from Acct. No. 8280-99, public service commission—cash control, and that said amounts be transferred and added to Acct. No. 4050, department of health and human resources, division of human services, as designated herein, supplementing and amending chapter twelve, acts of the Legislature, one thousand nine hundred ninety-two, as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 Section 1. Appropriations from general revenue.
- 3 DEPARTMENT OF HEALTH AND
- 4 HUMAN RESOURCES
- 5 64—*Division of Human Services*
- 6 (WV Code Chapters 9, 48 and 49)
- 7 Acct. No. 4050

		Federal Funds Fiscal Year 1992-93	General Revenue Fund Fiscal Year 1992-93
8			
9			
10			
11			
12			
13			
14	7 Medical Services	\$ —	\$8,834,559.89
15	8 Family Law Masters	—	128,000.00
16	The purpose of this supplementary appropriation bill		
17	is to transfer specified amounts from the accounts		
18	designated herein to supplement and amend the existing		
19	items of appropriation in Acct. No. 4050, division of		
20	human services, for expenditure in the fiscal year 1992-		
21	1993, with such amounts to be transferred and available		
22	for expenditure upon passage of the bill.		

CHAPTER 3

(H. B. 108—By Delegates Kiss, Browning and Rutledge)

[Passed May 19, 1993; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, and transferring specified unexpended amounts from Acct. No. 8013-10, state lottery fund, 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-three, to Acct. No. 9132, division of human services, all amending chapter twelve, acts of the Legislature, regular session, one thousand nine hundred ninety-two, known as the budget bill.

WHEREAS, The Legislature finds that amounts collected in Acct. No. 8013-10, state lottery fund, 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 five hundred thousand dollars be transferred from Acct. No. 8013-10, state lottery

fund, and that said amount be added to the line item in Acct. No. 9132, division of human services, as designated herein and as set forth in chapter twelve, acts of the Legislature, one thousand nine hundred ninety-two, as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 5. Appropriations from lottery net profits.

3 180—*Division of Human Services*

4 (WV Code Chapters 9, 48 and 49)

5 Acct. No. 9132

6 TO BE PAID FROM LOTTERY NET PROFITS

7 1 Health Care and

8 2 Title XIX Waiver for

9 3 Senior Citizens—Total \$ 1,500,000

10 The purpose of this bill is to add one million five
11 hundred thousand dollars to the line item "Health Care
12 and Title XIX Waiver for Senior Citizens" in Acct. No.
13 9132, division of human services, to be available for
14 expenditure during the fiscal year ending the thirtieth
15 day of June, one thousand nine hundred ninety-three.
16 The funds are to be transferred from Acct. No. 8013-
17 10, state lottery fund.

CHAPTER 4

(Com. Sub. for S. B. 6—By Senators Burdette, Mr. President, and Boley,
By Request of the Executive)

[Passed May 26, 1993; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections five and six, article twenty-three, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two-a, article nine, chapter eleven of said code; to amend and reenact section ten, article twenty, chapter forty-seven of said code; to amend and reenact section eleven, article twenty-one of

said chapter; to amend and reenact sections two, three, eight, nine, ten and eleven, article twenty-three of said chapter; and to further amend said article by adding thereto two new sections, designated sections seven-a and fourteen, all relating to charitable bingo and charitable raffle boards and games; repealing provisions requiring indicia on charitable raffle boards or games; providing for the deposit of specified amount of fees to special revenue account; providing for remittance of balance in special revenue account to be transferred to general revenue; increasing the limits on prizes awarded in bingo and charitable raffles; providing definitions for retail value for the purpose of imposition of fee; amending definition of charitable raffle board or game; requiring serial numbers or other form of verification to be affixed to charitable raffle boards or games; requiring wholesalers and distributors be licensed to do business in this state; requiring the appointment of an agent for service of process in order to do business in state; providing criminal penalties for violations of article; allowing emergency rule making for initial promulgation; and specifying an effective date for new article relating to charitable raffle boards and games.

Be it enacted by the Legislature of West Virginia:

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

Chapter

11. Taxation.

47. Regulation of Trade.

CHAPTER 11. TAXATION.**ARTICLE 9. CRIMES AND PENALTIES.****§11-9-2a. Criminal investigation section established; funding of same.**

1 A criminal investigation section consisting of no more
2 than twelve investigators plus necessary support staff is
3 hereby established within the state tax division for the
4 purpose of assuring compliance with laws, rules and
5 regulations pertaining to the taxes or credits established
6 by articles eleven, eleven-a, eleven-b, twelve, twelve-a,
7 twelve-b, thirteen, thirteen-a, thirteen-b, thirteen-c,
8 thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-h,
9 fourteen, fourteen-a, fifteen, fifteen-a, sixteen, seven-
10 teen, eighteen, nineteen, twenty-three, twenty-four and
11 twenty-six of this chapter, and articles twenty, twenty-
12 one and twenty-three, chapter forty-seven of this code.
13 Charitable bingo fees imposed under sections six and
14 six-a, article twenty of said chapter; charitable raffle
15 fees imposed under section seven, article twenty-one of
16 said chapter; and charitable raffle boards and games
17 fees imposed under section three, article twenty-three of
18 said chapter in an amount not to exceed three hundred
19 fifty thousand dollars in any fiscal year shall be
20 deposited in a special revenue account established in the
21 office of the treasurer and shall be used to support
22 compliance expenditures relating to the establishment,
23 maintenance and support of such criminal investigation
24 section. Prior to the close of the fiscal year, any moneys
25 in the special revenue account in excess of fifty thousand
26 dollars shall be transferred to the general revenue fund.

27 Any employee of the criminal investigation section so
28 designated by the tax commissioner who shall have a
29 background in accounting and who shall be certified as
30 a law-enforcement officer pursuant to article twenty-
31 nine, chapter thirty of this code, or its equivalent, shall
32 have all the lawful powers delegated to members of the
33 department of public safety except the power to carry
34 firearms to enforce the provisions of this article in any
35 county or municipality of this state. The commissioner
36 shall establish such additional standards as he or she

37 deems applicable or necessary. Any such employee shall,
38 before entering upon the discharge of his or her duties,
39 execute a bond with security in the sum of three
40 thousand five hundred dollars, payable to the state of
41 West Virginia, conditioned for the faithful performance
42 of his or her duties, as such, and such bond shall be
43 approved as to form by the attorney general, and the
44 same shall be filed with the secretary of state and
45 preserved in his or her office. The department of public
46 safety, any county sheriff, or deputy sheriff, or any
47 municipal police officer, upon request by the tax
48 commissioner, is hereby authorized to assist the tax
49 commissioner in enforcing the provisions of this article
50 and the criminal penalty provisions of this article or any
51 article of this chapter administered under this article.

CHAPTER 47. REGULATION OF TRADE.

Article.

20. Charitable Bingo.
21. Charitable Raffles.
23. Charitable Raffle Boards and Games.

ARTICLE 20. CHARITABLE BINGO.

§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 eighty-five percent of the gross proceeds
5 collected during that period: *Provided*, That notwith-
6 standing the foregoing limitation, the total prizes
7 awarded by a licensee, or in the aggregate by two or
8 more limited occasion licensees holding a joint bingo
9 occasion, for any bingo occasion held pursuant to an
10 annual or limited occasion license, may not exceed seven
11 thousand five hundred dollars in value.

12 Prizes may be money or merchandise other than beer,
13 nonintoxicating beer, wine, spirits or alcoholic liquor as
14 defined in section five, article one, chapter sixty of this
15 code. If the prizes are merchandise, the value assigned
16 to them is their fair market value at the time of
17 purchase.

ARTICLE 21. CHARITABLE RAFFLES.**§47-21-11. Limits on prizes awarded — General provisions.**

1 During the period of a license, the total value of all
2 prizes awarded by a licensee shall not exceed in value
3 eighty-five percent of the gross proceeds collected
4 during such period: *Provided*, That notwithstanding the
5 foregoing limitation, the total prizes awarded by a
6 licensee, or in the aggregate by two or more limited
7 occasion licensees holding a joint raffle occasion, for any
8 raffle occasion held pursuant to a limited occasion
9 license, may not exceed in value seven thousand five
10 hundred dollars.

11 Prizes may be money, real or personal property or
12 merchandise other than beer, wine, spirits or alcoholic
13 liquor as defined in section five, article one, chapter
14 sixty of this code. If the prizes are real or personal
15 property or merchandise, the value assigned to them is
16 their fair market value at the time of acquisition for the
17 raffle or at the time of purchase.

ARTICLE 23. CHARITABLE RAFFLE BOARDS AND GAMES.

§47-23-2. Definitions.

§47-23-3. Fees.

§47-23-7a. Requirement of wholesalers and distributors to be licensed to do business in state; resident agent requirement.

§47-23-8. How fee paid; reports required; due date; records to be kept; inspection of records and stocks; examination of witnesses, summons, etc.

§47-23-9. Penalty for failure to file return when no fee due; other offenses; penalties; seizures of illegal boards and games; disposition.

§47-23-10. Transportation of charitable raffle boards and games; forfeitures and sales of charitable raffle boards, charitable raffle games and equipment; criminal sanctions.

§47-23-11. Administration; rule making; required verification.

§47-23-14. Effective date of article.

§47-23-2. Definitions.

1 For purposes of this article, unless specified
2 otherwise:

3 (a) "Commissioner" means tax commissioner of the
4 state of West Virginia, or his delegate.

5 (b) "Retail value" means the actual consideration paid
6 to the wholesaler by the retailer for any raffle boards
7 or games.

8 (c) "Person" means any individual, association, society,
9 incorporated or unincorporated organization, firm,
10 partnership or other nongovernmental entity or
11 institution.

12 (d) "Retailer" means every person engaged in the
13 business of making retail sales of raffle chances except
14 a charitable or public service organization authorized to
15 conduct raffles pursuant to section three, article twenty-
16 one of this chapter.

17 (e) "Charitable raffle board" or "charitable raffle
18 game" means: (1) A board or other device that has many
19 folded printed slips to be pulled from the board or
20 otherwise distributed without a board on payment of a
21 nominal sum in an effort to obtain a slip or chance that
22 entitles the player to a designated prize; (2) a series of
23 paper cards with perforated break-open tabs, a face
24 value of which is covered or otherwise hidden from view
25 to conceal one or more numbers, letters or symbols,
26 which, on payment of a nominal sum, entitles the player
27 to obtain a chance to a designated prize; or (3) such other
28 similar game which may be defined by the state tax
29 commissioner by legislative rule.

30 (f) "Sale" means the transfer of the ownership of
31 tangible personal property for a consideration.

32 (g) "Verification" means a unique manufacture
33 identifiable serial number which is required to be
34 printed on each ticket in a charitable raffle board or
35 charitable raffle game or such other form of identifica-
36 tion as may be prescribed by the tax commissioner upon
37 a showing of undue hardship by the taxpayer: *Provided*,
38 That such other form of identification shall be pres-
39 cribed by rule in accordance with the provisions of
40 article three, chapter twenty-nine-a of this code.

41 (h) "Wholesaler" or "distributor" means any person or
42 entity engaged in the wholesale distribution of charit-
43 able raffle boards or games or similar boards or devices.

44 as defined by the commissioner, and licensed under the
45 provisions of this article, to distribute said devices to
46 charitable raffle boards or games retailers as defined in
47 this article. It also includes anyone who is engaged in
48 the manufacturing, packaging, preparing or repackag-
49 ing of charitable raffle boards or games for distribution
50 in this state.

§47-23-3. Fees.

1 Wholesalers or distributors of charitable raffle boards
2 and games to retailers shall be licensed and a license
3 fee in the amount of five hundred dollars shall be paid
4 to the commissioner by each wholesaler or distributor
5 for an annual license. Wholesalers and distributors shall
6 also pay a fee of twenty cents on each dollar of retail
7 value of each charitable raffle board or game sold to a
8 retailer. This fee shall be in addition to any tax imposed
9 pursuant to the provisions of article fifteen, chapter
10 eleven of this code. The fees imposed by this article shall
11 be deposited in accordance with the provisions of section
12 two-a, article nine, chapter eleven of this code.

**§47-23-7a. Requirement of wholesalers and distributors
to be licensed to do business in state; resi-
dent agent requirement.**

1 (a) Any wholesaler or distributor supplying charitable
2 raffle boards or games to retailers in this state shall be
3 registered to do business in this state pursuant to the
4 provisions of article twelve, chapter eleven of this code.

5 (b) Nonresidents otherwise complying with the
6 provisions of this article may be licensed as wholesalers
7 or distributors of charitable raffle boards or games upon
8 designating to the tax commissioner a resident agent
9 upon whom notices, orders or other communications
10 issued pursuant to this article may be served and upon
11 whom process may be served.

**§47-23-8. How fee paid; reports required; due date;
records to be kept; inspection of records and
stocks; examination of witnesses, summons,
etc.**

1 The retail value fee imposed by section three of this

2 article shall be paid by each licensed wholesaler or
3 distributor to the commissioner on or before the
4 twentieth day of April, July, October and January for
5 the preceding three calendar months. The measure of
6 the fee on the retail value of charitable raffle boards or
7 games shall be determined by multiplying the total
8 amount of the retail value of all charitable raffle boards
9 and games sold by a wholesaler or distributor to
10 retailers during the said three-month period by twenty
11 percent. Said fee shall be in addition to any tax imposed
12 pursuant to the provisions of article fifteen, chapter
13 eleven of this code. All fees due and owing to the
14 commissioner by reason of this article, if paid after the
15 due dates required by this section, shall be subject to
16 the provisions of article ten, chapter eleven of this code.
17 Each wholesaler or distributor shall provide with each
18 quarterly payment of fees a return covering the business
19 transacted in the previous three calendar months and
20 providing such other information as the commissioner
21 may deem necessary for the ascertainment or assess-
22 ment of the fee imposed by this article. Such return
23 shall be signed under penalty of perjury on such forms
24 as the tax commissioner may prescribe and the wholes-
25 aler or distributor shall at the time of filing remit all
26 fees owed or due.

27 The returns prescribed herein are required, although
28 a fee might not be due or no business transacted for the
29 period covered by the return.

30 Each person required to file a return under this
31 article shall make and keep such records as shall be
32 prescribed by the commissioner that are necessary to
33 substantiate the returns required by this article,
34 including, but not limited to, invoices, serial numbers or
35 other verification, inventories, receipts, disbursements
36 and sales, for a period of time not less than three years.

37 Unless otherwise permitted, in writing, by authority
38 of the commissioner, each delivery ticket or invoice for
39 each purchase or sale of charitable raffle boards or
40 games must be recorded upon a serially numbered
41 invoice showing the name and address of the seller and
42 the purchaser, the point of delivery, the date, quantity,

43 serial number and price of the product sold and the fee
44 must be set out separately, and such other reasonable
45 information as the commissioner may require. These
46 invoicing requirements also apply to cash sales and a
47 person making such sales must maintain such records
48 as may be reasonably necessary to substantiate his
49 return.

50 In addition to the commissioner's powers set forth in
51 section five, article ten, chapter eleven of this code, the
52 commissioner shall have authority to inspect or examine
53 the stock of charitable raffle boards and games kept in
54 and upon the premises of any person where charitable
55 raffle boards and games are placed, stored or sold, and
56 he or she shall have authority to inspect or examine the
57 records, books, papers and any equipment or records of
58 manufacturers, wholesalers and distributors or any
59 other person for the purpose of determining the quantity
60 of charitable raffle boards and games acquired or
61 disbursed to verify the truth and accuracy of any
62 statement or return and to ascertain whether the fee
63 imposed by this article has been properly paid.

64 In addition to the commissioner's powers set forth in
65 section five, article ten, chapter eleven of this code, and
66 as a further means of obtaining the records, books and
67 papers of a manufacturer, wholesaler, distributor or any
68 other person and ascertaining the amount of fees and
69 returns due under this article, the commissioner shall
70 have the power to examine witnesses under oath; and
71 if the witness shall fail or refuse at the request of the
72 commissioner to grant access to the books, records or
73 papers, the commissioner shall certify the facts and
74 names to the circuit court of the county having jurisdic-
75 tion of the party and such court shall thereupon issue
76 summons to such party to appear before the commis-
77 sioner, at a place designated within the jurisdiction of
78 such court, on a day fixed, to be continued as the
79 occasion may require for good cause shown and give
80 such evidence and lay open for inspection such books
81 and papers as may be required for the purpose of
82 ascertaining the amount of fee and returns due, if any.

§47-23-9. Penalty for failure to file return when no fee due; other offenses; penalties; seizures of illegal boards and games; disposition.

1 (a) *Penalty for failure to file required return where no*
2 *fee due.* — In the case of any failure to make or file a
3 return when no fee is due, as required by this article,
4 on the date prescribed therefor, unless it be shown that
5 such failure was due to reasonable cause and not due
6 to willful neglect, there shall be collected a penalty of
7 twenty-five dollars for each month of such failure or
8 fraction thereof.

9 (b) It shall be a misdemeanor, punishable pursuant to
10 the terms of this article, if any person:

11 (1) Makes any false entry upon an invoice required to
12 be made under the provisions of this article or with
13 intent to evade the fee imposed by this article presents
14 any such false entry for the inspection of the
15 commissioner;

16 (2) Prevents or hinders the commissioner from
17 making a full inspection of any place where charitable
18 raffle boards or games subject to the fee imposed by this
19 state are sold or stored or prevents or hinders the full
20 inspection of invoices, books, records or papers required
21 to be kept under the provisions of this article;

22 (3) Sells any charitable raffle boards or games in this
23 state on which the applicable fee or tax has not been
24 paid;

25 (4) Being a retailer in this state, fails to produce on
26 demand by the commissioner invoices and verification
27 of all charitable raffle boards and games purchased or
28 received by him within three years prior to such
29 demand, unless upon satisfactory proof it is shown that
30 such nonproduction is due to providential or other
31 causes beyond his control; or

32 (5) Being a retailer in this state, purchases or acquires
33 charitable raffle boards and games from any person
34 other than a wholesaler or distributor licensed under
35 this article.

36 (c) Any person convicted of violating the provisions of
37 subsection (b) of this section shall be confined in the
38 county jail or regional jail for not more than one year
39 or fined not less than one thousand dollars nor more
40 than ten thousand dollars, or both.

41 (d) Any person who falsely or fraudulently makes,
42 forges, alters or counterfeits any invoice or serial
43 number prescribed by the provisions of this article, or
44 its related rules and regulations, for the purpose of
45 evading the fee hereby imposed, shall be guilty of a
46 felony, and, upon conviction thereof, shall be sentenced
47 to pay a fine of not less than five thousand dollars nor
48 more than ten thousand dollars or imprisoned in the
49 penitentiary for a term of not less than one year nor
50 more than five years, or both.

51 (e) Whenever the commissioner, or any of his deputies
52 or employees authorized by him, or any peace officer of
53 this state shall discover any charitable raffle boards or
54 games subject to the fee as provided by this article and
55 upon which the fee has not been paid as herein required,
56 such charitable raffle boards and games shall thereupon
57 be deemed to be contraband, and the commissioner, or
58 such deputy or employee or any peace officer of this
59 state, is hereby authorized and empowered forthwith to
60 seize and take possession of such charitable raffle boards
61 or games, without a warrant, and such charitable raffle
62 boards and games shall be forfeited to the state, and the
63 commissioner shall retain the forfeited charitable raffle
64 boards and games until they are no longer needed as
65 evidence in any prosecution of the person from whom
66 the raffle boards and games were seized. The commis-
67 sioner may within a reasonable time thereafter destroy
68 such charitable raffle boards and games or sell said
69 charitable raffle boards or games at public auction to
70 the highest bidder: *Provided*, That such seizure and
71 destruction or public auction shall not be deemed to
72 relieve any person from fine or imprisonment as
73 provided herein for violation of any provisions of this
74 article. Such destruction may be made in any county the
75 commissioner deems most convenient and economical.
76 All revenue from said license fee shall be deposited in

77 the special revenue account established under the
78 authority of section two-a, article nine, chapter eleven
79 of this code and used to support the investigatory
80 activities provided for in said section.

81 (f) Magistrates shall have concurrent jurisdiction with
82 any other courts having jurisdiction for the trial of all
83 misdemeanors arising under this article.

**§47-23-10. Transportation of charitable raffle boards and
games; forfeitures and sales of charitable
raffle boards, charitable raffle games and
equipment; criminal sanctions.**

1 Every person who shall knowingly transport charit-
2 able raffle boards or games upon the public highways,
3 waterways, airways, roads or streets of this state shall
4 have in his actual possession invoices or delivery tickets
5 for such charitable raffle boards or games which shall
6 show the true name and the complete and exact address
7 of the manufacturer, the true name and complete and
8 exact address of the wholesaler or distributor who is the
9 purchaser, the quantity and description of the charitable
10 raffle boards and games transported and the true name
11 and complete and exact address of the person who has
12 or shall assume payment of the West Virginia state fee,
13 or the tax, if any, of the state or foreign country at the
14 point of ultimate destination. In the absence of such
15 invoices, delivery tickets or bills of lading, as the case
16 may be, the charitable raffle boards or games so
17 transported, the vehicle or vessel in which the charitable
18 raffle boards or games are being transported and any
19 paraphernalia or devices used in connection with such,
20 are declared to be contraband goods and may be seized
21 by the commissioner, his agents or employees or by any
22 peace officer of the state without a warrant.

23 Any person who transports charitable raffle boards or
24 games in violation of this section shall be guilty of a
25 misdemeanor, and, upon conviction thereof, shall be
26 fined not less than three hundred dollars nor more than
27 five thousand dollars, or imprisoned in the county jail
28 not more than one year, or both.

29 Charitable raffle boards and games seized under this

30 section shall be forthwith destroyed in the manner
31 provided hereinafter in this section and such destruction
32 shall not relieve the owner of the destroyed charitable
33 raffle boards and games of any action by the commis-
34 sioner for violations of this or any other sections of this
35 article.

36 The commissioner shall immediately, after any
37 seizure made pursuant to this section, institute a
38 proceeding for the confiscation thereof in the circuit
39 court of the county in which the seizure is made. The
40 court may proceed in a summary manner and may
41 direct confiscation by the commissioner: *Provided*, That
42 any person claiming to be the holder of a security
43 interest in any vehicle or vessel, the disposition of which
44 is provided for above, may present his petition so
45 alleging and be heard, and in the event it appears to the
46 court that the property was unlawfully used by a person
47 other than such claimant, and if the said claimant
48 acquired his security interest in good faith and without
49 knowledge that the vehicle or vessel was going to be so
50 used, the court shall waive forfeiture in favor of such
51 claimant and order the vehicle or vessel returned to such
52 claimant.

§47-23-11. Administration; rule making; required verification.

1 (a) The commissioner shall propose for promulgation,
2 rules to administer the provisions of this article in
3 accordance with the provisions of chapter twenty-nine-
4 a of this code: *Provided*, That the initial promulgation
5 of rules to administer the provisions of this article shall
6 be by emergency rule. Additionally, the commissioner
7 shall promulgate a rule which requires that every
8 charitable raffle board or game shall each bear verifi-
9 cation, as defined by section two of this article, printed
10 by a manufacturer on each ticket in a game unless, upon
11 application by the taxpayer showing undue hardship,
12 the tax commissioner consents to waive this requirement
13 in favor of some other form of verification.

14 (b) The commissioner shall deny an application for a
15 license if he or she finds that the issuance thereof would

16 be in violation of the provisions of this article.

17 (c) The commissioner may suspend, revoke or refuse
18 to renew any license issued hereunder for a material
19 failure to maintain the records or file the reports
20 required by this article or administrative rule if the
21 commissioner finds that said failure will substantially
22 impair the commissioner's ability to administer the
23 provisions of this article with regard to said licensee.

24 (d) The burden of proof in any administrative or court
25 proceeding is on the applicant to show cause why a
26 charitable raffle boards or games wholesaler's or
27 distributor's license should be issued or renewed and on
28 the licensee to show cause why its license should not be
29 revoked or suspended.

§47-23-14. Effective date of article.

1 The provisions of this article enacted in the year one
2 thousand nine hundred ninety-three shall be effective on
3 and after the ninth day of July, one thousand nine
4 hundred ninety-three.

CHAPTER 5

(H. B. 100—By Mr. Speaker, Mr. Chambers, and Delegate Burk,
By Request of the Executive)

[Passed May 26, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and eight, 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 two new sections, designated sections nine and ten; to amend and reenact sections one, two, eight, ten, eleven, twelve, thirteen, fourteen and fifteen, article three of said chapter; to further amend said article by adding thereto three new sections, designated sections sixteen, seventeen and eighteen; to amend and reenact sections one, two, three and six, article five of said chapter; to amend and reenact sections two and three,

article six of said chapter; to further amend said article by adding thereto a new section, designated section six; to amend and reenact sections two, three, five and six, article seven of said chapter; to amend and reenact section two, article eight of said chapter; to amend and reenact sections one, twelve, sixteen, eighteen, twenty, twenty-one, twenty-three, twenty-four, twenty-eight and thirty-one, article nine of said chapter; and to further amend said article by adding thereto two new sections, designated sections thirty-four and thirty-five, 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 legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing and directing certain of the agencies to amend legislative rules filed in the code of state regulations; authorizing the division of personnel to promulgate legislative rules relating to the administrative rules and regulations of the division, as modified and amended; authorizing the ethics commission to promulgate legislative rules relating to complaints, investigations and hearings, as modified; authorizing the ethics commission to promulgate legislative rules relating to the ethics commission, as modified; authorizing the ethics commission to promulgate legislative rules relating to advisory opinions, as modified; authorizing the consolidated public retirement board to promulgate legislative rules relating to general provisions, as modified; authorizing the consolidated public employees retirement board to promulgate legislative rules relating to the public employees retirement system, as modified and amended; authorizing the consolidated public retirement board to promul-

gate legislative rules relating to the teachers' defined benefit retirement system, as modified and amended; authorizing the consolidated public retirement board to promulgate legislative rules relating to the teachers' defined contribution system, as modified; authorizing the consolidated public retirement board to promulgate legislative rules relating to benefit determination and appeal, as modified; authorizing the committee for the purchase of commodities and services from the handicapped to promulgate legislative rules relating to the procurement list: committee for the purchase of commodities and services from the handicapped, as modified and amended; authorizing the committee for the purchase of commodities and services from the handicapped to promulgate legislative rules relating to qualifications for participation: committee for the purchase of commodities and services from the handicapped, as modified and amended; authorizing the committee for the purchase of commodities and services from the handicapped to promulgate legislative rules relating to fair market price determination, as modified and amended; authorizing the air pollution control commission to promulgate legislative rules relating to the prevention and control of air pollution from the emission of volatile organic compounds, as modified and amended; authorizing the air pollution control commission to promulgate legislative rules relating to confidential information; authorizing the air pollution control commission to promulgate legislative rules relating to serious and minor violations of applicable rules; authorizing the air pollution control commission to promulgate legislative rules relating to permits for construction and major modification of major stationary sources of air pollution for the prevention of significant deterioration, as amended; authorizing the air pollution control commission to promulgate legislative rules relating to the prevention and control of air pollution from the operation of coal preparation plants and coal handling operations, as modified; authorizing the air pollution control commission to promulgate legislative rules relating to the requirements for pre-construction review, determination of emission offsets for proposed

new or modified stationary sources of air pollutants and emission trading for intrasource pollutants, as modified and amended; authorizing the air pollution control commission to promulgate legislative rules relating to the submission of emission statements for volatile organic compound emissions and oxides of nitrogen emissions, as modified and amended; authorizing the division of banking to promulgate legislative rules relating to implementing the West Virginia community reinvestment act, as modified; authorizing the division of natural resources to promulgate legislative rules relating to water pollution control permit fee schedules, as amended; authorizing the division of natural resources to promulgate legislative rules relating to the commercial sale of wildlife, as modified; authorizing the division of natural resources to promulgate legislative rules relating to deer hunting, as modified; authorizing the division of natural resources to promulgate legislative rules relating to defining the terms to be used concerning all hunting and trapping regulations, as modified; authorizing the division of natural resources to promulgate legislative rules relating to dog training, as modified; authorizing the division of natural resources to promulgate legislative rules relating to general hunting regulations, as modified; authorizing the division of natural resources to promulgate legislative rules relating to general trapping regulations, as modified; authorizing the division of natural resources to promulgate legislative rules relating to special migratory bird hunting regulations, as modified; authorizing the division of natural resources to promulgate legislative rules relating to prohibitions when hunting and trapping, as modified and amended; authorizing the division of natural resources to promulgate legislative rules relating to the revocation of hunting and fishing licenses, as modified and amended; authorizing the division of natural resources to promulgate legislative rules relating to special bear hunting regulations, as modified; authorizing the division of natural resources to promulgate legislative rules relating to special requirements concerning boating, as modified; authorizing the division of natural resources

to promulgate legislative rules relating to special waterfowl hunting regulations, as modified; authorizing the division of natural resources to promulgate legislative rules relating to wild boar hunting, as modified; authorizing the division of natural resources to promulgate legislative rules relating to wild turkey hunting, as modified; authorizing the division of natural resources to promulgate legislative rules relating to West Virginia wildlife management areas, as modified; authorizing the division of natural resources to promulgate legislative rules relating to the recycling assistance fund grant program, as modified; authorizing the water resources board to promulgate legislative rules relating to underground injection control, as amended; authorizing the water resources board to promulgate legislative rules relating to the national pollutant discharge elimination system (NPDES), as amended; authorizing the water resources board to promulgate legislative rules relating to groundwater standards, as modified; authorizing the water resources board to promulgate legislative rules relating to requirements governing water quality standards, as modified and amended; authorizing the West Virginia economic development authority to promulgate legislative rules relating to the West Virginia capital company act: establishment of the application procedures to implement the act, as modified; authorizing the solid waste management board to promulgate legislative rules relating to the disbursement of grants to solid waste authorities, as modified; authorizing the board of manufactured housing construction and safety to promulgate legislative rules relating to the West Virginia manufactured housing construction and safety standards act, as modified; 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 rules and procedures for application for and environmental assessment of projects seeking qualification for the public energy authority's assist-

ance, as modified; authorizing the division of forestry to promulgate legislative rules relating to sediment control during commercial timber-harvesting operations - logger certification, as modified; authorizing the division of forestry to promulgate legislative rules relating to sediment control during commercial timber-harvesting operations - licensing, as modified and amended; authorizing the division of environmental protection to promulgate legislative rules relating to an operator's designation of bona fide future use of oil and gas wells - qualification for inactive status, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to oil and gas wells and other wells, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to abandoned wells, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to underground storage tank assessment fees, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to underground storage tanks; authorizing the division of environmental protection to promulgate legislative rules relating to hazardous waste management, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to the groundwater protection act fee schedule, as modified; authorizing the director of the office of miners' health, safety and training 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 department of health and human resources to promulgate legislative rules relating to infectious medical waste, as modified and amended; authorizing the department of health and human resources to promulgate legislative rules relating to residential board and care homes, as modified; authorizing the division of health to promulgate legislative rules relating to trauma center or facility designation, as modified; authorizing the division of health to promulgate legislative rules relating to primary care center seed money grants, as modified; authorizing the division of health to promul-

gate legislative rules relating to primary care center uncompensated care grants, as modified; authorizing the health care cost review authority to promulgate legislative rules relating to the exemption for birthing centers, as modified; authorizing the health care cost review authority to promulgate legislative rules relating to the exemption for primary care hospitals, as modified; authorizing the health care cost review authority to promulgate legislative rules relating to the exemption for new primary care services, as modified; authorizing the health care cost review authority to promulgate legislative rules relating to the temporary approval of discount contracts for border hospitals, as modified; authorizing the workers' compensation fund to promulgate legislative rules relating to self-insured employers, as modified; authorizing the division of workers' compensation to promulgate legislative rules relating to protocols and procedures for performing medical evaluations in noise-induced hearing loss claims, as modified; authorizing and directing the division of workers' compensation to promulgate legislative rules relating to the enforcement of reporting and payment requirements (85 CSR 11), as amended; authorizing the state fire commission to promulgate legislative rules relating to electrician licensing, as modified; authorizing jail and correctional facility standards commission to promulgate legislative rules relating to West Virginia minimum standards for construction, operation and maintenance of jails, as modified and amended; authorizing and directing the jail and prison standards commission to promulgate legislative rules relating to West Virginia minimum standards for construction, operation and maintenance of holding facilities (95 CSR 3), as amended; authorizing the state emergency response commission to promulgate legislative rules relating to the commission, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to the regulation of credit life insurance and credit accident and sickness insurance; authorizing the insurance commissioner to promulgate legislative rules relating to filing fees for purchasing groups and for risk retention groups not chartered in this state, as modified;

authorizing the insurance commissioner to promulgate legislative rules relating to the group coordination of benefits, as amended; 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 individual and employer group minimum benefits for accident and sickness insurance policies, as modified and amended; authorizing the insurance commissioner to promulgate legislative rules relating to long-term care insurance, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to standards for uniform health care administration, as modified; authorizing the state board of investments to promulgate legislative rules relating to the reporting of state debt to the board, as modified; authorizing the racing commission to promulgate legislative rules relating to pari-mutuel wagering; 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, as modified; authorizing and directing the division of tax to promulgate legislative rules relating to the division of tax (consumers sales and service tax and use tax), (110 CSR 15), as amended; authorizing the division of tax to promulgate legislative rules relating to bingo; authorizing the division of motor vehicles to promulgate legislative rules relating to motor vehicle dealers, wreckers/ dismantlers/ rebuilders and license services, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to commercial feed, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to general groundwater protection rules for fertilizers and manures, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to primary and secondary containment of fertilizers, as modified and amended; authorizing the commissioner of agriculture to promulgate legislative rules relating to general groundwater protection rules for pesticides, as

modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to bulk pesticide operational rules, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to nonbulk pesticide rules for permanent operational areas, as modified; authorizing the board of registration for professional engineers to promulgate legislative rules relating to the board, as modified and amended; authorizing the board of medicine to promulgate legislative rules relating to licensing, disciplinary and complaint procedures: physicians and podiatrists, as modified; authorizing the board of medicine to promulgate legislative rules relating to certification, disciplinary and complaint procedures and continuing education for physician assistants, as modified and amended; authorizing the board of examiners for registered professional nurses to promulgate legislative rules relating to limited prescriptive authority for nurses in advanced practice, as modified; authorizing the board of pharmacy to promulgate legislative rules relating to the board, as modified and amended; authorizing the board of examiners of psychologists to promulgate legislative rules relating to penalties and fees, as modified; authorizing the board of examiners of psychologists to promulgate legislative rules relating to the qualifications for licensure as a psychologist, as modified; authorizing the real estate commission to promulgate legislative rules relating to the requirements in licensing real estate brokers and salesmen and in the conduct of a brokerage business, as modified; authorizing the secretary of state to promulgate legislative rules relating to the filing fee for credit service organizations, as modified; authorizing the secretary of state to promulgate legislative rules relating to combined voter registration and driver licensing programs, as modified; authorizing the West Virginia cable television advisory board to promulgate legislative rules relating to implementing regulations, 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 board of occupational therapy to promulgate legislative

rules relating to the administration of the board, as modified; and authorizing the board of social work examiners to promulgate legislative rules relating to qualifications for licensure as a social worker, as modified.

Be it enacted by the Legislature of West Virginia:

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

§64-2-3. Division of personnel.

§64-2-8. Ethics commission.

§64-2-9. Consolidated public retirement board.

§64-2-10. Committee for the purchase of commodities and services from the handicapped.

§64-2-3. Division of personnel.

1 (a) The legislative rules filed in the state register on
2 the nineteenth day of November, one thousand nine
3 hundred eighty-six, modified by the civil service
4 commission to meet the objection of the legislative rule-
5 making review committee and refiled in the state
6 register on the fifteenth day of December, one thousand
7 nine hundred eighty-six, relating to the civil service
8 commission (civil service system), are authorized.

9 (b) The legislative rules filed in the state register on
10 the first day of November, one thousand nine hundred
11 eighty-eight, modified by the civil service commission to
12 meet the objections of the legislative rule-making review
13 committee and refiled in the state register on the
14 twenty-third day of February, one thousand nine
15 hundred eighty-nine, relating to the civil service
16 commission (civil service system), are authorized with
17 the amendments set forth below:

18 On page fifteen, section 5.05(d), after the words
19 "established in" by striking out the remainder of the
20 sentence and inserting in lieu thereof the words
21 "Chapter 29-6A of the Code of West Virginia, as
22 amended."

23 On page fifteen, section 5.06, after the words "estab-
24 lished in" by striking out the remainder of the sentence
25 and inserting in lieu thereof the words "Chapter 29-6A
26 of the Code of West Virginia, as amended."

27 On pages sixteen and seventeen by deleting all of
28 section 5.07.

29 And,

30 On page 46, section 13(f) line 2 by striking the words
31 "previously held".

32 (c) The legislative rules filed in the state register on
33 the fourteenth day of May, one thousand nine hundred
34 ninety, modified by the division of personnel to meet the
35 objections of the legislative rule-making review commit-
36 tee and refiled in the state register on the twenty-fifth
37 day of September, one thousand nine hundred ninety,
38 relating to the division of personnel (civil service
39 system), are authorized.

40 (d) The legislative rules filed in the state register on
41 the seventeenth day of September, one thousand nine
42 hundred ninety-two, modified by the division of person-
43 nel to meet the objections of the legislative rule-making
44 review committee and refiled in the state register on the
45 eighteenth day of February, one thousand nine hundred
46 ninety-three, relating to the division of personnel
47 (administrative rules and regulations of the West
48 Virginia division of personnel), are authorized, with the
49 following amendments:

50 On page 5, section 3, subsection 42, after the word
51 "affected", by striking the word "classified", and
52 inserting in lieu thereof the word "state";

53 And,

54 On page 66, subsection 17.01(e)(3), after the words
55 "provisions of" by striking out the words "W.V. Code §3-
56 8-3, §3-3-4 or §3-8-5(e), or serve as a ballot commissioner
57 or election official working inside a polling place; or sell
58 tickets to political affairs to employees in the classified
59 services; or post or distribute campaign literature in a
60 classified employee's worksite; or wear apparel bearing
61 political logos or endorsements during work hours when
62 observed by or in contact with the public" and inserting
63 the words "sections three, four or five-e, article eight,
64 chapter three of the Code of West Virginia, as
65 amended."

66 And,

67 On page 67, subsection 17.04, by striking all of
68 subsection 17.04.

§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 em-
134 ployees shall not use government property for personal
135 projects or activities that result in private gain. This
136 subsection does not apply to the de minimus use of
137 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
188 subsections.

189 (h) The legislative rules filed in the state register on
190 the ninth day of September, one thousand nine hundred
191 ninety-two, modified by the ethics commission to meet
192 the objections of the legislative rule-making review
193 committee and refiled in the state register on the
194 twentieth day of January, one thousand nine hundred
195 ninety-three, relating to the ethics commission (com-
196 plaints, investigations and hearings), are authorized.

197 (i) The legislative rules filed in the state register on
198 the ninth day of September, one thousand nine hundred
199 ninety-two, modified by the ethics commission to meet
200 the objections of the legislative rule-making review
201 committee and refiled in the state register on the
202 twentieth day of January, one thousand nine hundred
203 ninety-three, relating to the ethics commission (ethics
204 commission), are authorized.

205 (j) The legislative rules filed in the state register on
206 the ninth day of September, one thousand nine hundred
207 ninety-two, modified by the ethics commission to meet
208 the objections of the legislative rule-making review
209 committee and refiled in the state register on the
210 twentieth day of January, one thousand nine hundred
211 ninety-three, relating to the ethics commission (advisory
212 opinions), are authorized.

§64-2-9. Consolidated public retirement board.

1 (a) The legislative rules filed in the state register on
2 the fifth day of November, one thousand nine hundred
3 ninety-one, modified by the consolidated public retire-

4 ment board to meet the objections of the legislative rule-
5 making review committee and refiled in the state
6 register on the sixteenth day of September, one thou-
7 sand nine hundred ninety-two, relating to the consoli-
8 dated public retirement board (general provisions), are
9 authorized.

10 (b) The legislative rules filed in the state register on
11 the fifth day of November, one thousand nine hundred
12 ninety-one, modified by the consolidated public retire-
13 ment board to meet the objections of the legislative rule-
14 making review committee and refiled in the state
15 register on the sixteenth day of December, one thousand
16 nine hundred ninety-two, relating to the consolidated
17 public retirement board (public employees retirement
18 system), are authorized with the amendment set forth
19 below:

20 "On page one, subsection §162-5-2 after the word
21 'hereby' by striking out the word 'appealed' and
22 inserting in lieu thereof the word 'repealed'".

23 (c) The legislative rules filed in the state register on
24 the fifth day of November, one thousand nine hundred
25 ninety-one, modified by the consolidated public retire-
26 ment board to meet the objections of the legislative rule-
27 making review committee and refiled in the state
28 register on the sixteenth day of December, one thousand
29 nine hundred ninety-two, relating to the consolidated
30 public retirement board (teachers' defined benefit
31 retirement system), are authorized with the amendment
32 set forth below:

33 "On page one, subsection §162-4-2 after the word
34 'hereby' by striking out the word 'appealed' and
35 inserting in lieu thereof the word 'repealed'".

36 (d) The legislative rules filed in the state register on
37 the fourth day of November, one thousand nine hundred
38 ninety-one, modified by the consolidated public retire-
39 ment board to meet the objections of the legislative rule-
40 making review committee and refiled in the state
41 register on the sixteenth day of September, one thou-
42 sand nine hundred ninety-two, relating to the consoli-
43 dated public retirement board (teachers' defined

44 contribution system), are authorized.

45 (e) The legislative rules filed in the state register on
46 the fifth day of November, one thousand nine hundred
47 ninety-one, modified by the consolidated public retire-
48 ment board to meet the objections of the legislative rule-
49 making review committee and refiled in the state
50 register on the twenty-second day of January, one
51 thousand nine hundred ninety-three, relating to the
52 consolidated public retirement board (benefit determi-
53 nation and appeal), are authorized.

§64-2-10. Committee for the purchase of commodities and services from the handicapped.

1 (a) The legislative rules filed in the state register on
2 the eighteenth day of September, one thousand nine
3 hundred ninety-two, modified by the committee for the
4 purchase of commodities and services from the handi-
5 capped to meet the objections of the legislative rule-
6 making review committee and refiled in the state
7 register on the seventeenth day of February, one
8 thousand nine hundred ninety-three, relating to the
9 committee for the purchase of commodities and services
10 from the handicapped (procurement list: committee for
11 the purchase of commodities and services from the
12 handicapped), are authorized with amendments set
13 forth below:

14 On page two, subsection 2.9., by striking out the
15 entirety of said subsection and inserting in lieu thereof
16 the following: “‘Nonprofit workshops’, ‘workshops’ and
17 ‘rehabilitation facility’ means an establishment (a)
18 where any manufacture or handiwork is carried on, (b)
19 which is operated either by a public agency or by a
20 cooperative or by a nonprofit private corporation or
21 nonprofit association, in which no part of the net
22 earnings thereof inures, or may lawfully inure, to the
23 benefit of any private shareholder or individual, (c)
24 which is operated for the primary purpose of providing
25 remunerative employment to blind or severely disabled
26 persons who cannot be absorbed into the competitive
27 labor market, and (d) which shall be approved, as
28 evidenced by a certificate of approval, by the state board

29 of vocational education, division of vocational
30 rehabilitation.”;

31 On page three, subsection 2.13., by striking out the
32 entirety of said subsection.;

33 On page five, subsection 4.2., by striking out the word
34 “facility” and inserting in lieu thereof the word
35 “workshop”;

36 And,

37 On page six, subsection 4.7., by striking out the words
38 ‘certified or approved’.

39 (b) The legislative rules filed in the state register on
40 the eighteenth day of September, one thousand nine
41 hundred ninety- two, modified by the committee for the
42 purchase of commodities and services from the handi-
43 capped to meet the objections of the legislative rule-
44 making review committee and refiled in the state
45 register on the seventeenth day of February, one
46 thousand nine hundred ninety-three, relating to the
47 committee for the purchase of commodities and services
48 from the handicapped (qualifications for participation:
49 committee for the purchase of commodities and services
50 from the handicapped), are authorized with amend-
51 ments set forth below:

52 “On page one, subsection 2.1., by striking out the
53 entirety of said subsection;

54 On page one, subsection 2.3., by striking out the
55 entirety of said subsection;

56 On page two, subsection 2.7., by striking out the
57 entirety of said subsection;

58 On page two, subsection 2.8., by striking out the
59 entirety of said subsection;

60 On page three, subsection 2.10., by striking out the
61 entirety of said subsection and inserting in lieu thereof
62 the following ‘Nonprofit workshop’, ‘workshop’ and
63 ‘rehabilitation facility’ means an establishment (a)
64 where any manufacture or handiwork is carried on, (b)
65 which is operated either by a public agency or by a

66 cooperative or by a nonprofit private corporation or
67 nonprofit association, in which no part of the net
68 earnings thereof inures, or may lawfully inure, to the
69 benefit of any private shareholder or individual, (c)
70 which is operated for the primary purpose of providing
71 remunerative employment to blind or severely disabled
72 persons who cannot be absorbed into the competitive
73 labor market, and (d) which shall be approved, as
74 evidenced by a certificate of approval, by the state board
75 of vocational education, division of vocational
76 rehabilitation.”;

77 And,

78 On page four, subdivision 3.1.1.e.D., by striking out
79 the entirety of said subsection and inserting in lieu
80 thereof the following: “To comply with state and federal
81 laws regarding safety standards and wage payment.”

82 (c) The legislative rules filed in the state register on
83 the eighteenth day of September, one thousand nine
84 hundred ninety-two, modified by the committee for the
85 purchase of commodities and services from the handi-
86 capped to meet the objections of the legislative rule-
87 making review committee and refiled in the state
88 register on the eighteenth day of February, one thou-
89 sand nine hundred ninety-three, relating to the commit-
90 tee for the purchase of commodities and services from
91 the handicapped (fair market price determinations), are
92 authorized with amendments set forth below:

93 “On page one, subsection 2.1., by striking out the
94 entirety of said subsection.;

95 On page one, subsection 2.2., by striking out the
96 entirety of said subsection.;

97 On page two, subsection 2.10., by striking out the
98 entirety of said subsection.;

99 On page two, subsection 2.11., by striking out the
100 entirety of said subsection.;

101 On page three, subsection 2.14., by striking out the
102 entirety of said subsection and inserting in lieu thereof
103 the following:

104 “‘Nonprofit workshop’, ‘workshop’ and ‘rehabilitation
105 facility’ mean an establishment (a) where any manufac-
106 ture or handiwork is carried on, (b) which is operated
107 either by a public agency or by a cooperative or by a
108 nonprofit private corporation or nonprofit association, in
109 which no part of the net earnings thereof inures, or may
110 lawfully inure, to the benefit of any private shareholder
111 or individual, (c) which is operated for the primary
112 purpose of providing remunerative employment to blind
113 or severely disabled persons who cannot be absorbed
114 into the competitive labor market, and (d) which shall
115 be approved, as evidenced by a certificate of approval,
116 by the state board of vocational education, division of
117 vocational rehabilitation.”;

118 On page four, subdivision 3.3.1., by striking out the
119 last sentence.;

120 And,

121 On page five, subdivision 3.4.1., by striking out the
122 last two sentences.”

**ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COM-
MERCE, LABOR AND ENVIRONMENTAL RE-
SOURCESS TO PROMULGATE LEGISLATIVE
RULES.**

- §64-3-1. Air pollution control commission.
- §64-3-2. Division of banking.
- §64-3-8. Division of natural resources.
- §64-3-10. Water resources board.
- §64-3-11. Economic development authority.
- §64-3-12. Solid waste management board.
- §64-3-13. Board of manufactured housing construction and safety.
- §64-3-14. Division of tourism and parks.
- §64-3-15. Public energy authority.
- §64-3-16. Division of forestry.
- §64-3-17. Division of environmental protection.
- §64-3-18. Director of the office of miners’ health safety and training.

§64-3-1. Air pollution control commission.

- 1 (a) The legislative rules filed in the state register on
2 the thirteenth day of August, one thousand nine hundred
3 eighty-two, relating to the air pollution control commis-
4 sion (series VII), are authorized.
- 5 (b) The legislative rules filed in the state register on

6 the thirteenth day of August, one thousand nine hundred
7 eighty-two, relating to the air pollution control commis-
8 sion (series XIX), are authorized.

9 (c) The legislative rules filed in the state register on
10 the sixteenth day of November, one thousand nine
11 hundred eighty-three, relating to the air pollution
12 control commission (emission standards for hazardous
13 air pollutants) (series XV), are authorized.

14 (d) The legislative rules filed in the state register on
15 the sixteenth day of November, one thousand nine
16 hundred eighty-three, relating to the air pollution
17 control commission (standards of performance for new
18 stationary sources) (series XVI), are authorized.

19 (e) The legislative rules filed in the state register on
20 the sixth day of January, one thousand nine hundred
21 eighty-four, relating to the air pollution control commis-
22 sion (to prevent and control air pollution from hazardous
23 waste treatment, storage or disposal facilities)(series
24 XXV), are authorized with the amendments set forth
25 below:

26 Page 3, §1.06, change the § title from "Enforcement"
27 to "Procedure"; place an "(a)" in front of the existing
28 paragraph and add the following:

29 "(b) Permit applications filed pursuant to this regu-
30 lation shall be processed in accordance with the
31 permitting procedures as set forth in code §20-5E of this
32 regulation. Permit procedures set forth in code §16-20
33 and any other regulation of this commission are not
34 applicable to any permit application filed pursuant to
35 this regulation."

36 Such rules shall also include a section which shall
37 read as follows:

38 "The commission shall report to the legislative rule-
39 making review committee as required by that commit-
40 tee, but in no event later than the first day of the regular
41 session of the Legislature in the year one thousand nine
42 hundred eighty-five. Such report shall include informa-
43 tion regarding the commission's data gathering efforts,
44 the development of compliance programs, the progress

45 in implementation, and such other matters as the
46 committee may require, pertaining to the regulations
47 hereby authorized.”

48 (f) The legislative rules filed in the state register on
49 the ninth day of January, one thousand nine hundred
50 eighty-four, relating to the air pollution control commis-
51 sion (permits for construction and modification of
52 stationary sources of air pollution for the prevention of
53 significant deterioration) (series XIV), are authorized.

54 (g) The legislative rules filed in the state register on
55 the thirtieth day of December, one thousand nine
56 hundred eighty-eight, modified by the air pollution
57 control commission to meet the objections of the
58 legislative rule-making review committee and refiled in
59 the state register on the twenty-third day of February,
60 one thousand nine hundred eighty-nine, relating to the
61 air pollution control commission (prevention and control
62 of air pollution from hazardous waste treatment, storage
63 or disposal facilities), are authorized.

64 (h) The legislative rules filed in the state register on
65 the thirtieth day of December, one thousand nine
66 hundred eighty-eight, modified by the air pollution
67 control commission to meet the objections of the
68 legislative rule-making review committee and refiled in
69 the state register on the twenty-third day of February,
70 one thousand nine hundred eighty-nine, relating to the
71 air pollution control commission (good engineering
72 practice as applicable to stack heights), are authorized.

73 (i) The legislative rules filed in the state register on
74 the thirtieth day of December, one thousand nine
75 hundred eighty-eight, modified by the air pollution
76 control commission to meet the objections of the
77 legislative rule-making review committee and refiled in
78 the state register on the twenty-third day of February,
79 one thousand nine hundred eighty-nine, relating to the
80 air pollution control commission (TP-2, compliance test
81 procedures for regulation 2 — to prevent and control
82 particulate air pollution from combustion of fuel in
83 indirect heat exchangers), are authorized.

84 (j) The legislative rules filed in the state register on

85 the sixth day of September, one thousand nine hundred
86 eighty-nine, modified by the air pollution control
87 commission to meet the objections of the legislative rule-
88 making review committee and refiled in the state
89 register on the tenth day of January, one thousand nine
90 hundred ninety, relating to the air pollution control
91 commission (ambient air quality standards for sulfur
92 oxides and particulate matter), are authorized.

93 (k) The legislative rules filed in the state register on
94 the sixth day of September, one thousand nine hundred
95 eighty-nine, modified by the air pollution control
96 commission to meet the objections of the legislative rule-
97 making review committee and refiled in the state
98 register on the tenth day of January, one thousand nine
99 hundred ninety, relating to the air pollution control
100 commission (prevention of air pollution emergency
101 episodes), are authorized.

102 (l) The legislative rules filed in the state register on
103 the sixth day of September, one thousand nine hundred
104 eighty-nine, modified by the air pollution control
105 commission to meet the objections of the legislative rule-
106 making review committee and refiled in the state
107 register on the tenth day of January, one thousand nine
108 hundred ninety, relating to the air pollution control
109 commission (permits for construction and major modi-
110 fication of major stationary sources of air pollution for
111 the prevention of significant deterioration), are
112 authorized.

113 (m) The legislative rules filed in the state register on
114 the sixth day of September, one thousand nine hundred
115 eighty-nine, relating to the air pollution control commis-
116 sion (standards of performance for new stationary
117 sources), are authorized.

118 (n) The legislative rules filed in the state register on
119 the sixth day of September, one thousand nine hundred
120 eighty-nine, relating to the air pollution control commis-
121 sion (emission standards for hazardous air pollutants),
122 are authorized.

123 (o) The legislative rules filed in the state register on
124 the sixteenth day of October, one thousand nine hundred

125 eighty-nine, modified by the air pollution control
126 commission to meet the objections of the legislative rule-
127 making review committee and refiled in the state
128 register on the tenth day of January, one thousand nine
129 hundred ninety, relating to the air pollution control
130 commission (prevention and control of emissions of toxic
131 air pollutants), are authorized.

132 (p) The legislative rules filed in the state register on
133 the tenth day of August, one thousand nine hundred
134 ninety, relating to the air pollution control commission
135 (prevention and control of air pollution from the
136 emission of volatile organic compounds from bulk
137 gasoline terminals), are authorized.

138 (q) The legislative rules filed in the state register on
139 the thirteenth day of August, one thousand nine hundred
140 ninety, modified by the air pollution control commission
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 November, one thousand nine hundred
144 ninety, relating to the air pollution control commission
145 (air quality management fee program), are authorized.

146 (r) The legislative rules filed in the state register on
147 the tenth day of August, one thousand nine hundred
148 ninety, relating to the air pollution control commission
149 (prevention and control of air pollution from the
150 emission of volatile organic compounds from the storage
151 of petroleum liquids in fixed roof tanks), are authorized.

152 (s) The legislative rules filed in the state register on
153 the tenth day of August, one thousand nine hundred
154 ninety, relating to the air pollution control commission
155 (prevention and control of air pollution from the
156 emission of volatile organic compounds from petroleum
157 refinery sources), are authorized.

158 (t) The legislative rules filed in the state register on
159 the eighteenth day of December, one thousand nine
160 hundred ninety-one, modified by the air pollution
161 control commission to meet the objections of the
162 legislative rule-making review committee and refiled in
163 the state register on the fifteenth day of December, one
164 thousand nine hundred ninety-two, relating to the air

165 pollution control commission (regulations to prevent and
166 control air pollution from the emission of volatile
167 organic compounds), are authorized with the amend-
168 ments set forth below:

169 "On page 26, subsection §45-21-9.2, by striking all of
170 §45-21-9.2 and inserting in lieu thereof a new §45-21-9.2,
171 to read as follows:

172 "9.2 Registration. — Within thirty (30) days after May
173 31, 1993, all persons owning and/or operating a source
174 subject to this regulation and not previously registered
175 shall have registered such source(s) with the chief:
176 *Provided*, That on a case-by-case basis, the chief may
177 extend the 30-day period for the registration of sources
178 to allow sources up to one hundred eighty (180) days
179 after May 31, 1993 to register. The information required
180 for registration shall be determined and provided in the
181 manner specified by the chief. Registration forms shall
182 be requested from the chief by the owner or operator
183 of such source(s)."

184 And,

185 "On page fifty-six, subsection §45-21-20.5a by striking
186 out all of line "a" and its equivalent column and
187 inserting in lieu thereof the words "a = Surface area
188 coated per day in terms of square meters divided by 100
189 or surface area coated per day in terms of square feet
190 divided by 1000."

191 And,

192 "On page one hundred eighty-three, subsection §45-21-
193 40.2 after the words "control technology (RACT) in
194 section" by striking the numbers "2.57." and inserting
195 in lieu thereof the numbers "2.60."

196 (u) The legislative rules filed in the state register on
197 the eighteenth day of September, one thousand nine
198 hundred ninety-two, relating to the air pollution control
199 commission (confidential information), are authorized.

200 (v) The legislative rules filed in the state register on
201 the eighteenth day of September, one thousand nine
202 hundred ninety-two, relating to the air pollution control

203 commission (serious and minor violations of applicable
204 rules), are authorized.

205 (w) The legislative rules filed in the state register on
206 the thirty-first day of August, one thousand nine
207 hundred ninety-two, relating to the air pollution control
208 commission (permits for construction and major modi-
209 fication of major stationary sources of air pollution for
210 the prevention of significant deterioration), are autho-
211 rized with the amendments set forth below:

212 "On page fourteen, subsection §45.13.6.5 after the
213 word "[W]ithin" by striking the word "twelve (12)" and
214 inserting in lieu thereof the word "six (6)".

215 (x) The legislative rules filed in the state register on
216 the twenty-eighth day of August, one thousand nine
217 hundred ninety-two, modified by the air pollution
218 control commission to meet the objections of the
219 legislative rule-making review committee and refiled in
220 the state register on the nineteenth day of February, one
221 thousand nine hundred ninety-three, relating to the air
222 pollution control commission (regulations to prevent and
223 control air pollution from the operation of coal prepa-
224 ration plants and coal handling operations), are
225 authorized.

226 (y) The legislative rules filed in the state register on
227 the thirty-first day of August, one thousand nine
228 hundred ninety-two, modified by the air pollution
229 control commission to meet the objections of the
230 legislative rule-making review committee and refiled in
231 the state register on the nineteenth day of February, one
232 thousand nine hundred ninety-three, relating to the air
233 pollution control commission (requirements for pre-
234 construction review, determination of emission offsets
235 for proposed new or modified stationary sources of air
236 pollutants and emission trading for intrasource pollu-
237 tants), are authorized with amendments set forth below:

238 "On page twenty-one, subsection §45.19.12.5 after the
239 word "[W]ithin" by striking the word "twelve (12)" and
240 inserting in lieu thereof the word "six (6)".

241 (z) The legislative rules filed in the state register on

242 the twenty-eighth day of August, one thousand nine
243 hundred ninety-two, modified by the air pollution
244 control commission to meet the objections of the
245 legislative rule-making review committee and refiled in
246 the state register on the nineteenth day of February, one
247 thousand nine hundred ninety-three, relating to the air
248 pollution control commission (requiring the submission
249 of emission statements for volatile organic compound
250 emissions and oxides of nitrogen emissions), are autho-
251 rized with the amendments set forth below:

252 "On page four, section 2.27. after the words 'VOC or'
253 by striking out the words '100 tons per year or more of'".

§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 Vir-
57 ginia), 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.

86 (l) The legislative rules filed in the state register on
87 the twenty-sixth day of June, one thousand nine hundred
88 ninety-two, modified by the division of banking to meet
89 the objections of the legislative rule-making review
90 committee and refiled in the state register on the
91 seventeenth day of August, one thousand nine hundred
92 ninety-two, relating to the division of banking (general
93 rules implementing the West Virginia community
94 reinvestment act), are authorized.

§64-3-8. Division of natural resources.

1 (a) The legislative rules filed in the state register on
2 the eighth day of December, one thousand nine hundred
3 eighty-three, relating to the department of natural
4 resources (surface mining), are authorized with the
5 amendments set forth below:

6 Page 3-4, §3E.01 by adding after the word "engineer"
7 the words "or licensed land surveyor."

8 Page 3-5, §3E.02, subsection (a), by adding after the
9 word "mining" the words "or civil."

10 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 prefiling 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 which
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 legislative
104 rule-making review committee and refiled in the state
105 register on the twentieth day of February, one thousand
106 nine hundred eighty-six, relating to the department of
107 natural resources (hazardous waste management), are
108 authorized.

109 (m) The legislative rules filed in the state register on
110 the twenty-sixth day of September, one thousand nine
111 hundred eighty-six, modified by the department of
112 natural resources to meet the objections of the legislative
113 rule-making review committee and refiled in the state
114 register on the ninth day of December, one thousand
115 nine hundred eighty-six, relating to the department of
116 natural resources (hazardous waste management regu-
117 lations), are authorized.

118 (n) The legislative rules filed in the state register on
119 the seventh day of August, one thousand nine hundred
120 eighty-six, relating to the director of the department of
121 natural resources (procedures for transporting and
122 dealing in furbearing animals), are authorized.

123 (o) The legislative rules filed in the state register on
124 the thirtieth day of December, one thousand nine
125 hundred eighty-six, relating to the department of
126 natural resources (WV/NPDES program for coal mines
127 and preparation plants, and the refuse and waste

128 therefrom), are authorized with the amendments set
129 forth below:

130 On page four, §1.9.1.a by inserting the words “five
131 thousand dollars or” after the words “‘significant
132 portion of income’ means.”

133 And,

134 On page four, §1.9.1.a by inserting the words “which-
135 ever is less,” after the words “ten percent or more of
136 gross personal income for a calendar year.”

137 (p) The legislative rules filed in the state register on
138 the fifth day of March, one thousand nine hundred
139 eighty-six, relating to the department of natural
140 resources (hazardous waste management), are
141 authorized.

142 (q) The legislative rules filed in the state register on
143 the twelfth day of August, one thousand nine hundred
144 eighty-seven, relating to the department of natural
145 resources (WV/NPDES regulations for coal mining
146 facilities), are authorized.

147 (r) The legislative rules filed in the state register on
148 the tenth day of June, one thousand nine hundred
149 eighty-seven, relating to the director of the department
150 of natural resources (outfitters and guides), are
151 authorized.

152 (s) The legislative rules filed in the state register on
153 the ninth day of January, one thousand nine hundred
154 eighty-seven, relating to the department of natural
155 resources (hazardous waste management regulations),
156 are authorized.

157 (t) The legislative rules filed in the state register on
158 the fifth day of March, one thousand nine hundred
159 eighty-seven, relating to the department of natural
160 resources (hazardous waste management regulations,
161 series 35), are authorized.

162 (u) The legislative rules filed in the state register on
163 the seventh day of December, one thousand nine
164 hundred eighty-seven, relating to the department of
165 natural resources (hazardous waste management regu-

166 lations, series 35), are authorized.

167 (v) The legislative rules filed in the state register on
168 the sixteenth day of December, one thousand nine
169 hundred eighty-seven, modified by the department of
170 natural resources to meet the objections of the legislative
171 rule-making review committee and refiled in the state
172 register on the fourteenth day of January, one thousand
173 nine hundred eighty-eight, relating to the department of
174 natural resources (solid waste management), are
175 authorized.

176 (w) The legislative rules filed in the state register on
177 the twenty-eighth day of July, one thousand nine
178 hundred eighty-seven, modified by the director of the
179 department of natural resources to meet the objections
180 of the legislative rule-making review committee and
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 (aa) 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).”

496 (uu) The Legislature hereby authorizes and directs
497 the division of natural resources to amend its rules
498 relating to water pollution control permit fee schedules
499 which were filed in the code of state regulations (47 CSR
500 26) on the thirteenth day of April, one thousand nine
501 hundred ninety-two, with the following amendments set
502 forth below:

503 On page nine, after section 7.5, by inserting the
504 following:

505 “7.6. Facilities Discharging Stormwater. The annual
506 permit fee for a facility that discharges stormwater only
507 shall be determined through the use of Table F of these
508 regulations.

509 7.7. Aquaculture facilities. The annual permit fees
510 for aquaculture facilities that are subject to the
511 provisions of the water pollution control regulations
512 shall be determined by Table G of these regulations.”

513 And after Table E, on page ten, by inserting Table
514 F, designated “Schedule of Annual Permit Fees For

515 Facilities Discharging Stormwater,” and inserting
516 Table G, designated “Schedule of Annual Permit Fees
517 For Aquaculture Facilities” to read as follows:

518

“TABLE F

519 SCHEDULE OF ANNUAL PERMIT FEES FOR
520 FACILITIES DISCHARGING STORMWATER

521 Average Discharge Volume

522	(gallons per day)	Annual Permit Fee
523	less than 5,001	\$ 50
524	5,001 to 15,000	\$125
525	15,001 to 50,000	\$250
526	50,001 to 100,000	\$500
527	greater than 100,000	\$750”

528 and

529

“TABLE G

530 SCHEDULE OF ANNUAL PERMIT FEES FOR
531 AQUACULTURE FACILITIES

532	#Feed/Month	Annual Fee	Application Fee
533			(Initial and
534			Reissuance)
535	5,000 to 9,999	\$ 250	\$ 250
536	10,000 to 14,999	\$ 500	\$ 250
537	15,000 to 19,999	\$ 750	\$ 250
538	20,000 to 24,999	\$1,000	\$ 250
539	25,000 to 29,999	\$1,250	\$ 250
540	greater than 30,000	\$1,750	\$ 250”

541 (vv) The legislative rules filed in the state register on
542 the seventeenth day of September, one thousand nine
543 hundred ninety-two, modified by the division of natural
544 resources to meet the objections of the legislative rule-
545 making review committee and refiled in the state
546 register on the sixteenth day of December, one thousand
547 nine hundred ninety-two, relating to the division of
548 natural resources (commercial sale of wildlife), are
549 authorized.

550 (ww) The legislative rules filed in the state register

551 on the ninth day of September, one thousand nine
552 hundred ninety-two, modified by the division of natural
553 resources to meet the objections of the legislative rule-
554 making review committee and refiled in the state
555 register on the seventh day of December, one thousand
556 nine hundred ninety-two, relating to the division of
557 natural resources (deer hunting), are authorized.

558 (xx) The legislative rules filed in the state register on
559 the ninth day of September, one thousand nine hundred
560 ninety-two, modified by the division of natural resources
561 to meet the objections of the legislative rule-making
562 review committee and refiled in the state register on the
563 seventh day of December, one thousand nine hundred
564 ninety-two, relating to the division of natural resources
565 (defining the terms to be used concerning all hunting
566 and trapping regulations), are authorized.

567 (yy) The legislative rules filed in the state register on
568 the ninth day of September, one thousand nine hundred
569 ninety-two, modified by the division of natural resources
570 to meet the objections of the legislative rule-making
571 review committee and refiled in the state register on the
572 seventh day of December, one thousand nine hundred
573 ninety-two, relating to the division of natural resources
574 (dog training), are authorized.

575 (zz) The legislative rules filed in the state register on
576 the ninth day of September, one thousand nine hundred
577 ninety-two, modified by the division of natural resources
578 to meet the objections of the legislative rule-making
579 review committee and refiled in the state register on the
580 seventh day of December, one thousand nine hundred
581 ninety-two, relating to the division of natural resources
582 (general hunting regulations), are authorized.

583 (aaa) The legislative rules filed in the state register
584 on the ninth day of September, one thousand nine
585 hundred ninety-two, modified by the division of natural
586 resources to meet the objections of the legislative rule-
587 making review committee and refiled in the state
588 register on the seventh day of December, one thousand
589 nine hundred ninety-two, relating to the division of
590 natural resources (general trapping regulations), are
591 authorized.

592 (bbb) The legislative rules filed in the state register
593 on the ninth day of September, one thousand nine
594 hundred ninety-two, modified by the division of natural
595 resources to meet the objections of the legislative rule-
596 making review committee and refiled in the state
597 register on the seventh day of December, one thousand
598 nine hundred ninety-two, relating to the division of
599 natural resources (special migratory bird hunting
600 regulations), are authorized.

601 (ccc) The legislative rules filed in the state register on
602 the ninth day of September, one thousand nine hundred
603 ninety-two, modified by the division of natural resources
604 to meet the objections of the legislative rule-making
605 review committee and refiled in the state register on the
606 seventh day of December, one thousand nine hundred
607 ninety-two, relating to the division of natural resources
608 (prohibitions when hunting and trapping), are autho-
609 rized with the amendments set forth below:

610 "On page two, subsection 3.9., by striking out the
611 words 'No person may use portable tree stands on public
612 lands' and inserting in lieu thereof the words 'No person
613 may use tree stands, except for portable tree stands, on
614 public lands.'"

615 (ddd) The legislative rules filed in the state register
616 on the twenty-first day of April, one thousand nine
617 hundred ninety-two, modified by the division of natural
618 resources to meet the objections of the legislative rule-
619 making review committee and refiled in the state
620 register on the sixteenth day of December, one thousand
621 nine hundred ninety-two, relating to the division of
622 natural resources (revocation of hunting and fishing
623 licenses), are authorized with the amendments set forth
624 below:

625 "On page two, subsection 4.1., by striking out the word
626 'court' and inserting in lieu thereof the word
627 'commission'";

628 And,

629 "On page two, subdivision 4.1.1, by striking out the

630 word 'court' and inserting in lieu thereof the word
631 'commission'."

632 (eee) The legislative rules filed in the state register on
633 the ninth day of September, one thousand nine hundred
634 ninety-two, modified by the division of natural resources
635 to meet the objections of the legislative rule-making
636 review committee and refiled in the state register on the
637 seventh day of December, one thousand nine hundred
638 ninety-two, relating to the division of natural resources
639 (special bear hunting regulations), are authorized.

640 (fff) The legislative rules filed in the state register on
641 the seventeenth day of September, one thousand nine
642 hundred ninety-two, modified by the division of natural
643 resources to meet the objections of the legislative rule-
644 making review committee and refiled in the state
645 register on the sixteenth day of December, one thousand
646 nine hundred ninety-two, relating to the division of
647 natural resources (special requirements concerning
648 boating), are authorized with the following amendment
649 set forth below:

650 On page one, after subdivision 3.1, by inserting a new
651 subdivision, designated 3.2, to read as follows:

652 3.2. The Pipestem Creek Cove portion of Bluestone
653 Lake in Bluestone State Park is designated for marina
654 use only and is restricted from fishing and other
655 recreational use not directly related to use as a marina.

656 (ggg) The legislative rules filed in the state register
657 on the ninth day of September, one thousand nine
658 hundred ninety-two, modified by the division of natural
659 resources to meet the objections of the legislative rule-
660 making review committee and refiled in the state
661 register on the seventh day of December, one thousand
662 nine hundred ninety-two, relating to the division of
663 natural resources (special waterfowl hunting regula-
664 tions), are authorized.

665 (hhh) The legislative rules filed in the state register
666 on the ninth day of September, one thousand nine
667 hundred ninety-two, modified by the division of natural
668 resources to meet the objections of the legislative rule-

669 making review committee and refiled in the state
670 register on the seventh day of December, one thousand
671 nine hundred ninety-two, relating to the division of
672 natural resources (wild boar hunting), are authorized.

673 (iii) The legislative rules filed in the state register on
674 the ninth day of September, one thousand nine hundred
675 ninety-two, modified by the division of natural resources
676 to meet the objections of the legislative rule-making
677 review committee and refiled in the state register on the
678 seventh day of December, one thousand nine hundred
679 ninety-two, relating to the division of natural resources
680 (wild turkey hunting), are authorized.

681 (jjj) The legislative rules filed in the state register on
682 the tenth day of September, one thousand nine hundred
683 ninety-two, modified by the division of natural resources
684 to meet the objections of the legislative rule-making
685 review committee and refiled in the state register on the
686 eighth day of December, one thousand nine hundred
687 ninety-two, relating to the division of natural resources
688 (West Virginia wildlife management areas), are
689 authorized.

690 (kkk) The legislative rules filed in the state register
691 on the seventeenth day of September, one thousand nine
692 hundred ninety-two, modified by the division of natural
693 resources to meet the objections of the legislative rule-
694 making review committee and refiled in the state
695 register on the twenty-fifth day of January, one
696 thousand nine hundred ninety-three, relating to the
697 division of natural resources (recycling assistance fund
698 grant program), are authorized.

§64-3-10. Water resources board.

1 (a) The legislative rules filed in the state register on
2 the sixth day of January, one thousand nine hundred
3 eighty-three, relating to the state water resources board
4 (underground injection control program), are
5 authorized.

6 (b) The legislative rules filed in the state register on
7 the fifteenth day of November, one thousand nine
8 hundred eighty-three, relating to the state water

9 resources board (special regulations), are authorized.

10 (c) The legislative rules filed in the state register on
11 the third day of August, one thousand nine hundred
12 eighty-three, relating to the state water resources board
13 (groundwater protection standards), are authorized.

14 (d) The legislative rules filed in the state register on
15 the fifteenth day of November, one thousand nine
16 hundred eighty-three, relating to the state water
17 resources board (state national pollutant discharge
18 elimination system (NPDES) program), are authorized.

19 (e) The Legislature hereby authorizes and directs the
20 state water resources board to promulgate rules relating
21 to water quality standards in exact conformity with the
22 rules relating to water quality standards tendered to the
23 secretary of state on the seventh day of March, one
24 thousand nine hundred eighty-four, by the executive
25 secretary of the state water resources board, to be
26 received and filed for inclusion in the state register by
27 the secretary of state.

28 (f) The legislative rules filed in the state register on
29 the seventeenth day of October, one thousand nine
30 hundred eighty-five, and modified by the state water
31 resources board to meet the objections of the legislative
32 rule-making review committee and refiled in the state
33 register on the twenty-fourth day of February, one
34 thousand nine hundred eighty-seven, relating to the
35 state water resources board (special regulations), are
36 authorized.

37 (g) The legislative rules filed in the state register on
38 the seventh day of January, one thousand nine hundred
39 eighty-five, modified by the water resources board to
40 meet the objections of the legislative rule-making review
41 committee and refiled in the state register on the
42 thirteenth day of February, one thousand nine hundred
43 eighty-five, relating to the water resources board (water
44 quality standards), are authorized.

45 (h) The legislative rules filed in the state register on
46 the seventeenth day of October, one thousand nine
47 hundred eighty-five, modified by the state water

48 resources board to meet the objections of the legislative
49 rule-making review committee and refiled in the state
50 register on the eighth day of January, one thousand nine
51 hundred eighty-seven, and further modified by the state
52 water resources board to meet the objections of the
53 legislative rule-making review committee and refiled in
54 the state register on the twenty-fourth day of February,
55 one thousand nine hundred eighty-seven, relating to the
56 state water resources board (water quality standards),
57 are authorized.

58 (i) The legislative rules filed in the state register on
59 the seventeenth day of October, one thousand nine
60 hundred eighty-five, modified by the state water
61 resources board to meet the objections of the legislative
62 rule-making review committee and refiled in the state
63 register on the eighth day of January, one thousand nine
64 hundred eighty-seven, and further modified by the state
65 water resources board to meet the objections of the
66 legislative rule-making review committee and refiled in
67 the state register on the twenty-fourth day of February,
68 one thousand nine hundred eighty-seven, relating to the
69 state water resources board (state national pollutant
70 discharge elimination system (NPDES) program), are
71 authorized.

72 (j) The legislative rules filed in the state register on
73 the seventeenth day of October, one thousand nine
74 hundred eighty-five, and modified by the state water
75 resources board to meet the objections of the legislative
76 rule-making review committee and refiled in the state
77 register on the twenty-fourth day of February, one
78 thousand nine hundred eighty-seven, relating to the
79 state water resources board (underground injection
80 control program), are authorized.

81 (k) The legislative rules filed in the state register on
82 the seventeenth day of October, one thousand nine
83 hundred eighty-five, and modified by the state water
84 resources board to meet the objections of the legislative
85 rule-making review committee and refiled in the state
86 register on the twenty-fourth day of February, one

87 thousand nine hundred eighty-seven, relating to the
88 state water resources board (special regulations), are
89 authorized.

90 (l) The legislative rules filed in the state register on
91 the thirtieth day of June, one thousand nine hundred
92 eighty-seven, relating to the water resources board
93 (water quality standards), are authorized.

94 (m) The legislative rules filed in the state register on
95 the fourteenth day of October, one thousand nine
96 hundred eighty-eight, relating to the water resources
97 board (water quality standards), are authorized.

98 (n) The legislative rules filed in the state register on
99 the twenty-seventh day of August, one thousand nine
100 hundred ninety, relating to the water resources board
101 (requirements governing water quality standards), are
102 authorized.

103 (o) The legislative rules filed in the state register on
104 the eighteenth day of September, one thousand nine
105 hundred ninety-two, relating to the water resources
106 board (underground injection control), are authorized
107 with the amendments set forth below:

108 "On page two, subsection §46-9-2.3. by deleting the
109 entire subsection and by renumbering the following
110 subsections.

111 "On page three, subsection §46-9-2.7. after the word
112 "means" by striking out the remainder of the sentence
113 and inserting in lieu thereof the words "the personnel of
114 the Office of Water Resources and the personnel of the
115 Office of Oil and Gas and the Commissioner."

116 "On page three, subsection §46-9-2.11. after the word
117 "means" by striking out the remainder of the sentence
118 and inserting in lieu thereof the words "Chief of the
119 Office of Water Resources of the Division of Environ-
120 mental Protection."

121 "On page seven, subsection §46-9-2.59.b. by striking
122 out the sentence and inserting in lieu thereof the words
123 "which is not an exempted aquifer."

124 "On page eight, subsection §46-9-3.1.b.1. after the

125 words "permit application for a" by striking out the
126 words "Class II or III" and inserting in lieu thereof the
127 words "Class 2 or 3"

128 "On page nine, subsection §46-9-4.1. by striking out
129 the words "Class I" and inserting in lieu thereof the
130 words "Class 1".

131 "On page nine, subsection §46-9-4.2. by striking out
132 the words "Class II" and inserting in lieu thereof the
133 words "Class 2".

134 "On page nine, subsection §46-9-4.3. by striking out
135 the words "Class III" and inserting in lieu thereof the
136 words "Class 3."

137 "On page ten, subsection §46-9-4.4. by striking out the
138 words "Class IV" and inserting in lieu thereof the words
139 "Class 4."

140 "On page ten, subsection §46-9-4.5. by striking out the
141 definition and inserting in lieu thereof the words "Class
142 5. Injection wells not included in Classes 1, 2, 3, or 4.
143 Class 5 wells include, but are not limited to"

144 "On page eleven, subsection §46-9-4.5.r. after the word
145 "associated" by striking out the word "wit" and inserting
146 in lieu thereof the word "with".

147 "On page twelve, subsection §46-9-5.3.b. after the
148 words "possible objective method:" by striking out the
149 remainder of the subsection and inserting in lieu thereof
150 the following:

151 "Where "r" is equal to the square root of a quantity
152 which consists of a numerator divided by the denomi-
153 nator where the numerator is equal to 2.25 multiplied
154 by "K" multiplied by "H" multiplied by "t"; and, the
155 denominator is equal to "S" multiplied by 10 to the "x"
156 power. And, where "x" is equal to a numerator divided
157 by a denominator, where the numerator is equal to four
158 multiplied by "pi" multiplied by "K" multiplied by "H"
159 multiplied by the quantity equal to the product of
160 ("h(subscript w)" minus "h(subscript bo)") multiplied by
161 "S(subscript p)G(subscript b)"; and, the denominator is
162 equal to 2.3 multiplied by "Q":

163 Where "r" is equal to the radius of endangering
164 influence from injection well (length);

165 "k" is equal to hydraulic conductivity of the injection
166 zone (length/time)"

167 "H" is equal to thickness of the injection zone (length);

168 "t" is equal to time of injection (time);

169 "S" is equal to storage coefficient (dimensionless);

170 "Q" is equal to injection rate (volume/time);

171 "h(subscript bo)" is equal to observed original hydro-
172 static head of injection zone (length) measured from the
173 base of the lowermost underground source of drinking
174 water;

175 "h(subscript w)" is equal to hydrostatic head of
176 underground source of drinking water (length) mea-
177 sured from the base of the lowest underground source
178 of drinking water;

179 "S(subscript p)G(subscript b)" is equal to specific
180 gravity of fluid in the injection zone (dimensionless);
181 and,

182 "pi" is equal to 3.142 (dimensionless)."

183 "On page fifteen, subsection §46-9-6.2.c.1. by striking
184 out the words "Class II" and inserting in lieu thereof the
185 words "Class 2";

186 "On page fifteen, subsection §46-9-6.2.c.2. by striking
187 out the words "Class III" and inserting in lieu thereof
188 the words "Class 3";

189 "On page fifteen, subsection §46-9-7.1. after the words
190 "using any" by striking out the words "Class I" and
191 inserting in lieu thereof the words "Class 1";

192 "On page sixteen, subsection §46-9-7.3.b. after the
193 words "comply with the" by striking out the word
194 "requirements" and inserting in lieu thereof the word
195 "requirements";

196. "On page eighteen, subsection §46-9-8.2.c. after the
197 word "All" by striking out the words "Class I" and

- 198 inserting in lieu thereof the words "Class 1."
- 199 "On page nineteen, subsection §46-9-8.2.e. after the
200 words "construction of new" by striking out the words
201 "Class I" and inserting in lieu thereof the words "Class
202 1"
- 203 "On page twenty-five, subsection §46-9-10.2. after the
204 words "construction of" by striking out the words "Class
205 III" and inserting in lieu thereof the words "Class 3.";
- 206 "On page twenty-six, subsection §46-9-10.2.a. after the
207 words "All new" by striking out the words "Class III"
208 and inserting in lieu thereof the words "Class 3.";
- 209 "On page twenty-six, subsection §46-9-10.2.b. after the
210 words "parts of" by striking out the words "Class III"
211 and inserting in lieu thereof the words "Class 3";
- 212 "On page twenty-six, subsection §46-9-10.2.c. after the
213 words "construction of the new" by striking out the
214 words "Class III" and inserting in lieu thereof the words
215 "Class 3";
- 216 "On page twenty-six, subsection §46-9-10.2.c. after the
217 words "each type of" by striking out the words "Class
218 III" and inserting in lieu thereof the words "Class 3";
- 219 "On page thirty, subsection §46-9-10.4.c.2. after the
220 words "Chief reported" by striking out the word "wit"
221 and inserting in lieu thereof the word "with";
- 222 "On page forty, subsection §46-9-13.2.d.3. after the
223 words "than one" by striking out the word "(10" and
224 inserting in lieu thereof the word "(1)"
- 225 "On page forty, subsection §46-9-13.3.b. after the
226 words "application to" by striking out the word "he" and
227 inserting in lieu thereof the word "the";
- 228 "On page forty-six, subsection §46-9-13.9.a. after the
229 words "drinking water" by striking out the words
230 "(corrective action" by inserting in lieu thereof the
231 words "(corrective action)"
- 232 "On page fifty-eight, subsection §46-9-13.18.a.3.ii.
233 after the words "stayed State" by striking out the word
234 "promulgation" and inserting in lieu thereof the word
235 "promulgated"

236 And,

237 "On page sixty, subsection §46-9-13.22.b.1. after the
238 word "gradient" by inserting a comma."

239 (p) The legislative rules filed in the state register on
240 the eighteenth day of September, one thousand nine
241 hundred ninety-two, relating to the water resources
242 board (national pollutant discharge elimination system
243 (NPDES)), are authorized with the amendments set
244 forth below:

245 "On page seventy-two, subsection §46-2-14.1 after the
246 word "dischargers" by striking the remainder of the
247 sentence and inserting in lieu thereof the words "and
248 POTWs shall comply with the requirements of the Clean
249 Water Act and the regulations at 40 CFR 403 promul-
250 gated thereunder."

251 "On page seventy-two, subsection §46-2-14.1.a.5. after
252 the words "accommodate such heat." by inserting a new
253 subsection §46-2-14.1.a.6. to read as follows:

254 "6. Petroleum oil, non-biodegradable cutting oil, or
255 products of mineral oil origin in amounts that will cause
256 Interference or Pass Through."

257 (q) The legislative rules filed in the state register on
258 the eighteenth day of September, one thousand nine
259 hundred ninety- two, modified by the water resources
260 board to meet the objections of the legislative rule-
261 making review committee and refiled in the state
262 register on the sixteenth day of February, one thousand
263 nine hundred ninety-three, relating to the water
264 resources board (requirements governing groundwater
265 standards), are authorized.

266 (r) The legislative rules filed in the state register on
267 the twenty-first day of August, one thousand nine
268 hundred ninety-one, modified by the water resources
269 board to meet the objections of the legislative rule-
270 making review committee and refiled in the state
271 register on the sixteenth day of February, one thousand
272 nine hundred ninety-three, relating to the water
273 resources board (requirements governing water quality
274 standards), are authorized with the amendment set forth

275 below:

276 On page nineteen, by striking out all of subdivision
277 8.2.c. and inserting in lieu thereof a new subdivision
278 8.2.c, to read as follows:

279 "A final determination on the critical design flow for
280 carcinogens is not made in this rule, in order to permit
281 further review and study of that issue. Following the
282 conclusion of such review and study, the Legislature
283 may again take up the authorization of this rule for
284 purposes of addressing the critical design flow for
285 carcinogens: *Provided*, That until such time as the
286 review and study of the issue is concluded or until such
287 time as the Legislature may again take up the author-
288 ization of this rule, the regulatory requirements for
289 determining effluent limits for carcinogens shall remain
290 as they were on the date this rule was proposed."

§64-3-11. Economic development authority.

1 (a) The legislative rules filed in the state register on
2 the twenty-sixth day of May, one thousand nine hundred
3 eighty-nine, modified by the West Virginia economic
4 development authority to meet the objections of the
5 legislative rule-making review committee and refiled in
6 the state register on the twenty-fifth day of January, one
7 thousand nine hundred ninety, relating to the West
8 Virginia economic development authority (general
9 administration of the West Virginia capital company act
10 and the establishment of the application procedures to
11 implement the act), are authorized.

12 (b) The legislative rules filed in the state register on
13 the twentieth day of September, one thousand nine
14 hundred ninety-one, modified by the West Virginia
15 economic development authority to meet the objections
16 of the legislative rule-making review committee and
17 refiled in the state register on the twelfth day of August,
18 one thousand nine hundred ninety-two, relating to the
19 West Virginia economic development authority (general
20 administration of the West Virginia capital company
21 act: establishment of the application procedures to
22 implement the act), are authorized.

§64-3-12. Solid waste management board.

1 (a) The legislative rules filed in the state register on
2 the twenty-third day of October, one thousand nine
3 hundred ninety, modified by the solid waste manage-
4 ment board to meet the objections of the legislative rule-
5 making review committee and refiled in the state
6 register on the eighteenth day of January, one thousand
7 nine hundred ninety-one, relating to the solid waste
8 management board (development of comprehensive
9 litter and solid waste control plans), are authorized.

10 (b) The legislative rules filed in the state register on
11 the twenty-third day of October, one thousand nine
12 hundred ninety, modified by the solid waste manage-
13 ment board to meet the objections of the legislative rule-
14 making review committee and refiled in the state
15 register on the eighteenth day of January, one thousand
16 nine hundred ninety-one, relating to the solid waste
17 management board (disbursement of loans and grants
18 to governmental agencies for the acquisition or construc-
19 tion of solid waste disposal projects), are authorized.

20 (c) The legislative rules filed in the state register on
21 the twenty-third day of October, one thousand nine
22 hundred ninety, modified by the solid waste manage-
23 ment board to meet the objections of the legislative rule-
24 making review committee and refiled in the state
25 register on the eighteenth day of January, one thousand
26 nine hundred ninety-one, relating to the solid waste
27 management board (establishment of fee schedule and
28 cost allocation applicable to the issuance of bonds by the
29 board), are authorized.

30 (d) The legislative rules filed in the state register on
31 the twenty-third day of October, one thousand nine
32 hundred ninety, modified by the solid waste manage-
33 ment board to meet the objections of the legislative rule-
34 making review committee and refiled in the state
35 register on the eighteenth day of January, one thousand
36 nine hundred ninety-one, relating to the solid waste
37 management board (development of commercial solid
38 waste facility siting plans), are authorized.

39 (e) The legislative rules filed in the state register on

40 the eighteenth day of September, one thousand nine
41 hundred ninety-two, modified by the solid waste
42 management board to meet the objections of the
43 legislative rule-making review committee and refiled in
44 the state register on the seventeenth day of February,
45 one thousand nine hundred ninety-three, relating to the
46 solid waste management board (rules and regulations
47 for the disbursement of grants to solid waste authori-
48 ties), are authorized.

§64-3-13. Board of manufactured housing construction and safety.

1 (a) The legislative rules filed in the state register on
2 the twenty-third day of May, one thousand nine hundred
3 ninety, modified by the board of manufactured housing
4 construction and safety to meet the objections of the
5 legislative rule-making review committee and refiled in
6 the state register on the twenty-fourth day of Sep-
7 tember, one thousand nine hundred ninety, relating to
8 the board of manufactured housing construction and
9 safety (licensing, fees, standards, complaint handling,
10 sanctions, recovery fund, designation of board as state
11 administrative agency under the national manufactured
12 housing construction and safety standards act of 1974),
13 are authorized.

14 (b) The legislative rules filed in the state register on
15 the sixteenth day of September, one thousand nine
16 hundred ninety-two, modified by the board of manufac-
17 tured housing construction and safety to meet the
18 objections of the legislative rule-making review commit-
19 tee and refiled in the state register on the seventeenth
20 day of December, one thousand nine hundred ninety-
21 two, relating to the board of manufactured housing
22 construction and safety (West Virginia manufactured
23 housing construction and safety standards act), are
24 authorized.

§64-3-14. Division of tourism and parks.

1 (a) The legislative rules filed in the state register on
2 the twenty-sixth day of April, one thousand nine
3 hundred ninety-one, modified by the division of tourism
4 and 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".

14 (b) The legislative rules filed in the state register on
15 the eighteenth day of September, one thousand nine
16 hundred ninety-two, modified by the division of tourism
17 and parks 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 ninety-two, relating to the division of
21 tourism and parks (public use of West Virginia state
22 parks, state forests and state hunting and fishing areas
23 under the division of tourism and parks), are authorized
24 with the amendment set forth below:

25 "On page five, section 2.21, after the words 'posted
26 signs' by striking out the period and inserting a colon
27 and the words '*Provided, That any person, group or*
28 *association sponsoring a private party at the restaurant*
29 *at Chief Logan State Park may provide beer, wine,*
30 *liquor and all other alcoholic beverages for guests at the*
31 *private party as long as the party is not open to the*
32 *general public.'*"

§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.

21 (c) The legislative rules filed in the state register on
22 the eighteenth day of September, one thousand nine
23 hundred ninety-two, modified by the public energy
24 authority to meet the objections of the legislative rule-
25 making review committee and refiled in the state
26 register on the seventeenth day of February, one
27 thousand nine hundred ninety-three, relating to the
28 public energy authority (rules and procedures for
29 application for and environmental assessment of pro-
30 jects seeking qualification for public energy authority's
31 assistance), are authorized.

§64-3-16. Division of forestry.

1 (a) The legislative rules filed in the state register on
2 the eighteenth day of September, one thousand nine
3 hundred ninety-two, modified by the division of forestry
4 to meet the objections of the legislative rule-making
5 review committee and refiled in the state register on the
6 twentieth day of January, one thousand nine hundred
7 ninety-three, relating to the division of forestry (sedi-
8 ment control during commercial timber-harvesting
9 operations - logger certification), are authorized.

10 (b) The legislative rules filed in the state register on
11 the eighteenth day of September, one thousand nine
12 hundred ninety-two, modified by the division of forestry
13 to meet the objections of the legislative rule-making
14 review committee and refiled in the state register on the
15 sixteenth day of December, one thousand nine hundred
16 ninety-two, relating to the division of forestry (sediment
17 control during commercial timber-harvesting operations
18 - licensing), are authorized with the amendment set
19 forth below:

20 On page five, by striking out all of subsection 6.7.

§64-3-17. Division of environmental protection.

1 (a) The legislative rules filed in the state register on
2 the eleventh day of October, one thousand nine hundred
3 ninety-one, modified by the division of environmental
4 protection to meet the objections of the legislative rule-
5 making review committee and refiled in the state
6 register on the ninth day of November, one thousand
7 nine hundred ninety-two, relating to the division of
8 environmental protection (operator's designation of bona
9 fide future use of oil and gas wells - qualification for
10 inactive status), are authorized.

11 (b) The legislative rules filed in the state register on
12 the third day of September, one thousand nine hundred
13 ninety-two, modified by the division of environmental
14 protection to meet the objections of the legislative rule-
15 making review committee and refiled in the state
16 register on the nineteenth day of February, one thou-
17 sand nine hundred ninety-three, relating to the division
18 of environmental protection (oil and gas wells and other
19 wells), are authorized.

20 (c) The legislative rules filed in the state register on
21 the third day of September, one thousand nine hundred
22 ninety-two, modified by the division of environmental
23 protection to meet the objections of the legislative rule-
24 making review committee and refiled in the state
25 register on the nineteenth day of February, one thou-
26 sand nine hundred ninety-three, relating to the division
27 of environmental protection (abandoned wells), are
28 authorized.

29 (d) The legislative rules filed in the state register on
30 the eighteenth day of September, one thousand nine
31 hundred ninety-two, modified by the division of enviro-
32 nmental protection to meet the objections of the
33 legislative rule-making review committee and refiled in
34 the state register on the nineteenth day of February, one
35 thousand nine hundred ninety-three, relating to the
36 division of environmental protection (underground
37 storage tank assessment fees), are authorized.

38 (e) The legislative rules filed in the state register on
39 the eighteenth day of September, one thousand nine
40 hundred ninety-two, relating to the division of environ-
41 mental protection (underground storage tanks), are
42 authorized.

43 (f) The legislative rules filed in the state register on
44 the eighteenth day of September, one thousand nine
45 hundred ninety-two, modified by the division of environ-
46 mental protection to meet the objections of the
47 legislative rule-making review committee and refiled in
48 the state register on the nineteenth day of February, one
49 thousand nine hundred ninety-three, relating to the
50 division of environmental protection (hazardous waste
51 management), are authorized.

52 (g) The legislative rules filed in the state register on
53 the third day of March, one thousand nine hundred
54 ninety-two, modified by the division of environmental
55 protection to meet the objections of the legislative rule-
56 making review committee and refiled in the state
57 register on the eighteenth day of February, one thou-
58 sand nine hundred ninety-three, relating to the division
59 of environmental protection (groundwater protection act
60 fee schedule), are authorized.

**§64-3-18. Director of the office of miners' health, safety
and training.**

1 The legislative rules filed in the state register on the
2 thirteenth day of November, one thousand nine hundred
3 ninety-two, modified by the director of the office of
4 miners' health, safety and training to meet the objec-
5 tions of the legislative rule-making review committee
6 and refiled in the state register on the eighteenth day
7 of February, one thousand nine hundred ninety-three,
8 relating to the director of the office of miners' health,
9 safety and training (rules and regulations governing the
10 standards for certification of blasters for surface coal
11 mines and surface areas of underground coal mines), are
12 authorized.

**ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH
AND HUMAN RESOURCES TO PROMULGATE
LEGISLATIVE RULES.**

§64-5-1. Department of health and human resources.

§64-5-2. State board of health; division of health.

§64-5-3. Health care cost review authority.

§64-5-6. Workers' compensation.

§64-5-1. Department of health and human resources.

1 (a) The legislative rules filed in the state register on
2 the twenty-second day of January, one thousand nine
3 hundred ninety, modified by the secretary of the
4 department of health and human resources to meet the
5 objections of the legislative rule-making review commit-
6 tee and refiled in the state register on the twenty-fifth
7 day of January, one thousand nine hundred ninety,
8 relating to the secretary of the department of health and
9 human resources (implementation of omnibus health
10 care act), are authorized.

11 (b) The legislative rules filed in the state register on
12 the twenty-second day of January, one thousand nine
13 hundred ninety, modified by the secretary of the
14 department of health and human resources to meet the
15 objections of the legislative rule-making review commit-
16 tee and refiled in the state register on the twenty-fifth
17 day of January, one thousand nine hundred ninety,
18 relating to the secretary of the department of health and
19 human resources (implementation of omnibus health
20 care act payment provisions), are authorized.

21 (c) The legislative rules filed in the state register on
22 the twentieth day of March, one thousand nine hundred
23 ninety-two, modified by the department of health and
24 human resources to meet the objections of the legislative
25 rule-making review committee and refiled in the state
26 register on the seventeenth day of November, one
27 thousand nine hundred ninety-two, relating to the
28 department of health and human resources (infectious
29 medical waste), are authorized with the amendments set
30 forth below:

31 "On page seventeen, subsection 8.2, by after the words
32 '(45 days.' by inserting the following language: 'Facil-
33 ities that treat infectious medical waste on-site shall not
34 store the infectious medical waste more than thirty (30)
35 days.';

36 On page twenty-one, subdivision 10.1.2., by after the
37 words 'disposed of' striking out the words 'as solid waste'
38 and inserting in lieu thereof the words 'in the same
39 manner as ash from solid waste incineration and as
40 provided in subdivision 10.2.5. of this rule.';

41 On page twenty-six, subsection 11.7., by after the
42 words 'permit to' inserting the words 'own, operate and';

43 On page twenty-six, subsection 11.7., by striking out
44 the word 'publish' and inserting in lieu thereof the
45 words 'announce the public hearing required by subsec-
46 tion 11.9. of this rule by publishing';

47 On page twenty-six, by further amending subsection
48 11.7. by adding thereto a new subdivision, designated
49 subdivision 11.7.1.4. to read as follows: 'The announce-
50 ment of the date, time and place where the hearing is
51 to be conducted, shall be made at least fourteen (14) but
52 not more than forty-five (45) days prior to the hearing;

53 And,

54 On page twenty-six, subsection 11.9, by after the
55 words 'proposing to' inserting the words 'own, construct
56 and'.

57 (d) The legislative rules filed in the state register on
58 the third day of September, one thousand nine hundred
59 ninety-two, modified by the department of health and
60 human resources to meet the objections of the legislative
61 rule-making review committee and refiled in the state
62 register on the twenty-seventh day of January one
63 thousand nine hundred ninety-three, relating to the
64 department of health and human resources (residential
65 board and care homes), are authorized.

§64-5-2. State board of health; division of health.

1 (a) The legislative rules filed in the state register on
2 the second day of June, one thousand nine hundred
3 eighty-two, relating to the state board of health (waste
4 water treatment works operations), are authorized.

5 (b) The legislative rules filed in the state register on
6 the second day of June, one thousand nine hundred
7 eighty-two, relating to the state board of health

8 (laboratory reporting of syphilis and gonorrhoea), are
9 authorized.

10 (c) The legislative rules filed in the state register on
11 the second day of June, one thousand nine hundred
12 eighty-two, relating to the state board of health (public
13 water supply operators) with the modification of \$11.02
14 as presented to the legislative rule-making review
15 committee on the ninth day of November, one thousand
16 nine hundred eighty-two, are authorized.

17 (d) The legislative rules filed in the state register on
18 the twenty-second day of October, one thousand nine
19 hundred eighty-two, relating to the state board of health
20 (sewage systems) with the modification presented to the
21 legislative rule-making review committee on the sixth
22 day of December, one thousand nine hundred eighty-
23 two, are authorized except lines ten through seventeen,
24 page eight of the rules shall be stricken in their entirety
25 and the remaining paragraphs renumbered.

26 (e) The legislative rules filed in the state register on
27 the second day of June, one thousand nine hundred
28 eighty-two, relating to the state board of health
29 (approval of laboratories), are authorized.

30 (f) The legislative rules filed in the state register on
31 the twenty-fourth day of November, one thousand nine
32 hundred eighty-two, relating to the state board of health
33 (permit fees), are authorized.

34 (g) The legislative rules filed in the state register on
35 the third day of June, one thousand nine hundred eighty-
36 two, relating to the state board of health (certificate of
37 need), are authorized.

38 (h) The legislative rules filed in the state register on
39 the sixteenth day of August, one thousand nine hundred
40 eighty-two, relating to the state board of health (eyes of
41 newborn children), are authorized.

42 (i) The legislative rules filed in the state register on
43 the thirteenth day of August, one thousand nine hundred
44 eighty-two, and filed with amendments on the eleventh
45 day of January, one thousand nine hundred eighty-three,
46 relating to the state board of health (nursing home

47 licensure), are authorized with the amendment of
48 §5.15.02 of those rules as set forth below:

49 By striking the word "and" at the end of subdivision
50 (f), by changing the period at the end of subdivision (g)
51 to a semicolon, and by adding the following after
52 subdivision (g): "(h) One (1) member who represents
53 social work services."

54 (j) The legislative rules filed in the state register on
55 the twenty-fourth day of November, one thousand nine
56 hundred eighty-two, relating to the state board of health
57 (guardianship service), are authorized with the excep-
58 tion of section 9.3 of those rules which may not be
59 promulgated.

60 (k) The legislative rules filed in the state register on
61 the third day of June, one thousand nine hundred eighty-
62 two, relating to the state board of health (controlled
63 substances research program and certification), are
64 authorized.

65 (l) The legislative rules filed in the state register on
66 the fifth day of November, one thousand nine hundred
67 eighty-two, relating to the state board of health
68 (chemical test for intoxication), are authorized.

69 (m) The legislative rules filed in the state register on
70 the nineteenth day of December, one thousand nine
71 hundred eighty-three, relating to the state board of
72 health (birthing center licensure), are authorized.

73 (n) The legislative rules filed in the state register on
74 the fourteenth day of November, one thousand nine
75 hundred eighty-three, relating to the state board of
76 health (licensure of behavioral health centers), are
77 authorized with the 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 design-
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 (emergency
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.”

447 (zz) The legislative rules filed in the state register on
448 the sixteenth day of September, one thousand nine
449 hundred ninety-two, modified by the division of health
450 to meet the objections of the legislative rule-making
451 review committee and refiled in the state register on the
452 seventeenth day of November, one thousand nine
453 hundred ninety-two, relating to the division of health
454 (trauma center or facility designation), are authorized.

455 (aaa) The legislative rules filed in the state register
456 on the second day of November, one thousand nine
457 hundred ninety-two, modified by the division of health
458 to meet the objections of the legislative rule-making
459 review committee and refiled in the state register on the
460 nineteenth day of February, one thousand nine hundred
461 ninety-three, relating to the division of health (primary
462 care center seed money grants), are authorized.

463 (bbb) The legislative rules filed in the state register
464 on the second day of November, one thousand nine
465 hundred ninety-two, modified by the division of health
466 to meet the objections of the legislative rule-making
467 review committee and refiled in the state register on the
468 nineteenth day of February, one thousand nine hundred
469 ninety-three, relating to the division of health (primary
470 care center uncompensated care grants), are authorized.

§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 (exemp-
39 tions from certificate of need review), are authorized.

40 (g) The legislative rules filed in the state register on
41 the nineteenth day of September, one thousand nine
42 hundred eighty-eight, modified by the health care cost

43 review authority to meet the objections of the legislative
44 rule-making review committee and refiled in the state
45 register on the twenty-first day of February, one
46 thousand nine hundred eighty-nine, relating to the
47 health care cost review authority (financial disclosure),
48 are authorized.

49 (h) The legislative rules filed in the state register on
50 the fourteenth day of August, one thousand nine
51 hundred eighty-nine, modified by the West Virginia
52 health care cost review authority to meet the objections
53 of the legislative rule-making review committee and
54 refiled in the state register on the fifth day of December,
55 one thousand nine hundred eighty-nine, relating to the
56 West Virginia health care cost review authority (expe-
57 dited review for rate changes), are authorized with the
58 amendments set forth below:

59 On page 5, Section 4.1, after the words: "affected by
60 the increase." by inserting the following language: "The
61 hospital shall also reconcile any excesses in gross
62 revenue, gross patient revenue, gross inpatient revenue
63 or charges per discharge. Within fifteen days of
64 submission the Authority shall inform the hospital if it
65 accepts the justification for excesses provided by the
66 hospital."

67 And,

68 On page 6, section 4.2, after the words "the excess in
69 gross outpatient revenue" by striking the period and
70 inserting the following:

71 "or if any excesses in the above categories (1 through
72 4) have been sufficiently justified to the Authority as
73 required in Section 4.1 of this rule."

74 (i) The legislative rules filed in the state register on
75 the eleventh day of September, one thousand nine
76 hundred eighty-nine, modified by the West Virginia
77 health care cost review authority to meet the objections
78 of the legislative rule-making review committee and
79 refiled in the state register on the fifth day of December,
80 one thousand nine hundred eighty-nine, relating to the
81 West Virginia health care cost review authority (exemp-

82 tion for conversion of acute care beds to skilled nursing
83 care beds), are authorized.

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.”

206 (t) The legislative rules filed in the state register on
207 the eighteenth day of September, one thousand nine
208 hundred ninety-two, modified by the health care cost
209 review authority to meet the objections of the legislative
210 rule-making review committee and refiled in the state
211 register on the twentieth day of November, one thousand
212 nine hundred ninety-two, relating to the health care cost
213 review authority (exemption for birthing centers), are
214 authorized.

215 (u) The legislative rules filed in the state register on
216 the eighteenth day of September, one thousand nine
217 hundred ninety-two, modified by the health care cost
218 review authority to meet the objections of the legislative
219 rule-making review committee and refiled in the state
220 register on the twentieth day of November, one thousand
221 nine hundred ninety-two, relating to the health care cost
222 review authority (exemption for primary care hospitals),
223 are authorized.

224 (v) The legislative rules filed in the state register on
225 the eighteenth day of September, one thousand nine
226 hundred ninety-two, modified by the health care cost
227 review authority to meet the objections of the legislative
228 rule-making review committee and refiled in the state
229 register on the twentieth day of November, one thousand
230 nine hundred ninety-two, relating to the health care cost
231 review authority (exemption for new primary care
232 services), are authorized.

233 (w) The legislative rules filed in the state register on
234 the ninth day of September, one thousand nine hundred
235 ninety-two, modified by the health care cost review
236 authority to meet the objections of the legislative rule-
237 making review committee and refiled in the state
238 register on the first day of February, one thousand nine
239 hundred ninety-three, relating to the health care cost
240 review authority (temporary approval of discount

241 contracts for border hospitals), are authorized.

§64-5-6. Workers' compensation.

1 (a) The legislative rules filed in the state register on
2 the fourteenth day of November, one thousand nine
3 hundred eighty-three, relating to the workers' compen-
4 sation commissioner (employers' excess liability fund),
5 are authorized.

6 (b) The legislative rules filed in the state register on
7 the twenty-fifth day of October, one thousand nine
8 hundred eighty-four, relating to the workers' compensa-
9 tion commissioner (time limits for the administrative
10 proceedings of adjudications and awards), are
11 authorized.

12 (c) The legislative rules filed in the state register on
13 the twenty-fifth day of October, one thousand nine
14 hundred eighty-four, modified by the workers' compen-
15 sation commissioner to meet the objections of the
16 legislative rule-making review committee and refiled in
17 the state register on the ninth day of January, one
18 thousand nine hundred eighty-five, relating to the
19 workers' compensation commissioner (self-insured
20 employers), are authorized.

21 (d) The legislative rules filed in the state register on
22 the twenty-fifth day of October, one thousand nine
23 hundred eighty-four, modified by the workers' compen-
24 sation commissioner to meet the objections of the
25 legislative rule-making review committee and refiled in
26 the state register on the fifth day of December, one
27 thousand nine hundred eighty-four, relating to the
28 workers' compensation commissioner (payment of
29 attorney's fees), are authorized.

30 (e) The legislative rules filed in the state register on
31 the sixth day of August, one thousand nine hundred
32 eighty-five, relating to the workers' compensation
33 commissioner (standards for medical examination in
34 occupational pneumoconiosis claims), are authorized
35 with the amendments set forth below:

36 On page 1, the second and third unnumbered para-
37 graphs on page one are amended to read as follows:

38 "When two or more ventilatory function tests per-
39 formed in reasonably close proximity in time produce
40 differing but acceptable results, the Commissioner, at
41 the request of the O. P. Board, may direct the parties
42 to furnish additional evidence and/or order additional
43 testing at the laboratory utilized by the O. P. Board or
44 other laboratories, all for the purpose of determining
45 whether any of the results are unreliable or incorrect
46 or are clearly attributable to some identifiable disease
47 or illness other than occupational pneumoconiosis."

48 When blood gas studies are performed and abnormal
49 values are obtained and thereafter new blood gas studies
50 are performed and normal or significantly higher values
51 are further obtained, the Commissioner, at the request
52 of the O. P. Board, may direct the parties to furnish
53 additional evidence and/or order additional studies at
54 the laboratory utilized by the O. P. Board or other
55 laboratories, all for the purpose of determining whether
56 any of the values are unreliable or incorrect or are
57 clearly attributable to some identifiable disease or
58 illness other than occupational pneumoconiosis."

59 And,

60 On page 7, paragraph (11) is amended to read as
61 follows:

62 "(11) It is recognized that arterial blood gas studies
63 done in laboratories throughout this state are obtained
64 at different altitudes. Only by 'standardizing' for
65 altitude can an equitable assessment be made of
66 impairment when values of arterial oxygen are being
67 measured at remarkably different altitudes. Therefore,
68 the results reported from laboratories should include the
69 name of the laboratory and the date and time of the
70 testing, altitude of the laboratory and barometric
71 pressure at the laboratory on the day the samples were
72 collected. The O. P. Board will evaluate the arterial
73 blood gas values by converting those values to the
74 average altitude of Charleston, West Virginia. For this
75 purpose, it shall be sufficient to add 1 mmHg to each
76 arterial oxygen tension for each 300 feet or fraction
77 thereof that the testing laboratory is located above the

78 average altitude of Charleston, because the relationship
79 of barometric pressure (altitude) and alveolar oxygen is
80 approximately linear up to 4,000 feet as long as the
81 subject breathes room air.

82 As an example, Bluefield is located approximately
83 2,600 feet above sea level. Charleston is approximately
84 600 feet above sea level. Thus, arterial oxygen values
85 obtained in Bluefield should have 6.67 mmHg added to
86 them before applying the table to them to obtain
87 'percent impairment.' The calculations are as follows:

88 'Bluefield (2,600') minus Charleston (600') equals
89 2,000'

90 differential 2,000' divided by 300' altitude equals 6.67

91 6.67 multiplied by 1 mmHg per 300' altitude equals
92 6.67 mmHg.'"

93 (f) The legislative rules filed in the state register on
94 the ninth day of August, one thousand nine hundred
95 eighty-five, modified by the workers' compensation
96 commissioner to meet the objections of the legislative
97 rule-making review committee and refiled in the state
98 register on the fifteenth day of January, one thousand
99 nine hundred eighty-six, relating to the workers'
100 compensation commissioner (administration of the coal-
101 workers' pneumoconiosis fund), are authorized.

102 (g) The legislative rules filed in the state register on
103 the thirtieth day of November, one thousand nine
104 hundred eighty-nine, modified by the division of
105 workers' compensation to meet the objections of the
106 legislative rule-making review committee and refiled in
107 the state register on the tenth day of January, one
108 thousand nine hundred ninety, relating to the division
109 of workers' compensation (enforcement of reporting and
110 payment requirements), are authorized.

111 (h) The legislative rules filed in the state register on
112 the sixteenth day of January, one thousand nine hundred
113 ninety, modified by the division of workers' compensa-
114 tion to meet the objections of the legislative rule-making
115 review committee and refiled in the state register on the
116 twenty-third day of January, one thousand nine hundred

117 ninety, relating to the division of workers' compensation
118 (self-insured employers), are authorized.

119 (i) The legislative rules filed in the state register on
120 the eighteenth day of September, one thousand nine
121 hundred ninety-two, modified by the workers' compen-
122 sation fund to meet the objections of the legislative rule-
123 making review committee and refiled in the state
124 register on the twenty-first day of January, one thou-
125 sand nine hundred ninety-three, relating to the workers'
126 compensation fund (self-insured employers), are
127 authorized.

128 (j) The legislative rules filed in the state register on
129 the eighteenth day of September, one thousand nine
130 hundred ninety-two, modified by the division of workers'
131 compensation to meet the objections of the legislative
132 rule-making review committee and refiled in the state
133 register on the twenty-first day of January, one thou-
134 sand nine hundred ninety-three, relating to the division
135 of workers' compensation (protocols and procedures for
136 performing medical evaluations in noise-induced hear-
137 ing loss claims), are authorized.

138 (k) The Legislature hereby authorizes and directs the
139 division of workers' compensation to amend its rules
140 relating to enforcement of reporting and payment
141 requirements which were filed in the code of state
142 regulations (85 CSR 11) on the thirtieth day of March,
143 one thousand nine hundred ninety, with the amend-
144 ments set forth below:

145 On page one, by striking out all of subsection 2.8 and
146 inserting in lieu thereof a new subsection 2.8 to read as
147 follows:

148 "2.8 The term "employer" has the meaning ascribed
149 to that term by West Virginia Code, §23-2-1, which
150 includes, but is not limited to, any individual, firm,
151 partnership, limited partnership, copartnership, joint
152 venture, association, corporation, organization, receiver,
153 estate, trust, guardian, executor, administrator, or any
154 other entity regularly employing another person or
155 persons for the purpose of carrying on any form of
156 industry, service or business in this state."; and

157 On page 3, after subsection 3.8, by inserting a new
158 subsection 3.9, to read as follows:

159 "3.9 Any person required to collect, truthfully account
160 for, and pay over to the commissioner any premium,
161 premium deposit, interest, or penalty pursuant to the
162 provisions of West Virginia Code, §23-2-1, et. seq., who
163 willfully fails to collect the premium, premium deposit,
164 interest or penalty, or truthfully account for and pay
165 over the premium, premium deposit, interest or penalty,
166 or willfully attempts in any manner to evade or defeat
167 any premium, premium deposit, interest or penalty or
168 the payment thereof, is, in addition to other penalties
169 provided by law, liable for a penalty equal to the total
170 amount of the premium, premium deposit, interest or
171 penalty evaded, or not collected, or not accounted for
172 and paid over. The penalty is a personal obligation of
173 the responsible person immediately due and owing to
174 the commissioner and, in addition thereto, is a lien
175 enforceable against all the property of the person."

**ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF PUBLIC
SAFETY TO PROMULGATE LEGISLATIVE
RULES.**

§64-6-2. Fire commission.

§64-6-3. Jail and correctional facility standards commission.

§64-6-6. State emergency response commission.

§64-6-2. Fire commission.

1 (a) The legislative rules filed in the state register on
2 the third day of January, one thousand nine hundred
3 eighty-four, relating to the state fire commission (state
4 fire code), are authorized with the amendments set forth
5 below:

6 On page 1, section 106, line 1, after the word "to" add
7 the words "personal care homes caring for five or less
8 patients or";

9 And,

10 On page 26, section 11.06 (3) A. (3), strike the period
11 at the end of the sentence and add the words "except
12 for existing sleeping rooms owned by the state and
13 located in dormitories or state parks."

14 (b) The legislative rules filed in the state register on
15 the first day of August, one thousand nine hundred
16 eighty-six, modified by the state fire commission to meet
17 the objection of the legislative rule-making review
18 committee and refiled in the state register on the
19 twenty-eighth day of October, one thousand nine
20 hundred eighty-six, relating to the state fire commission
21 (hazardous substance emergency response training
22 program), are authorized.

23 (c) The legislative rules filed in the state register on
24 the sixth day of September, one thousand nine hundred
25 eighty-eight, modified by the state fire commission to
26 meet the objections of the legislative rule-making review
27 committee and refiled in the state register on the eighth
28 day of December, one thousand nine hundred eighty-
29 eight, relating to the state fire commission (state
30 building code), are authorized.

31 (d) The legislative rules filed in the state register on
32 the fourteenth day of August, one thousand nine
33 hundred eighty-nine, modified by the state fire commis-
34 sion to meet the objections of the legislative rule-making
35 review committee and refiled in the state register on the
36 fifteenth day of January, one thousand nine hundred
37 ninety, relating to the state fire commission (electrician
38 licensing), are authorized with the following
39 amendment:

40 On page 6, section 3.03, by deleting all of subsection
41 (A) and inserting in lieu thereof the following:

42 “(A) Any person who performs electrical work with
43 respect to any property owned or leased by such person.
44 For purposes of this subparagraph: (1) ‘property owner’
45 includes the property owner, lessee, and his or her
46 maintenance personnel; and, (2) ‘performs electrical
47 work’ includes routine maintenance, repairs, and
48 improvements to existing structures; or.”

49 (e) The legislative rules filed in the state register on
50 the fourteenth day of August, one thousand nine
51 hundred eighty-nine, modified by the state fire commis-
52 sion to meet the objections of the legislative rule-making
53 review committee and refiled in the state register on the

54 twenty-fifth day of October, one thousand nine hundred
55 eighty-nine, relating to the state fire commission (fees
56 for services rendered), are authorized with the amend-
57 ment set forth below:

58 On page 1, section 2.1(G), by striking out the word
59 "underground."

60 (f) The legislative rules filed in the state register on
61 the eleventh day of August, one thousand nine hundred
62 eighty-nine, modified by the state fire commission to
63 meet the objections of the legislative rule-making review
64 committee and refiled in the state register on the
65 twenty-sixth day of October, one thousand nine hundred
66 eighty-nine, relating to the state fire commission (fire
67 code), are authorized.

68 (g) The legislative rules filed in the state register on
69 the sixteenth day of July, one thousand nine hundred
70 ninety, modified by the state fire commission to meet the
71 objections of the legislative rule-making review commit-
72 tee and refiled in the state register on the fifteenth day
73 of November, one thousand nine hundred ninety,
74 relating to the state fire commission (state building
75 code), are authorized with the amendments set forth
76 below:

77 On page two, subsection 4.1 after the words "The
78 BOCA National Property Maintenance Code, Third
79 Edition, 1990" insert the following ": *Provided*, That
80 section PM-104.4 Right of Entry may be adopted or
81 rejected at the option of the local jurisdiction."

82 And,

83 On page two, subsection 4.1 by adding thereto a new
84 subdivision, designated subdivision 4.1.1 to read as
85 follows:

86 "4.1.1 The following structures shall not be subject to
87 inspection by local jurisdictions:

88 4.1.1.a Group U utility structures and storage sheds
89 comprising an area of not more than 150 square feet
90 which have no plumbing or electrical connections and
91 are utilized only for residential storage purposes.

92 (Examples include storage sheds that are for the
93 residential storage of lawnmowers, tools, bicycles or
94 furniture) Group U utility structures do not include
95 those utility structures and storage sheds which have
96 plumbing or electrical connections or are used for the
97 storage of explosives or other hazardous or explosive-
98 type materials.”

99 (h) The legislative rules filed in the state register on
100 the thirteenth day of August, one thousand nine hundred
101 ninety, modified by the state fire commission to meet the
102 objections of the legislative rule-making review commit-
103 tee and refiled in the state register on the fifteenth day
104 of January, one thousand nine hundred ninety-one,
105 relating to the state fire commission (state fire code), are
106 authorized.

107 (i) The legislative rules filed in the state register on
108 the fourteenth day of August, one thousand nine
109 hundred ninety-two, modified by the state fire commis-
110 sion to meet the objections of the legislative rule-making
111 review committee and refiled in the state register on the
112 thirtieth day of November, one thousand nine hundred
113 ninety-two, relating to the state fire commission
114 (electrician licensing), are authorized.

**§64-6-3. Jail and correctional facility standards
commission.**

1 (a) The legislative rules filed in the state register on
2 the fifth day of November, one thousand nine hundred
3 eighty-seven, relating to the jail and prison standards
4 commission (West Virginia minimum standards for
5 construction, operation and maintenance of jails), are
6 authorized.

7 (b) The legislative rules filed in the state register on
8 the ninth day of May, one thousand nine hundred eighty-
9 eight, modified by the jail and prison standards
10 commission to meet the objections of the legislative rule-
11 making review committee and refiled in the state
12 register on the twenty-seventh day of February, one
13 thousand nine hundred eighty-nine, relating to the jail
14 and prison standards commission (West Virginia
15 minimum standards for construction, operation and

16 maintenance of holding facilities), are authorized.

17 (c) The legislative rules filed in the state register on
18 the eighteenth day of March, one thousand nine hundred
19 eighty-eight, modified by the jail and prison standards
20 commission to meet the objections of the legislative rule-
21 making review committee and refiled in the state
22 register on the twenty-seventh day of February, one
23 thousand nine hundred eighty-nine, relating to the jail
24 and prison standards commission (West Virginia
25 minimum standards for construction, operation and
26 maintenance of prisons), are authorized.

27 (d) The Legislature hereby authorizes and directs the
28 jail and prison standards commission to amend its rules
29 relating to West Virginia minimum standards for
30 construction, operation and maintenance of jails which
31 were filed in the code of state regulations (95 CSR 1)
32 on the fifth day of April, one thousand nine hundred
33 eighty-eight, with the following amendment set forth
34 below:

35 On page 7, §8.10 by striking out in the first sentence,
36 after the word "house", the following words: "no less
37 than four (4)" and

38 On page 30 by adding a new section 17.21 to read as
39 follows:

40 "17.21 Visitation to Home County. To the extent that
41 the previous subsections provide requirements for
42 visitation with inmates housed in regional jail facilities,
43 it is the intent that such requirements apply only to
44 visitation provided in a regional jail facility. When
45 visitation with family and friends is required to be
46 provided to a person incarcerated in a regional jail
47 facility in a location other than the regional jail, the
48 following provisions shall apply:

49 17.21.1 The regional jail need not assume the respon-
50 sibility for transportation to the home county seat of a
51 person incarcerated in the regional jail facility for
52 visitation with their family and friends unless that
53 person has had no visits from family and friends in the
54 previous three months.

55 17.21.2 In providing any transportation under subsec-
56 tion 17.21.1 the regional jail has the right to schedule
57 such transportation for visits with family and friends of
58 the person incarcerated in a manner which would utilize
59 to the utmost the regional jail's regularly scheduled
60 trips to each of the respective counties it serves,
61 including the scheduling of round-trips, so long as a
62 minimum of 30 minutes is available for visitation.

63 17.21.3 The regional jail need not assume any respon-
64 sibility for transportation under subsection 17.21.1 when
65 the distance from the regional jail to the respective
66 county seat is less than two hours driving time."

67 (e) The legislative rules filed in the state register on
68 the twentieth day of September, one thousand nine
69 hundred ninety-one, modified by the jail and correc-
70 tional facility standards commission to meet the
71 objections of the legislative rule-making review commit-
72 tee and refiled in the state register on the ninth day of
73 July, one thousand nine hundred ninety-two, relating to
74 the jail and correctional facility standards commission
75 (minimum standards for construction, operation and
76 maintenance of jails), are authorized, with the following
77 amendment:

78 On page 4, section 1.1, by striking everything after the
79 word "Scope" and inserting in lieu thereof the following:
80 "This legislative rule establishes minimum standards
81 and procedures for new jail facilities completed after the
82 fifth day of April, one thousand nine hundred eighty-
83 eight, and shall serve only as guidelines for jail facilities
84 that were in operation prior to fifth day of April, one
85 thousand nine hundred eighty-eight."

86 (f) The Legislature hereby authorizes and directs the
87 jail and prison standards commission to amend its rules
88 relating to West Virginia minimum standards for
89 construction, operation and maintenance of holding
90 facilities which were filed in the code of state regula-
91 tions (95 CSR 3) on the twenty-seventh day of June, one
92 thousand nine hundred eighty-nine, with the following
93 amendment:

94 On page 30, by striking out all of §8.7, and renum-
95 bering the following subsections.

§64-6-6. State emergency response commission.

1 The legislative rules filed in the state register on the
2 ninth day of December, one thousand nine hundred
3 ninety-one, modified by the state emergency response
4 commission to meet the objections of the legislative rule-
5 making review committee and refiled in the state
6 register on the fifteenth day of December, one thousand
7 nine hundred ninety-two, relating to the state emer-
8 gency response commission (SERC legislative rules), are
9 authorized.

**ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND
REVENUE TO PROMULGATE LEGISLATIVE
RULES.**

§64-7-2. Insurance commissioner.

§64-7-3. Board of investments.

§64-7-5. Racing commission.

§64-7-6. Department of tax and revenue; division of tax; and state tax
commissioner.

§64-7-2. 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.

117 (p) The legislative rules filed in the state register on
118 the eighteenth day of September, one thousand nine
119 hundred ninety-two, relating to the insurance commis-
120 sioner (regulation of credit life insurance and credit
121 accident and sickness insurance), are authorized.

122 (q) The legislative rules filed in the state register on
123 the eighteenth day of September, one thousand nine
124 hundred ninety-two, modified by the insurance commis-
125 sioner to meet the objections of the legislative rule-
126 making review committee and refiled in the state
127 register on the tenth day of December, one thousand
128 nine hundred ninety-two, relating to the insurance
129 commissioner (filing fees for purchasing groups and for
130 risk retention groups not chartered in this state), are
131 authorized.

132 (r) The legislative rules filed in the state register on
133 the fourteenth day of October, one thousand nine
134 hundred ninety-two, relating to the insurance commis-
135 sioner (group coordination of benefits), are authorized
136 with the amendments set forth below:

137 “On page six, subsection 2.1.9., after the words ‘If a
138 person is covered by more than one employer group
139 minimum benefits plan, the order of benefits determi-

140 nation rules of this regulation decide the order in which
141 their benefits are determined in relation to each other'
142 by inserting a colon and the words '*Provided, That*
143 under the provisions of West Virginia Code §5-16-12(a),
144 coverage issued pursuant to the Public Employees
145 Insurance Act is secondary to an employer group
146 minimum benefits plan and any other applicable health
147 insurance coverage.'"

148 (s) The legislative rules filed in the state register on
149 the eighteenth day of September, one thousand nine
150 hundred ninety-two, modified by the insurance commis-
151 sioner to meet the objections of the legislative rule-
152 making review committee and refiled in the state
153 register on the fifteenth day of January, one thousand
154 nine hundred ninety-three, relating to the insurance
155 commissioner (permanent regulations on medicare
156 supplement insurance), are authorized.

157 (t) The legislative rules filed in the state register on
158 the eighteenth day of September, one thousand nine
159 hundred ninety-two, modified by the insurance commis-
160 sioner to meet the objections of the legislative rule-
161 making review committee and refiled in the state
162 register on the fifteenth day of January, one thousand
163 nine hundred ninety-three, relating to the insurance
164 commissioner (individual and employer group minimum
165 benefits, accident and sickness insurance policies), are
166 authorized with the amendments set forth below:

167 "On page two, subsection 3.2 by striking out the period
168 and inserting the following: 'other than coverage issued
169 pursuant to the Public Employees Insurance Act, as
170 provided in West Virginia Code §5-16-12(a).'

171 (u) The legislative rules filed in the state register on
172 the eighteenth day of September, one thousand nine
173 hundred ninety-two, modified by the insurance commis-
174 sioner to meet the objections of the legislative rule-
175 making review committee and refiled in the state
176 register on the fifteenth day of January, one thousand
177 nine hundred ninety-three, relating to the insurance
178 commissioner (long-term care insurance), are
179 authorized.

180 (v) The legislative rules filed in the state register on
181 the eighteenth day of September, one thousand nine
182 hundred ninety-two, modified by the insurance commis-
183 sioner to meet the objections of the legislative rule-
184 making review committee and refiled in the state
185 register on the fifteenth day of January, one thousand
186 nine hundred ninety-three, relating to the insurance
187 commissioner (standards for uniform health care
188 administration), 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.

101 (l) The legislative rules filed in the state register on
102 the sixth day of November, one thousand nine hundred
103 ninety-one, modified by the state board of investments
104 to meet the objections of the legislative rule-making
105 review committee and refiled in the state register on the
106 twenty-first day of August, one thousand nine hundred
107 ninety-two, relating to the state board of investments
108 (reporting of state debt to the West Virginia state board
109 of investments), 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.

193 (cc) The legislative rules filed in the state register on
194 the eighteenth day of September, one thousand nine

195 hundred ninety-two, relating to the racing commission
196 (pari-mutuel wagering), are authorized.

197 (dd) The legislative rules filed in the state register on
198 the eighteenth day of September, one thousand nine
199 hundred ninety-two, modified by the racing commission
200 to meet the objections of the legislative rule-making
201 review committee and refiled in the state register on the
202 twenty-sixth day of January, one thousand nine hundred
203 ninety-three, relating to the racing commission (tho-
204 roughbred racing), are authorized.

205 (ee) The legislative rules filed in the state register on
206 the eighteenth day of September, one thousand nine
207 hundred ninety-two, modified by the racing commission
208 to meet the objections of the legislative rule-making
209 review committee and refiled in the state register on the
210 twenty-sixth day of January, one thousand nine hundred
211 ninety-three, relating to the racing commission (grey-
212 hound racing), are authorized.

**§64-7-6. Department of tax and revenue; division of tax;
and state tax commissioner.**

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." Renumber 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 seventh day
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 the
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.”

699 (ss) The legislative rules filed in the state register on
700 the eighteenth day of September, one thousand nine
701 hundred ninety-two, relating to the division of tax
702 (bingo), are authorized.

703 (tt) The Legislature hereby authorizes and directs the
704 division of tax to amend its rule relating to consumers
705 sales and service tax and use tax which were filed in
706 the code of state regulations (110 CSR 15) on the twenty-
707 seventh day of April, one thousand nine hundred ninety-
708 two, with the following amendments:

709 On page fifty-eight, by striking out all of subpara-
710 graph 9.3.4.3.d and by renumbering the remaining
711 subparagraph; and,

712 On page one hundred eight, section 38.1, after the
713 words "daily charge." by striking out the words "The
714 daily charge subject to the consumers sales and service
715 tax does not include complimentary items such as
716 shampoo, coffee and newspapers given to guests by
717 hotels and motels." and inserting in lieu thereof the
718 following:

719 "Notwithstanding the fact that persons engaged in the
720 rendering of a service are required to pay tax on their
721 purchases for use and/or consumption in rendering such
722 services, the purchase by hotels, motels, tourist homes
723 and rooming houses of complimentary items such as
724 shampoos, coffee and newspapers given to guests by
725 such hotels, motels, tourist homes and rooming houses
726 are not taxable."

**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
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".

114 (n) The legislative rules filed in the state register on
115 the fifteenth day of September, one thousand nine
116 hundred ninety-two, modified by the division of motor
117 vehicles to meet the objections of the legislative rule-
118 making review committee and refiled in the state
119 register on the seventeenth day of November, one
120 thousand nine hundred ninety-two, relating to the
121 division of motor vehicles (motor vehicle dealers,
122 wreckers/ dismantlers/ rebuilders and license services),
123 are authorized.

**ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGEN-
CIES AND BOARDS TO PROMULGATE LEGISLA-
TIVE RULES.**

- §64-9-1. Commissioner of agriculture.
- §64-9-12. West Virginia state board of registration for professional engineers.
- §64-9-16. Board of medicine.
- §64-9-18. Board of examiners for registered professional nurses.
- §64-9-20. Board of pharmacy.
- §64-9-21. Board of examiners of psychologists.
- §64-9-23. Real estate commission.
- §64-9-24. Secretary of state.
- §64-9-28. West Virginia cable television advisory board.
- §64-9-31. Real estate appraiser licensing and certification board.

§64-9-34. Board of occupational therapy.

§64-9-35. Board of social work examiners.

§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 W. Va. Code §19-14-8(d), except that:

173 5.6.a. The name of the grower or feeder will substitute
174 for the requirements for the name of the purchaser; and,

175 5.6.b. The net weight (avoir dupois) of the commercial
176 feed and each feed ingredient used in the feed shall not
177 be required to be listed."

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

187 (z) The legislative rules filed in the state register on
188 the twentieth day of December, one thousand nine
189 hundred ninety, modified by the commissioner of
190 agriculture to meet the objections of the legislative rule-
191 making review committee and refiled in the state
192 register on the thirtieth day of April, one thousand nine

193 hundred ninety-one, relating to the commissioner of
194 agriculture (fee structure for the pesticide control act of
195 1990), are authorized.

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

204 (bb) The legislative rules filed in the state register on
205 the eighth day of August, one thousand nine hundred
206 ninety-one, modified by the commissioner of agriculture
207 to meet the objections of the legislative rule-making
208 review committee and refiled in the state register on the
209 tenth day of September, one thousand nine hundred
210 ninety-one, relating to the commissioner of agriculture
211 (West Virginia plant pest act), are authorized.

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

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

228 (ee) The legislative rules filed in the state register on
229 the eighth day of August, one thousand nine hundred
230 ninety-one, modified by the commissioner of agriculture
231 to meet the objections of the legislative rule-making
232 review committee and refiled in the state register on the

233 twenty-fourth day of September, one thousand nine
234 hundred ninety-one, relating to the commissioner of
235 agriculture (assessment of civil penalties and procedures
236 for consent agreements and negotiated settlements), are
237 authorized.

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

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

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

259 "61-4B-15. Enforcement policy.

260 15.1. The commissioner may assess a violation of W.
261 Va. Code §19-11B-1 et seq. or of these rules against the
262 manufacturer of product and/or the distributor of the
263 mix used to manufacture the product.

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

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

281 15.4. Whenever two of the last five consecutive official
282 product sample(s) taken on separate days within a one
283 year period are found to be adulterated or misbranded
284 the commissioner shall send a written "Second Notice"
285 to the manufacturer or distributor whichever is
286 appropriate.

287 15.4.a. The commissioner shall collect additional
288 official product sample(s) within 21 days of the sending
289 of a Second Notice to the manufacturer or distributor,
290 but shall not collect product samples before the lapse of
291 7 days from the sending of a Second Notice.

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

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

303 15.6. The commissioner will issue a "Shut-down
304 Order" for a period of 24 hours to a manufacturer or
305 distributor when the record of the firm indicates that
306 effective action has not been taken to correct the causes
307 of the violations, for instance when three out of the last
308 five samples from the same machine are violative. The
309 "Shut-down Order" will normally be issued with the
310 "Third Notice". The "Shut-down Order" will give the
311 reasons for the order, state the portion of the manufac-

312 turing or distributing operation that is prohibited from
313 operating while the order is in effect, give conditions of
314 the order, state the length of time that the Shut-down
315 Order will be in effect and specify a time and place for
316 a hearing to be held in this matter. Except that in the
317 case where the public health, safety or welfare is at risk,
318 the commissioner will issue an immediate Shut-down
319 Order and give notice to the manufacturer or distributor
320 under the provisions of subdivision 15.6.a. of this rule.

321 15.6.a. The commissioner will issue an immediate
322 Shut-down Order without giving the manufacturer or
323 distributor the opportunity to be heard where there is
324 a hazard to the public health, safety or welfare. In these
325 cases, the manufacturer or distributor will be given the
326 opportunity to request a hearing before the commis-
327 sioner after the notification of the order is received by
328 the manufacturer or distributor. All Shut-down Orders
329 issued due to noncompliance with subdivisions 8.1.c.,
330 8.1.d. or 8.1.g. of this rule are considered to involve a
331 risk to the public health, safety or welfare.

332 15.6.b. The manufacturer or distributor will be
333 responsible for causing all operations covered by the
334 Shut-down Order to cease and follow all other conditions
335 of the order. At the end of the period of the order, the
336 manufacturer or distributor may resume operations
337 without further action by the commissioner.

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

349 15.7.a. All suspensions due to nonconformance to
350 subdivisions 8.1.c., 8.1.d. or 8.1.g. of this rule are
351 summary suspensions.

352 15.7.b. A suspension of the Frozen Desserts Manufac-
353 turer Permit remains in effect until the manufacturer
354 submits and the commissioner accepts a written plan of
355 correction and a request for a reinstatement of the
356 permit.

357 15.7.c. The commissioner has seven days from the date
358 of receipt of this application to respond to a suspension
359 in the case of violations of subdivisions 8.1.c., 8.1.d. or
360 8.1.g. of this rule and fourteen days to respond for all
361 other violations of W. Va. Code §19-11B-1 et seq. or these
362 rules. The commissioner will accept or deny the
363 application for a reinstatement of the permit and will
364 give the terms and conditions under which the permit
365 will be reinstated.

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

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

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

387 15.11. A person who performs a recall by voluntarily
388 removing product from sale and distribution in an
389 effective manner so as to limit the potential harm to the
390 health and well-being of the public may be eligible for
391 exemptions from the normal enforcement policy. The

392 commissioner shall consider the facts of each case when
393 making a decision on an exemption.

394 15.12. The commissioner may apply the enforcement
395 policy in a liberal manner in cases where all official
396 product sample results that involve a product in the
397 form actually sold to the public have been found to be
398 in conformance with W. Va. Code §19-11B-1 et seq. or
399 these rules.

400 15.13. The commissioner may suspend the standard
401 enforcement policy in cases where such action is
402 necessary to protect the public health, safety or welfare.

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

408 15.14.a. After a first notice and one nonviolative
409 sample, resamples will be taken between 5 to 6 months
410 after the nonviolative sample.

411 15.14.b. After a second notice and one nonviolative
412 sample, resamples will be taken between 3-4 months
413 after the nonviolative sample.

414 15.14.c. Other resamples may be considered necessary
415 to determine that the nonviolative status is being
416 maintained.”

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

426 (ii) The legislative rules filed in the state register on
427 the eighth day of August, one thousand nine hundred
428 ninety-one, modified by the commissioner of agriculture
429 to meet the objections of the legislative rule-making

430 review committee and refiled in the state register on the
431 twenty-fourth day of September, one thousand nine
432 hundred ninety-one, relating to the commissioner of
433 agriculture (disposal of dead poultry), are authorized
434 with the amendments set forth below:

435 On page two, section two, by adding a new subsection
436 to read as follows:

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

447 On page two, subsection 3.1 after the word "inciner-
448 ator," by adding the words "disposal pit,"

449 And,

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

452 "\$61-1C-4. Standards for Site Location for Disposal
453 Pits.

454 4.1 No part of a disposal pit system shall be located
455 in a poorly drained or filled area, or in any area where
456 seasonal flooding occurs.

457 4.2 No part of a disposal pit system shall be located
458 within 10 feet of a building, foundation or property line.

459 4.3 No part of a disposal pit system shall be located
460 within 50 feet of a public water supply line or within
461 10 feet of a private water supply system.

462 4.4 A disposal pit shall be located at least 50 feet from
463 a private well or groundwater supply.

464 4.5 There shall be a minimum of three feet between
465 the bottom of a disposal pit and seasonal groundwater
466 or rock, shale or any other impermeable layer.

467 4.6 The evaluation of the site for installation of a
468 disposal pit shall be based upon percolation test results.
469 Percolation tests shall be performed in the following
470 manner:

471 4.6.1 Location - At least two holes shall be placed over
472 the selected site. The results of these two test holes will
473 be averaged.

474 4.6.2 Holes shall be dug or bored from six to eight
475 inches in diameter at the site where the disposal pit will
476 be installed. The holes should be at least 24 inches in
477 depth.

478 4.6.3 The bottom and sides of the holes shall be
479 scratched with a sharp pointed instrument or wire
480 brush to remove any smeared soil surfaces which
481 interfere with the absorption of water into the soil.

482 4.6.4 Loose dirt shall be removed from the bottom of
483 the test holes and two inches of coarse sand or fine
484 gravel shall be placed into the holes to prevent sealing.

485 4.6.5 An eight or ten penny nail shall be placed in the
486 wall of each hole exactly six inches above the level of
487 sand or gravel.

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

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

501 (jj) The legislative rules filed in the state register on
502 the eighth day of August, one thousand nine hundred
503 ninety-one, modified by the commissioner of agriculture
504 to meet the objections of the legislative rule-making

505 review committee and refiled in the state register on the
506 twenty-fourth day of September, one thousand nine
507 hundred ninety-one, relating to the commissioner of
508 agriculture (licensing of livestock dealers), are
509 authorized.

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

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

528 (mm) The legislative rules filed in the state register
529 on the fifteenth day of September, one thousand nine
530 hundred ninety-two, modified by the commissioner of
531 agriculture to meet the objections of the legislative rule-
532 making review committee and refiled in the state
533 register on the nineteenth day of February, one thou-
534 sand nine hundred ninety-three, relating to the commis-
535 sioner of agriculture (primary and secondary contain-
536 ment of fertilizers), are authorized with the amend-
537 ments set forth below:

538 "On page five, by striking out all of subsection 5.5 and
539 inserting in lieu thereof a new subsection 5.5 to read as
540 follows: "The operator or his licensed representative
541 shall sign and date each application under oath."; and

542 On page eighteen, by striking out all of subsection 14.1
543 and inserting in lieu thereof a new subsection 14.1 to
544 read as follows:

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

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

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

572 (pp) The legislative rules filed in the state register on
573 the fifteenth day of September, one thousand nine
574 hundred ninety-two, modified by the commissioner of
575 agriculture to meet the objections of the legislative rule-
576 making review committee and refiled in the state
577 register on the nineteenth day of February, one thou-
578 sand nine hundred ninety-three, relating to the commis-
579 sioner of agriculture (non-bulk pesticide rules for
580 permanent operational areas), are authorized.

**§64-9-12. West Virginia state board of registration for
professional engineers.**

1 (a) The legislative rules filed in the state register on
2 the twenty-ninth day of November, one thousand nine

3 hundred eighty-five, modified by the West Virginia
4 state board of registration for professional engineers to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the
7 twenty-eighth day of January, one thousand nine
8 hundred eighty-six, relating to the West Virginia state
9 board of registration for professional engineers (legisla-
10 tive rules governing the West Virginia state board of
11 registration for professional engineers), are authorized.

12 (b) The legislative rules filed in the state register on
13 the twenty-third day of December, one thousand nine
14 hundred eighty-seven, modified by the West Virginia
15 state board of registration for professional engineers to
16 meet the objections of the legislative rule-making review
17 committee and refiled in the state register on the
18 twenty-ninth day of January, one thousand nine hundred
19 eighty-eight, relating to the West Virginia state board
20 of registration for professional engineers (rules of the
21 West Virginia state board of registration for profes-
22 sional engineers), are authorized.

23 (c) The legislative rules filed in the state register on
24 the first day of October, one thousand nine hundred
25 ninety, modified by the West Virginia board of regis-
26 tered professional engineers to meet the objections of the
27 legislative rule-making review committee and refiled in
28 the state register on the seventeenth day of January, one
29 thousand nine hundred ninety-one, relating to the West
30 Virginia board of registered professional engineers
31 (regulations governing the board of registration for
32 registered professional engineers), are authorized.

33 (d) The legislative rules filed in the state register on
34 the twelfth day of November, one thousand nine
35 hundred ninety-two, modified by the board of registra-
36 tion for registered professional engineers to meet the
37 objections of the legislative rule-making review commit-
38 tee and refiled in the state register on the twenty-third
39 day of February, one thousand nine hundred ninety-
40 three, relating to the board of registration for profes-
41 sional engineers (West Virginia board of registration for
42 professional engineers), are authorized with the amend-
43 ment set forth below:

44 "On page thirty-five, by striking out all of subsection
45 19.6 and inserting in lieu thereof a new subsection 19.6
46 to read as follows:

47 "19.6 The fees for various services provided by the
48 Board are:

	Engineer Intern	Professional Engineer
	-----	-----
49 Application Fee:	\$25.00	\$40.00
50 Examination Fees:		
51 Board's Administration		
52 Charge:	\$20.00	\$20.00
53 NCEES' Examination Charge:		
54 As charged by NCEES		
55 Registration Fee:		\$25.00
56 Annual Renewal Fee For:		
57 a Professional Engineer:		\$35.00
58 a Professional Engineer-Retired:		\$25.00
59 Certificate of Authorization:		
60 Application Fee for Firms or		
61 Organizations with three		
62 Professional Engineers or Less:		\$10.00
63 Renewal Fee for Firms or		
64 Organizations with three		
65 Professional Engineers or Less:		\$5.00
66 Application Fee for Firms or		
67 Organizations with more than		
68 three Professional Engineers:		\$60.00
69 Renewal Fee for Firms or		
70 Organizations with more than		
71 three Professional Engineers		\$30.00
72 Comity Application Fee:		\$120.00
73 Temporary Permit:		\$200.00
74 Roster Fee:	----\$10.00----	
75 Replacement Certificates:	----\$20.00----	
76 Return Check Fee:	----\$15.00----	

§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.

112 (j) The legislative rules filed in the state register on
113 the twenty-fifth day of March, one thousand nine
114 hundred ninety-two, modified by the board of medicine
115 to meet the objections of the legislative rule-making
116 review committee and refiled in the state register on the
117 nineteenth day of May, one thousand nine hundred
118 ninety-two, relating to the board of medicine (licensing,
119 disciplinary and complaint procedures: physicians,

120 podiatrists), are authorized.

121 (k) The legislative rules filed in the state register on
122 the seventeenth day of September, one thousand nine
123 hundred ninety-two, modified by the board of medicine
124 to meet the objections of the legislative rule-making
125 review committee and refiled in the state register on the
126 sixteenth day of November, one thousand nine hundred
127 ninety-two, relating to the board of medicine (certifica-
128 tion, disciplinary and complaint procedures, continuing
129 education, physician assistants), are authorized, with the
130 following amendment:

131 On page six, section 11-1B-2, subsection 2.8 (c), after
132 the words "in writing" and the comma, by striking out
133 the words "prior to" and inserting in lieu thereof the
134 words "within ten days of".

§64-9-18. Board of examiners for registered professional nurses.

1 (a) The legislative rules filed in the state register on
2 the thirteenth day of September, one thousand nine
3 hundred eighty-three, relating to the board of examiners
4 for registered professional nurses (qualifications of
5 graduates of foreign nursing schools for admission to the
6 professional nurse licensing examination), are
7 authorized.

8 (b) The legislative rules filed in the state register on
9 the third day of August, one thousand nine hundred
10 ninety, modified by the board of examiners for regis-
11 tered professional nurses to meet the objections of the
12 legislative rule-making review committee and refiled in
13 the state register on the twenty-eighth day of Sep-
14 tember, one thousand nine hundred ninety, relating to
15 the board of examiners for registered professional
16 nurses (announcement of advanced nursing practice),
17 are authorized.

18 (c) The legislative rules filed in the state register on
19 the tenth day of September, one thousand nine hundred
20 ninety-two, modified by the board of examiners for
21 registered professional nurses to meet the objections of
22 the legislative rule-making review committee and

23 refiled in the state register on the nineteenth day of
24 January, one thousand nine hundred ninety-three,
25 relating to the board of examiners for registered
26 professional nurses (limited prescriptive authority for
27 nurses in advanced practice), 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.

49 (g) The legislative rules filed in the state register on
50 the fifteenth day of September, one thousand nine
51 hundred ninety-two, modified by the board of pharmacy
52 to meet the objections of the legislative rule-making
53 review committee and refiled in the state register on the
54 twenty-eighth day of January, one thousand nine
55 hundred ninety-three, relating to the board of pharmacy
56 (board of pharmacy), are authorized with the amend-
57 ments set forth below:

58 On page forty-nine, subsection (f), after the words
59 'who presents a' by inserting the word 'new';

60 And,

61 On page fifty, subdivision (1), after the words 'who
62 presents a' by inserting the word 'new'".

§64-9-21. Board of examiners of psychologists.

1 (a) The legislative rules filed in the state register on
2 the twentieth day of December, one thousand nine
3 hundred eighty-four, relating to the board of examiners
4 of psychologists (examination fee), are authorized.

5 (b) The legislative rules filed in the state register on
6 the sixteenth day of September, one thousand nine
7 hundred eighty-eight, modified by the board of examin-
8 ers of psychologists to meet the objections of the

9 legislative rule-making review committee and refiled in
10 the state register on the twenty-third day of November,
11 one thousand nine hundred eighty-eight, relating to the
12 board of examiners of psychologists (penalties and fees),
13 are authorized.

14 (c) The legislative rules filed in the state register on
15 the first day of October, one thousand nine hundred
16 ninety-one, modified by the board of examiners of
17 psychologists to meet the objections of the legislative
18 rule-making review committee and refiled in the state
19 register on the eleventh day of December, one thousand
20 nine hundred ninety-two, relating to the board of
21 examiners of psychologists (penalties and fees), are
22 authorized.

23 (d) The legislative rules filed in the state register on
24 the first day of October, one thousand nine hundred
25 ninety-one, modified by the board of examiners of
26 psychologists to meet the objections of the legislative
27 rule-making review committee and refiled in the state
28 register on the sixth day of August, one thousand nine
29 hundred ninety-two, relating to the board of examiners
30 of psychologists (qualifications for licensure as a
31 psychologist), 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.

19 (c) The legislative rules filed in the state register on
20 the fourth day of September, one thousand nine hundred
21 ninety-two, modified by the real estate commission to
22 meet the objections of the legislative rule-making review
23 committee and refiled in the state register on the tenth
24 day of November, one thousand nine hundred ninety-
25 two, relating to the real estate commission (require-
26 ments in licensing real estate brokers and salesmen and
27 the conduct of brokerage business), are authorized.

§64-9-24. Secretary of state.

1 (a) The legislative rules filed in the state register on
2 the fifteenth day of April, one thousand nine hundred
3 eighty-five, modified by the secretary of state to meet
4 the objections of the legislative rule-making review
5 committee and refiled in the state register on the eighth
6 day of October, one thousand nine hundred eighty-five,
7 relating to the secretary of state (standard size and
8 format for rules and related documents filed in the
9 secretary of state's office), are authorized.

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

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

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.

39 (f) The legislative rules filed in the state register on
40 the seventh day of October, one thousand nine hundred
41 ninety-one, modified by the secretary of state to meet the
42 objections of the legislative rule-making review commit-
43 tee and refiled in the state register on the twenty-eighth
44 day of May, one thousand nine hundred ninety-two,
45 relating to the secretary of state (filing fee for credit
46 service organizations), are authorized.

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

§64-9-28. West Virginia cable television advisory board.

1 (a) The legislative rules filed in the state register on
2 the twenty-eighth day of September, one thousand nine
3 hundred ninety, modified by the West Virginia cable
4 television advisory board to meet the objections of the
5 legislative rule-making review committee and refiled in
6 the state register on the twenty-second day of January,
7 one thousand nine hundred ninety-one, relating to the
8 West Virginia cable television advisory board (franchis-
9 ing procedures), are authorized.

10 (b) The legislative rules filed in the state register on
11 the twenty-eighth day of September, one thousand nine

12 hundred ninety, modified by the West Virginia cable
13 television advisory board to meet the objections of the
14 legislative rule-making review committee and refiled in
15 the state register on the twenty-second day of January,
16 one thousand nine hundred ninety-one, relating to the
17 West Virginia cable television advisory board (imple-
18 menting regulations), are authorized.

19 (c) The legislative rules filed in the state register on
20 the fourth day of December, one thousand nine hundred
21 ninety-two, modified by the West Virginia cable
22 television advisory board to meet the objections of the
23 legislative rule-making review committee and refiled in
24 the state register on the tenth day of February, one
25 thousand nine hundred ninety-three, relating to the
26 West Virginia cable television advisory board (imple-
27 menting regulations), 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.

32 (d) The legislative rules filed in the state register on
33 the seventh day of July, one thousand nine hundred
34 ninety-two, modified by the real estate appraiser
35 licensing and certification board to meet the objections
36 of the legislative rule-making review committee and
37 refiled in the state register on the fourteenth day of
38 August, one thousand nine hundred ninety-two, relating
39 to the real estate appraiser licensing and certification
40 board (requirements of licensure and certification), are
41 authorized.

§64-9-34. Board of occupational therapy.

1 The legislative rules filed in the state register on the
2 eleventh day of September, one thousand nine hundred
3 ninety-two, modified by the board of occupational
4 therapy to meet the objections of the legislative rule-
5 making review committee and refiled in the state
6 register on the first day of February, one thousand nine
7 hundred ninety-three, relating to the board of occupa-
8 tional therapy (administrative rules of the board of
9 occupational therapy), are authorized.

§64-9-35. Board of social work examiners.

1 The legislative rules filed in the state register on the
2 thirtieth day of October, one thousand nine hundred
3 ninety-two, modified by the board of social work
4 examiners to meet the objections of the legislative rule-
5 making review committee and refiled in the state
6 register on the sixteenth day of February, one thousand
7 nine hundred ninety-three, relating to the board of social
8 work examiners (qualifications for licensure as a social
9 worker), are authorized.

CHAPTER 6

(H. B. 110—By Delegates Phillips, Manuel and Collins)

[Passed May 26, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend article three, chapter sixty-four 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 authorizing the air pollution control commission to promulgate legislative rules relating to the prevention and control of air pollution from the operation of coal preparation plants and coal handling operations.

Be it enacted by the Legislature of West Virginia:

That article three, chapter sixty-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 one-a, to read as follows:

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-3-1a. Air pollution control commission—Operation of coal preparation plants and coal handling operations.

1 The legislative rules filed in the state register on the
2 twenty-eighth day of August, one thousand nine
3 hundred ninety-two, modified by the air pollution
4 control commission to meet the objections of the
5 legislative rule-making review committee, refiled in the
6 state register on the nineteenth day of February, one
7 thousand nine hundred ninety-three, and refiled in the
8 state register on the twentieth day of May, one thousand
9 nine hundred ninety-three, relating to the air pollution
10 control commission (regulations to prevent and control
11 air pollution from the operation of coal preparation
12 plants and coal handling operations), are authorized.

CHAPTER 7

(Com. Sub. for S. B. 2—By Senators Burdette, Mr. President, and Boley,
By Request of the Executive)

[Passed May 26, 1993; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections five, six and eight, article four-b, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal sections nine, ten and twelve, article four-c of said chapter; to repeal sections twenty-two, twenty-three and twenty-four, article thirteen-a, chapter eleven of said code; to repeal section eighteen, article twenty-six of said chapter; to amend and reenact section thirteen, article fifteen, chapter seven of said code; to amend article two, chapter nine of said code by adding thereto three new sections, designated sections nine, ten and eleven; to amend and reenact sections two and three, article four-a of said chapter; to further amend said article by adding thereto a new section, designated section two-a; to amend and reenact sections one, two and four, article four-b of said chapter; to amend and reenact sections one, two, five and seven, article four-c of said chapter; to amend and reenact section eleven, article five of said chapter; to further amend said article by adding thereto three new sections, designated sections eleven-a, eleven-b and seventeen; to amend and reenact section eighteen-a, article ten, chapter eleven of said code; to further amend said article by adding thereto a new section, designated section eighteen-b; to amend and reenact sections three and six, article twelve-b of said chapter; to amend and reenact sections one, two, three, seven, eight, nine, ten, nineteen and twenty, article thirteen-a of said chapter; to further amend said article by adding thereto six new sections, designated sections three-a, three-b, three-c, nine-a, twenty-a and twenty-five; to amend article twenty-six of said chapter by adding thereto a new section, designated section twenty; to further amend said chapter by adding thereto a new article, designated article twenty-seven; to amend article six, chapter twelve of said code by adding thereto

a new section, designated section nine-f; to amend and reenact section fifteen-a, article one, chapter sixteen of said code; and to amend and reenact section five, article two-d of said chapter, all relating generally to this state's medicaid program and taxes funding that program; repealing the physician provider medicaid enhancement fund; repealing physician providers' hold harmless provision; repealing abrogation provisions of physician provider medicaid act; repealing other provider medicaid enhancement funds; repealing other providers' hold harmless provision; repealing abrogation provisions of health care provider medicaid act; repealing provisions of severance tax relating to credit for coking facilities, credit for payment of consumers sales and use taxes, rules for filing returns and paying tax and obsolete requirement to file information returns; repealing abrogation rules of the medicaid enhancement tax; requiring county ambulance authorities to pay privilege tax on emergency ambulance services; requiring development of medicaid monitoring and case management systems and implementation of other reforms; limiting use of funds for abortion; requiring providers to collect copayments and providing for reports and civil penalties; eliminating requirement for pro rata reimbursement from medicaid uncompensated care fund; creating a medical services trust fund; identifying source of funds and permitted expenditures with respect to said fund; changing criteria for disproportionate share hospitals; requiring department of health and human resources to file state medicaid plan amendment; defining terms used in physician/medical practitioner provider medicaid act; amending powers and duties of physician/medical practitioner provider board; defining terms used in health care provider medicaid act; changing composition of general provider medicaid enhancement board; replacing outpatient hospital provider medicaid enhancement board with the facility providers' medicaid enhancement board; amending powers and duties of certain boards; requiring that department of health and human resources be fully subrogated to the rights of recipients of medical assistance; clarifying rules as to effect of subrogation;

providing for notice of actions or claims by medical assistance recipients or the department of health and human resources; providing for release of information related to right of subrogation and requiring insurance commissioner to establish guidelines therefor; requiring nonprofit organizations receiving medicaid reimbursement payments to provide annual accounting of receipts and disbursements; limiting application of current addition to tax for failure to pay estimated tax to the income and business franchise taxes and conforming annualization of income rules for individuals to federal law; imposing a new addition to tax for failure to make required installment payments of other taxes; making technical corrections in the imposition of minimum severance tax; requiring monthly remittance of estimated minimum severance tax; changing name of the "Severance Tax Act" to the "Severance and Business Privilege Tax Act of 1993"; defining terms; extending tax to providers of certain health care services; moving tax on privilege of severing natural gas or oil into a new section; moving tax on privilege of severing timber into a new section; moving tax on privilege of severing certain other natural resources into a new section; providing for accounting periods and methods of accounting, filing of annual returns and other documents, and rules for payment of taxes in periodic installment payments; specifying time for paying tax; providing for allowance of annual tax credit; providing rules on extensions of time for filing returns and other documents or paying tax; providing for administration, collection and enforcement of tax and application of criminal penalties; specifying effective dates; dedicating tax collected from health care providers to the medicaid program and requiring deposit of such tax into a special revenue fund created in state treasurer's office; requiring tax commissioner to account separately for amount of tax collected from each class of health care provider; providing transition rules for termination of medicaid enhancement tax; requiring providers to pay tax on estimated medicaid reimbursement payments for services rendered before the first day of June, one thousand nine hundred ninety-three, regardless of

whether payment for such services is received prior to that date; imposing civil penalty on health care providers who owe delinquent medicaid enhancement tax after specified date; creating the "West Virginia Health Care Provider Tax Act of 1993"; making legislative findings; providing short title and rules regarding arrangement and classification; defining terms; imposing broad-based health care related taxes on specified providers of health care items or services, at various rates of tax, based on the respective classifications of such providers; specifying the measure of tax for each classification; permitting temporary increase in rates of providers of inpatient hospital services effective upon filing of claim for temporary relief with health care cost review authority and providing requirements and procedures; permitting hospitals which provide nursing facility services to adjust nursing facility rates to compensate for the tax without first obtaining approval from the health care cost review authority and providing limitations; prohibiting double taxation; providing for filing of returns and other documents and payment of estimated tax in installment payments; specifying time and place for filing returns and paying tax; providing rules regarding extensions of time and the signing of returns and other documents; requiring taxpayers to keep records adequate to verify their liability for tax; making administration, collection and enforcement of these taxes subject to the West Virginia tax procedure and administration act; making the West Virginia crimes and penalties act applicable to these taxes; dedicating taxes collected to funding of medicaid program; requiring taxes collected to be deposited into special revenue fund created in state treasurer's office; requiring tax commissioner to keep records which account separately for the amount of tax paid by each class of health care provider; allowing tax commissioner certain costs of administration and collection; providing rules for abrogation and severability; specifying effective dates; specifying various effective dates throughout the bill; providing legislative findings regarding need for and source of loan from consolidated fund for medicaid; authorizing loan from consolidated fund for prompt

medicaid payments; establishing rate of interest on said loan; requiring the repayment of loan from collections of tax on state share of medicaid reimbursements and any civil penalties collected for nonpayment of tax; creating a "Medicaid Prompt Payment Fund" and requiring the deposit of loan proceeds and repayments into said fund; requiring board of investments to manage said fund; requiring board of investments to transfer loan proceeds to medical services fund upon request of the governor; providing for transfers by intergovernmental transfer from hospital services revenue account to medical services trust fund; and permitting approval by health care cost review authority of up to sixty beds for a demonstration project providing nursing services to patients with alzheimer's disease and providing requirements and limitations.

Be it enacted by the Legislature of West Virginia:

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

amended by adding thereto a new section, designated section eighteen-b; that sections three and six, article twelve-b of said chapter be amended and reenacted; that sections one, two, three, seven, eight, nine, ten, nineteen and twenty, article thirteen-a of said chapter be amended and reenacted; that said article be further amended by adding thereto six new sections, designated sections three-a, three-b, three-c, nine-a, twenty-a and twenty-five; that article twenty-six of said chapter be amended by adding thereto a new section, designated section twenty; that said chapter be further amended by adding thereto a new article, designated article twenty-seven; that article six, chapter twelve of said code be amended by adding thereto a new section, designated section nine-f; that section fifteen-a, article one, chapter sixteen of said code be amended and reenacted; and that section five, article two-d of said chapter be amended and reenacted, all to read as follows:

Chapter

- 7. County Commissions and Officers.**
- 9. Human Services.**
- 11. Taxation.**
- 12. Public Moneys and Securities.**
- 16. Public Health.**

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 15. EMERGENCY AMBULANCE SERVICE ACT OF 1975.

§7-15-13. Exemption from taxation.

1 It is hereby found, determined and declared that the
2 creation of any authority and the carrying out of its
3 purposes is in all respects for the benefit of the people
4 of this state in general and of the participating
5 governments in particular and is a public purpose; and
6 that the authority will be performing an essential
7 governmental function in the exercise of the powers
8 conferred upon it by the provisions of this article.
9 Accordingly, each authority and, without limitation, its
10 revenues, properties, operations and activities shall be
11 exempt from the payment of any taxes or fees to the

12 state or any of its political subdivisions: *Provided*, That
 13 this exemption shall not apply to the tax imposed by
 14 section seven, article twenty-seven, chapter eleven of
 15 this code on gross receipts derived from transporting
 16 patients. Interest on obligations and all evidences of
 17 indebtedness of any such authority shall be exempt from
 18 taxation, except inheritance and transfer taxes.

CHAPTER 9. HUMAN SERVICES.

Article

2. Department of Health and Human Resources, and Office of Commissioner of Human Services; Powers, Duties and Responsibilities Generally.
- 4A. Medicaid Uncompensated Care Fund.
- 4B. Physician/Medical Practitioner Provider Medicaid Act.
- 4C. Health Care Provider Medicaid Act.
5. Miscellaneous Provisions.

ARTICLE 2. DEPARTMENT OF HEALTH AND HUMAN RESOURCES, AND OFFICE OF COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

- §9-2-9. Secretary to develop medicaid monitoring and case management.
 §9-2-10. Collection of copayments by health care providers; penalties.
 §9-2-11. Limitation on use of funds.

§9-2-9. Secretary to develop medicaid monitoring and case management.

- 1 (a) On or before the first day of January, one thousand
 2 nine hundred ninety-four, the secretary of the depart-
 3 ment of health and human resources shall:
 - 4 (1) Develop a managed care system to monitor the
 5 services provided by the medicaid program to individual
 6 clients;
 - 7 (2) Develop an independent referral service, including
 8 the review of individual cases for abuses of the program;
 9 and
 - 10 (3) Develop a schedule for implementation of the
 11 managed care and independent referral system. The
 12 managed care system shall focus on, but not be limited
 13 to, the behavioral health and mental health services.

14 (b) In addition thereto, and in accordance with
15 applicable federal medicaid laws, the secretary shall
16 prepare recommendations, to be submitted to the joint
17 committee on government and finance on or before the
18 first day of January, one thousand nine hundred ninety-
19 four. In developing recommendations the secretary shall
20 consider as options the following:

21 (1) Review of medicaid services which are optional
22 under federal medicaid law and identification of
23 services to be retained, reduced or eliminated;

24 (2) The elimination, reduction or phase-out of: (i)
25 Services which are not generally available to West
26 Virginia citizens not covered under the state's medicaid
27 program; or (ii) services which are not generally covered
28 under group policies of insurance made available to
29 employees of employers within the state;

30 (3) The elimination or reduction of services, or
31 reduction of provider reimbursement rates, for identi-
32 fied services of marginal utility;

33 (4) Higher reimbursement rates for primary and
34 preventive care;

35 (5) Changes in fee structure, which may include a
36 system of prospective payments, and may include
37 establishment of global fees for identified services or
38 diagnoses including maternity care;

39 (6) Utilization caps for certain health care procedures;

40 (7) Restriction of coverage for cosmetic procedures;

41 (8) Identification of excessive use of certain health
42 care procedures by individuals and a policy to restrict
43 excessive use;

44 (9) Identification of services which reduce the need for
45 more costly options for necessary care and retention or
46 expansion of those programs;

47 (10) Identification of services for which preauthoriza-
48 tion should be requirement for medicaid
49 reimbursement;

50 (11) Recommendations relating to the development of

51 a demonstration project on long-term care, which
52 demonstration project may be limited to patients with
53 alzheimer's disease;

54 (12) A policy concerning the department's procedures
55 for compliance, monitoring and inspection; and

56 (13) Such other options as may be developed.

57 (c) The secretary shall utilize in-state health care
58 facilities for inpatient treatment when such facilities are
59 available. Prior authorization, consistent with applica-
60 ble federal law, shall be required for out-of-state
61 inpatient treatment.

62 (d) The secretary shall report to the joint committee
63 on government and finance on the development and
64 implementation of medicaid programs that provide
65 incentives to working persons. The secretary shall
66 consider: Subsidies for low income working persons;
67 individual or small employer buy-ins to the state
68 medicaid fund; prospective payment systems for prim-
69 ary care physicians in underserved areas; and a system
70 to improve monitoring of collections, expenditures,
71 service delivery and utilization.

72 (e) The secretary shall report quarterly to the joint
73 committee on government and finance regarding
74 provider and facility compliance with federal and state
75 medicaid laws, including, but not limited to, the
76 following: The number of inspections conducted during
77 the previous quarter; description of programs, services
78 and facilities reviewed; findings; and recommendations
79 for corrections.

**§9-2-10. Collection of copayments by health care provid-
ers; penalties.**

1 (a) The secretary is directed to institute a program by
2 the first day of January, one thousand nine hundred
3 ninety-four, which requires the payment and collection
4 of copayments. Such program shall conform with
5 Section 447.53, Chapter 42 of the Code of Federal
6 Regulations, and the amount of such copayments shall
7 be determined in accordance with the provisions of
8 Sections 447.54 and 447.55, Chapter 42 of the Code of

9 Federal Regulations. The secretary shall complete all
10 federal requirements necessary to implement this
11 section, including the submission of any amendment to
12 the state medicaid plan, immediately following the
13 effective date of this section.

14 (b) Any individual or entity receiving reimbursement
15 from this state under the medical assistance program of
16 the Social Security Act is required to collect such
17 copayments: *Provided*, That in accordance with Section
18 447.15, Chapter 42 of the Code of Federal Regulations,
19 no such individual or entity shall refuse care or services
20 to any medicaid-eligible individual because that individ-
21 ual is unable to pay such copayment. The amount of
22 copayments collected shall be reported to the secretary.

23 (c) After the first day of February, one thousand nine
24 hundred ninety-four, any person, firm, corporation or
25 other entity who willfully, by means of a false statement
26 or representation, or by concealment of any material
27 fact, or by other fraudulent scheme, device or artifice
28 on behalf of himself, itself or others, fails to attempt to
29 collect copayments as required by this section, shall be
30 liable for payment to the department of health and
31 human resources of a civil money penalty in the amount
32 of one hundred dollars for each occurrence of willful
33 failure to collect a required copayment.

34 (d) If it comes to the attention of the secretary that
35 a person or other entity is failing to attempt to collect
36 copayments as mandated, the matter shall be referred
37 to the medicaid fraud control unit for investigation and
38 referral for prosecution pursuant to the provisions of
39 article seven of this chapter.

§9-2-11. Limitation on use of funds.

1 (a) No funds from the medicaid program accounts
2 may be used to pay for the performance of an abortion
3 by surgical or chemical means unless:

4 (1) On the basis of the physician's best clinical
5 judgment, there is:

6 (i) A medical emergency that so complicates a
7 pregnancy as to necessitate an immediate abortion to

8 avert the death of the mother or for which a delay will
9 create grave peril of irreversible loss of major bodily
10 function or an equivalent injury to the mother: *Provided*,
11 That an independent physician concurs with the
12 physician's clinical judgment; or

13 (ii) Clear clinical medical evidence that the fetus has
14 severe congenital defects or terminal disease or is not
15 expected to be delivered; or

16 (2) The individual is a victim of incest or the
17 individual is a victim of rape when the rape is reported
18 to a law-enforcement agency.

19 (b) The Legislature intends that the state's medicaid
20 program not provide coverage for abortion on demand
21 and that abortion services be provided only as expressly
22 provided for in this section.

ARTICLE 4A. MEDICAID UNCOMPENSATED CARE FUND.

§9-4A-2. Creation of medicaid uncompensated care fund.

§9-4A-2a. Medical services trust fund.

§9-4A-3. Disproportionate share hospitals.

§9-4A-2. Creation of medicaid uncompensated care fund.

1 (a) There is hereby created in the state treasury a
2 special revolving fund known as the medicaid uncom-
3 pensated care fund. All moneys deposited or accrued in
4 this fund shall be used exclusively:

5 (1) To provide the state's share of the federal medicaid
6 program funds in order to improve inpatient payments
7 to disproportionate share hospitals; and

8 (2) To cover administrative cost incurred by the
9 department of health and human resources and asso-
10 ciated with the medicaid program and this fund:
11 *Provided*, That no expenditures may be made to cover
12 said administrative costs for any fiscal year after one
13 thousand nine hundred ninety-two, except as approp-
14 riated by the Legislature.

15 (b) Moneys from the following sources may be placed
16 into the fund:

17 (1) All public funds transferred by any public agency

18 to the department of health and human resources
19 medicaid program for deposit in the fund as contem-
20 plated or permitted by applicable federal medicaid
21 laws;

22 (2) All private funds contributed, donated or be-
23 queathed by corporations, individuals or other entities
24 to the fund as contemplated and permitted by applicable
25 federal medicaid laws;

26 (3) Interest which accrued on amounts in the fund
27 from sources identified in subdivisions (1) and (2) of this
28 subsection; and

29 (4) Federal financial participation matching the
30 amounts referred to in subdivisions (1), (2) and (3) of this
31 subsection, in accordance with Section 1902 (a) (2) of the
32 Social Security Act.

33 (c) Any balance remaining in the medicaid uncompen-
34 sated care fund at the end of any state fiscal year shall
35 not revert to the state treasury but shall remain in this
36 fund and shall be used only in a manner consistent with
37 this article.

38 (d) Moneys received into the fund shall not be counted
39 or credited as part of the legislative general appropri-
40 ation to the state medicaid program.

41 (e) The fund shall be administered by the department
42 of health and human resources. Moneys shall be
43 disbursed from the fund on a quarterly basis. The
44 secretary of the department shall implement the
45 provisions of this article prior to the receipt of any
46 transfer, contribution, donation or bequest from any
47 public or private source.

48 (f) All moneys expended from the fund after receipt
49 of federal financial participation shall be allocated to
50 reimbursement of inpatient charges and fees of eligible
51 disproportionate share hospitals. Except for the pay-
52 ment of administrative costs as provided for in this
53 section, appropriation from this fund for any other
54 purposes is void.

§9-4A-2a. Medical services trust fund.

1 (a) The Legislature finds and declares that certain
2 dedicated revenues should be preserved in trust for the
3 purpose of stabilizing the state's medicaid program and
4 providing services for future federally mandated
5 population groups in conjunction with federal reform.

6 (b) There is hereby created a special account within
7 the department of health and human resources, which
8 shall be an interest-bearing account and may be
9 invested in the manner permitted by section nine, article
10 six, chapter twelve of this code, designated the medical
11 services trust fund. Funds paid into the account shall
12 be derived from the following sources:

13 (1) Transfers, by intergovernmental transfer, from
14 the hospital services revenue account provided for in
15 section fifteen-a, article one, chapter sixteen of this code;

16 (2) All interest or return on investment accruing to
17 the fund;

18 (3) Any gifts, grants, bequests, transfers or donations
19 which may be received from any governmental entity or
20 unit or any person, firm, foundation or corporation; and

21 (4) Any appropriations by the Legislature which may
22 be made for this purpose.

23 (c) Expenditures from the fund are limited to the
24 following:

25 (1) Payment of backlogged billings from providers of
26 medicaid services when cash-flow problems within the
27 medical services fund do not permit payment of
28 providers within federally required time limits; and

29 (2) Funding for services to future federally mandated
30 population groups in conjunction with federal health
31 care reform: *Provided*, That other medicaid funds have
32 been exhausted for the federally mandated expansion:
33 *Provided, however*, That new optional services for which
34 a state medicaid plan amendment is submitted after the
35 first day of May, one thousand nine hundred ninety-
36 three, which are not cost effective for the state, are
37 eliminated prior to expenditure of any moneys from this
38 fund for medicaid expansion.

39 (d) Expenditures from the fund solely for the purposes
40 set forth in subsection (c) of this section shall be
41 authorized in writing by the governor, who shall
42 determine in his or her discretion whether any expen-
43 diture shall be made, based on the best interests of the
44 state as a whole and its citizens, and shall designate the
45 purpose of the expenditure. Upon authorization signed
46 by the governor, funds may be transferred to the
47 medical services fund: *Provided*, That all expenditures
48 from the medical services trust fund shall be reported
49 forthwith to the joint committee on government and
50 finance.

51 (e) Notwithstanding the provision of section two,
52 article two, chapter twelve of this code, moneys within
53 the medical services trust fund may not be redesignated
54 for any purpose other than those set forth in subsection
55 (c) of this section, except that, upon elimination of the
56 medicaid program in conjunction with federal health
57 care reform, moneys within the fund may be redesign-
58 dated for the purpose of providing health care coverage
59 or services in coordination with federal reform.

§9-4A-3. Disproportionate share hospitals.

1 (a) Unless otherwise noted, all disproportionate share
2 hospitals must meet the following criteria in order to be
3 eligible for reimbursement from the medicaid uncom-
4 pensated care fund:

5 (1) The hospital must be licensed by the department
6 of health and human resources and participate in the
7 medicaid program; and

8 (2) The hospital must have at least two obstetricians
9 with staff privileges at the hospital who have agreed to
10 provide obstetric services to individuals entitled to such
11 services by the approved state medicaid plan. In the case
12 of a hospital located in a rural area, the term "obste-
13 trician" includes any physician with staff privileges at
14 the hospital who performs nonemergency obstetric
15 procedures. The requirements of this subsection do not
16 apply to hospitals who did not offer routine obstetrical
17 services to the general public as of the twenty-first day
18 of December, one thousand nine hundred eighty-seven.

19 Notwithstanding the provisions of this section, should
20 federal requirements outlined in this subsection change,
21 the department is to comply with federal law.

22 (b) Additionally, all disproportionate share hospitals
23 must meet one of the following criteria:

24 (1) The hospital provided in excess of three thousand
25 medicaid inpatient days of service during the most
26 recent fiscal year of the hospital;

27 (2) For the same time period, the sum of the following
28 factors must exceed eight percent:

29 (i) Total medicaid inpatient days divided by total
30 inpatient days; and

31 (ii) Total medicare supplemental security insurance
32 inpatient days divided by total medicare inpatient days;
33 and

34 (iii) Total days of care provided to eligible medicaid
35 patients whose care was not paid by West Virginia
36 medicaid divided by total inpatient medicaid days; or

37 (3) The hospital is a psychiatric, rehabilitation or
38 acute care hospital owned and operated by the state of
39 West Virginia, which hospital shall be exempt from the
40 requirements of subdivision (1), subsection (a) of this
41 section.

42 (c) The dollar value of contributions, bequests or
43 donations made by any hospital to the fund shall not be
44 included as a reimbursable cost in the medicaid cost
45 report of that hospital.

46 (d) Immediately following the effective date of this
47 section, and in no event later than the thirtieth day of
48 June, one thousand nine hundred ninety-three, the
49 department of health and human resources shall submit
50 to the federal health care finance administration a state
51 medicaid plan amendment in order to effectuate the
52 purposes of subdivision (3), subsection (b) of this section.

**ARTICLE 4B. PHYSICIAN/MEDICAL PRACTITIONER PRO-
VIDER MEDICAID ACT.**

§9-4B-1. Definitions.

§9-4B-2. Physician/medical practitioner provider medicaid enhancement board; creation and composition.

§9-4B-4. Powers and duties.

§9-4B-1. Definitions.

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

5 (a) "Board" means the physician/medical practitioner
6 provider medicaid enhancement board created to
7 develop, review and recommend the physician/medical
8 practitioner provider fee schedule.

9 (b) "Physician provider" means an allopathic or
10 osteopathic physician, rendering services within this
11 state and receiving reimbursement, directly as an
12 individual provider or indirectly as an employee or
13 agent of a medical clinic, partnership or other business
14 entity.

15 (c) "Nurse practitioner" means a registered nurse
16 qualified by virtue of his or her education and creden-
17 tials and approved by the West Virginia board of
18 examiners for registered professional nurses to practice
19 as an advanced practice nurse independently or in a
20 collaborative relationship with a physician.

21 (d) "Nurse-midwife" means a qualified professional
22 nurse registered with the West Virginia board of
23 examiners for registered professional nurses who by
24 virtue of additional training is specifically qualified to
25 practice nurse-midwifery according to the statement of
26 standards for the practice of nurse-midwifery as set
27 forth by the American college of nurse-midwives.

28 (e) "Physician assistant" means an assistant to a
29 physician who is a graduate of an approved program of
30 instruction in primary health care or surgery, has
31 attained a baccalaureate or master's degree, has passed
32 the national certification examination and is qualified to
33 perform direct patient care services under the supervi-
34 sion of a physician.

35 (f) "Secretary" means the secretary of the department

36 of health and human resources.

37 (g) "Single state agency" means the single state
38 agency for medicaid in this state.

**§9-4B-2. Physician/medical practitioner provider medi-
caid enhancement board; creation and
composition.**

1 There is hereby created the West Virginia physi-
2 cian/medical practitioner provider medicaid enhance-
3 ment board to consist of eleven members. The board
4 shall consist of ten members, appointed by the governor,
5 and the secretary, or his or her designee, who shall serve
6 as an ex officio, nonvoting member. The members
7 appointed by the governor shall include five allopathic
8 physicians, one osteopathic physician, one nurse practi-
9 tioner, one nurse-midwife, one physician assistant and
10 one lay person. The governor shall select four allopathic
11 physician board members from a list of eight recom-
12 mendations submitted to the governor by the state
13 medical association, one allopathic physician board
14 member from a list of three recommendations submitted
15 to the governor by the state academy of family physi-
16 cians, the osteopathic physician board member from
17 three recommendations submitted to the governor by
18 the state osteopathic society, the nurse practitioner from
19 three recommendations submitted to the governor by
20 the advanced nursing practice conference group of the
21 West Virginia nurses association, the nurse-midwife
22 from three recommendations submitted to the governor
23 by the West Virginia chapter of the American college
24 of nurse midwives, the physician assistant from three
25 recommendations submitted to the governor by the state
26 physician assistant association and the lay board
27 member, at his or her discretion. The respective
28 associations shall submit their recommendations to the
29 governor within five days of the effective date of this
30 article. The governor shall make all appointments
31 within fifteen days from the receipt of all recommenda-
32 tions. After the initial appointment of the board, any
33 appointment to fill a vacancy shall be for the unexpired
34 term only, made in the same manner as the initial
35 appointment, and the terms of all members expire on

36 the first day of July, one thousand nine hundred ninety-
37 four. The board shall select a member to act as
38 chairperson. The chairperson shall be the chief adminis-
39 trative officer and shall preside over official transac-
40 tions of the board.

§9-4B-4. Powers and duties.

1 (a) The board shall:

2 (1) Develop and recommend a reasonable physi-
3 cian/medical practitioner provider fee schedule that
4 conforms with federal medicaid laws and remains
5 within the limits of annual funding available to the
6 single state agency for the medicaid program. In
7 developing the fee schedule, the board may refer to a
8 nationally published regional specific fee schedule
9 selected by the secretary of the department of health
10 and human resources. The board may consider identi-
11 fied health care priorities in developing its fee schedule
12 to the extent permitted by applicable federal medicaid
13 laws and may recommend higher reimbursement rates
14 for basic primary and preventive health care services
15 than for other services. In identifying basic primary and
16 preventive health care services and in accordance with
17 applicable federal medicaid laws, the board may
18 consider factors, including, but not limited to, services
19 defined and prioritized by the basic services task force
20 of the health care planning commission in its report
21 issued in December of the year one thousand nine
22 hundred ninety-two; and minimum benefits and cover-
23 ages for policies of insurance as set forth in section
24 fifteen, article fifteen, chapter thirty-three of this code
25 and section four, article sixteen-c of said chapter and
26 rules of the insurance commissioner promulgated
27 thereunder. If the single state agency approves the fee
28 schedule, it shall implement the physician/medical
29 practitioner provider fee schedule;

30 (2) Review the fee schedule on a quarterly basis and
31 recommend to the single state agency any adjustments
32 it considers necessary. If the single state agency
33 approves any of the board's recommendations, it shall
34 immediately implement those adjustments and shall

35 report the same to the joint committee on government and
36 and finance on a quarterly basis;

37 (3) Meet and confer with representatives from each
38 medical specialty area so that equity in reimbursement
39 increases or decreases be achieved to the greatest extent
40 possible;

41 (4) Assist and enhance communications between
42 participating physician and medical practitioner provid-
43 ers and the department of health and human resources;
44 and

45 (5) Review reimbursements in relation to those
46 physician and medical practitioner providers who
47 provide early and periodic screening diagnosis and
48 treatment.

49 (b) The board may carry out any other powers and
50 duties as prescribed for it by the secretary.

51 (c) Nothing in this section gives the board the
52 authority to interfere with the discretion and judgment
53 given to the single state agency that administers the
54 state's medicaid program. If the single state agency
55 disapproves the recommendations or adjustments to the
56 fee schedule, it is expressly authorized to make any
57 modifications to fee schedules as are necessary to ensure
58 that total financial requirements of the agency for the
59 current fiscal year with respect to the state's medicaid
60 plan are met and shall report the same to the joint
61 committee on government and finance on a quarterly
62 basis. The purpose of the board is to assist and enhance
63 the role of the single state agency in carrying out its
64 mandate by acting as a means of communication
65 between the medicaid provider community and the
66 agency.

67 (d) On a quarterly basis, the single state agency and
68 the board shall report to the joint committee on
69 government and finance the status of the fund, any
70 adjustments to the fee schedule and the fee schedule for
71 each health care provider group identified in section one
72 of this article.

§9-4C-1. Definitions.

§9-4C-2. General medicaid enhancement board.

§9-4C-5. Facility providers' medicaid enhancement board.

§9-4C-7. Powers and duties.

§9-4C-1. Definitions.

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

5 (a) "Ambulance service provider" means a person
6 rendering ambulance services within this state and
7 receiving reimbursement, directly as an individual
8 provider or indirectly as an employee or agent of a
9 medical clinic, partnership or other business entity.

10 (b) "General health care provider" means an audiol-
11 ogist, a behavioral health center, a chiropractor, a
12 community care center, an independent laboratory, an
13 independent X-ray service, an occupational therapist, an
14 optician, an optometrist, a physical therapist, a podiat-
15 rist, a private duty nurse, a psychologist, a rehabilit-
16 ative specialist, a respiratory therapist and a speech
17 therapist rendering services within this state and
18 receiving reimbursement, directly as an individual
19 provider or indirectly as an employee or agent of a
20 medical clinic, partnership or other business entity.

21 (c) "Inpatient hospital services provider" means a
22 provider of inpatient hospital services for purposes of
23 Section 1903(w) of the Social Security Act.

24 (d) "Intermediate care facility for the mentally
25 retarded services provider" means a provider of
26 intermediate care facility services for the mentally
27 retarded for purposes of Section 1903(w) of the Social
28 Security Act.

29 (e) "Nursing facility services provider" means a
30 provider of nursing facility services for purposes of
31 Section 1903(w) of the Social Security Act.

32 (f) "Outpatient hospital service provider" means a
33 hospital providing preventative, diagnostic, therapeutic,

34 rehabilitative or palliative services that are furnished to
35 outpatients.

36 (g) "Secretary" means the secretary of the department
37 of health and human resources.

38 (h) "Single state agency" means the single state
39 agency for medicaid in this state.

§9-4C-2. General medicaid enhancement board.

1 (a) The general medicaid enhancement board created
2 by this section is hereby continued in all respects, except
3 as otherwise provided in this section. Current members
4 of the board who represent groups not represented on
5 the board on and after the effective date of this article
6 shall not serve on the board after such date. The governor
7 shall appoint new members to the board to represent
8 groups not previously represented on the board within
9 thirty days after the effective date of this article.

10 (b) This board shall consist of eighteen members
11 appointed by the governor, including two lay persons
12 and one representative from each of the following
13 sixteen groups: Audiologists, behavioral health centers,
14 chiropractors, community care centers, independent
15 laboratory services, independent X-ray services, occupa-
16 tional therapists, opticians, optometrists, physical
17 therapists, podiatrists, private duty nurses, psycholo-
18 gists, rehabilitative specialists, respiratory therapists
19 and speech therapists. In addition to the members
20 appointed by the governor, the secretary, or his or her
21 designee, shall serve as an ex officio, nonvoting member
22 of the board.

23 (c) After the initial appointment of the board, any
24 appointment to fill a vacancy shall be for the unexpired
25 term only and shall be made in the same manner as the
26 initial appointment.

27 (d) The terms of all members expire on the first day
28 of July, one thousand nine hundred ninety-four.

§9-4C-5. Facility providers' medicaid enhancement board.

1 (a) The outpatient hospital medicaid enhancement

2 board created by this section shall cease to exist on the
3 effective date of this article.

4 (b) There is hereby created the facility providers'
5 medicaid enhancement board to consist of seven
6 members. In order to carry out the purpose of this
7 article, the board shall represent ambulatory surgical
8 centers, inpatient hospital service providers, outpatient
9 hospital service providers, nursing facility service
10 providers and intermediate care facility for the mentally
11 retarded service providers.

12 (c) The board shall consist of one representative from
13 each of the aforementioned classes of health care
14 providers, one lay person and the secretary, or his or her
15 designee, who shall serve as an ex officio, nonvoting
16 member. The governor shall make all appointments
17 within thirty days after the effective date of this article.

18 (d) After initial appointment of the board, any
19 appointment to fill a vacancy shall be for the unexpired
20 term only, shall be made in the same manner as the
21 initial appointment, and the terms of all members shall
22 expire on the first day of July, one thousand nine
23 hundred ninety-four.

§9-4C-7. Powers and duties.

1 (a) Each board created pursuant to this article shall:

2 (1) Develop, recommend and review reimbursement
3 methodology where applicable, and develop and recom-
4 mend a reasonable provider fee schedule, in relation to
5 its respective provider groups, so that the schedule
6 conforms with federal medicaid laws and remains
7 within the limits of annual funding available to the
8 single state agency for the medicaid program. In
9 developing the fee schedule the board may refer to a
10 nationally published regional specific fee schedule, if
11 available, as selected by the secretary in accordance
12 with section eight of this article. The board may
13 consider identified health care priorities in developing
14 its fee schedule to the extent permitted by applicable
15 federal medicaid laws, and may recommend higher
16 reimbursement rates for basic primary and preventa-

17 tive health care services than for other services. In
18 identifying basic primary and preventative health care
19 services, the board may consider factors, including, but
20 not limited to, services defined and prioritized by the
21 basic services task force of the health care planning
22 commission in its report issued in December of the year
23 one thousand nine hundred ninety-two; and minimum
24 benefits and coverages for policies of insurance as set
25 forth in section fifteen, article fifteen, chapter thirty-
26 three of this code and section four, article sixteen-c of
27 said chapter and rules of the insurance commissioner
28 promulgated thereunder. If the single state agency
29 approves the adjustments to the fee schedule, it shall
30 implement the provider fee schedule;

31 (2) Review its respective provider fee schedule on a
32 quarterly basis and recommend to the single state
33 agency any adjustments it considers necessary. If the
34 single state agency approves any of the board's recom-
35 mendations, it shall immediately implement those
36 adjustments and shall report the same to the joint
37 committee on government and finance on a quarterly
38 basis;

39 (3) Assist and enhance communications between
40 participating providers and the department of health
41 and human resources;

42 (4) Meet and confer with representatives from each
43 specialty area within its respective provider group so
44 that equity in reimbursement increases or decreases
45 may be achieved to the greatest extent possible and
46 when appropriate to meet and confer with other
47 provider boards; and

48 (5) Appoint a chairperson to preside over all official
49 transactions of the board.

50 (b) Each board may carry out any other powers and
51 duties as prescribed to it by the secretary.

52 (c) Nothing in this section gives any board the
53 authority to interfere with the discretion and judgment
54 given to the single state agency that administers the
55 state's medicaid program. If the single state agency

56 disapproves the recommendations or adjustments to the
57 fee schedule, it is expressly authorized to make any
58 modifications to fee schedules as are necessary to ensure
59 that total financial requirements of the agency for the
60 current fiscal year with respect to the state's medicaid
61 plan are met and shall report such modifications to the
62 joint committee on government and finance on a
63 quarterly basis. The purpose of each board is to assist
64 and enhance the role of the single state agency in
65 carrying out its mandate by acting as a means of
66 communication between the health care provider
67 community and the agency.

68 (d) In addition to the duties specified in subsection (a)
69 of this section, the ambulance service provider medicaid
70 board shall work with the health care cost review
71 authority to develop a method for regulating rates
72 charged by ambulance services. The health care cost
73 review authority shall report its findings to the Legis-
74 lature by the first day of January, one thousand nine
75 hundred ninety-four. The costs of the report shall be
76 paid by the health care cost review authority. In this
77 capacity only, the chairperson of the health care cost
78 review authority shall serve as an ex officio, nonvoting
79 member of the board.

80 (e) On a quarterly basis, the single state agency and
81 the board shall report the status of the fund, any
82 adjustments to the fee schedule and the fee schedule for
83 each health care provider identified in section two of
84 this article to the joint committee on government and
85 finance.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

- §9-5-11. Right of subrogation by department of health and human resources to the rights of recipients of medical assistance; rules as to effect of subrogation.
- §9-5-11a. Notice of action or claim.
- §9-5-11b. Release of information.
- §9-5-17. Nonprofit agency or facility, in receipt of medicaid moneys, shall provide annual accounting of gross receipts and disbursements including salaries.

§9-5-11. Right of subrogation by department of health and human resources to the rights of recipients of medical assistance; rules as to effect of subrogation.

1 (a) If medical assistance is paid or will be paid to a
2 provider of medical care on behalf of a recipient of
3 medical assistance because of any sickness, injury,
4 disease or disability, and another person is legally liable
5 for such expense, either pursuant to contract, negligence
6 or otherwise, the department of health and human
7 resources shall have a right to recover full reimburse-
8 ment from any award or settlement for such medical
9 assistance from such other person, or from the recipient
10 of such assistance if he has been reimbursed by the other
11 person. The department shall be legally subrogated to
12 the rights of the recipient against the person so liable,
13 but only to the extent of the reasonable value of the
14 medical assistance paid and attributable to the sickness,
15 injury, disease or disability for which the recipient has
16 received damages. When an action or claim is brought
17 by a medical assistance recipient or by someone on his
18 or her behalf against a third party who may be liable
19 for the injury, disease, disability or death of a medical
20 assistance recipient, any settlement, judgment or award
21 obtained is subject to the claim of the department of
22 health and human resources for reimbursement of an
23 amount sufficient to reimburse the department the full
24 amount of benefits paid on behalf of the recipient under
25 the medical assistance program for the injury, disease,
26 disability or death of the medical assistance recipient.
27 The subrogation claim of the department of health and
28 human resources shall not exceed the amount of medical
29 expenses for the injury, disease, disability or death of
30 the recipient paid by the department on behalf of the
31 recipient. The right of subrogation created in this
32 section includes all portions of the cause of action, by
33 either settlement, compromise, judgment or award,
34 notwithstanding any settlement allocation or apportion-
35 ment that purports to dispose of portions of the cause
36 of action not subject to subrogation. Any settlement,
37 compromise, judgment or award that excludes or limits
38 the cost of medical services or care shall not preclude

39 the department of health and human resources from
40 enforcing its rights under this section. The secretary
41 may compromise, settle and execute a release of any
42 such claim in whole or in part.

43 (b) Nothing in this section shall be construed so as to
44 prevent the recipient of medical assistance from
45 maintaining an action for injuries received by him
46 against any other person and from including therein, as
47 part of the compensatory damages sought to be reco-
48 vered, the amount or amounts of his medical expenses,
49 even though such person received medical assistance in
50 the payment of such medical expenses, in whole or in
51 part.

52 If the action be tried by a jury, the jury shall not be
53 informed as to the interest of the department of health
54 and human resources, if any, and such fact shall not be
55 disclosed to the jury at any time. The trial judge shall,
56 upon the entry of judgment on the verdict, direct that
57 an amount equal to the amount of medical assistance
58 given be withheld and paid over to the department of
59 health and human resources. Irrespective of whether the
60 case be terminated by judgment or by settlement
61 without trial, from the amount required to be paid to
62 the department of health and human resources there
63 shall be deducted the attorney fees attributable to such
64 amount in accordance with and in proportion to the fee
65 arrangement made between the recipient and his
66 attorney of record so that the department shall bear the
67 pro rata portion of such attorney fees. Nothing in this
68 section shall preclude any person who has received
69 medical assistance from settling any cause of action
70 which he may have against another person and deliv-
71 ering to the department of health and human resources,
72 from the proceeds of such settlement, the sums received
73 by him from the department or paid by the department
74 for his medical assistance. Any release given by a person
75 who has received medical assistance to another person
76 releasing such other person of liability with respect to
77 any cause of action shall be binding upon the depart-
78 ment of health and human resources if the person for
79 whose benefit the release inures is unaware of, or has

80 not been informed of, the interest of the department
81 therein. If such other person is aware of or has been
82 informed of the interest of the department of health and
83 human resources in the matter, it shall be the duty of
84 the person to whose benefit the release inures to
85 withhold so much of the settlement as may be necessary
86 to reimburse the department to the extent of its interest
87 in the settlement. No judgment, award of or settlement
88 in any action or claim by a medical assistance recipient
89 to recover damages for injuries, disease or disability, in
90 which the department of health and human resources
91 has interest, shall be satisfied without first giving the
92 department notice and reasonable opportunity to
93 establish its interest. If, after being notified in writing
94 of a subrogation claim and possible liability of the
95 recipient, guardian, attorney or personal representative
96 for failure to subrogate the department, a recipient, his
97 or her guardian, attorney or personal representative
98 disposes of the funds representing the judgment,
99 settlement or award, without the written approval of the
100 department, that person shall be liable to the depart-
101 ment for any amount that, as a result of the disposition
102 of the funds, is not recoverable by the department. In
103 the event that a controversy arises concerning the
104 subrogation claims by the department, an attorney shall
105 interplead, pursuant to rule twenty-two of the rules of
106 civil procedure, the portion of the recipient's settlement
107 that will satisfy the department exclusive of attorneys
108 fees and costs regardless of any contractual arrange-
109 ment between the client and the attorney.

§9-5-11a. Notice of action or claim.

1 If either the medical assistance recipient or the
2 department of health and human resources brings an
3 action or claim against a third person, the recipient, his
4 attorney or such department shall, within thirty days of
5 filing the action, give to the other written notice of the
6 action or claim by certified mail. This notice shall
7 contain the name of the third person and the court in
8 which the action is brought. If the department of health
9 and human resources institutes said action, the notice
10 shall advise the recipient of their right to bring such

11 action in their own name, in which they may include as
12 a part of their claim the sums claimed by such
13 department. Proof of such notice shall be filed in said
14 action. If an action or claim is brought by either the
15 recipient or the department of health and human
16 resources, the other may, at any time before trial,
17 become a party to the action, or shall consolidate his
18 action or claim with the other if brought independently:
19 *Provided*, That this consolidation or entry as a party
20 does not delay the proceedings.

§9-5-11b. Release of information.

1 (a) All recipients of medical assistance under the
2 medicaid program shall be deemed to have authorized
3 all third parties including, but not limited to, insurance
4 companies and providers of medical care, to release to
5 the department of health and human resources informa-
6 tion needed by the department to secure or enforce its
7 rights as assignee under this chapter.

8 (b) Every insurer and provider of medical care shall
9 furnish records or information pertaining to the
10 coverage of any individual or the medical benefits paid
11 or claims made under a policy or obligation, if the
12 department of health and human resources:

13 (1) Requests the information in writing; and

14 (2) Certifies that the individual is an applicant for or
15 recipient of medical assistance or is an individual who
16 is legally responsible for an applicant or recipient. The
17 department of health and human resources may request
18 only the records or information necessary to determine
19 if insurance benefits have been or should have been
20 claimed or paid with respect to items of medical care
21 and services that were received by a particular individ-
22 ual and or which medical assistance coverage would
23 otherwise be available.

24 (c) The insurance commissioner shall establish
25 guidelines for information requests pursuant to this
26 section.

§9-5-17. Nonprofit agency or facility, in receipt of medicaid moneys, shall provide annual accounting of gross receipts and disbursements including salaries.

1 Any nonprofit health care agency or facility which
 2 receives medicaid moneys shall, as a condition of the
 3 receipt of same, provide an annual accounting of that
 4 facility's or provider's receipts and disbursements,
 5 including the total salaries of all employees and
 6 administrators, with one copy of same to be submitted
 7 to the joint committee on government and finance and
 8 one copy submitted to the health care cost review
 9 authority on or before the fifteenth day of the first
 10 month of the year for the preceding year.

CHAPTER 11. TAXATION.

Article

- 10. Procedure and Administration.
- 12B. Minimum Severance Tax on Coal.
- 13A. Severance and Business Privilege Taxes.
- 26. Health Care Provider Medicaid Tax.
- 27. Health Care Provider Taxes.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-18a. Additions to tax for failure to pay estimated income or business franchise tax.

§11-10-18b. Additions to tax for failure to pay any other estimated tax.

§11-10-18a. Additions to tax for failure to pay estimated income or business franchise tax.

1 (a) *Additions to tax.* — Except as otherwise provided
 2 in this section, in the case of any underpayment of
 3 estimated tax, there shall be added to the tax due for
 4 the taxable year, under article twenty-one, twenty-three
 5 or twenty-four of this chapter, an amount determined by
 6 applying the rate established under section seventeen or
 7 seventeen-a of this article, as appropriate for the taxable
 8 year, to the amount of the underpayment of estimated
 9 tax, for 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) of this subsection over the amount determined under
14 subdivision (2) of 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 installment 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, 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,
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 subdivi-
68 sion from the amount determined under the approp-
69 riate clause of paragraph (A) of this subdivision. When
70 making these computations, the rules in paragraph (C)
71 of this subdivision shall be followed:

72 (A) (i) *Corporations.* — An amount equal to the
73 applicable percentage of the tax of a corporation for the
74 taxable year computed by placing on an annualized
75 basis its taxable income:

76 (I) For the first three months of the taxable year, in
77 the case of the first installment;

78 (II) For the first three months of or the first five
79 months of the taxable year, in the case of the second
80 installment;

81 (III) For the first six months or the first eight months
82 of the taxable year, in the case of the third installment;
83 and

84 (IV) For the first nine months or for the first eleven
85 months of the taxable year, in the case of the fourth
86 installment.

87 (ii) *Individuals.* — An amount equal to the applicable
88 percentage of the tax of an individual for the taxable
89 year computed by placing on an annualized basis the

90 taxable income of the individual for months in the
91 taxable year ending before the due date for the
92 installment.

93 (B) The aggregate amount of any prior required
94 installments for the taxable year.

95 (C) *Special rules.* — For purposes of this subdivision:

96 (i) *Annualization.* — Taxpayer's taxable income shall
97 be placed on an annualized basis in the same manner
98 that taxable income is annualized for federal income tax
99 purposes for the taxable year.

100 (ii) *Applicable percentage.* — The applicable per-
101 centage shall be determined from the following table:

102	In the case of the following	The applicable
103	required installments:	percentage is:
104	1st	22.5
105	2nd	45
106	3rd	67.5
107	4th	90

108 (e) *Additional exceptions.* —

109 (1) *Where tax amount is small.* — No addition to tax
110 shall be imposed under subsection (a) of this section for
111 any taxable year if the tax shown on the return for such
112 taxable year (or, if no return is filed, the tax), reduced
113 by the credit allowable for withheld tax, is less than two
114 hundred fifty dollars.

115 (2) *Where individual has no personal income tax*
116 *liability for preceding taxable year.* — No addition to tax
117 shall be imposed under subsection (a) of this section for
118 any taxable year if:

119 (A) The individual's preceding taxable year was a
120 taxable year of twelve months;

121 (B) The individual did not have any West Virginia
122 personal income tax liability for the preceding taxable
123 year;

124 (C) The individual was a citizen or resident of the
125 United States throughout the preceding taxable year;
126 and

127 (D) The individual's West Virginia personal income
128 tax liability for the current taxable year is less than five
129 thousand dollars.

130 (3) *Waiver in certain cases.* — No addition to tax shall
131 be imposed under subsection (a) of this section with
132 respect to any underpayment if and to the extent the tax
133 commissioner determines that by reason of casualty,
134 disaster or other unusual circumstances the imposition
135 of such addition to tax would be against equity and good
136 conscience.

137 (f) *Tax computed after application of credits against*
138 *tax.* — For purposes of this section, the term "tax"
139 means the amount of any annual tax or fee administered
140 under this article that is generally payable in two or
141 more installment payments during the taxable year,
142 minus the amount of credits allowable against such tax
143 or fee, other than taxes withheld from the taxpayer
144 under section seventy-one or seventy-one-a, article
145 twenty-one of this chapter (relating to taxes withheld on
146 wages, or from distributions of pass-through income to
147 nonresident partners, S corporation shareholders or
148 beneficiaries of an estate or trust).

149 (g) *Application of section in case of personal income*
150 *tax withheld on wages.* —

151 (1) *In general.* — For purposes of applying this
152 section, the amount of the credit allowed under section
153 seventy-one, article twenty-one of this chapter, for the
154 taxable year shall be deemed a payment of estimated
155 tax, and an equal part of such amount shall be deemed
156 to have been paid on each installment payment due date
157 for such taxable year, unless the taxpayer establishes
158 the specific dates on which all amounts were actually
159 withheld, in which case the amounts so withheld shall
160 be deemed payments of estimated tax on the dates on
161 which such amounts were actually withheld.

162 (2) *Separate application.* — The taxpayer may apply
163 subdivision (1) of this subsection separately with respect
164 to:

165 (A) Wage withholding; and

166 (B) All other amounts withheld for which credit is
167 allowed under section seventy-one, article twenty-one of
168 this chapter.

169 (h) *Application of section in case of income tax*
170 *withheld by pass-through entities from distributions to*
171 *nonresidents.* — For purposes of applying this section,
172 the amount of credit allowed under section seventy-one-
173 a, article twenty-one of this chapter to a nonresident
174 distributee of a pass-through entity, shall be deemed to
175 be a payment of estimated income tax for the taxable
176 year of the nonresident distributee, and an equal part
177 of such amount shall be deemed (only for purposes of
178 this section) to have been paid on each installment due
179 date for the taxable year of the distributee, unless the
180 distributee establishes the dates on which all amounts
181 were actually withheld, in which case the amounts so
182 withheld shall be deemed payments of estimated tax on
183 the dates on which such amounts were actually
184 withheld.

185 (i) *Special rule where personal income tax return filed*
186 *on or before the thirty-first day of January.* — If on or
187 before the last day of the first month following the end
188 of the taxable year, the taxpayer files his or her annual
189 personal income tax return for that taxable year and
190 pays in full the amount computed on the return as
191 payable, then no addition to tax shall be imposed under
192 subsection (a) of this section with respect to any
193 underpayment of the fourth required installment for
194 that taxable year.

195 (j) *Special rules for farmers.* — For purposes of this
196 section, if an individual is a farmer for any taxable year:

197 (1) There is only one required installment for that
198 taxable year;

199 (2) The due date for such installment is the fifteenth
200 day of January of the following taxable year;

201 (3) The amount of such installment shall be equal to
202 the required annual payment determined under subsec-
203 tion (b) of this section by substituting “sixty-six and two-
204 thirds percent” for “ninety percent”; and

- 205 (4) Subsection (h) of this section shall be applied:
- 206 (A) By substituting “the first day of March” for the
207 phrase “the thirty-first day of January”; and
- 208 (B) By treating the required installment described in
209 subdivision (1) of this subsection as the fourth required
210 installment.
- 211 (k) *Fiscal years and short years.* —
- 212 (1) *Fiscal years.* — In applying this section to a
213 taxable year beginning on any date other than the first
214 day of January, there shall be substituted, for the
215 months specified in this section, the months of the fiscal
216 year that correspond thereto.
- 217 (2) *Short taxable year.* — The application of this
218 section to taxable years of less than twelve months shall
219 be in accordance with regulations prescribed by the tax
220 commissioner.
- 221 (l) *Reserved.*
- 222 (m) *Estates and trusts.* —
- 223 (1) *In general.* — Except as otherwise provided in this
224 subsection, this section shall apply to any estate or trust.
- 225 (2) *Exception for certain estates and certain trusts.* —
226 With respect to any taxable year ending before the date
227 two years after the date of the decedent’s death, this
228 section shall not apply to:
- 229 (A) The estate of such decedent; or
- 230 (B) Any trust all of which was treated for federal
231 income tax purposes as owned by the decedent and to
232 which the residue of the decedent’s estate will pass
233 under his or her will (or, if no will is admitted to
234 probate, which is the trust primarily responsible for
235 paying debts, taxes and expenses of administration).
- 236 (3) *Special rule for annualizations.* — In the case of
237 any estate or trust to which this section applies,
238 paragraph (A), subdivision (2), subsection (d) of this
239 section shall be applied by substituting “ending before

240 the date one month before the due date of the instal-
241 lment" for the phrase "ending before the due date for
242 the installment".

243 (n) *Regulations.* — The tax commissioner may pres-
244 scribe such regulations as the commissioner deems
245 necessary to carry out the purpose of this section. This
246 includes, but is not limited to, equitable regulations
247 allowing payment of adjusted seasonal installments in
248 lieu of annualized income installments when the
249 commissioner determines, based on known facts and
250 circumstances, that payment of the annualized income
251 installment will result in significant hardship to the
252 taxpayer due to the seasonal nature of taxpayer's
253 business, and equitable regulations for payment of
254 estimated personal income tax by an individual who is:
255 (1) An employee; (2) employed in another state for some
256 portion or all of the taxable year; and (3) required to
257 pay personal income taxes to such other state on (or
258 measured by) wages earned in that state, for which
259 credit is allowed under section twenty, article twenty-
260 one of this chapter.

261 (o) *Effective date.* —

262 (1) This section as amended in the year one thousand
263 nine hundred ninety-two shall apply to taxable years
264 beginning after the thirtieth day of June, one thousand
265 nine hundred ninety-two, and this section as in effect on
266 the first day of January, one thousand nine hundred
267 ninety-two, is preserved and shall apply to taxable years
268 beginning before the first day of July, one thousand nine
269 hundred ninety-two.

270 (2) This section as amended in the year one thousand
271 nine hundred ninety-three shall apply to taxable years
272 ending after the thirtieth day of June, one thousand nine
273 hundred ninety-three. For taxable years ending on or
274 before such dates, the provisions of this section as in
275 effect for such years are fully preserved.

**§11-10-18b. Additions to tax for failure to pay any other
estimated tax.**

1 (a) *General rule.* — If a person required to make

2 monthly or quarterly installment payments of any
3 annual tax administered under this article, except the
4 taxes imposed by article twenty-one, twenty-three or
5 twenty-four of this chapter fails to timely remit any
6 installment payment of such tax or remits less than the
7 amount of the required installment payment of such tax,
8 there shall be added to the tax due for the taxable year
9 an amount determined by applying the rate established
10 under section seventeen or seventeen-a of this article, as
11 appropriate for the taxable year, to the amount of the
12 underpayment of estimated tax, for the period of the
13 underpayment.

14 (1) *Quarterly installment payments.* — If a person
15 required to make quarterly installment payments of
16 estimated tax timely pays estimated tax during the
17 taxable year equal to seventy-five percent or more of
18 such person's actual liability for such tax for that
19 taxable year, no additions to tax shall be imposed under
20 this section with respect to such payments. Estimated
21 tax is paid timely if at least one fourth of the tax due
22 for the taxable year is paid by the due date of each
23 installment for that year.

24 (2) *Monthly installment payments.* — If a person
25 required to make monthly installment payments of
26 estimated tax timely pays estimated tax during the
27 taxable year equal to at least eleven twelfths of such
28 person's actual liability for such tax for that taxable
29 year, no additions to tax shall be imposed under this
30 section with respect to such payments. Estimated tax is
31 paid timely if at least one twelfth of the tax due for the
32 taxable year is paid by the due date of each installment
33 for that year.

34 (b) *Amount of underpayment.* — For purposes of
35 subsection (a) of this section, the amount of the under-
36 payment shall be the excess of the amount that should
37 have been paid by the due date of the required
38 installment payment over the amount taxpayer remitted
39 by the due date of the required installment payment.

40 (c) *Period of underpayment.* — The period of under-
41 payment of any installment shall run from the date the

42 installment was required to be paid (due date) to
43 whichever of the following dates is the earlier:

44 (1) The due date of the annual return following the
45 close of the taxable year for which the installment was
46 due (determined without regard to any extension of time
47 for filing such annual return); or

48 (2) With respect to any portion of the underpayment,
49 the date on which such portion is paid. For purposes of
50 this subdivision, a payment of estimated tax shall be
51 credited against unpaid required installments in the
52 order in which such installments are required to be
53 paid.

54 (d) *Waiver in certain cases.* — No addition to tax shall
55 be imposed under this section with respect to any
56 underpayment of estimated tax if and to the extent the
57 tax commissioner determines that:

58 (1) By reason of casualty, disaster or other unusual
59 circumstances the imposition of such addition would be
60 against equity and good conscience; or

61 (2) The amount of the installment payment remitted
62 was determined using the statutory measure of the
63 particular tax, as received or accrued under taxpayer's
64 method of accounting during the period to which the
65 installment payment relates, and the applicable rate of
66 tax.

67 (e) *Burden of proof.* — The tax commissioner shall
68 make his or her determination under subsection (d) of
69 this section based upon relevant facts and circumstances
70 established by the taxpayer through such proof or proofs
71 as the tax commissioner may require.

72 (f) *Short tax years.* — This section shall apply to short
73 tax years under rules promulgated by the tax
74 commissioner.

75 (g) *Effective date.* — This section shall apply to taxable
76 years ending after the thirtieth day of June, one
77 thousand nine hundred ninety-three.

§11-12B-3. Imposition of tax, credit.

§11-12B-6. Periodic installment payments of estimated tax.

§11-12B-3. Imposition of tax, credit.

1 (a) *Imposition of tax.* — Upon every person exercising
2 the privilege of engaging within this state in severing,
3 extracting, reducing to possession or producing coal for
4 sale, profit or commercial use, there is hereby imposed
5 an annual minimum severance tax equal to fifty cents
6 per ton of coal produced by the taxpayer for sale, profit
7 or commercial use during the taxable year: *Provided,*
8 That for taxable years ending after the thirty-first day
9 of May, one thousand nine hundred ninety-three, the
10 minimum severance tax imposed on coal produced by
11 the taxpayer for sale, profit or commercial use during
12 such taxable year shall be seventy-five cents per ton,
13 with such rate increase to apply only to tons of coal
14 produced after the thirty-first day of May, one thousand
15 nine hundred ninety-three.

16 (b) *Credit against article thirteen-a tax.* — A person
17 who pays the minimum severance tax imposed by this
18 article shall be allowed a credit against the severance
19 tax imposed on the privilege of producing coal by section
20 three, article thirteen-a of this chapter, but not includ-
21 ing the additional severance tax on coal imposed by
22 section six of said article. The amount of credit allowed
23 shall be equal to the liability of the taxpayer for the
24 taxable year for payment of the minimum severance tax
25 on coal imposed by this article: *Provided,* That the
26 amount of credit allowed by this section shall not exceed
27 the severance tax liability of the taxpayer for the
28 taxable year determined under section three of said
29 article exclusive of the additional tax on coal imposed
30 by section six of said article after application of all
31 credits to which the taxpayer may be entitled except any
32 credit allowed pursuant to chapter five-e of this code,
33 any credit for installment payments of estimated tax
34 paid pursuant to section six of this article during the
35 taxable year and any credit for overpayment of article
36 thirteen-a tax. Notwithstanding anything herein to the
37 contrary, in no event shall the credit allowed under
38 chapter five-e of this code be allowed as a credit against

39 the minimum severance tax imposed by this article.

§11-12B-6. Periodic installment payments of estimated tax.

1 (a) *General rule.* — The annual tax levied under this
2 article shall be due and payable in monthly installments
3 during the taxable year. Installment payments shall be
4 due and payable on or before the last day of the month
5 following the month in which the tax accrued: *Provided,*
6 That the installment payment otherwise due under this
7 subsection on or before the thirtieth day of June each
8 year shall be remitted to the tax commissioner on or
9 before the fifteenth day of June each year.

10 (b) *Remittance form.* — Each such taxpayer shall, on
11 or before the last day of each month, make out an
12 estimate of the tax for which the taxpayer is liable for
13 the preceding month, in the form prescribed by the tax
14 commissioner, sign the same and mail it together with
15 a remittance of the amount of tax due to the office of
16 the tax commissioner: *Provided,* That the installment
17 payment otherwise due under this section on or before
18 the thirtieth day of June each year shall be remitted to
19 the tax commissioner on or before the fifteenth day of
20 June.

21 (c) *Exception.* — Notwithstanding the provisions of
22 subsection (a) of this section, the tax commissioner, if he
23 or she deems it necessary to ensure payment of the tax,
24 may require the return and payment under this section
25 for periods of shorter duration than that prescribed in
26 said subsection.

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAXES.

- §11-13A-1. Short title; arrangement and classification.
§11-13A-2. Definitions.
§11-13A-3. Imposition of tax on privilege of severing coal, limestone or sandstone, or furnishing certain health care services; effective dates therefor.
§11-13A-3a. Imposition of tax on privilege of severing natural gas or oil.
§11-13A-3b. Imposition of tax on privilege of severing timber.
§11-13A-3c. Imposition of tax on privilege of severing other natural resources.
§11-13A-7. Accounting periods and methods of accounting.

- §11-13A-8. Time for filing annual returns and other documents.
§11-13A-9. Periodic installment payments of taxes imposed by sections three-a, three-b and three-c of this article.
§11-13A-9a. Periodic installment payments of tax imposed by section three of this article.
§11-13A-10. Paying tax; annual tax credit.
§11-13A-19. General procedure and administration.
§11-13A-20. Crimes and penalties.
§11-13A-20a. Dedication of tax.
§11-13A-25. Effective date.

§11-13A-1. Short title; arrangement and classification.

1 This article may be cited as the “Severance and
2 Business Privilege Tax Act of 1993”. No inference,
3 implication or presumption of legislative construction
4 shall be drawn or made by reason of the location or
5 grouping of any particular section or provision or
6 portion of this article, and no legal effect shall be given
7 to any descriptive matter of headings relating to any
8 part, section, subsection, subdivision or paragraph of
9 this article.

§11-13A-2. Definitions.

1 (a) *General rule.* — When used in this article, or in
2 the administration of this article, the terms defined in
3 subsection (b), (c) or (d) of this section shall have the
4 meanings ascribed to them by this section, unless a
5 different meaning is clearly required by the context in
6 which the term is used, or by specific definition.

7 (b) *General terms defined.* — Definitions in this
8 subsection apply to all persons subject to the taxes
9 imposed by this article.

10 (1) “Business” includes all activities engaged in, or
11 caused to be engaged in, with the object of gain or
12 economic benefit, direct or indirect, and whether
13 engaged in for profit, or not for profit, or by a
14 governmental entity: *Provided*, That “business” does not
15 include services rendered by an employee within the
16 scope of his or her contract of employment. Employee
17 services, services by a partner on behalf of his or her
18 partnership and services by a member of any other
19 business entity on behalf of that entity are the business
20 of the employer, or partnership, or other business entity,

21 as the case may be, and reportable as such for purposes
22 of the taxes imposed by this article.

23 (2) "Corporation" includes associations, joint-stock
24 companies and insurance companies. It also includes
25 governmental entities when and to the extent such
26 governmental entities engage in activities taxable under
27 this article.

28 (3) "Delegate" in the phrase "or his delegate", when
29 used in reference to the tax commissioner, means any
30 officer or employee of the state tax division of the
31 department of tax and revenue duly authorized by the
32 tax commissioner directly, or indirectly by one or more
33 redelegations of authority, to perform the function
34 mentioned or described in this article or regulations
35 promulgated thereunder.

36 (4) "Fiduciary" means and includes a guardian,
37 trustee, executor, administrator, receiver, conservator
38 or any person acting in any fiduciary capacity for any
39 person.

40 (5) "Gross proceeds" means the value, whether in
41 money or other property, actually proceeding from the
42 sale or lease of tangible personal property, or from the
43 rendering of services, without any deduction for the cost
44 of property sold or leased or expenses of any kind.

45 (6) "Includes" and "including" when used in a
46 definition contained in this article shall not be deemed
47 to exclude other things otherwise within the meaning of
48 the term being defined.

49 (7) "Partner" includes a member of a syndicate,
50 group, pool, joint venture or other organization which
51 is a "partnership" as defined in this section.

52 (8) "Partnership" includes a syndicate, group, pool,
53 joint venture or other unincorporated organization
54 through or by means of which any privilege taxable
55 under this article is exercised, and which is not within
56 the meaning of this article a trust or estate or corpo-
57 ration. "Partnership" includes a limited liability
58 company which is treated as a partnership for federal
59 income tax purposes.

60 (9) "Person" or "company" are herein used interchan-
61 geably and include any individual, firm, partnership,
62 mining partnership, joint venture, association, corpora-
63 tion, trust or other entity, or any other group or
64 combination acting as a unit, and the plural as well as
65 the singular number, unless the intention to give a more
66 limited meaning is declared by the context.

67 (10) "Sale" includes any transfer of the ownership or
68 title to property, whether for money or in exchange for
69 other property or services, or any combination thereof.
70 "Sale" includes a lease of property, whether the
71 transaction be characterized as a rental, lease, hire,
72 bailment or license to use. "Sale" also includes rendering
73 services for a consideration, whether direct or indirect.

74 (11) "Service" includes all activities engaged in by a
75 person for a consideration, which involve the rendering
76 of a service as distinguished from the sale of tangible
77 personal property: *Provided*, That "service" does not
78 include: (A) Services rendered by an employee to his or
79 her employer under a contract of employment; (B)
80 contracting; or (C) severing or processing natural
81 resources.

82 (12) "Tax" means any tax imposed by this article and,
83 for purposes of administration and collection of such tax,
84 it includes any interest, additions to tax or penalties
85 imposed with respect thereto under article ten of this
86 chapter.

87 (13) "Tax commissioner" or "commissioner" means the
88 tax commissioner of the state of West Virginia, or his
89 or her delegate.

90 (14) "Taxable year" means the calendar year, or the
91 fiscal year ending during such calendar year, upon the
92 basis of which a tax liability is computed under this
93 article. In the case of a return made under this article,
94 or regulations of the tax commissioner, for a fractional
95 part of a year, the term "taxable year" means the period
96 for which such return is made.

97 (15) "Taxpayer" means any person subject to any tax
98 imposed by this article.

99 (16) "This code" means the code of West Virginia, one
100 thousand nine hundred thirty-one, as amended.

101 (17) "This state" means the state of West Virginia.

102 (18) "Withholding agent" means any person required
103 by law to deduct and withhold any tax imposed by this
104 article or under regulations promulgated by the tax
105 commissioner.

106 (c) *Specific definitions for producers of natural*
107 *resources.* —

108 (1) "Coal" means and includes any material composed
109 predominantly of hydrocarbons in a solid state.

110 (2) "Economic interest" for the purpose of this article
111 is synonymous with the economic interest ownership
112 required by Section 611 of the Internal Revenue Code
113 in effect on the thirty-first day of December, one
114 thousand nine hundred eighty-five, entitling the tax-
115 payer to a depletion deduction for income tax purposes:
116 *Provided,* That a person who only receives an arm's
117 length royalty shall not be considered as having an
118 economic interest.

119 (3) "Extraction of ores or minerals from the ground"
120 includes extraction by mine owners or operators of ores
121 or minerals from the waste or residue of prior mining
122 only when such extraction is sold.

123 (4) "Gross value" in the case of natural resources
124 means the market value of the natural resource product,
125 in the immediate vicinity, where severed, determined
126 after application of post production processing generally
127 applied by the industry to obtain commercially market-
128 able or usable natural resource products. For all natural
129 resources, "gross value" is to be reported as follows:

130 (A) For natural resources severed or processed (or
131 both severed and processed) and sold during a reporting
132 period, gross value is the gross proceeds received or
133 receivable by the taxpayer.

134 (B) In a transaction involving related parties, gross
135 value shall not be less than the fair market value for
136 natural resources of similar grade and quality.

137 (C) In the absence of a sale, gross value shall be the
138 fair market value for natural resources of similar grade
139 and quality.

140 (D) If severed natural resources are purchased for the
141 purpose of processing and resale, the gross value is the
142 amount received or receivable during the reporting
143 period reduced by the amount paid or payable to the
144 taxpayer actually severing the natural resource. If
145 natural resources are severed outside the state of West
146 Virginia and brought into the state of West Virginia by
147 the taxpayer for the purpose of processing and sale, the
148 gross value is the amount received or receivable during
149 the reporting period reduced by the fair market value
150 of natural resources of similar grade and quality and in
151 the same condition immediately preceding the process-
152 ing of the natural resources in this state.

153 (E) If severed natural resources are purchased for the
154 purpose of processing and consumption, the gross value
155 is the fair market value of processed natural resources
156 of similar grade and quality reduced by the amount paid
157 or payable to the taxpayer actually severing the natural
158 resource. If severed natural resources are severed
159 outside the state of West Virginia and brought into the
160 state of West Virginia by the taxpayer for the purpose
161 of processing and consumption, the gross value is the
162 fair market value of processed natural resources of
163 similar grade and quality reduced by the fair market
164 value of natural resources of similar grade and quality
165 and in the same condition immediately preceding the
166 processing of the natural resources.

167 (F) In all instances, the gross value shall be reduced
168 by the amount of any federal energy tax imposed upon
169 the taxpayer after the first day of June, one thousand
170 nine hundred ninety-three, but shall not be reduced by
171 any state or federal taxes, royalties, sales commissions
172 or any other expense.

173 (G) For natural gas, gross value is the value of the
174 natural gas at the wellhead immediately preceding
175 transportation and transmission.

176 (H) For limestone or sandstone quarried or mined,

177 gross value is the value of such stone immediately upon
178 severance from the earth.

179 (5) "Mining" includes not merely the extraction of ores
180 or minerals from the ground but also those treatment
181 processes necessary or incidental thereto.

182 (6) "Natural resources" means all forms of minerals
183 including, but not limited to, rock, stone, limestone, coal,
184 shale, gravel, sand, clay, natural gas, oil and natural gas
185 liquids which are contained in or on the soils or waters
186 of this state, and includes standing timber.

187 (7) "Processed" or "processing" as applied to:

188 (A) Oil and natural gas shall not include any conver-
189 sion or refining process; and

190 (B) Limestone or sandstone quarried or mined shall
191 not include any treatment process or transportation
192 after the limestone or sandstone is severed from the
193 earth.

194 (8) "Related parties" means two or more persons,
195 organizations or businesses owned or controlled directly
196 or indirectly by the same interests. Control exists if a
197 contract or lease, either written or oral, is entered into
198 whereby one party mines or processes natural resources
199 owned or held by another party and the owner or lessor
200 participates in the severing, processing or marketing of
201 the natural resources or receives any value other than
202 an arm's length passive royalty interest. In the case of
203 related parties, the tax commissioner may apportion or
204 allocate the receipts between or among such persons,
205 organizations or businesses if he determines that such
206 apportionment or allocation is necessary to more clearly
207 reflect gross value.

208 (9) "Severing" or "severed" means the physical
209 removal of the natural resources from the earth or
210 waters of this state by any means: *Provided*, That
211 "severing" or "severed" shall not include the removal of
212 natural gas from underground storage facilities into
213 which the natural gas has been mechanically injected
214 following its initial removal from earth: *Provided*,
215 *however*, That "severing" or "severed" oil and natural

216 gas shall not include any separation process of oil or
217 natural gas commonly employed to obtain marketable
218 natural resource products.

219 (10) "Stock" includes shares in an association, joint-
220 stock company or corporation.

221 (11) "Taxpayer" means and includes any individual,
222 partnership, joint venture, association, corporation,
223 receiver, trustee, guardian, executor, administrator,
224 fiduciary or representative of any kind engaged in the
225 business of severing or processing (or both severing and
226 processing) natural resources in this state for sale or use.
227 In instances where contracts (either oral or written) are
228 entered into whereby persons, organizations or busi-
229 nesses are engaged in the business of severing or
230 processing (or both severing and processing) a natural
231 resource but do not obtain title to or do not have an
232 economic interest therein, the party who owns the
233 natural resource immediately after its severance or has
234 an economic interest therein is the taxpayer.

235 (d) *Specific definitions for persons providing health*
236 *care items or services.* —

237 (1) "Behavioral health services" means health care
238 related services provided by a behavioral health center
239 as defined in section one, article two-a, chapter twenty-
240 seven of this code or section one, article nine of said
241 chapter.

242 (2) "Community care services" means home and
243 community care services furnished by a provider
244 pursuant to an individual plan of care, which also
245 includes senior citizens groups that provide such
246 services, but does not include services of home health
247 agencies.

**§11-13A-3. Imposition of tax on privilege of severing
coal, limestone or sandstone, or furnishing
certain health care services; effective
dates therefor.**

1 (a) *Imposition of tax.* — Upon every person exercising
2 the privilege of engaging or continuing within this state
3 in the business of severing, extracting, reducing to

4 possession and producing for sale, profit or commercial
5 use coal, limestone or sandstone, or in the business of
6 furnishing certain health care services, there is hereby
7 levied and shall be collected from every person exercis-
8 ing such privilege an annual privilege tax.

9 (b) *Rate and measure of tax.* — The tax imposed in
10 subsection (a) of this section shall be five percent of the
11 gross value of the natural resource produced or the
12 health care service provided, as shown by the gross
13 income derived from the sale or furnishing thereof by
14 the producer or the provider of the health care service,
15 except as otherwise provided in this article. In the case
16 of coal, this five percent rate of tax includes the thirty-
17 five one hundredths of one percent additional severance
18 tax on coal imposed by the state for the benefit of
19 counties and municipalities as provided in section six of
20 this article.

21 (c) *“Certain health care services” defined.* — For
22 purposes of this section, the term “certain health care
23 services” means, and is limited to, behavioral health
24 services and community care services.

25 (d) *Tax in addition to other taxes.* — The tax imposed
26 by this section shall apply to all persons severing or
27 processing (or both severing and processing) in this state
28 natural resources enumerated in subsection (a) of this
29 section, and to all persons providing certain health care
30 services in this state as enumerated in subsection (c) of
31 this section, and shall be in addition to all other taxes
32 imposed by law.

33 (e) *Effective date.* — This section, as amended in the
34 year one thousand nine hundred ninety-three, shall
35 apply to gross proceeds derived after the thirty-first day
36 of May of such year. The language of this section, as in
37 effect on the first day of January of such year, shall
38 apply to gross proceeds derived prior to the first day of
39 June of such year and, with respect to such gross
40 proceeds, shall be fully and completely preserved.

**§11-13A-3a. Imposition of tax on privilege of severing
natural gas or oil.**

1 (a) *Imposition of tax.* — For the privilege of engaging
2 or continuing within this state in the business of
3 severing natural gas or oil for sale, profit or commercial
4 use, there is hereby levied and shall be collected from
5 every person exercising such privilege an annual
6 privilege tax.

7 (b) *Rate and measure of tax.* — The tax imposed in
8 subsection (a) of this section shall be five percent of the
9 gross value of the natural gas or oil produced, as shown
10 by the gross proceeds derived from the sale thereof by
11 the producer, except as otherwise provided in this
12 article.

13 (c) *Tax in addition to other taxes.* — The tax imposed
14 by this section shall apply to all persons severing gas
15 or oil in this state, and shall be in addition to all other
16 taxes imposed by law.

17 (d) *Effective date.* — This section, as enacted in the
18 year one thousand nine hundred ninety-three, shall
19 apply to gross proceeds derived after the thirty-first day
20 of May of such year. The language of section three of
21 this article, as in effect on the first day of January of
22 such year, shall apply to gross proceeds derived prior
23 to the first day of June of such year and, with respect
24 to such gross proceeds, shall be fully and completely pre-
25 served.

**§11-13A-3b. Imposition of tax on privilege of severing
timber.**

1 (a) *Imposition of tax.* — For the privilege of engaging
2 or continuing within this state in the business of
3 severing timber for sale, profit or commercial use, there
4 is hereby levied and shall be collected from every person
5 exercising such privilege an annual privilege tax.

6 (b) *Rate and measure of tax.* — The tax imposed in
7 subsection (a) of this section shall be three and twenty-
8 two hundredths percent of the gross value of the timber
9 produced, as shown by the gross proceeds derived from
10 the sale thereof by the producer, except as otherwise
11 provided in this article.

12 (c) *Tax in addition to other taxes.* — The tax imposed

13 by this section shall apply to all persons severing timber
14 in this state, and shall be in addition to all other taxes
15 imposed by law.

16 (d) *Effective date.* — This section, as amended in the
17 year one thousand nine hundred ninety-three, shall
18 apply to gross proceeds derived after the thirty-first day
19 of May of such year. The language of section three of
20 this article, as in effect on the first day of January of
21 such year, shall apply to gross proceeds derived prior
22 to the first day of June of such year and, with respect
23 to such gross income, shall be fully and completely
24 preserved.

**§11-13A-3c. Imposition of tax on privilege of severing
other natural resources.**

1 (a) *Imposition of tax.* — For the privilege of engaging
2 or continuing within this state in the business of
3 severing, extracting, reducing to possession and produc-
4 ing for sale, profit or commercial use any other natural
5 resource product or product not taxed under section
6 three, three-a, three-b or four of this article, there is
7 hereby levied and shall be collected from every person
8 exercising this privilege an annual privilege tax.

9 (b) *Rate and measure of tax.* — The tax imposed in
10 subsection (a) of this section shall be four percent of the
11 gross value of the natural resource produced, as shown
12 by the gross proceeds derived from the sale thereof by
13 producer, except as otherwise provided in this article:
14 *Provided,* That beginning the first day of July, one
15 thousand nine hundred ninety-three, the tax imposed by
16 this section shall be levied and collected at the rate of
17 four and one-half percent, and beginning the first day
18 of July, one thousand nine hundred ninety-four, the tax
19 imposed by this section shall be levied and collected at
20 the rate of five percent.

21 (c) *Tax in addition to other taxes.* — The tax imposed
22 by this section shall apply to all persons severing other
23 natural resources in this state, and shall be in addition
24 to all other taxes imposed by law.

25 (d) *Effective date.* — This section, as amended in the

26 year one thousand nine hundred ninety-three, shall
27 apply to gross proceeds derived after the thirty-first day
28 of May of such year. The language of section three of
29 this article, as in effect on the first day of January of
30 such year, shall apply to gross proceeds derived prior
31 to the first day of June of such year and, with respect
32 to such gross proceeds, shall be fully and completely
33 preserved.

§11-13A-7. Accounting periods and methods of accounting.

1 (a) *General rule.* — For purposes of the taxes imposed
2 by this article, a taxpayer's taxable year shall be the
3 same as the taxpayer's taxable year for federal income
4 tax purposes. If taxpayer has no taxable year for federal
5 income tax purposes, then the calendar year shall be
6 taxpayer's taxable year under this article.

7 (b) *Change of taxable year.* — If a taxpayer's taxable
8 year is changed for federal income tax purposes,
9 taxpayer's taxable year for purposes of this article shall
10 be similarly changed. The taxpayer shall provide a copy
11 of the authorization for such change from the Internal
12 Revenue Service, with taxpayer's annual return for the
13 taxable year filed under this article.

14 (c) *Methods of accounting same as federal.* — (1) *Same*
15 *as federal.* — A taxpayer's method of accounting under
16 this article shall be the same as the taxpayer's method
17 of accounting for federal income tax purposes. In the
18 absence of any method of accounting for federal income
19 tax purposes, the accrual method of accounting shall be
20 used, unless the tax commissioner, in writing, consents
21 to the use of another method. Accrual basis taxpayers
22 may deduct bad debts only in the year to which they
23 relate, and accrual basis health care providers may not
24 deduct bad debts attributable to services rendered
25 before the first day of June, one thousand nine hundred
26 ninety-three.

27 (2) *Change of accounting methods.* — If a taxpayer's
28 method of accounting is changed for federal income tax
29 purposes, the taxpayer's method of accounting for
30 purposes of this article shall similarly be changed. The

31 taxpayer shall provide a copy of the authorization for
32 such change from the Internal Revenue Service with its
33 annual return for the taxable year filed under this
34 article.

35 (d) *Adjustments.* — In computing a taxpayer's liability
36 for tax for any taxable year under a method of
37 accounting different from the method under which the
38 taxpayer's liability for tax under this article for the
39 previous year was computed, there shall be taken into
40 account those adjustments which are determined, under
41 regulations prescribed by the tax commissioner, to be
42 necessary solely by reason of the change in order to
43 prevent amounts from being duplicated or omitted.

§11-13A-8. Time for filing annual returns and other documents.

1 On or before the expiration of one month after the end
2 of the taxable year, every taxpayer subject to a tax
3 imposed by this article shall make and file an annual
4 return for the entire taxable year showing such
5 information as the tax commissioner may require and
6 computing the amount of taxes due under this article
7 for the taxable year. Returns made on the basis of a
8 calendar year shall be filed on or before the thirty-first
9 day of January following the close of the calendar year.
10 Returns made on the basis of a fiscal year shall be filed
11 on or before the last day of the first month following the
12 close of the fiscal year.

§11-13A-9. Periodic installment payments of taxes imposed by sections three-a, three-b and three-c of this article.

1 (a) *General rule.* — Taxes levied under section three-
2 a, three-b or three-c of this article shall be due and
3 payable in periodic installments as follows:

4 (1) If a person's annual tax liability under this article
5 is reasonably expected to be fifty dollars or less per
6 month, no installment payments of tax are required
7 under this section during that taxable year.

8 (2) *Tax of more than one thousand dollars per month.*
9 — For taxpayers whose estimated tax liability under

10 this article exceeds one thousand dollars per month, the
11 tax shall be due and payable in monthly installments on
12 or before the last day of the month following the month
13 in which the tax accrued: *Provided*, That the installment
14 payment otherwise due under this subdivision on or
15 before the thirtieth day of June each year shall be
16 remitted to the tax commissioner on or before the
17 fifteenth day of June each year, beginning the fifteenth
18 day of June, one thousand nine hundred eighty-eight:

19 (A) Each such taxpayer shall, on or before the last day
20 of each month, make out an estimate of the tax for which
21 the taxpayer is liable for the preceding month, sign the
22 same and mail it together with a remittance, in the form
23 prescribed by the tax commissioner, of the amount of
24 tax due to the office of the tax commissioner: *Provided*,
25 That the installment payment otherwise due under this
26 paragraph on or before the thirtieth day of June each
27 year shall be remitted to the tax commissioner on or
28 before the fifteenth day of June, beginning the fifteenth
29 day of June, one thousand nine hundred eighty-eight.

30 (B) In estimating the amount of tax due for each
31 month, the taxpayer may deduct one twelfth of any
32 applicable tax credits allowable for the taxable year,
33 and one twelfth of any annual exemption allowed for
34 such year.

35 (3) *Tax of one thousand dollars per month or less.* —
36 For taxpayers whose estimated tax liability under this
37 article is one thousand dollars per month or less, the tax
38 shall be due and payable in quarterly installments on
39 or before the last day of the month following the quarter
40 in which the tax accrued:

41 (A) Each such taxpayer shall, on or before the last day
42 of the fourth, seventh and tenth months of the taxable
43 year, make out an estimate of the tax for which the
44 taxpayer is liable for the preceding quarter, sign the
45 same and mail it together with a remittance, in the form
46 prescribed by the tax commissioner, of the amount of
47 tax due to the office of the tax commissioner.

48 (B) In estimating the amount of tax due for each
49 quarter, the taxpayer may deduct one fourth of any

50 applicable tax credits allowable for the taxable year,
51 and one fourth of any annual exemption allowed for such
52 year.

53 (b) *Exception.* — Notwithstanding the provisions of
54 subsection (a) of this section, the tax commissioner, if he
55 deems it necessary to ensure payment of the tax, may
56 require the return and payment under this section for
57 periods of shorter duration than those prescribed in said
58 subsection.

§11-13A-9a. Periodic installment payments of tax imposed by section three of this article.

1 (a) *General rule.* — Taxes levied under section three
2 of this article shall be due and payable in periodic
3 installments as follows:

4 (1) If a person's annual liability under this article can
5 reasonably be expected to be fifty dollars or less per
6 month, no installment payments of tax are required
7 under this section during that taxable year.

8 (2) If a person's annual tax liability under section
9 three of this article can reasonably be expected to
10 exceed fifty dollars per month, the tax imposed by said
11 section shall be due and payable in monthly installments
12 on or before the last day of the month following the
13 month in which the tax accrued: *Provided,* That the
14 installment payment otherwise due on or before the
15 thirtieth day of June each year shall be remitted to the
16 tax commissioner on or before the fifteenth day of June
17 each year.

18 (A) Each such taxpayer shall, on or before the last day
19 of each month, make out an estimate of the tax for which
20 the taxpayer is liable for the preceding month, sign the
21 same and mail it together with a remittance, in the form
22 prescribed by the tax commissioner, of the amount of
23 tax due to the office of the tax commissioner: *Provided,*
24 That the installment payment otherwise due under this
25 paragraph on or before the thirtieth day of June each
26 year shall be remitted to the tax commissioner on or
27 before the fifteenth day of June, beginning the fifteenth
28 day of June, one thousand nine hundred eighty-eight.

29 (B) In estimating the amount of tax due for each
30 month, the taxpayer may deduct one twelfth of any
31 applicable tax credits allowable for the taxable year and
32 one twelfth of any annual exemption allowed for such
33 year.

34 (b) *Exception.* — Notwithstanding the provisions of
35 subsection (a) of this section, the tax commissioner, if he
36 deems it necessary to ensure payment of the tax, may
37 require the return and payment under this section for
38 periods of shorter duration than those prescribed in said
39 subsection.

§11-13A-10. Paying tax; annual tax credit.

1 Every taxpayer subject to any tax imposed under this
2 article shall be allowed one annual credit of five
3 hundred dollars against the taxes due under this article,
4 to be applied at the rate of forty-one dollars and sixty-
5 seven cents per month for each month the taxpayer was
6 engaged in business in this state during the taxable year
7 exercising a privilege taxable under this article. Persons
8 providing health care items or services who become
9 subject to the tax imposed by section three of this article
10 beginning the first day of June, one thousand nine
11 hundred ninety-three, shall be allowed a proportional
12 credit under this section based on the number of months
13 in their tax year that begin on or after the first day of
14 June, one thousand nine hundred ninety-three.

§11-13A-19. General procedure and administration.

1 Each and every provision of the “West Virginia Tax
2 Procedure and Administration Act” set forth in article
3 ten of this chapter shall apply to the taxes imposed by
4 this article, except as otherwise expressly provided in
5 this article, with like effect as if said act were applicable
6 only to the taxes imposed by this article and were set
7 forth in extenso in this article.

§11-13A-20. Crimes and penalties.

1 Each and every provision of the “West Virginia Tax
2 Crimes and Penalties Act” set forth in article nine of
3 this chapter shall apply to the taxes imposed by this
4 article with like effect as if said act were applicable only

5 to the taxes imposed by this article and were set forth
6 in extenso in this article.

§11-13A-20a. Dedication of tax.

1 (a) The amount of taxes collected under this article
2 from providers of health care items or services, includ-
3 ing any interest, additions to tax and penalties collected
4 under article ten of this chapter, less the amount of
5 allowable refunds and any interest payable with respect
6 to such refunds, shall be deposited into the special
7 revenue fund created in the state treasurer's office and
8 known as the medicaid state share fund. Said fund shall
9 have separate accounting for those health care providers
10 as set forth in articles four-b and four-c, chapter nine
11 of this code.

12 (b) Notwithstanding the provisions of subsection (a) of
13 this section, for the remainder of fiscal year one
14 thousand nine hundred ninety-three and for each
15 succeeding fiscal year, no expenditures from taxes
16 collected from providers of health care items or services
17 are authorized except in accordance with appropriations
18 by the Legislature.

19 (c) The amount of taxes collected under this article
20 from all other persons, including any interest, additions
21 to tax and penalties collected under article ten of this
22 chapter, less the amount of allowable refunds and any
23 interest payable with respect to such refunds, shall be
24 deposited into the general revenue fund.

§11-13A-25. Effective date.

1 Amendments to this article made by this act of the
2 Legislature shall take effect the first day of June, one
3 thousand nine hundred ninety-three.

ARTICLE 26. HEALTH CARE PROVIDER MEDICAID TAX.

§11-26-20. Transition rules; penalties; effective date.

1 (a) The tax imposed by this article shall not apply to
2 medicaid reimbursement payments received by health
3 care providers after the thirty-first day of May, one
4 thousand nine hundred ninety-three.

5 (b) All persons subject to the tax imposed by this
6 article prior to the first day of June, one thousand nine
7 hundred ninety-three, shall make and file a final return
8 with the tax commissioner, on or before the fifteenth day
9 of June, one thousand nine hundred ninety-three,
10 reporting such information as the tax commissioner may
11 require. This return shall be in lieu of the return
12 otherwise due under this article on the fifteenth day of
13 June, one thousand nine hundred ninety-three. With this
14 return, the provider shall remit the balance of tax due
15 under this article with respect to medicaid services
16 rendered before the said first day of June.

17 (c) For purposes of subsection (b) of this section, and
18 notwithstanding any provision of this article to the
19 contrary, the balance of tax due under this article shall
20 be the sum of the following components: (1) The tax due
21 on the state share of medicaid reimbursement payments
22 received by the provider before the said first day of June
23 and upon which tax was not previously paid by the
24 provider; and (2) the tax due on the state share of
25 medicaid reimbursement payments for services ren-
26 dered before the said first day of June that will be
27 received on or after that date either because the charges
28 for such service were not being billed to the department
29 of health and human resources before the said first day
30 of June, or the bill for such services was not paid by that
31 department before the said first day of June. Providers
32 who keep their records on a cash basis for federal
33 income tax purposes and who are required by this
34 subsection to pay tax on medicaid reimbursement
35 payments they did not receive before the said first day
36 of June may deduct the amount of such reimbursement
37 payments, when they are actually received, when
38 determining their tax liability under article thirteen-a
39 or twenty-seven of this chapter after said first day of
40 June.

41 (d) Any medicaid tax owed to the tax commissioner
42 which is not remitted by the fifteenth day of June, one
43 thousand nine hundred ninety-three, becomes delin-
44 quent as of the sixteenth day of June, one thousand nine
45 hundred ninety-three, notwithstanding any provision of

46 this article or article ten of this chapter to the contrary.

47 (e) Any person required to pay medicaid tax under
48 this article who fails to pay the amount due by the
49 twentieth day of June, one thousand nine hundred
50 ninety-three, shall be subject to a civil penalty equal to
51 two hundred percent of the delinquent medicaid tax
52 owed by such person. Such penalty shall be assessed and
53 collected as provided in article ten of this chapter. The
54 amount of penalty collected shall be deposited into the
55 state share fund established in the treasurer's office.

56 (f) The provisions of this section shall take effect on
57 the first day of June, one thousand nine hundred ninety-
58 three.

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

- §11-27-1. Legislative findings.
- §11-27-2. Short title; arrangement and classification.
- §11-27-3. Definitions.
- §11-27-4. Imposition of tax on ambulatory surgical centers.
- §11-27-5. Imposition of tax on providers of chiropractic services.
- §11-27-6. Imposition of tax on providers of dental services.
- §11-27-7. Imposition of tax on providers of emergency ambulance service.
- §11-27-8. Imposition of tax on providers of independent laboratory or X-ray services.
- §11-27-9. Imposition of tax on providers of inpatient hospital services.
- §11-27-10. Imposition of tax on providers of intermediate care facility services for the mentally retarded.
- §11-27-11. Imposition of tax on providers of nursing facility services, other than services of intermediate care facilities for the mentally retarded.
- §11-27-12. Imposition of tax on providers of nursing services.
- §11-27-13. Imposition of tax on providers of opticians' services.
- §11-27-14. Imposition of tax on providers of optometric services.
- §11-27-15. Imposition of tax on providers of outpatient hospital services.
- §11-27-16. Imposition of tax on providers of physicians' services.
- §11-27-17. Imposition of tax on providers of podiatry services.
- §11-27-18. Imposition of tax on providers of psychological services.
- §11-27-19. Imposition of tax on providers of therapists' services.
- §11-27-20. Double taxation prohibited.
- §11-27-21. Apportionment of gross receipts.
- §11-27-22. Accounting periods and methods of accounting.
- §11-27-23. Time for filing returns and other documents.
- §11-27-24. Payment of estimated tax.
- §11-27-25. Time for paying tax.
- §11-27-26. Place for filing returns and other documents.
- §11-27-27. Signing of returns and other documents.
- §11-27-28. Records.

- §11-27-29. General procedure and administration.
- §11-27-30. Exchange of information to facilitate compliance.
- §11-27-31. Crimes and penalties.
- §11-27-32. Dedication of tax.
- §11-27-33. Abrogation.
- §11-27-34. Severability.
- §11-27-35. Effective date.

§11-27-1. Legislative findings.

1 The Legislature finds and declares that:

2 (a) Medicaid provides access to basic medical care for
3 our citizens who are not physically, mentally or
4 economically able to provide for their own care.

5 (b) Inadequate compensation of health care providers
6 rendering medicaid services is a barrier to indigent
7 persons obtaining access to health care services.

8 (c) Without adequate compensation for the provision
9 of medicaid services, this state cannot attract or retain
10 a sufficient number of health care providers necessary
11 to serve our indigent population.

12 (d) While participation by a state in the medicaid
13 program created by Title XIX of the Social Security Act
14 is voluntary, the reality is that states, and particularly
15 this state, have no choice but to participate. The
16 alternative is to deprive indigent citizens and particu-
17 larly the children of indigent families of basic medical
18 services.

19 (e) The federal government sets the criteria for
20 eligibility to obtain medicaid services. The federal
21 government also requires that certain services be
22 provided as part of a state's medicaid program.

23 (f) Enactment by the United States Congress in 1991
24 of Public Law 102-234, amending Section 1903 of the
25 Social Security Act, places limitations and restrictions
26 on the flexibility states have to raise state share for its
27 medical assistance program.

28 (g) The tax enacted in this article is intended to
29 conform with the requirements of Public Law 102-234.

§11-27-2. Short title; arrangement and classification.

1 This article may be cited as the "West Virginia
2 Health Care Provider Tax Act of 1993". No inference,
3 implication or presumption of legislative construction
4 shall be drawn or made by reason of the location or
5 grouping of any particular section, provision or portion
6 of this article. No legal effect shall be given to any
7 descriptive matter or heading relating to any part,
8 section, subdivision or paragraph of this article.

§11-27-3. Definitions.

1 (a) *General.* — When used in this article, words
2 defined in subsection (b) of this section have the
3 meaning ascribed to them in this section, except in those
4 instances where a different meaning is distinctly
5 expressed or the context in which the word is used
6 clearly indicates that a different meaning is intended.

7 (b) *Definitions.* —

8 (1) "Business" includes all health care activities
9 engaged in, or caused to be engaged in, with the object
10 of gain or economic benefit, direct or indirect, and
11 whether engaged in for profit, or not for profit, or by
12 a governmental entity: *Provided,* That "business" does
13 not include services rendered by an employee within the
14 scope of his or her contract of employment. Employee
15 services, services by a partner on behalf of his or her
16 partnership, and services by a member of any other
17 business entity on behalf of that entity, are the business
18 of the employer, or partnership, or other business entity,
19 as the case may be, and reportable as such for purposes
20 of the taxes imposed by this article.

21 (2) "Broad-based health care related tax" means a
22 broad-based health care related tax as defined in
23 Section 1903 of the Social Security Act.

24 (3) "Corporation" includes associations, joint-stock
25 companies and insurance companies. It also includes
26 governmental entities when and to the extent such
27 governmental entities engaged in activities taxable
28 under this article.

29 (4) "Includes" and "including" when used in a
30 definition contained in this article shall not be deemed

31 to exclude other things otherwise within the meaning of
32 the term being defined.

33 (5) "Partner" includes a member in a "partnership",
34 as defined in this section.

35 (6) "Partnership" includes a syndicate, group, pool,
36 joint venture or other unincorporated organization
37 through or by means of which any privilege taxable
38 under this article is exercised, and which is not within
39 the meaning of this article a trust or estate or corpo-
40 ration. It includes a limited liability company when such
41 company is treated as a partnership for federal income
42 tax purposes.

43 (7) "Person" means any individual, partnership,
44 association, company, corporation or other entity
45 engaging in a privilege taxed under this article.

46 (8) "Social Security Act" means the Social Security
47 Act of the United States, as amended by Public Law
48 102-234, and codified in Title 42, Section 1396b of the
49 United States Code.

50 (9) "Tax" means any tax imposed by this article and,
51 for purposes of administration and collection of such tax,
52 includes any interest, additions to tax or penalties
53 imposed with respect thereto under article ten of this
54 chapter.

55 (10) "Taxable year" means the calendar year, or the
56 fiscal year ending during such calendar year, upon the
57 basis of which the tax imposed by this article is
58 computed. In the case of a return made under this
59 article, or regulations of the tax commissioner, for a
60 fractional part of a year, the term "taxable year" means
61 the period for which such return is made.

62 (11) "Taxpayer" means any person subject to any tax
63 imposed by this article.

64 (12) "This code" means the code of West Virginia, one
65 thousand nine hundred thirty-one, as amended.

66 (13) "This state" means the state of West Virginia.

**§11-27-4. Imposition of tax on ambulatory surgical
centers.**

1 (a) *Imposition of tax.* — For the privilege of engaging
2 or continuing within this state in the business of
3 providing ambulatory surgical center services, there is
4 hereby levied and shall be collected from every person
5 rendering such service an annual broad-based health
6 care related tax.

7 (b) *Rate and measure of tax.* — The tax imposed in
8 subsection (a) of this section shall be one and three-
9 fourths percent of the gross receipts derived by the
10 taxpayer from furnishing ambulatory surgical center
11 services in this state.

12 (c) *Definitions.* —

13 (1) “Gross receipts” means the amount received or
14 receivable, whether in cash or in kind, from patients,
15 third-party payors and others for ambulatory surgical
16 center services furnished by the provider, including
17 retroactive adjustments under reimbursement agree-
18 ments with third-party payors, without any deduction
19 for any expenses of any kind: *Provided*, That accrual
20 basis providers shall be allowed to reduce gross receipts
21 by their contractual allowances, to the extent such
22 allowances are included therein, and by bad debts, to the
23 extent the amount of such bad debts was previously
24 included in gross receipts upon which the tax imposed
25 by this section was paid.

26 (2) “Contractual allowances” means the difference
27 between revenue (gross receipts) at established rates
28 and amounts realizable from third-party payors under
29 contractual agreements.

30 (3) “Ambulatory surgical center services” means those
31 services of an ambulatory surgical center as defined in
32 Section 1832(a)(2)(F)(1) of the Social Security Act.

33 (d) *Effective date.* — The tax imposed by this section
34 shall apply to gross receipts received or receivable by
35 providers after the thirty-first day of May, one thousand
36 nine hundred ninety-three.

§11-27-5. Imposition of tax on providers of chiropractic services.

1 (a) *Imposition of tax.* — For the privilege of engaging
2 or continuing within this state in the business of
3 providing chiropractic services, there is hereby levied
4 and shall be collected from every person rendering such
5 service an annual broad-based health care related tax.

6 (b) *Rate and measure of tax.* — The tax imposed in
7 subsection (a) of this section shall be one and three-
8 fourths percent of the gross receipts derived by the
9 taxpayer from furnishing chiropractic services in this
10 state.

11 (c) *Definitions.* —

12 (1) “Gross receipts” means the amount received or
13 receivable, whether in cash or in kind, from patients,
14 third-party payors and others for chiropractic services
15 furnished by the provider, including retroactive adjust-
16 ments under reimbursement agreements with third-
17 party payors, without any deduction for any expenses of
18 any kind: *Provided*, That accrual basis providers shall
19 be allowed to reduce gross receipts by their contractual
20 allowances, to the extent such allowances are included
21 therein, and by bad debts, to the extent the amount of
22 such bad debts was previously included in gross receipts
23 upon which the tax imposed by this section was paid.

24 (2) “Contractual allowances” means the difference
25 between revenue (gross receipts) at established rates
26 and amounts realizable from third-party payors under
27 contractual agreements.

28 (3) “Chiropractic services” means those services
29 furnished in the practice of chiropractic by a person
30 entitled to practice chiropractic in this state.

31 (d) *Effective date.* — The tax imposed by this section
32 shall apply to gross receipts received or receivable by
33 providers after the thirty-first day of May, one thousand
34 nine hundred ninety-three.

§11-27-6. Imposition of tax on providers of dental services.

1 (a) *Imposition of tax.* — For the privilege of engaging
2 or continuing within this state in the business of

3 providing dental services, there is hereby levied and
4 shall be collected from every person rendering such
5 service an annual broad-based health care related tax.

6 (b) *Rate and measure of tax.* — The tax imposed in
7 subsection (a) of this section shall be one and three-
8 fourths percent of the gross receipts derived by the
9 taxpayer from furnishing dental services in this state.

10 (c) *Definitions.* —

11 (1) “Gross receipts” means the amount received or
12 receivable, whether in cash or in kind, from patients,
13 third-party payors and others for dental services
14 furnished by the provider, including retroactive adjust-
15 ments under reimbursement agreements with third-
16 party payors, without any deduction for any expenses of
17 any kind: *Provided*, That accrual basis providers shall
18 be allowed to reduce gross receipts by their contractual
19 allowances, to the extent such allowances are included
20 therein, and by bad debts, to the extent the amount of
21 such bad debts was previously included in gross receipts
22 upon which the tax imposed by this section was paid.

23 (2) “Contractual allowances” means the difference
24 between revenue (gross receipts) at established rates
25 and amounts realizable from third-party payors under
26 contractual agreements.

27 (3) “Dental services” means those services furnished
28 in the practice of dentistry by a person entitled to
29 practice dentistry or dental surgery in this state.

30 (d) *Effective date.* — The tax imposed by this section
31 shall apply to gross receipts received or receivable by
32 providers after the thirty-first day of May, one thousand
33 nine hundred ninety-three.

§11-27-7. Imposition of tax on providers of emergency ambulance service.

1 (a) *Imposition of tax.* — For the privilege of engaging
2 or continuing within this state in the business of
3 providing emergency ambulance service, there is hereby
4 levied and shall be collected from every person render-

5 ing such service an annual broad-based health care
6 related tax.

7 (b) *Rate and measure of tax.* — The tax imposed in
8 subsection (a) of this section shall be five and one-half
9 percent of the gross receipts derived by the taxpayer
10 from furnishing emergency ambulance service in this
11 state.

12 (c) *Definitions.* —

13 (1) “Gross receipts” means the amount received or
14 receivable, whether in cash or in kind, from patients,
15 third-party payors and others for emergency ambulance
16 service furnished by the provider, including retroactive
17 adjustments under reimbursement agreements with
18 third-party payors, without any deduction for any
19 expenses of any kind: *Provided*, That accrual basis
20 providers shall be allowed to reduce gross receipts by
21 their contractual allowances, to the extent such allowan-
22 ces are included therein, and by bad debts, to the extent
23 the amount of such bad debts was previously included
24 in gross receipts upon which the tax imposed by this
25 section was paid.

26 (2) “Contractual allowances” means the difference
27 between revenue (gross receipts) at established rates
28 and amounts realizable from third-party payors under
29 contractual agreements.

30 (3) “Ambulance” means any privately or publicly
31 owned vehicle or aircraft which is designed, constructed
32 or modified, equipped or maintained, and operated for
33 the transportation of patients.

34 (4) “Emergency ambulance service” means the
35 transportation by ambulance, and the emergency
36 medical services rendered at the site of pickup and en
37 route, of a patient to or from a place where medical,
38 hospital or clinical service is normally available.

39 (5) “Emergency medical services” means emergency
40 medical services as defined in section three, article four-
41 c, chapter sixteen of this code.

42 (d) *Effective date.* — The tax imposed by this section

43 shall apply to gross receipts received or receivable by
44 providers after the thirty-first day of May, one thousand
45 nine hundred ninety-three.

**§11-27-8. Imposition of tax on providers of independent
laboratory or X-ray services.**

1 (a) *Imposition of tax.* — For the privilege of engaging
2 or continuing within this state in the business of
3 providing independent laboratory or X-ray services,
4 there is hereby levied and shall be collected from every
5 person rendering such service an annual broad-based
6 health care related tax.

7 (b) *Rate and measure of tax.* — The tax imposed in
8 subsection (a) of this section shall be five percent of the
9 gross receipts derived by the taxpayer from furnishing
10 independent laboratory or X-ray services in this state.

11 (c) *Definitions.* —

12 (1) "Gross receipts" means the amount received or
13 receivable, whether in cash or in kind, from patients,
14 third-party payors and others for independent labora-
15 tory or X-ray services furnished by the provider,
16 including retroactive adjustments under reimbursement
17 agreements with third-party payors, without any
18 deduction for any expenses of any kind: *Provided*, That
19 accrual basis providers shall be allowed to reduce gross
20 receipts by their contractual allowances, to the extent
21 such allowances are included therein, and by bad debts,
22 to the extent the amount of such bad debts was
23 previously included in gross receipts upon which the tax
24 imposed by this section was paid.

25 (2) "Contractual allowances" means the difference
26 between revenue (gross receipts) at established rates
27 and amounts realizable from third-party payors under
28 contractual agreements.

29 (3) "Independent laboratory or X-ray services" means
30 those services provided in a licensed, free standing
31 laboratory or X-ray facility. It does not include labor-
32 atory or X-ray services provided in a physician's office,
33 hospital inpatient department, or hospital outpatient
34 department.

35 (d) *Effective date.* — The tax imposed by this section
36 shall apply to gross receipts received or receivable by
37 providers after the thirty-first day of May, one thousand
38 nine hundred ninety-three.

§11-27-9. Imposition of tax on providers of inpatient hospital services.

1 (a) *Imposition of tax.* — For the privilege of engaging
2 or continuing within this state in the business of
3 providing inpatient hospital services, there is hereby
4 levied and shall be collected from every person render-
5 ing such service an annual broad-based health care
6 related tax: *Provided,* That a hospital which meets all
7 the requirements of section twenty-one, article twenty-
8 nine-b, chapter sixteen of this code and regulations
9 thereunder may change or amend its schedule of rates
10 to the extent necessary to compensate for the tax in
11 accordance with the following procedures:

12 (1) The health care cost review authority shall allow
13 a temporary change in a hospital's rates which may be
14 effective immediately upon filing and in advance of
15 review procedures when a hospital files a verified claim
16 that such temporary rate changes are in the public
17 interest, and are necessary to prevent insolvency, to
18 maintain accreditation or for emergency repairs or to
19 relieve undue financial hardship. The verified claim
20 shall state the facts supporting the hospital's position,
21 the amount of increase in rates required to alleviate the
22 situation and shall summarize the overall effect of the
23 rate increase. The claim shall be verified by either the
24 chairman of the hospital's governing body or by the
25 chief executive officer of the hospital.

26 (2) Following receipt of the verified claim for
27 temporary relief, the health care cost review authority
28 shall review the claim through its usual procedures and
29 standards; however, this power of review does not affect
30 the hospital's ability to place the temporary rate
31 increase into effect immediately. The review of the
32 hospital's claim shall be for a permanent rate increase
33 and the health care cost review authority may include
34 such other factual information in the review as may be

35 necessary for a permanent rate increase review. As a
36 result of its findings from the permanent review, the
37 health care cost review authority may allow the
38 temporary rate increase to become permanent, to deny
39 any increase at all, to allow a lesser increase, or to allow
40 a greater increase.

41 (3) When any change affecting an increase in rates
42 goes into effect before a final order is entered in the
43 proceedings, for whatever reasons, where it deems it
44 necessary and practicable, the health care cost review
45 authority may order the hospital to keep a detailed and
46 accurate account of all amounts received by reason of
47 the increase in rates and the purchasers and third-party
48 payors from whom such amounts were received. At the
49 conclusion of any hearing, appeal or other proceeding,
50 the health care cost review authority may order the
51 hospital to refund with interest to each affected
52 purchaser and/or third-party payor any part of the
53 increase in rates that may be held to be excessive or
54 unreasonable. In the event a refund is not practicable,
55 the hospital shall, under appropriate terms and condi-
56 tions determined by the health care cost review author-
57 ity, charge over and amortize by means of a temporary
58 decrease in rates whatever income is realized from that
59 portion of the increase in rates which was subsequently
60 held to be excessive or unreasonable.

61 (4) The health care cost review authority, upon a
62 determination that a hospital has overcharged purchas-
63 ers or charged purchasers at rates not approved by the
64 health care cost review authority or charged rates which
65 were subsequently held to be excessive or unreasonable,
66 may prescribe rebates to purchasers and third-party
67 payors in effect by the aggregate total of the overcharge.

68 (5) The rate adjustment provided for in this section
69 is limited to a single adjustment during the initial year
70 of the imposition of the tax provided for in this section.

71 (b) *Rate and measure of tax.* — The tax imposed in
72 subsection (a) of this section shall be two and one-half
73 percent of the gross receipts derived by the taxpayer
74 from furnishing inpatient hospital services in this state.

75 (c) *Definitions.* —

76 (1) “Gross receipts” means the amount received or
77 receivable, whether in cash or in kind, from patients,
78 third-party payors and others for inpatient hospital
79 services furnished by the provider, including retroactive
80 adjustments under reimbursement agreements with
81 third-party payors, without any deduction for any
82 expenses of any kind: *Provided*, That accrual basis
83 providers shall be allowed to reduce gross receipts by
84 their contractual allowances, to the extent such allowan-
85 ces are included therein, and by bad debts, to the extent
86 the amount of such bad debts was previously included
87 in gross receipts upon which the tax imposed by this
88 section was paid.

89 (2) “Contractual allowances” means the difference
90 between revenue (gross receipts) at established rates
91 and amounts realizable from third-party payors under
92 contractual agreements.

93 (3) “Inpatient hospital services” means those services
94 that are inpatient hospital services for purposes of
95 Section 1903(w) of the Social Security Act.

96 (d) *Effective date.* — The tax imposed by this section
97 shall apply to gross receipts received or receivable by
98 providers after the thirty-first day of May, one thousand
99 nine hundred ninety-three.

**§11-27-10. Imposition of tax on providers of intermediate
care facility services for the mentally
retarded.**

1 (a) *Imposition of tax.* — For the privilege of engaging
2 or continuing within this state in the business of
3 providing intermediate care facility services for the
4 mentally retarded, there is hereby levied and shall be
5 collected from every person rendering such service an
6 annual broad-based health care related tax.

7 (b) *Rate and measure of tax.* — The tax imposed in
8 subsection (a) of this section shall be five and one-half
9 percent of the gross receipts derived by the taxpayer
10 from furnishing intermediate care facility services in
11 this state to the mentally retarded.

12 (c) *Definitions.* —

13 (1) "Gross receipts" means the amount received or
14 receivable, whether in cash or in kind, from patients,
15 third-party payors and others for intermediate care
16 facility services furnished by the provider, including
17 retroactive adjustments under reimbursement agree-
18 ments with third-party payors, without any deduction
19 for any expenses of any kind: *Provided*, That accrual
20 basis providers shall be allowed to reduce gross receipts
21 by their contractual allowances, to the extent such
22 allowances are included therein, and by bad debts, to the
23 extent the amount of such bad debts was previously
24 included in gross receipts upon which the tax imposed
25 by this section was paid.

26 (2) "Contractual allowances" means the difference
27 between revenue (gross receipts) at established rates
28 and amounts realizable from third-party payors under
29 contractual agreements.

30 (3) "Intermediate care facility services for the
31 mentally retarded" means those services that are
32 intermediate care facility services for the mentally
33 retarded for purposes of Section 1903(w) of the Social
34 Security Act.

35 (d) *Effective date.* — The tax imposed by this section
36 shall apply to gross receipts received or receivable by
37 providers after the thirty-first day of May, one thousand
38 nine hundred ninety-three.

**§11-27-11. Imposition of tax on providers of nursing
facility services, other than services of
intermediate care facilities for the men-
tally retarded.**

1 (a) *Imposition of tax.* — For the privilege of engaging
2 or continuing within this state in the business of
3 providing nursing facility services, other than those
4 services of intermediate care facilities for the mentally
5 retarded, there is hereby levied and shall be collected
6 from every person rendering such service an annual
7 broad-based health care related tax: *Provided*, That
8 hospitals which provide nursing facility services may

9 adjust nursing facility rates to the extent necessary to
10 compensate for the tax without first obtaining approval
11 from the health care cost review authority: *Provided,*
12 *however,* That the rate adjustment is limited to a single
13 adjustment during the initial year of the imposition of
14 the tax which adjustment shall be exempt from prospec-
15 tive review by the health care cost review authority and
16 further which is limited to an amount not to exceed the
17 amount of the tax which is levied against the hospital
18 for the provision of nursing facility services pursuant to
19 this section. The health care cost review authority shall
20 retroactively review the rate increases implemented by
21 the hospitals under this section during the regular rate
22 review process. A hospital which fails to meet the
23 criteria established by this section for a rate increase
24 exempt from prospective review shall be subject to the
25 penalties imposed under article twenty-nine-b, chapter
26 sixteen of the code.

27 (b) *Rate and measure of tax.* — The tax imposed in
28 subsection (a) of this section shall be five and one-half
29 percent of the gross receipts derived by the taxpayer
30 from furnishing nursing facility services in this state,
31 other than services of intermediate care facilities for the
32 mentally retarded.

33 (c) *Definitions.* —

34 (1) "Gross receipts" means the amount received or
35 receivable, whether in cash or in kind, from patients,
36 third-party payors and others for nursing facility
37 services furnished by the provider, including retroactive
38 adjustments under reimbursement agreements with
39 third-party payors, without any deduction for any
40 expenses of any kind: *Provided,* That accrual basis
41 providers shall be allowed to reduce gross receipts by
42 their bad debts, to the extent the amount of such bad
43 debts was previously included in gross receipts upon
44 which the tax imposed by this section was paid.

45 (2) "Nursing facility services" means those services
46 that are nursing facility services for purposes of Section
47 1903(w) of the Social Security Act.

48 (d) *Effective date.* — The tax imposed by this section

49 shall apply to gross receipts received or receivable by
50 providers after the thirty-first day of May, one thousand
51 nine hundred ninety-three.

§11-27-12. Imposition of tax on providers of nursing services.

1 (a) *Imposition of tax.* — For the privilege of engaging
2 or continuing within this state in the business of
3 providing nursing services, there is hereby levied and
4 shall be collected from every person rendering such
5 service an annual broad-based health care related tax.

6 (b) *Rate and measure of tax.* — The tax imposed in
7 subsection (a) of this section shall be one and three-
8 fourths percent of the gross receipts derived by the
9 taxpayer from furnishing nursing services in this state.

10 (c) *Definitions.* —

11 (1) "Gross receipts" means the amount received or
12 receivable, whether in cash or in kind, from patients,
13 third-party payors and others for nursing services
14 furnished by the provider, including retroactive adjust-
15 ments under reimbursement agreements with third-
16 party payors, without any deduction for any expenses of
17 any kind: *Provided*, That accrual basis providers shall
18 be allowed to reduce gross receipts by their contractual
19 allowances, to the extent such allowances are included
20 therein, and by bad debts, to the extent the amount of
21 such bad debts was previously included in gross receipts
22 upon which the tax imposed by this section was paid.

23 (2) "Contractual allowances" means the difference
24 between revenue (gross receipts) at established rates
25 and amounts realizable from third-party payors under
26 contractual agreements.

27 (3) "Nursing services" means all nursing acts per-
28 formed by a registered or practical nurse entitled to
29 provide nursing services in this state, including services
30 of nurse-midwives, nurse practitioners and private duty
31 nurses.

32 (d) *Effective date.* — The tax imposed by this section
33 shall apply to gross receipts received or receivable by

34 providers after the thirty-first day of May, one thousand
35 nine hundred ninety-three.

§11-27-13. Imposition of tax on providers of opticians' services.

1 (a) *Imposition of tax.* — For the privilege of engaging
2 or continuing within this state in the business of
3 providing opticians' services, there is hereby levied and
4 shall be collected from every person rendering such
5 service an annual broad-based health care related tax.

6 (b) *Rate and measure of tax.* — The tax imposed in
7 subsection (a) of this section shall be one and three-
8 fourths percent of the gross receipts derived by the
9 taxpayer from furnishing opticians' services in this
10 state.

11 (c) *Definitions.* —

12 (1) "Gross receipts" means the amount received or
13 receivable, whether in cash or in kind, from patients,
14 third-party payors and others for opticians' services
15 furnished by the provider, including retroactive adjust-
16 ments under reimbursement agreements with third-
17 party payors, without any deduction for any expenses of
18 any kind: *Provided*, That accrual basis providers shall
19 be allowed to reduce gross receipts by their contractual
20 allowances, to the extent such allowances are included
21 therein, and by bad debts, to the extent the amount of
22 such bad debts was previously included in gross receipts
23 upon which the tax imposed by this section was paid.

24 (2) "Contractual allowances" means the difference
25 between revenue (gross receipts) at established rates
26 and amounts realizable from third-party payors under
27 contractual agreements.

28 (3) "Optician" means a maker or dealer in optical
29 items or instruments; or a person who grinds and
30 dispenses prescription spectacle lenses but who is not an
31 ophthalmologist or an optometrist.

32 (4) "Opticians' services" means those services fur-
33 nished by a person trained and engaged in business as
34 an optician in this state.

35 (d) *Effective date.* — The tax imposed by this section
36 shall apply to gross receipts received or receivable by
37 providers after the thirty-first day of May, one thousand
38 nine hundred ninety-three.

§11-27-14. **Imposition of tax on providers of optometric services.**

1 (a) *Imposition of tax.* — For the privilege of engaging
2 or continuing within this state in the business of
3 providing optometric services, there is hereby levied and
4 shall be collected from every person rendering such
5 service an annual broad-based health care related tax.

6 (b) *Rate and measure of tax.* — The tax imposed in
7 subsection (a) of this section shall be one and three-
8 fourths percent of the gross receipts derived by the
9 taxpayer from furnishing optometric services in this
10 state.

11 (c) *Definitions.* —

12 (1) “Gross receipts” means the amount received or
13 receivable, whether in cash or in kind, from patients,
14 third-party payors and others for optometric services
15 furnished by the provider, including retroactive adjust-
16 ments under reimbursement agreements with third-
17 party payors, without any deduction for any expenses of
18 any kind: *Provided*, That accrual basis providers shall
19 be allowed to reduce gross receipts by their contractual
20 allowances, to the extent such allowances are included
21 therein, and by bad debts, to the extent the amount of
22 such bad debts was previously included in gross receipts
23 upon which the tax imposed by this section was paid.

24 (2) “Contractual allowances” means the difference
25 between revenue (gross receipts) at established rates
26 and amounts realizable from third-party payors under
27 contractual agreements.

28 (3) “Optometric services” means those services
29 furnished in the practice of optometry by a person
30 entitled to practice optometry in this state.

31 (d) *Effective date.* — The tax imposed by this section
32 shall apply to gross receipts received or receivable by

33 providers after the thirty-first day of May, one thousand
34 nine hundred ninety-three.

**§11-27-15. Imposition of tax on providers of outpatient
hospital services.**

1 (a) *Imposition of tax.* — For the privilege of engaging
2 or continuing within this state in the business of
3 providing outpatient hospital services, there is hereby
4 levied and shall be collected from every person render-
5 ing such service an annual broad-based health care
6 related tax.

7 (b) *Rate and measure of tax.* — The tax imposed in
8 subsection (a) of this section shall be two and one-half
9 percent of the gross receipts derived by the taxpayer
10 from furnishing outpatient hospital services in this
11 state.

12 (c) *Definitions.* —

13 (1) “Gross receipts” means the amount received or
14 receivable, whether in cash or in kind, from patients,
15 third-party payors and others for outpatient hospital
16 services furnished by the provider, including retroactive
17 adjustments under reimbursement agreements with
18 third-party payors, without any deduction for any
19 expenses of any kind: *Provided*, That accrual basis
20 providers shall be allowed to reduce gross receipts by
21 their contractual allowances, to the extent such allowan-
22 ces are included therein, and by bad debts, to the extent
23 the amount of such bad debts was previously included
24 in gross receipts upon which the tax imposed by this
25 section was paid.

26 (2) “Contractual allowances” means the difference
27 between revenue (gross receipts) at established rates
28 and amounts realizable from third-party payors under
29 contractual agreements.

30 (3) “Outpatient hospital services” means those services
31 that are outpatient hospital services for purposes of
32 Section 1903(w) of the Social Security Act.

33 (d) *Effective date.* — The tax imposed by this section
34 shall apply to gross receipts received or receivable by

35 providers after the thirty-first day of May, one thousand
36 nine hundred ninety-three.

§11-27-16. Imposition of tax on providers of physicians' services.

1 (a) *Imposition of tax.* — For the privilege of engaging
2 or continuing within this state in the business of
3 providing physicians' services, there is hereby levied
4 and shall be collected from every person rendering such
5 service an annual broad-based health care related tax.

6 (b) *Rate and measure of tax.* — The tax imposed in
7 subsection (a) of this section shall be two percent of the
8 gross receipts derived by the taxpayer from furnishing
9 physicians' services in this state.

10 (c) *Definitions.* —

11 (1) "Gross receipts" means the amount received or
12 receivable, whether in cash or in kind, from patients,
13 third-party payors and others for physicians' services
14 furnished by the provider, including retroactive adjust-
15 ments under reimbursement agreements with third-
16 party payors, without any deduction for any expenses of
17 any kind: *Provided*, That accrual basis providers shall
18 be allowed to reduce gross receipts by their contractual
19 allowances, to the extent such allowances are included
20 therein, and by bad debts, to the extent the amount of
21 such bad debts was previously included in gross receipts
22 upon which the tax imposed by this section was paid.

23 (2) "Contractual allowances" means the difference
24 between revenue (gross receipts) at established rates
25 and amounts realizable from third-party payors under
26 contractual agreements.

27 (3) "Physicians' services" means those services that
28 are physicians' services for purposes of Section 1903(w)
29 of the Social Security Act.

30 (d) *Effective date.* — The tax imposed by this section
31 shall apply to gross receipts received or receivable by
32 providers after the thirty-first day of May, one thousand
33 nine hundred ninety-three.

§11-27-17. Imposition of tax on providers of podiatry services.

1 (a) *Imposition of tax.* — For the privilege of engaging
2 or continuing within this state in the business of
3 providing podiatry services, there is hereby levied and
4 shall be collected from every person rendering such
5 service an annual broad-based health care related tax.

6 (b) *Rate and measure of tax.* — The tax imposed in
7 subsection (a) of this section shall be one and three-
8 fourths percent of the gross receipts derived by the
9 taxpayer from furnishing podiatry services in this state.

10 (c) *Definitions.* —

11 (1) “Gross receipts” means the amount received or
12 receivable, whether in cash or in kind, from patients,
13 third-party payors and others for podiatry services
14 furnished by the provider, including retroactive adjust-
15 ments under reimbursement agreements with third-
16 party payors, without any deduction for any expenses of
17 any kind: *Provided*, That accrual basis providers shall
18 be allowed to reduce gross receipts by their contractual
19 allowances, to the extent such allowances are included
20 therein, and by bad debts, to the extent the amount of
21 such bad debts was previously included in gross receipts
22 upon which the tax imposed by this section was paid.

23 (2) “Contractual allowances” means the difference
24 between revenue (gross receipts) at established rates
25 and amounts realizable from third-party payors under
26 contractual agreements.

27 (3) “Podiatry services” means those services furnished
28 in the practice of podiatry by a person entitled to
29 practice podiatry in this state.

30 (d) *Effective date.* — The tax imposed by this section
31 shall apply to gross receipts received or receivable by
32 providers after the thirty-first day of May, one thousand
33 nine hundred ninety-three.

§11-27-18. Imposition of tax on providers of psychological services.

1 (a) *Imposition of tax.* — For the privilege of engaging

2 or continuing within this state in the business of
3 providing psychological services, there is hereby levied
4 and shall be collected from every person rendering such
5 service an annual broad-based health care related tax.

6 (b) *Rate and measure of tax.* — The tax imposed in
7 subsection (a) of this section shall be one and three-
8 fourths percent of the gross receipts derived by the
9 taxpayer from furnishing psychological services in this
10 state.

11 (c) *Definitions.* —

12 (1) “Gross receipts” means the amount received or
13 receivable, whether in cash or in kind, from patients,
14 third-party payors and others for psychological services
15 furnished by the provider, including retroactive adjust-
16 ments under reimbursement agreements with third-
17 party payors, without any deduction for any expenses of
18 any kind: *Provided*, That accrual basis providers shall
19 be allowed to reduce gross receipts by their contractual
20 allowances, to the extent such allowances are included
21 therein, and by bad debts, to the extent the amount of
22 such bad debts was previously included in gross receipts
23 upon which the tax imposed by this section was paid.

24 (2) “Contractual allowances” means the difference
25 between revenue (gross receipts) at established rates
26 and amounts realizable from third-party payors under
27 contractual agreements.

28 (3) “Psychological services” means those services
29 furnished in the practice of psychology by a person
30 entitled to practice psychology in this state.

31 (d) *Effective date.* — The tax imposed by this section
32 shall apply to gross receipts received or receivable by
33 providers after the thirty-first day of May, one thousand
34 nine hundred ninety-three.

§11-27-19. Imposition of tax on providers of therapists’ services.

1 (a) *Imposition of tax.* — For the privilege of engaging
2 or continuing within this state in the business of
3 providing therapists’ services, there is hereby levied and

4 shall be collected from every person rendering such
5 service an annual broad-based health care related tax.

6 (b) *Rate and measure of tax.* — The tax imposed in
7 subsection (a) of this section shall be one and three-
8 fourths percent of the gross receipts derived by the
9 taxpayer from furnishing therapy services in this state.

10 (c) *Definitions.* —

11 (1) "Gross receipts" means the amount received or
12 receivable, whether in cash or in kind, from patients,
13 third-party payors and others for therapy services
14 furnished by the provider, including retroactive adjust-
15 ments under reimbursement agreements with third-
16 party payors, without any deduction for any expenses of
17 any kind: *Provided*, That accrual basis providers shall
18 be allowed to reduce gross receipts by their contractual
19 allowances, to the extent such allowances are included
20 therein, and by bad debts, to the extent the amount of
21 such bad debts was previously included in gross receipts
22 upon which the tax imposed by this section was paid.

23 (2) "Contractual allowances" means the difference
24 between revenue (gross receipts) at established rates
25 and amounts realizable from third-party payors under
26 contractual agreements.

27 (3) "Therapy services" includes physical therapy,
28 speech therapy, occupational therapy, respiratory
29 therapy, audiological services and rehabilitative special-
30 ist furnished by a person trained to furnish such therapy
31 and, where a license to practice is required by law, such
32 person is entitled to practice such therapy in this state.

33 (d) *Effective date.* — The tax imposed by this section
34 shall apply to gross receipts received or receivable by
35 providers after the thirty-first day of May, one thousand
36 nine hundred ninety-three.

§11-27-20. Double taxation prohibited.

1 (a) No health care provider shall be required to report
2 gross receipts derived from furnishing a health care
3 item or service under more than one section of this
4 article which imposes a tax.

5 (b) Gross receipts derived from furnishing a health
6 care item or service to a patient shall be taxed only one
7 time under this article.

§11-27-21. Apportionment of gross receipts.

1 When a service is rendered partially in this state and
2 partially in another state, gross receipts attributable to
3 such service shall be allocated or apportioned in
4 accordance with uniform rules promulgated by the tax
5 commissioner.

§11-27-22. Accounting periods and methods of accounting.

1 (a) *General rule.* — For purposes of the tax imposed
2 by this article, a taxpayer's taxable year shall be the
3 same as taxpayer's taxable year for federal income tax
4 purposes. If taxpayer has no taxable year for federal
5 income tax purposes, then the calendar year shall be
6 taxpayer's taxable year under this article.

7 (b) *Change of taxable year.* — If a taxpayer's taxable
8 year is changed for federal income tax purposes,
9 taxpayer's taxable year for purposes of this article shall
10 be similarly changed. The taxpayer shall be provided a
11 copy of the authorization from the Internal Revenue
12 Service for such change with taxpayer's annual return
13 for the taxable year filed under this article.

14 (c) *Method of accounting.* — A taxpayer's method of
15 accounting under this article shall be the same as
16 taxpayer's method of accounting for federal income tax
17 purposes. Accrual basis taxpayers may deduct bad debts
18 only in the year to which they relate.

19 (d) *Change of accounting methods.* — If a taxpayer's
20 method of accounting is changed for federal income tax
21 purposes, the taxpayer's method of accounting for
22 purposes of this article shall similarly be changed. The
23 taxpayer shall provide a copy of the authorization for
24 such change from the Internal Revenue Service with its
25 annual return for the taxable year filed under this
26 article.

27 (e) *Adjustments.* — In computing a taxpayer's liability

28 for tax for any taxable year under a method of
29 accounting different from the method under which the
30 taxpayer's liability for tax under this article for the
31 previous year was computed, there shall be taken into
32 account those adjustments which are determined, under
33 regulations prescribed by the tax commissioner, to be
34 necessary solely by reason of the change in order to
35 prevent amounts from being duplicated or omitted.

§11-27-23. Time for filing returns and other documents.

1 (a) *Annual return.* — Every person subject to a tax
2 imposed by this article shall file an annual return with
3 the tax commissioner. Returns made on the basis of a
4 calendar year shall be filed on or before the thirty-first
5 day of January following the close of the calendar year.
6 Returns made on the basis of a fiscal year shall be filed
7 on or before the last day of the first month following the
8 close of the fiscal year.

9 (b) *Extension of time for filing return.* — The tax
10 commissioner may, upon written request received on or
11 before the due date of the annual return or other
12 document, grant a reasonable extension of time for
13 filing any return, declaration or statement, or other
14 document required to be filed by this article or by
15 regulations, upon such terms as the commissioner may
16 by rule prescribe, or by contract require, if good cause
17 satisfactory to the tax commissioner is provided by the
18 taxpayer. No such extension shall be for more than six
19 months.

§11-27-24. Payment of estimated tax.

1 (a) *General rule.* — Every person subject to a tax
2 imposed by this article must make estimated tax
3 payments for a taxable year in which such person's tax
4 liability can reasonably be expected to exceed fifty
5 dollars per month. Eleven twelfths of such person's
6 estimated tax liability must be remitted in monthly
7 installment payments during that tax year. Installment
8 payments are due on the fifteenth day of the second
9 through the twelfth months of the tax year for gross
10 receipts received or receivable during the preceding
11 month. The balance of tax due must be paid by the last

12 day of the first month following the close of taxpayer's
13 tax year.

14 (b) *Remittance form.* — With each installment pay-
15 ment, taxpayer shall file a remittance form executed as
16 provided in section sixteen of this article. This form
17 shall be prescribed by the tax commissioner and require
18 such information as the commissioner deems necessary
19 for the efficient administration of this article.

20 (c) *Exception.* — Notwithstanding the provisions of
21 subsection (a) of this section, the tax commissioner, if the
22 commissioner deems it necessary to ensure payment of
23 the tax, may require the return and payment under this
24 section for periods of shorter duration than that
25 required in said subsection.

§11-27-25. Time for paying tax.

1 (a) *General rule.* — The person required to make an
2 annual return under this article shall, without assess-
3 ment or notice and demand from the tax commissioner,
4 pay such tax at the time and place fixed for filing the
5 annual return, determined without regard to any
6 extension of time for filing such return.

7 (b) *Extension of time for paying tax.* — The tax
8 commissioner may extend the time for payment of the
9 amount of tax shown, or required to be shown, on any
10 annual return required by this article (or any periodic
11 installment payment), for a reasonable period not to
12 exceed six months from the date fixed by statute for the
13 payment thereof.

14 (c) *Amount determined as deficiency.* — Under rules
15 prescribed by the tax commissioner, the commissioner
16 may extend the time for payment of the amount
17 determined as a deficiency of the taxes imposed by this
18 article for a period not to exceed eighteen months from
19 the due date of the deficiency. In exceptional cases, a
20 further period of time not to exceed twelve months may
21 be granted. The tax commissioner may grant an
22 extension of time under this subsection only where it is
23 shown to the tax commissioner's satisfaction that
24 payment of a deficiency upon the date fixed for payment

25 thereof will result in undue hardship to the taxpayer.

26 (d) *No extension in certain circumstances.* — The tax
27 commissioner may not grant an extension of time under
28 this section if the failure to timely pay tax, or if the
29 deficiency in payment of tax, is due to negligence, to
30 intentional disregard of rules or regulations, or to fraud.

§11-27-26. Place for filing returns and other documents.

1 Tax returns, statements or other documents, or copies
2 thereof, required by this article or by rules shall be filed
3 with the tax commissioner by delivery, in person or by
4 mail, postage prepaid, to the tax commissioner's office
5 in Charleston, West Virginia: *Provided*, That the tax
6 commissioner may, by rule, prescribe the place for filing
7 such returns, statements or other documents, or copies
8 thereof, at one or more other locations.

§11-27-27. Signing of returns and other documents.

1 (a) *General.* — Any return, statement or other
2 document required to be made under the provisions of
3 this article shall be signed in accordance with instruc-
4 tions or regulations prescribed by the tax commissioner.

5 (b) *Signing of corporation returns.* — The president,
6 vice president, treasurer, assistant treasurer, chief
7 accounting officer or any other duly authorized officer
8 shall sign the return of a corporation. In the case of a
9 return made for a corporation by a fiduciary, the
10 fiduciary shall sign the return. The fact that an
11 individual's name is signed on the return is prima facie
12 evidence that the individual is authorized to sign the
13 return on behalf of the corporation.

14 (c) *Signing of partnership returns.* — Any one of the
15 partners shall sign the return of a partnership. The fact
16 that a partner's name is signed on the return is prima
17 facie evidence that that partner is authorized to sign the
18 return on behalf of the partnership.

19 (d) *Signature presumed authentic.* — The fact that an
20 individual's name is signed to a return, statement or
21 other document is prima facie evidence for all purposes
22 that the return, statement or other document was

23 actually signed by him or her.

24 (e) *Verification of returns.* — Except as otherwise
25 provided by the tax commissioner, any return, declara-
26 tion or other document required to be made under this
27 article shall contain or be verified by a written
28 declaration that it is made under the penalties of
29 perjury.

§11-27-28. Records.

1 (a) Every person liable for reporting or paying any
2 tax under this article shall keep such records, receipts,
3 invoices and other pertinent papers in such forms as the
4 tax commissioner may require.

5 (b) Every person liable for reporting or paying any
6 tax under this article shall keep such records for not less
7 than three years after the annual return required under
8 this article is filed, unless the tax commissioner, in
9 writing, authorizes their earlier destruction. An exten-
10 sion of time for making an assessment shall automati-
11 cally extend the time period for keeping the records for
12 all years subject to audit covered in the agreement for
13 extension of time.

§11-27-29. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article
3 ten of this chapter applies to the taxes imposed by this
4 article, except as otherwise expressly provided in this
5 article, with like effect as if that act were applicable
6 only to the taxes imposed by this article and were set
7 forth in extenso in this article.

§11-27-30. Exchange of information to facilitate compliance.

1 Notwithstanding the provisions of section five-d,
2 article ten of this chapter, or any other provision of this
3 code to the contrary, the tax commissioner and the
4 commissioner of the bureau of administration and
5 finance of the department of health and human resour-
6 ces, or any successor agency thereto, may, by written
7 agreement, provide for the exchange of information

8 from their respective files, data bases, or audits of
9 health care providers, which the tax commissioner
10 deems relevant to determining provider compliance
11 with the provisions of this article, in a cost effective and
12 efficient manner. Such agreement may provide for the
13 sharing, or reimbursement, of costs incurred by either
14 party to gather or provide information under this
15 section.

§11-27-31. Crimes and penalties.

1 Each and every provision of the "West Virginia Tax
2 Crimes and Penalties Act" set forth in article nine of
3 this chapter applies to the taxes imposed by this article
4 with like effect as if that act were applicable only to the
5 taxes imposed by this article and were set forth in
6 extenso in this article.

§11-27-32. Dedication of tax.

1 (a) The amount of taxes collected under this article,
2 including any interest, additions to tax and penalties
3 collected under article ten of this chapter, less the
4 amount of allowable refunds, the amount of any interest
5 payable with respect to such refunds, and costs of
6 administration and collection, shall be deposited into the
7 special revenue fund created in the state treasurer's
8 office and known as the medicaid state share fund. The
9 tax commissioner shall have separate accounting for
10 those health care providers as set forth in articles four-
11 b and four-c, chapter nine of this code, except that taxes
12 paid by hospitals may be combined and reported as a
13 single item. The tax commissioner shall retain from the
14 taxes collected during each fiscal year the amount of two
15 hundred thousand dollars to be used for administration
16 and collection of these taxes.

17 (b) Notwithstanding the provisions of subsection (a) of
18 this section, for the remainder of fiscal year one
19 thousand nine hundred ninety-three and for each
20 succeeding fiscal year, no expenditures from any of the
21 several health care provider funds are authorized except
22 in accordance with appropriations by the Legislature.

§11-27-33. Abrogation.

1 This tax abrogates and is of no further force and
2 effect, without any further action by the Legislature,
3 upon the earliest of the following dates:

4 (a) The date upon which an act of Congress becomes
5 effective which prohibits the inclusion of revenue from
6 these broad-based health care related taxes in state
7 share when obtaining matching federal dollars: *Pro-*
8 *vided*, That: (1) If such act specifies a later date on
9 which such prohibition takes effect, that later effective
10 date controls; and (2) if such act prohibits the inclusion
11 revenue from some but not all of the broad-based health
12 care related taxes imposed by this article, then only
13 those sections of this article imposing taxes which
14 cannot be used to obtain federal matching dollars shall
15 abrogate on such date, and the remaining tax or taxes
16 shall remain in effect.

17 (b) The date upon which a judgment or order of a
18 court of competent jurisdiction becomes final prohibit-
19 ing the inclusion of revenue from these broad-based
20 health care related taxes when determining the amount
21 of state expenditures that are claimable as medical
22 assistance for purposes of obtaining federal matching
23 dollars: *Provided*, That: (1) If such judgment or order
24 specifies a later date on which the prohibition takes
25 effect, that later effective date controls; and (2) if such
26 judgment or order prohibits the inclusion revenue from
27 some but not all of the broad-based health care related
28 taxes imposed by this article, then only those sections
29 of this article imposing taxes which cannot be used to
30 obtain federal matching dollars shall abrogate on such
31 date, and the remaining tax or taxes shall remain in
32 effect.

33 (c) The date upon which any federal administrative
34 rule or regulation promulgated in conformity with
35 federal law becomes effective which negates the effect
36 or purposes of this article: *Provided*, That: (1) If such
37 rule or regulation specifies a later date on which the
38 prohibition takes effect, that later effective date
39 controls; and (2) if such rule or regulation prohibits the
40 inclusion of revenue from some but not all of the broad-
41 based health care related taxes imposed by this article

42 when determining the amount of state expenditures that
 43 are claimable as medical assistance for purposes of
 44 obtaining federal matching dollars, then only those
 45 sections of this article imposing taxes which cannot be
 46 used to obtain federal matching dollars shall abrogate
 47 on such date, and the remaining tax or taxes shall
 48 remain in effect.

§11-27-34. Severability.

1 If any provision of this article or the application
 2 thereof shall for any reason be adjudged by any court
 3 of competent jurisdiction to be invalid, such judgment
 4 shall not affect, impair or invalidate the remainder of
 5 said article, but shall be confined in its operation to the
 6 provision thereof directly involved in the controversy in
 7 which such judgment shall have been rendered, and the
 8 applicability of such provision to other persons or
 9 circumstances shall not be affected thereby.

§11-27-35. Effective date.

1 This act of the Legislature shall take effect upon its
 2 passage in the year one thousand nine hundred ninety-
 3 three: *Provided*, That the taxes imposed by this article
 4 shall not be levied on gross receipts received or accrued
 5 before the first day of June, one thousand nine hundred
 6 ninety-three, and shall be levied on gross receipts
 7 received or accrued on or after that date.

CHAPTER 12.

PUBLIC MONEYS AND SECURITIES.

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

**§12-6-9f. Legislative findings; loans for the prompt
 payment of medicaid reimbursements; ad-
 ministration of funds; conditions for repay-
 ment; creation of special account in state
 treasury.**

1 (a) The Legislature hereby finds and declares that
 2 there is a large amount of investable funds in the
 3 consolidated fund established in subsection (b), section
 4 eight of this article; that loans made under commer-
 5 cially reasonable terms to promptly reimburse persons

6 who have provided medicaid services to the citizens of
7 this state and to eradicate the backlog of accounts
8 payable to providers of medicaid services is in the best
9 interest of this state; and that loans from the consoli-
10 dated fund will assist in financing the need to promptly
11 reimburse medicaid services providers at the end of the
12 fiscal year ending the thirtieth day of June, one
13 thousand nine hundred ninety-three, without in any way
14 impairing the solvency or financial soundness of the
15 consolidated fund. The Legislature further specifically
16 finds that in no event may any of the funds borrowed
17 pursuant to the provisions of this section be utilized for
18 any purpose other than those specified within this
19 section. This section is enacted in view of these findings.

20 (b) On or before the thirty-first day of May, one
21 thousand nine hundred ninety-three, the state board of
22 investments shall transfer moneys, as a loan, from the
23 consolidated fund to the special sinking fund account
24 created in the state treasury by subsection (d) of this
25 section, in an amount not to exceed thirty million dollars
26 to meet payments for services rendered by medicaid
27 providers prior to the first day of June, one thousand
28 nine hundred ninety-three, and to reduce the backlog in
29 reimbursements that exists in accounts payable related
30 to that time period. On the date the loan is transferred
31 to the special sinking fund created in said subsection,
32 interest shall accrue at the current interest rate of the
33 fund from which the loan originated, plus one fourth of
34 one percent and the current interest rate shall be
35 recalculated daily.

36 (c) Notwithstanding any provision of any prior
37 enactments of articles four-b and four-c, chapter nine of
38 this code, repayment of moneys transferred, with
39 interest, shall be made to the board of investments not
40 later than the thirtieth day of August, one thousand nine
41 hundred ninety-three, from the proceeds of the tax on
42 the state share of medicaid reimbursement imposed by
43 article twenty-six, chapter eleven of this code and from
44 any civil penalties imposed pursuant to section twenty,
45 article twenty-six, chapter eleven of this code to the full
46 extent necessary to ensure repayment of the loan by the

47 due date: *Provided*, That, immediately following the
 48 effective date of this section, funds from the proceeds of
 49 the tax on the state share of medicaid reimbursement
 50 may first be used for the purpose of maximizing the
 51 receipt of federal matching funds during fiscal year one
 52 thousand nine hundred ninety-three.

53 (d) There is hereby created in the state treasury a
 54 special account, designated the "Medicaid Prompt
 55 Payment Fund", which is a sinking fund for the deposit,
 56 withdrawal and repayment of moneys transferred
 57 pursuant to this section. Management of such fund shall
 58 be a responsibility of the board of investments.

59 (e) Upon the written request of the governor, the
 60 board of investments shall transfer to the medical
 61 services fund created pursuant to section two, article
 62 four, chapter nine of this code, from the funds available
 63 in the medicaid prompt payment fund, those funds
 64 necessary for the timely payment of medicaid reimbur-
 65 sements and accounts payable in the medicaid program
 66 for services rendered prior to the first day of June, one
 67 thousand nine hundred ninety-three.

CHAPTER 16. PUBLIC HEALTH.

Article

1. State Bureau of Public Health.
- 2D. Certificate of Need.

ARTICLE 1. STATE BUREAU OF PUBLIC HEALTH.

§16-1-15a. Hospital services revenue account; health facilities long-range plans.

1 (a) Subject to the provisions set forth in section two,
 2 article two, chapter twelve of this code, there is
 3 continued in the state treasury a separate account which
 4 shall be designated the "hospital services revenue
 5 account". The secretary of the department of health and
 6 human resources shall deposit promptly into the account
 7 any fees received by a facility owned and operated by
 8 the department of health and human resources from
 9 whatever source including the federal government, state
 10 government or other third-party payer or personal
 11 payment.

12 (b) A five-year health facilities long-range plan shall
13 be developed by the secretary and shall be adopted as
14 regulation in accordance with this chapter and chapter
15 twenty-nine-a of this code. The health facilities long-
16 range plan shall be updated and revised at least every
17 two years.

18 (c) The secretary is authorized to expend the moneys
19 deposited in the hospital services revenue account in
20 accordance with federal laws and regulations and with
21 the laws of this state as is necessary for the development
22 of the five-year health facilities long-range plan and
23 subsequent revisions.

24 The secretary is authorized to expend the moneys
25 deposited in the hospital services revenue account as
26 provided for in the health facilities long-range plan at
27 such times and in such amounts as the secretary
28 determines to be necessary for the purpose of improving
29 the delivery of health and mental health services or for
30 the purpose of maintaining or obtaining certification at
31 a state health or mental health facility: *Provided*, That
32 all disproportionate share hospital funds received into
33 the account shall be transferred by intergovernmental
34 transfer to the medical services trust fund created in
35 section two-a, article four-a, chapter nine of this code,
36 except for funds appropriated by the Legislature for
37 other purposes within the annual budget bill: *Provided*,
38 *however*, That during any fiscal year in which the
39 secretary anticipates spending any money from such
40 account, he or she shall submit to the executive
41 department during the budget preparation period prior
42 to the Legislature convening, before that fiscal year for
43 inclusion in the executive budget document and budget
44 bill, his or her recommended capital investments,
45 recommended priorities and estimated costs, as well as
46 requests of appropriations for the purpose of improving
47 the delivery of health and mental health services or for
48 the purpose of maintaining or obtaining certification at
49 a state health or mental health facility in such amounts
50 as the secretary determines to be necessary for the
51 development of, and as provided for in, the five-year

52 health facilities long-range plan and subsequent
53 revisions.

54 The secretary shall make an annual report to the
55 Legislature on the status of the health services revenue
56 account, including the previous year's expenditures and
57 projected expenditures for the next year.

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-5. Powers and duties of state 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 approp-
15 riately 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 maximum of sixty
66 beds may be approved, as a demonstration project, by
67 the state agency for a unit to provide nursing services
68 to patients with alzheimer's disease if: (1) The unit is
69 located in an existing facility which was formerly owned
70 and operated by the state of West Virginia and is

71 presently owned by a county of the state of West
72 Virginia; (2) the facility has provided health care
73 services, including personal care services, within one
74 year prior to the effective date of this section; (3) the
75 facility demonstrates that awarding the certificate of
76 need and operating the facility will be cost effective for
77 the state; and (4) that any applicable lease, lease-
78 purchase or contract for operating the facility was
79 awarded through a process of competitive bidding
80 consistent with state purchasing practices and proce-
81 dures: *Provided further*, That an application for said
82 demonstration project shall be filed with the state
83 agency on or before the twenty-first day of October, one
84 thousand nine hundred ninety-three.

85 (h) No additional intermediate care facility for the
86 mentally retarded (ICF/MR) beds shall be granted a
87 certificate of need, except that prohibition does not
88 apply to ICF/MR beds approved under the Kanawha
89 County circuit court order of the third day of August,
90 one thousand nine hundred eighty-nine, civil action
91 number MISC-81-585 issued in the case of *E. H. v.*
92 *Matin*, 168 W.V. 248, 284 S.E.2d 232 (1981).

93 (i) Notwithstanding the provisions of subsection (g),
94 section five of this article and, further notwithstanding
95 the provisions of subsection (d), section three of this
96 article, an existing acute care hospital may apply to the
97 health care cost review authority for a certificate of need
98 to convert acute care beds to skilled nursing beds:
99 *Provided*, That the proposed skilled nursing beds are
100 medicare certified only: *Provided, however*, That any
101 hospital which converts acute care beds to medicare
102 certified only skilled nursing beds is prohibited from
103 billing for any medicaid reimbursement for any beds so
104 converted. In converting beds, the hospital must convert
105 a minimum of one acute care bed into one medicare
106 certified only skilled nursing bed. The health care cost
107 review authority may require a hospital to convert up
108 to and including three acute care beds for each medicare
109 certified only skilled nursing bed. The health care cost

110 review authority shall adopt rules to implement this
111 subsection which require that:

112 (1) All acute care beds converted shall be permanently
113 deleted from the hospital's acute care bed complement
114 and the hospital may not thereafter add, by conversion
115 or otherwise, acute care beds to its bed complement
116 without satisfying the requirements of subsection (d),
117 section three of this article for which purposes such an
118 addition, whether by conversion or otherwise, shall be
119 considered a substantial change to the bed capacity of
120 the hospital notwithstanding the definition of that term
121 found in subsection (ee), section two of this article.

122 (2) The hospital shall meet all federal and state
123 licensing certification and operational requirements
124 applicable to nursing homes including a requirement
125 that all skilled care beds created under this subsection
126 shall be located in distinct-part, long-term care units.

127 (3) The hospital must demonstrate a need for the
128 project.

129 (4) The hospital must use existing space for the
130 medicare certified only skilled nursing beds. Under no
131 circumstances shall the hospital construct, lease or
132 acquire additional space for purposes of this section.

133 (5) The hospital must notify the acute care patient,
134 prior to discharge, of facilities with skilled nursing beds
135 which are located in or near the patient's county of
136 residence.

137 Nothing in this subsection shall negatively affect the
138 rights of inspection and certification which are other-
139 wise required by federal law or regulations or by this
140 code of duly adopted regulations of an authorized state
141 entity.

142 (j) Notwithstanding the provisions of subsection (g) of
143 this section, a retirement life care center with no skilled
144 nursing beds may apply to the health care cost review
145 authority for a certificate of need for up to sixty skilled

146 nursing beds provided the proposed skilled beds are
147 medicare certified only. On a statewide basis, a maxi-
148 mum of one hundred eighty skilled beds which are
149 medicare certified only may be developed pursuant to
150 this subsection. The state health plan shall not be
151 applicable to projects submitted under this subsection.
152 The health care cost review authority shall adopt rules
153 to implement this subsection which shall include:

154 (1) A requirement that the one hundred eighty beds
155 are to be distributed on a statewide basis;

156 (2) There shall be a minimum of twenty beds and a
157 maximum of sixty beds in each approved unit;

158 (3) The unit developed by the retirement life care
159 center shall meet all federal and state licensing
160 certification and operational requirements applicable to
161 nursing homes;

162 (4) The retirement center must demonstrate a need
163 for the project;

164 (5) The retirement center must offer personal care,
165 home health services and other lower levels of care to
166 its residents; and

167 (6) The retirement center must demonstrate both
168 short and long-term financial feasibility.

169 Nothing in this subsection shall negatively affect the
170 rights of inspection and certification which are other-
171 wise required by federal law or regulations or by this
172 code of duly adopted regulations of an authorized state
173 entity.

174 (k) The provisions of this article are severable and if
175 any provision, section or part thereby shall be held
176 invalid, unconstitutional or inapplicable to any person or
177 circumstance, such invalidity, unconstitutionality or
178 inapplicability shall not affect or impair any other
179 remaining provisions contained herein.

CHAPTER 8

(Com. Sub. for H. B. 104—By Mr. Speaker, Mr. Chambers, and Delegate Burk
By Request of the Executive)

[Passed May 26, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section seven, article nine, chapter six of said code; to amend and reenact section six, article three, chapter eleven of said code; to amend and reenact sections six-f, six-g, twelve-a and sixteen, article eight of said chapter; to amend and reenact sections five and eleven-a, article fourteen of said chapter; to amend and reenact section twenty-six, article two, chapter eighteen of said code; to amend and reenact section one, article two-a of said chapter; to amend and reenact section four, article two-e of said chapter; to amend and reenact section two, article four of said chapter; to amend and reenact sections eighteen and eighteen-a, article five of said chapter; to further amend article five of said chapter by adding thereto a new section, designated section fifteen-e; to amend and reenact sections fourteen and eighteen, article seven-a of said chapter, to amend and reenact section ten, article seven-b of said chapter; to amend and reenact sections two, four, five, eight-a, ten, eleven and twelve, article nine-a of said chapter; to further amend said article by adding thereto a new section, designated section three-b; to amend and reenact section seventeen, article four, chapter eighteen-a of said code; and to further amend article four of said chapter by adding thereto a new section, designated section seven-b, all relating to public education and the financing thereof; increasing the maximum amount of employer premiums that county boards are required to pay for covered employees; requiring the tax commissioner to conduct an audit of county boards in certain instances; specifying penalty for false swearing in an examination by chief tax inspector; requiring that property valuations be furnished to state board by

March third; providing that county board regular levy rate calculated for fiscal year one thousand nine hundred ninety-three be the levy rate for fiscal year one thousand nine hundred ninety-four; authorizing reduction of special levy rates under certain circumstances until first day of July, one thousand nine hundred ninety-five; for this year only minimizing or eliminating procedure required in event revenues exceed stated amount; extending time for boards of education to enter their levies for this year only; validating delays and actions taken prior to the effective date of this section in setting levy rates; stating numerically amount of special levy which may be imposed; allowing exemptions or reimbursements of the gasoline and special fuel excise tax by county boards of education; authorizing a RESA feasibility study to be commissioned by LOCEA; extending the deadline for county boards to participate in the computer information system, prohibiting expansion of noncompatible computer systems, and authorizing the state superintendent to grant additional time extensions in certain instances; setting reimbursement for travel, meals and lodging of RESA employees at level under Travel Management Office; requiring RESA boards to hold one half of regular meetings outside school day; changing textbook adoption cycle from six to eight years with exceptions; restricting textbook adoptions for next school year; providing for additional items to be published in the school report cards; providing for alternate certification for county board superintendents; requiring county boards to conduct a funding and program study; allowing full-day on alternating days or full-day everyday kindergarten programs beginning with the 1994-1995 school year and requiring full-time programs beginning with the 1996-1997 school year; phasing-out the class size waivers for grades one, two and three; allowing an incremental increase in employer contributions for retirement; redefining 'levies for general current expense' to accommodate changes in school board levy rate and deleting obsolete provisions; defining total state basic foundation program; defining 'permanent substitute' and requiring that they be counted as professional

educators but not as instructional personnel for purposes of basic state aid; relocating certain report card provisions; decreasing the base used for calculating RESA funding; reallocating certain step seven funds, providing a gain/loss limit and authorizing additional utilizations of these funds; delaying certain application dates relating to step seven; providing for an increase in appropriations for SBA debt service in certain instances; redefining method of computing local share; providing certain adjustments in basic foundation program; adding to or clarifying provisions regarding accrual and calculation of seniority for professional personnel; extending to and prorating seniority for part-time professional personnel; and providing minimum salary rate equivalents and requirements for those teachers providing services to residents of certain state facilities including the state division of vocational rehabilitation services.

Be it enacted by the Legislature of West Virginia:

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

said article be further amended by adding thereto a new section, designated section three-b; that section seventeen, article four, chapter eighteen-a of said code be amended and reenacted; and that article four of said chapter be amended by adding thereto a new section, designated section seven-b, 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.**
6. **General Provisions Respecting Officers.**
11. **Taxation.**
18. **Education.**
- 18A. **School Personnel.**

**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.

§5-16-18. 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 are responsible for the transfer of
8 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 the 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 If the general revenue appropriation for any em-
19 ployer, including a county board of education, is
20 insufficient to cover the cost of insurance coverage for
21 the employer's participating employees, retired em-
22 ployees and surviving dependents, the employer shall
23 pay the remainder of the 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 the amount shall not exceed five million, five hundred
36 thousand dollars during fiscal year one thousand nine
37 hundred ninety-four: *And provided further*, That the
38 finance board and department of education shall
39 determine the extent to which state school aid appropri-
40 ations are being used by the county school boards to pay
41 employer premiums for employees whose positions are
42 not funded by state revenues and shall develop and
43 implement a plan to minimize the 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 the employers' share
48 of premium costs to reflect and pay the actual costs of
49 the coverage including incurred but not reported claims.

50 The contribution of the other employers (namely: A
51 county, city or town in the state; any separate corpora-
52 tion or instrumentality established by one or more
53 counties, cities or towns, as permitted by law; any
54 corporation or instrumentality supported in most part
55 by counties, cities or towns; any public corporation
56 charged by law with the performance of a governmental

57 function and whose jurisdiction is coextensive with one
58 or more counties, cities or towns; any comprehensive
59 community mental health center or comprehensive
60 mental retardation facility established, operated or
61 licensed by the secretary of health and human resources
62 pursuant to section one, article two-a, chapter twenty-
63 seven of this code, and which is supported in part by
64 state, county or municipal funds; and a combined city-
65 county health department created pursuant to article
66 two, chapter sixteen of this code) for their employees'
67 shall be such percentage of the cost of the employees'
68 insurance package as the employers deem reasonable
69 and proper under their own particular circumstances.

70 The employee's proportionate share of the premium or
71 cost shall be withheld or deducted by the employer from
72 the employee's salary or wages as and when paid and
73 the sums shall be forwarded to the director with such
74 supporting data as the director may require.

75 All moneys received by the public employees insu-
76 rance agency shall be deposited in a special fund or
77 funds as are necessary in the state treasury and the
78 treasurer of the state shall be custodian of the fund or
79 funds and shall administer the fund or funds in
80 accordance with the provisions of this article or as the
81 director may from time to time direct. The treasurer
82 shall pay all warrants issued by the state auditor against
83 the fund or funds as the director may direct in
84 accordance with the provisions of this article.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 9. SUPERVISION OF PUBLIC OFFICES.

§6-9-7. Examinations into affairs of local public officers.

1 (a) The chief inspector shall have power by himself
2 or herself, or by any person appointed by him or her to
3 perform the service, to examine into all financial affairs
4 of every local governmental office or political subdivi-
5 sion and all boards, commissions, authorities, agencies
6 or other offices created under authority thereof and
7 shall make an examination at least once a year, if

8 practicable: *Provided*, That when required for com-
9 pliance with regulations for federal funds received by
10 county boards of education, the chief inspector shall
11 conduct the audits of all county boards of education
12 within twelve months after the end of the fiscal year and
13 issue the reports within thirty days after completion of
14 the audit work or assign the work to a certified public
15 accountant in a timely manner so that the work is
16 completed within the specified time limits. On every
17 examination, inquiry shall be made as to the financial
18 conditions and resources of the agency having jurisdic-
19 tion over the appropriations and levies disbursed by the
20 office and whether the requirements of the constitution
21 and statutory laws of the state and the ordinances and
22 orders of the agency have been properly complied with
23 and also inquire into the methods and accuracy of the
24 accounts and such other matters of audit and accounting
25 as the chief inspector may prescribe. He or she or any
26 authorized assistant may issue subpoenas and compul-
27 sory process, direct the service thereof by any sheriff,
28 compel the attendance of witnesses and the production
29 of books and papers at any designated time and place,
30 selected in their respective county, and administer
31 oaths. If any person refuses to appear before the chief
32 inspector or his or her authorized assistant when
33 required to do so, refuses to testify on any matter or
34 refuses to produce any books or papers in his or her
35 possession or under his or her control, he or she is guilty
36 of a misdemeanor, and, upon conviction thereof, shall be
37 fined not more than one hundred dollars and imprisoned
38 in the county jail not more than six months. A person
39 convicted of willful false swearing in an examination is
40 guilty of a misdemeanor, and, upon conviction thereof,
41 shall be fined not more than one hundred dollars and
42 imprisoned in the county jail not more than six months.
43 A report of each examination shall be made in duplicate,
44 one copy to be filed in the office of the state tax
45 commissioner and one in the auditing department of the
46 agency. If any examination discloses misfeasance,
47 malfeasance or nonfeasance in office on the part of any
48 public officer or employee, a certified copy of the report
49 shall be filed with the proper legal authority of the

50 agency, the prosecuting attorney of the county wherein
51 the agency is located and with the attorney general for
52 such legal action as is proper. At the time of the filing
53 of such certified audit, the chief inspector shall notify
54 the proper legal authority, the prosecuting attorney and
55 the attorney general in writing of his or her recommen-
56 dation as to the legal action that the chief inspector
57 considers proper, whether criminal prosecution or civil
58 action to effect restitution, or both. If the proper legal
59 authority or prosecuting attorney, within nine months of
60 the receipt of the certified audit and recommendations,
61 refuses, neglects or fails to take efficient legal action by
62 a civil suit to effect restitution or by prosecuting
63 criminal proceedings to a final conclusion, in accordance
64 with the recommendations, the chief inspector may
65 institute the necessary proceedings or participate
66 therein and prosecute the proceedings in any court of
67 the state to a final conclusion.

68 (b) When requested by the governing body of a
69 municipality, the chief inspector shall take bids on the
70 audit of that municipality, and, if he or she finds that
71 a reputable certified public accountant or registered
72 public accountant outside the state tax department can
73 conduct the audit at a cost lower than if the department
74 did it, and if the accountant meets all criteria set forth
75 by the chief inspector, he or she shall contract with the
76 accountant for the audit: *Provided*, That the chief
77 inspector may elect to conduct the audit of a municipal-
78 ity with one or more members of his or her audit staff
79 where, in the opinion of the chief inspector, a special or
80 unusual situation exists.

CHAPTER 11. TAXATION.

Article.

3. Assessments Generally.
8. Levies.
14. Gasoline and Special Fuel Excise Tax.

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-6. Statements of assessed valuations for municipal-
ities and boards of education; extension of
levies.

1 The assessor shall annually, not later than the third
2 day of March, furnish to the recorder or clerk of the city
3 or town council of every incorporated city and town in
4 the county and also to the secretary of the board of
5 education of the county and to the state board of
6 education, a certified statement, showing in separate
7 amounts the aggregate value of all property, real and
8 personal, and of all property within each class as
9 provided in section five, article eight of this chapter, and
10 the clerk of the county commission shall, in like fashion,
11 certify the aggregate value of all property assessed by
12 the board of public works, or other board in lieu thereof,
13 in such city or district, as ascertained from the land and
14 personal property books and from the statement
15 furnished by the auditor to the county clerk of the value
16 of property assessed in such county by the board for the
17 current year.

18 The statement so furnished shall be taken, by the
19 council of such city or town, as the proper valuation of
20 all property situated therein and liable for taxation for
21 municipal purposes notwithstanding any provisions
22 which may be contained in the charter of any city or
23 town. Upon receiving such statement, the recorder or
24 clerk of the council, shall present the same to the council
25 at a meeting to be held for the purpose of making the
26 estimate and laying the levy as hereinafter required;
27 and, as soon as the rate shall have been determined
28 upon, the recorder, or secretary of the council, shall
29 furnish the officer whose duty it is to make out the land
30 and personal property books a certified copy of the order
31 of such city or town council fixing the rate of tax, and
32 such officer shall thereupon extend the tax against the
33 property situated in such city or town, in the land books
34 and the personal property book of the county, in
35 separate columns in such books, which columns shall be
36 headed with the words: "Town, or city, tax for the town,
37 or city, of _____."

ARTICLE 8. LEVIES.

§11-8-6f. Effect on regular school board levy rate when appraisal results
 in tax increase.

- §11-8-6g. Effect on special levy rates when appraisal results in tax revenue increase; public hearing.
- §11-8-12a. Adjourned session of board of education to hear objections to proposed levies; approval of estimate and levy by tax commissioner; first levy for bonded and other indebtedness and indebtedness not bonded, second for permanent improvement fund, then for current expenses.
- §11-8-16. What order for election to increase levies to show; vote required; amount and continuation of additional levy; issuance of bonds.

§11-8-6f. Effect on regular school board levy rate when appraisal results in tax increase.

1 (a) Notwithstanding any other provision of law, where
2 any annual appraisal, triennial appraisal or general
3 valuation of property would produce a statewide
4 aggregate assessment that would cause an increase of
5 one percent or more in the total property tax revenues
6 that would be realized were the then current regular
7 levy rates of the county boards of education to be
8 imposed, the rate of levy for county boards of education
9 shall be reduced uniformly statewide and proportion-
10 ately for all classes of property for the forthcoming tax
11 year so as to cause such rate of levy to produce no more
12 than one hundred one percent of the previous year's
13 projected statewide aggregate property tax revenues
14 from extending the county board of education levy rate,
15 unless subsection (b) of this section is complied with. The
16 reduced rates of levy shall be calculated in the following
17 manner: (1) The total assessed value of each class of
18 property as it is defined by section five, article eight of
19 this chapter for the assessment period just concluded
20 shall be reduced by deducting the total assessed value
21 of newly created properties not assessed in the previous
22 year's tax book for each class of property; (2) the
23 resulting net assessed value of Class I property shall be
24 multiplied by .01; the value of Class II by .02; and the
25 values of Class III and IV, each by .04; (3) total the
26 current year's property tax revenue resulting from
27 regular levies for the boards of education throughout
28 this state and multiply the resulting sum by one
29 hundred one percent: *Provided*, That the one hundred
30 one percent figure shall be increased by the amount the

31 boards of educations' increased levy provided for in
32 subsection (b), section eight, article one-c of this chapter;
33 (4) divide the total regular levy tax revenues, thus
34 increased in subdivision (3), above, by the total weighted
35 net assessed value as calculated in paragraph two of this
36 subsection and multiply the resulting product by one
37 hundred; the resulting number is the Class I regular
38 levy rate, stated as cents-per-one hundred dollars of
39 assessed value; and (5) the Class II rate is two times the
40 Class I rate; Classes III and IV, four times the Class I
41 rate as calculated in the preceding subdivision: *Pro-*
42 *vided, however,* That the rate of levy for county boards
43 of education for the fiscal year beginning on the first
44 day of July, one thousand nine hundred ninety-three
45 shall be equal to the rate of levy calculated for the fiscal
46 year beginning on the first day of July, one thousand
47 nine hundred ninety-two, pursuant to the provisions of
48 this subsection.

49 An additional appraisal or valuation due to new
50 construction or improvements, including beginning
51 recovery of natural resources, to existing real property
52 or newly acquired personal property shall not be an
53 annual appraisal or general valuation within the
54 meaning of this section, nor shall the assessed value of
55 such improvements be included in calculating the new
56 tax levy for purposes of this section. Special levies shall
57 not be included in any calculations under this section.

58 (b) After conducting a public hearing, the Legislature
59 may, by act, increase the rate above the reduced rate
60 required in subsection (a) of this section if any such
61 increase is deemed to be necessary.

62 (c) This section shall be effective as to any regular
63 levy rate imposed for the county boards of education for
64 taxes due and payable on or after the first day of July,
65 one thousand nine hundred ninety-one. If any provision
66 of this section is held invalid, such invalidity shall not
67 affect other provisions or applications of this section
68 which can be given effect without the invalid provision
69 or its application and to this end the provisions of this
70 section are declared to be severable.

§11-8-6g. Effect on special levy rates when appraisal results in tax revenue increase; public hearings.

1 (a) Until the first day of July, one thousand nine
2 hundred ninety-five, as to any special levy in effect prior
3 to that date, and notwithstanding any other provision of
4 law to the contrary, where any annual appraisal,
5 triennial appraisal or general valuation of property
6 would produce an assessment that would cause an
7 increase of four percent or more in the total projected
8 property tax revenues that would be realized were the
9 special levy rates then in effect by the county commis-
10 sion, the municipalities or the county board of education
11 to be imposed, the local levying body shall comply with
12 subsection (b) of this section and may reduce the rate
13 of special levy in accordance with the provisions of
14 subsection (d) of this section until the first day of July,
15 one thousand nine hundred ninety-five. After the first
16 day of July, one thousand nine hundred ninety-five, each
17 levying body shall adopt only the levy rate which is
18 specified and approved in the levy ballot: *Provided*, That
19 if the special levy ballot provision authorizes the levying
20 body to reduce the rate of special levy, such rate may
21 be reduced in accordance with the special levy ballot
22 provision.

23 An additional appraisal or valuation due to new
24 construction or improvements to existing real property,
25 including beginning recovery of natural resources, and
26 newly acquired personal property shall not be an annual
27 appraisal or general valuation within the meaning of
28 this section, nor shall the assessed value of such
29 improvements be included in calculating the new tax
30 levy for purposes of this section.

31 (b) Any local levying body projected to realize such
32 increase greater than four percent shall conduct a
33 public hearing no later than the twentieth day of March
34 in the years one thousand nine hundred ninety-four and
35 one thousand nine hundred ninety-five, which hearing
36 may be held at the same time and place as the annual
37 budget hearing. Notice of the public hearing and the
38 meeting in which the levy rate shall be on the agenda

39 shall be given at least seven days before the date for
40 each public hearing by the publication of a notice in at
41 least one newspaper of general circulation in such
42 county or municipality: *Provided*, That a Class IV town
43 or village as defined in section two, article one, chapter
44 eight of this code, in lieu of the publication notice
45 required by this subsection, may post no less than four
46 notices of each public hearing, which posted notices
47 shall contain the information required by the publica-
48 tion notice and which shall be in available, visible
49 locations including the town hall. The notice shall be at
50 least the size of one-eighth page of a standard size
51 newspaper or one-fourth page of a tabloid size news-
52 paper, and the headline in the advertisement shall be
53 in a type no smaller than twenty-four point. The
54 publication notice shall be placed outside that portion,
55 if any, of the newspaper reserved for legal notices and
56 classified advertisements and shall also be published as
57 a Class II-O legal advertisement in accordance with the
58 provisions of article three, chapter fifty-nine of this code.
59 The publication area is the county. The notice shall be
60 in the following form and contain the following infor-
61 mation, in addition to such other information as the local
62 governing body may elect to include:

63 HEARING REGARDING SPECIAL LEVY RATES

64 The (name of the local levying body) hereby gives
65 notice that the special levy rate imposed by the (local
66 levying body) causes an increase in property tax
67 revenues due to increased valuations.

68 1. Appraisal/Assessment Increase: Total assessed
69 value of property, excluding additional assessments due
70 to new or improved property, exceeds last year's total
71 assessed value of property by _____ percent.

72 2. Current Year's Revenue Produced Under Special
73 Levy:

74 3. Projected Revenue Under Special Levy for Next
75 Tax Year:

76 4. Revenue Projected from New Property or Improve-
77 ments: \$_____.

78 5. General areas in which new revenue is to be
79 allocated:

80 A public hearing on the issue of special levy rates will
81 be held on (date and time) at (meeting place). A decision
82 regarding the special levy rate will be made on (date
83 and time) at (meeting place).

84 Notwithstanding any other provision of this subsec-
85 tion to the contrary, for the year one thousand nine
86 hundred ninety-three only, any local levying body
87 required to conduct a public hearing due to a four-
88 percent increase as set forth in this subsection projected
89 for the next fiscal year shall hold the public hearing
90 prior to the sixth day of May, shall only be required to
91 publish a Class I legal advertisement in accordance with
92 the provisions of article three, chapter fifty-nine of this
93 code, and need not provide such notice at least seven
94 days before the date of the hearing as required in this
95 subsection: *Provided*, That a Class IV town or village
96 may provide notice as otherwise set forth in this
97 subsection: *Provided, however*, That any public hearings
98 held pursuant to the provisions of this section in the year
99 one thousand nine hundred ninety-three prior to the
100 effective date of this section are hereby ratified and
101 confirmed as having full force and effect: *Provided*
102 *further*, That no county commission or municipality shall
103 be required to hold a public hearing as required by this
104 section during the year one thousand nine hundred
105 ninety-three for the fiscal year one thousand nine
106 hundred ninety-four.

107 (c) All hearings are open to the public, and the local
108 levying body shall permit persons desiring to be heard
109 an opportunity to present oral testimony within such
110 reasonable time limits as are determined by the
111 governing body. A decision regarding the special levy
112 rate shall be made within ten days of the hearing.

113 (d) For the fiscal years beginning on the first day of
114 July, one thousand nine hundred ninety-three, ninety-
115 four and ninety-five, as to any special levy in effect prior
116 to the first day of July, one thousand nine hundred
117 ninety-five, a local levying body may reduce the rate of

118 the special levy for all classes of property for the
119 forthcoming tax year so as to cause such rate of special
120 levy to produce no more than one hundred four percent
121 of the previous year's projected property tax revenues
122 from extending such special levy rates or such lesser
123 reduction the local levying body considers adequate:
124 *Provided*, That no levying body shall reduce any special
125 levy if such levy rate has been covenanted or otherwise
126 dedicated and is necessary to the payment of bonds or
127 other obligations existing as of the effective date of this
128 section: *Provided, however*, That nothing contained in
129 this subsection shall be construed to limit the reduction
130 of the levy rate when the terms of the special levy
131 permit a lower reduction: *Provided further*, That this
132 provision shall not restrict the ability of a local levying
133 body to enact excess levies as authorized under existing
134 statutory or constitutional provisions.

135 (e) If any provision of this section is held invalid, such
136 invalidity shall not affect other provisions or applica-
137 tions of this section which can be given effect without
138 the invalid provision or its application and to this end
139 the provisions of this section are declared to be
140 severable.

**§11-8-12a. Adjourned session of board of education to
hear objections to proposed levies; approval of estimate and levy by tax commis-
sioner; first levy for bonded and other
indebtedness and indebtedness not bonded,
second for permanent improvement fund,
then for current expenses.**

1 Each board of education when it reconvenes on the
2 third Tuesday in April shall proceed in a manner
3 similar in all respects to that provided for in section ten-
4 a of this article. The board shall not finally enter any
5 levy until it has been approved in writing by the tax
6 commissioner. After receiving the approval, the board
7 shall enter the statement as approved in its record of
8 proceedings, together with the written approval:
9 *Provided*, That for the fiscal year one thousand nine
10 hundred ninety-three only, each board of education may
11 delay its final entry of the levy until no later than the

12 first Thursday in May, by which time each board shall
13 have entered the statement as approved in its record of
14 proceedings, together with the written approval:
15 *Provided, however,* That any delay by a county board of
16 education in the entry of its final levy pursuant to the
17 provisions of this section in the fiscal year one thousand
18 nine hundred ninety-three and any action taken prior to
19 the effective date of this section that is not inconsistent
20 with the provisions of this section or other applicable
21 levy rate sections of this code are hereby ratified and
22 confirmed as having full force and effect.

23 The board shall levy as many cents per hundred
24 dollars' assessed valuation on each class of property in
25 the county or in the area of a pre-existing school district,
26 as the case may be, as will produce the amounts,
27 according to the last assessment, shown to be necessary
28 by the statement in the following order:

29 First, for the bonded debt and for the contractual debt
30 not bonded, if any, of any school district of the county
31 existing prior to twenty-second day of May, one thou-
32 sand nine hundred thirty-three, and incurred prior to
33 the adoption of the Tax Limitation Amendment;

34 Second, for the permanent improvement fund;

35 Third, for general current expenses.

36 The rates of levy for each purpose shall not exceed the
37 amounts fixed by section six-c unless another rate is
38 authorized by the tax commissioner or set by the
39 Legislature in accordance with this article. When less
40 than the maximum levies are imposed, the levies on each
41 class of property shall be in the same proportions as the
42 maximums authorized.

§11-8-16. What order for election to increase levies to show; vote required; amount and continuation of additional levy; issuance of bonds.

1 A local levying body may provide for an election to
2 increase the levies, by entering on its record of proceed-
3 ings an order setting forth:

4 (1) The purpose for which additional funds are
5 needed;

6 (2) The amount for each purpose;

7 (3) The total amount needed;

8 (4) The separate and aggregate assessed valuation of
9 each class of taxable property within its jurisdiction;

10 (5) The proposed additional rate of levy in cents on
11 each class of property;

12 (6) The proposed number of years, not to exceed three,
13 to which the additional levy applies, except that in the
14 case of county boards of education the proposed number
15 of years shall not exceed five;

16 (7) The fact that the local levying body will or will
17 not issue bonds, as provided by this section, upon
18 approval of the proposed increased levy.

19 The local levying body shall submit to the voters
20 within their political subdivision, the question of the
21 additional levy at either a general or special election. If
22 at least sixty percent of the voters cast their ballots in
23 favor of the additional levy, the county commission or
24 municipality may impose the additional levy. If at least
25 a majority of voters cast their ballot in favor of the
26 additional levy, the county board of education may
27 impose the additional levy: *Provided*, That any addi-
28 tional levy adopted by the voters, including any
29 additional levy adopted prior to the effective date of this
30 section, shall be the actual number of cents per each one
31 hundred dollars of value set forth in the ballot provision,
32 which number shall not exceed the maximum amounts
33 prescribed in this section, regardless of the rate of
34 regular levy then or currently in effect, unless such rate
35 of additional special levy is reduced in accordance with
36 the provisions of section six-g of this article or otherwise
37 changed in accordance with the applicable ballot
38 provisions. For county commissions, this levy shall not
39 exceed a rate greater than seven and fifteen hundredths
40 cents for each one hundred dollars of value for Class I
41 properties, and for Class II properties a rate greater
42 than twice the rate for Class I properties, and for Class

43 III and IV properties a rate greater than twice the rate
44 for Class II properties. For municipalities, this levy
45 shall not exceed a rate greater than six and twenty-five
46 hundredths cents for each one hundred dollars of value
47 for Class I properties, and for Class II properties a rate
48 greater than twice the rate for Class I properties, and
49 for Class III and IV properties a rate greater than twice
50 the rate for Class II properties. For county boards of
51 education, this levy shall not exceed a rate greater than
52 twenty-two and ninety-five hundredths cents for each
53 one hundred dollars of value for Class I properties, and
54 for Class II properties a rate greater than twice the rate
55 for Class I properties, and for Class III and IV
56 properties a rate greater than twice the rate for Class
57 II properties.

58 Levies authorized by this section shall not continue for
59 more than three years in the case of county commissions
60 and municipalities and five years in the case of county
61 boards of education without resubmission to the voters.

62 Upon approval of an increased levy as provided by
63 this section, a local levying body may immediately issue
64 bonds in an amount not exceeding the amount of the
65 increased levy plus the total interest thereon, but the
66 term of the bonds shall not extend beyond the period of
67 the increased levy.

68 Insofar as they might concern the issuance of bonds
69 as provided for in this section, the provisions of sections
70 three and four, article one, chapter thirteen of this code
71 shall not apply: *Provided*, That nothing contained in this
72 section shall conflict with the provisions of article X,
73 section 8 of the constitution of West Virginia.

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-5. Exemptions from tax.

§11-14-11a. Refund of tax on gasoline or special fuel paid by any county board of education, volunteer fire department, nonprofit ambulance service and emergency rescue service.

§11-14-5. Exemptions from tax.

1 There shall be exempted from the excise tax on
2 gasoline or special fuel imposed by this article the
3 following:

4 (1) All gallons of gasoline or special fuel exported
5 from this state to any other state or nation.

6 (2) All gallons of gasoline or special fuel sold to and
7 purchased by the United States or any agency thereof
8 when delivered in bulk quantities of five hundred
9 gallons or more.

10 (3) All gallons of gasoline or special fuel sold to and
11 purchased by a county board of education when deli-
12 vered in bulk quantities of five hundred gallons or more.

13 (4) All gallons of gasoline or special fuel sold pursuant
14 to a government contract, in bulk quantities of five
15 hundred gallons or more, for use in conjunction with any
16 municipal, county, state or federal civil defense or
17 emergency service program, or to any person on whom
18 is imposed a requirement to maintain an inventory of
19 gasoline or special fuel for the purpose of any such
20 program: *Provided*, That fueling facilities used for these
21 purposes are not capable of fueling motor vehicles and
22 the person in charge of the program has in his or her
23 possession a letter of authority from the tax commis-
24 sioner certifying his or her right to such exemption.

25 (5) All gallons of gasoline or special fuel imported into
26 this state in the fuel supply tank or tanks of a motor
27 vehicle, other than in the fuel supply tank of a vehicle
28 being hauled. This exemption does not relieve a person
29 owning or operating as a motor carrier of any taxes
30 imposed by article fourteen-a of this chapter.

31 (6) All gallons of gasoline and special fuel used and
32 consumed in stationary off-highway turbine engines.

33 (7) All gallons of special fuel for heating any public
34 or private dwelling, building or other premises.

35 (8) All gallons of special fuel for boilers.

36 (9) All gallons of gasoline or special fuel used as a dry
37 cleaning solvent or commercial or industrial solvent.

38 (10) All gallons of gasoline or special fuel used as
39 lubricants, ingredients or components of any manufac-
40 tured product or compound.

41 (11) All gallons of gasoline or special fuel sold to any
42 municipality or agency thereof for use in vehicles or
43 equipment owned and operated by such municipality or
44 agency thereof and when purchased for delivery in bulk
45 quantities of five hundred gallons or more.

46 (12) All gallons of gasoline or special fuel sold to any
47 urban mass transportation authority, created pursuant
48 to the provisions of article twenty-seven, chapter eight
49 of this code, for use in an urban mass transportation
50 system.

51 (13) All gallons of gasoline or special fuel sold for use
52 as aircraft fuel.

53 (14) All gallons of gasoline or special fuel sold for use
54 or used as a fuel for commercial watercraft.

55 (15) All gallons of special fuel sold for use or
56 consumed in railroad diesel locomotives.

**§11-14-11a. Refund of tax on gasoline or special fuel paid
by any county board of education, volun-
teer fire department, nonprofit ambu-
lance service and emergency rescue
service.**

1 The tax imposed by this article and paid by county
2 boards of education shall be refunded to the county
3 board of education.

4 Upon certification by the county commission to the
5 state tax commissioner that an organization in the
6 county is a bona fide volunteer fire department,
7 nonprofit ambulance service or emergency rescue
8 service, the tax imposed by this article and paid by the
9 organization shall be refunded.

10 The tax shall be refunded upon presentation to the
11 commissioner of an affidavit accompanied by the
12 original or top copy sales slips or invoices, or certified
13 copies thereof, from the distributor or producer or retail
14 dealer, showing the purchases, together with evidence
15 of payment thereof, which affidavit shall set forth the
16 total amount of the gasoline or special fuel purchased
17 and consumed by the user, and the commissioner upon

18 the receipt of the affidavit and the paid sales slips or
19 invoices shall cause to be refunded the tax paid on
20 gasoline or special fuel purchased and consumed as
21 provided in this section.

22 The right to receive any refund under the provisions
23 of this section is not assignable and any assignment
24 thereof is void and of no effect, nor shall any payment
25 be made to any person other than the original person
26 entitled thereto using gasoline or special fuel as set forth
27 in this section. The commissioner shall cause a refund
28 to be made under the authority of this section only when
29 the application for the refund is filed with the commis-
30 sioner, upon forms prescribed by the commissioner, no
31 later than the thirty-first day of August for purchases
32 of fuel made during the preceding fiscal year ending the
33 thirtieth day of June. Any claim for a refund not timely
34 filed shall not be construed to be or constitute a moral
35 obligation of the state of West Virginia for payment. The
36 claim for refund is also subject to the provisions of
37 section fourteen, article ten of this chapter.

CHAPTER 18. EDUCATION.

- 2. State Board of Education.
- 2A. Adoption of Textbooks, Instructional Materials and Learning Technologies.
- 2E. High Quality Educational Programs.
- 4. County Superintendent of Schools.
- 5. County Board of Education.
- 7A. State Teachers Retirement System.
- 7B. Teachers' Defined Contribution Retirement System.
- 9A. Public School Support.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-26. Establishment of multicounty regional educational service agencies; purposes; authority to implement regional services.

1 (a) In order to consolidate and administer more
2 effectively existing educational programs and services
3 so individual districts will have more discretionary
4 moneys for educational improvement and in order to
5 equalize and extend educational opportunities, the state
6 board of education shall establish multicounty regional

7 educational service agencies for the purpose of provid-
8 ing high quality, cost effective educational programs
9 and services to the county school systems, and shall
10 make such rules as may be necessary for the effective
11 administration and operation of such agencies: *Provided,*
12 That the Legislative Oversight Commission on Educa-
13 tion Accountability shall commission a comprehensive
14 feasibility study of the regional educational service
15 agencies which shall be completed and reported to the
16 Legislative Oversight Commission on Education Ac-
17 countability no later than the 10th day of January, one
18 thousand nine hundred ninety-four.

19 (b) In furtherance of these purposes, it is the duty of
20 the board of directors of each regional educational
21 service agency to continually explore possibilities for the
22 delivery of services on a regional basis which will
23 facilitate equality in the educational offerings among
24 counties in its service area, permit the delivery of high
25 quality educational programs at a lower per student
26 cost, strengthen the cost effectiveness of education
27 funding resources, reduce administrative and/or opera-
28 tional costs, including the consolidation of administra-
29 tive, coordinating and other county level functions into
30 region level functions, and promote the efficient
31 administration and operation of the public school
32 systems generally.

33 Technical, operational, programmatic or professional
34 services would be among the types of services approp-
35 riate for delivery on a regional basis.

36 (c) In addition to performing the services and
37 functions required by the provisions of this or any other
38 section of this code, a regional educational service
39 agency may implement regional programs and services
40 by a majority vote of its board of directors. When said
41 vote is not unanimous, the board of directors shall file
42 a plan for the service or program delivery with the state
43 board describing the program or service, the manner of
44 delivery and the projected savings and/or the improved
45 quality of the program or service. The state board shall
46 promulgate rules requiring a county board that declines
47 to participate in such programs or services to show just

48 cause for not participating and the estimated savings
49 accruing to the county therefrom. If a county board fails
50 to show that savings will accrue to the county or that
51 the quality of the program will be significantly and
52 positively affected as a result of its decision not to
53 participate, the state board shall withhold from the
54 county's foundation allowance for administrative cost
55 the lesser of the amount of the estimated savings or the
56 allocation for the county's foundation allowance for
57 administrative cost.

58 (d) The state board, in conjunction with the various
59 regional educational service agencies, shall develop an
60 effective model for the regional delivery of instruction
61 in subjects where there exists low student enrollment or
62 a shortage of certified teachers or where such delivery
63 method substantially improves the quality of an instruc-
64 tional program. Such model shall incorporate an
65 interactive electronic classroom approach to instruction.
66 To the extent funds are appropriated or otherwise
67 available, county boards or regional educational service
68 agencies may adopt and utilize the model for the
69 delivery of such instruction.

70 (e) Each regional educational service agency shall
71 conduct a study setting forth how the following services
72 and functions may be performed by the agency for
73 public schools and school districts within the region
74 without terminating the employment of personnel
75 employed by school districts prior to the effective date
76 of this subsection: Accounting, purchasing, food service,
77 transportation, delivery of high cost services to low
78 incidence student populations, audiovisual material
79 distribution, facilities planning, federal program
80 coordination, personnel recruiting and an integrated
81 regional computer information system. On or before the
82 tenth day of January, one thousand nine hundred ninety,
83 each regional educational service agency shall submit
84 the study to the state board, to the standing committees
85 on education and finance of the West Virginia senate
86 and house of delegates, and to the secretary of education
87 and the arts: *Provided*, That in the event such study is
88 implemented those individuals employed prior to the

89 effective date thereof shall not have their employment
90 terminated as a result of the study.

91 (f) Each regional educational service agency shall
92 commence implementation of a uniform integrated
93 regional computer information system as recommended
94 by the state board of education on or before the first day
95 of January, one thousand nine hundred ninety-one. Each
96 county board of education shall use the computer
97 information system for data collection and reporting to
98 the state department of education beginning no later
99 than the first day of July, one thousand nine hundred
100 ninety-four. County boards of education shall bear the
101 cost of and fully participate in the implementation of the
102 system: *Provided*, That no county shall expand any
103 system either through the purchase of additional
104 software or hardware that does not advance the goals
105 and implementation of the uniform integrated regional
106 computer information system as recommended by the
107 state board: *Provided, however*, That nothing contained
108 herein shall prevent the state superintendent from
109 granting an extension to those counties projected to have
110 budget deficits for the school year beginning on the first
111 day of July, one thousand nine hundred ninety-four.

112 (g) Each regional educational service agency shall
113 submit a report and evaluation of the services provided
114 and utilized by the schools within each respective
115 region. Furthermore, each school shall submit an
116 evaluation of the services provided by the regional
117 educational service agency, which shall include an
118 evaluation of the regional educational service agency
119 program, suggestions as to how to improve utilization
120 and the individual school's plan as to development of
121 new programs and enhancement of existing programs.
122 The reports shall be due by the first day of January of
123 each year commencing with the year one thousand nine
124 hundred ninety-one and shall be made available to the
125 state board of education, standing committees on
126 education of the West Virginia senate and house of
127 delegates and to the secretary of education and the arts.

128 (h) A regional board shall be empowered to receive
129 and disburse funds from the state and federal govern-

130 ments, member counties, gifts and grants.

131 (i) Notwithstanding any other provision of the code to
132 the contrary, employees of regional educational service
133 agencies shall be reimbursed for travel, meals and
134 lodging at the same rate as state employees under the
135 travel management office of the department of
136 administration.

137 (j) Regional educational service agencies shall hold at
138 least one half of their regular meetings during hours
139 other than those of a regular school day.

ARTICLE 2A. ADOPTION OF TEXTBOOKS, INSTRUCTIONAL
MATERIALS AND LEARNING TECHNOLOGIES.

§18-2A-1. Definition; adoption groups; adoption schedule.

1 "Textbooks" includes books, instructional materials
2 and learning technologies. "Instructional materials"
3 means and includes systems of instructional materials,
4 or combinations of books and supplementary materials
5 which convey information to the pupil. "Learning
6 technologies" include, but are not limited to, applica-
7 tions using computer software, computer assisted
8 instruction, interactive videodisc; other computer
9 courseware and magnetic media.

10 Textbooks adopted on the state multiple list must
11 substantially cover the required content and skills for
12 the subject as approved by the state board of education.
13 Adopted materials must be current and information
14 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 are considered 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 that section is for textbooks.
32 The state adoption cycle as to science and health
33 textbooks shall not exceed six years and the adoption
34 cycle as to all other textbooks shall not exceed eight
35 years: *Provided further,* That the county textbook
36 adoption committees may request a waiver of the
37 maximum adoption cycles from the state board of
38 education: *And provided further,* That during the school
39 year beginning on the first day of July, one thousand
40 nine hundred ninety-three, the state board of education
41 shall make additional adoptions only in the subject of
42 science, and if the county boards of education make
43 additional adoptions and purchases, then those county
44 boards may make purchases only in the subjects of
45 science and health.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-4. Better schools accountability; school, school district and statewide school report cards.

1 (a) For the purpose of providing information to the
2 parents of public school children and the general public
3 on the quality of education in the public schools which
4 is uniform and comparable between schools within and
5 among the various school districts, the state board shall
6 prepare forms for school, school district and statewide
7 school report cards and shall promulgate rules concern-
8 ing the collection and reporting of data and the
9 preparation, printing and distribution of report cards
10 under this section. The forms shall provide for brief,
11 concise reporting in nontechnical language of required
12 information. Any technical or explanatory material a
13 county board wishes to include shall be contained in a
14 separate appendix available to the general public upon
15 request.

16 (b) The school report cards shall include:

17 (1) The following indicators of student performance at

18 the school in comparison with the county, state, regional
19 and national student performance, as applicable:
20 student performance by grade level in the various
21 subjects tested under the statewide testing of educa-
22 tional progress program; school attendance rates; the
23 percent of students not promoted to next grade; the
24 graduation rate; and student mobility (turnover shown
25 as a percent of transfers out and a percent of transfers
26 in); and

27 (2) The following indicators of school performance in
28 comparison with the aggregate of all other schools in the
29 county and the state, as applicable: average class size;
30 percent of enrollments in courses in high school
31 mathematics, science, English and social science;
32 amount of time per day devoted to mathematics, science,
33 English and social science at middle, junior high and
34 high school grade levels; percent of enrollments in
35 college preparatory, general education and vocational
36 education programs; pupil-teacher ratio; number of
37 exceptions to pupil-teacher ratio requested by the county
38 board and the number of exceptions granted; the
39 number of split-grade classrooms; pupil-administrator
40 ratio; operating expenditure per pupil; county expendi-
41 ture by fund in graphic display; and the average degree
42 classification and years of experience of the administra-
43 tors and teachers at the school.

44 (3) Every county board of education shall annually
45 determine the number of administrators, classroom
46 teachers and service personnel employed that exceeds
47 the number allowed by the public school support plan
48 and determine the amount of salary supplements that
49 would be available per state authorized employee if all
50 expenditures for the excess employees were converted to
51 annual salaries for state authorized administrators,
52 classroom teachers and service personnel within their
53 county. The information shall be published annually in
54 each school report card of each such county.

55 (c) The school district report card shall include the
56 data for each school for each separately listed applicable
57 indicator and the aggregate of the data for all schools,
58 as applicable, in the county for each indicator. The

59 statewide school report card shall include the data for
60 each county for each separately listed indicator and the
61 aggregate for all counties for each indicator.

62 (d) The report cards shall be prepared using actual
63 local school, county, state, regional and national data
64 indicating the present performance of the school and
65 shall also include the state norms and the upcoming
66 year's targets for the school and the county board.

67 The state board shall provide technical assistance to
68 each county board in preparing the school and school
69 district report cards.

70 Each school district board shall prepare report cards
71 in accordance with the guidelines set forth in this
72 section. The school district report cards shall be
73 presented at a regular school board meeting subject to
74 applicable notice requirements and shall be made
75 available to a newspaper of general circulation serving
76 the district. The school report cards shall be mailed
77 directly to the parent or parents of any child enrolled
78 in that school. In addition, each county board shall
79 submit the completed report cards to the state board
80 which shall make copies available to any person
81 requesting them.

82 The report cards shall be completed and disseminated
83 prior to the first day of January, one thousand nine
84 hundred eighty-nine, and in each year thereafter, and
85 shall be based upon information for the current school
86 year, or for the most recent school year for which the
87 information is available, in which case the year shall be
88 clearly footnoted.

89 (e) In addition to the requirements of subsection (c)
90 of this section, the school district report card shall list
91 (1) the names of the members of the district school
92 board, the dates upon which their terms expire and
93 whether they have attended an orientation program for
94 new members approved by the state board and con-
95 ducted by the West Virginia school board association or
96 other approved organizations, and other school board
97 member training programs, and (2) the names of the
98 district school superintendent and every assistant and

99 associate superintendent and any training programs
100 related to their area of school administration which they
101 have attended. The information shall also be reported by
102 district in the statewide school report card.

103 (f) The state board shall develop and implement a
104 separate report card for nontraditional public schools
105 pursuant to the appropriate provisions of this section to
106 the extent practicable.

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

§18-4-2. Qualifications; health certificate; disability; acting superintendent.

1 Superintendents employed prior to the twenty-eighth
2 day of June, one thousand nine hundred eighty-eight
3 shall hold a certificate valid in West Virginia and an
4 approved master's degree including at least twelve
5 semester hours in school administration and supervision,
6 and at least five years experience in public school
7 teaching and/or supervision.

8 Any superintendent appointed as superintendent after
9 the twenty-seventh day of June, one thousand nine
10 hundred eighty-eight, shall meet requirements for the
11 professional administrative certificate endorsed for
12 superintendent by the first day of July, one thousand
13 nine hundred ninety-three. Any new superintendent
14 appointed as of the thirtieth day of August, one thousand
15 nine hundred ninety, shall hold a professional adminis-
16 trative certificate endorsed for superintendent: *Pro-*
17 *vided*, That any candidate for superintendent who
18 possesses an earned doctorate from an accredited
19 institution of higher education, has completed three
20 successful years of teaching in public education and has
21 the equivalent of three years of experience in manage-
22 ment or supervision, upon employment by the county
23 board of education shall be granted a permanent
24 administrative certificate and shall be a licensed county
25 superintendent. Any person employed as assistant
26 superintendent or educational administrator prior to the
27 twenty-seventh day of June, one thousand nine hundred
28 eighty-eight, and who was previously employed as
29 superintendent shall not be required to hold the

30 professional administrative certificate endorsed for
31 superintendent.

32 Before entering upon the discharge of his or her
33 duties the superintendent shall file with the president
34 of the board a health certificate from a reputable
35 physician, on a form prescribed by the state department
36 of education, certifying that he or she is physically fit
37 for the duties of his or her office and that he or she has
38 no infectious or contagious disease; and if the superin-
39 tendent, due to accident or illness, should become
40 incapacitated to an extent that could lead to a prolonged
41 absence, the board, upon unanimous vote, has the
42 authority to enter an order declaring the incapacity and
43 it shall appoint an acting superintendent until such time
44 as a majority of the members of the board determine
45 that the incapacity no longer exists. However, an acting
46 superintendent shall not serve as such for more than one
47 year, or later than the expiration date of the superin-
48 tendent's term, whichever is less, without being reap-
49 pointed by the board of education.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-15e. Study on school equity.

§18-5-18. Kindergarten programs.

§18-5-18a. Maximum teacher-pupil ratio.

§18-5-15e. Study on school equity.

1 County boards shall conduct a comprehensive study to
2 determine equality of funding and programs among the
3 various schools within each county. Such study shall
4 consider issues including, but not limited to, cost per
5 pupil and availability of curriculum and programs.
6 County boards shall submit a report to the legislative
7 oversight commission on education accountability by the
8 first day of October, one thousand nine hundred ninety-
9 three.

§18-5-18. Kindergarten programs.

1 County boards of education shall provide by the school
2 year one thousand nine hundred eighty-three--eighty-
3 four, and continue thereafter, kindergarten programs
4 for all children who shall have attained the age of five

5 prior to September first of the school year in which the
6 pupil enters such kindergarten program and may
7 establish kindergarten programs designed for children
8 below the age of five: *Provided*, That beginning with the
9 school year one thousand nine hundred ninety-four—
10 ninety-five, such programs shall be full-day and may be
11 every day or on alternating days; beginning with the
12 school year one thousand nine hundred ninety-six—
13 ninety-seven, such programs shall be full-day everyday.
14 Before the first day of November, one thousand nine
15 hundred ninety-three, the state board shall develop cost
16 estimates and report to the legislative oversight commis-
17 sion on education accountability on the feasibility of
18 implementing a full-time kindergarten program.

19 Persons employed as kindergarten teachers, as
20 distinguished from paraprofessional personnel, shall be
21 required to hold a certificate valid for teaching at the
22 assigned level as prescribed by regulations established
23 by the state board of education. The state board of
24 education shall establish and prescribe guidelines and
25 criteria setting forth the minimum requirements for all
26 paraprofessional personnel employed in kindergarten
27 programs established pursuant to the provisions of this
28 section and no such paraprofessional personnel shall be
29 employed in any kindergarten program unless he meets
30 such minimum requirements.

31 The state board of education with the advice of the
32 state superintendent of free schools shall establish and
33 prescribe guidelines and criteria relating to the estab-
34 lishment, operation and successful completion of kinder-
35 garten programs in accordance with the other provi-
36 sions of this section. Guidelines and criteria so estab-
37 lished and prescribed are also intended to serve for the
38 establishment and operation of nonpublic kindergarten
39 programs and shall be used for the evaluation and
40 approval of such programs, provided application for
41 such evaluation and approval is made in writing to the
42 state board by proper authorities in control of such
43 programs. The state superintendent of free schools at
44 intervals not to exceed two years shall publish a list of
45 nonpublic kindergarten programs that have been

46 approved in accordance with the provisions of this
47 section and a list of Montessori kindergartens estab-
48 lished and operated in accordance with usual and
49 customary practices for the use of the Montessori
50 method. Teachers who have training or experience in
51 the use of the Montessori method of instruction for
52 kindergartens shall be deemed to be approved to teach
53 in such kindergartens using the Montessori method
54 without additional certification.

55 Pursuant to such guidelines and criteria, and only
56 pursuant to such guidelines and criteria, the county
57 boards may establish programs taking kindergarten to
58 the homes of the children involved, using educational
59 television, paraprofessional personnel in addition to and
60 to supplement regularly certified teachers, mobile or
61 permanent classrooms and other means developed to
62 best carry kindergarten to the child in its home and
63 enlist the aid and involvement of its parent or parents
64 in presenting the program to the child; or may develop
65 programs of a more formal kindergarten type, in
66 existing school buildings, or both, as such county board
67 may determine, taking into consideration the cost, the
68 terrain, the existing available facilities, the distances
69 each child may be required to travel, the time each child
70 may be required to be away from home, the child's
71 health, the involvement of parents and such other
72 factors as each county board may find pertinent. Such
73 determinations by any county board shall be final and
74 conclusive.

75 Funds for implementing the kindergarten programs
76 during the fiscal year one thousand nine hundred
77 seventy-two, and thereafter, shall be allocated to
78 counties from a special appropriation to the state
79 department of education from the general revenue fund:
80 *Provided*, That except for expenditures from the general
81 revenue funds for regional kindergarten demonstration
82 centers, in no event shall any state money from the
83 general fund be expended under the provisions of this
84 section unless federal funds are available for the
85 purposes of this section.

86 Allocations to counties will be made on the basis of

87 approved kindergarten programs. The West Virginia
88 board of education shall establish criteria and standards
89 necessary to guide counties in developing approvable
90 kindergarten programs and shall determine funding
91 levels of said programs on local operating costs.

92 An additional appropriation shall be made to the state
93 department of education from the general revenue fund
94 to establish and operate during the fiscal year one
95 thousand nine hundred seventy-two, regional kinder-
96 garten demonstration centers in educational regions
97 three, four, five, six and seven, and thereafter in regions
98 one through seven. Said funds shall be allocated to said
99 regions for establishing and operating regional demon-
100 stration centers in accordance with criteria and stand-
101 ards established by the West Virginia board of educa-
102 tion. Said regional centers shall be established to
103 provide exemplary and innovative kindergarten pro-
104 grams, to provide laboratory experiences for preservice
105 and in-service education for professional personnel and
106 staff development programs for training paraprofes-
107 sional personnel, to establish organizational and admi-
108 nistrative machinery designed to promote cooperation
109 between and among all agencies involved in the
110 education and development of young children, and to
111 promote cooperation between counties in providing high
112 cost supervisory, developmental, research and evalua-
113 tive services not currently available to individual
114 counties.

§18-5-18a. Maximum teacher-pupil ratio.

1 County boards of education shall provide, by the
2 school year one thousand nine hundred eighty-three—
3 eighty-four, and thereafter, sufficient personnel, equip-
4 ment and facilities as will ensure that each first and
5 second grade classroom, or classrooms having two or
6 more grades that include either the first or second
7 grades shall not have more than twenty-five pupils for
8 each teacher of the grade or grades and shall not have
9 more than twenty pupils for each kindergarten teacher
10 per session, unless the state superintendent has excepted
11 a specific classroom upon application therefor by a
12 county board.

13 County boards shall provide by the school year one
14 thousand nine hundred eighty-four—eighty-five, and
15 continue thereafter, sufficient personnel, equipment and
16 facilities as will ensure that each third, fourth, fifth and
17 sixth grade classroom, or classrooms having two or more
18 grades that include one or more of the third, fourth, fifth
19 and sixth grades, shall not have more than twenty-five
20 pupils for each teacher of the grade or grades.

21 Beginning with the school year one thousand nine
22 hundred eighty-six—eighty-seven, and thereafter, no
23 county shall maintain a greater number of classrooms
24 having two or more grades that include one or more of
25 the grade levels referred to in this section than were in
26 existence in said county as of the first day of January,
27 one thousand nine hundred eighty-three: *Provided*, That
28 for the prior school years, and only if there is insuffi-
29 cient classroom space available in the school or county,
30 a county may maintain one hundred ten percent of such
31 number of classrooms.

32 During the school year one thousand nine hundred
33 eighty-four—eighty-five, and thereafter, the state
34 superintendent is authorized, consistent with sound
35 educational policy, (a) to permit on a statewide basis, in
36 grades four through six, more than twenty-five pupils
37 per teacher in a classroom for the purposes of instruc-
38 tion in physical education, and (b) to permit more than
39 twenty pupils per teacher in a specific kindergarten
40 classroom and twenty-five pupils per teacher in a
41 specific classroom in grades one through six during a
42 school year in the event of extraordinary circumstances
43 as determined by the state superintendent after appli-
44 cation by a county board of education.

45 The state board shall establish guidelines for the
46 exceptions authorized in this section, but in no event
47 shall the superintendent except classrooms having more
48 than three pupils above the pupil-teacher ratio as set
49 forth in this section.

50 The requirement for approval of an exception to
51 exceed the twenty pupils per kindergarten teacher per
52 session limit or the twenty-five pupils per teacher limit

53 in grades one through six is waived in schools where the
54 schoolwide pupil-teacher ratio is twenty-five or less in
55 grades one through six: *Provided*, That a teacher shall
56 not have more than three pupils above the teacher/pupil
57 ratio as set forth in this section. Any kindergarten
58 teacher who has more than twenty pupils per session
59 and any classroom teacher of grades one through six
60 who has more than twenty-five pupils shall be paid
61 additional compensation based on the affected classroom
62 teacher's average daily salary divided by twenty for
63 kindergarten teachers or twenty-five for teachers of
64 grades one through six for every day times the number
65 of additional pupils enrolled up to the maximum pupils
66 permitted in the teacher's classroom. All such additional
67 compensation shall be paid from county funds
68 exclusively.

69 Notwithstanding any other provision of this section to
70 the contrary, commencing with the school year begin-
71 ning on the first day of July, one thousand nine hundred
72 ninety-four, a teacher in grades one, two or three or
73 classrooms having two or more such grade levels, shall
74 not have more than two pupils above the teacher/pupil
75 ratio as set forth in this section: *Provided*, That
76 commencing with the school year beginning on the first
77 day of July, one thousand nine hundred ninety-five, such
78 teacher shall not have more than one pupil above the
79 teacher/pupil ratio as set forth in this section: *Provided*
80 *however*, That commencing with the school year begin-
81 ning on the first day of July, one thousand nine hundred
82 ninety-six, such teacher shall not have any pupils above
83 the teacher/pupil ratio as set forth in this section.

84 No provision of this section is intended to limit the
85 number of pupils per teacher in a classroom for the
86 purpose of instruction in choral, band or orchestra
87 music.

88 Each school principal shall assign students equitably
89 among the classroom teachers, taking into consideration
90 reasonable differences due to subject areas and/or grade
91 levels.

92 The state board shall collect from each county board

93 of education information on class size and the number
94 of pupils per teacher for all classes in grades seven
95 through twelve. The state board shall report such
96 information to the legislative oversight commission on
97 education accountability before the first day of January
98 of each year.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-14. Contributions by members.

§18-7A-18. Funds created; fund transfers.

§18-7A-14. Contributions by members.

1 At the end of each month every member of the
2 retirement system shall contribute six percent of that
3 member's monthly earnable compensation to the retire-
4 ment board: *Provided*, That any member employed by
5 the West Virginia board of directors of the state college
6 system or the board of trustees of the university system
7 at an institution of higher education under its control
8 shall contribute on the member's full earnable compen-
9 sation, unless otherwise provided in section fourteen-a of
10 this article.

11 Annually, the contributions of each member shall be
12 credited to the member's account in the teachers
13 accumulation fund. The contributions shall be deducted
14 from the salaries of the members as herein prescribed,
15 and every member shall be deemed to have given
16 consent to such deductions. No deductions, however,
17 shall be made from the earnable compensation of any
18 member who retired because of age or service, and then
19 resumed service unless as provided in section thirteen-
20 a of this article.

21 The aggregate of employer contributions, due and
22 payable under this article, shall equal annually the total
23 deductions from the earnable compensation of members
24 required by this section. Beginning the first day of July,
25 one thousand nine hundred ninety-four, the rate shall be
26 seven and one-half percent; beginning on the first day
27 of July, one thousand nine hundred ninety-five, the rate
28 shall be nine percent; beginning on the first day of July,
29 one thousand nine hundred ninety-six, the rate shall be
30 ten and one-half percent; beginning on the first day of

31 July, one thousand nine hundred ninety-seven, the rate
32 shall be twelve percent; beginning on the first day of
33 July, one thousand nine hundred ninety-eight, the rate
34 shall be thirteen and one-half percent; and beginning on
35 the first day of July, one thousand nine hundred ninety-
36 nine and thereafter, the rate shall be fifteen percent.

37 Payment by an employer to a member of the sum
38 specified in the employment contract minus the amount
39 of the employee's deductions shall be deemed to be a full
40 discharge of the employer's contractual obligation as to
41 earnable compensation.

42 Each contributor shall file with the retirement board
43 or with the employer to be forwarded to the retirement
44 board an enrollment form showing the contributor's
45 date of birth and other data needed by the retirement
46 board.

§18-7A-18. Funds created; fund transfers.

1 The funds created are the teachers accumulation
2 fund, the employers accumulation fund, the benefit
3 fund, the reserve fund and the expense fund. Each fund
4 shall constitute a separate trust.

5 (a) The teachers accumulation fund shall be the fund
6 in which the contributions of members shall be accum-
7 ulated. The accumulated contributions of a member
8 returned to the member upon that member's withdra-
9 wal, or paid to that member's estate or designated
10 beneficiary in the event of death, shall be paid from the
11 teachers accumulation fund. Any accumulated contribu-
12 tions forfeited by failure to claim such contributions
13 shall be transferred from the teachers accumulation
14 fund to the reserve fund.

15 (b) Beginning on the first day of July, one thousand
16 nine hundred eighty-four, contributions of employers,
17 shall be deposited in the employers accumulation fund
18 through state appropriations, and such amounts shall be
19 included in the budget bill submitted annually by the
20 governor.

21 Beginning on the first day of July, one thousand nine
22 hundred ninety-two and ninety-three, each county shall

23 deposit in the employers accumulation fund an amount
24 equal to six percent of all salary paid in excess of that
25 authorized for minimum salaries in sections two and
26 eight-a, article four, chapter eighteen-a of this code and
27 any salary equity authorized in section five of said
28 article or any county supplement equal to the amount
29 distributed for salary equity among the counties;
30 beginning on the first day of July, one thousand nine
31 hundred ninety-four, the rate shall be seven and one-half
32 percent; beginning on the first day of July, one thousand
33 nine hundred ninety-five, the rate shall be nine percent;
34 beginning on the first day of July, one thousand nine
35 hundred ninety-six, the rate shall be ten and one-half
36 percent; beginning on the first day of July, one thousand
37 nine hundred ninety-seven, the rate shall be twelve
38 percent; beginning on the first day of July, one thousand
39 nine hundred ninety-eight, the rate shall be thirteen and
40 one-half percent; and beginning on the first day of July,
41 one thousand nine hundred ninety-nine and thereafter,
42 the rate shall be fifteen percent.

43 (c) The benefit fund shall be the fund from which
44 annuities shall be paid. Upon the retirement of a
45 member, that member's accumulated contributions shall
46 be transferred from the teachers accumulation fund to
47 the benefit fund; the accumulated employers' contribu-
48 tion shall be transferred from the employers accumula-
49 tion fund to the benefit fund; and annually a sum for
50 prior service pension and disability credits, if needed,
51 shall be transferred from the reserve fund to the benefit
52 fund. Any deficit occurring in the benefit fund which
53 is not automatically met by payments to that fund, as
54 provided for by this article, shall be met by additional
55 transfers from the employers accumulation fund and, if
56 necessary, by transfers from the teachers accumulation
57 fund.

58 (d) The retirement board is hereby authorized to
59 accept gifts and bequests. All gifts, bequests and
60 interest earnings from investments received by the
61 board shall be deposited in the reserve fund. Any funds
62 that may come into possession of the retirement system
63 in this manner or which may be transferred from the

64 teachers accumulation fund by reason of the lack of a
65 claimant or because of a surplus in any of the funds, or
66 any other moneys the disposition of which is not
67 otherwise provided for, shall be credited to the reserve
68 fund. The retirement board shall allow interest on the
69 contributions in the teachers accumulation fund. Such
70 interest shall be paid from the reserve fund and credited
71 to the teachers accumulation fund. Any deficit occurring
72 in any fund which would not be automatically covered
73 by the payments to that fund as otherwise provided by
74 this article shall be met by transfers from the reserve
75 fund to such fund. In the reserve fund shall be accum-
76 ulated moneys from retirement board appropriations to
77 pay the accrued liabilities of the system, caused by the
78 granting of prior service, ad hoc increases granted prior
79 to the first day of July, one thousand nine hundred
80 eighty, and disability pensions. Costs associated with
81 board investments, such as premiums, accrued interest
82 and commissions, shall be paid from the reserve fund.

83 (e) The expense fund shall be the fund from which
84 shall be paid the expense incurred in the administration
85 of the retirement system. The retirement board is
86 herewith authorized to pay, from the expense fund,
87 membership fees in such voluntary organizations as the
88 national council on teacher retirement, anything in this
89 code to the contrary notwithstanding. Interest on loans
90 to members shall be deposited in the expense fund.

91 The retirement board is herewith given sole authority
92 to direct and approve the making of any and all fund
93 transfers as provided herein, anything in this code to the
94 contrary notwithstanding.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIRE- MENT SYSTEM.

§18-7B-10. Employer contributions.

1 Each participating employer shall annually make a
2 contribution equal to seven and one-half percent of each
3 member's gross compensation whose employment
4 commenced on or after the first day of July, one
5 thousand nine hundred ninety-one: *Provided*, That
6 beginning on the first day of July, one thousand nine

7 hundred ninety-five, the rate shall be nine percent;
8 beginning on the first day of July, one thousand nine
9 hundred ninety-six, the rate shall be ten and one-half
10 percent; beginning on the first day of July, one thousand
11 nine hundred ninety-seven, the rate shall be twelve
12 percent; beginning on the first day of July, one thousand
13 nine hundred ninety-eight, the rate shall be thirteen and
14 one-half percent; and beginning on the first day of July,
15 one thousand nine hundred ninety-nine and thereafter,
16 the rate shall be fifteen percent. The pro rata share of
17 this amount shall be paid upon each date that a member
18 contribution is made and shall be remitted as provided
19 for in section nine of this article for credit to the
20 member's annuity account. Each participating employer
21 has a fiduciary duty to its employees to ensure that the
22 employer contributions are timely made. In the case of
23 an officer or employee of the state, any unpaid contri-
24 bution shall be a state debt, contracted as a result of a
25 casual deficit in state revenues, to be accorded preferred
26 status over other expenditures.

27 In the event that any payment is not timely made, the
28 participating employer shall immediately give to the
29 employee and the state auditor notice in writing of the
30 nonpayment, in such form and accompanied by such
31 documentation as may be required by the auditor.
32 Notice to the auditor shall operate in the manner of a
33 requisition, and the auditor shall transmit a warrant to
34 the treasurer. At such time as funds are available in the
35 appropriate account, the treasurer shall pay the
36 employer contribution, together with appropriate daily
37 interest.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

- §18-9A-2. Definitions.
- §18-9A-3b. Total state basic foundation program and foundation allowance for regional educational service agencies for fiscal year 1993-1994 only.
- §18-9A-4. Foundation allowance for professional educators.
- §18-9A-5. Foundation allowance for service personnel.
- §18-9A-8a. Foundation allowance for regional educational service agencies.
- §18-9A-10. Foundation allowance to improve instructional programs.
- §18-9A-11. Computation of local share; appraisal and assessment of property.
- §18-9A-12. County basic foundation; total basic state aid allowance.

§18-9A-2. Definitions.

1 For the purpose of this article:

2 "State board" means the West Virginia board of
3 education.

4 "County board" or "board" means a county board of
5 education.

6 "Professional salaries" means the state legally man-
7 dated salaries of the professional educators as provided
8 in article four, chapter eighteen-a of this code.

9 "Professional educator" shall be synonymous with and
10 shall have the same meaning as "teacher" as defined in
11 section one, article one, chapter eighteen of this code.

12 "Professional instructional personnel" means a profes-
13 sional educator whose regular duty is as that of a
14 classroom teacher, librarian, counselor, attendance
15 director, school psychologist or school nurse with a
16 bachelors degree and who is licensed by the West
17 Virginia board of examiners for registered professional
18 nurses. A professional educator having both instruc-
19 tional and administrative or other duties shall be
20 included as professional instructional personnel for that
21 ratio of the school day for which he is assigned and
22 serves on a regular full-time basis in appropriate
23 instruction, library, counseling, attendance, psychologist
24 or nursing duties.

25 "Service personnel salaries" shall mean the state
26 legally mandated salaries for service personnel as
27 provided in section eight-a, article four, chapter
28 eighteen-a of this code.

29 "Service personnel" shall mean all personnel as
30 provided for in section eight, article four, chapter
31 eighteen-a of this code. For the purpose of computations
32 under this article of ratios of service personnel to
33 adjusted enrollment, a service employee shall be counted
34 as that number found by dividing his number of
35 employment days in a fiscal year by two hundred:
36 *Provided*, That the computation for any such person
37 employed for three and one-half hours or less per day

38 as provided in section eight-a, article four, chapter
39 eighteen-a of this code shall be calculated as one half an
40 employment day.

41 "Net enrollment" means the number of pupils enrolled
42 in special education programs, kindergarten programs
43 and grades one to twelve, inclusive, of the public schools
44 of the county. Commencing with the school year
45 beginning on the first day of July, one thousand nine
46 hundred eighty-eight, net enrollment further shall
47 include adults enrolled in regular secondary vocational
48 programs existing as of the effective date of this section:
49 *Provided*, That net enrollment shall include no more
50 than one thousand such adults counted on the basis of
51 full-time equivalency and apportioned annually to each
52 county in proportion to the adults participating in
53 regular secondary vocational programs in the prior year
54 counted on the basis of full-time equivalency: *Provided*,
55 *however*, That no tuition or special fees beyond that
56 required of the regular secondary vocational student is
57 charged for such adult students.

58 "Adjusted enrollment" means the net enrollment plus
59 twice the number of pupils enrolled for special educa-
60 tion. Commencing with the school year beginning on the
61 first day of July, one thousand nine hundred ninety,
62 adjusted enrollment means the net enrollment plus
63 twice the number of pupils enrolled for special educa-
64 tion, including exceptional gifted, plus the number of
65 pupils in grades nine through twelve enrolled for honors
66 and advanced placement programs, plus the number of
67 pupils enrolled on the first day of July, one thousand
68 nine hundred eighty-nine, in the gifted program in
69 grades nine through twelve: *Provided*, That commencing
70 with the school year beginning on the first day of
71 July, one thousand nine hundred ninety, no more than
72 four percent of net enrollment of grades one through
73 eight may be counted as enrolled in gifted education and
74 no more than six percent of net enrollment of grades
75 nine through twelve may be counted as enrolled in
76 gifted education, exceptional gifted education (subject to
77 the limitation set forth in section one, article twenty of
78 this chapter) and honors and advanced placement

79 programs for the purpose of determining adjusted
80 enrollment within a county: *Provided, however,* That
81 nothing herein shall be construed to limit the number
82 of students who may actually enroll in gifted, honors or
83 advanced placement education programs in any county:
84 *Provided further,* That until the school year beginning
85 on the first day of July, one thousand nine hundred
86 ninety-two, the preceding percentage limitations shall
87 not restrict the adjusted enrollment definition for a
88 county to the extent that those limitations are exceeded
89 by students enrolled in gifted education programs on the
90 first day of July, one thousand nine hundred eighty-nine:
91 *And provided further,* That no pupil may be counted
92 more than three times for the purpose of determining
93 adjusted enrollment. Such enrollment shall be adjusted
94 to the equivalent of the instructional term and in
95 accordance with such eligibility requirements and rules
96 as established by the state board. No pupil shall be
97 counted more than once by reason of transfer within the
98 county or from another county within the state, and no
99 pupil shall be counted who attends school in this state
100 from another state.

101 "Levies for general current expense purposes" means
102 ninety-eight percent of the levy rate for county boards
103 of education calculated or set by the Legislature
104 pursuant to the provisions of section six-f, article eight,
105 chapter eleven of this code.

106 "Basic resources per pupil" for the state and the
107 several counties means the total of (a) ninety-five
108 percent of the property tax revenues computed at the
109 levy rate for county boards of education calculated or
110 set by the Legislature pursuant to the provisions of
111 section six-f, article eight, chapter eleven of this code,
112 but excluding revenues from increased levies as pro-
113 vided in section ten, article X of the Constitution of West
114 Virginia, and (b) basic state aid as provided in sections
115 twelve and thirteen of this article, but excluding the
116 foundation allowance to improve instructional programs
117 as provided in section ten of this article, and excluding
118 any funds appropriated for the purpose of achieving
119 salary equity among county board employees, this total

120 divided by the number of students in adjusted enrol-
121 lment: *Provided*, That beginning with the school year
122 commencing on the first day of July, one thousand nine
123 hundred ninety-one, and thereafter, the foundation
124 allowance for transportation costs as provided in section
125 seven of this article shall also be excluded and the total
126 shall be divided by the number of students in net
127 enrollment: *Provided, however*, That any year's alloca-
128 tions to the counties of the eighty percent portion of the
129 foundation allowance to improve instructional pro-
130 grams, as provided in section ten of this article, shall
131 be determined on the basis of the immediately preceding
132 school year's basic resources per pupil.

**§18-9A-3b. Total state basic foundation program and
foundation allowance for regional educa-
tional service agencies for fiscal year 1993-
1994 only.**

1 (a) Notwithstanding any other provision of this article
2 to the contrary, the total basic foundation program for
3 the state for the fiscal year one thousand nine hundred
4 ninety-three—ninety-four shall be the sum of the
5 following, less the county's local share:

6 (1) An allowance for professional educators in an
7 amount at least equal to six hundred twenty-three
8 million, five hundred fifteen thousand, seventy dollars;

9 (2) An allowance for service personnel in an amount
10 at least equal to one hundred ninety million, four
11 hundred forty-two thousand, three hundred eighty-two
12 dollars;

13 (3) An allowance for fixed charges in an amount
14 appropriated by the Legislature;

15 (4) An allowance for transportation costs in an amount
16 appropriated by the Legislature;

17 (5) An allowance for administrative costs in an
18 amount appropriated by the Legislature;

19 (6) An allowance for other current expense and
20 substitute employees in an amount appropriated by the
21 Legislature; and

- 22 (7) An allowance to improve instructional programs
23 in an amount 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 accor-
4 dance with provisions of article four, chapter eighteen-
5 a of this code, to the personnel employed: *Provided*, That
6 in making this computation no county shall receive an
7 allowance for the personnel which number is in excess
8 of fifty-three and one-half professional educators to each
9 one thousand students in adjusted enrollment: *Provided*,
10 *however*, That any county not qualifying under the
11 provision of section fourteen of this article is eligible for
12 a growth rate in professional personnel in any one year
13 not to exceed twenty percent of its total potential
14 increase under this provision, except that in no case
15 shall the limit be fewer than five professionals: *Provided*
16 *further*, That the number of and the allowance for
17 personnel paid in part by state and county funds shall
18 be prorated: *And provided further*, That where two or
19 more counties join together in support of a vocational or
20 comprehensive high school or any other program or
21 service, the professional educators for the school or
22 program may be prorated among the participating
23 counties on the basis of each one's enrollment therein
24 and that the personnel shall be considered within the
25 above-stated limit: *And provided further*, That in the
26 school year beginning the first day of July, one thousand
27 nine hundred eighty-eight, and in each school year
28 thereafter, each county board shall establish and
29 maintain a minimum ratio of fifty professional instruc-
30 tional personnel per one thousand students in adjusted
31 enrollment: *And provided further*, That no permanent
32 substitute shall be included in the minimum ratio for
33 professional instructional personnel. Permanent substi-
34 tutes may be included in the computation for profes-
35 sional educators. For the purposes of this section,
36 permanent substitute means a full-time employee who
37 performs the duties of a day-to-day substitute: *And*

38 *provided further*, That no county shall have less than a
39 total of five principals and central office administrators.
40 Any county board which does not establish and maintain
41 this minimum ratio shall suffer a pro rata reduction in
42 the allowance for professional educators under this
43 section: *And provided further*, That no county shall be
44 penalized if it has increases in enrollment during that
45 school year: *And provided further*, That any county
46 board which does not establish and maintain this
47 minimum ratio shall utilize any and all allocations to it
48 by provision of section fourteen of this article solely to
49 employ professional instructional personnel until the
50 minimum ratio is attained. Every county shall utilize
51 methods other than reductions in force, such as attrition
52 and early retirement, before implementing their
53 reductions in force policy to comply with the limitations
54 of this section. It is the intent of the Legislature that in
55 planning reductions in force to comply with reduced
56 ratios of professional educators to students in adjusted
57 enrollment, county boards shall consider positions for
58 elimination in the following order: (1) Central office
59 administrators, (2) assistant principals, and (3)
60 principals.

61 No county shall increase the number of administra-
62 tive personnel employed as either professional educators
63 or pay grade "H" service personnel above the number
64 which were employed, or for which positions were
65 posted, on the thirtieth day of June, one thousand nine
66 hundred ninety, and, therefore, county boards shall
67 whenever possible utilize classroom teachers for curric-
68 ulum administrative positions through the use of
69 modified or extended contracts: *Provided*, That the
70 governor shall submit a recommendation to the Legis-
71 lature at the beginning of the regular session thereof in
72 the year one thousand nine hundred ninety-one, which
73 proposes a method for establishing a responsible level
74 of administrative support for each county school system
75 and a pay scale differentiation on a daily rate between
76 classroom positions and administrative positions when
77 all other factors are equal.

§18-9A-5. Foundation allowance for service personnel.

1 The basic foundation allowance to the county for
2 service personnel shall be the amount of money required
3 to pay the annual state minimum salaries in accordance
4 with the provisions of article four, chapter eighteen-a of
5 this code, to such service personnel employed: *Provided,*
6 That no county shall receive an allowance for an amount
7 in excess of thirty-four service personnel per one
8 thousand students in adjusted enrollment: *Provided,*
9 *however,* That the state superintendent of schools is
10 authorized in accordance with rules and regulations
11 established by the state board and upon request of a
12 county superintendent to waive the maximum ratio of
13 thirty-four service personnel per one thousand students
14 in adjusted enrollment and the twenty percent per year
15 growth cap provided in this section, to the extent
16 appropriations are provided, in those cases where the
17 state superintendent determines that student population
18 density and miles of bus route driven justify the waiver,
19 except that no waiver shall be granted to any county
20 whose financial statement shows a net balance in
21 general current expense funds greater than three
22 percent at the end of the previous fiscal year: *Provided*
23 *further,* That on or before the first day of each regular
24 session of the Legislature, the state board, through the
25 state superintendent, shall make to the Legislature a full
26 report concerning the number of waivers granted and
27 the fiscal impact related thereto. Every county shall
28 utilize methods other than reduction in force, such as
29 attrition and early retirement, before implementing
30 their reductions in force policy to comply with the
31 limitations of this section.

32 For any county which has in excess of thirty-four
33 service personnel per one thousand students in adjusted
34 enrollment, the allowance shall be computed based upon
35 the average state minimum pay scale salary of all
36 service personnel in the county: *Provided,* That for any
37 county having fewer than thirty-four service personnel
38 per one thousand students in adjusted enrollment, in any
39 one year, the number of service personnel used in
40 making this computation may be increased the succeed-
41 ing years by no more than twenty percent per year of
42 its total potential increase under this provision, except

43 that in no case shall the limit be fewer than two service
44 personnel until the county attains the maximum ratio
45 set forth: *Provided, however,* That where two or more
46 counties join together in support of a vocational or
47 comprehensive high school or any other program or
48 service, the service personnel for the school or program
49 may be prorated among the participating counties on
50 the basis of each one's enrollment therein and that the
51 personnel shall be considered within the above-stated
52 limit.

§18-9A-8a. Foundation allowance for regional educational service agencies.

1 For the fiscal year beginning on the first day of July,
2 one thousand nine hundred ninety-one, and for each
3 fiscal year thereafter, the foundation allowance for
4 regional educational service agencies shall be equal to
5 sixty-three one-hundredths percent of the allocation for
6 professional educators as determined in section four of
7 this article: *Provided,* That for the fiscal year beginning
8 on the first day of July, one thousand nine hundred
9 ninety-three only, the foundation allowance for regional
10 educational service agencies shall be at least equal to
11 fifty-five one-hundredths percent of the allocation for
12 professional educators as determined in section four of
13 this article. The allowance shall be distributed to the
14 regional educational service agencies in accordance with
15 rules adopted by the state board. The allowance for
16 regional educational service agencies shall be excluded
17 from the computation of total basic state aid as provided
18 for in section twelve of this article.

§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-three only,
3 thirty-two million, five hundred twenty thousand, nine
4 hundred ninety-four dollars, unless a greater amount is
5 appropriated by the Legislature, in addition to funds
6 which accrue from allocations due to increase in total
7 local share above that computed for the school year
8 beginning on the first day of July, one thousand nine

9 hundred ninety-three, from balances in the general
10 school fund, or from appropriations for such purpose
11 shall be allocated to increase state support of counties
12 as follows: *Provided*, That for the school year beginning
13 on the first day of July, one thousand nine hundred
14 ninety-three only, no county shall gain more than
15 seventy-three and sixty-six one-hundredths percent or
16 lose more than twenty-six and thirty-four one-hun-
17 dredths percent over the previous year's allocation:
18 *Provided, however*, That for the school year beginning
19 on the first day of July, one thousand nine hundred
20 ninety-four and thereafter, the sum of the allocations
21 shall be in an amount at least equal to the amount
22 appropriated by the Legislature, in addition to funds
23 which accrue from allocations due to increase in total
24 local share above that computed for the previous school
25 year, from balances in the general school fund, or from
26 appropriations for such purposes:

27 (1) One hundred fifty thousand dollars shall be
28 allocated to each county; and

29 (2) Distribution to the counties of the remainder of
30 these funds shall be made proportional to the average
31 of each county's average daily attendance for the
32 preceding year and the county's second month net
33 enrollment.

34 Moneys allocated by provision of this section shall be
35 used to improve instructional programs according to a
36 plan for instructional improvement which the affected
37 county board shall file with the state board by the first
38 day of August of each year, to be approved by the state
39 board by the first day of September of that year if such
40 plan substantially complies with standards to be
41 adopted by the state board: *Provided*, That notwith-
42 standing any other provision of this code to the contrary,
43 moneys allocated by provision of this section may also
44 be used in the implementation and maintenance of the
45 uniform integrated regional computer information
46 system.

47 (3) For the school year beginning on the first day of
48 July, one thousand nine hundred ninety-three, up to

49 twenty-five percent of this allocation may be used to
50 employ professional educators and/or service personnel
51 in counties after all applicable provisions of sections four
52 and five of this article have been fully utilized.

53 Prior to the use of any funds from this section for
54 personnel costs, the county board must receive author-
55 ization from the state superintendent of schools. The
56 state superintendent shall require the district board to
57 demonstrate: (1) The need for the allocation, (2)
58 efficiency and fiscal responsibility in staffing, and (3)
59 sharing of services with adjoining counties and the
60 regional educational service agency for that county in
61 the use of the total local district board budget. District
62 boards shall make application for available funds by the
63 first day of May: *Provided*, That for the school year
64 beginning on the first day of July, one thousand nine
65 hundred ninety-three only, district boards shall make
66 application for available funds by the fifteenth day of
67 June, one thousand nine hundred ninety-three. On or
68 before the first day of June, the state superintendent
69 shall review all applications and notify applying district
70 boards of the distribution of the allocation: *Provided*,
71 *however*, That for the school year beginning on the first
72 day of July, one thousand nine hundred ninety-three
73 only, the state superintendent shall review all applica-
74 tions and notify applying district boards of the distri-
75 bution of the allocation on or before the first day of July,
76 one thousand nine hundred ninety-three. Such funds
77 shall be distributed during the fiscal year as approp-
78 riate. The state superintendent shall require the county
79 board to demonstrate the need for an allocation for
80 personnel based upon the county's inability to meet the
81 requirements of state law or state board policy: *Provided*
82 *further*, That the funds available for personnel under
83 this section may not be used to increase the total number
84 of professional noninstructional personnel in the central
85 office beyond four. Such instructional improvement plan
86 shall be made available for distribution to the public at
87 the office of each affected county board.

88 (b) Commencing with the school year beginning on the
89 first day of July, one thousand nine hundred ninety-

90 three, thirty-five million, four hundred forty thousand,
91 four hundred ninety-three dollars shall be paid into the
92 school building capital improvements fund created by
93 section six, article nine-d of this chapter, and shall be
94 used solely for the purposes of said article nine-d:
95 *Provided*, That in the event that additional money is
96 authorized for expenditure for new construction bonds,
97 then this appropriation shall be increased in an amount
98 no less than the new debt service. In each fiscal year
99 thereafter, fifty percent of the funds which accrue due
100 to an increase in local share above that computed for the
101 school year beginning on the first day of July, one
102 thousand nine hundred eighty-seven, shall be paid into
103 the school building capital improvements fund created
104 by section six, article nine-d of this chapter, and shall
105 be used solely for the purposes of said article nine-d:
106 *Provided, however*, That if funds are available and
107 appropriated in each such subsequent fiscal year, not
108 less than seven million seven hundred thousand dollars
109 shall be added to the amount of the prior year's
110 appropriation for such fund.

**§18-9A-11. Computation of local share; appraisal and
assessment of property.**

1 (a) For the fiscal year beginning on the first day of
2 July, one thousand nine hundred ninety-three, and
3 thereafter, on the basis of each county's certificates of
4 valuation as to all classes of property as determined and
5 published by the assessors pursuant to section six,
6 article three, chapter eleven of this code for the next
7 ensuing fiscal year in reliance upon the assessed values
8 annually developed by each county assessor pursuant to
9 the provisions of article one-c and article three, chapter
10 eleven of this code, the state board shall for each county
11 compute by application of the levies for general current
12 expense purposes, as defined in section two of this
13 article, the amount of revenue which such levies would
14 produce if levied upon one hundred percent of the
15 assessed value of each of the several classes of property
16 contained in the report or revised report of such value,
17 made to it by the tax commissioner as follows:

18 (1) The state board shall first take ninety-five percent

19 of the amount ascertained by applying these rates to the
20 total assessed public utility valuation in each classifica-
21 tion of property in the county.

22 (2) The state board shall then apply these rates to the
23 assessed taxable value of other property in each
24 classification in the county as determined by the tax
25 commissioner and shall deduct therefrom five percent
26 as an allowance for the usual losses in collections due
27 to discounts, exonerations, delinquencies and the like.
28 All of the amount so determined shall be added to the
29 ninety-five percent of public utility taxes computed as
30 provided above, and this total shall be further reduced
31 by the amount due each county assessor's office pursuant
32 to the provisions of section eight, article one-c, chapter
33 eleven of this code, and this amount shall be the local
34 share of the particular county.

35 As to any estimations or preliminary computations of
36 local share that may be required prior to the report to
37 the Legislature by the tax commissioner, the state board
38 of education shall use the most recent projections or
39 estimations that may be available from the tax depart-
40 ment for such purpose.

41 (b) Whenever in any year a county assessor or a
42 county commission shall fail or refuse to comply with
43 the provisions of this section in setting the valuations of
44 property for assessment purposes in any class or classes
45 of property in the county, the state tax commissioner
46 shall review the valuations for assessment purposes
47 made by the county assessor and the county commission
48 and shall direct the county assessor and the county
49 commission to make such corrections in the valuations
50 as may be necessary so that they shall comply with the
51 requirements of chapter eleven of this code and this
52 section, and the tax commissioner shall enter the county
53 and fix the assessments at the required ratios. Refusal
54 of the assessor or the county commission to make such
55 corrections shall constitute ground for removal from
56 office.

§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: *Provided*, That said adjustment shall not be made
38 or shall only be made proportionately when the Legis-
39 lature fails to fund or funds only in part the public
40 school basic foundation support plan state share at a
41 level sufficient to cover the reduction in state share:

42 *Provided, however,* That nothing herein provided shall
43 be construed to require or mandate any level of funding
44 by the Legislature.

45 (2) In those instances where the local share as
46 computed under section eleven of this article is not
47 reflective of local funds available because the county is
48 collecting tax based upon an assessed value which is less
49 than that determined by the tax commissioner in the
50 most recent published survey of property valuations in
51 the state due to an error in the published survey, which
52 error is certified to by the tax commissioner, the
53 allocated state aid share shall be the county's basic
54 foundation program, minus the local share as computed
55 under section eleven of this article, plus the amount of
56 property tax the county is unable to collect based on
57 differences in the assessed valuation between those in
58 the most recent published survey of valuation and the
59 corrected assessed value actually levied upon by the
60 county: *Provided,* That said adjustment shall not be
61 made or shall only be made proportionately when the
62 Legislature fails to fund or funds only in part the public
63 school basic foundation support plan state share at a
64 level sufficient to cover the reduction in state share:
65 *Provided, however,* That nothing herein provided shall
66 be construed to require or mandate any level of funding
67 by the Legislature.

68 (3) In instances where a county is unable to collect
69 property taxes from a taxpayer during the pendency of
70 any court proceeding, the allocated state aid share shall
71 be the county's basic foundation program minus the
72 local share as computed under section eleven of this
73 article, plus the amount the county is unable to collect
74 as a result of the pending court proceedings as certified
75 by the tax commissioner: *Provided,* That the county is
76 required to reimburse the amount of allocated state aid
77 share attributable to the amount of property tax it later
78 receives upon completion of court proceedings, which
79 shall be paid into the general revenue fund of the state:
80 *Provided, however,* That said adjustment shall not be
81 made or shall only be made proportionately when the
82 Legislature fails to fund or funds only in part the public

83 school basic foundation support plan state share at a
84 level sufficient to cover the reduction in state share:
85 *Provided further*, That nothing herein provided shall be
86 construed to require or mandate any level of funding by
87 the Legislature.

88 (c) The allocated state aid share shall be adjusted in
89 any county receiving payments or contributions in lieu
90 of property taxes. In instances where a county receives
91 payments or contributions in lieu of property taxes, the
92 allocated state aid share shall be the county's basic
93 foundation program minus the local share as computed
94 under section eleven of this article, plus any amounts
95 added pursuant to subsection (b) of this section minus
96 the payments or contributions in lieu of property taxes
97 which are distributed by the sheriff to the county board
98 of education. In determining the amount of such
99 contribution or payment in lieu of taxes, each county
100 commission shall provide to the state tax commissioner,
101 by the first day of January of each year, the total
102 amount of such payments or contributions paid to the
103 county and the proportion of the total amount that has
104 been or will be distributed to the county board of
105 education. The state tax commissioner then shall
106 provide the state board, by the fifteenth day of January
107 of each year, a certified listing of those counties in which
108 an adjustment pursuant to this section shall be made,
109 together with the amount of revenue which will be
110 available to each county board in the ensuing fiscal year
111 as a result of contribution or payment in lieu of taxes.

112 (d) Total basic state aid to the county shall be the
113 computed state share of basic foundation support. After
114 such computation is completed, the state board shall
115 immediately certify to each county board the amount of
116 state aid allocated to the county for that fiscal year,
117 subject to any qualifying provisions of this article.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

- §18A-4-7b. Calculation of seniority for professional personnel.
§18A-4-17. Health and other facility employee salaries.

§18A-4-7b. Calculation of seniority for professional personnel.

1 Notwithstanding any other provision of this code to
2 the contrary, seniority for professional personnel as
3 defined in section one, article one, chapter eighteen-a of
4 this code shall be calculated pursuant to the provisions
5 of section seven-a of this article as well as the following:
6 *Provided*, That any recalculation of seniority of a
7 professional personnel employee that may be required
8 in order to remain consistent with the provisions
9 contained herein shall be calculated retroactively, but
10 shall not be utilized for the purposes of reversing any
11 decision that has been made or grievance that has been
12 filed prior to the effective date of this section:

13 (a) A professional employee shall begin to accrue
14 seniority upon commencement of the employee's duties.

15 (b) An employee shall receive seniority credit for each
16 day the employee is professionally employed regardless
17 of whether the employee receives pay for that day:
18 *Provided*, That no employee shall receive seniority credit
19 for any day the employee is suspended without pay
20 pursuant to section eight, article two of this chapter:
21 *Provided, however*, That an employee who is on an
22 approved leave of absence shall accrue seniority during
23 the period of time that the employee is on the approved
24 leave of absence.

25 (c) Any professional employee whose employment
26 with a county board of education is terminated either
27 voluntarily or through a reduction-in-force shall, upon
28 reemployment with the same board of education in a
29 regular full-time position, receive credit for all seniority
30 previously accumulated with the board of education at
31 the date the employee's employment was terminated.

32 (d) Any professional employee employed for a full
33 employment term but in a part-time position shall
34 receive seniority credit for each day of employment
35 prorated to the proportion of a full employment day the
36 employee is required to work: *Provided*, That nothing
37 herein allows a regular full-time employee to be credited
38 with less than a full day of seniority credit for each day

39 the employee is employed by the board: *Provided,*
40 *however,* That this calculation of seniority for part-time
41 professional personnel is prospective and does not
42 reduce any seniority credit accumulated by any em-
43 ployee prior to the effective date of this section: *Provided*
44 *further,* That for the purposes of this section a part-time
45 employee shall be defined as an employee who is
46 employed less than three and one-half hours per day.

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

1 (a) The minimum salary scale for professional
2 personnel and service personnel employed by the state
3 department of education to provide educational and
4 support services to residents of state department of
5 health and human resources facilities, corrections
6 facilities providing services to juvenile and youthful
7 offenders, and in the West Virginia schools for the deaf
8 and the blind or professional personnel employed by the
9 division of rehabilitation services facilities, shall be the
10 same as set forth in sections two, three and eight-a of
11 this article. Additionally, such personnel shall receive
12 the equivalent of salary supplements paid to professional
13 and service personnel employed by the county board of
14 education in the county wherein each facility is located,
15 as set forth in sections five-a and five-b of this article.
16 Professional personnel and service personnel in these
17 facilities who earn advanced classification of training
18 after the effective date of this section shall be paid such
19 advanced salary from the date such classification of
20 training is earned: *Provided,* That beginning on the first
21 day of July, one thousand nine hundred ninety-four,
22 teachers employed at the state division of rehabilitation
23 services facilities shall be required to be certified,
24 licensed or trained and/or shall meet other eligibility
25 classifications as may be required by the provisions of
26 this chapter and by state board regulations for compar-
27 able instructional personnel who are employed by
28 county boards of education, and shall be paid at the
29 equivalent rate of pay of teachers as set forth in section
30 two of this article, but outside the public support plan,
31 plus the equivalent of the salary supplement paid to
32 teachers employed by the county board of education in

33 the county wherein each facility is located, as set forth
34 in section five-a of this article.

35 (b) Professional personnel employed by the depart-
36 ment to provide educational service to residents in state
37 department of health and human resources facilities,
38 corrections facilities providing services to juvenile and
39 youthful offenders, or in the West Virginia schools for
40 the deaf and the blind, or professional personnel
41 employed by the division of rehabilitation services
42 facilities, shall be afforded all the rights, privileges and
43 benefits established for such professional personnel
44 under this article: *Provided*, That such benefits shall
45 apply only within the facility at which employed:
46 *Provided, however*, That benefits shall exclude salaries
47 unless explicitly provided for under this or other
48 sections of this article: *Provided further*, That seniority
49 for such professional personnel shall be determined on
50 the basis of the length of time that the employee has
51 been professionally employed at the facility, regardless
52 of which state agency was the actual employer.

53 (c) Nothing contained in this section shall be
54 construed to mean that professional personnel and
55 service personnel employed by the department of
56 education to provide educational and support services to
57 residents in state department of health and human
58 resources facilities, corrections facilities providing
59 services to juvenile and youthful offenders and the West
60 Virginia schools for the deaf and the blind, or profes-
61 sional personnel employed to provide professional
62 education services in the division of rehabilitation
63 services facilities are other than state employees.

CHAPTER 9

(H. B. 106—(By Mr. Speaker, Mr. Chambers, and Delegate Burk
By Request of the Executive)

[Passed May 18, 1993; in effect from passage. Approved by the Governor.]

AN ACT to repeal section six, article nine-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the prohibition of

imposing more restrictive laws, rules or regulations on the use, sale or distribution of tobacco products.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§1. Repeal of section relating to the prohibition of imposing more restrictive laws, rules or regulations on the use, sale or distribution of tobacco products.

- 1 Section six, article nine-a, chapter sixteen of the code
- 2 of West Virginia, one thousand nine hundred thirty-one,
- 3 as amended, is hereby repealed.

CHAPTER 10

**(H. B. 101—(By Mr. Speaker, Mr. Chambers, and Delegate Burk
By Request of the Executive)**

[Passed May 21, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT providing for the payment of the veterans bonus to veterans of the Persian Gulf, Panama, Grenada and Lebanon conflicts and for the administration thereof; definitions; prohibiting certain acts with respect thereto; and prescribing penalties for the violation of such provisions.

Be it enacted by the Legislature of West Virginia:

PAYMENT OF VETERANS BONUS.

- §1. Division of veterans affairs to administer act; veterans advisory committee.
- §2. Veterans entitled to bonus.
- §3. Payment of bonus to relatives of deceased veterans.
- §4. Amount of bonus.
- §5. Limitation on time of filing application.
- §6. Determination of director of the validity of claims.
- §7. Review of board hearing.
- §8. Court review of final orders of review board.
- §9. Legislative appropriations paid into veterans bonus fund; expenditures; investment thereof; unexpended balance.
- §10. Penalty for making false statements.
- §11. Penalty for filing more than one application.

§12. Bonus payment not subject to taxation or legal process; claim therefor not assignable.

§13. Collection of fees or charges; penalty.

§1. Division of veterans affairs to administer act; veterans advisory committee.

1 The West Virginia division of veterans affairs is
2 hereby designated as the state agency to administer the
3 provisions of this bill. The director of the division of
4 veterans affairs shall do all things necessary for the
5 proper administration thereof. The director, with the
6 advice and consent of the veterans council, may adopt
7 and promulgate such reasonable rules and regulations,
8 not inconsistent herewith, as may be necessary to effect
9 the purposes of this bill, including regulations concern-
10 ing evidence or other data required to establish
11 eligibility and qualifications for the bonus as herein
12 provided. The director shall prepare and furnish all
13 necessary forms which shall be distributed by him or
14 her through such veterans and other organizations as he
15 or she may deem most practicable.

16 The division of veterans affairs shall, insofar as
17 possible, utilize the personnel, supplies and equipment
18 of the division in the administration of this bill. The
19 division may employ such additional personnel as may
20 be necessary for the proper administration of this bill,
21 subject, however, to the approval of the secretary of the
22 department of military affairs and public safety who
23 must also approve the salaries and other compensation
24 for such personnel.

25 The governor may appoint a veterans advisory
26 committee, consisting of representatives of veterans
27 organizations chartered under acts of Congress and
28 operating in this state, to advise and counsel with the
29 director in the administration of this bill. Such commit-
30 tee shall meet on the call of the director at such times
31 and places as he or she may specify.

§2. Veterans entitled to bonus.

1 In grateful recognition of their services in time of
2 grave national emergency, a cash bonus as herein
3 provided shall be paid to veterans of the Persian Gulf,

4 Panama, Grenada and Lebanon conflicts. Such bonus
5 shall be paid to (1) all persons who served on active duty
6 in the armed forces of the United States or who were
7 members of reserve components called to active duty in
8 the armed forces of the United States by the President
9 of the United States under Title 10, United States Code
10 section 782(D), 783, or 783(B), during the Persian Gulf
11 conflict, Operation Desert Shield/Desert Storm, between
12 the first day of August, one thousand nine hundred
13 ninety and the eleventh day of April, one thousand nine
14 hundred ninety-one, both dates inclusive, and (2) all
15 veterans, active service members, or members of reserve
16 components, of the armed forces of the United States,
17 who served on active duty in one of the military
18 operations referred to herein for which he or she
19 received a campaign badge or expeditionary medal
20 during the periods hereinafter described. For purposes
21 of this bill, periods of active duty in a campaign or
22 expedition are designated as: The conflict in Panama,
23 between the twentieth day of December, one thousand
24 nine hundred eighty-nine, through the thirty-first day of
25 January, one thousand nine hundred ninety, both dates
26 inclusive; the conflict in Grenada, between the twenty-
27 third day of October, one thousand nine hundred eighty-
28 three, and the twenty-first day of November, one
29 thousand nine hundred eighty-three, both dates inclu-
30 sive; and the conflict in Lebanon, between the twenty-
31 fifth day of August, one thousand nine hundred eighty-
32 two, and the twenty-sixth day of February, one thousand
33 nine hundred eighty-four, both dates inclusive: *Pro-*
34 *vided*, That said bonus shall only be paid to the veterans
35 as described herein who were bona fide residents of the
36 state of West Virginia at the time of their entry into
37 such service and for a period of at least six months
38 immediately prior thereto, who have not been separated
39 from such armed forces under conditions other than
40 honorable and who within the periods specified above,
41 actively served in such armed forces for a period of at
42 least ninety days.

43 Such cash bonus shall also be paid to any disabled

44 veteran otherwise qualified, who was discharged within
45 ninety days after entering the armed forces because of
46 a service-connected disability.

47 As used in this bill, "armed forces" means the army,
48 navy, air force, marine corps and coast guard of the
49 United States.

50 As used in this bill, "active duty" means full-time
51 active service in the armed forces with full duty pay
52 status, but shall not include time absent from leave,
53 absent over leave, while in confinement or any other
54 time classified by the respective branches of the armed
55 forces as "bad" or "lost" time.

56 For purposes of this bill, "active service" shall mean
57 the person's active duty as a member of one of the armed
58 forces during the periods of conflict referred to herein.

59 As used in this bill, "bona fide resident" shall mean
60 any person who, at the time of his or her entry into
61 active service as such is defined herein, was a legal
62 resident of the state of West Virginia. Evidence of legal
63 residence shall be shown by the presentation of evidence
64 that the person filed a West Virginia personal income
65 tax for the tax year immediately preceding his or her
66 entry into active service or proof that he or she
67 maintained a permanent place of abode in West
68 Virginia at the time of his or her entry into active
69 service and for a period of at least six months prior to
70 entry into active service.

§3. Payment of bonus to relatives of deceased veterans.

1 The bonus to which any deceased veteran would have
2 been entitled, had he or she lived, shall be paid only to
3 the following surviving relatives of such veteran,
4 provided that such relatives are residents of this state
5 when application for payment is made and if such
6 relatives are living at the time payment is made: Any
7 unremarried widow or widower, or, if none, all children,
8 stepchildren and adopted children under the age of
9 eighteen, or if none, any parent, stepparent, adoptive
10 parent or person standing in loco parentis. The catego-
11 ries of persons listed shall be treated as separate

12 categories listed in order of entitlement and where there
13 be more than one member of a class, the bonus shall be
14 paid to each member according to his or her propor-
15 tional share. Where a deceased veteran's death was
16 connected with such service and resulted from such
17 service during the time period specified, however, the
18 surviving relatives shall be paid, in accordance with the
19 same order of entitlement, the sum of one thousand
20 dollars in lieu of any bonus to which the deceased might
21 have been entitled if living.

22 As used in this bill, "unremarried widow" or "unrem-
23 arried widower" means the spouse of a deceased veteran,
24 legally married to the veteran at the time of his or her
25 death, who has not remarried at the time of making
26 application.

27 As used in this bill, "child" means the natural child,
28 adopted child or stepchild of the deceased veteran upon
29 whose service eligibility is derived and who has not
30 attained the age of eighteen years at the time of making
31 application.

32 As used in this bill, "parent" means either of the
33 natural, step, or adoptive father or mother of, or person
34 standing in loco parentis to, the deceased veteran upon
35 whose service eligibility is derived.

§4. Amount of bonus.

1 The amount of bonus shall be five hundred dollars per
2 eligible person who was in active service, inside the
3 combat zone designated by the President or Congress of
4 the United States at any time during the dates specified
5 herein. In the case of the Persian Gulf conflict, the
6 amount of bonus shall be three hundred dollars per
7 eligible person who was in active service outside the
8 combat zone designated by the President or Congress of
9 the United States during the dates specified herein. For
10 purposes of this bill not more than one bonus shall be
11 paid to or on behalf of the service of any one veteran.
12 In the event any veteran is eligible to receive more than
13 one bonus, said veteran shall receive the greater bonus.

§5. Limitation on time of filing application.

1 No bonus shall be paid to any person, otherwise
2 entitled thereto, unless application therefor shall be filed
3 with the division of veterans affairs on or before the
4 thirtieth day of June, one thousand nine hundred ninety-
5 four. Warrants for the payment of any bonus shall be
6 issued or reissued to any applicant on or before the
7 thirtieth day of June, one thousand nine hundred ninety-
8 five.

§6. Determination of director of the validity of claims.

1 Upon receipt of an application for benefits hereunder,
2 the director shall, as soon as may be practicable,
3 determine the validity of the claim. As soon as such
4 determination has been made, the director shall mail to
5 the applicant a warrant in the amount of the bonus
6 payment he or she finds to be due. If the determination
7 is made that no benefits hereunder are payable, then the
8 director shall mail to the applicant a notification
9 denying benefits and citing the reason or reasons for
10 such denial.

11 Any applicant who is aggrieved by any such determi-
12 nation of the director may demand that his or her claim
13 be reviewed as hereinafter provided. Such demand for
14 review shall be filed with the director, in writing, within
15 sixty days after the date on which the warrant of award
16 or notice of denial was mailed to the applicant. Upon
17 receipt of such demand for review, the director shall
18 certify the demand, together with all files and records
19 relating to the application, to a board of review. Unless
20 such demand for review is duly filed with the director,
21 all findings and orders of the director with reference to
22 such claim shall be final and conclusive upon the
23 applicant.

§7. Review of board hearing.

1 For the purposes of this bill, the veterans council of
2 the division of veterans affairs is hereby designated as
3 the "Veterans Bonus Board of Review." Under rules and
4 regulations adopted by the veterans council, any one or
5 more members of the board of review may conduct
6 hearings on a demand by an applicant for review of the
7 determination of the director, and may report his or her

8 or their findings thereon, together with the entire record
9 of the case, to the board of review for its final deter-
10 mination and decision.

11 If the number of demands for review hereunder shall
12 become too numerous to be handled expeditiously by the
13 veterans council, the governor, upon the recommenda-
14 tion of the council, may appoint one or more additional
15 boards of review. Additional boards shall consist of not
16 more than three members, one of whom shall be a
17 lawyer, who shall have the same qualifications as the
18 members of the veterans council, and who shall serve
19 at the will and pleasure of the governor for such time
20 as may be necessary for the purposes of this bill. Each
21 such additional board of review shall have the same
22 authority and its final decision shall have the same force
23 and effect as that of the veterans council under the
24 provisions of this bill.

25 Upon receipt from the director of the files and records
26 relating to any claim, the board, or a member or
27 members thereof, as the case may be, shall fix a time
28 and place for a hearing thereon. The applicant shall be
29 notified of the time and place fixed and shall be
30 informed of his or her right to demand a public hearing
31 if he or she so desires. At the hearing the claim shall
32 be reexamined de novo and the submission of additional
33 evidence may be required or permitted. Upon the
34 conclusion of such hearing, the board of review, on the
35 basis of the record and the recommendations, if any,
36 made by the member or members who conducted the
37 hearing, shall enter its order reversing, affirming or
38 modifying the determination made by the director.

39 Any order so entered by the board shall be final and
40 conclusive upon the applicant and the director unless an
41 application is made for review to the West Virginia
42 supreme court of appeals as hereinafter provided. The
43 board shall mail to the applicant and to the director a
44 copy of the order entered by it in each case.

45 All notices and correspondence shall be directed to the
46 applicant at the address listed on his or her application
47 and all notices and correspondence to the director shall

48 be addressed to him or her at his or her office in the
49 city of Charleston.

50 The director shall provide for each board of review
51 such clerical and stenographic assistants and such
52 supplies as may be necessary for the performance of its
53 duties.

54 Each member of a board of review shall receive as
55 compensation fifty dollars per day for each day actually
56 spent in the performance of his or her duties under the
57 provisions of this bill, and shall be reimbursed for all
58 reasonable and necessary expenses actually incurred by
59 him or her in the performance of such duties.

§8. Court review of final orders of review board.

1 Within thirty days after notification of the entry of
2 any final order of a board of review, the director or the
3 applicant affected may petition for review of such order
4 by the West Virginia supreme court of appeals in the
5 same manner and within the same period of time as is
6 provided by section four, article five, chapter twenty-
7 three of the code, for judicial review of final decisions
8 by the workers' compensation appeal board.

§9. Legislative appropriations paid into veterans bonus fund; expenditures; investment thereof; unexpended balance.

1 All money as appropriated by the Legislature for the
2 payment of a cash bonus to veterans as provided in the
3 veterans bonus amendment of 1992 shall be paid into the
4 veterans bonus fund which is hereby created in the
5 office of the state treasurer and such fund shall be
6 expended solely for the payment of such veterans bonus
7 and the cost of administration necessarily incident
8 thereto. Except for such sums necessary for current
9 operating balances, such fund shall be invested and
10 reinvested by the West Virginia state board of invest-
11 ments in accordance with the provisions of article six,
12 chapter twelve of the code of West Virginia, one
13 thousand nine hundred thirty-one, as amended: *Pro-*
14 *vided*, That no such investment or reinvestment shall
15 adversely affect the current operating balances of such

16 fund. Any unexpended balance remaining in this fund
17 after payment of all legal bonuses and other expenses
18 and costs have been made or adequately provided for
19 shall be available for appropriation by the Legislature.

§10. Penalty for making false statements.

1 Any person who shall knowingly make any false or
2 misleading statement or representation, oral or written,
3 in support of any claim for a bonus under the provisions
4 of this bill, shall be guilty of a felony, and, upon
5 conviction thereof, shall be punished by imprisonment
6 in the penitentiary for not less than one nor more than
7 five years.

§11. Penalty for filing more than one application.

1 Only one application shall be filed by any veteran or
2 by any person who claims to be entitled to a share of
3 the bonus payable in the case of any deceased veteran.
4 Any person who, with intent to defraud, violates the
5 provisions of this section shall be guilty of a felony, and,
6 upon conviction thereof, shall be punished by a fine of
7 not less than five hundred dollars nor more than one
8 thousand dollars, or by imprisonment in the peniten-
9 tiary for not less than one nor more than two years, or
10 by both such fine and imprisonment.

§12. Bonus payment not subject to taxation or legal process; claim therefor not assignable.

1 The bonus provided by this bill is hereby declared to
2 be a gift or gratuity made as a token of appreciation for
3 the service rendered by the veteran to the people of West
4 Virginia in time of grave national emergency and is in
5 no sense compensation for such services. The money
6 received as such bonus shall be exempt from taxation
7 and such money, or any claim therefor, shall not be
8 subject to garnishment, attachment or levy of execution.
9 A claim for payment of a bonus under the provisions of
10 this bill shall not be assignable for any purpose
11 whatsoever.

§13. Collection of fees or charges; penalty.

1 No fee or charge shall be made by any person,
2 attorney, agent or representative for any service in
3 connection with the filing of an application for payment
4 of a bonus hereunder, except such fees as are provided
5 by law for the performance of official duties by a duly
6 elected or appointed officer of this state or a political
7 subdivision thereof. No person shall, for a consideration,
8 discount or attempt to discount or advance money upon
9 any warrant issued for payment of any bonus provided
10 for in this bill.

11 If an applicant shall employ an attorney to represent
12 him or her in connection with the prosecution of his or
13 her claim before a board of review, or before the
14 supreme court of appeals, the attorney shall file with the
15 director an executed copy of his or her contract of
16 employment, and the total amount of the fee therein
17 provided shall not exceed twenty-five percent of the
18 amount under dispute.

19 Any person who violates any provision of this section
20 shall be guilty of a misdemeanor, and, upon conviction
21 thereof, shall be punished by fine of not less than
22 twenty-five dollars nor more than five hundred dollars,
23 or by imprisonment in the county jail for not less than
24 ten days nor more than twelve months, or by both such
25 fine and imprisonment.

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